

MINUTES

SENATE COMMITTEE ON LOCAL GOVERNMENT

October 13, 1993
Room 521-S -- Statehouse

Members Present

Senator Mark Parkinson, Chairperson
Senator Marian K. Reynolds, Vice-Chairperson
Senator Paul Feleciano, Jr.
Senator U. L. "Rip" Gooch
Senator Audrey Langworthy
Senator Alfred Ramirez

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Staff Present

Mike Heim, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees

Gloria Timmer, Director, State Division of Budget
Chris McKenzie, League of Kansas Municipalities
John Torbert, Kansas Association of Counties

State Mandates

The meeting was called to order by Senator Mark Parkinson, Chairperson, in Room 521-S at 9:10 a.m., on October 13, 1993.

Senator Parkinson recalled that the Committee had heard testimony at the August meeting from conferees from a variety of local units of government with regard to the impact of unfunded state mandates on local units of government. Discussion had followed the testimony regarding possible solutions to the problems created by unfunded mandates which ranged from statutory changes to constitutional amendments. As a result of these discussions, Ms. Kiernan was requested to draft two bills to address the problems, and Senator Parkinson suggested that perhaps tentative action could be taken on the bills at today's meeting.

Ms. Kiernan explained the bills. The first bill, 3 RS 1396, amends the provision that provides exceptions to the tax lid. New Section (1)(f) and New Section 2 exempt local units of government from the tax lid with regard to expenses incurred as a result of state or federal mandates. The second bill, 3 RS 1403, requires that the State Director of the Budget consult with the League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards before preparing fiscal notes for cities, counties, and school boards. Similarly, state agencies must consult with the appropriate association when preparing economic impact statements of proposed rules and regulations.

Gloria Timmer, Director of the State Division of Budget, testified with regard to fiscal notes, in particular, the effect of the second proposed bill on the Division of Budget. Ms. Timmer informed the Committee that her Division is required by statute to prepare notes concerning the fiscal impact of proposed legislation and submit them to the chairman of the committee involved within seven days of the introduction of the bill. Presently, the Division of Budget typically contacts any state agency or association which may be affected by the bill or which may have information affecting the bill before preparing the fiscal note. State agencies routinely have persons assigned to the fiscal note process. It has been less easy to make such contacts with cities, counties, or townships because there is no root place to go. The League of Municipalities and the Association of Counties try to help, but it is also difficult for them to know what the impact will be depending on the size of the municipality or county. In an effort to provide fiscal impact information for the Legislature, the Division of Budget has been working with the League of Municipalities and the Association of Counties to develop a process which will give them a group of people to contact about fiscal impacts on local units of government. It is their hope to develop a corps of contacts that will be able to collect information as soon as possible. It is their intent to train these contacts as to what type of information the Division of Budget needs in order to prepare the fiscal impact notes. This is in the best interest of everyone as it will put a better process in place to work with local governments. Ms. Timmer said her testimony is in response to the second proposed bill, not necessarily in support of it. However, the bill does offer the Division of Budget a desired opportunity in the form of a statute for an improved process for the collection of necessary information in preparing fiscal notes. The Division of Budget already follows the process outlined in the bill except in the case of school boards. She concluded that information networks are needed to insure immediate access to information for the timely preparation of fiscal notes. All bills must be researched, even those that end up having no fiscal impact, therefore, immediate accessibility is needed to provide more precise information.

Chris McKenzie, League of Kansas Municipalities, testified in support of the proposed bills. (See Attachment 1.)

Senator Ramirez raised the question, with regard to example 2 on page 3 of Mr. McKenzie's testimony, how the bill will make it easier to detect hidden mandates when proposed legislation is being considered for passage. Senator Parkinson noted that perhaps this would put an extra burden on the Revisor of Statutes' Office. Senator Feleciano stated that he felt it would not be necessary to look to the Revisor's Office but rather to the fiscal staff of the Division of Budget. Mr. McKenzie stated that the request is merely that the state agencies consult with the League before requesting mandates so that the true impact will be known to the Legislature when bills are considered. Upon further discussion, Senator Langworthy asked what would happen if, by chance, a hidden mandate is discovered after a regulation is put in place. Mr. McKenzie responded that the bill offers no panacea, but it is a beginning of raising consciousness both in the Legislature and the executive branch agencies about the fiscal impact of mandates. It offers a chance for a dialogue between the League and the Legislature.

