



CUA-PP-05: LOCAL OCCUPATIONAL LICENSING (COMBINED, REVISED, AND RENUMBERED)

COMMITTEE RECOMMENDATION: COMBINE CUA-PP-07, CUA-PP-08 AND CUA-PP-09, RELATING TO LOCAL OCCUPATIONAL LICENSING, AND ADOPT RECOMMENDED COMBINED POLICY STATEMENT

COMBINED PROPOSED POLICY: SUPPORT legislation repealing Chapter 2021-214, Laws of Florida, including all the created or amended statutory provisions presently in effect, such as s. 163.211, F.S., to allow counties to retain the authority to operate programs requiring the licensure, certification, or registration of local general contractors and specialty contractors, and other occupations as determined by each county's governing body by ordinance or resolution. In the alternative, SUPPORT legislation amending s. 163.211(2)(a), F.S., to remove the expiration date of local government occupational licensing requirements and programs existing on or before the effective date of Chapter 2021-214, Laws of Florida, including the job scopes identified in s. 489.117(4)(a), F. S., and others that were locally licensed prior to the effective date Chapter 2021-214, Laws of Florida, to ensure the health, safety and welfare of county residents and businesses.

BACKGROUND: In 2021, Chapter 2021-214, Laws of Florida (the "Act"; also referred to as HB 735) preempted counties from having local occupational licensing programs with the exception of any licensing of occupations authorized by general law. The bill specifically prohibited county governments from requiring a license for a person whose job scope did not substantially correspond to that of a contractor or journeyman licensed by the Construction Industry Licensing Board, and specifically precluded local governments from requiring a license for: 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.

Due to the unintended consequences of HB 735, local small business owners are suffering. Under local regulations, that will no longer be effective as of July 1, 2023, licensees and contractors must have adequate insurance, including liability and workers compensation, and:

- Costs are typically tailored to the associate risks/requirements of the occupation type of license.
- Acts as a deterrence for unlicensed activities.
- Enables contractors to obtain permits.



Without the ability to gain local occupational licenses, specialty contractors are now required to subcontract with General Contractors, to obtain permits to do the normal course of their business. This has resulted in a negative fiscal impact to occupational licensees across the board.

ANALYSIS: Local governments have an interest in protecting consumers by requiring contractors to be appropriately licensed and insured in order to obtain a permit and to conduct contracting work within their jurisdiction. Local governments also have an interest in ensuring that work done in their jurisdiction conforms to applicable federal, state, and local regulations.

A professional license gives consumers the confidence their hired contractor has the necessary experience and professional responsibility. Part of this confidence comes from the knowledge that a professional license is subject to oversight and discipline. In most counties that regulate local occupations, including in construction related occupations, local contractor licenses require demonstrated experience, testing, and proof of insurance. Many of these counties have examining and licensing boards that oversee local licenses and certificates of competency, including reviewing violations and imposing fines. Local enforcement boards will have no power to discipline unlicensed contractors, so consumers will lose this important level of protection. They will no longer be able to trust that the work done to their property will be safe, legal, and professional.

At the state level, unlicensed contractors can be prosecuted under s. 489.127, F.S. Those doing work that now doesn't require a license would be given a free pass from potential criminal charges. This is yet another level of protection that consumers will no longer be able to rely on.

FISCAL IMPACT: The fiscal impact for government is indeterminable. However, it is significant for businesses and consumers involved in the contracting industry throughout the state. Insurance companies will face higher costs due to shoddy work performed by unlicensed contractors. Poor work leads to more problems that have to be covered by insurance. This would then affect the insurance rates for both homeowners and licensed contractors.

Licensed contractors will face several challenges that will reduce their income. They will lose work to unlicensed contractors, who can undercut their prices. They will also face higher insurance rates. Licensed contractors could also face increased costs because they will have to insure unlicensed sub-contractors. Higher costs of operation and less income due to competition could severely affect small contracting businesses. In fact,



small contracting businesses may be forced to cut employees and raise prices to continue operating, and could face the loss of their businesses.

Former locally licensed contractors will also face increased competition, without the benefit of a license to market themselves. These contractors will lose out on work when they cannot pull necessary permits. This situation may likely lead to the shuttering or shrinking of more small contracting businesses.

Increased costs to insurance companies and licensed contractors will then be passed on to the consumer. Ultimately, it will be Florida's homeowners facing higher construction costs and higher insurance costs.

FAC STAFF NOTES:

- FAC 2022 Policy Conference
 - The Committee adopted the FAC staff recommendation to combine CUA Policy Proposals CUA-PP-07 (Broward), CUA-PP-08 (Monroe), and CUA-PP-09 (Pinellas), all relating to local occupational licensing, and to adopt FAC staff's recommended combined proposed policy statement.
- State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute. 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.
- Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred. Express preemption of a field by the Legislature must be accomplished by clear language stating that intent. When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.
- 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.
- Relevant Statutes: Part I and Part II of Chapter 489, Florida Statutes *Contracting*, and Part I of Chapter 163 *Intergovernmental Programs*
 - [Chapter 489, F.S., Contracting](#). 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 Department of Business and

Professional Regulation (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. See [s. 489.107, F.S.](#), *Construction Industry Licensing Board*.

- [s. 489.105, F.S.](#) *Definitions*. "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. See s. 489.105, F.S.
- [s. 489.103, F.S.](#) *Exemptions*. "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. See [s. 489.105\(3\)\(a\)-\(o\)](#) and (q); Rule 61G4-15.015-040, F.A.C.
- [s. 489.117, F.S.](#), *Registration; specialty contractors*. 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. See s. 489.117, F.S., and s. 487.131, F.S. Local governments may only collect licensing fees that cover the cost of regulation. 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, except that registration is not required by a person holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or certified specialty contractor. See [s. 489.105, F.S.](#), and [489.117\(4\), F.S.](#)
- [s. 489.505, F.S.](#) *Definitions*. 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 the ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality. See generally, [s. 489.505, 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. See s. 489.505(12), F.S.

- 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." See s. 489.505(1)-(2), F.S.
- 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, including lighting maintenance specialty contractor; sign specialty electrical contractor; residential electrical contractor; limited energy systems specialty contractor; and utility line electrical contractor. See [s. 489.505\(19\), F.S.](#), and [s. 489.511\(4\), F.S.](#); Rule 61G6-7.001, F.A.C.
- [Ch. 2021-214, L.O.F.](#), created [s. 163.211, F.S.](#), *Licensing of occupations preempted to the state*. This section 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 Act 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 January 1, 2021. However, any such local licensing scheme expires on July 1, 2023. See [s. 163.211\(2\), F.S.](#)
- The Act prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2023, from imposing additional licensing requirements on that occupation and from modifying such licensing. In addition, the Act 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. [See s. 163.211\(3\)-\(4\), F.S.](#)
- The Act further amended [s. 489.117\(4\)\(a\), F.S.](#), to provide that the preemption in s. 163.211, F.S., applies to licensing that is outside the scope of state contractor



licensing provisions. Specifically, subsection (4)(a) now 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 CILB. 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, 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.

- [s. 489.1455, F.S.](#), *Journeyman, reciprocity, and standards*. The Act amended s.489.1455, F.S., to expressly 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 a current practice by counties and municipalities. The licensing of those specific local journeyman license is exempt from the preemption in [S. 163.211, F.S.](#)

SUBMITTING COUNTY AND CONTACT: FAC Staff, Broward, Monroe, Pinellas

ASSIGNED COMMITTEE: CUA

BOARD SUPPORT: N/A

UNFUNDED MANDATE: No

PROTECTIVE OF HOME RULE: Yes