WARNING: Municipal Home Rule is in Danger of Being Expressly Preempted

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I. INTRODUCTION

This year, Florida's municipalities are commemorating twenty-five years of Home Rule Authority. This celebration, however, may be short-lived due to legislative and judicial erosion of local decision-making authority.

Municipalities in Florida predated statehood. Pensacola and St. Augustine existed under the civil law of Spain. The legislative council of the territory of Florida established the incorporated areas of Tallahassee and Quincy. After Florida's admission into the Union, these municipalities as well as newly created municipalities, continued to exist under the laws enacted by the General Assembly under the Florida Constitution of 1838. New municipalities were then established by special or local law.¹

Then, as now, one characteristic distinguished municipalities from all other units of local government in Florida. Unlike other units of local government, municipalities were organized by their citizens primarily to promote their exclusive needs and conveniences.² However, despite their "citizen driven" role, the law in Florida prior to the 1968 constitutional revisions severely restricted a city's ability to exercise the powers of local self-governance. The control of the state's Legislature over municipalities was plenary.³ Municipalities could possess and exercise only those powers expressly granted by the Legislature or necessarily or fairly implied in or incident to the powers expressly granted, and those powers essential to the declared purposes of the municipality.⁴ If reasonable doubt existed as to whether a municipality could exercise a certain power, the doubt would, as a matter of law, be resolved against the municipality.⁵

¹ State ex rel. Atty. Gen. v. City of Avon Park, 149 So. 409, 412 (Fla.), reh'g denied, 151 So. 701 (Fla. 1933), modified, 158 So. 159 (Fla. 1934).
² Loeb v. City of Jacksonville, 134 So. 205 (Fla. 1931); see also Avon Park, 149 So. at 412; City of Clearwater v. Caldwell, 75 So. 2d 765 (Fla. 1954).
³ See infra note 40 and accompanying text.
⁴ Liberis v. Harper, 104 So. 853, 854 (Fla. 1925).
⁵ Id.; see also City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972); City of Clearwater, 75 So. 2d at 765.
As the population of the state grew, this governance from the top down became more and more cumbersome. As the number of local bills increased, the limited state legislative time available was severely impacted. By returning local decision making to municipal governments, the State Legislature would eliminate the profusion of local bills and could therefore concentrate on issues of statewide significance.  

II. THE HOME RULE AMENDMENT

Home Rule Authority has often been defined as the unfettered authority of citizens to manage their own local affairs. Home Rule Authority was given municipalities as one of the constitutional revisions ratified by Florida's electorate on November 5, 1968. Florida's Municipal Home Rule Amendment to the Florida Constitution ("the Amendment"), was first proposed in Senate Joint Resolution 5-2X of 1968 ("SJR 5-2X"). The Amendment clearly reflected a fundamental change in the rules governing the exercise of municipal power in Florida to date. "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." Furthermore, the legislative analysis of SJR 5-2X stated that under the new article "[m]unicipalities would be given additional powers to perform services unless specifically prohibited by law" and the municipal power provision "gives municipalities residual powers except as provided by law." This was in sharp contrast to article VIII, section 8, of the 1885 Florida Constitution which stated that "[t]he Legislature shall have the power to establish, . . . municipalities . . . to prescribe their jurisdiction and powers, and to alter or amend the same at any time." Whereas the 1885 Florida Constitution restricted the independent operation of municipal authority, the broad grant of power in the 1968 revisions to "exercise any

7. FLA. CONST. art. VIII, § 2(b).
8. Id.
10. Id.
12. FLA. CONST. of 1885, art. VIII, § 8.
power for municipal purposes . . .” clearly intended to vest the authority for decisions with respect to appropriate municipal purposes in the municipal governing body.

In 1972, the Florida Supreme Court had its first occasion to examine the extent to which the rules governing the exercise of municipal power had changed. In City of Miami Beach v. Fleetwood Hotel, Inc., the court held the city could not adopt a rent control ordinance absent specific legislative authorization. In doing so, the court generally concluded that the Amendment had not changed the historical rules governing the exercise of municipal power. “The powers of a municipality are to be interpreted and construed in reference to the purposes of the municipality and if reasonable doubt should arise as to whether the municipality possesses a specific power, such doubt will be resolved against the City.”

Only the dissent, written by Justice Ervin, recognized how the Amendment had changed the rules of construction with respect to municipal authority. In Justice Ervin’s view, no longer would the court look to legislative authority for the validation for the ordinance. Instead, the new article created a deference for municipal ordinances adopted for a municipal purpose which was not prohibited or preempted by existing state law.

The following year the State Legislature, in response to the court’s incorrect view, enacted the Municipal Home Rule Powers Act (the “Act”). Article VIII, section 2(b) of the Florida Constitution is specifically referenced in the Act and almost identical enabling language repeated so as to eliminate any confusion as to what was intended. The only difference was in the limitations. Whereas the Florida Constitution of 1968 only limited home rule authority “except as otherwise provided by law,” section 166.021(1) of the Florida Statutes only limited home rule authority “except when expressly prohibited by law.”

The Act further provided for liberal construction to enable “broad

13. FLA. CONST. art. VIII, § 2(b) (emphasis added); see supra text accompanying note 6.
14. 261 So. 2d 801 (Fla. 1972).
15. Id. at 804.
16. Id. at 803-04.
17. Id. at 803 (citing Liberis, 104 So. at 854).
18. Id. at 807-08 (Ervin, J., dissenting).
19. Fleetwood Hotel, 261 So. 2d at 807-08 (Ervin, J., dissenting) (emphasis added).
21. Id. § 166.021(1).
22. FLA. CONST. art. VIII, § 2(b); see supra text accompanying note 6.
exercise of the home rule powers granted” under the Florida Constitution as evidenced by the language “and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.” Moreover, “[a]ll existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided” became ordinances of the municipality. Finally, the Act repealed the majority of general laws that had previously authorized the exercise of municipal power and left to the discretion of the municipalities the exercise of any powers previously contained in the various repealed state statutes subject to terms and conditions the municipalities themselves chose to prescribe.

Thereafter, the Florida Supreme Court upheld a subsequent rent control ordinance enacted by the City of Miami Beach relying on the Act. In State v. City of Sunrise, the Florida Supreme Court tacitly receded from its earlier holding in City of Miami Beach v. Fleetwood Hotel, and acknowledged the vast breath of municipal home rule power.

Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid “municipal purpose.” It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

24. Id. (emphasis added). Remaining limitations on home rule authority: (a) annexation, merger, and the exercise of extraterritorial powers; (b) subjects expressly prohibited by the Constitution; (c) subjects preempted to the state or county government by constitution or general law; and (d) subjects preempted to a county pursuant to a county charter. Id. § 166.021(3).

