



2017 Legislative Issue Briefs



Preemption of Municipal Home Rule Powers

Position:

The Florida League of Cities **OPPOSES** legislation that eliminates municipal home rule powers as applied to businesses, professions and occupations, leaving local communities without effective means to address the health, safety, welfare and property rights concerns of their residents and businesses, in a manner best suited to their needs.

Talking Points on HB 17 and SB 1158:

Cities are voluntarily created and chartered by their citizens. They are the embodiment of local self-determination. HB 17 (Fine) and SB 1158 (Passidomo) will thwart the will of millions of voters, impede access to government, and create inequities and inefficiencies throughout the State of Florida.

HB 17 and SB 1158 thwart the will of voters:

- It contradicts the will of the people of Florida, who expressed an unequivocal desire for broad Home Rule powers in their state constitution.
- It undercuts the intent of municipal citizens, who voted to incorporate their communities and exercise the broad Home Rule powers granted by the Florida Constitution to govern themselves and, thereby, effectively address the unique concerns of their communities.
- It could impair municipal charter provisions specifically adopted and approved by local voters to define their preferred form of self-government and safeguard issues of perennial importance to their communities.

HB 17 and SB 1158 will reduce access to government and delay redress of local needs:

- Many local issues of concern to citizens would be in the hands of a centralized state body, located hundreds of miles away from their homes and businesses.
- The Florida Legislature convenes in Tallahassee for 60 consecutive days in regular session once a year. Local governments typically meet multiple times each month at meetings that are noticed well in advance. Citizens and businesses have opportunities to regularly interact with local decision makers, both formally and informally, without ever having to leave their hometowns.

HB 17 and SB 1158 will create inefficiencies and inequities:

- State legislators may find themselves spending increasing amounts of time arbitrating over local problems and legislating on local issues, and less time attending to pressing statewide needs.

- State government – the Florida Legislature – will be in the position of picking winners and losers. Some local communities will be successful in obtaining permission from the state to undertake necessary action that will help their residents, their property owners and their local economies; others will not.

Background:

HB 17 (Fine) and **SB 1158** (Passidomo) expressly preempt the regulation of businesses to the state. The House bill and the Senate bill differ in how the preemptions are imposed.

HB 17 provides that after July 1, 2017, a local government may not adopt or impose a new requirement (including any regulation, license, permit or fee) on a “business, profession or occupation” unless the requirement is “expressly authorized by general law.” Additionally, HB 17 specifies that any existing requirement on a business, profession or occupation adopted without “general law authority” will be grandfathered until January 1, 2020 at which time they will automatically be repealed. Therefore, eventually no regulation may be imposed on a business, profession or occupation unless expressly authorized under general law and all existing ordinances enacted under home rule will be null and void.

SB 1158 expressly preempts the regulation of commerce, trade, and labor unless expressly authorized by special or general law. Under SB 1158, local governments would be expressly prohibited from banning the sale of a good or service, imposing a penalty on the sale of good or service, setting a wage rate that differs from state or federal law, or adopting a rule, ordinance or regulation which adversely impacts or interferes with the regulation of commerce, trade, and labor outside of the local government boundaries. Examples of adverse impact are those which adversely impact economic growth; adversely impact private sector job creation or employment; adversely impact private sector investment; adversely impact business competitiveness, including impeding the ability of persons doing business in the municipality or state to compete with persons doing business in other areas of the state or in other domestic markets; adversely impact productivity; or adversely impact innovation within the municipality or outside its territorial boundaries. Additionally, SB 1158 creates a process by which one local government can nullify another local government’s regulation if it violates the requirements of the bill.

Prior to 1968, municipalities had only those powers expressly granted by state law. As Florida’s population boomed following World War II, this framework became increasingly impractical. Each year, the Florida Legislature was inundated with local bills and special acts seeking authority for individual municipalities to address a local issue. State legislators found their time consumed by local matters at the expense of statewide matters. For example, 2,107 local bills were introduced in the 1965 legislative session. In stark contrast, only 35 local bills were introduced in the 2016 legislative session. In addition to the distraction from important statewide issues, this system created a patchwork of state law authorizations that varied from locale to locale, creating disparities and causing delays in addressing local needs. A municipality’s ability to timely act on local problems and opportunities was limited by a state Legislature that held session only once a year, and was contingent on the relative effectiveness of its representative in the state Legislature.

In 1968, Florida voters amended the state constitution to confer broad “home rule” powers on municipal government. Under Article VIII, Section 2(b), municipalities now had the power to act for any valid municipal purpose *except as prohibited by law*. This change was an unequivocal expression of

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support for local self-government by the people of the State of Florida. The right of the people of Florida to govern themselves was actualized. The right of people to access government to address local needs and problems was strengthened. Because municipal elected bodies meet several times a month, as opposed to 60 consecutive days a year, local issues could now be addressed more quickly, with solutions uniquely tailored to each community. Importantly for state government, the Florida Legislature could now focus its time on statewide matters rather than local issues.

HB 17 and SB 1158 are a statutory revocation of municipal home rule powers, as applied to businesses, professions and occupations. The bills would return Florida to a time when redress of local problems depended on a statewide body that took official action only once a year and from hundreds of miles away. It would thwart the will of millions of Floridians who expressly enshrined their desire for local self-government in their state constitution. The bills would thwart the will of thousands of Floridians who voted to exercise this right by incorporating as a municipal government. The legislation would thwart the will of thousands of Floridians who voted for a city charter to implement their preferred form of home rule.

Aside from the dubious policy merits of this sweeping change, the legislation as drafted presents numerous challenges and questions as to implementation and application. The bills fail to define key provisions that would clarify their scope. It is unclear how many and which general laws (statutes) currently provide the necessary grant of authority to local governments as contemplated by the legislation. It is unclear whether future state legislators will act to restore necessary powers that will be swept away by HB 17, or act to address future local needs that could now require state action.

As currently drafted, passage of HB 17 and SB 1158 could lead to several years of uncertainty and delayed decision making for local governments and their residents, property owners and businesses. Residential and commercial property owners may have little assurance that existing local government regulations designed to protect their property rights and their property values would remain effective and, if so, for how long. Individual property owners may have to seek state legislation to protect their investments from conflicting or harmful activities by adjacent or nearby “businesses, professions or occupations.” As currently drafted, the bills could substantially impede real estate transactions throughout the state because of the difficulties of exercising “due diligence” in the face of multiple uncertainties about what the Legislature may or not choose to authorize in the future. Businesses looking to relocate to or establish in Florida may have difficulty assessing whether a potential location would be suitable for conducting specific business activities or a desirable place for their employees to live.

Local self-government has been described as a “keystone of American democracy” because it is the most fundamental embodiment of the right of the people to govern themselves and have their issues addressed by a level of government that is closest to them. HB 17 and SB 1158 are an anathema to core democratic principles. They would seize control from local citizens and put their affairs in the hands of a centralized state power, located far away from where they live and work.

Status:

HB 17 passed the House Careers and Competition Subcommittee (9-6) and is now in the House Commerce Committee. This will be HB 17’s last Committee of reference before reaching the House floor for a final vote. SB 1158 is awaiting committee references.

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