

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 735 Preemption of Local Occupational Licensing

SPONSOR(S): Harding and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 268

FINAL HOUSE FLOOR ACTION: 82 Y's 32 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 735 passed the House on April 1, 2021, and subsequently passed the Senate on April 27, 2021.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law also determines whether local governments are able to regulate businesses, and to what degree. General law can authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation.

The bill expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2021, will continue to be effective until July 1, 2023, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

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 licensed by the Construction Industry Licensing Board, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-214, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.¹ A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.²

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁴ When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁵

Implied preemption is a legal doctrine that addresses situations in which the legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.⁶

Local Government Authority

General law authorizes counties "the power to carry on county government" 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."⁷ More specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁸ 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.⁹

Likewise, municipalities¹⁰ have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.¹¹

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,¹² special

¹ James R. Wolf and Sarah Harley Bolinder, *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/>.

² *Id.*

³ 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).

⁴ *Mulligan*, 934 So. 2d at 1243.

⁵ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

⁶ Wolf and Bolinder, *supra* note 1.

⁷ *Id.*

⁸ Art. VIII, s. 1(f), Fla. Const.

⁹ Art. VIII, s. 1(g), Fla. Const.

¹⁰ 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."

¹¹ Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

¹² S. 189.031(3), F.S.

act,¹³ local ordinance,¹⁴ or by rule of the Governor and Cabinet.¹⁵ 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.¹⁶

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 the governing body of a single county or municipality.¹⁷ An "independent special district" is any district that is not a dependent special district.¹⁸

Revenue Sources Authorized in the Florida Constitution¹⁹

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 taxes²⁰ 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.²¹

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.²²

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 question is whether the charge is 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 is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority

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. 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.²³

Professions and Occupations

¹³ *Id.*

¹⁴ S. 189.02(1), F.S.

¹⁵ S. 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

¹⁶ 2018–2020 Local Gov't Formation Manual, p. 62,

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Dec 19, 2019).

¹⁷ S. 189.012(2), F.S.

¹⁸ S. 189.012(3), F.S.

¹⁹ The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, <http://edr.state.fl.us/Content/local-government/reports/lqfih19.pdf>.

²⁰ "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

²¹ Art. VII, s. 1(a), Fla. Const.

²² Art. VII, s. 9(a), Fla. Const.

²³ EDR, *supra* note 19, at 9.

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.²⁴

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.²⁵ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.²⁶ For example, Florida law currently preempts local regulation with regard to the following:

- Zoning of family day care homes;²⁷
- Zoning of community residential homes;²⁸
- Pest control;²⁹
- Assessing local fees in certain circumstances for contractors;³⁰
- Assessing local fees for low-voltage alarm system projects;³¹
- Public lodging establishments and public food service establishments;³²
- Food trucks;³³
- Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps;³⁴
- Beekeeping;³⁵
- Nonresidential farm buildings, farm fences and farm signs;³⁶
- Insurers and agents;³⁷
- Sellers of travel;³⁸
- Movers of household goods and moving brokers;³⁹
- Tobacco and nicotine products;⁴⁰
- Firearms, weapons, and ammunition;⁴¹
- Employment benefits;⁴²
- Polystyrene products;⁴³ and
- Disposable plastic bags.⁴⁴

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.⁴⁵ 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

²⁴ S. 20.165, F.S.

²⁵ Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.

²⁶ *Id.*; Wolf and Bolinger, *supra* note 1.

²⁷ S. 125.0109, F.S.

²⁸ S. 419.001, F.S.

²⁹ S. 482.242(1), F.S.

³⁰ S. 553.80(7)(d), F.S.

³¹ S. 489.503(14), F.S.

³² S. 509.032, F.S.

³³ S. 509.102, F.S.

³⁴ S. 513.051, F.S.

³⁵ Ss. 586.10(1) & 586.055, F.S.

³⁶ S. 604.50, F.S.

³⁷ S. 624.401(3), F.S.

³⁸ S. 559.939

³⁹ S. 507.13, F.S.

⁴⁰ Ch. 569, F.S., and s. 386.209, F.S.

⁴¹ S. 790.33(1), F.S.

⁴² S. 218.077, F.S.

⁴³ S. 500.90, F.S.

⁴⁴ S. 403.7033, F.S.

⁴⁵ See examples, Chapters 559 and 553, F.S.

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”;⁴⁶

- The levy of local business taxes;⁴⁷
- Building code inspection fees;⁴⁸
- Tattoo establishments;⁴⁹
- Massage practices;⁵⁰
- Child care facilities;⁵¹
- Taxis and other vehicles for hire;⁵² and
- Waste and sewage collection.⁵³

Construction Professional Licenses

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

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.⁵⁴

“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.⁵⁵

“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.

“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.⁵⁶

The CILB licenses the following types of contractors:⁵⁷

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none"> • Air Conditioning- Classes A, B, and C • Building • General 	<ul style="list-style-type: none"> • Drywall • Demolition • Gas Line • Glass and Glazing

⁴⁶ S. 166.221, F.S.

⁴⁷ Ch. 205, F.S.

⁴⁸ S. 166.222, F.S.

⁴⁹ S. 381.00791, F.S.

⁵⁰ S. 480.052, F.S.

⁵¹ S. 402.306, F.S.

⁵² S. 125.01(1)(n), F.S.

⁵³ S. 125.01(1)(k), F.S.

⁵⁴ S. 489.107, F.S.

⁵⁵ S. 489.105, F.S.

⁵⁶ S. 489.103, F.S.

⁵⁷ S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.

<ul style="list-style-type: none"> • 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"> • 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
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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.⁵⁸ 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. Local governments may only collect licensing fees that cover the cost of regulation.⁵⁹

Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. 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.⁶⁰

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.⁶¹

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.⁶²

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."⁶³

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and

⁵⁸ Ss. 489.117, 489.131 F.S.

⁵⁹ EDR, *supra* note 19, at 9.

⁶⁰ Ss. 489.105, & 489.117(4), F.S.

⁶¹ See *generally* s. 489.505, F.S.

⁶² Ss. 489.505(12), & 489.537(7), F.S.

⁶³ S. 489.505(1)-(2), F.S.

- Utility line electrical contractor.⁶⁴

Journeyman

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.⁶⁵

However, ch. 489, F.S., allows tradesman to be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). Specifically, s. 489.1455(1) of part I, F.S., specifies:

- An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:⁶⁶

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating verifiable practical experience in the particular trade;
- Completing coursework approved by the Florida Building Commission specific to the discipline; and
- Not having a license suspended or revoked within the last 5 years.

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, career, field, vocation, or craft.
- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.

The bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- The licensing of occupations by local governments is authorized by general law; or
- The local licensing scheme for an occupation was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

The bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2023, from imposing additional licensing requirements on that occupation and from modifying such licensing.

The bill provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

⁶⁴ S. 489.505(19), & 489.511(4), F.S.; Rule 61G6-7.001, F.A.C.

⁶⁵ Ss. 489.103, 489.1455, 489.503, & 489.5335, F.S.

⁶⁶ S. 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. S. 489.5335, F.S.

The bill provides that the preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. The licensing of those specific local journeyman is exempt from the preemption in the bill.

The effective date of the bill is July 1, 2021.

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. Workers may have to pay less in licensing and examination fees in some local jurisdictions. There may be an increase in the number of people in the workforce practicing their chosen professions.

D. FISCAL COMMENTS:

None.