

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 Local Licensing

SPONSOR(S): Plakon

TIED BILLS: **IDEN./SIM. BILLS:** SB 890

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 3 N	Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 2 N	Helpling	Topp
3) State Affairs Committee			

SUMMARY ANALYSIS

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law can also authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation. General law determines whether local governments are able to regulate occupations and businesses, and to what degree. If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation. If an occupation is not regulated by the state, local governments are able to regulate such occupations and impose licensing requirements.

Construction contractors and specialty contractors are licensed and regulated by the state. However, the state gives local governments the specific authority to license and regulate certain contractors and gives contractors the choice: become certified with the state and practice statewide or become registered in a local jurisdiction and only practice in that jurisdiction. Jobs that fall outside the definition or job scope of contractors and specialty contractors are able to be regulated and licensed by local jurisdictions. If licensed by a local jurisdiction, that licensee is only allowed to perform that job in the jurisdiction in which the license is held.

The bill allows an individual with a local noncontractor license – for occupations that are not currently regulated by the state but are only required by specific local governments – to work on real property, to work within the scope of the license throughout the state with no geographic limitation, and without obtaining an additional local license, taking an examination, or paying additional fees. The bill allows local governments to have disciplinary authority over licensees who are licensed in another jurisdiction. However, the bill does not expand the authorization for registered local contractors or specialty contractors to work anywhere in Florida.

The bill would allow local licensees, such as, cabinet makers, drywall, fence and deck installers, and rain gutter, interior remodeling, masonry, painting, paving, stuccoing, vinyl siding, and decorative tile and granite workers, to be licensed in one jurisdiction but work anywhere in the state.

The bill requires DBPR to maintain a local licensing website to allow the public to review the licensing status of local licensees. The bill also requires a local government to transmit specified local licensing information to DBPR or to maintain its own website that DBPR may link to.

Local licensees working outside the jurisdiction in which they were issued a local license must provide consumers seeking services from the licensee sufficient information to access local licensing information and to verify the licensee's status in the original licensing jurisdiction.

DBPR can absorb the cost of maintaining a local licensing website within existing resources. The bill has an indeterminate, but likely insignificant, fiscal impact on local governments. See *Fiscal Analysis and Economic Impact Statement*.

The bill provides an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Local Government Authority

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

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

Revenue Sources Authorized in the Florida Constitution⁵

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 taxes⁶ 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.⁷

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.⁸

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.⁹

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

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

⁵ 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/lgfih19.pdf> (Jan. 8, 2020).

⁶ "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

⁷ Art. VII, s. 1(a), Fla. Const.

⁸ Art. VII, s. 9(a), Fla. Const.

⁹ EDR, *supra* note 5.

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.¹⁰ 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.¹¹

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹² Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹³ When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁴

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.¹⁵

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 25 professions and occupations.¹⁶

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.¹⁷ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.¹⁸ For example, 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;¹⁹
- assessing local fees and rules regarding low-voltage alarm system projects;²⁰
- tobacco and nicotine products;²¹
- firearms, weapons, and ammunition;²²
- employment benefits;²³
- polystyrene products;²⁴
- public lodging establishments and public food service establishments;²⁵ and
- disposable plastic bags.²⁶

¹⁰ 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 Jan 8, 2020).

¹¹ *Id.*

¹² 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).

¹³ *Mulligan*, 934 So. 2d at 1243.

¹⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁵ Wolf and Bolinder, *supra* note 17.

¹⁶ S. 20.165, F.S.

¹⁷ 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.

¹⁸ *Id.*; Wolf and Bolinger, *supra* note 17.

¹⁹ S. 553.80(7)(d), F.S.

²⁰ S. 489.503(14), F.S.

²¹ Ch. 569, F.S., and s. 386.209, F.S.

²² S. 790.33(1), F.S.

²³ S. 218.077, F.S.

²⁴ S. 500.90, F.S.

²⁵ S. 509.032, F.S.

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.²⁷ For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;
- the levy of “reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter”;²⁸
- the levy of local business taxes;²⁹
- building code inspection fees;³⁰
- tattoo establishments;³¹
- massage practices;³²
- child care facilities;³³
- taxis and other vehicles for hire;³⁴ and
- waste and sewage collection.³⁵

If an occupation is not regulated or preempted by the state, local governments are generally able to regulate such occupations and impose licensing requirements. Some counties and municipalities choose to require certain local licenses, while others do not.

