Final Minutes

Legislative Commission on Statutory Mandates Meeting
12:00 noon • Tuesday, November 18, 2008
Oakland County Executive Office Building
Executive Conference Room – 5th Floor
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 Excused
None

I. Call to Order
The Chair called the meeting to order at 12:20 p.m. and the clerk took the roll. A quorum was present.

II. Approval of the Agenda
The Chair asked for approval of the agenda. **Mr. Winegarden moved, supported by Mr. Pollard, to approve the November 18, 2008 agenda as proposed. There was no further discussion. The agenda was unanimously approved.**

III. Approval of Minutes – October 28, 2008 Meeting
The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting. **Mr. Winegarden moved, seconded by Ms. Van Dusen, to approve the minutes of the October 28, 2008 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Report Status from Associations

a. Michigan Community College Association Report
The Chair called on Mr. Dan Villaire of the Thrun Law Firm to summarize the pending items from the MCCA report. Mr. Villaire reported he has had further discussions with Mike Hansen from the Michigan Community College Association. Regarding the ASC reporting item on the MCCA report, Mr. Villaire noted that in order to fully evaluate whether this is a mandate, Mr. Hansen will go back to the locals to have them identify some of the specific activities they are engaging in and what the resulting costs are. Mr. Villaire also reported there was a change to the conclusion made at the last meeting regarding the Native American Tuition Waiver. The waiver was a requirement prior to the Headlee Amendment, but MCCA indicates that funding was removed from the annual appropriation bill after the Headlee Amendment was enacted.
Mr. Hansen will provide more information and historical data on the impact of this requirement. More information on MPSER contribution rates, financial aid programs, audits, and various reports required will also be coming from the local units.

b. Michigan Association of Counties
The Chair provided an update on the Friend of the Court and the Environmental Regulations issues from the Michigan Association of Counties report. Details on these items can be found in the attached summary letter prepared by Mr. Daddow. On the public health issue, Mr. Daddow has learned that the current Director of the Oakland County Department of Management & Budget had released a report in 1997 on unfunded mandates. He is trying to get a copy of this report from the current Public Health Department Director and will send it to the Commission members once he receives a copy.

c. Other Association Mandates
Mr. Villaire provided a preliminary report on the mandates identified by the Michigan School Business Officials and Michigan Association of School Administrators. For more details, see the attached Thrun memorandum dated November 17, 2008. Ms. Van Dusen clarified there are two parts to the retirement plan including pension benefits that are only slightly under funded and other post employment benefits (OPEB) for public school employees which are a huge component of the percentage of payroll that is deducted. She noted that the Citizens Research Council prepared a report on the issue and suggested members go to the Office of Retirement Services website for more information on the level of under funding. She will send a copy of the CRC Report and a link to the website to Mr. Pollard.

The Chair asked for a motion to receive and file the two memos he prepared to the Commission and the memo from Mr. Pollard and Mr. Villaire. **Mr. Pollard moved, supported by Mr. Schimmel, to receive and file the Daddow and Thrun memos. There was no objection and the motion was unanimously adopted.**

V. Status of the Citizens Research Council (CRC) Project on Other States' Mandates
The Chair called on Mr. Eric Lupher from CRC to provide an update on the progress of his research. He has prepared a document that contains the language of the constitutional provisions of other state that require funding for mandates handed down to local government. A discussion of possible constitutional changes and enforcement measures followed.

The Chair asked for a motion to receive and file the document prepared by CRC. **Mr. Winegarden moved, supported by Mr. Pollard, to receive and file the CRC memo. There was no objection and the motion was unanimously adopted.** A copy of the document is attached to these minutes.

VI. Status of Legislation on Extension of Commission Dates and Scope of Work

Ms. Van Dusen reported legislation has been crafted as discussed at the last Commission meeting to extend the Commission dates and scope of work. The bill has been sent to the Speaker and the Senate Majority Leader and is in the process of being introduced. The intention is for the bill to be taken up during the lame duck session.

