Navigating State Pre-Emption & Local Gov't Control: Continuing the BIG Ideas 2017 Conversation

January 24, 2018

From the BIG Ideas 2017 to virtual session, local gov't innovators to continue to share their unique perspective, navigating between state and local political dichotomies.
About the Alliance

Inspiring Innovation to Advance Communities

Convene and Engage Networks of Thought Leaders

Provide Training to help Organizations Build and Sustain a Culture of Innovation

Identify, Distribute Leading & Emerging Practices/Trends Important to Local Gov

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All attendees are muted, but we do want your participation!

Please ask your questions using your Go To Webinar Toolbox throughout the webinar.
Today’s Moderator & Presenter

Dr. David Swindell, Ph.D.
Director, Center for Urban Innovation

Daniel Ortiz-Hernandez, MPA
City Manager, City of Webster City, IA

Michael F. Sable
Director of Facilities Services, County of Hennepin, MN

David Finley
Project Manager, Town of Chapel Hill, NC

Jack Tuttle
Former City Manager, City of Williamsburg, VA
Navigating the Waters Between Local Autonomy and State Preemption

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Arizona State University
University of North Carolina at Chapel Hill
Navigating the Waters Between Local Autonomy and State Preemption

http://urbaninnovation.spa.edu
This presentation will explain…

- The nature of the debate
- Our recent research
- Help local leaders situate themselves
- Provide some tools for local government action
“As opposed to the state having to take multiple rifle-shot approaches at overriding local regulations, I think a broad-based law by the state of Texas that says across the board, the state is going to pre-empt local regulations, is a superior approach.”

Gov. Greg Abbott, Texas
March 21, 2017
State government is taking too much decision-making authority away from local governments

- Agree/SA: 84.0%
- Disagree/SD: 16.0%
Fundamental Debate

Judge John Dillon

The rule stated that the powers of a local government are limited to: “First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.”
Fundamental Debate

Local autonomy means: “the power of local government to act in a ‘purposeful goal-oriented’ fashion, without the need for a specific grant of power and ‘the power of localities to act without fear of the oversight authority of higher tiers of the state.’”
Example Arguments for Dillon’s Rule

• **Statewide policy, particularly in terms of the regulation of businesses, creates a better business climate.**

• Allows states to grant authority to local governments to be the lead agencies on very local scale issues.

• Dillon’s Rule can provide local officials “cover” for not acting on the desires of the community when what the community wants is bad for the jurisdiction.

• Dillon’s Rule allows state governments to curb the worst aspects of irresponsible, corrupt, or uncooperative local governments.

• **Dillon’s Rule allows states to protect individual rights that could too easily be trampled by the parochial nature of local communities.**

• Home rule advantages suburban communities while placing central cities in a disadvantageous position.
Example Arguments for Local Autonomy

• Local communities should be allowed to vary in order to create stronger innovation laboratories.

• Empowering local governments to run their own local affairs means the state government will be free to focus on state-level matters.

• Local governments with control over their own local finances will create greater responsiveness by local officials to citizen demands rather than state officials far removed from the community.

• Some feel that business interests are using state control as a means to circumvent local preferences regarding how businesses operate in their community.

• “It’s been touted that they [the legislators] know better than we do. Wrong. Absolutely wrong. We know what’s best for our neighborhoods. We know what’s best for our constituency. We live it every day.”
Our Research

• Research has found a steady increase in preemption bills across the country since 2011 (e.g. NLC)

• We reviewed state legislative actions in eight pilot states covering any issue involving a limitation or expansion of local authority from 2001 to mid-2017.

• We examined the legislative actions of the remaining states but with a more limited focus on two specific policy areas: minimum wage policy and telecommunication issues.

• We identified 164 laws, covering a wide range of policy areas.
Figure 1

State Actions by Year

y = 0.41x + 5.16
R² = 0.20
Nature of the actions states and local governments take varies by legal structure.

- Permit local action
- Restrict local action
- Require local action

A Framework for Assessing Local Government Autonomy
<table>
<thead>
<tr>
<th>Nature of state-local interaction</th>
<th>Type of Action</th>
<th>Type of state-local legal relationship</th>
</tr>
</thead>
<tbody>
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<td></td>
<td></td>
<td>Home rule states or local governments</td>
</tr>
<tr>
<td>Permit local action</td>
<td>Broad or specific authorization(^1)</td>
<td>Broad authorization to all or to designated municipalities plus specific authorization in laws</td>
</tr>
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<td>Limited or targeted authorization</td>
<td>Use classification to permit some cities to act</td>
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<td></td>
<td>Omission</td>
<td>Fall to include in general authorization(^2)</td>
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<td>Restrict local action</td>
<td>Targeted restriction</td>
<td>Use classification to prevent some cities from acting</td>
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<td></td>
<td>Nullification</td>
<td>Nullify local policy/program/practice in conflict with state laws</td>
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<td></td>
<td>Prohibition</td>
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<td></td>
<td>Penalize</td>
<td>Sanctions imposed for specified actions</td>
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<td>Require Local Action</td>
<td>Preemption</td>
<td>Preempt the authority of local governments to act in specified areas</td>
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<td>Requirements</td>
<td>Set standards that all governments must meet</td>
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<td>Mandates</td>
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How Local Governments Can Take Action?
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<th>Type of Action</th>
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<tr>
<td>Use legal powers and test the limits</td>
<td>Locally initiated legal action within broad powers. Take advantage of home rule option if available.</td>
<td>Locally initiated legal action within granted powers.</td>
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<td>Request additional powers</td>
<td>Seek broad authorization for all cities from legislature for previously un-granted power.</td>
<td>Seek specific authorization from legislature for all local governments or request local bill to permit action.</td>
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<td>“Workaround”</td>
<td>Find method that is consistent with state law.</td>
<td>Find method that complies with or circumvents restrictions.</td>
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<td>Referendum</td>
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<td>Advocacy &amp; voluntary efforts</td>
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Navigating the Waters Between Local Autonomy and State Preemption

http://urbaninnovation.spa.edu

2017 BIG Ideas Summary

https://discover.transformgov.org/documents/2017-big-ideas-summary
1st Q&A

Dr. David Swindell, Ph.D.
Director, Center for Urban Innovation

Jack Tuttle
Former City Manager, City of Williamsburg, VA
The Nature of State Interference

State Actions by Party Control

- Republican Trifecta: 85
- Republican Legislature, Democratic Governor: 6
- Split Legislature, Republican Governor: 15
- Split Legislature, Democratic Governor: 14
- Democratic Legislature, Republican Governor: 3
- Democratic Trifecta: 40
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2nd Q&A

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Driving Innovation

The Alliance for Innovation is inspiring innovation to advance communities. Is your community ready to take the step forward and invest in innovation, future-proof your community, and build a culture of action leaders?

Join today...

Webinar Resources

Questions? Need Handout Copies? Contact Ryan Spillers at rspillers@transformgov.org
Save the Date!
Upcoming learning events:
http://transformgov.org/en/calendar

- **Virtual Events**

- **Workshops**
  - Workforce of the Future Workshop - WA on 1/30/2018
  - Workforce of the Future Workshop – IL on 4/26/2018

- **Conferences**
  - Transforming Local Government Conference: April 3 – 6!
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Thank you for joining us today!