

Final Minutes

Legislative Commission on Statutory Mandates Meeting

9:00 a.m. • Tuesday, July 21, 2009

State Capitol Building • Room 426

100 N. Capitol Avenue • Lansing, 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 9:00 a.m. and the clerk took the roll. A quorum was present.

II. Approval of the Agenda

The Chair asked for a motion to approve today's meeting agenda. **Mr. Winegarden moved, supported by Mr. Pollard, that the meeting agenda as proposed be approved. There was no objection and the motion was unanimously adopted.**

III. Approval of Minutes – June 26, 2009 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 June 26, 2009 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Citizens Research Council Presentation

The Chair called on Mr. Eric Lupher from the Citizens Research Council to present a report which was prepared by CRC at the request of the Commission and provides a normative analysis of what other states are doing for constitutional or statutory requirements similar to Michigan's Headlee amendment. The report is available on the CRC and the Commission's web page. Mr. Lupher proceeded to highlight the major areas of the report and responded to questions afterwards. The Commissioners expressed appreciation to Mr. Lupher and CRC for a useful and comprehensive report. **Mr. Schimmel moved, supported by Mr. Pollard, to receive and file the CRC report to the Commission. There was no objection and the motion was unanimously adopted.**

V. Discussion of CRC Report Issues and Content of Final Report Recommendations.

In an effort to start solidifying some consensus on possible recommendations for the Commission's final report, the Chair opened a discussion of some of the issues presented in the CRC report and outlined in a document prepared by Mr. Pollard. He called on Mr. Pollard to lead the discussion. For specific information of the proposed statutory/administrative changes, please see the outline which is attached to these minutes. Consensus was reached on the following:

1. There is no immediate desire to recommend opening the Constitution to amend Article 9, § 29.
2. There is a need for a number of changes to 1979 PA 101 including shifting the burden of proof in proving the existence of an unfunded mandate to the State and making the changes which require evaluation of legislative mandates both prospectively and retrospectively.
3. The Commission recommends adjudicating Headlee amendment disputes through a Special Master proceeding in the Court of Appeals.
4. A recommendation should be made to correct or adjust MCR 2.112(H) and (M).
5. A recommendation should be made to specify what actions must be considered and acted upon by the Legislature following issuance of a Declaratory Judgment.
6. A recommendation to define de minimus requirements that impose a net cost that is less than 1/100 of one percent of a local government's annual budget.

Possible ways to change the disregard by the State of its legislative, executive, and judicial funding obligations under the Headlee amendment were also discussed. The Chair suggested that when the Commission has reached a

consensus on its recommendations specific language to amend PA 101 be included in the Commission's final report to help facilitate the preparation and introduction of a bill to implement the recommended changes. A discussion of a potential process for calculating the cost of a mandate and the timing of adding a fiscal note during the legislative process followed. Mr. Pollard will continue to work to on the draft recommendations. **Mr. Winegarden moved, supported by Ms. Van Dusen, to receive and file Mr. Pollard's outline. There were no objections and the motion was unanimously adopted.**

VI. Status of Costing Analysis

The Chair noted that Eric Scorsone has been out; therefore, there is no update to report. The item was tabled until the next meeting.

VII. Other Business

The Chair shared that he has a meeting on July 31 with Michigan Government Finance Officers Association Legislative Committee to talk about the CRC Report and the Commission's Interim Report.

VIII. Public Comment

The Chair asked if there was any public comment. There was none.

X. Next Meeting

After some discussion, the Chair announced that the next meeting will be held at **9:00 a.m. on Tuesday, August 25, 2009** in Waterford.

XI. Adjournment

Having no further business, Mr. Winegarden moved, supported by Mr. Schimmel, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 11:45 a.m.

(Minutes approved at the August 25, 2009 Commission meeting.)

**OUTLINE FOR DISCUSSION AT THE JULY 14, 2009
COMMISSION ON STATUTORY MANDATES**

PROPOSED STATUTORY/ADMINISTRATIVE CHANGES

**I. NEED, IF ANY, FOR CHANGES / AMENDMENTS TO
ARTICLE 9, § 29 OF HEADLEE AMENDMENT.**

- A. Whether State's failure to comply is attributable to flaws in wording in Article 9, § 29?
 - 1. If not, what is to be gained by launching amendatory process leading to statewide vote?
 - 2. If need exists, is it worth the time and effort if statutory or administrative changes will suffice?

II. NEED FOR STATUTORY CHANGES TO 1979 PA 101

- A. Given the Legislature' and Governors' failure to comply for over 30 years, what can be done *procedurally* to most effectively achieve compliance with the Constitution going forward?
 - 1. Adopting legislation, amending PA 101 that authorizes local units of government to not provide mandated services if they have not been funded by the State. (Just say no!) CRC Report pp. 29-30.
 - (i) Advantages of such legislation versus separately amending existing laws, executive orders and administrative regulations that impose state mandates in order to eliminate mandatory provisions.
 - (ii) Need to include in such legislation a provision that prohibits any penalty or set off in existing or new legislation from being imposed by the State as a result of local unit electing to provide unfunded service.
 - 2. Changes relative to means of adjudicating Headlee Amendment disputes- CRC Report pp. 22-27.

