

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 442

INTRODUCER: Senator Altman

SUBJECT: Local Government Services

DATE: February 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Pre-meeting
2.			EP	
3.			RC	

I. Summary:

SB 442 requires a municipality to obtain the express consent of a county prior to exercising its corporate powers under ch. 180, F.S., within unincorporated areas of a county.

The bill expands a prohibition on the provision of water or sewer facilities by a county to properties already receiving such facilities from a municipality to include a ban on the provision of services as well. However, the bill authorizes a county to provide water/sewer facilities or services to a property without the municipality's permission if the property is outside the municipality's borders and any prior consent agreement between the county and municipality related to the provision of such services or facilities has expired.

II. Present Situation:

Counties

Article VIII, s. 1 of the State Constitution establishes the powers of non-charter counties and charter counties. Non-charter counties have the power of self-government as provided by general law or special law.¹ Charter counties have broader powers; these counties have all powers of local self-government not inconsistent with general law or special law approved by vote of the electors and may enact ordinances not inconsistent with general law.²

Municipalities

Pursuant to Art. VIII, s. 2(b) of the State Constitution municipalities, have the 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

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

purposes except as otherwise provided by law. The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act, with certain exceptions.³

Current Law Governing the Provision of Water Facilities

Section 153.03(1), F.S., provides all counties the power to construct and operate water and sewer systems. However, a county may not construct, own, or operate any water or sewer facilities on property within the corporate limits of a municipality without the consent of the municipality's governing body.⁴ In addition, a county may not furnish such facilities to a property already being furnished similar facilities by a municipality without the consent of the municipality's governing body.

An exception to the general grant of power made to municipalities is the exercise of extra-territorial powers, which must be performed in accordance with general or special law.⁵ Chapter 180, F.S., authorizes municipalities to execute their corporate powers to provide for water supply and sewage collection and disposal systems outside of their corporate limits.

Section 180.19(1), F.S., allows a municipality to permit any other municipality and the owners or association of owners of lots or lands outside of its corporate limits or within the limits of any other municipality, to connect with or use the utilities mentioned in ch. 180, F.S., upon such terms and conditions as are agreeable to the parties. Incidental powers necessary to accomplish the provision of such facilities are also provided for, including the authority to: "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works."⁶

A recent survey of municipalities in Florida indicated that 254 municipalities provide water services and 222 provide sewer services.⁷ Of these municipalities, 137 provide water and/or sewer services to customers outside of their municipal boundaries.

III. Effect of Proposed Changes:

Section 1 expands the current prohibition against a county providing, absent a municipality's permission, water or sewer **facilities** to a property to which a municipality already furnishes such facilities to also ban the provision of water or sewer **services**. However, the bill allows a county to furnish such facilities or services to a property without the municipality's permission if the

³ Pursuant to s. 166.021(3)(a)-(d), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

⁴ Section 153.03(1), F.S. An exception exists where such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality.

⁵ Art. VIII, s. 2(c), Fla. Const.

⁶ Section 180.06(6), F.S.

⁷ Analysis for HB 813, by the House Subcommittee on Energy and Utilities (March 18, 2014) at p. 3, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0813a.EUS.DOCX&DocumentType=Analysis&BillNumber=0813&Session=2014> (last visited February 9, 2015).

property is outside the municipality's boundary and any prior consent agreement between the municipality and the county regarding such facilities or services has expired.

Section 2 prohibits a municipality from extending and executing its corporate powers in relation to public works projects into the unincorporated areas of a county without the express consent of the governing body of the county.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Those municipalities currently providing water and wastewater facilities or services outside their municipal boundaries pursuant to a consent agreement between the municipality and the county may experience a reduction in revenues upon the expiration of the consent agreement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Possible Conflict with Exclusive Jurisdiction of the Public Service Commission

Section 180.02, F.S., authorizes a municipality to “extend and execute **all** of its corporate powers... outside of its corporate limits...as may be desirable or necessary for the promotion of the public health, safety and welfare...”

Pursuant to Art. VIII, s. 2(b) of the State Constitution, municipalities 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.” No general or special law prohibits a municipality from providing electric utility services.

Furthermore, s. 366.02(2), F.S., defines an “electric utility” to include “any municipal electric utility.” In fact, according to the Florida Municipal Power Agency, 31 municipalities in Florida do actually operate a municipal electric utility.⁸ Therefore, it is reasonable to assume that provision of electric utility services is one of a municipality’s many “corporate powers” which may be exercised outside of its corporate limits to promote the public health, safety and welfare.

In 1994, the Fifth District Court of Appeal interpreted s. 180.02, F.S., to allow a municipality to exercise its authority to construct an electrical utility outside of the municipal boundary. *City of Ocala v. Red Oak Farm, Inc.*, 636 So.2d 81 (Fla. 5th DCA 1994). A similar argument can be made with relation to a municipal gas utility.

The Public Service Commission has power over electric utilities to “approve territorial agreements,”⁹ and “to resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas.”¹⁰ The commission is provided the same powers with respect to natural gas utilities.¹¹

The commission’s jurisdiction is declared by the Florida Statutes to be “exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or **counties**...”¹²

Section 2 of the bill purports to give counties authority over whether a municipality may extend or apply its corporate powers (which may include the power to provide electric and gas utility services) within the unincorporated areas of a county. This would appear to be in conflict with the exclusive authority of the Public Service Commission, as provided by s. 366.04(1), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 153.03, 180.02.

⁸ See <http://fmpa.com/about/members/> (last visited February 12, 2015).

⁹ Section 366.04(2)(d), F.S.

¹⁰ Section 366.04(2)(e), F.S.

¹¹ Section 366.04(3)(a) and (b), F.S.

¹² Section 366.04(1), F.S.

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.
