

Final Minutes

Legislative Commission on Statutory Mandates Meeting

12:00 noon • Friday, March 20, 2009

Oakland County Executive Office Building • Waterford Room
2100 Pontiac Lake Road, Building 41-West • Waterford, Michigan

Members Present:

Robert Daddow, Chair
Amanda Van Dusen, Co-Chair
Dennis Pollard
Louis H. Schimmel
J. Dallas Winegarden, Jr.

Members Absent:

None

I. Call to Order

The Chair called the meeting to order at 12:28 p.m. and the clerk took the roll. A quorum was present.

II. Approval of the Agenda

The Chair suggested the report from Eric Lupher from the Citizens Research Council be moved to the top of the agenda. **Mr. Pollard moved, supported by Ms. Van Dusen, that the report from Eric Lupher be moved to the top of the agenda and that the meeting agenda as amended be approved. There was no objection and the motion was unanimously adopted.**

III. Citizens Research Council (CRC) Presentation

Mr. Eric Lupher prefaced his presentation by stating that, when he was approached by the Commission to take on this project, his boss thought it was a good idea, but encouraged him to take on the project in a way that CRC could release a Citizens Research Council paper on the issue. Mr. Lupher then continued with a PowerPoint presentation that outlined his paper on reforming the process for identifying and funding Section 29 mandates on local governments. He hopes to have a final paper completed in a couple of months. See the attached document for more details on Mr. Lupher's report.

IV. Discussion of Draft Report

More Ideas and recommendations on how to draft the Commission report were exchanged between the members. Commissioner Winegarden suggested it may be more productive for the Commission to hold a weekend retreat meeting to work on the report line by line if necessary. Commissioner Pollard expressed support for Commissioner Winegarden's suggestion, but noted it may be more helpful to have a more complete draft report put together first. Commissioner Daddow will incorporate Commissioner Van Dusen's comments into the March 20 document, highlight any comments that are not incorporated, and then send the track change formatted document for comments to Commissioners Van Dusen and Pollard by Friday, March 27.

V. Next Meetings

After discussion of some potential dates for the next Commission meeting, the Chair announced that the next meeting will be held at 12:00 noon on **Tuesday, April 28, 2009** in Waterford.

VI. Approval of Minutes – February 27, 2009 Meeting

The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting.

Ms. Van Dusen moved, seconded by Mr. Winegarden, to approve the minutes of the February 27, 2009 meeting. There was no further discussion. The minutes were unanimously approved.

VII. Other Matters to Come Before the Commission

There were no other matters to come before the Commission.

VIII. Public Comments


The Chair asked for public comment. There was none.

IX. Adjournment

Having no further business, Mr. Winegarden moved, supported by Mr. Pollard, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:10 p.m.

(Minutes approved at the April 28, 2009 Legislative Commission on Statutory Mandates meeting.)

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Reforming the Process for Identifying and Funding Section 29 Mandates on Local Governments

Presented to the Commission on Statutory Mandates

March 20, 2009

Eric Lupher, Director of Local Affairs
eric@citizenscouncil.org / www.citizenscouncil.org

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Citizens Research Council of Michigan

- Founded in 1916
- Statewide
- Nonpartisan
- Private not-for-profit
- Promotes sound policy for state and local governments through factual research
- Relies on charitable contributions from Michigan foundations, businesses, organizations, and individuals

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The Citizens Research Council of Michigan is supported by gifts and grants of all sizes coming from many different donors including:

- Foundations
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We hope you will consider supporting CRC. For more information or to donate, contact us at:

Citizens Research Council of Michigan
38777 Six Mile Road
Livonia, MI 48152
(734) 542-8001
www.citizenscouncil.org

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Outline of Paper

- Introduction
- Article IX, Section 29, of Constitution
- Shortcomings of Legislative Implementation
- Mandates Enacted Since 1979
- Other States' Requirements to Fund Mandates

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Outline (continued)

- A Process for Identifying Mandates and Their Associated Costs
- Strengthen the Powers of Local Governments
- A Process for Estimating the Cost of Proposed Laws
- Disbursement of State Funds to Local Governments
- Conclusion

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Other States' Requirements to Fund Mandates

- 28 states with requirements
 - 15 states in constitution
 - 13 states in statute
- All offer lessons of some form but paid most attention to:
 - California, Massachusetts, Rhode Island, Missouri, Maine, Virginia, Oregon

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A Process for Identifying Mandates and Their Associated Costs

- Three Camps
 1. Those that prepare fiscal notes of proposed mandates
 2. Those that prepare fiscal notes and price mandates in existing laws
 3. Those that deal with mandates retrospectively

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A Process for Identifying Mandates and Their Associated Costs

- In which camp should you place Michigan?
 - Will require a means for determining whether existing laws create mandates
 - Would not be well served with a Rhode Island like system that is solely retrospective
- Recommendation is for Michigan to be like Massachusetts and California

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A Process for Identifying Mandates and Their Associated Costs

- Reforms should:
 1. Determine whether laws constitute mandates
 2. Strengthen powers of local government relative to the State
 3. Establish process for determining cost of existing mandates
 4. Establish process for estimating cost of proposed legislation
 5. Create process for disbursing funds to local governments to pay for state mandates

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Step 1: Determine if Laws Constitute State Requirements

- Note that determination of which laws constitute mandates separate from determination of costs
 - First step should be timely to identify mandates in year claim is filed
 - Cost determination more detailed and time consuming

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Durant v State of Michigan

- ... there is every reason to hope that future cases will be much more straightforward. We anticipate that taxpayer cases filed in the Court of Appeals will proceed to rapid decision on the issue whether the state has an obligation under art 9, § 29 to fund an activity or service. The Court of Appeals would give declaratory judgment on the obligation of the state. If there was such an obligation, we anticipate that the state would either comply with that obligation no later than the next ensuing fiscal year, unless it could obtain a stay from this Court, or remove the mandate.

