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# NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

# TENNESSEE

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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 Tennessee. 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)).

# TENNESSEE

## 1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Tennessee allows any municipality to opt to become a home rule municipality but retains the authority to preempt local measures through laws of general applicability. State law prevents the General Assembly from amending or repealing city charters themselves through legislative acts.

### 1.1 Constitutional Provisions

Tenn. Const. art. XI, § 9: "Any municipality may by ordinance submit to its qualified voters in a general or special election the question: 'Shall this municipality adopt home rule?' In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect."

Tenn. Const. art. XI, § 9: The General Assembly retains the sole power to enlarge or increase the taxation power of municipalities through enactment of general laws: "the power of taxation of [a home rule] municipality shall not be enlarged or increased except by general act of the General Assembly."

Tenn. Const. art. XI, § 9: "[A]ny act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval of a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected."

The state constitution also gives the General Assembly the power to allow counties to adopt home rule charters. Tenn. Const. art. VII, § 1.

### 1.2 Statutory Provisions

Tennessee has not enshrined municipal home rule authority into statute, but the General Assembly has passed legislation *concerning* home rule municipalities. *See, e.g.*, Tenn. Code Ann. § 69-10-112(a–b) (permitting home rule cities and counties to regulate certain types of well-drilling).

The General Assembly enacted a statute permitting counties to adopt home rule charters. Tenn. Code Ann. §§ 5-1-201 et seq.

## 2. HOME RULE CHARTERS

Fourteen cities in Tennessee are incorporated under home rule charters: Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Knoxville, Lenoir City, Memphis, Mt. Juliet, Oak Ridge, Red Bank, Sevierville, Sweetwater, and Whitwell.

Tennessee law also allows for the consolidation of cities and a county to form a unified metropolitan government and those consolidated governments to adopt a charter form of government, under Tenn. Code §§ 7-21-101 *et seq.* or Tenn. Code Ann. §§ 7-1-101 *et seq.*, and Tenn. Code Ann. §§ 5-1-201 *et seq.*, respectively. Three metropolitan areas in Tennessee have created consolidated city-county governments and adopted charters: Nashville and Davidson County, Lynchburg and Moore County, and Hartsville/Trousdale County. Two counties have adopted home rule charters, Shelby County and Knox County.

While it is constitutionally unclear whether the merged city-counties are considered "home rule" governments under Tenn. Const. art. XI, § 9, metropolitan governments have similar powers under statute. *See* Tenn. Code Ann. § 7-2-108. Similarly, "[c]ounties organized under charter government . . . are not strictly limited to those powers otherwise granted by the General Assembly, and they possess broad authority for the regulation of their own local affairs." *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706, 713 (Tenn. 2001).

## 3. PREEMPTION OF LOCAL LAW

Generally, the state legislature may pass preemptive legislation *of general applicability* affecting both home rule and non-home rule municipalities. *See* Tenn. Const. art. XI, § 9, clause 4. In other words, if the state wishes to preempt local legislation, it must do so through laws that *could* affect all municipalities in Tennessee. If the state legislature passes a law that can only apply to a single municipality, that law is likely void unless the law requires local ratification and is locally ratified. In general, a local government can enact more stringent laws if not otherwise preempted. *See, e.g.*, *Southern Railway Co. v. City of Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968) ("The mere fact that the state, in the exercise of the police power, has made certain regulations does not . . . prohibit a municipality from exacting additional requirements."). Tennessee law recognizes three types of preemption.

### 3.1 Express Preemption

Express preemption occurs when the General Assembly includes explicit preemptive language in state statutes. For example, the state has expressly preempted wage and employment benefit requirements: "Unless required by state or federal law, all additional wage or employment benefit mandates imposed on private employers by a local government are hereby preempted." Tenn. Code Ann. § 50-2-112(a)(1).

### 3.2 Field Preemption

Field preemption occurs when the state statutes expressly or impliedly occupy an entire legislative field, leaving no room for local regulation. For example, the state has preempted the field of firearm regulation:

> No county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy any part of the field regulation of firearms, ammunition or components of firearms or ammunition, or combinations thereof.

Tenn. Code Ann. § 39-17-1314.

