

## **BILL ANALYSIS**

Senate Research Center

S.B. 1806  
By: Estes  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Municipalities are creations of the state and therefore only have as much authority as the state authorizes, either through its constitution or statutes. Therefore, in circumstances where a municipality is acting in a contested area of law, a dispute may develop about whether the municipality is acting within the scope of its authority or if it is instead intruding into an area of state authority, where local authority is said to be "preempted."

S.B. 1806 clarifies that state law preempts local authority by specifying that any municipal charter provision, ordinance, rule, or regulation that conflicts with any provision of state law is null and void.

As proposed, S.B. 1806 amends current law relating to limits on the regulatory authority of a municipality.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle A, Title 7, Local Government Code, by adding Chapter 230, as follows:

#### **CHAPTER 230. PREEMPTION OF MUNICIPAL REGULATORY AUTHORITY**

Sec. 230.001. PREEMPTION. (a) Defines "license."

(b) Provides that any municipal charter provision, ordinance, rule, or regulation that conflicts with any provision of state law is null and void.

(c) Provides that a municipal charter provision, ordinance, rule or regulation conflicts with state law if:

(1) it is a type of ordinance expressly preempted by state law;

(2) it regulates an area in which state law is pervasive and occupies the field;

(3) it frustrates the purpose of state law;

(4) there is no reasonable construction of the municipal ordinance, rule, or regulation under which both the ordinance, rule, or regulation and the state law in question can be given full effect; or

(5) it regulates an activity performed under a license issued by the state and either actually or effectively prohibits a person from performing the licensed activity.

(d) Provides that Subsection (c) is not intended to be an exhaustive list of the ways in which a municipal charter provision, ordinance, rule, or regulation may conflict with state law.

(e) Authorizes the attorney general to bring an action in the name of the state to enforce the provisions of this section.

Sec. 230.002. BAG BANS. Prohibits a municipal charter provision, ordinance, rule or regulation from:

(a) banning the provision or sale of a single-use or carry-out paper or plastic bag;  
or

(b) requiring the payment of a fee for a single-use or carry-out paper or plastic bag.

SECTION 2. Effective date: September 1, 2015.