

NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION WISCONSIN



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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 Wisconsin. 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)).

WISCONSIN

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Wisconsin cities' home rule powers are set out in both the state's constitution and statute. Wisconsin municipalities have nominally extensive home rule powers, but those powers have been limited by state courts. Both the state constitution and Wisconsin statute delegate home rule powers to Wisconsin cities and villages. Municipalities are delegated the police power in statute only, not in the state's constitution.

1.1 Constitutional Provisions

[Wis. Const. art. XI, sec. 3](#): "(1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature." This constitutional grant of power is on its face narrower than the statutory grant of home rule power and has been interpreted narrowly by Wisconsin courts.

1.2 Statutory Provisions

To exercise home rule powers, a municipality must first enact a charter ordinance. [Wis. Stat. § 66.0101](#). Once a city has done so, [Wis. Stat. § 62.11\(5\)](#) states: "Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language." The statutory grant of power to cities is not limited to "local affairs" but covers traditional police powers ("the health, safety, and welfare of the public"), and can be implemented through municipal ordinances, resolutions, and regulations.

Statutory home rule is to be liberally construed pursuant to [Wis. Stat. § 62.04](#): "It is declared to be the intention of the revision of the city charter law, to grant all the privileges, rights and powers, to cities which they heretofore had unless the contrary is patent from the revision. For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that ss. [62.01](#) to [62.26](#) shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof." Despite this language, and as further discussed herein, local ordinances may still be preempted by state law.

2. HOME RULE CHARTERS

As noted, to unlock constitutional home rule in Wisconsin, a city must adopt a charter. [Wis. Stat. §§ 66.0101\(1m\), \(4\)](#); see also [Gloudeaman v. City of St. Francis](#), 143 Wis. 2d 780, 788 (Wis. App. 1988) ("[A] charter

ordinance is the only way to exercise a municipality’s home rule power.”). A charter ordinance creates or revises any part of the charter of a city. [Wis. Stat. § 66.0101\(1m\)](#). Wisconsin cities are divided into four classes based on population; cities with a population of 150,000 or greater are considered first class cities. [Wis. Stat. § 62.05\(1\)](#). The differences between classes of cities are few, but with Milwaukee being classified as the only first-class city²⁰ according to Wisconsin law, certain [special statutory provisions](#) apply only to it.²¹ The five largest Wisconsin cities by population (with links to charter ordinances) are: [Milwaukee](#); [Madison](#); [Green Bay](#);²² Kenosha; [Racine](#).

3. PREEMPTION OF LOCAL LAW

Wisconsin’s legislature can preempt local ordinances in two ways. First, for all charter ordinances and ordinances related to “local affairs and government,” state preemption laws must at least on their face apply “uniformly” throughout the state. [Black v. City of Milwaukee](#), 369 Wis. 2d 272, 299 (Wis. 2016). If the law is uniform, meaning that it does not facially apply differently to different cities, it can preempt a local law related to local affairs. Second, though cities enjoy presumptively broad police power authority, if the matter relates to a statewide concern, there are no restrictions on the manner in which the legislature may preempt local laws. *Id.*; see also [Wis. Stat. § 66.0101\(4\)](#). These preemptive mechanisms mean that the state can preempt local laws that touch on a matter of statewide concern or if the preemptive state law applies uniformly across the state.

3.1 Express Preemption

In Wisconsin, where a matter is of statewide concern, local control must yield if “the legislature has clearly and expressly withdrawn the power of municipalities to act[.]” [Am. Transmission Co. v. Dane County](#), 321 Wis. 2d 138, 144. (Wis. App. 2009). For example, Wisconsin has expressly preempted local governments from enacting a local law that:

[R]egulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

[Wis. Stat. § 66.0409\(2\)](#).

²⁰ Madison has a population greater than 150,000 but is not considered a first-class city because the city has not taken the required steps pursuant to [Wis. Stat. § 62.05\(2\)](#) to be reclassified as one.

²¹ See Andrea Brauer, *Chapter 22: Municipal and County Government*, in *Wisconsin Legislator Briefing Book 2019–2020*, <https://perma.cc/V37T-Q6A2>.

²² Green Bay received its original city charter from the state legislature in 1857. A copy does not appear to be available online.