25. Id. § 166.021(5); see also State v. City of Miami, 379 So. 2d 651 (Fla. 1980). Special laws or municipal charter provisions dealing with any of the following were not subject to this general repeal: (a) the exercise of extraterritorial powers; (b) creation or existence of the municipality, the terms of elected officers and the manner of their election, or the distribution of powers among elected officials; or (c) matters relating to appointed boards, any change in the form of government, and any rights of municipal employees. Changes to any of these charter provisions require approval by referendum of the electors. Id. § 166.021(4).

27. City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764 (Fla. 1974).
28. 354 So. 2d 1206 (Fla. 1978).
29. Fleetwood Hotel, 261 So. 2d at 801.
30. City of Sunrise, 354 So. 2d at 1206.
31. Id.
To date, the Florida Supreme Court has continued to recognize the "residual" nature of municipal home rule authority, even when specific authority has been granted certain other entities and municipalities are not mentioned in the enabling statute.\(^{32}\) Thus, the general rule is that if the state has the authority to exercise a particular power, then a municipality, under its home rule authority, may also exercise that power unless it is "expressly prohibited."\(^{33}\)

III. LIMITATIONS ON HOME RULE AUTHORITY

Home rule powers are not unlimited. Generally speaking, municipalities may exercise any power for "municipal purposes," except when "expressly prohibited by law."\(^{34}\) Initially, express limitations were contained in the Florida Constitution, county charters and ordinances pursuant thereto, and municipal charters and ordinances.\(^{35}\) Subsequently, additional limitations have been added by the courts in construing the application of the "expressly prohibited by law" provision contained in section 166, of the Florida Statutes, by the Legislature by preempting home rule authority on certain subjects, and by various state agencies in their interpretation of statutory authority delegated to them by the state.\(^{36}\) All of these entities have constricted the sphere of home rule authority to less than what was intended by the revisions to the 1968 Florida Constitution.

A. Municipal Charter and Ordinances

A municipality's charter and ordinances, not unlike the state's constitution and statutes, are the paramount governing instruments of the municipality and the fundamental law of the citizens served by the municipality.\(^{37}\) Both the governing body, by ordinance, and its citizens, by petition initiative, can require a referendum and subsequently limit their own Home Rule Authority.\(^{38}\) With rare exceptions,\(^{39}\) this limitation on

33. Nye, 608 So. 2d at 17.
35. See infra notes 35-50 and accompanying text.
36. For a state agency analysis, see infra notes 141-59 and accompanying text.
37. Fleetwood Hotel, 261 So. 2d at 803 (citing Gontz v. Cooper City, 228 So. 2d 913 (Fla. 4th Dist. Ct. App. 1969)).
38. FLA. STAT. § 166.031 (1991)
a municipality's Home Rule Authority has generally been upheld by the courts. However, since this is a limitation which is self-imposed, it will not be discussed in this article.

B. County Charter and Ordinances

Non-charter counties have only the authority given them by general and special law and cannot preempt the municipal Home Rule Authority of cities and towns within that county's geographic boundaries. However, article VIII, section 1(f) of the Florida Constitution also provides for establishing charter counties pursuant to a county-wide referendum. Out of sixty-seven counties, only twelve are charter counties who can themselves exercise home rule authority.

In the event of conflict between county and municipal ordinances, the county's charter must state which will prevail. Any county ordinance adopted by the charter county pursuant to its preemptive authority will supersede conflicting municipal ordinances. A county's charter may preempt to the county a sphere of regulation, but not a sphere of municipal service; the municipalities could otherwise undertake under their home rule authority. However, since a county-wide referendum is required for adoption of a county charter, and any subsequent amendment thereto, it too is a self-imposed limitation.

C. The Constitution

Florida's Constitution places several fundamental limitations on the exercise of municipal home rule authority. In addition to the clause "except as otherwise prohibited by law," article VIII, section 2(c) preempts to the State Legislature control of municipal annexation, merger, and the exercise

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39. See Gaines v. City of Orlando, 450 So. 2d 1174 (Fla. 5th Dist. Ct. App. 1984); West Palm Beach Ass'n of Firefighters Local 727 v. Board of City Comm'n, 448 So. 2d 1212 (Fla. 4th Dist. Ct. App. 1984).
40. Florida Land Co. v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983); see also Gaines, 450 So. 2d at 1174.
41. FLA. CONST. art. VIII, § 1(f).
42. Id.
43. Id. § 1(g).
45. Sarasota County v. Town of Longboat Key, 355 So. 2d 1197 (Fla. 1978).
46. Broward County v. City of Fort Lauderdale, 480 So. 2d 631 (Fla. 1985).
47. See supra note 41 and accompanying text.
of extra-territorial authority. While other articles of the Florida Constitution also impose limitations, the most poignant example in this area is the taxing authority of municipalities. Without adequate revenue streams, it is difficult at best to exercise Home Rule Authority. Article VII, section 1 requires enabling statutes before a municipality can enact a new tax, increase an existing tax above any statutory cap, or increase a tax which had been frozen by state statute. \[49\] Except for ad valorem taxes, municipalities may be granted the power to levy any tax only by general law. . . . Any tax not authorized by general law must necessarily fall by virtue of the preemption clause of Fla. Const. Art. VII, § 1 (1968). As was the case prior to the adoption of the Amendment, a municipality may still levy only those taxes authorized by the constitution or by the state. Thus, any doubts as to whether a municipality may levy a tax will be resolved against the municipality.\[52\]

### D. The State Legislature

Unquestionably, the greatest intrusion on home rule authority has come from the State Legislature under the “expressly prohibited by law” provision in Florida Statute section 166.021(1). The power of the State Legislature over municipalities in Florida is plenary,\[54\] and the passage of article VIII, section 2 did not alter this relationship. The superior authority of the State Legislature is implicit in the enumerated limitations expressed in Florida Statutes section 166.021(1) and article VIII, section 2 of the Florida Constitution.\[55\] Article VIII simply changed the measure to one of limitation rather than authorization, but the ability to limit is an all-pervasive power.\[56\]

The State Legislature may still restrict a municipality’s home rule

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48. FLA. CONST. art. VIII, § 2(c).
49. Id. art. VII, § 1.
50. City of Tampa v. Birdsong Motors Inc., 261 So. 2d 1, 3 (Fla. 1972); see also, Belcher Oil Company v. Dade County, 271 So. 2d 118 (Fla. 1972).
51. Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 31 So. 2d 905, 909 (Fla. 1947).
52. City of Miami v. Kayfetz, 30 So. 2d 521, 524 (Fla. 1947) (Statutes authorizing a municipality to levy a particular tax will be strictly construed and cannot be extended by implication to include items not expressly included in the enabling statute).
56. Id.
authority by general law. Municipal ordinances must give way to state law to the extent the ordinance conflicts with state law, and a municipality's power to regulate in a particular area may be entirely or partly preempted by general law. The conflict doctrine and the preemption doctrine are often referred to interchangeably; but, they are two fundamentally distinct doctrines. In general, the concept of conflict may be distinguished from the concept of preemption in that the latter effectively precludes all municipal regulation in a given area while the former permits municipal regulation, but only to the extent it supplements state law.

