

# THE NEW STATE PREEMPTION, THE FUTURE OF HOME RULE, AND THE ILLINOIS EXPERIENCE

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*This article examines the rise of new forms of state preemption of local government legal authority in states across the nation, a trend that is prompting scholars, advocates, and officials to re-examine the underlying nature of home rule. The article lays out core components of a new approach to home rule that might remedy contemporary shortcomings in the doctrine, then reflects on lessons for reforming home rule from the Illinois experience.*

Home rule—a legal doctrine that defines the expanded authority of local governments—has grown and declined in public attention many times since Missouri became the first state to enshrine formal local government legal power in its state constitution in 1875. Now, a recent wave of state laws designed explicitly to constrain local governments across the country is prompting a re-examination of the basic principles that should guide the state and local legal relationship. At this juncture, the Illinois experience has much to offer—and something to learn from—this national conversation. This article accordingly outlines the rise of what some scholars have called the “new preemption” (Briffault, 2018) and the need to modernize home rule in response. The article then reflects on how these national trends intersect with the doctrine of home rule and state and local relations in Illinois.

## STATE PREEMPTION’S NEW LANDSCAPE

Preemption is a well-established state legislative and judicial tool to mediate disputes between state and local governments if both a municipal government and the state legislature have adopted laws that arguably deal with the same subject matter. In many cases, state and local laws can coexist and apply concurrently, but in others, disputes arise that require a determination of whether the local law has been preempted by the state. For years, preemption has been used by state legislatures in two primary ways: either to displace

local policy with a statewide regulatory framework; or to establish general statewide minimum standards that are subject to local discretion to go beyond, to enhance, or to supplement those minimums. When conflicts arose over the interaction between state and local regulation, courts became the final arbiters of the preemption dispute. Shaped by regulatory context, the text of the relevant state and local laws, and the tradition of judicial involvement in preemption disputes, courts had to determine whether the state had explicitly preempted local laws; whether local laws conflicted with, were inconsistent with, or frustrated the purpose of state law; or whether state law “occupied the field” and left no room for concurrent local ordinances.

Over the past decade, preemption has begun to take on a new form. State legislatures have passed laws expressly preempting local control—not for the purposes of adopting statewide policies or providing regulatory baselines, but merely to strip local governments of the power to act, leaving no regulatory structure in place. In this new use of an old doctrine, preemption has acquired a new deregulatory purpose, leaving local governments unable to address local problems.

In a growing number of states, preemption has become a series of narrow, targeted, and often partisan legislative actions that deny long-standing local powers, eroding the protection guaranteed to home rule by state constitutions. This new wave of preemption challenges the traditional understanding that home rule municipalities may frequently regulate and exercise local discretion to deal with problems in their own particular ways, without state approval or state authorization, and often in ways that the state would not choose to adopt at the state level. Policy experimentation and the ability to respond to unique local situations are essential aspects of a strong and vibrant home rule system. In many states, those essential features of local democracy are at risk.

The State of Florida provides a good illustration of the new preemption. In recent years, the Florida legislature has passed laws prohibiting local regulation of smoking (Fla. Stat. § 386.209 *et seq.*), fire sprinklers (Fla. Stat. § 553.73(17)), nutrition and food policy (Fla. Stat. § 509.032), the sale or use of polystyrene (Styrofoam) products (Fla. Stat. § 500.90), hoisting equipment (Fla. Stat. § 489.113), beekeeping (Fla. Stat. § 586.10), fuel terminals (Fla. Stat. § 163.3206(3)), wireless alarm systems (Fla. Stat. § 553.793), minimum wage, paid sick leave and other employment benefits, such as vacation time (Fla. Stat. § 218.077), firearms (Fla. Stat. § 790.33), moving companies (Fla. Stat. Ann. § 507.13), sanctuary city policies (Fla. Stat. Ann. § 908.103), biomedical waste

in city landfills (Fla. Stat. § 381.0098(8)), plastic bags (Fla. Stat. § 403.7033), and even of milk and frozen desserts (Fla. Stat. § 502.232). Each of these laws is a targeted removal of a specific home rule power and part of no general statewide program other than perhaps a general statewide effort to undermine home rule. The state response to local action reflects deep partisan divides in our country, and with this polarization has come local disempowerment, even though that disempowerment is frequently in direct conflict with state constitutional protection of broad home rule powers.

