

FUNDING STATE AND FEDERAL MANDATES

SUMMARY

This bulletin summarizes developments relating to state and federal mandates. It provides a comparison of how other states currently control and finance mandated programs and outlines recent changes regarding unfunded mandates at the federal level.

In Wisconsin, this topic has been studied since 1980, and the legislature's recent efforts to provide mandate relief for local governments are described in detail.

I. DEFINING THE PROBLEM

State and local governments strive to provide needed services to their constituents. In recent years, they have been forced to confront the added challenge of offering and funding an increasing number of programs that are mandated by a superior level of government, while contending with limited revenue sources. These mandates typically fall in the categories of education, transportation, human services, environmental protection and employment.

In the past, when the federal or state government mandated services, a grant or subsidy was often attached. When budgets shrank in the 1970s and 1980s, there was a tendency to delegate the programs without any aids. As a result, those governments that were required to "do more with less" began to push for mandate control.

One type of control is to require that lawmakers be fully aware of the mandate's costs. In 1953, Wisconsin originated the "fiscal note" to aid the legislative process. This procedure, which has since been adopted by all the states and the federal government, requires that an estimate of related revenues and expenditures be attached to a bill when it is brought before the legislature for consideration. It was assumed that this would serve to limit (or at least slow) the passage of unfunded mandates.

In the last two decades, approximately one-third of the states have taken even more stringent action to implement specific controls on the enactment of mandates, and on January 1, 1996, the Unfunded Mandates Reform Act of 1995 took effect for bills introduced in the U.S. Congress. (Similar restrictions were placed on federal agency regulations in March 1995.)

These various state and federal attempts to limit mandates will be detailed in this bulletin, along with recent action by the Wisconsin Legislature.

II. FEDERAL MANDATES

The U.S. Advisory Commission on Intergovernmental Relations (ACIR) in its preliminary report, *The Role of Federal Mandates in Intergovernmental Relations* (January 1996), noted federal mandates to the states have steadily increased in number since 1960. It observed:

More than 200 separate mandates were identified to ACIR by state and local governments involving about 170 federal laws reaching into every nook and cranny of state and local activities.

The ACIR report, *Federal Court Rulings Involving State, Local, and Tribal Governments: Calendar Year 1994*, identified 3,500 decisions involving state and local governments, relating to more than 100 federal laws. . .

These numbers provide a dramatic picture of the cumulative effects of federal laws on state and local governments. They also confirm the need for better definition of the appropriate working relationships between the partners in the federal system. Relief from existing federal mandates will be especially important if state and local governments are to assume greater responsibilities from federal devolution.

Federal mandate relief has had the bipartisan support of state and local officials and was one of the planks of the House Republicans' "Contract With America". In March 1995, Congress passed and President Bill Clinton signed the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This recent federal law draws on the experience of many of the states and may aid others as they design procedures to deal with local mandates.

A. Legislative Action

The principal purpose of the act is to ensure Congress is aware of the costs of the mandates it votes to impose on state and local governments. Under the act, a "federal intergovernmental mandate" is defined as "any provision in legislation, statute, or regulation that . . . would impose an enforceable duty upon State, local, or tribal governments".

How effective the new law will be is hotly debated. Some consider it a major step forward in deterring unfunded mandates, while others claim that, due to exceptions and loopholes, it fails to enforce financial responsibility.

The legislative section of the act establishes procedures to identify any proposed intergovernmental mandate, estimated to cost \$50 million or more (adjusted annually for inflation) in its first year or in any of the four subsequent years. (Proposals which would cost the private sector \$100 million or more are also covered but are not included in this discussion because they are, by nature, regulations rather than mandates.)

In terms of legislative action, the effect of the reform act is prospective. This means that many costly, unfunded mandates, which already exist, will continue to affect state and local

governments. The exception would be a mandate that is amended or reauthorized resulting in a net decrease of funding relative to the services required.

The act provides different requirements for authorization bills and appropriations bills. In the U.S. Congress, authorization bills create the legal authority for a program to operate, but funding is usually approved through a separate appropriation bill. The authorization bill may, however, create a ceiling for the appropriation.

Exceptions. The act recognizes that some laws are of such national importance that they should be exempted from mandate review, e.g. social security programs, matters of national security, enforcement of constitutional rights, or discrimination prohibitions. The act also provides that mandates associated with voluntary grants are not covered by the act.

Mandate Analysis. If the committee intends that the mandate be partially or entirely unfunded, it must explain why it is appropriate for state and local government to bear the fiscal burden. Some argue that there are situations, such as up-stream pollution, air pollution, welfare assistance, or unemployment compensation, that override governmental boundaries. In these instances, federal mandates may be the solution, and it may be equitable to require states and local units to contribute financially toward resolving problems which arise in their jurisdictions.

The authorizing committee must also evaluate a mandate's costs and benefits in terms of human health and safety; environmental health; the competitive balance between government and private business; and the impact on state, local and tribal laws.

CBO Estimate. When an authorizing committee approves a bill or joint resolution that contains a mandate, the proposal must be accompanied by an estimate from the Congressional Budget Office (CBO), describing the mandate's costs and its funding. In its estimate, the CBO must describe the effect of any newly created authorizations and outline the budget authority that will be required during the first 10 years of the mandate's existence. If the CBO finds the mandate will be less expensive than the \$50 million threshold, or if it is unable to provide an estimate, it must explain why.

