Approved: January 28, 1993

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on January 21, 1993 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: Chris McKenzie, League of Kansas Municipalities
Dennis Kissinger, Salina City Manager
John Torbert, Kansas Association of Counties

Others attending: See Guest List (Attachment 1).

The chairman announced the receipt of the 1993 Committee Rules and indicated a copy has been distributed to all members.

The Committee then reviewed the proposed legislation considered at the January 20 meeting. Upon motion of Representative Hayzlett, seconded by Representative Bryant, the Committee unanimously recommended introduction of the following bills: (1) relating to emergency medical services and attendants; (2) resuscitation orders concerning emergency medical services; and (3) relating to the powers and duties of the emergency medical services board.

Upon motion of Representative Packer, seconded by Representative Mays, the Committee unanimously recommended that legislation be introduced relating to the governing body of townships having a population of less than 200.

The chairman announced that these new bills, plus **HB 2068**, will be assigned to this committee and may be heard at the January 27th meeting.

Chris McKenzie, League of Kansas Municipalities, distributed data on the preliminary "Analysis of the Public Cost of Environmental Protection" and other information concerning costs of mandates (Attachment 2).

Dennis Kissinger, Salina City Manager, spoke about the spiraling costs Salina has encountered as a result of federal and state mandates relating to environmental and safety standards. He also pointed out problems from hidden mandates, such as those for public water safety. State agencies executing federal mandates many times shield the impact on local units of government; consequently the units are not able to adequately plan for funding and staffing.

John Torbert, Kansas Association of Counties, stated some states have passed legislation to permit citizens to petition for relief from federal mandates. He also stated that Kansas counties have more concerns with the state level, and that virtually everything dealt with by the counties are impacted by mandates. Enacted mandates, such as Sentencing Guidelines, parole functions, and juvenile detention, have devastating financial effects on local government and raise additional burdens for planning.

Michael Heim, Legislative Research Department, distributed a copy of the National League of Cities Research Report on "State Mandates," (Attachment 3) and especially pointed out the State of Maine's strategy described on pages 32-35, and Kansas SCR No. 1639 from last year's legislative session.

The meeting was adjourned at 2:50 p.m. The next meeting is scheduled for 1:30 p.m., January 25, 1993, in Room 521-S of the State Capitol.

# GUEST LIST

COMMITTEE: House Local Government DATE: January 21, 1993

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| Mike Shields | Topeka | Harris News |
| John D. Talbot | " | KAC |
| Chris McKenzie | " | LKM |
| Dennis Kissinger | Salina | City of Salina |
| Gerry Ray | Overland Park | Overland Park Johnson County |
| Art Davis | ~~City of~~ Lenexa | City of Lenexa |
| Jonathan Allen | Lenexa | City of Lenexa |
| Chris Shaner | Wichita | Private Citizen |
| + (2 newsmen) | | |
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| | | ATTACHMENT 1 |
| | | 1-21-93 |

# A PRELIMINARY ANALYSIS OF THE PUBLIC COST OF ENVIRONMENTAL PROTECTION: 1981 - 2000

U.S. ENVIRONMENTAL PROTECTION AGENCY

ADMINISTRATION AND RESOURCES MANAGEMENT
(PM - 225)

MAY 1990

ATTACHMENT 2-1
1-21-93

# EXECUTIVE SUMMARY

Since the early 1970's, the U.S. Environmental Protection Agency (EPA) has overseen a national mandate to restore and protect our water, land, and air resources. In this massive undertaking, EPA has relied heavily on state and local governments to help administer programs and to expend resources to comply with requirements. However, the expanded programs and tightened controls of the environmental legislation enacted in the 1980's challenge our ability to pay for future environmental needs.

**Purpose of the Study**

This study documents the costs of environmental protections for EPA, the states, and local governments and uses these data to:

* Examine differences between current expenditures and future costs of environmental protection;
* Assess trends in the distribution of costs among EPA, the states, and local governments;
* Identify the cost impact of environmental policies on local governments, capital markets, and households.

**What Costs are Examined?**

This report examines the public costs of environmental protection over the period 1981-1987 and projects them to the year 2000. These projections are estimates of the future costs of maintaining existing environmental standards, assuming the same level of quality as in 1987. In addition, the report examines the local costs of selected new environmental regulations and programs that local governments will bear in the future.

While investments in environmental quality yield substantial benefits, this report focuses solely on the costs of providing environmental services. For this reason, no attempt is made to place a value on such benefits as reduced incidence of disease and death, improved fishing and shellfish yields, expanded recreational opportunities, and strengthened local economies.

The report complements the work of the Municipal Sector Study recently completed by EPA[1]. The Sector Study examined the future costs of 22 new environmental regulations and their impacts on municipalities. Both studies will serve as building blocks for the Agency's upcoming "Cost of A Clean Environment" report[2].

**Overall Spending will Increase**

In 1987, EPA, the states, and local governments spent about $40 billion for environmental protection. If recent trends continue, they will need to spend approximately $61 billion annually by the year 2000.

Spending trends reveal two potential costs gaps. The first, about $15.6 billion a year by the year 2000, is the amount of EPA, state and local government spending needed, in addition to 1987 expenditures, to maintain 1987 levels of environmental quality. The second, $5.3 billion a year by the year 2000, is the amount of local government spending needed to comply with selected new environmental regulations examined in this study.

Together these gaps represent a difference of nearly $21 billion between what governments spent in 1987 and what we project they will need to spend by 2000 for environmental protection. The gap could narrow if we are more efficient in meeting environmental goals. However, these estimates are also conservative in that they do not include the costs to EPA and the states of new regulations, the costs associated with future Congressional mandates, and the growing number of new state and local environmental mandates.

ATTACHMENT 2-2
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**EPA Expenditures will Decline**

EPA expenditures are projected to decline by about one-third, from $6.3 billion in 1981 to $4.3 billion in 2000. EPA's share of spending on the environment is projected to drop from 13 percent to 8 percent between 1987 and 2000. This drop is due largely to the Congressionally mandated phasing-out of EPA grants to build wastewater treatment plants.

**State Costs are Projected to Grow**

Although relatively little is known about future state outlays for environmental programs, a recent EPA study projects that in 1995 the states will need an additional $309 million to administer drinking water and wastewater programs. The study's analysis suggests that by the year 2000, the states will need to spend more than twice the amount spent in 1987 to administer water programs[3]. State administrative costs could triple by 2000 if air and solid waste programs impose similar demands.

**Local Share of Spending will Increase**

Local spending is projected to increase significantly by the turn of the century. In 1981, local spending was about $26 billion, or 76 percent of the public share of environmental costs. By the year 2000, localities are expected to spend over $48 billion just to maintain 1987 levels of environmental quality and are projected to bear 87 percent of public costs for environmental protection.

**Local Demands for Capital could Double (1981-2000)**

A key issue in examining the impact of environmental spending on capital markets is the ability of local governments to support higher levels of capital formation. We project that annual local demands for capital to maintain current levels of environmental quality could double from about $8 billion in 1981 to over $16 billion in 2000. Additional demands for capital imposed by new regulations could add more than $3 billion a year by 3000. Preliminary EPA analysis indicates that increase levels of capital formation may be difficult for many small and medium-size cities.

**Household Costs may Increase Dramatically**

The annual cost of environmental programs for the average households is projected to increase by 54 percent from $419 in 1987 to $647 in 2000. Over the same period, however, household costs for small cities are expected to increase more dramatically. In cities with fewer than 500 people, costs could more than double, from $670 in 1987 to $1,580 in 2000.

The financial impact of environmental costs on households can be examined by measuring costs as a percentage of household income. The results show a significant impact on households in small cities (less than 500 population), for whom expenditures are expected to increase from 2.8 percent to 5.6 percent of household income between 1987 and 2000. On average, the impact is much less for households in all other city size categories, with projected increase of about 0.2 percent to 0.7 percent of household income by the year 2000.

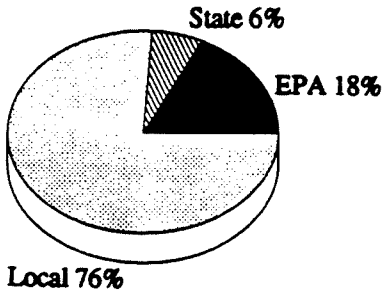
**Where do we go from here?**

The growing costs of environmental protection require a re-examination of how the nation finances and pays for such investments. The difference between current and future needs and current spending clearly calls for more innovative approaches, especially at the local level. We need to take a fresh look at our requirements as well as the financing and management options available to meet them.

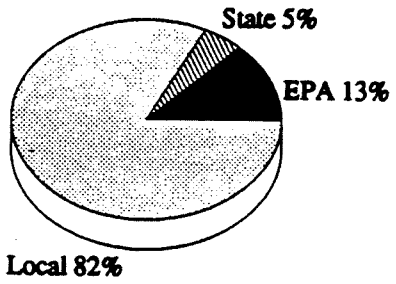
EPA has developed a number of new initiatives to help address these challenges. These include pollution prevention, public-private partnerships and other types of alternative financing, and technology development and transfer. The Agency has designed these initiatives to support state and local efforts to meet their environmental responsibilities. A theme common to these initiatives, is that they seek to involve and tap all available resources, both public and private in working to this goal.

ATTACHMENT 2-3
1-21-93

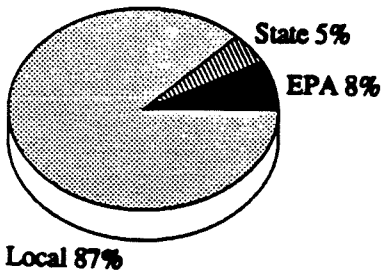
# Figure 5: Percentage of Public Expenditures by Level of Government to Maintain Current (1987) Level of Environmental Quality




