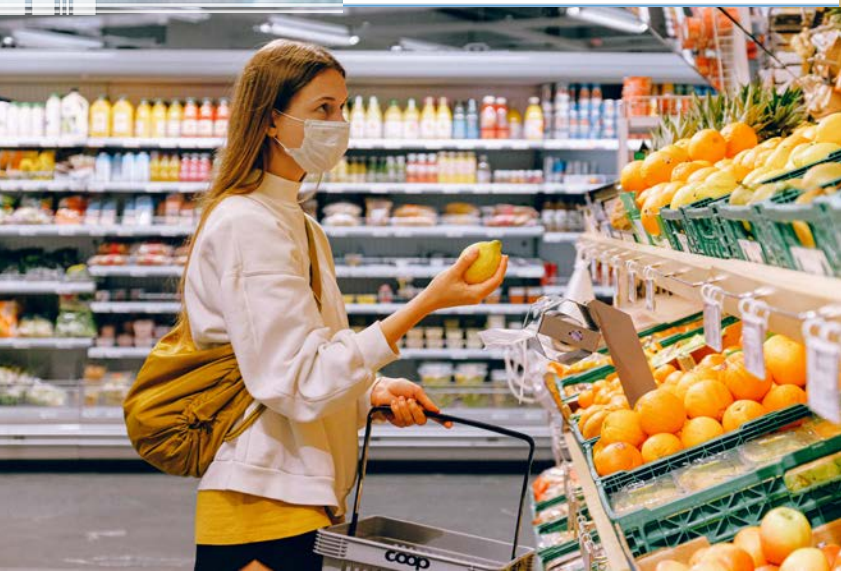
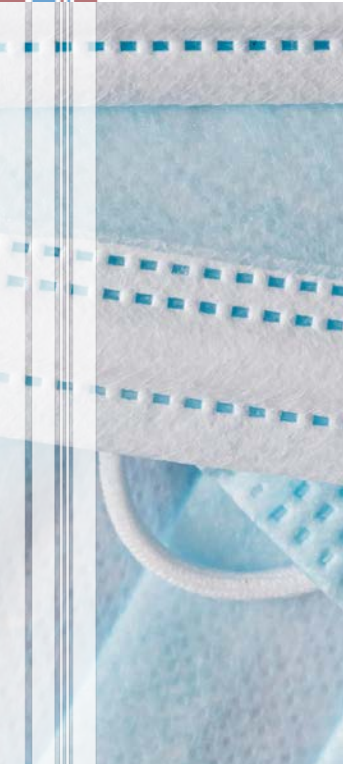


# Under the Cover of Covid

*A Survey of 2020-2021  
State Preemption Trends*





# Under the Cover of Covid

## A Survey of 2020-2021 State Preemption Trends

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## *Introduction*

Local governments in many states do not have the power, independence, or resources to address the public health, racial justice, and economic crises facing our nation. That's because their state legislatures have been deliberately and systematically sapping local authority and autonomy for the past decade. This year, the costs of undermining local democracy became terribly clear.

Conflict and hostility between state and local governments has intensified over the past decade as state legislatures made more aggressive use of preemption laws forbidding or removing local control over a broad and growing set of policies. But in 2020, the pandemic, its consequences, and the demand for racial justice revealed that more has been in play for the past ten years than an intergovernmental turf fight over policies and policymaking powers. 2020 laid bare the deeply rooted causes and life-and-death consequences of state interference in local democracy.

In 2021, many state legislatures will consider an avalanche of legislation that would further limit local authority, particularly curtailing local emergency powers, worker health and safety protections, and the ability of local health departments to issue masking, distancing, and closing orders. In addition, legislatures will debate bills that block local government initiatives to reform police departments, revise police department budgets, or increase oversight and accountability of law enforcement agencies. Many of these preemption bills include punitive measures threatening to cut off state funds to localities and civil and criminal penalties for local officials if they pass or enforce bills in defiance of state policy.

Historically, this report from the Local Solutions Support Center (LSSC) has focused on preemption bills and trends that emerged in the most recent legislative session. But because 2020 legislative sessions were shortened, suspended, or refocused by the pandemic, this briefing will look at trends in state interference that took hold in legislatures and state Executive Orders in 2020 and that are likely to dominate action in 2021. Additionally, to provide important context for this moment, this report will also trace the history of state preemption in the South back to the plantation, document industry's exploitation of the pandemic, and make the case that preemption can be used as a tool that reinforces and upholds white supremacy.

Finally, this report is not an encyclopedic scan of every state preemption bill passed or Executive Order issued in 2020 or expected in 2021. It is, instead, an illustrative look at preemption trends across states and policies intended to inform elected officials, advocates, and their allies.

## New Preemption

Preemption is a tool, like the filibuster, that can and has been used by both political parties for positive ends as well as harmful ones. Preemption has traditionally ensured uniform state regulation or protected against conflicts between local governments. Preemption has also advanced well-being and equity. In the past, states generally established minimum standards, “floors” for local governments to build on, to tailor locally or make stronger. Federal and state civil rights laws, for example, allow cities to increase protections but prohibit them from falling below what is required under law. Traditional preemption emphasized balance between the state and local levels of government. While state policy still had primacy, according to Columbia Law School professor Richard Briffault, it was understood that “state policies could coexist with local additions or variations.”

This is not what we are seeing now. What we are seeing now is “ceiling preemption” that prohibits local governments from doing more than what was proscribed by the state and, in many cases, from regulating at all. “*New Preemption*” laws, according to Briffault, “clearly, intentionally, extensively, and at times punitively, bar local efforts to address a host of local problems.”

Since 2011, state legislatures have passed preemption laws barring local control over a large and growing set of public health, economic, environmental, and social justice policy solutions. In addition to pushing a vast deregulatory agenda, state legislatures have also worked to consolidate governing powers at the state level, even taking control of “core” local powers including local zoning, local elections, and local revenues. In Florida, for example, the legislature has meddled in the work of city councils, such as setting home gardening and tree-trimming ordinances, and even trying to set the terms of local school boards. Finally, over the past decade, state lawmakers have adopted increasingly harsh methods for enforcing preemption laws, including the threat of fiscal penalties, removal of local officials from office, and civil and criminal sanctions.


## The Drivers of Preemption

The efforts to consolidate power at the state level and end local authority over a wide range of issues are part of a national long-term strategy often driven by trade associations and corporate interests. Much of this effort has been orchestrated by the [American Legislative Exchange Council \(ALEC\)](#), an industry-funded organization made up of corporate lobbyists and a quarter of all state lawmakers that writes and distributes “cut and paste” model bills. Their strategy has succeeded at an alarming rate.

Another primary driver of new preemption overlaps with ALEC’s agenda: the opportunity conservatives have to deliver on a long-promised anti-regulatory agenda – an agenda that disproportionately and negatively affects Black, Indigenous, and People of Color (BIPOC), women, and low-income communities. These new preemption laws are being used to prohibit local economic, housing, health, and anti-discrimination regulations without adopting new state standards in their place, effectively preventing any regulatory or policy remedy.

Some of this surge in state preemption laws is propelled by a disdain for local control by urban lawmakers seen as too liberal, intent on “oppressing” the free market, “trampling” on individual liberty, and impeding the passage of pro-market policies. According to Texas Governor Greg Abbott, “As opposed to the state having to take multiple rifle-shot approaches at overriding local regulations, I think a [broad-based law by the state of Texas that says across the board the state is going to preempt local regulations is a superior approach.](#)”





Finally, racism and the desire of majority white legislatures to maintain political and economic control over majority Black and Brown cities and their residents has been exposed as a driver of preemption and state interference in local self-determination. Minimum wage preemption is a prime example. Since Black and Latino/Hispanic workers are more likely to work in industries that pay low wages, preemption harms Black and Latino/Hispanic workers uniquely and disproportionately, further entrenching long-standing income and wealth inequality.

Today twenty-five states [preempt local minimum wage increases](#). Many of these wage preemption laws were [passed in direct response to proposed or adopted local minimum wage increases](#) in majority-minority communities including Atlanta, GA; Birmingham, AL; Cleveland, OH; Durham, NC; Memphis, TN; New Orleans, LA; and St. Louis, MO. A three-judge panel of the Eleventh Circuit ruling in *Lewis v. Governor of Alabama* permitted workers in Birmingham to bring an equal protection challenge against the state's preemptive legislation on the grounds that it was motivated by racial animus. This important decision put a spotlight on the connection between preemption and white supremacy, even though the full Eleventh Circuit later reversed the three-judge panel.

## The Consequences of Preemption

Preemption laws in place before the start of the pandemic and implemented during 2020 **forced cities to start from behind in their response to the pandemic** in critical policy areas such as paid sick leave, tenant protections, and access to critically needed broadband.

- Before the pandemic, 23 states had [preempted localities](#) from enacting their own paid sick time laws. Since the COVID-19 outbreak, [32 states or localities have acted to protect workers by passing new paid sick days laws](#) or expanding existing benefits or eligibility.
- The economic fallout from the pandemic turned America's [housing crisis](#) into an emergency that forced local and state governments to implement [eviction and foreclosure moratoria](#) to keep families from losing their homes. The fact that [33 states had preempted equitable housing policies](#) made it more difficult or impossible for localities to protect tenants.
- [22 states](#) have some form of state preemption that has kept local governments from building or expanding access to municipal broadband—limitations that disproportionately hurt people of color, low income, and rural residents even before the pandemic.
- And during the crisis, many states, including Arizona, Georgia, Florida, Mississippi, South Carolina, Texas, Tennessee, West Virginia and others, issued orders that made it harder for local governments to respond to the public health crisis, barring efforts by cities and counties to impose stricter pandemic orders than the state was willing to impose to protect the health and safety of residents.
  - Georgia Governor Brian Kemp set the most aggressive reopening course when his statewide shelter-in-place order expired at the end of April, stressing that in lifting his directive, "[local action cannot be taken that is more or less restrictive](#)." Kemp sued Atlanta Mayor Keisha Lance Bottoms to stop her from issuing a mandatory masking order in her city.
  - The Texas attorney general successfully sued to stop El Paso County, Travis County, Austin, and other local governments from imposing shutdown, masking, and curfew orders that were more restrictive than state orders
  - Nebraska's governor warned local governments they would not receive federal COVID-19 funds if they imposed masking or other local rules.

**State preemption laws hurt Black, Indigenous, and People of Color (BIPOC) and women the most**, blocking public health protections, barring economic and political gains, and perpetuating structural racism and white supremacy.

- Many of the most preempted policies – minimum wage, paid sick days, tenant protections and broadband – would have been most beneficial to people of color, workers in low-wage industries, and women, the [same communities disproportionately hurt by the health and economic effects](#) of COVID-19.
- Research shows that women, particularly women of color, and workers in low-wage jobs are disproportionately [harmed by state preemption of local worker protection laws](#).
- A large portion of [those without paid sick leave](#) are low-wage, part-time workers who are disproportionately Latino/Hispanic, Black Americans, and women, meaning state preemption that prevents cities and counties from adopting paid leave laws adds to racial and socioeconomic inequities.
- Research shows that [the abuse of state preemption is particularly prevalent in the South](#), where overwhelmingly white, male, and conservative state legislatures have kept cities from enacting policies on a multitude of work-related issues, such as minimum wage increases, fair scheduling laws, paid leave programs, local hire laws, prevailing wage laws, and other workplace protections.
  - When the Alabama state legislature preempted a minimum wage increase in Birmingham, Alabama, they denied pay raises to an estimated 65,000 low-wage workers, disproportionately harming Black people and women.
  - When Texas joined ongoing lawsuits to preempt local paid sick leave laws, they sought to exclude millions of workers – overwhelmingly people of color – from the opportunities and health benefits that those laws would provide.