- (i) Create Independent Body
 - (ii) Create Forum in Court of Claims
 - (iii) Revise Local Government Claims Review Board Process 1979 PA 101
 - (iv) Formalize Special Master Proceedings in Court of Appeals, to Streamline Proceedings Under § 32 of Headlee Amendment
 - (a) Need to change MCR 2.112(M). Rule adopted, amidst strong dissent, in 2007, requiring, among other things, that the extent and type of harm/damages be identified with particularity in the taxpayers' complaint.
3. Need to specify in legislation what actions must be considered and acted upon by the Legislature following issuance of a Declaratory Judgment. CRC Report, pp. iii-iv. See also III 1 iii below.
- (i) Fund that which is being mandated,
 - (ii) Change the law imposing mandate to reduce costs on local units or eliminate the mandate altogether. If law is changed to reduce costs of the mandate, remaining costs must be funded.
 - (iii) Suspend enforcement of the mandated activity or service until one of above legislative actions occurs.

III. SUBSTANTIVE CHANGES TO PA 101 TO CHANGE WHOLESALE DISREGARD BY LEGISLATURE OF FUNDING OBLIGATION UNDER § 29 OF HEADLEE AMENDMENT: “ ” A PROCESS FOR APPROPRIATING AND DISBURSING STATE FUNDS” CRC REPORT PP 31-41.

1. Recognition of costs imposed on local units of government *after* legislation or administrative mandate has been imposed. CRC Report, pp. 31-33.

(i) California:

(a) Commission on State Mandate twice each year: updates legislature on number of approved mandates (presumably, both legislatively and administratively imposed), estimated associated costs to local units of government, and basis for recommending reimbursement

(b) During state budget drafting process, “ a local government claims bill” is introduced to appropriate funding for proposed legislation that implicates mandates on local units of government

(c) State Mandates Apportionment System streamlines process for reimbursements to local units for costs of identified state mandates, eliminating need for local units to file claims for ongoing mandates

(ii) Rhode Island:

(a) Office of Municipal Affairs, Department of Administration reviews on going basis all proposed legislation that creates costs for local units of government and creates reimbursement request to State Budget Office for purposes of appropriation in next state budget.

bills that have possible mandate implications.

- (ii) Advantage is that DLM has created guidelines for consistent application of what constitutes unfunded mandate and consistent method of estimating costs, and facilitates preparation of fiscal note mid legislation.
- (c) Missouri:
- (i) Oversight Division of Joint Committee on Legislative Research prepares fiscal note for each bill introduced identifying financial impact, if any, on local units of government.
 - (ii) Surveys local units for their positions on fiscal impact of bills on them which are required to be returned within 2 days of receipt of survey.
- (d) Virginia:
- (i) Commission on Local Government prepares fiscal note during legislative process for General Assembly.
 - (ii) Commission works with Legislative Services and Virginia Municipal League, and Virginia Association of Counties to identify costs that may be incurred by local units from bills under consideration.
- (e) Maine:
- (i) Office of Fiscal and Program Review provides “rough estimates” of impact of mandates on local units.

- (ii) Upon receipt of same, Legislative Committee decides 1) whether to fund the costs that will be mandated, 2) exempt mandate from funding by securing 2/3rd vote of legislature, or 3) change bill in order to eliminate mandatory nature of legislation.
- (f) Rhode Island:
 - (i) League of City and Towns can request a fiscal note on any bill, resolution, or administrative rule that it believes there are unfunded mandates that are implicated.
- (g) New Jersey:
 - (i) Office of Legislative Services relies on information from administration (presumably Executive branch) for estimates of costs to local units of pending bills. Office then assesses costs to determine if costs exceed \$100,000 in any given locality or \$100,000 in the aggregate. CRC comments that this system of control is very ineffective because legislators consistently cause estimates to underfund local units.
- (h) Arkansas, Kentucky, North Dakota, West Virginia, and Wisconsin:
 - (i) Sponsor of the bill implicating a mandate is authorized to arrange for preparation of fiscal note. This is done with state agency in functional area of the subject of the bill.

3. De minimus costs.
 - (a) Michigan currently identifies as \$300 per unit of local government, in PA 101
 - (b) States range from \$50,000 per unit to 1/100th of 1% for each affected unit of local government (Rhode Island). CRC Report recommends latter for Michigan.

IV. **STRENGTHENING THE POWERS OF LOCAL GOVERNMENT**

- A. Recommend legislation that permits direct and active input by local units during consideration of bills introduced in legislature that potentially implicate unfunded mandates.
- B. Appoint a local unit of government liaison in existing state legislative department/bureau to permit active and on-going dialogue on financial impacts of legislation and State administrative requirements between local units and legislature.