As the new deregulatory preemption has accelerated, state legislatures whose policy preferences conflict sharply with their local governments, particularly large cities, have begun to use their preemptive authority in a more strident manner. Moving beyond the “strip one power at a time” approach to dismantling home rule, legislatures are considering expansive blanket preemption bills, erasing broad swaths of local legislative powers with one stroke of the pen. The Michigan legislature, for instance, in the “Local Government Labor Regulatory Limitation Act of 2015” (colloquially known as the “Death Star Act”), preempted all local regulation “of the employment relationship between a nonpublic employer and its employees.” Other states have considered, but not yet passed, even broader blanket preemption laws. In 2017, for instance, the Florida legislature considered HB 17, which would have prohibited all local regulation of “a business, profession, or occupation.” Oklahoma’s SB 1289 would have effectively repealed home rule by legislative fiat, with language that denied municipal power to act “unless expressly authorized by statute.” During their most recently concluded legislative sessions, Florida’s HB 3 would have imposed sweeping and severe limitations on the ability of local governments to pass laws regulating businesses, and Texas’ HB 3899 would have prohibited any municipality from imposing a restriction, condition, or regulation on commercial activity. Previously introduced legislation in Texas would have preempted “all local regulation of the use of private property, all local authority over any activity licensed by the state, and any local law setting higher standards than state law on the same subject” (Briffault, 2018, p. 2008). Texas’ Governor Abbott has been quoted saying that the state should adopt a “ban across the board on municipal regulations” (Briffault, 2018, p. 2008).

In addition to the removal of local powers in ways that leave regulatory concerns unaddressed at any level of government is the phenomenon of punitive preemption that has recently emerged. Some state legislatures have adopted measures that go beyond invalidating local laws deemed unacceptable by state

officials. These laws are designed to intimidate local officials; prevent local policy debate; and even punish local officials, either personally by penalizing (even criminalizing) certain local votes, or by depriving local governments of state revenue-sharing in retaliation for certain local legislative actions. A few of the most egregious examples include a Texas law allowing that local officials who refuse to cooperate with federal immigration officials can be removed from office, jailed, and fined up to \$25,000 a day (Texas Gov't Code § 725.0565, § 752.056; Texas Penal Code § 39.07), an Arizona law threatening local governments with loss of state revenue-sharing funds for adoption of any local law deemed preempted by the attorney general (A.R.S. § 41-194.01), and a Florida law that punishes local officials who “violate the Legislature’s occupation of the whole field of regulation of firearms and ammunition” with removal from office, imposition of civil fines, and personal liability up to \$100,000 in damages to successful private plaintiffs who challenge the local government’s actions (Fla. Stat. § 790.33). Though state and local relations have never been free from conflict, basic principles of judicial review and separation of powers have long provided clear and well-established avenues to resolve these disputes in court. There is no evidence to suggest that local governments have ever defied a judicial declaration of state preemption. State threats of civil and criminal penalties, and the decision to authorize executive officials to take what is essentially judicial action, seem to serve no purpose other than to chill local action and intimidate local officials.

In legal challenges to this novel state reordering of home rule power, municipal officials, local citizens, and advocacy groups have responded with a variety of legal strategies and doctrines. State-specific doctrines, such as bans on special legislation, constitutional uniformity requirements, and single-subject rules have been invoked to invalidate some state attempts to preempt. Other broader state constitutional principles, such as separation of powers or legislative immunity may also become part of the local governments’ resistance to state intrusion. In other cases, the precise constitutional language in the home rule provisions may offer grounds for a challenge as does, for instance, the requirement in many state constitutional home rule provisions that home rule initiatives are subject to “general laws.” In Ohio, that “general laws” provision has been interpreted as a limitation on preemption power, with the Ohio courts invalidating state laws that seek to do nothing other than remove local powers to act.<sup>1</sup> As state limitations on home rule powers deepen, local governments may also raise the basic and overarching argument that at some point, state preemption of home rule powers exceeds the proper bounds of the preemption

power and has become an abuse of that power, attempting to do indirectly what the state cannot do directly.

