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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION
VIRGINIA

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About this Document: This is an excerpt of a longer report, *Navigating State Law in Local Climate Action*, which covers nineteen states. The excerpt below contains the report's introduction, along with information and analysis related only to Virginia. The full report, as well as other state-specific reports, are available in Columbia Law School's Scholarship Archive.

INTRODUCTION

Local governments are well-positioned to lead the fight against climate change by reducing community-wide greenhouse gas emissions, promoting renewable energy resources, and otherwise advancing climate mitigation and adaptation goals. Many local governments have already taken actions, and there is more they can do. In taking action to mitigate and adapt to the climate crisis, local governments must be aware of and act consistently with preemptive state laws that limit their authority. This report provides state-by-state information, resources, and analysis for nineteen states on key state-local preemption issues.

1. CROSS-CUTTING THEMES

The courts, constitutions, and statutes of each state handle the balance of power between the state and its local governments differently. But broadly, all seek to offer local governments some degree of autonomy, usually expressed as a variety of "home rule," while preserving ultimate authority in the state itself. The specific ways in which the states wield their authority are similarly varied, but they usually include both instances where the state passes laws that withdraw whole fields from local regulatory authority, and ones in which states broadly regulate in an area but allow local governments latitude to regulate so long as there is no conflict between the two. The sections below provide general background on the kinds of considerations that shape the relationship between states and local governments, and the chapters that follow expand on each in the context of particular states.

2. SCOPE

The states covered in this report are ones within which the authors have ongoing research projects and partnerships. They represent several of the "swing" states that are the most closely politically divided, ones where control of the state is split between political parties, and others—like Texas and Florida—where legislatures have taken particularly noteworthy steps to preempt local climate law. For each state covered, the chapters highlight the sources of local authority to regulate and the limits imposed by the state, including: (1) constitutional and statutory delegations of home rule authority and police powers to local governments; (2) state law governing the nature and content of home rule charters, as well as preemption of local law generally; (3) a catalog of current state laws that may preempt local climate action; (4) leading case law on home rule and preemption of local law; (5) where applicable, information on recent and ongoing litigation; (6) a summary of how the state handles building codes; (7) discussion of legal considerations related to public utilities; (8) helpful secondary sources; and (9) additional relevant information.

Many of the issues presented in each state's preemption case law section in this report arise outside the environmental, energy, and climate context. This is intentional, as case law that specifically discusses climate-related preemption measures is too limited to fully illustrate the doctrines through which courts would likely

consider those cases. We would not be able to explain state-specific preemption doctrines by only examining cases that are topically relevant.

These resources are intended to help local governments, policymakers, city attorneys, academics, advocates, and other stakeholders craft resilient climate policies, anticipate and respond to preemption challenges, and mobilize public engagement. The information provided is not exhaustive—it is intended instead as a starting point and a guide to the topics most relevant to state-local preemption. Links to publicly available versions of the constitutional provisions, statutes, and cases cited are provided where those are available.

3. HOME RULE AND THE POLICE POWER

Determining whether a local government may take a particular action involves a two-part inquiry, asking first whether the locality has the authority to legislate on a given issue, and second whether the state has preempted local governments from exercising that authority. The scope of local governments' authority to legislate is significantly shaped by the extent to which their states have allowed for home rule.

Home rule is a constitutional or statutory delegation of authority from a state to its local governments, permitting them to govern within their jurisdictions and adopt laws, regulations, and policies across a broad range of subjects.[1] In the vast majority of states, this "commitment to local lawmaking capacity [is] codified in [state] constitutions and statutes."[2] The core purpose of home rule is to empower local governments to act independently on local matters, so long as their actions are not inconsistent with state law, the state constitution, or their own home rule charters.[3] Today, all but three states provide some level of home rule—forty-one via the state's constitution and six through statute.[4]

Local action in states without a home rule system is cabined by an approach that was first described by Iowa Supreme Court Chief Justice John Dillon, and which has come to be known as Dillon's Rule. Under that approach, courts considering the scope of local governments' authority recognize only those powers that "are essential to municipal government or that the state has explicitly given to them, including any powers that are necessary for or implied by those explicitly given powers."[5] When Dillon's Rule applies, local governments' ability to regulate is more restricted.