1981
Total Spending=
$35 Billion




1987
Total Spending=
$40 Billion

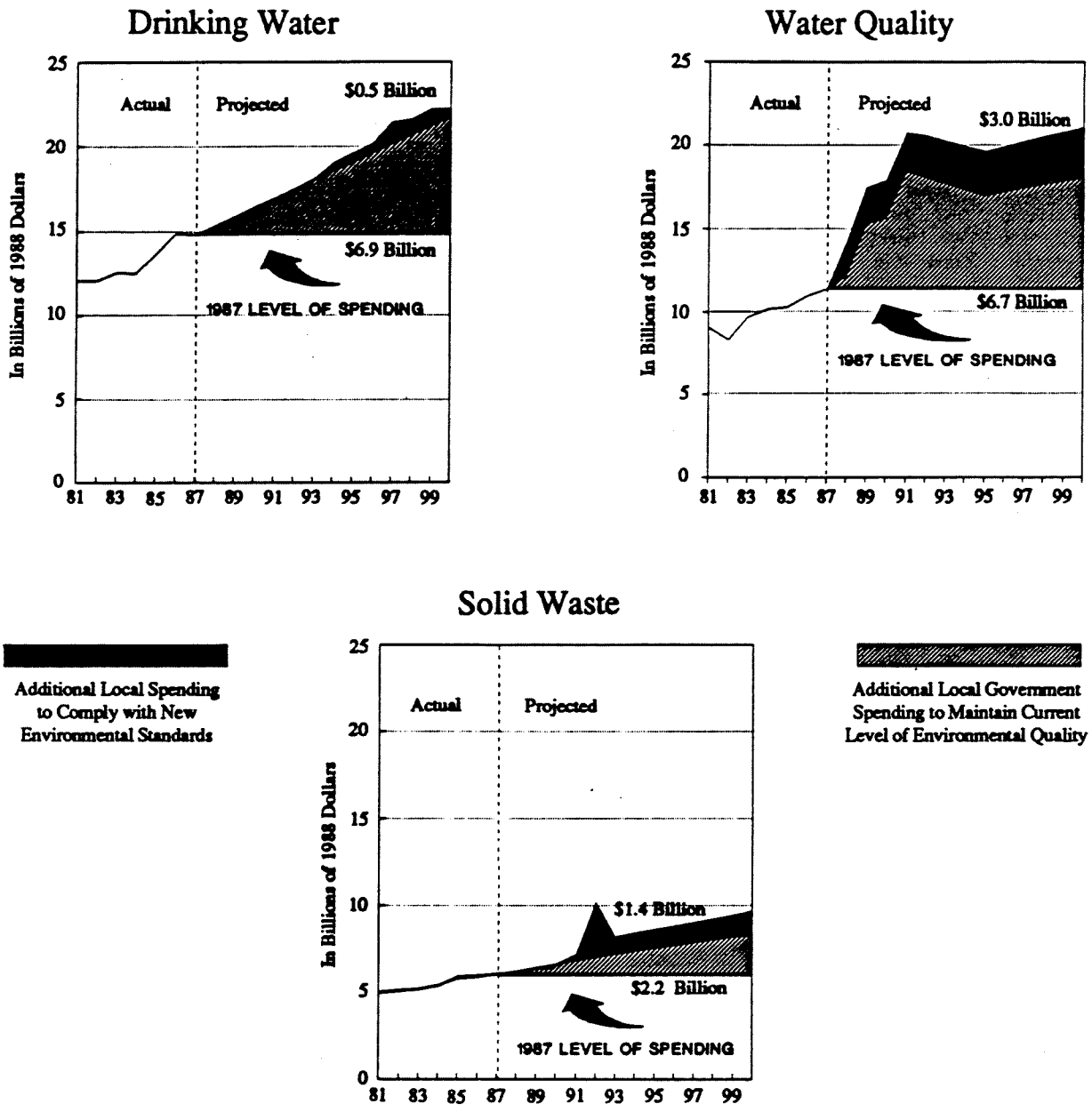



2000
Total Estimated Spending=
$55 Billion

***Source: A Preliminary Analysis of the Public Costs of Environmental Protection 1981-2000: U.S. EPA May 1990***

ATTACHMENT 2-4
1-21-93

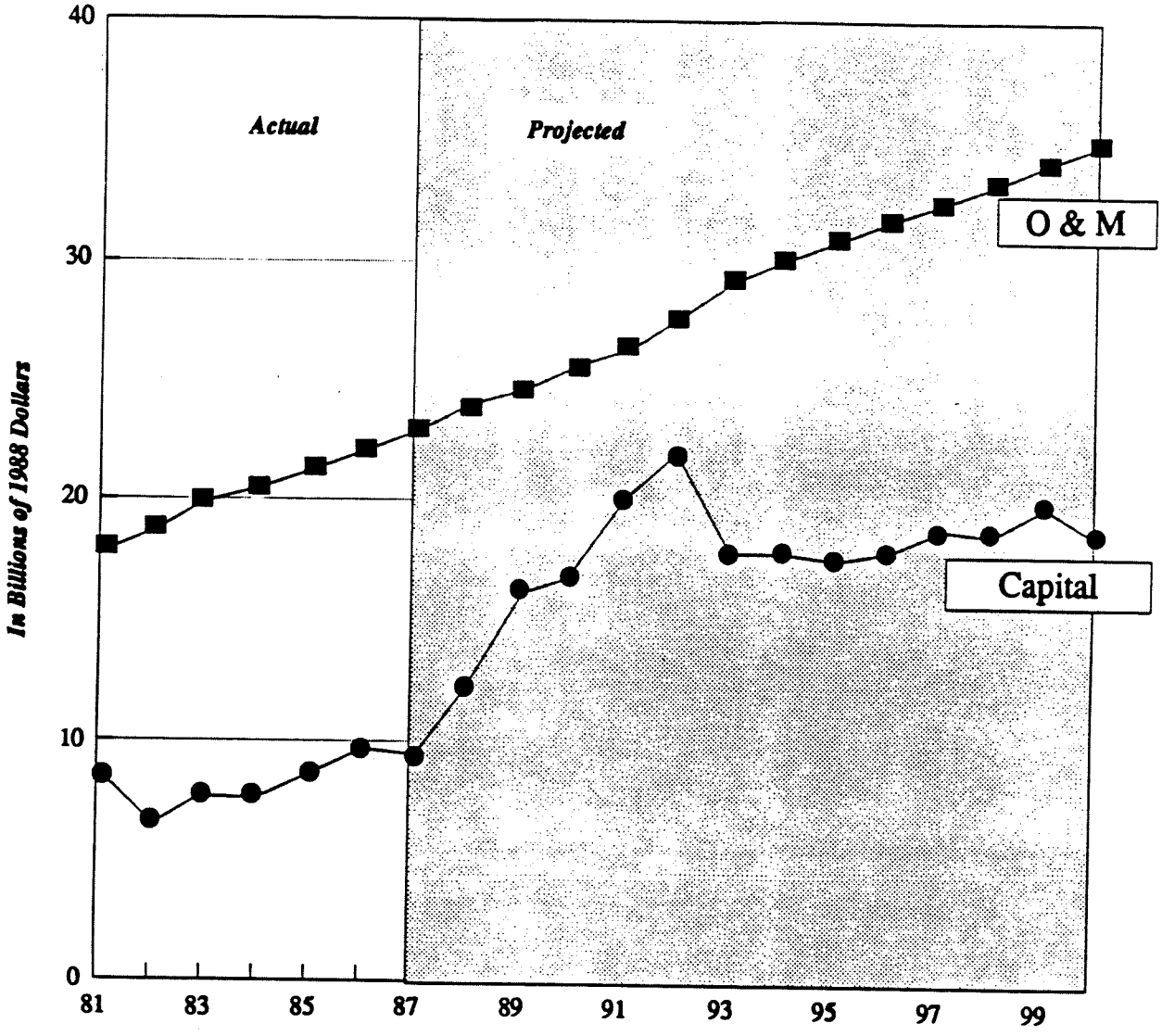
# Figure 7: Local Government Expenditures by Media




*Source: A Preliminary Analysis of the Public Costs of Environmental Protection 1981-2000; U.S. EPA May 1990*

ATTACHMENT 2-5
1-21-93

# Figure 10: Capital and O & M Expenditures* of Local Governments

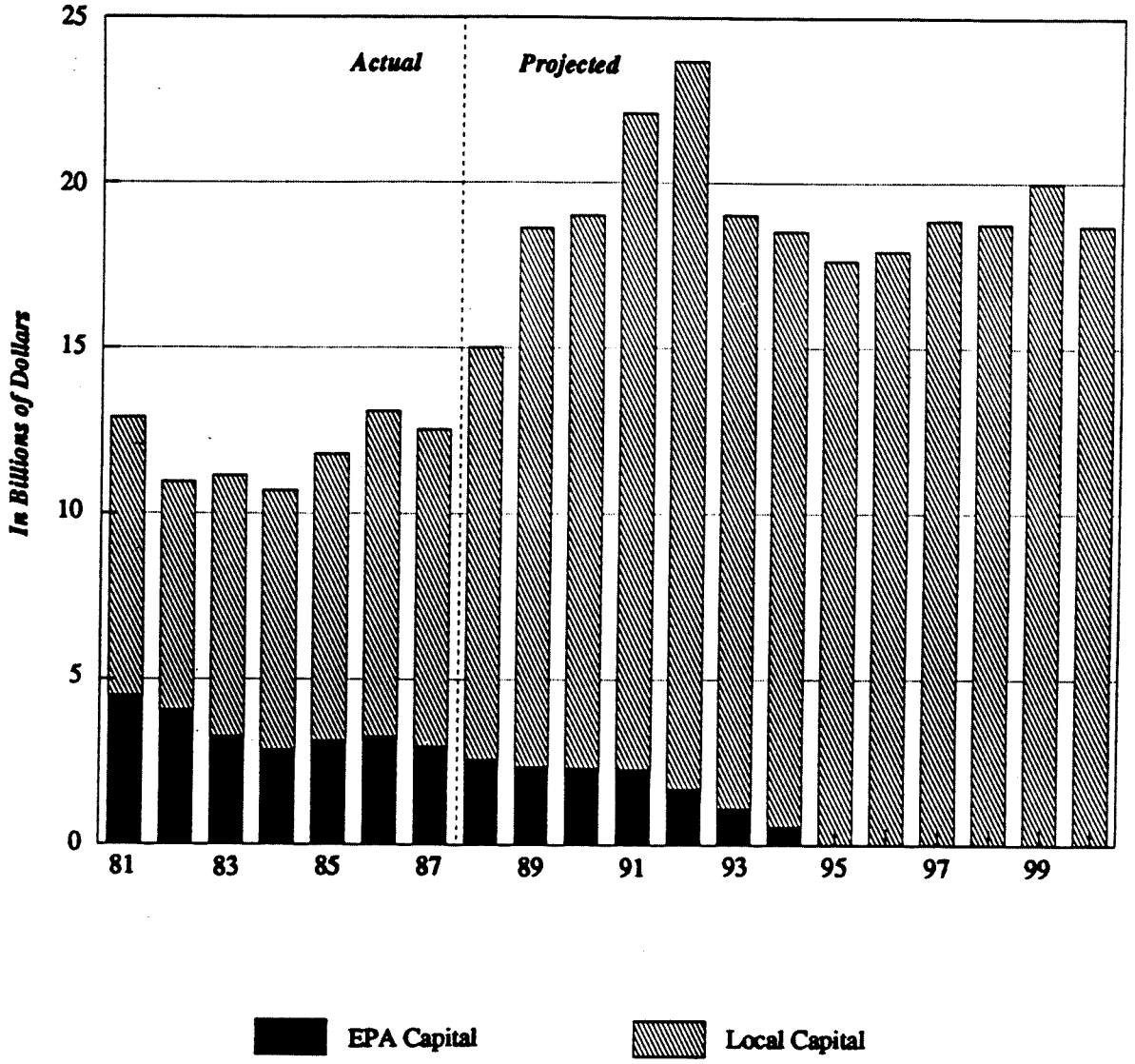



*Includes Expenditures to Maintain Current (1987) Environmental Quality and to Comply with New Regulations

Source: A Preliminary Analysis of the Public Costs of Environmental Protection 1981-2000; U.S. EPA May 1990

ATTACHMENT 2-6
1-21-93

# Figure 11: Comparison of EPA* and Local Government Capital Expenditures




*Construction Grants

*Source: A Preliminary Analysis of the Public Costs of Environmental Protection 1981-2000; U.S. EPA May 1990*

ATTACHMENT 2-7
1-21-93

## APPENDIX

## FLSA CLAIMS & SETTLEMENTS

As of May 31, 1992, the League of Kansas Municipalities is aware of the following FLSA-based claims against state and local governments in Kansas.

| UNIT OF LOCAL GOVERNMENT | YEAR CLAIM MADE | DOLLAR AMOUNT* & STATUS OF CLAIM | CASENAME (if case filed) BASIS OF CLAIM & CLAIMANTS |
|---|---|---|---|
| Junction City | 1987 | $140,000 settlement | Nixon v. City of Junction City/ Meal time & briefing time for police |
| Emporia | 1990 | $3.6 M judgment | Renfro v. City of Emporia /on-call time for firefighters |
| Hutchinson | 1990 | $150,000 settlement | Meal time for police |
| Wichita | 1990 | $2.5 M judgment | Wahl v. City of Wichita /meal time for police |
| Overland Park | 1991 | $358,000 settlement | Meal time for police |
| Shawnee | 1991 | $180,000 judgment (on appeal) | Lamon v. City of Shawnee /meal time for police |
| Shawnee | 1991 | $315,000 settlement contingent on Lamon appeal | Craven v. City of Shawnee /meal time for police |
| Wichita | 1991 | $880,000 settlement | Meal time for police |
| Emporia | 1992 | $370,000 judgment (on appeal) | Armitage v. City of Emporia /meal time & on-cal. time for police |
| Concordia | 1991 | suit pending* | Britt v. City of Concordia /On-call and sleep time for firefighters |
| Dodge City | 1991 | suit pending* | Ball v. City of Dodge City /Meal time for police |
| Douglas County | 1991 | demand* | On-call time for public works |
| Great Bend | 1991 | suit pending* | Amador v. Board of County Commissioners /meal time for police |
| Newton | 1991 | suit pending* | Anderson v. City of Newton / on-call time for EMS |
| Iola | 1992 | suit pending* | St. Clair v. City of Iola /on-call time for firefighters |
| Butler County | 1992 | suit pending* | Faflick v. Board of County Commissioners /on-call time for EMS & 7(k) plan |
| Ford County | 1992 | demand* | On-call time for firefighters |
| Neodesha | 1992 | suit pending* | Stone v. City of Neodesha /on-call time for firefighters and public works |
| Seward County | 1992 | suit pending* | Doris v. Board of County Commissioners /on-call time for EMS |

* Exact dollar amounts for pending suits and demands not yet filed in district court are not available



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RESEARCH / INFORMATION BULLETIN

*League of Kansas Municipalities / 112 West Seventh Street / Topeka, Kansas 66603 / 913-354-9565*

**Vol. XIV, No. 591**
**May 27, 1992 (Revised)**

## STATE OF KANSAS EXTENDS OSHA STANDARDS ON BLOODBORNE PATHOGEN TO LOCAL GOVERNMENTS

The Occupational Safety and Health Administration (OSHA) has adopted final regulations intended to help protect employees from the risk of occupational exposure to bloodborne pathogens. Those regulations were printed on December 6, 1991 in Volume 56, No. 235 of the Federal Register. While OSHA regulations are not directly applicable to local governments, they can be made applicable by action of the Kansas Department of Human Resources (DHR) and, as explained below, DHR has so acted. The OSHA regulations require employers to take steps to protect employees at risk of exposure to the hepatitis B virus, the human immunodeficiency virus (HIV) and other bloodborne pathogens (disease-causing agents carried in blood and body fluids). Generally, any public safety or health care employee is "at risk" under the regulations. Among the requirements are: development of an "exposure control plan"; provision of personal protection equipment; certain record keeping; training; and the provision of hepatitis B vaccinations to employees who desire them.

DHR has broad authority under K.S.A. 1991 Supp. 44-636 to enter the workplace and inspect for "the methods of protection from danger to employees and sanitary conditions ... ." While neither the Kansas statutes nor state administrative regulations make any OSHA standards applicable to local governments, DHR has taken the position that local governments must adhere to the OSHA bloodborne pathogen standards. It is the position of DHR that its authority to order employers, including local governments, to take steps for the safety and protection of employees enables it to require such compliance. Violations of DHR orders can result in civil penalties.

