

# NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION PENNSYLVANIA



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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 Pennsylvania. The full report, as well as other state-specific reports, are available in Columbia Law School's [Scholarship Archive](#).

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# 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

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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.<sup>1</sup> In the vast majority of states, this “commitment to local lawmaking capacity [is] codified in [state] constitutions and statutes.”<sup>2</sup> 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.<sup>3</sup> Today, all but three states provide some level of home rule—forty-one via the state's constitution and six through statute.<sup>4</sup>

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.”<sup>5</sup> When Dillon's Rule applies, local governments' ability to regulate is more restricted.

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<sup>1</sup> 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 21<sup>ST</sup> CENTURY (2020), <https://perma.cc/A3VP-NXZZ>.

<sup>2</sup> Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 2011 (2018), <https://perma.cc/3B53-S66J>.

<sup>3</sup> See NAT'L LEAGUE OF CITIES, *supra* note 1.

<sup>4</sup> See Briffault, *supra* note 2.

<sup>5</sup> See *City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).

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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.<sup>6</sup> However, even in states with expansive home rule systems, local authority is limited by the almost absolute power of state preemption.<sup>7</sup>

## 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.<sup>8</sup> 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”).<sup>9</sup> 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.<sup>10</sup> 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.”<sup>11</sup> 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:

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<sup>6</sup> See Briffault, *supra* note 2, at 2012.

<sup>7</sup> *Id.*; Diller, *supra* note 1, at 1126–27.

<sup>8</sup> See *Arizona v. United States*, 567 U.S. 387, 398–99 (2012) (explaining the principle of supremacy).

<sup>9</sup> See *Holt’s Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 153 (2011).

<sup>10</sup> See, e.g., *City of Canton v. State*, 95 Ohio St. 3d 149, 151–52 (Ohio 2002).

<sup>11</sup> 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,<sup>12</sup> ones that regulate alcohol ordinances,<sup>13</sup> and others that occupy the field of firework regulation.<sup>14</sup> Historically, preemption “consisted of a judicial determination of whether a local law conflicted with preexisting state law.”<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup> A quintessential example of this style of preemption occurred in 2016, when Alabama enacted legislation preempting local

<sup>12</sup> See, e.g., [Mayor of Ocean Springs v. Homebuilders Ass’n of Mississippi](#), 932 So. 2d 44 (Miss. 2006).

<sup>13</sup> See, e.g., [State v. Williams](#), 283 N.C. 550 (1973).

<sup>14</sup> See, e.g., [People v. Bahnke](#), 2024 WL 647931 (Mich. App. Feb. 15, 2024).

<sup>15</sup> See Briffault, *supra* note 2, at 1997.

<sup>16</sup> *Id.*

<sup>17</sup> See generally Briffault, *supra* note 2.

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minimum wage regulation just two weeks after Birmingham passed an increase.<sup>18</sup> 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.<sup>19</sup> 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.

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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.

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<sup>18</sup> 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>.

<sup>19</sup> 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)).

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PENNSYLVANIA

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

Pennsylvania cities that have adopted a home rule charter enjoy broad home rule powers that have been constitutionally granted and affirmed in statutes. Further, state law prescribes that all municipal grants of power shall be liberally construed in favor of the municipality.

As the sole first class home rule city (described below), Philadelphia has been statutorily granted more home rule authority than other classified cities, which are subject to certain statutory limitations. For all other cities, “no home rule charter may confer upon a home-rule municipality ‘power or authority’ that is ‘contrary to or in limitation or enlargement of powers granted by statutes which are applicable to a class or classes of municipalities.’” [Apt. Assn. of Metro. Pittsburgh v. City of Pittsburgh](#), 261 A.3d 1036, 1040 (Pa. 2021); *see also* [53 Pa. Cons. Stat. § 2962\(a\)](#). Despite those express limitations, “a home-rule municipality’s exercise of legislative power is presumed valid, absent a specific constitutional or statutory limitation.” *Apt. Assn. of Metro. Pittsburgh*, 261 A.3d at 1040. Courts have held that home rule authority includes the police power. *See* [Crawford v. Commonwealth](#), 326 A.3d 850, 861 (Pa. 2024); [Pennsylvania Rest. & Lodging Assn. v. City of Pittsburgh](#), 211 A.3d 810, 817 (Pa. 2019). The following constitutional and statutory provisions outline home rule delegation in the state or influence home rule.