There are vast differences from jurisdiction to jurisdiction as to what work requires a license and what does not.³⁶ For example, only seven counties require a cabinetry specialty license; and nineteen counties require a painting license. There are also vast differences from jurisdiction to jurisdiction on what is required to obtain such licenses. For example, Hillsborough County requires an applicant to have a year of experience and pay a \$280 licensing fee to obtain a painting license. Other counties do not require any experience. Broward County requires a license for residential interior remodeling that requires three years of experience, and an exam, and a fee. Such licenses are not required by the state for interior remodeling, painting, or cabinetry.

Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.³⁷

Construction contractors are either certified or registered by the CILB. 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.³⁸

²⁶ S. 403.7033, F.S.

²⁷ *Supra* note 25.

²⁸ S. 166.221, F.S.

²⁹ Ch. 205, F.S.

³⁰ S. 166.222, F.S.

³¹ S. 381.00791, F.S.

³² S. 480.052, F.S.

³³ S. 402.306, F.S.

³⁴ S. 125.01(1)(n), F.S.

³⁵ S. 125.01(1)(k), F.S.

³⁶ Information obtained by the Business and Professions Subcommittee in December 2018 after review of county websites and obtaining certain information from each county in response to information requests by committee staff.

³⁷ *See* s. 489.107, F.S.

³⁸ S. 489.107, F.S.

“Certified contractors” are individuals who have met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR that allows them to contract in any jurisdiction in the state.³⁹

“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. Registered contractors must register their license with the CILB after obtaining a local license.⁴⁰

The CILB also creates certified specialty contractor’s license through rulemaking. Certified specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor’s scope of work, such as a solar water heating specialty contractor⁴¹ or a building demolition specialty contractor.⁴² Certified specialty contractors are permitted to practice in any jurisdiction in the state.⁴³

The CILB licenses the following types of contractors:⁴⁴

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

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant to register as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the renewal fee may not

³⁹ Ss. 489.105(8) and 489.113(1), F.S.

⁴⁰ Ss. 489.105, & 489.117, F.S.

⁴¹ Rule 61G4-15.012, F.A.C.

⁴² Rule 61G4-15.038, F.A.C.

⁴³ S. 489.105(3)(q), F.S.

⁴⁴ S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.

exceed \$200.⁴⁵ The initial application fee and the renewal fee is \$50 for an application to certify or register a business.⁴⁶

Fees must be adequate to ensure the continued operation of the CILB, and must be based on estimates of DBPR of the revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.⁴⁷

All certified and registered contractors must pay a fee of \$4 to DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.⁴⁸

Local Regulation of Construction Trades

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.⁴⁹ 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.⁵⁰

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.⁵¹

According to DBPR:⁵²

Other than the [Division I and Division II] state-certified or state-registered professions, other professional trades of construction are not subject to regulation at the state level. However, under local government authority, counties and municipalities have created additional local categories for regulation within the construction industry (i.e., painting, flooring, cabinetry, masonry, plastering, and other construction-related trades). Under this local regulation patchwork, varying regulations and fees often create burdens and limitations on a professional's ability to operate freely and competitively between jurisdictions.

Effect of Proposed Changes

The bill allows an individual with a valid local license for a noncontractor job issued by a local government in Florida, to work within the scope of that local license throughout the state with no geographic limitation, and without obtaining an additional local license, taking an examination, or paying additional fees.

The expanded authorization for local licensees to work in any jurisdiction in the state does not include performance of construction contracting work that requires certification or registration from the CILB, such as roofing or plumbing.

⁴⁵ S. 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by DBPR.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ S. 489.109(3), F.S.

⁴⁹ Ss. 489.117, 489.131 F.S.

⁵⁰ EDR *supra*, note 5 at 1.

⁵¹ Ss. 489.105, & 489.117(4), F.S.

⁵² Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 1161, p. 3 (Oct. 1, 2020).

The bill defines:

- “Local government” to mean a county or municipality in within the state.
- “Local license” to mean a license, registration, or similar permit issued and required by a local government for a noncontractor job scope.