When a bill or joint resolution is amended or reported by a conference committee and it includes a mandate not previously analyzed by the CBO, the office is expected to prepare an estimate where possible.

Critics of the act claim it will be difficult to produce thorough analyses. One problem in determining an accurate cost figure is that a federal mandate can affect each state differently, depending on population, tax base, income distribution, technology, natural resources and other varying factors. Another difficulty is that when the federal government does try to

create uniformity, it may lead to needless costs. For example, Nebraska's Governor Ben Nelson questioned why his state must test its water for a pesticide used in raising pineapples.

Some are concerned the CBO may find itself pressured because the newly required estimate serves more than an informational purpose; it can become a political tool for proponents or opponents, who want to promote or stall a mandate.

Point of Order Procedure. The operative part of the act provides that it is not in order for the House or Senate to consider legislative action on bills or joint resolutions reported by an authorizing committee, unless the required CBO estimates are provided. Any provision in an appropriations bill, resolution, amendment or conference report that contains any unfunded intergovernmental mandate is also open to a point of order challenge. The point of order would affect the specific provision, not the entire proposal.

When any of these proposals is presented for floor action, a member may raise a point of order that it is inappropriate to consider it. The mandate then cannot be considered unless the presiding officer rules against the point of order or, in the case of the House of Representatives, a majority vote permits the measure to proceed. In the Senate, if the mandate is stricken from the bill and the point of order is sustained, it cannot be put back in the bill by amendment.

The legislative section of the act, which took effect January 1, 1996, is prospective so it will not affect mandates already enacted, except in the case of reauthorizations. The point of order can be raised against mandate reauthorizations that would result in a net decrease of federal assistance or net increase of costs exceeding the \$50 million threshold.

B. Executive Agency Action

Effective on the date of enactment (March 22, 1995), the act provided that federal agencies must also participate in mandate relief.

Underfunded Mandates. Each federal agency is required to review the mandates under its supervision to decide whether sufficient funding is available. If not, the agency must notify the appropriate authorizing committees of Congress within 30 days of the beginning of the related fiscal year. The agency may make various recommendations to the committees. For example, it may reestimate the appropriation after further consultation with state, local and tribal governments and find it sufficient. It may suggest a redesign of the mandate to reduce its cost. Finally it may recommend "making the mandate ineffective" for the fiscal year. Congress has 30 days to consider the recommendations. If it takes no action within 60 days, the mandate is abolished.

Administrative Rules. As part of the administrative rule promulgation process, a federal agency must determine whether a proposed rule includes either an intergovernmental mandate or a private sector mandate that would result in yearly expenditures of \$100 million

or more (adjusted annually for inflation). If so, the agency must submit a cost/benefit analysis and seek the input of the parties affected, particularly small governments. It must also assess the mandate's effect on health, safety and the natural environment, and, if possible, it should analyze future costs and any disproportionate effects on particular regions or communities or the private sector. The agency is expected to review alternative regulations and select the least costly.

Failure of an agency to follow the requirements of the act is open to judicial review. However, the court may only determine whether the proper reports have been filed; it cannot question the quality of the agency's compliance.

C. ACIR Review of Federal Mandates

The ACIR is charged with reviewing and making recommendations to Congress and the President on existing mandates. Its duty is to consider the role of federal mandates as they affect intergovernmental relations and their impact on state, local and tribal governments. Specifically, it must present recommendations for terminating obsolete or impractical mandates, reconciling multiple mandates that impose contradictory or inconsistent requirements, and creating simpler and more flexible mandates. It may recommend temporary suspension of mandates that are not vital to public health and safety, if they create fiscal difficulties for state, local or tribal governments. The report can also include private businesses in its review of the burden of federal mandates, and it may consider the competitive balance between the private and public sectors.

III. STATE MANDATES

In its 1994 publication, *Mandate Relief for Local Governments*, the National Conference of State Legislatures (NCSL) observed that state mandates can frustrate local officials, particularly if state policy restricts the ability of local governments to raise revenue to pay for the mandates. Local officials cite mandates in the areas of personnel policies, environmental standards, service levels, and tax base exemptions as the most troublesome.

To relieve the mandate burden on local governments, states have devised various relief mechanisms, including:

- Restricting the passage of mandates that may have significant fiscal impact on local governments;
- Requiring fiscal estimates of the costs imposed on local governments by prospective mandates;
- Providing state financing of mandate costs;
- Requiring regular legislative review of mandates or providing for their sunset. Currently, nine states provide for the regular review of mandates through a state

advisory body (Colorado, Connecticut, Florida, Iowa, Louisiana, Maryland, Oklahoma, Tennessee, and Utah).

The report recognized, however, that state mandates can be justified in at least three instances:

- They ensure minimum or uniform service levels statewide;
- They raise or maintain employee standards; or
- They implement state social or economic policy objectives.

The methods a state uses to define and control mandates and to reimburse local governments for implementation costs are often complex. According to the ACIR in *State Mandating of Local Expenditures*, a program for the uniform administration of state mandates should have: 1) a precise definition of “state mandate”, 2) mandate classifications, and 3) a mandate restraint policy. The restraint policy may cover such points as inventory and review of existing and new mandates; full or partial reimbursement of mandate costs; and procedural safeguards, including fiscal notes, strict interpretation and an appeals system.

