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Committee Log Book - 1980

Tape Number XIV

SENATE C/RA
Committee

Side Number 1

Present: Senators Rodey, Kelly, Mulcahy, &
Chairman Sturgulewski

Dates 3/6/80 to -

Bill Numbers Discussed

| | | | | | | | | | |
|-----------|-------------------------|--|--|--|--|--|--|--|--|
| SB 352 | <i>HB</i> <i>585</i> | | | | | | | | |
|-----------|-------------------------|--|--|--|--|--|--|--|--|

| Date & Time | Tape Meter Number | Bill | Significant Information (Witness, Action) |
|-------------|-------------------|-----------|--|
| 1:30 005 | | SB 352 | Chairman Sturgulewski - overview |
| | | | Palmer McCarter, Dept. C/RA |
| | 091 | | Sen. Mulcahy |
| | 170 | | Jack Chenoweth, Legal Division |
| | 220 | | Palmer McCarter - - |
| | 284 | | Marilyn Miller, AML Support of SB 352 |
| | 299 | | Sen. Kelly moved "do pass w/ind. rec." Sen. Mulcahy moved "do pass" |
| | 327 | HB 585 | Sen. Rodey moved to consider "CS"/ No obj. |
| | 342: | | Jack Chenoweth, Legal Division (Overview) |
| | 440 | | Carolyn Burg |
| | 509 | | Marilyn Miller, AML |
| | 524 | | Palmer McCarter, Dept. C/RA (Line 20 - 10%) Sen. Kelly |
| | | | Sen. Rodey |
| | | | Sen. Kelly & Rodey |
| | 611 | | Moved to amend 10% to 15% - Sen. Kelly |
| | 617 | | Sen. Kelly moved "do pass w/ind. rec." |

Sen. Rodey & Mulcahy concurred.

621 ADJOURNMENT



Official Business

Alaska State Legislature


Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

February 5, 1980

TO: Senator Bob Mulcahy
Vice-Chairman
Senator Tim Kelly
Senator Pat Rodey
Senator Terry Stimson
All Interested Parties

FROM: Arliss Sturgulewski 
Chairman

SUBJECT: Committee Meeting, Butrovich Room 207, Capitol Building

Thursday, March 6, 1980 - 1:30 p.m.

SB 352 - Requiring fiscal notes/bills affecting municipalities

HB 585 - Re/incorporation of 2nd class borough/home rule



Official Business

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

January 23, 1980

TELECONFERENCE NOTICE

February 6, 1980 / 8-10 a.m. (Juneau time)

Southeastern Alaska - Ketchikan and Sitka

February 7, 1980 / 1:30 p.m. (Juneau time)

first round robin grouping:

Soldotna, Anchorage, Fairbanks, Kodiak, Valdez

second round robin grouping:

Dillingham, Bethel, Kotzebue, and Nome

We are pleased to enclose the reports of the Local Government Interim Study by the Joint Senate and House Community and Regional Affairs Committee.

Legislation composed of seven bills was introduced jointly by the Senate and the House, Monday, January 21, 1980. Copies of the following bills may be obtained from your nearest Legislative Information Office. The complete package consists of Senate Bills 348, 349, 350, 351, 352, 353, 354; OR House Bills 580, 581, 582, 583, 584, 585, and 586.

For your additional information all the Senate bills in the package were assigned to the Senate Community and Regional Affairs Committee, with a referral to the Finance Committee. All the House bills in the package were assigned as follows: HB 580 - C/RA & Finance; HB 581 C/RA; HB 582 C/RA and Finance; HB 583 C/RA and Finance; HB 584 C/RA and Judiciary; HB 585 C/RA; and HB 586 C/RA. You might want to contact the referrals as well, after the bills leave the Community and Regional Affairs Committees. Senator John Sackett is Chairman of Senate Finance; Representative Russ Meekins is Chairman of House Finance, and Representative Charles Parr is Chairman of Judiciary.

In the event you are unable to give your comments during the set teleconference times, please feel free to contact the Senate and House R/CA Committees at Pouch V, Juneau, Alaska 99811.

I. REQUEST

Bill Resolution No. H. B. 585 and S. B. 302

Title An Act Requiring Fiscal Notes for Bills Affecting a Municipality

Requested by House Committee on Community & Regional Affairs Date 1-18-80

II. FISCAL DETAIL

Agency Affected Department of Community & Regional Affairs

Program Category Affected Community Development

BRU, Program, or Subprogram(s) Affected Local Government Assistance Division

(If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | 17.6 | 38.0 | 41.0 | 44.3 | 47.8 |
| 200 TRAVEL | | 0 | 0 | 0 | 0 | 0 |
| 300 CONTRACTUAL | | 1.0 | 1.0 | 1.1 | 1.3 | 1.4 |
| 400 COMMODITIES | | 0 | 0 | 0 | 0 | 0 |
| 500 EQUIPMENT | | .5 | 0 | 0 | 0 | 0 |
| 600 LAND & STRUCTURES | | 0 | 0 | 0 | 0 | 0 |
| 700 GRANTS, CLAIMS, ETC. | | 0 | 0 | 0 | 0 | 0 |

TOTAL

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|------|------|------|------|------|
| GENERAL FUND | | 19.1 | 39.0 | 42.1 | 45.6 | 49.2 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|----|---|---|---|---|
| FULL TIME | | .5 | 1 | 1 | 1 | 1 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

To prepare fiscal notes on all bills relating to municipalities would require an additional Local Government Specialist (Range 17). The figures above are based on the bill being passed at the end of the current session and the position becoming effective in January 1981 for the next legislative session.

Personal services costs are based on a Range 17 position with 28% added for benefits plus 8% each additional year for inflation.

Contractual costs are primarily for long distance telephone calls. The one time equipment cost is for a desk, phone, etc.

IV. DATE 1-18-80

PREPARED BY McKie Campbell

AGENCY Department of Community & Regional Affairs

PHONE 465-4735

Original Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Alaska
MUNICIPAL
League

TELEPHONES
(907) 586-1325
586-6827

204 N FRANKLIN ST
JUNEAU, ALASKA 99801

March 6, 1980

TO: Senate Community and Regional Affairs Committee

FROM: Alaska Municipal League

RE: SB 352

The Alaska Municipal League supports SB 352, Fiscal Notes. Material received from the Advisory Commission on Intergovernmental Relations is attached for your information.

Fiscal notes estimate the effect on the expenditures or revenues of a local government of implementing or complying with a proposed state law. These notes can provide information for both legislators and local representatives on the effect of state law on localities. Presently, twenty five states provide some type of formal procedures for attaching fiscal notes to pending legislation affecting state finances. Twenty two states have enacted fiscal note procedures covering proposed legislation affecting local governments.

4.103 Legislative Notes on The Fiscal Impact on Local Governments Of State Legislative Action¹

State legislative action often affects the expenditures and revenues of state government and local governments. The attachment of estimates of such costs (fiscal notes) to bills as they move through the legislative process assures a legislator's knowledge of the fiscal impact of the new or expanded programs being authorized or the requirements being imposed. It also enables interested citizens to fix responsibility for increased governmental costs and taxes. The Advisory Commission on Intergovernmental Relations, therefore, has recommended that, as a counterpart of a package providing citizens complete information about fiscal affairs, states include, with all major state legislation and proposed administrative regulations affecting local government revenues or expenditures, an explicit note setting out the fiscal impact on those local governments of the legislation or regulations.

The great majority of states provide some formal or informal procedure for attaching fiscal notes to pending legislation affecting state finances. Only 22, however, apply a similar procedure for legislation affecting local governments. Among the latter, only nine require the procedure as a matter of statutory law; most such fiscal note procedures have been established by joint rules of the legislature. Moreover, very few states require the attachment of

fiscal notes to proposed administrative rules or regulations.

Attachment of fiscal notes adds a new dimension to the legislative process—an increased sense of responsible questioning and examination on the part of state legislators. With knowledge of the estimated cost of proposed legislation, they must accept responsibility for their acts. The taxpaying public is bound to benefit—either in tax savings or in more considered public programs, or both.

¹Derived from ACIR, *State Limitations on Local Taxes and Expenditures*, A-64, Washington, DC, U.S. Government Printing Office, February 1977; and *State Mandating of Local Expenditures*, Report A-67, Washington, DC, U.S. Government Printing Office, September 1977.