## WHAT MUST LOCAL GOVERNMENTS DO TO IMPLEMENT THE FEDERAL BLOODBORNE PATHOGEN REGULATIONS?

The OSHA standards contain a number of requirements intended to minimize exposure by using a combination of "engineering and work practice controls", personal protective equipment, training, medical treatment, vaccinations, signs and labels and other provisions, as summarized below.

### 1. Exposure Control Plan

The first step for compliance is to develop a written Exposure Control Plan designed to eliminate or minimize employee exposure. This plan should (1) identify which employees are at risk of occupational exposure to bloodborne pathogens, and (2) establish controls to protect those employees. At-risk employees encompass more than health-care workers, taking in any employee where exposure might occur on a regular basis. So, in addition to EMS and other health care employees, cities should consider law enforcement officers, firefighters, lifeguards and handlers of regulated waste as "at risk" of occupational exposure.

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"Occupational exposure" means reasonably anticipated skin, eye, mucous membrane enteral contact with blood or other potentially infectious material that result from the performance of a job.

"Potentially infectious material" means all conceivable exposures to various human body fluids, tissues and organs, and to HIV or hepatitis-infected cells, tissues, cultures or mediums.

**2. Information and Training of At Risk Employees**

Employers must provide information and training annually to employees at risk of exposure to bloodborne pathogens. The training or educational program must include making accessible a copy of the regulatory text of the federal standard and explanation of its contents, general discussion on bloodborne diseases and their transmission, exposure control plan, engineering and work practice controls, personal protective equipment, hepatitis B vaccine, response to emergencies involving blood, how to handle exposure incidents, the post-exposure evaluation and follow-up program. New employees are to be provided training at the time of their commencing work.

**3. Protective Equipment**

Employers must provide and require at risk employees to use appropriate personal protective equipment (i.e. gloves, gowns, masks and mouthpieces). This equipment must be provided at the employer's cost. All cleaning, disposal and repair of the equipment also must be at the employer's cost.

**4. Medical Treatment and Inoculations**

Employers must make available to all employees having occupational exposure the hepatitis B vaccine. The vaccine is to be provided at the employer's expense. Employers must provide follow-up medical treatment and counseling for employees occupationally exposed to bloodborne pathogens. Such treatment could include blood testing and monitoring of the employee's health after exposure.

**5. Record Keeping**

Employers must establish and maintain a record keeping system which will document confidential medical records of employees with occupational exposure and records of training provided to at risk employees. Records must be kept for the duration of employment plus 30 years. Training records must also be kept for three years from the date of the training.

**6. Engineering and Work Practice Controls**

Employers must develop and maintain effective systems that enable at risk employees:

- to wash their hands;
- to remove and dispose of or store contaminated equipment; and
- to minimize splashing, spraying and aerosolizing blood and other potentially infectious materials.

Employers must also develop and maintain effective systems to prevent employees from actions that increase the risk of occupational exposure. Those systems should address behaviors such as:

- shearing, bending, breaking, recapping or resheathing used needles by hand;
- eating, drinking, smoking or applying cosmetics or lip balm in work areas in which there is a likelihood of exposure;
- handling contact lenses in work areas with a potential for exposure;
- handling sharp objects at the scene of an accident without protective gloves, etc.; and
- searching the body or effects of arrested persons.

Employers must affix warning labels to containers of regulated waste.



ATTACHMENT 2-10
1-21-93

# Local Building Codes and Enforcement by Local Building Inspectors

by Don Moler

*Editor's Note: The author is Senior Legal Counsel at the League of Kansas Municipalities.*

Much confusion has been generated as a result of House Bill 2602, now codified at Chapter 208 of the 1992 Session Laws of Kansas. This confusion stems from whether local building inspectors are charged with enforcement of the Americans with Disabilities Act (ADA) building requirements as a result of this action by the Kansas state legislature. Clearly, HB 2602 incorporates those building standards required under the Federal ADA of 1990. It is also clear from K.S.A. Supp. 58-1304, as amended by House Bill 2602, that the responsibility for enforcement of K.S.A. 58-1301:58-1309 and 58-1311, as amended, falls to the building inspector or other agency or person designated by the municipality in which the building or facility is located for all buildings which are not owned by a governmental entity (federal, state, county, school district, etc.).

### Duty to Inspect Permitted Buildings

This legislation places a special mandate on local building inspectors. It requires building inspectors who issue building permits, renovation permits and/or occupancy permits to enforce the standards adopted by House Bill 2602. These standards are taken directly from the ADA. Thus, the local official responsible for enforcement of K.S.A. 58-1301 *et seq.*, as amended by House Bill 2602, has a duty to ensure that building permits and occupancy permits issued for construction of new "public buildings" are in accordance with the Americans With Disabilities Act Accessibility Guidelines (ADAAG). This applies to all new construction for which first occupancy is scheduled to begin after January 26, 1993. The regulations also require enforcement of the ADAAG standards on all public buildings which are being renovated within the jurisdiction.

### No Duty to Inspect Non-Permitted Buildings

Further responsibility of local building officials was limited in Attorney General Opinion 92-106. Specifically, the Attorney General was asked "Does K.S.A. 58-1304, as amended, impose any duty upon local public officials to investigate a complaint regarding barriers in 'public buildings' which deny accessibility to individuals with disabilities if no one has made application for a permit for any alteration or construction of the building?" The Attorney General responded that "[L]ocal public building code officials are not required to investigate complaints or do random checks on buildings to see that they are accessible. Even though they are responsible for the enforcement of the provisions found at K.S.A. 58-1301 through 58-1309, their only means of enforcement is to deny an application for a building permit for the construction or renovation of the building." All complaints about the inaccessibility of non-permitted buildings should be addressed to the Kansas Commission on Civil Rights at (913) 296-3206.

### Summary

In summary, House Bill 2602, now codified at Chapter 208 at the 1992 Session Laws of Kansas, imposes a duty on local building officials who issue building and occupancy permits to enforce ADAAG standards for all buildings within their jurisdiction designed for first occupancy after January 26, 1993 and for other buildings and structures for which a permit is requested for alteration of an existing structure. This requirement does not extend to local building officials the responsibility of enforcing these regulations on other units of government which may have buildings or structures located within the municipality. Each unit of government is charged by House Bill 2602 with ensuring its own compliance with the ADAAG standards in governmental structures.

It should be stressed that House Bill 2602 places **no** duty on those jurisdictions which do not issue building or occupancy permits. Only those jurisdic-tions which issue building and oc-cupancy permits are affected by this legislation.

Questions regarding this information should be directed to the attention of Mary Jane Stattelman, Assistant Attorney General, at (913) 296-2215.



ATTACHMENT 2-11
1-21-93

# A

# Typical, Small

# Community

**LEWISTON, MAINE**

ATTACHMENT 2-12
1-21-93

# TABLE 2

## CAPITAL COST OF MANDATES

| LEGISLATION | COST TO DATE (Millions) | PROJECTED COST (Millions) | PROPOSED COST (Millions) | TOTAL COST (Millions) |
|---|---|---|---|---|
| **S.D.W.A.** | | | | |
| Surface Water Treatmnt Rule | 3.5 | 4.5 | 8.1 | 16.1 |
| Disinfct Byprod. Rule | 0.0 | 0.0 | 4.1 | 4.1 |
| Lead/Copper Rule | 0.0 | 0.0 | 0.5 | 0.5 |
| **CLEAN WATER ACT** | | | | |
| C.S.O.s | 0.2 | 5.1 | 39.5 | 44.8 |
| Non-Point Source Pollution | 0.0 | 0.1 | 10.0 | 10.1 |
| Snow Dumps | 0.011 | 0.0 | 0.08 | 0.09 |
| **SAFETY** | | | | |
| SARA Title III | 0.03 | 0.0 | 0.0 | 0.03 |
| Occupational Safety | 0.09 | 0.06 | 0.0 | 0.15 |
| **TOTAL FEDERAL** | 3.83 | 9.76 | 62.28 | 75.87 |
| **SOLID WASTE MANAGEMENT (STATE)** | | | | |
| Closeout Existing Landfill | 1.25 | 2.75 | 0.0 | 4.0 |
| New Landfill Construction | 3.9 | 5.0 | 0.0 | 8.9 |
| Closeout New Landfill | 0.0 | 2.5 | 0.0 | 2.5 |
| Recycling | 0.5 | 0.3 | 0.0 | 0.8 |
| **TOTAL FEDERAL AND STATE** | 9.48 | 20.31 | 62.28 | 92.07 |

NOTE: Amounts are in 1991 dollars and do not include financing costs.



ATTACHMENT 2-13
1-21-93

# TABLE 2 - EXPLANATION

**Safe Drinking Water Act**

Surface Water Treatment Rule

| | | |
|---|---|---|
| Cost to Date: | Study | $ 400,000 |
| | Webber Ave. Reservoir Covers | 1,500,000 |
| | New Lake Auburn Intake | 1,600,000 |
| | TOTAL | $3,500,000 |
| Projected Cost: | Watershed Protection | $1,500,000 |
| | Disinfection Improvements | 500,000 |
| | Transmission Main Construction | 2,500,000 |
| | TOTAL | $4,500,000 |
| Proposed Cost: | Filtration Plant | $8,100,000 |

Disinfection By-product Rule

| | | |
|---|---|---|
| Proposed Cost: | Ozonation Plant | $4,100,000 |

Lead/Copper Rule

| | | |
|---|---|---|
| Proposed Cost: | Testing & Monitoring | $ 250,000 |
| | Education | $ 250,000 |
| | TOTAL | $ 500,000 |

**Clean Water Act**

Combined Sewer Overflows

| | | |
|---|---|---|
| Cost to Date: | Testing & Monitoring | $ 75,000 |
| | Engineering Study | $ 125,000 |
| | TOTAL | $ 200,000 |
| Projected Cost: | Testing & Monitoring | $ 100,000 |
| | Engineering Study | $ 466,500 |
| | Geotechnical Investigation | $ 75,000 |
| | Inflow/Infiltration Removal | $4,500,000 |
| | TOTAL | $5,141,500 |
| Proposed Cost: | Treatment Plant Expansion | $ 5,000,000 |
| | Tunnels for Detention | 26,200,000 |
| | Pumping Facilities | 8,300,000 |
| | TOTAL | $39,500,000 |

Non-Point Source Pollution

| | | |
|---|---|---|
| Projected Cost: | Preparation of License Applications and License Fees | $ 100,000 |
| Proposed Cost: | Chlorination/Dechlorination Facilities | $10,000,000 |

Snow Dumps

| | | |
|---|---|---|
| Cost to Date: | Improvements to Franklin Pasture Site | $ 10,000 |



ATTACHMENT 2-14
1-21-93

| | | | |
|---|---|---|---|
| | Proposed Cost: Land Acquisition | | $ 80,000 |
| **Safety Regulations** | | | |
| SARA Title III | | | |
| | Cost to Date: Chemical Response Team | | $ 30,000 |
| Occupational Safety | | | |
| | Cost to Date: Safety Equipment such as Signs, Trench Boxes, 02 Meters | | $ 90,000 |
| | Projected Costs: Safety Equipment | | $ 60,000 |
| **Solid Waste Management** | | | |
| Close Out Existing Landfill | | | |
| | Cost to Date: Engineering | | $ 250,000 |
| | Construction | | 1,000,000 |
| | | TOTAL | $ 1,250,000 |
| | Projected Cost: Construction | | $ 1,270,000 |
| New Landfill Construction | | | |
| | Cost to Date: Engineering | | $ 500,000 |
| | Cell 1 Construction | | 3,200,000 |
| | Entrance Road | | 200,000 |
| | | TOTAL | $ 3,900,000 |
| | Projected Cost: Cell 2 & 3 Construction | | $ 2,500,000 |
| | Cell 4 & 5 Construction | | 2,500,000 |
| | | TOTAL | $ 5,000,000 |
| Close Out New Landfill | | | |
| | Projected Cost: Engineering | | $ 250,000 |
| | Construction | | 2,250,000 |
| | | TOTAL | $ 2,500,000 |
| Recycling | | | |
| | Cost to Date: Drop Off Area & Roads | | $ 190,000 |
| | Recycling Building | | 70,000 |
| | Vehicles | | 100,000 |
| | Baler | | 80,000 |
| | Education | | 20,000 |
| | Engineering | | 20,000 |
| | Miscellaneous | | 20,000 |
| | | TOTAL | $ 500,000* |
| | Proposed Cost: Recycling Bldg. Expansion | | $ 180,000 |
| | Additional Baler | | 120,000 |
| | | TOTAL | $ 300,000 |

