



**PREEMPTION OF COUNTY AUTHORITY IN FLORIDA**



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## **I. INTRODUCTION**

The state is able to restrict the home rule powers of counties and municipalities through preemption. State preemption precludes a city or county from exercising authority in a particular area. Florida courts have recognized two types of preemption: express and implied.<sup>1</sup> Express preemption “requires that the statute contain specific language of preemption directed to the particular subject at issue;” while, “[i]mplied preemption occurs if a legislative scheme is so pervasive that it occupies the entire field, creating a danger of conflict between local and state laws.”<sup>2</sup> Although preemption is typically associated with an express legislative declaration of preemption, home rule power can also be preempted by the legislature if the local government action is found to be: (1) conflicting with state law;<sup>3</sup> (2) inconsistent with a pervasive regulatory scheme;<sup>4</sup> or (3) attempting to exercise control over an area in which the Legislature has assigned contrary responsibility among governmental units.<sup>5</sup>

This whitepaper will focus on express statutory preemption and implied preemptions that have been identified by the courts in Florida.

## **II. HISTORY OF COUNTY AND MUNICIPAL HOME RULE AUTHORITY**

“Home rule” is the ability of a county or municipality to act without legislative authorization. Prior to the 1968 Florida Constitution, the majority of counties and municipalities had only those powers granted by the Legislature. Home rule authority was first adopted and given equal access to all counties and cities as one of the major constitutional revisions ratified in the 1968 Florida Constitutional Amendment.<sup>6</sup>

### **A. Counties.**

The Florida Constitution of 1885 provided Dade County (Miami-Dade) the “power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body.”<sup>7</sup>

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<sup>1</sup> Santa Rosa County v. Gulf Power Co., 635 So. 2d 96, 101 (Fla. 1<sup>st</sup> DCA 1994).

<sup>2</sup> Id.; see also Tallahassee Mem’l Reg’l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc., 681 So. 2d 826, 831 (Fla. 1<sup>st</sup> DCA 1996).

<sup>3</sup> Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972).

<sup>4</sup> Tribune Co. v. Cannella, 458 So. 2d 1075, 1077 (Fla. 1984).

<sup>5</sup> Dep’t of Transp. V. Torres, 526 So. 2d 674, 676 (Fla, 1988).

<sup>6</sup> See generally Art. VIII, Fla. Const.

<sup>7</sup> Art. VIII § 6(e), Fla. Const. (originally in Section 11 of Article VIII of the 1885 Florida Constitution).

The 1968 revision of the Florida Constitution created two forms of county government structures: charter counties and counties not operating under a charter. Currently, “non-charter counties” are provided:

[The] power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.<sup>8</sup>

“Charter counties” are provided:

[A]ll powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.<sup>9</sup>

A county may adopt a home-rule charter, which is a local constitution, and modify the structure of county government.<sup>10</sup> The county charter prevails in the event of a conflict between a county and a municipal ordinance. In non-charter counties, a municipality may void a county ordinance within its boundaries simply by passing its own ordinance that conflicts with the county ordinance.

The constitutional home rule powers were subsequently statutorily recognized for charter counties and implemented for non-charter counties in §125.01, Fla. Stat.<sup>11</sup>

## **B. Municipalities.**

Currently, Article VIII of the Florida Constitution gives municipalities the “governmental, corporate and proprietary powers . . . to conduct municipal government.”<sup>12</sup> This considerably broad power sharply contrasts with the limited powers expressed in the 1885 Florida Constitution, which stated that “[t]he

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<sup>8</sup> Art. VIII, § 1(f), Fla. Const.

<sup>9</sup> Art. VIII, § 1(g), Fla. Const.

<sup>10</sup> See §§125.60-.64, Fla. Stat.

<sup>11</sup> Section 125.01(3), Fla. Stat. (“The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property... The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.”).

<sup>12</sup> Art. VIII, § 2, Fla. Const.

Legislature shall have the power to establish, . . . municipalities . . . to prescribe their jurisdiction and powers, and to alter or amend the same at any time.”<sup>13</sup>

The municipal home rule concept provided in the 1968 revision to the Florida Constitution was first tested in 1972, when the Florida Supreme Court ruled that the City of Miami had no power to enact a rent control ordinance, absent a legislative enactment authorizing the exercise of such power by a municipality.<sup>14</sup> In response to the narrow construct of the Fleetwood Hotel decision, the Legislature enacted the Municipal Home Rule Powers Act (MHRPA).<sup>15</sup> The MHRPA guarantees municipalities the power to conduct government unless otherwise provided by law. Florida courts have interpreted this to mean that local government action should only be prohibited if the action is either preempted by state law or in conflict with state law.<sup>16</sup>

### **III. PREEMPTIVE AREAS OF LAW**

#### **A. State Lottery.**

“All matters relating to the operation of the state lottery are preempted to the state, and no county, municipality, or other political subdivision of the state shall enact any ordinance relating to the operation of the lottery.”<sup>17</sup>

#### **B. Elections.**

“All matters set forth in Chapters 97-105, Fla. Stat., relating to electors, elections, voting methods, and candidates are preempted to the state, except as otherwise specifically authorized by state or federal law.”<sup>18</sup> There are, however, certain responsibilities and powers delegated to local authorities, including choice of voting systems, because local governments are in the best position to make such decisions.<sup>19</sup>

#### **C. Ethics, Public Records, and Public Meetings.**

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<sup>13</sup> Art. VIII, § 8, Fla. Const of 1885.

<sup>14</sup> See City of Miami Beach v. Fleetwood Hotel, 261 So. 2d 801, 803 (Fla. 1972).

<sup>15</sup> Section 166.021, Fla. Stat., was enacted by Chapter 73-129, Laws of Florida.

<sup>16</sup> See City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764, 766 (Fla. 1974).

<sup>17</sup> Section 24.122(3), Fla. Stat.

<sup>18</sup> Section 97.0115, Fla. Stat.; see also Op. Atty. Gen. Fla. 074-263 (1974) (finding campaign financing applying to candidates for elective municipal office is preempted by section 106.08, Fla. Stat.); Op. Atty. Gen. Fla. 077-109 (1977) (finding that legislature has preempted the field of voter registration). “However, municipal elections may be altered if there is an applicable special act, charter, or ordinance.” Id.

<sup>19</sup> See Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 888 (Fla. 2010).

The Legislature has provided a Code of Ethics governing the conduct of all public officials and employees in Florida.<sup>20</sup> While there is no express preemption of this area to the state which would preclude legislation by a county consistent with the Code of Ethics,<sup>21</sup> Florida's Attorney General has stipulated that "the county commission of a charter county has the authority to enact a code of ethics for county officers and employees, a county ethics code may not conflict with the provisions of Chapter 112, Fla. Stat."<sup>22</sup>

Section 24 of Article I of the Florida Constitution grants to the public the right of access to public records and to public meetings of collegial bodies, and authorizes the Legislature to enact general laws, passed by a 2/3 vote of each house, establishing exemptions to these rights. Each such law must state the public necessity for the exemption and be no broader than necessary to accomplish the law's stated purpose. The Legislature is also directed to enact laws governing the enforcement of these provisions.

