The Situation  In the never-ending battle to adopt statewide energy codes, advocates occasionally come up against a tricky political adversary called “home rule.” This fact sheet hopes to provide you with the knowledge needed to understand this issue and overcome—or work with—home rule.

What exactly is home rule?  It depends. Home rule is a political chameleon, adjusting its meaning to fit its surroundings. In other words, home rule means different things to different people in different places—little wonder, then, that it can be such a contentious issue. Broadly speaking, home rule is “the ability of a local government to act and make policy in all areas that have not been designated to be of statewide interest.” In essence, it’s the power of municipalities to chart their own course without state approval or undue interference. Interpretations of this doctrine vary widely from state to state, hence this definition has little practical use out-of-context. So, the real question is: what exactly is home rule in my state?

Where did it come from?  Home rule dates all the way back to the Constitution, in which local governments and cities are conspicuously absent. Without Federal clarification, states were able to define local authority as they saw fit. They generally viewed municipalities as extensions of themselves and, thus, subject to state intervention whenever politically convenient or beneficial. In an era of rapid economic growth and national expansion, such intrusions were common, and state governments were guilty of occasional (read: frequent) abuses of power. As part of the larger reform movements of the late nineteenth and early twentieth centuries, home rule advocates sought to protect local governments from a political system mired in corruption and special legislation. It is important to note that home rule reform often took hold in younger and less-established states, particularly in the West and Midwest, and helped define their political cultures, a legacy that continues to influence many states today.

How does it affect energy codes?  Most states adopt codes on the statewide level, even if they are home rule in other ways. But strong home rule states—AZ and CO, for example—adopt codes on the local level with little state direction or support. While the process varies by state and between cities, the general concept is that the ruling body of a locality votes to adopt codes based on recommendations by the local building authority and outside advocates. Local building departments carry out implementation, including enforcement and compliance training when possible. In some cases, the state energy office supports these activities. Most building departments exhibit some degree of statewide organization through a professional association. On the whole, code adoption is more prevalent in urban areas than rural ones.

Well, what’s the problem?  It depends on whom you ask. Most home rule advocates would argue that there isn’t one. They prefer their jurisdiction-by-jurisdiction system, citing personalized care, local involvement in local issues and an aversion to unfunded mandates. However, most regional and national energy code advocates would counter that the uniform, compulsory and comprehensive nature of statewide adoption and implementation makes it more efficient and effective. Home rule, then, presents a barrier to code advocacy in the manner in which they are accustomed to operating. If statewide energy codes are the goal, home rule is indeed a problem.
C’mon, isn’t home rule just an excuse? Sometimes. Many home rule advocates are sincere in their preference for home rule. Conceptually, they support the idea of “local-first” politics. On a practical level, they believe that it offers them a greater ability to provide services for their communities. However, home rule can also be a mask for the stubborn maintenance of the status quo and an intrinsic resistance to change. The attitude is, “This is the way we’ve always done it, so this is the way we’ll keep doing it,” effectively eliminating all other options, regardless of their merit or potential. The real barrier here is a perceived inability to adopt statewide codes for reasons that are common to the code advocate: fear of additional costs, lack of awareness of benefits, or a lack of administrative infrastructure, for example. In these situations, home rule is a convenient excuse—but that doesn’t make it any less powerful.

So, is there a solution? Maybe, but only for the open-minded, clever and pragmatic advocate. The first question is: are statewide energy codes really the goal? They are, after all, the dominant form of code adoption countrywide. But isn’t increased energy efficiency—for any number of socioeconomic and political reasons—the true goal? If so, statewide energy codes are one means of achieving it. The open-minded advocate will acknowledge that, while statewide codes are a popular and proven method of increasing building energy efficiency, they aren’t the only one.

The next step is to recognize that home rule answers the “how” of code adoption and implementation, but not always the “why.” That is to say: what home rule advocates reject about statewide energy codes is the “statewide” part, not necessarily the “energy code” part. Sure, some home rule advocates are against codes, that’s a given. Yet home rule and energy codes are not mutually exclusive. Indeed, many home rule advocates support them; it’s just a question of “how” to do it. Even this can be subject to change. Louisiana and Texas have passed mandatory statewide energy codes in the last few years for political and economic reasons. The clever advocate, then, should find and leverage the incentives whenever possible. At the right time and with enough political or economic pressure, home rule states can choose the statewide path.

Even the most optimistic advocate will acknowledge that there will seldom be incentives strong enough to overturn home rule. After all, it’s a political system with a long and entrenched history and strong ties to the American culture of individualism. At this point, the pragmatic advocate will realize that it’s much easier and more productive to adjust his or her strategy to work within the existing home rule framework. Moreover, it’s very difficult to win over the “Nobody tells us what to do” attitude by telling them what to do, so why waste precious time and resources fighting a losing battle? If you cannot change the system, switch gears: advocate for as much code adoption in as many jurisdictions as uniformly as possible. Stress the economic benefits of energy codes; counteract misinformation with solid data; support all code activities across the state; build coalitions of energy code supporters on all levels to extend your reach and increase your influence. In short, provide the same services that you would in any state, and keep in mind the goal of increased energy efficiency.

Where do I begin? Start by reading your state’s chapter in Home Rule in America: A Fifty-State Handbook, the most comprehensive text on home rule to date. The next step is to speak with individuals involved in the code adoption and implementation process, including local elected and code officials, state energy office representatives, regional energy efficiency organizations and home builders’ representatives, among others. Finally, contact your state municipal league or similar organization to learn about how and why they maintain home rule authority in their own words.

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A joint initiative of the Alliance to Save Energy (ASE), the Natural Resources Defense Council (NRDC), and the American Council for an Energy Efficient Economy (ACEEE)

1850 M St. NW Suite 600 | Washington, DC | www.bcap-ocean.org