



**PUBLIC
POLICY**



2022 Legislative Preview & FAC Preemption Committee FACA MidYear CLE November 2021

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Preemption Committee



Intent: High level committee work

Charge: Provide thoughtful strategic advice to FAC on matters of preemption

Outcome: At the determination of the committee and the Association's leadership (e.g., constitutional amendments, legislative initiatives, political communications campaigns, statewide thought leadership, speakers bureau)

Duration of Committee: Long term and semi-permanent

Preemption Committee



Meetings: Primarily during FAC conferences/events; other meetings at the call of the Chair

Membership: FAC Executive Committee; past legislators who are now county commissioners; past FAC presidents; and a few special Presidential appointments (one year terms)

Staff: Ginger Delegal; Davin Suggs; and Cragin Mosteller

Preemption Committee



Schedule: Starting today with organizational session

Website Launch: November 2021

www.fl-counties.com/presidential-select-committee-preemption-0

Research: Has begun and will continue

Preemption Committee



About the Presidential Select Committee on Preemption

The Presidential Select Committee on Preemption is a long-range strategic effort to address the issue of preemption of local home rule authority. The committee will study how preemption issues have occurred both in Florida and nationally to understand the trends, causes and proponents of state preemption of local authority with the goal of creating sustainable solutions or alternatives to state preemption.

To view members of the FAC Presidential Select Committee on Preemption for 2021 - 2022, please [click here](#).

POLICY ACTION CENTER

POLICY DEVELOPMENT PROCESS

2020-22 PREEMPTION TRACKERS

PREEMPTION OF COUNTY AUTHORITY IN FLORIDA

WHAT IS PREEMPTION?

"WHAT WE ARE SEEING NOW IS PREEMPTION THAT PROHIBITS LOCAL GOVERNMENTS FROM DOING MORE THAN WHAT WAS PROSCRIBED BY THE STATE AND, IN MANY CASES, FROM

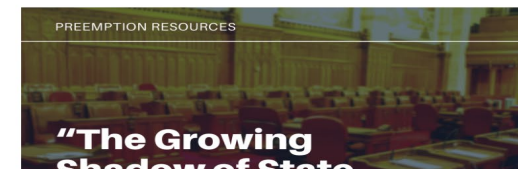
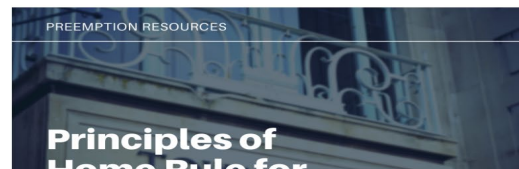
Preemption Committee



PREEMPTION: TRENDS, RESEARCH AND RESOURCES

According to research performed by the Local Solutions Support Center and the State Innovation Exchange, in the past, preemption was used to ensure uniform state regulation or to protect against conflicts between local governments. Traditional preemption emphasized balance between state and local levels of government. The research continues in citing Columbia Law School professor Richard Briffault, that current trends are representative of efforts to “clearly, intentionally, extensively and at times punitively, bar local efforts to address a host of local problems” additionally, the research also recognizes the trend of the use of preemption as a political tool of the nationwide anti-regulatory agenda or movement, as well as, national efforts to consolidate power at the state level and end local authority over a wide range of issues.

Below is a list of FAC recommended initial resources to assist our members in the development of their understanding of preemption and current trends regarding its use to limit local authority.



Preemption Committee



SB 2B - COVID-19 Mandates - 20 x Presidential Select Committee on x

fl-counties.com/presidential-select-committee-preemption-0

COVID-19 COUNTY RELIEF: [CLICK HERE FOR UP TO DATE INFORMATION.](#)


FAC FLORIDA ASSOCIATION OF COUNTIES
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ABOUT ADVOCACY EVENTS INSTITUTE PROGRAMS SERVICES

Below is a list of FAC recommended initial resources to assist our members in the development of their understanding of preemption and current trends regarding its use to limit local authority.

- Local Solutions Support Center (LSSC)**
An overview on preemption
- Principles of Home Rule for the 21st Century**
Published in 2020
- "The Growing Shadow of State Interference"**
LSSC & State Innovation Exchange, 2019
- State Preemption of Local Authority**
Explaining Patterns of State Adoption of Preemption Measures
- The Attack on American Cities**
Published in 2021
- Explaining State Preemption of Local Laws**
Political, Institutional, and Demographic Factors

 **FAC Contact**
Need additional information or want to know more about FAC's Finance, Tax & Administration program? Contact Bob McKee, Deputy Director of Public Policy, at bmckee@fl-counties.com.

Preemption Background



“Old” Preemptions*

“New” Preemptions*

Some Florida Examples

National movement

**The New Preemption Reader: Legislation, Cases and Comentary on the Leading Challenge in Today’s State and Local Gov’t Law, Briffault, Richard; Davidson, Nestor M., Reynolds, Laurie, West Publishing 2019.*

Home Rule



Starts in 1968 with constitutional amendment granting home rule to cities and counties

- Cities and charter counties (20 in the state now)

- Non charter counties

Motivations for constitutional amendment:

- Growth

- Diversity

- Legislative efficiency (1965: 1,186 special/local bills passed/586 general)

Impact: immediate

Preemption



What is it?