The provisions of *Florida's Public Records Act* preempt the field of public records to the state.<sup>23</sup> "The requirements of Chapter 119 have been made mandatory by the Legislature at the local as well as the state level and hence do not vest in any local agency any discretion whatsoever to change, alter or condition the provisions of the chapter."<sup>24</sup> Moreover, Florida courts have also recognized that the Legislature has made the requirements of Chapter 119 mandatory at the local level.<sup>25</sup>

Florida's *Government in the Sunshine Law* provides a right of access to governmental proceedings.<sup>26</sup> The statute applies to public collegial bodies within

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<sup>20</sup> See Section 112.311(5), Fla. Stat. ("[N]o officer or employee of a state agency or of a county, city, or other political subdivision of the state . . . shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees . . . in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.")

<sup>21</sup> Section 112.326, Fla. Stat., states: "Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part."

<sup>22</sup> Op. Atty. Gen. Fla. 091-89 (1991). However, in CEO 75-20, wherein the Florida Commission on Ethics recognizes that a municipality may enact a municipal code of ethics more stringent than, or with provisions differing from, Part III, Ch. 112, Fla. Stat., as long as it does not conflict with the state statute.

<sup>23</sup> Chapter 119, Fla. Stat.

<sup>24</sup> Op. Atty. Gen. Fla. 085-19 (1985).

<sup>25</sup> See *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984).

<sup>26</sup> See Section 286.011(1), Fla. Stat. ("All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as authorized by the

this state at the local and state level, and it is equally applicable to elected or appointed boards or commission.<sup>27</sup> All such meetings of public collegial bodies must be open to the public, with reasonable notice provided, and minutes of the meeting must be promptly recorded.<sup>28</sup>

#### **D. County Government.**

“Any county not having a chartered form of consolidated government may, pursuant to the provisions of §§125.60-125.64, locally initiate and adopt a county home rule charter.”<sup>29</sup>

In exercising the ordinance-making powers conferred by Art. VIII, § 1, Fla. Const., counties shall adhere to the enactment procedures and other requirements prescribed by statute.<sup>30</sup>

#### **E. Budget and Finance.**

Pursuant to Chapter 129, Fla. Stat., the Florida Legislature established a budget system for the finances of every county’s board of county commissioners, as well as the exclusive method for county budget amendments.<sup>31</sup>

Moreover, Chapter 200, Fla. Stat., prescribes the procedures for the adoption of a millage rate for the levy of taxes by the county, which each county commission must follow.<sup>32</sup> The courts of Florida have continuously struck down attempts to impose modifications inconsistent with the general laws providing for the establishment of a county budget and imposition of ad valorem taxes.<sup>33</sup>

In Ellis v. Burk, the Fifth District Court of Appeal decided whether a tax cap provision in Brevard County’s home rule charter was inconsistent with Chapters 129

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Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule or formal action shall be considered binding except as taken or made at such meeting.”)

<sup>27</sup> See City of Miami Beach v. Berns, 245 So. 2d 38, 40 (Fla. 1971); Op. Att’y Gen. Fla. 073-223 (1973).

<sup>28</sup> Section 286.011(1)-(2), Fla. Stat.

<sup>29</sup> Section 125.60, Fla. Stat.

<sup>30</sup> Sections 125.66-.68, Fla. Stat.

<sup>31</sup> Chapter 129, Fla. Stat.; Op. Att’y Gen. Fla. 2001-04 (2001) (“[T]he courts of this state have previously struck down attempts by a county to impose a tax cap as inconsistent with the general laws providing for the establishment of a county budget and imposition of ad valorem taxes contained in Chapters 129 and 200, Fla. Stat.”).

<sup>32</sup> Chapter 200, Fla. Stat.; Op. Att’y Gen. Fla. 2001-04 (2001).

<sup>33</sup> See, e.g., Bd. of County Comm’rs of Marion County v. McKeever, 436 So. 2d 299, 300 (Fla. 5th DCA 1983), pet. for rev. den., 446 So. 2d 99 (Fla. 1984) (holding that statutory scheme contemplated annual preparation and adoption of budget and fixing of millage rates by non-charter county, and “Board acted unconstitutionally in imposing the millage cap on ad valorem taxes for a period of ten years.”); Bd. of County Comm’rs of Dade County v. Wilson, 386 So. 2d 556, 560 (Fla. 1980) (holding that proposed ordinance was unconstitutional where in direct conflict with §200.191, Fla. Stat., which provided the exclusive manner by which to set countywide millage rates).

and 200, Fla. Stat.<sup>34</sup> The appellate court first opined that “[u]nder our state constitution and statutory scheme, the power to limit a county commission's ability to raise revenue for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the legislature.”<sup>35</sup> Thus, although Brevard County argued that its home rule charter authorized its ad valorem revenue cap, the court held that the tax cap provision was unconstitutional where it conflicted with the statutory schemes of Chapters 129 and 200, Fla. Stat., and then noted that requiring a referendum to override the tax cap violated the referendum provision of §125.01(1)(r), Florida Statutes.<sup>36</sup>

Pursuant to provisions of the *Uniform Local Government Financial Management and Reporting Act*, local government entities are required to comply with annual financial reporting requirements<sup>37</sup> and follow uniform accounting practices and procedures.<sup>38</sup>

The *Local Government Prompt Payment Act* establishes a procedure for the timely payment of goods, services, and construction services and the calculation of interest on late payments made by governmental entities.<sup>39</sup>

Political subdivisions are expressly prohibited by statute from establishing a minimum wage.<sup>40</sup> “Except as otherwise provided..., a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.”<sup>41</sup>

Section 215.425, Fla. Stat., prohibits the payment of extra compensation “to any officer, agent, employee, or contractor after the service has been rendered or the contract made...” and imposes requirements for the implementation of a “bonus scheme” or the provision of severance pay by a unit of government.

## **F. Taxation**

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<sup>34</sup> *Ellis v. Burke*, 866 So. 2d 1236 (Fla. 5th DCA 2004).

<sup>35</sup> *Id.* at 1237.

<sup>36</sup> Section 125.01(1)(r), Fla. Stat. (“There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.”).

<sup>37</sup> Section 218.32, Fla. Stat.

<sup>38</sup> Section 218.33, Fla. Stat.

<sup>39</sup> Chapter 218, Part VII, Fla. Stat.

<sup>40</sup> *City of Miami Beach v. Fla. Retail Fed’n, Inc.*, 233 So. 3d 1236, 1238 (Fla. 3d DCA 2017), review dismissed, 2019 WL 446549 (Fla., Feb. 5, 2019).

<sup>41</sup> Section 218.077(2), Fla. Stat.



