



2017-18 Constitution Revision Commission

CRC Proposal 61, Process to Restrict Municipal Home Rule Powers

Proposal: Municipal Home Rule, Article VIII, Fla. Const., Section 2(b)

Sponsor: Commissioner Smith

Summary Analysis

Article VIII, Section 2(b) of the Florida Constitution provides for municipal "home rule." Home Rule is the ability of a municipality to act without legislative authorization.¹ However, the constitution establishes a fundamental limitation on the exercise of municipal home rule authority. Municipalities may exercise any power for "municipal purposes," except when "expressly prohibited by law."² Municipal ordinances must give way to state law to the extent an ordinance "conflicts with the law" and a municipality's power to act or regulate in a particular area may be "preempted by general law."³

CRC Proposal 61 establishes a transparent process for the Legislature to follow when preempting the constitutional Home Rule powers granted in Article VIII, Section 2(b). Proposal 61 requires legislation restricting municipal home rule authority to pass each house of the Legislature by a two-thirds vote; state with specificity the statewide necessity justifying the restriction; be no broader than necessary to accomplish the statewide necessity expressed; contain only one restriction of municipal home rule authority; relate to only one subject; and be considered by at least one committee of each house, each of which must publicly notice the legislation no less than 48 hours prior to its consideration. Proposal 61 is self-executing.

Full Analysis

I. Background

Prior to the 1968 constitutional revisions, the law in Florida severely restricted a city's ability to exercise the powers of local self-governance. The Legislature's control over municipalities was plenary. Municipalities could possess and exercise only those powers expressly granted by the Legislature or necessarily or fairly implied in or incident to the powers expressly granted, and those powers essential to the declared purposes of the municipality.⁴

As Florida's population grew, this top-down governance became ever more cumbersome. As the number of local bills increased, the limited time available during the legislative session was

¹ Hon. James R. Wolf, *Municipalities and the Florida Constitution*, 37 *Stetson L. Rev.* 435, 439 (2008).

² Sec. 166.021(1), Fla. Stat.

³ *Lake Worth Utilities v. City of Lake Worth*, 468 So. 2d 215 (Fla. 1985).

⁴ *Liberis v. Harper*, 104 So. 853, 854 (Fla. 1925).



severely impacted. Home rule authority was first adopted and given equal access to all counties and cities as one of the major constitutional revisions ratified in the 1968 Florida constitutional amendment.⁵ Home Rule is the ability of a county or municipality to act without legislative authorization. By returning local decision-making to municipal governments, the Legislature would eliminate the profusion of local bills and could concentrate on issues of statewide significance.⁶

Municipal Home Rule

II. Current Situation

Florida law provides four fundamental limitations on the exercise of municipal home rule authority: the state Legislature, the citizens of the municipality, the state constitution, and a county's charter. Section 166.021(3), Florida Statutes. Unquestionably, the greatest intrusion on municipal home rule authority has come from the Legislature.

Municipal ordinances must give way to state law to the extent the ordinance "conflicts with the law," and a municipality's power to act or regulate in a particular area may be "preempted by general law." The concept of conflict may be distinguished from the concept of preemption in that the latter effectively precludes all municipal regulation in a given area while the former permits regulation, but only to the extent it supplements state law.

Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the Legislature.

In a field where both the state and local government can legislate concurrently, a city cannot enact an ordinance that directly conflicts with a state statute. Local ordinances are inferior to the laws of the state and must not conflict with any controlling provision of a statute. If a city has enacted such an inconsistent ordinance, the ordinance is null and void.

Preemption May be Express or Implied

Express preemption requires a specific legislative statement; it cannot be implied or inferred. Express preemption of a field by the Legislature must be accomplished by clear language stating that intent. In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁷

⁵ See generally FLA. CONST. art. VIII.

⁶ See George D. Vaubel, *Toward Principles of State Restraint Upon the Exercise of Municipal Power in Home Rule*, 22 STETSON L. REV. 643, 643 (1991).

⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).



Preemption is implied when the legislative scheme is so pervasive as to demonstrate an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature. Implied preemption is found when the state legislative scheme of regulation is pervasive and the local legislation would conflict with that pervasive regulatory scheme. In determining if implied preemption applies, a court must look to the provisions of the whole law, and to its object and policy. The nature of the power exerted by the Legislature, the object sought to be obtained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination.⁸ An example of implied preemption is the Legislature’s comprehensive workers’ compensation system.

Preemption Legislation

“An ominous trend has been the exercise of the state's preemptive authority.”⁹ Currently, any general law can be used to preempt municipal home rule authority. As the trend for preemption increases, the Legislature has passed lengthy bills in which multiple preemptions of home rule authority are added late in the legislative process, with little to no public input.¹⁰ Often, legislation is amended on the Senate and House floors to include preemptions of home rule authority. Current law does not require legislation that preempts municipal home rule authority to follow a prescribed process. Unfortunately, this has allowed multiple preemptions to bills that only tangentially relate to municipal issues, or to large state agency package bills. These efforts serve to hide preemptions in large bills – preemptions that might not pass on their own merits if they had to undergo the scrutiny of a public vetting as a standalone bill.

III. Effect of Proposal 61

CRC Proposal 61 establishes a transparent process for the Legislature to follow when restricting the powers granted to municipalities in Article VIII, Section 2(b). Proposal 61 follows a similar process established in the Florida Constitution for enacting restrictions to Florida’s public record and meeting laws.¹¹

Proposal 61 requires the Legislature to pass future preemptions of municipal home rule authority by filing a standalone bill that contains only one preemption of the powers granted in Article VIII, Section 2(b). The law must relate to only one subject. The law must state with specificity the statewide necessity justifying the preemption and be no broader than necessary to accomplish the statewide necessity for the preemption. The law must be considered by at

⁸ *Id.*

⁹ Ilene S. Lieberman & Harry Morrison, Jr., Warning: Municipal Home Rule Is in Danger of Being Expressly Preempted by . . ., 18 Nova L. Rev. 1437, 1445 (1994).

¹⁰ See CS/CS/HB 1021 relating to construction, Chapter 2017-149 Laws of Florida. The bill includes six different preemptions of municipal home rule authority.

¹¹ See generally FLA. CONST. art. I Sec. 24(c).



least one committee of each house, and each house must publicly notice the consideration of the legislation no less than 48 hours prior to its consideration. Finally, the law must pass each house by a two-thirds vote.