

Home Rule and Energy Codes: An Introductory Outline

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Brief History

- Cities and towns are not mentioned in US Constitution
 - Traditionally, county/local governments were viewed as “creatures of the state,” subject to state authority and control
 - Dillon’s Rule (1868): Localities can only do what the state explicitly grants
- The Home Rule Movement – part of Progressive and “Good Government” Movements of the 19th century
 - Too much state interference into local matters
 - Too much corruption and “special legislation” for localities as the result of the 19th century infrastructure/industry boom and the power of state governments in general
- Too much ambiguity regarding the specific powers of municipal governments
 - An 1875 amendment to the MO constitution allowed St. Louis to establish its own city charter
 - By 1912, CA, WA, MN, CO, VA, OR, OK, MI, AZ, OH, NE and TX followed suit
- Methods for adoption
 - Included in the state constitution
 - Through state legislation
- The Purpose of the Home Rule Movement (Ideally)
 - To prevent state legislative interference with local government
 - To enable cities and counties to adopt the kind of government they desire
 - To provide cities and counties with sufficient powers to meet the increasing need for local services
- Home Rule opposition
 - Limiting and myopic practice that increases political fragmentation and decreases the ability of states to apply uniform solutions to statewide issues

Working Definition

- Difficult to define – a political chameleon meaning different things to different people in different places
 - All but a handful of states are home rule in some form or another

- Conversely, all but a handful are “Dillon’s Rule” in some form or another, as well
- Questions to consider:
 - How much autonomy does the state grant localities? In what areas?
 - What authority does the state have to tell localities what to do? What not to do? How to do it?
- *Home Rule in America Handbook* Definition
 - “In general terms, the ideal of home rule is defined as the ability of a local government to act and make policy in all areas that have not been designated to be of statewide interest through general law, state constitutional provisions, or initiatives and referenda.”
- Beyond that, it is better defined on a state-by-state basis

Home Rule and Building Energy Codes

- States with strong home rule authority/tradition cite home rule as a reason for rejecting statewide codes
 - Localities should determine for themselves if energy codes fit their unique characteristics
 - Statewide codes require statewide funding/training/etc. (i.e. unfunded mandates will not work)
 - Statewide codes may restrict the ability of progressive localities to go beyond the mandated codes
 - Conversely, opponents of statewide codes like home builders associations and municipal leagues sometimes support code adoption *only if* it includes maximums, the idea being that inconsistency among jurisdictions makes the home builder’s job more difficult
- Some home rule states pass statewide energy code regulations with loopholes (IL), voluntary adoption policies (ND, CO), weak enforcement policies (GA), or additional flexible jurisdictional adoption requirements (SC)
- Some state legislatures override or “preempt” home rule to adopt statewide energy codes
 - Usually occurs if the legislature deems the issue to be of statewide importance
 - This process and the power of the legislature to block home rule varies by state
 - It is important to note that preempting home rule to pass a statewide code does not change anything on the practical level if it is an unfunded mandate

Insight & Observations

- Difficulty in phrasing the adoption problem as a “home rule” issue

- Too much ambiguity: Home rule has multiple meanings, even within a particular state, and can be altered to fit the agenda of an individual or organization
- Too much politics: Home rule is often a mask for politics and the stubborn maintenance of the status quo for personal ambition/convenience of those already in power
- Too much inconsistency: Most states are “home rule” with regards to some issues and not with others. Every state delineates what municipalities can and cannot do differently.
- Home rule is usually not the problem
 - Home rule and building codes are not mutually exclusive—some strong home rule states (LA, MI, CA and OR, for example) have codes, while some non-HR states (AL, MS and IN) do not.
 - The real barrier is a legitimate unwillingness or perceived inability on the part of involved organizations (legislatures, municipal leagues, home builders associations, etc.) to adopt energy codes for many of the same reasons that any of these groups oppose energy code adoption in any state:
 - Fear of additional costs to builders
 - Lack of knowledge regarding energy code benefits
 - Lack of administrative infrastructure and/or appropriate funding to establish the same
 - Home rule, whether granted in the state constitution or through statutes, does not override federal or state laws. As long as they are written well (i.e. no loopholes, no voluntary adoption, etc.) and funded appropriately, federal or statewide codes are legal.
 - Colorado is an exception. Local regulations supersede state law on issues of purely local importance, as defined by the state constitution
- It is more productive to view home rule states like any other (but with more caution)
 - Who has the power to adopt/enforce energy codes?
 - Who stands in the way of codes? What do they stand to gain/lose by blocking energy codes?
 - What would motivate them to support the statewide adoption of energy codes?
 - Who funds training and enforcement?
- Home rule authority is often largely ceremonial/illusionary
 - Most state governments grant less home rule authority for fiscal matters than they do for structural and functional ones. With limits to their own ability to tax and take on debt, such municipalities are still largely dependent on the state governments. Depending on the type of home rule, the state says either that a) you can do everything we do not explicitly prohibit you from doing by law *provided that you can pay for it*, or b) you can only do what we explicitly permit you to do by law *provided that you can pay for it*. In either case, the state controls the funds and, ultimately, the authority.