### **THREE CASE STUDIES**

#### **1. Bisbee, Arizona plastic bag ordinance**

An example of the new preemption paradigm comes from Arizona. In 2012, the City of Bisbee, Arizona passed an ordinance that banned the use of plastic bags by retailers. In 2016, the Arizona legislature passed HB 2131, which prohibited local governments from regulating plastic bags.

After HB 2131 passed, a Republican state senator requested that the Arizona attorney general investigate Bisbee's ordinance for a possible conflict. Under an Arizona law referred to as SB 1487, any member of the Arizona legislature can request that the attorney general investigate local ordinances for preemption. If the ordinance is found to be preempted, the municipality has 30 days to remedy the violation before the state treasurer begins withholding state money from the municipality.

The Arizona Attorney General found Bisbee's ordinance to violate HB 2131. To avoid losing almost one quarter of its annual revenue, Bisbee was forced to amend the ordinance to make participation voluntary. As of July 2019, there have been 12 Arizona SB 1487 investigations, with three ordinances declared in violation of state preemptive statutes.

#### **2. Rideshare companies seeking to avoid local regulation by going to the state legislature**

A common rationale for preemption is "uniformity," but this interest can also be undergirded by rent-seeking behavior. In the case of the ridesharing industry, companies such as Uber and Lyft are lobbying for state preemption of the livery industry (e.g., cabs, limousines). Historically, livery industry regulation has been largely local.

Currently, 49 states have statewide ridesharing regulations. Many of these bills preempt all local regulation of ridesharing. However, several states have created exceptions for major cities, such as New York City. Some states winnow this exception further by attaching an expiration date to local authority. For example, Vermont's 2018 ridesharing bill grants Burlington regulatory authority only until 2020.

These statutes tend to create an uneven playing field by only removing ridesharing from local jurisdiction. This leaves traditional livery companies subject to existing, often comprehensive, local regulations while ridesharing companies are subject to lighter state regulations.

#### **3. State Preemption of Airbnb**

Regulating short-term property rental companies, such as Airbnb, is another area in which state governments are increasingly seeking to preempt local authority on a uniformity rationale. These efforts are in the early stages, with various approaches being taken to regulation. Several states, including Arizona, Florida,

Tennessee, and Wisconsin, prevent local authorities from completely banning short-term rentals. Other states have taken aim at the industry, with New York banning rentals of non-owner-occupied apartments for periods of less than 30 days. Yet other states seek to empower local governments, with Virginia authorizing localities to create registration requirements for short-term rentals. Finally, some companies have taken the initiative and voluntarily entered contracts with state revenue departments to remit taxes owed on rental transactions.

Additionally, there are numerous proposed bills that outline the regulatory paths states might take. Some measures are relatively tame, such as HB 4841 in Massachusetts, which would have created a statewide registry of short-term rental properties. Others are aggressive “new preemption” statutes such as HB 987, a failed bill from the latest session of the Florida legislature, which would invalidate all local regulations of short-term rentals.

## RETHINKING HOME RULE

Tensions evident in the current landscape of state and local relations provide a timely opportunity to ask what a more constructive vision of home rule might look like today. For nearly 150 years—since Missouri’s adoption of constitutional home rule in 1875 and the St. Louis city charter that followed that innovation—home rule has evolved and developed to meet changing needs. The last comprehensive effort to reimagine home rule came in the 1953 Model Constitutional Provisions for Municipal Home Rule, drafted by Jefferson B. Fordham, who was then the Dean of the University of Pennsylvania Law School, and published by the American Municipal Association (AMA), which is now known as the National League of Cities.

The Fordham/AMA model sought to remedy the fundamental flaw in earlier models of constitutional home rule (still in force in many states) that the judiciary by necessity became heavily involved in both the determination of the scope of local powers and the resolution of disputes over whether local laws are inconsistent with or frustrate the purpose of a state law, even if that state statute contains no explicitly preemptive language. In that system, *imperio* home rule reflected the idea that a home rule municipality was *imperium in imperio* (an empire within an empire).<sup>2</sup> Home rule units of government had some immunity from legislative preemption when the issue at hand was deemed to be exclusively local. Because many state judges defined the scope of “local affairs” or “municipal issues” very narrowly, local laws were often invalidated as being beyond the scope of home rule powers. That shortcoming was a key impetus for the Fordham/AMA model. The wave of home rule reform it inspired removed the judiciary’s extensive involvement in drawing the line

between state and local matters—after all, most issues involve some mix of local and state interests. In exchange for this substantial reduction in judicial involvement, the model established broad local initiative authority combined with essentially unconstrained state preemption authority.

