HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 3 Preemption of Local Regulations
SPONSOR(S): Business & Professions Subcommittee, Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	9 Y, 5 N, As CS	Wright	Anstead
2) Local, Federal & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill prohibits local governments from adopting or imposing new regulations, not authorized by general law, on a business or business entity after July 1, 2019, unless the local government has:

- determined and publicly stated that the regulation is justified because:
  - it is necessary to protect public health, safety and welfare;
  - it is regulated in a manner that does not unnecessarily restrict entry into the business; and
  - the regulation is done in the least restrictive and most cost-effective manner.
- required that the regulation sunset 2 years after the date of adoption;
- passed the regulation by a two-thirds vote of the entire membership of the governing body, except when the regulation concerns zoning regulations, regulations that increase building costs by less than $750, nuisance ordinances, and ordinances related to alcohol or tobacco;
- completed and published a statement of estimated regulatory costs 14 days prior to any vote on the regulation, and has determined that the regulatory costs on the business or business entity could not be reduced by the adoption of a less costly alternative.

The bill also provides that any local government regulation of a business or business entity adopted or imposed before July 1, 2019, expires on July 1, 2021, and may only be readopted if the local government meets the requirements contained in the bill, unless the regulation is expressly authorized by general law.

The bill expressly preempts the regulation and licensing of professions and occupations to the state and supersedes any local government regulation or license requirement of professions and occupations. However, any regulation adopted prior to July 1, 2019, will continue to be effective until July 1, 2021, at which time it will sunset. Any regulation expressly authorized by general law or ratified by the Legislature before July 1, 2021, is exempt from the preemption and will not sunset.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to a contractor type licensed by the CILB, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, and decorative stone, tile, marble, granite, or terrazzo installation, plastering, and stuccoing.

The bill exempts any regulation expressly authorized by general law from the requirements of the bill.

The fiscal impact of the bill is unknown.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Counties[1]

The Florida Constitution of 1861 gave counties constitutional status for the first time.[2] However, not until passage of the 1885 Florida Constitution were provisions for cities and counties included in a separate article.[3] Counties were recognized as legal subdivisions of the state and the Legislature was granted the power to create new counties and alter county boundaries. By 1925, county boundaries were fixed and have, with a few minor changes, remained unchanged. The last county to be formed was Gilchrist County, which was created by special act of the Legislature in 1925 under the provisions of the amended 1885 Florida Constitution.[4]

The 1968 Florida Constitution revised the Legislature's constitutional authority to establish counties by simply providing for counties to be "created, abolished or changed by law, with provision for payment or apportionment of the public debt." The 1968 Constitution also authorized the passage of local ordinances consistent with the idea of home rule.[5]

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[6] and has the authority to choose to create municipalities.[7] The Florida Constitution recognizes two types of county government in Florida: those operating under a county charter and those without a charter. Florida currently has 67 counties.[8] County ordinances must be filed with the custodian of state records, and take effect at the time provided by law.[9]

Noncharter Counties

A county without a charter has such power of self-government as provided by general[10] or special law, and may enact county ordinances not inconsistent with general law.[11] General law authorizes counties "the power to carry on county government"[12] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[13]

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[1] *See generally* Florida House of Representatives, *Local Government Formation Manual 2017-2018*, Chapter 1.
[2] Art. IV, s. 27, and art. V, ss. 6, 8, 9, Fla. Const. (1861), pertaining to courts and officials established in counties; art. V, s. 18, authorizing the General Assembly to establish a Board of Commissioners in each county responsible for county business; art. VIII, s. 4, providing for counties and incorporated towns to be authorized to impose taxes for local purposes; art. IX, ss. 3 & 4, pertaining to the organization of senatorial districts and apportionment necessary for representation, http://www.law.fsu.edu/crc/conhist/1861con.html (last visited 2/14/2017). The 1861 Florida Constitution, adopted on January 10, 1861, by the convention called to determine whether Florida should attempt to withdraw from the United States, incorporated the Ordinance of Secession.
[3] FLA. CONST. art. VIII. (1885).
[4] Ch. 11371, Laws of Fla. (1925).
[5] Local Government Formation Manual 2017-2018, p. 4.
[6] Art. VIII, s. 1(a)., Fla. Const.
[7] Art. VIII, s. 2(a)., Fla. Const.
[8] *See* Local Government Formation Manual 2017-2018, Appendix B for a list these counties and their dates of incorporation.
[9] Art. VIII, s. 2(i)., Fla. Const.
[10] Ch. 125, Part I, F.S.
[11] Art. VIII, s. 1(f)., Fla. Const.
[12] S. 125.01(1), F.S.
[13] S. 125.01(1)(w), F.S.