- In AZ, however, the local governments raise 64 percent of their revenues (mostly property and sales taxes). The rest comes from the state and the Federal government. Furthermore, the state sets the method for property tax assessment and tax and debt limits on cities and counties.
- The local governments have even more fiscal freedom in CO, where they receive only 15 percent of their incomes from the state and federal governments. However, there are some state restrictions on the ability to tax.
- What is not ceremonial or illusionary is the *attitude* or *philosophy* of home rule
 - The most legitimate claim home rule advocates make is that they prefer a “local-first” political culture and system. They believe that locals should solve local issues and that their system provides better, more personal service to their constituents.
 - This attitude is real. It is important to remember that the majority of political players in these states want to maintain home rule at least in part because they believe it is a) a better system or b) *their* system. It is easy to speculate that it is all a political show for people who do not want to be told what to do, but for the “old boys” that support home rule, they really believe in it.
 - Of course, as mentioned earlier, it also stubbornly maintains the status quo and keeps them in power. The takeaway point here is that home rule is a complicated issue with multiple angles and a fine line between obstacle and excuse. There are some true believers, so, whenever dealing with home rule advocates, be careful not to diminish their views.

Strategies to Consider

- Define the ultimate goal
 - Statewide adoption and implementation of energy codes no matter what, or
 - The adoption and implementation of energy codes for the largest number of buildings on either the state or municipal levels (which may be the better and more realistic goal)
- Be flexible/pragmatic
 - It is much easier (and more productive) to adjust our strategy to meet a particular state’s needs. Some states prefer to adopt codes locality-by-locality. It might be slower, less efficient, less uniform and more costly, but they believe that it is better for them.
 - Home rule is political; it is often about independence from authority. We will never win over the “Nobody tells us what to do” attitude by telling them what to do.
 - If municipal governments have authority over code adoption and implementation, work with them, municipal leagues, and others, even if that means forgoing statewide codes in favor of as many local ones as uniformly as possible (AZ, WY and CO, for example).
- Find the incentives
 - Financial incentives that are large enough will help local governments, municipal leagues, etc., to consider abandoning their “home rule” positions and accepting statewide ruling (and funding).

- Same for political incentives: If adopting codes looks good enough (or not adopting them bad enough), states can overcome municipal league and home builders association lobbying, etc.
 - TX and LA are examples of financial and political incentives
- If strong enough incentives do not exist/cannot be found, no amount of pleading and prodding will cause home rule advocates to change their minds. Changing the political culture of a state is best left to the state itself.
- Focus on education
 - Some opposition is grounded in fear or uncertainty regarding the ability to adopt and implement codes and their associated costs
 - Outreach/training for builders, architects, designers, etc., will reduce their opposition to building codes as a home rule issue
 - Outreach/training, etc. for enforcement officials will increase their comfort with the process and help them understand the benefits
 - Create a market for building codes among the public. Put pressure on builders to factor in operational costs of home ownership. A public education campaign, especially in home rule states, will influence compliance where state mandates might otherwise fail.
 - If difficulties arise in creating sufficient interest among builders, code officials, etc., to participate in educational seminars, we need to find ways to include energy code education as part of a more “popular” educational program related to buildings and/or codes, such as health/fire/safety.
- Potential ways of framing the issue
 - Savings: Nobody disagrees that, theoretically, energy codes save money for building owners and that saving money is a worthwhile goal (right?)
 - Consumers/voters: State and local elected officials ultimately answer to their constituents, not their lobbyists (too naïve?)
 - ARRA: All involved parties should want to see more efficient buildings that save money. Regardless of who is going to enforce it, a statewide code will bring each state one step closer to receiving federal money that they can use to help their states’ energy efficiency. In strong home rule states, passing a statewide energy code with no possibility of enforcement is still a first step towards an enforced statewide code or enforced local codes that match or exceed the statewide one. The downside is that it risks further alienating builders and building officials that support jurisdiction-by-jurisdiction adoption.

State focuses

- Illinois
 - Paradoxical home rule: The state has a history of many local governments—over 7,000, the most in the nation— but only adopted home rule in 1970

- “Liberal” home rule: Charter cities are granted any powers not explicitly denied them by the state
- Any city over 25,000 can apply; more strict for counties
 - Only 198 municipalities (15 percent) have chosen to adopt home rule, but they include 48 of the 50 most populous cities and account for over two-thirds of the population
 - Only one county is home rule, but it is Cook County (Greater Chicago) and accounts for 40 percent of the population
 - Powerful force in Illinois politics
- Preemption
 - IL General Assembly can preempt home rule by:
 - Claiming exclusive jurisdiction through a majority vote
 - Deny concurrent powers of local and state government by a majority vote
 - Supermajority for tax issues
 - This occurred for the statewide commercial bill in 2004 and could occur again for a residential bill
- Adopted statewide commercial building energy code (HB4099), but there is a loophole
 - Only applies to buildings that require a permit. “Downstate,” in the rural areas, many buildings don’t go through a permit process
 - The vast majority of the cities have adopted some version of the national model code (the IECC), though
- No residential code
 - Rep. Julie Hamos introduced a bill in 2008 that was not passed (HB1842, SB2456)
 - Likely to introduce a similar bill again in 2009
 - Legislation rests partially on the support of the home builders association, who want a mini-max requirement (meaning that it would set minimum and maximum building codes for uniformity)
- Statewide codes are a first step towards compliance and enforcement
- Missouri
 - Extreme political fragmentation
 - Conservative political culture with strong local governments
 - There are 92 municipalities in St. Louis County alone, which does not even include the city of St. Louis, which is its own county

