



CUA-PP-06: LANDSCAPE PROFESSIONAL CERTIFICATION

COMMITTEE RECOMMENDATION: ADOPT

PROPOSED POLICY: SUPPORT allowing local governments to require certification for landscape professionals.

BACKGROUND: In 2021, Chapter 2021-214, Laws of Florida (also known as HB 735) preempted local governments from licensing certain occupations. The definition of licensing is any training, education, test, certification, registration, or license that is required for a person to perform an occupation. In Pinellas County, 51% of water bodies do not meet State Water Quality Standards for excess nutrient pollution. Pinellas County is required by its State NPDES permit and State Limits for Total Maximum Daily Loads of Nitrogen and Phosphorus to reduce nutrient pollution to the maximum extent practicable from all sources. Debris from landscape maintenance activities has been identified as a significant source of nutrient pollution in Pinellas County’s highly developed, urban environment.

In an effort to meet State-mandated nutrient pollution reductions, in 2010, Pinellas County adopted Ordinance #10-06 which requires certification of individuals holding an occupation in landscape maintenance. The required training and education are to provide targeted outreach of best management practices to reduce nutrient pollution. It is imperative that local governments are able to maintain education requirements for an occupation that has a significant impact on nutrient pollution at the source.

ANALYSIS: When s. 163.211, F.S., takes full effect on July 1, 2023, it will eliminate the Landscape Best Management Practices training requirement for Landscape Professionals in Pinellas County. Removing this requirement will reduce one of the primary tools used to address nutrient pollution as required by the State. Additionally, counties throughout the state have adopted fertilizer ordinances which will be effected by the removal of local licensing. Pinellas County’s fertilizer ordinance includes a ban on the retail sale of fertilizer that contains nitrogen or phosphorus during the rainy season. This provision is grandfathered and if required to change the ordinance to remove the certification requirement for landscape professionals, the retail sale provision and other provisions included in the ordinance will be eliminated. This will impact all counties that have a fertilizer ordinance in place to protect water quality.

FISCAL IMPACT: Indeterminate.

FAC STAFF NOTES:

- FAC 2022 Policy Conference
 - CUA-PP-06 was recommended for adoption by the committee.

- Previously, this proposal was CUA-PP-10 Landscape Professional Certification.
- **Relevant Statutes:**
 - 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.
 - [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 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.
 - [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.
 - [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), F.S.; Rule 61G4-15.015-040, F.A.C.
- 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.
 - [s. 489.505 \(12\), F.S. Definitions](#). 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.
 - [s. 489.505 \(1\)-\(2\), F.S. Definitions](#). 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."
 - 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.
 - Chapter 2021-214 created [s. 163.211, F.S.](#), relating to 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.
- [s. 163.211\(2\), F.S.](#) *Licensing of occupations preempted to state.* The bill 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.
- [s. 163.211\(3\)-\(4\), F.S.](#) *Licensing of occupations preempted to state.* 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.
- 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.
- The Act also amended [s. 489.1455, F.S.](#), relating to journeyman, reciprocity, and standards, 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.](#)

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ASSIGNED COMMITTEE: CUA

BOARD SUPPORT: No position



UNFUNDED MANDATE: No

PROTECTIVE OF HOME RULE: Yes