

**S B**

**9 6**

WITNESSES 3/22

SB 96

✓ JEROME SELBY - KODIAK

486-9380

MARIC EARNEST - UNALASKA

581-1251

PROF. JANET KELLY

CLEMSON UNIVERSITY

(803) 375-1730

SCOTT-BRANDT ERICSSON

MUNI ATTORNEYS OFFICE

ANCH 343-4227

FAX 4550

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/22/95

FURTHER: Finance

Date of 5-Day Notice: 3/2/95  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/30/95

CRA Committee considered      SENATE BILL NO. 96

"An Act relating to municipal activities or services mandated by state statute."

and recommends:

- be replaced with \_\_\_\_\_ CS SENATE BILL 96 (CRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- technical change
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	<input checked="" type="checkbox"/>	<i>Fred T. Zwick</i>	<input checked="" type="checkbox"/>		
<i>Re. to E. C. ...</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John Ferguson</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

<i>LEGISLATIVE BUDGET &amp; AUDIT</i>	<i>3/22/95</i>	<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR KELLY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal activities, services, or programs mandated by the  
2 state."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
5 has the power during each session to dramatically change the laws of the state. Statutes can  
6 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
7 this state is always changing. Additional changes in the law from year to year based upon  
8 the legislature's funding choices are not different in nature from legislative statutory  
9 amendments because both the statutory changes and the funding decisions are within the  
10 control of the legislature.

11 (b) The legislature finds that

12 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
13 that demands action from a subordinate government without adequate provision for funding  
14 the cost to the subordinate government of implementing the demanded action;

1 (2) unfunded mandates are a nationwide problem because federal or state  
2 governments have tended to balance their budgets on the backs of subordinate governments,  
3 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
4 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
5 the blame for higher taxes or service cuts falls to local elected officials rather than the  
6 government that made the decision;

7 (3) the legislature has proposed strong measures against the imposition of  
8 unfunded mandates by the federal government on the state;

9 (4) in the United States, 16 states currently have legislation to limit or prohibit  
10 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
11 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
12 session to protect municipalities;

13 (5) according to a September 1994 research report by the National League of  
14 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
15 difficult to quantify the overall effect of mandates because most municipalities are faced with  
16 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
17 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
18 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
19 intensified because state governments often tend to cut funding programs as they shift services  
20 and new mandates to municipalities;

21 (6) state government has cut state aid to municipalities in this state far more  
22 deeply than any other major program (over 55 percent in the past 10 years) while it has  
23 significantly increased the number of unfunded mandates on municipal governments through  
24 statutes, appropriation bills, regulations, and administrative actions;

25 (7) the effects of unfunded mandates and decreased state aid on municipalities  
26 has substantially decreased the quality of life in most municipalities through decreases in  
27 municipal basic services such as public safety, road maintenance, culture and recreation  
28 services, social services, public education, and waste management;

29 (8) the imposition of new unfunded mandates on municipalities while  
30 incrementally decreasing state aid to municipalities to implement existing mandates has been  
31 a major cause of increased property taxes and other local taxes, as well as a major cause of

1 the destabilization of some communities that has lead, and will lead, to dissolution of  
2 municipalities.

3 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

4 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
5 provided in (d) of this section, a bill enacted after January 1, 1996, that imposes or  
6 increases costs mandated by the state as a result of a new activity, service, or program  
7 or an increase in the level of municipal funding for an activity, service, or program  
8 required of municipalities by the bill is not effective unless sufficient funds are  
9 appropriated at the time of enactment to fully fund the mandated activity, service, or  
10 program. Unless sufficient levels of funding continue to be appropriated in each  
11 successive legislative session that the mandate is in effect, or new funding is otherwise  
12 provided annually, the mandate shall be inoperative in its effect upon a municipality  
13 until sufficient state funds are provided to pay the additional costs directly required for  
14 the actual performance of the activity, service, or program.

15 (b) Each bill enacted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities prepared by the legislative  
17 finance division. Each regulation or administrative order adopted under the authority  
18 of a bill enacted after January 1, 1996, that applies to municipalities must include  
19 findings regarding its effect on municipalities prepared by the Department of  
20 Community and Regional Affairs. A bill, regulation, or order without findings  
21 required under this subsection is void. The findings must address whether

22 (1) the bill, regulation, or order mandates a new activity, service, or  
23 program, significantly increases a current activity, service, or program, or causes a  
24 significant increase in the level of municipal funding for an activity, service, or  
25 program; and

26 (2) a mandate contained in the bill, regulation, or order will have a  
27 significant financial effect on municipalities.

28 (c) If a municipality disputes findings made under (b) of this section, it may,  
29 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
30 in writing, with the legislative audit division for a determination of the accuracy of the  
31 findings. The legislative audit division shall make its determination public within 60

1 days after receipt of the petition.

2 (d) This section does not apply to a

3 (1) bill passed in response to a disaster emergency declared by the  
4 governor under AS 26.23.020;

5 (2) bill passed by two-thirds of the members of each house;

6 (3) mandate requested by resolution from the Alaska Municipal League;

7 (4) bill that affirms existing law as it has been construed by the courts  
8 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
9 or

10 (5) bill that creates, eliminates, or changes an offense; in this  
11 paragraph, "offense" has the meaning given in AS 11.81.900.

12 (e) For purposes of this section,

13 (1) "costs mandated by the state" means any increased cost creating a  
14 significant financial effect that a municipality is required to incur as a result of any bill  
15 that, when enacted, mandates a new activity, service, or program, significantly  
16 increases a current activity, service, or program, or causes a significant increase in the  
17 level of municipal funding for an activity, service, or program; costs mandated by the  
18 state do not include costs of the type experienced equally by private and public entities  
19 that are incurred by a municipality in its proprietary capacity; costs mandated by a bill  
20 include any costs associated with regulations adopted under the authority of the bill  
21 if it is enacted;

22 (2) "increase in the level of municipal funding for an activity, service,  
23 or program" means any change in a municipality's delivery of a current service,  
24 activity, or program, or a reduction in the level of state funding for an activity, service,  
25 or program that is required by either a new or amended statute or that would be  
26 required by a bill if it is enacted;

27 (3) "new activity, service, or program" means an activity, service, or  
28 program that is required as a result of a statute or bill that was not required before  
29 enactment of the statute or that is not required unless the bill is enacted and that  
30 results in costs mandated by the state;

31 (4) "new funding" means a new appropriation;

1  
2  
3

(5) "significant financial effect" means the employment of additional personnel in one or more municipalities or an increase in expenditures for contracted services or equipment of more than \$20,000 in each of one or more municipalities.

ACCEPTED BY S. CRH 3/22

9-LS0751\G.2 ✓  
Cook  
3/24/95

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 96(CRA), Work Draft 9-LS0751\G, dated 3/22/95

1 Page 3, line 16:

2 Delete "audit"

3 Insert "finance"

4 Page 3, after line 30:

5 Insert a new paragraph to read:

6 "(1) bill passed in response to a disaster emergency declared by the  
7 governor under AS 26.13.020;"

8 Renumber the following paragraphs accordingly.

9 Page 4, line 1:

10 Delete "the affected municipalities"

11 Insert "resolution from the Alaska Municipal League"

AMENDMENTS TO BE BEFORE SENATE COMMUNITY & REGIONAL AFFAIRS  
COMMITTEE REGARDING SENATE BILL 96 (UNFUNDED MANDATES)

AMENDMENT G.2

(ADOPTED BY COMMITTEE 3/22)

AMENDMENT G.3

(NEW PROPOSAL BY SENATOR KELLY)

AMENDMENT G.4

(NEW PROPOSAL BY SENATOR KELLY)

AMENDMENT #5

(NEW PROPOSAL BY SENATOR TORGERSON)

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11 Insert "resolution from the Alaska Municipal League"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) (Work Draft 9-LS0751\G, dated 3/22/95)

1 Page 3, line 9:

2 Delete "new"

3

4

5

*Approved*

6 Page 3, lines 14 and 15:

7 Delete ", and each regulation or other administrative order adopted after January 1,  
8 1996,"

9 Page 3, line 17, after "division.":

10 Insert "Each regulation or administrative order adopted under the authority of a bill  
11 enacted after January 1, 1996, that applies to municipalities must include findings regarding  
12 its effect on municipalities prepared by the Department of Community and Regional Affairs."

13 Page 4, line 31, through page 5, line 9:

14 Delete all material.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) (Work Draft 9-LS0751\G, dated 3/22/95)

1 Page 4, lines 26 - 27:

2 Delete "it does not include transfers or reductions in another appropriation;"

*Approved*

AMENDMENT #5

BY SENATOR TORGERSON

*Approved*

TO: CSSB 96(CRA) (WORK DRAFT 9-LS0751\G, DATED 3/33/95)

PAGE 3, LINE 13:

DELETE "REVOKED"

INSERT NEW LANGUAGE TO READ:

"INOPERATIVE IN ITS EFFECT UPON A MUNICIPALITY UNTIL SUFFICIENT STATE FUNDS ARE PROVIDED TO PAY THE ADDITIONAL COSTS DIRECTLY REQUIRED FOR THE ACTUAL PERFORMANCE OF THE ACTIVITY, SERVICE OR PROGRAM."

PAGE 4, LINE 30:

AFTER "\$20,000 IN"

INSERT NEW LANGUAGE TO READ:

"EACH OF"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) 9-LS0751\G (3/22/95)

- 1 Page 3, line 16:
- 2 Delete "audit"
- 3 Insert "finance"

*ADOPTED*

PROPOSED AMENDMENTS BY SENATOR KELLY TO  
CS SB 96(CRA) WORK DRAFT G

TO PAGE THREE, LINE 14:

After "1996", delete [AND EACH REGULATION OR OTHER ADMINISTRATIVE  
ORDER ADOPTED AFTER JANUARY 1, 1996]

TO PAGE 3, LINE 16:

Delete [AUDIT] and replace with "finance"

TO PAGE 3, LINE 17:

After "division". add new language to read:]

"Each regulation or other administrative order adopted after January 1,  
1996, as a result of a bill enacted after January 1, 1996, must  
include findings regarding its effect on municipalities as prepared  
by the Department of Community and Regional Affairs."

