

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 Regulated Industries

BILL: SB 1570

INTRODUCER: Senators Hooper and Osgood

SUBJECT: Local Occupational Licensing

DATE: March 28, 2023

REVISED: _____

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

I. Summary:

SB 1570 amends s. 489.117, F.S., relating to registration of specialty contractors, to prohibit a local government from requiring a license issued by the local government or by the state for a person whose job scope is not covered by a state license or a journeyman trade license (license-free job scopes).

The bill adds to the list of license-free job scopes in current law the job scope of “pressure washing,” and revises the license-free job scope “interior remodeling” to “interior remodeling without a structural component.”

The bill requires all work performed within job scopes by a person who is not licensed by the local government or by the state to comply with all applicable local ordinances regarding such work. However, a local government may not require a license issued by the local government or by the state in order to obtain a building permit for work within these license-free job scopes.

The bill authorizes local governments to continue to require local occupational licenses, limited to those specialty job scopes specified in the bill, if those occupations were regulated by local ordinance before January 1, 2021. The specified specialty job scopes generally involve job scopes with a structural component or safety concern. Under current law, the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

According to the Department of Business and Professional Regulation (DBPR), the bill does not have an impact on state government.¹ See Section V, Fiscal Impact Statement.

The bill is effective upon becoming a law.

¹ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 1570* at 5 (Mar. 8, 2023) (on file with the Senate Committee on Regulated Industries).

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.² 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.³ Likewise, municipalities have the 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

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.⁵ Special districts provide specific services in addition to, or in place of, those provided by a municipality or county.⁶

Revenue Source Authorized in the Florida Constitution⁷

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 taxes⁸ 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.⁹

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.¹⁰

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

² FLA. CONST. art. VIII, s. 1(f).

³ FLA. CONST. art. VIII, s. 1(g).

⁴ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁵ *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).

⁶ 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/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Mar. 24, 2023).

⁷ *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/lgfih22.pdf> (last visited Mar. 24, 2023).

⁸ Pursuant to s. 192.001(1), F.S., “ad valorem tax” means a tax based upon the assessed value of property.

⁹ FLA. CONST. art. VII, s. 1(a).

¹⁰ FLA. CONST. art. VII, s. 9(a).

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 Authority¹¹

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 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.¹²

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.¹³

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁴ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁵ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁶

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.¹⁷ 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.”¹⁸ 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

¹¹ See also The Florida Legislature, *2022 Local Government Financial Handbook* *supra* note 7.

¹² See ch. 189, F.S. See also Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, *supra* note 6, at 70.

¹³ 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).

¹⁴ 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).

¹⁵ *Mulligan*, 934 So.2d at 1243.

¹⁶ *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.

¹⁷ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁸ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

strong public policy reasons exist for finding preemption.¹⁹ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.²⁰

Professions and Occupations

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 26 professions and occupations.²¹

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.²² If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.²³ Florida law currently preempts local regulation with regard to the following:

- Assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;²⁴
- Assessing local fees and rules regarding low-voltage alarm system projects;²⁵
- Smoking;²⁶
- Firearms 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.³² Florida law authorizes local regulations relating to:

- Zoning and land use;³³

¹⁹ *Id.*

²⁰ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

²¹ See s. 20.165, F.S., and *Annual Report, Fiscal Year 2021-2022, for the Division of Certified Public Accounting, Professions, Real Estate, and Regulation*, and the list of professions and occupations at 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 24 2023).

²² See FLA. CONST. art. VIII, s. 1(f), art. VIII, s. 2(b), and ss. 125.01(1) and 166.021(1), F.S.

²³ See Wolf and Bolinder, *supra* note 13.

²⁴ Section 553.80(7)(a)5., F.S.

²⁵ Section 489.503(14), F.S.

²⁶ Section 386.209, F.S.

²⁷ Section 790.33(1), F.S.

²⁸ Section 218.077, F.S.

²⁹ Section 500.90, F.S.

³⁰ Section 509.032(7), F.S.

³¹ Section 403.7033, F.S.

³² See Wolf and Bolinder, *supra* note 13.

³³ See part II, ch. 163, F.S.

- 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;”³⁴
- The levy of local business taxes;³⁵
- Building code inspection fees;³⁶
- Tattoo establishments;³⁷
- Massage practices;³⁸
- Child care facilities;³⁹
- Taxis and other vehicles for hire;⁴⁰
- Waste and sewage collection;⁴¹ and
- Regulation of vaping.⁴²

As discussed below in the section titled “State Preemption Relating to Certain Occupational Licensing,” the state has preempted, effective July 1, 2023, certain occupational licensing previously required by local governments.

