Columbia Law School | Columbia Climate School
Sabin Center for Climate Change Law

NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

SOUTH CAROLINA

JANUARY 2026

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

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

Columbia **Law School** | COLUMBIA CLIMATE SCHOOL
SABIN CENTER FOR CLIMATE CHANGE LAW

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 South Carolina. 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)).

SOUTH CAROLINA

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

South Carolina has granted all local governments relatively broad home rule authority, albeit constrained by potential preemption. Cities can enact local laws "necessary and proper for the . . . general welfare" and certain other purposes so long as they are "not inconsistent with the Constitution and general law of this State." S.C. Code Ann. § 5-7-30; S.C. Const. art. VIII. Only "general laws" that apply to all municipalities can supersede local authority; the General Assembly is generally unable to enact laws that apply to specific municipalities. S.C. Const. art. VIII, §§ 7, 10; *see also Knight v. Salisbury*, 206 S.E.2d 875 (S.C. 1974).

1.1 Constitutional Provisions

Article VIII of the South Carolina Constitution, as amended in 1973, is the constitutional source of home rule in the state for all cities and counties. It broadly outlines the powers of the General Assembly (the state's legislature) and municipalities in the operation of local governments. Although the constitution does not use the term "home rule," courts understand Article VIII, taken together with the provisions of the Home Rule Act referenced below, as bestowing home rule authority upon municipalities. *See, e.g.*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422 (S.C. 1993).

Courts also understand the delegation of home rule to be part and parcel with the delegation of police powers. Article VIII, sections 7 and 9—as implemented by S.C. Code Ann. § 5-7-30—are also cited as the basis for municipal police powers. *See, e.g.*, *City of North Charleston v. Harper*, 306 S.C. 153, 156 (S.C. 1991).

S.C. Const. art. VIII, § 7: "The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided."

S.C. Const. art. VIII, § 9: "The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law."

S.C. Const. art. VIII, § 10: "No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities."

S.C. Const. art. VIII, § 11: "The General Assembly shall provide by general law two or more optional procedures by which incorporated municipalities may select a charter commission" to adopt and amend a municipal charter. Any eligible municipality "shall have the power to frame and to amend a municipal charter setting forth its governmental structure and organization, powers, duties, functions, and responsibilities" but charters may not "contain any provision inconsistent with this Constitution or [certain] general law provisions."

S.C. Const. art. VIII, § 15: The General Assembly cannot pass certain laws without the consent of local government. The laws, specified in the text of the constitution, pertain to the rights to construct and operate transportation and utility infrastructure on public streets or property.

S.C. Const. art. VIII, § 17: "[T]his Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities" of local governments "shall include those fairly implied and not prohibited by this Constitution."

1.2 Statutory Provisions

The Home Rule Act of 1975 (codified in title 5 of the South Carolina Code of Laws) was passed to implement the amended Article VIII of the constitution and more clearly articulates the bounds of cities' and counties' home rule authority.

S.C. Code Ann. § 5-7-30: "Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." The section enumerates a number of specific regulatory activities included within municipal powers, such as those pertaining to public streets, law enforcement, and health, but also provides cities with the broad authority to regulate when "necessary and proper for the . . . general welfare." This section is also considered the basis of municipal police powers.

S.C. Code Ann. § 5-5-10: This section prescribes three options for forms of municipal governments that cities may adopt, described in chapters 9, 11, and 13 of the South Carolina Code, respectively. Chapters 9, 11, and 13 indicate some powers and duties of cities that are specific to the particular form of municipal government chosen; otherwise, the powers and duties of city governments are detailed in chapter 7. *See, e.g.*, *id.* § 5-9-10.

S.C. Code Ann. § 5-7-10: "The provisions of [title 5, chapter 7] provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government . . . The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities."

