I. Summary of Home Rule in Michigan

- Michigan’s constitution grants cities, counties, and other local governments home rule powers with some limitations, including limitations around fiscal authority.

- Michigan statutes fill in details of local governments’ home rule powers and impose various limitations.

- Despite local governments’ home rule powers under the state’s constitution, the legislature may exercise plenary control over local governments if and when it sees fit.

- In addition, local governments are precluded from acting if an ordinance is in direct conflict with a state statutory scheme or if the statutory scheme occupies the field of regulation in which the local government seeks to act, even where there is no direct conflict between the schemes of regulation.

II. Source of Municipal and County Home Rule Authority

- Constitutional sources of home rule:

  o Counties:

    - MI CONST Art. 7, § 1
      Sec. 1. Each organized county shall be a body corporate with powers and immunities provided by law.

    - MI CONST Art. 7, § 2
      Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.
Election of charter commissions
The board of supervisors by a majority vote of its members may, and upon
petition of five percent of the electors shall, place upon the ballot the
question of electing a commission to frame a charter.

Approval of electors
No county charter shall be adopted, amended or repealed until approved
by a majority of electors voting on the question.

Cities:

- MI CONST Art. 7, § 22
  Sec. 22. Under general laws the electors of each city and village shall have
  the power and authority to frame, adopt and amend its charter, and to
  amend an existing charter of the city or village heretofore granted or
  enacted by the legislature for the government of the city or village. Each
  such city and village shall have power to adopt resolutions and ordinances
  relating to its municipal concerns, property and government, subject to the
  constitution and law. No enumeration of powers granted to cities and
  villages in this constitution shall limit or restrict the general grant of
  authority conferred by this section.

Cities and Counties:

- MI CONST Art. 7, § 34
  Sec. 34. The provisions of this constitution and law concerning counties,
  townships, cities and villages shall be liberally construed in their favor.
  Powers granted to counties and townships by this constitution and by law
  shall include those fairly implied and not prohibited by this constitution.

Statutory sources of home rule:

Cities:

- Michigan Home Rule City Act of 1909, including such provisions as:
  - Mich. Comp. Laws Ann. § 117.4i (d) & (j) (West 2019)
    (d) Except as otherwise provided in this subdivision, the regulation of
    trades, occupations, and amusements within city boundaries, if the
    regulations are not inconsistent with state or federal law, and the
    prohibition of trades, occupations, and amusements that are detrimental to
    the health, morals, or welfare of the inhabitants of that city. This
    subdivision is subject to the local government occupational licensing act.
    ...
(j) The enforcement of police, sanitary, and other ordinances that are not in conflict with the general laws.

  Sec. 4-j. Each city may in its charter provide:
  
  1. **City departments.** For the establishment of any department that it may deem necessary for the general welfare of the city, and for the separate incorporation thereof: Provided, however, That these provisions shall not be construed to extend to and include public schools;
  2. **Special acts.** For altering, amending or repealing any special act affecting any municipal concerns or existing municipal department, but the department in control of the public schools shall not be construed to be a municipal department;
  3. **Municipal powers.** For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

- **Counties:**

  - **Michigan County Home Rule Act of 1966, including such provisions as:**

  Sec. 15. A county charter adopted under this act may provide for 1 or more of the following:

    (c) The authority to perform at the county level any function or service not prohibited by law, including, but not limited to, police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county. Powers granted solely by charter may not be exercised by the charter county in a local unit of government that is exercising a similar power without the consent of the local legislative body. The cost of a service authorized by charter to be performed by the county, may be determined by negotiation between the local unit of government and the charter county and the cost must be charged to the local unit of government or area benefited by the service, unless it is rendered on a countywide basis in which event the cost may be paid from the general fund of the county. If a function exercised by a local unit of government is transferred to the county and becomes a county function financed through the...
general fund of the county, the county shall reimburse a local unit of
government a negotiated sum representing the value of the transferred capital
assets of the function owned by and paid for by the local unit of government,
including outstanding bonded indebtedness of the local unit of government.