Senator Feleciano asked what the bill offers which is not already being done through fiscal impact notes from the Division of Budget. Mr. McKenzie said he feels the bill offers good government consultation dialogue and a way to do a better job in creating awareness. It will statutorily put in place basic guidelines requiring consultation as step one in a long journey and will be useful for newly elected legislators in the future. Senator Feleciano asked if the League is prepared to put the proposed network of information in effect if the bill is passed. Mr. McKenzie answered that the League has already started the process and is getting a positive response from cities and counties.

Senator Reynolds asked what the fiscal note and economic impact of this bill would be. Mr. McKenzie could not answer this but agreed that is a question that should be addressed. Senator Reynolds then questioned if the compelling state interest language should be included. Mr. McKenzie said there are no mandates in this bill, therefore, it is not needed.

Mr. Heim began a discussion as to the inclusion of the compelling state interest law in New Section 2 of the tax lid bill. It was explained that if the Legislature would accidentally not include a compelling state interest law, it is possible that a mandate would still be required because the state would make the argument that the more recent action of the Legislature was controlling. A constitutional amendment would be the only possible way to avoid this situation, but even then, the issue of interpretation could cloud the outcome.

John Torbert, Kansas Association of Counties, followed with testimony in support of both of the proposed bills. (See Attachment 2.)

With regard to the exemption of the cost of enforcing a mandate from the tax lid, Mr. Torbert related a problem which has occurred in Rice County as a result of a federal mandate through regulation on solid waste. Rice County did not have the funds or means to obtain funding to enforce a federal regulation regarding their land fill. Therefore, the county decided to consolidate with the landfill of an adjoining county. To do this, it would be necessary to build a solid waste transfer station in Rice County. It was discovered that the transfer station would fall under four to five state regulations and would cost the county approximately a quarter million dollars. This is not exempt from the tax lid, therefore, the county is considering a bond issue which, in all probability, will not be popular with the population of Rice County. This case enforces his contention that counties should be freed from the tax lid when forced to comply with an unfunded mandate. At present, a six-month extension has been granted to Rice County.

Senator Langworthy asked Mr. Torbert if the Kansas Association of Counties could assure that the local county volunteers enlisted to provide information for the fiscal note process would be qualified and responsible. Mr. Torbert answered, yes, they already have volunteers, and it has been explained to them that this is not a task to be taken lightly and it potentially could involve a lot of work. He added that this method will not offer a complete solution, but it will improve the present system by offering a chance to get better data.

Senator Parkinson said that since there is a question about the bill as to whether the Legislature can bind itself later on, there will be hearings on the bill when the Legislature convenes next session. However, he requested that the Committee tentatively act on both of the proposed bills.

Senator Reynolds made a motion to tentatively approve the tax lid bill, 3 RS 1396, Senator Langworthy seconded. Discussion followed.

Senator Langworthy referred to the testimony of Chris McKenzie as to the recommendation on page three to amend Section 2 to require the finding be contained in Section 1 of any bill containing a mandate. Ms. Kiernan said this could be done.

Senator Langworthy made a motion to amend 3 RS 1396 conceptually according to the recommendation by the League of Kansas Municipalities. Senator Ramirez seconded, and the motion carried.

Upon a call for a vote on the original motion by Senator Reynolds, the motion carried as amended.

Senator Feleciano expressed his concern that New Section 2 in 3 RS 1396 might lead to costly litigation.

Senator Feleciano made a motion to tentatively approve 3 RS 1403 and Senator Ramirez seconded.

Senator Reynolds made a substitute motion to amend 3 RS 1403 to make it effective upon publication in the *Kansas Register*. Senator Langworthy seconded, and the motion carried.

Upon a call for a vote on the original motion of Senator Feleciano, the motion carried as amended.

The motion was made by Senator Reynolds and seconded by Senator Langworthy to approve the minutes of August 18, 1993. The motion carried.

Mr. Heim informed the Committee that an interim report will be sent to Committee members with allowance for time to report any errors.

The meeting was adjourned at 11:30 a.m.