Information Bulletin

Advisory Commission on Intergovernmental Relations
Washington, DC 20575

BULLETIN No. 79-3

April 1979

STATE MANDATES

IN BRIEF

State mandates tend to impose state priorities on local governments. Many mandates require local governments to make organizational changes, provide more services, tell them how to relate to other local governments, or to their own personnel. While they sometimes create a benefit for the local government, more often mandates impose additional costs, especially when they are not accompanied by adequate state financial assistance.

To alleviate some of the difficulties inherent in state mandating of local expenditures, the Advisory Commission on Intergovernmental Relations has recommended that states define and catalog state-initiated mandates, and that they provide reimbursement for mandates which require local governments to provide additional services, exempt property from the tax base, or impose unnecessarily costly personnel requirements. In addition, the Commission has recommended that state legislation and proposed administrative regulations contain an explicit "fiscal note" setting out any financial cost impact on local governments. Copies of the model legislation are ~~attached.~~ available.

State Mandates: An Overview

A state mandate can be defined as any state constitutional, statutory, or administrative action that expands or limits local government expenditure requirements. These mandates are frequently used to achieve uniform service levels and more professional standards for employees, but they are often the basis for imposing special interest demands as well. There are state mandates on public library hours, park and recreational programs, and local payments for regional public transit systems. Mandates are enacted on special education programs, local retirement systems, labor relations procedures, and salary and wage levels.

A 1976 ACIR survey of state mandates found they were most prevalent in four areas: 45 states mandated solid waste disposal standards; 45 states mandated special education programs; 42 states set standards for workmen's compensation for local personnel other than police, fire and education; 35 or more states had provisions on retirement systems. ^{1/}

Not surprisingly, a survey of attitudes of local officials toward mandates revealed considerable opposition toward them. Although much of this disgruntlement can be alleviated with full or partial reimbursement of additional costs resulting from the mandates, 26% of the state municipal league representatives felt state mandates were inappropriate even if they were fully reimbursed.

The current financial stress being felt at all levels of government -- stemming from mounting inflation rates, a slowing of federal aid growth, and the growing popularity of tax and expenditure limits -- has made state mandates a problem that many local government officials insist must be rectified.

Current Trends

To date, ten states have acted to regulate state mandates by restricting their use or requiring that localities be fully or partially reimbursed for additional costs imposed by mandates. In 1978, four states enacted reimbursement measures to apply on proposed new mandates. Tennessee, Michigan, and Hawaii voters approved constitutional measures requiring the state to share or

^{1/} Advisory Commission on Intergovernmental Relations, State Mandating of Local Expenditures (Report A-67), Washington, D.C., U.S. Government Printing Office, July 1978.

fully fund costs associated with state-imposed mandates. Florida's reimbursement procedure is statutory.

Tennessee's constitutional revision provides that no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly provides that the state share in the cost.

In Michigan, the state is prohibited from "requiring any new or expanded activities by local governments, reducing the proportion of state spending in the form of aid to local governments or shifting the tax burden to local governments" without full state financing.

Hawaii's constitution now provides the state must "share in the cost of any new programs or increased services which the legislature requires that counties provide."

The Florida statute calls for full reimbursement when: (1) a state general law requires municipalities or counties to perform an activity or provide a service or facility which requires the expenditure of additional funds; or (2) a state law grants an exemption or changes the manner by which local property is assessed, or alters authorization to levy local taxes. Partial state reimbursement is to be provided for any state general law which establishes a service or activity which meets both state and local objectives.

Of the six additional states that require state compensation for certain types of mandates, two are statutory and four constitutional:

- By statute, California calls for full reimbursement for costs to local governments incurred by state-imposed mandates;
- Montana law calls for either compensation or authorization of additional local taxation to cover the additional costs; and
- Alaska, Louisiana, Maine and Pennsylvania have constitutional provisions calling for local reimbursement limited to certain types of state mandates.

Fiscal Notes

One step in the direction of state reimbursement is the provision of fiscal notes on state legislation. Fiscal notes estimate the effect on the expenditures or revenues of a local government of implementing or complying with a proposed state law, joint resolution, regulation, rule, order, or administrative action. These notes can serve as a brake on state legislative activity affecting local governments and provide information for both legislators and local representatives on the effect of state law on localities.

Presently, 25 states provide some type of formal procedures for attaching fiscal notes to pending legislation affecting state finances. These procedures vary considerably in their comprehensiveness and applicability. They generally do not extend to agency rules or governor's orders and are not tabulated at the end of the fiscal year.

In 1978, four states enacted fiscal note procedures covering proposed legislation affecting local governments: Connecticut, Georgia, Nevada, and Rhode Island. South Carolina established a fiscal note procedure in both houses of the legislature by rule. Wisconsin and Missouri provided for fiscal notes to be attached to proposed administrative rules and regulations affecting local governments.

Fiscal notes have recently become especially important because more local governments have begun asking for, and more states have begun providing, reimbursement for state mandated programs and services.

Recent State Activity

In this Bulletin, we will look at the state mandating/fiscal note processes in three states: California, Florida and Montana.

California

California's statutes are the most comprehensive of the existing state laws on state reimbursement for mandated costs imposed on local governments. Chapter 1406 of the California statutes of 1972, better known as SB 90, requires that local governments be reimbursed for costs incurred in providing state-mandated services. SB 90 imposed property tax limits on local governments as part of the state's response to Serrano v. Priest, a landmark California Supreme Court case which held that the state's school finance system was unconstitutional under the state's equal protection clause because it made the quality of education a function of local school district's taxable wealth.

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The state's commitment to reimburse encompasses local costs that result from new state-mandated programs, increased service levels, and costs previously incurred at local option that have been subsequently mandated by the state. State administrative or executive orders mandating local costs are also to be reimbursed.

To be exempt from SB 90's reimbursement requirements, legislation must contain a disclaimer describing the rationale for nonreimbursable status. Problems have arisen with the initial use of disclaimers, mainly because a 2/3 vote of the legislature is required for all appropriations legislation to be approved. This provides an incentive to determine some reason for a disclaimer. In the first five years of the program, only 76 of the 1,400 bills that imposed state mandates contained appropriations to reimburse local governments. Some disclaimers were based on negligible cash cost to the local governments. Other bills containing disclaimers gave no reason for the exemption.

The legislative council's office identifies bills containing mandates and they are sent to the Local Mandated Program Unit where an estimate of the costs to localities is prepared. If a disclaimer is attached, the bill is sent to the Finance Committee which approves or disapproves the disclaimer.

In 1977 California enacted legislation to deal with many of the problems that have arisen in the wake of SB 90. The legislation changed the minimum threshold for submission of claims by local governments, expanded the grounds for appeal for reimbursement, and required the California Department of Finance to review all non-reimbursed statutes adopted after 1972. Most importantly, local governments are given the right to appeal bills that mandate costs but which contain either a disclaimer or no appropriation.

Florida

In 1978 Florida enacted a bill stating that any statute requiring "municipalities or counties to administer any program or provide any service or facility [to] include an economic impact statement estimating total costs and [to] provide a method of financing such program or service." The measure requires the legislature to finance activities, services, or facilities when both state and local objectives are being served. General laws under which the required expenditure of additional local funds is incidental to the main purpose of the law are exempted.

Reimbursement can be provided by one of three methods: additional state funds, specific authority to the county or municipality to levy a special tax, or through other sources provided by law. Other state or federal revenues shared with or granted to municipalities or counties are not to be reduced, supplanted, or adversely affected because of this reimbursement.

This act can be superceded or modified by subsequent legislation only when the legislation states specifically that it is so doing, and a reason for the change is stated.

Montana

Montana's legislature passed state mandating legislation in 1974. The law requires the state to authorize local governments to increase local tax levies or provide state funding for the mandate. Any law intended to require local governments to exceed their statutory levy authority can be vetoed by local governments. However, the law does not apply to expenses incurred by local governments that are incidental to the main purpose of the law.

The Montana experience has been uneven so far. Although most of the legislation passed since 1974 has included a statement to the effect that local governments may pay for mandates with money from general funds, in March 1976 the Montana Attorney General ruled that additional taxing authority was not conferred on local governments. Therefore, where an all purpose levy is used, the 65 mill limit cannot be exceeded. Jurisdictions have been told, however, they can abandon the all purpose levy and utilize separate levies until the legislature either raises the limit or exempts additional functions from inclusion in the all purpose levy.