The increased use of preemption allowed industry and [The American Legislative Exchange Council \(ALEC\)](#), the source of much conservative and preemption legislation, to **accelerate enactment of their anti-regulatory agenda**. Here are some key examples of model ALEC bills designed to shift power away from localities in favor of the states:

- Employment policies. The [Living Wage Mandate Preemption Act](#), first introduced in 2002, prevented localities from setting minimum wage. Now ALEC is pushing the [Employment Mandate Preemption](#), an all-encompassing preemption bill that prohibits localities from regulating almost anything related to conditions of employment.
- Municipal Broadband. Backed by AT&T, Verizon, and Comcast, [ALEC has pushed industry-backed measures to preempt cities and counties](#) from providing citizens with basic local broadband – and now 5G.
- Sanctuary Cities. [ALEC adopted a bill that effectively barred sanctuary cities](#) by creating new crimes of “trespass” for people without federal immigration papers and allowing private suits against police if they do not “fully” enforce immigration laws.
- Rent Control. This ALEC bill would [bar cities from adopting rent control measures](#).





The frequency and scope of preemption has **chilled local innovation and lawmaking and disempowered local democracy**.

- [A recent survey](#) found that over 70% of local health officials and 60% of mayors reported abandoning or delaying local policy making efforts because of the threat of state preemption. Local policies chilled by the threat of preemption included efforts to regulate commercial tobacco, environmental hazards, firearms, minimum wage, safe housing, and transportation, among others.
- A [research brief](#) found that in states with more preemption laws, both local and state governments were substantially less likely to adopt innovative policy responses to COVID-19.
- A series of case studies examining how [state preemption of local housing policies](#) has affected crisis response and recovery efforts during COVID-19 found that:
  - Local governments failed to consider adopting local policies that would conflict with existing state preemption laws even if such policies could help stabilize housing for at-risk renters.
  - Local policies that were not directly preempted were nonetheless “chilled” and not pursued due to concerns that acting would spark legal challenges or new preemption efforts at the state level.

The misuse of preemption and abuse of state authority has **demonstrated that local governments need more power** to address today’s crises and tomorrow’s recovery and that it is time to reform the balance of power between cities and states.

- [The powers of cities to rule themselves need to be updated](#) to reflect and respond to the fast-changing demands and challenges of pandemics, racial and economic equity, climate change, and more.



## ***Preemption and the Plantation: The White Supremacist Origins of Preemption***

White majority legislatures in the South have used preemption in the past and are using preemption now to maintain white supremacy by stopping Black- and Brown-majority cities from advancing policies to further economic, public health, and racial equity in their own communities. A recent study by the Economic Policy Institute (EPI) and EARN, [Preempting Progress](#), tracks the use of preemption to block policies, including minimum wage, local hire, paid leave and fair scheduling laws, and to keep BIPOC, women, and workers in jobs paying low wages from gaining political and economic power in the South. Many of the local policies barred by the states would have been most beneficial to [the same communities disproportionately hurt](#) most by the health and economic effects of COVID-19.



The current-day use of preemption in the South is deeply rooted in the past, in the post-Reconstruction era, and designed to uphold white supremacy. Before the Civil War, according to legal historian Dan Farberman, slaveholders had wide jurisdiction over slaves' bodies and social lives, [plantations were the primary unit](#) of local government for the vast majority of the Black population, and county governments were principally dedicated to protecting the property rights of white residents.

After the Civil War, the laws passed by Congress constituted a momentous expansion of civil and political rights for Black people, amounting to a wholesale remodeling of Southern society and instituting what historian Eric Foner calls a "[massive experiment in interracial democracy](#)." But the election of Black legislators, judges, sheriffs, and other officials with legal and political power over the white population sparked a violent backlash. In the views of many Americans, Reconstruction had gone too far. *The New York Tribune* reported in 1874, "The civilized and educated white race was under foot, prostrate, and powerless, and the black barbarian reigned in its stead."

Reconstruction formally ended in 1877 when President Rutherford B. Hayes pulled federal troops out of the South, keeping his end of the bargain that won him the contested election of 1876. Promises to protect civil and political rights of Black people were not kept. The end of federal oversight of southern affairs led to the dismantling of political and legal protections and the disenfranchisement of Black people as white people sought to reassert their control over the labor force and their racial dominance.

From the late 1870s onward, southern legislatures passed a series of laws requiring the separation of white people from "persons of color" on public transportation, in schools, parks, restaurants, theaters, and other locations. These "Jim Crow" laws, which created an unequal society structurally divided by race, governed life in the South through the next one hundred years, ending formally with the successes of the civil rights movement in the 1960s. But underlying structural racism is still in effect and racial animus still drives legislative and executive action.

For example, in 2015 the city of Birmingham – which has the state's highest proportion of Black residents and of people living in poverty – passed an ordinance raising the minimum wage. In response, the majority-white state legislature – in a span of only sixteen days – introduced and enacted the Minimum Wage Act, a bill that preempted any municipal legislation establishing a local minimum wage. The law was challenged for being in violation of the Equal Protection Clause and a result of intentional discrimination.

The discrimination allegation made in [Lewis v. Governor of Alabama](#) was upheld by U.S. Court of Appeals for the Eleventh Circuit, which, in a ruling that has since been overturned, criticized the "rushed, reactionary, and racially polarized nature of the legislative process." The court contended that the Minimum Wage Act was a modern iteration of "Alabama's historical use of state power to deny local black majorities authority over economic decision-making." The court argued that the standard requiring the "clearest proof" of intentional discrimination "turns a blind eye to the realities of modern discrimination," where "racism is no longer pledged from the portico of the capitol or exclaimed from the floor of the constitutional convention; it hides, abashed, cloaked beneath ostensibly neutral laws and legitimate bases, steering government power toward no less invidious ends."

State preemption, like voter suppression, gerrymandering, and limiting ballot access, is part of the scaffolding of structural racism used traditionally and today to maintain white supremacy and keep BIPOC, women, and workers in low wage jobs from gaining power.





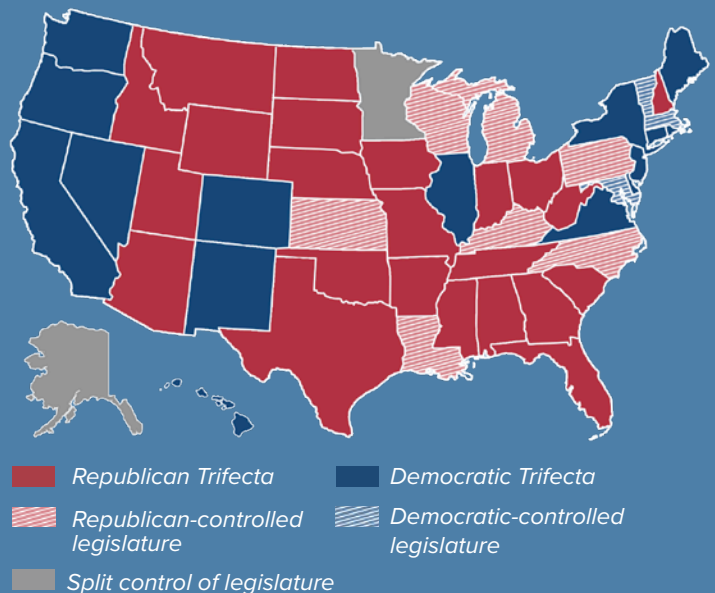
# Make-Up of 2020-2021 State Legislatures

State legislatures are overwhelmingly male and white. And, as a result of the 2020 elections, red states got redder and more conservative and, odds are, more likely to use preemption laws to accomplish their aims.

## By Party

The steep increase in the misuse of state preemption laws started in 2011, after 2010 midterm elections produced a tectonic shift in power in the states. The Republicans went from controlling 14 legislatures to controlling 25, and from 9 to 21 state trifectas where they controlled both houses and the governorship. In the 2020 elections, Republicans increased their hold on state legislatures. In 2021, the Republican Party controls 31 legislatures and has trifectas in 23 states (and potentially 24, pending legislative action in Alaska). Southern states that frequently pass preemption laws - Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, Tennessee, and Texas - are all Republican trifecta states in 2021.

### Partisan composition of state legislatures





## By Race

The nation's 7,383 state lawmakers are substantially whiter than America as a whole, and that is especially true in the South. According to [2020 research](#) by the National Council of State Legislatures (NCSL), legislatures remain overwhelmingly white, at 78%, [while the white population of the US has declined to 60.1%](#). Since NCSL's last in-depth look at legislative demographics five years ago, Black representation inched up from 9% in 2015 to 10% in 2020. Black people make up 13.4% of the US population. The percentage of Hispanic/Latino legislators has remained at 5% since 2015, though 21 states had slight upticks according to the 2020 data. Hispanic/Latinos comprise 18.5% of the overall population.

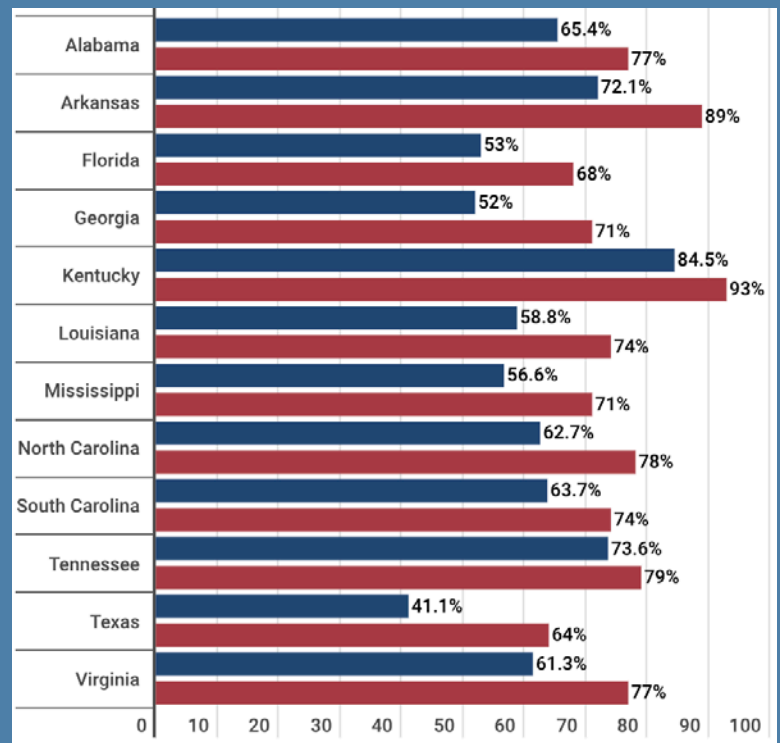
### Inequitable Representation in the South

Even though the majority of Black Americans (55%) live in the South and Southeast, white politicians make up the preponderance of state legislatures in the South (see chart).