### 3.3 Conflict Preemption

Conflict preemption occurs when there is outright or actual conflict between state and local law. Municipalities with home rule charters may only pass ordinances that are consistent with state law. "Municipal ordinances in conflict with and repugnant to a State law of a general character and state-wide application are universally held to be invalid." *Southern Railway Co. v. City of Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968). When presented before a court, the test of "whether such county or municipal rule is in 'conflict with and repugnant to' a statute is whether the rule takes away a right granted by the state, or conversely grants a right denied by the state." *Crawley v. Hamilton County*, 2005 WL 123495, at *2 (Tenn. Ct. App. Jan. 21, 2005). In other words, if a statute permits something prohibited by the state or prohibits something permitted by the state, the local law is preempted.

### 3.4 State Laws with Potential for Local Climate Preemption

**Greenhouse Gas Emissions.** Tenn. Code Ann. § 4-1-422: Preempts local governments from adopting or implementing "policy recommendations that deliberately or inadvertently infringe or restrict private property rights without due process, as may be required by policy recommendations originating in, or traceable to, the United Nations or a subsidiary entity of the United Nations" including Agenda 21, the 2030 Agenda for Sustainable Development, proposals to reach net zero emissions by 2050, and other comparable international goals and agreements. The same section prohibits local governments from providing any financial aid to nongovernmental organizations that assist in implementing those goals and agreements. It further creates a private right of action allowing any individual to sue a local government for violating this section and allowing a prevailing plaintiff to recover fees and punitive damages.

**Building Electrification.** Tenn. Code Ann. § 7-51-2101: This law prohibits local governments from adopting a "policy that prohibits or has the effect of prohibiting, based upon the type or source of energy to be delivered to or used by an individual customer (1) the connection or reconnection of a utility service or (2) the sale or installation of an appliance used for cooking, space heating, water heating, or another end use."

**Fossil Fuel Development & Pipeline Safety.** Tenn. Code Ann. § 7-51-2202: Preempts local governments from banning fossil fuel projects or regulating or enforcing pipeline safety. Under the law's broad language, local governments may not prohibit oil and gas companies from building new fossil fuel infrastructure in their jurisdiction. Specifically, "a political subdivision of this state shall not, arising from or as a result of a local action, prohibit the development and implementation of the types or sources of energy that may be used, delivered, converted, or supplied by [utilities, transmission corporations, or liquefied petroleum dealers]." Not only are direct prohibitions on new fossil infrastructure prohibited, but so too are "de facto" prohibitions "of the siting, or a prohibition of construction, expansion, or maintenance, of energy, industrial, or related transportation infrastructure within the jurisdictional boundary of a political subdivision."

**Plastic Bags.** Tenn. Code Ann. § 7-51-2002**:** Prohibits local governments from regulating the use, disposition, or sale of an "auxiliary container" (e.g., plastic bags), including prohibitions, restrictions, fees, charges, or taxes. The law does not restrict recycling programs nor apply to auxiliary container use on local government property or regulation at certain events managed by local governments.

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

Dillon's Rule remains the basic principle under which courts will consider the validity of local laws in cities without home rule charters. *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706, 711–12 (Tenn. 2001) ("[W]ithout some form of constitutional authorization, local governments in Tennessee possess only those powers and authority as the General Assembly has deemed appropriate to confer upon them."). Still, courts have also recognized that when the General Assembly has demonstrated an intent to delegate broad authority to local governments, courts should respect that delegation and construe the scope of that authority broadly. *Id.* at 712–13 ("[S]trict construction of local governmental power is only appropriate when legislative intent as to the proper scope of that power is absent or otherwise ambiguous . . . [and] Dillon's Rule is essentially only a canon of construction used to ascertain the intention of the General Assembly.").

Cities that have adopted home rule charters are treated in a fundamentally different way:

> The effect of the home rule amendments was to fundamentally change the relationship between the General Assembly and these types of municipalities, because such entities now derive their power from sources other than the prerogative of the legislature. Consequently, because the critical assumption underlying application of Dillon's Rule is no longer valid as to home rule municipalities, Dillon's Rule simply cannot be applied to limit any authority exercised by them.

