



Leadership in Stormwater Management and Utilities
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Via USPS and Electronic Mail

March 17, 2020

Honorable Ron DeSantis, Governor
State of Florida
The Capitol
Tallahassee, FL 32399

RE: Veto Request - SB 410

Dear Governor DeSantis:

The Florida Stormwater Association (FSA) hereby requests that you withhold your approval of SB 410 and veto said legislation.

FSA is a non-profit, professional association focused on the improvement of water quality and those related policies and programs that are designed to enhance our ability to improve water quality in the State of Florida.

Background

Over the past 50 years, many practices based on the Florida Constitution have been developed to foster cooperation between municipal and county governments, and to give the local electorate the ability to determine which policies should be effective locally or regionally. Many of those practices have resulted in policies that serve to improve water quality in Florida; SB 410 upends those practices and policies.

Article VIII of the Florida Constitution provides for the basic structure and powers of cities and counties in Florida. Subsection 1(f) provides that non-charter counties have such power of self-government as is provided by general or special law, and that a county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

Subsection 1(g) of Article VIII provides that charter counties have all powers of local self-government not inconsistent with general law or special law approved by vote of the electorate and requires the charter to specify which prevails in the event of conflict between county and municipal ordinances.

SB 410

SB 410 and its house counterpart (HB 203) were originally filed as legislation that amended Florida's growth management statutes. The legislation remained as such throughout the committee process in both houses. With little discussion, amendments were adopted on the Senate floor late in the Session to provide that after January 1, 2020:

Kelli Hammer Levy
President
Pinellas County

Elliot Shoberg, PE
Vice-President
City of Clearwater

Elizabeth Perez, PE
Secretary-Treasurer
Collective Water Resources

Danielle Hopkins, CMP
Executive Director

1. A county may not adopt any measure or policy that serves as a limitation on a municipality from establishing land use and zoning on lands located within a municipality, unless the municipality itself adopts the measure or policy on lands located within its jurisdiction.
2. A county may not limit a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality, if the municipality follows the provisions of subsection (3) of 163.3167, FS.
3. A partial exemption from the above provisions of SB 410 was granted for charter counties with populations greater than 750,000 that have charter provisions in place governing land use or development that apply to all jurisdictions within the county.

Effects in Non-Charter Counties

SB 410 creates an unnecessary step in coordinating policy at the local level. Under current practice, cities need not affirmatively act to accept the policies of a countywide ordinance. Conversely, if they wish to reject the provisions of an ordinance, they are free to do so. Under SB 410, cities must affirmatively act to accept a countywide policy – a cumbersome process, which is more akin to the provisions of Article VIII, Section 4, concerning the transfer of assets or services and not the simple setting of policy countywide.

Further, SB 410 conflicts with Article VIII(1)(g) of the Florida Constitution, which requires charters to specify which ordinance prevails in the event of a conflict between a county and municipal ordinance, including those relating to land use. Moving forward, Floridians in non-charter counties who wish to adopt a charter that contains provisions relating to countywide land use policies, may have their efforts questioned in unnecessary legal challenges.

Effects in Charter Counties

Floridians in 20 of the State's 67 counties have voted to adopt charter forms of government. Pursuant to Article VIII (1)(g), the electorate in at least 10 of those counties have voted to authorize the county commission to enact measures protecting the environment through the adoption of countywide land use policies.

As noted above, SB 410 is inconsistent with the provisions of Article VIII(1)(g), which requires the county charter to provide which ordinance prevails in the event of a conflict. For the sake of argument, the following examples illustrate the impacts of the legislation:

- Seminole County – In 2004, the voters of Seminole County approved an amendment to the charter which established a rural boundary to protect environmentally-sensitive lands in the eastern part of the county. After the adoption of the charter amendment, the land use designations of the county's comprehensive plan control the density and intensity of development within the rural area regardless of whether the land was subsequently annexed into a municipality. (The voters of Sarasota County

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have adopted a similar provision in their charter.) SB 410 places voter-approved charter policies such as these into question.

- Alachua County – The charter was amended by the voters to provide that municipal ordinances prevail over county ordinances, except for ordinances that establish more stringent standards that protect the environment by regulating water pollution. Pursuant to this authority, the County Commission adopted a Low Impact Development code on a countywide basis to protect surface and groundwater. The ordinance became fully effective in January 2019 and was necessary because state standards were determined to not be sufficiently protective. As with the charter policies in Seminole and Sarasota counties, SB 410 would place the Alachua policy into question.

Beyond the effects of SB 410 on charter counties of less than 750,000 people, it will likely impact all charter counties in that the “exemption” for counties of more than 750,000 is not of a general nature but seems to be specific, requiring each type of a policy to be in place on or before January 1, 2020. For example, if a charter county of 800,000 people had the authority to adopt countywide environmental policies on January 1, 2020, would a charter amendment adopted by its voters in 2022 establishing a rural boundary be permitting under SB 410?

In summary, the electorate in several charter counties have determined that a preferred method to protect our environment and water quality through land use policy is to authorize the county to set that policy countywide. We are not aware of instances where such measures have harmed state policy; in fact, they serve to protect and improve our water resources. Those who oppose such policies have recourse through the political process or by seeking to amend the county charter. But if allowed to become law, SB 410 will be litigated for many years to come.

For the reasons stated herein, we urge you to veto SB 410.

Sincerely,

FLORIDA STORMWATER ASSOCIATION, Inc.



Danielle Hopkins