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 Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the DBPR.⁴³ The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.⁴⁴ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁴⁵

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by the 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.⁴⁶

³⁴ Section 166.221, F.S.

³⁵ Chapter 205, F.S.

³⁶ Section 166.222, F.S.

³⁷ Section 381.00791, F.S.

³⁸ Section 480.052, F.S.

³⁹ Section 402.306, F.S.

⁴⁰ Section 125.01(1)(n), F.S.

⁴¹ Section 125.01(1)(k), F.S.

⁴² Section 386.209, F.S.

⁴³ See ss. 489.105, 489.107, and 489.113, F.S.

⁴⁴ Section 489.107(1), F.S.

⁴⁵ Section 489.107, F.S.

⁴⁶ See ss. 489.105(6)-(8) and (11), F.S.

“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.⁴⁷

“Registered contractors” are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.⁴⁸

The following table provides examples of CILB licenses for types of contractors.⁴⁹

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

Current law provides that local governments 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.⁵⁰

However, under current law, a local government, as defined in s. 163.211, F.S., may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q), F.S., or authorized in s. 489.1455(1), F.S. Job scopes for which a local government may not require a

⁴⁷ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

⁴⁸ Section 489.117, F.S.

⁴⁹ See s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).

⁵⁰ Sections 489.117 and 489.131, F.S.

license include, but are not limited to, 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.⁵¹

Further, effective July 1, 2023, local governments are prohibited from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor.⁵² Local governments may only collect licensing fees that cover the cost of regulation.⁵³

Locally registered contractors who are required to hold a contracting license to practice their profession in accordance with state law must register with the 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 the DBPR.⁵⁴

Electrical and Alarm System Contracting

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB).⁵⁵ Certified contractors may 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.⁵⁶

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.⁵⁷

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."⁵⁸

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.⁵⁹ Certified electrical specialty

⁵¹ See ch. 2021-214, Laws of Fla. (HB 735).

⁵² *Id.*

⁵³ See also The Florida Legislature, 2020 Local Government Financial Handbook *supra* note 7.

⁵⁴ Sections 489.105 and 489.117(4), F.S.

⁵⁵ See Sections 489.505(3) and 489.507, F.S.

⁵⁶ See s. 489.505(16), F.S.

⁵⁷ Sections 489.505(12) and 489.537(7), F.S.

⁵⁸ Sections 489.505(1) and (2), F.S.

⁵⁹ Sections 489.507(3) and 489.511(4), F.S.

contractors may 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;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems Contractor.⁶⁰

Contractor Licensing Exemptions; Handyman Exemption

More than 20 categories of persons are exempt⁶¹ from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning the work is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions.⁶²

Contractor Licensing Exemption for Eligible Specialty Contracting Services

In 2022, an exemption from local and state licensing was established by the Legislature for all persons performing certain specialty contracting services under the supervision of a certified or registered commercial pool/spa contractor, a residential pool/spa contractor, or a swimming pool/spa servicing contractor (a licensed pool contractor).⁶³ A contractual relationship between the supervising contractor and those performing the specialty contracting services is not required (i.e., the performance of such contracting services is outside the business of contracting and need not be undertaken through a contractor/subcontractor relationship).

The services that may be performed by unlicensed persons under the supervision of a licensed pool contractor include the construction, remodeling, repair, or improvement of swimming pools, hot tubs, spas, and interactive water features, as defined in the Florida Building Code (building code).⁶⁴ The exemption is not available for persons required to be certified or registered as

⁶⁰ Sections 489.505(19) and 489.511(4), F.S.; *See* Fla. Admin. Code R. 61G6-7.001.

⁶¹ Exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements *See* s. 489.103, F.S., for additional exemptions.

⁶² *See* s. 489.103(9), F.S., and Fla. Admin. Code R. 61G-12.011(2).

⁶³ *See* s. 489.117(4)(e), F.S., as enacted by ch. 2022-90, Laws of Florida.

