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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

FLORIDA

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Vincent M. Nolette, Daniel J. Metzger & Olivia N. Guarna

Columbia Law School, Sabin Center for Climate Change Law
Edited by Amy E. Turner

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The Sabin Center for Climate Change Law develops legal techniques to fight climate change and promote climate justice, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University's Climate School and with a wide range of governmental, non-governmental and academic organizations.

Sabin Center for Climate Change Law Columbia Law School
435 West 116th Street
New York, NY 10027
Tel: +1 (212) 854-3287
Email: columbiaclimate@gmail.com
Web: https://climate.law.columbia.edu/
Bluesky: @sabincenter.bsky.social
Blog: http://blogs.law.columbia.edu/climatechange

About the Authors: Vincent M. Nolette is the Equitable Cities Climate Law Fellow at Columbia Law School's Sabin Center for Climate Change Law. Daniel J. Metzger is a Senior Fellow for Smart Surfaces at the Sabin Center. Olivia N. Guarna is the Sabin Center's Climate Justice Fellow. Amy E. Turner is the Director of the Cities Climate Law Initiative at the Sabin Center for Climate Change Law. Part of their work supports the Sabin Center's Cities Climate Law Initiative, which provides resources to efficiently and effectively address legal questions confronting the urban climate transition.

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 Florida. 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)).

FLORIDA

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Florida's constitution empowers local governments of all types to adopt charters, and by doing so, to claim a broad set of powers to govern their affairs. Subsequent statutes generally affirm municipalities' and counties' broad authority under the constitution. Still, local governments' authority is constrained by a range of statutory provisions that remove certain climate-related regulatory topics from local control.

1.1 Constitutional Provisions

Fla. Const. art. 8 § 2(b): "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."

Fla. Const. art. 8 § 1(f): "Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict."

Fla. Const. art. 8 § 1(g): "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

Fla. Const. art. 19 § 1(a): "No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

1.2 Statutory Provisions

Florida's constitutional grant of authority is restated in, and expanded upon by, the state's Municipal Home Rule Powers Act (MHRPA). *See* Fla. Stat. ch. 166. The MHRPA affirms the breadth of home rule power cities enjoy. It provides, for example, that:

> The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.

Fla. Stat. § 166.021(4).

The MHRPA also contains provisions that specifically grant municipal authority. The MHRPA allows cities to, for example, collect as taxes "amounts of money which are necessary for the conduct of municipal government," Fla. Stat. § 166.201, and to exercise the power of eminent domain, Fla. Stat. § 166.401.

Other sections of the MHRPA include rules setting parameters around how cities may exercise their authority. For example, cities can review development permit applications but may not request additional information from an applicant more than three times Fla. Stat. § 166.033. Under amendments passed in 2023, local governments cannot adopt rent control measures. *See* Fla. Stat. § 166.043(3).

Florida's Formation of Municipalities Act, codified at Chapter 165 of the state code, governs how cities may be incorporated and the necessary components of their charters.

2. HOME RULE CHARTERS

Florida law provides for county and municipal governments, and does not distinguish between cities, towns, and villages. Twenty of Florida's sixty-seven counties have adopted charters, which afford them home rule authority comparable to that of municipalities.[20] Florida's charter cities include the state's five largest municipalities—Miami, Tampa, Orlando, St. Petersburg, and Hialeah—as well as the consolidated City of Jacksonville and Duval County. Non-charter counties have a local government structure prescribed by state law and only the powers specifically granted them by state law.

Florida's constitution, as amended in 1968, allows cities and counties to consolidate governments, though the City of Jacksonville and Duval County are the only pair to have done so, and their consolidation predated that constitutional amendment.

3. PREEMPTION OF LOCAL LAW

3.1 Express Preemption

Express preemption occurs when the state includes explicit preemptive language in state statutes. Florida courts have clarified that finding express preemption requires a "specific legislative statement" and that "it cannot be implied or inferred," and must be accomplished by "clear language stating that intent." *Sarasota All. for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

For example, the state has expressly preempted all political subdivisions from regulating the removal or destruction of citrus trees: "Regulation of the removal or destruction of citrus trees pursuant to this section is hereby preempted to the state. No county, municipal, or other local ordinance or other regulation that would

[20] *Charter County Information*, FLA. ASS'N OF COUNTIES, https://perma.cc/6MWA-EY9M.

otherwise impose requirements, restrictions, or conditions . . . with respect to the removal or destruction of citrus trees pursuant to this section shall be enforceable . . .” Fla. Stat. § 581.184.