The problems caused by this Attorney General's decision have caused Montana's reimbursement system to be unacceptable to many local governments. Until the legislature works out these mandate funding problems, there will continue to be state expansions into the local government arena without sufficient compensating funding.

State Mandates and Fiscal Notes - A Model

The Advisory Commission on Intergovernmental Relations has reviewed the status of state mandating across the country and the problems associated with this practice, and has made a number of

4.116 State Mandates*

The constitutional fact of state supremacy over local governments—the latter being “creatures of the state”—provides the legislature and the courts with authority to issue directives to these local units. State-initiated mandates can be defined to include any state constitutional, statutory, or administrative action that places new fiscal or administrative requirements on local governments. While other definitions might be possible, no matter what definition is used, the main problem raised by mandates is that added costs are imposed on local government officials. Stated simply, state mandates substitute state objectives for local priorities.

Because of the imposed restrictions on local autonomy, few issues create more resentment among local officials than state mandates. While it is necessary that state governments have wide latitude in establishing statewide policies and programs, there is a substantial controversy on how far states should move into certain areas. The real question becomes: Can state mandates be sufficiently differentiated between an “appropriate” mandate, and an “inappropriate” mandate?

The use of mandates has increased in recent years for two notable reasons. First, state legislatures

have been increasingly reluctant to raise state taxes in response to public demand for local services. Second, the courts have taken a more active role in ordering improvements in service standards. Consequently, state legislatures are sometimes tempted to mandate local service increases, with no state financing, and let local officials figure out how to pay for the mandates.

Several justifications are offered in defense of mandates: (1) to assure minimum statewide service levels or a more uniform level of service throughout the state; (2) to develop professional standards for employees; and (3) to implement state social or economic policy objectives.

It must be emphasized that there is little or no controversy over many state-initiated mandates, particularly those relating to the organization and procedures of local government. State mandates are justified to prescribe the form of local government, the holding of local elections, and the designation of public officers and their responsibilities. Due process and “safeguard-type” mandates are necessary to insure, for example, the equitable administration of justice and the tax laws as well as to protect the public from malfeasance. State mandates of a supervisory nature are also necessary to require localities to act or to refrain from acting so as to avoid injury to, or conflict with, neighboring jurisdictions.

Despite the controversy and interest in the mandating issue, there is still little information available on the scope of the practice. However, results of an ACIR survey indicate that among the most commonly mandated functions are special education

*Derived from ACIR, *State Mandating of Local Expenditures*, A-67, Washington, DC, U.S. Government Printing Office, September 1978; ACIR, *Labor Management Policies for State and Local Government*, A-35, Washington, DC, U.S. Government Printing Office, September 1969; ACIR, *The Role of the State in Strengthening the Property Tax*, A-17, Washington, DC, U.S. Government Printing Office, June 1963; and ACIR, *State-Local Taxation and Industrial Location*, A-30, Washington, DC, U.S. Government Printing Office, April 1967.

programs (45 states) and solid waste disposal standards (45 states). Workmen's compensation (for local personnel other than police, fire, and education) programs are mandated in 42 states, while various provisions of retirement systems are mandated in 35 or more states. Most controversial, however, are state mandates that extend to traditionally local programs—park and recreational activities, for example.

State controls over, and mandates upon, local governments are manifested in constitutional and statutory provisions and in judicial interpretations thereof. Some state constitutional provisions and state legislation are enacted for the purpose of restraining such state mandates. For example, four state constitutions—Alaska, Louisiana, Pennsylvania, and Tennessee—limit the power of the state legislature to impose mandates upon local governments.¹ But the Pennsylvania provision, after disavowing interference with internal affairs proceeds to mandate binding arbitration of firemen and policemen.²

¹*Constitution of the State of Alaska*, art. II, sec. 19, provides that "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." The constitution also forbids a political subdivision to contract a debt "unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question." *Constitution of the State of Louisiana*, art. VI, sec. 14, provides that "No law requiring increased expenditures for wages, hours, working conditions, pension and retirement benefits, vacation, or sick leave benefits of political subdivision employees, except a law providing for civil service, minimum wages, working conditions and retirement benefits for firemen and municipal policemen, shall become effective until approved by ordinance enacted by the governing authority of the affected political subdivision or until the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided." Art. II, sec. 24, of the *Tennessee Constitution* provides in part: "Laws imposing increased expenditures on local governments must provide method of funding, and, in case of bills of general application, provide state share in the cost."

²Art. III, sec. 31, of the *Constitution of the Commonwealth of Pennsylvania* provides: "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever. Notwithstanding the foregoing limitation or any other provision of the Constitution, the General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for the adjustment or settlement of grievances or disputes or for collective bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer if the Commonwealth is the employer, with respect to matters which can be remedied by administra-

Proponents of the constitutional approach argue that this is surest way to protect local autonomy. The constitutional amendment is preferable, they argue, because state statutes cannot bind future legislatures. On the other hand, opponents of constitutional restrictions stress that this approach removes the flexibility state legislatures need to meet unforeseen future demands swiftly and decisively.³ Opponents also note that the constitutional route is slower than statutory action.

A third position advocates a constitutional provision which requires a two-thirds vote of both houses of the legislature before the state legislature may mandate local government expenditures without offsetting state financial aid. This provision is supported in some states on the ground that the proposed procedure is in conformity with the authorization procedure contained in the existing home rule amendment allowing the state legislature by a two-thirds vote to pass a special law, provided the Governor has recommended passage of the law.

Besides the constitutional provisions, some states have adopted statutes which require state compensation for future mandated local costs or revenue losses, or both.⁴ To date, the California statutes are the most comprehensive of the existing state laws on state reimbursement for mandated costs to local government. Under the terms of Chap. 1406, 1972, California statutes adopted the principle of reimbursing local governments for the costs incurred in providing state-mandated services. The reimbursement provision is broad in scope and intent, but it should be noted that such reimbursement applies only to subsequent mandates, and not retroactively. The state government commitment to reimburse is not limited to specific areas of governmental activities; rather, it encompasses local costs that result from (1) new state-mandated programs; (2) increased service levels mandated for existing pro-

ductive action, and to the lawmaking body of such political subdivision or of the Commonwealth, with respect to matters which require legislative action, to take the action necessary to carry out such findings."

³In reviewing the draft legislation, states will need to consider whether a constitutional amendment is necessary to make the legislation workable.

⁴*Revised Codes of Montana, Annotated*, sec. 43-517, provides that "Any law enacted by the legislature after July 1, 1974, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a means to finance the activity service or facility." And further, that "the local government unit may refuse to administer or enforce any law which does not comply with the requirements of the section if that law requires any expenditure that would require the local government unit to exceed its statutory levy authority."

grams: and (3), by amendment, costs previously incurred at local option that have subsequently been mandated by the state. Mandated local costs arising from state administrative or executive orders are also to be reimbursed.

In drafting its recommended model bill, ACIR has concentrated on the reimbursement principle and suggests that it constitutes the core of any legislative proposal. The ACIR policy on state mandates rests on the belief that states mandating either new programs or increases in service levels, or personnel and retirement benefits should share in the cost that these programs impose on local governments.

The first step necessary to come to grips with the state mandating problem is a catalog or inventory of existing state mandates. The legislative or executive branch, or both jointly, should define and then catalog existing state-initiated mandates originating by legislation, executive order, or administrative rule and regulation. All state-initiated mandates adopted in the future should be added to the catalog, and the estimated costs imposed on local governments by all new mandates should be tabulated at the conclusion of each legislative session. After a catalog is created, the same reviewing body should categorize these mandated programs so that they may be fit into proper categories for reimbursement as discussed later. Most importantly, the catalog provides the indispensable first step necessary to rationalize mandates in terms of current policy concerns. (Some states may wish to institute some "sunset" procedure for mandates, once an accurate listing has been obtained.)

Secondly, to accomplish these policy objectives, state statutes should provide procedures and formulas for partial or full reimbursement to local governments, depending upon the category of the mandate. Drawing from the California statute, the following draft bill provides certain safeguards: (a) a fiscal note process to evaluate the cost of all mandates, and (b) a strict interpretation of state-initiated mandates.

