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# When State Policy Goals and Local Prerogatives Collide

## In a Nutshell

- Michigan’s local governments are afforded latitude to address many issues within the confines of state laws. When state policy preferences and local decision-making are not in alignment, the state has enacted laws that permit the preemption of local authority.
- Local governments must engage in some self-reflection to ask whether all land use decisions should properly be made at the most local levels of government.
- Because local governments are created by state law, the state can override local decisions, but a healthier approach would be to engage local governments in the development of state policies that will affect them so that preemption becomes unnecessary.

Sometimes it seems that state officials forget that no one is a state resident who isn’t also a county resident, a city or township resident, and a resident of their local school district. The reality is that every Michigander is a constituent of multiple layers of government.

The governor and state lawmakers get elected to pursue their favored policy preferences. In a state with wide diversity across many spectrums, it is not uncommon for state policy preferences to differ from local policies in some parts of the state. Intergovernmental conflicts arise if state policies are not developed in collaboration with local officials.

It is not as if state and local politicians are pulling in different directions. Michigan’s state and local governments share a common goal of growth and prosperity. It is just that they don’t always share a common vision of how to attain those goals.

Depending on the political party currently in control of the governor’s office and/or the legislative chambers, state goals have pushed for a mix of different public policies. Sometimes it is business-friendly policies, pro-environmental policies, anti-union policies, or union-friendly policies. Regardless, it must be acknowledged that local government leaders have their own policy preferences. Some may align with the preferences of state leadership, while others don’t. When alignment is not present, we’ve often seen state administrative or legislative actions to override local policies.

On paper, you wouldn’t think this could happen. Since 1908, Michigan has been considered a home rule state. Article VII, Sections 21 and 22, of the 1963 Michigan Constitution grants home rule powers to cities and villages, and Section 2 grants counties home rule powers. Section 22 says that “... Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property, and government, subject to the constitution and law. ...” But it should be noted that there is a deference for local decision-making on many issues whether the governmental unit in question is organized under home rule laws or not.

The tension between state and local policy preferences extends beyond the home rule communities. Local governments of all types have been provided latitude to develop their own policies within the confines of the state

laws that define their powers.

The seeming increase in state preemption of local decision-making feels like state officials are pulling back on home rule powers and deference to local decision-making. State officials clearly have the right to do this. State laws create the powers of local governments, and they can undo powers previously exercised. The challenge is to make state preemption less painful for the local governments.

A culture and expectation of local autonomy have developed. It would be very difficult to undo more than 100 years of practice to restrain the deference to local decision-making. Instead, state officials should work to improve communication channels with local government officials and their representatives to better understand the needs of various types and sizes of local governments and how state policies will affect them.

## Background

Prior to the adoption of the 1908 Michigan Constitution, the structure and policies of local governments were established exclusively in state law. State laws established the means of selecting local government officials and their powers. Local acts enacted by the state established local ordinances for specific communities.

This was controversial and easily manipulated because the elected state officials were setting policies for governments ranging in size from Detroit to the smallest cities and villages. A one-size-fits-all approach has never been appropriate.

It was never clear for whom local policies should be developed. Sometimes state actions may have been in reaction to requests from the locally elected officials. At other times, policy changes may have been requested by those outside of the local government discontent because local officials were unresponsive to their concerns.

In a state as large as Michigan, with local governments as varied as the mining communities in the Upper Peninsula, to the agricultural communities throughout the state, to the urban communities sprinkled across the Lower Peninsula, local home rule reform was an easy idea to glean onto.

## Home Rule

The concept of local government home rule incorporates (1) the idea of giving local governments the ability to organize government and exercise local powers as the local leaders see fit and (2) the idea that the state will not interfere in a local unit's discretion. Home rule frees cities and villages to devise forms of government and exercise powers of local self-government under locally prepared charters adopted by local referendum.

This contrasts with the establishment of local charters by special state legislative action, which results in mandated charters from state capitols. Today, about two-thirds of the states have afforded home rule powers to their local governments. Local governments in the other states remain beholden to their state governments for the structure of the local governments and the ordinances affecting their residents.