A. Definitions of a State Mandate

Several national groups have attempted to assist states in answering the question of what constitutes a state mandate. The ACIR suggested that a state mandate is “any constitutional, statutory or administrative action that either limits or places requirements on local governments”. The National League of Cities has suggested that a state mandate is “a legal requirement – constitutional, statutory, or administrative – that local units provide a specified service, meet minimum state standards, engage in a particular activity . . . or establish certain terms and conditions of local public employment”. Defining the term “mandate” is a prerequisite to determining the scope of a state mandates program.

B. Mandate Classifications

The ACIR contends the general definition of mandate must be further refined according to the objective of the individual mandate. It proposed the following classifications of state mandates, based on their effects:

Rules-of-the-game mandates relating to the organization and procedures of local government, such as: local government structure; local elections; the designation of public officers and their responsibilities; “due process” requirements; state safeguards to protect the public from malfeasance by local public officeholders; and criminal code provisions.

Spillover (or service) mandates dealing with new programs or enrichment of existing local government programs, such as education, health, hospitals, welfare, environment and transportation.

Interlocal equity mandates requiring localities to act or refrain from acting to avoid injury to or conflict with neighboring jurisdictions. Mandates of this type could include regulatory

and supervisory state roles in such areas as local land use regulations, tax assessment procedures, and environmental standards.

Loss of local tax base mandates where the state removes property or selected items from the local tax base. Examples would be exemption of business inventories from the local property tax base and exemption of food and medicine from the local sales tax.

Personnel mandates that include personnel standards for local employes who carry out state-aided programs; state-established wage levels, hours or working conditions; and mandates affecting retirement benefits.

States will want to tailor their classifications to their actual operations, but determining the broader categories helps focus on the objectives of a particular state mandate and whether it continues to meet its objective over a period of time.

C. Mandates Restraint Policy

In *State Mandates: An Update* (November 1982), the ACIR suggested that the following would provide constructive restraints for state mandates:

- An inventory of existing mandates to ascertain whether they meet a statewide interest.
- A review procedure for weeding out unnecessary mandates.
- A statewide policy objective statement to accompany all proposed state mandates.
- Procedural safeguards within the reimbursement procedure, including fiscal notes, strict interpretation of state-initiated mandates, and provisions for adjustment and appeal to a designated state agency when local governments dispute state payments.
- Full state reimbursement for state mandates if state-imposed tax lids seriously constrain local revenue raising ability.
- A partial reimbursement procedure to compensate local governments for those state mandates that prescribe program enhancement in spillover areas, such as education, highways, health, hospitals and welfare.
- Full state reimbursement for mandates affecting local employe retirement benefits.
- Full state reimbursement to minimize state intrusion into matters of essential local concern – employe compensation, hours, and working conditions.

The ACIR concluded that a program which incorporates these elements would allow lawmakers an opportunity to give more careful and coordinated consideration to the pattern of state mandates than if mandates were developed randomly.

IV. STATE MANDATES IN WISCONSIN

The funding of state-mandated programs or services has been a matter of concern for various governors and the Wisconsin Legislature over the past couple of decades. A variety of approaches to the problem have been proposed and the voters have addressed the issue.

Popular Input. The question of state mandate funding was presented to state voters in separate, county-initiated referenda on the November 6, 1990, ballot. Each of the state's 72 county boards adopted a question of its own choosing, proposing state-funding of state mandates. Some called for a constitutional amendment; others proposed statutory change. Some proposals were retroactive to cover both existing and new mandates; others related only to future legislative action. Statewide, of the 1,166,255 ballots cast on mandate funding, 810,828 (or 69.5%) favored full state funding of program or service requirements imposed on local governments by the state. The referenda passed in 71 out of 72 counties. (Menominee County's referendum failed to meet technical qualifications.)

Gubernatorial Response. Governor Tommy G. Thompson created the Governor's Advisory Council on Mandates on March 19, 1992, in Executive Order 140 and has continued it in subsequent executive orders. The council, which is composed of county board members, officials of the Wisconsin Counties Association, and executive branch officers, is directed to review proposed legislation that would create unfunded mandates and to advise the governor "regarding the best public policy for the taxpayers of Wisconsin". It usually meets once a year and has investigated various mandates affecting counties, such as the funding of county nursing homes, placement of children in juvenile correctional facilities and juvenile court activities.

Legislative Action. In August 1992, Assembly Speaker Walter Kunicki established a Task Force on State Mandates, composed of assembly representatives and public members, to review the mandates imposed on local governments by state statute and administrative rule. After six public hearings across the state, the task force submitted a variety of recommendations concerning existing state-mandated programs and tightening the fiscal estimate process for legislative proposals and administrative rulemaking. The major prospective change it advocated was the creation of a "joint committee on local fiscal impact", which would assist other standing committees by identifying the fiscal impact and program objectives of proposed mandates.

Attempts were made the last three legislative sessions to establish a joint committee such as the task force recommended. Although all of these failed, the 1995 Assembly decided to take a different approach by creating its own Committee on Mandates as a standing committee to review the local costs and impacts of state-imposed mandates. As a result of information attained in committee hearings, 1995 Wisconsin Act 136 was enacted to repeal required reporting on tax-exempt lands held by units of government. The fiscal note attached to the bill (1995 Assembly Bill 240) indicated counties alone would be relieved of the responsibility for reporting on over 19,000 parcels of land.