An ominous trend has been the exercise of the state's preemptive authority in zoning issues. Zoning has long been considered the traditional domain of municipal decision making. Since 1968, at least eleven statutes have been enacted expressly preempting municipal regulation with respect to siting. These statutes appear to be the result of legislators' perceptions that the "NIMBY" syndrome inhibits the location of such facilities. More insidious are those statutes which regulate use of land, prescribe a myriad of procedural requirements, or remove regulatory authority, and in

57. City of Miami Beach v. Frankel, 363 So. 2d 555 (Fla. 1978) (the court invalidated a municipal rent control ordinance because the City failed to comply with a state statute regulating rent control ordinances); see also City of Sanibel v. Buntrock, 409 So. 2d 1073 (Fla. 2d Dist. Ct. App. 1981) (the court invalidated a building moratorium ordinance on the grounds that statutory notice provisions were not followed). In both cases, however, the municipal ordinance met the municipal purpose tier of the test. See Frankel, 363 So. 2d at 557; City of Sanibel, 409 So. 2d at 1075.

58. Frankel, 363 So. 2d at 557; see also City of Miami Beach v. Rocio Corp., 404 So. 2d 1066, 1069 (Fla. 3d Dist. Ct. App. 1981).

59. Rocio Corp., 404 So. 2d at 1068-69; see also Edwards v. State, 422 So. 2d 84 (Fla. 2d Dist. Ct. App. 1982).

60. Total siting preemption has occurred for juvenile facilities, FLA. STAT. § 39.074 (1991); amateur radio antennas, id. § 166.0435; family day care homes, id. § 166.0445; electricity transmission lines, id. § 403.536; alcoholic beverage off-premise sales license, id. § 563.02; community residential homes, FLA. STAT. § 419.001 (1991); and prisons sitings, id. § 944.095. Partial preemption has occurred for high speed rail, id. § 341.302; electrical power plant siting, id. § 403.501-403.518; rezoning of mobile home parks, id. § 723.083; and natural gas lines, FLA. STAT. § 368.041 (1992).

61. "NIMBY" is the common zoning and land use acronym for Not In My Back Yard.


63. Some examples are: how and where to conduct meetings, FLA. STAT. §§ 166.041, 286.011 (1991); purchase of real property, id. § 166.045; ad valorem tax increase notices, id. § 200.065.
doing so, clearly infringe on local discretion.

Even the advance of progressive laws governing growth management in Florida have come at the expense of municipal control over land use and development matters. While section 163.3184 of the Florida Statutes on its face empowers a municipality to determine its future within wide parameters by preparing a comprehensive plan, in fact, the approval of the state through its Department of Community Affairs is required before implementation of the plan may occur at the local level. Municipal decision-making under this chapter is clearly contingent upon the approval of an arm of state government. The Department of Community Affairs has the ability to find that a local comprehensive plan fails to comply with state law and to thereby initiate a process under which punitive sanctions may be assessed against that municipality. By adopting this top-down approach, the state appears to have come full circle and to have rejected its original home rule position that the state should not be interfering in matters of local concern.

E. The Courts

One substantial intrusion into municipal home rule is the judicially created two-tier test which is used to determine whether a municipal ordinance is a valid exercise of home rule authority. The first portion of the test looks to whether the action is undertaken for a municipal purpose. If so, the second portion of the test looks to whether that action is expressly prohibited by the constitution, general or special law, or county municipal charter.

64. Municipalities and counties are prohibited from enacting laws about: the possession, use, or transportation of sources of radiation, id. § 404.166; local employment registration or screening procedures whereas the same is permitted for business, institution, association, profession, or occupation categories, subject to certain limitations, id. § 166.0443; possession or sale of ammunition, FLA. STAT. § 166.044 (1991); prohibiting the installation of energy devices based upon renewable resources, id. § 163.04; elevator accessibility for the handicapped, ch. 93-16, § 4, 1993 Fla. Laws 129, 133 (to be codified at FLA. STAT. § 399.045); local licensing of building inspectors, ch. 93-166, § 24, 1993 Fla. Laws 1015, 1057 (to be codified at FLA. STAT. § 468.606); defining solid waste, ch. 93-207, § 8, 1993 Fla. Laws 1976, 1988 (to be codified at FLA. STAT. § 403.703); and defining substance abuse impairment and creating impairment offenses, ch. 93-39, § 2, 1993 Fla. Laws 215, 215-19 (to be codified at FLA. STAT. § 397.305).
66. Id. § 163.3184(11).
68. Id.
69. Id.
The definition of municipal purpose is very broad and includes all activities essential to the health, morals, protection, and welfare of the municipality.\textsuperscript{70} Despite a general deference to the municipal governing body’s determination of whether or not a particular activity serves a municipal purpose, the test itself still creates a potential for courts to sit as a super legislative body when they retroactively review and evaluate the activities of a municipal government to determine whether the activities in question fit the courts’ definition of a municipal purpose. Municipal decisions are based upon the individual governing body’s evaluation of the needs, concerns, issues, expectations, and perceptions of its citizens. The courts lack this perspective when evaluating the municipal purpose tier of the test and may therefore substitute their own judgment instead. Post 1968 case law reflects the following has been held to constitute a “municipal purpose”:

a) The provision of day care educational facilities;\textsuperscript{71}

b) Issuing bonds to finance a convention center which would provide a forum for educational, civic and commercial activities and would increase tourism and trade;\textsuperscript{72}

c) Using public property for a sports stadium;\textsuperscript{73}

d) The sale of souvenir photographs; and\textsuperscript{74}

e) The expenditure of funds to promote the passage of a referendum.\textsuperscript{75}

Thus, as a general rule, a municipality’s exercise of power would have to constitute a clear and gross abuse of discretion in order to fall within this limitation. A municipality can even provide a service or operate a facility that competes with a privately owned business and still effectuate a municipal purpose.\textsuperscript{76} The phrases “municipal purpose” and “public purpose” have often been used interchangeably by the courts.\textsuperscript{77}

However, the courts have also found that the following activities serve

\begin{itemize}
  \item \textsuperscript{70} State v. City of Jacksonville, 50 So. 2d 532, 535 (Fla. 1951).
  \item \textsuperscript{71} Gidman, 440 So. 2d at 1280.
  \item \textsuperscript{72} State v. City of Miami, 379 So. 2d 651, 653 (Fla. 1980).
  \item \textsuperscript{73} Rolling Oaks Homeowner’s Assoc. v. Dade County, 492 So. 2d 686, 686 (Fla. 3d Dist. Ct. App. 1986).
  \item \textsuperscript{74} City of Winter Park v. Montesi, 448 So. 2d 1242, 1244-45 (Fla. 5th Dist. Ct. App. 1984).
  \item \textsuperscript{75} People Against Tax Revenue Mismanagement, Inc. v. County of Leon, 583 So. 2d 1373, 1378 (Fla. 1991).
  \item \textsuperscript{76} Montesi, 448 So. 2d at 1245.
  \item \textsuperscript{77} See id. at 1244; City of Miami, 379 So. 2d at 652.
\end{itemize}
no “municipal purpose”: borrowing money simply to reinvest the money and thereby derive a profit on the investment;\textsuperscript{78} a municipal ordinance opting out of an otherwise valid county road impact fee ordinance in a charter county;\textsuperscript{79} and the expenditure of public funds to promote the passage of a referendum.\textsuperscript{80} These court findings show some inconsistency even though the breadth of home rule authority under the municipal purpose tier is quite broad.