Section 125.01, F.S., provides that the legislative and governing body of a county shall have the power to carry on county government and that "to the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:"

- Prepare and enforce comprehensive plans for the development of the county.
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- Adopt, by reference or in full, and enforce housing and related technical codes and regulations.
- Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.
- Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.
- License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[14]
- Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the county pursuant to general law.
- Establish, merge or abolish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided a number of essential facilities and municipal services from funds derived from service charges, special assessments, or taxes.
- Levy and collect taxes and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code, and adopt and enforce local technical amendments thereto.
- Prohibit a business entity, other than a county tourism promotion agency, from using certain names when representing itself to the public under specific circumstances.

Section 125.01, F.S., also provides:

- The "enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated;" and
- The "provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts including both incorporated and unincorporated areas.

This delegation of home rule power to noncharter counties is broad.[15] Nevertheless, it is a legislative, not a constitutional, grant of home rule power, and as such is subject to legislative regulation through law in the same manner as is a municipality.[16]

Noncharter counties must organize their governing body either in the traditional commission form or the commission-administrator form of county government, which may be enacted by county ordinance.[17] If

[14] . . . except that any constitutional charter county as defined in s. 125.011(1) shall on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, shall be issued by lottery among individuals with such experience as a taxi driver as the county may determine.

[15] *Santa Rosa County v. Gulf Power Corp*., 635 So. 2d 96 (Fla. 1st DCA. 1994).

[16] David G. Tucker, *A Primer On Counties and Municipalities - Part 1*, 81 FLA. BAR J. 49 (2007).

[17] *See* ss. 125.01(1), 125.72, F.S.

an ordinance enacted by a noncharter county conflicts with a municipal ordinance, the county ordinance is not effective within the municipality to the extent of the conflict.[18]

Charter Counties

Pursuant either to general[19] or special law, a county government may be adopted by charter approved by the county voters. A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.[20]

Article VIII, section 6(e) of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization[21] for specific home rule charters including those of Duval[22] and Miami-Dade Counties.[23] Currently, 20 Florida counties have adopted charters.[24]

A 1956 amendment to the 1885 Florida Constitution authorized Dade County "to adopt, revise and amend from time to time a home rule charter government for Dade County." The voters of Dade County approved that charter on May 21, 1957.[25] This was the first evidence that Florida was moving toward recognition of home rule authority for counties. Until this time, local governments had no power to enact local laws (ordinances). The Legislature controlled local laws through the passage of numerous special legislative acts (local bills) directed at specific locales. For example, 2,107 local bills were introduced during the 1965 legislative session.[26]

The most significant distinction between charter and non-charter county power is the constitutional provision for direct power of self-government to a county upon charter approval, whereas a non-charter county has "such power of self-government as is provided by general or special law." Charter counties possess greater home rule authority than non-charter counties, as follows[27]:

- A special act of the Legislature may not diminish the home rule powers of a charter county unless the act is approved by electors in the county.[28]
- A county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.[29]

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[18] *Id.*
[19] S. 125.60, F.S.
[20] Art. VIII, s. 1(g)., Fla. Const.
[21] Article VIII, section 6(e) of the Florida Constitution, states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."
[22] The consolidated government of the City of Jacksonville was created by Ch. 67-1320, Laws of Fla., adopted pursuant to article VIII, section 9 of the 1885 Florida Constitution.
[23] Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, section 11(5) of the 1885 Florida Constitution, now incorporated by reference in article VIII, section 6(e) of the 1968 Florida Constitution, further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[24] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. *Local Government Formation Manual 2017-2018*, p. 4.
[25] *See generally* Miami-Dade County Home Rule Charter, *available at* https://library.municode.com/index.aspx?clientId=10620 (last visited 2/14/2017).
[26] Steven L. Sparkman, *The History and Status of Local Government Powers in Florida*, 25 U. FLA. L. REV. 271 (1973).
[27] *Id.* at 4.
[28] Art. VIII, s. 1(g)., Fla. Const.
[29] *Id.*

- A charter county may levy any tax within its jurisdiction that is authorized by general law for a municipality unless the general law prohibits levy by a county.[30]

Charter counties may manage administrative functions under centralized control of the county governing board.

