

NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION LOUISIANA



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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 Louisiana. 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)).

LOUISIANA

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Louisiana’s municipalities comprise a diverse set of pre-constitutional charter cities, cities with charters adopted after the state’s 1974 constitution was ratified, and general law cities operating under a statutory framework. Each has a different degree of autonomy, with charter cities enjoying the highest degree of home rule authority. The state has broad power to preempt local ordinances and has done so in several climate-related areas.

1.1 Constitutional Provisions

[La. Const. art. VI, § 2](#): “The legislature shall provide by general law for the incorporation, consolidation, merger, and government of municipalities. No local or special law shall create a municipal corporation or amend, modify, or repeal a municipal charter. However, a special legislative charter existing on the effective date of this constitution may be amended, modified, or repealed by local or special law.”

[La. Const. art. VI, § 4](#): “Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.”

[La. Const. art. VI, § 5\(A\)](#): “Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section. The governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission.”

[La. Const. art. VI, § 5\(E\)](#): “A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.”

[La. Const. art. VI, § 5\(F\)](#): “Except as prohibited by its charter, a local governmental subdivision adopting a home rule charter under this Section shall have the additional powers and functions granted to local governmental subdivisions by other provisions of this constitution.”

[La. Const. art. VI, § 7\(A\)](#): “Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no home rule charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of

the proposition that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law.”

[La. Const. art. VI, § 9\(B\)](#): “Notwithstanding any provision of this Article, the police power of the state shall never be abridged.”

[La. Const. art. VI, § 17](#): “Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.”

1.2 Statutory Provisions

Statutory law in Louisiana has comparatively little to say about home rule cities but lays out detailed requirements for general law cities throughout title thirty-three of the state’s revised statutes. *See generally* [La. Stat. Ann. § 33:361](#).

[La. Rev. Stat § 33:321](#): “All municipalities shall be governed by the provisions of this Part except those municipalities governed by a special legislative charter or a home rule charter or plan of government adopted pursuant to Article VI of the Constitution of Louisiana.”

[La. Rev. Stat § 33:361](#): “Except as otherwise provided in this Part, a municipality shall be vested with all powers, rights, privileges, immunities, authorities, and duties heretofore possessed in accordance with all constitutional and statutory provisions with respect thereto. A municipality is further authorized to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied by law.”

[La. Rev. Stat § 33:481](#): “Notwithstanding any other provision of law to the contrary, in any municipality governed by a special legislative charter, if the provisions of the special legislative charter are silent on a particular matter, then the provisions of [state law] shall govern. If a conflict exists between the provisions of the special legislative charter and the provisions of [state law], then the [latter governs.]”

[La. Rev. Stat § 33:2755](#): “[I]t is hereby provided that any municipality operating under a home rule or special legislative charter shall have all rights, powers, privileges, and authority granted by any general law of the state which uniformly applies by its terms to all municipalities relating to the levy and collection of local or special assessments on real property for the purpose of acquiring, constructing, or improving works of public improvement and the issuance of certificates of indebtedness to cover the costs of any such public improvement secured in whole or in part by pledges of such local or special assessments.”

2. HOME RULE CHARTERS

Louisiana recognizes parishes (equivalent to counties in most other states) and municipalities as the primary units of local governments, and either form of local government can adopt a home rule charter under a 1974 amendment to the state's constitution, codified at [art. VI, § 5\(A\)](#). Dozens of Louisiana cities and parishes have done so, and about twenty-five others continue to operate under charters that predate but are acknowledged as still in force by the state constitution.²⁰ [New Orleans](#) and [Baton Rouge](#), the state's largest cities, each operate under charters that predate the state's 1974 constitution. [Shreveport](#), [Lafayette](#), and [Lake Charles](#) each operate under charters adopted after the 1974 constitution.

