CS House Bill 3 - Preemption of Local Regulations

Committee Substitute for HB 3 nullifies most Home Rule powers that have been enjoyed by Florida local governments and the public since the 1968 revisions to the Florida Constitution. If passed, the legislation will have far-reaching impacts on numerous local water quality improvement programs and practices.

Background

The principle of Home Rule is that a local government may undertake any action or adopt any policy as long as it is not specifically prohibited or "preempted" by law. Absent preemption, the local government is presumed to be authorized to take action. HB 3 upends Home Rule in Florida and requires express authorization in general law to act. Absent express authorization, an arduous and repetitive adoption procedure must be followed.

Summary

1. With minor exceptions, unless the authority to adopt a regulatory policy is ***expressly authorized by general law***, the regulation of businesses and business activities by cities, counties and special districts is prohibited unless the below adoption procedure is followed.

2. If a local regulatory program or practice is not expressly authorized by general law, the legislation requires that extraordinary measures be followed at the local level before the regulation may be adopted or readopted, including:

   a) A very detailed analysis of the impacts of the regulation on local businesses must be performed (*see* subparagraph (2) on line 72 of CS/HB 3); and

   b) The regulation must have been passed by a 2/3 vote of the entire governing body; and

   c) The regulation must "sunset" in two years and may be readopted only by using the above procedures and criteria every two years.

Example Impacts: Practice Expressly Authorized by General Law

- Stormwater Utility Fees – SWU fees are expressly authorized by general law and would not be required to follow the provisions as outlined above in Item #2

Example Impacts: Practice Not Expressly Authorized by General Law – Follow Item #2 Procedure

- Confusion over what is "Expressly Authorized" - Since local governments have operated under the Home Rule provisions of the Florida Constitution for 50 years, the test that a city or county would normally look for is whether a regulatory policy was specifically prohibited or pre-empted, not expressly authorized by general law. Determining what types of regulations are (or are not) expressly authorized will likely subject numerous existing policies and practices to litigation and/or re-adoption using HB 3's cumbersome adoption process and criteria.

Example regulatory policies that would be subject to extraordinary adoption and re-adoption procedures every two years:

- Nutrient Management Programs – Regulatory programs such as prohibiting conventional OSTDS within a certain distance of nutrient-impaired waters.
- Wellfield Protection Programs – Programs prohibiting the location of underground petroleum storage tanks within a specific distance from the wellhead of a public water supply.
- Wetland Protection Programs – Policies providing for more stringent definitions or standards than those of the State regarding development in or adjacent to wetlands.
- Tree Preservation Programs – Policies designed to preserve trees and other vegetation so as to minimize runoff and maintain water quality.
- Programs Implemented per Special Act – Regulatory authority granted by a Special Act to a specific city or county as it is not authorized by general law.
- Charter Amendments – Ordinances implementing voter-approved amendments to a city or county charter whose subject was not expressly authorized by general law must be adopted and re-adopted every two years per the process described in Item #2, even though the charter amendment was already approved by the local electorate.

Florida Stormwater Association