A major change in state mandate funding was embodied in the County Mandate Relief entitlement program, created by the 1993 Wisconsin Legislature as a component of the state's shared revenue program. The program was proposed in Governor Thompson's budget and enacted in 1993 Wisconsin Act 16 (the executive budget act) and 1993 Wisconsin Act 437 (the executive budget adjustment act). It began in 1995 with an appropriation of \$4,725,200, based on the 1994 fiscal year. For subsequent fiscal years the appropriation increased to \$20,159,000. Under this program, each county receives a payment proportionate to its share of the statewide population in the prior year. The County Mandate Relief payments for each of Wisconsin's 72 counties for the 1996 fiscal year appear in the state map on page 10.

More recent approaches to unfunded mandates, as considered by the 1995 Legislature, include 1995 Senate Bill 297 to create a federal mandate review council in the Wisconsin Department of Administration and 1995 Assembly Joint Resolution 6, relating to unfunded federal mandates and inviting the Wisconsin congressional delegation to appear annually before the legislature to respond to mandate questions. Passage of these measures in the current legislative session appears doubtful, based on time limitations.

V. MANDATE ABATEMENT ACTIVITY IN OTHER STATES

Over the last two decades, approximately one-third of the states have implemented programs directed specifically at the identification, control and reimbursement of state mandates. When legislation is proposed for a state mandates program, its usual objective is to control the creation of mandates and supervise their operation to avoid placing a glut of uncoordinated, unfunded requirements on local governments.

In 1972, California became the first state to enact state reimbursement provisions for certain types of state mandates. By 1978, the ACIR had prepared model legislation for states to use as a possible solution to local government complaints about unfunded state mandates. The following year, Illinois was the first to enact a state mandates law, based on the ACIR model. Since then, an additional 27 states have adopted their own versions, either through statutory enactment or constitutional provisions. Seven states have adopted both types of provisions.

Determination of which state mandates will be reimbursed and how reimbursement will be handled varies from state to state. For example, some states pay for increases in costs, while others pay for increases in service levels. There are states that pay for a mandate on a first-time only basis, while others continue to fund the mandate for its duration. Some exclude certain types of mandates from reimbursement; others reimburse all mandates.

Currently, 28 states have some type of mandate restraint program, established either by constitutional provisions, statutory provisions or both. Of the 28 states, 17 currently provide for the reimbursement of all mandates; nine provide for reimbursement of selected mandates; and Minnesota, Virginia, and Wisconsin do not address this issue. The extent of reimbursement may be full, partial, or a combination of the two.

Alabama. Under the Alabama constitution, no mandate can be enacted unless the local governing body (municipality or county) approves the legislation and the legislation provides new or additional revenues sufficient to fund new or increased expenditures.

Alaska. The Alaska constitution provides that the state legislature may not enact any law requiring funding by a local political subdivision, unless the law is approved by a majority of the electorate in that political subdivision.

California. California was the first state to institute major legislation reimbursing local governments for the costs incurred in providing new state-mandated services. This covered local costs that resulted from: 1) new state-mandated programs, 2) increased service levels mandated for existing programs, and 3) costs previously incurred in a local option program which subsequently was mandated by the state. The program covered mandates resulting from statutory changes or state executive regulations, but not those stemming from statewide initiatives or actions by the federal government or the courts, which local governments were permitted to finance by a change in tax rate. When a bill is introduced, the California Legislative Council decides whether it qualifies for reimbursement.

There is an appeals process against mandates that do not have state funding. Local governments can file a claim with the state's quasi-judicial appeals commission to determine whether the mandate should be reimbursable and to estimate the reimbursable cost. Commission-approved mandates are then submitted to the legislature for approval. If the commission rejects the claim of the local government, a final appeal is permitted to the courts.

In an initiative election on November 6, 1979, the statutory provisions were incorporated into the California constitution. Exceptions were made for certain mandates, including legislative mandates requested by the local agency affected, legislation defining a new crime or changing an existing definition of a crime, and legislative mandates or executive orders or regulations initially implementing legislation which was enacted prior to January 1, 1975. According to the California Legislative Analyst, the purpose of the constitutional amendment is to allow local governments to seek a court order declaring a mandate unconstitutional if the jurisdiction has pursued all available administrative remedies for an unfunded mandate.

Table 1: State Mandate Reimbursement Provisions, By State

State	Type of Definition	Reimbursement Type	Portion of Reimbursement
Alabama	Specific	All	Full
Alaska	Specific	Selected	Full
California	Specific	Selected	Full
Colorado	Broad	All	Full
Connecticut	Specific	Selected	Full/Partial
Florida	Specific	Selected	Full
Hawaii	Broad	All	Partial
Illinois	Specific	Selected	Full/Partial
Iowa	Broad	All	Full
Louisiana	Broad	All	Full
Maine	Broad	All	Partial
Massachusetts	Specific	Selected	Full
Michigan	Broad	All	Full
Minnesota	Specific	—	—
Missouri	Broad	All	Full
Montana	Broad	All	Full
Nevada	Broad	Selected	Full/Partial
New Hampshire	Broad	All	Full
New Jersey	Specific	All	Full
New Mexico	Broad	All	Full
Oregon	Specific	Selected	Full/Partial
Rhode Island	Broad	All	Full
South Carolina	Specific	All	Full/Partial
South Dakota	Broad	All	Full
Tennessee	Broad	All	Full/Partial
Virginia	Specific	—	—
Washington	Broad	All	Full
Wisconsin	—	—	Partial

In 1980 the legislature enacted a “sunset” provision for state mandates. New laws which mandate a local program and require state reimbursement are automatically repealed after six years, unless reauthorized by the legislature.