3.2 Field Preemption

Field preemption occurs where “the state has entered [a] field of regulation.” *Fox v. Racine*, 275 N.W. 513, 514 (1937). In that situation, “municipalities may not make regulation inconsistent” with the state. *Id.* The case law involving state field preemption is relatively sparse. Wisconsin has explicitly occupied the field of fair working scheduling:

(1) The legislature finds that employee hour and overtime requirements that are uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county regulating employee hours or overtime would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the employee hour and overtime requirements. Therefore, the employee hour and overtime requirements shall be construed as an enactment of statewide concern for the purpose of providing employee hour and overtime requirements that are uniform throughout the state.

[Wis. Stat. § 103.007\(1\)](#).

3.3 Conflict Preemption

In Wisconsin, conflict preemption occurs when “[1] the local regulation logically conflicts with state legislation; [2] the local regulation defeats the purpose of state legislation; or [3] the local regulation violates the spirit of state legislation.” *Am. Transmission Co., LLC*, 321 Wis. 2d at 144.

E.g., [DeRosso Landfill Co. v. City of Oak Creek](#), 200 Wis. 2d 642 (Wis. 1996) (regulation of exempt landfills was a matter of statewide concern and Oak Creek’s landfilling and excavation ordinance violated the purpose and spirit of a statute addressing a matter of statewide concern).

3.4 State Laws with Potential for Local Climate Preemption

Although the statewide building code and public utilities law can substantially limit certain climate-related local actions (described below), Wisconsin has passed few other laws that preempt local control over issues connected to climate change. In 2021, Wisconsin enacted a climate-friendly preemption law related to the siting of renewable energy resources.

Single-Use Containers. [Wis. Stat. § 66.0419](#): “No political subdivision may do any of the following: (a) Enact or enforce an ordinance or adopt or enforce a resolution regulating the use, disposition, or sale of auxiliary containers. (b) Prohibit or restrict auxiliary containers. (c) Impose a fee, charge, or surcharge on auxiliary containers.” “Auxiliary containers” refers to single-use containers constructed of several material types, including paper, plastic, aluminum, and glass. The law does not restrict local recycling programs.

Renewable Energy Siting. State law disallows political subdivisions, including cities, villages, towns, and counties, from unduly restricting solar or wind energy systems. [Wis. Stat. § 66.0401](#). Additionally, Section 66.0401 provides that “[i]f installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance,” the local ordinance is preempted.²³ Wis. Stat. § 66.0401(1m). The Wisconsin Court of Appeals has held that Section 66.0401 is a “legislative restriction on the ability of local governments to regulate solar and wind energy systems” that allows local restrictions only if they satisfy one of three conditions: restrictions must “serve the public health or safety, [] not significantly increase the cost or decrease the efficiency of the system, or allow for an alternative system of comparable cost and efficiency.” [State ex rel. Numrich v. City of Mequon Bd. of Zoning Appeals](#), 626 N.W.2d 366, 371 (Wis. App. 2001). These conditions do not permit an across-the-board restrictive policy, however. Instead, a local government may be able to restrict wind or solar energy if it employs a case-by-case approach and makes quantitative findings that satisfy Section 66.0401. See [Ecker Brothers v. Calumet County](#), 772 N.W.2d 240, 248 (Wis. App. 2009) (“We [] conclude that WIS. STAT. § 66.0401(1) requires a case-by-case approach, such as a conditional use permit procedure, and does not allow political subdivisions to find legislative facts or make policy.”).

In 2023, Governor Tony Evers vetoed two bills that would have preempted local governments from prohibiting natural gas hookups or mandating that specific sources of energy be used in their communities.²⁴ No local government has banned natural gas hookups nor mandated the electrification of appliances, buildings, or vehicles.