## By Gender

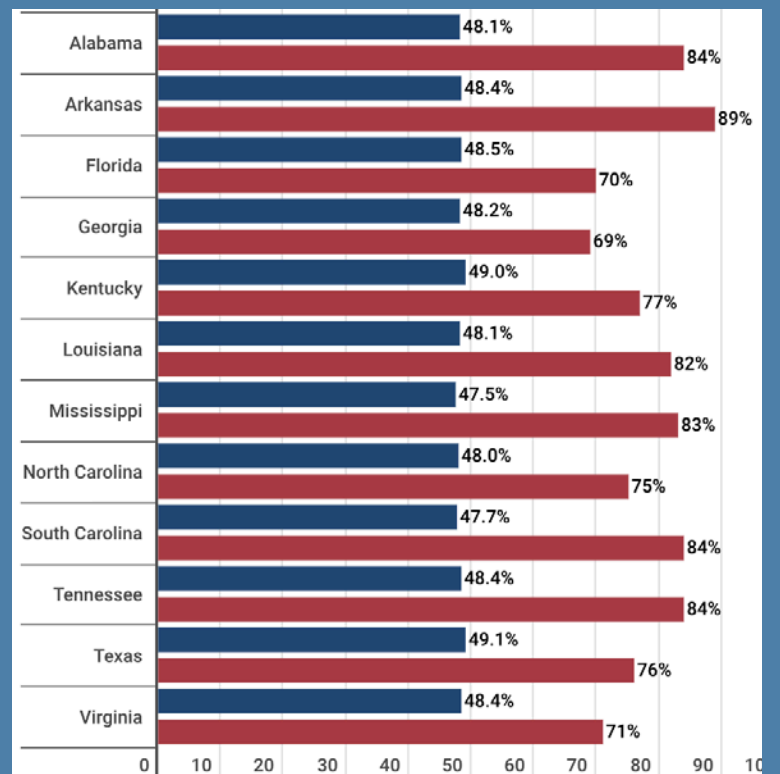
Women make up 50.8% of the US population. According to NCSL, they currently hold 29% of legislative seats, up from 25% in 2015. Between 2015 and 2020, 40 of the 50 states saw an increase in the number of female legislators. In Nevada in 2021, nearly 60% of the seats will be filled by female legislators — by far the largest percentage of any statehouse in the country. But women comprise less than 20% of legislators in Alabama, Louisiana, Mississippi, South Carolina, and Tennessee, where the percentage of women lawmakers dropped in the last five years.

### White representation of Southern state populations and in Southern legislatures



■ Percentage of State Population Who Are White  
 ■ Percentage of State Legislators Who Are White

### Male representation of Southern state populations and in Southern legislatures



■ Percentage of State Population Who Are Male  
 ■ Percentage of State Legislators Who Are Male

Sources: Kaiser Family Foundation, National Conference of State Legislatures, and MS Today



## ***Preemption Legislation and Trends 2020-2021***

In March 2020, the pandemic forced the majority of legislatures to suspend or adjourn their sessions early. When legislatures [reconvened or called special sessions later in the year](#), the pandemic, its economic consequences, and calls for racial justice and police reform dominated the debate. Those issues are also expected to dominate in 2021.

At the start of the 2021 sessions, many of the bills considered pre-pandemic remain in committee, where they may or not be considered, given the [unique circumstances defining this year's sessions](#). Many state legislatures are meeting for short times (for example, Virginia's legislature is meeting for just 30 days), some are meeting only remotely, others in-person, and all are subject to COVID-19-driven changes in the operating environment.

Even in shortened sessions, preemption bills limiting local emergency powers, weakening public health authority (e.g., masking, closures), barring vaccine mandates, banning laws intended to protect workers and hold businesses and industries accountable during the pandemic, outlawing protests, and punishing local efforts at police reform have all been filed and more are expected. In addition, a large volume of preemption bills have also been filed that target transgender students, outlaw sanctuary cities, reduce the legal capacity of cities to sue, override local prosecutorial discretion, and prohibit local regulation of specific industries, particularly tobacco, guns, plastic bags and containers, natural gas, and telecommunications (5G).

Finally, there have been a large number of bills filed to repeal preemption bills, following successful repeal efforts in Colorado and Arkansas in 2019 and in Virginia in 2020. In addition to efforts to repeal preemption laws, bills are also being filed to make it harder to interfere in local lawmaking and affirm and strengthen local authority. Local governments in several states are also exploring options for updating and fortifying home rule.



## ALEC Bills Exploit the Pandemic

ALEC has developed a slate of model bills that take advantage of the pandemic to push its policies. Concerned that policy proposals being considered at all levels of government to address the public health and economic crises “could lead to an erosion of free markets, limited government...and be dangerous for our shared principles,” ALEC is promoting [30 policy prescriptions in response to COVID-19](#), all of them pro-industry and anti-regulatory and many of them calling for preemption of local power. Priority ALEC legislation includes:

- The [Emergency Power Limitation Act](#) which seeks to limit the emergency powers of the executive branch and curtail public health officials of power. It would place limits on the number of days the executive branch’s emergency order can remain in effect and bar the reissuing of similar orders without legislative action.
- Related to this, the [Draft Statement of Principles to Inform Emergency Management Acts](#) shifts power away from the executive branch and to the legislature during emergencies, stating that, “Emergency powers should last only as long as necessary to secure legislative approval for the emergency response.”
- The [Expedited Suspension and Legislative Repeal of Harmful Rules Act](#) makes it easier for governors, state agencies, and legislators to suspend rules during emergencies for reasons such as being “obsolete,” “overly burdensome,” or “no longer enforced.” The model bill could potentially be used to justify removing environmental, labor, and/or health regulations.
- Federal and state laws that provide liability shields for corporations and employers. ALEC has long [fought](#) for restrictions on individuals’ right to sue in civil court because of unsafe workplaces or products. Now ALEC has joined the U.S. Chamber of Commerce, National Federation of Independent Businesses, and Senate Republicans to push for sweeping limits on the civil liability of employers for coronavirus-related illnesses and deaths in the workplace.
- In addition, ALEC is working to pass comparable industry-backed immunity laws in the states. Its [“Liability Protection for Employers in a Declared Disaster or Public Emergency”](#) would limit any liability for workplace COVID-19 illnesses and death just to “recklessness or willful misconduct” by employers.



# Emergency and Public Health Authority

Since March, local authorities in Texas, Florida, Arizona, Georgia, Iowa, South Carolina, Missouri, Oklahoma, and other states have been grappling with their governors for authority over masking mandates, stay at home orders, distancing ordinances, and other protective public health measures. In 2021, the majority of state legislatures will consider some COVID-related preemption, including bills limiting the authority of state and local public health officials, barring local restrictions on business operations or requiring masks without legislative approval, and providing businesses with immunity from pandemic-related suits.

According to the Associated Press, [24 states have or will consider bills that limit public health powers](#), some at both the state and local levels. Some of these bills have already failed ([CO HB 1013](#)) while others are pending or were pre-filed for the 2021 session.

These bills, many of which are based on the [ALEC Emergency Power Limitation Act](#), seek to limit the emergency powers of the executive branch, strip public health officials of power, and defund local health departments or even dissolve them.

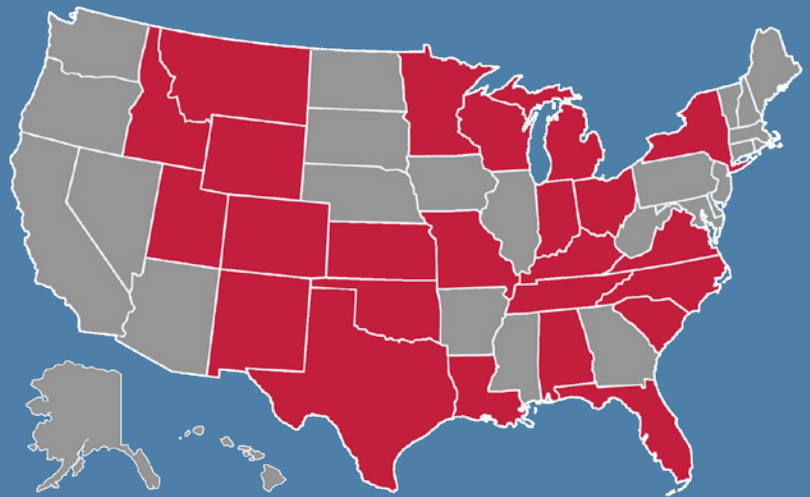
Here are some examples of those bills:

**MO** ([SB 56](#)): 1/6/21 first read. Under current law, county commissions and county health boards have the authority to make and promulgate public health orders, ordinances, rules, and regulations relating to infectious, contagious, communicable, or dangerous diseases in the county, subject to certain limitations. This act removes such authority from county health boards.

**MT** ([HB121](#)): Intro 1/6/21. This bill would require elected official approval of local health board and officer actions.

**OH** ([HB 621](#)): Intro 5/7/20; Status: Referred to committee. The bill, in part, provides that businesses required to cease or limit operations by a local board of health or general health district due to epidemic may continue or resume operations if they comply with any safety precautions that the order or regulation requires of businesses that are permitted to continue operations.

## States Where Lawmakers Proposed or Plan to Propose Legislation Limiting Public Health Powers



*Bills include limits on quarantines, contact tracing, vaccine requirements, and emergency executive powers. Some of the bills failed, while others are pending or were prefiled for 2021 sessions. Includes bills filed since March 2020.*

*Source: The Associated Press*

**TN** ([HB 37](#)): Filed 12/11/20; Status: Filed. The bill prohibits local governments, as well as the governor and state entities, from classifying certain businesses as essential “for the purpose of authorizing such categories or classes to remain in operation or requiring the same to cease operation.”

**TX** ([HB 525](#)): Pre-filed for 2021; Defines places of worship as essential for state of emergency purposes; prohibits local governments from prohibiting a religious organization from engaging in religious or other related activities during an emergency.

*Similar bills that have been filed include:*  
**OK** ([SB 1102](#)); **WA** ([HB 1004](#)).



## [ **Masking mandate preemption bills** ]

**MI** ([HB 6134](#)): Intro 8/17/20; Prohibits local governments from adopting or enforcing any ordinance requiring any individual to wear a face covering on public or private property.

Similar bills that have been filed include: **ND** ([HB 1323](#)); **OH** ([HB 682](#)); **OK** ([SB 224](#)); and **SC** ([SB 1213](#)).

## [ **Vaccine preemption bills** ]

**TN** ([HB 0013](#)): Intro 11/30/20; Status: Filed. Prohibits state and local authorities from forcing, requiring, or coercing a person to receive a COVID-19 vaccine against the person's will.

## [ **School closures** ]

**TN** ([SB 103](#)): Intro 1/12/21; As introduced, specifies that local boards of education and governing bodies of public charter schools, as applicable, have the sole authority to open or close schools during a public health emergency. States that an executive order by the Governor supersedes a local decision.



## [ *Limiting Civil Liability* ]

Corporate immunity laws are being introduced all over the country and they generally threaten local governments' ability to hold corporations and others accountable under their own standards and protections. These are the bills that have been tracked by the National Employment Law Project (NELP):

### *Bills or executive orders that have been enacted (15 states):*

- **UT** [SB 3007](#)
- **NC** [SB 704](#) (essential businesses) & [HB 118](#) (general)
- **OK** [SB 1946](#)
- **AL** May 8, 2020 [Executive Order](#)
- **LA** [SB 435](#) & [HB 59](#) (educational institutions)
- **WY** [SF 1002](#)
- **IA** [SF 2338](#)
- **KS** [HB 2054](#) (vetoed), [HB 2244](#) (died), [HB 2016](#) (enacted compromise legislation)
- **AR** June 15, 2020 [Executive Order](#)
- **MS** [SB 3049](#)
- **GA** [SB 359](#)
- **NV** [S.B. 4](#)
- **TN** [SB 8002](#) (as enacted)
- **ID** [HB No. 6](#)
- **OH** [HB 606](#)

### *Bills enacted that only provide immunity if businesses follow all local, state, and federal statutes, rules, regulations, executive orders, and agency orders re: COVID-19 (1 state):*

- **MI** [HB 6030](#) & [HB 6031](#)

### *Bills that have been proposed:*

- **AZ** [HB 2912](#) (passed House)
- **SC** [SO 147](#)
- **NJ** [A 3951](#) & [A 4189](#)
- **AL** [SB 330](#)
- **OR** [HB 4212](#)
- **DE** [HB 359](#)
- **IL** [SB 3989](#)
- **CA** [AB 1035](#)
- **MA** [HD 5163](#)
- **NM** [HB 16](#)
- **VA** [HB 5074](#) & [SB 5067](#) (effectively died in special session)
- **FL** [HB 7](#)
- **KY** [SB 5](#) and [HB 10](#)
- **MO** [SB 1](#)
- **PA** [HB 1737](#) ([vetoed](#) by Governor)

### *In addition:*

Florida's legislature will consider a bill that overrides a November ballot measure passed by close to [80% of Key West voters](#) who used their vote to restrict cruise ships to limit the spread of infectious diseases. [SB 426 - State Preemption of Seaport Regulations](#) would transfer control over local ports to the state.



