

Dillon's Rule: Good or Bad for Local Governments?

Committee Members: Chair, Sally Ormsby; Members: Edith Appel, Pat Brady, Jere Gibber, Fran Kieffer, Rita Koman, Mary Nightlinger, Jean Packard, and Mary Valder

Introduction

There have been numerous studies of the pros and cons of state and local governance under Dillon's Rule versus home rule over the past few decades—and longer. Our unit meetings in October and November 2002 focused on Virginia's government structure and the General Assembly, which provoked numerous questions and comments. This is an update and expansion of 1990 LWVVA and LWVFA studies on Dillon's Rule and looks at the arguments for and against each type of local governmental powers, including specific instances here in Fairfax County.

Dillon's Rule

In an Iowa State Court decision in 1868, and subsequently upheld by the U.S. Supreme Court in *City of Clinton v. Cedar Rapids and Missouri River Railroad Company*, 24 Iowa 455 (1868), state supremacy was codified. Judge John F. Dillon adjudicated this case in 1872 in a major treatise, stating:

*It is a general and undisputed proposition of law that a municipal corporation possesses, and can exercise, the following powers, and no other: First, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; third, those essential to the declared objects and purposes of the corporation not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.*¹

Dillon's Rule arose in response to local corruption and fiscal irresponsibility. The pendulum of political power and abuse had swung freely toward municipal governments. According to former Virginia Senator Robert Calhoun (R-Alex.), in a speech at a LWVVA workshop, it was not an uncommon practice for local governments to issue bonds to enable various projects, notably to finance railroads, and when the project failed to refuse to honor its obligations, arguing that the locality lacked the authority of state law to have issued the bonds in the first place.

It has not been, and still is, difficult to set out clearly what specific functions should or can be best handled by any level of government. People can differ philosophically and ardently about what functions should be shared among our national, state, regional, and local units. Diversity of populations, traditions, resources, geography, and economic fluctuations often preclude generalizations about proper functions and powers.

Dillon's Rule, by asserting that there are no such things as *inherent rights of local self-government*, exacerbated an ongoing power struggle between state and local governments. Local communities must derive their powers from the state rather than the local electorate. The state can expand or contract these same powers at any given time. Senator Calhoun explained that, in formal terms, Dillon's Rule has been part of the law of Virginia since 1896 and is a fundamental rule for construing the scope of governmental powers. Attempts to repeal or modify its rigors by a constitutional amendment, as was attempted in 1971, or by legislative enactment are routinely allowed to slumber in the committees of the General Assembly.

Limiting State Legislative Excesses

Nationally, with population growth in cities and towns, local demands grew for public services such as better education, sanitation, and recreation that the state could not, or would not, provide. This, coupled with the growing complexities of industrialization, communications, and expansion, fueled the tendency to extend more *home rule*. Before the end of the 19th century the abuses committed by corrupt state politicians became so flagrant that there arose a groundswell of citizen action to restrain legislatures and to enlarge the powers of local jurisdictions.

Proposals ranged from minor limitations on state legislatures to broad *home rule* efforts. Specifically, four kinds of checks and balances have been devised to effect this reform:

- The first check *forbids special legislation* and allows the legislature to pass only general laws. The Virginia General Assembly attempts to operate under this provision. Bills for a specific locality are drafted in general terms with locality-specific application, such as population parameters, form of government, and/or geographic location.
- The second check grew out of the first. It *forbade special legislation except when approved by the locality concerned*.
- A third variation is known as the *optional charter*. This change did not satisfy the most ardent proponents of home rule but, like Virginia's statutory law, allowed a wider choice of governmental forms. A charter is an organized way of presenting the basic laws and usually permits more experimentation than allowed under general law.

■ The fourth, and probably most popular, option for controlling state legislative excesses is known as *home rule*. This device was first adopted in 1875. The 1915 Maryland constitutional *home rule* amendment for Baltimore City and County is closest to the *grant of power* approach discussed below and was further defined by statutory law in an Express Powers Act. In 1970, the Maryland legislature extended the *charter county* concept to the remaining counties with the exception of Frederick County, which remains a code county. The Maryland counties in the Washington metropolitan area have charters.^{2,3}

State preeminence, based on Dillon's Rule, is now accepted legal theory in all fifty states. All courts continue to resolve controversies over state and local rights in favor of the state by assigning the benefit of the doubt to that entity. As an established legal principle Dillon's Rule will remain the deciding factor whenever state and local powers come into conflict. The degree to which the rule remains operative depends upon the degree of *home rule* granted localities. Virginia applies Dillon's Rule in a strict way. Actions of a county board of supervisors must be in accordance with the *exact* language of enabling state legislation. This fact of life is little understood by most residents.

