

Whose County Is It?

A decade of legislative preemption and the shrinking discretion of Idaho county governments.

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SECTION ONE

Constitutional & statutory baseline

Where county authority comes from and why it looks nothing like a city's authority.

Counties are creatures of the state.

The Idaho Constitution and Idaho Code decide, session by session, how much room counties have to govern themselves.

This is the framework for our system. The question is not if Legislature sets the framework but how they set it.

Article XVIII: counties as an extension of state administration

- The Legislature must create a **uniform system of county government** statewide
- 9 **officers**: assessor, clerk, commissioners (3), coroner, prosecuting attorney, sheriff, and treasurer
- No other county offices may be created
- Nowhere in the article does home-rule language appear

Article XII: cities get something different

- The Legislature's role is simply to provide **general laws for incorporating and classifying** cities and towns by population
- Previously incorporated cities can **reorganize under new general laws** by a majority vote of electors
- The constitutional text leaves city structure far more open than county structure

Two default rules, one state

COUNTIES

Only what's authorized

Idaho Code § 31-801 — commissioners hold power only “under such limitations and restrictions as are prescribed by law.”

Classic Dillon's Rule: a county can act only where the Legislature has specifically granted the power, plus what is clearly incidental to it.

CITIES

Anything not forbidden

Idaho Code § 50-301 — cities may exercise all powers of local self-government “not specifically prohibited by or in conflict with” general law.

Near home rule: an inversion of the county default. A city can act on any city affair unless a statute says it can't.

What this produces

- **County government looks similar** from county to county — because so much is mandated: courthouses and jails, trial courts, elections, roads and bridges, property tax administration, prosecution, public health, death investigations, etc.
- **City government varies widely** — fire, transit, hospitals, and parks are a menu cities can adopt or decline

Shared fiscal limitations

- Article VIII requires **cash-basis operation** for both counties and cities
- Debt beyond current-year revenue requires **two-thirds voter approval**
- Idaho Code § 63-802 caps annual budget growth at roughly **3 percent plus new construction and annexation** value (**up to 8%**), absent a supermajority vote



SECTION TWO

Fiscal preemption

Controlling the money before a county ever gets to decide how to spend it.

The local-option problem

- Outside fourteen small resort cities and a few auditorium districts, **Idaho counties and cities cannot ask voters for a local sales or lodging tax**
- Nationally, only Idaho and Montana restrict this authority so narrowly
- Counties have long pointed to this as a structural limit on funding local priorities without leaning harder on property tax

HB 389 (2021)

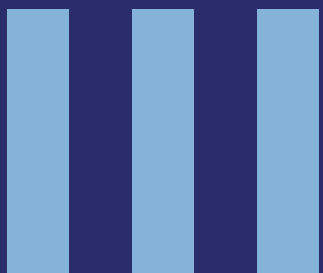
- Increased homestead exemption to \$125,000
- Created an **8 percent cap** on tax increases tied to growth
- Changed formula for calculating new construction and annexation

H0292 (2023) → H0521 (2024) → H0304 (2025)

- H0292 established state-funded sales tax refunding to reduce property taxes for homeowners (HTR) and all property taxpayers (SDFF)
- H0521 (2024) and H0304 (2025) added an additional **permanent \$50 million a year** to both the SDFF and HTR, increased sales tax funding to SDFF by an additional 1%, dedicated 20% of online sales tax and $\frac{5}{8}$ of net lottery funds to SDFF, and created the sales tax supported School Modernization Fund (schools are increasingly relied on state support for school facilities and operations)
- The Legislature now shapes a growing share of local property tax relief, and by extension, local budgets.

The reform that stalled

- HJR 5 / HB 375 (2025), sponsored by Rep. Britt Raybould
- Would have allowed counties to adopt a **purpose-specific local sales tax**
- It did not pass. The fiscal preemption line held.



SECTION THREE

Land-use preemption

The short-term rental escalation — three sessions, each one narrower than the last.

A decade of tightening, one statute

2017

Short-Term Rental Act

Bars outright local bans on short-term rentals; leaves room for local health and safety rules.

2024

HB 506

Narrows the health and safety carve-outs local governments had relied on.

2025

SB 1162 (did not pass)

Would have barred counties from passing any short-term rental ordinance at all.