### 1.1 Constitutional Provisions

[Pa. Const. art. IX, § 2](#): “Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum . . . A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.”

[Environmental Rights Amendment](#): “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” The Supreme Court of Pennsylvania has determined that this right creates obligations for local governments that generally cannot be preempted. *See* [Robinson Township v. Commonwealth](#), 83 A.3d 901 (Pa. 2013) (discussed below).

### 1.2 Statutory Provisions

[53 Penn. Cons. Stat. § 2961](#): “A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.”

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This section is part of the Home Rule Charter and Optional Plans Law, which gives municipalities the right and power to frame and adopt home rule charters. [53 Penn. Cons. Stat. § 2901 et seq.](#)

[First Class City Home Rule Act of 1949](#) (currently only applicable to Philadelphia): This act gives cities with populations of one million or greater the “right and power to frame, adopt and mend their own charters and to exercise the powers and authority of local self-government, and providing the procedure therefor; imposing certain restrictions, limitations, and regulations . . .”

As noted above, the home rule authority of home rule cities not classified as first-class cities (i.e., all but Philadelphia) are more limited by state law. [53 Penn. Cons. Stat. § 2962.](#)

The upshot of the grants of power to home rule cities in Pennsylvania is that they may generally govern themselves except where denied by the state Constitution, state statute, or a municipality’s home rule charter. Home rule in Pennsylvania “incorporates and reinforces municipalities’ traditional police power . . . that which ‘promote[s] the health, safety and general welfare of the people.’” [Pennsylvania Rest. & Lodging Assn.](#), 211 A.3d at 817.

## 2. HOME RULE CHARTERS

All Pennsylvania cities can adopt a home rule charter, enabling them to exercise the home rule authority guaranteed by the state Constitution and affirmed by state law. Pennsylvania categorizes political subdivisions based on population.<sup>20</sup> [53 Pa. Cons. Stat. § 101.](#) Cities with populations of one million or greater, currently just Philadelphia, are considered first class cities. *Id.* Home rule cities that are not first-class cities (i.e., every city but Philadelphia) have some limitations on their home rule authority that first-class cities do not. 53 Pa. Cons. Stat. §§ [2901\(b\)](#); [2962](#). Pittsburgh, a second-class city, has adopted a home rule charter, as have 8 counties and over 80 cities, townships, and boroughs.<sup>21</sup> Charters can only be adopted, amended, and repealed by referendum. [Pa. Const. art. IX, § 2.](#) A majority of voters must approve the adoption or repeal of a charter. 53 Pa. Const. Stat. §§ [2928](#) (adoption), [2967](#) (repeal). The procedure for charter amendments is set forth in [53 Pa. Const. Stat. §§ 2941–44.](#) The local governing body may pass an ordinance to place an amendment to the voters. *Id.* § 2942. Residents can also get proposed amendments to home rule charters on the ballot through a petition signed by 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality. *Id.* § 2943.

## 3. PREEMPTION OF LOCAL LAW

Pennsylvania recognizes state preemption of local laws in three broad forms: express, field, and conflict preemption. [Nutter v. Dougherty](#), 595 Pa. 340, 345–46 (Pa. 2007) (“In addition to . . . ‘express’ and ‘field

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<sup>20</sup> *PA Municipalities List*, PENN. DEP’T OF CMTY. & ECON. DEV., <https://perma.cc/EA9M-624H>.

