



## Overview of Local Authority & Preemption for Advocates in North Carolina

*This document provides a summary of local authority and preemption in North Carolina 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 North Carolina, this document provides examples of important policies that are preempted (i.e., prohibited), emergency powers that may be available to local officials, and ways in which advocates may expand their local authority through repeal of existing preemption and/or voter-initiated ballot measures.<sup>1</sup>*

### I. Summary of Home Rule in North Carolina

- North Carolina is a weak home rule state: cities and counties have broad police powers and limited authority to impose taxes. There are few constraints on the state's ability to preempt restructure local governments.
- North Carolina courts recognize express, conflict, and field preemption.
- All incorporated cities and counties in North Carolina automatically enjoy statutory authority to locally select their form of government, management options, and personnel systems with no opt-in requirement.

### II. What Policies Are Preempted in North Carolina?

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

- Regulation of private employment practices or public accommodations (provision sunsets Dec. 1, 2020)<sup>2</sup>
- Regulation of access to multiple occupancy restrooms<sup>3</sup>
- Contractor minimum wage & employee benefits<sup>4</sup>

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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> N.C. Sess. Laws 2017-4, § 2.

<sup>3</sup> N.C. Sess. Laws 2017-4, § 1.

<sup>4</sup> N.C. Gen. Stat. Ann. § 153A-449 (counties); N.C. Gen. Stat. Ann. § 160A-20.1 (cities).

- Project labor agreements<sup>5</sup>
- Rent control<sup>6</sup>
- Sanctuary city policies<sup>7</sup>
- Transportation network companies<sup>8</sup>
- Firearms<sup>9</sup>

### III. Emergency Powers in North Carolina

- The North Carolina Emergency Management Act lays out various powers and duties for the governor, state agencies, and local governments to address emergencies.<sup>10</sup>
- The governor, for example, is authorized to “[m]ake, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor [in the Act], with due consideration of the policies of the federal government.”<sup>11</sup> The governor may also exercise broad powers like the ability to “establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages,” the power to “waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering,” and the power to “perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.”<sup>12</sup>
- Counties are “responsible for emergency management within the geographical limits of [each] county,” and “[a]ll emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.”<sup>13</sup> Counties and incorporated municipalities are authorized to make appropriations for the purposes of the state’s Emergency Management Act and “to fund them by levy of property taxes and by the allocation of other revenues, use of which is not otherwise restricted by law.”<sup>14</sup> In addition, each political subdivision may “appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency purposes and to provide for the health and safety of persons and property,

<sup>5</sup> N.C. Gen. Stat. Ann. § 143-133.5.

<sup>6</sup> N.C. Gen. Stat. Ann. § 42-14.1.

<sup>7</sup> N.C. Gen. Stat. Ann. § 153A-145.5 (counties); N.C. Gen. Stat. Ann. § 160A-205.2 (cities).

<sup>8</sup> N.C. Gen. Stat. § 20-280.10.

<sup>9</sup> N.C. Gen. Stat. Ann. § 14-409.40(a).

<sup>10</sup> N.C. Gen. Stat. Ann. § 166A-19 *et seq.*

<sup>11</sup> N.C. Gen. Stat. Ann. § 166A-19.10.

<sup>12</sup> N.C. Gen. Stat. Ann. § 166A-19.30.

<sup>13</sup> N.C. Gen. Stat. Ann. § 166A-19.15.

<sup>14</sup> *Id.*

including emergency assistance, consistent with [the Act].”<sup>15</sup>

- Counties and municipalities are authorized to declare a state of emergency.<sup>16</sup> Such a declaration, in part, activates any ordinances authorized by N.C. Gen. Stat. Ann. § 166A-19.31. Under N.C. Gen. Stat. Ann. § 166A-19.31, a municipality or county “may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency.”<sup>17</sup> The statute authorizes a range of prohibitions and restrictions, including those related to the “ingress and egress” of an emergency area, “the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate,” and “[u]pon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.”<sup>18</sup>

#### IV. Repealing Preemption in North Carolina

- During a time of crisis—and beyond—there may be opportunities to repeal state preemption of local authority.
- Some procedural considerations for repeal include:
  - **Single Subject Rule:** North Carolina does not require bills to adhere to one subject,<sup>19</sup> so a repeal bill should be able to address preemption of a variety of subject areas. Advocates should consult with an attorney who can provide advice on the best approach for drafting a preemption repeal bill.
  - **Repealing & Granting Affirmative Authority:** Nothing in state law appears to preclude a bill that repeals existing preemption legislation and also grants affirmative authority to regulate in that issue area, but advocates should consult with an attorney or legislative sponsor who can consult with legislative staff on bill drafting practices in North Carolina.
- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)<sup>20</sup> from the Local Solutions Support Center and the National Employment Law Project.

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<sup>15</sup> *Id.*

<sup>16</sup> N.C. Gen. Stat. Ann. § 166A-19.22.

<sup>17</sup> N.C. Gen. Stat. Ann. § 166A-19.31.

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

<sup>19</sup> Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. Pitt. L. R. 804, 812 n. 41 (2006).

<sup>20</sup> 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>.

## **V. Is There a Ballot Measure Process in North Carolina?**

- North Carolina residents cannot adopt new statewide statutes or constitutional amendments through ballot measures proposed by residents.
- State law provides that residents can adopt or amend charter provisions by local ballot initiative process.<sup>21</sup>

## **VI. What Organizations Are Fighting Preemption and Supporting Local Democracy?**

Advocates interested in working with other organizations in North Carolina focused on protecting local democracy and strengthening local authority can email [LSSC@supportdemocracy.org](mailto:LSSC@supportdemocracy.org).

For additional support, please contact The Local Solutions Support Center at [LSSC@supportdemocracy.org](mailto:LSSC@supportdemocracy.org).

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<sup>21</sup> N.C. Gen. Stat. Ann. § 160A-104.