*Id.* at 714.

Across all city types however, express, field, and implied preemption still operate to invalidate certain local laws. Although the state recognizes each of those types of preemption,[20] Tennessee courts often resolve cases without specifically naming those doctrines.

Relatedly, one of the main sources of conflict between cities and states in Tennessee concerns whether a state law is one of "general applicability" or is "private and local in form or effect." Under Tenn. Const. art. XI, § 9, laws that are local in effect must be approved by a local referendum. But courts have affirmed that statutes are valid even where the statute may only apply to one municipality *at the time* of the law's passage, provided it is possible for the law to later apply to other municipalities. *See, e.g.*, *Civ. Serv. Merit Bd. v. Burson*, 816 S.W.2d 725 (Tenn. 1991).

[20] Tenn. Att'y Gen. Op. No. 16-40 at 4 (2016), https://perma.cc/B6G6-V38L ("It is well established that an ordinance may be preempted by state law in three manners: (1) express field preemption; (2) implied field preemption, or (3) conflict preemption.").

Several cases provide examples of Tennessee courts balancing local and state control:

- *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706 (Tenn. 2001): After a county school board and its contractor arbitrated a contract dispute, the contractor challenged the arbitration award by arguing that the General Assembly had never expressly granted a county the authority to enter into an arbitration agreement. *Id*. at 708–09. This case reaffirms that Dillon's Rule is the default canon of construction used to construe local governmental power, but notes that courts have taken a liberal view of local government power when "the General Assembly has conferred general welfare authority to protect the citizens' health, convenience, and safety." *Id*. at 713.

- *Southern Railway Co. v. City of Knoxville*, 442 S.W.2d 619 (Tenn. 1968): In this case a railway challenged a local ordinance requiring active signals like crossing gates or staff waving flags at intersections where its tracks crossed roadways. *Id*. at 620. The railroad argued that the local law was in conflict with a state law only requiring "at each crossing a sign, marked" in a way prescribed by the state statute. *Id.* at 621. The court upheld the local law, concluding that there was no preemptive conflict where the local "ordinance does not authorize anything the statute forbids nor does it forbid anything the statute requires. Both the statute and the ordinance can co-exist and be effective." *Id.* at 623.

- *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975): This case involved a challenge to a state law designed to provide for run-off elections in counties with a mayor as head of the executive or administrative branch. At the time, only Shelby County met that criterion. The issue before the court was whether the law was private and local in effect. *Id*. at 551. Recognizing that the state can only pass laws affecting home rule cities through laws of general applicability, the court created the legal test for determining when a state statute is private or local in form or effect, explaining that the "sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application." *Id*. Using this framework, the court voided the state law for being private and local in effect.

- *Bd. of Educ. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631 (W.D. Tenn. 2012): This case involved a challenge that a state statute creating criteria for creating municipal school districts was ostensibly general but in fact applied only to one particular county. The plaintiffs brought multiple claims, including that Public Chapter 905 was unconstitutional. *Id*. at 640. The court reasoned that, although a law was written in generic terms, upon a pragmatic consideration of how it was designed and how it operates in fact, the court can find that the law in fact unconstitutionally applies to a single local government. That standard was met in this case and the court invalidated the law after applying the test set out in *Farris*. The court concluded that the General Assembly intended the statute to apply only to the county where Knoxville is located, ruling it general in form but local in effect. *Id*. at 660.

- *Shelby County v. McWherter*, 936 S.W.2d 923 (Tenn. App. 1996): Shelby County brought a declaratory judgment action challenging a state statute that dictated which residents were eligible to serve on certain school boards. *Id*. at 924–25. The county tested an argument that its own charter should supersede state

laws where the charter concerns a governmental or political function internal to the county. *Id.* at 932. The court disagreed, broadly announcing that "there is no constitutional provision that prohibits the Legislature from enacting laws which in some form or fashion are contrary to a local law set forth in a county's home rule charter" and that the holding applies even as to local laws that "relate to matters in which the county acts in a governmental or political capacity." *Id*. at 933–34.