VII. Report Content, Preparation and Actions Going Forward

The Chair opened a discussion of the process and time frame for preparing the Commission report and ideas for the structure of the report and who will compile the information were exchanged. The members will continue to work on different portions of the report and all members will have the opportunity to edit and offer input. The Chair will also contact Dr. Scorsone to have him begin pricing the mandates identified by the Commission.

VIII. Other Business

The Chair brought forward another local government mandate that has been brought to his attention. The mandate is from the Michigan State Police requiring a listing of all equipment that could be involved in a Homeland security event. There was no other business to discuss.

IX. Public Comments

The Chair asked for public comment. There was none.

X. Next Meeting Date

The Chair announced that the next meeting will be held on **December 18, 2008** at **12:00 noon** at the Oakland County Executive Office Building in Waterford, Michigan.

XI. Adjournment

Having no further business, Mr. Winegarden moved, supported by Mr. Daddow, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 1:50 p.m.

(Approved at the December 18, 2008 Legislative Commission on Statutory Mandates meeting.)

TO: Legislative Commission on Statutory Mandates

FROM: Bob Daddow

SUBJECT: MAC Mandate on Environmental Regulations

DATE: November 16, 2008

As related to the Commission in the last meeting, the Oakland County Drain Commissioner has engaged a firm to evaluate the state mandates imposed on counties. Since these are universal mandates in compliance with federal requirements, the cities, villages and townships would also be impacted. Generally, the federal environmental rules have arisen in the past several decades – well beyond the adoption of the Headlee Amendment.

The Michigan Association of Counties and other associations have identified the permitting process and compliance with the environmental rules and regulations as onerous and a mandate that should be funded by the state. After reading the material cited above, I concur.

The report produced for the Oakland County Drain Commissioner is over 100 pages long, involves a point-by-point analysis of the individual sections of federal law and is nearly impossible to summarize in any memorandum of this nature. There is no quantification of the dollar impact of the individual issues where the state has imposed rules and regulations on subordinate governmental units.

However, I do have some observations on this report. Time and again, the author cites a generic framework of environmental requirements by the federal government that leaves the details to be resolved by the states. Depending upon the issue involved, the federal statutes provide terms like 'reasonable', 'adequate' and 'best management practices' that require further definition in rules and regulations to be prepared by the states in the enactment of the federal statute. Details on compliance means (sampling plans, for example) are not included in federal regulations but are in the rules develop3ed by the state. The state has developed these rules and regulations contemplated by the federal government and are imposing the adopted rules on subordinate governmental units.

On the surface and subject to a legal interpretation by the Commission attorneys, this entire area is rife with unfunded Headlee mandates so numerous it will take someone with the environmental / legal skills to assist in ferreting out the details and then, even more troublesome somehow quantifying this area for the Commission's report. This will not be easy, if it can even be reasonably accomplished. Clearly, any debate on an unfunded mandate between the state and subordinate governmental units will involve a protracted court battle. Suffice it to say that in my opinion there is an unfunded Headlee mandate, it is quite substantial and almost impossible to easily quantify. A discussion of the actions to be undertaken with regard to this recommendation by the local governmental units in their submission of mandates to the Commission should be held in the upcoming meeting.

TO: Legislative Commission on Statutory Mandates
Tom Hickson, MAC

FROM: Bob Daddow

SUBJECT: Michigan Association of Counties Mandate – Friend of the Court

DATE: November 15, 2008

The Michigan Association of Counties (MAC) provided a recommended mandate for consideration by the Commission involving the Friend of the Court (FOC) operations. We received a report entitled "Friend of the Court Association – State of Michigan: Funding & Mandates Committee Report" (Report) dated October 20, 2006. The Report is comprehensive, provides ample details to track statutes and is thorough. The Report is on point for use by the Commission and supports the notion that most of the net costs incurred locally by the counties are clearly an unfunded Headlee mandate. Unfortunately, however, there is no summary of what the FOC Association believes to be the component of total unfunded Headlee mandates in the Report.