Types of Home Rule

Pure *home rule* assumes that a local government may exercise all authority *not specifically prohibited* it by a state's constitution or statutory law. The Virginia General Assembly has been opposed to extending *home rule* to its localities. Three types of *home rule* are generally recognized based on the scope of power granted to localities and upon the extent of local freedom from reliance upon the state's legislature for such powers:

■ **Self-executing constitutional home rule or mandatory constitutional home rule** is deemed the strongest form. Under it, localities are granted self-government in purely local affairs. The principle is incorporated in the state constitution. The state legislature acts in local matters through *special laws requested by the locality* concerned or through *general laws applicable to all communities*.

The constitution may spell out chartermaking procedures in detail or may require the legislature to pass general laws granting *home rule* to localities on the basis of specified broad constitutional principles. *Self-executing home rule* provisions vary greatly from state to state. Most follow one of two divergent approaches, namely:

■ The more common **grant of powers** approach reflects the older classical concept of the home rule charter as a grant of power that must spell out the desired, expressed powers on the basis of a constitutional separation or powers between the local and state governments.

■ The **instrument of limitation or residual powers** approach broadly grants to localities all powers of local self-government *except* those powers which are specifically denied or restricted by the state's constitution itself, the home rule charter of the community, or general state laws.

■ **Permissive constitutional home rule.** State constitutions with permissive home rule provisions merely *authorize* the state legislature to enact home rule laws delegating powers of self-government to localities but do not impose an obligation upon the legislature to so act. Thus, home rule becomes a *matter of legislative grace*.

■ **Legislative home rule.** This weakest form of home rule is extended piecemeal to localities by statute rather than by constitutional authorization.

State Constitutions

State constitutions authorize state actions in conformance with the Tenth Amendment to the constitution of the United States that says, in effect, the powers not specifically given to Congress or prohibited altogether reside in the states or in the people. State constitutions may define the powers of local governments and special districts. *Virginia's constitution contains no provision analogous to the Tenth Amendment in prescribing power relationships between the state and its localities.*

The Virginia Constitution expressly gives the General Assembly power to pass general and special laws to set forth the organization and powers of local governments. In 1969, the Commission on the Constitutional Revision proposed reversal of Dillon's Rule, recommending "A charter county or a city may exercise any power or perform any function which is not denied to it by this constitution, by its charter or by laws enacted by the General Assembly." Both the Virginia Municipal League (VML) and the Virginia Association of Counties (VACO) opposed these changes because local officials serving on VML felt the General Assembly had been fairly responsive to the needs and desires of local governments both through general laws and through charters. They also had a fear of the unknown in moving from Dillon's Rule to home rule. The VML and VACO executive directors also talked with their counterparts in various home rule states and found it was not unusual for general assemblies in those states to pass laws denying local governments powers in a wide variety of areas. Thus, their opposition resulted in deletion of this proposed home rule constitutional provision by the General Assembly.⁴

Virginia's Government Structure

On August 12, 2001, former Governor Gerald L. Baliles presented the keynote address at the 50th anniversary meeting of the Virginia Local Government Officials' Conference on

this subject. “All of us live in either a city or a county. The structure and power of that local government depends upon whether it is a city or county. We live with the terms ‘city and county.’ Yet I submit that we do so without comprehending that time and events have blurred the distinctions that city and county once had. We tinker almost annually . . . adjust for core city problems. . . alter for suburban areas. . . change for rural needs. . . [We need] to effect the changes desired by both urban and rural interests in the various state funding formulas for local governments. We owe it to ourselves and to the future of the Commonwealth.”