* *CITY SHARE ONLY; DOES NOT INCLUDE STATE GRANT*



ATTACHMENT 2-15
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# TABLE 3

## OPERATION/MAINTENANCE COSTS OF MANDATES

| LEGISLATION | COST TO DATE/YR (Millions) | PROJECTED COST/YR (Millions) | PROPOSED COST/YR (Millions) | TOTAL COST/YR (Millions) |
|---|---|---|---|---|
| **S.D.W.A.** | | | | |
| Surface Water Treatmnt Rule | 0.03 | 0.3 | 0.7 | 1.03 |
| Disinfct Byprod. Rule | 0.0 | 0.0 | 0.5 | 0.5 |
| Lead/Copper Rule | 0.0 | 0.0 | 0.05 | 0.05 |
| **CLEAN WATER ACT** | | | | |
| C.S.O.s | 0.0 | 0.4 | 0.4 | 0.8 |
| Non-Point Source Pollution | 0.0 | 0.01 | 0.5 | 0.51 |
| Snow Dumps | 0.01 | 0.0 | 0.1 | 0.11 |
| **SAFETY** | | | | |
| SARA Title III | 0.01 | 0.01 | 0.0 | 0.02 |
| Occupational Safety | 0.03 | 0.06 | 0.0 | 0.09 |
| **TOTAL FEDERAL** | 0.08 | 0.78 | 2.25 | 3.14 |
| **SOLID WASTE MANAGEMENT (STATE)** | | | | |
| Closeout Existing Landfill | 0.01 | 0.05 | 0.0 | 0.06 |
| New Landfill Construction | 0.0 | 0.15 | 0.0 | 0.15 |
| Closeout New Landfill | 0.0 | 0.03 | 0.0 | 0.03 |
| Recycling | 0.5 | 0.3 | 0.0 | 0.8 |
| **TOTAL FEDERAL AND STATE** | 0.59 | 1.31 | 2.25 | 4.18 |



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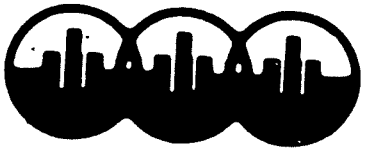
Research Report on America's Cities

# STATE MANDATES

*Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*

*One of a series of Research Reports on major empirical studies of conditions and policies in America's municipalities.*



NATIONAL LEAGUE OF CITIES

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# Chapter 5
# Reimbursement Provisions

*The reimbursement provisions, exclusions, and processes of the states are described in this chapter. Some state reimbursement processes are working well; others are not working at all. Even with constitutional reimbursement, there are opportunities for state legislatures to bypass the reimbursement requirement. This suggests that localities considering reimbursement initiatives should design the best features of existing programs into their proposals, and that they should have a realistic expectation of the mandate-stopping ability of any statutory or constitutional plan.*

## Reimbursement in the States

Fourteen states have some kind of state mandate reimbursement requirement. Three states have statutory reimbursement, eleven have constitutional reimbursement requirements. The constitutional requirements are accompanied by statutory implementation language that details the process of reimbursement, the exclusions, and any appeals options available to local governments. The difference between constitutional and statutory reimbursement appears to be minimal because of the necessity of implementation language. Voters pass a constitutional mandates reimbursement act based upon its intent and leave the details to the legislature. In constructing the details, the legislatures appear to have as much flexibility in the interpretation of constitutional reimbursement as they do in the enactment of statutory reimbursement. The experience of the fourteen states shows the extent of legisla-



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## California

California was one of the first states to react to the cost of state mandates to local governments. The state enacted statutory reimbursement of a sort in 1972, calling it the Property Tax Relief Bill. In compensation for the state cap on local property taxes, the state would reimburse localities for sales and use taxes and pay the full cost of any new program or increased level of service it mandated. The statutory intent to fund mandates may have slowed the legislature's mandating activities, but it did not provide the kind of formal reimbursement process that would be created six years later. In fact, a review of the bill introduced and considered by the California legislature during the 1973-74 session reveals the use of "disclaimers" that contend that the bill under consideration was not subject to the statutory reimbursement. The typical form of the disclaimer was "not withstanding any provision to the contrary" — a phrase that runs common to statutory reimbursement plans. When used, the legislature essentially acknowledges that the legislation to follow violates the intent of reimbursement but asserts its right to exempt itself from any self-imposed restrictions on its lawmaking ability. California local governments learned that statutory reimbursement was a poor solution to their mandates problem. The property tax cap was not waived, but the reimbursements could be.

In 1979 the voters approved Proposition 4, which added a constitutional reimbursement provision for state mandates. California's constitutional reimbursement took effect in 1980. Article XIIIB, Section 6 of the California Constitution provides:

> Whenever the Legislature or any state agency mandates a new program or level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level off service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected;
>
> (b) Legislation defining a new crime or changing an existing definition of a crime; or
>
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

As with every constitutional change affecting legislative behavior, the passage of the amendment required the legislature to pass implementation language. Reading California's constitutional amendment hardly leaves it clear to the local government how the process will work and how to proceed in the event an unfunded mandate is enacted. This implementation language is critical to a viable reimbursement process and the irony is, according to some states that have struggled with implementation language, that the matter again is left to the state's legislature. By construing the constitutional amendment in a way that binds



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them to refrain from mandating or provide reimbursement, they can give local governments a clear recourse to an unfunded mandate. By construing the amendment in its narrowest possible form and creating administrative roadblocks at every stage of the reimbursement process, a legislature can ensure that the cost of local recourse will be high enough to offset the cost of most mandates. The way to create a barrier to reimbursement is to designate a group under the control of the legislature to determine whether or not a mandate exists and to determine the appropriate level of reimbursement, and force the local governments to litigate if they are not satisfied with the reimbursement decision. The way to facilitate reimbursement is to create a nonpartisan commission to hear appeals from local governments and, upon successful appeal, give the state the option of paying or the localities the option of not complying.

California quickly discovered that the effect, intended or not, of their implementation language was a system inadequate to the task of fair and timely reimbursement and unparalleled congestion of the judiciary system. The 1985 reform was designed to accommodate, if not facilitate, the intent of the reimbursement amendment. Before 1985, an existing legislative agency, the Board of Control, was authorized to decide claims regarding mandate reimbursement. On January 1, 1985, the California Commission on State Mandates was created and given the authority to hear and decide local claims requesting reimbursement from the state for mandated costs. The Commission also can hear claims that reimbursement has been insufficient. It is a quasi-judicial body composed of five members: the state controller, state treasurer, director for the Department of Finance, director of the Office of Planning and Research, and a public representative with expertise in public finance who is appointed by the governor and approved by the state senate.

The Commission may find any increased cost a mandate and recommend appropriate reimbursement, with seven exceptions:

(a) the locality or school district requested the statute that imposed costs;

(b) the statute affirmed existing law as determined by the courts;

(c) the statute implemented federal law;

(d) the locality or school district has the authority to levy charges, fees or assessments sufficient to cover the cost of the mandate;

(e) the statute provides for offsetting savings that result in not net increased cost;

(f) the statute imposed duties that were approved by the voters in a statewide election; or

(g) the statute created, eliminated or changed a crime or infraction.

These exceptions are the disclaimers that now accompany California mandates. To avoid reimbursement, the legislature may include one or more of the disclaimers in the mandate bill. In 1987, the California legislature enacted 270 bills with disclaimers. Some had more than one disclaimer. Most of the statutes created, eliminated, or modified crimes or infractions (165) and a fair number of them were enacted at local request (45). The next



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most common disclaimer of 1987 was the self-financing authority exemption. The intent of the constitutional amendment was to reduce local property taxes by eliminating the upward pressure on them from state mandates. When the mandate could be financed through another means, typically a user fee, then there is no requirement that the state reimburse the cost of the mandate. General disclaimers were used 14 times. A general disclaimer simply indicates that the legislature disclaimed a duty to reimburse but declined to say upon what grounds. Disclaimers of this type are often appealed to the Commission and are the most frequently overturned of all other types of disclaimers.

When a locality or school district believes it has incurred a cost exceeding $200 because of a reimbursable mandate (they are not constrained to accept the legislature's word that the mandate is not reimbursable), it files a claim with the Commission by November 30 of the fiscal year in which the cost will be incurred and by November 30 of the following year furnishes the actual costs incurred and request reimbursement. In subsequent fiscal years, the amount of the reimbursement is included in the governor's budget and the appropriations bill. If the appropriated amount is not sufficient to cover the reimbursable claims, the state may prorate the claims in proportion to the amount of the claim. Each year the approved claims are itemized in a report submitted to the legislature.

In 1987, a typical year, 270 statutes were enacted with disclaimers. Two statutes were enacted containing appropriations for reimbursement. Six contained no appropriations and no disclaimers and were reimbursed. Fifteen contained language that specifically prohibited reimbursement from the State Mandates Claim Fund. One directed reimbursement from the Claims Fund. Seventy-one were not considered to be mandates by the General Counsel to the legislature but were considered mandates by the Commission. The irony of the bulk of mandates not being so designated is that no fiscal notes were prepared and the California legislature enacted those bills without any consideration to their cost – costs that they ultimately might pay.

In summary, California local governments are not protected against increased costs from state initiated priorities, but against property tax increases required by state mandates. In 1987, localities received forty-three mandates that the state expected the localities to raise revenue to pay for, though not from the property tax. Of the mandates with disclaimers and the unintentional mandates enacted in 1987, it is uncertain how many localities chose to appeal the cost to the Commission or how the Commission ruled in all of those cases. What is known is that the volume of new mandates and the number of appeals places a strain upon the Commission's time and resources. However, California localities seem to be confident in the Commission's ability to act fairly, if not quickly. The localities do note that a number of laws pertaining to local governments are permissive, or allow the locality to choose to offer the service or improve the program. If the locality so chooses, then a number of requirements apply. These requirements are conditions of aid, not mandates, and therefore are not reimbursable. The difficulty, at the local level, is resisting the new standard if it is recommended by the legislature based on the perceived need to serve the constituency affected by the change. In a sense, California localities choose to place unfunded mandates



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upon themselves as they try to serve their constituencies, but the stimulus for many of these mandates originates with the state.

## Florida

In 1978, the Florida legislature enacted a statute requiring a fiscal note bill to precede any general law affecting the program or service functions of local governments and requiring the state to provide a means for financing the mandate. Additionally, the legislature would be required to finance any changes in the ways in which property taxes were assessed and any changes in the local authority to levy taxes. It was as strong a fiscal note and reimbursement statute as existed at the time.

Unfortunately, for Florida local governments, the 1978 statute was effectively meaningless. One legislature cannot bind the hand of another, according to Florida law, and so future legislatures simply ignored the requirement as they added new unfunded mandate. From the period 1981-1989, Florida's local governments received an average of 150 mandates per year. The citizens of Florida became increasingly sensitive to high and rising property taxes, and the localities were only moderately successful in deflecting the blame for high taxes away from themselves and to the legislature. Additionally, the state is exceedingly restrictive to the local revenue system, limiting the sources of local revenue and the rates.

In 1988, Florida localities faced the kind of "focusing event" that is often so critical in effecting change. In that year, both houses of the state legislature passed joint resolutions restricting the passage of unfunded mandates, but their failure to agree on a compromise bill killed the effort late in the session. In that same session, the legislature enacted Chapter 88-382, expanding the category of persons eligible to receive pension benefits from local governments. The approximate cost of the new bill was $50 million per year and it was to be borne by localities. From the local perspective, it appeared that many legislatures were only sensitive to the mandates problem until the state budget was threatened by funding a new program.

The Florida League of Cities began a petition drive to place a constitutional amendment prohibiting unfunded mandates on the November, 1990 ballot. The petition language was strongly worded – the legislature could not enact any law for which local compliance cost local money – and it had its intended effect. The League agreed to end its petition drive only when the legislature agreed to pass a resolution to amend the state constitution ending unfunded mandates. Faced with the choice of a more moderately worded amendment or the threat of a very strongly worded voter initiated bill, the Legislature took the safer alternative. The resolution (see box, page 46) passed the House by a margin of 101 to 13 and the Senate by 38 to 1.

The future of the law for Florida's local governments is unclear. The legislature can pass implementation language that can either support or undermine the intent of the bill. The first try at implementation was vetoed by the governor in 1991 for two major reasons. First,



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## Florida Mandate Resolution

ARTICLE VII
FINANCE AND TAXATION

Section 18. Laws requiring counties and municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditures by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure s approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments, or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislatures may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency as declared in a written joint proclamation of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws re-authorizing but not expanding then existing statutory authority, laws having insignificant fiscal impacts, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) the legislature may enact laws to assist in the implementation and enforcement of this section.

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

LAWS AFFECTING LOCAL GOVERNMENT EXPENDITURES OR ABILITY TO RAISE REVENUE OR RECEIVE STATE TAX REVENUE

Excuses counties and municipalities from complying with general laws requiring them to spend funds unless: the law fulfills an important state interest; and it is enacted by two-thirds vote, or funding or funding sources are provided or certain other conditions are met. Prohibits general laws that have certain negative consequences for counties and municipalities unless enacted by two-thirds vote. Exempts certain categories of laws from these requirements.



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the Florida legislature defined an insignificant fiscal impact as $1.4 million. Second, the implementation language shifted the onus for a challenge from the state to the local governments. If the state enacts an unfunded mandate the local government may refuse to comply, according to the constitutional amendment. If the state attempts to force compliance, it must initiate the challenge. The 1991 implementing legislation provided that the locality must undertake a judicial challenge if the state enacts a mandate with which it does not intend to comply. The impact of the change was that the locality would have had to weigh the cost of the legal challenge against the cost of the mandate in order to make a compliance decision, undermining the noncompliance provision in the constitutional amendment. New implementation legislation is underway in the Florida legislature, but the debate still centers on these two core issues.