A glaring example of this dynamic was the inability of cities in southern states to remove statues of Confederate generals. Those states have not afforded home rule to their cities, so only the state governments could make the decisions or specifically grant the cities the ability to do so.

Michigan's home rule powers provide for the incorporation of counties, cities, and villages by general law. The home rule laws limit their rate of taxation and restrict their borrowing of money and their issuance of debt. The voters of each county, city, and village have the power to frame, adopt, and amend charters in accordance with these general laws. Through regularly constituted authority, namely their established representative government, local government officials at these levels may pass laws and ordinances pertaining to municipal concerns subject to the state constitution and general laws.

## State Policy Can Override Local Policy

If some Michigan local governments have home rule powers, why then do we have the controversy of the state telling local governments what they can and cannot do?

First, it is important to recognize that not all Michigan local governments have home rule powers. Two of Michigan's 83 counties (Macomb and Wayne), many villages, and all cities have adopted home rule charters. But the other 81 counties, the other villages, all townships, school districts, community college districts, and special authorities operate under general state laws that define their operating structures and their powers.

Additionally, it must be recognized that when state and local policies collide, state policies prevail. Let me explain.

The relationship between states and their local governments is different than the relationship between the federal government and the states. In America's federal system, intergovernmental conflict on many levels. When federal officials in Washington, D.C., come up with their ideas for policy priorities, they cannot dictate those to the states. State sovereignty complicates the idea of the federal government dictating state and local policies. Instead, the federal government often ties eligibility for federal funding to state adoption of policies that conform to the federal policies. Receipt of federal highway funding is tied, at least in part, to state adoption of seat belt laws. Receipt of federal education funding is tied, at least in part, to state adoption of specific school policies.

The dynamic between the states and their local governments is different. Local governments exist only because state laws create the circumstances for their existence. The cities of Marquette and Detroit (and some others) existed before statehood, but they are still creatures of the state with governance structures developed under state laws and powers granted or implied by state laws. The concept of local government sovereignty does not exist so the state has the authority to mandate policies or preempt the local adoption of policies.

The state still has the authority to enact local acts, but those laws require supermajority votes in both legislative chambers. Instead, the state has enacted laws that override all local government policies – such as outlawing local government residency requirements for municipal workers or placing on restrictions local governments imposing bans on plastic bags.

## Examples of Conflict

We've seen examples of state preemption of local policy-making and intergovernmental conflict take multiple forms in recent years.

Sometimes the state preemption appears to be driven by political motives. Some local governments wished to impose residency requirements for municipal workers based on the idea that people will care more about the community if it affects their families and investments in the homes they live in. Those who advocated for the ban couched their arguments in affording the workers the freedom to choose the places they preferred to live and raise their families.

More recently, state preemption is driven by the mismatch between economic activities, the externalities those activities create, and those that benefit from the activity.

Take aggregate mining for example. The Michigan road industry and infrastructure contractors need sand, gravel, and limestone to repair the roadways, construct buildings, and many other purposes. The benefits from access to the aggregate are enjoyed throughout the state, but it is not practical to mine aggregate in every community in which it is needed. Beyond the reality of mining not fitting in many communities (could we imagine aggregate mines in the cities of Royal Oak or East Grand Rapids?), aggregate mining creates externalities that affect nearby properties. Communities have complained about hours of operation, the rumble of trucks and other machinery, the road damage caused along truck routes, and the dust that mining and trucking cause. The need for aggregate is clear, but the prevalence of not-in-my-back-yard (NIMBY) zoning cause tensions. Legislative efforts have attempted to permit state preemption to override the local zoning actions.

A recently enacted law allows state preemption of local zoning for certain renewable energy installations. State officials have set a policy to require Michigan electric utilities to achieve a renewable energy portfolio standard of 50 percent by 2030, and 60 percent by 2035. As we discussed in an earlier essay, achieving this goal will require a vast expansion of the amount of wind and solar infrastructure presently installed. Again, we see a mismatch between those that benefit – all electricity customers and future generations if Michigan’s actions contribute even a small part to slow climate change – and those that bear the cost – those affected by the noise and light pollution caused by spinning turbines or land use needs of solar panels.