Colorado. The Colorado Legislature instituted funding for state-mandated programs, beginning July 1, 1981, by requiring that all legislative actions that placed a new mandate on a unit of local government or expanded an existing program must provide for a sufficient state appropriation or a local source of revenue to cover the costs.

According to the ACIR, the Colorado statutory provisions . . . “may be more effective in eliminating hidden mandates than in guaranteeing state reimbursement . . . [because the law] provides lawmakers the alternative of stating explicitly that added costs shall be borne by property tax revenues subject to state and local revenue and spending limits.”

Table 2: State Mandate Restraint Programs, By State

State	Constitutional	Statutory	Year Enacted and/or Revised
Alabama	Amendments 474 & 491		1988
Alaska	Art. 2, Sec. 19		1959
California	Art. 13B, Sec. 6		1979
Colorado	Art. 10, Sec. 20 (9)	Sec. 29-1-304, Colorado Revised Statutes	c: 1992; 1994 s: 1981; 1991
Connecticut		Sec. 2-32, General Statutes of Connecticut	1993
Florida	Art. 7, Sec. 18	Sec. 11.076, Florida Statutes	c: 1990 s: 1978
Hawaii	Art. 8, Sec. 5		1978
Illinois		Ch. 30, Sec. 805/1-805/10, Illinois Statutes Annotated	1979; 1981; 1993
Iowa		Ch. 25B, Iowa Code	1983; 1994
Louisiana	Art. 6, Sec. 14		1991
Maine	Art. 9, Sec. 21	Sec. 5685, Maine Revised Statutes	c: 1992 s: 1993
Massachusetts	Art. 115 of amendments	Ch. 11, Sec. 6B; Ch. 29, Sec. 27c, Massachusetts Annotated Laws	c: 1980 s: 1981; 1984
Michigan	Art. 9, Sec. 29	Sec. 21.231-21.412, Michigan Compiled Laws	c: 1979 s: 1979
Minnesota		Sec. 3.981-3.983, Minnesota Statutes	1985
Missouri	Art. 10, Sec. 21		1980
Montana		Sec. 1-2-112, Montana Code Annotated	1974; 1979
Nevada		Sec. 354.599, Nevada Revised Statutes	1993
New Hampshire	Art. 28a		1984
New Jersey	Art. 8, Sec. 2		c: 1995
New Mexico	Art. 11, Sec. 8		1984
Oregon		Sec. 327.645, Oregon Revised Statutes	1989
Rhode Island		Sec. 45-13-9, Rhode Island General Laws	1980; 1987
South Carolina		Secs. 4-9-55 and 5-7-310, South Carolina Code of Laws	1993
South Dakota		Ch. 6-15, South Dakota Codified Laws	1993
Tennessee	Art. 2, Sec. 24	Sec. 9-6-301 to 9-6-304, Tennessee Code Annotated	c: 1978 s: 1979
Virginia		Sec. 2.1-51-5:1, Virginia Code Annotated	s: 1991; 1993; 1994
Washington		Sec. 43.135.060, Revised Code of Washington	1979
Wisconsin		Sec. 79.058, Wisconsin Statutes	1994

Effective December 31, 1992, the Colorado constitution was amended to include the “Taxpayer’s Bill of Rights”, which stipulates that, except for public education, a local district may reduce or end its subsidy to any program delegated to it by the state legislature, thereby overriding mandated expenses.

Connecticut. The Connecticut state mandate law, passed in 1993, was apparently based on the ACIR model. It provides for a definition of a state mandate, mandate categories, and a review procedure for possible cost reimbursement.

Connecticut defines a state mandate as “any state-initiated constitutional, 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 state court and any legislation necessary to comply with a federal mandate.”

The categories of state mandates are local government organization and structure mandates, due process mandates, service mandates, interlocal equity mandates, tax exemption mandates, and personnel mandates.

Even prior to the 1993 law, proposed mandates had been subject to legislative scrutiny. Since January 1, 1985, any proposal reported by a joint standing committee that might create or expand a state mandate to local governments had to be referred to the joint standing committee responsible for appropriations and the state budget, unless referral was dispensed with by a two-thirds vote of the legislature. Legislative proposals favorably reported by the appropriations committee had to have a recommendation specifying: 1) whether or not the legislative proposal creates or expands a state mandate, and, if so, the type of mandate created; 2) whether or not the state should reimburse local governments for costs resulting from the new or expanded mandate; and 3) if so, which costs are eligible for reimbursement and the level and timetable for the reimbursement.

Florida. In Florida, state mandates are defined as those state actions that impose costs upon local government, either by causing erosion of the local tax base or by requiring the local unit to provide a service or facility. Florida requires that these mandates must be financed by the state.

Effective July 1, 1978, any laws passed by the Florida Legislature that mandate a municipality or county to perform an activity or provide a service or facility that would require additional local expenditures must include an estimate of the total cost and provide a means for financing it. When the legislature determines that a law serves both state and local objectives, the legislature may provide for local revenues to partially finance the activity. (If the expenditure of additional local funds is incidental to the main purpose of the law, state financing is not required.)

In 1990, Florida voters approved a constitutional amendment that protects local governments against the imposition of unfunded mandates. The amendment permits local governments to ignore a state law requiring them to spend funds unless: 1) the law was passed by two-thirds vote of both houses and 2) the legislature has declared the legislation fulfills an important state interest. If these two requirements are not met, the state must appropriate sufficient funds to pay for the mandate or provide a new local funding source.