TO PAGE 4 AND 5:

Delete Section 3.

9-LS0751G

Cook

3/22/95

## CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR KELLY

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to municipal activities, services, or programs mandated by the  
2 state and requiring increased costs to municipalities to be included in fiscal notes  
3 on regulations."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
6 has the power during each session to dramatically change the laws of the state. Statutes can  
7 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
8 this state is always changing. Additional changes in the law from year to year based upon  
9 the legislature's funding choices are not different in nature from legislative statutory  
10 amendments because both the statutory changes and the funding decisions are within the  
11 control of the legislature.

12 (b) The legislature finds that

13 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
14 that demands action from a subordinate government without adequate provision for funding

1 the cost to the subordinate government of implementing the demanded action;

2 (2) unfunded mandates are a nationwide problem because federal or state  
3 governments have tended to balance their budgets on the backs of subordinate governments,  
4 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
5 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
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8 (3) the legislature has proposed strong measures against the imposition of  
9 unfunded mandates by the federal government on the state;

10 (4) in the United States, 16 states currently have legislation to limit or prohibit  
11 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
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14 (5) according to a September 1994 research report by the National League of  
15 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
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22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
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26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
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29 services, social services, public education, and waste management;

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31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
2 the destabilization of some communities that has lead, and will lead, to dissolution of  
3 municipalities.

4 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

5 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
6 provided in (d) of this section, a bill enacted after January 1, 1996, that imposes or  
7 increases costs mandated by the state as a result of a new activity, service, or program  
8 or an increase in the level of municipal funding for an activity, service, or program  
9 required of municipalities by the bill is not effective unless sufficient new funds are  
10 appropriated at the time of enactment to fully fund the mandated activity, service, or  
11 program. Unless sufficient levels of funding continue to be appropriated in each  
12 successive legislative session that the mandate is in effect, or new funding is otherwise  
13 provided annually, the mandate shall be revoked.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
15 administrative order adopted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities prepared by the legislative audit  
17 division. A bill, regulation, or order without findings required under this subsection  
18 is void. The findings must address whether

19 (1) the bill, regulation, or order mandates a new activity, service, or  
20 program, significantly increases a current activity, service, or program, or causes a  
21 significant increase in the level of municipal funding for an activity, service, or  
22 program; and

23 (2) a mandate contained in the bill, regulation, or order will have a  
24 significant financial effect on municipalities.

25 (c) If a municipality disputes findings made under (b) of this section, it may,  
26 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
27 in writing, with the legislative audit division for a determination of the accuracy of the  
28 findings. The legislative audit division shall make its determination public within 60  
29 days after receipt of the petition.

30 (d) This section does not apply to a

31 (1) bill passed by two-thirds of the members of each house;

1 (2) mandate requested by the affected municipalities;

2 (3) bill that affirms existing law as it has been construed by the courts  
3 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
4 or

5 (4) bill that creates, eliminates, or changes an offense; in this  
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7 (c) For purposes of this section,

8 (1) "costs mandated by the state" means any increased cost creating a  
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11 increases a current activity, service, or program, or causes a significant increase in the  
12 level of municipal funding for an activity, service, or program; costs mandated by the  
13 state do not include costs of the type experienced equally by private and public entities  
14 that are incurred by a municipality in its proprietary capacity; costs mandated by a bill  
15 include any costs associated with regulations adopted under the authority of the bill  
16 if it is enacted;

17 (2) "increase in the level of municipal funding for an activity, service,  
18 or program" means any change in a municipality's delivery of a current service,  
19 activity, or program, or a reduction in the level of state funding for an activity, service,  
20 or program that is required by either a new or amended statute or that would be  
21 required by a bill if it is enacted;

22 (3) "new activity, service, or program" means an activity, service, or  
23 program that is required as a result of a statute or bill that was not required before  
24 enactment of the statute or that is not required unless the bill is enacted and that  
25 results in costs mandated by the state;

26 (4) "new funding" means a new appropriation; it does not include  
27 transfers or reductions in another appropriation;

28 (5) "significant financial effect" means the employment of additional  
29 personnel in one or more municipalities or an increase in expenditures for contracted  
30 services or equipment of more than \$20,000 in one or more municipalities.

31 \* Sec. 3. AS 44.62.195 is amended to read:

1           Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. if the adoption,  
2 amendment, or repeal of a regulation would require increased appropriations by the  
3 state, the department or agency affected shall prepare an estimate of the appropriation  
4 increase for the fiscal year following adoption, amendment, or repeal of the regulation  
5 and for at least two succeeding fiscal years. If the adoption, repeal, or amendment  
6 of a regulation would require increased costs to municipalities, the Department  
7 of Community and Regional Affairs shall prepare an estimate of the increased  
8 costs for the fiscal year following the regulation change and for at least two  
9 succeeding fiscal years.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 96 (CBA)

Revision Date: \_\_\_\_\_

Dept. Affected: Legislative Audit

Title: As Act related to MHTIA, activities or services provided with state

BRU: \_\_\_\_\_

Sponsor: Senator Kelly

Component: \_\_\_\_\_

Requester: \_\_\_\_\_

COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	- 0 -	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0.0 -	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME						
PART-TIME	N/A					
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Candy S. Willet  
Division: Legislative Audit

Phone: 465-3830  
Date: 3/22/95

Approved by Commissioner: [Signature]  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

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**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

March 15, 1995

**SUBJECT:** State mandates on municipalities (CSSB 96(CRA))

**TO:** Senator John Torgerson  
Chair, Senate Community and Regional Affairs

**FROM:** Tamara Brandt Cook *TBC*  
Director of Legal Services

Here is a new draft incorporating changes requested by memorandum from Kevin Ritchie dated March 14, 1995. With the exception of the change made to incorporate the definition of offense as it appears in the Criminal Code, be aware that the changes made in this draft in no way alleviate the concerns and questions I expressed in my memorandum to you dated March 8, 1995. With respect to the specific changes made in this draft I have some additional comments. Note that because the bill now seems to be dealing with enactments rather than effective dates, the operative provision has been relocated to AS 24.08.

(1) Sec.24.08.120(a) - This subsection is illogical as reworded. On the one hand, it applies to bills enacted after a particular date. On the other it claims those very bills may not be enacted unless certain things occur. As a substantive matter, it appears that the subsection is intended to prevent the enactment of certain bills and require the repeal of others. Since the legislature, subject to veto by the governor, has the constitutional power to enact and repeal laws, how is this to be accomplished? And, once again, who is to decide whether sufficient new funds have been appropriated for purposes of determining whether or not a bill is enacted (and, whether the funds cease to be provided later, for purposes of determining whether it is repealed)? How is one to know what laws have been enacted and what laws have been repealed?

(2) Sec. 24.08.120(b) - Under this subsection it is now the legislative audit division that must prepare findings for every regulation, administrative order or bill adopted or enacted after the trigger date. Yet under subsection (c) if a municipality disputes findings it files a petition for review with the legislative audit division. Is this review provision useful in any way when it is the same division that originally prepares the findings that must now review them? Does anything happen as a result of the review?

TBC:klb  
95-164.klb

Enclosure

9-LS0751NF

Cook

3/15/95

## CS FOR SENATE BILL NO. 96(CRA)

## IN THE LEGISLATURE OF THE STATE OF ALASKA

## NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR KELLY

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22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
25 statutes, appropriation bills, regulations, and administrative actions;

26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
28 municipal basic services such as public safety, road maintenance, culture and recreation  
29 services, social services, public education, and waste management;

30 (8) the imposition of new unfunded mandates on municipalities while  
31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
 2 the destabilization of some communities that has lead, and will lead, to dissolution of  
 3 municipalities.

4 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

5 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
 6 provided in (d) of this section, a bill enacted<sup>EFFECTIVE</sup> after January 1, 1996, that imposes or  
 7 increases costs mandated by the state as a result of a new activity or service or an  
 8 increase in the level of municipal funding for an activity or service required of  
 9 municipalities by the bill may not be enacted<sup>UNLESS FUNDS OF EFFECTS</sup> unless sufficient new funds are  
 10 appropriated at the time of enactment to fully fund the mandated service or activity.  
 11 Unless sufficient new funds continue to be appropriated in each successive legislative  
 12 session that the mandate is in effect, or sufficient new funds are otherwise provided  
 13 annually, the mandate shall be repealed.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
 15 administrative order adopted after January 1, 1996, that applies to municipalities must  
 16 include findings regarding its effect on municipalities prepared by the legislative audit  
 17 division. A bill, regulation, or order without findings required under this subsection  
 18 is void. The findings must address whether

19 (1) the bill, regulation, or order mandates a new activity or service,  
 20 significantly increases a current activity or service, or causes a significant increase in  
 21 the level of municipal funding for an activity or service; and

22 (2) a mandate contained in the bill, regulation, or order will have a  
 23 significant financial effect on municipalities.

24 (c) If a municipality disputes findings made under (b) of this section, it may,  
 25 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
 26 in writing, with the legislative audit division for a determination of the accuracy of the  
 27 findings. The legislative audit division shall make its determination public within 60  
 28 days after receipt of the petition.

29 (d) This section does not apply to a

30 (1) bill passed by two-thirds of the members of each house;

31 (2) mandate requested by the affected municipalities;

1 (3) bill that affirms existing law as it has been construed by the courts  
2 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
3 or

4 (4) bill that creates, eliminates, or changes an offense; in this  
5 paragraph, "offense" has the meaning given in AS 11.81.900.

