

## SOUTH DAKOTA

### CONSTITUTIONAL AND STATUTORY PROVISIONS

#### **South Dakota Constitution**

- S.D. CONST. art. IX, § 2. Home rule.

Any county or city or combinations thereof may provide for the adoption or amendment of a charter. Such charter shall be adopted or amended if approved at an election by a majority of the votes cast thereon. Not less than ten percent of those voting in the last preceding gubernatorial election in the affected jurisdiction may by petition initiate the question of whether to adopt or amend a charter.

A chartered governmental unit may exercise any legislative power or perform any function not denied by its charter, the Constitution or the general laws of the state. The charter may provide for any form of executive, legislative and administrative structure which shall be of superior authority to statute, provided that the legislative body so established be chosen by popular election and that the administrative proceedings be subject to judicial review.

Powers and functions of home rule units shall be construed liberally.

#### **South Dakota Statutes**

- S.D. CODIFIED LAWS § 6-12-5 (2017). Standards to be at least as stringent as state law.

Neither charter nor ordinances adopted thereunder may set standards and requirements which are lower or less stringent than those imposed by state law, but they may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

- S.D. CODIFIED LAWS § 6-12-6 (2017). Restrictions on power of home rule units.

The power of a home rule unit does not include the power to:

- (1) Enact private or civil law governing civil relationships except as incident to the exercise of an independent county or municipal power;
- (2) Define and provide for the punishment of a crime, but this limitation shall not abridge the power of a home rule unit to provide punishment for the violation of ordinances or charter provisions by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months or by both such fine and imprisonment;
- (3) Abridge laws relating to elementary and secondary education;
- (4) Change assessment practices and procedures relating to ad valorem taxation of property;

- (5) Exempt itself from providing the necessary personnel and facilities to perform services required by general law to be performed by a like unit or units of local government;
  - (6) Deny referendum on ordinances or bylaws provided by chapter 9-19;
  - (7) Regulate rates or conditions of service of any public utility regulated by the South Dakota Public Utilities Commission.
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## HOME RULE STRUCTURE

South Dakota provides for home rule by both constitutional and statutory means. Under South Dakota's constitutional provision establishing home rule, any municipality, county, or combination may provide for the adoption or amendment of a home rule charter. A South Dakota county or municipality that has adopted a home rule charter may exercise "any legislative power or perform any function not denied by its charter, the Constitution, or the general laws of the state." Home rule governments may choose any form of executive, legislative, or administrative structure, subject to the requirements that the local legislative body is chosen by popular election and that administrative proceedings be subject to judicial review. The constitution directs that the powers and functions of home rule governments are to "be construed liberally."

In 1974, the South Dakota Legislature enacted S.D.C.L. chapter 6-12, which specifies additional procedures and requirements related to home rule and home rule charters, based on the 1972 constitutional amendment establishing home rule.<sup>1</sup> S.D.C.L. § 6-12-5 prohibits a home rule local government from adopting a charter or any ordinance that establishes standards that are less stringent than standards imposed by state law, although the local standards may be more stringent than state standards unless otherwise prohibited. Chapter 6-12 also establishes various election and filing requirements related to home rule units of government. S.D.C.L. § 6-12-6 imposes general limitations and restrictions on home rule governments. As noted above, South Dakota's constitution allows home rule governments to exercise any function not prohibited by the state constitution, the general laws of the state, or the charter of the home rule government.

In determining the validity of an ordinance, South Dakota courts consider two concepts: local government's home rule authority and the state's power to nullify or preempt local action.<sup>2</sup> The concept of home rule encompasses the doctrine of preemption, meaning state and local governments may regulate in the same area if the local rule does not conflict with state law.<sup>3</sup>

There are several ways in which a local ordinance may conflict with state law. First, an ordinance may prohibit an act which is forbidden by state law and, in that event, the ordinance is void to the extent it duplicates state law.<sup>4</sup> Second, a conflict may exist between state law and an

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<sup>1</sup> 1974 S.D. Sess. Laws ch. 52 § 5.

<sup>2</sup> *Rantapaa v. Black Hills Chair Lift Co.*, 633 N.W.2d 196, 203 (S.D. 2001) (citing *Goodell v. Humboldt County*, 575 N.W.2d 486, 491-92 (Iowa 1998); *State v. Hansen*, 68 N.W.2d 480 (S.D. 1955)).

<sup>3</sup> *Rantapaa*, 633 N.W.2d at 203 (S.D. 2001) (citing *Goodell*, 575 N.W.2d at 492).

<sup>4</sup> *Rantapaa*, 633 N.W.2d at 203 (S.D. 2001).

ordinance because one prohibits what the other allows.<sup>5</sup> Third, state law may occupy a particular field to the exclusion of all local regulation.<sup>6</sup>

#### IMMUNITY FROM STATE PREEMPTION

Because the South Dakota state constitution conditions preemption on the “deni[al]” of local power by a general law of the state, it is possible that a potentially preemptive law might be invalid because it does not qualify as “general.” There are no cases in the home-rule era, however, that grapple with this defense to preemption.

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<sup>5</sup> *Snow Land, Inc. v. City of Brookings*, 282 N.W.2d 607, 608 (S.D.1979) (citing *Mangold Midwest Co. v. Village of Richfield*, 352 143 N.W.2d 813, 816 (Minn. 1966)).

<sup>6</sup> *Rantapaa*, 633 N.W.2d at 203 (S.D. 2001) (citing *Envirosafe Serv. of Idaho v. Cty. of Owyhee*, 735 P.2d 998, 1000 (Idaho 1987)).