

**Constitution Revision Commission  
Local Government Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 95

Relating to: LOCAL GOVERNMENT, creates s. 6

Introducer(s): Commissioner Lee

Article/Section affected: Article VIII, new section

Date: January 18, 2018

	REFERENCE	ACTION
1.	<u>LO</u>	<u><b>Pre-meeting</b></u>
2.	<u>LE</u>	<u><b>Pre-meeting</b></u>

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**I. SUMMARY:**

Proposal 95 creates a constitutional prohibition against any county, municipality, or special district's regulation of any type of commerce, trade, or labor, unless such regulation operated exclusively within the respective entity's own boundaries in a manner not prohibited by law. Additionally, the Proposal prohibits any regulation enacted by a county, municipality, or special district from intruding upon, or impeding, commerce, trade, or labor across the respective entity's boundaries.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

The 1968 Florida Constitution introduced the concept of "Home Rule" whereby local governments "may exercise any power for municipal purposes except as otherwise provided by law."<sup>1</sup>

Florida law provides four fundamental limitations on the exercise of municipal home rule authority:

1. The state legislature;
2. The citizens of the municipality;
3. The state constitution; and
4. A county's charter.<sup>2</sup>

Municipalities are granted broad home rule authority to pass ordinances to govern the local community in areas that are not specifically addressed or reserved by state legislation or the state constitution.<sup>3</sup> However, municipal ordinances must yield to state law to the extent the ordinance conflicts with existing

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<sup>1</sup> Fla. Const. Art VIII, §2(b)

<sup>2</sup> F.S. §166.021(1)

<sup>3</sup> F.S. §166.021(1)

state law and a municipality's power to act or regulate in a particular area may be preempted by general law.<sup>4</sup>

Pursuant to Article XIII and Chapter 125 of the Florida Statutes, local governments have broad authority to legislate on matters not inconsistent with federal or state law. A local government regulation may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Florida law recognizes two types of preemption: express and implied. An express preemption is created when the Legislature specifically declares a local government is prohibited from regulating a certain field.<sup>5</sup>

### Noncharter Counties

A county without a charter has such power of self-government as provided by general<sup>6</sup> or special law, and may enact county ordinances not inconsistent with general law.<sup>7</sup> General law authorizes counties "the power to carry on county government"<sup>8</sup> and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."<sup>9</sup>

### Charter Counties

Pursuant either to general<sup>10</sup> or special law, a county government may be adopted by charter approved by the county voters. A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.<sup>11</sup>

### Municipalities<sup>12</sup>

A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

### Special Districts<sup>13</sup>

Special districts are separate governmental entities existing for specific purposes and having substantial fiscal and administrative independence from general purpose governments

In Florida, special districts perform a wide variety of functions, such as providing fire protection services, delivering urban community development services, and managing water resources. Special districts typically are funded through ad valorem taxes, special assessments, user fees, or impact fees. The Uniform Special District Accountability Act, ch. 189, F. S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain types of special districts.

<sup>4</sup> *Lake Worth Utils. Auth. v. Lake Worth*, 468 So. 2d 215 (Fla. 1985).

<sup>5</sup> *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).

<sup>6</sup> Chapter 125, Part I, F.S.

<sup>7</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>8</sup> Section 125.01(1), F.S.

<sup>9</sup> Section 125.01(1)(w), F.S.

<sup>10</sup> Section 125.60, F.S.

<sup>11</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>12</sup> See generally Florida House of Representatives, *Local Government Formation Manual 2017-2018*, Chapter 2.

<sup>13</sup> See generally *Local Government Formation Manual 2017-2018*, Chapter 5.

### Businesses, Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate many professions and occupations and preempts the regulation of many businesses.

Whether or not, and to what degree, current law authorizes or preempts the local regulation of professions and occupations is typically done specifically and individually by subject matter, business type, or profession. Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.

### Defining “Commerce,” “Trade” and “Labor”

The terms “Commerce,” “Trade” and “Labor” are not defined by the Florida Constitution, but are defined under limited circumstances in statute and in case law. For the purposes of construing an undefined constitutional provision, the Florida Supreme Court will first begin with an examination of the provision’s explicit language. If that language is clear and unambiguous, and addresses the matter at issue, it is enforced as written. If, however, the provision’s language is ambiguous or does not address the exact issue, a court must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and the voters.<sup>14</sup>

Taken at its plain meaning, “Regulate” potentially includes any sort of local government oversight. “Commerce, trade, and labor” potentially includes any activity or transaction performed by any person, business, or entity for compensation, and possibly includes activities or transactions not performed for compensation.<sup>15</sup> “Intrude or impede” potentially includes any interference – notwithstanding the degree or magnitude of such interference.<sup>16</sup>

Florida Statutes defined “trade and commerce” as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.<sup>17</sup> Merriam-Webster Dictionary defines labor as “an act or process requiring labor.”<sup>18</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

Proposal 95 creates a constitutional prohibition against any county, municipality, or special district’s regulation of any type of commerce, trade, or labor, unless such regulation operated exclusively within the respective entity’s own boundaries in a manner not prohibited by law. Additionally, the Proposal

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<sup>14</sup> *West Florida Regional Medical Center v. See*, 79 So. 3d 1, 9 (Fla. 2012).

<sup>15</sup> Florida Association of Counties, Analysis of P 95, 12/22/2018 (on file with CRC staff).

<sup>16</sup> Florida Association of Counties, Analysis of P 95, 12/22/2018 (on file with CRC staff).

<sup>17</sup> Section 501.203(8), F.S.

<sup>18</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/labor> (last visited 1/16/2018)

prohibits any regulation enacted by a county, municipality, or special district from intruding upon, or impeding, commerce, trade, or labor across the respective entity's boundaries.

The Proposal may inhibit the Legislature's ability to direct or authorize local governments to regulate or oversee any commerce, trade, or labor function unless such regulation was confined exclusively within the jurisdictional boundaries of the local government.

The scope of the proposal may be dependent on the interpretation of "may only regulate commerce, trade or labor occurring exclusively within the respective entity's own boundaries..." Courts may be required to determine the scope and reach of this language in its current form.

Under the proposal language, a county or municipality may be prohibited from overseeing persons, businesses, or other entities based outside of their jurisdiction, even though such persons, businesses, or entities conduct business inside of the county or municipality and enjoy property interests inside of the jurisdiction.

**C. FISCAL IMPACT:**

Indeterminate

**III. Additional Information:**

**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

**D. Related Issues:**

None.