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

Cities’ home rule authority has been progressively eroded by the statewide concern doctrine, the analytical framework that courts use to assess home rule authority. The doctrine addresses three possible legislative enactments. First, if a legislative enactment concerns a policy matter that is exclusively of statewide concern, then the home rule amendment grants no city or village the authority to regulate the matter. [Black v. City of Milwaukee](#), 369 Wis. 2d 272, 298–99 (Wis. 2016). In contrast, if a legislative enactment concerns a policy matter of “purely local affairs,” then “home rule municipalities may regulate those local matters and, under the home rule amendment, state legislation that would preempt or make that municipal regulation unlawful, unless uniformly applied statewide, is prohibited.” *Id.* In other words, the state legislature may not single out a local government for preemption on a matter of local concern, but courts have given the state broad latitude to define whether a matter is one of statewide concern or to pass a preemption law of general applicability. Finally, if a “legislative enactment touches on an issue that concerns both statewide and local government interests (a

²³ See Matthew Eisenson et al., *Opposition to Renewable Energy Facilities in the United States: June 2024 Edition*, SABIN CENTER FOR CLIMATE CHANGE LAW (June 2024), <https://perma.cc/EB95-86D6>.

²⁴ Danielle Kaeding, *Evers Vetoes Bills that Would Prevent Local Bans on Gas-Powered Cars, Appliances and Energy*, WISC. PUB. RADIO (Aug. 4, 2023), <https://perma.cc/F72T-JNF5>.

‘mixed bag’),” then a court must determine whether the matter is “primarily” or “paramountly” a matter of statewide or local concern. *Id.* After making this determination, the court will apply the corresponding test.

The cases below demonstrate how Wisconsin interpret municipal home rule authority and the state’s power to preempt local ordinances.

- [*Adams v. State Livestock Facilities Siting Rev. Bd.*](#), 342 Wis. 2d 444 (Wis. 2012): In this case, Larson Acres applied for a livestock facility siting permit from the Town of Magnolia (the Town), which granted the permit but attached several conditions aimed at protecting local water quality. Larson Acres challenged the conditions, arguing that they exceeded the Town’s authority under Wisconsin’s Livestock Facility Siting Law (Siting Law). The court applied Wisconsin’s preemption doctrine, finding through the test of paramountcy that the Siting Law is a “mixed bag” issues involving both local and statewide concerns. Accordingly, the court employed the “Anchor Test,” that includes a set of four factors that guide the court’s determination of whether a political subdivision’s actions are preempted by the state legislation. Those four factors are: “(1) whether the legislature has expressly withdrawn the power of political subdivisions to act; or (2) whether the political subdivision’s actions logically conflict with the state legislation; or (3) whether the political subdivision’s actions defeat the purpose of the state legislation; or (4) whether the political subdivision’s actions are contrary to the spirit of the state legislation.” *Id.* at 464-65; see also [*Anchor Sav. & Loan Ass’n v. Equal Opportunities Comm’n*](#), 120 Wis. 2d 391 (Wis. 1984). The court determined that in passing the Siting Law the Legislature had expressly withdrawn the power of local governments to act in the field of livestock facility siting. The court concluded that the Siting Law’s purpose of statewide uniformity preempted the Town’s actions, reaffirming the legislature’s intention to centralize authority over livestock facility siting standards at the state level.
- [*Madison Teachers, Inc. v. Walker*](#), 358 Wis. 2d 1 (Wis. 2014): Pursuant to a Milwaukee Charter Ordinance, the Milwaukee Employee Retirement System (ERS) required that plan members contribute a certain percentage of their compensation. Prior to the enactment of a state law (Act 10), the City of Milwaukee and participating city agencies funded these contributions for certain employees. However, Act 10 created a state law prohibiting Milwaukee from paying an employee’s required contribution to the Milwaukee ERS. The plaintiffs argued that the state law violated the home rule amendment of the Wisconsin Constitution, contending that the law conflicted with the Milwaukee charter ordinance that addressed a purely local matter. The state argued that the law addressed a statewide financial crisis that aims to regulate public employee compensation statewide. The court reaffirmed that the legislature can regulate matters of local concern as long as the legislation “applies with uniformity to every city and village.” *Id.* at 66. As the court viewed the Act 10 as concerning statewide interests and local interests, it applied the “test of paramountcy” to determine whether the legislation “is primarily or paramountly a matter of ‘local affairs and government’ under the home rule amendment or of ‘state-wide concern’ under the exception thereto.” *Id.* at 77. The court concluded that the statute “primarily implicates a matter of statewide concern,” as it addresses fiscal challenges impacting all public employees across Wisconsin. *Id.* at 78.

