

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 268

INTRODUCER: Senator Perry

SUBJECT: Preemption of Local Occupational Licensing

DATE: March 15, 2021

REVISED: _____

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

I. Summary:

SB 268 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 July 1, 2021. However, the exception for local government licensing imposed by a local government expires July 1, 2023. Local government occupational licensing requirements in place by the deadline may not be increased or modified thereafter.

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, and canvas awning or ornamental iron installation.

Finally, the bill 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 excepted from the preemption of local licensing to the state since it would be authorized under general law.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have 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.³

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

Revenue Sources Authorized in the Florida Constitution⁶

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

No tax shall be levied except in pursuance of law. No state ad valorem taxes⁷ shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.⁸

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.⁹

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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

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

⁵ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020*, available at <https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Mar. 10, 2021).

⁶ *See* Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lghfih20.pdf> (last visited Mar. 10, 2021).

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

⁸ FLA. CONST. art. VII, s. 1(a).

⁹ FLA. CONST. art. VII, s. 9(a).

charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Local Government Revenue Sources Based on Home Rule Authority¹⁰

Pursuant to home rule authority, counties and municipalities may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. Because special districts do not possess home rule powers, they may impose only those taxes, assessments, or fees authorized by special or general law.¹¹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law when (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹²

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

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁶ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁷ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and

¹⁰ See also The Florida Legislature, *2020 Local Government Financial Handbook* *supra* note 6.

¹¹ See ch. 189, F.S. See also Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, *supra* note 5, at 70.

¹² See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 10, 2021).

¹³ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹⁴ *Mulligan*, 934 So.2d at 1243.

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

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

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

strong public policy reasons exist for finding preemption.¹⁸ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁹

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.²⁰

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.²¹ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.²² 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;²³
- Assessing local fees and rules regarding low-voltage alarm system projects;²⁴
- Smoking;²⁵
- Firearms and ammunition;²⁶
- Employment benefits;²⁷
- Polystyrene products;²⁸
- Public lodging establishments and public food service establishments;²⁹ and
- Disposable plastic bags.³⁰

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations, and professions in certain circumstances.³¹ Florida law authorizes local regulations relating to:

- Zoning and land use;³²
- The levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on

¹⁸ *Id.*

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

²⁰ See s. 20.165, F.S., and *Annual Report, Fiscal Year 2019-2020, for the Division of Professions, Certified Public Accounting, Real Estate, and Regulation*, and the list of professions and occupations at 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Mar. 10, 2021).

²¹ See FLA. CONST art. VIII, s. 1(f), art. VIII, s. 2(b), and ss. 125.01(1) and 166.021(1), F.S.

²² See Wolf and Bolinder, *supra* note 12.

²³ Section 553.80(7)(a)5., F.S.

²⁴ Section 489.503(14), F.S.

²⁵ Section 386.209, F.S.

²⁶ Section 790.33(1), F.S.

²⁷ Section 218.077, F.S.

²⁸ Section 500.90, F.S.

²⁹ Section 509.032(7), F.S.

³⁰ Section 403.7033, F.S.

³¹ See Wolf and Bolinder, *supra* note 12.

³² See part II, ch. 163, F.S.

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;”³³

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

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 DBPR.⁴² The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.⁴³ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁴⁴

“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.⁴⁵

“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.⁴⁶

³³ Section 166.221, F.S.

³⁴ Chapter 205, F.S.

³⁵ Section 166.222, F.S.

³⁶ Section 381.00791, F.S.

³⁷ Section 480.052, F.S.

³⁸ Section 402.306, F.S.

³⁹ Section 125.01(1)(n), F.S.

⁴⁰ Section 125.01(1)(k), F.S.

⁴¹ Section 386.209, F.S.

⁴² See ss. 489.105, 489.107, and 489.113, F.S.

⁴³ Section 489.107(1), F.S.

⁴⁴ Section 489.107, F.S.

⁴⁵ See ss. 489.105(6)-(8) and (11), F.S.

⁴⁶ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

“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.⁴⁷

The following table provides examples of CILB licenses for types of contractors.⁴⁸

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 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

⁴⁷ Section 489.117, F.S.

⁴⁸ See s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).

⁴⁹ Sections 489.117 and 489.131, F.S.

⁵⁰ See also The Florida Legislature, 2020 *Local Government Financial Handbook* *supra* note 6.

⁵¹ Sections 489.105 and 489.117(4), F.S.

