

Legislative Tracking: State Preemption Laws

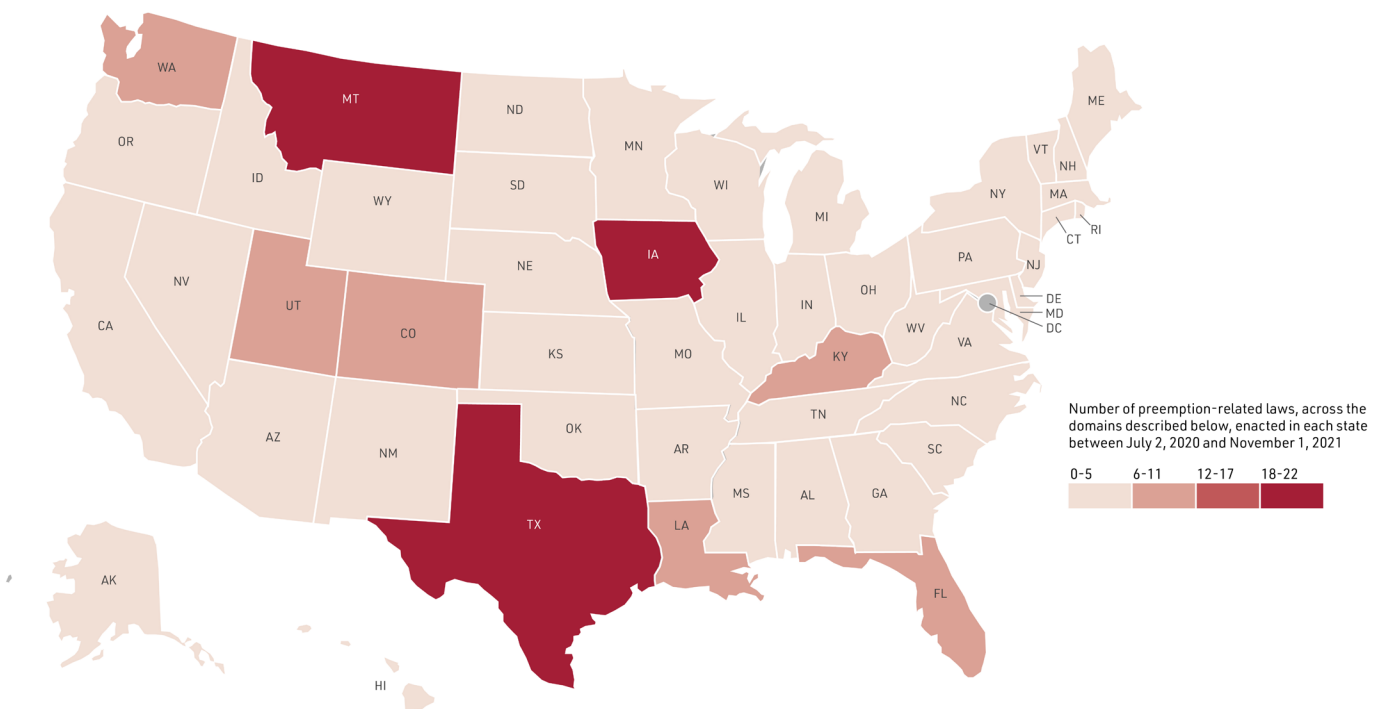
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Preemption — a legal doctrine that allows a higher level of government to limit or eliminate the regulatory authority of a lower level of government — can occur at multiple levels of government. Federal law can limit both state and local governments from passing new laws or amending existing laws related to a specific legal issue. States also have the authority to block or limit local governments from passing or changing local ordinances by statutory or constitutional law.

There are two primary types of preemption: express and implied. Express preemption occurs when a law explicitly limits or bans the lawmaking authority of a lower level of government through legislation. Implied preemption occurs when a government authority invalidates a lower level of government, even though explicit preemptive language is not included in the law itself.