### 4.1 Recent and Ongoing Litigation

Three recent challenges brought by the consolidated government of Nashville and Davidson County ("Metro Nashville") against the state have challenged state laws as violative of the city's home rule authority:[21]

- Metro Nashville challenged a law that would have prevented the city and county from enforcing its charter rules concerning procedures for making changes to a local fairground. The case, *Metropolitan Government of Nashville and Davidson County v. Lee*, Case No. 23-0670-I (Davidson Cty. Chancery Ct.), argued that the state law improperly targeted a single local government. On September 21, 2023, the trial court ruled for the city and county. The state did not appeal the decision.[22]

- Metro Nashville challenged a law giving the state the power to appoint the majority of the city's airport authority board. On October 31, 2023, the trial court found for Metro Nashville, concluding that the state law violated Tenn. Const. art. XI, § 9.[23] The intermediate appellate court upheld that portion of the trial court's ruling.[24] The state appealed that decision to the Tennessee Supreme Court, where the matter is now pending.[25]

- Finally, Metro Nashville challenged a state law limiting city and metropolitan councils to no more than 20 members.[26] Prior to that law's passage Nashville's metro council had 40 members. The case is *Metro Government of Nashville and Davidson County v. Lee*, Case Nos. 23-0336-I, 23-0395-III(I) (Davidson Cty. Chancery Ct.). On July 29, 2024, the trial court ruled for Nashville, finding the law singularly targeted Nashville,[27] but the intermediate appellate court partially reversed that decision. Metro Nashville appealed

[21] Detailed information on these cases at the trial court stage is available by searching Chancery Court records at https://chanceryclerkandmaster.nashville.gov/cases/motion-dockets/.
[22] *See* Ct. Docket, *Metropolitan Government of Nashville and Davidson County v. Lee*, Case No. 23-0670-I (Davidson Cty. Chancery Ct.).
[23] *See also* Adam Friedman, *Court Strikes Down State Law Creating New Nashville Airport Board*, TENN. LOOKOUT (Oct. 31, 2023), https://perma.cc/6U73-DZWT.
[24] *Metropolitan Government of Nashville and Davidson County v. Bill Lee et al.*, M2023-01678-COA-R3-CV (Tenn. Ct. App. Apr. 28, 2025).
[25] TENNESSEE SUPREME COURT PENDING CASES REPORT 17 (Oct. 2025), https://perma.cc/2EEX-7TB3 (noting a briefing schedule that concludes with appellants' reply brief due on January 16, 2026).
[26] Cassandra Stephenson, *Nashville Says State Lawmakers Are Violating 'Home Rule'*, THE TENNESSEAN (June 14, 2023), https://perma.cc/WQE9-8M57.
[27] *See, e.g.*, *Bass, Berry & Sims & Metro Legal Secure Landmark Win for Nashville in State Law Challenge*, BASS, BERRY & SIMS (July 30, 2024), https://perma.cc/B7NR-KGL7.

that decision to the Tennessee Supreme Court, where the matter is now pending.[28] The state has appealed that decision. The appeal is M2024-01182-COA-R3-CV (Tenn. Ct. App.), available here.

## 5. BUILDING CODES

Tennessee's code authorizes the state fire marshal to adopt the minimum statewide building construction safety standards and associated rules and regulations. Tenn. Code Ann. § 68-120-101. Under Section 0780-02-02.01 of the Rules of Tennessee's Department of Commerce and Insurance, Division of Fire Prevention, the state fire marshal has adopted by reference the codes published by the International Code Council, including the 2012 editions of the International Building Code and the International Energy Conservation Code.

Counties and cities in Tennessee may adopt their own building codes. Tenn. Code Ann. § 6-54-502. Municipalities may be classified as exempt from state enforcement if they have an approved code enforcement department with certified inspectors.[29] An exempt jurisdiction can adopt any code if it is at least as strong as the state code and gets approval from the State Fire Marshal's Office.[30]

For counties that adopt their own building codes, such codes only apply to the unincorporated areas of the county and to the incorporated cities and towns within the county that have not adopted their own building codes. Tenn. Code Ann. § 5-20-106.

