

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 3 Preemption of Local Professional and Occupational Regulations and Licensing
SPONSOR(S): State Affairs Committee, Business & Professions Subcommittee, Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	9 Y, 5 N	Wright	Anstead
2) State Affairs Committee	15 Y, 7 N, As CS	Renner	Williamson
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. Current law can also authorize or preempt the local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or profession.

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 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 that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation, 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, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill does not appear to have a fiscal impact on the state, but may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.²

Likewise, municipalities³ have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁴

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,⁵ special act,⁶ local ordinance,⁷ or by rule of the Governor and Cabinet.⁸ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁹

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.¹⁰ An "independent special district" is any district that is not a dependent special district.¹¹

Revenue Sources Authorized in the Florida Constitution¹²

The Florida Constitution limits the ability of local governments to raise revenue for their operations. 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.¹³

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ 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."

⁴ Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

⁵ Section 189.031(3), F.S.

⁶ *Id.*

⁷ S. 189.02(1), F.S.

⁸ S. 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

⁹ 2018 – 2020 *Local Gov't Formation Manual*, p. 62, at

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf> (last visited March 8, 2019).

¹⁰ S. 189.012(2), F.S.

¹¹ S. 189.012(3), F.S.

¹² EDR, 2018 Local Government Financial Information Handbook, p. 1

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.¹⁴

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 Authority¹⁵

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.

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.¹⁶

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.¹⁷ 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.¹⁸

¹³ Art. VII, s. 1(a), Fla. Const.

¹⁴ Art. VII, s. 9(a), Fla. Const.

¹⁵ EDR, 2018 Local Government Financial Information Handbook, p. 9

¹⁶ 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).

¹⁷ 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)

¹⁸ *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.¹⁹

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.²⁰ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.²¹ In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.²² 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.²³

Businesses, Professions, and Occupations

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) 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;²⁴ local fees and rules regarding low-voltage alarm system projects;²⁵ tobacco and nicotine products;²⁶ firearms, weapons, and ammunition;²⁷ employment benefits;²⁸ polystyrene products;²⁹ public lodging establishments and public food service establishments;³⁰ and disposable plastic bags.³¹

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 and land use; 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";³² the levy of local business taxes;³³ building code inspection fees;³⁴ tattoo establishments;³⁵ massage practices;³⁶ child care facilities;³⁷ taxis and other vehicles for hire;³⁸ and waste and sewage collection.³⁹

¹⁹ Wolf, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited March 8, 2019).

²⁰ 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).

²¹ *Mulligan*, 934 So. 2d at 1243.

²² *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

²³ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

²⁴ S. 553.80(7)(d), F.S.

²⁵ S. 489.503(14), F.S.

²⁶ Ch. 569, F.S., and s. 386.209, F.S.

²⁷ S. 790.33(1), F.S.

²⁸ S. 218.077, F.S.

²⁹ S. 500.90, F.S.

³⁰ S. 509.032, F.S.

³¹ S. 403.7033, F.S.

³² S. 166.221, F.S.

³³ Ch. 205, F.S.

³⁴ S. 166.222, F.S.

³⁵ S. 381.00791, F.S.

Construction Professional Licenses

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within 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.⁴⁰

"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.⁴¹ "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 by 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:⁴²

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• 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.⁴³

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.⁴⁴ Local jurisdictions are not barred from issuing and

³⁶ S. 480.052, F.S.

³⁷ S. 402.306, F.S.

³⁸ S. 125.01(1)(n), F.S.

³⁹ S. 125.01(1)(k), F.S.

⁴⁰ S. 489.107, F.S.

⁴¹ S. 489.105, F.S.

⁴² S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.

⁴³ S. 489.103, F.S.

⁴⁴ Ss. 489.117, 489.131 F.S.

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.⁴⁵

Effect of the Bill

The bill defines the following terms:

- “Local government” means a county, municipality, special district, or political subdivision of the state.
- “Occupation” means a paid job, profession, work, line of work, trade, employment, position, post, situation, 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 or license to engage in a profession.
- “Regulation” means a rule, directive, act, law, bylaw, ordinance, pronouncement, mandate, command, injunction, license, procedure, requirement, prescription, or guideline, and any action or process of regulating or being regulated along with any associated fee.

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
- Is expressly authorized by general law.

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.

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

Finally, the bill provides that a person whose job scope does not substantially correspond to a contractor or journeyman licensed by the CILB is not required to register with the CILB, and local governments may not require such a person to obtain a license. The bill specifically precludes local governments from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, and decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

B. SECTION DIRECTORY:

Section 1 creates s. 163.21, F.S., relating to regulation and licensing of professions and occupations preempted to the state.

Section 2 amends s. 489.117, F.S., relating to registration; specialty contractors.

⁴⁵ Ss. 489.105, & 489.117(4), F.S.
STORAGE NAME: h0003b.SAC
DATE: 3/14/2019

Section 3 provides an effective date of July 1, 2019.

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:

None.

2. Expenditures:

None.

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:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

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.

On March 14, 2019, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that it:

- Removed the preemption of local governments related to the adoption of regulations on businesses;
- Added caulking, canvas awning installation and ornamental iron installation to the list of occupations that specifically may not be regulated by local jurisdictions; and
- Clarified definitions.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.