

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 1336

INTRODUCER: Senator Perry

SUBJECT: Preemption of Local Occupational Licensing

DATE: January 17, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	<b>Pre-meeting</b>
2.			IT	
3.			RC	

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**I. Summary:**

SB 1336 expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2020, will continue to be effective until July 1, 2022, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

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

**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.<sup>1</sup> Those counties operating under a county charter have all powers of local

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those 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.<sup>3</sup>

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.<sup>4</sup> Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>5</sup>

### **Revenue Sources Authorized in the Florida Constitution<sup>6</sup>**

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 taxes<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.

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<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

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

<sup>4</sup> *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. 1<sup>st</sup> DCA 1982).

<sup>5</sup> State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, 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 Jan. 18, 2020).

<sup>6</sup> *See* Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Jan. 18, 2020).

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

<sup>8</sup> FLA. CONST. art. VII, s. 1(a).

<sup>9</sup> FLA. CONST. art. VII, s. 9(a).

## Local Government Revenue Sources Based on Home Rule Authority<sup>10</sup>

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.<sup>11</sup>

### 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.<sup>12</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>13</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>14</sup> In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>15,16</sup>

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.<sup>17</sup> Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.<sup>18</sup> 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.<sup>19</sup> Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.<sup>20</sup>

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<sup>10</sup> Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lghf19.pdf> (last visited Jan. 18, 2020).

<sup>11</sup> See ch. 189, F.S. See also State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018-2020*, 70, 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 Jan. 18, 2020).

<sup>12</sup> See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions 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. 18, 2020).

<sup>13</sup> 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).

<sup>14</sup> *Mulligan*, 934 So.2d at 1243.

<sup>15</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

<sup>16</sup> 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.

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

<sup>18</sup> *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

<sup>19</sup> *Id.*

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

## 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.<sup>21</sup>

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.<sup>22</sup> If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.<sup>23</sup> 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;<sup>24</sup>
- Assessing local fees and rules regarding low-voltage alarm system projects;<sup>25</sup>
- Smoking;<sup>26</sup>
- Firearms and ammunition;<sup>27</sup>
- Employment benefits;<sup>28</sup>
- Polystyrene products;<sup>29</sup>
- Public lodging establishments and public food service establishments;<sup>30</sup> and
- Disposable plastic bags.<sup>31</sup>

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.<sup>32</sup> Florida law authorizes local regulations relating to:

- Zoning and land use;<sup>33</sup>
- 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;”<sup>34</sup>

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<sup>21</sup> Section 20.165, F.S.

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

<sup>23</sup> See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions 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. 18, 2020).

<sup>24</sup> Section 553.80(7)(d), F.S.

<sup>25</sup> Section 489.503(14), F.S.

<sup>26</sup> Section 386.209, F.S.

<sup>27</sup> Section 790.33(1), F.S.

<sup>28</sup> Section 218.077, F.S.

<sup>29</sup> Section 500.90, F.S.

<sup>30</sup> Section 509.032(7), F.S.

<sup>31</sup> Section 403.7033, F.S.

<sup>32</sup> See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions 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. 18, 2020).

<sup>33</sup> See part II, ch. 163, F.S.

<sup>34</sup> Section 166.221, F.S.

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

### **Construction Professional Licenses**

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

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR.<sup>42</sup> The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.<sup>43</sup> The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.<sup>44</sup>

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.<sup>45</sup>

“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.<sup>46</sup>

“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.<sup>47</sup>

The table on the next page provides examples of CILB licenses for types of contractors.<sup>48</sup>

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<sup>35</sup> Chapter 205, F.S.

<sup>36</sup> Section 166.222, F.S.

<sup>37</sup> Section 381.00791, F.S.

<sup>38</sup> Section 480.052, F.S.

<sup>39</sup> Section 402.306, F.S.

<sup>40</sup> Section 125.01(1)(n), F.S.

<sup>41</sup> Section 125.01(1)(k), F.S.

<sup>42</sup> See ss. 489.105, 489.107, and 489.113, F.S.

<sup>43</sup> Section 489.107(1), F.S.

<sup>44</sup> Section 489.107, F.S.

<sup>45</sup> See ss. 489.105(6)-(8) and (11), F.S.