There are some exceptions to this funding requirement, including laws that involve criminal and noncriminal infractions, funding of preexisting pension requirements, elections, appropriations, and reauthorizing (but not expanding) existing mandates.

Hawaii. The constitution of Hawaii was amended in 1978 to provide reimbursement for state mandates. Specifically, it requires the state to share in the costs of any new program or any increased level of service under an existing program when the change is mandated to any political subdivision by the legislature.

Illinois. Illinois adopted all the major provisions of the ACIR model when the legislature enacted the State Mandates Act, effective on January 1, 1981. The act includes several state mandate definitions based on the ACIR recommendations. State mandate is broadly defined 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. . .” The act classifies state mandates into five groups: 1) local government organization and structure, 2) due process, 3) service, 4) tax exemption, and 5) personnel.

Reimbursement levels are divided into three categories of mandates: service (50-100%), tax exemption (100%), and personnel and pension (100%). If the state fails to appropriate funds to cover the costs of the mandates, local governments are not obligated to implement them.

Certain mandates are excluded from reimbursement if they: 1) accommodate a request from local governments or their organizations, 2) impose no appreciable new costs, 3) impose new costs but create offsetting revenues, 4) impose costs that are recoverable from federal, state or other sources, or 5) impose an additional annual net cost of less than \$1,000 for each of the several local governments affected or an aggregate of less than \$50,000 for all local governments affected. The state can also release itself from the obligation of reimbursing local governments by amending the State Mandates Act, and it has used this release on nine occasions related to tax items.

The State Mandates Act did little to deter legislative passage of new requirements for local governments. According to a 1992 study by the Illinois Department of Commerce and Community Affairs, 326 new state mandates have been enacted since 1981. In November 1992, the Illinois voters approved an advisory referendum which has resulted in introduction of 1996 Senate Joint Resolution Constitutional Amendment 76, currently before a legislative committee. This proposal would amend the Illinois constitution to prohibit the legislature from adopting new unfunded state mandates. Should the amendment be passed by the legislature and approved by the voters as scheduled, it would apply to legislation introduced after November 5, 1996.

Iowa. The purpose of Iowa's state mandate statutory provisions, as established in 1983 and subsequently revised in 1994, is to establish policies, criteria and procedures to govern future state-initiated mandates. Commencing on July 1, 1994, if a new state mandate is not fully funded, the political subdivision is not required to perform the activity or provide the service. A state mandate is defined as activities that necessitate additional combined annual expenditures of local revenue of at least \$100,000 or more, or additional combined expenditures of local revenue of \$500,000 or more within five years of enactment. Cost estimates for legislation containing a state mandate are required when requested. In addition, state agencies can not propose or adopt administrative rules which necessitate additional combined annual expenditures exceeding \$100,000.

Louisiana. Under the Louisiana constitution, except for educational programs, no law or regulation that requires increased expenditures can take effect until the local governing body enacts an ordinance and the legislature provides sufficient funds.

Maine. The Maine constitution, supplemented by statutory law, provides that, commencing November 24, 1992, the state legislature may not require a local unit of government to provide additional expenditures for a specified program unless the law provides for 90% state funding. Mandates include "laws, rules or executive orders that primarily affect the performance of a local unit's governmental activities".

Massachusetts. In November 1980, the Massachusetts voters approved Proposition 2-1/2, a tax limitation initiative measure that amended the state's constitution to prohibit unfunded state mandates. This provision resulted in the creation of statutory law, effective January 1, 1981, related to legislative action that: 1) mandates direct service or cost obligations on cities and towns; 2) grants or increases local tax exemptions; or 3) imposes additional costs through administrative rules or regulations. Any law that does any of these must provide for state funding before being enacted.

The 1981 law attempts to protect cities and towns from mandates which impose more than incidental service or cost obligations upon local governments. However, any city or town may choose to submit to any law or administrative rule or regulation, whether it is state funded or not.

Michigan. Michigan voters in an initiative conducted on November 7, 1978, amended the state constitution to provide for state mandate cost reimbursement. As a result, the state is prohibited from reducing the proportion of expenses it covers for existing state mandates. A new state mandate or an increase in the level of an existing mandate, whether created by legislative or administrative action, must be accompanied by a state appropriation to reimburse local governments.

In 1979, the Michigan Legislature enacted statutory provisions to implement the constitutional change. These prescribed the powers and duties of certain state agencies and public officers with reference to state mandates and provided for the administration of state mandate financing.

Minnesota. In 1985, Minnesota enacted legislation defining a mandate as a requirement applied to “local agencies or school districts and which, if not complied with, results in civil liability, criminal penalty, substantial economic sanction such as loss of funding, or severe administrative sanctions such as closure or nonlicensure of a facility or program.” The law requires fiscal notes when the state proposes that a local agency or school district take an action whereby “reasonable compliance” would result in increased costs. There is no statutory mechanism by which a local government can appeal lack of funding for state-created mandates.

Missouri. The Missouri voters adopted a constitutional amendment in 1980 to provide for state mandate funding. The Missouri constitution prohibits the state from reducing financial support for state-imposed mandates on local governmental units, and it prevents the establishment of additional mandates (new programs or additional services within an existing program) without full state funding. State mandate reimbursement is tied to revenue and expenditure limits as in California’s constitution.