In the area of preemption, the courts have tended to take a broad view of the doctrine. However, immediately following the passage of the Municipal Home Rule Powers Act,\textsuperscript{81} students of municipal law initially believed the courts would take a very narrow view of the preemption doctrine at least in part because the Act provided that a municipality could enact legislation concerning any subject except on a subject “expressly preempted to the state.”\textsuperscript{82} It was thus assumed the historical doctrine of “implied preemption” no longer applied to the exercise of municipal home rule authority. This view initially prevailed in most Florida courts.\textsuperscript{83}

The first indication the courts would apply a broad preemption doctrine to the home rule authority of municipalities came in \textit{Tribune Co. v. Cannella.} The court held the Public Records Act\textsuperscript{85} preempted a municipality’s authority to adopt a policy providing for a delay in producing public records for public inspection because the statute’s “scheme of regulation of the subject is pervasive and . . . further regulation of the subject by the junior legislative body would present a danger of conflict with that pervasive

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\textsuperscript{78} State v. City of Orlando, 576 So. 2d 1315, 1317 (Fla. 1991).
\textsuperscript{79} City of Ormond Beach v. County of Volusia, 535 So. 2d 302, 304-05 (Fla. 5th Dist. Ct. App. 1988).
\textsuperscript{80} Palm Beach County v. Hudspeth, 540 So. 2d 147, 154 (Fla. 4th Dist. Ct. App. 1989).
\textsuperscript{81} FLA. STAT. ch. 166 (1991) (originally enacted 1973).
\textsuperscript{82} \textit{See id. § 166.021(3)(c) (originally enacted 1973)}.
\textsuperscript{83} In \textit{State v. City of Pensacola}, 397 So. 2d 922 (Fla. 1981), \textit{Pace v. Board of Adjustment, Town of Jupiter Island}, 492 So. 2d 412, 415 (Fla. 4th Dist. Ct. App. 1986), \textit{City of Venice v. Valente}, 429 So. 2d 1241 (Fla. 2d Dist. Ct. App. 1983), and \textit{City of Miami Beach v. Rocio Corp.}, 404 So. 2d 1066, 1069 (Fla. 3d Dist. Ct. App. 1981), the courts upheld municipal ordinances because the relevant statutes contained no written provisions expressly limiting home rule authority.
\textsuperscript{84} 458 So. 2d 1075 (Fla. 1984). \textit{But see Pace}, 492 So. 2d at 415 (where the court held that the town’s setback ordinance was not preempted by section 161 of the Florida Statutes despite the statute’s statewide comprehensive scheme for beach and shore preservation). There is some thought that the \textit{Cannella} court’s holding is more a result of the court’s extremely high regard for the Public Records Law.
\textsuperscript{85} FLA. STAT. §§ 119.01-119.16 (1981).
regulatory scheme..." 86. Since then, the Florida Supreme Court has continued to expand the doctrine of "implied preemption," finding preemption where it appears that exclusive regulatory authority has been vested in another entity. 87. Generally, preemption will be found if the regulatory scheme appears to be all inclusive, so that legislation at the municipal level would undermine the state's interest. 88. By expanding the application of this doctrine, the courts have implied preemption despite the lack of a specific express preemptive statement and where it may not have been intended by the Legislature. In fact, the Legislature has hardly been shy in stating that preemption of municipal regulation was intended when express preemption statements appear in at least sixteen different statutes.89

Ironically, while the use of the preemption doctrine has been expanded by the courts to substantially impair home rule authority, the use of the conflict doctrine, in its present form, is more narrowly construed than when the Home Rule Act was first adopted. Immediately prior to the onset of municipal home rule, the conflict doctrine was often broadly applied to invalidate municipal ordinances. 90. Municipal ordinances were considered inferior to state statutes and any reasonable doubts with respect to the ordinance's effect on state statutes were resolved against the municipal ordinance. 91. Early guidelines for determining the existence of a conflict state “[a] municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.” 92. Under the Rinzler v. Carson court's conflict doctrine, one is simply hard-put to find a set of circumstances in which an ordinance speaking to the same subject as a statute would not conflict with the state law. After all, is there any set of circumstances in which a municipal ordinance does not either “forbid an activity permitted under state law” or “permit an activity forbidden under state law”?

The incongruity of this situation was tacitly recognized but unfortunately compounded in City of Miami Beach v. Rocio Corp. 93. The Rocio court defined the conflict doctrine as “[a]n ordinance which supplements a

86. Cannella, 458 So. 2d at 1077 (quoting Tribune Co. v. Cannella, 438 So. 2d 516 (Fla. 2d Dist. Ct. App. 1983) (Lehan, J., dissenting)).
87. Florida Power Corp. v. Seminole County, 579 So. 2d 105 (Fla. 1991); Barragan v. City of Miami, 545 So. 2d 252 (Fla. 1989).
88. Cannella, 458 So. 2d at 1078-79.
89. See supra notes 54, 56-57 and accompanying text.
92. Id.
statute’s restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail." While the Rocio court found ordinances and statutes could theoretically “coexist,” it is extremely difficult to determine a set of circumstances in which ordinances and statutes could in fact coexist under the court’s view of the doctrine. How can an ordinance “supplement a state’s restriction of rights,” and not “countermand rights provided by statute”? For example, if state law permits a person to dredge and fill a wetland if the person satisfies three state established requirements, does the person not have a “right” to dredge and fill the wetland if he satisfies the three state requirements? If an ordinance “supplements the statute’s restriction of rights” by requiring the person to satisfy an additional criteria before he may dredge and fill a wetland, hasn’t the ordinance “countermanded rights provided by statute”?

A competing conflict analysis first emerged in Jordan Chapel Freewill Baptist Church v. Dade County. In Jordan, the court stated that “the sole test of conflict for purposes of preemption is the impossibility of coexistence of the two laws.” Therefore, if compliance with a local ordinance requires violating a state statute or inhibits compliance with a state statute, an impermissible conflict exists.