Besides the local government’s ability to levy ad valorem taxes, “[a]ll other forms of taxation shall be preempted to the state except as provided by general law.”<sup>42</sup>

Unless expressly exempted from taxation, the following property *shall* be subject to taxation in the manner provided by law: (1) all real and personal property in this state and all personal property belonging to persons residing in this state; and all leasehold interests in property of any political subdivision, municipality, agency or authority, or other public body corporate of the state.<sup>43</sup>

Ad valorem tax exemptions are authorized by Art. 7 § 3 and § 6, Fla. Const., and Chapter 196, Fla. Stat. Subject to the provisions of Art. 7 § 3 and general law, counties and municipalities are authorized, for the purpose of its respective tax levy, to grant economic development ad valorem tax exemptions to new businesses and expansions of existing businesses<sup>44</sup> and historic preservation ad valorem tax exemptions.<sup>45</sup>

No tax on the manufacture, distribution, exportation, transportation, importation, or sale of alcoholic beverages may be imposed by way of license, excise, or otherwise by any municipality.<sup>46</sup> In addition, no municipality may levy or collect any excise tax on cigarettes.<sup>47</sup>

### **G. Eminent Domain.**

Counties are delegated the power of eminent domain through Chapter 127, Fla. Stat., for any county purpose. This power excludes state and federal property and is limited to within its own boundaries for parks, playgrounds, recreational centers or other recreational purposes.<sup>48</sup>

### **H. Growth Policy, Land Use and Planning.**

Pursuant to the requirements set forth in the *Community Planning Act*, local governments are required to adopt and maintain a local comprehensive plan, which is intended to be a guide for making land use decisions for future development and redevelopment within the locality.<sup>49</sup> The Legislature mandated that once a comprehensive plan has been adopted in conformity with the *Community Planning*

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<sup>42</sup> Art. VII, § 1 Fla. Const.

<sup>43</sup> Section 196.001, Fla. Stat.

<sup>44</sup> Section 196.1995, Fla. Stat.

<sup>45</sup> Section 196.1997, Fla. Stat.

<sup>46</sup> Section 561.342, Fla. Stat.

<sup>47</sup> Section 210.03, Fla. Stat.

<sup>48</sup> Section 127.01(1)(a) and 127.01(2), Fla. Stat.

<sup>49</sup> Section 163.3161, et seq., Fla. Stat.

Act, there may be no variance from the plan granted to development activities adopted afterward.<sup>50</sup>

Within 1 year after submission of the comprehensive plan, each county and municipality shall adopt and maintain land development regulations that are consistent with and implement the adopted comprehensive plan to include certain minimum requirements.<sup>51</sup> **Except as provided by statute, land development regulations relating to “building design elements” may not be applied to single-family or two-family dwellings.**<sup>52</sup>

Any impact fee adopted by a county or municipality to fund infrastructure necessitation by new growth is subject to the limitations and requirements of the *Florida Impact Fee Act*.<sup>53</sup>

**A “solar facility” shall be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area and must comply with the setback and landscape buffer area criteria for other similar uses in the agricultural district.**<sup>54</sup> **A county may, however, adopt an ordinance specifying certain buffer and landscaping requirements for solar facilities.**<sup>55</sup>

Zoning of family day care homes is restricted. “The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Children and Families shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of \$50, to operate in an area zoned for residential use.”<sup>56</sup>

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<sup>50</sup> Section 163.3194(1)(a), Fla. Stat. (“After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.”)

<sup>51</sup> Section 163.3202, Fla. Stat.

<sup>52</sup> **Section 163.3202(5), Fla. Stat. [HB 401]**

<sup>53</sup> Section 163.31801, Fla. Stat.

<sup>54</sup> Section 163.3205(3), Fla. Stat.

<sup>55</sup> **Section 163.3205(4), Fla. Stat. [SB 896]**

<sup>56</sup> Section 166.0445, Fla. Stat.

Zoning of community residential housing is restricted. “State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes.”<sup>57</sup>

**A home-based business that operates on residential property may operate in an area zoned for residential use and may not be regulated in a manner that is different from other businesses in the jurisdiction except as otherwise provided by statute.**<sup>58</sup>

A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.<sup>59</sup>

A local government may not impose any requirements for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist or landscape architect that the tree presents a danger to persons or property and the local government may not require a property owner to replant such a tree that was pruned, trimmed, or removed in accordance with the statute.<sup>60</sup>

After a right-of-way for any electric transmission or distribution line has been established, no local government shall require or apply any permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way.<sup>61</sup>

Except as provided by law, a county, municipality, or other political subdivision may not regulate vegetable gardens on residential properties. Any such local ordinance or regulation is void and unenforceable.<sup>62</sup>

The *Right to Farm Act* and the *Agricultural Land Use and Practices Act* preempt regulation of bona fide farming activities on property classified as agricultural under §193.461, Fla. Stat., where the farming activity is regulated through implemented best management practices, interim measures, or regulations adopted under Chapter 120, Florida Statutes, by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management

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<sup>57</sup> Section 419.001, Fla. Stat.

<sup>58</sup> **Section 559.995, Fla. Stat. [HB 403]**

<sup>59</sup> Section 381.00896(3), Fla. Stat.

<sup>60</sup> Section 163.045, Fla. Stat.

<sup>61</sup> Section 163.3209, Fla. Stat.

<sup>62</sup> Section 604.71(2), Fla. Stat.

district as part of a statewide, or regional program, or if the activity is expressly regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.<sup>63</sup>

## **I. Building Standards.**

Nonresidential farm buildings, farm fences, and farm signs are exempt from the Florida Building Code, and any county or municipal code or fee, except for floodplain management regulations.<sup>64</sup>

The establishment of handicapped accessibility standards is expressly preempted to the state and supersedes any county or municipal ordinance on this subject.<sup>65</sup>

The Florida Building Commission retains the authority to adopt a unified state building code called the Florida Building Code (FBC), which “shall be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction...”<sup>66</sup> Local governments are permitted to adopt amendments to the administrative and technical provisions of the FBC which impose more stringent requirements than specified in the FBC to apply solely within its jurisdiction subject to the limitations set forth in §553.73(4), Fla. Stat.<sup>67</sup>

## **Local governments may not require a contract between a builder and an owner as a condition for issuance of a building permit.<sup>68</sup>**

A political subdivision may not adopt or enforce any ordinance or impose any building permit or other development order requirement that contains any requirement or condition that conflicts with or impairs the corporate branding identity on real property or improvements used in activities conducted under Chapter 526, Fla. Stat., or imposes requirements on the design, construction, or location of signage advertising the retail price of gasoline in accordance with the requirements of §526.111 and 526.121.<sup>69</sup>

## **J. Emergency Management.**

Each county must establish and maintain an emergency management agency and develop a county emergency management plan and program that is coordinated and

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<sup>63</sup> Sections 823.14(6) and 163.3162(3), Fla. Stat.

<sup>64</sup> Section 604.50, Fla. Stat.

<sup>65</sup> Section 553.513, Fla. Stat.

<sup>66</sup> Section 553.72, Fla. Stat.; *see also* §§553.76-77, Fla. Stat.

<sup>67</sup> *See also* §553.79(4) and §125.56(1), Fla. Stat.

