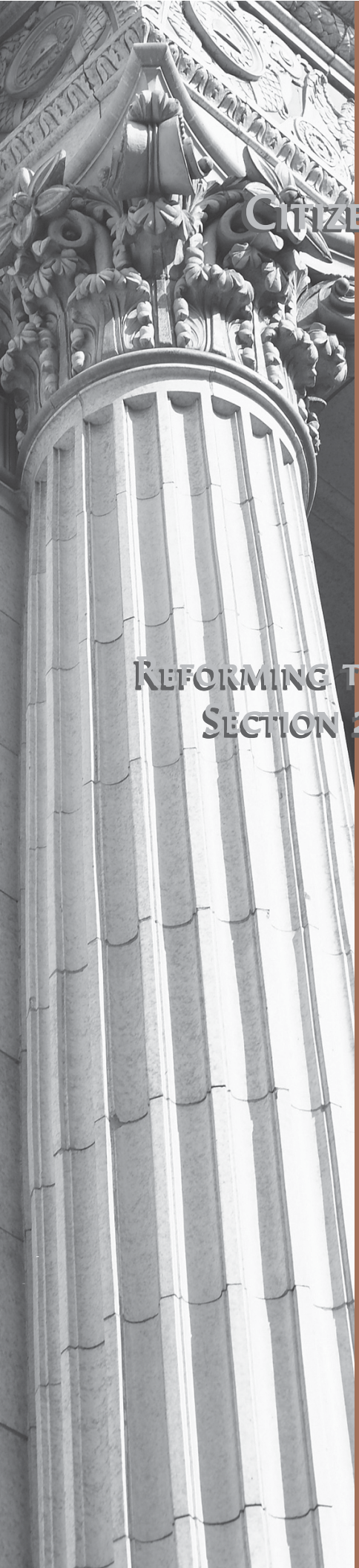

Citizens Research Council of Michigan

CRC

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

July 2009

Report 355

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CITIZENS RESEARCH COUNCIL OF MICHIGAN

REFORMING THE PROCESS FOR IDENTIFYING AND FUNDING SECTION 29 MANDATES ON LOCAL GOVERNMENTS

JULY 2009

REPORT 355

This CRC Report was prepared for the
Legislative Commission on Statutory Mandates

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June 9, 2009

The Honorable Members
Legislative Commission on Statutory Mandates

Commission Members:

Pursuant to your request there is transmitted herewith the Citizens Research Council of Michigan report on reforming the legislative and judicial processes related to Article IX, Section 29, of the 1963 Michigan Constitution.

The work of your Commission has illustrated that this section of the Headlee Amendment has been disregarded by all branches of state government in Michigan. CRC takes a strong interest in the proper functioning of our State Constitution and we hope that your work, as supported by this report, helps to achieve that end.

As requested, CRC has looked at all aspects of the process and this report offers alternatives and options to reform the process. This report looks at practices in other states related to the funding of state mandates on local governments and existing literature that analyzes why these local government protections work better in some states than in others.

We hope this report helps to fulfill your mission.

Respectfully Submitted

Earl M. Ryan
President

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

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Summary

Public Act 98 of 2007 created the Legislative Commission on Statutory Mandates and directed that body to review and investigate the extent of unfunded mandates imposed on local units of government by State government through state laws. The Commission engaged the Citizens Research Council of Michigan to investigate practices in other states with similar constitutional and statutory requirements to fund state mandates on local governments. The following highlight options for the Commission to consider in recommending a process for implementing Article IX, Section 29 of the 1963 Michigan Constitution.

At the November 1978 general election, Michigan voters approved a tax limitation amendment to the 1963 State Constitution. The amendment, generally referred to as the Headlee Amendment, amended Article IX, Section 6 and added ten new sections (25 through 34) to Article IX of the 1963 Michigan Constitution. One of those sections, Section 29, prohibits the State from

- mandating local governments to provide new services or activities (after 1978) without proper funding;
- increasing the level of mandated activities and services required beyond what was required in 1978 without proper funding; or
- decreasing the level of funding provided in 1978 for existing mandates.

Section 29 was thought to be necessary because a companion section of the Headlee Amendment, Section 26, limits State government revenues in any given year to a fixed percentage of total personal income. Drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the State in order to save the money the State would have needed to spend if it continued to provide such services. Section 29 was intended to forestall such attempts unless they were accompanied by State appropriations to fund the services transferred.

Section 29 has been largely disregarded. Public Act 101 of 1979, the law enacted to implement Section 29, was never fully implemented and state requirements subsequently have been enacted without regard to this provision in the Constitution. The courts have resisted enforcing this provision. Rather than enforcing this provision of the State Constitution, executive branch officers have actively opposed enforcement of this section.