The conflict doctrine was narrowed even further in Pace v. Board of Adjustment. Though the city’s set back ordinance did conflict with the general state policy of combatting beach erosion, the court did not invalidate the city’s ordinance because it did not “require the petitioner to take any action which would violate the state law or forbid him from taking action which the state law requires. State and local provisions reflect conflicting policy considerations all the time, but this does not render the local provisions unenforceable.”

The practical dilemma presented by the courts’ conflicting views of the doctrine was finally resolved in Laborers’ International Union of North America, Local 478 v. Burroughs. The court adopted the following conflict analysis: “In the regulatory area involved in this case, the test of conflict is whether one must violate one provision in order to comply with the other. Putting it another way, a conflict exists when two legislative

94. Id. at 1070 (citations omitted).
95. Id.
96. 334 So. 2d 661 (Fla. 3d Dist. Ct. App. 1976).
97. Id. at 664 (citations omitted).
98. 492 So. 2d 412 (Fla. 4th Dist. Ct. App. 1986).
99. Id. at 415.
100. 541 So. 2d 1160 (Fla. 1989).
enactments 'cannot co-exist.' 101

The conflict analysis adopted by the court in Laborers' International, eschews the relatively esoteric analysis of whether an ordinance "supplements state restrictions" or "countermands rights granted by statute" in favor of a relatively straightforward and simple approach to conflict analysis. A conflict exists if the person must violate state law in order to comply with the ordinance or violate the ordinance in order to comply with state law. Stated differently, no conflict exists if the person can satisfy both state law and the local ordinance. Nor, as a general rule, will a conflict exist if an ordinance simply requires more stringent standards than those required under state law. 102 In the final analysis, Laborers' International injected into the conflict doctrine a healthy dose of respect for the residual nature of municipal home rule authority. As a result, courts will generally attempt to find some way for the statute and ordinance to co-exist. By narrowly applying the conflict doctrine, municipal home rule authority has made substantial inroads into this doctrine.

One of the most imminent potential intrusions into municipal home rule authority is the current debate over the extent to which the Local Government Comprehensive Planning and Land Development Regulation Act 103 ("The Growth Management Act") has altered the traditional zoning and planning powers of municipalities. Under the Growth Management Act, each municipality is required to prepare and adopt a comprehensive plan to manage future growth and development and implement land development regulations to fulfill the goals and objectives stated in that municipality's adopted plan. 104 The plan consists of elements and objectives and policies which govern each element. One element is the future land use element which is intended to designate "proposed future general distribution, location, and extent of the uses of land . . . .' 105

Prior to the adoption of the Growth Management Act, the rezoning of a specific parcel of property was considered by the courts to be a legislative function. 106 While the rezoning decision had to bear a rational relationship

101. Id. at 1161 (citations omitted) (emphasis added).
102. But see Edwards, 422 So. 2d at 85 (where a municipal ordinance conflicted with state law because it set a greater penalty for possession of cannabis and cocaine).
104. Id. § 163.3177.
105. Id. § 163.3177(6)(a) (emphasis added).
106. Florida Land Co. v. City of Winter Springs, 427 So. 2d 170, 174 (Fla. 1983); Schauer v. City of Miami Beach, 112 So. 2d 838, 838 (Fla. 1959).
to the community’s health, safety, and welfare, the legislative character of the decision granted the municipality a great deal of latitude and discretion. So long as the decision was “fairly debateable,” open to reasonable dispute or controversy, the courts would not question the wisdom of the rezoning decision. Thus, the courts traditionally deferred to the local government’s rezoning decision.

To invalidate a presumptively valid municipal zoning decision, the burden is on the party challenging the rezoning decision to establish that the decision was not fairly debateable but “arbitrary, unreasonable, or confiscatory.” The adoption of a comprehensive plan by a municipality serves merely as a guide to future zoning decisions and therefore has no legal impact on the court’s review of rezoning decisions. However, recently courts have taken the opportunity to review the entire manner in which municipalities exercise their planning and zoning powers.

In Snyder v. Board of County Commissioners of Brevard County, landowners petitioned the county to rezone their property to permit a higher density than was permitted under the existing zoning on the property. The existing density as well as the proposed density were permitted in the future land use element of the county’s comprehensive plan. In reviewing the county’s denial of the landowners’ rezoning request, the court held that the rezoning proceeding was quasi-judicial, rather than legislative. As a result, the county was required to make specific findings of fact, giving specific reasons for denying the rezoning request. Additionally, the court held that upon a showing by the applicant that the use sought was within the density permitted in the future land use element of the county’s comprehensive plan, the burden shifted to the

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107. Ellison v. City of Fort Lauderdale, 183 So. 2d 193 (Fla. 1966).
109. Id.
112. 595 So. 2d 65 (Fla. 5th Dist. Ct. App. 1991), juris. accepted, 605 So. 2d 1262 (Fla. 1992).
113. Density is the intensity of use permitted on a particular property. Id. at 69.
114. Id. at 66-67.
115. Id.
116. Snyder, 595 So. 2d at 79.
117. Id.
county to prove by clear and convincing evidence that a specifically stated public purpose required a more restrictive use, even if the more restrictive use was the currently existing use of the property.\(^{118}\) Under Snyder, basic zoning ordinances and amendments of broad application are legislative acts because they are general in nature, whereas subsequent site specific rezonings are quasi-judicial because they involve applying the provisions of the existing ordinance, in this case the comprehensive plan, to the request at issue.\(^{119}\) Under this court's rationale, the rezoning of a specific parcel is but a ministerial application of previously enacted legislative policy.\(^{120}\)

Several courts have subsequently adopted the Snyder holdings to one degree or another. In Lee County v. Sunbelt Equities,\(^ {121}\) which also involved rezoning, the court concurred in part with the Snyder court when it held a county's rezoning of specific parcels of property is a quasi-judicial rather than a legislative function.\(^ {122}\) On the other hand, the Sunbelt Equities court rejected that portion of the Snyder court's holding governing the burden of proof.\(^ {123}\) Thus, the county's zoning ordinance was presumptively valid and the applicant bore the burden of demonstrating the unreasonableness of the zoning decision.\(^ {124}\) Also, in City of Melbourne v. Puma,\(^ {125}\) the Snyder court's earlier holding was extended when Puma held that amendments to a comprehensive plan are quasi-judicial in nature. In reaching this holding, the Puma court again based its decision on the size of the property which was the subject of the plan amendment. Overshadowing all of these holdings is Jennings v. Dade County,\(^ {126}\) where the court held that ex-parte communications in quasi-judicial proceedings are presumed prejudicial and a fundamental denial of due process.\(^ {127}\)