Prepared by Mike Heim

Approved by Committee on:

November 29, 1993

(date)



THE LEAGUE OF KANSAS MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Local Government Committee
FROM: Chris McKenzie, Executive Director
DATE: October 13, 1993
SUBJECT: Proposed Legislation Concerning State Mandates

1. Introduction

On behalf of the 538 member cities of the League of Kansas Municipalities, I want to express our appreciation for the Committee's last hearing on the subject of unfunded state mandates and HCR 5018, the constitutional amendment proposed by the League and the Kansas Association of Counties on the same subject. We appreciated the Committee's expressions of concern and interest about what we perceive as a growing problem. That Committee meeting led to some subsequent discussions between the Chairman, Representative Brown, John Torbert and me that were aimed at identifying steps that the legislature could consider taking that would cover some meaningful ground in addressing this growing problem, yet still fall short of a constitutional solution or fix.

We entered the discussions with Senator Parkinson and Representative Brown knowing full well that there are some definite concerns about whether HCR 5018 may move us too far too quickly in the direction of restraining state legislative options in terms of unfunded mandates. Further, there is understandable concern about amending the state constitution without first having attempted some statutory solutions to the problem.

It is in the spirit of encouraging a better dialogue about the effects of unfunded and underfunded state mandates on cities that we appear today in support of the measures that have been drafted and presented to you today. We believe each of these bills helps lay a better groundwork for an improved state-local dialogue before new mandates are enacted or adopted in the form of administrative rules and regulations. Further, one of the proposals (3 RS 1396) provides valuable fiscal flexibility to cities that are faced with an unrelenting stream of federal and state mandates but required to cut other municipal services because of a tight state property tax lid.

In the following sections I will discuss each of the sections of this bill and provide you with concrete examples of how they will improve state-local relations in the area of mandates.

2. Tax Lid; Special Mandate Finding (3 RS 1396)

(a) Section 1--Tax Lid Exemption for Mandated Costs. Section 1 of bill draft 3 RS 1396 would add a new and much needed exemption to the aggregate property tax lid for added expenses "...which are specifically mandated or required by a state or federal law or rule and regulation. In other words, if the federal or state government, acting directly through Congress or the state legislature, or indirectly through one of their administrative agencies, requires a city to increase spending, that amount would be exempt from the property tax lid. Further, the only items this

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would apply to would be those for which noncompliance could trigger a civil or criminal sanction. This would not include discretionary actions by a city, including spending as a match for a state or federal grant. Only the hard core mandated spending would be exempt.

Why should the legislature exempt truly mandated spending from the tax lid? In the first place, it is the just thing to do. Telling municipal officials to increase spending for new mandated programs while at the same time keeping a tax lid in place means local spending priorities must suffer. This includes parks and recreation, police protection, fire protection, and every other municipal function supported by the property tax. In the second place, it will require the legislature to confront the fact that state mandates cost money. During state FY 1994 cities will realize virtually no increase in state aid as a result of last minute budget decisions by the 1993 legislature. What will cities use to fund new state mandates when state aid stays steady or declines: the property tax. Finally, exempting mandates from the tax lid will allow local elected officials to continue to determine local spending priorities for local program priorities. Some city governing bodies may still decide not to raise taxes because of growing mandates. That should be a local decision, however.

(b) Section 2--Finding of Compelling State Interest. One of the hardest parts of trying to raise public and legislative understanding of the growing difficulty of unfunded mandates is that most of us have never met a mandate that we did not like. In the abstract, every mandate can be justified many times over. It is only when you begin to interject the fiscal impact of a mandate proposal that a dose of pragmatic thinking begins to take over.

Section 2 of this bill would require a simple finding before a new unfunded or partially funded state mandate would be binding upon a city. That would be that the legislature finds by law "...that the enactment of such law and the imposition of the mandate without full state funding shall serve a compelling state interest." We respectfully suggest that it is just this type of finding that most Kansans would expect to be made before a statewide scheme of any kind is imposed on elected governing bodies at the local level. In fact, this really captures the essence of the circumstances in which most persons would say an unfunded or underfunded is justifiable--when the circumstances are compelling enough to require such action. Finally, imposing such a statutory requirement would require that the legislature concentrate on both the mandate and its lack of funding before it took effect. As a result, some of the "surprise" mandates we experience from time to time can be avoided.

