

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1383 Specialty Contractors

SPONSOR(S): Commerce Committee and State Administration & Technology Appropriations Subcommittee, Trabulsy and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1570

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1383 passed the House on April 28, 2023, and subsequently passed the Senate on May 1, 2023.

In 2021, HB 735 was enacted, which expressly preempted occupational licensing to the state and provided that any local licensing of an occupation not specifically authorized by general law may not be enforced. This preemption supersedes any local government licensing requirement of occupations unless:

- The licensing of occupations by local governments is authorized by general law; or
- The local licensing scheme was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

HB 735 specifically preempted local construction licensing that is **outside the scope** of state construction contractor licensing provisions regulated by the Construction Industry Licensing Board (CILB) under the Department of Business and Professional Regulation, including, but not limited to, painting, cabinetry, and ornamental iron installation.

The bill extends the expiration date for local licensing without general law authority to July 1, 2024.

The bill requires the CILB, by July 1, 2024, to, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

- Structural aluminum or screen enclosures.
- Marine seawall work.
- Marine bulkhead work.
- Marine dock work.
- Marine pile driving.
- Structural masonry.
- Structural prestressed, precast concrete work.
- Rooftop solar heating installation.
- Structural steel.
- Window and door installation, including garage door installation and hurricane or windstorm protection.
- Plaster and lath.
- Structural carpentry.

The bill:

- Provides that a local government may not require a license issued by the local government or CILB to perform a job scope which does not substantially correspond to one of the state contractor or specialty contractor categories.
- Prohibits local governments from requiring a license to obtain a permit for a job scope outside of the practice of contracting.
- Allows a county in an area designated as an area of critical state concern to continue to offer a license for any job scope which requires a statewide contractor license.
- Allows a local government to continue to offer a license for veneer work, including gutters, siding, soffit, or fascia; rooftop painting, coating, and cleaning above three stories; and fence installation and erection, if such a licensing requirement existed before January 1, 2021.
- Provides that a local government may not require a license as a prerequisite to submit a bid for public works projects if the work to be performed does not require a license under general law.

The bill will have an indeterminate, likely insignificant, negative fiscal impact on state government and does not appear to have a fiscal impact on local governments. See Fiscal Analysis & Economic Impact Statement.

The bill was approved by the Governor on June 20, 2023, ch. 2023-271, L.O.F., and will become effective on July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

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DATE: 6/22/2023

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.¹ 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.²

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁴ When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁵

Implied preemption is a legal doctrine that addresses situations in which the legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.⁶

Local Government Authority

General law authorizes counties "the power to carry on county government" 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."⁷ More specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁸ 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.⁹

Likewise, municipalities¹⁰ 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.¹¹

¹ 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/>.

² *Id.*

³ 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).

⁴ *Mulligan*, 934 So. 2d at 1243.

⁵ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

⁶ Wolf and Bolinder, *supra* note 1.

⁷ *Id.*

⁸ Art. VIII, s. 1(f), Fla. Const.

⁹ Art. VIII, s. 1(g), Fla. Const.

¹⁰ 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."

¹¹ Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,¹² special act,¹³ local ordinance,¹⁴ or by rule of the Governor and Cabinet.¹⁵ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.¹⁶

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.¹⁷ An "independent special district" is any district that is not a dependent special district.¹⁸

Revenue Sources Authorized in the Florida Constitution¹⁹

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 taxes²⁰ 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.²¹

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.²²

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

¹² S. 189.031(3), F.S.

¹³ *Id.*

¹⁴ S. 189.02(1), F.S.

¹⁵ S. 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

¹⁶ 2018 – 2020 Local Gov't Formation Manual, p. 62,

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&Committeed=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Dec 19, 2019).

¹⁷ S. 189.012(2), F.S.

¹⁸ S. 189.012(3), F.S.

¹⁹ 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/lgifh19.pdf>.

²⁰ "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

²¹ Art. VII, s. 1(a), Fla. Const.

²² Art. VII, s. 9(a), Fla. Const.

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.²³
HB 735 (2021 Regular Session)

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.²⁴

In 2021, HB 735²⁵ was enacted, relating to preempting occupational licensing to the state. The law defines the following terms:

- "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.
- "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.