<sup>68</sup> **Section 553.79(1)(d), Fla. Stat. [HB 401]**

<sup>69</sup> Section 553.79(22)(a), Fla. Stat.

consistent with the state comprehensive emergency management plan and program.<sup>70</sup> Each political subdivision is granted emergency management powers, including the power to declare a state of local emergency and the authority to waive certain procedures and formalities otherwise required by law as related to incurring obligations, appropriation and expenditure of funds, and entering into contracts.<sup>71</sup>

Emergency orders enacted by a political subdivision in response to a hurricane or weather-related natural emergency may be issued in 7-day increments and extended, as necessary, in 7-day increments.<sup>72</sup> Other emergency orders issued under Chapter 252 or 381, Fla. Stat., may only be extended for 7-day increments for a total duration of 42 days, and upon expiration, a political subdivision may not issue a substantially similar order.<sup>73</sup>

### **K. Competitive Procurements.**

The state has established bidding procedures that counties are required to follow when procuring voting machines and equipment.<sup>74</sup>

When procuring construction services paid with **any** state appropriated funds, a county or municipality is prohibited from using a local ordinance or regulation that provides a preference based upon the contractor: a) maintaining an office or place of business within a particular local jurisdiction; b) hiring employees or subcontractors from within a particular local jurisdiction; or c) prior payment of local taxes, assessments or duties within a particular local jurisdiction.<sup>75</sup>

Except as required by federal or state law, a political subdivision that contracts for a “public works project” paid with **any** state appropriated funds may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project: a) pay employees a predetermined wage; b) provide employees a specified type, amount, or rate of employee benefits; c) control, limit, or expand staffing; or d) recruit, train, or hire employees from a designated, restricted, or single source.<sup>76</sup> In addition, unless a vendor is otherwise disqualified pursuant to §287.133 or 287.134, Fla. Stat., a political subdivision may not prohibit a contractor, subcontractor, or

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<sup>70</sup> Section 252.38(1), Fla. Stat.

<sup>71</sup> Section 252.38(3), Fla. Stat.

<sup>72</sup> Section 252.38(3)(a)5., Fla. Stat.

<sup>73</sup> Section 252.38(4), Fla. Stat.

<sup>74</sup> Section 101.293(2), Fla. Stat. (“The Division of Elections of the Department of State shall establish bidding procedures for carrying out the provisions and the intent of ss. 101.292-101.295, and each governing body shall follow the procedures so established.”).

<sup>75</sup> **Section 255.0991, Fla. Stat. [HB 53]**

<sup>76</sup> **Section 255.0992(2)(a), Fla. Stat. [HB 53]**

material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project.<sup>77</sup>

Political subdivisions may not accept a bid, proposal, or reply from, and may not award a contract to or transact business in excess of \$35,000 [Category 2] with any person or affiliate on the convicted vendor list or the discriminatory vendor list maintained by the Department of Management Services for a period of 36 months after the date of being placed on the list.<sup>78</sup> In addition, the provisions of §287.135, Fla. Stat., impose certain contractual requirements and restrictions relating to companies on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List.

Counties and municipalities “...seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated to cost more than \$75,000.”<sup>79</sup>

The Consultants’ Competitive Negotiation Act (CCNA) requires an agency, including counties and municipalities, to follow certain procedures and requirements for the competitive procurement of professional services within the scope of architecture, professional engineering, landscape architecture, registered surveyor and mapper.<sup>80</sup>

**With respect to competitive solicitations (issued on or after October 1, 2021) for the procurement of services limited to the classes of work for which the DOT issues certificates of qualification and which services do not involve the construction, remodeling, repair, or improvement of any building, a governmental entity may not prohibit a response from a vendor possessing a valid DOT certificate of qualification under §337.14, Fla. Stat., or license under Chapter 489, Fla. Stat.<sup>81</sup>**

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<sup>77</sup> Section 255.0992(2)(b), Fla. Stat. [HB 53

<sup>78</sup> Section 287.133 and 287.134, Fla. Stat.

<sup>79</sup> Section 255.20(1), Fla. Stat.

<sup>80</sup> Section 287.055, Fla. Stat.; Op. Atty. Gen. Fla. 086-57 (1986).

<sup>81</sup> Section 287.05705, Fla. Stat. [SB 1194]

Each local governmental entity, prior to entering into a written contract for audit services, must comply with certain auditor selection procedures.<sup>82</sup>

Pursuant to the *Public Bid Disclosure Act*, solicitations issued by a local governmental entity or any public contract entered into with a contractor shall disclose each permit or fee the contractor will have to pay before or during construction, the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract, and a listing of all other governmental entities that may have additional permits or fees generated by the project.<sup>83</sup>

All public employers are required to register with and utilize the E-Verify system to verify the work status of all newly hired employees and may not enter into a contract with a contractor unless each party to the contract registers with and uses E-Verify.<sup>84</sup>

#### **L. Purchase and Sale of County Property.**

The board of county commissioners is expressly authorized to sell and convey any real or personal property and to lease real property owned by the county subject to certain standards and disposition procedures.<sup>85</sup> A county must also comply with certain procedural requirements when acquiring by purchase any real property for a public purpose.<sup>86</sup>

A county may not purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation or enter into a wastewater facility privatization contract for a wastewater facility until the governing body holds a public hearing and makes a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest after considering several different factors.<sup>87</sup>

Chapter 274, Fla. Stat., governs tangible personal property owned by local governments. A governmental unit may dispose of surplus property that is obsolete or serves no useful function by sale to the highest bidder or donation to another governmental unit or private non-profit as provided in §274.05, Fla. Stat. An alternative procedure for disposition is provided in §274.06, Fla. Stat.

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<sup>82</sup> Section 218.391, Fla. Stat.

<sup>83</sup> Section 218.80(3), Fla. Stat.

<sup>84</sup> Section 448.095, Fla. Stat.

<sup>85</sup> Section 125.35, Fla. Stat.

<sup>86</sup> Section 125.355, Fla. Stat.

<sup>87</sup> Section 125.3401, Fla. Stat.

## **M. Maritime Commerce in Ports.**

**With respect to any port that has received or is eligible to apply for or receive state funding under Chapter 311, a local ballot initiative or referendum may not restrict maritime commerce in such a port, including, but not limited to, restricting commerce based on the following:**

- (a) Vessel type, size, number, or capacity;**
- (b) Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state or any local jurisdiction;**
- (c) Source, type, loading, or unloading of cargo; or**
- (d) Environmental or health records of a particular vessel or vessel line.**

**Any local ballot initiative or referendum that was adopted before, on, or after July 1, 2021, and any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in such an initiative or referendum, is prohibited, void, and expressly preempted to the state.<sup>88</sup>**

## **N. Motor Vehicles and Roads.**

The provisions of *Florida Uniform Traffic Control Law* are applicable and uniform throughout the state. “[N]o local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.”<sup>89</sup> For example, regulation of the use of cameras to monitor and enforce red light infractions is expressly preempted by state law,<sup>90</sup> regulation of the use of automated “red light” cameras is expressly preempted by the Florida Uniform Traffic Control Law,<sup>91</sup> regulation of motor-propelled bicycles is preempted to the state,<sup>92</sup> regulation of skateboards on streets within the city’s jurisdiction is preempted to the state,<sup>93</sup> regulation of commercial mobile radio services within a motor vehicle is expressly preempted to the state,<sup>94</sup> and child or truck bed restraints are preempted to the state.<sup>95</sup>

The *Florida Transportation Code* provides for a statewide transportation system under the supervision and control of the Department of Transportation (DOT).<sup>96</sup> The DOT has plenary authority to plan, construct, and maintain state roads and bridges.<sup>97</sup>

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<sup>88</sup> **Section 311.25, Fla. Stat. [SB 1194]**

<sup>89</sup> Section 316.007, Fla. Stat.

<sup>90</sup> Section 316.0076, Fla. Stat.; see also *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014).

<sup>91</sup> *City of Orlando v. Udowychenko*, 98 So. 3d 589 (Fla. 5th DCA 2012).

<sup>92</sup> Op. Atty. Gen. Fla. 077-84 (1997).

