

# Prevent the expansion of legislative power from becoming an abuse of power 避免地方立法“扩权”成“滥权”

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redistribution of power 权力分配  
devolution 简政放权

There are still loopholes for localities to abuse their power. The three areas—urban planning, environmental protection and cultural heritage—on which localities can legislate could encompass almost any reform. NPC is inadequately equipped for review; circuit tribunals and cross-district courts are too immature.



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This is the first major revision of the *Legislation Law* in 15 years. On passage, all cities that contain districts [all municipalities and prefecture-level cities] will have the right to enact local legislation; this privilege, previously limited to a few large cities, will be expanded nationwide. This adjustment in centre-local relations has sparked some controversy.

Local abuse of power is a common topic in the modern legal community. ... Expanding legislative power, it is argued, may further facilitate abuse of power.

While the *Legislation Law* expands the extent of cities enjoying legislative power, others maintain it is a great opportunity to curb abuse of power, as the law also standardises and restricts use of this power. Still others find the expansion may encourage more cities to become 'reform pioneers', offering more reform solutions. ...

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Before the expansion, most prefecture-level People's Congresses were legislatures only in name and had no legislative practise to speak of, apart from joining in legislative consultations with higher-level legislatures. ...

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The expansion of legislative power is in many ways a positive step. Yet, concerns are justified. ...

The Legislative Affairs Commission of the NPC Standing Committee has already responded to this concern from a legislative angle. ... If the five lines of defence [legislative power restricted to certain areas; national law enforced in others; no contradiction of existing national laws; ratification by provincial-level People's Congress Standing Committees; recording and reviewing by NPC Standing Committee and State Council] are upheld, they may have some effect, yet two issues still remain.

1. A loophole exists in the limits on local legislative power. ... It looks like a restrictive clause when in fact it restricts nothing—not to mention the inclusion of 'etc'.

立法法十五年来首次大修。修订之后，全国所有设区的城市都将拥有地方立法权，这意味着原来仅限于少数较大城市的立法权，将扩张到全国。这种中央和地方在立法权力关系上的变化，引发了一些争议。

“地方滥权”是当代中国法治领域的常见话语。.....因而一些人认为，此时放开地方立法权可能会使地方滥权变本加厉。

也有一些人认为，立法法虽然扩大了享有地方立法权的城市范围，但同时也规范和限制了地方立法权的行使，因此可能是刹住地方滥权的一大契机。还有人认为扩权还可以使更多城市参与到“改革探路者”的行列中来，为改革寻找更多出路。.....

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扩权之前，大部分地市级的人大虽然性质上是立法机关，但实际上除了参与上层人大的立法咨询以外，几乎没有其他立法实践。.....

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因此地方立法权的扩张从很多方面看都是一件“好事”，但人们的顾虑也是有道理的。.....

全国人大法工委已经在全国人大代表大会上从立法角度回应了这一顾虑。.....五道防线假如能够坚守，或可以起到一定作用，但还需至少注意两个问题。

首先，立法法修正案中对地方立法权范围的限制，在表述上留有口子。.....因此看上去像是限制性条款，而实际上什么都限制不了，更何况还包括了一个“等”字。

2. Neither the NPC or State Council have an effective system for recording and reviewing local laws and regulations; nor have they the means. There is no guarantee they can handle this task. ....

To effectively prevent abuse of power, more lines of defence are needed. An important one would be to have courts review and supervise local legislation. New circuit tribunals and cross-district jurisdiction courts are now accepting cases across districts as a ways to stamp out local interference. .... If these institutions can be further improved, local legislative power will have a better chance of functioning successfully.

其次，目前不论是全国人大还是国务院，法律法规的备案审查制度还不完善，力量还不充足，现有法律法规和规章的备案审查工作不一定能做得很好。.....

所以为了更好地避免好事变坏事，还应该强调更多防线。其中一道重要防线是法院在审判工作中对地方立法的审查与监督。新近成立的最高院巡回法庭和跨区域法院等，为法院排除地方干扰，跨区域受理行政诉讼案件展开了探索。.....这些制度若能进一步完善，扩张之后的地方立法权便更有机会结出善果。

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