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

- The licensing of occupations by local governments is authorized by general law; or
- The local licensing scheme for an occupation was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

The law provides that 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. For example, Florida law specifically authorizes local 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";²⁶
- The levy of local business taxes;²⁷
- Building code inspection fees;²⁸
- Tattoo establishments;²⁹
- Massage practices;³⁰
- Child care facilities;³¹
- Taxis and other vehicles for hire;³² and
- Waste and sewage collection.³³

²³ EDR, *supra* note 19, at 9.

²⁴ S. 20.165, F.S.

²⁵ Ch. 2021-214, L.O.F.

²⁶ S. 166.221, F.S.

²⁷ Ch. 205, F.S.

²⁸ S. 166.222, F.S.

²⁹ S. 381.00791, F.S.

³⁰ S. 480.052, F.S.

³¹ S. 402.306, F.S.

³² S. 125.01(1)(n), F.S.

³³ S. 125.01(1)(k), F.S.

Additionally, Florida law specifically preempts local regulation with regard to the following:

- Zoning of family day care homes;³⁴
- Zoning of community residential homes;³⁵
- Pest control;³⁶
- Assessing local fees in certain circumstances for contractors;³⁷
- Assessing local fees for low-voltage alarm system projects;³⁸
- Public lodging establishments and public food service establishments;³⁹
- Food trucks;⁴⁰
- Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps;⁴¹
- Beekeeping;⁴²
- Nonresidential farm buildings, farm fences and farm signs;⁴³
- Insurers and agents;⁴⁴
- Sellers of travel;⁴⁵
- Movers of household goods and moving brokers;⁴⁶
- Tobacco and nicotine products;⁴⁷
- Firearms, weapons, and ammunition;⁴⁸
- Employment benefits;⁴⁹
- Polystyrene products;⁵⁰ and
- Disposable plastic bags.⁵¹

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. 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.⁵²

"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

³⁴ S. 125.0109, F.S.

³⁵ S. 419.001, F.S.

³⁶ S. 482.242(1), F.S.

³⁷ S. 553.80(7)(d), F.S.

³⁸ S. 489.503(14), F.S.

³⁹ S. 509.032, F.S.

⁴⁰ S. 509.102, F.S.

⁴¹ S. 513.051, F.S.

⁴² Ss. 586.10(1) & 586.055, F.S.

⁴³ S. 604.50, F.S.

⁴⁴ S. 624.401(3), F.S.

⁴⁵ S. 559.939

⁴⁶ S. 507.13, F.S.

⁴⁷ Ch. 569, F.S., and s. 386.209, F.S.

⁴⁸ S. 790.33(1), F.S.

⁴⁹ S. 218.077, F.S.

⁵⁰ S. 500.90, F.S.

⁵¹ S. 403.7033, F.S.

⁵² S. 489.107, F.S.

competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.⁵³

“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.⁵⁴

The CILB licenses the following types of contractors:⁵⁵

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.⁵⁶ Local governments may only collect licensing fees that cover the cost of regulation.⁵⁷

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.⁵⁸

⁵³ S. 489.105, F.S.

⁵⁴ S. 489.103, F.S.

⁵⁵ S. 489.105(a)-(q), F.S.; R. 61G4-15.015-.040, F.A.C.

⁵⁶ Ss. 489.117 and 489.131, F.S.

⁵⁷ EDR, *supra* note 19, at 9.

⁵⁸ Ss. 489.105 and 489.117(4), F.S.

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB). 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.⁵⁹

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. 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; and
- Utility line electrical contractor.⁶⁰

HB 735 specifically preempted local licensing that is outside the scope of state contractor licensing provisions. Specifically, it provided 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 CILB after July 1, 2023. The bill precluded counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The law also expressly authorized 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. The licensing of those specific local journeyman licenses is exempt from preemption.

Since the law was enacted, certain local jurisdictions and local contractors have noted issues with the law and its enforcement. For example, some local jurisdictions will no longer continue to license certain types of contractors, even though those contractors perform work that corresponds to a state license and ch. 489, F.S., provides authority to do so.⁶¹

Some have stated that local enforcement agencies are not allowing unlicensed professionals to pull permits for work that is outside of the scope of contracting, but previously required a local license.⁶² However, current law does not require a professional license to pull a permit for such work.