[1] *See* Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1124 (2007) (describing home rule as "a system of state and local relations that gives some degree of permanent substantive lawmaking authority to localities beyond that which was provided by the traditional Dillon's Rule regime."); NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY (2020), https://perma.cc/A3VP-NXZZ.
[2] Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 2011 (2018), https://perma.cc/3B53-S66J.
[3] *See* NAT'L LEAGUE OF CITIES, *supra* note 1.
[4] *See* Briffault, *supra* note 2.
[5] *See City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).

Home rule's "primary purpose and [] principal effect . . . has been to undo Dillon's Rule" and empower local governments to legislate proactively, without prior state approval.[6] However, even in states with expansive home rule systems, local authority is limited by the almost absolute power of state preemption.[7]

4. PREEMPTION

Broadly speaking, preemption is a legal doctrine that allows the federal or a state government to restrict or eliminate the authority of lower levels of government in a specific policy area.[8] There are three ways a state can preempt local action: (1) expressly through clear statutory language (known as "express preemption"); (2) by demonstrating the state's legislative intent to occupy a whole field of regulation (known as "field preemption"); or (3) by enacting state laws that conflict with local ones (known as "conflict preemption").[9] State governments can employ all or a mixture of preemption methods, depending on the state.

While related, home rule and preemption are distinct legal doctrines. Strong home rule increases baseline local authority but it does not limit a state's power to preempt particular laws or fields of regulation. Further, a municipality is generally only affected by preemption to the extent that its actions cross into areas of state concern. Home rule should be viewed as a source of local initiative, while preemption as a legal boundary.

Many state courts liberally construe home rule authority and avoid finding preemption under certain conditions. A few states, like Ohio, have even reined in state power in order to protect local lawmaking.[10] In *City of Canton v. State*, the Supreme Court of Ohio held that "a state law preempting local regulation cannot merely block local action but must include some substantive replacement regulation."[11] Home rule has developed differently in each state, resulting in a patchwork of fifty distinct and nuanced systems of local power.

5. KEY ENVIRONMENTAL, ENERGY, AND CLIMATE CASES

In most states, there is relatively little preemption case law specific to environmental issues. Where there are cases, they are not broadly applicable because of each state's unique home rule and preemption frameworks. As a result, many of the issues discussed in each state's preemption case law section fall outside the environmental, energy, and climate context. That said, some state courts have decided significant preemption disputes in the environmental, energy, and climate sectors. Even though each state's decisions are not binding on other states, courts in states in which there is little applicable case law may find these examples persuasive:

[6] *See* Briffault, *supra* note 2, at 2012.
[7] *Id*.; Diller, *supra* note 1, at 1126–27.
[8] *See* *Arizona v. United States*, 567 U.S. 387, 398–99 (2012) (explaining the principle of supremacy).
[9] *See* *Holt's Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 153 (2011).
[10] *See, e.g.*, *City of Canton v. State*, 95 Ohio St. 3d 149, 151–52 (Ohio 2002).
[11] *See* Briffault, *supra* note 2, at 2013; *City of Canton*, 95 Ohio St. 3d at 152–53.