Finally, in recognition of the potential for disagreement between state and local units of government as to the costs imposed by state-initiated mandates, the draft bill provides for an appeal and adjustment procedure through a state agency designated to resolve local governments' claims arising from inadequate state funding of the reimbursement provisions. Optional provisions are included to give the local government units the right to refuse to carry out a mandate not in compliance with the reimbursement

policy and to appeal to the courts once administrative procedures have been exhausted.

Section 1 gives the short title of the bill.

Section 2 serves as a policy statement for the bill, including the recognition that state mandates have often produced confusing, inconsistent, and inequitable relationships between the state government and its local political subdivisions, and that to correct these problem areas a review of existing mandates should be undertaken with an eye to developing corrective actions to produce a consistent and equitable framework of state-local relations.

To establish a uniform basis for sifting through the historical record, the term "mandate" must be defined. *Section 3* of the bill defines a state mandate and the various categories of mandates. A broad rather than narrow definition is preferable in providing a basis for differential treatment of various types of mandates.⁵ These definitions serve as a necessary prerequisite to any cataloging or reimbursement procedure, and constitute a first step of a review process of state mandates.

Section 4 of the suggested legislation calls for the legislative or executive branch, or both jointly, to catalog and publish descriptions of existing state-initiated mandates originating by legislation, executive order, or administrative rule and regulation. State mandates which are a result of federal legislative, executive, and court initiatives are also to be included in the catalog with appropriate annotation, as are all future state-initiated mandates. The estimated costs of all new state mandates imposed on local governments are to be tabulated at the conclusion of each legislative session.

Section 4 provides further that the catalog should indicate to which local government unit or official the mandate is directed, whether or not direct costs are attributable to the mandate and what those costs are, the extent of state financial participation in the mandate, and a description of the mandate and its source.

Section 5 requires that, in addition to any statutory requirements for evaluating the fiscal impact of proposed mandates, the state legislature and executive branch adopt, either by statute or rules of procedure, provisions for a statement of the statewide policy objective or objectives that require or justify the imposition of the proposed requirement upon the local government. The premise underlying this re-

⁵If the definition of mandates in general is narrowed at the outset, the door is closed to obtaining a complete inventory of mandates in effect and a subsequent delineation of "justified" and "unjustified" mandates.

quirement is that a good deal of irritation and friction concerning state-mandated costs imposed on local governments stem from the failure to articulate clearly the statewide policy objective.

Section 6 specifies the reimbursement share to be paid by the state government to the local unit for each category of mandate defined in *Section 3* of the bill. Briefly, subsection (b) calls for at least a 50% reimbursement of service mandates. Subsection (c) calls for a 100% reimbursement of the loss of local revenue directly attributable to a mandated classification or exemption of property for purposes of ad valorem property taxation. Subsection (d) calls for reimbursement of personnel mandates to the full extent of increased costs incurred by local governments directly attributable to the mandate, with a few exceptions. Subsection (e) calls for a 100% reimbursement of local governmental costs directly attributable to a mandated increase in public employee retirement benefits. It should be noted that reimbursements are to be paid only for mandates effective subsequent to the effective date of this legislation.

Finally, subsection (a) of *Section 6* expressly relieves the state of reimbursement liability for mandates dealing with the organization and structure of local government, matters of due process, and interlocal equity as defined in *Section 3* of the bill. Subsection (f) provides that any proposal which creates or enlarges a state mandate shall bear either a proposed authorization for appropriation of an amount necessary for reimbursement or a disclaimer from reimbursement liability, stating the specific reason for such exclusion as provided in *Section 9(a)*.

Section 7 deals with the situation where the state also places a lid on local expenditures or taxes and calls for local government units to have the authority necessary to levy taxes beyond the general limitations on local government taxes or expenditures when mandates are not reimbursed. As a practical matter, this authority can be restricted to those local costs that exceed \$5,000 or 1% of the local operating budget. In this way, the financial bind of local officials will be eased while the state policy will be coordinated through a reconciliation of program objectives and the desire to restrain local government tax and expenditure growth.

Section 8 calls for the state agency charged with oversight of mandates to complete and submit to the Governor and the legislature, within three months of the publication of the catalog prescribed in *Section 4*, a review and report on mandates existing prior to the effective date of the act. This report is to include but not be restricted to matters relating to the history of

the mandate, its costs, and extent of state reimbursement and whether the mandate continues to meet a statewide policy objective and whether reimbursement should be undertaken. The report is to include any other information or recommendations which the agency considers pertinent. The objective of this required review would be to highlight those mandates that no longer meet a current statewide policy objective, and at the same time to uncover mandates that continue to meet current statewide policy but need to be strengthened or changed if they are to be effective.

Once it has been determined that reimbursement is a desirable statewide policy, a mechanism for reviewing reimbursement applications and for paying reimbursements to the local unit must be established. *Section 9* of the bill sets forth this procedure. First, however, subsection (a) expressly lists several circumstances which shall exclude the state from reimbursement liability. Basically, these circumstances are those which impose little recognizable new duty on the local government, or impose only minimal new costs, or those which impose additional costs but also provide offsetting savings. Additionally, subsection (a) enables the legislature to disclaim reimbursement liability for a unique or compelling policy reason, provided the reason is stated within the proposed act establishing the mandate.

Subsections (b) and (c) of *Section 9* provides the procedures necessary for an estimation of reimbursement costs, application for reimbursement, and a disbursement procedure. Most importantly, subsection (b) calls for an estimate of mandated costs to be prepared by an agency of the state executive branch after consultation with the affected local government unit and for the estimate to be submitted to both houses of the legislature before consideration of the proposal. Subsection (c) calls for the local governmental unit affected by the mandate to submit an application for reimbursement with estimated costs within 60 days of its effective date, and for an agency of the executive branch to review this application and forward the application upon approval to the appropriate agency for reimbursement or to the legislature for a direct appropriation to the local units of government. It should be noted that all reimbursement procedures are subject to the right of the state to audit the records of any local government to verify the actual costs of the mandate and make changes if necessary. Subsection (d) of *Section 9* provides the local unit with the authority needed to appeal any adverse reimbursement decision to a designated state agency.

States having a general revenue sharing or per

capita aid program for local governments will already have established procedures for executive review, appeal, and reimbursement that can be adapted to accommodate mandate reimbursement application, review, and adjudication.

Some states may desire to make reimbursements a function of the legislature, through annual appropriations to the individual local units, following receipt of a recommended reimbursement schedule from the executive branch.

Recognizing that such an administrative appeals process may not be sufficient in some cases, an optional *Section 9* is included in the draft legislation calling for local governmental units to have the right (a) to initiate court action when the local unit feels there has been inadequate reimbursement or an improper decision as to whether a proposal involves state-mandated costs, or to enjoin the effect of the mandate until funds are available; and (b) to refuse to comply with the mandate.

Suggested Legislation

[AN ACT RELATING TO STATE MANDATING OF LOCAL GOVERNMENT EXPENDITURES, SERVICES, STANDARDS, EMPLOYMENT CONDITIONS, AND RETIREMENT BENEFITS]

(Be it enacted, etc.)

1 SECTION 1. *Short Title.* This act may be cited as "The State Mandates Act."

2 SECTION 2. *Findings and Purpose.*

3 (a) The [legislature] finds that preceding actions of the state government in specifying the manner,
4 standards, and conditions under which public services are rendered to citizens by the political subdivisions
5 of this state on occasion have not resulted in equitable relationships between the state government and its
6 local political subdivisions. Some of these actions have dealt in detail with the internal management of local
7 governments, others have specified the establishment of new services and facilities without providing any
8 new revenue sources or any financial participation by the state in meeting the additional costs; still others
9 have specified the adoption of higher service standards without a full assessment of the impact upon local
10 expenditures and tax rates.

11 (b) It is the purpose of this act

12 (1) to provide for the collection and periodic publication of information on existing and future
13 state and federal mandates;

14 (2) to enunciate policies, criteria, and procedures to govern any future state-initiated specifica-
15 tion of local government services, standards, employment conditions, and retirement benefits that has the
16 effect of necessitating increased local government expenditures in such a way as to accommodate the
17 constitutional obligations of the state government in addressing problems of statewide concern, while
18 avoiding the imposition of state standards upon essentially local responsibilities without appropriate
19 reimbursement or other appropriate fiscal participation on the part of the state government; and

20 (3) to provide for a review of existing mandates and an identification of the nature and
21 magnitude of corrective actions needed to produce a consistent and equitable framework of state-local
22 relations regarding mandated services, standards, and expenditures.