Preexisting charter cities enjoy a large degree of home rule autonomy, theoretically subject only to the limit that they cannot pass local laws in conflict with the state's constitution:

Article VI, § 4 limits a preexisting home rule charter's grant of the power of initiation only by providing that the local government may not exercise that power inconsistently with the 1974 constitution. In contrast, a local governmental subdivision that acquires home rule powers subsequent to the adoption of the 1974 constitution is authorized to exercise such powers only when 'necessary, requisite, or proper for the management of its affairs.' La. Const. 1974, art. VI, §§ 5(E), 7. In this respect, therefore, a preexisting home rule city or parish potentially enjoys the power to initiate legislation to a greater degree than other local governmental subdivisions.

[City of New Orleans v. Bd. of Comm'rs](#), 640 So. 2d 237, 244 (1994).

3. PREEMPTION OF LOCAL LAW

3.1 Express Preemption

Express preemption occurs when the state includes explicit preemptive language in state statutes. For example, Louisiana has expressly preempted local governments from regulating employee leave and minimum wage:

[La. Stat. Ann. § 23:642\(B\)](#): "[P]ursuant to the police powers ultimately reserved to the state by Article VI, Section 9 of the Constitution of Louisiana, no local governmental subdivision shall establish a mandatory, minimum number of vacation or sick leave days, whether paid or unpaid, or a minimum wage rate which a private employer would be required to pay or grant employees."

²⁰ See LOUISIANA HOUSE OF REPRESENTATIVES, STATE AND LOCAL GOVERNMENT IN LOUISIANA: AN OVERVIEW 2012-2016 TERM, <https://perma.cc/HN7E-VG6D>.

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, Louisiana has preempted the field of hazardous materials reporting or anything else governed by chapter 16 of title 30 of the state’s revised statutes.

[La. Stat. Ann. § 30:2379](#): “No local governing authority, municipality, parish, or other local governmental entity may enact, adopt, or enforce an ordinance, law, or regulation relative to hazardous materials reporting or any other provisions of this Chapter, except as otherwise specifically authorized by state law. However, if reporting requirements to agencies in the federal government under federal law conflict with reporting requirements under this Chapter, the affected entities shall file those reports. This Chapter shall have prospective effect only.”

3.3 Conflict Preemption

Conflict preemption occurs when a local government enacts an ordinance that is inconsistent with state law. Except to the limited extent described above for certain home-rule cities, courts in Louisiana recognize that local governments cannot enact local laws in conflict with state law. See [Restivo v. City of Shreveport](#), 566 So. 2d 669, 671 (La. Ct. App. 1990) (“It is well settled that a municipality is without authority to enact ordinances which are inconsistent or in contravention with state law.”). Generally, local law can expand the prohibitions of state law as long as the local measure does not forbid anything the state has permitted. *Id.* In several instances however, state law expressly precludes this otherwise-applicable rule. See, e.g., [La. Stat. Ann. § 40:1796](#) (“No governing authority of a political subdivision shall enact or enforce any ordinance, order, regulation, policy, procedure, rule, or any other form of executive or legislative action more restrictive than state law concerning in any way [firearms and ammunition].”).

3.4 State Laws with Potential for Local Climate Preemption

The Louisiana State Legislature has adopted a variety of laws preempting local control over issues connected to climate change. Those include, as examples:

Oil & Gas Infrastructure Siting. [La. Stat. Ann. § 30:28\(F\)](#): “The issuance of the permit by the commissioner of conservation shall be sufficient authorization to the holder of the permit to enter upon the property covered by the permit and to drill in search of minerals thereon. No other agency or political subdivision of the state shall have the authority, and they are hereby expressly forbidden, to prohibit or in any way interfere with the drilling of a well or test well in search of minerals by the holder of such a permit.”