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Step 1: Determine if Laws Constitute State Requirements

Other States

- Massachusetts – Division of Local Mandates
 - Determine if laws impose mandates
 - Determine the cost impact, if any
- California – Commission on State Mandates
 - Local government files last claim
 - If law determined to impose a mandate, test claim used to develop parameters and guidelines
- Rhode Island – Office of Municipal Affairs
 - Municipalities file statements of actual costs for reimbursement
 - Serves as basis for state appropriation

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Step 1: Determine if Laws Constitute State Requirements

- A process for Michigan
- Blend California and Rhode Island systems
- Like California
 - Allow single government to file test case
 - All other local governments of that type involved in class action status
- Like Rhode Island
 - If mandate determined, actual cost filed for reimbursement

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Responsibility for Step 1

1. Independent body
2. Attorney General or Auditor General
3. Circuit Courts
4. Special Masters in Court of Appeals

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Responsibility for Step 1: Independent Body

- Massachusetts, California, Virginia
- Local Government Claims Review Board
- 2007 Court Rule – Sec. 29 claims stated with “particularity”
- Such a body would allow local governments to develop case to take to court of appeals consistent with court rule

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**Responsibility for Step 1:
Attorney or Auditor General**

- Staff in these offices interpret laws and to various extents analyze costs and revenues
- Attorneys General have fought Section 29 claims in court for last 30 years
- Auditor General serves at pleasure of legislature that has ignored Sec. 29 for last 30 years

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**Responsibility for Step 1:
Circuit Courts**

- Other states inflate laws in Superior Court (parallel to circuit court in Michigan)
- Michigan has 57 circuit courts (210 judges)
 - Most of docket deals with criminal and civil cases
 - Varying interpretations of Headlee Amdt
 - Varying levels of competency

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**Responsibility for Step 1:
Special Masters**

- Durant and Adair cases employed special masters to hear testimony, admit evidence, flesh out issues
- Special Master rules on case
- Case immediately presented to COA
- COA review case and adjudicate findings

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Responsibility for Step 1: Recommendation

- As long as 2007 court rule in place
 - Reconstitute LGCRB
 - Representation of state and local government
- Preferred reform
 - Repeal 2007 court rule
 - Create permanent special master(s) to hear *Headlee Amendment* cases
 - Fund position
 - Clearly define role and authority

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Post Step 1

1. Local Governments may ask courts for authorization not to comply with mandate
2. State legislature may:
 - Begin to fund mandate
 - Amend law to remove mandate
3. Judicial process advance to cost finding

- It is anticipated few cases would proceed to 3rd option if legislature takes action

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Step 2: Strengthen Hand of Local Governments

- Mandamus claim to enforce Art. IX, Sec. 34?
- Optional compliance with unfunded mandates
 - Option in several other states
 - Some laws would have to be complied with even without funding
 - Potential to create confusion among citizens with programs varying among municipalities

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Step 3: Determine Cost of Mandate Laws

- Test case used to determine direct and indirect costs attributable to mandate
- All local governments submit costs related to those costs
- Amount submitted to legislature for funding
- There remains the question of courts forcing legislature to fund mandates

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Step 4: Estimating Cost of Proposed Laws

- Most states with laws similar to Michigan's have fiscal note process to inform legislature of cost it is imposing with mandates
- Fiscal Notes should address:
 - Future costs
 - Differential impact relative to size, functional scope, or tax base
- Should be submitted within 14 days of first reading or before first hearing in committee

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Step 4: Estimating Cost of Proposed Laws

- Should employ sampling of local governments to determine costs
- Not possible or desirable to use random sampling
 - Larger, urban units best equipped to respond promptly to surveys
 - Also most likely to incur majority of costs
- Only sample once per legislative bill

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Step 4: Estimating Cost of Proposed Laws

- What bills should require fiscal note preparation?
- Would be consistent with intent of Hoodlee Amendment to subject all bills that would create costs for local governments to fiscal note process
- That must be reconciled with 2nd sent. In Sec. 29

New mandates shall not be required of units of local governments, unless a **state appropriation is made and disbursed** to pay local governments for any necessary increased costs.

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Step 4: Estimating Cost of Proposed Laws

- House and Senate Fiscal Agencies responsible for fiscal note preparation
 - Each responsible for preparation for bills introduced in their own chamber
- Common volunteer local governments to be sampled
- Requires Agencies employ staff with understanding of local government finances

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Step 4: Estimating Cost of Proposed Laws

- De Minimus Costs
 - States all over the board
 - Oregon's approach is to define de minimus costs as anything less than 1/100 of one percent of a local government's annual budget
 - Accounts for varying size (SE Michigan v 100 townships in upstate Michigan)

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Step 5: Disbursement of State Funds to Local Governments

- Past mandates have been funded without Michigan legislature increasing the amount of money sent to local governments
- Question of when funding takes place in budgetary process
- Recommend that mandate funding be given constitutional status with funding before allocating discretionary funds

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