23 SECTION 3. *Definitions.*

24 (a) "Local government" means a city, [municipality,] county, township, town, [borough, village,]
25 school district, or special district.

26 (b) "State mandate" means any state-initiated constitutional, statutory, or executive action that
27 requires a local government to establish, expand, or modify its activities in such a way as to necessitate
28 additional expenditures from local revenues, including any order issued by a state court except judgments in

1 eminent domain condemnation and tort liability proceedings, or proceedings relating to local government
2 performance or nonperformance under any contract or agreement. State mandates may be reimbursable or
3 nonreimbursable as provided in this act.

4 (c) "Local government organization and structure mandate" is a state mandate concerning such
5 matters as

- 6 (1) the form of local government and the adoption and revision of local government charters,
- 7 (2) the establishment of multicounty districts, councils of governments, or other forms and
8 structures for interlocal cooperation and coordination;
- 9 (3) the holding of local elections;
- 10 (4) the designation of public officers, and their duties, powers, and responsibilities; and
- 11 (5) the prescription of administrative practices and procedures for local governing bodies.

12 (d) "Due process mandate" is a state mandate concerning such matters as the

- 13 (1) administration of justice,
- 14 (2) notification and conduct of public hearings,
- 15 (3) procedures for administrative and judicial review of actions taken by local governing bodies,
16 and
- 17 (4) protection of the public from malfeasance, misfeasance, or nonfeasance by local government
18 officials.

19 (e) "Benefit spillover" is the process of accrual of social or other benefits from a governmental service
20 to jurisdictions adjacent to, or beyond the jurisdiction providing the service.

21 (f) "Service mandate" is a state mandate as to creation or expansion of governmental services or
22 delivery standards therefor and those applicable to services having substantial benefit spillover and
23 consequently being wider than local concern; for purposes of this act, applicable services are

- 24 (1) elementary and secondary education,
- 25 (2) community colleges,
- 26 (3) public health,
- 27 (4) hospitals,
- 28 (5) public assistance,
- 29 (6) air pollution control,
- 30 (7) water pollution control,
- 31 (8) solid waste treatment and disposal,
- 32 (9) non-local public transportation, and
- 33 (10) *[other statewide or non-local services for which the state might be expected to establish levels*
34 *or delivery standards.]*

35 A state mandate that expands the duties of a public official by requiring the provision of additional

1 services is a "service mandate" rather than a "local government organization and structure mandate."

2 (g) "Interlocal equity mandate" is a state mandate requiring local governments to act so as to
3 benefit other local governments or to refrain from acting to avoid injury to, or conflict with, neighboring
4 jurisdictions, including such matters as

5 (1) land use regulations,

6 (2) tax assessment procedures for equalization purposes, and

7 (3) environmental standards.

8 (h) "Tax exemption mandate"¹ is a state mandate that exempts privately owned property or other
9 specified items from the local tax base, such as

10 (1) exemption of business inventories from the local property tax base, and

11 (2) exemption of food or medicine from the local sales tax.

12 (i) "Personnel mandate" is a state mandate concerning or affecting local government

13 (1) salaries and wages,

14 (2) employee qualifications and training (except when any civil service commission, profes-
15 sional licensing board, or personnel board or agency established by state law sets and administers
16 standards relative to merit-based recruitment of candidates for employment or conducts and grades
17 examinations and rates candidates in order of their relative excellence for purposes of making
18 appointments or promotions to positions in the competitive division of the classified service of the
19 public employer served by such commission, board, or agency).

20 (3) hours, location of employment, and other working conditions, and

21 (4) fringe benefits including insurance, health, medical care, retirement and other benefits.

22 SECTION 4. *Collection and Maintenance of Information Concerning State Mandates.*

23 (a) The [department of community affairs] [state comptroller] [other agency in the executive
24 branch of state government] [committee, agency, or office of the legislature] shall be responsible for

25 (1) collecting and maintaining information on state mandates, including such information as
26 may be required for effective implementation of the provisions of this act;

27 (2) reviewing local government applications for reimbursement submitted pursuant to this
28 act;

29 (3) hearing complaints or suggestions from local governments and other affected organiza-
30 tions as to existing or proposed state mandates; and

31 (4) reporting periodically to the Governor and [legislature] regarding the administration of
32 provisions of this act and changes proposed thereto.

33 (b) (1) Within [12 months] following the effective date of this act, the [head of state agency]

¹See suggested legislation *State Compensation Programs for State-Owned Property*.

1 *specified in subsection (a) above*] shall collect and tabulate relevant information as to the nature and
2 scope of each existing state mandate, including but not necessarily limited to

3 (i) identity of type of local government and local government agency or official to
4 whom the mandate is directed;

5 (ii) whether or not an identifiable local direct cost is necessitated by the mandate and
6 the estimated annual amount;

7 (iii) extent of state financial participation, if any, in meeting such identifiable costs;

8 (iv) state agency, if any, charged with supervising the implementation of the mandate;

9 (v) a brief description of the mandate and a citation of its origin in statute or
10 regulation.

11 (2) The resulting information shall be published in a catalog [available to legislators, state
12 and local officials, and interested citizens]; as new mandates are enacted they shall be added to the
13 catalog, and at the conclusion of [*each annual or biennial session of the legislature or other specified*
14 *time*] the [*state executive or legislative agency*] shall list each new mandate enacted at the preceding
15 legislative session, and the estimated additional identifiable direct costs, if any, imposed upon local
16 governments.² A revised version of the catalog shall be published every [five] years, beginning with the
17 publication date of the initial version.

18 (3) Information comparable to that described in subsection (1) above shall be collected by
19 [*state agency*] regarding federal legislative, executive, and judicial mandates and shall be included in the
20 initial and subsequent versions of the catalog.³

21 SECTION 5. *Specification of State Policy Objective.*

22 (a) Subsequent to the effective date of this act, any proposal for legislation submitted by the
23 executive branch of the state government, any bill filed for introduction by a member of the [*legislature*],
24 and any committee print of a new or amended bill that has the effect of creating or enlarging a state
25 mandate upon local government as defined in Section 3(b) of this act shall include, in addition to the
26 estimated additional costs to the affected local governments as provided under [*citation of any statute(s)*
27 *requiring the attachment to proposed legislation of notes on local government fiscal impact*], a
28 statement of the statewide policy objective or objectives that require or justify the imposition of the
29 proposed requirements upon local government and the extent to which such policy objectives or
30 objective cannot be achieved in the absence of such proposed requirements.⁴

31 (b) Subsequent to the effective date of this act, any executive order or administrative regulation

²See suggested legislation *Legislative Notes on the Fiscal Impacts on Local Governments of State Actions*. Also a provision might be included for differentiating between initial or first-year costs and subsequent annual operating costs.

³Federal mandates are so numerous and complex that states may wish to confine catalog coverage to certain major or other selected categories.

⁴In some states the substance of this subsection would be provided in the legislature's rule of procedure rather than by statute, at least with regard to the responsibilities imposed upon individual members or committees; alternatively such a rule might provide that consideration of a mandate bill would not be in order, absent the required statement of policy objective.

1 that creates or enlarges a mandate as defined in Section 3(b) of this act shall include a statement of the
2 statewide policy objective or objectives as specified in subsection (a) above.

3 SECTION 6. *State Reimbursement to Local Government for Increased Costs Arising from*
4 *Certain State Mandates.*

5 (a) Any increased costs accruing to local governments as a direct result of mandates dealing with
6 the organization and structure of local government, due process mandates, and interlocal equity
7 mandates as defined in subsections (c), (d), and (g) respectively, of Section 3 above, are not reimbursable
8 by the state.

9 (b) At least [50%], but under no circumstances more than [100%] of the increase in costs of a
10 local government directly attributable to a service mandate as defined in Section 3(f) enacted
11 legislatively or established administratively subsequent to the effective date of this act shall be
12 reimbursed by the state unless there is in existence at the time of such enactment a program of state aid
13 for the service affected by the mandate whereunder the non-local share for any participating local
14 government is [50%] or greater and where the increased costs arising under the mandate constitute
15 allowable expenditures under the aid program. Where all or part of the increased costs are met through
16 federal or other external aid, only the net increase to the local government shall be included in the base
17 against which the amount of state reimbursement is to be computed.