Governor Baliles reported that “for years, local governments’ financial problems have been studied, reports and recommendations have been made. . . The decade of the 1990s offered us a wonderful opportunity. But we didn’t take it. . . Instead, we watched state revenues increase significantly, strengthened by rises in sales and income taxes. . . Meanwhile, localities were largely confined to stagnant property tax revenues. . . Local government provides vital and essential services: fire, police, garbage collection, schools, parks, etc. . . Yet, Virginia has failed to give local government the support needed to do its best work.” He offered three proposals for changing the fortunes of local governments, improve their abilities or address their challenges. They were:

- **Powers and Duties of Local Governments.** In many areas of the Commonwealth cities and counties are generally indistinguishable and provide essentially the same levels of service yet are governed by different laws and their funding often depends upon their status as a city or county. First the question of what we want local governments to accomplish must be answered, . . . then we should determine whether counties and cities should be different. The next step would be to define the powers and duties of governments, draft a charter and then “allow local governments to operate within the framework of that clearly defined charter without having to trot to the General Assembly, hat in hand, on an annual basis.” He finished this recommendation by saying, “The idea that somehow state government—and, specifically, the General Assembly—is the font of all wisdom on local matters is a concept that many observers find increasingly unacceptable.” “The General Assembly would periodically review the legislatively approved local charter framework and revisions to it” (and) “would bear the obligation and the duty to identify sources of revenue for financing the specified functions of local government.”

- **Consolidation of Government Functions.** To achieve the benefits of efficiency and lower costs through cooperative programs, and to increase the potential of the Regional Competitiveness Act, the General Assembly could appropriate a one-time hefty increase in local government funding to meet long unfunded state mandates and to make up for program

budget cuts” (following which increases would be limited to cost-of-living adjustments). The General Assembly could also provide that where two or more adjoining jurisdictions (counties or cities) combined or consolidated major functions of government, the total appropriations to those localities would be increased by a significant percentage, perhaps 25 to 35 percent.

- **Reorganization of Redistricting and Reducing the Size of Government.** Redistricting often sacrifices “communities of interest,” sometimes with legislators representing only a few precincts in a community. Baliles’ proposal was to reconfigure the size of the House and Senate so that one senator and two delegates represent the same area, thereby reducing the size of the House of Delegates to 80. Districts could be more compactly drawn, respecting communities of interest, and creating more coherent results.

Arguments for and Against Dillon’s Rule and Home Rule

In a presentation to the Virginia Chapter of the American Planning Association annual meeting on April 25, 2004, Robert Puentes, senior research manager at the Center on Urban and Metropolitan Policy of The Brookings Institution, spoke on “Clarifying the Influence of Dillon’s Rule on Growth Management.”⁶ Before addressing growth management, Mr. Puentes presented the arguments for and against Dillon’s Rule and home rule, as follows:

For Dillon’s Rule

- State legislators often prefer to give new powers to a few local governments at first, to “test” the new powers. If proven successful, then the legislature may grant the power to all local governments.
- Control from the state level ensures more uniformity (taxes, etc.).
- State legislators often feel that Dillon’s Rule results in efficient and fair governance.
- Benefits local government officials by allowing them to use the rule as an excuse to not do things.
- State oversight may prevent exclusionary and provincial actions by local governments.
- Provides certainty to local governments.

Against Dillon’s Rule

- Shackles local officials and prevents them from quickly reacting to unique local problems with specially tailored local responses.
- Prevents progressive local governments from going beyond the status quo to deliver services in an efficient and high quality manner and forces uniform mediocrity.
- Forces local government officials or their hired lobbyists to periodically trek to state capitals to beseech state legislators to grant more authority.
- Creates problems of unfunded state mandates.

- State “one size fits all” solutions may not serve local governments well.
- Many commentators assail the lack of certainty involved in Dillon’s Rule.

For Home Rule

- Local citizens can select the form of government they prefer.
- Local communities are diverse, and home rule allows local citizens to solve their problems in their own fashion.
- Reduces the time that a state legislature devotes to “local affairs.”
- Places the responsibility for taxation where it belongs—on the local elected, not on state, officials.
- State officials do not “second guess” local officials.
- “Liberal construction” of home rule provisions reduces court interference in local policymaking and administration.

Against Home Rule

- Allows local officials to act in an arbitrary and capricious fashion.
- Results in a lack of uniformity among units of government.
- Local citizens whose preferences are not met cause the state legislature to spend more time on local affairs.
- Local units with control over their finances will undercut the revenue base of the state government.
- Local units with authority to make and administer their own public policies would make it very difficult for the state government to address problems that cut across jurisdictional boundaries or require the action of multiple jurisdictions.