- **Buildings:** *Glen Oaks Village Owners, Inc. v. City of New York*, No. 42, 2025 WL 1458090 (N.Y. May 22, 2025) (holding that New York State's climate law, the Climate Leadership and Community Protection Act (CLCPA), does not field preempt Local Law 97, New York City's building performance standards);
- **Oil & Gas:** *Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014) (holding that New York's Oil, Gas and Solution Mining Law does not preempt local zoning laws that ban oil and gas production activities, including hydrofracking);
- **Renewable Energy:** *Town of Copake v. New York State Off. of Renewable Energy Siting*, 191 N.Y.S.3d 181 (N.Y. App. Div. 3d Dept. 2023) (upholding the discretionary authority of New York State's Office of Renewable Energy Siting to override local restrictions on major renewable energy facilities when such a restriction is "unreasonably burdensome in view of the CLCPA targets and the environmental benefits" of the facility); and
- **Utilities:** *StopAquila.Org v. Aquila*, 180 S.W.3d 24 (Mo. Ct. App. 2005) (holding that state public utilities law does not preempt local zoning law); *PPL Electric Utilities v. City of Lancaster*, 214 A.3d 639 (Pa. 2019) (state public service law field preempted a municipal ordinance that imposed additional controls on state-regulated public utilities for the use of the municipality's rights-of-ways); *Boston Edison Co. v. City of Boston*, 459 N.E.2d 1231, 1234 (Mass. 1984) (holding that local ordinances that regulate utilities are broadly preempted by comprehensive state legislation that occupies the field of utility regulation); *Boston Gas Co. v. City of Somerville*, 652 N.E.2d 132 (Mass. 1995) (holding a local ordinance was preempted by state law governing the sale of gas and electricity by public utilities because the ordinance imposed additional requirements on gas companies that were inconsistent with the state law).

6. THE POLITICS OF PREEMPTION

Preemption exists in every state and, as a legal concept, is content neutral. States have used their preemptive powers across diverse subject matters including, for example, laws that restrict local taxation authority,[12] ones that regulate alcohol ordinances,[13] and others that occupy the field of firework regulation.[14] Historically, preemption "consisted of a judicial determination of whether a local law conflicted with preexisting state law."[15] Over the past two decades, though, state legislatures have aggressively and frequently used preemption to enact sweeping statutes barring "local efforts to address a host of local actions."[16] This trend, sometimes referred to as "New Preemption," is characterized deregulatory action against larger, often progressive cities—either to prevent the enactment of certain ordinances or to retaliate against those already passed.[17] A quintessential example of this style of preemption occurred in 2016, when Alabama enacted legislation preempting local

[12] *See, e.g.*, *Mayor of Ocean Springs v. Homebuilders Ass'n of Mississippi*, 932 So. 2d 44 (Miss. 2006).
[13] *See, e.g.*, *State v. Williams*, 283 N.C. 550 (1973).
[14] *See, e.g.*, *People v. Bahnke*, 2024 WL 647931 (Mich. App. Feb. 15, 2024).
[15] *See* Briffault, *supra* note 2, at 1997.
[16] *Id*.
[17] *See generally* Briffault, *supra* note 2.

minimum wage regulation just two weeks after Birmingham passed an increase.[18] On the climate front, one of the most replicated state preemption laws has been the so called "ban on natural gas bans," which swept through conservative states after Berkeley, California enacted an ordinance prohibiting natural gas piping in new construction in 2019.[19] Recent preemption of local climate-related laws fits squarely within the framework of New Preemption, with conservative-led states increasingly targeting climate-related initiatives led by progressive city governments.

* * *

There is an observable trend towards state governments seeking to preempt local climate-related actions, but how and to what extent states will succeed in that effort depends on specific circumstances and varies significantly by state. The following chapters offer a state-by-state primer on state preemption of local action in nineteen states, with particular attention to climate considerations.

[18] *See* Yuki Noguchi, *In Battle Pitting Cities Vs. States Over Minimum Wage, Birmingham Scores A Win*, NAT. PUB. RADIO (July 27, 2018), https://perma.cc/82SY-KUXS.

[19] Berkeley's ordinance was later repealed after losing a federal preemption challenge in federal court. *See Cal. Restaurant Ass'n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024); BERKELEY, CAL., CITY CODE § 12.80 (repealed by Ord. No. 7907-NS (2024)).

