

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 Governmental Oversight and Accountability

BILL: SB 432

INTRODUCER: Senator Gruters

SUBJECT: Employment Conditions

DATE: March 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.			CA	
3.			RC	

I. Summary:

SB 432 amends s. 218.077, F.S., regarding state preemption of conditions of employment. The bill:

- Expressly prohibits a county, city, district, or other public body created by state law from requiring an employer to offer conditions of employment. This does not prohibit the political subdivision from requiring conditions of employment for its own employees, the employees of its contractors and subcontractors, and the employees of any entity receiving a direct tax abatement or subsidy;
- Expressly preempts to the state the right to regulate any requirements imposed upon employers relating to a minimum wage and conditions of employment;
- Defines “conditions of employment” to include preemployment screening, job classification, job responsibilities; hours of work; scheduling and schedule changes, wages, payment of wages, leave, paid or unpaid days off for holidays, illness, vacations, and personal necessity, and employee benefits;
- Clarifies the definitions for “employer” and “employee;”
- Substitutes the term “employment benefits” with the term “conditions of employment” throughout s. 218.077, F.S.;
- Voids any ordinance, regulation, or policy currently in existence which is now preempted.

The bill is not expected to impact state or local revenues and expenditures directly.

The bill takes effect upon becoming a law.

II. Present Situation:

Home Rule and Preemption

Counties

Article VIII, s. 1(f) of the State Constitution grants a county not operating under a charter “such power of self-government as is provided by general or special law.” Chapter 125, F.S., codifies the specific powers granted to such counties. Article VIII, s. 1(g) of the State Constitution grants charter counties “all powers of self-government not inconsistent with general law.”

General law authorizes counties “the power to carry on county government”¹ 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.”²

Municipalities

Article VIII, s. 2(b) of the State Constitution grants a municipality powers to conduct government, perform municipal functions, and render services “except as otherwise provided by law.” Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,³ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.⁴ Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.⁵

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

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.⁶ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁷ Express preemption of a field by the Legislature must be accomplished by clear

¹ Section 125.01(1), F.S.

² Section 125.01(1)(w), F.S.

³ Section 166.011, F.S.

⁴ Florida House of Representatives, Publications, *The Local Government Formation Manual 2018-2020*, p. 16, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf>.

⁵ Section 166.021(4), F.S.

⁶ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

⁷ 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).

language stating that intent.⁸ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁹

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.¹⁰ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.¹¹ 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.¹² Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹³

Local Wage Ordinances in Florida

In 2003, the Florida Legislature enacted s. 218.077, F.S. This law prohibits local governments from establishing minimum wage levels in their individual jurisdictions. The law retains for the state government the power to set a minimum wage. However, the law does not limit the authority of a political subdivision to establish a minimum wage for:

- Its employees;
- The employees of an employer contracting to provide goods or services for the political subdivision;
- The employees of a subcontractor of such an employer; or
- The employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Furthermore, the law contains an exception for situations where compliance with the law would prevent a political subdivision from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,¹⁴ which direct the Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. The Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of the federal funds.

Section 218.077, Florida Statutes

In 2013, s. 218.077, F.S., was amended to additionally prohibit Florida political subdivisions from requiring an employer to provide employment benefits not required by state or federal law. This provided uniformity throughout the state with regard to mandated non-wage compensation. The amendment maintained the same exemptions and limitations as discussed above.

⁸ *Mulligan*, 934 So.2d at 1243.

⁹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹⁰ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹¹ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹² *Id.*

¹³ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

¹⁴ *See, e.g., 40 U.S.C. 3141 et seq.*

An “employee” is defined by the statute to be any natural person who is entitled under state or federal law to receive a state or federal minimum wage.¹⁵

An “employer” is defined by the statute to be any person who is required under state or federal law to pay a state or federal minimum wage to the person’s employees.¹⁶

“Employment benefits” means anything of value that an employee may receive from an employer in addition to wages and salary.¹⁷ These include, but are not limited to:

- Health benefits;
- Paid or unpaid days off for holidays;
- Sick leave;
- Vacation;
- Retirement benefits; and
- Profit-sharing benefits.

The 2013 law also created the Employer-Sponsored Benefits Study Task Force, which was intended to conduct a study of employment benefits and make a recommendation regarding state preemption policy. The task force considered studies, testimony, and statistics over four months before recommending that the state preempt local governments from setting minimum mandatory employer-sponsored benefits.¹⁸

In 2016, the Florida Retail Federation, Inc., among others, sued the City of Miami Beach for enacting in an ordinance a “City Minimum Living Wage,” raising the minimum wage for all employers subject to the city’s business tax receipt requirement and testing the state’s preemption powers.¹⁹ The city argued that the State Constitution’s Article X, Section 24 (f)²⁰ nullified the preemption provision of s. 218.077, F.S., passed earlier. The appellate court agreed with the Florida Retail Federation, Inc.’s position that the plain text of the State Constitution did not affect the legislature’s authority to preempt municipal powers.

III. Effect of Proposed Changes:

Section 1 amends s. 218.077, F.S., to replace “employment benefits” with “conditions of employment,” which slightly expands the scope of the state’s preemption in this section. The definition provided for “conditions of employment” provides examples of newly included items that municipalities and counties are prohibited from mandating, including but not limited to:

- Pre-employment screening;
- Job classification;

¹⁵ Section 218.077 (1)(a), F.S.

¹⁶ Section 218.077 (1)(b), F.S.

¹⁷ Section 218.077 (1)(d), F.S.

¹⁸ Workforce Florida, Inc., *Employer-Sponsored Benefits Study Task Force Final Report*, January 15, 2014, page 3.

(Available online at <https://careersourceflorida.com/wp-content/uploads/2014/01/TaskForceBenefitsStudyFinalReport.pdf>.)

¹⁹ *City of Miami Beach v. Florida Retail Federation, Inc.*, 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).

²⁰ Stating that “[t]his amendment provides for payment of a minimum wage and *shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits...*” (emphasis added).

- Hours of work;
- Scheduling and schedule changes; and
- Payment of wages.

Expressly preempting for the state the right to regulate requirements on conditions of employment shows legislative intent to occupy the space. This clarification in the law will be used for future statutory interpretation by administrators or courts considering whether local governments' regulations are valid.

Section 2 voids any ordinance, regulation, or policy currently in existence which is preempted. This section clarifies that the preemption is intended to be complete as opposed to merely forward-facing.

Section 3 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impose, authorize, or raise a state tax or fee.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not impact state or local taxes or fees.

B. Private Sector Impact:

The bill provides uniformity throughout the state going forward with regard to conditions of employment. A private employer cannot be required by a local government to change its offerings in terms of conditions of employment, except in limited circumstances.

C. Government Sector Impact:

This bill does not appear to impact state and local government revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 218.077, Florida Statutes.

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.