2. FORMS OF MUNICIPAL GOVERNMENT

The state constitution requires the General Assembly to "provide by general law two or more optional procedures by which incorporated municipalities may select a charter commission" to adopt and amend a charter that specifies their municipal organization and powers. S.C. Const. art. VIII, § 11. However, the General Assembly has not yet done so.[20] In the absence of such a law, cities in South Carolina currently operate under one of three forms of government prescribed by general law: (1) mayor-council form (see chapter 9); (2) council form (see chapter 11); and (3) council-manager form (see chapter 13). S.C. Code Ann. § 5-5-10. Under mayor-council form, the mayor has administrative powers and the council has legislative powers.[21] Under the council form, the council has all legislative and administrative powers, and the mayor votes as a council member but

[20] MUN. ASS'N OF SOUTH CAROLINA, FORMS AND POWERS OF MUNICIPAL GOVERNMENT 2 (2017), https://perma.cc/V7LW-RAQN.
[21] *Id.* at 3–5.

only has administrative duties as delegated by the council.[22] Under the council-manager form, the council has all legislative powers, and employs a manager which acts as the head of the administrative branch.[23]

Further, the General Assembly provides certain requirements for local governments to pass ordinances, although it also allows local governments to adopt their own rules and procedures. S.C. Code Ann. § 5-7-270.

3. PREEMPTION OF LOCAL LAW

Local laws that are properly enacted pursuant to a municipality's home rule authority can still be invalid if they are preempted by state law. Preemption in South Carolina occurs when a local ordinance is "inconsistent with the Constitution and general law of the state." *Williams v. Town of Hilton Head Island*, 429 S.E.2d 802, 805 (S.C. 1993). In determining whether a local law is "inconsistent" with a general state law, courts look for evidence of legislative intent to preempt local law. *See, e.g.*, *S.C. State Ports Auth. v. Jasper County*, 629 S.E.2d 624, 628 (S.C. 2006).

3.1 Express Preemption

Express preemption occurs when "the General Assembly declares in express terms its intention to preclude local action in a given area." *S.C. State Ports Auth.*, 629 S.E.2d at 628. For example, South Carolina has expressly preempted local regulation of highway traffic:

> The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein.

S.C. Code Ann. § 56-5-30.

3.2 Field Preemption

Field preemption occurs when "the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." *S.C. State Ports Auth.*, 629 S.E.2d at 628. A finding of field preemption requires "a clear legislative intent that state law control all aspects" of a given subject. *Id*. at 629. For example, in *Barnhill v. City of North Myrtle Beach*, the Supreme Court of South Carolina held that section 50-21-30 of the South Carolina Code of Laws "has preempted the entire field of regulating watercraft on navigable waters." 511 S.E.2d 361, 363 (S.C. 1999).

[22] *Id*.
[23] *Id*.

3.3 Conflict Preemption

Conflict preemption occurs when a local "ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible." *S.C. State Ports Auth.*, 629 S.E.2d at 630. For a local law to be conflict preempted, both laws must contain "conditions that are inconsistent and irreconcilable with each other," although these conditions can be express or implied. *Wrenn Bail Bond Serv. v. City of Hanahan*, 515 S.E.2d 521, 522 (S.C. 1999). However, "[i]f either [law] is silent where the other speaks, there is no conflict." *Id*. In *Wilson ex rel. State v. City of Columbia*, for example, the Supreme Court of South Carolina held that a local ordinance imposing a mask mandate in public schools was in conflict with and, thus, preempted by a state law that banned mask mandates. 863 S.E.2d 456 (S.C. 2021).

3.4 State Laws with Potential for Local Climate Preemption

South Carolina has few but significant state laws that threaten to preempt local climate action. Primarily, these are the laws requiring municipalities to adhere to statewide building and energy codes:

Building Codes. S.C. Code Ann. § 6-9-10: Requires municipalities to enforce statewide building codes. The provision states that "the municipality or county shall enforce only the national building and safety codes provided in this chapter."

Building Codes. S.C. Code Ann. § 6-10-50: Requires municipalities to enforce statewide energy codes.

South Carolina's General Assembly has also considered and rejected two different bills which would preempt local regulation of disposable bags and containers: S. 394, 2019-20 Gen. Assemb., 123d Sess. (S.C. 2019) and H. 3529, 2017-18 Gen. Assemb., 122 Sess. (S.C. 2018).