Although the Fordham/AMA model was innovative for its time, much has changed about the nature and role of local governments in our federal system since its publication in 1953. Local governments have always provided many important public services, including education and public safety. But cities, counties, and other local governments have increasingly become dynamic sources of policy innovation in recent decades, tackling issues as disparate as climate change, economic opportunity, racial and gender equity, public health, and the impacts of new technology. And, at a time of political polarization and gridlock, people still place faith in the ability of their local governments to be pragmatic problem-solving institutions.

How should home rule be re-envisioned to protect the crucial role that cities and other local governments are now playing at the forefront of governance? One starting point would be that local governments should—at least as a default matter—carry the full range of policymaking authority they need to meet the challenges they face. What local government scholars often call the initiative power in home rule was central to the Fordham/AMA model in 1953. Unfortunately, that fundamental premise has not been consistently respected by state courts; as a result, courts spend too much time adjudicating the boundaries of what is appropriate for local action. Not all local communities will need to exercise every tool in the policy toolkit, but there should be a clear reason why any local government would be denied the ability to act in any given instance.

In terms of the power to make policy, a particularly important aspect of home rule involves municipal finance. Over the past generation, local governments have been frustrated in their attempts to raise revenue sufficient to meet the needs of their constituents. State-imposed limitations on local taxation, state restrictions on local fees, and other constraints imposed either by statute or through judicial decision, have combined to severely limit municipal fiscal powers. Those limitations are further compounded by frequent state imposition of mandates for local spending without corresponding rises in local revenue capacity.

Home rule should thus presumptively include the ability for local governments to structure their finances. There are legitimate state interests in fiscal uniformity and coordination, to be sure, but those interests should be manifest when states intervene. Indeed, given the importance of finance to all of the work of local governance, some commentators have even argued that it would be appropriate in a system of home rule for states to take an active role in ensuring a minimum baseline of fiscal resources across the widely varying capacity of local governments, so that every community can meet at least the most basic needs of its residents (Briffault, 2004, p. 270–271).

Similarly critical is a recognition that states should be particularly cautious in directly interfering with the workings of local democracy. How communities choose to structure and operate their own governance is at the heart of home rule, and the rise of punitive preemption runs counter to the very reason we have local governments. It is one thing for states to displace local policymaking if they have good reason but taking the additional step of punishing local governments and local officials in policy disputes should not be part of any system of home rule.

A renewed commitment to the ability of cities and other local governments to make policy, structure local finances, and govern themselves requires rethinking of how states shape local autonomy—what legal scholars call the immunity function of home rule. The Fordham/AMA approach of granting broad local initiative while removing local immunity from preemption worked until the current new preemption wave made clear that states were not exercising their oversight as the model contemplated. Contemporary home rule, then, should recalibrate, requiring states to have—and to articulate clearly—a good reason to remove or limit local authority. There are many such reasons, including addressing problems that require regional or statewide solutions, or ensuring that the floor for particular rights or regulatory interests is maintained across a state. But state lawmakers should not be able to declare without any judicial scrutiny that the state prevails in mere policy disagreements with local governments.

Protecting local autonomy does not deprive states of their ability to establish uniform standards that reflect important state policies or to prohibit local regulation that comes with unacceptable extraterritorial impacts. Few would argue, for example, that local laws should be able to undercut state minimum wage laws, laws that reflect the state's considered decision that all workers earn at least the amount adopted by statute. Similarly, local laws that would change,



for instance, a state's system of comparative or contributory negligence in tort within one particular locality would never survive a legal challenge because of the unacceptable disruption this change would cause statewide. When limited to ensuring compliance with important state policies or laws, preemption is an important tool in establishing the balance of state and local relations. But when used simply to strip local governments of the ability to respond to their particular social, geographic, and demographic realities by creating regulatory vacuums, preemption undercuts the democratic process and denies the very essence of the home rule system.

Under this approach to home rule, in short, states and local governments can be—indeed, should be—partners in governance. That partnership requires mutual respect and a recognition that each level of government has a vital role to play. But it also takes a formal legal underpinning for local authority that recognizes the importance of local democracy and places responsibility on state governments when displacing that local democracy.