6 (e) For purposes of this section,

7 (1) "costs mandated by the state" means any increased cost creating a  
8 significant financial effect that a municipality is required to incur as a result of any bill  
9 that, when enacted, mandates a new activity or service, significantly increases a current  
10 activity or service, or causes a significant increase in the level of municipal funding  
11 for an activity or service; costs mandated by the state do not include costs of the type  
12 experienced equally by private and public entities that are incurred by a municipality  
13 in its proprietary capacity; costs mandated by a bill include any costs associated with  
14 regulations adopted under the authority of the bill if it is enacted;

15 (2) "increase in the level of municipal funding for an activity or  
16 service" means any change in a municipality's delivery of a current service or activity,  
17 or a reduction in the level of state funding for an activity or service that is required  
18 by either a new or amended statute or that would be required by a bill if it is enacted;

19 (3) "new activity or service" means an activity or service that is  
20 required as a result of a statute or bill that was not required before enactment of the  
21 statute or that is not required unless the bill is enacted and that results in costs  
22 mandated by the state;

23 (4) "new funding" means a new appropriation; it does not include  
24 transfers or reductions in another appropriation;

25 (5) "significant financial effect" means the employment of additional  
26 personnel in one or more municipalities or an increase in expenditures for contracted  
27 services or equipment of more than \$20,000 in one or more municipalities.

28 \* Sec. 3. AS 44.62.195 is amended to read:

29 Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. If the adoption,  
30 amendment, or repeal of a regulation would require increased appropriations by the  
31 state, or increased costs to municipalities, the department or agency affected shall

- 1 prepare an estimate of the appropriation increase for the fiscal year following adoption,
- 2 amendment, or repeal of the regulation and for at least two succeeding fiscal years.

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 8, 1995

**SUBJECT:** Mandated municipal services (CSSB 96)

**TO:** Senator John Torgerson, Chair  
Senate Community and Regional Affairs Committee

**FROM:** Tamara Brandt Cook *TBC*  
Director of Legal Services

Here is the requested draft committee substitute based on a "Proposed Bill" submitted to me. The basic premise behind the bill strikes me as unworkable. If a bill that imposes mandates on municipalities does not become effective unless the state provides funding for the mandates, how is anyone to ever know what laws are in effect and what laws are not? Who is to determine whether the level of funding is sufficient and whether a bill, therefore, takes effect? What if the level of funding is sufficient for some municipalities but not for others? Is the bill in effect or not? In only some, but not all municipalities? Which ones? And who is to determine whether future funding levels are insufficient, so that a statute goes out of effect? How is the state to establish any coherent state-wide policy, if statutes (and implementing regulations) pop into and out of effect?

I have tried to follow the Proposed Bill closely, but did reword language somewhat, so please review this draft carefully in case I misunderstood what was requested. In particular, I tried to untangle the use of "bill" and "statute" somewhat and this should be checked. I reworded some phrases slightly to match the exact wording of the phrases that are defined, to pick up the definitions, and these changes should be checked for substantive effect. I have the following specific observations and questions about this draft:

(1) The findings language contained in sec. 1(a) of the draft is not strictly true in that it leaves out the role of the governor in the enactment of legislation. What is the point of this finding in regard to this particular bill?

(2) In sec. 2 of the draft, AS 01.10.075(a) applies to bills enacted after January 1, 1996. Should this be tied to the effective date rather than the date of enactment? In subsection (b) of the Proposed Bill, the date was not included. I added it, assuming that the finding requirement should also apply only to new bills and regulations. Correct?

Senator John Torgerson

March 8, 1995

Page 2

(3) In (c) certain bills are effective only if new funds are appropriated "in the same session." Does this mean the same regular or special session, or two year legislative session cycle? Does the trigger depend upon the effective date of the appropriation, the time it is passed by the legislature, or the time it is enacted as a result of the governor's signature or expiration of veto period? Who decides whether sufficient new funds have been appropriated in the same session for purposes of determining whether a bill takes effect? Who decides in the future whether a bill goes out of effect? Can a bill go out of effect once it becomes law without legislative action to repeal it?

(4) In subsection (d) a municipality may dispute findings on a bill or regulation and the Legislative Audit Division is required to review those findings for accuracy. The division's determination is made public. What then? If the division decides that the findings are, indeed, wrong, is there any consequence? Also, a municipality, not being sentient, cannot dispute anything. I presume it is the governing body or the mayor that acts to file a petition on behalf of the municipality. What if the mayor and governing body do not agree?

(5) Since the state cannot enact federal law, what does paragraph (e)(3) mean?

(6) Under (e)(4), what is a bill that changes a "crime or misdemeanor?" "Crime" is defined in AS 11.81.900(9) to include misdemeanors and felonies for which a period of imprisonment is possible. "Offense" is defined in AS 11.81.900(34) to include crimes and violations. Are these definitions relevant in the context of this bill?

(7) Under (f), the definitions seem to contain substantive law that probably does not belong in a definition section. I can't say that I understand any of them. In particular the definition of "new funding" is utterly incomprehensible to me.

(8) The provision dealing with fiscal notes for regulations is amended in sec. 3 to require information regarding increased costs to municipalities. The provision currently states that the affected department or agency will prepare the fiscal note. "Agency" is defined in AS 44.62.640 and the word does not include a municipality. Is any executive branch department affected by increased costs to municipalities? If not, who prepares this fiscal note information?

TBC:klb

65-133.klb

Enclosure

9-LS0751NC ✓

Cook

3/8/95

## CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Spensor(s): SENATOR KELLY

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to municipal activities or services mandated by the state and  
2 requiring increased costs to municipalities to be included in fiscal notes on  
3 regulations."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
6 has the power during each session to dramatically change the laws of the state. Statutes can  
7 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
8 this state is always changing. Additional changes in the law from year to year based upon  
9 the legislature's funding choices are not different in nature from legislative statutory  
10 amendments because both the statutory changes and the funding decisions are within the  
11 control of the legislature.

12 (b) The legislature finds that

13 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
14 that demands action from a subordinate government without adequate provision for funding

1 the cost to the subordinate government of implementing the demanded action;

2 (2) unfunded mandates are a nationwide problem because federal or state  
3 governments have tended to balance their budgets on the backs of subordinate governments,  
4 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
5 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
6 the blame for higher taxes or service cuts falls to local elected officials rather than the  
7 government that made the decision;

8 (3) the legislature has proposed strong measures against the imposition of  
9 unfunded mandates by the federal government on the state;

10 (4) in the United States, 16 states currently have legislation to limit or prohibit  
11 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
12 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
13 session to protect municipalities;

14 (5) according to a September 1994 research report by the National League of  
15 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
16 difficult to quantify the overall effect of mandates because most municipalities are faced with  
17 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
18 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
19 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
20 intensified because state governments often tend to cut funding programs as they shift services  
21 and new mandates to municipalities;

22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
25 statutes, appropriation bills, regulations, and administrative actions;

26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
28 municipal basic services such as public safety, road maintenance, culture and recreation  
29 services, social services, public education, and waste management;

30 (8) the imposition of new unfunded mandates on municipalities while  
31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
2 the destabilization of some communities that has lead, and will lead, to dissolution of  
3 municipalities.

4 \* Sec. 2. AS 01.10 is amended by adding a new section to read:

5 Sec. 01.10.075. MANDATED MUNICIPAL SERVICES. (a) Except as  
6 provided in (c) of this section, a bill enacted after January 1, 1996, that imposes or  
7 increases costs mandated by the state as a result of a new activity or service or an  
8 increase in the level of municipal funding for an activity or service required of  
9 municipalities by the bill is not effective unless it

10 (1) contains provisions for the reimbursement of those costs to affected  
11 municipalities; or

12 (2) grants to municipalities the discretion of electing whether to comply  
13 with the statutory change accomplished by the bill.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
15 administrative order adopted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities. A bill, regulation, or order  
17 without findings required under this subsection is void. The findings must address  
18 whether

19 (1) the bill, regulation, or order mandates a new activity or service,  
20 significantly increases a current activity or service, or causes a significant increase in  
21 the level of municipal funding for an activity or service; and

22 (2) a mandate contained in the bill, regulation, or order will have a  
23 significant financial effect on municipalities.

24 (c) A bill enacted under (a)(1) of this section is not effective unless sufficient  
25 new funds are appropriated during the same session to fully fund the mandated service  
26 or activity and unless sufficient new funds continue to be appropriated in each  
27 successive session or otherwise provided annually.

28 (d) If a municipality disputes findings made under (b) of this section, it may,  
29 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
30 in writing, with the legislative audit division for a determination of the accuracy of the  
31 findings. The legislative audit division shall make its determination public within 60

1 days after receipt of the petition.

2 (e) This section does not apply to a

3 (1) bill passed by two-thirds of the members of each house;

4 (2) mandate requested by the affected municipalities;

5 (3) bill that affirms existing law as it has been construed by the courts  
6 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
7 or

8 (4) bill that creates, eliminates, or changes a crime or misdemeanor.

9 (f) A municipality may elect to provide a service or perform an activity in  
10 accordance with a bill that is ineffective under (a) - (e) of this section using local  
11 funds to pay costs mandated by the state. A municipality may enact ordinances  
12 providing for services or activities of the type addressed by a bill that is ineffective  
13 under (a) - (e) of this section; however, an ordinance adopted under the authority of  
14 this subsection may not conflict with the bill.

