

Issue: MI Preemption Bills

Michigan's Preemption Legislation Who's in Charge: ALEC & Corporate Interests or Local Communities?

Introduction

Preemption legislation is the practice of limiting a government's ability to pass local laws specific to its own community. A common preemption practice, for example, is to force cities to adhere to a statewide minimum wage. Such a preemptive measure is typically backed by businesses opposed to raising minimum wages; hence they pressure state legislators to take away that freedom of choice from localities. Similar preemptive legislation has restricted localities from passing stricter environmental laws, private/charter school regulations, easing restrictive voter registration measures, overturning LGBT rights and many other externally-driven directives, as described below.

State preemption laws are increasingly being used by conservative state leaders as a tool to rein in progressive local governments. (J. Hodos, *Journal of Federalism*, 25 May 2017). Over the last 20 years, rather than state leadership assuming that role, the relegation of the implementation of federal mandates has been assumed by local government and public school districts. Following the adage, "When life gives you lemons, you make lemonade" and fear of expensive liability lawsuits (i.e. a school district's lack of special education services, a federally mandated service), local government and public-school districts developed innovative solutions and a sense of self-sufficiency (Hodos 2009, 58). This trend toward self-sufficiency and progressive laws (i.e. increasing the minimum wage), however, has been shut down in recent years by state preemption legislation.

The privatization of functions previously run by the government for the public's benefit has become increasingly common across states. This is a result of the outsized power that one constituency—corporate interests—has garnered in recent years to influence legislation. But businesses, whose primary motive is profit, don't necessarily consider the societal costs of their actions. Do we really want businesses, whose overriding interest is monetary gain, to be running our schools? It is disquieting when corporations or other organizations are able to curtail civil rights within a state. And when businesses are able to pollute the environment without consideration of the costs to public health, not only current but future generations will suffer the consequences. We need a society that benefits the majority, not just a few wealthy individuals and corporations.

This phenomenon—the enormous power of one constituency—is playing out in two different but related ways. A national organization, called the American Legislative Exchange Council, commonly referred to as ALEC, has had a huge impact on laws passed within the states. Its impact comes from writing "model" legislation, which is then given to

lawmakers who sponsor it. This has resulted in nearly identical bills being passed in many different states.

Preemption, as mentioned above, is the other way local policy is being affected by outside interests. Preemption laws are passed at the state level—often with input from ALEC—which prevents cities from enacting their own ordinances or laws. Local laws are then preempted by state laws. Preemption laws are usually the result of conservative state legislators acting to rein in progressive cities which are trying to solve problems not being addressed at the state or national level. One example is the attempts of cities to address low, non-living wages by passing laws that increase the minimum wage. Republican-led state legislatures have thwarted these attempts by passing laws that prevent cities from passing their own minimum wage laws.

About ALEC

Through its model legislation, ALEC promotes very conservative and pro-business causes. It's been compared to a dating service for legislators and corporations because it matches up fully-written legislation with legislators willing to sponsor the bills.

Although ALEC claims to be bipartisan, the vast majority of legislative members are Republicans. Legislation written by ALEC seeks to increase business profits, weaken environmental protections and privatize public entities such as schools, prisons and other infrastructure. Other legislation promotes very conservative social causes.

Most of its funding comes from corporations, trade associations and the foundations of very wealthy individuals. Entities controlled by the Koch brothers have been major donors, but many other right-wing groups also give substantial amounts¹. The Koch brothers, with a combined net worth of about \$97 billion, have long sought to weaken (or eliminate) the social safety net, weaken labor laws, promote denial of climate change and weaken regulation of industry.

ALEC is very secretive. ALEC does not reveal its members, either corporate or legislative. Many legislators will not even acknowledge their membership or that they are sponsoring legislation that came from ALEC. Some legislators are known to be members of ALEC only because of information that has been leaked to the press or to groups such as Common Cause. According to the ALEC website, "a quarter of state legislators, one-fifth of the U.S. Congress, and seven sitting governors" are members of ALEC.² With 7,383 state legislators nationwide, this works out to nearly 2000 ALEC members in state houses.

<https://www.alec.org/>; https://www.alecexposed.org/wiki/ALEC_Exposed; Riverstone-Newell, Lori. *The Rise of State Preemption Laws in Response to Local Policy Innovation*. The Journal of Federalism, 25 May 2017, volume 47 number 3, pp. 403-425, Oxford: Oxford Press; Hodos, Jerome. 2009. *Against exceptionalism: Intercurrence and intergovernmental relations in Britain and the United States*. In *The city in American political development*, ed. Richardson Dilworth, 44–63. New York: Routledge.