Municipalities[31]

A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

Typically, incorporation efforts are undertaken by a group of residents working through their elected state representatives. Such groups often seek greater levels of urban services and infrastructure expansion than can reasonably be provided through county government. Municipalities have an advantage in providing urban services by virtue of their traditionally compact and contiguous nature. However, municipal residents must pay ad valorem taxes levied separately by municipal and county governments, generally resulting in increased taxes for property owners within a newly created city. The decision to incorporate requires careful consideration by communities to ensure the desired result.

In Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level. Municipalities were created by the Legislature to perform additional functions and provide additional services for the particular benefit of the population within the municipality. Originally, counties provided state services (i.e., courts, tax collection, sheriff functions, health and welfare services) uniformly throughout the county, while municipalities provided services, such as utilities and transportation, only within the boundaries described in the municipal charter.[32]

Historically, municipalities in Florida were created by special acts of the Legislature. The 1885 Florida Constitution limited municipal authority to that expressly granted by the Legislature. Any reasonable doubt regarding a municipality's right to exercise power was to be resolved by a court against the municipality. This limitation of municipal authority was widely known as "Dillon's Rule" and prevailed generally throughout the United States.[33] Municipalities were not authorized to enact local laws (ordinances); therefore, all ordinances were made through the passage of special legislative acts directed at specific locales.

The 1968 Florida Constitution began the process of granting what is referred to as "municipal home rule." With the 1973 enactment of ch. 166, F.S., the Legislature granted municipalities all governmental, corporate, and proprietary powers necessary to function independently and provide services. Today, the Legislature must create a municipality by passing a special act enacting a municipality's charter (with the exception of municipalities in Miami-Dade County), but subsequent special acts are not required to grant specific powers to conduct municipal government. Currently, there are approximately 412 municipalities in Florida.[34]

Article VIII, section 2 of the Florida Constitution provides that municipalities "shall 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.[35]

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[30] *McLeod v. Orange County*, 645 So. 2d 411, 413 (Fla. 1994); *State ex rel. Volusia County v. Dickerson,* 269 So. 2d 9, 11 (Fla. 1972).
[31] *See generally* Florida House of Representatives, *Local Government Formation Manual 2017-2018*, Chapter 2.
[32] *See City of Miami v. Rosen*, 10 So. 2d 307, 309, 151 Fla. 677, 682 (Fla. 1942); *City of Tampa v. Prince*, 58 So. 542, 543, 63 Fla. 387, 388 (Fla. 1912); *Basic Energy Corporation v. Hamilton County*, 652 So. 2d 1237, 1239 (Fla. 1st DCA 1995).
[33] *City of Boca Raton v. State*, 595 So. 2d 25, 27 (Fla. 1992).
[34] *See* Local Government Formation Manual 2017-2018, Appendix E for a list these cities and their dates of incorporation.
[35] Art. VIII, s. 2(b)., Fla. Const.

With the exception of Miami-Dade County, the Legislature is authorized to establish or abolish municipalities or amend their charters by general or special law.[36] In Miami-Dade County, the Board of County Commissioners has exclusive authority to provide a method for establishing new municipalities and prescribing their jurisdiction and powers.[37]

General Law

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[38] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[39] Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.[40]

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Special Districts[41]

Special districts are separate governmental entities existing for specific purposes and having substantial fiscal and administrative independence from general purpose governments. Special districts have existed in the United States for over 200 years and are found in every state and the District of Columbia.

In Florida, special districts perform a wide variety of functions, such as providing fire protection services, delivering urban community development services, and managing water resources. Special districts typically are funded through ad valorem taxes, special assessments, user fees, or impact fees. The Uniform Special District Accountability Act, ch. 189, F. S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain types of special districts.

