



VIRGINIA

*This document provides a summary of local authority and preemption in Virginia 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 Virginia, 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 Virginia

- Virginia does not have a constitutional home rule provision.
- Virginia operates as a Dillon's Rule state, which means that local governments generally need specific permission from the state legislature to advance a local policy.
- State statutes, however, have granted municipal corporations and counties some general powers. *See* Va. Code Ann. § 15.2-1102 (municipal corporations); Va. Code Ann. § 15.2-1200 (counties).
- There are no limitations on Virginia's state authority to preempt local law.

II. What Policies Are Preempted in Virginia?

- Although Virginia is a Dillon's Rule state, the state has also passed bills to expressly preempt/prohibit particular policies.
- The following are examples of subject areas where the state has expressly preempted local action:
 - Regulation of transportation network companies (TNCs)²

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 Va. Code Ann. § 46.2-2099.46.



- Regulation of the package requiring a deposit³ on a disposable container or package
- Regulation of firearms (possession; purchase; carrying; transfer; ammunition; storage; ownership; transportation; buyback programs)⁴
- Local property tax assessments⁵
- State limits on local property tax levy with some authority to override the limit⁶
- Local contracting standards⁷
- Tobacco (smokefree air laws)⁸
- Regulating refund anticipation loans (i.e. loans based on anticipated tax refunds)⁹

III. Examples of Local Laws Upheld Under General Powers Granted to Municipalities Despite Dillon’s Rule

- Although Virginia operates as a Dillon’s Rule state, state law granting municipalities and counties some general powers¹⁰ has been understood to allow some local policies, including:
 - A local trespassing law¹¹
 - A local law requiring persons wishing to acquire a pistol or revolver from a licensed firearms dealer to first obtain a city permit¹²

³ Va. Code Ann. § 10.1-1425.

⁴ Va. Code Ann. § 15.2-915.

⁵ Va. Code Ann. § 58.1-3201.

⁶ Va. Code Ann. § 58.1-3321.

⁷ Various Virginia Attorney General opinions have concluded that local governments could not impose labor standards on contractors under the Virginia Public Procurement Act. Geremia Di Maro, “U.Va. could face legal barriers to increase minimum wage for contracted employees,” *The Cavalier Daily*, Mar. 20, 2019, <https://www.cavalierdaily.com/article/2019/03/u-va-could-face-legal-barriers-to-increase-minimum-wage-for-contracted-employees>.

⁸ American Nonsmokers’ Rights Foundation, Preemption, What is Preemption?, <https://no-smoke.org/smokefree-threats/preemption/> (last viewed June 1, 2020).

⁹ Va. Code Ann. § 6.2-2504. “Refund anticipation loan” is defined as “a loan, whether provided through a facilitator or by another entity such as a financial institution, in anticipation of, and whose payment is secured by, a customer’s federal or state income tax refund or by both.” Va. Code Ann. § 6.2-2500.

¹⁰ Va. Code Ann. § 15.2-1102; Va. Code Ann. § 15.2-1200.

¹¹ *Pearson v. City of Falls Church*, No. 2422-10-4, 2012 WL 124396 (Va. Ct. App. Jan. 17, 2012) (unpublished) (finding express authority for the ordinance under Va. Code Ann. § 15.2-1102 because the local trespassing ordinance “plainly furthers the reasonable objective of preventing, crime, protecting life and property, and preserving the peace,” and finding implied authority under Va. Code Ann. § 15.2-1102 despite the existence of a statewide trespassing statute because state and local governments may have concurrent jurisdiction over the same subject as long as the local law is not inconsistent with state law).

¹² *Stallings v. Wall*, 235 Va. 313, 318 (1988) (concluding that the general grant of power under Code § 15.1-839 permitted the enactment of the ordinance).

- A local law prohibiting pawnbrokers from dealing in certain weapons¹³
- A county law prohibiting nude and semi-nude dancing¹⁴
- A local law prohibiting the keeping of a vicious dog¹⁵

IV. Emergency Powers in Virginia

- The Commonwealth of Virginia Emergency Services Disaster Law of 2000 gives the Virginia governor broad powers to address emergencies. The governor may, for example, “proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.”¹⁶
- When the governor has declared a state of emergency, state law gives broad powers to political subdivisions to respond to emergencies in order to “protect the health and safety of persons and property” as long as such actions are “under the supervision and control of the Governor or his designated representative.”¹⁷
- Local governments may also declare a local emergency. In such declared emergencies, political subdivisions have broad powers to respond to the emergency, including the power to “protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster.”¹⁸

V. Repealing Preemption in Virginia – Recent Example & Rules for Bill Drafting

¹³ *Elsner Bros. v. Hawkins*, 113 Va. 47, 50 (Va. 1912) (finding authority for ordinance prohibiting pawnbrokers from dealing in certain weapons within the “broad and comprehensive police powers” delegated by the legislature to the city of Richmond, allowing for ordinances “to secure and promote the general welfare of the inhabitants of the city, such as they may deem proper for the safety, health, peace, good order, and morals of the community” as well as ordinances “as may be deemed desirable and suitable to prevent vice and immorality, to preserve public peace and good order, to prevent and quell riots, disturbances, and disorderly assemblages, etc.”).

¹⁴ *Boyd v. Cty. of Henrico*, 592 S.E.2d 768, 782 (Va. Ct. App. 2004) (finding that the “delegation of police powers” in Va. Code Ann. § 15.2-1200 “includes the power to regulate nude and semi-nude dancing”).