<https://www.prwatch.org/news/2011/07/10887/cmd-special-report-alecs-funding-and-spending>
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Since legislators generally don't admit to sponsoring legislation provided by outside organizations, it can be difficult to know when this is occurring. Sometimes it becomes apparent that bills were generated from a template when bills with very similar language—too similar to be coincidental—are found in different states. Occasionally, legislators are outed as being members of ALEC when failing to remove some of the boilerplate language in legislation that identifies ALEC as the true author of the bill.

ALEC is registered as a 501 (c)(3) organization, the designation for a tax-exempt charitable organization with the IRS. Such organizations are not permitted to lobby. However, the activities of ALEC are the very essence of lobbying. ALEC puts on conferences where business and legislative members hash out details of bills. In some states, lawmakers have used taxpayer money to attend the ALEC conferences, which are held at high-end resorts. Activities for spouses and childcare are perks for attendees. Not only does ALEC pay for these boondoggles, lawmakers often don't disclose these gifts to their constituents. Because of ALEC's tax-exempt status, taxpayers are effectively subsidizing its lobbying activities.

A former Republican state senator from New Jersey, William Schluter, said about ALEC, "When you get right down to it, this is not different from lobbying. It is lobbying... Any kind of large organization that adds to public policy or has initiatives involving public policy should be disclosed—not only their name, but who is backing them."³

The vision of ALEC is to privatize almost all functions of government with the exception of national security. As mentioned in the introduction, eliminating public education, infrastructure, Medicare, Social Security and government-run prisons are goals of ALEC. Here is a sampling of what ALEC bills have done to further this vision:

- Limit consumer and worker rights
- Help protect businesses against lawsuits
- Privatize public water and sewer systems
- Weaken unions
- Weaken environmental laws
- Limit or prevent local governments from regulating pollutants and pesticides
- Eliminate taxes such as the estate and capital gains taxes
- Require identification to vote and other voter suppression measures
- Enact state laws to preempt local laws
- Promote "stand your ground" gun laws

ALEC's Influence Across Michigan

Since 2010, a series of ALEC-type preemption bills have been introduced with the emergence of the Republican-dominated legislature in Michigan.

Erosion of Local Government

Since the 1950s, preemption laws have long been used to set minimum standards on local activity by setting a floor on local responsibilities and regulations. But today, recent preemption laws are different in that they are meant to strip authority from localities altogether. These newer “maximum preemption” laws not only intend to shape local behavior in keeping with minimum state goals, but also prohibit localities from passing any laws or regulations in specific policy areas. Those policies areas reflect the progressive social values that are concentrated in cities or are of critical importance to local economies, environmental and public health, and community safety. The most alarming preemption tactic include the introduction of “Super-preemption” laws that hold local units and/or participating officials liable for local regulation or ordinances pertaining to specific policy areas, such as local firearm regulation. Michigan is one such state that has introduced a bill to allow special interest groups to sue local governments and, in some cases, sue local officials. There may be nothing more chilling to creating legislation than to hold the drafters legally liable for the outcomes—whether they are culpable or not.

Preemption legislative examples of the loss of local authority across Michigan include:

1. Privatization: Michigan’s HB 4453 (2011) is a step towards privatizing essential governmental services as it prohibits governmental entities to compete against private companies. It also penalizes governmental units that do not outsource traditional public services. This bill mirrors ALEC’s Competitive Contracting of Public Services Act.
2. Broadband Expansion: HB 5099 (2017) would prohibit *local units* from using federal, state and local funds or loans to operate local broadband, internet services. That unit can enter into contract with private ISP providers but cannot do it using public funds. When almost half of Michigan is working with 20th century internet services, will this bill ever really help residents and students?
3. Local Property Control & Charter Schools: SB 702 (2018) expands the definition of “deed restriction” in a 2017 law that prohibits a *public-school district or local government* from refusing to sell property to a charter or private school, or from taking other actions designed to keep these potential conventional public-school competitors from using property for a lawful educational purpose. The bill would close loopholes that cities and public-school districts have used to discriminate against charter schools
4. Public Employment: SB 353(2018) expands a law that prohibits *local governments* from imposing mandatory job application information requirements or restrictions on employers. The bill would expand this to job interviews. Among other things the bill would ban local governments from prohibiting an employer from asking about a prospective employee's previous salary history during a job interview.

5. Public and Local Minimum Wage: HB 4052 (2015) amends Government Regulation of Employment Conditions. Anti-worker pre-emption law—bans cities and towns from improving on state standards for minimum wage, paid sick leave, etc.