3.2 Field Preemption

Field preemption occurs when a state statute expressly or impliedly occupies an entire legislative field, leaving no room for local regulation. Florida courts imply field preemption where “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature”—but such a finding is generally “limited to the specific area where the Legislature has expressed their will to be the sole regulator.” *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1019 (Fla. Dist. Ct. App. 2005). For example, the state has expressly preempted the field of regulating ammunition: “No municipality may adopt any ordinance relating to the possession or sale of ammunition.” Fla. Stat. § 166.044. Similarly, Florida courts have held that the state’s Public Records Act preempts local policy concerning certain public records. *See Tribune Co. v. Cannella*, 458 So. 2d 1075, 1079 (Fla. 1984).

3.3 Conflict Preemption

Conflict preemption occurs when there is outright or actual conflict between state and local law. Florida courts have not consistently named “conflict preemption” as a distinct form of preemption but do recognize that where local laws conflict with state laws, the latter prevails. *See, e.g.*, *D’Agastino v. City of Miami*, 220 So. 3d 410, 421 n.8 (Fla. 2017) (“Under Florida law, a separate and distinct [(from preemption analyses)] way for a local enactment to be inconsistent with state law is where the local enactment conflicts with a state statute.”). The test for conflict is relatively stricter than in other states, with Florida courts asking “whether one must violate one provision in order to comply with the other. Putting it another way, a conflict exists when [state and local] enactments ‘cannot co-exist.’” *Sarasota All. For Fair Elections*, 28 So. 3d at 888.

3.4 State Laws with Potential for Local Climate Preemption

In recent years, the Florida legislature has adopted a wide variety of laws preempting local control over issues connected to climate change. Those include, as examples:

Solar Development in Agricultural Zones. Fla. Stat. § 163.3205(3): “A solar facility shall be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area and must comply with the setback and landscaped buffer area criteria for other similar uses in the agricultural district.”

Building Electrification. Fla. Stat. § 366.032(1): “A municipality, county, board, agency, commission, or, authority of any county, municipal corporation, or political subdivision, special district, community development district . . . may not . . . take any action that restricts or prohibits or has the effect of restricting or prohibiting the types

or fuel sources of energy production which may be used, delivered, converted, or supplied by [public utilities] to serve customers that such entities are authorized to serve."

Building Electrification. Fla. Stat. § 366.032(2): "[A] municipality, county, board, agency, commission, or, authority of any county, municipal corporation, or political subdivision, special district, community development district . . . may not . . . take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1)."

Building Electrification. Fla. Stat. § 425.041: "A [rural electric] cooperative may not adopt, enact, or enforce any bylaw, tariff, or policy, or take any other action, that restricts or prohibits or has the effect of restricting or prohibiting . . . (1) The types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in s. 366.032(1) . . . [or] (2) The use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in s. 366.032(1)."

Building Electrification. Under Fla. Stat. § 720.3075(3)(b) a homeowners' association may not enforce rules that would block residents in these planned communities from using gas for heating or for cooking. The statute reads that "[h]omeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude: . . . [t]ypes or fuel sources of energy production which may be used" and "[t]he use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by" certain entities, like public utilities.

Building Efficiency Requirements. Fla. Stat. § 163.3202: "[E]ach county and each municipality shall adopt or amend and enforce land development regulations . . . [but those] regulations relating to building design elements may not be applied to a single-family or two-family dwelling . . . [where] '[b]uilding design elements' . . . [include] the style or material of roof structures or porches."

Building Code. Fla. Stat. § 553.73 20(c): Under this law, the Florida Building Commission may not "[a]dopt into the Florida Building Code any provision that prohibits or requires, or has the effect of prohibiting or requiring, the installation of materials to facilitate the use of more than one type or fuel source of energy production listed in s. 366.032(1), except to the extent that more than one type or fuel source of energy is required for the proper operation of an appliance, as specified by the appliance manufacturer."