VIRGINIA

1. DELEGATION OF FUNCTIONAL AUTHORITY AND POLICE POWER

Virginia remains a classically Dillon's Rule state—cities may exercise only those powers that are expressly granted to them by the General Assembly or that are necessarily implied from those express powers. *Tabler v. Bd. of Sup'rs*, 269 S.E.2d 358, 359 (Va. 1980); *Commonwealth v. Cty. Bd.*, 217 Va. 558, 573–74 (Va. 1977). The state has delegated a limited police power to municipalities, which they may exercise so long as their laws do not conflict with state laws or the Virginia Constitution. This statutory grant of power to cities sits alongside a historically "strict construction concerning the powers of local governing bodies" in Virginia courts. *Id*. *Cf.*, *City Council v. Wilder*, 74 Va. Cir. 382, 6–7 (Va. Cir. 2007).

1.1 Constitutional Provisions

Virginia's Constitution does not contain a home rule provision.

1.2 Statutory Provisions

Title 15.2 of the Code of Virginia, which pertains to "Counties, Cities and Towns" delegates a limited form of authority to local governments to conduct their own affairs—that is, to function as local governments. Local governments are also delegated a form of police power, but are not granted home rule as in many other states.

Va. Code Ann. § 15.2-1102: "A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth." Counties have a similar, though more limited, grant of power under Va. Code Ann. § 15.2-1200.

Divergent state and federal courts' interpretation of section 15.2-1102 make the provision's scope somewhat unclear. For example, in upholding the City of Virginia Beach's authority to finance the construction of a water pipeline by increasing water rates, the Virginia Supreme Court explained that "[a] city, in the exercise of its police power, has the right to undertake projects to promote the health, safety, and welfare of its inhabitants[,]" so long as those actions are reasonable and do not unduly restrict citizens' constitutional rights. *Tidewater Ass'n of Homebuilders v. City of Virginia Beach*, 241 Va. 114, 118–19 (Va. 1991) More recently, however, a federal court applying state law held that the statute's delegation of general authority is limited to powers granted by state

law. *Marcus Cable Associates v. City of Bristol*, 237 F. Supp. 2d 675, 679 (W.D. Va. 2002); *see also McMahon v. City of Virginia Beach*, 221 Va. 102 (Va. 1980) (holding that state law permits local governments under certain circumstances to require the use of public water to protect the health of its inhabitants). This interpretive tension means that local governments should identify express statutory authorization for municipal actions, especially when they are outside the traditional purview of local authority.

2. HOME RULE CHARTERS

Virginia has 38 incorporated cities that are completely independent of any county jurisdiction. Va. Const. art. VII, § 1. State law requires a community to have a population of 5,000 or more to be considered a city. *Id.* Cities may annex counties. Va. Code Ann. § 15.2-748. The state legislature can amend a city's charter, but must follow the procedure set forth in Va. Code Ann. § 15.2-200 et seq. In their charters, cities claim the full extent of the power granted to them under section 15.2-1102. *See, e.g.,* Richmond, Virginia City Charter § 2.01 ("The city shall have and may exercise all powers which are now or may hereafter be conferred upon or delegated to cities under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of a city government the exercise of which is not expressly prohibited by the said Constitution and laws and which in the opinion of the council are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this charter, and no enumeration of particular powers in this charter shall be held to be exclusive but shall be held to be in addition to this general grant of powers.").

3. PREEMPTION OF LOCAL LAW

Virginia has broad authority to preempt local laws. *See Virginia Electric & Power Co. v. City of Chesapeake*, 95 Va. Cir. 106, 108–13 (Va. Cir. 2017) (describing express field preemption and conflict preemption as applied in Virginia); *see also Resource Conservation Mgt., Inc. v. Bd. of Sup'rs*, 238 Va. 15, 22–23 (Va. 1989) ("The real question is whether the General Assembly intended to so invade [a field of regulation] as to exclude the localities.").

3.1 Express Preemption

Express preemption occurs when the state legislature includes explicit preemptive language in state statutes. For example, Virginia has expressly preempted local governments from regulating food or beverage packaging:

> The provisions of this article shall supersede and preempt any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package.

Va. Code Ann. § 10.1-1425.

