



# 2019 Legislative Issue Briefs



## Attorney Fees and Costs

### Statement:

The Florida League of Cities OPPOSES legislation providing for the mandatory award of attorney fees and costs against local governments in civil actions.

### Background:

The general rule in the United States is each party to a lawsuit pays his or her own attorney fees and costs no matter who wins. There are two exceptions to this rule that may allow a prevailing party to be awarded fees and costs. First, some contracts may contain a prevailing party attorney fee provision. Second, a statutory exception to this general rule may be enacted as a sanction or punitive measure intended to curtail certain conduct or practices.

Preemption occurs when the constitution or the Legislature by statute removes a topic or field from the scope of local governments' broad Home Rule powers. There are two types of preemption: express and implied. Express preemption requires a specific statement by the Legislature of its intent to preempt. The area of firearms and ammunition regulation is an oft-cited example of express preemption. Section 790.33(1), Florida Statutes, states: "the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition . . . ." Implied preemption occurs when a court creates a preemption in the absence of an express legislative statement. Courts will imply a preemption when the legislative scheme is so pervasive as to evidence an intent to preempt the particular field of regulation or when strong public policy reasons exist for the preemption.

**CS/SB 1140** (Hutson) and **CS/CS/HB 829** (Sabatini) create a new section of law providing for a mandatory award of attorney fees, costs and damages, including prejudgment interest and costs, against a local government in a civil action in which a local government ordinance is determined to have been preempted by the state Constitution or by state law. As filed, the bills apply to legal challenges involving both express and implied preemptions. The bills provide that fees and costs may not be awarded if the local government withdraws or repeals the ordinance within 21 days after receiving a written claim that the ordinance is preempted or receives a motion seeking fees and costs pursuant to the newly created section of law. The bills specify they are remedial in nature and intended to apply retroactively to all cases pending or commenced on or after July 1, 2019. According to bill sponsors, the purpose of the bills is to deter rogue local governments who intentionally enforce or adopt ordinances regarding a particular subject when the Legislature has clearly preempted the subject matter.

### Status:

**CS/SB 1140** was amended to provide that attorney fees and costs would be awarded to either prevailing party in such actions and to limit the applicability of the fee award to actions based on express preemptions (rather than implied preemptions).

**Contact:** Rebecca O'Hara, Deputy General Counsel – 850-701-3692 – [rohara@flcities.com](mailto:rohara@flcities.com)

**CS/CS/HB 829** was amended to limit the applicability of the fee award to actions based on express preemptions.

**Revised:** 3/29/2019

**Contact:** Rebecca O'Hara, Deputy General Counsel – 850-701-3692 – [rohara@fcities.com](mailto:rohara@fcities.com)