Other States' Requirements to Fund Mandates

A literature review and examination of the constitutions and laws of other states reveals that 28 states have constitutional or statutory requirements that state mandates be identified and, in many states, that funding must accompany any state laws that mandate local government services and activities. The programs implemented in other states fall into two camps.

- Some states, such as Maine, Minnesota, Missouri, Tennessee and Virginia, focus their efforts on the fiscal note process, prospectively identifying the cost that legislation would create for local governments before the laws are enacted.
- A few states, including Massachusetts, California and Rhode Island, have processes in place to prospectively identify the costs legislation would cause for local governments and retrospectively identify mandates and their costs in existing laws.

Michigan could be well served by emulating Massachusetts and California, whose processes identify existing laws that impose mandates and determine their costs for reimbursement by the State in addition to identifying the cost of legislation that would impose mandates on local governments.

Reforming the Implementation of Section 29

Article IX, Section 29 of the 1963 Michigan Constitution provides for state financing of activities and services required of local governments by state law:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

Reforming the implementation of Section 29 would require bringing statutory definitions and exceptions to the funding requirements in line with established case law. Furthermore, reform would have to legislatively recognize the differences between the first and second sentences of Section 29.

- The first sentence of Section 29 creates a maintenance-of-support provision. To show that the State has failed to maintain the level of support that was in place at the time of adoption of the Headlee Amendment, a plaintiff must show 1) that there is a continuing state mandate, 2) that the State actually funded the mandated activity at a certain proportion of necessary costs in the base fiscal year of 1978-1979, and 3) that the state funding of necessary costs has dipped below that proportion in a succeeding year.
- The second sentence creates a prohibition-of-unfunded-mandates provision. To show that the State has violated that prohibition, a plaintiff must show that the state-mandated local activity or service was originated without sufficient state funding after the Headlee Amendment was adopted in 1978 or, if properly funded initially, that the mandated local role was increased by the state without state funding for the necessary increased costs.

A Process for Identifying Laws that Constitute State Requirements

In 1980, a lawsuit was filed in the Michigan Court of Appeals on behalf of seven taxpayers, including one Donald Durant, who resided in the Fitzgerald School District.[1] The essence of the lawsuit was that State officials had reduced the proportion of educational costs paid by the State to a level below that required by the Headlee Amendment. Over the next 17 years, the Durant case would beat a well-worn path between the Court of Appeals and the Supreme Court, culminating with a final decision by the high court on July 31, 1997.

The *Durant* case was, when filed, one of first impression, meaning that the issues involved were being raised for the first time. However, there was nothing inherently difficult about those issues, and certainly nothing to foreshadow the fact that it would take the courts nearly two decades to resolve them. What made *Durant* unique was an initial unwillingness of the Court of Appeals to hear the lawsuit and what the State Supreme Court referred to as the "prolonged recalcitrance" on the part of State officials in defending it.

After 17 years of wrangling with the *Durant* case, the Supreme Court felt obliged to address its vision of how future Section 29 cases should proceed through the courts. As a case of first impression, it might be expected that this case would determine a procedural pattern for cases that follow. The Court stated,

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

[3] *Durant v. State of Michigan*, 456 Michigan 175, 566 NW2d 272 (1997).

If Michigan blended the California and Rhode Island models, it would achieve a process such as that envisioned in the *Durant* decision of identifying laws that constitute state obligations subject to funding under Section 29 and then determining the amount of funding needed to meet this obligation. Local governments would be reimbursed for their actual costs related to those state requirements.

Local governments could be allowed to seek immediate declaratory judgments that specific existing state laws or regulations require them to perform activities or services. Single units of local government – that is a single city, school district, county, etc. – could be authorized to bring test cases to determine whether a law or regulation is in fact a state requirement. Because mandates qualify for state funding under Section 29 only if all local governments of that type are required to provide the activity or service, all other local governments of that type essentially become claimants in a class action suit in this arrangement, supporting the single government seeking the declaratory judgment. The declaratory judgment process should be structured to provide a decision within twelve months of the claim being made.

Article IX, Section 32, provides that "*Any taxpayer* of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article…" [emphasis added] Because the Court of Appeals hears appeals of cases that originated in lower district, circuit, or probate courts on matters of law, it is not well suited to having cases originate at this level. The authority to rule on whether laws or regulations constitute unfunded state requirements be delegated either to:

- A newly created independent body (reconstituted Local Government Claims Review Board) with representatives of state and local government; or
- A special master within the court of appeals.