<sup>21</sup> *See Home Rule in Pennsylvania*, PENN. DEP’T OF CMTY. & ECON. DEV. 102–04 (April 2023), <https://perma.cc/VL5K-XJET>.

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preemption,’ there is also a third, ‘conflict preemption[.]’”). Despite the effort Pennsylvania has taken to protect the authority of home rule municipalities, preemption principles apply when a court considers whether a given municipal exercise of power is in fact limited by an act of the General Assembly or the state constitution. *Id.* at 357. A core preemption principle is the statewide concern doctrine, which limits state preemption of local ordinances that conflict with state statutes to matters of statewide concern. [Crawford v. Commonwealth](#), 326 A.3d 850, 860–61 (Pa. 2024). For ordinances “pertaining to matters of purely local concern . . . the General Assembly cannot abrogate.” *Id.* The Supreme Court in *Crawford* explained that matters of statewide concern include those “involving the health, safety, security and general welfare of all the inhabitants of the State,” whereas “matters of purely local concern are those that affect the personnel and administration of the local government . . . and which are of no concern to citizens elsewhere.” *Id.* at 861 (citations omitted).

### 3.1 Express Preemption

Express preemption occurs when the state legislature includes explicit preemptive language in a state statute. For example, Pennsylvania has expressly preempted local governments in the area of minimum wage: “Except as set forth in subsection (b), this act shall preempt and supersede any local ordinance or rule concerning [minimum wage].” [53 Pa. Cons. Stat. § 333.114\(a\)](#).

### 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. To find field preemption, the entire statute must “reveal[] the General Assembly’s implicit intent to occupy the field completely and to permit no local enactments.” [Hoffman Min. Co. v. Zoning Hrg. Bd.](#), 612 Pa. 598, 610 (Pa. 2011). Courts have held that Pennsylvania has preempted the field of firearm regulation:

[18 Pa. Cons. Stat. § 6120](#): “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” See [Gun Owners of Am., Inc. v. City of Philadelphia](#), 311 A.3d 72, 83–84 (Pa. Commw. Ct. 2024) (affirming that Section 6120(a) “prohibit[s] any and all local regulation of firearms,” but did not apply to an ordinance regulating materials and components of “ghost” guns).

### 3.3 Conflict Preemption

Conflict preemption occurs when there is outright or actual conflict between state and local law. Conflict preemption in Pennsylvania “acts to preempt any local law that contradicts or contravenes state law.” [Nutter](#), 595 Pa. at 345–46. In *Nutter*, the Commonwealth Court of Pennsylvania determined that a local ordinance limiting campaign contributions to candidates for municipal elections did not conflict with Pennsylvania’s Election Code. *Id.* at 365.

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

In recent years, Pennsylvania has enacted limited laws that could affect local climate action. The state did prohibit municipal plastic bag bans for one year, beginning in 2019, but after local pushback and a group of cities filed suit, the moratorium was not extended, and preemption of local plastic bag bans ended in 2021.<sup>22</sup> Although the state has not passed a ban-on-gas-bans, [Senate Bill 311 of 2025](#) would preempt municipalities from restricting or prohibiting connection to a utility based on fuel type. The bill passed the Pennsylvania Senate in June 2025 and was referred to the Energy Committee in the House, where it remains.<sup>23</sup>

As discussed in more detail in Section 5, Pennsylvania state law includes a provision that allows “[a]ggravated parties” to challenge local building code ordinances within 30 days of the ordinance’s enactment. [35 Pa. Cons. Stat. § 7210.503\(j\)](#). A challenge automatically stays the enforcement of the ordinance until the Secretary of the Department of Labor and Industry issues a ruling or 45 days after the filing date of the last challenge to the ordinance, whichever occurs first. *Id.* Parties have successfully challenged a local ordinance that mandated the installation of automatic sprinkler systems in a broad range of construction projects. [Schuylkill Township v. Pennsylvania Builders Ass’n](#), 935 A.2d 575 (Pa. Commw. Ct. 2007), *aff’d*, 7 A.3d 249 (Pa. 2010). Schuylkill Township argued that the heightened requirement was a valid response to local conditions, including demographic changes on its fire department, increase in traffic congestion, and trends in residential home construction. *Id.* at 579–80. The court affirmed the Secretary of the Department of Labor and Industry’s invalidation of the ordinance, holding that the Township did not “proffer[] clear and convincing local conditions to justify a deviation from the minimum requirements of the Uniform Construction Code, which does not require automatic sprinklers in residential buildings.” *Id.* at 585.

