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FLORIDA

PREEMPTION STRATEGY 2.0

The Continuing Attack on Home Rule in Florida



**LOCAL
GOVERNMENTS**



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Table of Contents

Introduction	6
Summary - “Preemption Strategy: The Attack on Home Rule in Florida”	6
Preemption Strategy in the Florida Legislature	12
Anatomy of a Preemption 2020 (Cosmetics/Sunscreen)	15
Preemption and Public Health	19
Preemption by Executive Authority	20
Conclusion.....	22
Appendix.....	23
Endnotes	26

EXECUTIVE SUMMARY

In many states, including Florida, legislatures increasingly are passing bills that preempt local power granted to city and county government.

State governments dominated by Republicans, the American Legislative Exchange Council and business interests combine to pass legislation to explicitly block local action on an array of issues.

Preemption moves government action away from the entity closest to the people. It can be used to block local ordinances that reflect a community's will to help women, people of color, LGBTQ people and those in poverty. Since March 2020, when COVID-19 forced the implementation of mitigation strategies, Republican governors in particular have preempted local governments' power to institute stay-at-home orders, mask mandates and other measures. That has been the case in Florida, where Governor Ron DeSantis has refused to issue a statewide mask mandate while impeding the ability of local governments to institute their own precautions.

In 2020, 42 preemption bills were filed in the Florida Legislature, which is consistent with the number filed in the previous three years. Legislators are already filing preemption legislation for consideration in 2021. Some of the bills have been proposed in previous years while other bills are new preemptions, significantly broadening the state's ability to override the home rule authority of local governments.



KEY FINDINGS

- Use of preemption as a legislative strategy continued to be used by legislators in the 2020 Florida legislative session with 42 bills filed containing some form of local government preemption.
- Business-funded corporate interest groups used their considerable political influence, gained through campaign contributions and lobbying expenditures, to push a bill preempting local regulation of sunscreens through the 2020 Florida legislative session.
- Preemption bills filed for the 2021 legislative session include some familiar ones that have been proposed in previous years but failed to pass, including bills preempting regulation of vacation rentals, home-based businesses and red-light cameras.
- A bill filed for the 2021 session, Senate Bill 656, would preempt local regulation of campaign financing, including cities and counties where voters have adopted lower campaign contribution limits.
- New preemptions are being proposed for 2021, including bills preempting local regulation of seaports and energy infrastructure. There are also bills to create a process by which city government budget decisions involving the police can be reversed or amended at the state level.
- The refusal of governors to enact statewide mask mandates and their blockage of mask requirements and other local responses to the pandemic are clear hazards to Americans' public health. Disproportionately impacted are women, people of color and workers in low-wage jobs.
- The COVID-19 crisis has highlighted a rarer form of state preemption than action by legislatures – using executive orders by governors to overturn or block local ordinances. By executive order, Governor Ron DeSantis has blocked anti-COVID local ordinances.

POLICY OPTIONS



Require two-thirds or super-majority vote for passage of legislation that preempts local government authority (similar to what is required for local unfunded mandates and public record exemptions).



Establish by rule or law a single-subject requirement for preemption legislation.



Establish a sunset review provision for preemptions that automatically repeals a preemption on a certain date unless the legislature affirmatively acts to renew it.



Prohibit any fines or punitive liabilities for local governments that violate legislative preemptions.

Introduction

“Preemption is the use of state law to nullify a municipal ordinance or authority. State preemption can span many policy areas including environmental regulation, firearm use and labor laws. States can preempt cities from legislating on particular issues either by statutory or constitutional law.”¹

In January 2020, Integrity Florida published a research report titled “Preemption Strategy: The Attack on Home Rule in Florida.” The report documented the increasing use of preemption as a strategy in the Florida Legislature from 2017 through 2019.

In this new report, Integrity Florida examines how preemption was used during the 2020 legislative session. The report also examines how preemption was used as a response to the COVID-19 pandemic, after the first two cases in Florida were reported on March 1, 2020.² These COVID-related preemptions are unique because they were instituted by the executive rather than the legislative branch of state government. The new report begins with a summary of the previous report.

Summary - “Preemption Strategy: The Attack on Home Rule in Florida”³

The Florida Legislature in recent years has expanded its use of preemption – the legal doctrine that allows a higher level of government to supersede the authority of a lower level⁴-- to block local ordinances it opposes.

Preemption by the legislature overrides local governments’ authority, impeding local ability to respond to local challenges. Preemption dictates a one-size-fits-all approach. It weakens or ignores the home rule authority of cities and counties granted in Florida law since 1973.

Aggressive and expanded use of preemption by legislatures is not unique to Florida. The practice is another battleground in the nation’s political and ideological divides. In Florida, more frequent use of preemption is the result in part of two decades of Republican control of the governorship and both the state House of Representatives and state Senate.

Republicans and other supporters of preemption have made clear that it is a strategy rooted in partisan, ideological and urban-rural concerns. One Florida legislator says preemption is “an ideological battle...between a conservative state Legislature and more liberal urban centers.”⁵ State preemption is justified, its adherents maintain, because “local governments have become victims of far left organizations manipulating the public and local officials.”⁶ Preemptions often are instigated by conservative organizations and businesses that seek to overthrow local initiatives inimical to their interests.⁷ Preemption frequently constitutes “a conservative blockade against progressive interests.”⁸

Preemption is more often used today by Republicans, although Democrats have used it as well. For example, in 1987, when Democrats were in power, the Florida Legislature forbade local regulation of

firearms. That law continues to prevent city or county action on gun regulations, regardless of local conditions or shootings like that at the Marjory Stoneman Douglas High School in 2018.