¹⁵ *King v. Arlington Cty.*, 195 Va. 1084 (Va. 1954) (finding that a broad grant of police power, Va. Code § 15-8(5), which empowered counties “[t]o adopt such measures as they deem expedient to secure and promote the health, safety, and general welfare of the inhabitants of their respective counties, not inconsistent with the general laws of this State,” permitted the county to adopt an ordinance prohibiting the keeping of a vicious dog).

¹⁶ Va. Code Ann. § 44-146.17.

¹⁷ Va. Code Ann. § 44-146.19.

¹⁸ Va. Code Ann. § 44-146.21.

- During a time of crisis—and beyond—there may be opportunities to repeal state preemption of local authority. Examples of recent efforts to repeal preemption in Virginia include:
 - Bill to repeal preemption of local authority to remove Confederate monuments ([SB 183/](#)HB 1537, [2020 Session](#))¹⁹ (Passed)
 - Bill to repeal preemption of local authority to establish labor standards conditions as part of local procurement ([HB 1488, 2020 Session](#)) (Not Passed)
- Some procedural considerations for repeal include:
 - **Single Subject/Clear Title Rule:**
 - Any effort to repeal existing preemption in Virginia should take into account the state’s “single subject rule.” The Virginia Constitution provides that no law “shall embrace more than one object, which shall be expressed in its title.”²⁰ Ultimately, the subjects encompassed in a statute but not specified in the statute’s title must be “congruous” and have a “natural connection with, or be germane to, the subject stated in the title.”²¹
 - It is possible that a preemption repeal bill may address 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 precludes a bill that repealed existing preemption legislation and also granted affirmative authority,²² but advocates should

¹⁹ Laura Taylor, “Bills to Repeal Discriminatory Language and Replace Confederate Statues Become Law in Va,” *ABC13 News*, Apr. 11, 2020, <https://wset.com/news/at-the-capitol/bills-to-repeal-discriminatory-language-and-replace-confederate-statues-become-law-in-va>.

²⁰ Va. Const. art. IV, § 12.

²¹ The Supreme Court of Virginia has explained that “[t]he fact that many things of a diverse nature are authorized or required to be done in the body of the act, though not expressed in its title is not objectionable, if what is authorized by the act is germane to the object expressed in the title, or has a legitimate and natural association therewith, or is congruous therewith, the title is sufficient.” *Marshall v. N. Virginia Transp. Auth.*, 275 Va. 419, 429–30 (2008) (quoting *Town of Narrows v. Bd. Of Sup’rs*, 128 Va. 572, 582–83 (Va. 1920)). Ultimately, Article IV, Section 12 “requires that subjects encompassed in a statute, but not specified in the statute’s title, be congruous, and have a natural connection with, or be germane to, the subject stated in the title.” *Id.*

²² State statutes do not appear to prohibit the introduction of a bill that repeals legislation and also authorizes new local powers or includes new statutory language. Recent bills provide examples of legislation that includes repeal of statutes along with new language and other amendments. *See, e.g.*, HB 87 (Va. 2020 Session), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB87>; HB 17 (Va. 2020 Session), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB17>.

consult with an attorney or legislative sponsor who can consult with legislative staff on bill drafting practices in Virginia.

- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)²³ from the Local Solutions Support Center and the National Employment Law Project.

VI. Is There A Ballot Measure Process in Virginia?

- Virginia residents cannot adopt new statewide policies through ballot measures proposed by residents.²⁴
- State law in Virginia does not generally grant local residents in Virginia a right to propose a new local policy through a local ballot measure.
 - Under state law, local residents may propose an amendment to their local charter by petition, but approval by voters only results in a request that the General Assembly introduce a bill to amend the local charter (charters operate similar to a local constitution and are often found with the local code of ordinances).²⁵
 - State law also grants local residents the power to adopt a local policy through a petition/ballot process in some specific circumstances (e.g., state law allows local voters to decide whether the sale of mixed beverages by restaurants should be permitted).²⁶
- Local charters in Virginia may give residents the authority to adopt or amend ordinances through a local ballot initiative process.²⁷ According to Ballotpedia, only four charter cities in Virginia have adopted a local ballot initiative process to adopt or amend local ordinances: Hampton, Lynchburg, Norfolk, and Portsmouth.²⁸

²³ 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>.

²⁴ Ballotpedia, Laws governing ballot measures in Virginia, https://ballotpedia.org/Laws_governing_ballot_measures_in_Virginia (last viewed May 28, 2020).

²⁵ Va. Code Ann. § 15.2-201.

²⁶ See Virginia Department of Elections, Place Issue on Ballot, <https://www.elections.virginia.gov/election-law/place-issue-on-ballot/#localissues> (last viewed June 1, 2020); Va. Code Ann. § 4.1-124.

²⁷ *Id.*; see also Ballotpedia, Laws Governing Local Ballot Measures in Virginia, https://ballotpedia.org/Laws_governing_local_ballot_measures_in_Virginia#cite_ref-Types_5-0 (last viewed June 1, 2020).

²⁸ Ballotpedia, Laws Governing Local Ballot Measures in Virginia, https://ballotpedia.org/Laws_governing_local_ballot_measures_in_Virginia#cite_ref-Types_5-0 (last viewed June 1, 2020).

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

Advocates interested in working with other organizations in Virginia 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.