The FOC became a county function with little or no monetary support from the State in 1919. It had very little functions and over the next 50 years expanded moderately with the expansions either not being funded or being partially covered via fees. By the time Headlee became effective in 1978, the FOC had only modest functions and likely, modest costs covered via the counties.

In 1982, however, the functions were substantially expanded. At that time, the state incorporated a 3% incentive fees for collections in public assistance together with some court fees to fund only the custody and parenting time services. Most of the other service expansions, which appear to be substantial, were unfunded by the state. The 3% incentive fees were discontinued in 2003 with no reduction in services allowed by the state.

In the 1990s, further expanded services of the FOC by the state were required. At that time, the federal government covered 75% of the net costs of the FOC (25% covered by the county general fund). At present and for the past 10 years or so, the percentage has been reduced to two-thirds being covered by the federal government (one-third covered by the county general fund). It is likely that a preponderance of the one-third portion of the costs borne by county general funds is an unfunded mandate.

The Report covers several other costs burdened on counties that are troublesome and almost certainly an unfunded Headlee mandate:

- Effective October 1, 2007, the ability to use a component of the federal grants flowing through to the FOC operations and could be used as part of the county's local grant match was revised. The federal dollars could no longer be used as a match effectively requiring that the counties fund $27 million locally that was previously covered via the federal government on the expanded services as noted above.

- In the 1980s, the federal government tried to encourage a national standard by requiring all state and county governments to use standard hardware and software by individual state. It has been a very costly endeavor by Michigan with almost $800 million having been spent on this project since the early 1990s. Oakland County complied in 2002 (last county to do so)

and immediately the functionality and efficiencies enjoyed by a locally- based system were lost. For example, Oakland had 75% of the FOC recipients using electronic deposits – meaning, that amounts paid on Monday would be in the recipients' accounts on Tuesday at the amounts would be in the recipients' checking / savings accounts. The *goal* of the state's system was to try to issue a *check* by Wednesday of the same week. The state's system has never achieved where Oakland was in 2002 in terms of processing. These efficiency losses are absorbed through increases in inefficient costs to the tune of one-third of the inefficiency – estimated in the Report (with which I agree) at roughly one-third to one-half of the time now required simply addressing the deficiencies of the computer system. Further, the national objective of a standardized system was never achieved.

- At present, the 2002 equipment in Oakland County is aging rapidly as to its capabilities, operating systems, etc. It will have to be replaced in the near term by a state in fiscal distress. Likely, there will be an attempt to require local resources to cover the replacement, potentially for one-third of the cost of this mandate. Other counties' equipment is even older since Oakland County was the last county to convert to the state's computer system.

As cited previously, the Report does not provide for any summarization by clearly most of the matters cited in the Report fall within an unfunded Headlee mandate. I will have a copy of the report for the Commission members and for the minutes on Tuesday, November 18, 2008.

MEMO TO FILE

TO: Legislative Commission on Statutory Mandates

FROM: Dennis R. Pollard, Esq. and Robert T. Schindler, Esq.

RE: Michigan School Business Officials ("MSBO") and Michigan Association of School Administrators ("MASA") Report on Top Mandates on School Districts

DATE: November 17, 2008

The Michigan School Business Officials ("MSBO") and Michigan Association of School Administrators ("MASA") submitted a report of the most burdensome mandates on Michigan local and intermediate school districts.

1. Retirement Plan for Employees of Public School Districts

The funding of the Michigan Public School Employees Retirement System ("MPSERS") by Michigan school districts is a mandate that was imposed on local units of government after December 23, 1978, the effective date of the Headlee Amendment. MPSERS was initially created by Public Act 136 of 1945, and was created as part of a retirement system fully funded by the State. This system changed, however, in 1980; two years after the passage of the Headlee Amendment.