## 6. ELECTRIC UTILITY CONSIDERATIONS

The Tennessee Valley Authority (TVA) plays a central role in electricity generation and in the regulation of distribution utility entities in Tennessee. TVA is a federally owned corporation created by the Tennessee Valley Authority Act of 1933 (TVA Act) and overseen by a board of directors appointed by the President of the United States. TVA is governed by the TVA Act itself and regulations promulgated thereunder. As a result, TVA is largely immune from state regulation, even though TVA serves "virtually all of the 95 counties in Tennessee"[31] and operates over 90% of Tennessee's electric generating capacity, including the ten largest power plants in the state.[32]

**What is the relevant utility regulatory body in the state? Who and what does it regulate?** The Tennessee Public Utility Commission (TPUC) is responsible for regulating and setting rates for investor-owned electric utilities. *See* Tenn. Code Ann. § 65-5-101. However, TVA's unique authority in the state means that the TPUC does not regulate the rates of municipal electric or rural electric cooperatives. *See* Tenn. Code Ann. §§ 65-4-101(6); 65-5-101(a).

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[28] TENNESSEE SUPREME COURT PENDING CASES REPORT, *supra* note 25, at 17–18 (noting a briefing schedule that concludes with appellants' reply brief due on January 16, 2026).
[29] *Tennessee*, INT'L CODE COUNCIL, https://perma.cc/K7MN-W7M5.
[30] *Id*.
[31] *TVA in Tennessee*, TENN. VALLEY AUTH. (2019), https://perma.cc/N2LJ-SFFY.
[32] *See Tennessee: State Profile and Energy Estimates,* U.S. ENERGY INFO. ADMIN. (updated Sep. 21, 2023), https://perma.cc/2T2D-FV94.

The TPUC has very little authority in matters that implicate TVA. For example, the TPUC has no authority over what generation assets TVA chooses to build. The TPUC does have jurisdiction over wastewater, gas, and telecommunications utilities.[33]

**What authority, if any, do municipalities have over utilities?** TVA has broad authority to set resale rate schedules at the consumer level. *See* 16 U.S.C. § 831i; *Ferguson v. Elec. Power Bd.*, 378 F. Supp. 787, 789–90 (E.D. Tenn. 1974). Municipalities can create their own electric distribution utilities, but because TVA is a federally created monopoly and controls the state's transmission lines, local power companies buy power from TVA at a rate unilaterally set by TVA. *See* Tenn. Code Ann. § 7-52-103. A local power company that wants to end its contract with TVA must build its own transmission lines. *See Tennessee Valley Authority*, 177 F.E.R.C. ¶ 61,021 (2021).

While the TVA Act does not expressly preempt state regulation, the Attorney General has suggested that the TVA Act may create implied preemption, as it confers broad discretion on the TVA Board of Directors "in the exercise of their authority to sell surplus power in accordance with the Act's established policies." Additionally, in *McCarthy v. Middle Tenn. Elec. Membership Corp.*, the Sixth Circuit found that state law provisions that invade the area of control over distributors granted to TVA are preempted. *See* 466 F.3d 399, 406 (6th Cir. 2006). TVA primarily exercises that control through its contracts for the sale of power with local power companies.

**Can cities enter into franchise agreements with utilities?** Yes, but any such franchise must be approved by the TPUC, which can impose "such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require." Tenn. Code Ann. § 65-4-107. Additionally, TVA has the power to acquire real estate by eminent domain and, for real estate located along the Tennessee River or any of its tributaries, TVA can acquire such property "at a price deemed fair and reasonable" by the TVA board, or in the alternative, through eminent domain. TVA Act, § 4(h)–(i).

**Does case law address whether the state public service law preempts local authority over utilities?** As to ratemaking for electric utilities, a significant body of federal case law confirms that TVA's ratemaking authority, established in federal law and primarily exercised through provisions in the contracts TVA enters into with its distributors, is not reviewable by courts. *See Holbrook v. Tennessee Valley Auth.*, 48 F.4th 282, 291 (4th Cir. 2022) ("[F]ederal courts in the Tennessee Valley region have a long history of declining to review TVA ratemaking. This trend reaches back at least 84 years to a case decided just a few years after the TVA Act was passed.") (citations omitted). As to other types of utilities, case law is limited but generally indicates that state public service law only preempts local regulations that would affect whether a utility can exist, but does not preempt local regulation over access to municipal streets and rights-of-way. *See, e.g.*, *Briley v. Cumberland Water Co.*, 389 S.W.2d 278, 282 (1965) ("[T]he elemental powers of a public utility must be obtained from the State Public Service Commission [but] . . . the privilege of occupying the streets, roads and public ways of cities or counties