⁶⁴ The term “swimming pool” is defined as “[a]ny structure basin, chamber or tank containing an artificial body of water for swimming, diving or recreational bathing located in a residential area serving four or fewer living units having a depth of 2

contractors for specified trade categories described in s. 489.105(3), F.S.,⁶⁵ or those in s. 489.505, F.S., relating to electrical and alarm system contracting.

Journeyman Licenses

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 or issue a license to a journeyman.⁶⁶

Counties and municipalities are expressly authorized by s. 489.1455(1), F.S., to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as this authority is not preempted to the state. A tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality).⁶⁷ If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;⁶⁸ or
- Electrical and alarm system trades.⁶⁹

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:⁷⁰

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

feet (610mm) or more at any point as defined in Section 515.25, Florida Statutes, or the body of water is a public pool as defined in Section 514.011, Florida Statutes” (italics omitted). *See* ch. 2 of the 2020 Florida Building Code (7th Edition), available at <https://codes.iccsafe.org/content/FLBC2020P1/chapter-2-definitions> (last visited Mar. 24, 2023). The current code does not appear to define “interactive water features.” However, the described scope of work for certification as a “swimming pool piping specialty contractor” includes construction of “decorative or interactive water displays or areas.” *See* Fla. Admin. Code R. 61G4-15.032, relating to the certification requirements of swimming pool piping specialty contractors.

⁶⁵ *See* ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

⁶⁶ Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

⁶⁷ Section 489.1455(2), F.S.

⁶⁸ Section 489.1455, F.S.

⁶⁹ Section 489.5335, F.S.

⁷⁰ Sections 489.1455 and 489.5335, F.S.

A local government may charge up to \$25 as a registration fee for reciprocity.⁷¹

Residency Requirements for Contracting Licenses

Some local governments have adopted policies to promote the use of local residents for contracting activities within their jurisdictions. For example, it is the policy of Miami-Dade County that, except where federal or state laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a county construction contract must satisfy the requirements of the Miami-Dade County Residents First Training and Employment Program.⁷² These requirements include that the contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having 51 percent of all construction labor hours performed by Miami-Dade County residents.⁷³

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 before January 1, 2021.⁷⁴ 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, 2023.⁷⁵

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 CILB within the 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.⁷⁶

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;

⁷¹ See ss. 489.1455, F.S. and 489.5335, F.S.

⁷² See Code of Miami Dade County Florida, Chapter 2, Article I, Section 2.11.17, available at

https://library.municode.com/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR

(last visited Mar. 24, 2023).

⁷³ *Id.* at paragraph (5)(a)(ii) of Article I, Section 2.11.17.

⁷⁴ 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.

⁷⁵ *Id.*

⁷⁶ See s. 489.117(4)(a), F.S.

- 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.⁷⁷

Contractor Grandfathering Provision

Section 489.118, F.S., authorizes the board to grandfather, or certify registered contractors with valid local licenses, in one of the contractor categories defined in s. 489.105(3)(a)-(p), F.S., in certain circumstances.⁷⁸ However, the CILB does not have the authority to “grandfather” a specialty contractor, defined in s. 489.105(3)(q) F.S., who is a “contractor whose scope of work and responsibility is limited to a particular phase of construction.”⁷⁹

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.⁸⁰ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.⁸¹

The Florida Building Commission (commission) adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.⁸² The current edition of the building code is the seventh edition, which is

⁷⁷ 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).

⁷⁸ The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial and residential pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

⁷⁹ See s. 489.118(1), F.S.

⁸⁰ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the “Florida Building Codes Act.” See s. 552.70, F.S., and the Florida Building Code, 7th Edition, (building code) available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar. 24, 2023).

⁸¹ See s. 553.72(1), F.S.

⁸² See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

referred to as the 2020 Florida Building Code.⁸³ The next edition of the building code will take effect on December 31, 2023.

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁸⁴ The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.⁸⁵

The commission was statutorily created to implement the building code. The commission, which is housed within the DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code. The commission reviews International Codes published by the International Code Council,⁸⁶ the National Electric Code, and other nationally adopted model codes during its triennial update of the building code.⁸⁷

Local Enforcement of the Florida Building Code; Issuance of Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.⁸⁸ Every local government must enforce the building code and issue building permits.⁸⁹ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹⁰

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.⁹¹ Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.⁹²

⁸³ *Id.*

⁸⁴ Section 553.72(1), F.S.

⁸⁵ *See* s. 553.72(3), F.S.

⁸⁶ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Mar. 24, 2023).