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- [*DeRosso Landfill Co. v. City of Oak Creek*](#), 547 N.W.2d 770 (Wis. 1996): This case centered on whether a solid waste facility exempt from regulation under state law had to nonetheless comply with Oak Creek’s ordinance. The dispute arose when the City of Oak Creek sought to block DeRosso Landfill Company’s plan to fill a 300,000-cubic-yard hole on a property owned by Gordon DeRosso with clean fill. The Wisconsin Department of Natural Resources (DNR) approved the plan, exempting the landfill from local approval requirements under Wis. Stat. § 144.44(7)(g). The City objected, asserting that the exemption merely removed certain procedural requirements but did not eliminate its authority to regulate the facility locally. The Wisconsin Supreme Court ruled that the exemption granted by the DNR was not a mere procedural change, but a substantial preemption of municipal control, as the state legislature had granted the DNR authority to determine which facilities should be exempt from local regulations. The court employed the *Anchor* test, finding that the legislature had explicitly withdrawn municipal authority for clean fill facilities by authorizing the DNR to exempt them from local approval. Additionally, the court found that Oak Creek’s ordinance violated the third and fourth *Anchor* tests because it defeated the purpose of the state legislation and violated the spirit of the legislature’s “complex and comprehensive statutory structure[]” regulating waste. *Id.* at 662.

4.1 Other Relevant Cases

[*U.S. Oil, Inc. v. City of Fond Du Lac*](#), 199 Wis. 2d 333 (Wis. App. 1996) (city ordinance designed to limit teenage tobacco use conflicted with state law that legislated on an issue of statewide concern).

[*Black v. City of Milwaukee*](#), 369 Wis. 2d 272 (Wis. 2016) (concluding that the state legislature “uniformly” preempted local rules requiring municipal government workers to reside within city limits, even if such requirements amounted to “local concerns”).

[*Savich v. Columbia Cty. Bd. of Adjustment*](#), 413 Wis. 2d 140 (Wis. App. 2024) (a county ordinance requiring telecommunication towers to be separated by a half-mile conflicted with a state statute that prohibits political subdivisions from “enact[ing] an ordinance prohibiting the placement of” a tower “in particular locations within the political subdivision,” and thus the county board of adjustment was correct in determining that the county ordinance was preempted and unenforceable).

5. BUILDING CODES

Cities in Wisconsin generally must adhere to the state’s building code. [Wisconsin’s Department of Safety and Professional Services \(DPS\)](#) is responsible for adopting the statewide building, fire safety, and energy efficiency codes. In 2014, the Wisconsin legislature enacted Act 270, which created a “building code council,” an entity separate from DPS that is charged with “review[ing] the rules relating to constructing, altering, adding to, repairing, and maintaining public buildings²⁵ and buildings that are places of employment” and “mak[ing]

²⁵ Public building is defined as

recommendations to the department pertaining to these rules.” Wis. Stat. §§ [15.407\(18\)](#); [101.023](#). Wisconsin has mostly adopted amended versions of the 2015 code editions published by the International Code Council (ICC), including 2015 editions of the International Building Code (IBC) and the International Energy Conservation Code (IECC).²⁶ [Wis. Admin. Code § 361.05](#). In 2023, the state legislature blocked a proposed commercial building code update that would have adopted the 2021 ICC standards.²⁷ A [July 2025 ruling](#) from the Wisconsin Supreme Court in *Evers v. Marklein* cleared the way for implementation of the updated code. 22 N.W.3d 789 (Wis. 2025). Although it took effect October 1, 2025, the state Legislature attempted to delay its implementation.²⁸ Wisconsin’s governor vetoed that legislation, meaning that the 2021 code versions are in effect.²⁹

With few exceptions, no local government “may enact or enforce an additional or more restrictive local ordinance that establishes minimum standards for constructing, altering, or adding to public buildings or buildings that are places of employment.” [Wis. Stat. § 101.02\(7r\)\(a\)](#); [Wis. Admin. Code § 361.03\(5\)\(a\)1](#). Under the commercial building code, municipalities have express authority to “enact or enforce standards relative to land use, zoning or regulations under ss. 59.69 [planning and zoning], 60.61 [general zoning authority], 60.62 [village zoning authority], 61.35 [village planning], and 62.23 (7) [city planning], Stats.” [Wis. Admin. Code § 361.03\(5\)](#).