Public Act 136 of 1945 was repealed in 1980 and in its stead the Legislature passed Public Act 300 of 1980. This act, codified at MCL § 38.1301 *et seq*., restructured the MPSERS and required contribution from Michigan school districts. The act does not create a set amount that must be contributed, rather it creates a formula based on an actuarial that the state retirement board must use to determine the percentage of total payroll contribution for each local unit of government. MCL § 38.1341. Due to changes in the determining of the actuarial resulting from amendments to the act since 1980 that rate has risen considerably since its initial adoption. By way of example, for fiscal year 2007-08 the contribution rate was 16.72% of each school district's entire payroll. This represented a contribution by Michigan school districts of approximately $1.45 billion. For fiscal year 2008-09 the contribution rate declined slightly to 16.54% of the districts total payroll.

The Legislature does not appropriate or disburse any funds to the school districts to pay for this activity/service. This mandate violates the Headlee Amendment.

2. Special Education Services

The Michigan Supreme Court determined that there is no violation of the Headlee Amendment in the current funding scheme of special education services and transportation. Many Michigan school districts contend that the Court was incorrect in this finding and believe that the Legislature should review the special education funding scheme.

The Revised School Code, specifically MCL §§ 380.1701 and 380.1751, require Michigan school districts to provide special education services and transportation. It is undisputed that special education services were required prior to passage of the Headlee Amendment in 1978. The Michigan Supreme Court also determined in *Durant v State Board of Education*, 424 Mich 364 (1985), that 28.6% of special education costs and 70.4% of special education transportation costs were funded by the State at the time of the

adoption of the Headlee Amendment. The Court further held in *Durant* that the State was not meeting its funding obligations. In order to rectify that problem, the Legislature developed, what is often referred to as, the Three Pot Funding Scheme. This funding scheme is created by the State School Aid Act ("SSA"), MCL § 388.1601 *et seq*. The SSA is quite long and confusing, but what is clear is that while the Legislature creates categorical funding for special education services and transportation in one pot, that same amount of money is removed from the school aid fund in order to pay this amount. Thus, the money is taken from Michigan school districts to pay those very same Michigan school districts.

The Michigan Court of Appeals determined that this funding scheme was constitutional in *Durant v State*, 251 Mich App 297 (2002), *Durant III*. Thus, any mandate regarding special education services is funded and does not violate the Headlee Amendment.

3. Curriculum and Diploma Requirements

There are two separate mandates under this heading. The first is the graduation requirements created by Public Acts 123 and 124 of 2006. The second is the requirement for a core academic curriculum created by Public Act 25 of 1990.

A. Graduation/Diploma Requirements

The graduation requirements created by Public Acts 123 and 124 of 2006, MCL §§ 380.1278a, 1278b, and 1280 are mandates imposed after December 23, 1978, the effective date of the Headlee Amendment. The mandates violate the Headlee Amendment to the extent school district's incur costs to comply with these requirements. Prior to 2006, the only course mandated for graduation by the State of Michigan was a high school course in civics. The civics requirement was instituted as part of Public Act 451 of 1976, and thus was in existence prior to adoption of the Headlee Amendment. All remaining requirements of Public Acts 123 and 124 of 2006 are newly required activities and should be fully funded by the State.

Calculating costs for the new graduation/diploma requirements will be difficult because they were so recently enacted and affect each school district differently. The acts mandate rigorous course requirements and additional counseling and monitoring requirements. The Legislature has not appropriated or disbursed any categorical funds to pay for these newly mandated activities or services. School districts will attempt to estimate the increased costs.

B. Core Academic Curriculum

The core academic curriculum, originally created as part of Public Act 25 of 1990, is a mandate imposed after December 23, 1978, the effective date of the Headlee Amendment. The Act violates the Headlee Amendment to the extent school districts incur costs to comply with its requirements.