The strength of the Florida initiative is that it protects localities from the cumulative impact of a tide of unfunded mandates, while it leaves open the possibility that a circumstance could arise that requires statewide local compliance with some standard. In other words, it accepts that some mandates are justified. Whether or not the forthcoming implementation legislation will uphold the intent of the amendment remains to be seen. But one change has already occurred because of the amendment. In 1989 the Legislature enacted 333 unfunded mandates to Florida local governments. Since the amendment, no unfunded mandates have been passed.

## Hawaii

The Hawaii experience is not tremendously useful as an instructional model for other states because Hawaii has only one municipality – Honolulu – and county governments with limited functional scope. Most functions are handled at the state level or directed by the state in partnership with the counties. A constitutional ammendment passed in 1978, however, requires the state to share in the cost of any increased level of service it required of a political subdivision. The effectiveness of the amendment has varied with the type of program to which it applied. The state share for some activities has been substantial, while the share for others has been minimal. The issue for Hawaii counties is the portion of the cost that the state will choose to bear. They report that their attempts at lobbying for increased state cost sharing have typically been ineffective.

## Illinois

The Illinois statutory reimbursement provision was modeled on the ACIR model mandate reimbursement legislation. It defines state mandates as "any state initiated statutory or executive action that requires a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a court other than any order enforcing such statutory or executive action."



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The statute goes on to provide that funding for increased cost service mandates shall be reimbursed at not less than 50 percent and not more than 100 percent, lost revenue mandates shall be reimbursed at 100 percent, and the full increased cost of personnel, pension, and retirement mandates shall be reimbursed at 100 percent. There are five specific exclusions to reimbursement in the statute. The first is based on local request for a mandate. The second excludes reimbursement if existing staff and procedures can be used to carry out the new mandate at no increased cost. The third precludes reimbursement when there are offsetting cost savings. The fourth excludes mandates that impose a cost wholly or largely recovered from federal state or other external aid. The fifth excludes mandates that cost less than $100 to any local government and less than $50,000 in the aggregate. In addition, the Illinois General Assembly can exempt the state from reimbursement by a three-fifths majority vote. If no reimbursement is made and a mandate neither meets the exclusion criteria nor is passed by a three-fifths majority, localities are under no obligation to comply with it.

During the year following its adoption (1981), the State Mandates Act resulted in a reduction of state mandates passed, Illinois state and local officials agreed. But this deterrent effect diminished in subsequent years. Since 1981, the General Assembly has passed fifty-seven unfunded mandates with a total estimated annual cost to local governments of $148 million. Of this total, the General Assembly has voted to exempt itself from the funding requirement on twenty-five occasions, resulting in an estimated annual cost to local governments of over $107 million. Of the remaining thirty-two mandates, estimated to cost $41 million, the General Assembly appropriated only $200,000 for one mandate, even though all are technically covered. In one instance, school districts sued the state, and the Illinois Appellate Court ruled that the local governments did not have to carry out the mandate in the absence of state money. The General Assembly then approved by three-fifths vote an amendment to exempt this mandate from the reimbursement law, thereby requiring local governments to implement it.[1]

The appeals process does not work in Illinois. There is little evidence that a locality appealing the mandate will be reimbursed for it and as a result most localities have not tried the appeals process since the first few years. Another test case that soon followed further expanded the state's discretion and limited the localities' recourse. In the Nurses' Pay Act (83-913), the General Assembly enacted a mandate and exempted it from reimbursement in these terms: "[T]he General Assembly hereby finds and declares that this mandatory act does not require reimbursement by the State under the State Mandates Act." The First District Appellate court ruled that there was a difference between an exemption and an exclusion. The General Assembly could not exempt itself from a reimbursable mandate. The only ways to avoid reimbursement are to claim one of the statutory exclusions, pass it by the extraordinary majority, or add a paragraph to the Mandates Act stating that the new law is exempt. Adding

1 *Legislative Mandates*, General Accounting Office, Washington, D.C., 1988.



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the paragraph does not require an extraordinary majority and provides the easiest circumvention to the statutory reimbursement requirement. By 1989 there were seven such exemptions to the Mandates Act, each considered very costly by Illinois localities. Among them are changes in homestead exemptions and local pension systems. Local officials in Illinois charge that while the legislature finds most mandates not subject to the reimbursement provisions, it would likely enact more mandates in the absence of a reimbursement requirement. They believe reimbursement, combined with a strong local lobbying effort, stops many mandates in committee. Once the mandate goes to a floor vote, the reimbursement provision doesn't inhibit enactment of unfunded mandates.

## Louisiana

Effective January 1, 1992, any state law, executive order, rule, or regulation requiring additional expenditure by a local government can only become effective if (1) the local government voluntarily complies, (2) the state provides reimbursement, (3) the state permits local government to raise new revenues to fund the mandate or (4) the legislature enacts the mandate by a super majority of two-thirds. The constitutional amendment passed by a margin of 58 percent to 42 percent. Exclusions to the reimbursement requirement are school district mandates, existing mandates, mandates requested by individual localities, police and fire benefits, changes to the criminal code, and federal standards.

While the new reimbursement provision has not yet had the test of a new legislative session, its weakest point seems to be the state's ability to enact an unfunded mandate so long as the locality is enabled to raise revenue to pay for it. Like the California reimbursement provision, that exclusion only protects the property tax rates of the localities; it does not mean that the responsibility of paying for state priorities will rest with the state. Moreover, depending upon how the exclusion is interpreted, it may be possible for the state to permit a new mil levy for the mandates, as in Montana. If so, the local property tax still funds state mandates, it just does not do so to the detriment of the locality's state controlled general fund property tax rates.

## Maine

Maine's statutory reimbursement provision, enacted in 1989, took effect for the fiscal year beginning July 1991. The statute requires the state to provide full funding for all mandates enacted (Title 30A, Sec 5684). Since the Maine legislature has not met since enactment of the reimbursement statute, the statute's effect on mandates is uncertain. Maine localities previously had received approximately thirty-two unfunded mandates per legislative session. Local officials cite a weak fiscal note statute as part of the reason for the volume of unfunded mandates.



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The fiscal note statute (Title 3, section 163-A) states that "the statement of cost shall be made within the limits of information provided to the office designated by the Legislative Council as having responsibility for financial analysis. The statements shall be furnished to the appropriate committee for the information of its members and for inclusion in bills which receive an ought to pass report when reported to the committee." The statute fails to designate who is to provide the information necessary for the fiscal note. Therefore, each new mandate is given to the appropriate committee with the notation that information is not available to estimate cost. The two positions for fiscal note preparers have not been funded, so there is no one to sample localities or gather relevant data.

Though reimbursement was enacted, these positions remain unfunded, so local governments are not optimistic about their chances for reimbursement if no cost estimating will be done in advance of mandate enactment. They are further pessimistic about the prospects for reimbursement, as there has been discussion in the legislature of repealing the statute in light of the current state budget difficulties in Maine. Constitutional reimbursement continues to be a critical imperative of the Maine Municipal League.

## Massachusetts

The state mandate statute in Massachusetts was a part of the Citizens Tax Revolt, known as Proposition 2½. It was enacted in 1980, after the Massachusetts House and Senate had rejected its primary elements, including the portion dealing with state mandates. In effect, the rule provides that any state law or agency rule that imposes a cost on local government is only binding upon the locality if the Commonwealth provides reimbursement. The locality may voluntarily comply with the mandate if it so chooses, but it may not decide to fail to comply if reimbursement is not made. The locality must petition the Superior Court to be exempted from the unfunded mandate. Proposition 2½ also created the Division of Local Mandates (DLM), a division within the state auditor's office. The DLM is charged with reviewing each law or rule that a locality believes is creating a cost. The DLM determines whether a cost exists and the extent of the cost to the locality. Their assessment forms the basis for the reimbursement. In 1984 the DLM was also charged with the periodic review of existing mandates under the Sunset Review Law. When an existing mandate has a significant financial impact, the DLM may recommend continuing it, amending it, or repealing it.

Massachusetts' DLM is considered one of the best institutionalized cost assessment systems in the nation – best in the sense that such a high degree of accuracy is expected since reimbursement follows estimation and best in that the Division is seen by both states and localities as a highly skilled, professional group with no political agenda. The analysts for the DLM stay very busy. The Massachusetts legislature continues to enact program and service mandates without the up-front funding that the statute requires. The difference is that localities see the DLM as a part of their solution rather than their problem.



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The DLM uses a computer tracking system linked to the legislature to access legislation under consideration. Their legal staff identifies laws that have costs to localities and forwards them to the research staff. The research staff has a routine for cost estimating that involves stratified sampling of forty cities and towns, chosen to be representative of the state's municipalities. As information is gathered from surveys to address a particular mandate, it is incorporated into a statewide database from which future mandate costs can be more accurately estimated. After the cost estimate is complete, the DLM legislative staff contacts the relevant legislative committees and state agencies to inform them of their findings. Since Proposition 2½ requires up-front funding, the committee or agency either incorporates funding into the law or rule, or kills it to avoid reimbursement.

In fact, as already mentioned, the legislature or the agency does not always provide for funding or kill the bill. The process breaks down when DLM's recommendations for reimbursement are ignored. This seems to happen most frequently when the mandates do not come to the attention of the affected localities before they are passed. After a mandate is passed, the localities approach DLM with their increased cost data and request cost documentation. The documentation process, which is as painstaking and methodical as the initial cost survey process, results in an estimate that will serve as evidence of state imposed cost when the locality petitions for exemption to the court. If the court finds that a mandate has occurred without reciprocal funding, it can exempt the locality from compliance until the state fully funds the mandate. If the court so rules, the legislature must approve funds for all affected localities, not just for the locality that initiated the court case.

The most serious problem with the Massachusetts system, according to local governments, is that the legislature may choose to pay for state mandates by reducing the amount of state shared revenue available to local governments. There is no requirement that shared revenues remain constant over time. In years of state budget prosperity, mandates are likely to be funded from general revenues. But the fiscal stress of recent years has seen "raids" on state shared revenues to pay for state-imposed laws or rules. Mandates can also arise as conditions of aid for the receipt of state shared revenue as well as other kinds of state revenue. For example, a mandate that required free transportation of private school children was imposed as a condition of aid for the disbursement of state funds to provide transportation of public school children. To the DLM staff these mandates are more than simple conditions of aid — they are "irresistible conditions."[2]

As fiscal conditions worsen for Massachusetts, local governments fear that the use of disclaimers will begin to erode a process that protects localities from the cost of state initiatives. As in all states with statutory reimbursement, the Massachusetts legislature needs only to explicitly state that a new law is not subject to the existing law requiring reimburse-

2 Lunceford, Emily D., "Massachusetts Mandate Statute and Its Application" in Fix and Kenyon, Eds., *Coping with Mandates: What Are the Alternatives?*, Urban Institute Press, 1990.



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ment to exempt itself from mandate costs. At present, the legislature has not availed itself of this option, a fact that credits state-local relations in Massachusetts. Observers note that the fact that the voters overwhelmingly supported the anti-mandate portion of Proposition 2½ may be important in understanding legislative compliance and their continued resistance to using the standard loophole to statutory reimbursement — the explicit exemption. While the Massachusetts legislature clearly did not wish to obligate itself to fund its mandates, it has, by and large, done so. Legislative compliance, some charge, is not so much commitment to principle as fear that the voters may act to hold them to a higher standard of reimbursement than the one they have imposed upon themselves.

## Michigan

Michigan voters passed a tax limitation amendment, called the Headlee amendment, in the November 1978 general election. Headlee was primarily intended to limit the growth of the state budget to approximately 10 percent per year. It also included a provision to ensure that state revenue shared with localities remain a fixed percentage of the state budget. The mandated cost provision of the Headlee amendment was not really intended to address the controversy over unfunded mandates, but to prevent the state legislature from evading their responsibility under the amendment to keep spending down to 10 percent growth by shifting responsibility for state programs down to the local level. As such, it was not seen at the time as a pro-local provision as much as an anti-state spending provision. Nonetheless, the language of Headlee seems to require the state to reimburse any increased local costs arising from state action.

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of local government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of local government unless a state appropriation is made and disbursed to pay the unit of local government for any necessary increased costs.

Because the Headlee amendment included a limitation on the rate of growth of local property taxes, the reimbursement provision was seen as necessary to offset the adverse impact on local government. Localities would be required to roll back property taxes when the state equalized valuation of property in the locality exceeded a certain rate of growth. Additionally, all tax levies not authorized by the state under the amendment would have to be approved by the voters in the locality. In return, the state would guarantee that the fiscal 1979 proportion of state revenue going to local governments (41.6 percent) would remain stable and that no new duties would be imposed upon localities unless the state appropriated funds to cover their increased costs.



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The Local Government Claims Review Board was created within the Department of Management and Budget to facilitate reimbursement. Local governments that suffer increased costs because of state service or activity requirements may file a claim with the department not more than ninety days after the close of the local government's fiscal year. The department reviews the request and determines whether it is allowable and how much should be reimbursed. Disallowed claims include federal mandates, offsetting savings, costs recoverable from external aid, and nonsubstantive changes in existing service or activity requirements. Reimbursement for any mandate may be waived by a two-thirds majority in both houses of the legislature or through the declaration of an emergency. If localities contend that reimbursement was not made or not adequately made, they can appeal to the Local Government Claims Review Board. The Board has nine members, four of whom are local government representatives. They hear disputed claims and decide by majority vote whether a claim should be paid. If they decide in favor of a claim, the legislature must approve the payment by concurrent resolution.