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).⁵² 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.⁵³

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.⁵⁴

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."⁵⁵

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.⁵⁶ Certified electrical specialty 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.⁵⁷

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.⁵⁸

However, under ch. 489, F.S., 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

⁵² See Sections 489.505(3) and 489.507, F.S.

⁵³ See s. 489.505(16), F.S.

⁵⁴ Sections 489.505(12) and 489.537(7), F.S.

⁵⁵ Sections 489.505(1) and (2), F.S.

⁵⁶ Sections 489.507(3) and 489.511(4), F.S.

⁵⁷ Sections 489.505(19) and 489.511(4), F.S.; See Fla. Admin. Code R. 61G6-7.001.

⁵⁸ Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

jurisdictions (county or municipality). 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;⁵⁹ or
- Electrical and alarm system trades.⁶⁰

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include.⁶¹

- 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.

Residency Requirements for Contracting Licenses

Some local governments have adopted policies to promote the usage 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.⁶² 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.⁶³

III. Effect of Proposed Changes:

Section 1 creates s. 163.211, F.S., to define the following terms:

- "Licensing" means any training, education, test, certification, 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:

⁵⁹ Section 489.1455, F.S.

⁶⁰ Section 489.5355, F.S.

⁶¹ Sections 489.1455 and 489.5355, F.S.

⁶² See Code of Miami Dade County Florida, Chapter 2, Article I, Section 2.11.17, available at

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

[dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR](https://library.municode.com/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR) (last visited Mar. 10, 2021).

⁶³ *Id.* at paragraph (5)(a)(ii) of Article I, Section 2.11.17.

- The local licensing requirements for an occupation are enacted before July 1, 2021; or
- The licensing of occupations by local governments is authorized by general law.

However, after July 1, 2023, the exception for local government licensing of occupations imposed by a local government expires. After that date, local government licensing of occupations is preempted to the state.

In addition, this section of the bill prohibits local governments that license an occupation from imposing additional licensing requirements on that occupation and from modifying such licensing. Under the bill, any local licensing of an occupation that is not imposed before July 1, 2021 or otherwise authorized by general law does not apply and may not be enforced.

Section 2 amends s. 489.117, F.S., relating to registration of specialty contractors to provide that persons whose job scope is outside the contractor trades or certified specialty trades need not register with the Construction Industry Licensing Board (CILB). 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 CILB, or the plumbing, pipefitting, mechanical, or HVAC trades of a journeyman under s. 489.1455(1), F.S.

The bill specifically prohibits 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, and canvas awning or 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, or 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 excepted from the preemption of local licensing to the state, as provided in the bill.

Section 5 provides an effective date of July 1, 2021.

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 will not be required to pay local licensing and/or examination fees due to the preemption of occupational licensure to the state. This may have a positive impact on the number of individuals 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. Under the bill, local governments are not authorized to increase existing license fees after July 1, 2021, and the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that local occupational licensing that is not authorized under s. 163.211, F.S., created by the bill, or otherwise authorized by general law “does not apply and may not be enforced.” See lines 50 to 53 of the bill. These authorizations do not address occupational licensing imposed by local governments that may be authorized by special act of the Legislature (previously or in the future), or licensing imposed by local ordinance for a purpose such as protection of water quality.

As an example, the Pinellas County Construction Licensing Board was originally established in 1975 by special act, which was last revised in 2018 by special act of the Legislature.⁶⁴ Similarly, in 2008 Lee County adopted an ordinance regulating landscape management practices, including registration of landscaping businesses and certain landscapers, and completion of certain training.⁶⁵ A stated purpose of this ordinance is to meet federal and state water quality standards

⁶⁴ See ch. 2018-179, Laws of Florida.

⁶⁵ See Lee County Ordinance No. 08-08 at <https://www.leegov.com/bocc/ordinances/08-08.pdf> (last visited Mar. 10, 2021).

and to minimize the detrimental impacts on the county's lakes, estuaries, wetlands, the Caloosahatchee River, and the Gulf of Mexico.⁶⁶ Similar requirements exist for drilling of elevator shafts and water wells,⁶⁷ to avoid cross contamination of local aquifers.

VIII. Statutes Affected:

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

This bill creates s. 163.211 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.

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

⁶⁶ *Id.* at 3 (Section Two).

⁶⁷ See Lee County Ordinance No. 16-06 at <https://www.leegov.com/bocc/Ordinances/16-06.pdf> (last visited Mar. 10, 2021).