The Virginia Chamber of Commerce “is strongly opposed to an alteration of the Dillon Rule that would allow local autonomy on matters of taxation, business and environmental regulation, collective bargaining for public employees, land use and other major policy decisions best left to the state legislative process.” The Chamber justifies its position by saying that local autonomy would result in a third level of government regulation of business; local environmental regulatory ordinances create a costly duplication of reporting without providing greater public protection; there must be stability and predictability in land use, development, and construction activities with ultimate authority being retained by the legislature.⁷

Jesse Richardson, co-author of The Brookings Institution report, an attorney and assistant professor in the Department of Urban Affairs and Planning at Virginia Tech, has written several articles on Dillon’s Rule. In a “Mother, May I?” article in late 1998,⁸ Professor Richardson talked about enabling statutes which municipalities must obtain in order to take desired local actions. He reported that one Virginia statute in particular purports to grant broad powers to municipalities, allowing them to exercise “all powers” to “secure and promote the general welfare” and promote “safety, health, peace, good order, comfort, convenience, morals, trade, commerce and

industry” (*Virginia Code Ann. §15.2-1102*), but Virginia and other courts use Dillon’s Rule to narrowly construe even this seemingly generous grant of power. As recently as July 1998, the Virginia Court of Appeals reaffirmed Dillon’s Rule in Virginia.

Richardson writes about the pros and cons of Dillon’s Rule (see text above), noting that “Municipalities generally disapprove of Dillon’s Rule. They feel that the rule prevents them from adopting creative solutions to local problems. Municipalities are often more aware of local problems and, given free reign, may be able to fashion unique solutions to fit the unique circumstances. . . . The General Assembly sets out which taxes municipalities may impose, how they may impose them and, in some cases, the tax rate.”⁹

A Scan of the States

The Brookings Institution study⁶ shows that 31 states operate under Dillon’s Rule while 10 states do not abide by it. In addition, 8 states practice Dillon’s Rule for certain types of municipalities and the one remaining state (Florida) has conflicting authority. Brookings also ranked the 50 states by the degree of local discretionary authority, and, surprisingly, Virginia ranked 8th in the composite (for all types of local units), 9th for cities only, and 13th for counties only.

A Research Brief for the National Association of Counties in January 2004¹⁰ reports that one survey found 40 states currently considered “Dillon’s Rule” states. It notes that “regardless of type, home rule gives local government the capability to shape the way it serves the needs of its constituency. . . . Home rule is not all encompassing, or absolute, since it too has its limitations. Counties are a unit of the state government, deriving their powers from the state constitution and legislative statutes—they will always be subject to, and affected by, state law.”

Those best fitted by their intelligence, business experience, capacity and moral character do not hold local office.

Justice John Forest Dillon, Iowa, about 1865

Local Government Powers in Virginia

The local levels of government in Virginia are counties, cities, and towns. Cities are not part of counties but stand alone as the only level of government below that of the state. Cities, and some counties, have charters that set out their specific governmental powers. Cities are responsible for building and maintaining roads for which they receive an allocation from the state. Towns are a part of the counties within which they are located, with the counties being responsible for providing some of the town’s services, such as K-12 education. Towns levy their own real property taxes in addition to those of the counties to cover the cost of their local government and certain services, such as police and fire.

The uniform charter powers provision in *The Code of Virginia* (§15.2-204) states that:

- Cities and towns shall have all powers set forth in this section and such powers need not be specified or incorporated by reference in a city or town's charter.
- Counties shall have all powers set forth in this section only when specifically granted to the county.

Powers of Counties and Cities

County and city governments have certain powers, per §15.2, Chapter 9, General Powers of Local Governments, but must seek approval of the General Assembly to assume any additional powers. Some of the 75 items in this chapter grant the following powers:

- Abatement or removal of nuisances
- Removal or disposal of trash; cutting of grass or weeds
- Control of certain noxious weeds
- Taxing and regulating "automobile graveyards" and "junkyards"
- Removal of inoperative motor vehicles on residential and commercial properties, but certain counties have expanded powers for this purpose
- Require removal, repair, etc., of buildings and other structures (local "blight abatement" ordinance), including those harboring illegal drug use, harboring a bawdy place, etc.
- Remove or repair the defacement of buildings, walls, fences, and other structures

Powers of Cities and Towns

The Code of Virginia, §15.2-1100, specifies the powers held by municipal corporations (cities and towns), whether or not included in their charter, including the following:

- A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth.
- Generate revenue annually through taxes and assessment on property, persons, and other subjects not prohibited by law

- Impose an admissions tax and exempt such tax for charitable events
- Borrow money and issue evidence of indebtedness therefor
- Inspect milk, milk products, beverages, and food products from production through distribution

General Powers of Counties

§§15.2-1200 through -1249 set forth the general powers of counties, some of which can be considered rather mundane. Among those enumerated are:

- Any county may adopt such measures as it deems expedient to secure and promote the health, safety, and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals, and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county. (§15.2-1200)
- County boards of supervisors are vested with powers and authority of councils of cities and towns, except for certain actions regarding motorized vehicles, signs, road lighting, etc., controlled by the Commonwealth Transportation Board.
- May appropriate funds to towns within its boundaries.
- May give, lend, or advance funds or property to any authority created by the governing body pursuant to law.
- May impose a license tax of not more than \$25 to a person in the business of selling pistols or revolvers to the public.
- May regulate carrying of loaded firearms on public highways.
- Establish boundaries of election and magisterial districts.
- May equip and maintain television transmission and relay facilities.
- May regulate the sale of property at auction; may regulate the conduct of and prescribe the number of pawnshops and dealers in secondhand goods, wares, and merchandise; may regulate or prohibit peddling; may prevent fraud or deceit in the sale of property.
- The governing body of every county shall cause to be recorded, in well-bound books or by a microphotographic process which complies with standards adopted pursuant to regulations issued under §42.1-82 for microfilm, microfiche, or such other similar microphotographic process, complete minutes of all their respective meetings and proceedings.

Forms of County Government

Virginia has the following forms of county government:

- **County Board.** One member elected at-large and others from districts; "board shall elect chairman from its membership," although a 1990 amendment allows counties to gain voter approval through referendum to elect the board

chairman at large. The board is the policy-determining body “and shall be vested with all rights and powers conferred on boards of supervisors by general law, consistent with the form of county organization and government herein provided;” has county administrator. “Whenever it is not designated herein what officer or employee of the county shall exercise any power or perform any duty conferred upon or required of the county, or any officer thereof, by general law, then any such power shall be exercised or duly performed by that officer or employee of the county so designated by ordinance or *resolution of the board.*” (Example: Loudoun County, with the chairman elected at large)

- **County Executive.** Board of three to nine members elected at large or by district; any district may hold referendum on chairman elected at large; if adjacent to a county with an Urban County Executive (UCE) form of government may elect to establish different, but fixed, terms of office for appointed boards, authorities, and commissions; board is policy-determining body; county executive appointed by board for no specific term, serving at pleasure of the board; county executive may also serve as head of a department(s); county manager appointed by board as administrative head, does not have to reside in county, cannot be an elected official, and serves at pleasure of the board. (Example: Prince William County)

- **County Manager.** Board of three to nine members elected at large or by district, plus one member elected at large; board is policy-determining body.

- **County Manager Plan.** County must have population of at least 500 persons per square mile; five-member board; chairman elected by board annually, is the official head of the county, and has same powers and duties as other board members but no veto; annual salary \$25,000 but can be increased for inflation (chairman and vice chairman can receive more); board cannot interfere with county manager’s appointments; county manager is appointed by board each year and has administrative *and* executive powers, appointing some non-elected officers and employees; board appoints department heads; board has general power of management and “all the powers conferred by general law on city councils;” no part of county can be annexed by city, only entire county following referendum. (Example: Arlington County)

- **Urban County Executive.** County must have population of at least 90,000; board composed of one member from each district and an at-large chairman; chairman may call regular and special meetings, set agendas, appoint county representatives to regional boards, authorities, and commissions, create and appoint committees of the board; board is policymaking body; appoints county executive (cannot be board member or elected official) who is the

administrative head of the county, can act as director of a department, and serves at pleasure of the board; no unincorporated area within county may become an incorporated city or town, but a city within or adjacent to the county may petition, following referendum, to become a district within the county; board may establish a committee to audit and review county agencies and county-funded functions; board establishes salaries and allowances for board members following public hearing. (Virginia’s UCE form of local government is so specifically tailored by statutory law for Fairfax County that it has many of the earmarks of a charter. Only Fairfax County uses this form of government.)