- Lack of regional/statewide solutions to regional/statewide problems
- The home of home rule
 - Home rule granted by state constitution of 1875
 - Any city over 5,000 and any county over 85,000
 - As of 1971, home rule cities granted all powers not explicitly denied them
 - 32 home rule municipalities (one-third of population)
 - 4 home rule counties (40 percent of population)
- No statewide residential or commercial codes
 - Efforts have been made without success
 - True to its motto, Missouri has a “Show me” political attitude
 - Education on all levels is needed to change the culture of opposition to codes
- SB 1181 mandated the 2006 IECC for state-owned buildings over 5,000 sq. ft.
- Arizona
 - Strong political and legal tradition of local government and home rule authority
 - Staunchly Republican and anti-big government
 - Resistant to state controls
 - The word “mandatory” is taboo in the state legislature
 - Founded during the heart of the Progressive Movement
 - 1912 constitution reflects the desire of reformers to:
 - Prohibit special interest legislation
 - Ensure the rights of localities to exercise exclusive jurisdiction over purely local matters
 - Local autonomy is an established, deeply engrained and cherished practice
 - Half of eligible municipalities have adopted their own home rule charters
 - Includes the largest urban areas, such as Phoenix and Tucson
 - Local jurisdiction for all building codes
 - Statewide plumbing code in 1990s failed miserably due to lack of state infrastructure to support it
 - The attitude is: No statewide minimum standards without resources to implement them

- Buildings are about personal safety, which is a matter of local—not state—concern
 - Local authorities know what building practices are best for their communities
- Code adoption is erratic
 - Some communities do not have codes (many smaller towns)
 - Others have or are working on advanced codes (Scottsdale, Chandler, Phoenix, Tucson)
 - Dept. of Commerce Energy Office provides educational information and supporting materials
 - Careful not to represent the will of the state
 - Cites strong enforcement as one benefit of local jurisdiction-by-jurisdiction adoption
- HB 2337, which proposes “voluntary statewide codes,” was introduced in January of 2009
 - Passed the House Water and Energy Committee
 - Awaiting the passage of a state budget
 - Previous attempt for an energy bill with similar language failed in 2008
- More so than in other home rule states, Arizona home rule is a real barrier to statewide code adoption
 - The local authorities *want* to adopt codes on the local level
 - The state is content to continue this arrangement
 - However, a small minority of building officials are frustrated with the patchwork nature of code adoption and implementation statewide
- Colorado
 - State and local governments have a well-defined and comfortable relationship
 - Separate and concurrent powers for each delineated in the state constitution and through established legal rulings
 - local regulations supersede state law on issues of purely local importance
 - Independence from state authority on most issues
 - Firm belief that local governments do a better job of delivering services to their constituents
 - Article XX of the state constitution (drafted in 1902) grants the people the right to draft home rule charters
 - City or town must have population of 2,000 or more

- “The people...are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter...which shall be its organic law and extend to all its local and municipal matters”
- The constitution confirms that home rule authority “shall supersede...any law of the state in conflict therewith” for such matters
- The state constitution expressly prohibits the state from revoking the citizens’ right to charter adoption
- Local energy code adoption and enforcement
 - Code and elected officials believe that they are capable of making intelligent decisions regarding building code adoption and implementation for their own communities
 - Cities have greater fiscal autonomy
 - They are responsible for a larger percentage of their revenues
 - They have the resources to manage every step of the code process with little need for state assistance
- HB 1146
 - Interesting piece of legislation
 - sets the 2003 IECC as the minimum energy code requirement
 - One important caveat: it applies only to jurisdictions that have:
 - Adopted any type of building code
 - Will do so in the future
 - The bill is a de facto mandatory minimum
 - Many jurisdictions had already adopted the 2003 or 2006 IECC
 - In essence, it functioned more as a catalyst for slower jurisdictions to catch up
- Governor’s Energy Office
 - Proactive in providing support, funding and resources to any municipality that wants its assistance
 - In 2008, it ran 30 training workshops across the state on the 2006 IECC
- regular, uniform code adoption on the local level works best for Colorado

A Few Resources

[Summary](#) of *Home Rule in America: A Fifty-State Handbook*

- Note: This text is the best source for general home rule information. However, it does not address codes specifically. The best method for learning about how home rule affects energy codes in a particular state is to call ICC regional representatives, state energy offices, and municipal organizations, etc.

[Overview](#) from the National League of Cities

National Association of Counties [description and listing](#)