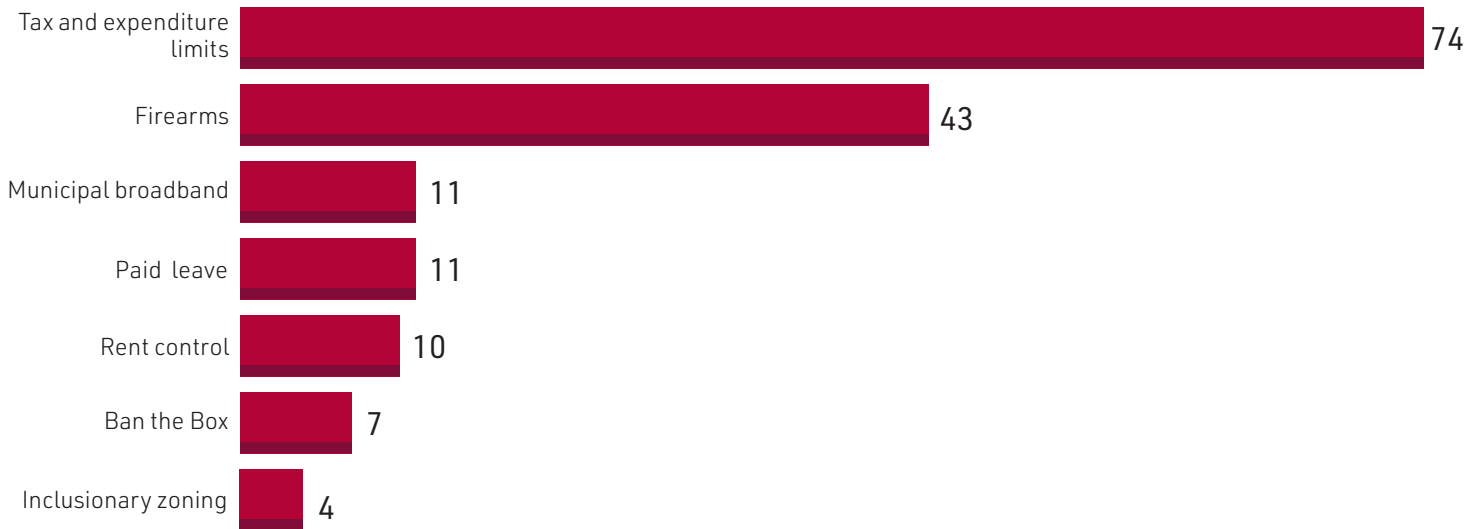
Since 2020, state preemption of local governmental authority has taken hold in legislatures across the United States. While much of the movement in state-level preemption of local governments has been restrictive, states are also enacting “anti-preemption” legislation that remove preemptive barriers in favor of public health. This trend increases local government authority and autonomy by states repealing existing preemptive statutes and enacting new laws that grant local governments the express authority to regulate certain areas.



Temple University’s Center for Public Health Law Research (CPHLR), in partnership with the National League of Cities (NLC), tracks and analyzes preemption of local policies, particularly those that impact the social determinants of health, conditions in which people live, learn, work, and play. Researchers at CPHLR collected proposed bills, laws that were enacted or amended, and any case law and attorney general opinions that expressly preempted local authority from July 2, 2020 to November 1, 2021. This report summarizes the key trends from this research across 12 domains: Ban the Box, firearms, mandatory inclusionary zoning, municipal broadband, mandatory paid leave, and rent control, as well as six domains related to tax and expenditure limits (TELS): general expenditure limits, full disclosure requirements, general revenue limits, property tax rate limits, tax assessment limits, and tax levy limits.

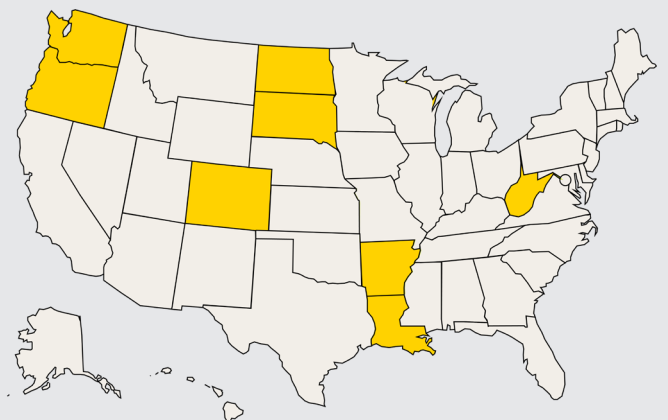
Movement across Domains

Across these 12 domains, there have been 160 preemption-related amendments enacted from July 2, 2020 to November 1, 2021. TELS and firearms in particular experienced the most significant efforts by state legislatures — together, they had 117 preemption-related amendments.