Since 2007, Michigan court rules have required claimants to develop the cases alleging unfunded state requirements before even knowing that the cases would be accepted by the court.[2] Ordinary practice in Michigan allows a plaintiff to plead an application of a law has caused harm without stating the full substance of the complaint. If the court agrees to hear their case, time and energy is exerted into building the case and documenting damages. As long this court rule requires legal actions alleging violations of the Headlee Amendment should be stated with "particularity", an independent body (recreating the Local Government Claims Review Board whether in the same name or not) with representatives of state and local government serving as members should be created to hear claims of unfunded state requirements pursuant to Article IX, Section 29. Proceedings of the Board could be used as prima facie evidence in courts to document the existence and cost of state requirements. Alternatively, if court rules are amended to revert to pre-2007 standards, then reform should build off of the court processes developed over the past 30 years by institutionalizing the position of special master and legislatively clarifying that role.

Post Declaratory Judgment

Notwithstanding an appeal by the State challenging a declaratory judgment that the State requires local governments to provide activities or services under Section 29, the State and local governments would have three options following a declaratory judgment:

Preferably before, but perhaps concurrent with any ensuing judicial proceedings, the legislature should be engaged to

(1) provide sufficient funding to comply with Section 29 or

(2) amend the law (or the promulgating agency could amend the regulation) to eliminate the mandatory nature of the law (or regulation).

If the legislature does not choose to take either of those actions,

(3) Local governments should be allowed to seek a ruling that they need not comply with the law or regulation until such time as state funding accompanies the mandate.

If local governments successfully gain a declaratory judgment that state laws or regulations impose state

[5] Michigan Supreme Court, ADM File No. 2003-59, Amendment of Rules 2.112 and 7.206 of the Michigan Court Rules.

requirements, and the State continues to not provide the necessary funding, then local governments could be enabled to petition the courts so that compliance with statutory requirements is not mandated without the proper funding.

A Process for Appropriating and Disbursing State Funds

If new or existing laws are identified that impose state mandates subject to state funding under Section 29, a process needs to be put in place that results in a state appropriation that provides funding additional to the state funding sent to that type of local government prior to imposition of the mandate.

For the actual disbursement of funds to local governments, Michigan could establish a process of reimbursement for local governments that incur costs related to mandates similar to those used in California and Rhode Island. Identification of a mandate and definition of reimbursable costs should result in an opportunity for local governments to apply for reimbursement.

If a single local government can get a declaratory judgment establishing that a state obligation to fund an activity or service exists under Section 29, this process would include a cost determination to establish the types of costs local governments must incur to comply with the mandate. This process would establish guidelines – identification of the mandated program, eligible claimants, the period for which local governments should provide accounts of costs incurred, reimbursable activities, and other necessary claiming information – for all other local governments subject to that mandate to use in calculating their costs.

Based on those guidelines, all local governments subject to the state requirement would have to submit statements of actual costs incurred in the preceding fiscal year for the activities or services mandated. The statements would be subject to audit to ensure compliance with the guidelines. Eventually the statements would be compiled and aggregated to create a total cost for local governments to comply with the state requirement.

That total cost would be submitted to the State Budget Office in the Department of Management and Budget and should ultimately result in a recommendation for an appropriation. Consistent with Section 29, the legislature would appropriate funds sufficient to reimburse local governments for the cost of complying with mandates. Those reimbursements would come two to three fiscal years after the costs were incurred because local governments have fiscal years starting at various times throughout the year.

Act 101 of 1979 defined de minimus costs as requirements that impose a net cost to a local government that do not exceed $300 per claim. Taking a different approach, Oregon defines de minimus costs any requirements that impose costs that are less than 1/100 of one percent of a local government's annual budget. This makes sense for a state with as diverse a range of local governments as is found in Michigan. In the cities of Detroit, Grand Rapids, and Warren, the counties of Wayne and Oakland, the school districts of Detroit, Grand Rapids, and Livonia, a de minimus cost can be as large as the entire budgets of the smallest townships, counties, and school districts found in Michigan. By determining de minimus amounts on individual bases, the amounts will better reflect the potential impact a state requirement will have on the ability of the individual local governments to continue providing the services they had been providing before the requirement was enacted.

The Process of Estimating the Cost of Proposed Laws

A fiscal note process should be established to estimate the cost of all proposed legislation that would affect local governments.

Michigan should join the many other states with mandate funding requirements and establish a network of local governments to participate in voluntary information sharing for the purposes of preparing fiscal notes.

Surveying of local governments and preparation of fiscal notes should be a joint effort of the House and Senate Fiscal Agencies.

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

Introduction

Section 29 prohibits the State from reducing the portion of funding for mandates for which the State shared the cost of provision in 1978 or from imposing new mandates (after 1978) on local governments without proper funding. Public Act 101 of 1979, the law enacted to implement Section 29, was never fully implemented and state requirements* subsequently have been enacted without regard to this provision in the Constitution. The courts have resisted enforcing this provision. And rather than enforcing the State Constitution, executive branch officers have actively opposed enforcement of this section.

