



Overview of Local Authority & Preemption for Advocates in Pennsylvania

This document provides a summary of local authority and preemption in Pennsylvania 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 Pennsylvania, 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.¹

I. Summary of Home Rule in Pennsylvania

- 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 non-preemptable powers upon municipalities to fulfill their obligations under the amendment. Further, However, the Pennsylvania courts also recognize implied preemption of municipal ordinances (through two subtypes- field and conflict).

II. What Policies Are Preempted in Pennsylvania?

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

- Minimum wage²
- Plastic bags and containers³

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 43 P.S. § 333.114a.

³ 72 P.S. § 1706-E(c).

- Firearms⁴
- Municipal broadband⁵
- Transportation Network Companies⁶
- State limit on property tax rate with a process for overriding the limit⁷ (would require a constitutional amendment)
- Some limits on imposing a property tax levy⁸ (would require a constitutional amendment)
- Outside of Philadelphia (a First Class City), Section 2629(f) of the Home Rule Act and Optional Plans Law likely prohibits a broad range of business requirements. It prohibits cities from determining “duties, responsibilities or requirements placed upon businesses, occupations and employers . . . except as provided by statutes which are applicable in every part of [the] Commonwealth or which are applicable to all municipalities or to a class of municipalities.”⁹

III. Emergency Powers in Pennsylvania

- Pennsylvania’s Emergency Management Services Code lays out various powers and duties for the governor, state agencies, and local governments to address emergencies.¹⁰
- 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.¹¹ 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.¹²
- 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

⁴ 18 Pa.C.S.A. § 6120.

⁵ 66 Pa.C.S.A. § 3014(h).

⁶ Gali Racabi, *State TNC and MC Legislation: Preemption and Employment Status of Drivers*, onlabor, Oct. 19, 2018, <https://www.onlabor.org/state-tnc-and-mc-legislation-preemption-and-employment-status-of-drivers/>; National League of Cities, *City Rights in an Era of Preemption: A State-by-State Analysis* (Apr. 2, 2018), <https://www.nlc.org/resource/city-rights-in-an-era-of-preemption-a-state-by-state-analysis>.

⁷ 53 Pa. Cons. Stat. Ann. § 6924.320 ; 16 Pa. Const. Stat. Ann. § 1770.

⁸ 53 Pa. Cons. Stat. Ann. § 6926.327; *see also* *The Policy Surveillance Program*, A Law Atlas Project, <https://lawatlas.org/datasets/preemption-project> (last viewed July 29, 2020)

⁹ 53 Pa.C.S. § 2962(f).

¹⁰ 52 Pa. C.S.A. § 7101.

¹¹ 53 Pa. C.S.A.. § 7501(b).

¹² 53 Pa. C.S.A. § 7501(d).

response plans of the State or localities; and suspend statutes “prescribing the procedures for the conduct of Commonwealth business” if strict compliance would hinder emergency response.¹³

IV. Repealing Preemption in Pennsylvania

- 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:** The Pennsylvania Constitution requires all bills (except for general appropriations bills) passed by the General Assembly to contain only a single subject.¹⁴ The test to determine whether several provisions fall within the same subject is whether they are “germane.” For example, a bill whose only unifying subject was “the business of the courts, municipalities, or the economic wellbeing of the Commonwealth . . . would empty the germaneness test of all meaning.”¹⁵ It is possible that a preemption repeal bill addresses preemption of a variety of subject areas as long as all subjects are tied to the expansion or clarification of local authority, but advocates should consult with an attorney who can provide advice on the best approach in order to comply with the single subject rule.
 - **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 Pennsylvania.
- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)¹⁶ from the Local Solutions Support Center and the National Employment Law Project.

V. Is There a Ballot Measure Process in Pennsylvania?

¹³ 53 Pa. C.S.A. § 7301.

¹⁴ Pa. Const. art. 3, § 3.

¹⁵ *Weeks v. Dep’t of Human Services*, 222 A.2d 722, 729 (Pa. 2019).

¹⁶ 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>.

- Pennsylvania residents cannot adopt new statewide statutes or constitutional amendments through ballot measures proposed by residents.
- Local charters in Pennsylvania give residents the authority to adopt or amend ordinances through a local ballot initiative process. According to Ballotpedia, all of Pennsylvania's charter counties, all of the state's charter cities, and all of the state's third class cities allow residents to adopt local ordinances by ballot initiative.¹⁷

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

Advocates interested in working with other organizations in Pennsylvania 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.

¹⁷ Ballotpedia, Laws Governing Local Ballot Measures in Pennsylvania, https://ballotpedia.org/Laws_governing_local_ballot_measures_in_Pennsylvania (last viewed June 10, 2020).