15 (g) For purposes of this section,

16 (1) "costs mandated by the state" means any increased cost creating a  
17 significant financial effect that a municipality is required to incur as a result of any bill  
18 that, when enacted, mandates a new activity or service, significantly increases a current  
19 activity or service, or causes a significant increase in the level of municipal funding  
20 for an activity or service; costs mandated by the state do not include costs of the type  
21 experienced equally by private and public entities that are incurred by a municipality  
22 in its proprietary capacity; costs mandated by a bill include any costs associated with  
23 regulations adopted under the authority of the bill if it is enacted;

24 (2) "increase in the level of municipal funding for an activity or  
25 service" means any change in a municipality's delivery of a current service or activity,  
26 or a reduction in the level of state funding for an activity or service that is required  
27 by either a new or amended statute or that would be required by a bill if it is enacted;

28 (3) "new activity or service" means an activity or service that is  
29 required as a result of a statute or bill that was not required before enactment of the  
30 statute or that is not required unless the bill is enacted and that results in costs  
31 mandated by the state;

1 (4) "new funding" means an appropriation that does not decrease  
2 previous state support for other municipal programs or general state aid to  
3 municipalities, or other state funds within an existing appropriation not previously  
4 provided to municipalities that are allocated to municipalities by contract or grant or  
5 other means;

6 (5) "significant financial effect" means the employment of additional  
7 personnel in one or more municipalities or an increase in expenditures for contracted  
8 services or equipment of more than \$20,000 in one or more municipalities.

9 \* Sec. 3. AS 44.62.195 is amended to read:

10 Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. If the adoption,  
11 amendment, or repeal of a regulation would require increased appropriations by the  
12 state, or increased costs to municipalities, the department or agency affected shall  
13 prepare an estimate of the appropriation increase for the fiscal year following adoption,  
14 amendment, or repeal of the regulation and for at least two succeeding fiscal years.

# FISCAL NOTE

Revision Date: March 7, 1995 Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to municipal activities or services mandated by state statute BRU: none  
 Component none  
 Sponsor: Senator Kelly  
 Requestor: Senate C & RA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE:

--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Under existing statutes, DCRA is required to prepare municipal fiscal notes in the event that a proposed bill could have significant fiscal impacts on municipalities. SB 96 does not appear to place any additional requirements on DCRA. Therefore, we anticipate no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 3/7/95  
 Approved by Commissioner: *Mike Druehl* Date: 3/7/95  
 Agency: Community & Regional Affairs

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2

SENATE BILL NO. 96

IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KELLY

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal activities or services mandated by state statute."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 01.10 is amended by adding a new section to read:

4 Sec. 01.10.075. MANDATED MUNICIPAL SERVICES. (a) A statute enacted  
5 or amended after January 1, 1996, that imposes or increases costs mandated by the state  
6 as a result of a new activity or service or an increase in the level of municipal funding for  
7 an activity or service required of municipalities by the statute is not effective unless the  
8 bill under which the statute was enacted or amended

9 (1) contains an appropriation for the reimbursement of those costs to  
10 affected municipalities; or

11 (2) grants to municipalities the discretion of electing whether to comply  
12 with the statute.

13 (b) Each bill that applies to municipalities must include findings as to whether

14 (1) the bill would mandate a new activity or service or increase the level

1 of municipal funding required for an activity or service; and

2 (2) any mandate contained in the bill will have a significant financial  
3 effect on municipalities.

4 (c) If a municipality disputes findings on a bill made under (b) of this section, it  
5 may, within 30 days after the effective date of the bill, petition the legislative audit  
6 division for review of the action.

7 (d) A municipality may elect to provide a service or perform an activity in  
8 accordance with a statute that is ineffective under (a) of this section using local funds to  
9 pay costs mandated by the state. If a municipality voluntarily provides a service or  
10 performs an activity under this subsection, the municipality may modify the activity or  
11 service consistent with the policy and intent of the statute to the extent and in the manner  
12 necessitated by the limitations of the local funding available.

13 (e) If full state funding for an activity or service required under a statute that was  
14 enacted or amended in accordance with (b)(1) of this section is not provided to a  
15 municipality in a subsequent year, the municipality affected by the reduction in funding  
16 may modify the activity or service as permitted under (d) of this section.

17 (f) For purposes of this section,

18 (1) "costs mandated by the state" means any increased cost creating a  
19 significant financial effect that a municipality is required to incur after January 1, 1996,  
20 as a result of a statute enacted after January 1, 1996, or a regulation adopted after  
21 January 1, 1996, that mandates a new activity or service or a higher level of municipal  
22 contribution to an activity or service; costs mandated by the state do not include costs of  
23 the type experienced equally by private and public entities that are incurred by a  
24 municipality in its proprietary capacity or costs that result from activities or services that  
25 a municipality, although not required to do so, elects to provide;

26 (2) "new activity or service" means an activity or service that is required  
27 as a result of a statute, that was not required before the enactment of the statute, and that  
28 results in costs mandated by the state;

29 (3) "significant financial effect" means the employment of additional  
30 personnel or an increase in expenditures.

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE  
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

*Ray D  
2/23/95*

STATE CAPITOL  
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ANCHORAGE, ALASKA 99501  
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**MEMORANDUM**

**DATE:** February 23, 1995

**TO:** Senator John Torgerson, Chairman  
Senate Community & Regional Affairs Committee

**FROM:** Senator Tim Kelly *TDK*

**RE:** Scheduling of SB 96, Unfunded State Mandates on Municipalities

-----

I respectfully request you schedule SB 96, An Act relating to Unfunded State Mandates on Municipalities, for a hearing before the Senate Community & Regional Affairs Committee at the Committee's earliest convenience.

Much like the U.S. Congress is addressing the problem of unfunded federal mandates on States, this legislation was crafted to address the same problem municipalities are experiencing with unfunded State mandates. SB 96 is a legislative priority for the Alaska Municipal League.

A sponsor statement and additional back-up will be following.

Thank you in advance for your timely consideration.

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE  
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

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## Sponsor Statement & Bill Analysis

### SB 96: The Bill of Mandates

Just as the U.S. Congress is attempting to address the considerable financial hardship unfunded federal mandates place on state governments, many state legislatures are beginning to address the same financial hardships unfunded state mandates are placing on local governments. In fact, at present sixteen states currently have laws which either limit or prohibit state government from imposing unfunded mandates on municipalities. Additionally, more than 20 other state legislatures are actively considering such legislation.

SB96 was introduced this year to remedy the problem of unfunded state mandates here in Alaska. This legislation is a high priority for the Alaska Municipal League, the Municipality of Anchorage, the Fairbanks North Star Borough, and the Alaska Conference of Mayors.

Unfunded mandates cause cash-strapped cities to decrease basic municipal services such as public safety, road maintenance, and the local contribution to education to schools, to name a few, in order to pay for the unfunded mandates which most often are much lower priorities than these basic municipal government functions. Moreover, as these unfunded mandates increase for local governments, aid to municipalities has been cut more than 55%. A good example is the Senior Citizen's Property Tax Exemption which has increased 300% in cost to local governments in the last several years. As municipalities and local governments struggle to provide services mandated but not funded by the Legislature, increased property and other local taxes have been used as the funding vehicle.

The principle imperative of this legislation is that the state government should not require municipalities by statute, appropriation, regulation, or administrative action to implement any program, service, or activity which significantly impacts municipalities' budgets unless the legislature provides new funding to cover the costs of these mandates.

SB 96 sets up a mechanism, described below, which will go a long way to preventing State government from imposing new mandates without funding them. However, the Legislature is ultimately constitutionally capable of imposing such mandates if it desires. It is helpful to think of this legislation as establishing a moral imperative for the Legislature, as well as providing a mechanism for municipalities to raise questions on unfunded mandates while focusing public attention on this problem.

## Bill Analysis

Section 1: Legislative Findings and Intent

Section 2: Adds a new section to Title 24, the Legislature, Chapter 8, Enactments:

### AS 24.08.120: Mandated Municipal Services:

(a) Provides that a bill enacted after January 1, 1996, that imposes new or increases costs to municipalities is not effective unless funds are appropriated at the time of enactment to fully cover those new or increased costs resulting from the mandate. Further, unless sufficient funds continue to be appropriated each successive legislative session that the mandate is in effect, that mandate shall be repealed.

Exceptions to this, provided in (d), are as follows:

- 1) A bill passed by 2/3rds of the members of each house;
  - 2) A mandate requested by the affected municipalities;
  - 3) A bill that affirms existing law as it has been construed by the courts or enacts federal law or regulation;
  - 4) A bill that creates, eliminates, or changes an offense, as defined in the definitions of Title 11, Criminal Law.
- (b) Requires that each bill, regulation, or administrative order enacted after January 1, 1996, that applies to municipalities must include findings regarding its effects on municipalities prepared by the Legislative Audit Division. The findings must address the financial impact on municipalities, and

(b) - Continued

whether the bill, order, or regulation mandates a new activity, significantly increases a current activity, or causes a significant increase in the level of municipal funding of an activity;

- (c) Provides that if a municipality disputes findings made under (b), it may file a written petition within 30 days with Legislative Audit for a determination of the accuracy of the findings. Legislative Audit must then make its determinations public within 60 days.
- (d) Provides exceptions to section (a).
- (e) Definitions.

**Section 3:** Amends 44.62.195, Fiscal Notes on Regulations, to require that when adoption, amendment, or repeal of a regulation would increase costs to municipalities, the affected department or agency must prepare an estimate of those cost changes for the fiscal year following adoption and for at least two succeeding fiscal years.

**MUNICIPALITY OF ANCHORAGE  
1995 LEGISLATIVE PROGRAM**

**LEGISLATIVE ISSUES**

**TITLE:**        **Bill of Mandates Legislation or Constitutional Amendment**

The Municipality of Anchorage supports legislation (or a constitutional amendment) which would require the State to provide full funding for State mandated municipal activities or services. The most prominent and costly of existing State mandates is the Senior Citizens/Disabled Veterans property tax exemption, which underfunded Anchorage by \$7.7 million in 1994. Other examples of State mandates include: alcohol services, domestic violence writs, prisoner transportation costs, 1% for Art, Davis-Bacon wages, etc. State mandates have resulted in the Municipality assigning artificially high priority to mandated programs/services thereby superseding the funding of higher priority, fundamental local government services.

The Municipality is especially concerned about the potential escalation of unfunded State mandates resulting from the pressure of declining State revenues. Legislation is needed now so that future Legislatures will be discouraged from unfairly burdening local government with unfunded State mandates.

