



2019 Legislative Issue Briefs



Preemption of Local Regulations

The Florida League of Cities OPPOSES **CS/HB 3** (M. Grant), which expressly preempts the regulation and licensing of occupations and professions to the state and prohibits the enforcement of any regulation of a business unless the regulation is expressly authorized by general law or adopted pursuant to the new requirements imposed by the bill.

What CS/HB 3 Does:

Imposes Requirements for New Regulations Affecting Business:

- Prohibits local governments from taking actions affecting business after July 1, 2019, unless the local government has:
 - Made public findings that: the action is necessary to protect public health, safety and welfare; the action is performed in a manner that does not unnecessarily restrict entry into the business; and the action is performed in the least restrictive and cost-effective manner;
 - Required the action sunset in two years;
 - Passed the action by two-thirds vote of its membership except for zoning regulations, regulations that increase building costs by less than \$750, nuisance ordinances and ordinances related to alcohol and tobacco;
 - Published a “Statement of Estimated Regulatory Costs” (SERC) 14 days prior to any vote on the action and determined the regulatory costs on business could not be reduced by adoption of a less costly alternative. The SERC must contain a detailed economic analysis, including: anticipated impacts to business and consumers, impacts on business competitiveness across markets, impacts on economic growth and job creation, and transactional costs likely to be incurred by businesses.

Sunset Existing Regulations Affecting Business:

- Existing regulations of business will expire on July 2021.
- May only be readopted upon meeting the requirements of the bill.

Exempts regulations “expressly authorized” by general law from the new requirements

Background:

Under the Florida Constitution, municipalities have broad Home Rule powers to act for any valid municipal purpose except as prohibited by law. The Municipal Home Rule Powers Act further states that municipalities “shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by general law.”

In general, ordinances and resolutions adopted by the elected municipal body are the means by which a municipality engages in official action. Other municipal functions (e.g., permit approvals, plat approvals, code enforcement, procurement and certain contracts) are accomplished through other mechanisms and

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may be delegated by the elected body to professional staff to improve service delivery and administrative efficiency. The application of an adopted policy to a situation or individual may be handled administratively by staff but sometimes may require approval by the elected body (such as some quasi-judicial land use appeals).

Many municipal regulations apply to all persons regardless of status as a business or as an individual. These regulations are not adopted with a specific intent to regulate business. Examples include sign ordinances, street and sidewalk ordinances, and setback requirements from waterways. Sometimes municipalities will adopt ordinances or undertake actions that specifically and directly affect business. These actions typically target a specific type of business or conduct – usually at the request of the public or other businesses. Typical examples: pawn shop ordinances, secondary metals dealer ordinances, solicitation ordinances, panhandling ordinances, food truck ordinances, video arcade ordinances, fireworks ordinances, adult entertainment ordinances, convenience store safety ordinances, open container ordinances.

Why the League Opposes CS/HB 3:

It's Unnecessary:

- They claim local governments are “over-regulating” businesses, but the truth is, our cities work closely with the businesses in their communities and are members of their local chambers of commerce. They work together on economic development. Local elected officials work hard to balance the needs of all their constituents whether they are businesses or not. The local government process is a consensus-driven process, and we are proud of it.
- They claim there are too many local governments that have too many different ways of doing things and this bill will bring uniformity. Wrong! Nothing in this bill provides uniformity. It's a recipe for chaos. Besides, we believe diversity among our great communities is something to be celebrated. Tampa is not Tavares, and Miami is not Micanopy. And that's the way Floridians like it.
- Finally, a few supporters of this bill just don't trust local voters to know what's best for their own communities - they prefer to micromanage local decision-making from Tallahassee by forcing “supermajority” vote requirements and mandatory sunset of local regulations rather than trusting local voters to hold their local elected officials accountable.

It's Overbroad and Vague:

- “Business” is defined broadly to include any activity regularly engaged in for public or private gain, benefit or advantage. *The bill even protects illegal and illicit activities.*
- “Regulation” is defined broadly to include virtually any action taken by local government, including even “fees,” “pronouncements” and “guidelines.”
 - Includes actions directed specifically at business (e.g., pawn shop ordinances) as well as actions generally applicable to all persons (e.g., streets and sidewalks ordinances).
 - Includes contracts, permits, approvals and Home Rule revenue sources.
- The bill does not define “expressly authorized by general law.” Because cities and counties have Home Rule powers, very few statutes contain express grants of authority. Most statutes are unclear as to the grant of authority. Example: Chapter 863 states that all nuisances that tend to annoy the community, injure the health of citizens or corrupt the public morals are misdemeanors, but it does not contain an express grant of authority to cities or counties to enforce provisions of their codes that protect against various forms of nuisance. Other examples of things not “expressly authorized” that would be subject to the extraordinary procedures of the bill (to name just a few):
 - Wellfield protection requirements
 - Ethics ordinances

- Wetland protection requirements that are more stringent than state law
- Tree preservation programs
- Voter-approved charter requirements (such as height restrictions)
- Sexually oriented business and adult entertainment ordinances
- Open container requirements

It Imposes Unnecessary Costs on Local Taxpayers:

- Local taxpayers will bear the additional public notice costs associated with re-adopting numerous ordinances, contracts, permits, resolutions and other actions that may be deemed to affect business and therefore be subject to the sunset and sunrise provisions of the bill.
- Local taxpayers will bear the additional cost associated with local government staff performing a sophisticated economic analysis of every action that may be deemed to affect business. Unlike the Florida Administrative Procedure Act, which requires the state to perform a SERC only upon request, CS/HB 3 would require a local government to do a SERC even if nobody requested one.
- Local taxpayers will bear the cost of staff performing a SERC on local government utility rate decisions because fees are included in the bill's definition of "regulation." Local government utilities already perform rate studies and analyses prior to setting or changing rates. A SERC analysis for utility rates is wasteful and duplicative.

It Fosters an Uncertain Regulatory Climate:

- Every local action that is not expressly authorized by general law – every contract, fee, special assessment, permit, approval, etc. – will last for only two years with no guarantee of reauthorization or renewal. This change will create a highly uncertain environment for those doing business with local government and for those seeking permits and approvals from local government.
- Could "reset" the statute of limitations for legal challenges to the validity of government decisions.

It Delays Responsiveness and Creates Gridlock:

- Many local government actions, including numerous contracts, permits, approvals and agreements, are routinely handled by staff and do not require approval of the governing body. This system expedites an efficient delivery of governmental services and functions. CS/HB 3 will now subject all these actions to a vote of the governing body on a repeating two-year cycle. This will bottleneck decision-making on routine permitting and administrative and ministerial matters.

Status:

CS/HB 3 passed the House Business & Professions Subcommittee on February 23. It's now in the House State Affairs Committee.

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