The landscape is similar for Wisconsin’s residential buildings. The Uniform Dwelling Code reads: “A municipality may not adopt an ordinance on any subject falling within the scope of this code including establishing restrictions on the occupancy of dwellings for any reason other than noncompliance with the provisions of this code.” [Wis. Admin. Code § 320.02\(2\)\(a\)](#). Similar to the commercial code, under the residential building code, state preemption does not “affect local requirements relating to land use, zoning, post-construction storm water management, fire districts, side, front and rear setback requirements, property line requirements or other similar requirements.” [Wis. Admin. Code § 320.02\(2\)\(b\)](#).

any structure, including exterior parts of such building, such as a porch, exterior platform, or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, “public building” does not include any of the following:

- (a) A previously constructed building used as a community-based residential facility as defined in s. [50.01 \(1g\)](#) which serves 20 or fewer residents who are not related to the operator or administrator.
- (b) An adult family home, as defined in s. [50.01 \(1\)](#).
- (c) A home-based business, as defined by the department by rule.
- (d) A not-for-profit facility with the primary purpose of housing or rehabilitating abandoned, injured, or sick wildlife.

[Wis. Stat. § 101.01\(12\)](#).

²⁶ See Wisconsin, INT’L CODE COUNCIL, <https://perma.cc/T9RL-GXCA>.

²⁷ Erik Gunn, *Legislature’s Rules Committee Kills New Building Standards that Advocates Said Would Save Money*, WISC. EXAMINER (Oct. 2, 2023), <https://perma.cc/4VQ8-RHF5>.

²⁸ See Press Release, Upgraded Commercial Building Code to Take Effect September 1, Wisc. Dep’t of Safety and Prof. Servs. (July 30, 2025), <https://perma.cc/3QYK-UFFZ>; Ethan Duran, *Senate Passes Bill to Delay Commercial Building Code Enforcement*, DAILY REPORTER (Nov. 19, 2025), <https://perma.cc/JQQ5-WANH>.

²⁹ *Assembly Bill 450*, WIS. STATE LEG., <https://perma.cc/887W-VQAC>.

In *Associated Builders & Contractors of Wisconsin v. City of Madison*, the Wisconsin Court of Appeals addressed whether Madison’s “Bird-Safe Glass” ordinance was preempted by [Wis. Stat. § 101.02\(7r\)\(a\)](#). 409 Wis. 2d 660 (Wis. App. 2023). The ordinance required bird-safe design features in certain new construction to reduce bird collisions. *Id.* at 666. The plaintiffs, representing trade associations, argued that the ordinance conflicted with the statewide uniform building code established by the statute, which prohibits municipalities from enacting building code requirements that exceed or differ from state standards. *Id.* at 667–68. To determine “whether a local ordinance imposes a standard that is effectively a building code standard,” the court created a new test, inquiring into whether “a local ordinance sets minimum standards that are meant to ensure that buildings are constructed in such a way that they are structurally sound, and are equipped with systems and components . . . such that the buildings are safe for employees, frequenters, and the public.”³⁰ *Id.* at 693–94. Applying this test, the court ruled that the ordinance was not preempted because it did not constitute a “building code” regulation under section 101.02(7r)(a). *Id.* at 694. Instead, it fell within the city’s regulatory authority under its home rule powers, as it primarily addressed environmental and public welfare concerns rather than minimum building code standards related to the safety of buildings. *Id.* The court further emphasized that the statute aims to ensure uniformity in statewide building codes but does not limit all forms of municipal regulation related to buildings, such as zoning ordinances or other non-code requirements. This ruling may stand for the proposition that local ordinances not relating to building safety may be safe from preemption under section 101.02(7r)(a)’s plain language, but further judicial interpretation is needed to clarify the scope of the ruling.

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The [Wisconsin Public Service Commission \(PSC\)](#) has centralized regulatory authority and is responsible for regulating Wisconsin public utilities (as defined in [Wis. Stat. § 196.01\(5\)\(a\)](#)), including municipally-owned utilities. [Wis. Stat. § 196.02\(1\)](#); [Wis. Stat. § 196.37\(2\)](#). A public utility with an “indeterminate permit” authorizes such utility to operate as a monopoly subject to regulation by the state.³¹ [Wis. Stat. § 196.01\(3\)](#). The PSC ensures that utilities are “providing ‘reasonably adequate service’ and may make ‘any just and reasonable order’ to correct the problem.” [Clean Wisconsin, Inc. v. Pub. Serv. Comm’n](#), 282 Wis. 2d 250, 296–97 (Wis. 2005).