In [Robinson Township v. Commonwealth](#), Pennsylvania’s Supreme Court determined that a statewide prohibition of “any local regulation of oil and gas operations, including via environmental legislation” violated the Pennsylvania Constitution based upon the application of Pennsylvania’s [Environmental Rights Amendment](#) (also referred to as a “[Green Amendment](#)”). 83 A.3d 901, 985, 987–88 (Pa. 2013).

In 2025, democratic State Representative Mandy Steele introduced [House Bill 502](#), which would preempt local governments from regulating the siting of energy projects, transferring the power to a politically appointed statewide board. [Senate Bill 939](#), introduced in July 2025, would require local governments to allow for the “reasonable development” of data centers by preempting certain local regulatory authority.

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<sup>22</sup> *End in Sight for PA’s Statewide Preemption on Local Single-Use Plastic Laws*, PENNENVIRONMENT (June 28, 2021), <https://perma.cc/HRS4-NMTW>.

<sup>23</sup> S.B. 311, PENN. GEN. ASSEMB., 2025 Sess., <https://perma.cc/9UW6-YJAP>.

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

Home rule cities are given relatively generous deference by courts in cases considering home rule and preemption issues. Courts have found that home rule cities “may legislate concerning municipal governance without express statutory warrant for each new ordinance.” [\*City of Philadelphia v. Schweiker\*](#), 579 Pa. 591, 605 (Pa. 2004). Additionally, when courts find “ambiguity in the scope of municipal authority or the limitations imposed thereon,” the court must resolve that ambiguity in the municipality’s favor. [\*Pennsylvania Rest. & Lodging Assn.\*](#), 211 A.3d at 817. However, courts still can and do find local laws preempted. Much of Pennsylvania’s preemption case law has concerned firearm regulation.

The cases below demonstrate how Pennsylvania courts interpret the scope of home rule authority and the state’s power to preempt local ordinances:

- [\*City of Philadelphia v. Schweiker\*](#), 858 A.2d 75 (Pa. 2004): Pennsylvania made amendments to the state’s Parking Authority Law (Act 22) that, among other things, transferred control of Philadelphia Parking Authority from the city to the state. Philadelphia challenged Act 22, arguing that it violated the city’s home rule rights under the Pennsylvania Constitution, the First-Class City Home Rule Act, and the Philadelphia Home Rule Charter. The Pennsylvania Supreme Court emphasized that a city’s home rule authority is “limited only by [its] home rule charter, the Pennsylvania Constitution, and the General Assembly.” *Id.* at 84. The court concluded that the General Assembly had the authority to limit Philadelphia’s home rule powers, upholding Act 22’s preemption of the city’s control over the Parking Authority. *Id.* at 83–88.
- [\*Clarke v. H.R. of Com.\*](#), 957 A.2d 361 (Pa. Commw. Ct. 2008), *aff’d sub nom. Clarke v. H.R. of the Com.*, 980 A.2d 34 (Pa. 2009): In 2007, Philadelphia passed seven ordinances regulating firearms, including purchase limitations and licensure requirements, despite Section 6120 of the Uniform Firearms Act, which expressly preempts municipal firearm regulation. In the litigation, Philadelphia sought declaratory judgment ordering that the ordinances take effect, arguing that firearm regulation was a local issue and that Section 6120 unconstitutionally infringed on its authority. The Commonwealth Court rejected this argument, relying on precedent that firearm regulation is a statewide concern under the General Assembly’s sole authority. The petitioners also relied on [\*Nutter v. Dougherty\*](#), 595 Pa. 340 (Pa. 2007), to argue that the ordinances should be valid because the state had not fully addressed their subject matter. The court also rejected this, distinguishing *Nutter* on the grounds that the Election Code in that case lacked the explicit preemption language present in the Firearms Act.
- [\*Robinson Township v. Penn. Pub. Util. Comm’n\*](#), 623 Pa. 564 (Pa. 2013): A group of Pennsylvania municipalities, organizations, and citizens challenged “Act 13,” a revision to Pennsylvania’s Oil and Gas Law that revised standards for permitting oil and natural gas wells and prohibited “any local regulation of oil and gas operations, including via environmental legislation.” *Id.* at 588. On appeal, the Pennsylvania Supreme Court concluded that Act 13 violated the state’s Environmental Rights Amendments, which charges the