18 (c) [100%] of the loss in revenue of a local government directly attributable to a mandated
19 classification or exemption of property for purposes of ad valorem property taxation enacted subse-
20 quent to the effective date of this act shall be reimbursed by the state. The loss of revenue does not
21 include potential revenue from property of a type which was not being assessed and taxed on January 1,
22 [insert year in which this act is to be effective].*

23 (d) Except for a state mandate that places a floor under retirement benefits or that affects
24 personnel qualifications for local employees, the salaries and wages of which are partially or wholly
25 financed under a state aid program, any personnel mandate as defined in Section 3(i) above enacted
26 legislatively or established administratively subsequent to the effective date of this act shall be
27 reimbursed by the state to the extent of increased costs incurred by local governments directly
28 attributable to such mandate.

29 (e) All of the increased costs of a local government directly attributable to a mandated increase in
30 public employee retirement benefits enacted subsequent to the effective date of this act [and which has
31 the effect of elevating retirement benefits of local government employees above an adequate level—to

*States may wish to provide total or partial reimbursement in case of mandated exemptions of business inventories (see ACIR, *State Legislative Program*, Vol. 3, M-94, *State and Local Revenues*, 3.107, pp. 49-52, Washington, DC, U. S. Government Printing Office, November 1975). See suggested legislation, *State Compensation Programs for State-Owned Property*.

1 costs above a 75% takehome salary replacement] shall be reimbursed by the state.⁶

2 (f) Subsequent to the effective date of this act, any proposal for legislation submitted by the
3 executive branch of state government, any bill filed for introduction by a member of the [legislature], and
4 any committee print of a new or amended bill that creates or enlarges a state mandate of the type
5 specified in subsections (b), (c), (d), and (e) above, shall bear either a proposed authorization for
6 appropriation of an amount necessary to provide the reimbursement specified above or a disclaimer
7 from reimbursement liability, stating the specific reasons for such exclusion, as provided in Section 9(a)
8 below.

9 SECTION 7. *Exemption from State-Imposed Limits of Taxes [and/or Expenditures] of Local*
10 *Governments of Revenues Needed to Meet Increased Costs Directly Attributable to State Mandates.*

11 Execution of state mandates as defined in this act is hereby declared a public purpose of affected
12 local governments in the [insert name of state], and where the increased local costs directly attributable
13 to any nonreimbursable mandate as provided in Section (6) above exceeds [\$5,000] [1% of the operating
14 budget of the local government], the excess may be included in the [property tax levy] [fiscal year's
15 operating expenditure] above and beyond the limitations set forth in [cite applicable statutory provision
16 setting general limitations upon local government tax rates or levies or upon expenditures].

17 SECTION 8. *Review of Existing Mandates.*

18 (a) Concurrently with, or within [three] months subsequent to the publication of a catalog of state
19 mandates as prescribed in Section 4(b) above, the [state agency charged with oversight of mandates in
20 Section 4(a)] shall submit to the Governor and the [legislature] a review and report on mandates enacted
21 prior to the effective date of this act and remaining in effect at the time of submittal of the report.

22 (b) The report shall include for each mandate the following:

23 (1) the factual information specified in Section 4(b) for the catalog;

24 (2) extent to which the enactment of the mandate was requested, supported, encouraged, or
25 opposed by local governments or their respective organizations;

26 (3) whether or not the mandate continues to meet a statewide policy objective or has
27 achieved the initial policy intent in whole or in part;

28 (4) amendments if any required to make the mandate more effective;

29 (5) whether the mandate should be retained or rescinded;

30 (6) whether state financial participation in helping meet the identifiable increased local costs
31 arising from the mandate should be initiated, and if so, recommended ratios and phasing-in schedules;
32 and

⁶In many states most local government retirement benefits have already reached what are regarded as adequate levels among retirement and actuarial experts (e.g. 75%-80% take-home salary replacement after meeting length of service requirements); many are beginning to exceed this level amid increasing concern about the financial soundness of local retirement systems. Each state will need to develop its own definition of "adequacy" with any mandated enrichments over this level subject to full or partial state reimbursement.

1 (7) any other information or recommendations which the [state agency] considers pertinent.

2 [(c) Any mandate not renewed, revised, or dealt with otherwise by the [legislature] shall terminate
3 at the end of three years following the publication of the initial version of the catalog prescribed in
4 Section 4(b).]

5 [(d) The [appropriate committee of each house of the legislature] shall review the report and shall
6 initiate such legislation or other action as it deems necessary.]

7 SECTION 9. *Exclusions. Reimbursement Application, Review, Appeals, and Adjudication.*

8 (a) *Exclusions.* Any of the following circumstances inherent to, or associated with, a mandate
9 shall exclude the state from reimbursement liability under this act. If the mandate

10 (1) accommodates a request from local governments [or organizations thereof];⁸

11 (2) results in no new governmental duties, including legislation or regulation permissive in
12 nature;

13 (3) provides only clarifying or conforming, nonsubstantive changes in an earlier statute or
14 regulation;

15 (4) imposes additional duties of a nature which can be carried out by existing staff and
16 procedures at no appreciable net cost increase;

17 (5) creates additional costs but also provides offsetting savings resulting in no aggregate
18 increase in net costs;

19 (6) imposes a cost that is wholly or largely recovered from federal, state, or other external
20 financial aid;

21 (7) imposes additional net costs of less than [\$1,000 for a single local government or 1/10 of
22 a mill on the statewide aggregate local property tax base].

23 Additionally, the [legislature] may exclude a mandate from reimbursement liability for a unique or
24 compelling policy reason, such reason to be stated in the act establishing the mandate.

25 (b) *Reimbursement Estimation and Appropriation Procedure.*

26 (1) When a bill is introduced in the [legislature], the [legislative counsel or other office of the
27 legislature] shall determine whether such bill requires reimbursement to local governments pursuant to
28 this act. The [counsel or office] shall make such determination known in the digest of the bill.

29 In making the determination required by this subsection the [legislative counsel] shall disregard any

⁸If a state desires to initiate a "sunset" procedure for forcing attention to mandates already on the books, the procedure should follow that set forth in the state's general "sunset" law, if one exists, additionally the legislature might find it preferable in consideration of workload to exclude "form and structure" and "due process" mandates from the scope of "sunset."

⁹A state mandate that arises as a direct result of a legislative provision sought by local governments probably should not require reimbursement. The wording of this exclusion depends upon the structure and process that underlies state legislation on local government affairs in a given state including such factors as: the extent to which such matters are handled by general law or as special legislation targeted by name or narrow population class to one or a few local governments; the nature of the local governments' request in a specific instance; nature of testimony given in support of the legislation; degree of unanimity of support among the individual local governments; and the role of state organizations of city or county officials and the scope and nature of the process by which the organizations establish positions in support of or opposition to specific legislative bills.

1 provision in a bill which would make inoperative the reimbursement requirements of Section 6 above,
2 and shall make the determination irrespective of any such provision.

3 (2) Whenever the [*legislative counsel*] determines that a bill will require state reimbursement
4 to a local government as provided in Section 6, the [*department of finance or other executive branch*
5 *fiscal agency*], after consultation with the [*department of community affairs or the state agency*
6 *designated in Section 4 and subsequently*] shall prepare estimates of the amount of reimbursement which
7 will be required.⁹ Such estimates shall be prepared for the [*respective committees of each house of the*
8 *legislature*] which consider taxation and appropriation measures and shall be prepared prior to any
9 hearing on such a bill by any such committee.

10 (3) The estimate required by subsection (2) above shall be the amount estimated to be
11 required during the first fiscal year of a bill's operation in order to reimburse local governments
12 pursuant to Section 6, for costs mandated by such bill. In the event that the operative date of such a bill
13 does not begin on the first day of [*state fiscal year*], the estimate shall also include the amount estimated
14 to be required for reimbursement for the next following full fiscal year. In the event that a bill is
15 amended on the floor of [*either house*], whether by adoption of the report of a conference committee or
16 otherwise, in such a manner as to require reimbursement pursuant to this act, the [*legislative counsel*]
17 shall immediately inform, respectively, the [*Speaker of the House and the President of the Senate*] of
18 such fact. Such notification from the [*legislative counsel*] shall be published in the journal of the
19 [*respective houses of the legislature*].