The reimbursement process has never been used in Michigan. The enabling legislation requires the legislature to adopt joint rules to identify mandates that are eligible for reimbursement. No rules have been adopted, so no legislation is ever identified as a mandate. Without such identification the Department of Management and Budget cannot review claims and the Local Government Claims Review Board cannot hear disputes. The Local Government Claims Review Board has met only once, in June 1985, and determined that until joint rules are passed in both houses of the legislature there can be no review and appeals process under Michigan law. The legislature continues to enact unfunded mandates without any statutory constraint in the absence of identification rules for state mandates to Michigan localities. Michigan counties have three pending legal challenges to the Headlee amendment and are anxious for a ruling. On the other hand, the counties are sure an appeal will follow any ruling and do not anticipate any major changes in the near future.

## Missouri

Missouri's voters approved a constitutional limitation on local government taxes and fees on November 4, 1980. The amendment provided that:

> Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of the county or other political subdivision.



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If the assessed value of property subject to the tax increases more than the general price level of the previous year, the localities must roll back the increase in reduced tax levels.

Section 21, approved on the same ballot, provides, "The state is hereby prohibited from reducing the state financed portion of the costs of any existing activity or service required of counties or other political subdivisions. A new activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased cost."

Although the provision has been quite effective in stopping unfunded legislative mandates, Missouri localities report that new mandates come from state agencies that either stop or reduce funding for programs and services but require the same or increased level of local activity. The localities also contend that reimbursement is sometimes insufficient, attributable to the fiscal note process. Missouri's Office of Fiscal Affairs typically forwards the fiscal note to the state agency affected by the rule or law for cost estimates. If the agency favors the rule, the cost estimates are low; if the agency opposes it, the cost estimates are high. While it is not a politicized process, thanks to the influence of the legislature, it is (more accurately) a bureaucratized process that sometimes operates to the detriment of both the legislature and the local governments.

## Montana

The Montana reimbursement plan is unique. The Drake amendment, passed in 1979, prohibits the Montana legislature from enacting mandates unless they provide for payment. Since 1979, the legislature has never failed to provide for payment for any mandate. It simply authorizes the local government to create a separate mil levy to pay for the mandate. The legislature, however, does not mandate with any frequency. Years sometimes pass between mandates, according to both the municipal and county associations. But both associations expressed concern for the future. A new state imposed property tax freeze may inhibit the state from authorizing a local levy to pay for new mandates. The question, according to local officials, is whether the state will appropriate money of its own or require the localities to absorb the cost of new mandates within their existing levies.

## New Mexico

In 1984, the voters of New Mexico passed a constitutional amendment requiring the state to pay for mandates by a margin of 220,101 to 64,884. The amendment permits the localities to disregard mandates for which reimbursement is not provided.



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> Any state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new finding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed.

One of the strongest features of New Mexico's reimbursement provision is that it covers agency rules and regulatory mandates. One of the weakest features is that the determination of a mandate and the reimbursable cost is left to the district court that hears the challenge. New Mexico localities would prefer the agency involved with the new mandate do the cost estimates with local input. The courts are expensive and ill equipped to render precise cost estimates. On the whole, New Mexico localities are pleased by the results of the 1984 initiative. Only one unfunded mandate has been enacted in recent years, and it was not costly.

## Rhode Island

Rhode Island's statutory reimbursement provision defines a mandate as " any state initiated statutory or executive action that requires a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenue sources where the expenditures are not otherwise reimbursed in whole of in part." Further, the statute does what no other has done regarding federal mandates: It acknowledges that the state may exceed minimum standards imposed by the federal government, and that when the state does so, the action may appropriately be considered a state mandate or a partial state mandate. If the federal standard is discretionary and the state makes it mandatory, a state mandate exists. Where the federal standard is exceeded by state standard, the portion of the standard exceeded by the state is reimbursable. Finally, any state augmented federal mandate that costs less than $500 is not reimbursable.

There are further exclusions to Rhode Island's general reimbursement provision. They are: mandates on holding of local elections, due process, conduct and notification of public meetings, administrative and judicial review of local actions, protection from local malfeasance, and requirements on local financial administration (including the levy, assessment and collection of taxes). Mandates not subject to these or the federal requirements exemptions are reimbursed in the fiscal year following the review of their costs.

The Office of Municipal Affairs of the Department of Administrations, a legislative office, is responsible for administering the reimbursement program. Rhode Island does not have counties. The office reviews each adopted law for a mandate, identifies reimbursable costs, makes the rules governing municipal reimbursement requests, and forwards the reimbursement requests to the State Budget Office to be appropriated in the next state budget.



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Between 1986 and 1990, the total statewide reimbursement for eligible mandates was $225,000, only a fraction of the cost of imposed mandates. However, much of the mandating activity has come in the field of personnel and pension mandates on local employees, and constitutes an adjustment of existing mandates rather than enactment of new mandates. These adjustments are costly to Rhode Island municipalities. Further, the municipalities do not appear to avail themselves of the reimbursement process for mandates that may be reimbursable. In 1990, only one-third of affected municipalities formally requested reimbursement. Municipal officials suggest that the reason may be that those mandates that are the most burdensome are not reimbursable, and those whose costs are more easily absorbed by the localities may be reimbursable.

While reimbursement may not be working perfectly in Rhode Island, the fiscal note process has been very effective in reducing the number of new mandates. The Office of Municipal Affairs is responsible for the preparation of a fiscal note on each law and agency rule within ten legislative days from the day of the request. These notes must show the impact on each of Rhode Island's thirty-nine municipalities and may not describe costs by words; a dollar estimate is mandatory. The results are reliable estimates produced in cooperation with the municipalities that are taken very seriously in legislative debate. Additionally, an annual report of legislative and agency mandating activity, including these cost estimates, is published by the Department of Administration each year.

## Tennessee

Article II of the Tennessee constitution provides that "no law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state share in the cost". Curiously, this is one of the weakest constitutional reimbursement requirements, and yet it is one of the most effective in preventing new unfunded state mandates. The provision is weak in that it only requires the state to share in the cost, not absorb it, and in that it is limited only to general laws, not agency rules. Further, it defines a mandate as an increased expenditure. That definition has been seen to limit effective reimbursement as laws requiring more intense use of existing local resources are excluded from consideration.

Tennessee's constitutional provision works because it is backed by a strong administrative process and effective lobbying by Tennessee's local government associations. The Office of Fiscal Review, a legislative office, attaches a fiscal note to every bill that has a local cost. The city and county associations work together to ensure that the legislature is aware of the cost and to facilitate an equitable cost sharing arrangement with the state. While the cost estimates may sometimes be politicized and the subsequent sharing arrangement less than equitable, Tennessee's localities are generally accepting of the process and its outcomes. That acceptance has been bolstered by increases in state-shared taxes that have been perceived by both state and local officials as compensation for mandates.



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Tennessee localities report that the psychological impact of the constitutional provision and the strength of their coalition have been more effective in stopping unfunded mandates than the reimbursement provision. However, the Tennessee reimbursement requirement excludes all agency rules. Local officials contend that state and federal regulatory policy has been fiscally burdensome in the past and predict that it will become more burdensome in the future. They also acknowledge that the constitutional provision is not adequate to protect them should the state's fiscal conditions worsen and the legislature seek to shift service responsibilities to the localities without adequate compensation.

## Washington

Initiative 62, passed by Washington voters in November 1980, was a statement by the citizens of the state against government in general, and state government in particular. Its statement of intent asserts:

> (1) The continuing increases in our state tax burden and the corresponding growth of state government is contrary to the interest of the people of the state of Washington.
>
> (2) It is necessary to limit the rate of growth of state government while assuring adequate funding of essential services, including basic education as defined by the legislature.
>
> (3) It is therefore the intent of this chapter to:
>
> > (a) Establish a limit which will assure that the growth rate of state tax revenue does not exceed the growth rate of state personal income;
> >
> > (b) Assure that local governments are provided funds adequate to render those services deemed essential their citizens;
> >
> > (c) Assure that the state does not impose, on any taxing district, responsibility for new programs or increased levels of service under existing programs unless the costs are paid by the state;
> >
> > (d) Provide for adjustment of the limit when costs of a program are transferred between the state and another political entity; and
> >
> > (e) Establish a procedure for exceeding this limit in emergency situations.



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Surprisingly, the mood of Washingtonians was decidedly anti-state government without extending to anti-local government. Both state and local officials attribute this, at least in part, to the regional heritage of strong government at the local level and minimal scope of local services — corresponding to the preferences of local residents. In that spirit, the initiative further provided that state government should not transfer programs to the local level unless it was prepared to have the state budget reduced by the amount appropriated for that program. And finally, Initiative 62 required that the proportion of state revenue shared with localities should not be reduced beyond the 1980 level unless the state budget itself is decreased or unless an emergency exists. A two-thirds vote of the legislature is required to declare a fiscal emergency that would suspend any provision of Initiative 62.

Since 1980, state-imposed mandates have been offset by state-shared revenues to the extent that there has been no net cost to localities for mandates. In 1989, some changes to Initiative 62, all favoring localities, were made. The taxing authority of the localities was increased, and the formula for state revenue shared with localities was increased as well. Washington localities report that the revenue from the state exceeds the cost of mandates by many times.

## Summary and Conclusions

Reimbursement requirements are not a guaranteed cure for the mandates problem. While local governments in some states have had positive results from their reimbursement programs, others report that unfunded mandates persist. One of the more common complaints from localities in states with reimbursement programs is that circumvention of the intent of the constitutional amendment or loopholes in the statutes create the impression that the state legislature is not acting in good faith. As is the case with the effectiveness of fiscal note requirements, it appears that the context of state-local relations is more important to understanding the end result of reimbursement legislation than the provision of the legislation itself. Table 9 summarizes the features of reimbursement provisions in the states and the local assessment of their effectiveness.

Local governments in California, Missouri, Rhode Island, and Tennessee find that their reimbursement provisions are not equal to the task of stopping unfunded mandates, but generally work toward inhibiting them. California has, arguably, the strongest reimbursement program. Its limitation is that only mandates that would adversely affect local property taxes are reimbursed. Those that may be funded by other local revenues are not subject to reimbursement. The Illinois and Michigan programs are strong on paper but weak in practice. Local governments in both those states point to lack of legislative will to be bound by reimbursement provisions as the impediment to their programs. Hawaii and Montana find that the reimbursement is adequate as far as it goes. In Montana, the legislature permits the local governments to raise property taxes to pay for the mandates. In Hawaii, the state's participation in cost sharing arrangements varies with the type and expense of the mandate enacted. Florida, Louisiana, and Maine are still unknowns. The Florida amendment is



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**Table 9**
**Selected Features of State Mandate Reimbursement Requirements, 1991.**

| State | Source | Local Assessment of Effectiveness | Estimated Unfunded Mandates per Session |
|---|---|---|---|
| California | Constitutional | Moderate; is no barrier to locally funded state initiatives, but not circumvented | 43 |
| Florida | Constitutional | Unknown; implementation language not yet enacted | ? |
| Hawaii | Constitutional | Variable;state share of program cost determined at state's discretion | 2 |
| Illinois | Statutory | Poor; most mandates designated as not subject to reimbursement provision | 17 |
| Louisiana | Constitutional | Unknown; amendment passed in 1991, no implementation language | ? |
| Maine | Statutory | Unknown; amendment to take effect next legislative session | ? |
| Michigan | Constitutional | Very poor; no mandates reimbursed since reimbursement enacted | 25 |
| Missouri | Constitutional | Poor; administrative mandates exempt and cost sometimes underestimated | 1 |
| Montana | Constitutional | State permits localities to raise tax rates to pay for mandates | 2 |
| New Mexico | Constitutional | Good; state has only enacted one mandate and it was inexpensive | 0 |
| Rhode Island | Statutory | Moderate; most expensive mandated programs often excluded | 7 |
| Tennessee | Constitutional | Moderate; primarily important for its psychological value, is a good bargaining position for localities | 3 |
| Washington | Statutory | Good; state shared revenue exceeds total mandate costs | 0 |



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strong. With equally strong implementation language it could emerge as the reimbursement model for the nation. Louisiana's amendment may be weakened by legislative interpretation of providing for payment for mandates as permitting the localities to raise taxes to pay for them. Finally, the two states in which the local governments consider reimbursement to be working the most effectively are not the states that have the strongest reimbursement provisions. But they are states with strong local lobbying coalitions and generally good state-local relations. Strategies to improve local responses to unfunded mandates, both new and existing, will be the focus of the next chapter.