<sup>46</sup> See ss. 489.108, 489.113, 489.117, 489.131, F.S.

<sup>47</sup> Section 489.117, F.S.

<sup>48</sup> See s. 489.105(a)-(q), F.S., and Rules 61G4-15.015-040, F.A.C.

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none"> <li>• Air Conditioning- Classes A, B, and C</li> <li>• Building</li> <li>• General</li> <li>• Internal Pollutant Storage Tank Lining Applicator</li> <li>• Mechanical</li> <li>• Plumbing</li> <li>• Pollutant Storage Systems</li> <li>• Pool/Spa- Classes A, B, and C</li> <li>• Precision Tank Tester</li> <li>• Residential</li> <li>• Roofing</li> <li>• Sheet Metal</li> <li>• Solar</li> <li>• Underground Excavation</li> </ul>	<ul style="list-style-type: none"> <li>• Drywall</li> <li>• Demolition</li> <li>• Gas Line</li> <li>• Glass and Glazing</li> <li>• Industrial Facilities</li> <li>• Irrigation</li> <li>• Marine</li> <li>• Residential Pool/Spa Servicing</li> <li>• Solar Water Heating</li> <li>• Structure</li> <li>• Swimming Pool Decking</li> <li>• Swimming Pool Excavation</li> <li>• Swimming Pool Finishes</li> <li>• Swimming Pool Layout</li> <li>• Swimming Pool Piping</li> <li>• Swimming Pool Structural</li> <li>• Swimming Pool Trim</li> <li>• Tower</li> </ul>

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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors’ Licensing Board (ECLB).<sup>52</sup> Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.<sup>53</sup>

<sup>49</sup> Sections 489.117 and 489.131, F.S.

<sup>50</sup> Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lghfih19.pdf> (last visited Jan. 18, 2020).

<sup>51</sup> Sections 489.105 and 489.117(4), F.S.

<sup>52</sup> See Sections 489.505(3) and 489.507, F.S.

<sup>53</sup> See s. 489.505(16), F.S.

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.<sup>54</sup>

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."<sup>55</sup>

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.<sup>56</sup> Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting Maintenance Specialty Contractor;
- Sign Specialty Electrical Contractor;
- Residential Electrical Contractor;
- Limited Energy Systems Specialty Contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems Contractor.<sup>57</sup>

### **Journeyman**

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.<sup>58</sup>

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

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

<sup>54</sup> Sections 489.505(12) and 489.537(7), F.S.

<sup>55</sup> Sections 489.505(1)-(2), F.S.

<sup>56</sup> Sections 489.507(3) and 489.511(4), F.S.

<sup>57</sup> Sections 489.505(19) and 489.511(4), F.S; Rule 61G6-7.001, F.A.C.

<sup>58</sup> Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include.<sup>59</sup>

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

### III. Effect of Proposed Changes:

**Section 1** creates s. 163.21, F.S., to define the following terms:

- "Licensing" means any training, education, test, certification, procedure, registration, or license that is required for a person to perform an occupation along with any associated fee.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

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

- The local licensing scheme for an occupation was imposed before July 1, 2020. However, any such local licensing scheme expires on July 1, 2022; or
- The licensing of occupations by local governments is authorized by general law.

In addition, this section of the bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2022, from imposing additional licensing requirements on that occupation and from modifying such licensing. Any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

**Section 2** amends s. 489.117, F.S., to provide that the bill's preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the Construction Industry Licensing Board. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

**Sections 3 and 4** amend ss. 489.1455 and 489.5335, F.S., to authorize counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. Therefore, local journeyman licensing is exempt from the preemption in the bill.

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<sup>59</sup> Section 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. Section 489.5335, F.S.



**Section 5** provides an effective date of July 1, 2020.

**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 identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate impact on the private sector. Workers may have to pay less in licensing and examination fees in some local jurisdictions which may increase the number of people in the workforce practicing certain professions. The impact on construction costs and workers' wages is indeterminate.

C. Government Sector Impact:

The bill will have indeterminate impact on local government costs and revenues linked to licensing.

**VI. Technical Deficiencies:**

Line 73 of the bill provides a job scope description of "canvas awning." The job scope may be better captured by "canvas awning installation."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 489.117, 489.1455, 489.5335.

This bill creates section 163.21 of the 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.