3.2 Field Preemption

As a general rule, the Virginia Supreme Court has stated that "when the General Assembly intends to preempt a field, it knows how to express its intention." *Resource Conservation Mgt., Inc.*, 238 Va. at 23. In *Ticonderoga Farms, Inc. v. Loudoun County*, the court stated that a political subdivision may, acting within its delegated power, "legislate on the same subject unless the General Assembly has expressly preempted the field." 242 Va. 170, 175 (1991). Absent field preemption, "the locality may impose additional requirements not contained in the state law." *Id*. For example, in *Resource Conservation Mgt., Inc. v. Bd. of Sup'rs*, the Virginia Supreme Court held that the Virginia Waste Management Act does not preempt the field of waste management regulation because it "displays legislative intent to permit local involvement" in regulating the field. 238 Va. 15, 22 (Va. 1989).

3.3 Conflict Preemption

Conflict preemption occurs when a city ordinance "permits what a state statute forbids, or forbids what a statute permits." *Virginia Electric & Power Co.*, 95 Va. Cir. at 111. Virginia's Supreme Court has further explained that "[l]ocalities have 'no element of sovereignty' and are agencies created by the Commonwealth. Accordingly, when a statute enacted by the General Assembly conflicts with an ordinance enacted by a local governing body, the statute must prevail." *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576 (Va. 2012).

E.g., *Wayside Rest., Inc. v. City of Virginia Beach*, 215 Va. 231 (Va. 1974) (finding a city ordinance prohibiting certain obscene conduct to not be in conflict with state alcohol regulations, in part because state regulations were not inclusive of all conduct).

3.4 State Laws with Potential for Local Climate Preemption

Virginia has passed limited preemption laws that may affect local climate action.

Containers. Va. Code § 10.1-1425: This law preempts "any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package."

Virginia has not passed a ban on local plastic bag bans. Instead, local governments are authorized to pass ordinances that impose taxes on plastic bags issued at the point of sale in grocery stores, pharmacies, and convenience stores. Va. Code Ann. § 58.1-1745.

In 2022 the General Assembly attempted to pass House Bill 1257, which included a so-called "ban on gas bans" that would have prohibited political subdivisions from adopting measures that would restrict access to gas utility

service and propane.[20] Although a version of HB 1257 was enacted into law, a late substitution removed the preemption provision from the bill.

In 2024, the Virginia Senate passed Senate Bill 697, which would have preempted local governments from "including in an ordinance (i) limits on the total amount, density, or size of any ground-mounted solar facility or energy storage facility until such time that the total area under panels within the locality exceeds four percent of the total area within the locality or (ii) any prohibitions on the use of solar panels that comply with generally accepted national environmental protection and product safety standards, provided that such installation is in compliance with any provisions of a local ordinance that establishes criteria and requirements for siting." The bill ultimately died in the House.

4. CASE LAW ON HOME RULE AND PREEMPTION OF LOCAL LAW

Generally, Virginia courts strictly construe municipal authority, adhering to the legal theory that political subdivisions "have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." *Virginia Electric & Power Co.*, 95 Va. Cir. at 109. When analyzing municipal authority, Virginia courts look to whether there is an express or implied grant of power that allows a city to act; if the power cannot be found, "the inquiry is at an end." *Id*.

In some instances, however, courts have opted to apply a "reasonableness" test to local ordinances. *See Arlington County v. White*, 259 Va. 708, 712 (Va. 2000); *see also City of Virginia Beach v. Hay*, 258 Va. 217, 221 (Va. 1999) ("Where the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable."). This has come to be known as the "reasonable selection of method," a rule that courts apply to determine "whether a local governing body has employed a proper method for exercising a power delegated to it[.]" *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576; *see also Commonwealth v. Cty. Bd.*, 217 Va. 558, 574–75 (Va. 1977) (explaining that the reasonable selection of method is properly applicable to an "express grant of power silent upon its mode and method of execution" and "a power which has been implied from an express grant.").

The cases below demonstrate how Virginia courts apply Dillon's Rule to the statutory grant of police power to cities.