Fire Prevention Code. Fla. Stat. § 633.202(21): Under this law, the State Fire Marshal may not "adopt into the Florida Fire Prevention Code any provision that prohibits or requires, or has the effect of prohibiting or requiring, the installation of materials to facilitate the use of more than one type or fuel source of energy production listed

in s. 366.032(1), except to the extent that more than one type or fuel source of energy is required for the proper operation of an appliance, as specified by the appliance manufacturer." [21]

Worker Protection Standards. Fla. Stat. § 448.106(2)(a): "A political subdivision may not establish, mandate, or otherwise require an employer, including an employer contracting to provide goods or services to the political subdivision, to meet or provide heat exposure requirements not otherwise required under state or federal law." The statute defines a "heat exposure requirement" as "a standard to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure," and provides a non-exclusive list of standards local governments may not enact. *Id.* at § 448.106(1)(b) (2024). Cities may not enforce rules relating to water consumption, cooling measures, notices that inform employees how to protect themselves from heat, protections for employees who report experiencing excessive heat, or ones related to first-aid or emergency response following heat exposure. *Id.*

Watercraft. Fla. Stat. § 327.75: "Notwithstanding any other law to the contrary, a state agency, municipality, governmental entity, or county may not restrict the use or sale of a watercraft based on the energy source used to power the watercraft, including an energy source used for propulsion or used for powering other functions of the watercraft."

Electric Vehicle Charging Infrastructure. Fla. Stat. § 366.94(2)(a): "The regulation of electric vehicle charging stations is preempted to the state. A local governmental entity may not enact or enforce an ordinance or regulation related to electric vehicle charging stations."

Gas Stations. Fla. Stat. § 377.707: "A municipality, county, special district, or political subdivision may not do any of the following:

(a) [Prohibit] . . . the siting, development, or redevelopment of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within the entirety of the jurisdictional boundary of the municipality, county, special district, or political subdivision.

(b) Adopt or apply a law, an ordinance, a regulation, a policy, or a resolution that results in the de facto prohibition of a fuel retailer or the related transportation infrastructure . . .

(c) Require a fuel retailer to install or invest in a particular kind of fueling infrastructure, including, but not limited to, electric vehicle charging stations."

Natural Gas Resiliency Infrastructure. Fla. Stat. § 163.3210(3–4): "A [facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster] is a permitted use in all commercial, industrial, and

[21] The prohibitions in Fla. Stat. § 553.73 20(c) and Fla. Stat. § 633.202(21) do not "apply to emergency power systems and standby power systems required by law, the Florida Building Code, the Florida Fire Prevention Code, or local amendments adopted thereto."

manufacturing land use categories in a local government comprehensive plan . . . After July 1, 2024, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with [such a] facility's classification as a permitted and allowable use."

Coastal Redevelopment. Chapter No. 2023-349 § 14, Laws of Florida: "Due to the impacts of Hurricane Ian, Charlotte, Collier, Desoto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, and Sarasota Counties, and any a county or municipality located within one of those counties, may not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by [Florida Law] before October 1, 2026, and any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio."

Environmental Bonds. Fla. Stat. § 215.681: Local governments are expressly prohibited from issuing "ESG Bonds" which are broadly defined to include, among other types of bonds, "environmental bonds marketed as promoting a generalized or global environmental objective."

Suspension of Local Laws Alleged to be Preempted. Fla. Stat. § 166.0411: "A municipality must suspend enforcement of an ordinance that is the subject of an action challenging the ordinance's validity on the grounds that it is expressly preempted by the State Constitution or by state law or is arbitrary or unreasonable if: (a) The action was filed with the court no later than 90 days after the adoption of the ordinance; (b) The plaintiff requests suspension in the initial complaint or petition, citing this section; and (c) The municipality has been served with a copy of the complaint or petition."

Attorney's Fees. Fla. Stat § 57.112(2): "If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party."

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

The cases below demonstrate how Florida courts have viewed municipal authority and the state's power to preempt local ordinances.

- *Sarasota All. for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010): In *Sarasota All. for Fair Elections* a group proposed a county charter amendment requiring the county to do several mandatory audits of the county's voting system. *Id.* at 884. The Florida Supreme Court considered whether Florida's election law preempted the field of election-related law. *Id.* at 886. The Court noted that "[i]mplied preemption is found

where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme," and that the "nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination." *Id.* In this case, the court held the local measure not preempted because the state's election law, while "detailed and extensive," was expressly designed to give county commissioners authority over a variety of procedural matters, evincing an intent to leave room for some local regulation. *Id.* at 887.

