

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 Community Affairs

BILL: SB 1002

INTRODUCER: Senators Truenow and Trumbull

SUBJECT: Utility Service Restrictions

DATE: March 31, 2025

REVISED: 3/12/25

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	Favorable
2. <u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3. <u></u>	<u></u>	<u>RC</u>	

I. Summary:

SB 1002 expands the preemption over utility service restrictions to include boards, agencies, commissions, and authorities of counties and municipal corporations. Preempted entities cannot restrict or prohibit the types or fuel sources of energy produced, used, delivered, converted, or supplied by certain utilities.

The bill nullifies any existing charter, resolution, ordinance, rule, code, or policy from the included entities which conflict with this preemption and which existed before or on July 1, 2021.

The bill takes effect July 1, 2025.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local 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.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

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.⁴

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁵ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁶ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁷

In cases determining the validity of ordinances in violation of state preemption, the effect has been to find such ordinances null and void.⁸ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”⁹ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁰ Implied preemption is found where the local legislation would present the danger of conflict with the state’s pervasive regulatory scheme.¹¹

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.¹² The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe and reliable manner and at fair prices.¹³ In order to do so, the PSC exercises authority over utilities in one or more of

⁴ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption 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. 28, 2025).

⁵ 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).

⁶ *Mulligan*, 934 So. 2d at 1243.

⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

⁸ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

⁹ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

¹⁰ *Id.*

¹¹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

¹² Section 350.001, F.S.

¹³ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Mar. 28, 2025).

the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.¹⁴

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid¹⁵ and may order the addition or repair of infrastructure as necessary.¹⁶ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities¹⁷ (called “public utilities” under ch. 366, F.S.).¹⁸ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, and bulk power supply operations and planning.¹⁹ Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative’s membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a “municipal utility,” variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state’s electric utility customers.²⁰ Florida also has 27 municipally-owned gas utilities and four special gas districts.²¹

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.²² These cooperatives operate in 57 of Florida’s 67 counties and have more than 2.7 million customers.²³ Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida’s total electric utility customers, but their service territory covers 60 percent of Florida’s total land

¹⁴ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Mar. 28, 2025).

¹⁵ Section 366.04(5) and (6), F.S.

¹⁶ Section 366.05(1) and (8), F.S.

¹⁷ Section 366.05, F.S.

¹⁸ Section 366.02(8), F.S.

¹⁹ Florida Public Service Commission, *About the PSC*, *supra* note 14 **Error! Bookmark not defined.**

²⁰ Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Mar. 28, 2025).

²¹ Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, pg. 1 & 13, Apr. 2024 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.pdf>).

A “special gas district” is a dependent or independent special district, set up pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”

²² Florida Electric Cooperative Association, *Members*, <https://feca.com/members/> (last visited Mar. 28, 2025).

²³ Florida Electric Cooperative Association, *Our History*, <https://feca.com/our-history/> (last visited Mar 28, 2025).

mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.²⁴

Preemption over Utility Service Restrictions

Section 366.032, F.S., provides that “a municipality, county, special district, development district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any 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:²⁵

- 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
- Category I liquefied petroleum gas dealers, category II liquefied petroleum gas dispensers, or category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01, F.S.

Section 366.032(2), F.S., also prohibits (except to enforce the Florida Building Code and Florida Fire Prevention Code) a municipality, county, special district, development district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types used, delivered, converted, or supplied by the entities above.

The section also provides that it acts retroactively to any provision that existed before its enactment in 2021.

III. Effect of Proposed Changes:

The bill amends s. 366.032, F.S., to expand the preemption over utility service restrictions to include boards, agencies, commissions, and authorities of counties and municipal corporations. Preempted entities cannot restrict or prohibit the types or fuel sources of energy produced, used, delivered, converted, or supplied by certain utilities.

The bill nullifies any existing charter, resolution, ordinance, rule, code, or policy from the included entities which conflict with this preemption and which existed before or on July 1, 2021.

The bill takes effect July 1, 2025.

²⁴ *Id.*

²⁵ To the extent of serving the customers they are authorized to serve.

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:

The bill may have an indeterminate effect on public and cooperative utilities to the extent that it voids any restrictions or prohibitions imposed by preempted entities on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

C. Government Sector Impact:

The bill may have an indeterminate effect on municipal utilities to the extent that it voids any restrictions or prohibitions imposed by preempted entities on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.032 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