As of September 1, 2016, there were 631 active dependent special districts and 1,024 active independent special districts in Florida.[42] Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include drainage and water control districts, fire control districts, and community redevelopment districts.[43]

Revenue Sources Authorized in the Florida Constitution[44]

The Florida Constitution limits the ability of local governments to raise revenue for their operations.

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[36] Local Government Formation Manual 2017-2018, p. 15.
[37] Art. VIII, s. 6(e), Fla. Const., incorporating 1885 FLA. CONST. art. VIII, s. 11(e).
[38] S. 166.011, F.S.
[39] Local Government Formation Manual 2017-2018, p. 16.
[40] S. 166.021(4), F.S.
[41] *See generally* Local Government Formation Manual 2017-2018, Chapter 5.
[42] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *State Totals*, http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited 2/14/2017).
[43] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *Special District Function Totals* at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-accountability-program (last visited 2/14/2017).
[44] EDR, 2016 Local Government Financial Information Handbook, p. 1

The Florida Constitution provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[45]
>
> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[46]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the judicial question is whether the charge meets the legal sufficiency test for a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge fails the legal sufficiency test for a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority[47]

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. Each fee imposed under a local government's home rule powers should be analyzed in the context of requirements established in Florida case law that are applicable to its validity.

Proprietary fees are based on the assertion that local governments have the exclusive legal right to impose such fees. Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees. The guiding legal principle is that the imposed proprietary fee is reasonable in relation to the government-provided privilege or service or the fee payer receives a special benefit.

Regulatory fees may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and stormwater fees. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

Special assessments are used to construct and maintain capital facilities and to fund certain services. Generally, the courts have deemed special assessments to be valid if the assessed property has derived a special benefit from the improvement or service and the assessment has been fairly and reasonably apportioned among the properties receiving the special benefit.

In summary, all local government revenue sources are not taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether or not the charge meets the legal sufficiency test for a valid assessment or fee. If the charge does not meet the test, it is considered a tax and requires general law authorization. If the charge is not deemed a tax, the imposition of the assessment or fee is within the constitutional and statutory home rule powers of county and municipal governments.

Proprietary Fees[48]

[45] Art. VII, s. 1(a), Fla. Const.
[46] Art. VII, s. 9(a), Fla. Const.
[47] EDR, 2016 Local Government Financial Information Handbook, p. 9

Proprietary fees are home rule revenue sources, which are based on the assertion that local governments have the exclusive legal right to impose such fees. Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees. Each proprietary fee imposed under a local government's home rule powers should be considered in context with rules applicable to its validity that have been set forth in case law. The guiding legal principle is that the imposed fee is reasonable in relation to the government-provided privilege or service or that the fee payer receives a special benefit.

Local governments, for example, may exercise their home rule authority to impose a franchise fee upon a utility for the grant of a franchise and the privilege of using local government's rights-of-way to conduct the utility business. The fee is considered fair rent for the use of such rights-of-way and consideration for the local government's agreement not to provide competing utility services during the term of the franchise agreement. The imposition of the fee requires the adoption of a franchise agreement, which grants a special privilege that is not available to the general public. Typically, the franchise fee is calculated as a percentage of the utility's gross revenues within a defined geographic area. A fee imposed by a municipality is based upon the gross revenues received from the incorporated areas while a fee imposed by a county is generally based upon the gross revenues received from the unincorporated areas.

Regulatory Fees[49]

Regulatory fees are home rule revenue sources that may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and stormwater fees. Two principles guide the application and use of regulatory fees. The fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by population growth. Rather than imposing the costs of these additional capital facilities upon the general public, the purpose of impact fees is to shift the expense burden to newcomers.

Until 2006, the characteristics and limitations of impact fees in Florida were found in case law rather than state statute. As developed under case law, an impact fee imposed by a local government should meet the dual rational nexus test in order to withstand legal challenge. First, a reasonable connection, or rational nexus, should exist between the anticipated need for additional capital facilities and the population growth generated by the new development. Second, a rational nexus should exist between the local government's expenditure of impact fee proceeds and the benefits accruing to the new development from those proceeds.