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United States General Accounting Office

GAO

Report to the Honorable
Dave Durenberger, U.S. Senate

September 1988

# LEGISLATIVE MANDATES

## State Experiences Offer Insights for Federal Action

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GAO/HRD-88-75

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# States Requiring Local Cost Estimates and Mandate Reimbursement

| State | Requires: Estimate of local cost burden | Requires: Mandate reimbursement | Legislature considered a reimbursement requirement |
|---|---|---|---|
| Alabama | X | | |
| Alaska | | | X |
| Arizona | X | | X |
| Arkansas | X | | |
| California | X | X | |
| Colorado | X | X | |
| Connecticut | X | | X |
| Delaware | X | | |
| Florida | X | X | |
| Georgia | X | | X |
| Hawaii | | X | |
| Idaho | X | | X |
| Illinois | X | X | |
| Indiana | X | | X |
| Iowa | X | | |
| Kansas | X | | |
| Kentucky | X | | |
| Louisiana | X | | X |
| Maine | | | X |
| Maryland | X | | |
| Massachusetts | | X | |
| Michigan | X | X | |
| Minnesota | | | X |
| Mississippi | | | |
| Missouri | X | X | |
| Montana | X | X | |
| Nebraska | X | | X |
| Nevada | X | | |
| New Hampshire | X | X | |
| New Jersey | X | | X |
| New Mexico | X | X | |
| New York | X | | X |
| North Carolina | X | | |
| North Dakota | X | | |
| Ohio | X | | |
| Oklahoma | | | X |
| Oregon | X | | |
| Pennsylvania | X | | X |

(continued)



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| State | Requires: Estimate of local cost burden | Requires: Mandate reimbursement | Legislature considered a reimbursement requirement |
|---|---|---|---|
| Rhode Island | X | X | |
| South Carolina | X | | |
| South Dakota | X | | |
| Tennessee | X | X | |
| Texas | X | | X |
| Utah | X | | X |
| Vermont | X | | X |
| Virginia | X | | |
| Washington | X | X | |
| West Virginia | X | | |
| Wisconsin | X | | X |
| Wyoming | | | |
| **Totals** | **42** | **14** | **18** |

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# Types of Mandates Excluded From State Reimbursement in Six States

In six of the seven states reviewed, we found certain types of mandates that are formally excluded from state reimbursement. This appendix details the general and specific types of mandates excluded from reimbursement by each state.

## General Exclusions

The following types of mandates generally are excluded from reimbursement by most states we reviewed:

- Federal,
- Court,
- Voter-approved, and
- Local government-requested.

## Specific Exclusions

In addition to the general exclusions allowed by most states, each state has specified that certain types of mandates are not state-reimbursable. The principal exclusions are as follows:

### California

- Cost-savings mandates,
- Self-financing mandates,
- Mandates enacted prior to January 1, 1975, and executive orders or regulations initially implementing legislation enacted prior to January 1, 1975,
- Mandates defining a new crime or changing an existing definition of crime, and
- Mandates applicable to both public and private sectors (based on recent California Supreme Court decision).

### Florida

- Mandates affecting schools or other special districts, and
- Mandates applicable to specific local governments.

### Illinois

- Mandates with no net cost increases,
- Cost-savings mandates,
- Mandates with costs recoverable through federal, state, or external aid,
- Mandates costing less than $1,000 per local government or less than $50,000 for all local governments,
- Local government organization and structure mandates, and
- Due process mandates.



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| | |
|---|---|
| Massachusetts | • Retirement and group insurance mandates,<br>• Mandates affecting county and regional jurisdictions,<br>• Criminal laws or civil violations, and<br>• Penalties imposed by a state agency on a municipality due to violation of a law that resulted in hazard to the public. |
| Michigan | • Mandates applicable to a larger class of persons or corporations, such as the private sector, and not exclusively to local governments (public sector),<br>• Mandates increasing salaries of circuit and probate court judges,<br>• Mandates benefiting or protecting public employees of local governments, and<br>• Due process mandates. |
| Tennessee | • Mandates applicable to specific local governments. |
| Colorado | • No specific exclusions listed. |



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# Specific Definitions of Mandate Reimbursement Requirements in Seven States

The definitions of mandate reimbursement requirements vary by state. This appendix contains the specific definitions of mandate reimbursement requirements in the seven states we reviewed.

## California

Article XIII B, section 6, California Constitution: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

## Colorado

Section 29-1-304, Session Laws of Colorado 1981: "(1) Every action by the general assembly which mandates a new program or the expansion of an existing program subsequent to July 1, 1981, upon a unit of local government shall either: (a) Provide sufficient state general fund appropriations to meet the cost thereof; (b) Provide for a local source of revenue to meet the cost thereof . . . ."

## Florida

Florida statute 11.076 of 1978: "(1) Any general law, enacted by the Legislature after July 1, 1978, which requires a municipality or county to perform an activity or to provide a service or facility, . . . . which will require the expenditure of additional funds, . . . . must provide a means to finance such activity, service, or facility . . . . (2) This act shall not apply to any general law under which the required expenditure of additional local funds is incidental to the main purpose of the law."

## Illinois

Chapter 85, sections 2201-2210, Illinois Revised Statutes: ". . . . any State-initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a court other than any order enforcing such statutory or executive action. State mandates may be reimbursable or nonreimbursable as provided in this Act. However, where the General Assembly enacts legislation to comply with a federal mandate, the State shall be



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exempt from the requirement of reimbursing for the cost of the mandated program . . . ."

## Massachusetts

Chapter 29, section 27C, Massachusetts General Laws: ". . . . (a) Any law, rule or regulation taking effect on or after January first, nineteen hundred and eighty-one imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, . . . . unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption . . . ."

## Michigan

Article IX, section 29, Michigan Constitution: "The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs . . . ."

## Tennessee

Article 2, section 24, Tennessee Constitution: ". . . . No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost . . . ."



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# Administration of Mandate Reimbursement Programs

The administration of mandate reimbursement programs varies by state. This appendix details program administration in California, Massachusetts, and Tennessee.

## California

With a few exceptions, the state constitution requires the state to reimburse local government for all mandated costs arising from legislation or regulations that provide for a new program or an increased level of service in an existing program. Local agencies may obtain reimbursement for mandated costs in one of two ways:

1. The legislation initially imposing the mandated activity may contain an appropriation for reimbursement, and local agencies may file reimbursement claims with the State Controller to obtain a share of these funds.

2. If the legislation does not contain an appropriation, the local agency may file a "test claim" with the state's quasijudicial Commission on State Mandates (CSM). The test claim is the first claim that alleges the existence of mandated costs eligible for reimbursement. This claim initiates a fact-finding process that culminates in a decision by CSM. CSM holds several hearings to determine (1) the merits of the test claim, (2) the costs and types of localities eligible for reimbursement, and (3) the estimated amount of reimbursement. If CSM determines that a particular statute or regulation contains a reimbursable mandate, it requests an appropriation from the legislature to reimburse localities for costs incurred since the mandate became operative. If the legislature appropriates funding, the Controller notifies localities of the available funds and gives them guidelines for preparing reimbursement claims. Localities actually do not receive reimbursement until approximately 2 years after the initial test claim is filed.

Whether a mandate is funded through the appropriation or test claim processes, local agencies must annually file detailed reimbursement claims with the Controller for each approved mandate. Reimbursements to local agencies cover the prior year's actual costs and the estimated costs for the current year. These payments may be for total or incremental costs depending on the guidelines certified by CSM.

In 1985, two laws were enacted to reduce reimbursement delays for mandates funded through the appropriation and test claim processes. Under one law, reimbursement for certain ongoing mandates is provided on a block grant basis, with the amount of the grant equal to the average



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amount of reimbursement received during a 3-year base period. This amount is automatically disbursed to local agencies, who will no longer have to file reimbursement claims with the Controller. Under the second law, mandates approved for funding by CSM can be reimbursed from a newly created mandate claims fund, if the mandate's first-year statewide costs are less than $500,000. The amount of this new revolving claims fund is $10 million. Reimbursements from this fund can be made only after local agencies have gone through the test claim process. However, CSM will no longer have to seek funding approval from the legislature.

## Massachusetts

The mandate reimbursement requirement was enacted by statute in 1980 through a voter tax relief initiative. Any law, rule, or regulation taking effect on or after January 1, 1981, is subject to the reimbursement requirement. The Division of Local Mandates (DLM), created within the State Auditor's Office in 1983, is the key administering agency of the reimbursement requirement. It has the authority to determine which statutes qualify for reimbursement by meeting the mandate criteria detailed in the reimbursement provision. DLM reviews a state program at the request of a city, town, or state legislator to determine within 60 days whether part or all of it originated after January 1981, when the reimbursement requirement became effective. If so, the requirement stipulates that the state must appropriate money for the mandate at the same session in which the law was enacted and in each successive year. The requirement also directs the state to pay cities and towns up-front and in full for the costs associated with mandates. The local governments need not comply with a mandate unless and until there is a state appropriation for the mandated provisions. They must, however, petition the courts to permit noncompliance.

DLM makes the final determination as to what qualifies as a mandate; however, the power of appropriation lies with the legislature. Thus, all legislative appropriations concerning mandates are based on DLM determinations. DLM determines reimbursable amounts through either an estimation or a claims process and alerts the state to its obligation through mandate determination reports. The reports are sent to affected local governments, appropriate state agencies, and state legislators. DLM's mandate determinations may be admitted as cost evidence in court should a city or town resort to legal action to recover its costs. In addition to DLM, the state's office of Administration and Finance (A&F) has been directed on three occasions to distribute reimbursable funds to



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affected cities and towns. A&F's role was written into legislative appropriation language for three separate mandates. Both DLM and A&F have required affected communities to itemize estimated and/or certify actual costs incurred in carrying out each mandated program prior to checks being drawn from the mandate appropriation.

## Tennessee

The state constitution specifies that no laws of general application shall impose increased expenditure requirements on local governments unless the state shares in the costs. The state does not have a specific unit that administers the mandate reimbursement program. Local governments are reimbursed for state-mandated costs through either appropriations or state-shared taxes. For reimbursements provided through appropriations, the state agency that oversees the mandated activity is responsible for reimbursing local governments. Reimbursements are allocated to local governments on a formula basis. For reimbursements provided through state-shared taxes, the first $1,000,000 increase over the previous year in state-shared taxes must be made available to municipalities and counties to cover the state's share of mandated costs. However, localities would receive these state-shared taxes regardless of any new mandates imposed by the state. Thus, the state does not provide new funding for mandates when they require local governments to use state-shared taxes as reimbursement for mandated costs. Since state-shared taxes also are allocated on a formula basis, there is no relationship between the cost of mandates and the amount received from shared taxes. Local governments are not required to file reimbursement claims, as allocations are based on formulas.



ATTACHMENT 3-31
1-21-93

CONSTITUTIONAL
RESOLUTION

# STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

S.P. 42 - L.D. 66

**RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities**

**Constitutional amendment. RESOLVED:** Two thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of Maine be proposed:

**Constitution, Art. IX, §21** is enacted to read:

Section 21. State mandates. For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the votes of 2/3 of all members elected to each House. This section must be liberally construed.

; and be it further

**Constitutional referendum procedure; form of question; effective date. Resolved:** That the city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a general election, at the next general election in the month of November following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:



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"Shall the Constitution of Maine be amended to require the State to fund any state mandates imposed upon a municipality by statute, by executive order or by rule?"

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal voters are in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on the date of the proclamation; and be it further

**Secretary of State shall prepare ballots. Resolved:** That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.



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Maine Municipal Association

37 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428



# MEMO

TO: Mark Woodward and Todd Benoit, Bangor Daily News
FROM: Christopher G. Lockwood, Executive Director
DATE: October 6, 1992
RE: Mandates Passed In 1992 That Were Specifically Exempted From The Full Funding Provisions Of 30-A MRSA §5684, The Existing Anti-mandates Statute, And Other Examples Of Changes In State Law That Have Either Immediate Or Future Impact On Municipal Costs

Attached is a list of the laws that include specific language to the effect that the actions required are State mandates that impose costs on counties and or municipalities. In each instance the Legislature exempted the State from the requirement to pay the cost of these mandates.

In addition to these mandates the Legislature made a number of a changes in the FY 1993 budget, LD 2185, PL 1992, c. 780, that have an adverse impact on municipalities including a permanent $2.8 million annual reduction in Municipal Revenue Sharing, a change in the formula for reimbursement of forest fire protection expenses, a reduction in fees paid to municipalities for local police attendance as witnesses in court cases, and a cut in the rate of reimbursement to counties for lodging of State prisoners in county jails. These changes amount to a reduction of more than $20 million in State aid to municipalities or in previously existing cost-sharing formulas. In addition, provisions in the concealed weapons permit law, LD 2263, PL 1992, c. 865, resulted in an overall reduction of the amount of fees shared with municipalities from the issuance of concealed weapons permits.

In addition, the Legislature passed two bills that will impose future costs on municipalities. "AN ACT Pertaining to Wellhead Protection," LD 1191, PL 1992, c. 77, has the potential to impose upwards of $5 million in costs on municipalities and local water districts. LD 2308, PL 1992, c. 818, dealing with motor vehicle emission inspection standards, may require municipalities to pay for the cost of motor vehicle emission inspections.

I hope this information is useful. It is intended to illustrate our concern that the existing protection afforded by the statute is insufficient to reduce the continuing flow of State mandated expenditures imposed on municipalities.

Perhaps most disturbing is the recent change in the anti-mandate statute itself that incorporates specific, broad exemptions to the previously existing full funding requirement. The exemption for "routine obligations" alone allows the Legislature to pass on as much as $900,000 in costs to municipalities without even the necessity of adding language exempting the State from the full funding requirement.