Tax and Expenditure Limits (TELS)

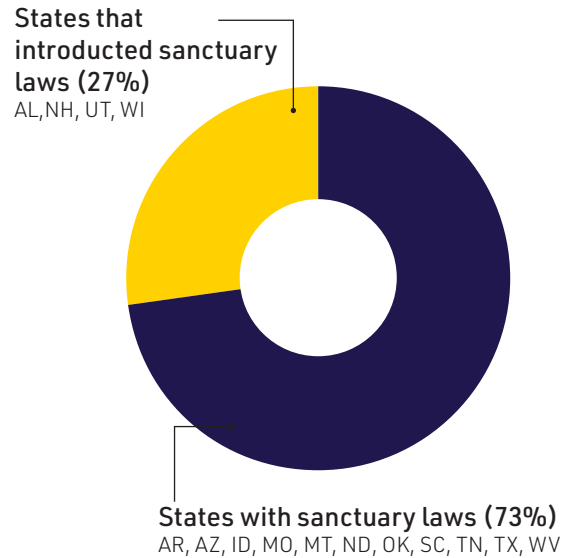
Tax and expenditure limits (TELS) can restrict property taxing mechanisms within a state. Whether the rate of taxation, the assessment ratio, or the tax levy itself is limited depends on the jurisdiction, but functionally, all of these limits constrict the revenue and expenditure powers of municipal governments. Since tax rate and tax levy limit changes often require citizen referenda, movement in this domain is often dependent on the next state election. In 2020, there were four ballot measures explicitly related to TELS — three passed (two in Colorado and one in Georgia), and California’s proposition 15 failed. In the 2021 elections, both Amendments 3 and 4 failed to pass in Louisiana. As of November 1, 2021, there are an additional 10 TEL-related ballot measures in eight states (AR, CO (2), LA (2), ND, OR, SD, WA, WV) pending for the 2022 election.



States with pending ballot measures as of November 1, 2021

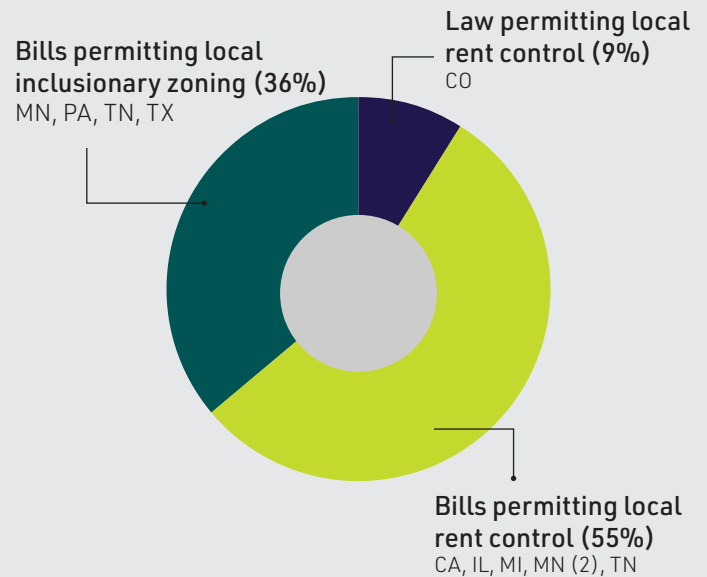
Firearms

In March 2021, following a mass shooting in Boulder, Colorado, President Biden urged Congress to take action on gun control, and in June, he introduced a comprehensive strategy to combat gun violence. In response, there was a flurry of state action: 11 states introduced new laws or amended existing laws that expressly affirmed the state's intent to protect and preserve the right to bear arms. These new laws, sometimes called sanctuary laws, prohibit government entities, including local governments and officials, from enforcing federal firearm laws that are stricter than state law, with some going as far as to explicitly state that federal law is unenforceable within the state. Four states also introduced bills proposing similar laws, though in Wisconsin, the governor vetoed the proposed bill. On the other end of the continuum, ten states introduced "anti-preemption" bills that would allow municipalities to have more control over firearm regulation either by removing existing preemption language or expressly giving municipalities the authority to regulate.