In response to local governments' reliance on impact fees and the growth of impact fee collections, the Florida Legislature adopted the Florida Impact Fee Act in 2006, which requires local governing authorities to satisfy certain requirements when imposing impact fees.[50] The Act was amended in 2009 to impose new restrictive rules on impact fees by requiring local governments to shoulder the burden of proof when an impact fee is challenged in court and prohibiting the judiciary from giving deference to local government impact fee determinations.[51]

With respect to the school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board. The fee amount is usually determined after a study of the actual impact/costs of new residential construction on the school district has been made. As

[48] EDR, 2016 Local Government Financial Information Handbook, p. 11
[49] EDR, 2016 Local Government Financial Information Handbook, p. 13
[50] S. 163.31801, F.S.
[51] Ch. 2009-49, Laws of Fla.

previously mentioned, state law and legal precedent require a rational nexus between the impact fee and actual costs associated with the new construction.

Special Assessments[52]

Special assessments are a home rule revenue source used to construct and maintain capital facilities and to fund certain services. Additionally, state law authorizes the levy of special assessments for county and municipal governments[53] and county emergency medical services.[54] Special districts derive their authority to levy special assessments through general law or special act creating the district.[55] As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the assessed property must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

In order for an assessed property to derive a special benefit from the service provided, there should be a logical relationship between the provided service and the benefit to real property. This logical relationship to property legal test defines those services that can be funded by special assessments versus those that cannot. General government services, such as general law enforcement and indigent health care, fail to satisfy the logical relationship to property test and cannot be funded by special assessments.

Many improvements and services have been upheld by the courts as providing a special benefit to assessed properties. Examples of such improvements and services include beach renourishment and restoration, downtown redevelopment, garbage disposal, fire and rescue services, fire protection, parking facilities, sewer improvements, stormwater management services, street improvements, and water and sewer line extensions. Once the service or capital facility satisfies the special benefit test, the assessment should be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

Whether imposed to fund capital projects or services, a special assessment is generally collected on the annual ad valorem tax bill. Under this collection procedure, the special assessment is characterized as a non-ad valorem assessment.[56]

Sunrise and Sunset Reviews

A sunrise review is a formal process where a state legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis be conducted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of that regulation. Some states require proponents to provide certain information to a specific legislative committee or a state agency for analysis and evaluation, which is then provided to the state legislature. State lawmakers then review the information provided before moving forward with the legislation.[57]

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[52] EDR, 2016 Local Government Financial Information Handbook, p. 15
[53] For county governments, s. 125.01(1)(r), F.S.; for municipal governments, ch. 170, F.S.
[54] S. 25.271, F.S.
[55] For example, s. 153.73, F.S., for county water and sewer districts; s. 163.514, F.S., for neighborhood improvement districts; s. 190.021, F.S., for community development districts; and s. 191.009, F.S., for independent special fire control districts.
[56] s. 197.3632, F.S.
[57] The White House, *Occupational Licensing: A Framework for Policymakers*, 48, (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Feb. 8, 2019); Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx (last visited Feb. 8, 2019); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://www.clearhq.org/page-486181 (last visited Feb. 8, 2019).

A sunset review is a clause embedded in a provision of law requiring the provision to expire on a certain date unless the legislature takes action to renew the provision. A sunset review allows regulations to be periodically examined to determine if they are still necessary or need to be changed to account for advancement of technology.[58] Sunset reviews can be useful because even if a regulation was justified when first introduced, technological and economic advancements may have made the regulation unnecessary or burdensome.

However, some reports indicate that sunrise reviews are more successful at limiting the growth of regulations. According to a White House report published in 2015, both sunrise and sunset reviews can be useful tools to ensure a government facilitates a careful consideration of a regulation's costs and benefits, but that sunrise reviews are more successful at limiting the growth of regulation since removing a regulation is much more difficult than enacting one.[59]

State Agency Rulemaking and Statements of Estimated Regulatory Costs

State agencies are required to follow the Administrative Procedure Act (APA) which sets forth a uniform set of procedures that agencies must follow when exercising authority to make rules delegated to the agency by the legislature. Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create" rules.[60]

A state agency is required by the APA in certain circumstances to complete a statement of estimated regulatory costs (SERC), which is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[61] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. A SERC is required, however, if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[62] A SERC must include:

- Good faith estimates of the number of people and entities affected by the proposed rule;
- Good faith estimates of the cost to the agency and other governmental entities to implement the proposed rule;
- Good faith estimates of the transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs is defined to mean direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs;
- An analysis of the proposed rule's impact on small businesses, counties, and cities; and
- Any additional information that the agency determines may be useful.[63]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[64]

[58] White *supra* note 57, at 48-49; Brian Baugus & Feler Bose, *Sunset Legislation in the States: Balancing the Legislature and the Executive*, Mercatus Center, 3(August 2015)
[59] *Id.*
[60] Ss. 120.52(16)-(17), 120.54(1)(a), F.S; Ch. 120, F.S.
[61] S. 120.541(2), F.S.
[62] S. 120.54(3)(b), F.S.
[63] S. 120.541(2)(b), F.S.
[64] *Id.*

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.[65]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[66] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[67] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[68] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[69]

Businesses, Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate many professions and occupations and preempts the regulation of many businesses. For example, the Department of Business and Professional Regulation currently regulates approximately 25 professions and occupations.

Whether or not, and to what degree, current law authorizes or preempts the local regulation of professions and occupations is typically done specifically and individually by subject matter, business type, or profession. For example, Florida law currently preempts local regulation with regard to the following: local fees associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;[70] local fees and rules regarding low-voltage alarm system projects;[71] tobacco and nicotine products;[72] firearms, weapons, and ammunition;[73] employment benefits;[74] styrofoam products;[75] public lodging establishments and public food service establishments;[76] and disposable plastic bags.[77]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances. For example, Florida law specifically authorizes regulations relating to: zoning; the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[78] the levy of local business taxes;[79] building code inspection fees;[80] tattoo establishments;[81] massage practices;[82] child care facilities;[83] taxis and other vehicles for hire;[84] and waste and sewage collection.[85]

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[65] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[66] *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).
[67] *Mulligan*, 934 So. 2d at 1243.
[68] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[69] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).
[70] 553.80(7)(d), F.S.
[71] S. 489.503(14), F.S.
[72] Ch. 569, F.S., and s. 386.209, F.S.
[73] S. 790.33(1), F.S.
[74] S. 218.077, F.S.
[75] S. 500.90, F.S.
[76] S. 509.032, F.S.
[77] S. 403.7033, F.S.
[78] S. 166.221, F.S.
[79] Ch. 205, F.S.
[80] S. 166.222, F.S.

Construction Professional Licenses

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR). The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[86]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[87] "Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

The CILB licenses the following types of contractors:[88]

Statutory Licenses:	Specialty Licenses:
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[89]

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[81] S. 381.00791, F.S.
[82] S. 480.052, F.S.
[83] S. 402.306, F.S
[84] S. 125.01(1)(n), F.S.
[85] S. 125.01(1)(k), F.S.
[86] S. 489.107, F.S.
[87] S. 489.105, F.S.
[88] S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.
[89] S. 489.103, F.S.

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[90] Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses.

Registered contractors must register with DBPR after obtaining a local license from the jurisdiction and comply with local and state statutory obligations. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[91]

Effect of the Bill

The bill prohibits local governments from adopting or imposing new regulations, not expressly authorized by general law, on a business or business entity after July 1, 2019, unless the local government has determined and publicly stated that the regulation is:

- justified because the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage, and that the police power being exercised is only being exercised to the extent necessary for that purpose;
- justified because the regulation is being regulated in a manner that does not unnecessarily restrict entry into the business or adversely affect the availability of the business' services to the public; and
- justified because the least restrictive and most cost-effective regulatory scheme is being used to regulate such business or business entity.

The bill requires that any regulation of a business or a business entity by a local government sunset 2 years after the date of adoption, and be adopted by a two-thirds vote of the entire membership of the governing body, except for zoning regulations, regulations that increase building costs by less than $750, nuisance ordinances, and ordinances related to alcohol or tobacco.