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

The language of the state constitution suggests that municipalities enjoy broad home rule authority: "The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor." S.C. Const. art. VIII, § 17. South Carolina courts reiterate this principle in the case law: "A municipal ordinance is . . . presumed to be constitutional." *Aakjer v. City of Myrtle Beach*, 694 S.E.2d 213, 215 (S.C. 2010). However, local laws that are "inconsistent" with state law can be preempted. For example, courts have found that local laws with more stringent requirements than state law are preempted under both conflict and field preemption analysis, even when it would be possible to comply with both laws. *See, e.g.*, *City of N. Charleston v. Harper*, 410 S.E.2d 569 (S.C. 1991) (discussed below); *Aakjer*, 694 S.E.2d at 215 (noting a concern that "local authorities might enact ordinances imposing additional . . . requirements" if not field preempted).

The cases below provide further detail on how South Carolina courts interpret the scope of municipal home rule authority under the constitution and state statutes, and the ability of state law to preempt "inconsistent" local laws.

- *Williams v. Town of Hilton Head Island*, 429 S.E.2d 802 (S.C. 1993): This case arose when the Town of Hilton Head Island passed an ordinance that imposed a tax on transfers of real property. The ordinance was challenged on the ground that the Town had not been delegated the statutory authority to enact it and, therefore, the law was invalid under Dillon's Rule. The Town argued that it had home rule authority to enact the ordinance. To resolve the case, one of the issues was whether article VIII of the state constitution, which authorizes home rule, supplanted Dillon's Rule in the state. The South Carolina Supreme Court held that it had and upheld the ordinance. It reasoned that "the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local governments" because "taken together, Article VII and Section 5-7-30, bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government." *Id*. at 805.

- *Wrenn Bail Bond Serv. v. City of Hanahan*, 515 S.E.2d 521 (S.C. 1999): This case provides analysis of both field and conflict preemption under state law. One of the issues in the case was whether a local business license ordinance, which requires bail bondsmen to pay a licensing fee, was preempted by state law. The South Carolina Code has a chapter that regulates professional licensing of bail bondsmen and section 38-53-80 states that "[no] license may be issued to a professional bondsman or runner except as provided in this chapter." *Id*. at 522. Regarding field preemption, the South Carolina Supreme Court held that, although section 38-53-80 expressly preempts the field of professional licensing for bail bondsmen, the city's ordinance did not touch professional licensing because it "sets forth no qualifications for bail bondsmen. It simply requires payment of a fee for the privilege of doing business within City limits." *Id*. Regarding conflict preemption, the court held that "[i]f either [the state or local law] is silent where the other speaks, there is no conflict" and the "City's ordinance is silent regarding professional qualifications for bail bondsmen." *Id*. Therefore, the court held that the ordinance was valid.

- *S.C. State Ports Auth. v. Jasper County*, 629 S.E.2d 624 (S.C. 2006): This case provides guidance on the scope of home rule authority and clear descriptions of the three types of preemption: express, field, and conflict. The issue arose over county laws establishing and delegating certain powers to a local port authority. The South Carolina Ports Authority had begun efforts to acquire a site in the county by condemnation for use as a port. Jasper County's local laws provided a means for the county to acquire the same land, which the state agency challenged on preemption grounds. *Id*. at 626–27. The South Carolina Supreme Court first held that the county had the home rule authority to enact its ordinance under the article VIII constitutional home rule amendment and section 4-9-25 of the South Carolina Code (the county-level counterpart to cities' statutory home rule authority in section 5-7-30). *Id.* at 631. After analyzing the ordinance under express, implied field, and implied conflict preemption, the court held that the ordinance was not "inconsistent with the Constitution and general law" of the state and was thus not preempted. However, it held that, although the ordinance was not preempted by state law, the state's eminent domain rights are superior to the county's rights "because condemnation by a state agency is on behalf of the state [so] a state agency's power of eminent domain is superior to that of a political subdivision." *Id*.

- *Wilson ex rel. State v. City of Columbia*, 863 S.E.2d 456 (S.C. 2021): The South Carolina Supreme Court invalidated multiple local ordinances that mandated wearing masks in school on the grounds that they were preempted by a state appropriations law containing a proviso regarding mask mandates in K-12 public schools. The ordinances conflicted with the proviso's express language that stated, "No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities." *Id*. at 458. The express conflict between local and state law is clear in this case because the local ordinances allowed what the proviso prohibited. Moreover, the court goes further in its discussion of conflict preemption. It notes that, "even in the absence of an express conflict, the ordinances cannot stand, for the ordinances frustrate the purpose of the proviso and are therefore preempted." *Id.* at 462.