Liquefied Petroleum Gas Dealers. [La. Stat. Ann. § 33:1377\(A\)](#): “The regulation of a liquefied petroleum gas dealer’s authority to operate and serve customers is a matter of statewide concern. No code, ordinance, land use restriction, or general or specific plan provision or part of a code, ordinance, land use regulation, or general or specific plan provision adopted by a parish or municipality may prohibit or have the effect of restricting a

person’s or entity’s ability to use the services of a liquefied petroleum gas provider who is capable and authorized to provide the service at the person’s or entity’s property.”

Building Electrification. [La. Stat. Ann. § 40:1730.21.1](#): “No code, ordinance, land use restriction or general or specific plan provision or part of a code, ordinance, land use regulation or general or specific plan provision adopted by a parish or municipality may prohibit or have the effect of restricting a person’s or entity’s ability to use the services of a utility provider that is capable and authorized to provide the utility service at a person’s or entity’s property.”

Building Electrification. [La. Stat. Ann. § 51:3043A](#): “No local governing authority shall adopt an ordinance, rule, or law that limits consumer access to an energy type or that results in the prohibition of a wholesaler, retailer, energy producer, or the related infrastructure necessary to provide consumer access to a specific energy type within the jurisdiction of the local governing authority.”

Building Codes. [La. Stat. Ann. § 40:1730.57](#): “A municipality or parish may not require or enforce, as a prerequisite for granting or approving a building or construction permit or certificate of occupancy, any requirement more stringent than the standards provided for in this Part.”

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

The following cases provide a look at how Louisiana courts have construed local home rule authority and state preemption of local law. Early cases articulate a broad vision of cities’ home rule authority, but later courts have taken a variety of approaches to analyzing the state’s police power and with it, the state’s ability to preempt local measures. Compare [City of Shreveport v. Restivo](#), 491 So. 2d 377, 380 (La. 1986) (finding “no apparent reason related to the public health” for requiring licensed journeyman plumber to be part of a firm with a licensed master plumber in order to provide basic leak-repair services, and therefore striking down ordinance), with [Restivo v. City of Shreveport](#), 566 So. 669 (La. App. 2d Cir. 1990) (upholding broader restrictions on journeyman plumbers’ activities after city allowed them to conduct minor repairs). Although Louisiana courts appear to vary in how broadly they construe local authority, they are typically deferential to the state—and even more so when considering measures adopted by city governments other than ones with charters that predate the state constitution.

- [City of New Orleans v. Bd. of Comm’rs](#), 640 So. 2d 237 (La. 1994): In this case, the Louisiana Supreme Court explained the nature and extent of local governments’ authority. The case concerned a state agency’s decision to build a marina within city limits without complying with New Orleans’ zoning and building rules. *Id.* at 240. The state agency argued that its own enabling legislation, as an exercise of the state’s police power, superseded the City’s home rule powers. *Id.* at 241. After examining the legislative history around the state’s 1974 constitution and what its drafters intended for preexisting charter cities, the court emphasized that such charter cities are immune from some forms of state preemption: it would be

“absurdity to permit the legislature to supersede the ordinances of the [City] simply by enacting an inconsistent general state law.” *Id.* at 248. The court further concluded that the constitution’s caveat that the state’s police power can never be abridged means only that the state retains the authority to enact certain types of statewide laws, but some city measures are beyond its reach.

Accordingly, a litigant claiming that a home rule municipality’s local law abridges the police power of the state must show that the local law conflicts with an act of the state legislature that is necessary to protect the vital interest of the state as a whole. To establish that the conflict actually exists, the litigant must show that the state statute and the ordinance are incompatible and cannot be effectuated in harmony.

Id. at 252.