The proposed legislation would also require a State government agency which unilaterally transfers responsibility for a program to a municipality or imposes regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or the regulations.

Lastly, the Municipality also supports a local option section to be included with proposed legislation, which would allow a municipality faced with an unfunded mandate to decide whether it will provide the activity or service from local funds. Essentially, the unfunded mandate would become an authorization for a Municipality to provide a service or activity at whatever level it deems appropriate.

The propensity of state government to impose mandated programs on local government is by no means limited to the State of Alaska. The tax revolt in California in 1978 and 1979 was fueled, in part, by the state's transfer of certain responsibilities to the county level, placing an onerous tax burden on property owners.

(more)

**Bill of Mandates Legislation or Constitution Amendment**  
(continued)

California now has an active reimbursement program. Massachusetts appropriates money with the mandating law as it is passed. In all, fifteen states have statutory or constitutional requirements that payments be made on some level for the financial effects of state statutes. Some state constitutions stipulate that special acts necessitating appropriations by a local government do not become effective unless approved by a voter referendum.

We ask for your support for legislation addressing the issue of municipal fiscal mandates.

**Contact:** Gene Dusek, Budget Director  
Office of Management and Budget  
**Phone:** 343-4490

**CITY OF UNALASKA**

P.O. BOX 89  
UNALASKA, ALASKA 99685  
(907) 581-1251  
FAX (907) 581-1417



March 18, 1995

Senator Tim Kelly, Chairman  
Community and Regional Affairs Committee  
Room 101, State Capitol  
Juneau, Alaska 99801-1182

RE: Senate Bill 96, an Act relating to municipal activities or services  
mandated by state statute

Dear Senator Kelly:

Thank you for extending the opportunity to submit testimony on Senate Bill 96, relating to municipal activities or services mandated by state statute. The City of Unalaska is on record supporting this type of legislation on the federal level. We are extremely pleased that you have sponsored legislation at the state level to address the problem of unfunded state mandates on local governments.

This legislation would significantly relieve local governments of the financial burdens related to future state mandates. We are concerned, however, that the proposed language, as written, may not provide relief from *existing* state mandates. Like local governments across Alaska, the City of Unalaska is already facing potentially crippling financial impacts as a direct result of existing unfunded state and/or federal mandates. In Unalaska, the largest of the existing mandated, but unfunded or underfunded, projects include:

1. constructing a water filter plant at \$6 million (with an annual operating cost increase of \$400,000);
2. constructing an advanced primary or secondary wastewater treatment plant at \$5-10 million (with an annual operating cost increase of \$200,000);

Senator Kelly  
March 18, 1995  
Page 2

3. constructing a lined landfill and baler facility at \$6 million (with an annual operating cost increase of \$100,000); and
4. reducing emissions from our power generation facility (costs yet to be determined, but identified options range up to \$110 million).

As you know, the problem of complying with unfunded state and federal mandates is left largely to local government officials who must take the heat for increasing local taxes and utility rates. For many tax payers, the cause and effect relationships associated with complying with the myriad existing state and federal laws and regulations are not readily apparent.

Of course we are committed to providing public services that protect and enhance the health, safety, and welfare of our citizens. However, many existing mandates impose unrealistic time schedules for compliance and dictate specific actions when less costly alternatives might serve just as well. Additionally, they direct limited local resources away from other local priorities that could contribute *more* to the health, safety and welfare of local residents than the specific actions dictated by the mandates.

We do not seek to challenge the laudable goals of most state and federal mandates. Yet the accumulated weight of existing state and federal laws and regulations have made it nearly impossible for most local governments to prioritize among their most pressing needs. Solutions to the problems imposed by unfunded mandates must be based on a rational and balanced approach emphasizing outcome-oriented results. There must be greater political accountability at the state level, identification and appropriation of the resources required to pay for the mandates, and greater flexibility at the local level.

This is a national problem that has been dumped on local governments and their elected and appointed officials. We hope that the Alaska State Legislature will follow through with its good intentions and solve not only the problem of future mandates, but also address the onerous problem posed by existing mandates. We respectfully request that you and the Committee consider changes to the proposed legislation, or through other means, to obtain relief from existing unfunded state mandates.

Senator Kelly  
March 18, 1995  
Page 3

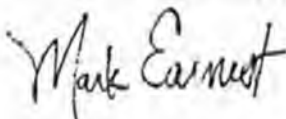
We would support the creation of a Commission on Unfunded State Mandates to review and investigate the impacts of existing state mandates on local governments. The purposes of this Commission would be to make recommendations to the Governor and Legislature regarding flexibility in local compliance, as well as terminating, suspending, or consolidating certain existing state mandates.

We would also support the creation of an advisory panel consisting of local government officials, perhaps coordinated through the Alaska Municipal League, to review and comment on proposed administrative regulations. State agencies should be required to consult with local officials during the development of administrative regulations that impact local governments. State agencies should also be required to prepare a written estimate, including the underlying analysis, of the cost impacts to local governments of administrative regulations.

Again, thank you for the opportunity to testify on this important issue and for your efforts to help local governments in Alaska. Senate Bill 96 represents an important step in addressing our concerns regarding the need for relief from unfunded and underfunded intergovernmental mandates.

Very truly yours,

CITY OF UNALASKA



Mark Earnest  
City Manager

Municipality  
of  
Anchorage



P.O. Box 1963150  
Anchorage, Alaska 99519-0350  
Telephone: (907) 343-3431  
Fax: (907) 343-4101

*Rick Mystrom, Mayor*

OFFICE OF THE MAYOR

March 10, 1995

The Honorable Tim Kelly  
Alaska State Senate  
State Capitol, Room 101  
Juneau, Alaska 99801-1182

Re: Senate Bill 96

Dear Senator Kelly:

Thank you for sponsoring SB 96 relating to municipal mandates.

Across the country unfunded mandates imposed by states upon their municipalities are a focus of legislative efforts. In the 1993-94 legislative session, anti-mandates legislation was introduced in 22 state legislatures. Sixteen states currently have legislation to limit or prohibit state governments from imposing unfunded mandates on municipalities.

The Municipality of Anchorage has previously estimated the burden on its budget of state unfunded mandates and municipally assumed responsibilities to be over \$26,000,000 in 1994.

The Municipality of Anchorage strongly supports CS SB 96 (CRA) as a reasonable and balanced approach to addressing the issue of unfunded mandates imposed by the state on municipalities.

Thanks again for your help on this issue.

Sincerely,

Rick Mystrom  
Mayor

## Anti-Mandates Strategies: Reimbursement Requirements In The States

### NEW JERSEY ✎

New Jersey localities are optimistic that the media attention to the issue of unfunded state mandates will produce both legislative and public support for their new proposed constitutional amendment.

(T)he state government shall not require the governing body of a county or municipality to perform any new or expanded program or service ... without full state funding for any net additional costs directly required for the actual performance for that program or service. Any provision of law, or of a rule, regulation or order issued pursuant to law, which has the effect of requiring a new program or service beyond that level ... shall be inoperative in its effect upon a county or municipality until sufficient state funds are provided ... to pay the net additional costs directly required for the actual performance of that program or service ....<sup>8</sup>

*THE MANDATED ACTIVITY, SERVICE OR PROGRAM.*

A two-thirds majority in both houses is required to make the mandate effective in absence of funding. ]

The proposed amendment appears quite strong, including administrative rules and regulations and not providing any of the typical exceptions found in similar amendments. On the other hand, only programs and services which require new net expenditures are covered. When resources can be redirected or used more intensively to affect compliance, state funding may not be necessary. Restrictive mandates such as limitations on tax rates and sources are also left uncovered by the amendment. However, many of these details may change as the bill goes through the legislative process.

### NORTH CAROLINA

During the 1993 legislative session, North Carolina local governments attempted reform of the fiscal noting process and a prohibition on unfunded state mandates in a constitutional amendment.

No county or municipality shall be bound by any general law requiring the county or municipality to spend funds unless funds have been appropriated by the General Assembly that have been estimated at the time of enactment to be sufficient to fund such expenditure....<sup>9</sup>

<sup>8</sup> Concurrent Resolution proposing to amend Article IV, Section IV, paragraphs 6 and Article VIII, Section II of the Constitution of the State of New Jersey.

<sup>9</sup> House Bill 434, 1993 Session, General Assembly of North Carolina.

SENATE BILL 96  
(Kelly)

Unfunded Mandates with Municipalities  
In: 2/22/95            Out:  
Further referral: Finance  
Request for hearing: 2/23/95  
Hearing date: 3/8/95

Remarks: Abbreviated version of this legislation introduced last session (HB 502 - Hanley)  
House Community & Regional Affairs Committee replaced with CS  
Died in House Finance

3/15/95 - S.C.P.A  
465-

By: Valerie Therrien  
Introduced: 03/09/95  
Adopted: 03/09/95

**RESOLUTION NO. 95-017**

**A RESOLUTION SUPPORTING SENATE BILL 96, AN ACT RELATING TO MUNICIPAL ACTIVITIES OR SERVICES MANDATED BY STATE STATUTE**

WHEREAS, municipal activities and services mandated by state statute require municipalities to expend great amounts of funds and hire employees who would not be necessary if it were not for the mandates; and

WHEREAS, unless the state funds these mandates, municipalities are and will be required to raise taxes in order to comply with the statutes; and

WHEREAS, Senate Bill 96, a bill which provides that any statute enacted or amended after January 1, 1996, that imposes or increases costs mandated by the state as a result of a new activity or service or an increase in the level of municipal funding for an activity or service required of municipalities by the statute is not effective unless the bill under which the statute was enacted or amended contains an appropriation for the reimbursement of those costs to affected municipalities or grants to municipalities the discretion of electing whether to comply with the statute; and

WHEREAS, should the legislature adopt this legislation, the burden of new state mandated requirements would not cost municipalities additional funds.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough supports SB 96 or any other bill which would relieve municipalities of the financial burden of future state mandates.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska and all members of the Interior Delegation.