<sup>93</sup> Op. Atty. Gen. Fla. 098-15 (1998); but see Op. Atty. Gen. Fla. 094-5 (1994) (finding a city is not preempted from regulating safety equipment for bicycles, specifically the requirement to wear a helmet).

<sup>94</sup> Section 316.0075, Fla. Stat.

<sup>95</sup> See §316.613; see also Op. Atty. Gen. Fla. 2008-11 (2008).

<sup>96</sup> See §334.035 and 334.044, Fla. Stat.

<sup>97</sup> See *Dep’t of Transp. v. Lopez-Torres*, 526 So.2d 674, 675 (Fla. 1988).



A local government is prohibited from adopting standards or specifications for permissible use of aggregates<sup>98</sup> and for the permissible use of reclaimed asphalt pavement material<sup>99</sup> in construction that are contrary to the DOT's standards or specifications.

#### **O. Drones.**

Pursuant to the *Unmanned Aircraft Systems Act*, the authority to regulate the operation of unmanned aircraft systems is vested in the state except as provided in federal regulations, authorizations, or exemptions.<sup>100</sup> Except as otherwise expressly provided, a political subdivision may not enact or enforce any ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training and certification.<sup>101</sup>

#### **P. Regulated Utilities.**

“The authority of a public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state because of unique circumstances applicable to communications services dealers.”<sup>102</sup>

Except as expressly authorized by law, a municipality or county may not adopt or enforce any ordinance, regulation, or requirement as to the placement or operation of communications facilities in a right-of-way by a communications services provider authorized by state or local law to operate in a right-of-way; regulate any communications services; or impose or collect any tax, fee, cost, or charge, or exaction for the provision of communications services over the communications services provider's communications facilities in a right-of-way.<sup>103</sup>

Pursuant to the *Emergency Communications E911 Act*, the legislature established a comprehensive statewide emergency telecommunications number system.<sup>104</sup> In order to facilitate reliable E911 service implementation, the law imposes certain

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<sup>98</sup> Section 334.179, Fla. Stat.

<sup>99</sup> Section 336.044(5), Fla. Stat.

<sup>100</sup> Section 330.41(3)(a), Fla. Stat.

<sup>101</sup> Section 330.41(3)(b), Fla. Stat.

<sup>102</sup> Section 202.24(1), Fla. Stat.

<sup>103</sup> Section 337.401(3), Fla. Stat.

<sup>104</sup> Section 365.172, Fla. Stat.

standards and limitations upon a local government's actions, as a regulatory body, to regulate the placement, construction, or modification of a wireless communications facility.<sup>105</sup>

The Florida Public Service Commission has exclusive jurisdiction to regulate telecommunications companies, and such preemption supersedes any local or special act or municipal charter where any conflict in authority may exist.<sup>106</sup> The Commission also has exclusive jurisdiction to regulate and supervise each public utility supplying electricity or gas with respect to its rates and service; assumption by it of liabilities or obligations as guarantor, endorser, or surety; and the issuance and sale of its securities.<sup>107</sup> In addition, the Commission is vested with exclusive jurisdiction over each water and wastewater utility with respect to its authority, service and rates.<sup>108</sup>

**A municipality or county may not enact or enforce a resolution, ordinance, rule, code, or policy restricting or prohibiting the types or fuel sources of energy production that can be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve: (a) a public utility or an electric utility; (b) an entity formed under §163.01 that generates, sells, or transmits electrical energy; (c) a natural gas utility; (d) a natural gas transmission company; or (e) a liquified petroleum gas dealer or dispenser or a liquified petroleum gas cylinder exchange operator.<sup>109</sup> The board of a municipality or governmental entity may, however, adopt rules, regulations, and policies governing an electric or natural gas utility that it owns or operates and directly controls.<sup>110</sup>**

#### **Q. Natural Resources and Conservation.**

The *Florida Water Resources Act of 1972* declared that all waters in the state are subject to regulation under the provisions of Chapter 373, Fla. Stat., unless specifically exempted by general or special law. “No state or local government agency may enforce, except with respect to water quality, any special act, rule, regulation, or order affecting the waters in the state controlled under the provisions

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<sup>105</sup> Section 365.172(13), Fla. Stat.

<sup>106</sup> Section 364.01(2), Fla. Stat.

<sup>107</sup> Section 366.04(1), Fla. Stat.

<sup>108</sup> Section 367.011(2), Fla. Stat.

<sup>109</sup> **Section 366.032, Fla. Stat. [HB 919]**

<sup>110</sup> **Section 366.032(2), Fla. Stat. [HB 919]**

of this act.”<sup>111</sup> Part II of the *Florida Water Resources Act of 1972* preempts the regulation of the consumptive use of water.<sup>112</sup>

The state has preempted the regulation of the prevention and removal of pollutant discharges from a facility maintained for the purpose of underground storage of petroleum products for use as fuel.<sup>113</sup> A county government is authorized to adopt countywide ordinances that regulate underground storage tanks, as described in the statute, if the ordinance establishes a more stringent or extensive local program regulating such tanks and is approved by the Department of Environmental Protection (DEP).

The Fish and Wildlife Conservation Commission (FWCC) retains the regulatory and executive powers of the state with respect to wild animal life and freshwater aquatic life, and the regulatory and executive powers of the state with respect to marine life, except that all license fees and penalties for violating rules of the Commission shall be prescribed by general law.<sup>114</sup> In addition, the power to regulate the taking or possession of saltwater fish is expressly reserved to the state.<sup>115</sup>

## **R. Environmental Control.**

Chapter 403, Fla. Stat., prescribes how the Florida Legislature plans to ensure the beauty and quality of the state’s environment, with provisions addressing air and water pollution control and prevention, resource recovery and management, and extensive environmental regulations.

All local pollution control programs established and administered by a county or municipality must comply with the requirements of the *Florida Air and Water Pollution Control Act* and must be approved by the DEP. Any such requirements imposed by ordinance, regulation or local law must be compatible with, or stricter or more extensive than those imposed under the Act.<sup>116</sup>

The provisions of the *Florida Motor Vehicle Noise Prevention and Control Act* are uniform throughout the state and no local authority may enact or enforce any ordinance on a matter covered by the act unless expressly authorized.<sup>117</sup>

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<sup>111</sup> Section 373.023(1)-(2), Fla. Stat.

<sup>112</sup> Section 373.217, Fla. Stat.

<sup>113</sup> Section 376.317, Fla. Stat.

<sup>114</sup> Art IV § 9, Fla. Const.; Chapter 379, Fla. Stat.

<sup>115</sup> Section 379.2412 and 125.01(4), Fla. Stat.

<sup>116</sup> Section 403.182(1), Fla. Stat.

<sup>117</sup> Section 403.415(10), Fla. Stat.