The 1987 law reserves all regulation of firearms to the legislature. The all-encompassing law “declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.”⁹

Since the 1987 firearms statute the appetite of the Florida Legislature for preemption of local actions has grown enormously. The legislature has asserted its powers of preemption on an increasing number of issues, including smoking, sanctuary cities, banning polystyrene and plastic bags, pest control, local signage, affordable housing and the minimum wage.¹⁰ In less than a decade, a report on preemption said, the Florida Legislature “has passed nearly 20 laws whose sole purpose is to preempt local legislation dealing with a particular topic – from plastic bags to bio-medical waste to vacation rentals and beyond.” The laws are designed “to invalidate the decisions of locally elected governments whose policies differ from the preferences of the state legislative majority.”¹¹

The increase in legislative preemption in Florida accompanies a similar increase throughout the nation. Legislatures have enacted preemption laws targeting labor standards, civil rights, public health and safety, technology, environmental protection, local zoning and local taxes.¹²

Legislatures are adopting new, more sweeping forms of preemption that go beyond its historic use to set “a floor for regulation and force[s] local governments to do something they would not otherwise have done.”¹³ The new types of preemption provide that a state government “commands the field” in an area of regulation,¹⁴ preempting “broad swaths of preexisting home rule powers.”¹⁵

Punitive preemption is another new form of preemption. Such laws hold local governments and officials liable for violating state preemption legislation. In addition to blocking local governments’ action, punitive preemption subjects local governments and officials to penalties such as fines, damages and removal from office.

The first-ever incidence of punitive preemption in Florida is tied up in a state Court of Appeal.¹⁶ The legislature in 2011 imposed civil penalties, both official and personal, for anyone violating the state’s firearms preemption law. Individual officials can be sued personally, removed from office by the governor and subjected to a fine up to \$5,000 and damages up to \$100,000.

A circuit court judge struck down the punitive provisions of the law as unconstitutional, although he upheld the legislature’s preemption of firearms regulation.¹⁷ He noted that the state had never before enacted penalties against local officials and governments. “In every other circumstance, the only consequence of a determination that local action violates express preemption would be a finding that such local action is null and void.”

Forces Driving State Preemption of Local Government in Florida

Defending the increased use of state preemption represents a reversal of previous arguments by conservatives, who long maintained that ultimate authority should rest with local governments. That position has been discarded by preemption proponents. Local action is now associated with progressive causes and many conservatives and business groups view both local and federal government as threats to liberty, seeing states as the right level to govern.¹⁸

Proponents typically have rationalized preemption as a needed standardization of law throughout a state. They maintain that preemption avoids the need for companies operating in multiple jurisdictions to master multiple legal regimes, thereby increasing compliance costs and thus the cost of doing business in the state. In the case of preemption of minimum wages, for example, they argue that standardization is needed because the wage rate in one jurisdiction will affect the wages employers must offer in neighboring jurisdictions.

Today's motivations for the change in attitude toward state preemption are often **partisan** and/or **policy-driven**, frequently involving national wedge issues opposed by Republican majorities in some states, such as sanctuary cities and the minimum wage. Other preemptive actions are **special-interest driven**, in which "a special interest group, usually a business group that is frustrated by a specific situation in a specific city or county...takes that to the state legislature and has a state remedy to address a local problem."¹⁹

Special interests have been active for decades in pushing for preemptions. "Often propelled by trade association and business lobbying, preemptive state laws are aimed not at coordinating state and local regulation but preventing any regulation at all," says one study.²⁰ "Recent preemption efforts [are] part of longstanding campaigns waged by industry groups hoping to stop or limit progressive local policies in order to create a friendlier business environment for themselves," concludes another study.²¹

Special-interest driven preemptions accelerated in the late 1980s when the tobacco industry sought legislative aid to overcome local smoking restrictions. Then in the 1990s the National Rifle Association began seeking state preemption of local gun regulation. The NRA effort resulted in firearms preemption laws in 43 states, preventing local governments from enacting their own firearms regulations. Thereafter, "Other conservative interest and ideological groups joined tobacco companies and the NRA in lobbying state leaders to enact preemption laws with an eye to defeating local, progressive policies."²²

Opponents of preemption of labor-related preemptions have called "the corporate lobby" the "most significant force behind the recent wave of preemption laws nationwide."

Failing to stop the adoption of local pro-worker laws, the corporate lobby has persuaded state-level lawmakers to revoke the underlying local authority to adopt such policies, in some cases rolling back wage increases that were already enacted by city and county governments. In doing so, the corporate lobby has not only captured the political lever closest to the people (their city or county government) it has also hampered the democratic process at its most intimate level."²³

The Role of ALEC in Expanding State Preemptions

The American Legislative Exchange Council (ALEC) has played an important role in advancing preemption legislation. Its support for preempting the power of local governments includes creating model legislation, hundreds of which are included on its website. (See examples²⁴)

ALEC says its task forces “have considered, written and approved hundreds of model bills on a wide range of issues, model legislation that will frame the debate today and far into the future. Each year, close to 1,000 bills, based at least in part on ALEC Model Legislation, are introduced in the states. Of these, an average of 20 percent become law.”²⁵

It also says its membership includes “25 percent of all legislative members and over 200 corporate and nonprofit members ... 20 percent of Congress, eight sitting governors and more than 300 local elected officials.”²⁶

Dozens of Florida state legislators have ties to ALEC: Twenty members of the Florida House of Representatives, six members of the Florida Senate, more than 50 former members of the state House and nine former state senators.²⁷

ALEC’s trade association and corporate members include the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Federation of Independent Business, Pharmaceutical Research and Manufacturers of America (PhRMA), Pfizer, Koch Enterprises, Altria (whose brands include Philip Morris USA and the U.S. Smokeless Tobacco Company), State Farm Insurance and Peabody Energy (the largest private-sector coal company in the world).^{28,29}

State preemption “exploded with the lobbying efforts, through ALEC and other groups, of the tobacco industry, followed by the National Rifle Association in the early 1990s, as tobacco bills were handed out at ALEC conferences and new legislators were greeted with free cigarettes,” influencing states to pass “dozens of tobacco pre-emption bills a year. The Consistency in Firearms Regulation Act, a onetime ALEC model bill that abolishes local gun laws, was to some extent ‘the model of models,’ for today’s pre-emption policies.”³⁰