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Commonwealth with acting as trustee of public natural resources. The court held that the clause “create[s] a right in the people to seek to enforce the obligations” of the Commonwealth as trustee and created obligations for all levels of government. *Id.* at 684.<sup>24</sup> The court also held that the General Assembly cannot “remove necessary and reasonable authority from local governments to carry out these constitutional duties” without assuming the obligations itself. *Id.* at 689.

- [Hoffman Min. Co. v. Zoning Hrg. Bd.](#), 612 Pa. 598 (Pa. 2011): In this case, the Pennsylvania Supreme Court found that the state’s Surface Mining Act did not preempt local regulation of land use through zoning ordinances affecting the location or siting of surface mining operations. It applied a conflict analysis to determine that local setback provisions for surface mining did not frustrate the “full purposes and objectives of the General Assembly as set forth in the Surface Mining Act[,]” and rejected that the Surface Mining Act field preempts the location or siting of surface mining within a municipality. *Id.* at 605.

#### 4.1 Other Relevant Cases

[Hartman v. City of Allentown](#), 880 A.2d 737 (Pa. Commw. Ct. 2005): An amendment to the City of Allentown’s human rights ordinance prohibiting discrimination on the basis of sexual orientation and gender identity was not preempted by a state statute limiting the regulation of businesses by home rule municipalities because the state statute did not specifically prohibit local anti-discrimination ordinances. Nor did the state’s Human Relations Act preempt the city’s ordinance even though the ordinance prohibited what the statute did not.

#### 4.2 Recent and Ongoing Litigation

[Crawford v. Commonwealth PFR](#), No. 19 EAP 2022 (Pa. 2022): The City of Philadelphia, alongside a gun control organization and a group of individuals, sued alleging that the state’s firearm preemption laws violate Article I, Section I of the Pennsylvania Constitution, and “thwart the City of Philadelphia from fulfilling its responsibility to ‘prevent or remove conditions which constitute a menace to public health,’” such as gun violence. [16 Pa. Cons. Stat. § 12010](#). The Commonwealth Court sustained preliminary objections, rejecting the plaintiffs’ contentions. The plaintiffs appealed to the Supreme Court of Pennsylvania. On December 20, 2024, the court [unanimously affirmed](#) the dismissal of the plaintiffs’ complaint, holding that they failed to “provide a sufficient basis for us to conclude that [a collective right to self-defense by local regulation] exist[s].”

### 5. BUILDING CODES

The Pennsylvania Construction Code Act of 1999 was enacted “to establish uniform and modern construction standards.” [Gerbracht v. Fairview, Harborcreek & Millcreek Townships UCC Appeals Bd.](#), 61 A.3d 1073, 1078 (Pa. Commw. Ct. 2013); see [35 Pa. Stat. § 7210.301 et seq.](#) Pursuant to the Act, Pennsylvania’s Department of Labor

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<sup>24</sup> For a more in-depth analysis of this case, see John C. Dernbach, *The Potential Meanings of a Constitutional Public Trust*, 45 ENV’T L. 463 (2015).