You may ask yourself whether this is simply window dressing or would it really serve a practical purpose. Let me give you two examples from the 1993 legislative session that have taken us by surprise since the session was over:

Example 1: In 1993 the legislature passed the Underground Utility Damage Prevention Act which requires the owners of underground facilities, including cities which own gas lines and electric lines (but not water or sewer lines) to belong to the state underground facility notification center and to mark any underground facilities which the city owns that may be covered by the act when notification from the center is received that digging will occur in the area. The annual maintenance fee is \$10 per 1,000 population, with a minimum fee of \$200. Municipalities are then charged \$.40 per incoming locate call received in excess of 100 calls per

charged \$.40 per incoming locate call received in excess of 100 calls per year. Emergency calls on weekend or after hours are \$2.00 each plus \$.50 for each additional attempt to notify the municipality. When this legislation passed we were comforted by the fact that water and sewer facilities of cities were excluded. What we did not know, however, is that the electric lines owned by cities which connect traffic signals and street lines are covered. This was totally unexpected.

Example 2: In 1993 SB 423 (Chapter 291, 1993 Session Laws of Kansas) was enacted by the legislature which has been described as "clean-up" legislation for the sentencing guidelines laws. Contained in that bill is a mandate I learned about only as recently as October 3, 1993 which requires that violators of municipal ordinances which are parallel to Class A and Class B misdemeanors have to be finger printed at the time of their first appearance or before final disposition. While this may make sense for purposes of the sentencing guidelines, this is a new unfunded mandate on the approximately 340 cities which operate municipal courts in Kansas since the vast majority of them do not have fingerprinting machines. We learned recently that a typical ink fingerprinting machine costs approximately \$300--which sounds affordable. This means, however, that in order to comply with this law that over 300 such machines would have to be purchased--approximately \$90,000. In addition to the capital costs, however, you must have a trained operator, for which we haven't yet calculated the cost. When we tell these cities this good news you can imagine the reception it will get. By the way, an automated fingerprinting machine (which does not require a trained operator) costs approximately \$87,000.

Section 2 would require that the legislature make an explicit finding before mandates of this type become binding on a city or county. Given the surprise with which both of these mandates were received by us and cities across the state, a requirement for such a finding seems eminently sensible and desirable. Only when the legislature make such a finding would the "mandate" be legally binding.

RECOMMENDATION: We recommend that Section 2 be amended slightly to require the finding be contained in Section 1 of any bill containing such a mandate. In that manner the legislative bodies considering the legislation would have a reasonable chance of detecting the presence of a mandate in a bill before voting on it.

3. Fiscal Notes; Economic Impact Statements (3 RS 1403)

One of the more frustrating aspects of working to address the problem of unfunded federal and state mandates is that there is so little reliable information on the local cost of mandates. Some existing state statutes require state agencies charged with the preparation of fiscal notes on proposed legislation (Division of Budget) and economic impact statements by state agencies charged with the development of proposed administrative rules and regulations (most state agencies) to look at the fiscal consequences of legislative or administrative mandates. Unfortunately, due to the press of time and lack of familiarity with local government, little meaningful information is produced through the existing process.

Bill draft RS 1403 would begin to address that problem in the following ways:

(a) Section 1--Consultation With Local Government Organizations on Fiscal Notes. Currently the Division of Budget is required by K.S.A. 75-

(a) Section 1--Consultation With Local Government Organizations on Fiscal Notes. Currently the Division of Budget is required by K.S.A. 75-3715a to prepare a fiscal note for "...all bills increasing or decreasing state revenues or the revenues of counties, cities and school districts, making state appropriations or increasing or decreasing existing appropriations or the fiscal liability of the state, or imposing functions or responsibilities on counties, cities and school districts which will increase their expenditures or fiscal ability." While this provision is noble in its intentions, it is a difficult requirement with which to comply fully because neither the Budget Division nor any other state agency can prepare such fiscal notes without direct local government assistance.

The proposed amendment to this section would require the Budget Division to consult directly with the League, the Association of Counties and the Kansas Association of School Boards when preparing such fiscal notes. It then would be up to us to provide the Budget Division with information about the fiscal impact of the proposed bill. The League is presently in the process of establishing a team of municipal analysts who will assist the Budget Division with this task. While the Budget Division currently endeavors to consult with our associations on such matters, this amendment would formalize that practice. Furthermore, it will require more direct assistance by our organizations in assisting with the development of fiscal notes affecting local government coffers.

(b) Section 2--Consultation With Local Government Organizations on Economic Impact Statements. Current state law requires state agencies to prepare economic impact statements prior to the issuance of administrative rules and regulations. The purpose of this requirement apparently is to require more careful thought by administrative agencies prior to the issuance of rules and regulations that will have an adverse economic impact on private persons, other governmental agencies, consumers, etc. This section would require that in the preparation of such statements that state agencies consult with the League, KAC, and KASB in the same manner as would be required of the Budget Division in Section 1.

