

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1570

INTRODUCER: Regulated Industries Committee and Senator Hooper and others

SUBJECT: Preemption of Local Occupational Licensing

DATE: April 18, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1570 amends s. 163.211, F.S., relating to the preemption of occupational licensing to the state, to extend by one year, to July 1, 2024, the date that local governments may require and issue local occupation licenses, but only if such licensing was imposed by the local government before January 1, 2021.

The bill does not impact state government.

The bill is effective upon becoming a law.

II. 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 Counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have the governmental, corporate, and proprietary powers that

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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.³

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or general law.⁴ Special districts provide specific services in addition to, or in place of, those provided by a municipality or county.⁵

Revenue Source Authorized in the Florida Constitution⁶

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 taxes⁷ 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.⁸

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.⁹

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.

Local Government Revenue Sources Based on Home Rule Authority¹⁰

Pursuant to home rule authority, counties and municipalities may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ *See* s. 189.031(3)(b), F.S. *See also* *State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So.2d 1067, 1068 (Fla. 1st DCA 1982).

⁵ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020*, available at <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 Mar. 24, 2023).

⁶ *See* Office of Economic and Demographic Research, The Florida Legislature, *2022 Local Government Financial Handbook*, available at <http://www.edr.state.fl.us/Content/local-government/reports/lghf22.pdf> (last visited Mar. 24, 2023).

⁷ Pursuant to s. 192.001(1), F.S., “ad valorem tax” means a tax based upon the assessed value of property.

⁸ FLA. CONST. art. VII, s. 1(a).

⁹ FLA. CONST. art. VII, s. 9(a).

¹⁰ *See also* The Florida Legislature, *2022 Local Government Financial Handbook* *supra* note 7.

regulating an activity. Because special districts do not possess home rule powers, they may impose only those taxes, assessments, or fees authorized by special or general law.¹¹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law when (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.¹²

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁴ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁵

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.¹⁶ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁷ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁸ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁹

State Preemption Relating to Certain Occupational Licensing

Current law expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of occupations authorized by general law or occupational licenses imposed by a local government

¹¹ See ch. 189, F.S. See also Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, *supra* note 6, at 70.

¹² See 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/> (last visited Mar. 24, 2023).

¹³ 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).

¹⁴ *Mulligan*, 934 So.2d at 1243.

¹⁵ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

¹⁶ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁷ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁸ *Id.*

¹⁹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

before January 1, 2021.²⁰ Local government occupational licensing requirements imposed by that date may not be increased or modified, meaning that local governments are not authorized to increase existing occupational license fees, and the authority of local governments to license occupations and collect license fees expires on July 1, 2023.²¹

Section 489.117(4)(a), F.S., specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor licensed by the Construction Industry Licensing Board (CILB) within the Department of Professional Regulation (DBPR). It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.²²

Concerns about the impact of current law on consumers and those who hold local licenses have been raised by local building officials and licensing boards, including but not limited to:

- Reduction in protection for consumers against unlicensed activity;
- Reduction in the quality and the standards required to perform contracting work in the state;
- Limitation on remedies available to consumers for incomplete or poor work quality performed by unlicensed contractors;
- Competition between formerly locally-licensed contractors and unlicensed contractors working in the same trade, without the same level of training and experience;
- Increased difficulty for the public to distinguish between qualified and unqualified businesses;
- Lack of local licensure causing previously locally-licensed contractors to rely on Division I contractors licensed as general contractors (GC), building contractors (BC), or residential contractors (RC) to pull building permits, with those contractors assuming greater liability with increased insurance coverage required, as building officials continue to require licenses to pull permits;
- Limitation on the ability of local jurisdictions to execute their mission of protecting the public, improving competency levels and providing the public access to skilled, reliable and safe tradesmen by issuing local licenses; and
- Lack of a corresponding (state) job scope for the trades for which local licensing is prohibited.²³

According to representatives from local government licensing agencies, many individuals and small businesses have faced issues due to local governments advising local licenses would no longer be issued after July 1, 2023. A recurring example was given of locally licensed specialty contractors who need a license to obtain a building permit to conduct their specialty contracting work. Without a local license and because there are very few specialty licenses available at the state level, individuals who have been working with a local license for many years will be unable

²⁰ See s. 163.211(2), F.S., as enacted by ch. 2021-214, Laws of Fla., popularly known as “HB 735.” This exception for local government licensing expires July 1, 2023.

²¹ *Id.*

²² See s. 489.117(4)(a), F.S.

²³ See Letter to the Florida Legislature from Construction Industry Licensing Board of Palm Beach County on behalf of said board and the Palm Beach County Building Code Advisory Board (Feb. 28, 2023)(on file with the Senate Committee on Regulated Industries).

to continue to obtain permits and will be unable to continue with their specialty contracting businesses.

Representatives from the Building Officials Association of Florida suggested delaying the effective date of the preemption of local licensing until July 1, 2024, to give the DBPR and affected groups time to assess options and identify specific categories of specialty contractors, possibly for state licensure.

III. Effect of Proposed Changes:

CS/SB 1570 amends s. 163.211, F.S., relating to the preemption of occupational licensing to the state, to extend by one year, to July 1, 2024, the date that local governments may require and issue local occupation licenses, but only if such licensing was imposed by the local government before January 1, 2021.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The date for preemption of local government licensing is extended to July 1, 2024, provided the local government imposed such licensing before January 1, 2021. A person

with a local occupational license issued by a local government may be able to maintain such licensing until July 1, 2024.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.211 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 29, 2023:

The CS:

- Removes all provisions of the bill amending s. 489.117, F.S., related to local government licensing of specialty contractors for limited job scopes;
- Extends by one year, to July 1, 2024, the date that local governments may require and issue local occupation licenses, but only if such licensing was imposed by the local government before January 1, 2021.

B. **Amendments:**

None.