Montana. The statutory provisions for Montana’s state mandate reimbursement, as established in 1974 and subsequently revised in 1979, provide that any law that requires a local governmental unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds must provide for a specific means to finance the mandate. Furthermore, if the legislature fails to provide specific financial means for a state mandate, the law mandating the service or facility does not become effective. The legislature may fulfill the financing requirements through additional state funding or by authorizing increased mill levies, but the financing must be reasonably related to the actual cost. Additional expenditures which are only incidental to the main purpose of the law are exempt from the funding requirement.

Nevada. Under the Nevada statutes, laws which direct local governmental action and require additional funding must specify the source of the additional funding.

New Hampshire. As a result of a 1984 constitutional convention resolution, the State of New Hampshire adopted the following constitutional requirement for state reimbursement of mandate costs:

The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivisions unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities

are approved for funding by vote of the local legislative body of the political subdivision.

New Jersey. The New Jersey constitution, as amended by the voters in November 1995, prohibits the passage of any legislation after July 1, 1996, that would impose unfunded mandates on school boards and local governments. Specific exceptions are provided, however, for mandates that are: required by federal law; uniformly imposed on both government and nongovernment entities; enacted to revise or ease an existing mandate; necessitated by a failure to comply with previously enacted laws; or designed to implement provisions of the state constitution or of laws passed by 3/4s vote of both houses. A bipartisan Council on Local Mandates was established by statute to determine whether an unfunded mandate has been imposed. Legislation to implement the constitutional amendment is currently pending (1996 Senate Bill 2).

New Mexico. On November 6, 1984, the New Mexico constitution was amended to require the state to reimburse costs of mandated programs. It reads:

A state rule or regulation mandating any county or city to engage in a new activity, 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 funding 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.

Oregon. Because programs adopted by the legislature and various state and federal agencies have fiscal and revenue impact on school districts, the Oregon statutes require the state to pay, to the greatest extent possible, an appropriate share of expenses imposed on school districts by mandates.

Rhode Island. Since the early 1980s, under the general laws of Rhode Island, the state must reimburse cities and towns for the state mandate costs. Reimbursement is a three-step procedure:

- 1) The Department of Administration submits an annual report to the State Budget Office indicating, by city and town, the cost of all state mandates established after January 1, 1979.
- 2) The State Budget Office includes a line item appropriation in the annual state budget equal to the statewide total of the reported state mandate costs that must be reimbursed.
- 3) The state treasurer distributes the annual reimbursements to cities and towns for state-mandated costs in accordance with the Department of Administration's report.

South Carolina. State law in South Carolina provides that counties and municipalities are not bound by any general law requiring the expenditure of funds unless the legislature determines that the law fulfills a state interest and a funding source is provided.

South Dakota. Under South Dakota law, except for specific exemptions, no law, rule or regulation creating a mandate on a local unit of government is effective unless sufficient state

funding is provided. The exemptions pertain to conduct of elections; federal requirements; funding the unified judicial system and the welfare system; criminal law; and any law reauthorizing, but not expanding, existing statutory authority.

Tennessee. Under the Tennessee constitution, established in 1978, the state is prohibited from imposing increased expenditure requirements on cities or counties unless the legislature provides that the state share in the costs involved. The Tennessee statutes require that the legislature be given a certified listing of new spending increases within the meaning of the constitutional provision, broken out by incorporated municipality or county. The law also establishes a funding base, which is apportioned to local governments in the same manner as state-shared taxes.

A two-tiered procedure is used to meet the state mandate funding requirement when the cost of any law is estimated to exceed \$50,000:

1) A fiscal note, prepared by the fiscal review committee, indicates whether the legislation imposes an increased expenditure requirement on cities and counties.

2) If it does, the legislation must be amended in committee to indicate the state share of the expenditure. Furthermore, the sponsor of the legislation must also introduce an amendment to the general appropriations act to fund the state share of the cost.

Virginia. Except for educational programs, the governor of Virginia is allowed by statute to temporarily suspend specifically identified state mandates. The governor is required to submit an annual report to the legislature that identifies each locality and petitioning body, the mandate or portion of the mandate for which suspension has been sought, and the response provided to the locality.

Washington. A Washington law, created by an initiative measure in 1979, provides for reimbursement of state-imposed mandates on local governments. The intent is to:

1) Establish a limit which will assure that the growth of state tax revenue does not exceed the growth rate of state personal income.

2) Assure that local governments are provided funds adequate to render those services deemed essential by their citizens.

3) Assure that the state does not impose responsibility for new programs or increased levels of service under existing programs on any taxing district unless the costs are paid by the state.

4) Provide for adjustment of the tax revenue limit when costs of a program are transferred between the state and another political entity and establish a procedure for exceeding this limit in emergency situations.

VI. CONCLUSION

Although the outcome of the federal government's attempt to control unfunded mandates remains to be seen, the states have tried to address the issue both constitutionally and by statute with mixed results. In its survey of seven selected states with mandate reimbursement provisions, the U.S. General Accounting Office (GAO) reported in 1989 that California, Massachusetts, Michigan, and Tennessee believed these provisions had deterred passage of unfunded mandates and fostered modification of proposed mandates thereby reducing local costs. Colorado, Florida, and Illinois, however, felt the provisions had little, if any, impact.

According to GAO, reimbursement requirement provisions are more effective when they are established by constitutional provisions or voter referenda, rather than by statutory enactment. GAO reported that if mandate reimbursement provisions are "simply enacted by statute, it is easy to suspend them by statute, so they tend to be ineffective." Since that report, Colorado (1992) and Florida (1990) have established constitutional provisions to tighten the control of unfunded state mandates, and the Illinois legislature is currently considering a constitutional amendment proposal.