## Heading Off State Preemption

It is possible to lessen the need for state preemption. Doing so will require actions at both the state and local levels.

At the local government level, we must recognize that all land use decisions are best made at the most local level. We have previously argued for increased utilization of county governments for the provision of some services and to improve the fiscal capacities of the cities, villages, and townships within them. Counties offer a happy medium between local zoning and state preemption.

The Michigan Zoning Enabling Act permits zoning at the county level as well as by cities, villages, and townships. While several counties in the northern parts of the Lower Peninsula and the Upper Peninsula have adopted county zoning ordinances, most counties in the southern part of the Lower Peninsula continue to defer to city, village, and township zoning. This creates more opportunities to engage in NIMBY zoning – recognizing that activities such as aggregate mines or renewable energy installations are necessary but let other communities host them.

The Zoning Enabling Act already provides that some land use decisions are bigger than local decision-making. For example, it says that counties or townships may not regulate or control the drilling, completion, or operation of oil or gas wells. Taking similar actions to make other land uses the purview of the counties rather than cities, villages, and townships would keep decision-making closer to home than deferring to politicians and bureaucrats in Lansing.

It also is incumbent on the state to be better at communicating policy goals to local governments and working with local officials to craft and implement those policies when local governments will be affected.

Although the state plays a significant role in providing financial resources to local governments of all kinds, Michigan’s state government is not structured to interface with officials from those local governments. Some other states have departments of local government or standing local government commissions to bring together the state executive and legislative branches with representatives of local government to maintain a constant dialogue. In Michigan, the offices that interact with local governments are sprinkled throughout the state departments of Education, Treasury, Transportation, Environment, Great Lakes, and Energy, Agriculture & Rural Development, Natural Resources, State Police, and the Michigan Economic Development Corporation in a quasi-governmental role.

Being intentional about creating a forum for state officials to hear the needs and concerns of local governments can help to address issues before state preemption is raised as a potential solution.

The legislative process also can be reformed to head off the need for state preemption. The legislative fiscal agencies do a fantastic job of assessing how proposed legislation will affect state service delivery and the state’s finances, but they do less well at estimating the consequences when proposed legislation will affect local governments’ land uses, service delivery, or finances. Several years ago, we offered a road map for improving the preparation of fiscal notes to address the often-overlooked concerns of local preferences in the development of state policies.

Michigan should establish a network of local governments to participate in voluntary information sharing for the purposes of preparing fiscal notes that will help the legislature understand the financial, economic, or

social consequences that proposed legislation will have on local governments. Legislators hear from the state-wide associations representing the various types of local governments, a fiscal note process would formalize communications and elevate local governments to partners working alongside the state.

## Conclusion

In Michigan, the state has provided wide latitude for local government decision-making. State preemption of local authority shows signs that the deference to local decision-making has limits. Changes can be made to address policy issues in ways different from current methods with the goal of making state preemption unnecessary in the future.

### ABOUT THE AUTHOR

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Eric has been President of the Citizens Research Council since September of 2014. He has been with the Citizens Research Council since 1987, the first two years as a Lent Upson-Loren Miller Fellow, and since then as a Research Associate and, later, as Director of Local Affairs. Eric has researched such issues as state taxes, state revenue sharing, highway funding, unemployment insurance, economic development incentives, and stadium funding. His recent work focused on local government matters, including intergovernmental cooperation, governance issues, and municipal finance. Eric is a past president of the Governmental Research Association and also served as vice-chairman of the Governmental Accounting Standards Advisory Council (GASAC), an advisory body for the Governmental Accounting Standards Board (GASB), representing the user community on behalf of the Governmental Research Association.

Eric holds a B.A. in International Relations from James Madison College at Michigan State University and a Masters in Public Administration from Wayne State University.

Founded in 1916, the Citizens Research Council of Michigan works to improve government in Michigan. The organization provides factual, unbiased, independent information concerning significant issues of state and local government organization, policy, and finance. By delivery of this information to policymakers and citizens, the Citizens Research Council aims to ensure sound and rational public policy formation in Michigan. For more information, visit [www.crcmich.org](http://www.crcmich.org).

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