Around Virginia

As an example of local jurisdictions seeking authority to carry out important local functions, the Fauquier County Board of Supervisors submitted a list of legislative priorities for consideration by the 2004 General Assembly, which included the following issues: Adequate Public Facilities, impact fees, full funding of K-12 Standards of Quality, retention of local revenue authority, retention of local government zoning and land use authority, sharing of state income tax revenues with localities, relaxation of Dillon’s Rule for planning, zoning, and revenue matters, and a local option real estate transfer tax.¹¹ This is indicative of the numerous requests from localities for state legislative permission to take specific actions at the local level.

An interesting opinion was written by Jim Oliver, former city manager of Norfolk and administrator of James City County, in September 1999.¹² Of note are his statements, “Our local governments are established in isolation and often produce policies and programs that don’t consider realities beyond their boundaries. But consider how many issues today cross boundary lines: crime, traffic, education, poverty, etc. . . . I often thought the state was insensitive to local government, or worse. Whether through action or inaction, words or silence, it felt like local government was facing complicated problems alone, unless, of course, it was time for a new rule or mandate. The result was not a sense that we were partners, or even ‘agents of the state.’ It was instead a sense of aloneness, worry about ‘incoming scuds’ from the State Capitol. At the same time, I often found myself just trying to focus on helping my city survive as opposed to thinking out better choices.”

In a speech on January 8, 2004, at the Virginia Natural Resources Leadership Institute,¹³ former Prince William County Attorney Sharon Pandak noted the following tools lacking in Virginia’s statutory system: a full transfer of development rights program, full Adequate Public Facilities authority, full Tree Preservation authority, full Blight Abatement authority, equality of powers between cities and counties, tax flexibility at the local level, and incentives for

Prince William can't ban dangerous dogs or install photo-red cameras. Fairfax County can't require cars to stop for pedestrians at marked crosswalks or mold zoning ordinances to its particular needs. Arlington can't declare English Ivy a "noxious weed."

Michael Neibauer, Journal Newspapers, June 27, 2004

regional cooperation. Without enabling state legislation, localities cannot act on any of these issues but must continue to plead with the General Assembly for action.

Fairfax County

When the candidates for Chairman of the Fairfax County Board of Supervisors were asked their opinion of Dillon's Rule in a campaign debate in October 2003, candidate Mychele Brickner responded, "I wouldn't go as far as saying that we need to abolish the Dillon Rule. I think there should be a balance there," adding that the state ought to give more taxing powers to the county, including the ability to tax cigarettes (for which cities and some counties already had the authority). Candidate Gerry Connolly said he was in favor of repealing the rule, calling it a "terrible impediment" to the county.¹⁴

The 1989 General Assembly granted permission to Fairfax County to form a special tax district to improve the Route 28 road corridor. The enabling legislation specifically protected the county's right to change future zoning. However, when the Board of Supervisors amended the zoning ordinance in late 1989 to place more restrictions on uses permitted in the district, the 1990 General Assembly revoked this authority for a thirteen-year period.

In a letter appearing in the Outlook section of *The Washington Post* on March 4, 1990, Delegate Kenneth Plum, Va. 36th Dist., wrote "Never before has the Virginia legislature interceded in a matter that is so clearly before the court. More than 71 lawsuits concerning the downzoning along Route 28 are now moot as a result of the actions of the legislature. Never before in Virginia or in any state legislature has there been such a direct intrusion of state government in a local land-use controversy. Substituting the judgment of the state lawmaking body for that of the local governing authority is unprecedented."

This action and several other land use *vesting* bills were passed despite the fact that landowners' suits were before the court to resolve whether the county's action was unfair to property owners within the tax district. The legislative action also countervailed explicitly delegated powers of planning and zoning by and within a local jurisdiction.

Living side-by-side with Maryland's urban counties, which enjoy constitutional home rule, Northern Virginia's jurisdictions are acutely aware of the detriments of a strict Dillon Rule adherence by the courts and legislature upon local actions. Montgomery County, MD, adopted an **adequate public facilities** provision in its subdivision regulations in 1973. It also created a program for the **transfer of development rights** from the rural upper portion to the more urbanized lower section of Montgomery County. Fairfax County has been unsuccessful in many attempts over the years to persuade the Virginia General Assembly to enable it to provide such programs.