Florida Building Code

In response to the destruction of Hurricane Andrew, in 1998, the Legislature approved a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.⁶³

⁵⁹ See generally s. 489.505, F.S.

⁶⁰ S. 489.505(19), & 489.511(4), F.S.; Rule 61G6-7.001, F.A.C.

⁶¹ Lee County, Contractor Licensing, <https://www.leegov.com/dcd/ContLic> (last visited Mar. 19, 2023).

⁶² Patrick Fraser and Gabby Hernandez, WSVN-TV Sunbeam Television Corp, 7 News Miami, July 11, 2022, *Confusing state law: Licenses*, <https://wsvn.com/news/help-me-howard/confusing-state-law-licenses/> (last visited Mar. 19, 2023).

⁶³ *Id.*

The “Florida Building Codes Act” was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁶⁴

The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building Commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Code. The Building Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.⁶⁵

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.⁶⁶ Every local government must enforce the Building Code and issue building permits.⁶⁷ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁶⁸

Areas of Critical State Concern

The Areas of Critical State Concern Program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. The Department of Economic Opportunity reviews all local development projects within the designated areas and is responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed and adopted by local governments within the designated areas.⁶⁹

Designated areas of critical state concern are:⁷⁰

- Big Cypress Area (portions of Collier, Miami-Dade, and Monroe Counties).
- Green Swamp Area (portions of Polk and Lake Counties).
- City of Key West and the Florida Keys Areas (Monroe County).
- Apalachicola Bay Area (Franklin County).

Effect of the Bill

The bill extends the expiration date for local licensing without general law authority to July 1, 2024, from July 1, 2023.

⁶⁴ See s. 553.72(1), F.S.

⁶⁵ Ss. 553.73 and 553.74, F.S.

⁶⁶ S. 553.72, F.S.

⁶⁷ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

⁶⁸ Ss. 125.56(4)(a) and 553.79(1), F.S.

⁶⁹ S. 380.05, F.S.; Department of Economic Opportunity, *Areas of Critical State Concern Program*, <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Apr. 18, 2023).

⁷⁰ *Id.*

The bill requires the CILB, by July 1, 2024, to, by rule, establish certified specialty contractor categories for voluntary licensure for all of the following:

- Structural aluminum or screen enclosures.
- Marine seawall work.
- Marine bulkhead work.
- Marine dock work.
- Marine pile driving.
- Structural masonry.
- Structural prestressed, precast concrete work.
- Rooftop solar heating installation.
- Structural steel.
- Window and door installation, including garage door installation and hurricane or windstorm protection.
- Plaster and lath.
- Structural carpentry.

The bill provides that a local government may not require a license issued by the local government or DBPR for a job scope which does not substantially correspond to the job scope of one of the contractor or specialty contractor categories.

The bill also prohibits local governments from requiring a license to obtain a permit for a job scope outside of the practice of contracting, including, but not limited to, painting, flooring, cabinetry, interior remodeling when the scope of the project does not include a task for which a state license is required, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, pressure washing, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill allows a county that includes an area designated as an area of critical state concern to continue to offer a license for any job scope which requires a contractor license, if the county imposed such a licensing requirement before January 1, 2021.

The bill allows a local government to continue to offer a license for veneer work, including aluminum or vinyl gutters, siding, soffit, or fascia; rooftop painting, coating, and cleaning above three stories; and fence installation and erection, if the local government imposed such a licensing requirement before January 1, 2021.

The bill provides that a local government may not require a license as a prerequisite to submit a bid for public works projects if the work to be performed does not require a license under general law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase revenues due to an increase of specialty contractors licensed by DBPR.

2. Expenditures:

The bill may have an increase in regulatory expenditures related to creating new specialty licenses including updates to the department's licensing document management and online portal and an increase in workload. These expenditures can be absorbed within existing resources.⁷¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminant. Private sector impacts will fluctuate based on how many citizens apply for the new licenses and how many local governments require a local license to perform the work outlined in the bill.

D. FISCAL COMMENTS:

None.

⁷¹ Florida Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 1383, pp. 5 and 7 (Mar. 8, 2023).