The state has expressly preempted the regulation and certification of electrical power plant sites and electrical power plants; the certification of transmission lines and transmission line corridors; and the certification and regulation of natural gas transmission pipelines and natural gas transmission pipeline corridors.<sup>118</sup>

A county or a municipality shall not adopt by ordinance any definition that is inconsistent with §403.703, Fla. Stat., which defines 43 terms relating to resource recovery, recycling, and solid waste management.<sup>119</sup>

Local governments are prohibited from enacting any rule, regulation or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings or disposable bags.<sup>120</sup>

Under the *Mangrove Trimming and Preservation Act*, the state preempts the regulation and licensing of mangrove trimming, unless the local government is delegated the DEP's authority under the Act.<sup>121</sup>

#### **S. Public Health.**

Rules adopted by the Department of Health (DOH) and actions taken by the DOH pursuant to a declared public health emergency, isolation or quarantine shall supersede all rules enacted by other departments, boards, or commissions, and ordinances and regulations enacted by all political subdivision.<sup>122</sup>

**Governmental entities are prohibited from requiring persons to provide any documentation certifying COVID-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the governmental entity's operations in the state.**<sup>123</sup>

The DOH shall regulate the packaging, transport, storage, and treatment of biomedical waste, and the DEP shall regulate onsite/offsite incineration and disposal of biomedical waste.<sup>124</sup> Accordingly, the DOH has exclusive authority to establish treatment efficacy standards for biomedical waste, and the DEP has exclusive authority to establish statewide standards relating to environmental impacts. The

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<sup>118</sup> Sections 403.510, 403.536, and 403.942, Fla. Stat.

<sup>119</sup> Section 403.7031, Fla. Stat.

<sup>120</sup> Section 403.7033, Fla. Stat.

<sup>121</sup> Sections 403.9321-403.9334, Fla. Stat.

<sup>122</sup> Section 381.00315(6), Fla. Stat.

<sup>123</sup> **Section 381.00316, Fla. Stat. [SB 2006]**

<sup>124</sup> Section 381.0098(1), Fla. Stat.

regulation and inspection of biomedical waste generators is preempted by the state.<sup>125</sup>

A local government may not restrict the access to or use of any public facility or infrastructure for the collection of blood or blood components from volunteer donors based upon whether the establishment is operating as a for-profit or non-profit organization.<sup>126</sup>

The DOH is authorized to license medical marijuana treatment centers,<sup>127</sup> and the regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment facilities is preempted to the state except as provided by statute.<sup>128</sup>

Pursuant to the provisions of the *Florida Clean Indoor Air Act*, the regulation of smoking is expressly preempted to the state, but the act does not preclude municipal or county ordinances imposing more restrictive regulation on the use of vapor generating devices.<sup>129</sup>

Except as provided in §397.702, Fla. Stat, a county, municipality or other political subdivision may not adopt a local law, ordinance, resolution, or regulation which provides that impairment in public in and of itself or being found in certain places in an impaired condition, is an offense, a violation, or the subject of civil or criminal sanctions or penalties of any kind.<sup>130</sup>

“A county may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management (DEM) and costs for transportation and treatment provided by ambulance services licensed pursuant to §401.23(4) and (5).”<sup>131</sup>

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<sup>125</sup> Section 381.0098(8), Fla. Stat.

<sup>126</sup> Section 381.06014(5), Fla. Stat.

<sup>127</sup> Section 381.986(6), Fla. Stat.

<sup>128</sup> Section 381.986(11), Fla. Stat.

<sup>129</sup> Section 386.209, Fla. Stat.

<sup>130</sup> Section 397.701, Fla. Stat.

<sup>131</sup> Section 125.01045(1), Fla. Stat.

The provisions of the *Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act* establish a statewide regulatory scheme for emergency and nonemergency medical transportation services.<sup>132</sup>

#### **T. Labor.**

The provisions of Chapter 440, Fla. Stat., preempt local regulation on the subject of workers' compensation. See Barrangan v. City of Miami, 545 So. 2d 252, 254 (1989).

The provisions of the *Public Employees Relations Act (PERA)* govern public employer and public employee labor relations.<sup>133</sup> Any political subdivision may, however, elect to adopt "its own local option in lieu of the requirements of this part, provided such provisions and procedures thereby adopted effectively secure to public employees substantially equivalent rights and procedures as set forth in this part."<sup>134</sup>

#### **U. Regulation of Professions/Occupations.**

**"The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:**

- (a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.**
- (b) Any local government licensing of occupations authorized by general law."<sup>135</sup>**

**The term "occupation" is broadly defined as "a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation or craft."<sup>136</sup>**

Licensing and regulation of real estate salesmen and brokers is preempted to the state.<sup>137</sup> Counties and municipalities are precluded by this section from licensing and regulation of the real property activities or services of persons already licensed as real estate salesmen and brokers by the state.<sup>138</sup>

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<sup>132</sup> Chapter 401, Part III, Fla. Stat.

<sup>133</sup> Chapter 447, Part II, Fla. Stat.

<sup>134</sup> Section 447.603(1), Fla. Stat.

<sup>135</sup> **Section 163.211(2), Fla. Stat. [HB 735]**

<sup>136</sup> **Section 163.211(1)(c), Fla. Stat. [HB 735]**

<sup>137</sup> Chapter 475, Fla. Stat.

<sup>138</sup> Op. Att'y Gen. Fla. 081-5 (1981).

All regulation of the activities and operations of pest control services is preempted to the state, including the pesticides used pursuant to labeling and registration approved under Part I of Chapter 487, the *Florida Pesticide Law*.<sup>139</sup> Except as provided in the statute, no local government or political subdivision may enact or enforce an ordinance that regulates pest control.<sup>140</sup>

**A local government is prohibited from requiring a person to obtain a license whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board.<sup>141</sup> More specifically, job scopes for which a local government may not require a license include, but are not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation. Counties and municipalities are, however, authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, and HVAC trades,<sup>142</sup> as well as in the electrical and alarm system trades.<sup>143</sup>**

Municipalities and counties have no home rule powers in the area of examining into or certifying the competency of fire protection systems contractors. Such regulation is preempted to the state.<sup>144</sup>

Pursuant to the provisions of the *Florida Pawnbroking Act*, the DACS is responsible for the licensing and regulation of pawnbrokers.<sup>145</sup> Any county or municipality may enact ordinances that are in compliance with, but no more restrictive than this section, except that local ordinances shall not require payment of any fee or tax related to a pawn transaction unless authorized under this chapter or restrict hours of operations other than between midnight and 6 a.m.<sup>146</sup>

“No municipality or county or other political subdivision shall have the authority to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration or bonding in any manner of any seller of travel who is registered or complies with the applicable provisions of this part, unless that authority is provided

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<sup>139</sup> Sections 482.242(1) and 487.051(2), Fla. Stat.

<sup>140</sup> Section 482.242(1), Fla. Stat.

<sup>141</sup> **Section 489.117(4), Fla. Stat. [HB 735]**

<sup>142</sup> **Section 489.1455(1), Fla. Stat. [HB 735]**

<sup>143</sup> **Section 489.5335(1), Fla. Stat. [HB 735]**

<sup>144</sup> Op. Atty. Gen. Fla. 080-46 (1980).

<sup>145</sup> Chapter 539, Fla. Stat.