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and Industry promulgated building code regulations known as the [Uniform Construction Code](#) (UCC). Since the Act's inception, the Department has adopted by reference into the UCC various codes, in whole or in part, issued by the International Code Council (ICC), including the International Building Code (IBC) and the International Energy Conservation Code (IECC). [34 Pa. Code § 403.21](#).

Local jurisdictions may enact ordinances adopting building codes that are equal or more restrictive than the statewide code, provided they satisfy the requirements set forth in [35 Pa. Cons. Stat. § 7210.503](#). A municipality must hold at least one public hearing, place a notice in a newspaper of general circulation in advance of a public hearing, provide notice and file a copy of the proposed ordinance with the Department of Labor and Industry, and ensure the ordinance is available for public inspection. *Id.* § 7210.503(d)–(f). Additionally, parties can challenge a building code ordinance within 30 days from its enactment. *Id.* § 7210.503(j). A municipality may not enforce the ordinance until a ruling is issued by the Secretary of the Department of Labor and Industry or 45 days after the filing date of the last challenge to the ordinance, whichever occurs first. *Id.* The Department reviews any ordinance which would equal or exceed the minimum building code based on the following standards:

- (i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;
- (ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than that prescribed by the Uniform Construction Code;
- (iii) the exception would not diminish or threaten the health, safety and welfare of the public; and
- (iv) the exception would not be inconsistent with the legislative findings and purpose described in section [§ 7210.102].

*Id.* § 7210.503(j)(2).

The Pennsylvania Review and Advisory Council periodically reviews the updated ICC codes and recommends code revisions for adoption to the Governor, General Assembly, and the Department of Labor and Industry. See 35 Pa. Cons. Stat. §§ [7210.107](#); [7210.108](#). Since 2011, however, the Council can only adopt each provision of the updated code if each provision receives a two-thirds majority vote from the Council's members. [35 Pa. Cons. Stat. § 7210.108\(ix\)](#). Currently, Pennsylvania has adopted the [2018 Editions of the ICC's codes](#), including the 2018 Editions of the IBC and the IECC. See [34 Pa. Code § 403.21](#).

## 6. ELECTRIC UTILITY CONSIDERATIONS

**What is the relevant utility regulatory body in the state? Who and what does it regulate?** The Pennsylvania Public Utilities Commission (PUC) has regulatory jurisdiction over all public utilities, but does not have regulatory

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jurisdiction over rates set by municipal electric utilities furnishing service within their corporate limits. [66 Pa. Cons. Stat. § 1301](#).

**What authority, if any, do municipalities have over utilities?** The court in [PPL Electric Utilities v. City of Lancaster](#) held that state law field preempted a municipal ordinance that imposed additional controls on state-regulated public utilities for the use of the municipality’s rights-of-way. 654 Pa. 203 (Pa. 2019). In its decision, the court reaffirmed that “the General Assembly long has intended, and continues to intend, that its comprehensive statutory framework for utility regulation, as complemented by the PUC’s voluminous complementary regulations, reflect its general intention wholly to occupy the field of utility regulation at the state level.” *Id.* at 225. In the court’s view, field preemption “avoid[s] the harm that would follow from the convolution of fragmentary local regulation of public utilities.” *Id.* at 237. In this case, the court held that Lancaster’s imposition of an “annual occupancy fee” upon utilities that utilize its municipal rights-of-way was preempted by the state Public Utility Law. *Id.* at 207–08. The Court further held that state law preempted municipal authority to conduct inspections beyond basic permitting, to order relocation of utility facilities, and to enforce compliance. *Id.* 230–33. It is thus unclear whether there is any subject matter related to public utilities but not “fairly encompassed by that field” that could be regulated by municipalities. *Id.* at 230. In short, municipalities have very little, if any, regulatory authority over public utilities.