Local Law Enforcement and Immigration Rights

1. HB 4305 (2011) models ALEC’s Immigration Law Enforcement Act, which requires local law enforcement to enforce federal immigration law. This interferes with local law enforcement’s ability to prioritize local needs, staff and financial resources while interfering with its community relations.
2. HB 5221 (2011), modeled after ALEC’s Taxpayer and Citizen Protection Act, requires residents to provide evidence of US citizenship to vote.

Education

The State and the DeVos family want to take control of public school district’s financial and administrative operations as an attempt to fund private charter schools as well as to achieve the greater goal of breaking the back of teacher and public and private unions. ALEC’s education policy states, “Instead of throwing more money at the problem, it’s time to let parents take back control over their children’s educations by allowing them to apply competitive pressure to schools and educational providers. Innovative, parent-empowering choices such as charter schools, voucher programs, tax credit scholarships, homeschool, and education savings accounts allow each child the opportunity to reach his or her potential. In higher education, greater transparency is needed to ensure that students and parents know what they are paying for, and with what prospects they are likely to graduate.

”Source: <https://www.alec.org/issue/education/>

Recent legislation follows:

1. Charter Schools: SB 574 (2018) authorizes Charter Schools to Collect Revenues from Enhancement Mill ages. Forces public school districts to share funding from local millage fees (taxes voted to support K-12 schools) with charter schools, despite the fact that MI already has the most for-profit, deregulated charter schools in the country with some of the least oversight; and 70% of MI charter schools are in the bottom half of state rankings, leading to the reality that, “Even staunch charter advocates have blanched at the Michigan model.” With SB 702 – prohibits public school districts from setting aside real estate for public schools rather than charter or private schools.
Source: <https://www.nytimes.com/2017/09/05/magazine/michigan-gambled-on-charter-schools-its-children-lost.html>
2. Charter Schools: SB-249 (2018) prohibits a public-school district or local government from refusing to sell property to a charter or private school, or taking other actions designed to keep these potential conventional public-school competitors from using property for a lawful educational purpose. Prohibited

actions could also include imposing deed or zoning restrictions. Several local governments and conventional public-school districts have adopted such restrictions in the past.

3. Charter Schools: SB-702 (2018) expands the definition of “deed restriction” in a 2017 law that prohibits a *public-school district or local government* from refusing to sell property to a charter or private school, or from taking other actions designed to keep these potential conventional public-school competitors from using property for a lawful educational purpose. The bill would close loopholes that cities and public-school districts have used to discriminate against charter schools.
4. College Course Credit: HB-4735 (2018) revises a program that allows high school students to take a college course and get both college credits and high school graduation credit, with the cost *paid by the state through the public-school district*, based on the average per-pupil state support to public schools. The bill would extend this to a student in a county on the state line who takes a course from a college in the other state, or a charter school student whose school is located less than 20 miles from the college. It would also cap the amount paid to the college based on various factors.
5. Health Education: HB 4317 (2018) allows high school students to replace a health education graduation requirement by instead taking a class on the government health and safety regulations that apply to industry and construction, taught by the state agency in charge of enforcing these regulations.
6. Student Safety: HB 5140 (2018) requires public school districts to give representatives of proprietary schools, community colleges and skilled trades employers access to high school directory information on students, with exceptions if a parent has not signed a form permitting this information to be in a school directory.
7. Teachers Pensions: SB 401 (2017), HB 4647 amends Teacher Retirement Plans. SB 401 + HB 4647 – Overhauls teacher retirement system to replace the current pension system with one requiring more cost-sharing; limits state responsibility for the \$29.1 billion of unfunded pension fund liabilities. Leaves the teachers high and dry. HB 4647 establishes the new Teacher Pension Plan.

Guns and School Boards

Michigan schools can now ban guns on their property as ruled by the State Supreme Court as July 27, 2018. The Supreme Court case hinged on a debate about the statute that prohibits local units of government from enacting or enforcing any ordinance related to firearms but defines a local unit of government as a city, village or township – not a public-school district. Source: *Detroit News*, July 27, 2018.

Workers' Rights

ALEC has numerous policies relating to eroding the rights of workers, especially in private and public sector unions. Those model bill examples include: Prevailing Wage Repeal Act; Competitive Contracting of Public Services Act; Right to Work Act; etc.

