

STORAGE NAME: h1499.ca

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1499

RELATING TO: Jacksonville Electric Authority

SPONSOR(S): Representative Crady

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) ENVIRONMENTAL PROTECTION (RLC)
 - (3) UTILITIES & COMMUNICATIONS (CAC)
 - (4)
 - (5)
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I. SUMMARY:

This bill makes certain changes to the Charter of the City of Jacksonville relating to the powers of the Jacksonville Electric Authority (JEA). The two most significant changes:

- Grant the JEA authority to assess civil penalties, not to exceed \$2,000, against violators of industrial pretreatment protective regulations; and
- Authorize the JEA to sell power and energy, water, sanitary sewer service, natural gas, and other utility services at wholesale or retail to any public or private entity, in or out of the state.

There appears to be a negative fiscal impact against entities found in violation of the industrial pretreatment protective regulations pursuant to this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

City of Jacksonville Charter

The City of Jacksonville functions under a consolidated government, as a municipal corporation that has jurisdiction both as a municipality and as a county. This government's jurisdiction extends throughout Duval County. The 1992 Legislature enacted chapter 92-341, Laws of Florida, which readopted the entire Charter of the City of Jacksonville (charter), reflecting changes made by local ordinances as well as by special acts. The Charter has been subsequently amended by special act and local ordinance each year since.

Chapter 92-341, Laws of Florida, as amended, provides for local amendment of the charter without an act of the Legislature. It further provides that the charter may only be amended by ordinance or by petition signed by qualified Duval County voters, followed by a public referendum.

However, the charter requires the City Council of the City of Jacksonville to advise the Legislature of any home rule or referendum amendments or revisions to the charter. Such notification must be in the form of a reviser's bill for such further legislative revision of the Legislature after such local charter amendments or revisions have occurred.

To date this provision of chapter 92-341, Laws of Florida, has not been adhered to by the City. The effect of this is there are changes to the City's Charter accomplished by local ordinance that are not reflected in the Laws of Florida.

Jacksonville Electric Authority

Section 21.04 of article 21 of chapter 92-341, Laws of Florida, as amended, relates to the JEA and specifically, establishes the powers of the JEA. The JEA owns, operates and manages the electric system established by the City of Jacksonville beginning in 1895. As of June 1, 1997, the JEA owns, operates and manages the water and sewer system established by the City of Jacksonville in 1880.

The JEA reports to be the largest municipally owned electric utility in Florida and the eighth largest municipally owned in the United States. The JEA's electric system currently serves more than 335,000 customers in Jacksonville and parts of three adjacent counties. The JEA's water system serves 170,000 water customers and 127,000 sewer customers.

Local City Ordinance

In 1998, Jacksonville adopted a local ordinance # 98-253-E, that amended article 21 of the charter, relating to the JEA. The local ordinance changed the name of Jacksonville Electric Authority to "JEA," expanded its powers and revised its internal staffing needs and fiscal, financial and budgetary functions obligations.

The local ordinance contains a provision that authorizes the JEA to sell power and energy, water, sanitary sewer service, natural gas, and other utility services at wholesale or retail to any public or private entity, in or out of the state. As to this provision, representatives of some Florida utilities believe that the JEA may be noncompliant with state public utility territorial agreements established by the Florida Public Service Commission (FPSC). The FPSC is a state regulatory agency for public utilities as defined in chapter 366, Florida Statutes. Utility territorial agreements generally confine utilities to a certain service area within the state. So to service customers outside those agreed upon boundaries, with nothing more, violates state law.

However, utility representatives reasoned that the "statewide selling of power" provision in the local ordinance might preempt state law if the Legislature adopted it into Jacksonville's charter. The JEA and such other utilities wanted to avoid such a situation. The entities pledged to work through this issue and others in its reviser's bill for 2000. However, it was discovered that the JEA needed certain legislative authority through its charter sooner.

Since the JEA's services expanded to include water and sewer, JEA is required to regulate the United States Environmental Protection Agency (EPA) industrial pretreatment protective regulations

program, relating to air and water quality. According to a representative from the JEA, the JEA is under a consent decree with Florida Department of Environmental Protection, EPA's state enforcement agency, to obtain authority to enforce the pretreatment standards. As such, the JEA is unable to wait until a reviser's bill is filed, but needs to seek pretreatment standards enforcement authority at the earliest opportunity. Consequently, it was agreed to only seek specific legislation regarding the charter amendments granting the JEA enforcement authority against violators to the pretreatment standards for 1999.

Due to a drafting glitch, the provision pertaining to JEA's authority to sell service statewide was included in this bill. However, the sponsor of this bill will offer a strike everything amendment to cure this glitch.

B. EFFECT OF PROPOSED CHANGES:

The bill substantially rewords s. 21.04 of article 21 of chapter 92-341, Laws of Florida. A significant part of the rewording incorporates some the provisions from the local ordinance # 98-253-E, as amended. In particular, the bill provides that JEA is authorized to sell power and energy, water, sanitary sewer service, natural gas, and other utility services at wholesale or retail to any public or private entity, in or out of the state in apparent contravention to FPSC regulatory requirements.

The bill also grants the JEA the power to impose civil penalties against entities who violate the federal industrial pretreatment protective regulations program. The penalty can be assessed in an amount up to but not to exceed \$2,000 to be paid to the JEA. Each day a violation continues will be considered a separate violation.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Section 21.04 of article 21 of chapter 92-341, Laws of Florida, as amended.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Although the bill grants the JEA authority to impose certain penalties, the bill fails to provide due process for those industrial pretreatment users who want to challenge such penalty imposition.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The JEA must assess civil penalties in an amount up to but not to exceed \$2,000 to be paid to the JEA for violation of industrial pretreatment protective regulations.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Rewording, substantially, of s. 21.04 of article 21 of chapter 92-341, Laws of Florida; relating, generally, to the powers granted to the JEA; and authorizing the JEA to assess civil penalties of at least \$2,000 per violation for violations of the water and sewer regulations and of the industrial pretreatment program under the Clean Water Act that each day of an on going or continuing violation shall be deemed to be separate violation will be considered a separate violation.

Section 2. Providing that this bill takes effect upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? October 20, 1998.

WHERE? Jacksonville, Florida

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B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

IV. COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill will offer a strike everything amendment of the April 14, 1999, House Community Affairs Committee meeting. The strike everything amendment will do the following:

- (1) Publish only specific JEA changes to the city charter that addresses the needed authority by JEA to enforce the industrial pretreatment regulations;
- (2) Provide for due process procedures as provided by either chapter 120, Florida Statutes, or a JEA procedure at the election of the industrial pretreatment user for any air or water pollution penalties assessed under the pretreatment program; and
- (3) Clarifies that it is the industrial pretreatment user gets to chose which due process procedure to use.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Nayola R. Frazier

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