- *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. Dist. Ct. App. 2005): *Phantom of Clearwater* involved a challenge to a county ordinance that added requirements to the city code relating to selling fireworks. *Id.* at 1016. Plaintiffs argued in part that that the ordinance was expressly preempted by a state law regulating fireworks sales that included the sentence: "This chapter shall be applied uniformly throughout the state." *Id.* The reviewing Court declined to find express preemption, noting that the state statute at issue in this case "does not contain language similar to the phrase, 'It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter,'" and citing a litany of examples of Florida statutes that contain similarly clear statements. The court added that "[i]f the legislature intends to preempt a field, it must state that intent more expressly than the language [quoted above]."

- *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017): At issue was a state-enacted "Policeman's Bill of Rights" that set procedural rules for how and by whom police officers could be interrogated for alleged misconduct; and, arguably conflicting, a city law creating a citizen's oversight panel with broad subpoena power not checked by similar rules about what testimony would be collected. *Id.* at 414–18. The court concluded that because the city's subpoenas could result in officers giving testimony without the protections afforded by state law, the city law amounted to "a mechanism to circumvent the operation of the [state law's] protective measures." *Id.* at 425. The court found the local law unconstitutional to the extent it conflicted with the state law.

4.1 Other Relevant Cases

Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972) ("[A]n ordinance penalty may not exceed the penalty imposed by the state"; however, "a municipality may provide a penalty less severe than that imposed by a state statute.").

Rinker Materials Corp. v. City of North Miami, 286 So. 2d 552, 553–54 (Fla. 1973) ("[C]ourts generally may not insert words or phrases in municipal ordinances in order to express intentions which do not appear, unless it is clear that the omission was inadvertent, and must give to a statute (or ordinance) the plain and ordinary meaning of the words employed by the legislative body . . .").

Tallahassee Mem'l Reg'l Med. Ctr. v. Tallahassee Med. Ctr., 681 So. 2d 826, 831 (Fla. Dist. Ct. App. 1996) ("The courts should be careful in imputing an intent on behalf of the Legislature to preclude a local elected governing body from exercising its home rule powers.").

City of Palm Bay v. Wells Fargo Bank, 114 So. 3d 924, 929 (Fla. 2013) ("We categorically reject the City's argument that the legislative enactment of exceptions to a statutory scheme provides justification for municipalities to enact exceptions to the statutory scheme . . . The power to create exceptions to a legislative scheme is the power to alter that legislative scheme.").

5. BUILDING CODES

State law in Florida prescribes a uniform building code that is "applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction." Fla. Stat. § 553.72. By law, the Florida Building Commission must update the state code every three years, drawing on the latest model codes. *Id.* Fla. Stat. § 553.73(7)(a). The latest edition of the Florida Building Code uses 2021 versions of model codes and went into effect on December 31, 2023.[22]

Local governments may make local amendments to the code provided that they follow exacting procedural requirements described in state law. Any local amendments must be more stringent than the state code and be the subject of a public hearing prior to adoption. Fla. Stat. § 553.73(4). The local legislative body seeking a local code amendment must also, among other procedural requirements:

- "[D]emonstrate by evidence or data" that there is "local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code", *see id.* Fla. Stat. § 553.73(4)(b)(1);
- Demonstrate that the local need will be met by the proposed amendment, *id.*;
- Ensure the amendment is only as stringent as necessary to meet the local need, *id.*;
- Write the code section so as to not be "discriminatory against materials, products, or construction techniques of demonstrated capabilities," *id.* Fla. Stat. § 553.73(b)(2);
- Not introduce new subjects not addressed in the Florida Building Code, *id.* Fla. Stat. § 553.73(b)(3); and
- Accompany the amendment with a fiscal statement that "documents the costs and benefits of the proposed amendment," including its "impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance," *id.* Fla. Stat. § 553.73(h).

[22] *Florida Building Codes*, INT'L CODE COUNCIL, https://codes.iccsafe.org/codes/florida.

A local government that takes all these steps can enforce its local amendment, but only until the next edition of the Florida Building Code is adopted by the state Commission. When a new edition of the state code is adopted, the Commission will choose to incorporate the local amendment into the statewide code or rescind it. *Id.* Fla. Stat. § 553.73(4)(e). If the amendment is rescinded, the local government can readopt that amendment by repeating the steps outlined above. *Id.*

Despite the many procedural steps necessary to enforce a local amendment, a handful of local governments in Florida have done so, including for example the City of Key West adding local flood response regulations.[23]

6. ELECTRIC UTILITY CONSIDERATIONS

State-level law and regulation largely preempt local control over energy generation and distribution, but local governments in Florida retain a degree of control over municipally owned-utilities and, through franchise agreements, over private utilities operating within the municipality.