MAR 14 '95 05:50PM FNSB CLERK'S OFFICE

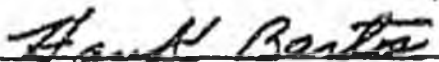
P.5/5

WHEREAS, Governor Tony Knowles has developed a plan to expend \$43 million of state money into the University of Alaska's neglected buildings and grounds with approximately \$20 million allocated for repairs and up-grading on the Fairbanks campus.


NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly appreciates and thanks the Governor for developing a maintenance and repair plan and strongly urges the Alaska State Legislature to take the action necessary to provide approval and the funding necessary to pay for the repair and rehabilitation of the facilities of the University of Alaska.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska and all members of the Interior Delegation.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 1995.

  
Hank Bartos  
Presiding Officer

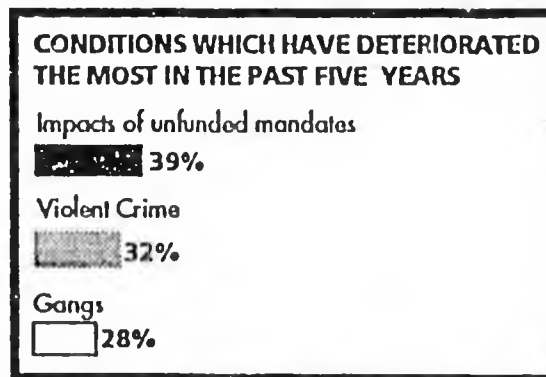
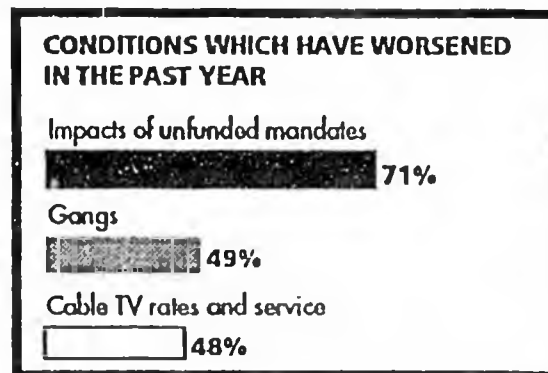
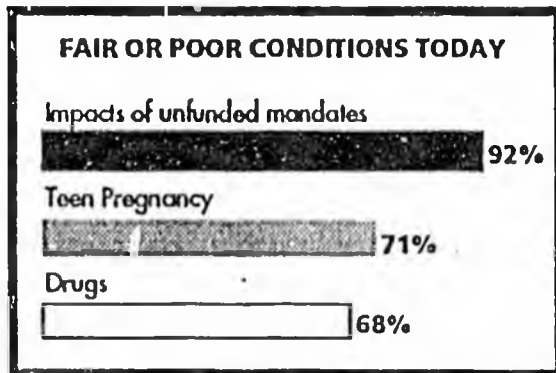
ATTEST:

  
Mona Lisa Drexler, CMC/AE  
Municipal Borough Clerk

Ayes: Logan, Hackenmiller, Jones, Hove, LaSota, St. John, Thamen, Kilgore and Bartos  
Noes: None

RESOLUTION NO. 95-018  
Page 2 of 2

# City Officials Understand the Impact of Unfunded Mandates...



Source: NLC Research Report,  
"The State of America's Cities," 1994



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel. 907/586-4225 • Fax 907/463-5480

TO: Senator Tim Kelly  
FROM: Kevin Ritchie, Executive Director  
DATE: March 26, 1995  
RE: Examples of Unfunded Mandates

Legislative Research Agency (94.083) identified over 600 state mandates on municipal governments. According to Legislative Research (95.092) "Collectively, they (state mandates) account for a major portion of the workloads of local governments, which are under increasing fiscal pressure."

Recent examples of types of state unfunded mandates, both enacted and proposed, follow:

1. State statutory funded mandates which become unfunded mandates- The mandatory Senior Citizen Property Tax Exemption was originally a state funded mandate. Since its enactment, the state has largely withdrawn its funding for the program. The current HB 185 is an example of how state government can respond positively to mandates which become unfunded over time. HB 185 reduces the mandatory exemption from \$150,000 to \$75,000 and allows municipalities the option of granting the exemption over \$75,000.

2. State regulations that are unfunded mandates on local governments - The federal government requires states to establish minimum standards for water quality. The state is now considering adopting new water quality standards above those required by the federal government. The cost to a municipality of complying with the standards required by the federal government, even if the program is administered by the state, is NOT an unfunded state mandate under SB 96.

However, if the state decides to set standards above those required by the federal government, the cost to municipalities to comply with the additional state standards would be an unfunded state mandate created by state administrative regulation. Under SB 96 the administration would have to prepare a finding of the financial effect of this proposed regulation on municipalities.

3. A proposed state statute that could create an unfunded mandate on municipal government- HB 154 deals with regulatory "takings" by the state or municipal government. The bill defines a taking as any municipal government action that "regulates or imposes a restraint on private property". Under this definition, normal municipal powers such as zoning and subdivision regulations, would be considered compensable "takings". Under SB 96 a finding of the potential financial effect on municipalities would be prepared.

**PARTIAL LIST OF STATE MANDATES  
THAT INCREASE LOCAL COSTS**

<b>Sr. Citizens &amp; Disabled Veterans</b>	State mandates exemption from property tax for seniors and disabled veterans - AS 29.45.030 (e). The state has consistently underfunded the program, leaving municipalities to pick up the cost. For example, municipalities are being required to cover over 77 percent (nearly \$10 million) of the cost of the program during FY 93.
<b>Little Davis Bacon</b>	Little Davis-Bacon prevailing wages required to be paid on construction projects involving state funds (AS 36.95.010 - definitions) - AS 36.05.010
<b>Interest on Retainage</b>	10.5% interest required to be paid on retainage from contractors rather than use current market interest or negotiated figure for each contract - AS 36.90.010
<b>Procurement Preferences</b>	Local agricultural and fisheries products procurement preferences (7%) - AS 29.71.040  Recycled Alaska products procurement preferences (3-7%) - AS 29.71.050  A state procurement requirement requires municipalities to competitively bid for their insurance coverage if state funds are used - AS 36.30.850(e)
<b>Public Defender</b>	Public Defender does not defend municipal offenders - AS 18.85.155
<b>Road Redesignation</b>	State turning over road responsibility to local government via redesignation - AS 19.20.010 (General Powers); AS 19.05.040 (Chapter on state-local cooperation)
<b>State Audits</b>	State audits of construction grants (necessary to meet federal requirements) - AS 19.15.020. Often these are not done in a timely manner, and the local governments are required to duplicate efforts they made while the project was underway.
<b>Health Insurance</b>	Health insurance costs for alcoholism, drug abuse, and mammography coverage (applies to any employer of 5(?) or more people - AS 21.42.365

**State Tax Exemptions** State property and property of political subdivisions of the state are exempt from taxation unless otherwise specified by the legislature - AS 29.45.030. The list of authorities and political subdivisions includes:

AS 14.40	University of Alaska
AS 16.10.380	Regional Salmon Enhancement Authorities
AS 16.51	Alaska Seafood Marketing Institute
AS 18.26	Alaska Medical Facility Authority
AS 18.55	Alaska State Building Authority
AS 18.55.996(a)	Regional Native Housing Authorities
AS 18.56	Alaska Housing Finance Corporation
AS 18.57.030	Regional Electrical Authorities
AS 21.88	Medical Indemnity Corporation of Alaska
AS 30.13.010	Regional Resource Development Authorities
AS 37.13	Alaska Permanent Fund Corporation
AS 42.40	Alaska Railroad Corporation
AS 44.81	Commercial Fishing and Agriculture Bank
AS 44.83.150	Alaska Power Authority
AS 44.85.160	Alaska Municipal Bond Bank Authority
AS 44.88	Alaska Industrial Development Authority Teachers Retirement System and Public Employees Retirement System

Statute also limits a municipality's ability to tax property and facilities of utility cooperatives - AS 10.25.540.

*The items below are less clearly defined state-mandated programs or policies.*

**Environmental  
Regulations**

A whole host of regulations establish municipal responsibility for environmental planning and control. This includes such things as emergency response plans, hazardous waste collection and disposal, registration of and liability for underground storage tanks, meeting drinking water and storm water regulations, meeting standards for solid waste and landfill facilities, and many others. In addition, municipalities are required to meet DEC regulations prior to recording subdivision plats handled by local governments.