# Police Department Funding and Anti-Protester Bills

The shooting deaths by police of George Floyd and Breonna Taylor fostered wide-scale police brutality protests and, in some cities, violent confrontations with law enforcement and counter-protesters. Several state legislatures have responded with preemption bills that threaten punitive action against localities that cut or reallocate police budgets (the punitive sections of the bills are bolded below). Examples include:

## [ Police Department Funding Bills ]

**IN** ([SB 42](#)): would prohibit local government from reducing annual public safety budgets unless there's a revenue shortfall.

**LA** ([HB 67](#)): Intro 9/30; Status: Passed house and ordered to the Senate on 10/13/20. Bill allows the legislature to reduce appropriation of sales tax dedications to a municipality that has reduced the annual operating budget of its police department and the Joint Legislative Committee on the Budget finds that the reduction will have a significant and harmful effect on public safety. The reduction may be proportional to the amount of funding reduced.

**MO** ([SB 66](#)): Intro 12/1/20; Status: Pre-filed. The bill makes localities ineligible for state funding if they decrease their law enforcement budget by more than 12 percent in relation to other budget items in the proposed budget.

Similar bills that have been filed include: **AZ** ([HB2310](#)); **NJ** ([A4990](#)); **TX** ([HB 638](#)).

## [ Police Department Oversight ]

**IN** ([SB168](#)): Intro 1/1/21; This bill would take control of the Indianapolis Metropolitan Police Department away from the mayor of Indianapolis and the city-county council and instead put a five-member state board of police commissioners in charge.



## [ *Anti-Protester Legislation* ]

These bills make certain conduct unlawful, but indirectly, they limit the type of conduct that can take place on local streets. So, while these bills do not appear to include a “preemption” component per se, they do interfere with the way in which localities may wish to allow for public protests on their city streets, particularly where localities have historically allowed protests along public streets leading to the obstruction of traffic.

### *Three bills have already been signed into law:*

**SD (HB 1117):** Intro: 1/29/20; Status: Signed by Governor March 2020. Bill establishes the crime of incitement to riot, and revises provisions regarding civil liability for riot and riot boosting.

**SD (HB 1199):** Intro 1/30/20; Status: Signed by Governor. The bill creates a new definition for “incitement to riot” and establishes personal and joint liability for damages and other penalties if a person commits incitement to riot.

**TN (HB 8005/ SB 8005):** House Intro 8/7/20, Senate Intro 8/10/20; Status: Signed by Governor. The new law, in part, imposes new punishments for assaults against first responders, adds to conduct that constitutes the offense of aggravated criminal trespass (including remaining on property and recklessly damaging property), adds to the type of conduct that constitutes “damage” for purposes of the offense of vandalism, and enhances the penalty for obstruction of a highway or other public way.

### *Examples of pending bills include:*

**FL (SB 484) (HB1):** Filed 1/6/2021. Bill creates a cause of action against a municipality for obstructing or interfering with reasonable law enforcement protection during a riot or an unlawful assembly; increases the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or an aggravated riot; prohibits defacing, injuring, or damaging a memorial.

**MA (HB 1588):** Intro 1/22/10; Status: Accompanied study order 11/12/20. In part, the bill compels authorities (explicitly including “the mayor and each of the aldermen of such city, each of the selectmen of such town, every justice of the peace living in any such city or town, any member of the city, town, or state police and the sheriff of the county and his deputies”) to disperse any assembly of 5 or more masked individuals.

**MO (SB 66):** Intro 12/1/20; Status: Pre-filed. The bill, in part, makes employees of local governments ineligible for employment benefits if they are convicted of participating in an unlawful assembly. The bill provides immunity to persons operating a motor vehicle who injure another person blocking traffic if such person was exercising due care and not grossly negligent. The bill waives public entities’ sovereign immunity if the entity was “grossly negligent” in protecting persons or property from an unlawful assembly. The bill deprives individuals of bail in certain cases where they are convicted and the victim was a law enforcement officer, firefighter, or medical provider who was assaulted during the performance of official duties. The bill allows for the use of deadly force in certain cases where it is used against a person participating in an unlawful assembly who unlawfully enters or attempts to enter private property and also addresses other penalties related to rioting and vandalism.

**OK (SB 15):** Intro: Pre-filed; Status: First reading scheduled 2/1/21. The bill revises and, in part, increases penalties for persons involved in riots and unlawful assemblies.

Similar bills that have been filed include: **NM (SB 16); NJ (AB 3760); NY (A 10603); OH (HB 362); OR (HB 4126); VA (SB 5056); VA (SB 5059)**





# Anti-Immigrant Bills

A large number of state legislatures will consider bills that outlaw local sanctuary policies, make localities liable for harm that results from crimes committed by an individual who is not lawfully present in the US, and require local governments to enforce federal immigration laws. Examples include:

## [ Sanctuary City Preemption Bills ]

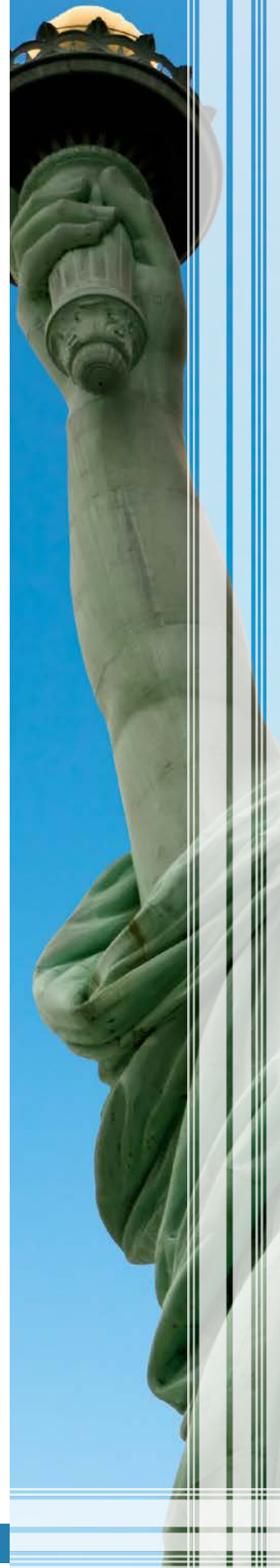
**AZ** ([HB 2598](#)): Intro 1/27/20; Status: Held in House awaiting committee of Whole. The bill adds to existing law prohibiting localities from limiting the enforcement of federal immigration laws by adding a punitive provision under which officials and agencies of localities must comply with federal immigration detainer requests. If an official, agency, or law enforcement officer “intentionally or knowingly fails to comply with a valid immigration detainer,” that person or agency is subject to a civil penalty. In addition, if the attorney general “finds cause to believe that an entity” is violating the requirement to comply with immigration detainer requests, the attorney general or county attorney shall commence an action in superior court. The bill also makes localities liable to civil suits brought by family of individuals deceased or permanently incapacitated if the locality failed in certain circumstances to respond to a detainer request or inquire about immigration status. The bill also allows the state to “bill” a locality for incarceration costs involving the “alien” charged in a criminal case.

**GA** ([HB 915](#)): Intro 2/5/20; last action 2/19/20; Would require law enforcement agencies to use best efforts to support the enforcement of federal immigration law; would prohibit local government entities from restricting law enforcement agencies from gathering information about a person’s immigration status; would require judges and correctional officers to undertake certain actions to promote the seamless transfer of suspects with an immigration detainer into federal custody; would provide civil penalties for intentional violation of the chapter of up to \$1500 for the first violation and \$25,500 for subsequent violations; would provide a private right of action against local governments to persons injured by undocumented immigrants if the local government failed to comply with this chapter.

**IL** ([HB 5559](#)): Intro 2/14/20; last action 2/18/20; Creates the Justice for Victims of Sanctuary Cities Act. Provides that any individual, or, if the individual is deceased or permanently incapacitated, a spouse, parent, or child of the individual, who is the victim of a murder, rape, or any felony in the State, for which an alien who benefited from a sanctuary policy has been arrested, convicted, or sentenced to a term of imprisonment of at least one year, may bring a sanctuary-related civil action for compensatory damages against a sanctuary jurisdiction in the appropriate court if the sanctuary jurisdiction failed to comply with: (1) a request with respect to the alien that was lawfully made by the Department of Homeland Security; and (2) a detainer for or notify about the release of the alien.

**WY** ([HB 0108](#)): Intro 2/4/20; House failed introduction 2/13/20; Would prohibit sanctuary policies by cities, towns, and counties; would withhold state and state-administered funding from cities, towns, and counties with sanctuary policies.

Similar bills that have been filed include: **KY** ([HB 51](#)); **MI** ([HB 5600](#)); **MO** ([SB 589](#)); **NC** ([HB 135/S 341](#)); **OK** ([HB 1407](#)); **TN** ([HB 0021](#)); **TX** ([HB 101](#)); **WA** ([SB 6030](#)).





# ***Minimum Wage/Paid Sick Days/Worker Misclassification***

For the past ten years, workplace policies have been heavily preempted; 25 states bar localities from increasing minimum wages and 23 states ban local action on paid sick days. The fact that both of these policies were so widely preempted forced local governments to start from behind in their response to COVID. Many frontline workers – particularly people of color and women – make minimum wage and have no paid time off. Since the pandemic, 32 states or localities have acted to protect workers by passing new Paid Sick Days laws or expanding existing benefits or eligibility.

Legislation that would keep gig workers from being defined as “employees” could be seen in several states this session. In November, California voters passed Proposition 22, endorsing a ballot proposal that, by allowing gig companies like Uber, Lyft, and DoorDash to misclassify their workers as contractors, will keep gig workers from accessing minimum wage, overtime, unemployment insurance, union, and health and safety protections that apply to employees. Advocates expect the companies to push similar ballot initiatives or legislation in other states in 2021.

## ***[ Minimum Wage / Paid Sick Time Preemption ]***

**MN** ([HF 2776/SF 2321](#)): House Intro: 4/1/19; Status: Referred to committee in House; Referred to committee in Senate and passed committee, re-referred to 2nd committee. Preempting minimum wage, paid or unpaid leave, hours, benefits, or terms of employment.

**PA** ([HB 331](#)): Intro: 2/1/19; Status: Referred to committee. Preempts local “employer policies or practices” defined to include, but not limited to, wages, compensation or benefits, hiring or termination, workplace management, including scheduling and workplace procedures, the relationship between employers and employees, including employee discipline, paid or unpaid employee leave, terms and conditions of employment.