In recent years ALEC has fought minimum wage laws enacted by many cities throughout the nation. It has provided model legislation preempting local minimum wages since 2002, reaffirming it in 2013.³¹

Leaked accounts of a December 2014 ALEC meeting included discussion by a staff member of an “onslaught” of bills at all levels of government to raise minimum wages. “Perhaps the biggest threat comes from the local level,” she said. “Our solution that Alec has passed is state legislation that pre-empts the polities from within the state from raising the minimum wage higher than state level.”³²

ALEC has been clear about its intent to rein in local governments. They “have become victims of far-left organizations manipulating the public and local officials to create policies that hurt economic development and individual freedom,” Jon Russell, the director of ALEC’s American City County Exchange, wrote in 2015. His article, titled “Preemption Laws Provide Backstop for Localized Progressive Politics,” said “big

government activists have begun targeting local governments to create oppressive policies that could not survive at the state capitol. As a result, state lawmakers have found themselves in the precarious position of passing preemption laws to get a handle on intrusive government at the local level.”³³

The Consequences of Preemption

Increased use of the preemption strategy in Florida comes with consequences. Preemption weakens home rule powers of local governments. It interferes with voters’ ability to determine the direction of their own communities and receive adequate responses to local conditions. Urban areas may be disproportionately affected by state preemption; areas where gun crimes are most prevalent have their hands tied from addressing the problem by rural legislators who have little connection to those areas and the problems they face.³⁴

Local ordinances that reflect a community’s will to help women, people of color and LGBTQ people may be blocked. The frequent use of state preemption “threaten[s] to stymie any form of local progress protecting individual rights.”³⁵

Preemption may block local policies that mitigate disproportionate impacts of state government on people of color. “Preemption laws are not inherently anti-democratic but become so when used to amplify existing racial and economic inequality,” a 2018 report said. “What we’re seeing is conservative, mostly white legislatures really tying the hands of cities that are majority people of color.”³⁶

Similarly, low-wage earners may be disadvantaged by state preemptions. “[W]hen corporate-friendly, overwhelmingly white legislatures decide to tie the hands of local policymakers to raise the wage floor in their cities, it is typically communities earning low wages, in many cases disproportionately people of color, who suffer....”³⁷

Punitive preemption laws would change the type of candidates who run for office. By imposing personal liability, state legislation may “deter qualified individuals from seeking local office” and “distort the thinking of the individuals who do serve, thus discouraging valid local legislative action in areas that are not reserved to the state.”³⁸

Key Findings from the 2020 Preemption Report

- Home rule powers granted to municipalities and counties do not protect local governments against aggressive preemption of their actions.
- Traditionally preemption was used to align state and local laws to make sure there were no inconsistencies. New types of powerful preemptions – called maximum preemption, blanket preemption, nuclear preemption and super-preemption – are now often used to void or block local government actions.

- Increasingly, super-preemption laws that hold local governments liable for action in specific policy areas are being used to punish or threaten punishment of local officials.
- Preemption is not always “bad”. “Bad” preemption deters policy innovation, limits local governments’ ability to make policy or undermines protection of individual rights.
- New preemptions are driven by partisan, ideological or special-interest motivations.
- Some state preemptions have been stimulated by corporate interests to block regulations they dislike.
- Some Republicans have expressly acknowledged that the use of preemption is a strategy to block progressive local actions and to punish “rogue” local governments.
- Aggressive use of preemptions has many negative consequences. Preemptions interfere with local residents’ ability to determine the direction of their communities. They block local attempts to add protections for LGBTQ individuals, black residents and the poor. They prevent local governments from enacting strong environmental and community health measures. Use of punitive preemption changes the kind of candidate who would serve under punitive laws.
- Use of preemption as a legislative strategy is increasing in Florida.
- Bills containing multiple preemptions are becoming common in the Florida Legislature.
- Business-funded corporate interest groups are using their considerable political influence, gained through campaign contributions and lobbying expenditures, to push preemption legislation in the Florida Legislature.

Preemption Strategy in the Florida Legislature

Integrity Florida's previous preemption report found that from 2017 through the 2019 legislative sessions, 119 bills were filed that contained some form of state preemption of local governments (see Appendix). Integrity Florida research showed there were 36 bills filed in 2017,³⁹ 38 filed in 2018⁴⁰ and 45 filed in 2019.⁴¹ Only a small number of those bills (11) were passed into law, but it was clear that on a yearly basis there is a concerted and strategic effort in the Florida Legislature to strip local government of its power to act on a wide variety of issues.

The local issues that are the subject of preemption bills run a wide gamut and often return year after year because they fail to pass. Each year from 2017 through 2019 there were bills preempting local regulation of short-term vacation rentals like Airbnb. An example of this legislation is House Bill 733⁴² filed in 2018.

While some preemption legislation is narrowly targeted like 2019's Senate Bill 82,⁴³ which preempted local regulation of vegetable gardens, other legislation is notable for the range and scope of its preemption. In 2017, House Bill 17⁴⁴ would preempt to the state all local regulation of businesses, professions or occupations, unless the regulation is authorized by law. Any regulations that were adopted by local governments before the bill became law would have been repealed in July 2020. A similar bill in the Senate (SB1158⁴⁵) would have preempted local regulation of "matters of commerce, trade and labor."

2020 Florida Legislative Session

In the 2020 legislative session, preemption continued to be used as a strategy to strip local government of its home-rule authority. As in previous sessions, the proposed preemptions covered a wide variety of issues ranging from fireworks to towing services to monuments and memorials and home-based businesses. Over the last two years, the legislature is averaging over 40 preemption bills filed each year.