- *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567 (Va. 2012): New Cingular Wireless contracted with a company to install a cellular transmission tower on a residential parcel subject to Albemarle County Code § 18-4.2 (the Ordinance), which restricts construction on steep slopes unless a waiver is approved by the county planning commission. *Id*. at 574. The plaintiff sued, arguing that the county exceeded the power delegated to it by the General Assembly because state law did not authorize the county's waiver process.

[20] H.B. 1257, VA. GEN. ASSEMB., 2022 Session.

Id. In striking down the waiver provision, the Supreme Court held that no state statute permitted local governing bodies to delegate legislative decisions to planning commissions, 283 Va. at 582, nor found any broad grant of implied authority. *Id*. at 583-84.

- *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409 (Va. 2010): The state's Chesapeake Bay Preservation Act requires local governments to incorporate water quality protections into zoning and subdivision ordinances, using criteria established by a state board to designate Resource Protection Areas (RPAs). In 2008, the City of Hampton amended its zoning ordinance to expand RPA buffer areas, including lands designated under the federal Coastal Barrier Resources System. *Id*. at 414. Property owners challenged this, arguing the City exceeded its authority under Virginia's Dillon Rule, which limits local powers to those expressly or impliedly granted by the state. That is, because the General Assembly authorized only localities to designate lands subject to the Act, the "City did not have authority to incorporate land into an RPA by referencing the [federal] Coastal Barrier Resource System." *Id.* at 415. The Virginia Supreme Court reaffirmed the Dillon Rule, noting that "[i]f there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body." *Id*. at 417. The court held that while the Act authorized local governments to designate RPAs based on state board criteria, it did not expressly or impliedly grant authority to rely on federal criteria. *Id*. at 420.

- *Virginia Electric & Power Co. v. City of Chesapeake*, 95 Va. Cir. 106 (Va. Cir. 2017): Virginia Electric & Power Co. (VEPCO) had operated an electric power plant in Chesapeake (the "CEC") since the 1950s. In 1984, VEPCO constructed a landfill and pond to dispose of and store coal ash created from coal combustion. *Id*. at 106. After ceasing coal use in 2014, VEPCO closed the landfill and pond, submitting closure plans to the Virginia Department of Environmental Quality, detailing that the existing ash would continue to be stored at the landfill and in the pond. *Id.* The Chesapeake City Council passed an ordinance requiring properties that store coal combustion byproducts (CCBs) and undergo a "significant change" in principal use to obtain a conditional use permit (CUP) for the storage, use, or placement of CCBs. *Id.* at 107–08. VEPCO challenged this determination, arguing that the CUP requirement was preempted by the Virginia Waste Management Act. *Id*. at 108–10. The state Supreme Court had previously determined that the Virginia Waste Management Act did not preempt the field of waste management regulation, *Ticonderoga Farms, Inc. v. County of Loudoun*, 242 Va. 170, 174 (1991), emphasizing that the General Assembly "knows how to express its intention" to preempt a field, but that it had not done so in this instance. *Id.* at 110. Moreover, while the court did not make a judgment as to conflict preemption, it expressed that, where both state law and a local ordinance can coexist without conflicting, the ordinance should be upheld. *Id*. at 111–12. The court thus upheld the Chesapeake City Council's ordinance requiring VEPCO to obtain a CUP for the storage of coal combustion ash.

4.1 Other Relevant Cases

Commonwealth v. Cty. Bd., 217 Va. 558, 572–81 (Va. 1977) (well-cited opinion from Virginia's Supreme Court, explaining Dillon's Rule and that the reasonable selection of method is properly applicable to an "express grant

of power silent upon its mode and method of execution" and "a power which has been implied from an express grant.").

Bragg Hill Corp. v. City of Fredericksburg, 297 Va. 566, 580 (Va. 2019) (upholding a provision of Fredericksburg's zoning code because it fell within the scope of authority granted by a state statute.)

Dumfries-Triangle Rescue Squad, Inc. v. Bd. of Cty. Supervisors, 299 Va. 226, 235 (Va. 2020) (state statute allowing a county board to dissolve an emergency medical services agency established pursuant to the statute did not contain an express or implied grant of power to dissolve an entity that was not established pursuant to the statute.)