**WV** ([SB 227](#)): Intro: 1/9/20; Status: Referred to committee. Preempting any local legislation on information tied to applications for employment other than criminal background checks; minimum wage; wage or fringe benefit based on wage and fringe benefit rates prevailing in the locality; work stoppage or strike activity; paid or unpaid leave time; participation in any educational apprenticeship or training programs; regulating hours and scheduling; regulating standards or requirements regarding the sale or marketing of consumer merchandise; standards of care or licensing fees for any profession regulated by the state.

## ***[ Paid Sick Days ]***

**NJ** ([AB 422](#)): introduced 1/14/20; Status: referred to committee. Prohibits local governments from requiring private employers to provide paid sick leave.





## ***Housing (Including Eviction Moratoria)***

In some areas - notably housing - states are also intervening in local policymaking to advance equity and racial justice. For example:

### ***Enacted:***

**CA** ([AB 3088](#)): Intro 2/21/20; Status: Signed by governor August 2020. The bill protects residential tenants from evictions for failure to pay rent due to a COVID-19 related hardship. In some regards the bill defers to local ordinances that are more protective of tenants, but it specifically preempts any renewal, modification, or adoption of local ordinances during a specified time period that are intended to prevent evictions.

### ***In terms of pending housing bills, some of the proposed state preemption would increase tenant rights:***

**MD** ([HB 1540](#)): Intro 2/7/20; Status: Referred to committee. Preempts local ordinances prohibiting deposit of rent into an escrow account, as part of a law establishing standards for mold inspection and disclosure and providing that tenants may deposit rent into an escrow account upon their landlord's violation.

**NJ** ([AB 1923](#)): Intro 1/14/20; Status: Referred to committee. Establishes a statewide prohibition on increasing rent more than 5% plus cost of living, or 10%, over a 12-month period. Preempts ordinances that would result in permitting a rent increase higher than this allowed amount, but states that it does not preempt ordinances that would further restrict rent increases.

**WA** ([SB 6490/HB 2878](#)): Intro 1/17/20; Status: Referred to committee. Establishes that landlords may not categorically exclude renters with prior convictions or take adverse action against tenants with prior arrests or convictions, unless there is a legitimate business reason. Preempts local ordinances regarding provision of housing to those with convictions or arrest records, except for ordinances that are more stringent.

### ***Housing bills pending in other states limit the power of local governments:***

**AZ** ([HB 2348](#)): Intro 1/21/20; Status: Held in Rules committee. Current law requires cities and towns that want to levy a tax or fee on the renting/leasing of residential property get voter approval. But this bill would also cap the tax or fee at 5%.

**IA** ([SF 2368](#)): Intro 2/13/20; Status: committee recommended passage on 6/4/20. Prevents counties and cities from adopting or enforcing regulations that prohibit owners from refusing to rent to a prospective tenant based on income source.

**PA** ([HB 2190](#)): Intro 1/10/20; Status: Referred to committee. Preempts localities from enacting or maintaining any ordinance that would control rent charged for leasing commercial or residential property; any ordinance that would establish a maximum sales price for a housing unit or lot; or any ordinance that would limit a landlord's ability to decline to enter a new lease contract. Allows localities to enact or maintain zoning regulation that requires a percentage of new units to be set aside for affordable housing.

# Broadband / 5G

## ***One 5G preemption bill signed into law:***

**SC** ([HB 4262](#)): Intro 3/19/19; Status: Enacted 10/7/2020. Preempts “any enactment by an authority that contradicts, expands, contracts, or otherwise modifies the provisions of this article with respect to the regulation of the placement of small wireless facilities and of support structures and poles for small wireless facilities in the ROW; provided however that nothing in this item limits any power granted to any authority under this article.”

## ***Pending bills include:***

**IA** ([SSB 3009](#)): Intro 1/15/20; Status: Referred to subcommittee. This study bill involves cities that own or operate a municipal utility providing telecommunications services and municipal utilities providing telecommunications services. The bill prohibits cities, in part, from lending money from the general fund or reserve fund to a telecommunications system at an interest rate lower than the prevailing market rate. It also imposes other limits related to the financing of a telecommunications system and from providing telecommunications at lower costs.

**NY** ([SB 8020](#)): Intro 3/10/20; Status: In committee. Preempting any “provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing broadband internet service shall upon the effective date of this section.”







## LGBTQ Discrimination

One huge trend regarding anti-LGBTQ preemption was the rise in bills that prohibit transgender students from participating in sports according to their gender identity. These bills prevent school districts and universities from enacting equitable policies around gender identity and sports participation. Some examples include:

**ID (HB 500):** Intro 2/13/20; Signed into law 3/30/20. Called the “Fairness in Women’s Sports Act,” it requires public schools to divide gendered sports based on biological sex.

### *Pending bills include:*

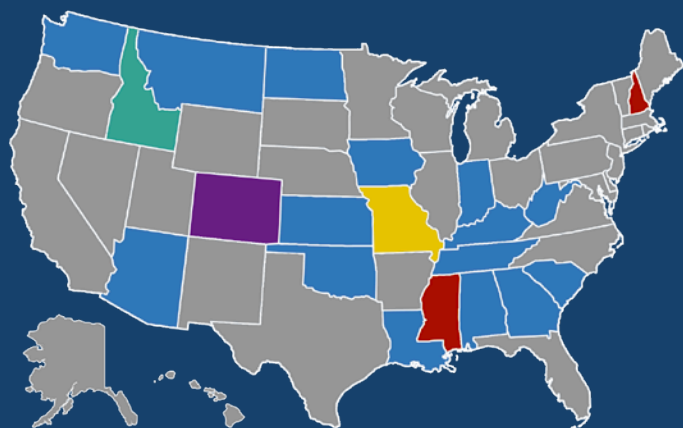
**TN (HB 1689/SB 1736):** Intro 1/22/20; This bill would prohibit students from participating in single-sex interscholastic sports at public schools unless the student verifies their sex with the public school.

**WA (HB 2201):** Intro 1/13/20; This bill would require schools to prohibit students assigned “male” at birth from participating in female sports.

**WV (HB 4564):** Intro 1/28/20; This bill would require elementary and secondary schools to ensure that athletes participating in sports that designate based on sex determine their sex based on an original birth certificate issued at birth. Violations would result in a civil penalty of up to \$10,000.

Similar anti-trans athlete bills were introduced in 11 other states, where they failed.

### *State Legislation to Prohibit Transgender Athletes from Playing Sports in Schools*



Legend:  
Green: Law Enacted  
Purple: Postponed  
Red: Died in Committee  
Blue: Introduced  
Yellow: Hearing Conducted

Source: The American Civil Liberties Union and Freedom for All Americans (as of 1/24/2021)

# Preemption Benefiting Specific Industries

Corporations prefer to work at the state level, where their lobbyists and allied groups have the most influence and can be most effective. It is more efficient for industries to push policy, often in partnership with ALEC, Chambers of Commerce and specific trade organizations (Plastics Industry Association, The National Restaurant Association, National Beverage Association, National Association of Manufacturers, etc.) in 50 state capitals than in 19,000 cities and 3,000 counties. This strategy of preempting local power continued to have success for industry in 2020 sessions and will be used again by multiple industries in 2021.

## [ **Plastic Bag Bans** ]

The plastic industry took advantage of the pandemic in 2020 to push the idea that single-use plastics are the safest choice during the pandemic. The Plastics Industry Association used a [scientifically questionable theory](#) that reusable bags pose an outsized risk of spreading COVID-19 to persuade states to suspend or delay the start of already-enacted plastic bag bans and coax legislatures to preempt local action. As part of their campaign, [they asked the U.S. Department of Health and Human Services to “make a public statement on the health and safety benefits seen in single-use plastics.”](#) We ask that the department speak out against bans on these products as a public safety risk and help stop the rush to ban these products...”

New Hampshire Gov. Chris Sununu [prohibited shoppers](#) from bringing reusable bags to stores and ordered stores to make new paper or plastic bags available. Maine delayed a bag ban that was scheduled for April 2020. The Massachusetts Food Association [called for](#) temporary suspensions of local plastic bag bans. Municipalities from coast to coast have been following suit or considering it. The Jan. 1, 2021 effective date of Washington’s bag ban has been officially delayed. Gov. Jay Inslee issued a proclamation on Dec. 18 to push back the effective date to Jan. 31, and there’s legislation in Olympia to move it to July 1.

### ***In 2020, four states barred local actions on plastic bags and other plastic products:***

**OH** ([HB 242](#)): Intro in House 5/13/19; Status: Passed and effective Jan 2021. Prohibits local governments from imposing a tax/fee/charge on auxiliary containers.

**PA** ([HB 1083](#)): Fiscal Code Amendment. Passed 6/20. The new provision, inserted into the fiscal code just hours before a full vote, prohibits municipalities from enacting any fees or restrictions on all single-use plastics such as bags, utensils, or Styrofoam containers. Passage has delayed implementation of any current plastic bag bans such as those passed in Philadelphia and West Chester.

**NE** ([LB 861](#)): Intro 1/9/20; Status: Amended into [HB 632](#) and enacted into law. Prohibits counties, municipalities, and agencies from adopting or enforcing ordinances that prohibits the use of, or that sets standards or fees for, the sale, use, or marketing of containers designed for transporting merchandise. Does not apply to solid waste and recycling programs.

**SD** ([SB 54](#)): Intro 1/21/20; Status: Signed by governor on 3/2/20. Prevents political subdivisions from enacting any law restricting the use of auxiliary containers/garbage bags/plastic straws in commerce.

### ***One state passed a bag ban, but it included state preemption:***

**NJ** ([SB 864](#)): Intro 1/14/20; Status: passed 9/24/20. Bans sale and use of polystyrene food service products two years after date of enactment; regulates single-use plastic straws; and bans sale and use of single-use carryout bags. Prohibits localities from adopting ordinances regulating these topics and provides that the state law will preempt any local law.





## **Plastic Preemptions Bills Pending**

**MN** ([HF 4560](#)): Intro 4/17/20; Status: Referred to committee. Prohibits local ordinances that impose fees on merchant-provided paper or plastic bags during a peacetime public health emergency and prohibits merchants from permitting customers to bring their own used bags.

**NJ** ([A 3931](#)): Intro 4/13/20; Status: Referred to committee. The bill suspends any local laws that regulate single-use carryout bags during the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 and for 30 days thereafter. The bill also requires grocery store and food services businesses to prohibit customers from bringing their own reusable carryout bags.

Similar bills that have been filed include: **MO** ([HB 1463](#)); **WV** ([SB 227](#)); **SC** ([S 394](#)).

## ***In addition, state preemption bills have been filed with the purpose of reducing the amount of plastic used in their state, including in:***

**RI** ([SB 2794](#)): Intro 3/12/20; Status: Referred to committee. Preempting regulation of single-use plastic straws.

**VT** ([SB 227](#)): Intro 1/7/20; Status: passed Senate, in House. Regulating provision of personal care products in small plastic containers and preempting localities from regulating same.

Similar bills that have been filed include: **CO** ([HB 1163](#)); **MD** ([HB 209](#))



## [ Tobacco ]

The history of the tobacco control movement is rife with examples of industry's use of state-level preemption to thwart local efforts to expand smokefree protections, reduce youth access to tobacco products, and counter the tobacco industry's pernicious targeting of underserved communities. In recent years, as more local communities sought to address the surge in youth e-cigarette use – particularly flavored e-cigarettes – the tobacco and vaping industries have renewed and redoubled their efforts to enact new, and expand existing, state tobacco preemption. At the same time, the rise in youth e-cigarette use has also provided an opening for advocates to push to repeal existing preemption laws and restore communities' ability to adopt more protective tobacco control laws at the local level.