The bill also defines “noncontractor job scope” to mean any category of work that is done to real property, which does not require certification or registration by the CILB. The term includes, but is not limited to, the performance or installation of:

- Awnings;
- Cabinetry;
- Carpentry;
- Caulking;
- Debris removal;
- Driveways;
- Drywall;
- Fence and decks;
- Flooring;
- Garage doors;
- Glass and glazing;
- Gunite;
- Gutters and downspouts;
- Hurricane shutters;
- Insulation;
- Interior remodeling;
- Irrigation;
- Landscaping;
- Lightning protection systems;
- Masonry;
- Nonelectrical signs;
- Painting;
- Paving;
- Plastering;
- Stuccoing;
- Tennis courts;
- Vinyl siding; and
- Ornamental or decorative iron, stone, tile, marble, granite, or terrazzo.

The bill provides that local governments have disciplinary authority over noncontractor licensees who are licensed by another local government but work in that jurisdiction. The bill provides that such disciplinary authority includes, but is not limited to, suspension and revocation of a licensee’s ability to operate within the local government’s jurisdiction.

Local governments must forward disciplinary orders to a licensee’s original licensing jurisdiction. The original licensing jurisdiction may take action against a licensee for being disciplined by another local licensing jurisdiction or for violating the scope of practice for the noncontractor license.

The bill requires DBPR to create and maintain an online local licensing information system (website) to allow the public to review the licensing status of local licensees. The bill also requires a local government that issues local noncontractor licenses to transmit specified local licensing information to DBPR. The information must be transmitted by a local government at least monthly and include, at a minimum, the name, business name, address, license number, and licensing status of the local licensee. Alternatively, a local government may maintain a website that allows DBPR to link to it.

Local licensees working outside the jurisdiction in which they are licensed must provide consumers seeking services from the licensee sufficient information to allow access to local licensing information and to verify the licensee’s status in the licensee’s original licensing jurisdiction.

The bill does not affect the ability of local governments to collect business taxes.

The bill provides an effective date of October 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 489.1175, F.S.,

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DBPR, “The bill requires the Department of Business and Professional Regulation to create and maintain a local licensing information system available through the internet whereby the public may review the licensing status of individuals holding a local license. Recurring cost of hosting the portal in a cloud-based internet environment is estimated at \$25,000-\$50,000 annually.”⁵³ These technology costs can be absorbed within existing resources.⁵⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate. The bill requires local governments to transmit specified local licensing information to DBPR or maintain a website that allows DBPR to link to it. However, any such expenditures are likely to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on people with noncontractor local licenses because they will be able to practice throughout the state without having to pay additional fees or take additional exams.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁵³ Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 1161, p. 5 (Oct. 1, 2020).

⁵⁴ Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: 1161, (Feb. 6, 2020).

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires a local government that issues local licenses to transmit specified local licensing information to DBPR, or instead maintain a website that allows DBPR to link to it. It also takes away a local jurisdiction's ability to require a license and a licensing fee if the worker is licensed in another jurisdiction but maintains the ability of that jurisdiction to discipline such licensees. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that noncontractor licenses only apply to job scopes that do not require certification or registration by the CILB. However, the term "noncontractor job scope" includes work that requires a certification or registration as contractor in certain circumstances. For example, certain drywall and glass & glazing work requires licensure as a contractor. Additionally, there is a certified specialty glass & glazing license⁵⁵ and a certified specialty gypsum drywall license.⁵⁶ This could result in confusion about what jobs fall under the scope of a noncontractor.

The bill does not provide a remedy or a cause of action if a local government decides to enforce a licensure fee or exam against a noncontractor licensee who has obtained a license from another local government in the state. It is not clear how a local licensee will be able to obtain relief in such situations.

The bill also does not provide a remedy to DBPR if a local government does not update DBPR about the status of its noncontractor licensees. It is not clear what happens if a local government revokes or suspends a noncontractor license, but fails to notify DBPR or update its website.

The bill defines a "local license" as a license, registration, or similar permit issued by a local government. However, the term "permit" is generally used in part I of ch. 489, F.S., to mean a building permit. This could lead to confusion about what a permit is for purposes of determining what a noncontractor license includes and whether local jurisdictions can still require a permit.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁵⁵ Rule 61G4-15.018, F.A.C.

⁵⁶ Rule 61G4-15.017, F.A.C.