The mandates of the core academic curriculum add numerous requirements for the creation, maintenance and implementation of a core academic curriculum for each Michigan school district. The mandate results in higher costs for school districts. For example, school districts must allocate resources, including personnel to create a new curriculum. School districts also must purchase different text books, purchase new lab equipment, and hire new teachers to implement the new curriculum. The legislature does not appropriate funds to cover the cost to comply with the requirements. The school districts will gather additional information to estimate costs incurred as a result of this requirement.

4. Reporting Requirements

Again, there are two separate mandates under this topic heading. The first are the mandates of the Center for Educational Performance and Information and the second is the reporting requirements placed on intermediate school districts.

A. Center for Educational Performance and Information

The Center for Educational Performance and Information ("CEPI") originally created by Executive Order in 2000, EO 2000-9, and later codified at MCL § 388.1694a is a mandate imposed after December 23, 1978, the effective date of the Headlee Amendment. The Michigan Court of Appeals has ruled that the mandate violates the Headlee Amendment. *Adair v People*, 279 Mich App 507 (2008). CEPI is a state agency that oversees the Michigan Education Information System ("MEIS"). MEIS is a data warehouse that consists of five individual databases dealing with separate types of information related to Michigan school districts, including information on facilities, personnel, students, infrastructure and finances.

The State required Michigan school districts to report information prior to December 23, 1978, the effective date of the Headlee Amendment. However, with the creation of CEPI in 2000, the State greatly expanded the amount and detail of information school districts are required to report. The State also imposed costly requirements with respect to the manner in which the information is gathered, shared and transmitted to the State. The mandates of CEPI greatly increased the administrative costs of school districts in regard to reporting information.

The Legislature granted a one-time appropriation of $3.4 million in 2002 for start up costs associated with one of CEPI's five databases. No other funds have been appropriated or disbursed to pay for the costs associated with the start up or ongoing costs associated with the State's CEPI mandates. The Michigan Court of Appeals ruled that State created new or increased activities and costs for Michigan school districts and that the one-time payment in 2002 was not enough to cover the start-up costs or the ongoing costs associated with the State's CEPI mandates. *Adair, supra.*

The school districts are currently gathering information to create an estimate of the costs incurred as a result of the state's CEPI requirements.

B. Intermediate School District Reporting

Public Act 413 of 2004 mandates that Michigan intermediate school districts ("ISD") collect, consolidate and report a multitude of information to the State. The Act also requires ISD's and to retain paper copies of the reported information for ten years. The Act is a mandate imposed after December 23, 1978, the effective date of the Headlee Amendment. MCL § 380.620. There was no requirement for an ISD to report any such information prior to the Headlee Amendment.

The requirements create additional administrative costs for ISDs, and no funds have been appropriated or disbursed by the Legislature to cover the associated costs. This Act violates the Headlee Amendment to the extent ISD's incur costs to meet its requirements. School districts are currently attempting to gather information as to the costs incurred.

5. Testing Mandates

State law mandates that Michigan school districts distribute numerous standardized tests. These tests include the Michigan Educational Assessment Program ("MEAP"), the Michigan Merit Exam ("MME"), and other yearly assessments to elementary students. Subsequent to December 23, 1978, the effective date of the Headlee Amendment, the State increased the number of tests school districts must give. Costs incurred as a result of the tests violate the Headlee Amendment.

Subsequent to the Headlee Amendment, the State added to the number of MEAP tests school districts must conduct. The MEAP was initially required pursuant to Public Act 38 of 1970, 388.1081 *et seq*. At that time the state required the MEAP test be administered to all students at two grade levels. The statute was amended to require MEAP testing of all students in two grades in elementary school and two grades in middle school. In addition, an executive order and state law transferred power to oversee MEAP testing to the State Superintendent of Public Instruction. EO 2003-2, MCL § 388.997. The Superintendent now requires the MEAP test to be administered, on some level, for all students in grades 3 through 9. Additionally, the MEAP test was required for all students in grade 11 as of 1993; however, that requirement changed upon the creation of the MME in 2004. Thus, while the MEAP was required prior to the passage of the Headlee Amendment, the mandates associated with the MEAP test have significantly increased since that time.