Integrity Florida research found there were 42 bills filed for the 2020 session that included some form of local government preemption. (see Appendix). Of those 42 bills, 8 were adopted and signed into law. One of those that was signed into law was Senate Bill 172, known as the Florida Drug and Cosmetic Act.⁴⁶ The law preempts regulation of over-the-counter drugs and cosmetics to the state. The law was targeted to preempt the City of Key West from banning certain types of sunscreen.⁴⁷ How the law made it its way through the legislative process is discussed in the section of this report titled "Anatomy of a Preemption 2020 (Cosmetics/Sunscreen)."

2021 Florida Legislative Session Preview

As this report is being written, the beginning of the 2021 legislative session is just a few weeks away. Preemption bills are already being filed and more will likely be filed as the March 2 bill filing deadline approaches. Preemption bills filed already include some familiar ones that have been proposed in previous years but failed to pass, including bills preempting regulation of vacation rentals, home-based businesses and red-light cameras.

A bill similar to one filed in 2020 would preempt local regulation of the financing of campaigns.⁴⁸ The bill, Senate Bill 656, would overturn efforts by local governments to reduce campaign contribution limits or otherwise regulate the financing of local elections. In some cases, those local campaign contribution limit reductions were adopted by voters. In 2014, 67 percent of voters in the City of Tallahassee adopted a charter amendment that reduced the campaign contribution limit for city races from \$1,000 to \$250.⁴⁹ SB 656 would overturn what was clearly the will of a majority of Tallahassee voters.

There is a new area of local regulation that some legislators would like to preempt to the state in 2021. Senate Bill 426⁵⁰ and House Bill 267⁵¹ would preempt local regulation of commerce in seaports. According to a report⁵² by the Miami Herald, the bill is meant to overturn three ordinances recently passed by voters in the City of Key West. The ordinances, adopted by more than 60 percent of voters in 2020, ban cruise ships with more than 1,300 passengers from docking at the city. Another ordinance limits the number of cruise visitors who can disembark each day to 1,500.

Another new area of preemption proposed in the 2021 session is aimed at local requirements for apprenticeships.⁵³ The Tampa City Council is currently considering a proposed ordinance that would require 12 percent of hours worked on city projects over \$1 million to be performed by apprenticeships. There is a similar program in St. Petersburg. House Bill 53⁵⁴ would prohibit local governments from enacting apprenticeship requirements.

Senate Bill 856⁵⁵ would preempt local regulation of energy infrastructure projects. The bill would prevent local governments from passing ordinances or regulations that would restrict the “construction of new or the expansion, upgrading, or repair of existing energy infrastructure.”⁵⁶

One of the most controversial bills proposed for the 2021 session also contains a new form of preemption involving municipal budgets. HB 1⁵⁷ and SB 484 are identical bills aimed at “Combatting Public Disorder.” The staff analysis of HB1 by the House Criminal Justice & Public Safety Subcommittee cites “protests relating to race, police tactics, and politics” as the reason for the bill.⁵⁸

The bill contains a number of provisions aimed at prosecuting “violent and disorderly behavior associated with rioting.” Under a section of the staff analysis titled “Law Enforcement Funding,” the analysis mentions a nationwide movement to “defund the police.”

It goes on to say that HB 1 creates a “budget appeal process for municipal law enforcement agencies.” According to the analysis, the bill allows a resident of a city to challenge a proposed funding reduction for the city’s police department. If a citizen files an appeal, the Executive Office of the Governor conducts a hearing and makes a recommendation to the Governor and the Cabinet which can override the city’s budget reduction decision. While the bill does not use the word “preempt,” it does create a process by which the state can override and modify a local government decision.

Bills have also been filed to repeal preemptions adopted by past legislatures. The bills include restoring the ability of local governments to regulate tree pruning, firearms and ammunition and disposable plastic bags.

A Senate Joint Resolution has been filed that would require a supermajority vote of the legislature for passage of a preemption.

Legislative Leadership

Past, present, and future legislative leadership, particularly in the Florida House of Representatives, appear committed to using the preemption strategy to attack the home rule authority of local governments. Richard Corcoran, who served as House Speaker for 2017 through 2018, told Politico that he can give a thousand examples of when preemptions are needed to thwart burdensome local regulations and tax increases.⁵⁹ Corcoran said, “I absolutely believe in preemption when those people are violating the principles and philosophy that make society great.”

In 2018, Speaker Corcoran spoke favorably about preemption again, saying governments create a “patchwork quilt” of policies that are unsustainable and bog down businesses in regulation.⁶⁰ Corcoran told WFSU-FM, “Every year it’s something we can’t even fathom or conceive the stuff that they come up with at the local government level.”

Representative Jose Oliva, who served as House Speaker from 2019 through 2020, also spoke publicly about using the preemption strategy to roll back local government regulations. Speaker Oliva told reporters in 2019, “The greater the government involvement in something, the less there is true free market.”⁶¹

Current House Speaker Chris Sprowls did not list preemption as one of his priorities when he was designated Speaker-elect in September 2019.⁶² But he has sponsored preemption legislation in the past, including the high-profile bill in 2017 to preempt local regulation of ride-share companies like Uber and Lyft.⁶³

Representative Paul Renner is expected to be Speaker of the House following Speaker Sprowls, for the 2023 and 2024 legislative sessions. Representative Renner is an outspoken advocate for state preemption of local regulations as evidenced in a 2017 interview he gave on WNZF-FM in Flagler County. As reported by FlaglerLive,⁶⁴ Renner talked about how preemption is used by the legislature to combat “rogue” cities.

“Part of this, to be real blunt about it,” Renner said, “what you’re seeing and this is part of a larger conversation (we) could have is the concentration of support for a more center-left or left-wing viewpoint, and this is again not Flagler County, but our major cities, San Francisco, New York. So part of the fight, part of the sub-context of this whole discussion, is the reason we think they’re going rogue is because it’s Bernie Sanders in charge of your local city government ...”