5. BUILDING CODES

Virginia has a statewide building code, the Uniform Statewide Building Code (USBC), that supersedes all local government building codes and regulations. Va. Code Ann. § 36-98. The Board of Housing and Community Development (the Board) may modify, amend, or repeal any of the USBC provisions, and may regularly update the codes. Va. Code Ann. § 36-102. The USBC "contains the building regulations that must be complied with when constructing a new building, structure, or an addition to an existing building. They must also be used when maintaining or repairing an existing building or renovating or changing the use of a building or structure." Although municipalities cannot alter building code requirements or adopt their own codes, local building departments are responsible for enforcing the statewide code. Va. Code Ann. § 36-105.

Virginia has adopted versions of the codes issued by the International Code Council (ICC).[21] The current Virginia Construction Code (VCC) comprises an amended version of the International Building Code 2021 (IBC 2021). Virginia has also adopted the 2021 International Energy Conservation Code (IECC) and ASHRAE 90.1-2019 for statewide commercial energy codes (effective in 2024), and the 2021 IECC with amendments for residential codes.[22]

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The Virginia State Corporation Commission (SCC) acts as the state's public service commission. Article IX, section 2 of the Virginia Constitution provides that "[s]ubject to such criteria . . . prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies" and that it also "shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law." Although the SCC "has exclusive and paramount jurisdiction to regulate [privately-

[21] *Virginia*, INT'L CODE COUNCIL, https://perma.cc/4GU3-FNHA.
[22] *Building Energy Codes Program*, U.S. DEP'T OF ENERGY, https://perma.cc/99L9-W8H3.

owned] electric utilities," this jurisdiction does not extend to municipal electric utilities operating within their own boundaries. *Town of Culpeper v. Virginia Elec. & Power Co.*, 215 Va. 189, 192 (Va. 1974).

Investor-owned utilities (IOUs) provide electricity service for much of the state, almost 80% of customers according to 2018 data.[23] The two largest, Dominion Energy and Appalachian Power, operate as utility monopolies, and their rates and profits are regulated by the SCC. *See* Va. Code Ann. § 56-581 (rates); Va. Code Ann. § 56-585.1 (profits).

What authority, if any, do municipalities have over utilities? Because the SCC has "exclusive and paramount" authority to regulate the rates, services, and operations of all IOUs within the state, cities are limited in their ability to control private electric utilities. There are opportunities for municipalities to exert some control, namely the discretionary authority over utility access to public infrastructure and franchise authority. Pursuant to article 7, section 8 of the Virginia Constitution, "[n]o street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town."

Additionally, cities have legal priority over the electric power serviced to their residents pursuant to Va. Code Ann. § 15.2-2109(B), which states in part that "[a] locality may not (i) acquire all of a public utility's facilities, equipment or appurtenances for the production, transmission or distribution of natural or manufactured gas, or of electric power, within the limits of such locality or (ii) take over or displace, in whole or in part, the utility services provided by such gas or electric public utility to customers within the limits of such locality until after the acquisition is authorized by a majority of the voters voting in a referendum held in accordance with the provisions of Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2 in such locality on the question of whether or not such facilities, equipment or appurtenances should be acquired or such services should be taken over or displaced[.]"

Municipal natural gas utilities can seek to discontinue natural gas service but must follow the procedure set forth in Va. Code Ann. § 56-265.4:7: "A. No municipal corporation that provides natural gas service shall discontinue such service to any residential, commercial, or industrial customer prior to satisfying the following requirements:

> 1. Provide at least three years' notice, both by bill insert and by publication in a newspaper of general circulation in the area in which the municipal corporation provides service, of the municipal corporation's intention to discontinue service;

[23] *Electric Service Territories*, VA. ST. CORP. COMM'N (2020), https://perma.cc/3UER-KLWW.