Exists when two levels of government each enact laws with respect to the same subject and the laws are arguably in conflict.

Preemption determines whether the lower level of government can continue to enforce its law or whether the higher level government's law "preempts" – that is displaces the lower level government's law.

Resolution of this conflict typically involves the judiciary

Preemption



Courts address these issues in preemption cases:

Whether each government has power to adopt its measure in question

Whether those measures are in conflict with each other

Who wins?

“Old” Preemption



State-local preemption issues play out against the general background rules of state and local government law. Most important are:

- Underlying norm of broad state power: Dillon’s Rule
- The rise of local self-govt under home rule: Power to enact local laws
- The doctrines for resolving conflicts between home rule governments and their states: Express and Implied

Traditional preemption cases also occur in similar settings and themes:

- Floors vs. ceilings
- Local innovations in a state law vacuum

“New” Preemption



Turn of the century, begins to rise; quickly expands after 2010

Aggressive form of intentional/extensive preemption of local law making

Characteristics:

- Deregulatory and sweeping
- Partisan and ideological
- Punitive

“New” Preemption



Challenge:

whether there is a way to hold together the longstanding legal superiority of the states WITH the promise of self government and innovation offered by home rule

Special Session



SB2B/HB1B: Reject COVID-19 Vaccine Mandates

Private Employers

Public Employers

Parental Decisions

Fines & Parent Cause of Action

SB 4B/HB 3B: Public Records Exemption of Certain Private Health Care/Religious Info

SB 6B/HB 5B: Begin Withdrawing from OSHA

SB 8B/HB 7B: Remove Authority of State Health Officer to Order Vaccinations

Preemption: SB 280/HB 403



Requires a **business impact statement** adoption before enactment

- Public purpose

- Reasonable connection between the public purpose of the ordinance's impacts

- Estimated economic effect of the ordinance on businesses inside and outside the city/county; adverse and beneficial; direct and indirect

- Estimate of the ## of businesses likely impacted

- Analysis ordinance is likely to deter/encourage formation of new businesses

- Analysis of the extent the ordinance will impede the ability of businesses to compete statewide and other domestic markets

- Scientific basis of ordinance

- Alternatives considered

- Other

Preemption: SB 280/HB 403



City/county must **suspend enforcement** of the ordinance when it is challenged as

Preempted by state law

Is arbitrary or unreasonable

Is otherwise prohibited by law

IF

Action is filed no later than 20 days after effectiveness;

Petitioner requests suspension; and

City/county has been served

Attorneys fees and costs can be awarded

Preemption: SB 280/HB 403



Judicial Proceeding

Court must prioritize case over other pending cases and issue a preliminary or final decision expeditiously

In determining arbitrary/unreasonableness, court must use, at least, the following factors:

- Extent to which ordinance protects health, welfare, safety and quality of life of residents;

- Impact of the ordinance on the personal rights/privileges of residents;

- Total economic impact of the ordinance;

- The business impact statement

Preemption: SB 280/HB 403



Does not apply to:

- Emergency ordinances
- Ordinances under Chapter 163, F.S., Part II (growth policy, county/municipal planning; LDRs)
- Florida Building Code
- Florida Fire Prevention Code

Preemption: SB 280/HB 403



Examples

- Vacation rentals
- Transportation network companies
- Prohibition of retail sale of puppies/kittens
- Alcohol sales
- City of Key West cruise ship restrictions
- Home based businesses

Preemption: SB 620/HB 569



Claim for **business damages**:

- Business has engaged in a lawful business in Florida for at least three years
- City/county ordinance or charter amendment
- Will cause a reduction of at least 15% of the business' revenue or profit

Except:

- Ordinance/charter required to comply with state/federal law
- Emergency ordinances, declarations, orders under State Emergency Management Act
- Temporary emergency ordinance effective only 90 days
- Ordinance/charter that increases economic freedom

Preemption: SB 620/HB 569



Presuit procedures

- Offers/counteroffers
- If case is settled pre trial, the business still gets attorney fees and costs

Trial by jury unless business elects bench trial

Enactments or amendments on or after July 1, 2022

Not applicable to business damages in eminent domain (Chapter 73)

Preemption: SB 620/HB 569



Examples:

- Similar to SB 280
- Alcohol sales
- Key West cruise ships
- Tax & finance area
- Utilities

Preemption: Others



- HB 75 - Limiting COVID-19 Restrictions
- SB 592 - Face Covering Mandates
- SB 594 - Discrimination On The Basis Of Covid-19 Vaccination Or Postinfection Recovery Status
- HB 259 - Photovoltaic Solar Installations
- HB 325/SB 512 - Vacation Rentals
- HB 445/SB 696 - Transportation Network Companies
- SB 518 - Residential Home Protection

Preemption: Repealers



- HB 105/ SB 224: Regulation of Smoking by Counties and Municipalities/ Regulation of Smoking in Public Places
- SB 152: Supermajority Vote for Legislative Preemption
- SB 316/HB 6025: Preemption of Tree Pruning, Trimming, and Removal
- SB 580/HB 6017: Rent Control Measures
- HB 6033: Preemption of the Regulation of Vacation Rentals
- SB 496/HB 6049: Preemption of Firearms and Ammunition
- HB 6003: Legal Rights of the Natural Environment



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Questions?