- *City of N. Charleston v. Harper*, 410 S.E.2d 569 (S.C. 1991): The ordinance at issue mandated a particular sentence for a criminal violation whereas a state law granted municipal judges discretion in determining the sentence for the same criminal conduct. The city argued that its ordinance was not preempted because it "merely imposed the maximum punishment allowed under state law, and thus does not usurp state law." *Id*. at 570. The South Carolina Supreme Court held that the city's imposition of a stricter punishment than the state law was preempted because it "deprives municipal judges of discretionary authority. Power granted pursuant to state law can be restricted only by state law." *Id.* at 571. Although the court's conflict preemption standard requires that the state and local law be "inconsistent or irreconcilable," this case suggests that, in practice, courts may focus more on the "inconsistency" rather than the "irreconcilability." *Id.* (emphasis added).[24]

4.2 Recent and Ongoing Litigation

There were at least two cases related to city home rule authority and preemption in South Carolina in 2024:

Schultie vs. City of Folly Beach, No. 2024-CP-10-216 (S.C. Cir. Ct. Jan 16, 2024): The plaintiff filed an amended complaint in April 2024 alleging, among other things, that an ordinance from the City of Folly Beach, which regulates boats anchoring in the Folly River and creeks, is preempted by section 50-21-30 of the South Carolina Code. The plaintiff argued that section 50-21-30 has been held to field preempt local regulation of watercraft on navigable waters under *Barnhill*. The case was dismissed in March 2025 without reaching the merits of the preemption issue.

Fred Holland Realty v. City of Folly Beach, 2024 WL 36068 (S.C. Ct. App. 2024): This case arose when the plaintiff challenged a City of Folly Beach emergency ordinance temporarily banning check-ins at vacation rentals in response to the COVID-19 pandemic, arguing that the law was preempted by the Governor's Executive Order

[24] This is different from the approach that some other states take to conflict preemption, where a local law containing more stringent requirements than a state law is not conflict preempted because there is no actual conflict—it is possible to adhere to both laws. *See, e.g.*, *State ex rel. Haley v. City of Troutdale*, 281 Or. 203 (1978). In other words, the two can be reconciled because complying with the more stringent local law would also be in compliance with the state law.

No. 2020-19, which restricted short-term rental check-ins. *Fred Holland Realty*, 2024 WL 36068, at *1, *3. The South Carolina Court of Appeals held that, while emergency state executive orders can preempt local law, Executive Order No. 2020-19 neither expressly nor impliedly preempted the City of Folly Beach's ordinance. First, "[n]othing in the Ordinance is expressly or impliedly 'inconsistent or irreconcilable' with the Executive Order." *Id.* at *4. Second, the Order has a "specific and targeted approach to preemption" which does not support a finding of field preemption. *Id.* at *5.

5. BUILDING CODES

All municipalities in the state are obligated to adhere to and enforce the statewide building codes. S.C. Code Ann. § 6-9-10. State law requires the state's Building Codes Council to adopt model codes with statewide application. S.C. Code Ann. §§ 6-9-5, 6-9-50. The Council has currently adopted the 2021 edition of the International Building Code (IBC). State law allows municipalities to opt into several International Code Council model codes not adopted statewide—codes addressing property maintenance, performance, existing buildings, and swimming pools, as well as non-mandatory appendices to the other model codes. S.C. Code Ann. § 6-9-60. Under a separate legislative provision, the 2009 version of the International Energy Conservation Code (IECC) is adopted state-wide and known as the "Energy Standard." S.C. Code Ann. § 6-10-30.

South Carolina law allows for local amendments to the state codes provided that any such amendment is justified by "local physical or climatological conditions." S.C. Code Ann. § 6-9-105. The law provides that the Council can approve such an amendment—and must do so before a municipality can enforce the amendment—if it finds that the amendment "provides a reasonable standard of public health, safety, and welfare." *Id.*

The Council's regulations provide further clarity on what kinds of conditions will be deemed to satisfy those statutory requirements:

> (E)(1)(a) To qualify by physical basis, a jurisdiction must demonstrate that it possesses unique physical qualities, such as unusual characteristics or composition of soils, unusual geological conditions (including earthquakes), unusual geographical conditions, unusually varying or extreme ranges in the topography of the land or any other natural condition.
>
> (E)(1)(b) To qualify by climatological basis, a jurisdiction must demonstrate that it experiences weather conditions which are unusual to, confined to, occurring on a regular or seasonal cycle or determined through research or past experiences to have a high probability of reoccurrence within its area. Climatological conditions may include the known occurrence of hurricanes, tornadoes, damaging wind, snow, flooding caused by rainfall, lightning or any other form of natural climate related phenomenon.