2. For two years following the publication of notice required by subdivision 1, attempt to negotiate the sale of its system facilities and associated rights such that service to its customers remains uninterrupted; and

3. If such sale as described in subdivision 2 is not accomplished within two years following the publication of notice required by subdivision 1, the municipal corporation may offer its system facilities and associated rights by auction to the highest bidder."

Municipalities that own and operate electrical systems "may contract with any other party to buy power and energy required for its present or future requirements. Such contracts may provide that the source of such power and energy is limited to a specified project or may include provision for replacement power and energy." Va. Code Ann. § 15.2-1133(B).

Can cities enter into franchise agreements with utilities? Yes, cities have the power to grant or deny franchises to public utilities. *See Potomac Edison Co. v. Town of Luray*, 234 Va. 348, 353–54 (Va. 1987). Once a municipality has granted a franchise, it is "impressed with a duty to ensure uninterrupted utility service to the consuming public." *Id*.

How can cities intervene in State Corporation Commission proceedings? The SCC has permitted local governments to intervene in proceedings. *See, e.g.*, *Commonwealth v. Virginia Elec. & Power Co.*, 214 Va. 457, 459 (Va. 1974). Under Rule 80 of the SCC's Rules of Practice and Procedure, a city can intervene as a public witness to a regulatory proceeding by filing written comments in advance of the hearing if provided for by commissioner order or by attending the hearing, noting an appearance in the manner prescribed by the commission, and giving oral testimony. 5 Va. Admin. Code 5-20-80(C). Cities can participate in other SCC proceedings, including by commenting or presenting evidence before the promulgation of a general order, rule, regulation. 5 VAC-20-100(A). Additionally, cities may be able to participate in declaratory judgments as interested parties. 5 VAC-20-100(C).

Does the state have an obligation to serve statute? Yes, Virginia public utilities, not including municipal electric utilities, have an obligation to serve pursuant to Va. Code Ann. § 56-234(A), which provides that, "It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring the same."

Has the state passed enabling legislation for community choice aggregation (CCA)? Virginia has enabled community choice aggregation (CCA), allowing local governments to "aggregate electrical energy and demand requirements" for the purpose of negotiating electricity supply from an electric utility if a majority of the local governing body members' authorizes it. Va. Code Ann. § 56-589.[24] For a municipality to start a CCA program, it

[24] The entirety of the section reads:

A. Subject to the provisions of subdivision A 3 of § 56-577, counties, cities, and towns (hereafter municipalities) and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing

must be licensed as an "aggregator" by the SCC. Va. Code Ann. § 56-588. There are other requirements that a city must satisfy before creating a CCA program.[25] No local Virginia government has yet established a CCA program, rendering the process for establishing such a program somewhat uncharted territory.

7. SECONDARY SOURCES

Richard Schragger and C. Alex Retzloff, *The Failure of Home Rule Reform in Virginia: Race, Localism, and the Constitution of 1971*, Virginia Public Law & Legal Theory Research Paper No. 2020-25 (Apr. 15, 2020), available at: https://perma.cc/XDQ3-8XBF (considering why Virginia has not provided a home rule provision for cities and other local governments in its Constitution).

Karly Newcomb, *Breaking up with Dillon: A Practical Call for Virginia State & Local Government Law Reform*, 45 Wm. & Mary Env't L. & Pol'y Rev. 247 (2020), https://perma.cc/MA9X-RKQJ (Student Note highlighting why a transition away from Dillon's Rule in Virginia "is advisable and why it is a crucial moment for the Virginia legislature to act.").

bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of residential, commercial, and industrial retail customers within its boundaries on an opt-in or opt-out basis.
2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588.
3. Two or more municipalities or other political subdivisions within the Commonwealth may aggregate the electric energy load of their governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588 when such municipalities or other political subdivisions are acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.

Nothing in this subsection shall prohibit the Commission's development and implementation of pilot programs for opt-in, opt-out, or any other type of municipal aggregation, as provided in § 56-577.

Va. Code Ann. § 56-589.

[25] *See, e.g.*, Va. Code Ann. § 56-577(A)(3).