III. Scope of Municipal and County Home Rule Authority
The Michigan constitution provides home rule for cities and counties. See Part II, supra. These
provisions were first enacted for Michigan’s cities and villages in 1908,¹ and then largely
transferred over to Michigan’s current constitution of 1963. The Michigan constitution extended
home rule powers to counties for the first time in 1963.²

Michigan has a variety of forms of local government, including villages and townships. Because
cities and counties are the two most powerful forms of local government, this memorandum will
focus on them, although prominent cases involving conflict between local and state law also
concern townships.

The constitution empowers counties, cities, and villages to adopt charters for home rule. See Part
II, supra. Only two counties, Wayne (Detroit) and Macomb (suburban Detroit) have adopted
such charters.³ All cities and some villages are governed by a charter.⁴

In addition to the constitution, the Michigan legislature has passed statutes that fill in the details
of home rule.⁵ With respect to both cities and counties, these statutes are quite detailed. For
cities, for instance, the statute grants seemingly broad police powers to regulate “trades,
occupations, and amusements within city boundaries, if the regulations are not inconsistent with
state or federal law, and the prohibition of trades, occupations, and amusements that are
detrimental to the health, morals, or welfare of the inhabitants of that city,” and to “enforce[. . . ]
police, sanitary, and other ordinances that are not in conflict with the general laws.”⁶ With
respect to fiscal authority, the constitution itself limits local power,⁷ as do many sections of the
home rule statute.⁸

¹ John Amrhein, Michigan State University, MSU Extension, Elected County Executives And County Home Rule in
Michigan: Part One (Sept. 21, 2016),
² See, e.g., Citizens Research Council of Michigan, Michigan Constitutional Issues: System of Local Government at
An Approach to Metropolitan Problems in Michigan, 6 U. MICH. J. L. REFORM 232 at 234 (1972),
https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2290&context=mjl.
⁴ Id.
⁵ For cities, this statute is known as the “Home Rule City Act of 1909,” and it has been updated repeatedly in the
century-plus since its enactment. See Mich. Comp. Laws Ann. §§ 117 to 117.38 (West 2019). For counties, the
Michigan County Home Rule Act of 1966 explains the charter adoption process and permissive and mandatory
⁷ See, e.g., MI CONST Art. 7, § 11 (limiting indebtedness to 10 percent of a county’s assessed valuation); MI
CONST Art. 7, § 16 (limiting county taxes for road purposes); MI CONST Art. 7, § 21 (requiring legislature to
limit property taxes for municipal purposes).
⁸ E.g., Mich. Comp. Laws Ann. § 117.5 (West 2019) (prohibiting cities from increasing property tax rates by more
than 2 percent except in limited circumstances).

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IV. Preemption
Michigan’s home rule system is essentially legislative in structure. A recent Michigan Supreme Court case clarified that at least in the regulatory realm, cities’ default authority is quite broad.\(^9\) Despite this broad default authority, the legislature may exercise plenary control over local governments if and when it sees fit. This principle was clearly illustrated by the state’s passage of legislation that allowed an emergency manager to steer Detroit into bankruptcy, essentially depriving the elected city council and mayor of all their powers.\(^10\) A federal bankruptcy court, relying on Michigan law, held that the arrangement did not violate the home rule provisions of the Michigan constitution.\(^11\)

A municipality is precluded from acting if its ordinance is in direct conflict with a state statutory scheme or if the statutory scheme occupies the field of regulation in which the municipality seeks to act, even where there is no direct conflict between the schemes of regulation.\(^12\) “Preemption” and “conflict” are separate doctrines under which a local ordinance may be found invalid; under preemption doctrine a municipality may not invade a field completely occupied by state statute while “conflict doctrine” only invalidates ordinances actually in conflict with state law where the entire area has not been preempted.\(^13\) In the absence of complete field occupation, local governments are free to regulate beyond state law’s minimum requirements.\(^14\)

Note that the statutes are inconsistent in referring to either “laws” or “general laws” as preemptive. Perhaps due to this inconsistency, there is no case law distinguishing preemption by state “law” from preemption by “general law” for the purposes of validity.

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\(^9\) Assoc. Builders & Contractors v. City of Lansing, 880 N.W.2d 765, 769 (Mich. 2016) (concluding that cities have broad powers over local concerns, and overruling prior case to the contrary from before the 1963 constitution).