What is the relevant utility regulatory body in the state? Who and what does it regulate? The Florida Public Service Commission sets rates for investor-owned electric utilities throughout the state, but not for municipally-owned utilities. *See* Fla. Stat. § 366.04. Under state law, utilities are required to offer net metering to their customers but may set their own credit rates. Fla. Stat. § 366.91(3–7); Florida Admin. Code 25-6.065.

What authority, if any, do municipalities have over utilities? Municipalities and other local governments may own and operate utilities and may set rates for the power sold by them. *See* Fla. Stat. § 180.13. Cities can also contract with private companies to secure utility service, Fla. Stat. § 180.17, and can issue debt to finance building utilities and related infrastructure. Fla. Stat. § 180.08.

Can cities enter into franchise agreements with utilities? Yes. Charter counties, non-charter counties, and municipalities are all authorized by state law to enter into franchise agreements with utilities. *See* Fla. Stat. § 180.14; Fla. Stat. § 337.401. In granting a franchise to a privately-owned utility, a municipality may allow a utility to build facilities within the municipality on "such conditions and limitations as may be deemed expedient and for the best interest of said municipality." Fla. Stat. § 180.14.

Does case law address whether the state public service law preempts local authority over utilities? Case law has recognized an expansive and preemptive role for the Public Service Commission in matters relating to regulating public utilities. Courts have held, for example, that "state policy in Florida is to supervise privately-owned electric utilities through regulation by a state agency" and that "[t]he powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law." *Storey v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968).

[23] Key West, Fla., Ord. No. 23-27, https://perma.cc/K5QX-4T2J. The Florida Building Commission maintains a searchable database of submitted local amendments to the building code available at https://perma.cc/8W5M-FVXM.

How can cities intervene in Public Service Commission proceedings? Under Florida Admin. Code 28-106.205, anyone "whose substantial interest will be affected by the proceeding and who desire[s] to become parties may move the presiding officer for leave to intervene" at least twenty days before a final hearing. Doing so requires a city to file a motion for leave to intervene which must include allegations that the city has a constitutional right affected or generally that "that the substantial interests of the [city] intervenor are subject to determination or will be affected by the proceeding." *Id.*

In addition, under Florida Admin. Code 25-22-0021, anyone can participate in Commission meetings informally as public commenters, except under specific circumstances outlined in the rule. The extent and manner of public participation allowed in particular meetings is determined by the Commission and described in the public notice announcing that meeting. *Id.*

Does the state have an obligation to serve statute? Yes, utilities are subject to a duty to serve: "Each public utility shall furnish to each person applying therefore reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect." Fla. Stat. § 366.03.

Has the state passed enabling legislation for community choice aggregation (CCA)? No, Florida does not have legislation enabling community choice aggregation.

7. SECONDARY SOURCES

Judge James R. Wolf & Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 FLA. BAR J. 92 (2009), https://perma.cc/MFT8-2PDW (describing the origins and history of home rule in Florida).

FLORIDA ASS'N OF COUNTY ATTORNEYS, PREEMPTION OF COUNTY AUTHORITY IN FLORIDA (2024), https://perma.cc/36WP-SQSW (cataloging and describing preemptive actions taken by the state of Florida as applicable to counties in particular).

8. MISCELLANEOUS

As noted above, a Florida municipality may be liable for a plaintiff's attorneys fees and damages after a successful challenge that a local law is preempted by state law, and in some instances may be required to suspend a local law while litigation is ongoing. *See* Fla. Stat § 57.112(2). In addition, under Fla. Stat. § 166.041(4)(a), local governments must prepare a business impact estimate before adopting any proposed ordinance.

Florida has adopted several "anti-ESG" measures that target efforts to leverage investments in a way that would serve environmental goals. Those include: Fla. Stat. § 17.57, which prohibits state funds from being invested in way that would amount to "sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor."

Florida has also specifically forbidden construction of offshore wind facilities by any person, including municipal electric utilities, under Fla. Stat. § 377.708(2)(a): "Construction or expansion of the following is prohibited:

1. An offshore wind energy facility.
2. A wind turbine or wind energy facility on real property within 1 mile of coastline in this state.
3. A wind turbine or wind energy facility on real property within 1 mile of the Atlantic Intracoastal Waterway or Gulf Intracoastal Waterway.
4. A wind turbine or wind energy facility on waters of this state and any submerged lands."