## **LESSONS FOR—AND FROM—ILLINOIS**

Illinois municipalities and their officials have long enjoyed a state home rule system in which the state legislature and judiciary have generally respected the constitutional drafters' intent to protect broad local initiative powers from state meddling and micromanagement. Because home rule did not come to Illinois until the adoption of the 1970 Illinois Constitution, the constitutional drafters had many examples of home rule successes and failures to guide their choices. They opted for a home rule system based on the Fordham/AMA model, meaning that in Illinois, the constitutional grand bargain coupled extremely broad local initiative home rule powers with equally broad legislative powers to preempt, as opposed to the older, flawed *imperio* approach of trying to protect some indeterminate core local sphere from preemption.

Illinois' constitutional drafters were particularly careful to establish the contours of home rule powers and the relationship between home rule units and the state legislature. Article VII, Section 6's grant of regulatory power is broad, and the constitution explicitly states that "a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt" (Ill. Const. art. VII § 6(a)). To stress the breadth of that power and the expected

judicial restraint, the home rule article ends with the directive that “powers and functions of home rule units shall be construed liberally” (Ill. Const. art. VII § 6(m)). Moreover, the state’s constitution establishes that concurrent exercise of power at the state and local levels is unremarkable and is to be expected (Ill. Const. art. VII § 6(i)).

However, Illinois’ grant of broad local home rule power, along with the expectation of harmonious concurrent state and local regulatory schemes, is not absolute. If the legislature chooses to establish exclusive state regulatory power in a certain area, it may preempt local power if it “provide[s] specifically by law for the exclusive exercise by the State of any power or function of a home rule unit” (Ill. Const. art. VII § 6(h)). If the local laws being preempted are in an area that the state has not yet regulated, a three-fifths majority is required to preempt the local law (Ill. Const. art. VII § 6(g)).<sup>3</sup>

To date, the Illinois General Assembly has not taken excessive actions that fall within the new preemption. In most cases, it continues to respect home rule authority and to use its preemption powers judiciously. Home rule and preemption have coexisted relatively peacefully in the nearly five decades since the adoption of the Illinois Constitution. Home rule powers have been given a wide berth, and local governments enjoy the discretion and flexibility to respond to many particularly local problems in ways that would not have been possible prior to the adoption of home rule. This is due less to the structure and text of the Illinois Constitution’s home rule article and more to two important facts. First, the Illinois courts have generally respected the constitution’s unenforceable directive to exercise restraint in their use of preemption doctrines to invalidate local laws. Second, the Illinois legislature has acknowledged the benefits that home rule brings to the people and communities of Illinois: a decentralized level of government closest to the people; opportunity for local experimentation without locking in statewide uniformity; and a system that understands that the distinct and substantial differences among rural Illinois, suburban Illinois, and the City of Chicago require different and individualized local responses to local problems.

Although the Illinois legislature has been generally unwilling to join other state legislatures that have been significantly curtailing home rule, the growing volume of proposed legislation with traces of preemption and other recent examples suggest that the General Assembly may not be immune from the temptation to squelch local powers, either with a narrow, targeted deregulatory preemption statute or with a preemption law that imposes punitive consequences

on local officials who pass local laws that conflict with the state's preemption. In 2018, for instance, an early version of the law banning local right-to-work ordinances made local legislators' violation of the state's preemption a Class A misdemeanor (SB 1474, 2019). Ultimately, that punitive provision was dropped as the bill progressed. To date, there have been no new attempts to penalize local governments whose officials disagree with state policies in Illinois.

Turning to the judicial branch, the attitude toward home rule is similar. For the most part, Illinois courts have shown the same deference and restraint as the legislature. Since it would be unrealistic to expect a perfect consistency in judicial interpretation, however, it is not surprising to find some judicial deviation from the state's well-established norms of deference to home rule (*City of Chicago v. StubHub, Inc.*, 2012). In that case, the majority of the court reached the surprising conclusion that although Chicago clearly had home rule authority to levy an amusement tax on tickets sold in Chicago, it had no power to require online ticket brokers to collect that tax. Over a strenuous dissent, the court held that the ordinance exceeded the bounds of home rule power because it did not "pertain to" the city's affairs. The state's comprehensive regulation in that field, the majority concluded, meant that the entire area of ticket sales had become an exclusive statewide concern.