20 (4) For the initial fiscal year, reimbursement funds shall be provided as follows:

21 (i) any statute mandating such costs shall provide an appropriation therefor, and

22 (ii) any executive order mandating such costs shall be accompanied by a bill to
23 appropriate the funds therefor, or, alternatively an appropriation for such funds shall be included in the
24 executive budget for the next following fiscal year.

25 In subsequent fiscal years, appropriations for such costs shall be included in the [*executive budget*]
26 and general or supplemental appropriation bills.

27 (5) The amount appropriated for such purposes shall be [*appropriated to the [state fiscal*
28 *agency] for disbursement*] [*appropriated directly to the local units of government pursuant to*
29 *subsection (c) below*].

30 (c) *Reimbursement Application and Disbursement Procedure.*

31 (1) For the initial fiscal year during which reimbursement is authorized, each local govern-
32 ment believing itself to be entitled to reimbursement under this act shall submit to the [*department of*
33 *community affairs*] [*state fiscal agency*] [*other appropriate state officials or agency*], within [60] days of

⁹Where the legislature has provided a fiscal note procedure (as referenced in footnote to Section 4(b)(2) above), somewhat different wording may be needed.

1 the operative date of the mandate a claim for reimbursement accompanied by its estimate of the
2 increased costs required by the mandate for the balance of the fiscal year. [The department of
3 community affairs] [or other state executive agency] shall review such claim and estimate and forward
4 them with its comments to the [state fiscal agency]. The [department of finance] [or appropriate state
5 fiscal agency] shall [pay such claims from the funds appropriated pursuant to subsection (b) above,
6 provided that it may

7 (i) audit the records of any local government to verify the actual amount of the
8 mandated cost, and

9 (ii) reduce any claim determined to be excessive or unreasonable.] [submit to the
10 [legislature] a schedule of recommended appropriation to respective units of local government.]

11 (2) For the subsequent fiscal years, local governments shall submit claims as specified above
12 on or before [date] of each year. The [state fiscal agency] shall [pay] [recommend to the [legislature]
13 the payment of] such claims from funds appropriated therefor, provided that it

14 (i) may audit the records of any local governments to verify the actual amount of the
15 mandated cost.

16 (ii) may [reduce] [recommend to the [legislature] the reduction of] any claim, determined
17 to be excessive or unreasonable, and

18 (iii) shall adjust the payment to correct for any underpayments or overpayments which
19 occurred in the previous fiscal year.

20 (3) Any funds received by a local government pursuant to this act may be used for any
21 public purpose.

22 (d) *Appeals and Adjudication.*

23 (1) Local governments may appeal determinations made by state officers acting pursuant to
24 this act. The appeal must be submitted to the [department of community affairs or other state agency
25 designated in Section 4] within [days] following the date of receipt of the determination being appealed.
26 [The appeal must include evidence as to the extent to which the mandate has been carried out in an
27 effective manner and executed without recourse to standards of staffing or expenditure higher than
28 specified in the mandatory statute]. The [state agency], after reviewing the evidence submitted to it,
29 [may increase or reduce the amount of a reimbursement claim] [shall submit to the legislature any
30 recommendations for change]. [The decision of the [agency] shall be final.] [Some states, especially
31 those already having boards of control or other adjudicatory body for review of claims against the state
32 may wish to provide a second level of appeal].

33 SECTION 10. *Refusal to Comply with Mandate and Judicial Review Thereof.*

34 (a) An affected local government may, by resolution refuse to comply with or enforce any law
35 not meeting the requirements of this act.¹⁰ A copy of such resolution shall be transmitted within 24

1 hours to the [attorney general; Governor.]

2 (b) *[A section that would permit a local government to initiate court action to determine whether*
3 *or not an enacted statute or issued executive order correctly specifies that it does not involve any state-*
4 *mandated costs, or if it involves such costs that there is an adequate appropriation available and that*
5 *would require the court to enjoin the effect of the mandate until funds are available.]¹¹*

6 SECTION 11. *Effective Date.* [Insert effective date.]

7 SECTION 12. *Separability.* [Insert separability clause.]

¹¹See *Revised Codes of Montana*, sec. 43-517, SB 231, Florida Senate, 1978, provided "The municipality or county may refuse to comply with, administer, or enforce any law which does not comply with the requirements of this section unless such law expressly supersedes or modifies this act. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise except to the extent that such legislation shall do so expressly; reasons for legislative deviations from this section shall be stated with particularity in the preamble of the act."

¹²See AB 1563, California Assembly, 1977.

4.103 Legislative Notes on The Fiscal Impact on Local Governments Of State Legislative Action¹

State legislative action often affects the expenditures and revenues of state government and local governments. The attachment of estimates of such costs (fiscal notes) to bills as they move through the legislative process assures a legislator's knowledge of the fiscal impact of the new or expanded programs being authorized or the requirements being imposed. It also enables interested citizens to fix responsibility for increased governmental costs and taxes. The Advisory Commission on Intergovernmental Relations, therefore, has recommended that, as a counterpart of a package providing citizens complete information about fiscal affairs, states include, with all major state legislation and proposed administrative regulations affecting local government revenues or expenditures, an explicit note setting out the fiscal impact on those local governments of the legislation or regulations.

The great majority of states provide some formal or informal procedure for attaching fiscal notes to pending legislation affecting state finances. Only 22, however, apply a similar procedure for legislation affecting local governments. Among the latter, only nine require the procedure as a matter of statutory law; most such fiscal note procedures have been established by joint rules of the legislature. Moreover, very few states require the attachment of

fiscal notes to proposed administrative rules or regulations.

Attachment of fiscal notes adds a new dimension to the legislative process—an increased sense of responsible questioning and examination on the part of state legislators. With knowledge of the estimated cost of proposed legislation, they must accept responsibility for their acts. The taxpaying public is bound to benefit—either in tax savings or in more considered public programs, or both.

As states move toward reimbursement of local governments for mandated programs, the attachment of fiscal notes becomes an essential part of any such procedure. The fiscal note will provide a basis for estimating the cost of such reimbursement and then initiating the actual reimbursement process.²

The following suggested legislation requires that fiscal notes be attached to legislation or administrative actions affecting local governments. It comprises a full fiscal note procedure and can be made to apply to legislation affecting state government. States that already have adequate state fiscal note legislation may simply wish to use the applicable local government provisions as amendatory to their present statutes. Requiring fiscal notes on legislation affecting local governments may also be handled through legislative rules or resolutions, rather than by statute.

The suggested bill is based on Arkansas and Maryland statutes (Act 221, 1977 Session, and An-

¹Derived from ACIR, *State Limitations on Local Taxes and Expenditures*, A-64, Washington, DC, U.S. Government Printing Office, February 1977; and *State Mandating of Local Expenditures*, Report A-67, Washington, DC, U.S. Government Printing Office, September 1977.

²See suggested legislation on *State Mandates*.

notated Code, Art. 40, secs. 63-7-A, respectively).

Section 1 states the title of the act.

Section 2 states the findings and purpose of the legislation.

Section 3 defines a fiscal note.

Section 4 requires that fiscal notes be attached to all bills and resolutions with a fiscal impact on local governments.

Section 5 provides a parallel requirement for administrative rules and actions.

Section 6 specifies the information to be contained in a fiscal note.

Section 7 designates the official responsible for preparing the fiscal note or for determining that a fiscal note is not necessary and directs the official to obtain the advice and assistance of local government officials, when appropriate.

Sections 8 and 9 provide for revision of notes and replacement of waivers with notes if bills and resolutions are amended to change their fiscal impact.

Section 10 requires that fiscal notes be made available for public inspection.

Sections 11 and 12 are separability and effective date clauses.

Suggested Legislation

[AN ACT REQUIRING THE ATTACHMENT OF FISCAL NOTES
TO PROPOSED LEGISLATION AFFECTING LOCAL GOVERNMENT
FINANCES]

(Be it enacted, etc.)

1 SECTION 1. *Short Title.* This act may be cited as the "[State] Local Government Fiscal
2 Notes Act."

3 SECTION 2. *Findings and Purpose.*

4 (a) The [legislature] finds that many [local political subdivisions] of this state are adversely
5 affected by the fiscal effects of rules, orders of regulatory bodies, and acts of the [legislature]. In many
6 instances, neither the [legislature] nor the affected local governments are fully aware of the extent
7 of the fiscal consequences of proposed laws or administrative actions. The [legislature] finds also that
8 awareness on the part of legislators and interested citizens of the fiscal impact of proposed administra-
9 tive actions and laws can result in tax savings or in more considered programs, or both.