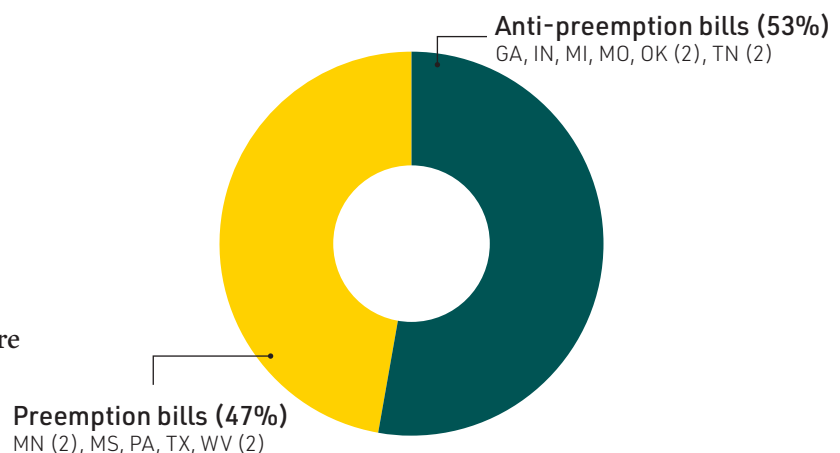
Housing

Many states moved, unsuccessfully, on efforts to permit affordable housing. Eight states (CA, CO, IL, MI, MN, PA, TN, TX) introduced bills that would give local governments more control to regulate rent control and inclusionary zoning. Among the flurry of activity, one state saw success — Colorado. A new Colorado law took effect in September 2021 that expressly allows local governments to require developers to build affordable housing. In the other states, California introduced a constitutional proposition that would have allowed local rent control; while bills introduced in Illinois, Michigan, Minnesota, and Tennessee would have repealed preemption statutes currently in effect. Of note, Pennsylvania introduced a bill that would both preempt local rent control but permit local inclusionary zoning.



Paid Leave

Paid leave, which can include time off for sick or family medical care, is time taken off of work with pay. Fifteen bills were introduced in 11 states (GA, IN, MI, MO, MN (2), MS, OK (2), PA, TN (2), TX, WV (2)) between July 2, 2020 and November 1, 2021. Of the 15 bills, eight were "anti-preemption" legislation that proposed repealing restrictions on local governments and seven were preemptive. During this same time period, three laws were enacted to preempt paid leave on the local level.



Municipal Broadband

The COVID-19 pandemic has further exposed the digital divide in the United States as many continue to lack access to high-speed internet, especially low-income and BIPOC individuals, and those living in rural and tribal communities. These structural inequities are worsened by state barriers or outright preemption bans of municipal broadband networks. Ten states (AR, IA, MT, NE, NC, OH, PA, SC, TN, WA) proposed 16 bills regulating preemptive barriers related to municipal broadband from July 2, 2020 to November 1, 2021. Only two of those bills passed: on July 25, 2021, Washington amended its law to remove the explicit preemption limiting municipalities from providing their citizens with telecommunication services but maintained a few barriers making it challenging to do so. Arkansas took a similar step in February of 2021, removing a few of the barriers already in place, and providing more exceptions to the general preemptive statute. Conversely, four states without limitations regarding municipal broadband have recognized other challenges and have worked to increase coverage and access for those most vulnerable. Three of these states (CA, LA, MI) responded through budget considerations for developing ways to expand internet access in areas where municipal broadband was possible, whereas the fourth state (NJ) established a committee tasked with discerning where community broadband networks would suit the state best. At the federal level, The Accessible, Affordable Internet for All Act (H.R. 1783), introduced by Rep. James Clyburn (SC), would invest \$100 billion to build high-speed broadband infrastructure across the country that would specifically target unserved and underserved areas.

States that introduced bills related to preemptive barriers

IA MT NE NC OH PA SC TN

States that enacted laws removing preemptive barriers

AR WA

States that enacted laws to increase broadband funding

CA LA MI

States that enacted laws to create broadband development committees

NJ

Acknowledgments

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The Center for Public Health Law Research at the Temple University Beasley School of Law supports the widespread adoption of scientific tools and methods for mapping and evaluating the impact of law on health. Learn more at <http://phlr.org>.