⁸⁷ Sections 553.73 and 553.74, F.S.

⁸⁸ Section 553.72, F.S.

⁸⁹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

⁹⁰ Sections 125.56(4)(a) and 553.79(1), F.S.

⁹¹ *See* s. 110 of the building code *supra* note 78.

⁹² Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, available at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 24, 2023).

III. Effect of Proposed Changes:

SB 1570 amends s. 489.117, F.S., relating to registration of specialty contractors, to prohibit a local government from requiring a license issued by the local government or by the state for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB, or the plumbing, pipefitting, mechanical, or HVAC trades of a journeyman under s. 489.1455(1), F.S. (license-free job scopes).

The bill adds the job scope of “pressure washing” to the list of license-free job scopes in current law, and revises the license-free job scope “interior remodeling” to “interior remodeling without a structural component.” The term “structural component” is a construction term defined in s. 489.105(15), F.S., to mean:

any vertical or horizontal load-bearing member of a structure which supports dead or live loads in addition to its own weight and includes, but is not limited to, a foundation, an exterior or interior load-bearing wall, a column, a column beam, a floor, and a roof structure.

The bill requires all work performed within job scopes by a person who is not licensed by the local government or by the state to comply with all applicable local ordinances regarding such work. However, a local government may not require a license issued by the local government or by the state in order to obtain a building permit for work within these license-free job scopes.

The bill authorizes local governments to continue to require a local occupational license, limited to those specialty job scopes specified in the bill, if those occupations were regulated by local ordinance before January 1, 2021. Under current law, the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

The specialty job scopes listed in the bill generally involve job scopes with a structural component or safety concern that certain local governments were regulating and requiring occupational licenses for work in their jurisdictions before January 1, 2021, including:

- Aluminum or screen enclosure, with or without concrete.
- Carpentry, with a structural component, or finish carpentry, without a structural component.
- Concrete forming, placing, or finishing, including on or off grade.
- Demolition.
- Dredging and land filling.
- Excavation and clearing.
- Garage door installation.
- Gasoline tank and pump.
- Hurricane or windstorm protection.
- Masonry, with a structural component.
- Paving, sealing, or striping.
- Pile driving.
- Pool safety barrier.
- Prestressed precast concrete.
- Reinforcing iron and steel.
- Rental apartment maintenance and repair.

- Roof painting, coating, and cleaning.
- Sandblasting or waterproofing.
- Solar heating installation.
- Specialty structure work performed by a specialty contractor, as defined in s. 489.105(3)(q), F.S., or by a specialty structure contractor as defined in the administrative rules of DBPR, including gutters, metal substructures, pool enclosures, pre-formed panel-post and beam roofs, roof-overs, screened enclosures, screened porches, sunrooms, and windstorm protective devices.
- Structural iron, metals, and steel erection.
- Swimming pool enclosures.
- Swimming pool or spa, including commercial or residential repair or service.
- Tree removal and trimming.
- Veneer, including aluminum or vinyl gutters, siding, soffit, or fascia.
- Window and door installation.

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:

Certain professionals may elect to pay required local licensing and/or examination fees to obtain or maintain local licensing in order to perform certain job scopes in a local jurisdiction, rather than pursuing a license issued by the state for such work (if such state licensing is available for the job scope).

The opportunity to be licensed either by a local government or by the state may have a positive impact on the number of individuals practicing certain professions, and enabling others to maintain licensing needed to work on certain projects or in certain locations, e.g., condominium or apartment buildings, that require some form of licensure to perform certain work. The impact on construction costs and workers' wages is indeterminate.

The DBPR indicates the fiscal impact to the private sector is indeterminate, as the bill specifies certain job scopes for which local governments may or may not require a local license to perform.”⁹³

C. Government Sector Impact:

The DBPR states the bill does not have an impact on state government.⁹⁴ Under current law, the authority of local governments to license occupations and collect license fees expires on July 1, 2023. The bill authorizes local governments to continue to require a local occupational license, limited to those specialty job scopes specified in the bill (*see* lines 42 to 81).

According to the DBPR, the fiscal impact to local government is indeterminate, as the bill specifies certain job scopes for which local governments may or may not require a local license to perform.”⁹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.117 of the Florida Statutes.

⁹³ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 1570* at 5 (Mar. 8, 2023) (on file with the Senate Committee on Regulated Industries).

⁹⁴ *Id.*

⁹⁵ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
