



Florida

I. Summary of Home Rule in Florida

- Home rule cities have broad authority to legislate in any areas not preempted by superior legislative bodies.
- County governments have a considerable amount of power in Florida. Counties that have adopted charters (“charter counties”) have home rule authority and may preempt cities within their boundaries from passing municipal ordinances that conflict with county laws. A county’s charter may also explicitly allow municipal ordinances to control in situations where they conflict with county law.
- Municipalities in non-charter counties do not face county-level preemption, but may still be preempted by state legislation and the constitution.

II. Source of Municipal Home Rule Authority

In 1968 Florida amended its constitution to grant municipalities home rule authority.¹ Article VIII, § 2 gives municipalities all “governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.”²

The Florida Supreme Court has clarified that the phrase “except as otherwise provided by law” in Article VIII, § 2 subordinates municipalities to the legislature.³ That is, a city’s “inherent” power is not “absolute” or “supreme,” and the legislative power to overrule cities is “an all-pervasive power.”⁴

III. Scope of Municipal Home Rule Authority

The “broad exercise of [municipal] home rule powers” is codified in Florida Statutes, Title XII Chapter 166.⁵ Municipalities have “the power to enact legislation concerning any subject matter upon which the state Legislature may act, except” for the following:

¹ *Lake Worth Utilities Auth. v. City of Lake Worth*, 468 So. 2d 215, 216 (Fla. 1985).

² Fla. Const. art. VIII, § 2.

³ *Lake Worth Utilities*, 468 So. 2d at 217.

⁴ *Id.*

⁵ Fla. Stat. Ann. § 166.021(4) (Florida’s Appellate Court overruled portions of § 166.021(4) regarding the rights of municipal employees in favor of a recognized state constitutional right to collectively bargain. *See: City of Miami*

- (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- (b) Any subject expressly prohibited by the constitution;
- (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
- (d) Any subject preempted to a county pursuant to a county charter⁶

This municipal power is to be construed broadly.⁷

Municipalities may be preempted by the state legislature, state and federal constitutions, or the county they reside in,⁸ except that non-charter counties cannot preempt municipal ordinances, and a charter county’s charter decides whether or not a municipal ordinance will prevail against a county ordinance in the case of a conflict between the two.⁹

Non-home rule municipalities may not opt-out of compliance with a county ordinance without a valid municipal reason.¹⁰ For example, in *City of Ormond Beach v. County of Volusia*, four cities adopted legislation “exempting” themselves from a road impact fee previously adopted by the county.¹¹ The court could find no positive reason for the exemption other than to avoid paying the fee and “to force the county to consult them in planning county roads and expending funds within the county.”¹² While cities are “given broad powers to act for ‘municipal purposes’” the court could find no apparent motivation “relatin[g] to the conduct of municipal government , exercise of a municipal function, or provision of a municipal service” and ruled the cities had to pay the fee.¹³

IV. County Home Rule

Article 8, § 1 of the Florida Constitution allows counties to adopt their own charters.¹⁴ Charter counties have broad home-rule authority, bounded only by the constitution and any general or special laws passed by the state.¹⁵ A county may adopt, amend, or repeal its charter by a vote of the county electors via special election.¹⁶

Beach v. Bd. of Trustees of City Pension Fund for Firefighters and Police Officers in City of Miami Beach, 91 So. 3d 237 (Fla. 3d Dist. App. 2012)).

⁶ Fla. Stat. Ann. § 166.021(3).

⁷ Fla. Stat. Ann. § 166.02(4)

⁸ *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105, 106 (Fla. 1991).

⁹ *Fillingim v. State*, 446 So. 2d 1099, 1102 (Fla. 1st Dist. App. 1984).

¹⁰ *City of Ormond Beach v. County of Volusia*, 535 So. 2d 302 (Fla. 5th Dist. App. 1988).

¹¹ *Id.* at 303.

¹² *Id.* at 305.

¹³ *Id.* at 304.

¹⁴ Fla. Const. art. VIII, § 1.

¹⁵ *Fillingim*, 446 So. 2d at 1102 (Fla. 1st Dist. App. 1984).

¹⁶ Fla. Const. art. VIII, § 1(c).

