



## PENNSYLVANIA

### I. Summary of Home Rule in Pennsylvania<sup>1</sup>

- Pennsylvania municipalities enjoy broad home rule powers stemming from the constitution and affirmed by statute. Pennsylvania courts have generally embraced the doctrine that ambiguities of home rule municipal power are to be resolved in favor of the municipality.
- Pennsylvania courts recognize express, conflict, and field preemption of municipal ordinances.
- Pennsylvania’s constitutional Environmental Rights Amendment has been interpreted as conferring some non-preemptable powers upon municipalities to fulfill their obligations under the amendment.

### II. Source of Municipal Home Rule Authority

Pa Const. art. IX, § 2 states that “[m]unicipalities shall have the right and power to frame and adopt home rule charters . . . 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.

The Pennsylvania General Assembly (“Legislature”) has stated that “[a]ll grants of municipal power . . . shall be liberally construed in favor of the municipality.”<sup>2</sup>

### III. Categories of Home Rule Municipalities & The Scope of Their Power

Pennsylvania recognizes five kinds of local government: counties, cities, boroughs, incorporated towns, and townships.<sup>3</sup> These kinds of municipalities are further divided into nine classes of counties, four classes of cities, and two classes of townships.<sup>4</sup> The purpose of those sub-classifications is to allow the Legislature to enact different regulations for cities of different populations.<sup>5</sup> Any of these kinds of local government can adopt a home rule charter, with the

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<sup>1</sup> The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

<sup>2</sup> 53 Pa. Cons. Stat. § 2961.

<sup>3</sup> Pa. Const. art. IX, § 14.

<sup>4</sup> *The Pennsylvania Manual* 6-3, Pa. Dep’t of General Services, available at <https://www.dgs.pa.gov/Documents/PA-Manual-v123.pdf> (2017).

<sup>5</sup> *Schneider v. City of Scranton*, 330 Pa. 507, 512 (1938).

caveat that home rule cities that do not fall into the category of first class cities (and Philadelphia is the only first class city in Pennsylvania) have certain limitations on their home rule authority.<sup>6</sup>

Pennsylvania courts have affirmed the Legislature’s grant of expansive powers to home rule municipalities, noting that they have all powers not denied to them by the Constitution, Legislature or their home rule charters, including the classic “police power” to protect the health, safety, and welfare of residents.<sup>7</sup> Non-first class home rule municipalities are prohibited from, among other things:

- engaging in proprietary or public business, unless otherwise authorized to do so;
- regulating businesses and employers, unless otherwise authorized to do so;
- regulating the transfer, ownership, transportation, or possession of firearms.<sup>8</sup>

*a. The Business Exclusion Rule*

Regarding the prohibition on regulating businesses and employers located at 53 Pa. Cons. Stat. § 2962, this potentially broad restriction has been limited by the courts. The Pennsylvania Supreme Court held in 2019 in *Pennsylvania Restaurant and Lodging Association* that, since the provision allows municipal regulation of businesses when that authority is “expressly provided by statutes... to all municipalities or to a class of municipalities,” home rule municipalities can look to *any* grant of power given to *any* class of municipality as a basis of their authority enact a business regulation.<sup>9</sup> This reasoning led to the court upholding Pittsburgh’s paid sick leave ordinance as a public health measure authorized by two state statutes, the Second-Class City Code,<sup>10</sup> and the Disease Prevention and Control Law (DPCL).<sup>11</sup> However, in the same decision, the court struck down a set of disaster preparedness requirements as violating the same Business Exclusion Rule. In that case, the statutes the city pointed to as granting it authority to enact the ordinance were either too limited (a statute authorizing cities to enact fire prevention regulations, but did not authorize broader safety requirements) or too broad (a statute granting municipalities general “police power” to protect the general health of residents) to constitute an “express” grant of power to allow the city to impose a business regulation.<sup>12</sup>

*b. The Private Law Exception*

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

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<sup>6</sup> 53 Pa.C.S.A. §§ 2901; 2962.

<sup>7</sup> *Pa. Rest. & Lodging Ass’n. v. City of Pittsburgh*, 211 A.3d 810, 816–17 (Pa. 2019).