S.C. Admin. Regs. § 8-245. The Council's regulations also provide for local amendments to the Energy Standard to accommodate local conditions under a similar, but somewhat less stringent standard for approval.

Amendments to the Energy Standard—currently, the 2009 edition of the IECC—must be accompanied by "[s]ufficient test information, studies, data or other documentation to fully explain and justify the requested variance." *Id.* § 8-250(C).

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The state Public Service Commission has broad regulatory authority "to supervise and regulate the rates and service of every public utility" in South Carolina. S.C. Code Ann. § 58-3-140. However, except under limited circumstances, municipal utilities are carved out of the Public Service Commission's jurisdiction and the Commission cannot regulate or set rates for municipal utilities. S.C. Code Ann. § 58-5-30.

What authority, if any, do municipalities have over utilities? The South Carolina Constitution grants municipalities the power to "acquire by initial construction or purchase [and] operate gas, water, sewer, electric, transportation or other public utility systems and plants." S.C. Const. art. VIII, § 16; S.C. Code Ann. § 5-31-610. Municipalities can elect a board of commissioners of public works which "have full control and management" over electric utilities, including the power to set rates. S.C. Code Ann. §§ 5-31-210, 5-31-250. Beyond municipally-owned utilities, the authority to regulate investor-owned utilities is vested in the state Public Service Commission.

Can cities enter into franchise agreements with utilities? Cities may enter franchise agreements with utilities. S.C. Code Ann. § 5-7-260. Further, the South Carolina Supreme Court has held that cities may "unilaterally impose a franchise fee on a utility provider even though no such fee has ever been imposed during the existence of a long-term franchise agreement" under section 5-7-30, which confers upon municipalities the authority to enact certain ordinances and regulations. *S.C. Elec. & Gas Co. v. Town of Awendaw*, 596 S.E.2d 482, 486 (S.C. 2004).

How can cities intervene in Public Service Commission proceedings? The Public Service Commission allows interested parties to petition to intervene in proceedings. The agency's regulations do not impose any limitations on the types of parties who may intervene, so cities can petition to intervene following the agency's procedures. S.C. Admin. Regs. § 103-825. Cities can also participate in proceedings by submitting written comments or providing testimony at hearings.[25]

Does the state have an obligation to serve statute? Yes, South Carolina law states, "[e]very electrical utility shall furnish adequate, efficient and reasonable service." S.C. Code Ann. § 58-27-1510.

[25] *How to Participate in Utility Cases*, S.C. OFF. OF REGULATORY STAFF (2025), https://perma.cc/FFR7-9J6W.

Has the state passed enabling legislation for community choice aggregation (CCA)? No, South Carolina has not passed legislation enabling community choice aggregation.[26]

7. SECONDARY SOURCES

Municipal Ass'n of South Carolina, *Forms and Powers of Municipal Government: An Elected Official's Guide from the Municipal Association of South Carolina* (2017), https://perma.cc/V7LW-RAQN (explaining the distribution of power in different local government forms and summarizing local authority across a number of subjects).

South Carolina Ass'n of Counties, *Home Rule Handbook for County Government* (2013), https://perma.cc/KSC9-S4SD (republishing the provisions of the Home Rule Act in a manner that is easy for local governments to follow).

South Carolina Government: An Introduction (Charlie B. Tyer ed., 2002) (providing an overview of the structure and powers of South Carolina's state and local governments).

8. MISCELLANEOUS

In 2023, South Carolina's General Assembly passed the ESG Pension Protection Act. This law prevents the South Carolina Retirement System Investment Commission from considering environmental, social, and corporate governance (ESG) factors when making investment decisions.

[26] *Community Choice Aggregation*, U.S. ENV'T PROTECTION AGENCY, https://perma.cc/8GKA-3GWN.