A county’s charter will specify whether a municipal ordinance or a county ordinance will control when conflict occurs.¹⁷ Perhaps surprisingly, counties frequently draft charter ordinances giving preemption power to municipalities.¹⁸ Non-charter counties still have broad home rule authority, although they are preempted by the laws of municipalities within their county.¹⁹

Counties may not tax municipalities for services that exclusively benefit unincorporated areas of the county.²⁰ State legislation prohibits county revenues from being “used to fund any service or project provided by the county when no real and substantial benefit accrues to the property or residents within a municipality or municipalities.”²¹

The Florida constitution makes special reference to Dade County in a few provisions, potentially preserving its immunity to special laws,²² and allowing it “to exercise all the powers conferred now or hereafter by general law upon municipalities.”²³

V. Preemption

Florida Courts recognize both express and implied preemption. Express preemption “requires a specific legislative statement—it cannot be implied or inferred—and the preemption of a field is accomplished by clear language.”²⁴

When it comes to implied preemption, “a subject is preempted by a senior legislative body from the action by a junior legislative body if the senior legislative body’s scheme of regulation of the subject is pervasive and if further regulation of the subject by the junior legislative body would present a danger of conflict with that pervasive regulatory scheme.”²⁵ The Florida Supreme Court has further clarified that “preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature.”²⁶ The test for implied preemption consists of looking “to the provisions of the whole law, and to its object and policy” in addition to “[t]he nature of the

¹⁷ Fla. Const. art. VIII, § 1(g).

¹⁸ David G. Tucker, *A Primer on Counties and Municipalities, Part 2*, 81-APR Fla. B.J. 70 (2007) (“Frequently, charter provisions will echo the constitutional provisions as to noncharter counties, namely that municipal ordinances prevail in the event of conflict within the municipality.”).

¹⁹ *Fillingim*, 446 So. 2d at 1102.

²⁰ Fla. Const. art. VIII, § 1(h).

²¹ Fla. Stat. Ann. § 125.01(7).

²² Fla. Const. art. VIII, § 6(e);(f).

²³ *Id.* § 6(f).

²⁴ *D’Agastino v. City of Miami*, 220 So. 3d 410, 420 (Fla. 2017).

²⁵ *Trib. Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984) (quoting dissenting opinion in *Trib. Co. v. Cannella*, 438 So. 2d 516, 525 (Fla. 2d Dist. App. 1983), decision quashed, 458 So. 2d 1075 (Fla. 1984)).

²⁶ *D’Agastino*, 220 So.3d at 421.

power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute.”²⁷

Where the legislature has not preempted the field through implied preemption, “concurrent state and municipal regulation is permitted” as long as the local law does not conflict with state law.²⁸ A local law will be preempted by conflict preemption “where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.”²⁹ In other words, “[t]he test for conflict is whether in order to comply with one provision, a violation of the other is required.”³⁰ Additional local requirements do not necessarily conflict with state law.³¹

VI. Local Legislative Immunity

Forty-three state constitutions have some sort of “speech or debate” clause, which essentially provides *absolute immunity* to state legislators for their legislative acts. Federal legislators enjoy the same immunity. These constitutional provisions ensure that legislators cannot be held liable for their actual speech or debate on the legislative floor, nor for other legislative acts such as voting and participating in committee meetings.

Unfortunately, this legislative immunity generally does not explicitly extend to local legislators. As a result, states can punish local legislators for the exact kinds of actions for which state officials themselves are immune from liability.

The Florida Constitution does not contain a speech or debate clause. In 2019, a Florida district court found that local legislators enjoy legislative immunity that derives from the separation of powers clause of the Florida Constitution.³²

VII. Other Relevant Considerations

Single Subject Rule:

Article III, § 6 of the Florida Constitution requires all laws to contain only one subject.³³

²⁷ *Id.* at 421 (internal quotations and citation omitted).

²⁸ *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013).

²⁹ *Id.* (internal quotations and citation omitted).

³⁰ *Phantom of Brevard, Inc. v. Brevard Cty.*, 3 So. 3d 309, 314 (Fla. 2008) (internal quotations and citation omitted).

³¹ *Id.* (finding that the local additional requirement on businesses selling fireworks did not conflict with state law).

³² *City of Weston v. DeSantis*, No. 2018 CA 0699, 3–4 (Fla. Cir. Ct. July 29, 2019).

³³ Fla. Const. art. III, § 6.