The record indicates that without some strong prohibition, the State will continue to enact laws while passing the costs of implementation onto municipalities and local property taxpayers. This will continue to frustrate other attempts to provide local property tax relief, and continue the situation in which Maine is overly dependent on local property tax revenues to fund government both for State and local levels.

I certainly hope that the Bangor Daily News will support passage of Question #9 on the November, 1992, ballot. If I can be of further assistance, please feel free to contact me.

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# 1992 LEGISLATION CONTAINING STATE MANDATES

The following is a list of laws enacted in 1992, that contain State mandates, the operation of which was specifically exempted from the statutory prohibition on unfunded mandates contained in Title 30-A, MRSA, §5684. In each instance a section was added to the law as follows:

> "Notwithstanding the Maine Revised Statutes, Title 30-A, section 5684, any requirements of this Act that result in additional costs to local or county government are not State mandates subject to that section and the State is not required to fund those costs."

LD 1289, PL 1992, c. 863, **AN ACT to Promote Comprehensive and Consistent Statewide Environmental Policy and Regulation.** This Act requires a municipality to retain the services of a professional forester to review any municipal ordinance that regulates timber harvesting. The cost of this mandate was not estimated.

LD 1810, PL 1992, c. 864, **AN ACT to Provide for Dissolution of a Union School or Withdrawal From a Union School.** This Act relates to the procedures to be used by school unions in conducting dissolution elections. The cost of this mandate was not estimated.

LD 2013, PL 1992, c. 749, **AN ACT Regarding Budget Advisory Committees in Hancock County and Lincoln County.** This Act established a budget advisory committee in Hancock County (not Lincoln despite title). The Act imposes certain notice and election requirements on municipalities and the county regarding the membership in the budget advisory committee. The cost of this mandate was not estimated.

LD 2019, PL 1992, c. 862, **AN ACT to Amend the Election Laws.** This Act made several changes in the election law and imposes certain notice requirements on the municipal clerk concerning the activities of political parties. The cost of this mandate was not estimated.

LD 2029, PL 1992, c. 878, **AN ACT to Amend the Maine High-risk Insurance Organization Laws.** This Act requires employers to contribute to the health insurance premium of high-risk employees. There are additional local costs for paying employee or dependent health insurance premiums for individuals not previously covered that represent a State mandate. These costs were not determined.

LD 2140, PL 1992, c. 722, **AN ACT Regarding Growth Management.** This Act reinstituted the requirement that municipalities adopt comprehensive plans consistent with the previously repealed Growth Management Act. The cost of the mandate was not estimated.

LD 2353, PL 1992, c. 845, **AN ACT to Establish a Supervised Community Confinement Program for Certain Prisoners of the Department of Corrections.** This Act establishes a supervised community confinement program administered by counties. The cost of this mandate was not estimated.

LD 2418, PL 1992, c. 776, **AN ACT to Permit Washington County to Establish a Budget Committee.** This Act established budget advisory committee in Washington County. The Act imposes certain notice and election requirements on municipalities and the County regarding the membership in the budget advisory committee. The cost of this mandate was not estimated.

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## *What Maine Newspapers Say*

### A mandate opportunity

"A longstanding effort to make Maine's Legislature more accountable will come to a head this fall. Voters will choose whether to amend the Constitution to require state government to fund any mandates imposed upon a municipality - finally, this issue has been languishing on lawmakers' desks for years . . .

It's not surprising. If the state is required to fund mandates, lawmakers will be forced to be more responsible when spending taxpayers' money, one contributing component in the lock-step march in municipalities' property taxes will be in check and voters will therefore have more local control ...

Forcing accountability is not an easy task . . . But the rising tide of property taxes that is increasingly engulfing homeowners has created an opportunity that voters should not pass up."

Lewiston Sun Journal, June 16, 1992

### Passing the Buck But Not the Bucks

"City councils and town boards across Maine are beginning to feel like the circus performer who balances a heavy pyramid of acrobats on his shoulders.

And well they might. Starting with President Bush and Congress on down through state government spending, there's an unfair game of pass the buck, but not the bucks being paid.

The place it stops — again unfairly — is with local officials and their basic source of revenue: the property tax . . .

Local officials . . . are organizing to fight back. They're calling for an amendment to the Maine Constitution requiring state government to fully fund any new or expanded mandates it imposes on lower levels of government . . .

In terms of improved accountability, the proposal has much to recommend it. At the very least it would give voters a better idea of where improvements in public services — and the costs of implementing them — are originating."

Maine Sunday Telegram, May 26, 1991.

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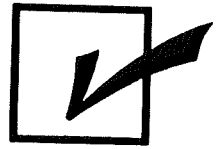
Prepared and distributed by the Maine Municipal Association, 37 Community Drive, Augusta, ME 04330.

The Maine Municipal Association is a voluntary association of 488 Maine cities, towns and plantations. It was founded in 1937 as a non-profit, non-partisan organization for the purpose of strengthening the quality of local government in Maine. The MMA provides a wide variety of services to assist local governments in effectively and efficiently delivering quality services to Maine's citizens.

# Stop Unfunded State Mandates

# Vote



# "YES"

# on Question #9

Session of 1990

# Senate Concurrent Resolution No. 1639

By Committee on Local Government

3-5

A PROPOSITION to amend article 2 of the constitution of the state of Kansas by adding a new section thereto, requiring an election prior to the enforcement of certain enactments of the Legislature.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 2 of the constitution of the state of Kansas is hereby amended by adding a new section to read as follows:

§ 31. **Laws requiring cities or counties to spend funds or limiting their ability to raise revenue or receive state tax revenue.** (a) No city or county shall be bound by any general law requiring such city or county to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: (1) Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a city or county to enact a funding source, not available for such city or county on July 1, 1990, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure, by a simple majority vote of the governing body of such city or county; (3) the law requiring such expenditure is approved by ¾ of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and cities and counties; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by cities or counties for compliance.

(b) Except upon approval of each house of the legislature by

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## What Is Question #9?

Question 9 will appear on the statewide general election ballot on November 3, 1992. It asks voters whether they wish to amend the Constitution to require the State to pay for programs it requires local governments to undertake. The question reads as follows:

> **"Shall the Constitution of Maine be amended to require the State to fund any state mandate imposed upon a municipality by statute, by executive order or by rule?"**

## What is a mandate?

A mandate exists when the State requires local governments to carry out certain policies and programs. The mandate is unfunded when the State imposes the requirement but refuses to pay for it with State tax revenues. Or, to bring it home, a mandate is what your selectman or town councilor is referring to when they tell you: "We have no choice; we have to pass this budget item; the State is making us do it."

## What impact will Question #9 have on the State?

A "YES" vote on this question will amend the Maine Constitution to require the State to fund at least 90% of the cost of future mandates that it imposes on cities and towns in Maine. It will require that if the Legislature adopts a state law that requires municipalities to act, the State must provide sufficient funding for the municipalities to comply with the mandate.

## What impact will Question #9 have on me and my Municipality?

Neither the State nor towns or cities pay for government: the people of Maine do.

A "YES" vote on this question will help stabilize local property taxes, relieve some of the pressure to increase the already overburdened local property tax, and give you and your local elected officials more control over your municipality's budget.

Whenever the State passes programs on to cities and towns without providing money to pay for them, local officials are forced either to increase local spending, thereby raising local property taxes, and/or postpone local spending priorities. The needs of local roads and other important local investments are often put on the back burner to pay for state mandates.

Taxpayers in Bar Harbor, for example, know how much they are paying for state mandates. Their local property tax bills include information about both the positive impact of state subsidies on the tax rate, and about how much higher the taxes are because of state mandates. A recent tax bill in Bar Harbor read as follows:

> **"If it were not for state subsidies, the tax bill would be five percent higher; if it were not for the mandates, it would be 12 percent lower."**

In figuring the impact, Bar Harbor officials included 28 mandated items to come up with their figures.

## Can you give me some examples of state mandates?

- Construction of sand-salt sheds
- Closure of municipal landfills
- Number of pupils in a classroom
- Minimum salary of teachers
- Adoption of shoreland zoning ordinances
- Development of comprehensive plans

## But aren't these mandated projects for the public good?

Yes. But the fundamental issue surrounding mandates is that the government body that makes the law should be responsible for funding it. When the state passes unfunded mandates, it shifts responsibility for both funding and administering the mandate from the state government to cities and towns and their property tax payers. State programs should be funded with State taxes —income and sales taxes --- not the local property tax.

## Does passage of this question mean there will be no State mandates in the future?

No, but it would force the State to establish spending and program priorities, just as cities and towns have always done. If the State has to come up with most of the funding for the laws it passes, it will weigh more carefully whether or how soon a program is needed.

## Does passage of the amendment mean there will be no future unfunded mandates?

No, a provision in the amendment allows lawmakers to sidestep the funding issue if two-thirds of both the House and Senate approve. It will require legislators to be accountable — to go on record in order to impose an unfunded mandate.

## Why do we need a constitutional provision?

A constitutional provision carries more weight than a state law. As recent experience shows, the people of Maine need the protection against unfunded state mandates that only a provision in the Constitution can provide.

Maine does have a law that prohibits unfunded mandates, but it has proven too easy for legislators to ignore. Nine other states, including California, Florida, Michigan and New Hampshire, have constitutional provisions requiring their state governments to share in the cost of mandates imposed on local governments.

# Two Good Reasons Why "Voting Yes on #9" Makes Sense

## Fiscal Responsibility

It establishes a system of fiscal responsibilty for the State. It will require the State Legislature to establish spending priorities based on available state revenues (not local property taxes) and make better informed choices about which new government programs are really most important.

## Property Tax Stabilization and Relief

It is a reasonable and much needed approach to achieve long-term property tax stabilization and relief. The cost of state government, including mandates, should be paid for with a broad-based mix of state taxes. When the State is allowed to impose unfunded mandates on cities and towns, it simply transfers that cost to your local property tax.

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# Making the Connection between Question #9 and Property Taxes

## Did you know?

- Maine municipalities rely on property taxes for 99 percent of their revenues; nationally the average is 74 percent.

- Property taxes comprise the biggest piece of Maine's tax pie: 43 percent, compared to 31 percent for income taxes and 25 percent for sales taxes. The mix nationally averages 37 percent, 30 percent and 33 percent, respectively.

- Between 1985 and 1990, property taxes in Maine rose 76 percent. Between 1989 and 1990 alone property taxes rose 13 percent. Due to recent cuts in municipal revenue sharing and state aid to education, cities and towns are faced with both cutting local services like police and fire protection and continuing to raise local property taxes.

- More than 75 percent of county government is paid for with property taxes. The cost of county government has risen from $14.4 million in 1980 to more than $43 million in 1990, an increase of 297 percent. Much of the increase is a result of unfunded state mandates imposed on counties.

- Unfunded federal mandates are an even bigger burden on Maine's cities and towns which are currently facing a combined cost of $1.5 billion — that's $1,500,000,000 — in order to comply with unfunded federal mandates to filter the source of their drinking water and separate their sewer from their storm waters. These federal mandates will cost more than twice the amount raised annually by property taxes in all of Maine's communities.

- Efforts are currently underway to limit unfunded federal mandates. Question 9 presents Maine voters the opportunity to send a strong message to Washington in support of those efforts.

3/4 of the membership, the legislature may not enact, amend, repeal any general law if the anticipated effect of doing so wo be to reduce the authority that cities or counties have to r revenues in the aggregate, as such authority exists on July 1, 19

(c) Except upon approval of each house of the legislature 3/4 of the membership, the legislature may not enact, amend, repeal any general law if the anticipated effect of doing so wou be to reduce the percentage of a state tax shared with cities a counties as an aggregate on July 1, 1990. The provisions of t subsection shall not apply to enhancements enacted after July 1990, to state tax sources, during a fiscal emergency declared a written joint proclamation issued by the president of the sen and the speaker of the house of representatives, or where legislature provides additional state-shared revenues which are ticipated to be sufficient to replace the anticipated aggregate of state-shared revenues resulting from the reduction of the p centage of the state tax shared with cities and counties, wh source of replacement revenues shall be subject to the same quirements for amendment or repeal as provided herein for a sta shared tax source existing on July 1, 1990.

(d) Laws enacted to require funding of pension benefits existi on the effective date of this section, criminal laws, election la the general appropriations act, special appropriations acts, l reauthorizing but not expanding then-existing statutory author laws having insignificant fiscal impact, and laws creating, m fying, or repealing noncriminal infractions, are exempt from requirements of this section.

(e) The legislature may enact laws to assist in the implem tation and enforcement of this section."

Sec. 2. The following statement shall be printed on the ball with the amendment as a whole:

"*Explanatory statement.* This proposed amendment would e cuse cities and counties from complying with general laws r quiring them to spend funds unless: The law fulfills an import state interest; and it is enacted by 3/4 vote, or funding or fundi sources are provided, or certain other conditions are met. Th amendment would prohibits general laws that have certain negati fiscal consequences for cities and counties unless enacted by 3 vote. This amendment would exempt certain categories of law from these requirements.

"A vote for this proposition would limit the legislature's abili to enact laws which would cause a city or county to spend mor or raise revenue unless certain conditions are met.

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"A vote against this proposition would continue the legislature's power to enact laws affecting cities and counties."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 1990 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

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