It is extremely difficult to believe that the State Legislature, in enacting the Local Government Comprehensive Planning and Land Development

\(^{118}\) Id. at 81.
\(^{119}\) Id.
\(^{120}\) Id. at 80 n.62.
\(^{121}\) 619 So. 2d 996 (Fla. 2d Dist. Ct. App. 1993).
\(^{122}\) Id. at 1000-01.
\(^{123}\) Id. at 1005-06.
\(^{124}\) Id.
\(^{125}\) 616 So. 2d 190 (Fla. 5th Dist. Ct. App.), review granted, 624 So. 2d 264 (Fla. 1993).
\(^{126}\) 589 So. 2d 1337 (Fla. 3d Dist. Ct. App. 1991), review denied, 598 So. 2d 75 (Fla. 1992).
\(^{127}\) Id. at 1341-42.
Regulation Act,\textsuperscript{128} ever intended or envisioned the courts would use this Act to reek havoc on the comprehensive planning, zoning, and land use processes of municipalities. The legislative intent of the Growth Management Act states that it “shall not be interpreted to limit or restrict the powers of municipal or county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land.”\textsuperscript{129} The purpose of the Growth Management Act was to provide broad guidelines to municipalities in the preparation of their comprehensive plans and land development regulations, thereby enhancing municipal decision-making.\textsuperscript{130} Though the Snyder court used the Growth Management Act’s planning requirements as the basis for its holding,\textsuperscript{131} clearly this Act was never intended to supplant municipal decisions on such matters.\textsuperscript{132}

Municipalities have traditionally enjoyed broad home rule authority in the areas of planning and zoning. It has long been the law of this state that zonings and amendments to zoning ordinances, such as rezonings, are legislative in nature.\textsuperscript{133} A comprehensive plan is a broad policy statement of future goals and objectives and does not necessarily establish immediate limits on zoning.\textsuperscript{134} General use zones are designated in zoning codes because the future growth of an area and appropriate uses to compliment and enhance that future growth is not capable of being specifically determined at the time the initial zoning ordinance was first adopted.\textsuperscript{135} Each property is unique and the appropriateness of a particular rezoning may change between the time a municipality’s comprehensive plan is first adopted and the time the property is ready to be developed. Economies, technology, community values, and demographics can all change over time without necessitating an amendment to a city’s Comprehensive Plan or zoning ordinance.\textsuperscript{136}


\textsuperscript{129} FLA. STAT. § 163.3161(8) (1991).

\textsuperscript{130} Id.

\textsuperscript{131} Snyder, 595 So. 2d at 65.

\textsuperscript{132} Id.

\textsuperscript{133} Snyder, 595 So. 2d at 80-81; see also FLA. STAT. § 163.3117(1) (Supp. 1992).

\textsuperscript{134} Snyder, 595 So. 2d at 73.

\textsuperscript{135} The Snyder court requires the applicant to show that the rezoning request is consistent with the city’s comprehensive plan and upon such proof, the burden shifts to the city to show by clear and convincing evidence why the rezoning should not be granted.
The Sunbelt Equities court, while maintaining the traditional presumption that a municipalities rezoning decision is valid,137 appears to have ignored the Legislature’s intent to encourage public participation in the comprehensive planning process. “It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible.”138 The formalities associated with a quasi-judicial process will discourage rather than encourage public participation in the comprehensive planning process.

The Puma court seems to have ignored the fact that local government’s responsibility to legislate land use policy does not change once a comprehensive plan has been adopted.139 The same policy responsibility exists irrespective of the size of the parcel involved in the comprehensive plan amendment. Moreover, in adopting the Local Government Comprehensive Planning and Land Development Regulation Act, the Legislature recognized that changes would be needed for local land use policy to accommodate future growth.140 A comprehensive plan is amended by ordinance. Regardless of the size of the parcel covered by the plan amendment, the amendment permanently changes the existing comprehensive plan and its new available uses affect the entire community. It is sufficiently general in nature to be considered an ordinance.141 Therefore, there is no basis to treat a comprehensive plan amendment any differently than an amendment to any other existing ordinance of the municipality on a subject other than planning.

The Jennings holding only compounds and otherwise exasperates the Snyder, Sunbelt Equities, and Puma holdings. Read together, these cases stand for the proposition that the citizens of a municipality may not freely discuss the merits of a proposed rezoning or comprehensive plan amendment with a member of the governing body of that municipality unless the applicant of the rezoning or comprehensive plan amendment is present at the discussion. These cases, therefore, affect the fundamental right of private citizens to speak to their elected officials on matters of local concern in an

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Snyder, 595 So. 2d at 81. This has increased and shifted the burden of proof for municipalities. It is expected that this will also inhibit discretion in municipal decisions.  
137. See Sunbelt Equities, 619 So. 2d at 996.  
139. See Puma, 616 So. 2d at 190.  
141. Florida law defines an ordinance as “an official legislative action of a governing body which action is a regulation of a general and permanent nature and enforceable as law.” FLA. STAT. § 166.041(1)(a) (1991).
informal manner. Some residents, due to work schedules, child care obligations, and the like, are unable to attend a formal hearing, yet they see their elected officials in the course of routine, day-to-day activities. Thus, the informal contact may be the only communication option available. These cases substantially chill the ability of residents to freely discuss the issues that affect the future of their municipality. Nor, can this be reconciled with the Legislature's requirement that public participation in the comprehensive planning process be encouraged to the maximum extent possible. Clearly, municipal governmental decision-making should not be so stilted.

Home rule authority is limited additionally by the court's adoption of the clear and convincing standard as the city's burden to maintain the property's current status once the applicant shows consistency with the municipality's comprehensive plan. The clear and convincing standard is a much higher standard than generally accorded a legislative act. Under this new higher standard, a municipality must show the reasonableness of its decision while supporting that decision with substantial, specific findings of fact, whereas a municipality enjoys greater flexibility in its decision-making for other legislative acts. It is incomprehensible that a higher burden be required to maintain the status quo than that required of the applicant in requesting a change via a comprehensive plan amendment or rezoning under Snyder and its progeny.

The inconsistencies among these cases have left municipal governments guessing as to the status of their home rule powers. Hopefully, the Florida Supreme Court will soon bring some semblance of order to this area of law while permitting the municipalities and their citizens to continue to exercise the home rule powers they have come to enjoy. The governing body of a municipality must have every opportunity to balance local interests in reaching its ultimate decision. Municipalities, pursuant to their home rule powers, are in the best position to conduct the necessary analysis and balance the interests of the community and the interests of the landowner when making development decisions that affect the community. This historical prerogative of municipal government must not be preempted by the courts.