- [Morial v. Smith & Wesson](#), 785 So. 2d 1 (La. 2001): In this case, the Louisiana Supreme Court considered whether a state law precluding local governments from suing firearms manufacturers could stand. The Court reasoned that “to sustain an action under the state’s police power, courts must be able to see that its operation tends in some degree to prevent an offense or evil or otherwise to preserve public health, safety, welfare or morals.” *Id.* The Court decided that a statute reserving for the state the exclusive right to sue firearms manufacturers for damages served a vital state interest in uniformity of regulation and preventing the “haphazard” regulation that could result from varied local lawsuits against gun companies. *Id.* at 16. Effectuating a charter provision allowing a local government to sue would amount to abridging the state’s police power in this respect, so the charter provision was preempted. *Id.*
- [St. Tammany Parish Government v. Welsh](#), 199 So. 3d 3 (La. Ct. App. 2016): A parish operating under a post-constitution charter passed zoning rules that precluded building an oil well otherwise permitted by the state. The court affirmed that to find a state law preempts a local one it must be “the clear and manifest purpose of the legislature to do so,” or that “the exercise of dual authority is repugnant to a legislative objective.” *Id.* at 8. In this instance, [La. Stat. Ann. 30:28\(F\)](#) both “manifestly evince[d] the legislative intent to expressly preempt that area of law,” and the statutes’ comprehensiveness demonstrated “the legislative intent to impliedly preempt that area of the law.” *Id.* at 8.

4.1 Other Relevant Cases

[New Orleans Campaign for a Living Wage v. City of New Orleans](#), 825 So. 2d 1098 (La. 2002) (invalidating a New Orleans minimum wage requirement in light of state legislation preempting local minimum wage rules).

[Hildebrand v. City of New Orleans](#), 549 So. 2d 1218 (La. 1989) (upholding in part a local inheritance tax after finding that state death taxes did not impliedly preempt local ones in light of (1) the state regulatory scheme not being pervasive enough to conclude that preemption was intended, (2) there being no need for statewide uniformity in this context, and (3) there being no danger of conflict between state and local regulation).

[Palermo Land Co. v. Planning Comm’n](#), 561 So. 2d 482 (La. 1990) (finding no field preemption where comprehensive state landfill regulation required compliance with local land use rules as a prerequisite to obtaining a state permit).

5. BUILDING CODES

Louisiana law establishes mandatory state-wide building codes and, as noted above, is broadly preemptive of local authority in this space. “Notwithstanding any other law to the contrary relating to the authority of local governments to enforce construction codes, all municipalities and parishes in this state shall enforce only the construction codes provided for in this Part.” [La. Stat. Ann. § 40:1730.23](#).

State law creates a Louisiana State Uniform Construction Code Council, which is required to adopt the latest published versions of the International Code Council model codes, including the International Building Code, International Residential Code, and the International Energy Conservation Code, as well as several others. [La. Stat. Ann. § 40:1730.28](#). The 2021 codes are adopted with some state-wide exceptions and amendments. See [17 La. Admin. Code §§ 101–17](#).

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body? Who and what does it regulate? The Louisiana Public Service Commission exercises regulatory jurisdiction over most public utilities that provide electric, water, wastewater, natural gas, and certain telecommunications services in Louisiana. [La. Const. art. IV, § 21](#). The Commission has the authority to set rates for those utilities. See [La. Stat. Ann. § 45:1163](#).

Louisiana law’s definition of public utility excludes “utilities municipally owned, or operated, or regulated,” even those that originated as investor-owned utilities and were later bought out by a city. [La. Stat. Ann. § 45:1161\(1\)](#). Under the Louisiana Constitution, the state Public Service Commission does not have authority to regulate municipally-owned utilities unless the city specifically authorizes the Commission to do so, except for safety regulations. See [La. Const. art. IV § 21\(C\)](#) (“The commission shall have no power to regulate any common carrier or public utility owned, operated, or regulated on the effective date of this constitution by the governing authority of one or more political subdivisions, except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This Paragraph shall not apply to safety regulations pertaining to the operation of such utilities.”). Further, the Commission does not regulate utilities in New Orleans, which were already regulated by a separate local body called the Council Utilities Regulatory Office at the time Article 4, section 21 of the state’s constitution was adopted.