[33] TENN. PUB. UTIL. COMM'N, 2023-2024 ANNUAL REPORT at 8 (2024), https://digitaltennessee.tnsos.gov/cgi/viewcontent.cgi?article=1013&context=tpuc_annual_reports.

with its facilities must be obtained from the local political subdivision in which the utility operates.") (quoting *Franklin Light & Power Co. v. S. Cities Power Co.*, 47 S.W.2d 86, 91–92 (Tenn. 1932)).

**How can cities intervene in Public Utility Commission proceedings?** Under the state regulations governing the practice and procedure of contested cases before the TPUC, petitions for intervention shall be granted in accordance with Tenn. Code Ann. § 4-5-310 and Tenn. Code Ann. § 65-2-107. *See also* Tenn. Comp. R. & Regs. § 1220-01-02-.08. Further, a petition for intervention must "set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law." *Id*.

As a federal entity, some of TVA's activities are regulated by the Federal Energy Regulatory Commission (FERC). FERC provides a step by step guide on how a party, including a municipality, may file for intervention in its proceedings.[34] All motions to intervene are to be submitted to FERC in accordance with 18 C.F.R. § 385.214.

**Does the state have an obligation to serve statute?** Yes, but it does not apply to TVA. As provided by Tenn. Code Ann. § 65-4-114, "[t]he commission has the power, after hearing, upon notice, by order in writing, to require every public utility, as defined in § 65-4-101, to: (1) Furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so; and (2) Establish, construct, maintain, and operate any reasonable extension of its existing facilities where, in the judgment of the commission, such extension is reasonable and practicable, and will furnish sufficient business to justify the construction, operation, and maintenance of the same, and when the financial condition of the public utility affected reasonably warrants the original expenditure required in making such extension."

**Has the state passed enabling legislation for community choice aggregation (CCA)?** No, Tennessee currently lacks enabling legislation for community choice aggregation programs.[35]

## 7. SECONDARY SOURCES

Elijah Swiney, *John Forrest Dillon Goes to School: Dillon's Rule in Tennessee Ten Years After Southern Constructors*, 79 TENN. L. REV. 103 (2011) (providing, among other things, an in-depth discussion of the history of Dillon's Rule in Tennessee).

Caroline Cox & Madeline Flynn, *The TVA Effect: Clean Energy Goals & Public Power*, Vanderbilt Law Research Paper No. 23-54 (Sept. 29, 2023), https://perma.cc/75MQ-DF93 (examining "the TVA's effect on clean energy goals within the TVA 'fence' and how interpretation of the TVA Act and other federal laws have given TVA control over the energy transition in the region") (cleaned up).

[34] *How to Intervene*, FED. ENERGY REG. COMM'N, https://perma.cc/5UNW-XE49.
[35] *Community Choice Aggregation*, U.S. ENV'T PROTECTION AGENCY, https://perma.cc/8GKA-3GWN.

## 8. MISCELLANEOUS

In 2018, Tennessee adopted a law that makes any local government entity that has adopted or enacted "a sanctuary policy" ineligible for grants from the state department of economic and community development so long as the policy remains in place.[36]

Tennessee does not allow for citizen-initiated ballot measures that would uphold, repeal, or amend a state statute or the state constitution. Ballot initiatives or constitutional amendments can only come through the state legislature or state constitutional convention. *See* Tenn. Const. art. XI, § 3.

In 2025, Tennessee adopted a law allowing any member of the legislature to request that the state's attorney general investigate a local law that "violates, or that would violate if enacted or enforced, state law or the Constitution of Tennessee." Tenn. H.B. 1097 (2025). Upon concluding that the local law might violate state law, the state can withhold funds, including state-shared taxes.

[36] *See* Tenn. Code Ann. § 7-68-103.