### Adopted Legislation

**CO** ([HB20-1001](#)): Reaffirms local authority to adopt local, more stringent laws regulating tobacco sales but prohibits local governments from adopting a minimum tobacco purchase age under 21 years of age (i.e., floor preemption).

**NM** ([SB 131](#)): Provides that when a municipality, county, home rule municipality, or urban county “adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.”

**OK** ([SB 1423](#)): Maintains existing laws allowing cities and towns to adopt and enforce tobacco sales ordinances (e.g., minimum legal sales age) if the local ordinances mirror state law. Local governments remain preempted from adopting more stringent enforcement provisions.

**UT** ([HB 23](#)): Repeals a previously existing preemption provision and enacts a new and less ambiguous preemption provision to supersede local ordinances, rules, and regulations affecting specified subjects if the local law “is not essentially identical to any state statute relating to the applicable subject.” The preempted areas include: “(i) the minimum age of sale for a tobacco product, an electronic cigarette product, or tobacco paraphernalia; (ii) the provision or sale of a tobacco product, an electronic cigarette product, or tobacco paraphernalia; (iii) the flavoring of a tobacco product or an electronic cigarette product; (iv) the purchase or possession of a tobacco product, an electronic cigarette product, or tobacco paraphernalia; or (v) the placement or display of a tobacco product or an electronic cigarette product.” Exempts from preemption “the adoption or enforcement of a land use ordinance by a municipal or county government.” This exemption is consistent with prior state law.

**WY** ([HB 73](#)): Extends preemption of local taxes on cigarettes and “the sale, occupation, or privilege of selling cigarettes” to preempt such local taxes with respect to all nicotine products.

**WY** ([SF 50](#)): Preserves existing preemption and non-preemption language.

### Proposed Legislation

**AZ** ([HB 2877](#) / [SB 1527](#)): Specifies that “the sale and marketing of tobacco products, e-liquids, vapor products, and alternative nicotine products is a matter of statewide concern and is not subject to further regulation by a city, town or county in the state...” The legislation would explicitly preempt local sales and marketing regulations that are “in conflict with or more restrictive than a state statute or rule.” Exempt from preemption are local regulations on the sale, marketing, or use of tobacco products on property owned, leased, or operated by the local government.

**ID** ([HB 611](#)): Would repeal a non-preemption clause and replace with a clause preempting local requirements “for the regulation, marketing, or sale of tobacco products or electronic cigarettes that are more restrictive than or in addition to state law.” The proposed bill would also preempt local taxes and fees on tobacco products and electronic cigarettes while preserving local authority to (1) regulate the public use of such products; and/or (2) exercise its lawful zoning or land use powers.

**MO** ([HB 1730](#) / [HB 517](#)): Would preempt “the field regulating the sale of tobacco products, alternative nicotine products, and vapor products.” Includes an exemption for “a county, municipality, or other political subdivision from taxing the sale of tobacco products, alternative nicotine products, or vapor products under other law.”

**OR** ([SB 1577](#)): Would preempt local authority to prohibit the sale of tobacco products at pharmacies, with an exception for local ordinances adopted on or before the effective date of the proposed legislation.

Similar legislation includes: **MI** ([SB 783](#)); **MO** ([HB 2673](#)).



## [ **Natural Gas Hookups** ]

Four states passed bills preventing cities from banning natural gas as an energy source in new buildings. Several cities are requiring all-electric systems in new homes as a way to fight climate change. These preemption bills mark an escalation in the battle between clean energy advocates and the fossil fuels industries. Expect to see more in 2021.

**AZ** ([HB 2686](#)): Adopted 2/21/20; prohibits municipalities from banning natural gas hookups in new homes & commercial buildings.

**LA** ([SB 492](#)) (2020): Adopted 6/4/2020; effective 8/1/2020; provides for state regulation of natural gas utility service; preempts local regulation of the use of natural gas utility service.

**OK** ([HB 3619](#)) (2020): Adopted 5/19/20; prohibits municipalities from banning connections to utility facilities lawfully operating in the state.

**TN** ([SB 1934](#)) (2020): Adopted 3/26/20; prohibits all governments from prohibiting the connection of a utility based on the type or source of energy to be delivered.

### **Introduced in 2021**

**IN** ([HB 1191](#)): First reading 1/7/21; This bill would stop Indiana cities from banning natural gas stoves and other natural gas equipment in new homes and businesses.

**KS** ([SB 24](#)): Referred to committee 1/14/21. This bill would prohibit municipalities from imposing restrictions on customer's use of energy based upon source of energy.

Similar bills that have been filed include: **AR** ([SB 137](#)); **MS** ([SB 2123](#)); **MO** ([HB 488](#)); **TX** ([HB 884](#)).

## [ **Occupational Licensing** ]

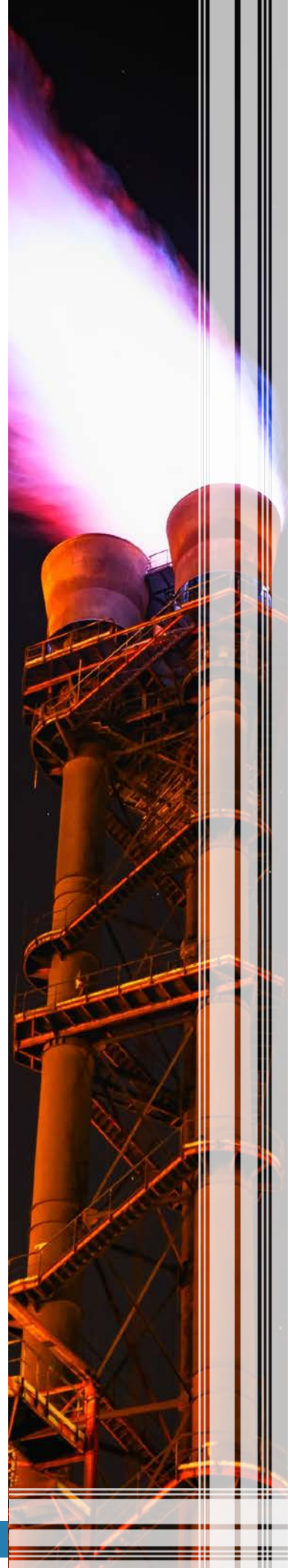
In 2021, state lawmakers are expected to sustain a trend in repealing or scaling back occupational licensing. Nearly 20% of Americans work in a profession that requires some type of license issued by the state or local governments. More than 20 states introduced some form of universal license recognition legislation in 2020.

**FL** ([HB 1193](#)): Enacted 6/30/20. This bill reduced or eliminated regulatory requirements enforced by 18 state boards that licensed professions, including barbers, real estate agents, certified public accountants, engineers, and auctioneers.

### **Bills Pending:**

**FL** ([SB 268](#)): Referred to committee 12/21/2020. This bill would preempt licensing of occupations to the state; prohibiting local governments from imposing additional licensing requirements or modifying licensing.

**TX** ([HJR 33](#)): Constitutional amendment protecting an "individual's right to earn a living free from unnecessary governmental interference."





# Erosion of Core Local Powers

Historically, cities have had authority over their own court actions, zoning and land use contracts, and revenues and expenditures, but no more. Core local powers were targeted by preemption bills in several states in 2020 and will be again in 2021.

## [ Attacks on Municipal Litigation Authority & Local Prosecutorial Discretion ]

A troubling new trend is emerging of bills that limit a local government's ability to litigate by prohibiting or limiting the use of contingency fee agreements or that take away a local prosecutor's discretion. The effort to limit the ability of localities to sue industries is being led by the [U.S. Chamber of Commerce](#) and rose out of business concern about the spate of lawsuits filed by cities, counties, and towns against opioid manufacturers and against the oil and gas companies seeking to hold them liable for climate change. The Chamber and its members fear that similar suits would be filed against other industries, including the vaping industry, and against companies responsible for data breaches that compromise private information.

### ***Bills Limiting Contingency Fee Contracts for Local Governments***

These contingency fee bills work to effectively limit local authority by making it more expensive for local governments - many of which do not have the capacity to develop large legal departments - to exercise the full range of their powers. These contingency fee bills take a more indirect approach to preemption than the type of bill that simply prohibits local governments from exercising a particular power, but these bills nevertheless amount to a concerning form of preemption.

**AZ** ([SB 1459](#)): Intro 1/30/20; Status: Retained on Committee of Whole Calendar. This bill would prohibit cities and counties from entering into contingency fee contracts unless the city/county attorney makes a written determination that the agreement is both cost effective and in the public interest. If the city/county attorney approves it, the city must request proposals from private attorneys and receive approval from the state Attorney General. The AG can disagree with the city's/county's findings on why the contract is appropriate. The bill would also prohibit a contingency fee agreement that would result in the private attorney receiving more than 25% of a recovery of less than \$10 million, with limits scaling up from there, and contingency fees cannot exceed \$50 million outside of reasonable costs and expenses.

Similar bills have been filed, including: **FL** ([SB 1574](#) / [HB 7043](#)); **TN** ([SB 981](#) / [HB 1103](#)).



## Prosecutorial Discretion

These pending bills allow the state attorney general the power to prosecute when local jurisdictions do not. In some states, like Indiana, state lawmakers want the Attorney General to intervene when local prosecutors “refuse as a matter of policy” to prosecute; for example, [when a county prosecutor refuses to prosecute cases involving small amounts of marijuana](#). In other states, these bills aim to advance police accountability by giving the state Attorney General authority in cases involving the death or injury of persons in police custody when a local prosecutor chooses not to prosecute (e.g., **OH** ([SB 337](#)); **MI** ([SB 993](#)); **VA** ([HB 5065](#))). These bills underscore that some state intervention can advance equity and racial justice where local governance fails.

**IN** ([SB 436](#)): Intro 1/15/20; Status: Passed committee. Bill seeks to give the attorney general authority to appoint a special prosecutor to prosecute certain crimes if the county prosecuting attorney refuses to prosecute the crimes as a matter of policy.

**OH** ([HB 723](#)): Intro 7/7/20; Status: Referred to committee. Bill gives the attorney general new authority to prosecute crimes occurring on state property.

**SC** ([SB 1241](#)): Intro 6/24/20; Status: Referred to committee. Bill gives a state division exclusive authority to make prosecutorial decisions in cases involving the death or injury of persons in police custody.

Similar bills that have been filed include: **GA** ([HB 1190](#)); **MO** ([SB 602](#)); **NC** ([HB 356](#)); **PA** ([SB 1321](#)).