10 (b) It is the purpose of this act to require the attachment of a fiscal note to each proposed law,
11 joint resolution, regulation, rule, order, or administrative law presumed to have a fiscal impact on the
12 [local political subdivisions] of this state.

13 SECTION 3. *Fiscal Note Defined.* For purposes of this act, "fiscal note" means a realistic state-
14 ment of the estimated effect on the expenditures or revenues of [local political subdivisions] of imple-
15 menting or complying with a proposed law, joint resolution, regulation, rule, order, or administrative
16 law.

17 SECTION 4. *Fiscal Note Required on Legislation.* Before any vote is taken in a committee of the
18 [legislature] or on the floor of [either house] thereof, on any bill or joint resolution affecting the
19 expenditures or revenues of a [local political subdivision], a fiscal note shall be filed with the chairman
20 of the committee to which the bill or resolution was referred and the [chief clerk of each house]. Any
21 representative of any [local political subdivision] requesting a copy of the fiscal note shall be furnished
22 with a copy immediately upon request. The sponsor of the bill or resolution shall be responsible for
23 causing copies of the fiscal note to be furnished as required by this act.

24 SECTION 5. *Fiscal Note Required on Administrative Actions.* No regulation, rule, order, or
25 administrative law, or amendment to an existing regulation, rule, order, or administrative law which
26 would affect the expenditures or revenues of any [local political subdivision] in this state shall be
27 valid, unless 30 days prior to its adoption by the board, commission, agency, department, officer, or
28 other authority of the government of the [insert state], except the [legislature, the courts, and the

1 Governor], such board, commission, agency, department, officer, or other authority shall file a fiscal
2 note with the [secretary of state]. Any [local political subdivision] that will be affected by the pro-
3 posed regulation, rule, order, administrative law, or amendment thereto shall, upon request, immedi-
4 ately be furnished with a copy of the fiscal note by the board, commission, agency, department, of-
5 ficer, or other authority.

6 SECTION 6. *Contents of Fiscal Note.* A fiscal note shall contain an estimate of the effect of the
7 bill, joint resolution, or administrative action on the expenditures or revenues of [local political sub-
8 divisions] for the fiscal year in which the bill, joint resolution, or administrative action would become
9 effective if enacted and for the next [four] succeeding fiscal years. If the effect of the bill, joint reso-
10 lution, or administrative action is not expected to be totally evident within the applicable period, the es-
11 timate shall be projected beyond that period to include an estimate for the first fiscal year in which it is
12 expected to be fully effective.

13 SECTION 7. *Preparation of Note or Waiver.* The [chief fiscal officer]¹ [legislative research
14 director] shall have the fiscal note prepared by his office or by other departments or agencies of state
15 government. Where appropriate, he shall seek the advice and assistance of local government officials
16 or their representatives. A waiver of the fiscal note shall be prepared by the [chief fiscal officer]
17 [legislative research director] for any bill, joint resolution, or administrative action that does not
18 have a direct effect upon the revenues or expenditures of [local political subdivisions]. If the fiscal
19 note is not prepared by the [chief fiscal officer] [legislative research director], the department or
20 agency of state government preparing the fiscal note shall be clearly indicated on the fiscal note along
21 with the signature of the [chief fiscal officer] [legislative research director] or his authorized rep-
22 resentative indicating that the [chief fiscal officer] [legislative research director] agrees with the
23 fiscal impact estimate thereon.

24 SECTION 8. *Revision of Note.* A fiscal note that is attached to a bill or joint resolution shall be
25 revised if an amendment is adopted that changes the fiscal effect of the bill or joint resolution, unless
26 this requirement is waived by [the chairman of the committee to which the bill was referred,] the
27 [president of the senate] or the [speaker of the house]; provided, however, that such waiver shall
28 apply only to technical changes. The revised fiscal note shall be processed by the [chief fiscal officer]
29 [legislative research director] and returned as quickly as possible to the committee, or the clerk of the
30 [house], or [secretary of the senate] if one of the latter has the custody of the bill or joint resolu-
31 tion at that time.

32 SECTION 9. *Replacement of Waiver With Note.* A waiver of a fiscal note shall be replaced with a
33 fiscal note if an amendment to a bill or joint resolution causes the bill or joint resolution to have an ef-

¹Either the chief fiscal officer of the executive branch or of the legislature may be designated

1 fect upon the revenues or expenditures of [local political subdivisions].

2 SECTION 10. *Retention of Copy of Fiscal Note or Waiver; Inspection; Publication of Note or*
3 *Waiver in Journals; Matter of Public Record.*

4 (a) A copy of each fiscal note or waiver of a fiscal note shall be retained by the [*chief fiscal of-*
5 *ficer*] [*legislative research director*], and be reasonably available for public inspection, for [at
6 least three years following its preparation] [the duration of the program]. The fiscal note or waiver
7 of a fiscal note attached to any bill or joint resolution shall be published in the [journal of each house
8 of the [legislature] [session laws for the legislative session in which the act to which it applies is
9 enacted].

10 (b) A fiscal note, upon being filed as herein provided, is a public record within the meaning of the
11 [*cite state freedom of information act*]

12 SECTION 11. *Separability.* [*Insert separability clause.*]

13 SECTION 12. *Effective Date.* [*Insert effective date.*]

| <u>SENATE</u> | | | <u>HOUSE</u> | | |
|---------------|-----------------------------------|----------------|--------------|--------------------------------|----------------|
| Bill # | Subject | Committee | Bill # | Subject | Committee |
| 348 | Est. Unorg. Boros | C/RA & Finance | 580 | Est. Unorg. Boros | C/RA & Finance |
| 349 | Planning Assistance | C/RA & Finance | 582 | Planning Assistance | C/RA & Finance |
| 350 | DPDP | C/RA & Finance | 581 | DPDP | C/RA |
| 351 | State Aid to Municip | C/RA & Finance | 583 | State Aid to Municipalities | C/RA & Finance |
| 352 | Fiscal Notes | C/RA & Finance | 586 | Fiscal Notes | C/RA |
| 353 | Incorp. 2nd Class Boroughs | C/RA & Finance | 585 | Incorp. 2nd Cls. Boroughs | C/RA |
| 354 | Elimination 3rd Class Boroughs | C/RA & Finance | 584 | Elim. 3rd Class Boroughs | C/RA & Jud. |

TELECONFERENCE NOTICE

February 6, 1980 / 8-10 a.m. (Juneau time)

Southeastern Alaska - Ketchikan and Sitka

February 7, 1980 / 1:30 p.m. (Juneau time)

first round robin grouping:
Soldotna, Anchorage, Fairbanks, Kodiak, Valdez

second round robin grouping:
Dillingham, Bethel, Kotzebue, and Nome



Official Business

Alaska State Legislature

Senate Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

March 8, 1980

TO: Senator John Sackett
Senate Finance

FROM: Senator Arliss Sturgulewski *as*

On March 6 the Senate Community and Regional Affairs Committee passed out SB 352 with a unanimous do-pass. The next committee of referral is Senate Finance. There has been growing interest in many states to have state legislatures more aware of the financial implications of their actions on local governments. Alaska seems to be no exception to that interest. For example, Senators Hackney, Ziegler and Kelly introduced SB 309, An Act requiring the preparation of a local government impact statement. That bill is currently before Community and Regional Affairs. Substitute language is currently being prepared that could either be attached to SB 292 as amended, An Act requiring fiscal notes to be prepared for regulations having fiscal impact, or could be considered as a committee substitute for SB 309. Senate Bill 309 speaks to the impact of changes in regulations as they might impact local governments; while SB 352 speaks to impacts of particular bills that could cause a financial impact on local communities.

During the committee meetings we spent considerable time discussing how legislation should be written to require a fiscal note showing municipal impact. I'm sending along materials submitted by the Alaska Municipal League that might help the Senate Finance Committee when it considers this bill. We discussed utilizing more specific language, such as consideration only of major impacts. However, testimony by the Community and Regional Affairs Department indicated they were comfortable with the wording of the bill and would of course be prepared to carry out the legislation if it should pass. There is a fiscal note accompanying SB 352.

I would be very happy to work with you or designated staff in the event you feel this legislation needs further refinement or discussion. I strongly support this bill and would appreciate your support and assistance. Thanks, John.

Attachment