

Overview of Local Authority & Preemption for Advocates in Mississippi

This document provides a summary of local authority and preemption in Mississippi that can inform advocates' efforts to adopt new policies at the city or county level. State preemption laws limit or prohibit local policymaking in different areas. In addition to an overview of how local authority operates in Mississippi, this document provides examples of important policies that are preempted (i.e., prohibited), emergency powers that may be available to local officials, examples of key COVID-19 policies that local governments in Mississippi appear to have the power to implement, and ways in which advocates may expand their local authority through repeal of existing preemption and/or voter-initiated ballot measures.¹

I. Summary of Home Rule in Mississippi

- Home rule in Mississippi is a statutory affair, meaning that municipalities do not have a constitutional guarantee of home rule.
- Under the state's Home Rule statute, which essentially abrogated Dillon's Rule in the state, cities have broad authority to legislate regarding their municipal affairs and exercise the traditional police power to protect the health, welfare, and safety of their residents.
- Counties can generally exercise the same broad powers as cities,² except that county ordinances do not apply in a municipality located within the county if the municipality has adopted another regulation on the same general topic.³
- Municipalities do not have immunity from state preemptive legislation, and state legislation does not have to be general or uniform.
- Mississippi courts recognize two kinds of preemption: express and conflict. Mississippi courts do not appear to recognize field preemption.

II. What Policies Are Preempted in Mississippi?

¹ 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.

² Miss. Code Ann. § 19-3-40(1); *see also* Miss. Op. Gen. 2008-00355, 2008 WL 3166167 (July 18, 2008) (describing Miss. Code Ann. § 19-3-40 as granting counties police powers).

³ Miss. Code Ann. § 19-3-40(1).

The following are examples of subject areas where the state has expressly preempted local action:

- Private-sector minimum wage & paid and unpaid leave⁴
- Private-sector ban-the-box and salary history inquiry bans⁵
- Project labor agreements⁶
- Contractor competency requirements⁷
- Transportation network companies⁸
- Sanctuary city policies⁹
- Rent control for private residential properties¹⁰
- Firearms or their components¹¹
- Food labeling requirements; consumer incentive items; addressing food-based health disparities (i.e. combating food deserts); and regulating foods that are approved by the USDA or other federal or state agencies (e.g. banning trans fats or regulating soda serving sizes)¹²
- Use of traffic or speed cameras¹³
- Plastic bags and auxiliary containers¹⁴

III. Emergency Powers in Mississippi

- ***Gubernatorial Emergency Powers***
 - The Mississippi Legislature has granted the Governor broad powers to address man-made, technological, and natural disasters.¹⁵ Among other things, the

⁴ Miss. Code Ann. § 17-1-51(1).

⁵ Miss. Code Ann. § 17-25-33(1).

⁶ Miss. Code Ann. § 71-15-9.

⁷ Miss. Code Ann. § 17-25-5.

⁸ Miss. Code Ann. § 77-8-37.

⁹ Miss. Code Ann. § 25-1-119.

¹⁰ Miss. Code Ann. § 21-17-5(2)(h).

¹¹ Miss. Code Ann. § 45-9-51.

¹² Miss. Code Ann. § 75-29-901.

¹³ Miss. Code Ann. § 17-25-19.

¹⁴ S.B. 2570 (Miss. 2018).

¹⁵ Miss. Code Ann. § 33-15-11(a).

Governor can “make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of [the Emergency Powers Statute].”¹⁶ The Governor may also, in the event of a natural disaster, “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with a disaster or emergency.”¹⁷

- Given that authority to suspend state laws during an emergency, advocates could ask the Governor to suspend the state’s rent control, minimum wage, and paid sick leave preemption laws to allow cities that are more impacted by COVID-19 to provide relief to their residents.
- More broadly, the Governor may “perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population” when dealing with a disaster or emergency that is “beyond local control.”¹⁸
- The Governor has used these emergency powers to, among other things, temporarily suspend evictions within the state of Mississippi.¹⁹ As of April 1, 2020, the Governor has allowed municipalities to enact regulations that are stricter than those laid out in his various executive orders, except to the extent that they impose restrictions on essential businesses that would prevent them from providing essential services.²⁰
- **Municipal Emergency Powers**
 - Municipalities and counties during emergencies have the authority to “provide for the health and safety of persons and property, including emergency assistance to the victims of any . . . natural disaster.”²¹ They may also, subject to the order of the mayor or Governor, “control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property.”²²

IV. Examples of Key COVID-19 Policies That Cities and Counties May Have Authority to Adopt

- Public-sector minimum wage and paid sick leave

¹⁶ Miss. Code Ann. § 33-15-11(b)(1).