1. Minimum wage: Michigan has prohibited its cities and counties from raising their local minimum wages above Michigan's state minimum wage. Gov. Rick Snyder (R) and a Republican majority state legislature passed this law. [Mich. Comp. Laws § 123.1385](#)
2. Fair schedules: Since 2015, Michigan has prohibited its cities and counties from establishing any laws governing work schedules—such as laws requiring employers to give notice of work schedules or pay a premium for requiring workers to be “on call” for shifts. These laws are often referred to as “fair work scheduling” laws. [Mich. Comp. Laws § 123.1389](#) Gov. Rick Snyder (R) and a Republican majority state legislature passed this law.
3. Project labor agreements: Since 2012, Michigan has prohibited cities and counties from requiring city contractors to abide by project labor agreements. [Mich. Comp. Laws Ann. § 408.875](#) Passed by Gov. Rick Snyder (R) and Republican majority state legislature.
4. Prevailing wage: Since 2015, Michigan has prohibited its cities and counties from requiring city/county contractors to pay workers a prevailing wage. [Mich. Comp. Laws § 123.1386](#) Passed by Gov. Rick Snyder (R) and a Republican majority state legislature and modeled after ALEC's Prevailing Wage Repeal Act.
5. Paid leave: Since 2015, Michigan has prohibited its cities and counties from requiring employers to provide employees paid sick days or paid family leave. [Mich. Comp. Laws § 123.1388](#), [§ 123.1391](#) Passed by Gov. Rick Snyder (R) and a Republican majority state legislature.

Preempting Federal Regulations

ALEC and its supporters dislike all forms of regulation, no matter if it is federal, state or local. ALEC and its model, the Madison Act, want to call a Constitutional Convention to propose an amendment to the US Constitution that would allow for states to repeal any federal law by a vote of two-thirds of the state legislature. Michigan's Republican-controlled legislature introduced such a bill SB 14 (2011), following on ALEC's footsteps but it died in committee. But attempts to preempt federal laws continue in Michigan. The following are a list of attempted bills:

1. Healthcare: HB 4693 / SB 973—HB 4693, introduced in the Michigan House in 2011, and SB 973, introduced in the Michigan Senate in 2012, are identical pieces of legislation. These bills pose a risk to thousands of Michiganders' access to affordable healthcare. Both would allow Michigan to enter into a healthcare compact—an effort to bypass and reject the Affordable Care Act, which gave expanded access to affordable healthcare to thousands of Americans by not permitting insurers to refuse coverage to any individual based on preexisting conditions, extending the time a young adult can stay on his or her parents' plan, and implementing reforms that will help lower overall healthcare costs. See SR 120 below for ALEC association. *HB 4693 referred to House Health Policy Committee on May 26, 2011; no further action*
SB 973 referred to Senate Health Policy Committee on February 16, 2012; reported favorably without amendment to the Senate on March 20, 2012; no further action

Healthcare: SR 120—This resolution supports the passage of SB 973 (above), using almost identical language to an ALEC model that was presented and adopted by ALEC's Health and Human Services Task Force at the August 2011 meeting in New Orleans. It is unknown if the model has been officially approved by the ALEC Board of Directors.

Referred to Senate Health Policy Committee on February 21, 2012; reported favorably without amendment to the Senate on March 20, 2012; no further action.

Healthcare: HB 4050—Introduced as The Michigan Health Care Freedom Act, HB 4050 is an attempt to take away thousands of Michiganders' access to affordable healthcare by allowing the state of Michigan to opt out of the Affordable Care Act. ALEC pushes the same idea in its model Freedom of Choice in Health Care Act. *Referred to House Health Policy Committee on January 13, 2011; no further action.*

Environment and Public Health: HR 19—Resolution in Opposition to EPA's Plan to Regulate Greenhouse Gases under the Clean Air Act (HR 19) ignores dangerous health and environmental risks associated with pollution and greenhouse gases, and instead calls for the EPA to stop regulating greenhouse gases. The resolution also calls on the U.S. Congress to adopt legislation prohibiting the EPA from regulating greenhouse gas emissions. ALEC has also called on the EPA to stop regulating polluters and its corporate sponsors, such as the Koch brothers and Exxon Mobil, in its model Resolution in Opposition to EPA's Plan to Regulate Greenhouse Gases under the Clean Air Act.