“And so states are stepping in to say,” Renner continues, “look we’re not going to let you destroy all the good work that we’re doing and all the economic growth we’re creating in the state for people by trying to ban or shut down particular industries that you don’t like.”

In addition to preempting local governments, Renner also threatened to withhold state funding from cities that choose to be “sanctuary cities” and take in undocumented immigrants. “If you don’t want to follow the law because of your ideological view on immigration and refuse to follow the law, we’re not going to fund you anymore.”

The 2019 legislature adopted a sanctuary city preemption similar to that described by Representative Renner.⁶⁵ Senate Bill 168⁶⁶ prohibits local officials from implementing “sanctuary policies.” To show local governments how serious the state is when it comes to limiting home rule, the law gives the governor the authority to remove those officials who do not comply with the law. The bill was passed and signed into law even though there were no sanctuary cities in Florida at the time.

Anatomy of a Preemption 2020 (Cosmetics/Sunscreen)

The following is a case study meant to demonstrate how a proposed preemption becomes a bill in the Florida Legislature, the forces at work that move the bill through the legislative process and what happens when the bill becomes law. For this case study, Integrity Florida examined Senate Bill 172, which preempted local regulation of over-the-counter drugs and cosmetics including sunscreen. The bill was filed and passed in the 2020 legislative session and was signed into law by Governor Ron DeSantis.

The previous Integrity Florida preemption report included a case study of a bill passed in 2019 that preempted local regulation of single-use plastic straws to the state. Unlike the sunscreen preemption, the plastic straw preemption was vetoed by Governor Ron DeSantis.

The Beginning of Session 2021

In 2019, the Key West City Commission voted to ban the sale of sunscreens that contained oxybenzone and octinoxate, two chemicals that had been shown to be damaging to coral reefs. The state of Hawaii had passed a similar ban.⁶⁷ The Key West ban was set to take effect in January of 2021.

Before the Commission voted, Key West Mayor Teri Johnston explained how important, both environmentally and economically, the Great Florida Reef was to the tourist town. “There are thousands of sunscreens out there, and we have one reef,” said Mayor Johnston. “And we have an opportunity to do one small thing to protect that.” In her comments, the Mayor acknowledges that there are plenty of sunscreens available that do not contain the two chemicals that have been shown to damage coral reefs.

In August of 2019, Senator Rob Bradley filed Senate Bill 172,⁶⁸ its subject was the Florida Drug and Cosmetic Act. Shortly thereafter, an identical bill (HB 113)⁶⁹ was filed in the Florida House by Representative Spencer Roach.

Senator Bradley’s argument in support of his bill was that nothing should stand in the way of Floridians trying to protect themselves from skin cancer. “All sunscreen should be available throughout the state of Florida for people who buy it so they can protect themselves,” Bradley was quoted as saying.⁷⁰

Senate Bill 172

Senate Bill 172 was first heard in the Community Affairs Committee on October 14, 2019, well before the beginning of legislative session in January. The bill changed very little as it moved through the legislative process. It preempted to the state any local regulation of over-the-counter drugs and cosmetics.

While the bill⁷¹ itself did not specifically mention sunscreen, the staff analysis prepared for the Senate Rules Committee contains three pages of analysis and research about sunscreen and its impacts on health and the environment.⁷² At the Rules Committee hearing, the sponsor, Senator Rob Bradley made the purpose of the legislation clear. Senator Bradley told committee members that despite the seemingly broad scope of the bill, “Understand that this is aimed at sunscreen.”⁷³

Political Influence Brought to Bear

As SB 172 began to move through the legislative process it became clear which interests were supporting and opposing the legislation. The first committee hearing for the bill was before the Senate Community Affairs Committee on October 14.⁷⁴ After a presentation by the bill’s sponsor, Senator Bradley, the Committee began to hear testimony from the public.

At that committee meeting, supporters of the bill included the business group the Florida Retail Federation and the Florida Society of Dermatology and Dermatologic Surgery (FSDDS). On its website, the FSDDS claims to support and maintain the nation’s most active state dermatology Political Action Committee – the Dermatology PAC of Florida. Opposition to the bill came from environmental groups including the Sierra Club of Florida and the Surfrider Foundation. The bill was passed by a 3 to 1 vote of committee members.

The second Senate Committee hearing for SB 172 was before the Innovation, Industry, and Technology Committee on November 4.⁷⁵ At this meeting, supporters of the bill included the Florida Retail Federation, the Florida Chamber of Commerce and the Florida Society of Dermatology and Dermatologic Surgery. Opponents included the City of Key West and environmental groups the Sierra Club of Florida and the Surfrider Foundation. The bill passed by a vote of 8 to 2.

The final committee hearing for SB 172 was in the Senate Rules Committee on January 15, one day after the 2020 legislative session began.⁷⁶ At this meeting, proponents of the bill included the Florida Chamber of Commerce, the Florida Retail Federation and the Florida Society of Dermatology and Dermatologic Surgery. Opponents included environmental groups and the Florida League of Cities. The bill was passed by the Rules Committee by a vote of 12 to 4.

In addition to groups that appeared in the Senate committees in support of SB 172, it was reported that Johnson & Johnson, a maker of sunscreens with oxybenzone, was also actively lobbying in support of the legislation.⁷⁷

Of the interests supporting the sunscreen preemption bill, the Florida Retail Federation and the Florida Chamber of Commerce wield considerable political influence in the Florida Legislature. Integrity Florida's previous report on preemption found the two business groups were also proponents of a 2019 bill preempting local regulation of plastic straws.⁷⁸

Election Expenditures

Integrity Florida measures political influence by examining campaign and lobbying expenditures as reported to the Florida Division of Elections and the Florida Legislature. The following charts show the campaign spending of the Florida Chamber of Commerce and the Florida Retail Federation during the 2018 and 2020 election cycle as reported by the Florida Division of Elections.⁷⁹ The 2018 election cycle preceded the 2020 legislative session. The 2020 election cycle was ongoing when SB 172 preempting local regulation of sunscreens was passed into law.