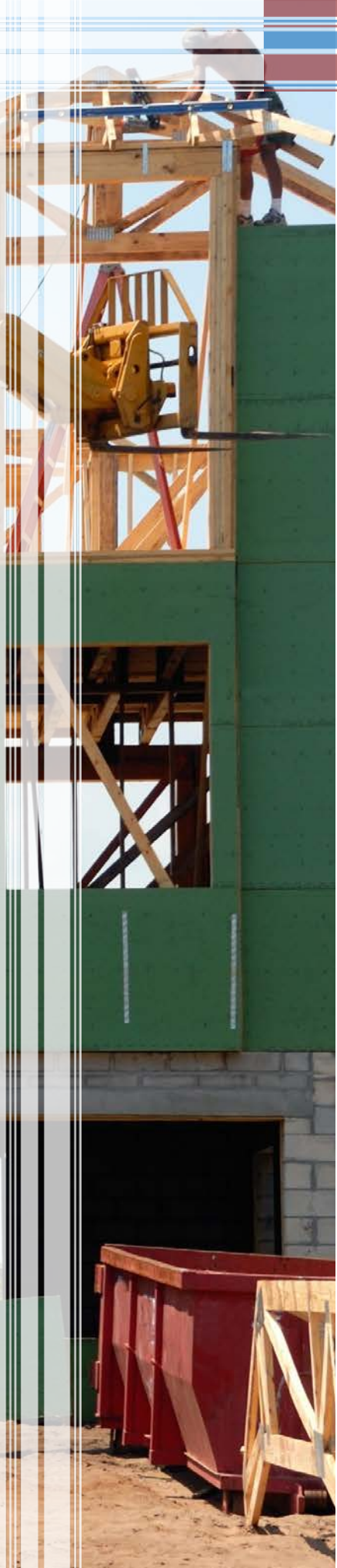
## Contracting

**FL** ([HB 53](#)): Filed 12/10/20. This bill requires local governments to use competitive bidding processes when contracting city, town, or county projects. It would block local ordinances that require training and apprenticeship programs aimed at providing work opportunities for residents.

## [ **Ban on the use of taxpayer funds for lobbying by cities and counties** ]

**TX** ([HB 749](#) / [SB 234](#)): Pre-filed 12/8/20; This bill prohibits political subdivisions from spending public funds: (1) to hire an individual required to register as a lobbyist under Chapter 305 for the purpose of lobbying a member of the legislature; or (2) to pay a nonprofit state association or organization that: (A) primarily represents political subdivisions; and (B) hires or contracts with an individual required to register as a lobbyist.”





## [ *Local Development and Zoning Regulations* ]

### *Short-Term Rentals*

**FL** ([HB 522](#)): Filed 1/11/21; This bill would place vacation rental regulation exclusively under the Florida Department of Business and Professional Regulation’s (FDBPR) Division of Hotels and Restaurants. HB 522 would preempt local laws, ordinances, and regulations that have been adopted by municipalities since 2011 from allowing or requiring inspections or licensing of all lodging establishments and restaurants.

**MI** ([SB 1196](#)): Intro 10/13/20; Status: Referred to committee. The bill provides for some statewide regulation of short-term rentals, and while it allows local governments to “enact reasonable regulations for short-term rentals to safeguard the public health, safety, and welfare,” it also prohibits local governments from enacting any local law, including zoning regulations, that would have the “total effect of prohibiting short-term rentals.”

### *Local Development*

**AZ** ([HB 2841](#)): Intro 2/11/20; Status: Passed House Committee of the Whole 3/12/20. This bill requires municipalities to create affordable housing overlay zones on at least 1% of vacant land currently zoned single family and immunizes developers in those overlay zones from design requirements, among other rights. It also preempts local regulation of “the size and number of stories of the dwelling.”

**SD** ([SB 157](#)): Intro 2/5/10; Status: Signed by governor. Changes permitting rules regarding grants of land permits, and states that granted permits do not expire for two years after their grant and any local law to the contrary is invalidated.

### *Building Design*

Homebuilders, realtors, and other groups including the Vinyl Siding Institute have supported legislation that limits local authority to regulate local building design standards.

**FL** ([HB 54](#) / [SB 284](#)): Filed 12/10/20; This bill would prohibit local government design review/authority for residential buildings, unless the building is historic (National Register) or review is required by NFIP. Most municipalities have design standards in their codes to preserve a sense of place. This would undo that important local tool. Broward County’s planning department is against it.

**GA** ([HB 302](#) / [SB 172](#)): Intro 2/3/19; Status: April 2019 was withdrawn and recommitted. This bill, in part, prohibits local governments from adopting or



## Impact Fees

**FL** ([SB 1066](#)): Approved by Governor 6/20/20. This bill blocks local governments from increasing impact fees on pending building permits, requires each local government to create an impact fee review board, and streamlines the approval processes.

## Growth Management

**FL** ([HB 59](#) / [SB 496](#)): Filed 12/20/20. This bill, which is very similar to SB 410 (which was vetoed by the governor), prohibits counties from adopting a comprehensive plan, a land development regulation, or other restrictions unless certain conditions are met. The bill also prohibits municipalities from certain annexation of areas and requires local governments to include a property rights element in their comprehensive plans. SB 410 was opposed by environmental groups (and others) because it would have “cleared the way for high-density development in designated rural areas... [required] county governments... to add a property-rights element to their comprehensive plans, even though federal and state law already provide ample property rights protections. It would have violated the Florida Constitution by overriding county charters and would have invited costly litigation.”

## Code Enforcement

**FL** ([SB 60](#)): Referred to Committee 1/11/21. This bill prohibits code inspectors designated by boards of county commissioners from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints; prohibiting code inspectors from initiating enforcement proceedings for potential violations of codes and ordinances by way of anonymous complaints; prohibiting code enforcement officers from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints; prohibiting code inspectors designated by governing bodies of municipalities from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints.

**TX** ([HB 738](#)): Intro 12/4/20; Status: Filed. The bill imposes a new requirement on municipalities that wish to add, modify, or remove requirements set by the residential building code adopted by state law as a municipal residential building code. Municipalities must now hold a public hearing on the local amendment and adopt the amendment by ordinance.



## **[Fiscal Authority]**

States have imposed a variety of statutory and constitutional limitations on local fiscal autonomy focused on general tax and expenditure limitations applied to counties, municipalities, and school districts. These types of limitations exist in 48 states.

**IA (HSB 675):** Intro 2/11/20; Status: House Study Bill sent to subcommittee. Under existing law, when a school district puts forth a bond proposition to voters, if it fails, the school district cannot resubmit the proposal for 6 months. The bill increases that period to 1 year.

**TX (HB 59):** Filed 11/9/20; Status: Filed. The bill prohibits the imposition of a maintenance or operations tax by school district with some exceptions.

**TX (HB 183):** Filed 11/9/20; Status: Filed. The bill imposes new limits on school taxes on certain homesteads.

**TN (HB 2638 / SB 2751):** Filed in House 2/5/20, Filed in Senate 2/6/20; Status in House: Taken off subcommittee calendar; Status in Senate: Passed on Second Consideration and referred to local government committee. The bill, as introduced, limits increases to real property taxes locally unless a referendum election is held and a majority of the electorate approves.

# Unmasking Preemption

## Strategies Used to Hide State Interference

Aware that residents are more likely to trust and rely on local government, and that many locally passed policies are popular in their communities, state legislatures have employed strategies to obscure public discussion about preemption, the policies being preempted or the consequences of preemption.

[Research into recent legislative action](#) has identified strategies intended to mask preemption including:

### (1) PASSING PREEMPTIVE BILLS QUICKLY

- The most common strategy for passing preemptive laws was to do so quickly, sometimes getting a bill passed on the same day it was proposed. Passing bills quickly minimizes open debate on the purpose of the bill, reduces opponents' ability to organize, and limits legislators' ability to consult with constituent groups.

### (2) CONCEALING PREEMPTION

- Legislatures have concealed preemption by adding it to existing bills or an unrelated bill, using a misleading title, or bundling preemption of multiple non-related topics or titling bills in a way that does not reflect the substance of the bill, such as:
  - Preemption of paid sick leave added to a bill outlawing puppy mills in Ohio
  - Preemption of food and nutrition policy added to a California state budget bill
  - Preemption of tobacco control added to a bill addressing kidney disease and funding dialysis centers in Hawaii

### (3) REPEALING AND REPLACING PREEMPTION

- In North Carolina in 2017, the legislature repealed a controversial law (HB2) preempting nondiscrimination, paid sick leave, and minimum wage but replaced it with similar preemption that still blocked local efforts in those areas until its recent sunset.

### (4) PREEMPTING MUNICIPAL LITIGATION

- Utah enacted a law protecting the firearm industry from lawsuits.
- Multiple states are considering preempting legal action by cities against industries, including suits that would hold the oil and gas industry accountable for damage done by climate change.
- A number of states are also considering legislation that would make it more difficult for local governments to enter into contingency fee agreements with law firms. Such contingency fee agreements can be critical in allowing local governments to undertake significant, resource-intensive litigation against corporate defendants and others.

### (5) ENACTING PUNITIVE PREEMPTION

- Several states allow for lawsuits against local governments and officials for passing laws that challenge state preemption, particularly around guns and sanctuary city policies.





## Pending Preemption Repeal Legislation

As noted, one encouraging trend this year is the large number of bills filed to repeal preemption, following successful repeal efforts in Colorado and Arkansas in 2019 and in Virginia in 2020.

### **Bills to Repeal Minimum Wage Preemption**

**FL** ([SB 304 / HB 6027](#)): Status: Referred to committee 1/11/21. This bill would repeal state preemption of local minimum wage and employment benefits.

**ID** ([HB337](#)): Intro 1/20/20; Status: Referred to committee 1/21/20. Amends existing law to remove language prohibiting a political subdivision from enacting a minimum wage that is higher than the state minimum wage.

**KY** ([HB 39 / SB 13](#)): Intro 1/7/20; Status: Referred to committee in House, Referred to committee in Senate. Raises minimum wage to \$15 and also permits local minimum wage higher than state law (Note: wages broadly defined to include “any other similar advantages agreed upon by the employer...”)

**PA** ([HB 2659](#)): Intro 8/7/2020; Status: Referred to committee in House. Adds provision allowing for municipalities to adopt greater minimum wages than those required under state and federal law and repealing provision preempting and superseding any municipal ordinance dealing with the subject of this act.

**VA** ([HB 325](#)): Intro 1/1/20; Status: Left Labor & Commerce Committee 2/11/20. Establishes a procedure by which a local alternative minimum wage may be imposed in any locality.

Similar repeal bills that have been filed include:

**FL** ([HB 6065](#)) ([SB 1520](#)); **NY** ([S02228](#)); **OH** ([HB 34](#)); **OK** ([HB 1131](#)); **PA** ([HB 2721](#)); **TX** ([HB 224](#)).

### **Housing Preemption Repeal Bills**

**FL** ([HB 6021](#)): Filed 1/12/21. This bill deletes provisions that require certain local government rent control measures to expire within a specified time period unless extended or renewed.

**IN** ([HB 1012](#)): Intro 1/7/20; Status: Referred to committee. Repeals a statute that prohibits a county, city, town, or township from requiring a landlord to participate in a federal Section 8 housing assistance program or similar housing program.

### **Broadband Preemption Repeal Bills**

**ID** ([H 490](#)): Intro 2/11/20; Status: Referred to committee. Establishes certain local authority around broadband.

**NC** ([SB 769](#)): Intro 5/14/20; Status: Passed first reading and sent to Senate committee on Rules. Bill would enable local governments to expand access to broadband.

**TN** ([HB 28](#)): Intro 1/12/21. As introduced, authorizes municipal electric plants, electric cooperatives, and telephone cooperatives to provide broadband internet service on their own or by joint venture in geographical areas outside their service areas if the areas are located in a distressed county; requires broadband internet service be provided in state parks located in distressed counties.

## Sanctuary City Preemption Repeal Bills

**AZ** ([SB 1564](#)): Intro 2/4/20; Status: Held in Committees. Repeals state law preempting localities from “limit[ing]” or “restrict[ing]” federal enforcement of immigration laws and requiring cooperation with the federal government, and also repeals various other anti-immigrant provisions in state law.

Similar bills that have been filed include: **FL** ([HB 6023](#)) and **TX** ([HB 177](#)).