In addition to the MEAP test, all pupils statewide must be offered the MME in grades 11 and 12. MCL § 380.1279g. The MME is a mandate imposed after December 23, 1978, the effective date of the Headlee Amendment. The MME replaced the requirement that student take the MEAP test in grade 11.

Finally, Michigan law mandates, in addition to the MEAP requirements, yearly assessments to elementary students. MCL § 380.1280b. This requirement encompasses all students' grades 1 through 5. This mandate was created in 2000 by Public Act 230.

School districts incur significant costs when giving these tests. Costs include staff and supplies to administer the test. For some school districts cost also includes renting of equipment such as tables and chairs. The only requirements that existed at the time of the effective date of the Headlee Amendment were the administration of the MEAP test to all students in two grades. The Legislature has not appropriated or disbursed funds to pay for the cost of this new or increased testing. Thus, the additional testing requirements violate the Headlee Amendment. Moreover, MCL § 388.1704 removes $29.3 million in costs from the school aid fund (money required to go to the general operation of schools by Const 1963, art 9, § 11) to pay third parties for some costs associated with the tests. School districts are currently gathering information as to the costs incurred as a result of the above requirements.

6. Prevailing Wage Act

The Prevailing Wage Act appears to be a mandate but it was imposed prior to December 23, 1978, the effective date of the Headlee Amendment. The Prevailing Wage Act was created by Public Act 166 of 1965. The law was not enforced for a couple of years in the 1990's as a result of a state court decision; however, that changed two years later after a federal court decision essentially reversed the state court holding and the law was again enforced. The law was never removed from the Michigan Compiled Laws during that time. Thus, the Act does not violate the Headlee Amendment.

State Constitutional Provisions Requiring State Funding for Local Government Mandates

Alabama (1988 constitutional amendment)

Amendment 474 ratified: Effectiveness of Laws Providing for Expenditure of County Funds.

"No law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of county funds held or disbursed by the county governing body shall become effective as to any county of this state until the first day of the fiscal year next following the passage of such law. The foregoing notwithstanding, a law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of county funds held or disbursed by the county governing body, shall become effective according to its own terms as any other law if: (1) such law is approved by a resolution duly adopted by and spread upon the minutes of the county governing body of the county affected thereby; or (2) such law (or other law or laws which specifically refer to such law) provides the respective county governing bodies with new or additional revenues sufficient to fund such new or increased expenditures."
Amendment 491 ratified: Effectiveness of Laws Providing for Expenditure of Municipal Funds.
"No law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of municipal funds held or disbursed by the municipal governing body shall become effective as to any municipality of this state until the first day of the fiscal year next following the passage of such law. The foregoing notwithstanding, a law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of municipal funds held or disbursed by the municipal governing body, shall become effective according to its own terms as any other law if: (1) Such law is approved by a resolution duly adopted by and spread upon the minutes of the municipal governing body of the municipality affected thereby; or (2) Such law (or other law or laws which specifically refer to such law) provides the respective municipal governing bodies with new or additional revenues sufficient to fund such new or increased expenditures."

Alaska (1959 Constitution)

Article 2, Section 19. Local or Special Acts

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

California (1979 constitutional amendment)

Article 13b, Government Spending Limitation, Section 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined

in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Colorado (1992 constitutional amendment)

Article 10, Section 20(9). State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Florida (1990 constitutional amendment)

Article 7, Section 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.—

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

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

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a

written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.
(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.
(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

Hawaii (1978 constitutional amendment)

Transfer of Mandated Programs

Article VIII, Section 5. If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost.