F. Agency Rules

Probably the most eminent threat to municipal home rule today is the adoption and implementation of state agency rules. Activities are increasingly regulated by state agencies. Municipalities have borne the brunt of

142. See generally Puma, 616 So. 2d at 190; Snyder, 595 So. 2d at 65.
the state's regulatory activism, again at the expense of home rule authority. Between 1975 and 1991, agencies, on the average, proposed approximately 4,250 rules per year. The state's Department of Community Affairs alone has averaged some 168 proposed rules per year during the same period; the state's Department of Environmental Regulation, approximately 250 a year. In 1983, agencies noticed approximately 3,500 proposed rules; by 1992, over 7,000 proposed agency rules were noticed.

Even more evident of the proliferation of rules is the growth rate of Florida's Administrative Code. It is estimated that the code is increasing by approximately 1,000 pages per year. Since 1986, the code has been increased by eight entire volumes!

A wholly uncodified body of law also affects municipal home rule authority. Agency interpretations and directives, which form the informal policy of the agency, are often unknown to the outsider. Thus, the applicant can be "blind-sided" when trying to comply in good-faith because this informal policy is often the most difficult information to obtain prior to entering the formal process. Many municipalities submitting comprehensive plans found that their submission ran afoul of these informal interpretations. This situation "is created by state law and it can only be changed by state law."

The collision between agency rulemaking authority and municipal home rule arises primarily as a result of the substantial deference courts have shown to both state agencies and municipalities. On the one hand, the courts have repeatedly recognized the vast breath of municipal home rule authority. Broad municipal authority to manage local affairs is explicit in the Florida Constitution and chapter 166 of the Florida Laws. On the other hand:

The well recognized general rule is that agencies are to be accorded wide discretion in the exercise of their lawful rulemaking authority, clearly conferred or fairly implied and consistent with the agencies'

146. Id.
147. Id.
148. Id.
150. Nye, 608 So. 2d at 15; City of Boca Raton, 595 So. 2d at 25; State v. City of Sunrise, 354 So. 2d 1206, 1208 (Fla. 1978).
An agency's construction of the statute it administers is to be entitled to great weight and is not to be overturned unless clearly erroneous.151

Thus, the party challenging an agency rule bears a heavy burden.152 At least one court has gone so far as to essentially label agency rulemaking authority a form of legislative authority. "Indeed, the principle applied in rule challenge proceedings that an agency’s interpretation of a statute need not be the sole possible interpretation, or even the most desirable one but need only be within the range of possible interpretations. . . ."153 This broad range of authority closely resembles the deference accorded legislative enactments under the rational basis test. Such legislation, or rule as the case may be, will therefore not generally be disturbed absent a finding of arbitrariness or capriciousness.154

The courts appear to have had some trouble in reconciling the broad home rule authority granted municipalities and the broad rulemaking authority granted state agencies. In Florida League of Cities, Inc. v. Department of Insurance & Treasurer,155 the Department sought, by rule, to apply various provisions of section 175 and section 185 of the Florida Statutes to certain local municipal fire and police officer pension plans. The appellants argued the proposed rules unlawfully preempted municipal control over local plans because there was no expression of preemption stated in the relevant statutes.156 The court held the Department could not, by rule, apply the subject statutory provisions to the plans because there was no explicit language in the statutes expressly permitting the Department to apply the provisions to the plans.157 In doing so, the court implicitly recognized that something more than an agency’s traditional rulemaking authority was necessary when agencies were adopting rules that applied to...

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152. The challenger must show that the agency exceeded its authority, the rule requirements are not reasonably related to the stated legislative ends, and that the requirements are arbitrary and capricious. Grove Isle, Ltd. v. State Dep’t of Envtl. Reg., 454 So. 2d 571, 573-75 (Fla. 1st Dist. Ct. App. 1984).
154. Grove Isle, 454 So. 2d at 573.
156. Id. at 855.
157. Id. at 869.
municipal activities.\textsuperscript{158}

On the other hand, in \textit{Florida League of Cities, Inc. v. Department of Environmental Regulation},\textsuperscript{159} the appellants challenged rules that made a municipal wastewater treatment facility financially liable for the proper disposal of its domestic wastewater residuals by an independent third party unless the third party legally agreed in writing to accept responsibility for proper disposal.\textsuperscript{160} Appellants sought to invalidate the rules in part on the grounds the Department had no express legislative authority to make the municipality financially responsible for the wrongful acts of independent third parties in disposing of the residuals. In upholding the rule, the court applied the traditional principle of agency rulemaking authority and held that the Department presumptively had ample authority to enact the rules because its enabling statute "simply states that an agency may make such rules and regulations as may be necessary to carry out the provision of this act . . . ."\textsuperscript{161}

It's extremely hard to envision the State Legislature, by including such "boilerplate" language, ever contemplated that state agencies, with the help of the courts, could or would reach out and use this language to substantially erode the constitutional and statutory authority of municipalities to manage local affairs. In fact, such language is often included by the Legislature as an afterthought primarily because it recognizes that the Legislature could hardly specify every minute action contemplated by the statute or each statute would be several hundred pages long. However, the language clearly is not meant to be authority for the state agency to engage in micro-management and delve into every minuscule action taken by a municipality.

If in fact the latter court's view of agency rulemaking authority ultimately prevails, agencies will be able to increasingly dictate the activities of municipalities. Municipal home rule in Florida would theoretically exist but would be void of any substance. Many state agencies have adopted rules that then could apply, to one degree or another, to most municipal activities.

Such overreaching by state agencies would seriously undermine the ability for local decisions to be made based upon the unique characteristics of a particular area. Florida is too diverse in its typography, environment, demographics, and the like, to apply the homogenized approaches often

\textsuperscript{158} Id.
\textsuperscript{159} 603 So. 2d 1363 (Fla. 1st Dist. Ct. App. 1992) (citations omitted).
\textsuperscript{160} Id.
\textsuperscript{161} Id. at 1369.
inherent in agency rule-making. If daily local municipal governance decisions can be overridden by a non-elected entity, then municipal home rule authority would be but a shell.

IV. FUTURE MUNICIPAL ISSUES

It is ironic that at the same time the Legislature and the courts have been looking to curtail home rule powers, the municipalities are looking to expand them. A significant event in the area of municipal home rule occurred in November, 1990, when Florida's voters approved the "Mandates Amendment". A mandate is an obligatory requirement by one governmental entity of another separate governmental entity to perform an activity, provide a service, facility, or benefit, or erodes the local tax base. It is an unfunded mandate to the extent costs are imposed on the other governmental entity. Municipalities cannot respond to the needs and conveniences of their citizens if municipal revenues are diverted to pay for unfunded programs mandated by the state.

Under this amendment, counties and municipalities are excused from complying with state laws that require the expenditure of county or municipal funds unless the state law fulfills an important state interest and the law meets one of five exceptions. This amendment also requires a two thirds vote of both houses for the State Legislature to enact, amend, or repeal any general law, if the anticipated effect of the Legislature's action would reduce the authority of counties or municipalities to raise revenues in the aggregate, as that authority existed on February 1, 1989, or would reduce the percentage of state tax revenues shared with the counties or municipalities as an aggregate on February 1, 1989.