Expenditures by Florida Retail Federation PACs in 2018 and 2020 Election Cycle

Election Expenditures	2018	2020
FRF PAC	\$760,290	\$165,152
FRF Beauty Industry Council PAC	\$12,015	\$2,300
FRF Pharmacy Council PAC	\$25,119	\$8,565
FRF Retail Beverage Council PAC	\$6,015	\$168
FRF Grocery Council PAC	\$4,200	\$407
FRF PAC Total	\$807,639	\$176,592

The largest contributor to the Florida Retail Federation's PACs is the grocery supermarket chain Publix. In the 2018 and 2020 election cycles, Publix contributed \$600,000 to the FRF PAC. Other top contributors include the Walgreens pharmacy chain.⁸⁰

Expenditures by Florida Chamber of Commerce PACs in 2018 and 2020 Election Cycle

Election Expenditures	2018	2020
Florida Chamber of Commerce PAC	\$2,717,276	\$2,371,125
Florida Chamber of Commerce Alliance PAC	\$1,359,027	\$157,010
Florida Jobs PAC	\$5,147,131	\$1,115,484
Total	\$9,223,434	\$3,643,619

Among the biggest contributors to the Florida Chamber of Commerce PACs are Publix, Florida Power and Light, U.S. Sugar, Walt Disney Parks and Resorts and Florida Crystals.⁸¹

Total 2018 and 2020 campaign expenditures for the two business groups - \$13,851,284

As mentioned above, the company Johnson & Johnson was also a proponent of SB 172. The company is a maker of sunscreens that use one of the chemicals that would have been banned for sale under the Key

West ordinance. According to the Florida Division of Elections campaign finance database, Johnson & Johnson gave \$75,500 to Florida candidates and political committees during the 2020 election cycle.⁸²

The company's contributions included a \$5,000 contribution to the political committee controlled by Representative Spencer Roach, the legislator who filed HB 113, the identical House version of SB 172. Johnson & Johnson also gave the maximum allowed \$1,000 contribution directly to Representative Roach's campaign account.

Lobbying Expenditures

The following chart shows the number of registered lobbyists and the estimated amount of compensation paid for lobbying in 2020 by each of the two business groups that were proponents of SB 172. The estimated compensation covers January through December of 2020 when the sunscreen preemption was passed and is aggregated based on a range of reported compensation. For example, the category of \$1 to \$9,999 is aggregated to \$5,000. Categories continue to be aggregated until compensation reaches \$50,000. Any compensation over \$50,000 is reported by the actual amount. The data is from the Florida Lobbyist Registration Office.⁸³

Business Group	Number of registered lobbyists	Estimated Lobbyist Compensation
Fl. Retail Federation	7	\$60,000 – Paid to 2 lobby firms
Fl. Chamber of Commerce	25	\$150,000 – Paid to 8 lobby firms
Combined Total	32	\$210,000

The sunscreen-making company Johnson & Johnson also had a lobbying presence during the 2020 legislative session, paying one firm \$75,000 with nine registered lobbyists.⁸⁴

The End of Session 2020

As the 2020 legislative session drew to a close, both SB 172 and HB 113 had made their way through the process. At each step of the way, in both the House and Senate, the bills drew opposition. SB 172 was voted on by the full Senate on January 29. It passed by a vote of 25 to 14. The bill went to the House and sat in messages for the entire month of February. After substituting the Senate Bill for House Bill 113, Senate Bill 172 was passed by the House on March 9 by a vote of 68 to 47.

Florida Governor Ron DeSantis (to veto or sign)

With the 2020 legislative session over, it was now up to Governor Ron DeSantis to take action on the bills that had been adopted. Opponents of SB 172 called on the Governor to veto the legislation, citing his veto of a 2019 bill preempting local regulation of plastic straws.⁸⁵

In that veto message,⁸⁶ Governor DeSantis wrote, "A number of Florida municipalities, including Sanibel, Ft. Myers Beach and Miami Beach, have enacted ordinances prohibiting single-use plastic straws. These measures have not, as far as I can tell, frustrated any state policy or harmed the state's interests."

Also in that veto message, Governor DeSantis seemed to acknowledge the principle of home rule writing, “Under these circumstances, the State should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views.”

The Sierra Club of Florida put out a statement urging the Governor to veto SB 176. “Last session, Governor DeSantis stood up for home rule and defended the authority of local governments when no compelling state interest exists. Once again, the state legislature has overreached to pass a statewide preemption in response to a single local ordinance that is well grounded in science and local support.”

This time, Governor DeSantis disappointed opponents of the sunscreen preemption. Without issuing a statement justifying his decision, the Governor announced he had signed SB 172 into law.⁸⁷ The Key West ordinance, prohibiting the sale of sunscreen containing two chemicals which were thought to harm the coral reefs, would not take effect as scheduled on January 1, 2021.

Preemption and Public Health

The refusal of governors to enact statewide mask mandates and their blockage of mask requirements and other local responses to the pandemic are clear hazards to Americans’ public health. Disproportionately impacted are women, people of color and workers in low-wage jobs.⁸⁸

Governors in many states, particularly in the South and including Florida, have “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.”

The pandemic is “deepening existing inequalities along racial lines.” Black, Indigenous, Pacific Islander, and Latinx people have died from COVID-19 at higher rates than white people, in part a reflection of existing economic inequalities. They often are paid less, are more likely to live in poverty and are less likely to have paid sick leave.⁸⁹

“Black workers are more likely to be front-line workers – employed in essential industries such as health care, childcare and social services, and grocery, convenience, and drug stores – putting them and their families at even greater risk.”⁹⁰ The absence of a statewide mask mandate in Florida and executive orders that preempt local efforts to address the crisis have led to increased infections, hospitalizations and deaths to Black, Latinx and other minority Floridians.