Passed House 65 – 44 on March 2, 2011

2. Environmental and Public Health: HR 134 This bill promotes a polluter agenda by allowing Michigan to pull out of the Midwestern Greenhouse Gas Reduction Accord, a cap-and-trade program to cut greenhouse gases and carbon-dioxide emissions. HR 134 shares exact language with ALEC's model resolution State Withdrawal from Regional Climate Initiatives. Both Michigan's HR 134 and ALEC's model resolution use language that denies climate change and benefit ALEC's corporate sponsors, such as Koch Industries, Exxon Mobil, and BP. *Referred to House Energy and Technology Committee on September 27, 2011; no further action*

3. Regulation Exemption: SB 27 (2011): Asks Congress to pass the REINS Act, that would allow Congress the authority to block enforcement of important federal regulations. Modeled after ALEC's Resolution in Support of the "Regulations from the Executive in Need of Scrutiny".
4. Attack on First Amendment: HB 4643 (2015): Allows the Employment Relations Commission to modify the penalties for mass picketing. Increase penalties against protestors and allow businesses to sue individual protestors. This bill was shelved.
5. Anti-States Rights: HB 4205—Prohibits a state from adopting rules that are more stringent than federal standards, unless specifically required by state statute or if the department director determines that "the preponderance of the evidence" shows a need to do so. Republican Gov. Rick Snyder has vetoed previous versions of this proposal.
Passed House 57 – 50 on May 18, 2017
Subtext: This bill prohibits Michigan from passing regulations that are stricter than the federal government's. For example, some states have enacted Clean Water Act provisions that are tougher than federal standards, and the current federal administration wants to force states to lower their standards to the EPA's more lax levels.
6. Environmental & Public Health: Michigan's HB 4601 strips away the rights of Michiganders who have been exposed to deadly asbestos by limiting the liability of the faulted corporation if the company has merged or consolidated with another corporation. HB 4601 shares exact language with much of ALEC's model Successor Asbestos-Related Liability Fairness Act, including provisions that define an "asbestos claim" and describe the types of claims not covered by the bill. HB 4601 was included in ALEC's 2011 legal reform legislative tracking document. One of ALEC's long-time funders and corporate leaders is Crown, which is responsible for untold amounts of asbestos exposure. This bill is little more than a corporate giveaway that would benefit Crown and other corporations at the expense of the rights of Michiganders. It also reverses traditional components of corporate and contract law by allowing a corporation to buy the assets of another corporation but not the liabilities. It allows a corporation to secure its assets from injured Americans by transferring them to another corporation, while retaining its liabilities for the asbestos products from which it profited, thereby preventing injured American workers and consumers from holding the corporate assets to account.
Signed into law by Gov. Rick Snyder on April 10, 2012

Local Governmental Attitude toward Preemption Legislation

In 2017, the University of Michigan's Center for Local, State and Urban Policy conducted its biannual poll of Michigan's 1,856 local governmental units. That year, the Center received a 71% response rate from 1,315 jurisdictions. Its key findings follow:

“Statewide, *70% of Michigan’s local government officials believe the State government is taking away too much decision-making authority from local governments*, while only 8% disagree with that view.

However, when it comes to sharing authority over various policy areas, many local leaders believe state government should have primary authority over certain policy issues, while local governments should have that authority over other areas. In terms of broad policy areas, majorities of local officials believe **state government** should have primary authority over:

1. anti-discrimination policies such as those that address LGBTQ rights and equal opportunity laws (42% say state government should have “most” authority, while 32% say it should have “complete” authority);
2. social issues such as public welfare, homelessness, and gun regulation (45% say most, 24% say complete);
3. business issues such as policies on the minimum wage, plastic bag bans, puppy mills, Uber, Airbnb, etc. (47% say most, 19% say complete);
4. issues regarding the environment and natural resources, including policies on water, solid waste, agriculture, and forestry (51% say most, 9% say complete).

By contrast, most local leaders believe local governments should have primary authority over:

1. land use and planning, including zoning and permitting (43% say local governments should have “most” authority, while 49% say they should have “complete” authority);
2. local finance and tax policy (49% say most, 26% say complete);
3. how local governments conduct business, such as requirements for open meetings and public notices (39% say most, 23% say complete);
4. general economic development issues (55% say most, 23% say complete).”

According to this study, local government sentiment against loss of authority is not a partisan issue. There was a strong, consistent agreement about the delineation of authority between state and local government. The sad implication is that the Michigan legislature will continue to erode environment protection regulations, suppress LGBTQ rights, promulgate private/charter schools, repress wage justice actions, and extend gun rights unless local government has the will and empowerment to delve into these social, anti-discrimination, business and environmental issues.

Source: Horner, Debra and Ivacko, Thomas M., *Michigan Local Leaders’ Views on State Preemption and How to Share Policy Authority*. Michigan Public Policy Survey, University of Michigan Center for State, Local and Urban Policy, June 15, 2017.

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