<sup>8</sup> 53 Pa. Cons. Stat. § 2962.

<sup>9</sup> *Pa. Rest & Lodging Ass’n*, 211 A.3d at 824–25.

<sup>10</sup> The Court specifically rejected the notion that Pittsburgh’s adoption of a home rule charter precluded it from exercising powers conferred by the state to second class cities in the SCCC. *Id.* at 825.

<sup>11</sup> *Id.* at 832 (noting that ambiguity over whether the DPCL conferred authority to Pittsburgh to enact a paid sick leave ordinance should be resolved in favor of municipal power since paid sick leave directly deals with public health, which “lies squarely within both the City’s traditional police powers and the ambit of the DCPL”).

<sup>12</sup> *Id.* at 832–35.

entities.”<sup>13</sup> 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 prohibiting any regulation of “private law” or a narrower exception prohibiting private rights of action.<sup>14</sup> Pennsylvania law appears to generally be ambiguous as to whether localities may create a private right of action,<sup>15</sup> but at least one federal district court has found that a Township did not have the requisite authority under the powers granted to Second Class Townships to “create a cause of action for its residents to enforce an ordinance written on their behalf.”<sup>16</sup>

#### **IV. Preemption**

Pennsylvania recognizes three forms of preemption: express, field, and conflict.<sup>17</sup>

##### *a. Express Preemption*

Express preemption occurs when the Legislature specifically declares that it preempts local legislative authority.<sup>18</sup>

##### *b. Field Preemption*

Field preemption occurs when the Legislature is silent on the issue of preemption but “where analysis of the entire statute reveals the General Assembly’s implicit intent to occupy the field completely and to permit no local enactments.”<sup>19</sup> Field preemption does not occur whenever the Legislature enacts any law in a particular field.<sup>20</sup> Rather, it requires clear evidence that the Legislature intended to preempt.<sup>21</sup> Pennsylvania courts are disinclined to find field preemption; as of 2011, the state Supreme Court has deemed local regulation completely preempted in only three fields: alcoholic beverages, anthracite strip mining, and banking.<sup>22</sup>

##### *c. Conflict Preemption*

Conflict preemption occurs when a municipal ordinance is in irreconcilable conflict with a state statute, or when “simultaneous compliance with both the local ordinance and the state statute is impossible” or a local ordinance “stands as an obstacle to the execution of the full purposes and objectives of the General Assembly.”<sup>23</sup> Pennsylvania courts generally agree that municipal regulations more restrictive than state regulations are not in conflict with the state provisions

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<sup>13</sup> Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).

<sup>14</sup> See Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).

<sup>15</sup> *Id.* at 1132, n. 111.

<sup>16</sup> *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706, 719 (W.D. Pa. 2015).

<sup>17</sup> *Holt’s Cigar Co. v. City of Philadelphia*, 10 A.3d 902, 907 (Pa. 2011).

<sup>18</sup> *Id.*

<sup>19</sup> *Hoffman Min. Co., Inc. v. Zoning Hearing Bd. of Adams Tp.*, 32 A.3d 587, 594 (Pa. 2011).

<sup>20</sup> *Id.* at 593.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Holt’s Cigar Co.*, 10 A.3d at 918.

because any other result would severely restrict municipal autonomy with respect to legislative power.<sup>24</sup>

## V. County Home Rule

While counties may opt for home rule<sup>25</sup>—as seven of Pennsylvania’s 67 counties have—this primarily affects their form of government rather than their powers.<sup>26</sup> Additionally, home rule counties may not exercise powers within a municipality in the county’s jurisdiction if that power is already being exercised by that municipality.<sup>27</sup>

## VI. Local Legislative Immunity

Pennsylvania’s Constitution provides that “[t]he members of the General Assembly shall . . . for any speech or debate in either House they shall not be questioned in any other place.”<sup>28</sup> This provision ensures that state 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. Pennsylvania courts have extended legislative immunity to local elected officials.<sup>29</sup>

## VII. Substantive and Procedural Constraints on State Legislation

### a. *The Environmental Rights Amendment*

Article I, Section 27 of the Pennsylvania Constitution, also known as the Environmental Rights Amendment (ERA), states:

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 Pennsylvania Supreme Court has ruled that the ERA “places a limitation on the state’s power to act contrary to [the] right [to clean air, pure water, and the preservation of the natural,

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<sup>24</sup> *Hoffman Min. Co., Inc.*, 32 A.3d at 593.