## Plastic Preemption Repeal Bills Pending

**FL** ([SB 594 / HB 6027](#)): Filed 1/12/21. This bill removes prohibition of local laws relating to regulation of auxiliary containers, wrappings, & disposable plastic bags.

**IA** ([HF 2207](#)): Intro 1/31/20; Status: Referred to committee. Amends existing preemption of local plastic bag/container regulations by allowing cities and counties to set standards or requirements pertaining to bags. Cities and counties are still preempted from imposing regulations on cups, packages, containers, bottles, and other packaging.

**ID** ([HB 338](#)): Intro 1/20/20; Status: Referred to committee. Repeals section of code preempting local regulation of auxiliary containers.

**MI** ([SB 975](#)): Intro 6/18/20; Status: Referred to committee. Repeals law preempting local ordinances regulating the use, disposition, and taxes on certain containers.

Similar bills that have been filed include: **AZ** ([SB 1404](#)); **CO** ([SB 20-010](#)); **IN** ([SB 371](#)); **MO** ([HB 2459](#)).

## Short-Term Rentals Preemption Repeal

**AZ** ([SB 1479](#)): Intro 2/3/20; Status: Held in committees. Repeals preemption of local vacation and short-term rentals regulations.

## Tobacco Control Preemption Repeal Bills

**FL** ([HB 239 / SB 334](#)): Filed 1/13/21. This bill authorizes counties & municipalities to further restrict smoking within boundaries of public beaches & public parks under certain circumstances.

**KY** ([HB 147](#)): Intro in House 1/25/21. This bill would give local governments the authority to regulate tobacco sales along with the advertising and distribution of tobacco products.

**RI** ([Article 21](#)): Proposed legislation in Rhode Island would affirmatively grant towns and city councils the authority to “regulate the use and sale of cigarettes, other tobacco products, and electronic nicotine delivery systems.” Although Rhode Island state law did not previously expressly preempt local tobacco ordinances, the state Supreme Court invalidated several local tobacco ordinances when it held that such laws were outside the scope of local government authority absent explicit authorization from the state legislature. The proposed legislation provides such explicit authorization.

Finally, a joint resolution filed in **FL** ([SB 540](#)) would make it harder for the state legislature to preempt local laws by requiring a supermajority of each chamber to approve the bill. “The legislature may not, except by a general law passed by a two-thirds vote of each house, preempt to the state a field of regulation or other subject of legislation not preempted to it by this Constitution.”





# Preemption and Repeal Bills Passed in 2020

## Plastics

In 2020, four states barred local actions on plastic bags and other plastic products.

**OH** ([HB 242](#) / [SB 222](#)): Intro in House 5/13/19; Status: Passed and effective Jan 2021. Prohibits local governments from imposing a tax/fee/charge on auxiliary containers.

**PA** ([HB 1083](#)): Fiscal Code Amendment; Passed 6/20. The new provision, inserted into the fiscal code just hours before a full vote, prohibits municipalities from enacting any fees or restrictions on all single-use plastics such as bags, utensils, or Styrofoam containers. Passage has delayed implementation of any current plastic bag bans such as those passed in Philadelphia and West Chester.

**NE** ([LB 861](#)): Intro 1/9/20; Status: amended into [HB 632](#) and enacted into law. Prohibits counties, municipalities, and agencies from adopting or enforcing ordinances that prohibits the use of, or that sets standards or fees for, the sale, use, or marketing of containers designed for transporting merchandise. Does not apply to solid waste and recycling programs.

**SD** ([SB 54](#)): Intro 1/21/20; Status: Signed by governor on 3/2/20. Prevents political subdivisions from enacting any law restricting the use of auxiliary containers/garbage bags/plastic straws in commerce. One state passed a bag ban, but it included state preemption:

**NJ** ([SB 864](#)): Intro 1/14/20; Status: passed 9/24/20. Bans sale and use of polystyrene food service products two years after date of enactment; regulates single-use plastic straws; and bans sale and use of single-use carryout bags. Prohibits localities from adopting ordinances regulating these topics and provides that the state law will preempt any local law.

## Tobacco

**CO** ([HB 20-1001](#)): Reaffirms local authority to adopt local more stringent laws regulating tobacco sales but prohibits local governments from adopting a minimum tobacco purchase age under 21 years of age (i.e., “floor” preemption).

**NM** ([SB 131](#)): Provides that when a municipality, county, home rule municipality, or urban county “adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.”

**OK** ([SB 1423](#)): Maintains existing laws allowing cities and towns to adopt and enforce tobacco sales ordinances (eg, minimum legal sales age) if the local ordinances mirror state law. Local governments remain preempted from adopting more stringent enforcement provisions.

**UT** ([HB 23](#)): Repeals a previously existing preemption provision and enacts a new and less ambiguous preemption provision to supersede local ordinances, rules, and regulations affecting specified subjects if the local law “is not essentially identical to any state statute relating to the applicable subject.” The preempted areas include:

“(i) the minimum age of sale for a tobacco product, an electronic cigarette product, or tobacco paraphernalia; (ii) the provision or sale of a tobacco product, an electronic cigarette product, or tobacco paraphernalia; (iii) the flavoring of a tobacco product or an electronic cigarette product; (iv) the purchase or possession of a tobacco product, an electronic cigarette product, or tobacco paraphernalia; or (v) the placement or display of a tobacco product or an electronic cigarette product.”

Exempts from preemption “the adoption or enforcement of a land use ordinance by a municipal or county government.” This exemption is consistent with prior state law.

**WY** ([HB 73](#)): Extends preemption of local taxes on cigarettes and “the sale, occupation, or privilege of selling cigarettes” to preempt such local taxes with respect to all nicotine products.

**WY** ([SF 50](#)): Preserves existing preemption and non-preemption language.

## Anti-Protester

**SD** ([HB 1117](#)): Intro 1/29/20; Status: Signed by Governor March 2020. Bill establishes the crime of incitement to riot, and revises provisions regarding civil liability for riot and riot boosting.

**SD** ([HB 1199](#)): Intro 1/30/20; Status: Signed by Governor. The bill creates a new definition for “incitement to riot” and establishes personal and joint liability for damages and other penalties if a person commits incitement to riot.

**TN** ([HB 8005 / SB 8005](#)): House Intro 8/7/20, Senate Intro 8/10/20; Status: Signed by Governor. The new law, in part, imposes new punishments for assaults against first responders, adds to conduct that constitutes the offense of aggravated criminal trespass (including remaining on property and recklessly damaging property), adds to the type of conduct that constitutes “damage” for purposes of the offense of vandalism, and enhances the penalty for obstruction of a highway or other public way.

## Natural Gas Hookups

**AZ** ([HB 2686](#)): Adopted 2/21/20. Prohibits municipalities from banning natural gas hookups in new homes & commercial buildings.

**LA** ([SB 492](#)): Adopted 6/4/2020; effective 8/1/2020. Provides for state regulation of natural gas utility service; preempts local regulation of the use of natural gas utility service.

**OK** ([HB 3619](#)): Adopted 5/19/20). Prohibits municipalities from banning connections to utility facilities lawfully operating in the state.

**TN** ([SB 1934](#)): Adopted 3/26/20. Prohibits all governments from prohibiting the connection of a utility based on the type or source of energy to be delivered.

## Occupational Licensing

**FL** ([HB 1193](#)): Enacted 6/30/20. This bill reduced or eliminated regulatory requirements enforced by 18 state boards that licensed professions, including barbers, real estate agents, certified public accountants, engineers, and auctioneers.

## Impact Fees

**FL** ([SB 1066](#)): Approved by Governor 6/20/20. This bill blocks local governments from increasing impact fees on pending building permits, requires each local government to create an impact fee review board and streamlines the approval processes.

## 5G

**SC** ([HB 4262](#)): Intro 3/19/19; Status: Enacted 10/7/2020. Preempts “any enactment by an authority that contradicts, expands, contracts, or otherwise modifies the provisions of this article with respect to the regulation of the placement of small wireless facilities and of support structures and poles for small wireless facilities in the ROW; provided however that nothing in this item limits any power granted to any authority under this article.”

## Housing

**CA** ([AB 3088](#)): Intro 2/21/20; Status: Signed by governor August 2020. The bill protects residential tenants from evictions for failure to pay rent due to a COVID-19 related hardship. In some regards the bill defers to local ordinances that are more protective of tenants, but it specifically preempts any renewal, modification, or adoption of local ordinances during a specified time period that are intended to prevent evictions.

## Transgender Athletes

**ID** ([HB 500](#)): Signed into law 3/30/20. Called the “Fairness in Women’s Sports Act,” it requires public schools to divide gendered sports based on biological sex.


## Sunscreen and Over the Counter Drugs

**FL** ([SB 172](#)): Signed into law 6/30/20. This bill preempts local regulation of over-the-counter proprietary drugs or cosmetics.

## Environmental Resource Management/Rights of Nature

**FL** ([SB 712](#)): Signed into law 7/1/20. A provision in this bill prohibits local governments from providing legal rights to any plant, animal, body of water, or other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution.

# Preemption Repeal Bills Passed



**VA** ([SB 183](#)) and ([HB 1537](#)): Signed into law 4/11/20. This bill overturns the Commonwealth’s prohibition on the removal of Confederate war memorials and gives localities the ability to remove, relocate, or contextualize the monuments in their communities.

**VA** ([SB 35](#)) and ([HB 421](#)): Signed into law 4/22/20. This bill repeals existing prohibitions and allows localities to regulate firearms in public buildings, parks, recreation centers, and during permitted events.



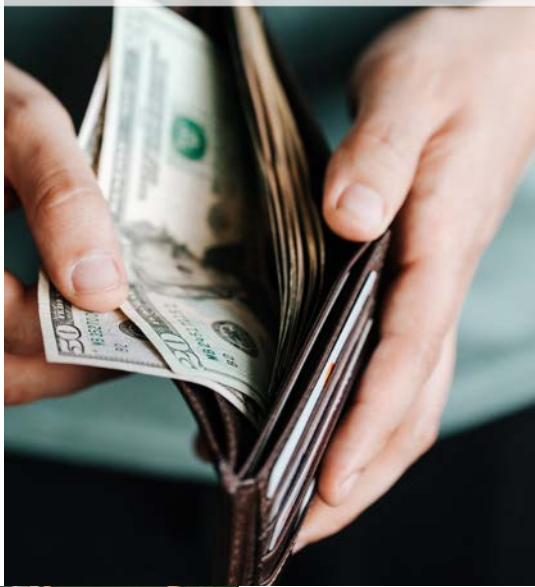
# Conclusion

In 2020, Americans got an education in the worst and the best of federalism. The idea that all levels of government could work together to address the threats and challenges to our shared enterprise was shown to be quaint and creaky with age. But the absence of federal action demonstrated the value of well-functioning and coordinated state and local governments and made it clear that ambiguity about local/state authority and confrontations over control can cost lives, chill innovation, prolong pain, and delay recovery.

Instead of recognizing the need and opportunity to update the legal framework and address the imbalance in state and local power, many state lawmakers responded in 2021 with sweeping, often punitive preemption bills intended to further erode the power and independence of local governments and keep cities, towns, and counties from doing all they could to protect and promote the health, safety, and economic and racial equity of their residents.

However, the 2021 legislative sessions have also seen the introduction of an unprecedented number of preemption repeal bills. The efforts by cross-issue grassroots coalitions to kill and weaken proposed state interference laws may herald the emergence of local and state lawmakers championing local control and the ability of local governments to address their own unique problems and act on the needs and values of their residents.





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