Municipally-owned electric utilities, however, do not need to acquire a license from the PUC to provide electricity service within their jurisdictional limits because they are not considered electric generation suppliers. [66 Pa. Cons. Stat. § 2809\(a\)](#); [52 Pa. Code § 54.31](#).

**Can cities enter into franchise agreements with utilities?** Yes, but cities are significantly constrained by state utility law and the Pennsylvania Supreme Court’s decision in [PPL Electric Utilities v. City of Lancaster](#). See [Valley Railways v. City of Harrisburg](#), 124 A. 644, 647 (Pa. 1924) (“When a municipal franchise ordinance is accepted and acted upon by a street railway company, it becomes an irrevocable contract.”); [66 Pa. Cons. Stat. § 507](#). Contracts between public utilities and municipalities must be filed with the PUC at least 30 days prior to their effective date. 66 Pa. Stat. § 507. Further, “the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.” *Id.*; see [White Rock Sewage Corp. v. Penn. Pub. Util. Comm’n](#), 578 A.2d 984 (Pa. Commw. Ct. 1990) (affirming the PUC’s dismissal of a public utility petition to review a contract with a municipality because the commission did not have jurisdiction to review the reasonableness of the contract).

Additionally, for legitimate utility purposes, such as the generation and transportation of electricity, a public utility has “the right to enter upon and occupy streets, highways, waters and other public ways and places. [15 Pa. Cons. Stat. § 1511\(e\)](#). Utilities must still “obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof.” *Id.* If a municipality refuses to allow a utility reasonable access to its property, even after

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the utility has adhered to all applicable procedures, for example, a utility can obtain such property through eminent domain. *Id.* § 1511(a).

As noted above, in [PPL Electric Utilities v. City of Lancaster](#), the Pennsylvania Supreme Court held that the Public Utility Law preempted Lancaster’s ordinance, which, among other things, authorized the city to impose annual maintenance fees on utilities for the occupancy and use of municipal rights-of-way and to assess penalties for violations of the ordinance’s rights-of-way provisions. 654 Pa. 203 (Pa. 2019). Local governments may still assess reasonable permitting fees from utilities. See [Waterford Township v. Penn. Pub. Util. Comm’n](#), 276 A.3d 301 (Pa. Commw. Ct. 2022).

**How can cities intervene in Public Utilities Commission proceedings?** Cities can file complaints related to violations of laws that PUC has jurisdiction to administer or any regulation or order of the PUC. [66 Pa. Cons. Stat. § 701](#). Additionally, municipalities may file petitions to intervene in PUC proceedings. [52 Pa. Code §§ 5.72–.75](#).

**Does the state have an obligation to serve statute?** Yes, under [66 Pa. Cons. Stat. § 1501](#), “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.”

**Has the state passed enabling legislation for community choice aggregation (CCA)?** No, Pennsylvania lacks enabling legislation for community choice aggregation programs.<sup>25</sup> Relatedly, [House Bill 504](#), introduced in 2025, would permit community solar programs.

## 7. SECONDARY SOURCES

Pennsylvania Department of Community & Economic Development, *Home Rule in Pennsylvania*, 12th ed. (Apr. 2023), <https://perma.cc/VL5K-XJET> (discussing the meaning of home rule for local governments in Pennsylvania, covering a number of topics, including the extent of home rule powers).

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<sup>25</sup> *Community Choice Aggregation*, U.S. ENV’T PROTECTION AGENCY, <https://perma.cc/8GKA-3GWN>.

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## 8. MISCELLANEOUS

[Article III, § 32](#) of Pennsylvania’s constitution forbids the General Assembly from passing a “local or special law” that can be provided for by general state law, including for eight specific subject matters. The purpose of this provision to ensure that the General Assembly does not enact a law that privileges or punishes particular localities. See [Harrisburg Sch. Dist. v. Hickok](#), 563 Pa. 391, 397 (Pa. 2000) (“the proscription against special laws was ‘adopted . . . to put an end to the flood of privileged legislation for particular localities and for private purposes’”).