<sup>25</sup> See 16 Pa.S. § 6107-C.

<sup>26</sup> Pa. Const. art. IX, § 4 generally establishes the form of county government, but by adopting a home rule charter, a county may alter that default structure.

<sup>27</sup> 53 Pa. Cons. Stat. § 2963.

<sup>28</sup> Penn. Const. art. 2, § 15.

<sup>29</sup> See, e.g., *DeSimone, Inc. v. Philadelphia Auth. for Indus. Dev.*, No. 00207 NOV.TERM 2001, 2003 WL 21390632, at \*6 (Pa. Com. Pl. June 10, 2003) (internal quotations and citation omitted); *DeSimone, Inc. v. City of Philadelphia*, No. 000207 NOV.TERM 2001, 2002 WL 1023439, at \*7 (Pa. Com. Pl. May 7, 2002) (“[I]t is clear that as a City Councilman, defendant O’Neill is entitled to legislative immunity so long as his actions fall within the sphere of legitimate legislative activity.”).

scenic, historic and esthetic values of the environment.”<sup>30</sup> The court noted that, while this right to a clean environment “may be amendable to regulation, any laws that unreasonably impair the right are unconstitutional.”<sup>31</sup>

The question of what constitutes an “unreasonable” abrogation of the rights protected under the ERA is not entirely clear, but an earlier plurality decision by the Court did strike down a state law preempting local regulation of oil and gas operation as violating the ERA.<sup>32</sup> In this case, a plurality of the Court noted that the ERA places obligations on municipalities to “‘conserve and maintain’ the public natural resources . . . ‘for the benefit of all the people,’” and that the Legislature cannot command municipalities to ignore that Constitutional obligation.<sup>33</sup> Further, while the Legislature can restrain a municipality from exercising any powers granted to it by statute, the Legislature cannot strip a municipality, or other political sub-division, of the “implicitly necessary authority” for that subdivision to honor its constitutional obligations.<sup>34</sup> Thus, any legislative attempt to force municipalities to abrogate that obligation could be found to violate the ERA.

Although the plurality decision in *Robinson Township* on the constitutionality of preemption laws that affect local regulatory authority over environmental matters may not technically be binding on lower courts, the reasoning in the case was later adopted by a majority of the Court in *Pennsylvania Environmental Defense Foundation*, indicating that the Pennsylvania Supreme Court favors such a broad reading of the ERA. Subsequent litigation has shown that the state may still be able to exercise certain preemptive powers, however.<sup>35</sup> Additional litigation will help clarify the meaning and scope of the ERA.

#### *b. Unfunded Mandates*

Pennsylvania does not prohibit the Legislature from imposing unfunded mandates on municipalities. Notably, a 2010 Senate resolution established a task force “to study unfunded and underfunded state statutory mandates that affect Pennsylvania’s municipalities—its counties, cities, boroughs, town, and townships.”<sup>36</sup>

#### *c. Single-Subject Requirement*

The Pennsylvania Constitution generally requires all bills passed by the General Assembly to contain only a single subject.<sup>37</sup> However, there are exceptions for general appropriation bills and

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<sup>30</sup> *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017).

<sup>31</sup> *Id.*

<sup>32</sup> *Robinson Twnshp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).

<sup>33</sup> *Id.* at 978.

<sup>34</sup> *Id.* at 977 (citing *Commonwealth v. Tate*, 274 A.2d 193, 196–97 (1971)).

<sup>35</sup> See, e.g., *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 690 (Pa. Commw. Ct.), *appeal denied*, 648 Pa. 281, 192 A.3d 1106 (2018); *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706, 718 (W.D. Pa. 2015).

<sup>36</sup> Local Government Commission, General Assembly of the Commonwealth of Pennsylvania, *Study of Statutory Mandates Places on Counties and Municipalities* (Oct. 9, 2012), [http://www.lgc.state.pa.us/download.cfm?file=/Reports/SR323/SR\\_323\\_of\\_2010\\_Report.pdf](http://www.lgc.state.pa.us/download.cfm?file=/Reports/SR323/SR_323_of_2010_Report.pdf).