<sup>146</sup> Section 539.001(20), Fla. Stat.

for by special or general act of the Legislature. Any ordinance, resolution or regulation of any municipality or county or other political subdivision of this state which is in conflict with any provision of this part is preempted by this part.”<sup>147</sup>

The state preempted the field of regulating insurers and their agents and representatives. No county, city, municipality, or political subdivision shall require any insurer, agent, or representative regulated under Chapter 624 of the Insurance Code any authorization, permit or registration of any kind for conducting lawful transactions under the authority granted by the state.<sup>148</sup> The state has also preempted the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes and fees upon insurers and their agents and representatives.<sup>149</sup> The regulation of title insurers and title insurance is also preempted to the state.<sup>150</sup>

Transportation network companies are exclusively governed by state law. A county, municipality, or other local government entity may not impose a tax or require a license for a TNC; subject a TNC to any rate, entry, operation or other requirement; or require a TNC to obtain a business license or other authorization to operate within the entity’s jurisdiction.<sup>151</sup>

## **V. Regulation of Trade and Commerce.**

The regulation of over-the-counter proprietary drugs and cosmetics is expressly preempted to the state.<sup>152</sup>

Pursuant to the provisions of the *Florida Food Safety Act*: the regulation and permitting of food establishments is preempted to the state;<sup>153</sup> the regulation of bottled water plants, water vending machines, water vending machine operators, and packaged ice plants is preempted to the state;<sup>154</sup> the regulation, identification, and packaging of meat, poultry, and fish is preempted to the state;<sup>155</sup> and the regulation of polystyrene products by entities regulated under Chapter 500 is preempted to the

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<sup>147</sup> Section 559.939, Fla. Stat.

<sup>148</sup> Section 624.401(3), Fla. Stat.

<sup>149</sup> Section 624.520(1), Fla. Stat.

<sup>150</sup> Section 624.785, Fla. Stat.

<sup>151</sup> Section 624.748(17), Fla. Stat.

<sup>152</sup> Section 499.002(7), Fla. Stat.

<sup>153</sup> Section 500.12(5), Fla. Stat. (“Regulatory and permitting authority over any food establishment is preempted to the department.”)

<sup>154</sup> Section 500.511(3), Fla. Stat.

<sup>155</sup> Section 500.60, Fla. Stat. (“Notwithstanding any other law or local ordinance to the contrary and to ensure uniform health and safety standards, the regulation, identification, and packaging of meat, poultry, and fish is preempted to the state and the Department of Agriculture and Consumer Services.”)



state.<sup>156</sup> In addition, regulations relating to milk or milk products, or frozen desserts for wholesale are preempted to the state.<sup>157</sup>

**“The regulation of cottage food products is expressly preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, and sale of cottage food products by a cottage food operation; however, a cottage food operation must comply with the conditions for the operation of a home-based business under §559.955.”**<sup>158</sup>

The Division of Hotels and Restaurants is vested with the authority to carry out the provisions of Chapter 509, Fla. Stat., and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments. The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing personnel, and matters related to the nutritional content and marketing of foods offered in such establishments is preempted to the state.<sup>159</sup> In addition, the ranking of food service establishments is also preempted to the state.<sup>160</sup>

A local law, ordinance, or regulation adopted after June 1, 2011, may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.<sup>161</sup>

“Regulation of mobile food dispensing vehicles involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local government entity may not require a separate license, registration, or permit other than the license required under §509.241, Fla. Stat., or require the payment of any license, registration, or permit other than the fee required under §509.251, Fla. Stat., as a condition for the operation of a mobile food dispensing vehicle within the entity’s jurisdiction. A municipality, county, or other local government entity may not prohibit mobile food dispensing vehicles from operating within the entirety of the entity’s jurisdiction.”<sup>162</sup>

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<sup>156</sup> Section 500.90, Fla. Stat.

<sup>157</sup> Section 502.232, Fla. Stat. (“All special or local acts, general laws of limited application, county ordinances or resolutions, municipal ordinances or resolutions, and municipal charter provisions that authorize the regulation of milk or milk products, or frozen desserts for wholesale, are superseded by this chapter and the rules adopted pursuant to this chapter.”)

<sup>158</sup> **Section 500.80(6), Fla. Stat. [HB 663]**

<sup>159</sup> Section 509.032(7)(a), Fla. Stat.

<sup>160</sup> Section 509.039, Fla. Stat.

<sup>161</sup> Section 509.032(7)(b), Fla. Stat.

<sup>162</sup> Section 509.102(2), Fla. Stat.

**Local governments may not enact or enforce any ordinance, regulation, or policy or take any action to license a home-based business except as authorized.<sup>163</sup>**

The DOH is the exclusive regulatory and permitting authority for sanitary and permitting standards for all mobile home parks, lodging parks, recreational vehicle parks and recreational camps.<sup>164</sup> In addition, the regulation and control of mobile home lot rents and all matters related to the landlord-tenant relationship falling under the purview of Chapter 723, Fla. Stat., are expressly preempted to the state.<sup>165</sup>

**The regulation of fuel retailers and related transportation infrastructure is expressly preempted to the state.<sup>166</sup> A municipality or county may not: adopt a law, ordinance, regulation, policy, or resolution that prohibits the siting, development, redevelopment of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within a local government’s entire jurisdiction; adopt or apply a law, ordinance, regulation, policy, or resolution that results in the de facto prohibition of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within a local government’s entire jurisdiction; or require a fuel retailer to install or invest in any particular kind of fueling infrastructure, including, but not limited to, electric vehicle charging stations.<sup>167</sup> In addition, the regulation of retail petroleum fuel measuring devices is preempted to the state.<sup>168</sup>**

Except as authorized, a county may not enact an ordinance that would impose a fee or charge on an authorized wrecker operator or towing business for towing, impounding or storing a vehicle or vessel.<sup>169</sup>

Except as provided by statute, Chapter 507, Fla. Stat., preempts a local ordinance or regulation that regulates transactions of movers of household goods or moving brokers.<sup>170</sup>

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<sup>163</sup> Section 559.995, Fla. Stat. [HB 403]

<sup>164</sup> Section 513.051, Fla. Stat.

<sup>165</sup> Section 723.004(2), Fla. Stat.

<sup>166</sup> Section 377.07, Fla. Stat. [HB 839]

<sup>167</sup> Section 377.07(2), Fla. Stat. [HB 839]

<sup>168</sup> Section 525.07(10)(g), Fla. Stat. [SB 430]

<sup>169</sup> Sections 125.01047 and 323.002(4), Fla. Stat.

<sup>170</sup> Section 507.13(1), Fla. Stat.

The regulation of transactions involving regulated metals property is preempted to the state.<sup>171</sup> Except as provided by statute, an ordinance or regulation adopted by a county or municipality relating to the purchase or sale of regulated metals or the registration or licensure of secondary metals recyclers is void.<sup>172</sup> In addition, a uniform statewide process preempts municipal or county ordinances enacted after December 31, 2008, relating to hold notices issued to secondary metals recyclers.<sup>173</sup>

The regulation of refunds from retail sales establishments is preempted to the DACS notwithstanding any other law or local ordinance to the contrary.<sup>174</sup>

Any local act, law, ordinance, or regulation of a county, municipality, or other political subdivision that pertains to hoisting equipment including power operated cranes, derricks, hoists, elevators and conveyers used in construction, demolition, or excavation work that is not already preempted by OSHA is prohibited and preempted to the state.<sup>175</sup>

Local government units may not enact or enforce any ordinance or other local law or rule conflicting with, or preempted by, any provision of the *Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Standard Act*, which establishes the method for measuring the ignition strength of cigarettes.<sup>176</sup>

“Except as expressly provided, the provisions of this section and §§655.960-655.964 supersede and preempt all rules, regulations, codes, or ordinances of any city, county, municipality, or other political subdivision of this state, and of any local agency regarding customer safety at automated teller machines located in this state.”<sup>177</sup>

“This chapter [681] preempts any similar county or municipal ordinance regarding consumer warranty rights resulting from the acquisition of a motor vehicle in this state.”<sup>178</sup>

“A political subdivision of this state may not adopt, for convenience businesses, security standards which differ from those contained in §§812.173-812.174, and all

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<sup>171</sup> Section 538.28(1), Fla. Stat.