**Hazardous  
Materials**

Hazardous materials reporting as imposed by SARA & AS 29.35.500

<p><b>Reduction in Services and Transfers of Responsibility by State Agencies</b></p>	<p>There are numerous examples of the transfer of state responsibility and duty to local government without a clear definition and conscious decision about the desirability of the service or the appropriateness of the transfer. This includes, among other things, reductions in public safety, road maintenance and repair, harbor and airport maintenance, search and rescue, and shifts in responsibility for enforcement of state laws.</p>
<p><b>Traffic Court</b></p>	<p>Requirement to have local government collect and process uncontested traffic violations. Prior to 1987, this function was performed by the state court system. AS 12.25.210 (a)</p>
<p><b>State Harbors</b></p>	<p>The state constructs inner harbor facilities and then leases them to the municipalities, which have only use rights, not ownership rights. However, the municipality is responsible for all operations and maintenance costs and the state is held harmless. Title 30, Navigation, Harbors, and Shipping says nothing about the lease arrangement. Likewise, Title 17 AAC 80, Waters &amp; Harbors, is also silent.</p>
<p><b>Percent for Art</b></p>	<p>Applies to schools, which are predominantly state funded, and perhaps to transfer of responsibility agreements - AS 35.27.010</p>
<p><b>Utility Use of Right of Way</b></p>	<p>Public utilities - gas, television, communications, electric, etc. - have a right to use to the public right of way. In past cases, the state APUC and courts have ruled that municipalities must pay for damages/relocation costs if road improvements are made or if municipally owned construction disturbs non-municipally owned utilities. This "free" right of way to the non-municipal utilities can result in a significant cost to municipalities.</p>

RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS

RESOLUTION 95-5

**A RESOLUTION URGING THE PASSAGE OF LEGISLATION REQUIRING THE STATE TO REIMBURSE MUNICIPALITIES FOR THE COST OF ANY NEW STATE-MANDATED PROGRAMS**

WHEREAS, "the League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations" (*Alaska Municipal League Policy Statement 1994, Part 1 Taxation and Finance, F.2 Reimbursement for Responsibilities Transferred from State*); and

WHEREAS, state aid to municipalities in the form of Municipal Assistance and Revenue Sharing has been reduced by over 45 percent since FY 86, while during the same period the overall state general fund budget has been reduced by only 10 percent; and

WHEREAS, along with the reduction in state financial assistance there have been increases in state-mandated programs that take the form of increased costs, new programs, and funding shortfalls for existing programs that are costly for municipalities to administer and implement; and

WHEREAS, legislation affecting municipalities is considered and passed by the Alaska State Legislature without the benefit of knowing its fiscal impact on local governments; and

WHEREAS, these mandated programs, funding shortfalls, and shifts in responsibilities have required municipalities to increase local taxes and reduce services in order to balance their budgets and at the same time, the Legislature has ignored deficit spending while boasting that the State has no income or sales taxes and that operating budgets have been reduced; and

WHEREAS, costly state-mandated programs provide a significant additional disincentive for communities to incorporate; and

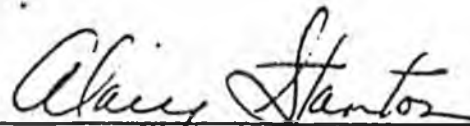
WHEREAS, the National Conference of State Legislatures in 1987 recommended that state legislatures consider relaxing or eliminating costly requirements on local governments or assuming the cost of complying with the requirements:

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska Legislature and the Governor to pass legislation requiring the State to reimburse municipalities for the costs of any new state-mandated programs or regulations that increase the costs of local government operations.

SUPPORT:

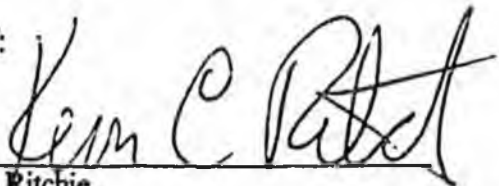
Alaska Conference of Mayors

This resolution was approved for submission to the Alaska Municipal League membership by the governing body of the Alaska Conference of Mayors on November 15, 1994.



Mayor Alaire Stanton, President

ATTEST:



Kevin C. Ritchie  
AML Executive Director

**Resolution of the Alaska Municipal League**

**Resolution No. 95-2**

**A RESOLUTION OPPOSING UNFUNDED STATE MANDATES AND  
URGING PASSAGE OF LEGISLATION REQUIRING THE STATE OF  
ALASKA TO REIMBURSE MUNICIPALITIES FOR THE COST OF  
ANY NEW STATE-MANDATED PROGRAM**

WHEREAS, "the Alaska Municipal League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations" (Alaska Municipal League Policy Statement 1995, Part 1 Taxation and Finance, F.2 Reimbursement for Responsibilities Transferred from State); and

WHEREAS, state aid to municipalities in the form of Municipal Assistance and State Revenue Sharing has been reduced by over 55 percent since FY 88, while during the same period the overall state general fund budget has been reduced by only 10 percent; and

WHEREAS, along with the reduction in state financial assistance, there have been increases in state-mandated programs that take the form of increased costs, new programs, and funding shortfalls for existing programs that are costly for municipalities to administer and implement; and

WHEREAS, legislation affecting municipalities is considered and passed by the Alaska State Legislature without the benefit of knowing its fiscal impact on local governments; and

WHEREAS, these mandated programs, funding shortfalls, and shifts in responsibilities have required municipalities to increase local taxes and reduce services in order to balance their budgets and, at the same time, the Alaska Legislature has ignored deficit spending while boasting that the state has no income or sales taxes and that operating budgets have been reduced; and

WHEREAS, costly state-mandated programs provide a significant additional disincentive for communities to incorporate; and

WHEREAS, the National Conference of State Legislatures in 1987 recommended that state legislatures consider relaxing or eliminating costly requirements on local governments or assuming the cost of complying with the requirements:

**SUPPORT:**

**Alaska Municipal League**

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska Legislature and the Governor to pass legislation requiring the state to reimburse municipalities for the costs of any new state-mandated programs or regulations that increase the costs of local government operations.

# A PRIMER ON MANDATES

Adapted from "Mandates: Keeping Citizens Aware," by Janet M. Kelly; *An Issues and Options report* by the National League of Cities

Of all the issues that engage local government officials, none is more contentious than mandates. Mandates go to the heart of what governing is all about—autonomy and money. Local officials recognize the need for the policies that ensure basic and equal protection for all citizens and are willing to help implement those policies. In return, they generally ask for two things. The first is the ability to implement the policy consistent with local needs and conditions, and the second is financial assistance to fund the requirement.

Unfunded mandates place additional burdens on already fiscally stressed local governments. They have also strained the intergovernmental relationship, making innovative partnership approaches to providing services and paying for them simultaneously more necessary and more difficult.

## What Is a Mandate?

The two most broadly used definitions are based on either cost or penalty. Cost-based definitions begin with some variation of the theme "any statute or rule requiring a local expenditure of funds or restricting local revenue rates or bases...."

A weakness of a simple cost-based definition is that it reduces important arguments about mandates to money. When the definition is cost-based, discussions will center on whether or not the mandate has a cost and what that cost will be. This is especially troublesome as many mandates require localities to use their existing resources differently or more intensively. Because of the proliferation of mandates, local governments bear very high cumulative costs but very low marginal costs. A cost-based definition might not recognize the burden of these mandates at all.

An alternative approach is a penalty-based definition. Rather than ask "will it cost money?" a penalty-based definition asks "must I comply?" The latter is much easier to answer decisively than the former. This test for the mandate is whether the locality can legally resist i

For instance, some would argue that if a law impacts the private sector as well as local governments, it cannot be considered a mandate. A penalty-based definition settles that argument in short order. The only disadvantage is that a definition based on penalty tends to reveal the volume of existing mandates, some of which are not important to the local government. However, there is a strong argument to be made that if you aggregate all the "little" mandates their cost would approach if not exceed the cost of the few "big" mandates.

## So What?

Is this whole issue, as some contend, really all about money? Well, yes and no. Money spent on compliance with federal mandates is money that cannot be spent on local priorities. So cost is a central issue, but it is opportunity cost displacement caused by the mandate that chafes—the preclusion of spending the money on programs or services valued by the local constituency. If local priorities were equivalent to federally mandated priorities, money spent on compliance with mandates would not be contested. In fact, localities willingly accept responsibility for programs and services when there is popular support for them at the local level. So the mandates issue is more accurately about different priorities and the foregone opportunities they create.

However, the fiscal implications are enormous. There is the loss of local tax dollars that might have been applied to other more pressing and popular uses. There are mandates that limit the ways in which localities raise revenue, putting some potentially lucrative and relatively pain free taxes off limits. These revenue exclusions and exemptions have the effect of forcing more intensive use of the much hated property tax.

Another serious and often ignored fiscal consequence of mandates is that of loss of flexibility. When mandates are procedural—telling the locality not what to do, but how to do it—it should not come as a surprise that Congress or federal agencies are not the best judge of how to run the business of local government. Some local

ciency"—the preclusion by law or rule from taking the most efficient path toward the service or program goal. Not surprising, the administrative routines mandated for a city of 500,000 may not be as workable for a city of 500. Even seemingly innocuous procedural mandates have their consequences. One law requires a social service agency to keep a copy of certain records. A copy is defined by statute in such a way as to prevent the use of computer records or microfiche, alternatives far less expensive than the maintenance of paper copies.

Finally, and most critically, the biggest "so what" of mandates is the loss of responsiveness in local government toward its citizens. Local governments have consistently been shown to be more responsive to citizen preferences for taxes and services than the federal government. Poll respondents are far more likely to say that their local government is more responsive to their needs and is more open to their input than federal government. Local officials often point out that they see their constituents on the street, dine with them, worship with them, and hear about problems daily. Governing, for these elected officials, is about the ability to respond to constituent demands or at least to engage constituents with conflicting goals in negotiation and compromise. When mandates preclude the use of local resources toward the essential function of government, local government loses the trust and the confidence of its people.

All that having been said, it is critical to note that mandates are a necessary part of intergovernmental relations. No locality should have the right to pollute the environment, deny adequate education to children, deny benefits to eligible residents, deny due process and voting rights to citizens, or operate a justice system that is not in conformance with other localities. Mandates are a necessary means by which to achieve these goals and are both the right and the obligation of Congress. However, the proliferation of mandates has also made it clear that local governments are being saddled with an ever expanding load of rules and requirements whose cost over

# Legislative Research Agency

Alaska State Legislature




130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

February 3, 1995

## MEMORANDUM

TO: Representative Brian Porter

FROM: Gordon Harrison, Director 

RE: Unfunded State Mandates  
Research Request 95.092

You asked for information about unfunded mandates imposed by the state government on municipal governments in Alaska. Specifically, you asked for a list of all such unfunded mandates. Although there is a long list of statutory directives to local government, few of these are controversial or contentious when considered individually. Collectively, they account for a major portion of the workload of local governments, which are under increasing fiscal pressure. We believe that it is unproductive to attempt to classify these many, individual directives as either funded or unfunded. The term mandate has come to imply an onerous, expensive and perhaps capricious directive from a higher level of government to a lower level of government intended to accomplish a policy objective of the former. A mandate is a directive that has become a political problem, and a working definition of the term is necessarily political, not technical. This memorandum identifies the few unfunded state mandates that municipal officials have pointed out in recent years as problems for local governments. This is not a long list, however. The source of financial pressures on municipalities today are not individual statutory directives, but rather cutbacks in direct state aid to municipalities (revenue sharing and municipal assistance), and cutbacks in various state services that have required local governments to increase local expenditures.

