

## NEW HAMPSHIRE

### CONSTITUTIONAL AND STATUTORY PROVISIONS

#### **New Hampshire Constitution**

- Part I, Art. 39

No law changing the charter or form of government of a particular city or town shall be enacted by the legislature except to become effective upon the approval of the voters of such city or town upon a referendum to be provided for in said law.

The legislature may by general law authorize cities and towns to adopt or amend their charters or forms of government in any way which is not in conflict with general law, provided that such charters or amendments shall become effective only upon the approval of the voters of each such city or town on a referendum.

#### **New Hampshire Statutes**

- Chapter 49-B. Home Rule. Municipal Charters.
- N.H. REV. STAT. ANN. § 49-B:1 Purpose and Intent. (2017)

It is the purpose of this chapter to implement the home rule powers recognized by article 39, part first, of the constitution of the state of New Hampshire. To that end, the general court hereby provides a vehicle whereby a municipality may adopt a form of government that best addresses local needs. At the same time, however, the general court recognizes a need to require uniform procedures and practices when there is a corresponding state interest. Therefore, this chapter is intended only to provide a procedural framework by which a city or town may amend its actual form of government. Nothing in this chapter shall be construed to create any power in, or confer any power upon, any city or town beyond that necessary to carry out the amendment of a charter or form of government as set forth in this chapter. The general laws of this state shall remain in full force and effect, and they shall be construed to be consistent with this chapter to the greatest extent possible in the effectuation of this chapter's stated purpose. Accordingly, this chapter shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their form of government so long as the resulting charter is neither in conflict with nor inconsistent with the general laws or the constitution of this state.

- *Id.* § 49-B:8 Ordinance, Power Limited.

Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function granted to a municipality by the constitution or general law. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

## HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

New Hampshire's constitutional provision regarding local power is not self-executing with respect to fiscal, regulatory, or personnel powers.<sup>1</sup> Rather, the goal of the amendment was to give municipalities the prerogative to choose one of the statutorily specified forms of government.<sup>2</sup> N.H. REV. STAT. ANN. chapter 49-B helps implement the constitutional provision by specifying in more detail the forms of government a municipality may choose to best meet its local needs.<sup>3</sup> This legislation "provides the statutory framework through which cities and towns may amend their actual forms of government, and grants them the power necessary to carry out such changes."<sup>4</sup> New Hampshire courts have warned, however, that the constitutional authority supporting chapter 49-B "in no way provides or suggests that the towns, cities or other subdivisions of this State should have the right to exercise supreme legislative authority."<sup>5</sup> The statute expressly provides that its provisions "shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their form of government so long as the resulting charter is neither in conflict with nor inconsistent with the general laws or the constitution of this state."<sup>6</sup>

New Hampshire "[t]owns are merely subdivisions of the State and have only such powers as are expressly or impliedly granted to them by the legislature."<sup>7</sup> Powers received by municipalities under chapter N.H.R.S.A. 49-B are granted by the legislature and thus come within the doctrine of plenary control by the legislature over municipalities unless limited by constitutional provision.<sup>8</sup> New Hampshire, therefore, has been characterized as a Dillon's Rule state even if it grants a limited form of structural home rule.<sup>9</sup>

It is well-settled in New Hampshire that towns cannot regulate a field that has been preempted by the State.<sup>10</sup> In New Hampshire, the preemption doctrine flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent with, State law.<sup>11</sup> Thus, preemption will occur when local legislation either expressly contradicts a statute or otherwise runs counter to the legislative intent underlying a statutory scheme.<sup>12</sup> Courts may find implied preemption when the

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<sup>1</sup> *Harriman v. City of Lebanon*, 122 N.H. 477, 481, 446 A.2d 1158, 1160 (1982).

<sup>2</sup> *Opinion of the Justices*, 145 N.H. 680, 683, 765 A.2d 706, 708 (2001)

<sup>3</sup> *See Girard v. Town of Allenstown*, 121 N.H. 268, 272, 428 A.2d 488, 491 (1981).

<sup>4</sup> *Harriman*, 122 N.H. at 481, 446 A.2d at 1160 (1982).

<sup>5</sup> *Id.* at 482, 446 A.2d at 1160.

<sup>6</sup> N.H. REV. STAT. ANN. § 49-B:1 (2017).

<sup>7</sup> *Town of Hooksett v. Baines*, 148 N.H. 625, 628, 813 A.2d 474, 477 (2002) (quoting *Public Serv. Co. v. Town of Hampton*, 120 N.H. 68, 71, 411 A.2d 164, 166 (1980)).

<sup>8</sup> *Hobart v. Duvall*, 112 N.H. 420, 422, 297 A.2d 667, 669 (1972).

<sup>9</sup> *E.g.*, Katherine Garvey, *Legal Consequences of Adopting New Floodplains Maps in New Hampshire*, 43 *Envtl. L. Rptr. News & Analysis* 10564 (July 2013) (characterizing New Hampshire as a Dillon's Rule state).

<sup>10</sup> *Town of Salisbury v. New England Power Co.*, 121 N.H. 983, 985, 437 A.2d 281, 282-83 (1981).

<sup>11</sup> *Casico v. City of Manchester*, 142 N.H. 312, 315, 702 A.2d 302, 303-04 (1997).

<sup>12</sup> *Id.*

comprehensiveness and detail of the State statutory scheme evinces legislative intent to supersede local regulation.<sup>13</sup>

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<sup>13</sup> Casico, at 316, 702 A.2d at 304.