What authority, if any, do municipalities have over utilities? Municipalities have been given limited statutory authority to regulate the terms “upon which [a] public utility may be permitted to occupy the streets, highways or other public places within the municipality.” [Wis. Stat. § 196.58\(1r\)](#). Municipalities may “[d]etermine by municipal regulation the quality and character of each kind of product or service to be furnished or rendered by any public utility within the municipality and all other terms and conditions, consistent with this chapter and ch. [197](#), upon which the public utility may be permitted to occupy the streets, highways or other public places

³⁰ The word “safe” is defined to mean “such freedom from danger to the life, health, safety or welfare of employees or frequenters, or the public,” “and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or other property, as the nature of the . . . public building[] will reasonably permit.” [Wis. Stat. § 101.01\(13\)](#).

³¹ See generally *Public Utility Regulation in Wisconsin*, WIS. LEGISLATIVE COUNCIL (2025), <https://perma.cc/66JG-5TGZ>.

within the municipality. The municipal regulation shall be in force and on its face reasonable.” *Id.* However, the power of a municipality to regulate public utilities in their jurisdiction is subordinate to the PSC’s authority. [Wis. Stat. § 196.58\(5\)](#). For example, municipalities cannot regulate the rates of investor-owned public utilities, which is a power strictly within the PSC’s authority. *Milwaukee Elec. Ry. & Light Co. v. R.R. Comm’n of Wis.*, 153 Wis. 592 (Wis. 1913).

Additionally, a municipality is generally prohibited from creating a utility if there is already a public utility operating under an indeterminate permit in the municipality. Wis. Stat. §§ [196.50\(1\)\(a\)](#); [196.50\(4\)](#). However, if the PSC determines that the public convenience and necessity require another competing utility in a service area, a public utility’s monopoly can be terminated. [Wis. Stat. § 196.50\(1\)\(a\)](#). Alternatively, a municipality in which the major part of a public utility is located may purchase, or municipalize, that utility “under the terms and conditions decided by the [PSC].” [Wis. Stat. §§ 196.54\(4\)–\(5\)](#).

Can cities enter into franchise agreements with utilities? Yes, “[a] city, village or town may grant to any person the right to construct and operate a public utility in the city, village or town,” provided, however, that the rules and regulations prescribed by the ordinance are reasonable. [Wis. Stat. § 66.0815\(1\)](#). Under section 66.0815(1)(c), franchise ordinances cannot take effect until 60 days after passage and publication, during which time citizens may petition for a referendum. If electors equal to 20 percent of those voting in the last regular municipal election file a proper petition, the franchise ordinance must be approved by referendum before taking effect. *Id.*

How can cities intervene in Public Service Commission proceedings? A municipality can intervene in a PSC proceeding as of right or by permission. A city has a right to intervene when its “substantial interests may be affected by the commission’s action or inaction in a proceeding[.]” [Wis. Admin. Code § 2.21\(1\)](#). A city may be granted permission to intervene “if the [city’s] participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the [city’s] participation will not impede the timely completion of the proceeding or docket.” [Wis. Admin. Code § 2.21\(2\)](#).

Does the state have an obligation to serve statute? Yes, Wisconsin public utilities have an obligation to serve pursuant to [Wis. Stat. § 196.0\(3\)\(1\)](#): “Subject to s. [196.63](#), a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.”

A public utility may not discontinue providing service unless it first receives permission from the PSC. [Wis. Stat. § 196.81](#).

Has the state passed enabling legislation for community choice aggregation (CCA)? No, Wisconsin currently lacks enabling legislation for community choice aggregation.³²

7. SECONDARY SOURCES

Claire Silverman, *Municipal Home Rule in Wisconsin*, LEAGUE OF WISCONSIN MUNICIPALITIES (2016), <https://perma.cc/FG35-TRLR> (reviewing the history of municipal home rule in Wisconsin, and explaining the sources of home rule power in the state and associated analyses to determine whether a municipality may exercise its home rule powers in a given area).

³² *Community Choice Aggregation*, U.S. ENV'T PROTECTION AGENCY, <https://perma.cc/8GKA-3GWN>.