Preemption by Executive Authority

The COVID-19 crisis has highlighted a rarer form of state preemption than action by legislatures – using executive orders by governors to overturn or block local ordinances.

Executive preemption actions concerning COVID have occurred around the nation, in particular states in the South and the Sun Belt with Republican governors. They typically “have couched their crackdowns on strict city ordinances as a defense of liberty and personal responsibility,” a report has said. “They want people to wear masks but believe that mandating it oversteps government’s bounds.”⁹¹

Yet most states have now enacted some form of stay-at-home order, although weaker than proponents advocate and often only after their cities acted on their own. “When these states issue orders, they often are written to ‘preempt’ or supersede existing, stricter local orders.”⁹²

Local officials in several states were frustrated early in the pandemic by their inability to respond to the crisis because of action by their governors. In at least eight states – Mississippi, South Carolina, Nebraska, North Carolina, Texas, Arizona, Georgia and Florida – localities have been blocked by state executive action from an array of COVID actions, including closing businesses, issuing stay-at-home orders and mandating the wearing of masks. Responses to the crisis in the absence of nationwide restrictions have resulted in a patchwork system not only among individual states but sometimes within localities in a state.

Adding to the confusion, governors in some states have modified or reversed their position on statewide mask mandates.⁹³ In Nebraska, for example, local governments at first were threatened by the governor with a loss of federal COVID funding if they enacted mask mandates.⁹⁴ In August, he intervened when a county pushed for a mask mandate, saying a local mask mandate violates state law.⁹⁵ Later he said state law might grant such authority to cities and towns, depending on their charter laws, and he advised them to check with their legal counsel.⁹⁶ Subsequently, many Nebraska localities have passed mask mandates, although the governor said he will not issue a statewide mandate.⁹⁷

Executive Preemption by Florida Governor Ron DeSantis

In Florida, Governor DeSantis has relied on executive powers granted to the governor in the Florida Constitution⁹⁸ and in a state law granting him authority for emergency management.

In the event of an emergency “beyond local control,” Florida law provides that “the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.”⁹⁹

On March 9, 2020, DeSantis declared a statewide state of emergency and on March 17 he ordered restrictions on bars and restaurants. In March and April, he began issuing executive orders prohibiting local actions.¹⁰⁰ One stated that “No county or local authority may restrict or prohibit any ‘essential’ service from performing a function allowed under this order.”¹⁰¹ An April 1 stay-at-home order except for workers in

essential services said, “This Order shall supersede any conflicting official action or order issued by local officials in response to COVID-19.”¹⁰²

On September 25 he issued his most far-reaching preemption order and extended it in September. It said “No COVID-19 emergency ordinance may prevent an individual from working or from operating a business,” thus banning local government actions to close businesses. It also “suspends the collection of fines and penalties associated with COVID-19 enforced upon individuals.... Restaurants, including any establishment with a food service license, may not be limited by a COVID-19 emergency order by any local government to less than fifty percent of their indoor capacity.” Furthermore, if a restaurant is limited to less than one hundred percent of its indoor capacity, such local COVID-19 emergency orders must explain why each limit is necessary for public health, the order said.¹⁰³

The suspension of collecting fines has become a flashpoint in disagreements between DeSantis and local governments. That provision “shattered the authority of county and city governments to protect their residents with local mask ordinances, restrictions on big gatherings and other safety measures.”¹⁰⁴ The suspension of fines did not block local orders, but it removed penalties local governments could use to achieve compliance.

Nevertheless, some cities have moved forward with assessing fines.^{105,106} For example, Miami Beach issued citations to people who refuse to wear facial coverings and imposed a \$50 fine for violators who refuse to wear a mask after being offered one. But because of the DeSantis executive order, “the city will only be able to collect the fine after the order expires.”¹⁰⁷

Local officials “feel handcuffed because Gov. DeSantis signed an executive order saying that they were not allowed to enforce their own mask mandate,” Representative Guillermo Smith said. Officials in Miami, Miami-Dade County and St. Petersburg have pushed to regain some local authority for COVID actions.¹⁰⁸ Some local officials said COVID conditions worsened after DeSantis stripped their power to enforce ordinances.¹⁰⁹

“We can give out citations and we can urge people and we can give out masks, and we’ve given out thousands, but we don’t have the ability to mandate it in any way that’s effective,” said Miami Beach Mayor Dan Gelber.¹¹⁰

In January 2021 DeSantis reaffirmed his opposition to a statewide mask mandate as well as local COVID ordinances and fines. “We will categorically not allow any local government to lock people down,” he said. “We will not let any local government kick anybody out of their job” and “We will not let any local government fine individual Floridians. We will not let any local government shut down schools.”¹¹¹

Conclusion

Use of preemption as a legislative strategy continued to be used by legislators in the 2020 Florida legislative session with 42 bills filed containing some form of local government preemption. Business-funded corporate interest groups used their considerable political influence, gained through campaign contributions and lobbying expenditures, to push a bill preempting local regulation of sunscreens through the 2020 Florida legislative session.

Preemption bills filed for the 2021 legislative session include some familiar ones that have been proposed in previous years but failed to pass, including bills preempting regulation of vacation rentals, home-based businesses, and red-light cameras. A bill filed for the 2021 session, Senate Bill 656, would preempt local regulation of campaign financing, including cities and counties where voters have adopted lower campaign contribution limits.

New preemptions are being proposed for 2021, including bills preempting local regulation of seaports and energy infrastructure. There are also bills to create a process by which city government budget decisions involving the police can be reversed or amended at the state level.

The refusal of governors to enact statewide mask mandates and their blockage of mask requirements and other local responses to the pandemic are clear hazards to Americans' public health. Disproportionately impacted are women, people of color and workers in low-wage jobs.

The COVID-19 crisis has highlighted a rarer form of state preemption than action by legislatures – using executive orders by governors to overturn or block local ordinances. By executive order, Florida Governor Ron DeSantis has blocked anti-COVID local ordinances.