In terms of easing the financial burden on subordinate governments, an alternate approach to limiting new mandates is to increase aids to local governments to fund the existing ones. Wisconsin is trying this approach in the County Mandate Relief entitlement program. Another alternative is to address the local burden by modifying the mandates to have the state assume additional functions from local governments.

State funding of state mandates can be a mixed blessing. Increases in state aid often are accompanied by increased state oversight of local government. Local governments may also experience a significant increase in financial reporting requirements. By linking the state aids to the cost of specific services, it may be more difficult for the local government to achieve tax base equalization and the flexibility associated with general aids.

Despite all these complexities, government leaders at all levels have expressed their hopes that the concerted focus on unfunded mandates by federal, state and local governments will lead to cooperative and innovative solutions.

VII. SOURCES

- California Commission on State Mandates. *Report to the California Legislature – Options to Shorten the Mandate Reimbursement Process*. Sacramento: State of California, September 1987. (352.25/C1)
- California Legislative Analyst. *An Analysis of 21 State Mandated Local Programs*. Sacramento: State of California, January 1982. (352.25/C1a)
- . *State Reimbursement of Mandated Local Costs: A Review of Statutes Funded During [the fiscal year]*. Sacramento: State of California, April 1986. (352.25/C1c)
- Colorado Legislative Council Staff. *Mandates: An Inventory of Federal and State Mandates in Colorado*. Denver: Colorado Legislative Council, June 1993. (352.25/C7)
- Congressional Quarterly, Inc. *Congressional Quarterly Weekly Report*. Washington, DC: Congressional Quarterly, Inc., various issues. (Ref. 328.12/C761)
- Council of State Governments. *The Book of the States 1994-95*. Lexington, KY: Council of State Governments, 1994. (Ref. 029/C83/1994-95)
- Fix, Michael and Daphne Kenyon. *Coping With Mandates: What are the Alternatives*. Washington, DC: Urban Institute. (353.28/Ur1)
- Florida Advisory Council on Intergovernmental Relations. *1993 Intergovernmental Impact Report (Mandates and Measures Affecting Local Government Fiscal Capacity)*. Tallahassee: State of Florida, Advisory Council on Intergovernmental Relations, September 28, 1993. (352.25/F6)
- Illinois Commission on Intergovernmental Cooperation. *Implementation of the State Mandates Act in Illinois*. Springfield: State of Illinois, 1982. (352.25/IL6a)
- . *A Review of the Illinois State Mandates Act, 1981-1985*. Springfield: State of Illinois, 1986. (352.25/IL6)
- Kelly, Janet M. *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*. Washington, DC: National League of Cities, 1992. (352.25/N211)

Note: Numbers in parentheses are catalog numbers for materials in the Dr. H. Rupert Theobald Legislative Library at the Legislative Reference Bureau. Readers are also referred to the clippings filed in the library under *State Supervision of Local Finance* (352.25/Z).

- Maine Legislature. *State Mandates – A Report of the Joint Standing Committee on State and Local Government*. Augusta: Office of Policy and Legal Analysis, December 1987. (352.25/M2)
- Massachusetts Institute of Technology. Impact: 2-1/2 Project. *Proposition 2-1/2: Its Impact on Massachusetts*. Cambridge, MA: Oelgeschlager, Gunn and Hain, 1983. (336.22/M4)
- Minnesota Department of Administration. *A Report Describing the Efforts of the Governor's Task Force to Reduce State Mandates on Local Governments*. St. Paul: State of Minnesota, 1982.
- National Conference of State Legislatures. Legisbrief, *Mandate Relief for Local Governments*. Denver: June 1994.
- . *The Unfunded Mandates Reform Act of 1995*. Denver: January 1996.
- U.S. Advisory Commission on Intergovernmental Relations. *State Mandating of Local Expenditures*. Washington, DC: U.S. Advisory Commission on Intergovernmental Relations, August 1978.
- . *Mandates: Cases in State-Local Relations*. Washington, DC: U.S. Advisory Commission on Intergovernmental Relations, September 1990. (325.25/X3)
- . *State Mandates: An Update*. Washington, DC: U.S. Advisory Commission on Intergovernmental Relations, November 1982. (352.25/X/1982)
- U.S. General Accounting Office. *Legislative Mandates: State Experiences Offer Insights for Federal Action*. Washington, DC: U.S. General Accounting Office, September 1988.
- Wisconsin. Governor's Special Committee on State Mandates. *Final Report*. Madison: State of Wisconsin, 1981. (352.25/W7d)
- . Governor's Task Force on County and Local Mandates. *Report*. Madison: State of Wisconsin, December 1986. (352.25/W7f)
- Wisconsin Legislature. *Report of the Task Force on State Mandates*. Madison: State of Wisconsin, May 1993.
- Zimmerman, J.F. *State-Local Relations: Recent Developments*. Albany: University of New York, 1986. (352.25/Zi6c)
- . *State Mandates on Local Governments*. Albany: University of New York, 1982. (352.25/Zi6a)

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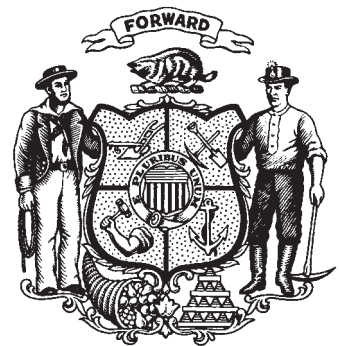


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