### Defining Mandates

At the national level, the problem of unfunded federal mandates is a prominent political issue. Over the years, Congress has enacted many laws that require compliance, often expensive compliance,

by state and local governments.<sup>1</sup> At the state level, many cities and counties have also complained about burdensome state mandates on municipal governments.<sup>2</sup> On close examination, many of these are actually directives of the state government necessitated by federal environmental laws such as the clean air and clean water acts. However, a number of purely state directives have been identified as especially burdensome.<sup>3</sup>

In Alaska, the issue of state mandates originally surfaced in connection with a specific grievance of several borough and city governments: the senior citizens' property tax exemption. State law requires municipal governments to exempt \$150,000 of real property owned by residents over 65 years of age (AS 29 4. 030 [e-g]). For many years the state reimbursed local governments for the revenue they lost by way of this exemption, but these reimbursements have all but dried up in recent years as the legislature found ways to reduce state spending. Consequently, local governments now bear the fiscal burden of the exemption, and, because state law preempts local ordinance, they have been barred as well from substituting their own senior property exemption tailored to local circumstances.

Beyond the senior's property tax exemption, however, there has not been strong agreement among the municipalities on *specific* onerous state mandates common to them, nor a focused lobbying effort to repeal or amend these particular mandates. Governor Hickel created a Task Force on Governmental Roles that included legislators and municipal officials from around the state. Early on, the group sought a definitive listing of all state mandates, but the effort was eventually

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<sup>1</sup>The National Conference of State Legislatures (NCSL) has monitored the issue of federal mandates, and it recently published a list of these federal directives to state and local government in the *Mandate Catalog*, NCSL, Washington, D.C., December 1994. To the best of our knowledge, only one effort has been made to estimate the cost of complying with federal mandates in Alaska. In 1993, the Municipality of Anchorage released a study of the cost of complying with federal environmental laws (Municipality of Anchorage, *Paying for Federal Environmental Mandates: A Looming Crisis for Cities and Counties*, January 1993).

<sup>2</sup>A number of articles on the subject have appeared in recent years. See, for example, articles in the following publications: *State Legislatures*, September, 1989, December, 1991; *Governing*, January, 1992; *State Government News*, April, 1993. Also, NCSL issued a *Legisbrief* entitled "Mandate Relief for Local Governments," June, 1994.

<sup>3</sup>Unfunded mandates frequently cited in other states are the requirement that counties provide free office space and supplies to local state agencies, and that the school district provide free transportation of pupils.

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dropped.<sup>4</sup> A legislative task force member requested from the Legal Services Division of the Legislative Affairs Agency a computer search of the Alaska constitution, statutes, and administrative code for pertinent sections using the key words "shall" and "must" in connection with such words as "local government," "municipality," "political subdivision," etc. The resulting list of twenty-three statutes was considered unenlightening and inconclusive.

During the second session of the Eighteenth Legislature, this agency was asked to compile a comprehensive list of all state directives to local governments. Legislative Research Agency Memorandum 94.083 was the result. While we presume that our list is reasonably comprehensive (we read some sections of the statutes page by page, other sections we searched by computer), we do not think that by itself it is particularly useful in clarifying the dimensions of the issue of mandates as a *political* problem. Municipal governments are creatures of state government. They do not possess inherent powers. In general, state governments may create, dissolve and realign local governments, and direct them to accomplish governmental objectives.<sup>5</sup> Thus, municipal corporations have a fundamentally different legal relationship to their state government than the states have to the federal government.

The Alaska statutes are full of major and minor directives to municipal governments. For example, Title 29 requires all boroughs and first class cities outside of boroughs to establish, operate, and maintain a system of public schools (AS 29.35.160 and 260). Much of Title 14 is devoted to telling the boroughs and cities how these school systems are to be administered, including where and when to fly the Alaska and United States flags (AS 14.03.130). Each such provision is, strictly speaking, a formal directive from the state to local governments. Similarly, the state criminal code (Title 12) constitutes a type of state-imposed mandate because local police departments are required to apprehend murders and robbers. But even if it were a simple matter to do so<sup>6</sup>, it does not

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<sup>4</sup>With regard to state mandates, the final report made this recommendation: "Policymakers should adopt a policy of deliberate restraint with respect to enacting mandates on local governments. The legislature should closely monitor Department of Community and Regional Affairs fiscal notes on legislation that affects municipalities and make a firm commitment to use the estimates in its deliberation." *Final Report; Task Force on Governmental Roles*, published jointly by the Governor's Office of Management and Budget and the Alaska Municipal League, July 10, 1992, p. 3.

<sup>5</sup>See discussion in David J. McCarthy, Jr. *Local Government Law*, 3rd ed. (St. Paul: West Publishing Co., 1990), p. 28 ff.

<sup>6</sup>Individual directives pertaining to local school districts might be said to be funded in the same proportion that district revenues are derived from state grants and entitlement programs. This may also be assumed for the various mandatory duties of the different classes of general government and home rule municipalities: they are funded to the same extent that the municipal revenues are derived from state sources. The percentage of state support for schools and local government generally

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seem fruitful to categorize as "funded" or "unfunded" these and the many other noncontroversial arrangements that govern the fundamental relationship between Alaska's municipalities and the state. This is not to say that the level of state funding for education and state support for local government are not major political issues. They are major issues and everyone knows that they are. However, the debate over these issues is not advanced by a finding that the directive to display flags on the school house during school hours is funded, unfunded, or partially funded.

Certainly specific mandates that have become a particular source of political irritation to municipal governments deserve attention. The senior citizens tax exemption is one such mandate (unfunded). Municipalities have, from time to time, identified a few other such unfunded mandates. These are discussed below.

#### **Unfunded Mandates Identified by Municipalities**

From the information on this subject that we have located, four state mandates have been identified at one time or another as special problems for municipalities, in addition to the property tax exemption for senior citizens.

#### **Other Property Tax Exemptions**

State law exempts state-owned property (AS 29.45.030), including property owned by public corporations such as the Alaska Industrial Development and Export Authority (AS 44.88.140), the Alaska Permanent Fund (AS 37.13.180), the Alaska Energy Authority (AS 43.83.150), the Alaska Bond Bank (AS 43.85.160), regional electrical associations (AS 18.57.030), and electric and telephone cooperatives (AS 10.25.540[b]).

#### **PERS and TRS Contribution Rates**

Municipalities are members of the Public Employees' Retirement System (PERS) and school districts are members of the Teachers' Retirement System (TRS). Municipal employees and school teachers contribute a certain percentage of their base pay to their respective retirement system; their employer contributes the remainder. When the legislature changes the PERS and TRS statutes in a manner that causes the total contribution for each participant to increase--for example, by increasing benefits, liberalizing service credit rules, or raising contributions to maintain actuarial soundness of the system--the local governments and school districts must bear these higher costs. (AS 14.25, TRS; and AS 39.35, PERS)

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### "Little Davis-Bacon" Wages

The state version of federal Davis-Bacon Act requires that prevailing local wages be paid on all public construction projects. Thus, local governments must require contractors to pay local wage scales even if lower cost labor is available. (AS 36.05.010)

### Procurement Preferences

When municipal governments purchase fishery and agricultural products, they must give a 7 percent price preference to bidders who supply products harvested within Alaska. (AS 29.71.040)

In addition to these mandates, municipalities have opposed the shifting of various program costs onto local governments as state agencies reduce their services because of state budget cuts.

### The Local Fiscal Effects of State Budget Cuts

Virtually all state agencies have taken budget cuts of some kind in recent years. As a result, most have had to cut back their services. In some cases local governments have had to fill the void. Thus, for example, the City of Wasilla provided local police service when the Alaska State Troopers, for budgetary reasons, withdrew service from the area. The Alaska Department of Transportation and Public Facilities has threatened to turn over to the municipalities maintenance of Class III roads. The Department of Law has talked about local governments prosecuting violators of municipal codes. Shifting to local governments the cost of services now provided by the state is a serious problem for some communities and a major threat to all of them. Note, however, that strictly speaking the issue of "cost shifting" is not one of state mandates in the sense of mandatory statutory directives. It is rather the indirect result of state budget cuts that are made without consideration of their impact on local governments.

Of far greater significance to the municipalities, however, is the steady erosion of *direct* state support of local governments through the state revenue sharing and municipal assistance programs. The fiscal impact of cuts to these programs dwarfs the effect of all of the foregoing state mandates and agency belt tightening. Shoring up these two programs is the highest legislative objective of the Alaska Municipal League (AML).

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### **Legislative Agenda of the Alaska Municipal League**

The overriding legislative priority of the AML is adoption of the league's proposal to combine the state revenue sharing and municipal assistance programs and to avoid further reductions in appropriations for these programs. This proposal, called the Alaska Municipal Basic Services Program, is designed to rationalize, simplify, and strengthen state support of local governments. A full description of the proposal and its rationale are beyond the scope of this memorandum. The point here is to emphasize that municipal officials see the legislative solution to their immediate problem as adequate direct state funding for local governments.

With regard to specific unfunded mandates, the AML is on record in support of legislation that would make senior citizens' tax exemption a matter of local option. More generally, the AML supports legislation that would prohibit the state from transferring any additional responsibilities to local governments through statute, regulation, or *budgetary measures* without commensurate funding. We suggest you contact Kevin Ritchie, Executive Director of the AML (586-1325), for a full discussion of the organization's proposals, legislative objectives, and position on the unfunded mandates identified above.

Although not exactly what you asked for, I nonetheless hope this information is useful. If you have questions about any of this, or would like follow-up information, please call.