Planning and land use innovations to deal with development as well as other regulations are freely employed by Maryland's local governments. In addition to constitutional and statutory restraints imposed on the Maryland legislature, that body has evolved a state-local relationship that operates in a climate that is cooperative and not adversarial. Local ordinances may be superseded if the Maryland legislature enacts a bill that applies on a statewide basis.

An important constraint placed on Fairfax County because of Dillon's Rule is the lack of ability to diversify the county's tax base to relieve pressure on the real property tax, which currently represents about half of the revenue stream. Among the 2004 General Assembly's actions was authorization for counties to increase their sales tax on cigarettes if they so choose as well as a transient occupancy tax, 75 percent of which must be dedicated to tourism promotion and the remainder to a local nonprofit convention and visitors bureau. However, unlike cities and towns, counties still cannot enact a meals tax, transient occupancy, or admissions tax without going to referendum.

Unfunded state mandates, financial aid to localities, and a more flexible local revenue base have been the subject of many studies over the past few decades with no discernible results. A report by the Joint Legislative and Audit Review Commission of March 1992¹⁵, referring to a 1983 JLARC study of state mandates, noted 81 mandates placed on local governments since 1983. The report suggested two broad options: increase local taxing authority and increase state financial aid to localities. And JLARC made the bold suggestion that the legislature might wish to allow counties taxing authority equal to that of cities!

For several years the county sought enabling legislation aimed at preserving more trees during the construction process. In 2001 a minimal bill was passed, which helped a little. The county's request for more comprehensive legislation in 2002 was held over at the request of the development community; a watered-down version passed in 2003.

Regionalism and Growth Management

The Code of Virginia requires localities to have comprehensive plans. Zoning is a local function that is subject to controls by the legislature and courts. State comprehensive and/or strategic planning has been studied over several years by legislatively appointed committees but has yet to be realized through legislative action.

Article VII of the *Constitution of Virginia* entitled “Local Government” includes provision for “regional government.” Its definition is “a unit of general government organized as provided by law within defined boundaries, as determined by the General Assembly.” Later, the Constitution states, “Every law for the organization of a regional government shall . . . require the approval of the organization of the regional government by a majority vote of the qualified voters voting thereon in each county and city which is to participate in the regional government. . . .”

The 1992 Final Report of the Commission Studying “Local and State Infrastructure Needs and Revenue Resources” (House Document No. 51) addressed, among other issues, the advisability of how regional approaches to infrastructure projects could benefit the Commonwealth considerably through cost savings. The report also noted that stormwater management utility fees “could enable localities to phase out general fund contributions and to rely on revenue bonds for the program’s infrastructure needs.”

According to The Brookings Institution’s study, growth management requires regional or statewide coordination and generally is not possible for localities to accomplish by themselves, noting that strong regional governance is scarce in the United States. In the argument that *home rule* would foster growth management, the study reports that Dillon’s Rule exerts little or no influence on the amount of government authority and presents no roadblock to intergovernmental cooperation; further, expanded local authority actually hinders growth management and regional collaboration. “In sum, localities—rather than blaming Dillon’s Rule for the shortcomings of growth management—need to reexamine their own regulations (which set the rules of the development game) and urge states to take a leadership role.”

Conclusion

Unlike the federal government, states are wholly involved in dealing with internal issues, collecting and allocating resources for common use, and regulating the activities of their local jurisdictions and citizens. How they go about exercising these powers creates profound differences among and within states in the provision of programs and services. Virginia’s legislators, in the main, continue to view their role as one of micro-managers of local affairs. Almost without exception, and with about 3,000 bills to consider each legislative session, these lawmakers have little time to study the complexities of problems in a particular city or county,

yet are asked to vote on their solutions. Many legislators have never held local office.

Much of the general climate of distrust between local and state elected officials can be attributed to the General Assembly’s oversight of local authority. Fairfax County, with a population of more than one million people, must look to state legislators from throughout the Commonwealth, from Newport News to Norton to Westmoreland County, to determine what governmental authorities are needed in this increasingly urbanized county—for diversification of the local tax base, for educational programs, for land use and growth management, for the environment, and for many other aspects of our lives. It may be time for Virginia’s legislature to reconsider its role *vis-a-vis* local governments.

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Interviews (telephone)

Stephen MacIsaac, Arlington County Attorney
 Susan Milbourne, Loudoun County Attorney’s office
 Prince William County Attorney’s office