The following laws are exempted from the purview of the amendment: laws adopted to fund existing pension benefits; criminal laws; election laws;

164. What Amendment #3 Will Do For Florida, QUALITY CITIES 5, (June 1990).
165. The five exceptions are: (1) the law is passed by at least a two-thirds vote of the membership of both the House and Senate; (2) sufficient state funds have been appropriated to fund the program; (3) the state authorizes the counties or cities to enact a sufficient funding source for the program; (4) the law applies to all persons similarly situated; or (5) the law is required to comply with a federal mandate or to maintain eligibility for federal entitlement programs. FLA. CONST. art. VII, § 18 (amended 1990).
166. Id.
general and special appropriations acts; reauthorization laws; laws creating, modifying, or repealing non-criminal infractions; and laws having an insignificant fiscal impact.\footnote{Id.}

While a careful reading of the Mandates Amendment reveals a number of ambiguities, and the Amendment to date has not been judicially construed, it’s clear that it has had its intended affect. In 1983, there were twenty-eight fiscally significant\footnote{Jt. Advis. Council on Intergovt’l Rel., 1988 Catalogue of State Mandates XV (Oct. 1988).} state mandates for local governments; by 1987, the number had risen to fifty.\footnote{Jt. Advis. Council on Intergovt’l Rel., 1991 Report on Mandates and Measures Affecting Local Gov’t Fiscal Capacity 3, 8-11 (1992 Supp. Oct. 1993).} In 1992, the number of state mandates on local governments had dropped to thirty-two, and most, at least colorably, fell within the Amendment’s exemptions.\footnote{1993 INTERGOVERNMENTAL IMPACT REPORT, supra note 163 at 5.} However, as of the 1993 legislative session, it appears that the state legislators have found the loophole in this amendment, because forty-five of the laws passed during the 1993 session contained mandates for local governments.\footnote{Id. at 16.} Of those forty-five new mandates, twenty-one fell under amendment’s exemption provisions and three were exceptions.\footnote{Id.} The estimated statewide fiscal impact on local governments for only six of these mandates is $5,243,642.\footnote{Id. at 16.}

The Amendment has also had a substantial impact on the legislature’s general operating procedures. Procedural changes have subtly discouraged the introduction and passage of legislation that likely falls within the purview of the Amendment. Then Senate President Gwen Margolis and House Speaker T. K. Wetherell issued a set of guidelines on March 21, 1993 which both houses have used to date to determine whether proposed legislation falls within the purview of the Mandates Amendment. Generally, the guidelines require a relatively extensive analysis of each general bill to determine if it will trigger the Mandates Amendment. All staff analyses of proposed general bills must specifically disclose the extent if any to which the Amendment applies to proposed general bills. Finally, under the Senate’s Rules, any proposed general bill that might trigger the Mandates Amendment must be referred to and heard by the Senate Committee on

\footnote{Id.
168. According to the Florida House and Senate guidelines, insignificant is defined as an amount not exceeding ten cents times the average statewide population for the applicable fiscal year. Cover Memorandum, Senate President Gwen Margolis and House Speaker T.K. Wetherall, County and Municipal Mandates Analysis (Mar. 21, 1991).
169. Id. at 16.}
Even on good days, the state legislative process is generally not conducive to passing bills: if a proposed bill gets caught in the legislative apparatus established to ferret out potential state mandates, its passage becomes very unlikely.

Municipalities are also expected to lobby for a federal “no unfunded mandates” provision. Increasing federal mandates also affect municipal revenue sources due to the exception provision in Florida’s mandates amendment for laws required to comply with a federal mandate. Thus, a “spillover” effect occurs when the state is forced to adopt a law to implement the federal act. For example, Florida’s law implementing the federal Americans with Disabilities Act (“ADA”) imposed additional parking space and public transportation accessibility requirements on municipalities. More state mandates under this exception can be expected with the implementation of the National Voter Registration Act, the Federal Highway Administration’s interpretation of the Intermodal Surface Transportation Enhancement Act (“ISTEA”), and the Environmental Protection Agency’s interpretation of the Clean Air and Clean Water Acts.

Another emerging area of municipal concern is diminishing municipal revenue sources due to state imposed caps or restrictions on funding sources. While municipalities have the home rule authority to levy fees to fund various services to its citizens, they have no home rule authority to tax. Recognizing the need for greater diversity and flexibility in the development and implementation of appropriate municipal revenue streams, municipalities have conscientiously lobbied the Legislature for fiscal home rule over the past two years. During the 1993 Legislative Session, SJR 78 (Dudley) and HJR 445 (Goode) proposed an amendment to Florida’s Constitution, commonly known as “Voter Control of City Taxes”. Under these proposals, a municipality would be permitted, upon the adoption of a charter amendment by referendum of its voters, to levy virtually any tax authorized in the charter amendment, regardless of whether the tax was authorized by general law. Municipalities would not have been permitted to levy estate or inheritance taxes, personal or corporate income taxes, or tangible personal property sales taxes under the proposed amend-

177. Contractors' & Builders' Ass’n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976); City of Boca Raton, 595 So. 2d at 25.
However, these proposals would have eliminated the state Legislature's exclusive constitutional authority over the area of municipal non-ad valorem taxing authority. More importantly, they would have returned local decision making on a vital component of municipal government, financing, to the local level. The proposed amendment is sorely needed because Florida's municipalities, without adequate authority to raise sufficient revenues, have found it difficult to respond in a timely manner to the needs of their residents. While these proposals failed to pass the Legislature so far, like proposals are expected to surface in future legislative sessions because of the severe revenue shortfalls municipalities are expected to encounter in the future.

V. CONCLUSION

Municipal home rule authority undoubtedly has many advantages. State involvement with local issues should be minimized. Individual municipalities are better situated to determine the needs and conveniences of their citizens and legislate accordingly because local government is the government closest to the people served. With full responsibility and accountability resting upon the citizens, there is a significant opportunity for education about the principles and methods of municipal government and involvement in the development of common community interests and solutions for local concerns.

State government is simply unable to provide the type of open participatory forum inherent in municipal government. If municipalities are free to manage their own affairs, they can respond more promptly to the needs and conveniences of their citizens, and deal quickly with new problems as they arise. Strengthening home rule authority will relieve the State Legislature of the micro-management responsibility for municipal government. Then and only then will the state truly be free to concentrate on the pressing affairs of state.

181. Sharon G. Berrian, Why We Must Have Voter Control of City Taxes, QUALITY CITIES, 4 (May 1992).
182. 1 MCQUILLEN MUNICIPAL CORPORATIONS § 1.43 (3d ed. 1987).