Louisiana (1991 constitutional amendment)

Article IV, §14. Increasing Financial Burden of Political Subdivisions

Section 14.(A)(1) No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to a school board.
(2) This Paragraph shall not apply to:
(a) A law requested by the governing authority of the affected political subdivision.
(b) A law defining a new crime or amending an existing crime.
(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 1991.
(d) A law enacted, or state executive order, rule, or regulation promulgated, to comply with a federal mandate.
(e) A law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.
(f) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature and any rule or regulation adopted to implement such instrument or adopted pursuant thereto.
(g) A law having insignificant fiscal impact on the affected political subdivision.
(B)(1) No law requiring increased expenditures within a city, parish, or other local public school system for any purpose shall become effective within such school system only as long as the legislature appropriates funds for the purpose to the affected school system and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the school system for the purpose and the affected school board is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to any political subdivision to which Paragraph (A) of this Section applies.

(2) This Paragraph shall not apply to:
(a) A law requested by the school board of the affected school system.
(b) A law defining a new crime or amending an existing crime.
(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 2006.
(d) A law enacted to comply with a federal mandate.
(e) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature.
(f) A law having insignificant fiscal impact on the affected school system.
(g) The formula for the Minimum Foundation Program of education as required by Article VIII, Section 13(B) of this constitution, nor to any instrument adopted or enacted by the legislature approving such formula.
(h) Any law relative to the implementation of the state school and district accountability system.

Maine (1992 constitutional amendment)

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

Massachusetts (1980 constitutional amendment)

Article CXV of Amendments. No law imposing additional costs upon two or more cities or towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment shall be effective in any city or town until such law is accepted by vote or by the appropriation of money for such purposes, in the case of a city, by the city council in accordance with its charter, and in the case of a town, by a town meeting or town council, unless such law has been enacted by a two-thirds vote of each house of the general court present and voting thereon, or unless the general court, at the same session in which such law is enacted, has provided for the assumption by the commonwealth of such additional cost.

Missouri (1980 constitutional amendment)

State support to local governments not to be reduced, additional activities and services not be imposed without full state funding.

Section 21. The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

New Hampshire (1984 constitutional amendment)

Article 28-a. [Mandated Programs.] 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 subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

New Jersey (1995 constitutional amendment)

Article VIII, Section II, 5. (a) With respect to any provision of a law enacted on and after January 17, 1996, and with respect to any rule or regulation issued pursuant to a law originally adopted after July 1, 1996, and except as otherwise provided herein, any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon boards of education, counties, or municipalities because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire. A law or rule or regulation issued pursuant to a law that is determined to be an unfunded mandate shall not be considered to establish a standard of care for the purpose of civil liability.

(b) The Legislature shall create by law a Council on Local Mandates. The Council shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. The Council shall consist of nine public members appointed as follows: four members to be appointed by the Governor; one member to be appointed by the President of the Senate; one member to be appointed by the Speaker of the General Assembly; one member to be appointed by the minority leader of the Senate; one member to be appointed by the minority leader of the General Assembly; and one member to be appointed by the Chief Justice of the New Jersey Supreme Court. Of the members appointed by the Governor, at least two shall be appointed from a list of six willing nominees submitted by the chairman of the political party whose candidate for Governor received the second largest number of votes at the most recent gubernatorial general election. The decisions of the Council shall be political and not judicial determinations.

(c) Notwithstanding anything in this paragraph to the contrary, the following categories of laws or rules or regulations issued pursuant to a law, shall not be considered unfunded mandates:

(1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;

(2) those which are imposed on both government and non-government entities in the same or substantially similar circumstances;

(3) those which repeal, revise or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities;

(4) those which stem from failure to comply with previously enacted laws or rules or regulations issued pursuant to a law;

(5) those which implement the provisions of this Constitution; and

(6) laws which are enacted after a public hearing, held after public notice that unfunded mandates will be considered, for which a fiscal analysis is available at the time of the public hearing and which, in addition to complying with all other constitutional requirements with regard to the enactment of laws, are passed by 3/4 affirmative vote of the members of each House of the Legislature.

New Mexico (1984 constitutional amendment)

Article X, Section 8. A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new 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.

Tennessee (1978 constitutional amendment)

Article II, Section 24. No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.