\(^12\) AFSCME v. City of Detroit, 652 N.W.2d 240, 249 (Mich. Ct. App. 2002) (per curiam), aff’d sub nom. Am. Fed’n of State, Cty. & Mun. Employees v. City of Detroit, 662 N.W.2d 695 (2003); People v. Llewellyn, 257 N.W.2d 902, 904 (Mich. 1977) (per curiam); In re Wilcox, 233 F.3d 899, 906 n. 5 (6th Cir. 2000) (“As the provisions of the Michigan Constitution and Home Rule City Act make clear, cities such as Detroit are empowered to enact any ordinance or charter provision deemed necessary for the public interest, as long as the enactment is not contrary to or preempted by the state constitution or state laws.”).

\(^13\) E.g., City of Detroit v. Recorder's Court Traffic and Ordinance Judge, 304 N.W.2d 829 (Mich. Ct. App. 1981) (engaging in both conflict and field analysis in determining whether Detroit anti-prostitution ordinance was preempted).

\(^14\) Miller v. Fabius Tp., 114 N.W.2d 205, 207–08 (Mich. 1962) (“The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.”) (quotations omitted).
V.  Local Legislative Immunity
The Michigan constitution includes a Speech or Debate immunity provision under MI CONST Art. 4, § 11. The provision states:

Except as provided by law, senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

MI CONST Art. 4, § 11. The Court of Appeals of Michigan has explained that “[b]ecause Michigan's Speech or Debate Clause is substantially similar to the Speech or Debate Clause found in the Constitution of the United States, it should be similarly construed.”¹⁵ The state’s Court of Appeals has also noted that “in the absence of a waiver of the immunity, the Speech or Debate Clause immunizes a legislator from civil suits premised on actions that he or she took within the legitimate sphere of legislative activity.”¹⁶ The Michigan Court of Appeals does not appear to have questioned the application of the privilege under MI CONST Art. 4, § 11 to local officials.¹⁷

The Michigan legislature has codified the protections afforded under the state constitution’s Speech or Debate Clause through Mich. Comp. Laws Ann. § 4.551 (West 2019). The Michigan Court of Appeals has stated that Section 4.551 “is clearly a codification of the constitutional protections afforded under the Speech or Debate Clause” and “[b]ecause it was enacted after the amendment of Const1963, art. 4 § 11, it can be considered legislation that had the purpose of implementing the amendment of the constitution.”¹⁸

In addition, Michigan courts have recognized that the separation of powers doctrine insulates legislative bodies and their members, including local officials, from judicial interference when carrying out their discretionary duties “absent an abuse of discretion, excessive use of power or error of law.”¹⁹ Moreover, legislators in Michigan, including local officials, enjoy common law absolute immunity “for what they do or say in legislative proceedings.”²⁰

¹⁶ Id. at 7.
¹⁹ See, e.g., Cahalan v. Wayne Cty. Bd. of Comm’rs, 286 N.W.2d 62, 66 (Mich. Ct. App. 1979) (per curiam) (applying separation of powers doctrine to actions by a county board, explaining that “[t]he judiciary will not interfere with the discretionary actions of legislative bodies”); Sheffield Dev. Co. v. City of Troy, 298 N.W.2d 23, 25 (1980) (explaining that “the limitations inherent in the constitutional separation of powers” preclude judicial interference in acts that are legislative in nature “absent an abuse of discretion, excessive use of power or error of law”).

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VI. Other Relevant Issues

The Michigan constitution includes a “single object” requirement for bills in MI CONST Art. 4, § 24.21

21 The Michigan Supreme Court “has explained that three kinds of challenges may be brought against statutes on the basis of the Title–Object Clause: ‘(1) a ‘title-body’ challenge, (2) a multiple-object challenge, and (3) a change of purpose challenge.’” Estate of Buol by Roe v. Hayman Co., 918 N.W.2d 211, 216 (Mich. Ct. App. 2018) (quoting People v. Kevorkian, 527 N.W.2d 714, 714 (Mich. 1994)).