What authority, if any, do municipalities have over utilities? Louisiana law authorizes cities to own and operate utilities. See [La. Stat. Ann. § 33:4162](#). Cities can sell the power their utility generates both within and outside their city limits, [La. Stat. Ann. § 33:4163](#), and are also authorized to enter into contracts to purchase power,

provided those contracts are for a term not longer than fifteen years. [La. Stat. Ann. § 33:4164](#). Cities may also partner with one another to jointly own and operate generation and transmission assets. [La. Stat. Ann. § 33:4170](#).

Before any public utility may expand a current “plant, equipment, property, or facility” (or build new ones above a minimal threshold), the utility must obtain a certificate of public convenience and necessity from the relevant city, which by statute is “the sole and final judge of what the public convenience and necessity require, in every case.” [La. Stat. Ann. § 33:4406](#). Relatedly, utilities may not construct any “railroad, plank road, canal, or works of drainage, sewerage, and land reclamation” without first obtaining municipal consent. [La. Stat. Ann. § 33:4502](#).

Can municipalities enter into franchise agreements with utilities? Yes, cities may enter franchise agreements with utilities. *See, e.g.,* [La. Stat. Ann. § 33:4401](#).

Does case law address whether the state public service law preempts local authority over utilities? Although no precedent appears to directly address how public service law affects local authority over utilities, the cases that examine the scope of the Louisiana Public Service Commission’s jurisdiction affirm that its constitutional authority is expressly limited to investor-owned utilities and that it cannot regulate municipally-owned utilities. *See, e.g., Cent. Louisiana Elec. Co. v. Louisiana Pub. Serv. Comm’n*, 601 So. 2d 1383, 1385–86 (La. 1992) (“The constitutional provisions pertaining to the powers and duties of the PSC . . . grants the PSC the power to regulate all public utilities and such other regulating authority as provided by law . . . [but] limits the power of the PSC by withholding authority to regulate any public utility owned, operated or regulated by a municipality.”) (cleaned up).

How can cities intervene in Public Service Commission proceedings? The Louisiana Public Service Commission’s rules allow any party with a justiciable interest to appear in a proceeding and offer testimony and evidence. *See* [LPSC Rule 10](#). In addition, the Commission’s rules specifically allow any political subdivision of the state to intervene in a proceeding. *Id.* Intervenor must file a motion for leave to intervene and be granted permission before appearing. *Id.*

Does the state have an obligation to serve statute? Yes, under [La. Stat. Ann. § 45:122](#), “[t]he Louisiana Public Service Commission has authority to require electric public utilities furnishing electricity to make extensions of their services and facilities whenever the revenues to be derived from the proposed extensions will be sufficient to provide a fair return upon the fair value of the facilities used and useful in rendering additional service.”

Has the state passed enabling legislation for community choice aggregation (CCA)? No, the state [has not passed](#) enabling legislation for community choice aggregation.

7. SECONDARY SOURCES

Jerry J. Guillot, “*The Lawrason Act*” (2014), <https://perma.cc/TF6C-UL8Y> (explaining the history of Louisiana law concerning municipalities not operating under a charter).

Louisiana House of Representatives, *State and Local Government in Louisiana: An Overview 2012-2016 Term*, <https://perma.cc/HN7E-VG6D>.

Local Solutions Support Center, *Louisiana* (Dec. 2020), <https://perma.cc/SVP5-4BB6> (providing background on constitutional provisions establishing home rule in Louisiana).

8. MISCELLANEOUS

Louisiana follows a civil law tradition and therefore technically does not have stare decisis, but it has a doctrine called “jurisprudence constante,” under which legal principles are afforded more persuasive weight the more frequently and consistently courts adopt them. See *Borel v. Young*, 989 So. 2d 42, 65 (La. 2007) (“Once this court has ruled on an issue, we should be extremely reluctant to change our position, as both the legislature and society in general should be able to rely on the finality of our pronouncements.”).