2026

HB 583

The broadest state-level short-term rental preemption in the country. Short-term rentals reclassified as ordinary residential use; local permits, fees, density caps, and owner-occupancy rules all barred.

Why this case study matters

- Three legislative sessions, each narrowing county zoning authority further
- Zoning is a core Dillon's-Rule county power — this is preemption reaching directly into it
- Part of a national pattern: NACo counted more than **500 county land-use preemption bills across 40 states** in 2025 alone

IV

SECTION FOUR

Police-power preemption

Firearms regulation as the template for how preemption matures.

Idaho Code § 18-3302J (2008)

- The Legislature declares intent to **wholly occupy the field** of firearms regulation
- No county, city, or subdivision may regulate sale, possession, transport, or storage of firearms
- Narrow carve-outs remain: discharge within boundaries, and siting of sport-shooting ranges

SB 1430 (2026)

- Adds **civil penalties and permanent injunctions** against any county, city, or locality that violates firearms preemption
- Eighteen years after the original statute, the Legislature adds enforcement teeth

Why firearms preemption is the template

- Field preemption, then an enforcement mechanism — a two-step model
- Watch for this same structure reappearing in other policy areas going forward



SECTION FIVE

2025: a single-session snapshot

One session covers nearly as much ground as the prior decade combined.

V • 2025 SNAPSHOT

14

preemption bills passed in the
2025 session alone

- Often blanket, statewide preemption with no local opt-out
- Largely city-focused, but most apply to counties as well

Five bills, five different domains

HB 243

DAYCARE

Loosens staff-to-child ratios; preempts stricter local rules.

HB 68

EV CHARGING

Preempts local EV charging station requirements.

HB 32

PUBLIC HEALTH

Bans local mask mandates.

SB 1140 / 1144

TRANSPORTATION

Preempt cities from prioritizing pedestrian infrastructure on new highway projects.

SB 1141

HOMELESSNESS

Compels local governments to ban public camping or sleeping among the unhoused.

Five domains, one session — and none of them a single-issue trend.

The common thread

- Statewide, blanket, no local opt-out
- Spans public health, transportation, land use, and social policy — not a single-issue trend

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SECTION SIX

The county response

What officials are saying, and how counties try to get ahead of it.

What local officials say

- A 2026 survey conducted with the Association of Idaho Cities found local officials — across party lines — oppose preemption and see it as harmful to local affairs

Getting ahead of it

- IAC's legislative resolution process: county officials submit proposals, vetted by policy steering committees, then voted on by the full membership
- IAC policy staff advance IAC policies adopted by the membership during future legislative session
- County officials must meet early and often with their legislators to educate them on the challenges of county preemption and fiscal constraints

THE QUESTION AHEAD

Not whether preemption continues — but what's left to decide locally

Counties operate on delegated power in a state where that delegation has narrowed nearly every session for a decade. The practical question for county officials is which power goes next — and what a county can still decide for itself.

APPENDIX

Legislation quick reference

BILL	YEAR	SUBJECT	EFFECT
§ 18-3302J	2008	Firearms	Field preemption of local firearms regulation
STR Act	2017	Short-term rentals	Bars outright local bans
HB 389	2021	Property tax	8 percent growth cap; valuation changes
HB 292	2023	Property tax	State-funded relief funds
HB 506	2024	Short-term rentals	Narrows local health and safety carve-outs
HJR 5 / HB 375	2025 (failed)	Local option tax	Would have authorized purpose-specific local sales tax
SB 1162	2025 (failed)	Short-term rentals	Would have barred any local STR ordinance
HB 243	2025	Daycare	Preempts stricter local staff ratios
HB 68	2025	EV charging	Preempts local requirements
HB 32	2025	Public health	Bans local mask mandates
SB 1140 / 1144	2025	Transportation	Preempt pedestrian infrastructure priority
SB 1141	2025	Homelessness	Mandates public camping ban
HB 304	2025	Property tax	Makes tax relief credit permanent
HB 583	2026	Short-term rentals	Broadest STR preemption in the country
SB 1430	2026	Firearms	Adds civil enforcement penalties

Thank you!



STRONGER COUNTIES — STRONGER IDAHO