Prior to adoption, local governments must first complete and publish a statement of estimated regulatory costs 14 days prior to any vote on the regulation, and determine that the regulatory costs on the business or business entity could not be reduced by the adoption of a less costly alternative. The statement of estimated regulatory costs must include the following:

- A determination of whether the cost-effectiveness and economic impact, including the indirect costs to consumers, will be favorable;
- Estimates of the number of businesses and business entities affected by the regulation;
- Estimates of the cost of the regulation, including the indirect costs to consumers, and the method proposed to finance the regulation;
- The resources necessary to implement and enforce the regulation including the anticipated costs to implement the regulation and the anticipated license fees to cover the anticipated costs;
- Good faith estimates of transactional costs likely to be incurred by businesses and business entities for compliance with the regulation;
- The regulation’s anticipated impact on small businesses; and
- The regulation’s anticipated impact on economic growth, private-sector job creation or employment, and business competitiveness, including the ability of persons doing business in the county to compete with persons doing business in other counties or markets.

The bill provides that any regulation expressly authorized by general law is exempt from the requirements of the bill.

[90] Ss. 489.117, 489.131 F.S.
[91] Ss. 489.105, & 489.117(4), F.S..

Any local government regulation, not authorized by general law, of a business or business entity adopted or imposed before July 1, 2019, expires on July 1, 2021, and may only be readopted if the local government meets the requirements of the bill.

The bill expressly preempts the regulation and licensing of professions and occupations. This preemption supersedes any local government regulation or license requirement of professions and occupations unless:

- the regulation was adopted or imposed before July 1, 2019. However, any such regulation expires on July 1, 2021; or
- the regulation is expressly authorized by general law or ratified by the Legislature before July 1, 2021.

A local government with an existing regulation concerning a profession or occupation that is being retained until July 1, 2021, may not impose additional regulations on that profession or occupation or modify such regulation except in accordance with the new sunrise procedure.

The bill provides that any local regulation of a business, business entity, profession, or occupation that is not authorized under the bill or otherwise expressly authorized by general law does not apply and may not be enforced.

The bill provides the following definitions:

- “Business” means any activity regularly engaged in by any person, or caused to be engaged in by any person, for the purpose of private or public gain, benefit, or advantage. The term includes goods and services and business entities.
- “Business entity” has the same meaning as in s. 112.312, F.S., which means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.
- “Local government” means a county, municipality, special district, school district, or political subdivision of the state.
- “Occupation” means a paid job, profession, work, line of work, trade, employment, position, post, situation, business, career, field, vocation, calling, or craft, or any other activity undertaken by a person to earn a livelihood.
- “Profession” means a paid occupation that involves prolonged or specialized training, knowledge, qualifications, and skills. The term includes membership in a professional body that is guided by a certain code of conduct established by the professional body or a certificate of practice to engage in a profession.
- “Publicly stated” or “published” means the posting of a statement or report on the local government's website 14 days before any publicly noticed meeting to adopt any regulation of a business or business entity, or, if the local government does not have a website, the publishing of a statement or report in the local government's meeting notice or agenda and publicly reading the statement or report at the meeting immediately before the vote to adopt the regulation.
- "Regulation" means a rule a rule, directive, act, law, bylaw, ordinance, pronouncement, mandate, command, injunction, procedure, requirement, prescription, or guideline, and any action or process of regulating or being regulated along with any associated fee.
- "Transactional costs" are direct costs that are ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of procedures required to be employed in complying with the proposed regulation, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the proposed regulation.

The bill provides that a person whose job scope does not substantially correspond to a contractor type licensed by the CILB is not required to register with the CILB, and that local governments may not require such a person to obtain a license. The bill specifically precludes local governments from

requiring a license for the following job scopes: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, and decorative stone, tile, marble, granite, or terrazzo installation, plastering, and stuccoing.

The bill has an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1 Creates s. 163.21, F.S., providing definitions; prohibiting certain local governments from imposing or adopting certain regulations on businesses, professions, and occupations after a certain date; preempting the regulation of business, professions, and occupations to the state; providing exceptions to such preemption

Section 2 Amends s. 489.117, F.S., limiting the scope of licenses local governments may issue.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments section.

2. Expenditures:

See fiscal comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate, positive impact on the private sector.

D. FISCAL COMMENTS:

The fiscal impact of the bill on local governments is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment exempts local regulations expressly authorized by general law from the requirements of the bill.

This analysis is drafted to the committee substitute as passed by the Business & Professions subcommittee.