Though the court's analysis used § 6(a) as its doctrinal basis to conclude that the local ordinance did not pertain to Chicago's affairs, it is in reality nothing more than a backdoor return to the doctrine of implied preemption, with shades of an "occupation of the field" analysis. As the dissent correctly noted, however, a consistent line of Illinois cases has repeatedly rejected the argument that the Illinois Constitution's home rule provisions envision any role for implied preemption analyses.<sup>4</sup> Although *StubHub* sounded the alarm in many local government offices and chambers just one year later in *Palm v. 2800 Lake Shore Drive Condominium* (2013), the court appeared to return to its pre-*StubHub* mode of analysis and concluded that Chicago's ordinance regulating condominiums was a valid exercise of home rule authority in spite of extensive, and less restrictive, state statutory law. Reiterating its longstanding position that the legislature's preemption of home rule authority must be express, the *Palm* opinion seems to relegate *StubHub* to a position of relative unimportance in Illinois home rule analysis. Since the *Palm* decision, although the Illinois Supreme Court has not considered home rule, lower court opinions have focused more on *Palm* than on *StubHub* (*Midwest Gaming and Entertainment LLC v. County of Cook*, 2015; *Ill. Coin Mach. Operators Ass'n v. County of Cook*,

2015; *Youngbert v. Village of Round Lake Beach*, 2017; *Accel Entertainment Gaming, LLC v. Village of Elmwood Park*, 2015). In these cases, the Illinois Appellate Court has rejected plaintiffs' attempts to invalidate local ordinances, refusing to apply *StubHub* and focusing more on *Palm* and the pre-*StubHub* jurisprudence. Three of those pro-home rule appellate court decisions were appealed; the Illinois Supreme Court denied review in all three. In sum, despite what appear to be some outliers, Illinois municipalities continue to enjoy expansive local initiative powers, subject to state legislative oversight that has been measured.

## CONCLUSION

As the momentum grows for a nationwide re-examination of home rule, officials in Illinois will have an opportunity to consider whether the constitutional home rule provisions in the state would benefit from revision. For the most part, the state legislature and state judiciary have respected the constitutional drafters' intent that home rule powers be broad and subject to minimal judicial and legislative interference. The stability of home rule in Illinois has produced a system with flourishing local initiative powers tempered with more limited preemptive interference, either by the legislature or the judiciary, than is typical in many Fordham/AMA model home rule states. True, there has been a legislative proposal for punitive preemption provisions, and one surprising judicial departure from established legal doctrine. It is also true that Illinois local government officials must be vigilant to fight back against possible expansion of *StubHub's* precedential weight, and should speak in one voice to oppose any legislative proposals that impose penalties or other punitive consequences on local government actions. But in comparison to other states, those intrusions on home rule are minimal. The question for Illinois will be whether constitutional amendments could produce even stronger and more certain home rule powers, or whether prudential caution leads to the decision to leave well enough alone.

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## ENDNOTES

<sup>1</sup> The Ohio courts define general laws as “statutes setting forth police, sanitary, or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations” (*Village of West Jefferson v. Robinson*, 1965; *City of Canton v. State*, 2002).

<sup>2</sup> The language comes from a Supreme Court opinion involving Missouri’s home rule provision, with the *imperio* language referring to St. Louis (*St. Louis v. Western Union Tel. Co.*, 1893).

<sup>3</sup> Ill. Const. art. VII, § 6(g)–(l) for the enumeration of specific limits on the legislature’s powers of preemption. Those provisions deal with legislative preemption of local taxing power, local debt limits, special assessments, and special service-area taxes.

<sup>4</sup> Further support against implied preemption is found in the Home Rule Note Act, which provides that “[e]very bill that denies or limits any power or function of a home rule unit shall have . . . a brief explanatory note that includes a reliable estimate of the probable impact of the bill on the powers and functions of home rule units” (Home Rule Note Act of 2010). The law further provides that: “No law . . . denies or limits any power or function of a home rule unit, pursuant to paragraphs (g), (h), (i), (j) or (k) of Section 6 of Article VII of the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language that specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.” (Home Rule Note Act of 2010). If no home rule note is attached to a piece of legislation, the only plausible interpretation is that the legislature does not intend to preempt home rule powers.

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