<sup>37</sup> Pa. Const. art. 3, § 3.

bills codifying or compiling the law.<sup>38</sup> The requirements of a general appropriation bill are contained in Article 3, Section 11, which states that;

The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.<sup>39</sup>

Courts have held that a general appropriation bill, while exempt from the single-subject requirements of Article 3, Section 3, may only contain appropriations for the five enumerated subjects listed in Article 3, Section 11.<sup>40</sup> The Pennsylvania Supreme Court has clarified that a provision does not need to be a mere “schedule of amounts appropriated and the objects of the expenditure” in order to qualify for the general appropriations exception, but can be properly included in a general appropriation bill if it is incidental to a legitimate purpose of the appropriation.<sup>41</sup> In *Hospital & Healthsystem Ass'n*, the Pennsylvania Supreme Court adopted a three-part test for determining if a provision qualifies for the Section 11 exception, which requires that the provision (1) be germane to the appropriation; (2) not be in conflict with existing legislation; and (3) not extend beyond the life of the appropriation bill itself.<sup>42</sup>

#### *d. Prohibition on Local or Special Laws*

Pennsylvania’s Constitution forbids the Legislature from enacting a “local or special” law that can be provided for by general law.<sup>43</sup> Further, the Legislature may not enact a local or special law on any of the following topics:

- regulating municipal affairs;
- vacating roads, plots, or streets;
- altering the location of county seats or county lines;
- establishing new municipalities;
- remitting fines, penalties, and forfeitures;
- exempting properties from taxation;
- regulating businesses; or
- creating or altering corporations.<sup>44</sup>

The purpose of this prohibition is to prevent the Legislature from enacting laws that privilege or punish particular localities.<sup>45</sup> Thus, an impermissible “special law” is one that creates

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<sup>38</sup> *Id.*

<sup>39</sup> Pa. Const. art. 3, § 11.

<sup>40</sup> *Common Cause of Pa. v. Pennsylvania*, 668 A.2d 190, 197 (Pa. Commw. Ct. 1995), *aff'd*, 544 Pa. 512, 677 A.2d 1206 (Pa. 1996).

<sup>41</sup> *Hospital & Healthsystem Ass'n of Pennsylvania v. Dep't of Public Welfare*, 888 A.2d 601, 609 (Pa. 2005).

<sup>42</sup> *Id.* at 610.

<sup>43</sup> Pa. Const. art. III, § 32.

<sup>44</sup> *Id.*

<sup>45</sup> *Harrisburg School Dist. v. Hickok*, 761 A.2d 1132, 1135–36 (Pa. 2000).

classifications that are artificial or irrelevant, rather than based on real differences between the classified subjects.<sup>46</sup>

### **VIII. Local Emergency Powers**

Pennsylvania's Emergency Management Services Code lays out various powers and duties for the governor, state agencies, and local governments to address emergencies.<sup>47</sup>

The governing body of a municipality may declare a local disaster emergency, or can authorize the mayor or other chief executive officer of the municipality to do so.<sup>48</sup> During a local emergency, or when a state-wide emergency has been declared by the Governor, municipalities may temporarily suspend formalities and procedures pertaining to public works, enter into contracts, incur obligations, employ temporary workers, rent equipment, purchase supplies and materials, levy taxes, and spend public funds.<sup>49</sup>

During an emergency, the Governor may, among other things, declare a disaster emergency; enact executive orders, which have the force of law; activate the disaster response plans of the State or localities; and suspend statutes "prescribing the procedures for the conduct of Commonwealth business" if strict compliance would "in any way prevent, hinder or delay necessary action in coping with the emergency."<sup>50</sup>

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<sup>46</sup> *Id.* at 1136.

<sup>47</sup> 35 Pa. C.S.A. § 7101.

<sup>48</sup> 35 Pa. C.S.A. § 7501(b).

<sup>49</sup> 35 Pa. C.S.A. § 7501(d).

<sup>50</sup> 35 Pa. C.S.A. § 7301.