¹⁷ Miss. Code Ann. § 33-15-11(c)(1).

¹⁸ Miss. Code Ann. § 33-15-11(c)(4).

¹⁹ Miss. E.O. 1466 (Apr. 1, 2020).

²⁰ *Id.*

²¹ Miss. Code Ann. § 33-15-17(c)(1).

²² Miss. Code Ann. § 33-14-17(c)(7).

- Minimum wage and paid sick leave for *independent contractors* (with a possible exception for TNC contractors)
- Tenant protection policies other than rent control, such as a rent freeze, limit on late payment fees, or requiring a grace period before a landlord can commence an eviction proceeding (note: though these policies are not expressly preempted, they may be found to conflict with state landlord-tenant law or face constitutional challenges)
- Worker health and safety ordinance to protect workers from contracting COVID-19

For additional support and analysis on local authority to enact these or other policies, please contact LSSC.

V. Repealing Preemption in Mississippi – Examples & Rules for Bill Drafting

- During a time of crisis—and beyond—there may be opportunities to repeal state preemption of local authority. In the last few years, several states have introduced bills that would repeal preemption, and in 2019 Colorado became the first state to legislatively repeal its minimum wage preemption law.
- Some procedural considerations for repeal include:
 - **Clear Title Rule:** Any effort to repeal existing preemption in Mississippi should account for the state’s “clear title rule.” The Mississippi Constitution requires all bills to have a title, which “ought to indicate clearly the subject matter or matters of the proposed legislation.”²³ The state supreme court has held that this rule directs, but does not mandate, that the legislature clearly title all bills.²⁴ That is, it is up to the legislature to decide whether a bill’s title is sufficiently clear.²⁵ Advocates should consult with an attorney familiar with bill drafting in Mississippi provide advice on the best approach in order to comply with the clear title rule.
 - **Repealing & Granting Affirmative Authority:** Nothing in state law appears to prohibit a bill that repeals existing preemption legislation from also granting affirmative authority to localities to enact policies on that issue, but advocates should consult with an attorney or legislative sponsor who can consult with legislative staff on bill drafting practices in Mississippi.

²³ Miss. Const. art. IV, § 71.

²⁴ *Matthews v. State*, 126 So.2d 245, 247 (Miss. 1961).

²⁵ *Everett v. Williamson*, 143 So. 690, 692 (Miss. 1932).

- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)²⁶ from the Local Solutions Support Center and the National Employment Law Project.

VI. Is There a Ballot Measure Process in Mississippi?

- Mississippi residents can indirectly initiate amendments to the state constitution.²⁷ Once an initiative to amend the constitution gains enough signatures, it may be adopted by the legislature by majority vote.²⁸ If the legislature does not adopt the initiative or amends an initiative, the initiative will go to the ballot.²⁹
- Mississippi residents *cannot* adopt new statewide statutes through ballot measures proposed by residents.
- Under Mississippi law, most³⁰ municipal charters can be amended by ballot initiative.³¹

VII. What Organizations Are Fighting Preemption and Supporting Local Democracy?

Advocates interested in working with other organizations in Mississippi focused on protecting local democracy and strengthening local authority can email LSSC@supportdemocracy.org.

For additional support, please contact The Local Solutions Support Center at LSSC@supportdemocracy.org.

²⁶ Laura Huizar, Local Solutions Support Center and National Employment Law Project, *Repealing Preemption: Defending Local Democracy Now Includes A Growing Focus on Recovering Lost Local Authority* (Dec. 2019), <https://www.abetterbalance.org/wp-content/uploads/2020/01/White-Paper-Repealing-Preemption-FINAL.pdf>.

²⁷ Miss. Const. art. XV, § 273(3).

²⁸ Miss. Const. art. XV, § 273(6).

²⁹ Miss. Const. art. XV, § 273(6)-(7).

³⁰ For municipalities with “special charters,” if the charter has a conflicting provision regarding the availability of ballot initiatives, the charter provision will prevail. Miss. Code Ann. § 21-17-13. Very few municipalities in Mississippi still have special (or private) charters. Joseph “Dallas” Breen, Stennis Institute of Government, *A Primer on Forms of Municipal Government in Mississippi & How to Change Them* 12, <https://sig.msstate.edu/publications/formsofgovernment.pdf>.

³¹ Miss. Code Ann. § 21-17-11.