<sup>172</sup> Section 538.28(2), Fla. Stat.

<sup>173</sup> Section 538.21, Fla. Stat.

<sup>174</sup> Section 501.142, Fla. Stat.

<sup>175</sup> Section 489.113(11), Fla. Stat.

<sup>176</sup> Section 633.142(11), Fla. Stat.

<sup>177</sup> Section 655.965, Fla. Stat.

<sup>178</sup> Section 681.116, Fla. Stat.

such differing standards, whether existing or proposed, are hereby preempted and superseded by general law.”<sup>179</sup>

## **W. Agriculture and Horticulture.**

The DACS is vested with the authority to enforce state laws and rules relating to:

- a. Fruit and vegetable inspection/grading;
- b. Pesticide spray, residue inspection, and removal;
- c. Commercial stock feeds and commercial fertilizers;
- d. Classification/Inspection/sale of poultry and eggs;
- e. Registration/inspection/analysis of gasoline and oils;
- f. Registration/labeling/inspection/analysis of pesticides;
- g. Registration/labeling/inspection/sale of seeds;
- h. Weights, measures and standards;
- i. Foods, as set forth in the Food Safety Act;
- j. Inspection/certification of honey;
- k. Sale of liquid fuels;
- l. Licensing of dealers in agricultural products;
- m. Administration/enforcement of regulatory legislation applying to milk and milk products, ice cream, and frozen desserts;
- n. Recordation/inspection of marks and brands of livestock;
- o. Regulation of fertilizer; and
- p. All other regulatory laws relating to agriculture.

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) above are expressly preempted to the state.<sup>180</sup>

A local government may not adopt or enforce a local ordinance, regulation, rule or policy that prohibits, restricts, regulates, or otherwise limits agritourism activity on land classified as agricultural land.<sup>181</sup>

The authority to regulate, inspect, sample, and analyze any commercial feed or feedstuff distributed in this state and to exercise the powers and duties of regulation in Chapter 580, including the power to assess penalties, is preempted to the DACS.<sup>182</sup>

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<sup>179</sup> Section 812.1725, Fla. Stat.

<sup>180</sup> Section 570.07(16), Fla. Stat.

<sup>181</sup> Section 570.85, Fla. Stat.

<sup>182</sup> Section 580.0365, Fla. Stat.

The authority to regulate, inspect, and permit managed honeybee colonies and to adopt rules on the placement and location of registered inspected managed honeybee colonies is preempted to the state through the DACS and supersedes any ordinance adopted by a county, municipality, or political subdivision thereof.<sup>183</sup>

## **X. Animal Control.**

The “fence law” contained in Chapter 588, Fla. Stat., governing the impoundment of stray livestock, is intended to be uniform throughout the state.

The provisions of Chapter 767, Fla. Stat., establish minimum procedures governing the investigation, certification, notice and hearing, confinement, and appellate remedies related to dangerous dogs.<sup>184</sup> The law requires that a dog that has been “declared dangerous attacks or bites a person or a domestic animal without provocation” shall be “destroyed in an expeditious and humane manner.”<sup>185</sup> In all cases, the law requires that a dog that “causes severe injury or death of any human” shall be euthanized.<sup>186</sup> No local government may adopt dangerous dog regulations “specific to breed.”<sup>187</sup>

In Hoesch v. Broward County, 53 So. 3d 1177 (Fla. 4th DCA 2011), the court invalidated a county ordinance that required destruction of dogs that kill or cause the death of a domestic animal on only one occasion finding it conflicted with Chapter 767 that required at least two such incidents.

If counties elect to provide local animal control, state law establishes minimum criteria and responsibilities.<sup>188</sup> There are minimum criteria governing the civil citation process for local ordinances “relating to animal control or cruelty.”<sup>189</sup> While the law states “no county or municipal ordinance relating to animal control or cruelty shall conflict with the provisions of this chapter or any other state law”, it also proclaims that it is still “an additional, supplemental, and alternative means of enforcing county or municipal codes or ordinances.”<sup>190</sup> Local governments may not

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<sup>183</sup> Section 586.10(1), Fla. Stat.

<sup>184</sup> Sections 767.10-.15, Fla. Stat. (“Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or requirements.”)

<sup>185</sup> Section 767.13(1), Fla. Stat.

<sup>186</sup> Section 767.13(2), (3), Fla. Stat.

<sup>187</sup> Section 767.14, Fla. Stat.

<sup>188</sup> In areas not served by an animal control authority, the sheriff shall carry out the duties of the animal control authority. Section 767.11(5), Fla. Stat.

<sup>189</sup> Section 828.27, Fla. Stat.

<sup>190</sup> Section 828.27(7)-(8), Fla. Stat.

“mandate revaccination of currently vaccinated animals except in instances involving postexposure treatment for rabies.”<sup>191</sup>

#### **Y. Firearms and Ammunition.**

“Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.” If a county or municipality is found to be “knowing and willful” of its violation of the firearm and ammunition preemption, “the court shall assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.”<sup>192</sup>

Except as expressly provided by law, the Legislature hereby declares that it is occupying the whole field of the regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.<sup>193</sup>

#### **Z. Explosives and Fireworks.**

Section 791.001, Fla. Stat., expressly states that Chapter 791, Fla. Stat., which concerns the sale of fireworks, “shall be applied uniformly throughout the state.”<sup>194</sup>

The licensing and regulation of the manufacture, distribution, and use of explosives is governed by Chapter 552, Fla. Stat. “Nothing contained in this chapter shall affect any existing ordinance, rule or regulation pertaining to explosives of any incorporated city, town, county, or other local governmental entity in this state not less restrictive than the provisions of this chapter and rules promulgated pursuant thereto, or affect, modify or limit the power of such incorporated cities, towns, counties, or other local governmental entities to make ordinances, rules or

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<sup>191</sup> Section 828.30(7), Fla. Stat.

<sup>192</sup> Section 790.33(3)(c), Fla. Stat.

<sup>193</sup> Section 790.333(8), Fla. Stat.

<sup>194</sup> Counties can regulate more stringently. “This does not mean that the county cannot legislate concerning fireworks to the extent such does not conflict with the provisions of chapter 791. See Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309 (Fla. 2008); see also Section 791.012, Fla. Stat; “Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations for the outdoor display of fireworks, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of firework.”

regulations hereunder pertaining to explosives within their respective corporate limits.”<sup>195</sup> Notwithstanding the provisions of §552.25, Fla. Stat., the State Fire Marshall has sole and exclusive authority to promulgate standards, rules and regulations regarding the use of explosives in conjunction with construction material mining activities.<sup>196</sup>

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<sup>195</sup> Section 552.25, Fla. Stat.

<sup>196</sup> Section 552.30(1), Fla. Stat.