Policy Options

- Require two-thirds or super majority vote for passage of legislation that preempts local government authority (similar to what is required for local unfunded mandates and public record exemptions).
- Establish by rule or law a single-subject requirement for preemption legislation.
- Establish a sunset review provision for preemptions that automatically repeals a preemption on a certain date unless the legislature affirmatively acts to renew it.
- Prohibit any fines or punitive liabilities for local governments that violate legislative preemptions.

Appendix

Preemption Bills Filed in the 2017 Legislative Session¹¹²

36 total bills, 18 House Bills, 18 Senate Bills.

HB 425 – vacation rentals, failed
HB 901 / SB 1700 – building codes, failed
HB 6007 / SB 178, SB 630 – red light cameras, failed
HB 77 / SB 122 – professional sports facilities, failed
HB 17 / SB 1158 – regulation of businesses, failed
HB 553 / SB 244 – applicants criminal background, failed
HB 353 / SB 428 – retirement plans, failed
HB 751 / SB 1378 – stormwater management, failed
HB 599 / SB 534 – public works contracts, passed
HB 221 / SB 340 – regulation of rideshare, passed
HB 1027, HB 601 / SB 460 – regulation of drones, passed
HB 687, HB 865 / SB 596 – wireless antenna placement, passed
HB 7069 – charter school facilities, passed
SB 990 / SB 7103 – municipal elections, failed
HB 803 / SB 908 – firearm regulation, failed
SB 626 – firearm regulation, failed
SB 140 – firearm regulation, failed
SB 320 / HB 627 – dogs in vehicles, failed
HB 193 – towing and storage fees, failed
SB 324 – fireworks, failed

Preemption Bills Filed in the 2018 Legislative Session¹¹³

38 total bills, 18 House Bills, 20 Senate Bills

HB 17 / SB 432 – CRA's, failed
HB 6001 / SB 548, SB 176 – red light cameras, failed
HB 987 / SB 1328 – affordable housing, failed
HB 697 / SB 324 – impact fees, failed
HB521 / SB 574 – tree trimming, failed
HB 815 / SB 1180 – travel expenses, failed
HB 7037 / SB 1262 – election dates, failed
HB 773/ SB 1400 – vacation rentals, failed
HB 299 – Building Commission membership, failed
HB 879 / SB 1326 – storm debris and solid waste, failed
SB 1776 – vegetable gardens, failed
HB 883 / SB 1348 – community development districts, failed

HB 6029 – cardrooms, failed
HB 1433 / SB 1774 – government actions/ wedding cake, failed
SB 378 – parking garages, failed
HB 871 / SB 1290 - government actions/ wedding cake, failed
HB 963 / SB 1632 – towing fees, failed
SB 702 / HB 433 – criminal history employment screening, failed
HB 6037 / SB 198 – fireworks, failed
SB 1082 – electric vehicle charging stations, failed
HB 647 / SB 926 – natural gas fuel tax, failed

Preemption Bills Filed in the 2019 Legislative Session¹¹⁴

45 total bills, 25 House Bills, 20 Senate Bills

HB 407 – public records, failed
HB 101 / SB 246 – retainage, failed
HB 1237 / SB 1792 – towing rates, failed
HB 6003 / SB 622 – red light cameras, failed
HB 3 / SB 1748 – preemption of local business regulations, failed
HB 603 / SB 588 – single use plastic straws, failed
HB 1299 – multiple preemptions including plastic straws, sunscreen and tobacco, failed
HB 987 / SB 824 – short-term rentals, failed
SB 82 / HB 145 – vegetable gardens – passed
HB 905 / SB 1044 – transportation, passed
HB 1159 / SB 1400 – private property rights, passed
HB 7103 – growth management, passed
SB 1000 / HB 693 – telecommunications, passed
HB 771 – recycling and 5-year moratorium on plastic straw bans, passed but vetoed
HB 715 / SB 1036 – building code enforcement, failed
HB 7095 – charter school land use, failed
HB 27 / SB 1640 – deregulation of professions, failed
HB 1333 – building construction, failed
SB 1364 – assisted living facilities, failed
HB 161 / SB 494 – firefighters, failed
HB 97 / SB 288 – monuments, failed
HB 847 / SB 432 – employment conditions, failed
HB 667 / SB 394 – criminal history employment screening, failed
HB 723 / SB 908 – fire safety systems, failed
HB 157 / SB 1716 – fertilizer, failed
HB 1169 / SB 1572 – private waste companies, failed

Preemption Bills Filed in the 2020 Legislative Session¹¹⁵

42 total bills, 21 House Bills, 21 Senate Bills

HB 3 / SB 1336 – deregulation of professions, failed
HB 31 – monuments and memorials - failed
HB 65 / SB 140 – fireworks, passed
HB 101 / SB 246 – retainage, passed
HB 113 / SB 172 – over-the-counter cosmetics, sunscreen, passed
HB 133 / SB 1352 – towing, passed
HB 195 / SB 162 – public records, failed
HB 215 / SB 620 – firefighters’ bill of rights, failed
HB 225 / SB 824 – clean energy, failed
HB 305 / SB 1126 – conditions of employment, failed
HB 343 / HB 921 / SB 422 – recreational vehicle parks, passed
HB 537 / SB 778 / SB 1702 – home-based businesses, failed
HB 611 / SB 766 – lobby registration, failed
HB 637 / SB 1066 – impact fees, passed
HB 647 / SB 772 – recreational vehicle parks, failed
SB 768 – lobby registration fees, failed
HB 1039 / SB 1352 - transportation networks, passed
HB 1193 / SB 474 – deregulation of businesses and professions, passed
HB 1199 – environmental protection, failed
HB 1237 / SB 1698 – pets stores, failed
SB 1372 – elections, failed
SB 1382 – resource management, failed
HB 6083 – red light cameras, failed

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