Such direct consultation should even lead to the development of improved regulations, as the League's experiences with consultation with KDHE and the Kansas State Historical Society on proposed regulations in the last year have demonstrated. The dialogue we have been able to have on both the proposed Surface Water Quality regulations and the proposed historic preservation regulations has significantly improved both sets of proposed regulations and softened their fiscal impact on cities. Direct consultation of the type proposed in Section 2 would hopefully lead to the development of a similar network of local fiscal analysts who will assist state agencies with fiscal assessments of proposed rules and regulations.

4. Conclusion

At this stage of my testimony some of you may be wondering why I am supporting these two measures when the League's real agenda is to advocate passage of HCR 5018. I want to stress that passage of HCR 5018 and its submission to the voters is one of our major priorities. We are willing to work on these and other shorter range "solutions", however, because we know the problem of unfunded mandates will only really be solved by a joint effort by the legislature, Congress and local government. As the representative of your partners in the intergovernmental system, we are receptive to any sincere proposals that may begin to address the serious

receptive to any sincere proposals that may begin to address the serious imbalance in our federal system of government that has been created by unfunded and underfunded mandates. We believe these proposals are the result of a good faith effort to address that problem. They are not panaceas any more than HCR 5018, but they represent a step in the direction of solving the problem.

Fort Scott City Commissioner Nancy Maze, a League Board member, recently captured our position on unfunded mandates so well when she said: "You shouldn't pick the tune on the jukebox unless you've plugged it with your money." We respectfully suggest it is time for legislative action on this important subject. These bills will not stop the state from spending local tax dollars to comply with mandates, but they will make the process a bit more rigorous than it is currently.

Thank you for your consideration.



"Service to County Government"

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Executive Director

John T. Torbert, CAE

October 13, 1993

Testimony

To: Senate Local Government Committee

From: John T. Torbert, CAE
Executive Director

Subject: Mandate Legislative Package

The Kansas Association of Counties is in favor of the proposed mandate legislative package.

Of the two proposals, the one that provides an additional tax lid exemption for state and federally mandated costs is of the most immediate importance. We simply feel that if another level of government is going to require us to do something, we should at the very least have a tax lid exemption that would allow us to fund for that expense within our budgets.

As the state and federal governments have seen increasingly tight budgets, the result has been the tendency to pass costs down to the city or county level. In just the past few years, the state has enacted a new community corrections program, passed on new requirements on juvenile detention and more recently, enacted sentencing guidelines. All of these have had cost impacts on county budgets. At the federal level, in very recent history, we have seen "motor voter", the Americans with Disabilities Act and the new Subtitle D regulations on landfills. We are not sure what impact the new national health care proposals will have on county budgets but I think there is concern that there will be the potential of increased costs. There is also national legislation that has been introduced that would require local governments to be brought under the jurisdiction of OSHA - most certainly at an increased cost. For all of these reasons, and others too numerous to mention, we feel very strongly that there should be a tax lid exemption for mandated costs. It is an issue of simple fundamental intergovernmental fairness.

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Attachment 2

The other key part of this particular proposal is that the legislature would have to make a "finding" of compelling state interest before approving a mandate. This has no real impact in the overall scheme of things other than to call your attention as legislators to the fact that a piece of legislation that you are giving strong consideration to for passage may well impose an additional cost burden on the property tax system. This "finding" should be in the very early part of the proposed bill. With mandates, awareness is half the battle. We feel this fosters that awareness.

With respect to the proposal requiring that local governments be consulted on fiscal notes, we think this is an excellent idea. This consultation has been attempted in the past but the results have been hit and miss. We are attempting to find (and have already found) county volunteers that will work directly with the state in preparing local information on fiscal notes. This information would then be generated to the state via computer linkup so that there is no time lost in the process. It is critical that all of you have good financial cost information available to you when passing laws. We think this proposal will assist the state budget director in getting this information to you directly from those that will be most impacted by it.

We think these two bill drafts make a good solid beginning at a statutory approach to dealing with mandates. They do however merely give us ways of dealing with these mandates in a little more orderly fashion. They treat the disease, not the source of the disease. We still think that more needs to be done. Other states have considered and passed mandate legislation and constitutional amendments that makes compliance with that mandate optional if funding is not provided for it. We do feel that the legislature should view this package as a beginning - not an end all solution.

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