Special & Local Laws:

The Florida Constitution and the legislature distinguish between special laws, local laws, and general laws. An impermissible special law is one that applies to a particular person or thing where the classification scheme used does not bear a reasonable relationship to the purpose of the statute.³⁴ Similarly, an impermissible local law is one that uses a classification scheme that does not bear a reasonable relationship to the purpose of the statute to limit the application of the law to a particular territory.³⁵

Special laws must either be approved by general referendum or undergo specific notice requirements.³⁶ The Florida Constitution prohibits special or laws pertaining to 21 enumerated categories of legislation and requires general laws on all other subjects to classify political subdivisions in a manner “reasonably related to the subject of the law.”³⁷

Unfunded Mandates:

The Florida Constitution was amended in 1990 to prevent the legislature from passing unfunded mandates onto counties or municipalities.³⁸ The legislature is not allowed to compel a locality to expend funds unless the legislature determines the “law fulfills an important state interest” *and* the legislature appropriates enough funds at the state level or creates a new funding source for the cities or counties to tax that was previously unavailable prior to February 1, 1989.³⁹ Federal requirements or costs related to federal eligibility do not have the same funding requirements, nor do laws that raise costs evenly for persons similarly situated across the state.⁴⁰

The legislature is also unable to remove or reduce a county or municipality’s ability to raise revenues, as such authority existed on February 1, 1989, without a two-third vote of the membership of each house.⁴¹

Private Laws:

An additional consideration in assessing whether a local government has the authority to adopt a particular policy is whether state law recognizes a “private law exception.” Private law can generally be defined as law that “establishes legal rights and duties between and among private entities.”⁴² Some states, either by constitutional provision, statute, or case law, prohibit municipalities from regulating private law. This can take the form of a “subject-based” exception

³⁴ *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So.3d 1137, 1142–43 (Fla. 2014).

³⁵ *Id.*

³⁶ Fla. Const. art. III, § 10.

³⁷ Fla. Const. art. III, § 11.

³⁸ Fla. Const. art. VII, § 18.

³⁹ Fla. Const. art. VII, § 18(a).

⁴⁰ *Id.*

⁴¹ Fla. Const. art. VII, § 18(b).

⁴² Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).

prohibiting any regulation of “private law” or a narrower exception prohibiting private rights of action.⁴³

Florida does not prevent municipalities from passing “private” legislation, nor does it prohibit them from creating private rights of action.⁴⁴ As an example, Miami-Dade County has created a private right of action allowing cable companies to sue landlords who prevent them from constructing or repairing cable lines.⁴⁵

Emergency Powers:

The Florida Legislature has granted the Governor and the Division of Emergency Management broad powers for managing emergency situations.⁴⁶ The legislature also extended limited emergency powers to municipalities and other political subdivisions.⁴⁷ In part, local emergency powers include the authority to “appropriate and expend funds” and “provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency.”⁴⁸

Political subdivisions are able to declare a local state of emergency in the event an emergency affects “only one subdivision.”⁴⁹ Local states of emergency are limited to seven days, although they can be extended as necessary in seven-day increments.⁵⁰ Local emergency declarations give political subdivisions “the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to” (among other things)... the “performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.”⁵¹

In addition, the Florida governor has the power during emergencies “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.”⁵² There is limited case law defining the contours of this power or what statutes are considered a “regulatory statute prescribing the procedures for conduct of state business.” A single on point case from the appellate court indicates this power allows the Governor to suspend a statute governing public procurement.⁵³

⁴³ See Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).

⁴⁴ Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109, 1133 (2012).

⁴⁵ Miami-Dade Cnty., Fla., Mun. Code § 8AA-28.1.

⁴⁶ Fla. Stat. Ann. § 252.31 *et seq.*

⁴⁷ Fla. Stat. Ann. § 252.38.

⁴⁸ Fla. Stat. Ann. § 252.38(3)(a)(1).

⁴⁹ Fla. Stat. Ann. § 252.38(3)(a)(5).

⁵⁰ *Id.*

⁵¹ Fla. Stat. Ann. § 252.38(3)(a)(5).

⁵² Fla. Stat. Ann. § 252.36(5)(a).

⁵³ *Blu-Med Response Sys. v. Florida*, 993 So.2d 150 (Fla. Dist. Ct. App. 2008).