Section 29 has gained attention recently. Public Act 98 of 2007 created the Legislative Commission on Statutory Mandates and directed that body to review and investigate the extent of unfunded mandates imposed on local units of government by State government through state laws. The Commission engaged the Citizens Research Council of Michigan to investigate practices in other states with similar constitutional and statutory requirements to fund state mandates on local governments. This report provides options and alternatives to the Commission on a number of statutory reforms that would carry out the intent of Section 29 as a measure to protect local governments against the State passing costs to local governments that it is not willing to pay for itself.

As will be discussed below, the role of the Legislative Commission on Statutory Mandates extends to some analysis of whether existing laws constitute state requirements under Section 29. The Citizens Research Council of Michigan chose to get involved with this project not because we have a firm opinion on the extent of unfunded mandates imposed on local governments, but because a vigorous enforcement process is needed to investigate claims of unfunded state requirements by local governments, determine relevant costs, and draw a legislative response when claims are found to be legitimate.

* Although some differences may arise in the legal definitions for "state requirements" and "state mandates" in Michigan, those terms are used interchangeably for the purposes of this paper.

Article IX, Section 29 of the Michigan Constitution

At the November 1978 general election, Michigan voters approved a tax limitation amendment to the 1963 State Constitution. The amendment, generally referred to as the Headlee Amendment, amended Article IX, Section 6 and added ten new sections (25 through 34) to Article IX.

Section 29 requires the State to pay in subsequent years at least the same proportion of costs for activities or services required of units of local government as it paid in the year in which the amendment took effect.

The first sentence of this section encompasses activities or services which were required of units of local government when the Headlee Amendment took effect; the second, activities or services that might be required thereafter. However, the two sentences share a common purpose: to prevent state policymakers from shifting to units of local government responsibility for services previously provided by State government. The third sentence concerns Article VI, Section 18, which covers determination of the salaries of Supreme Court Justices and judges of Michigan's lower courts and the authority for counties to augment the state paid salaries of circuit court judges.

Section 29 was thought to be necessary because a companion section of the Headlee Amendment, Article IX, Section 26, limits State government revenues in any given year to a fixed percentage of total personal income. Drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the State in order to save the money the State would have needed to spend if it continued to provide such services. Section 29 was intended to forestall such attempts unless they were accompanied by State appropriations to fund the services transferred.

Article IX, Section 29 of the 1963 Michigan Constitution

State financing of activities and services required of local governments by state law

The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

Shortcomings in the Legislative Implementation

Article IX, Section 34, the final section of the Headlee Amendment, required the legislature to enact laws to implement the concepts encompassed by the other sections in the amendment. Public Act 101 of 1979 (Michigan Compiled Laws (MCL) 21.231 through 21.244) was enacted to statutorily implement the provisions of Section 29.

Public Act 101 has experienced wholesale disregard. The act did create a process for identifying mandates and providing disbursements to fund state requirements for local governments. That system required the House and Senate, through their joint rules process, to create a method for carrying out the necessary tasks. Those rules were never promulgated and local governments have received no relief from state obligations under Section 29 to fund activities or services as the law intended.

The Failure of Act 101

While it can be assumed that Act 101 was enacted in good faith to comply with the will of the people as expressed through the State Constitution, definitions within the act have been discarded by the courts; the required joint rules were never created; the Local Government Claims Review Board was belatedly created and given operating rules, and later was wholly abandoned; and over time Section 29 and the process created in Act 101 have been all but ignored.

Definition of State Requirements

Sections 1 through 4 of Act 101 (MCL 21.231 – 21.234) gave statutory definition to the words and phrases included in Section 29, many of which had not carried statutory significance prior to adoption of the Headlee Amendment. It was necessary to define terms such as "activity," "service," "local unit of government," "necessary cost," "state financed proportion of the necessary cost", and "state requirement."

Exceptions to "State Requirements" in Public Act 101 of 1979

"State requirement" means a state law which requires a new activity or service or an increased level of activity or service beyond that required of a local unit of government by an existing law. State requirement does not include any of the following:

(a) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963 adopted pursuant to an initiative petition, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(b) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963, enacted or adopted pursuant to a proposal placed on the ballot by the legislature, and approved by the voters, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(c) A court requirement.

(d) A due process requirement.

(e) A federal requirement.

(f) An implied federal requirement.

(g) A requirement of a state law which applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.

(h) A requirement of a state law which does not require a local unit of government to perform an activity or service but allows a local unit of government to do so as an option, and by opting to perform such an activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines.

(i) A requirement of a state law which changes the level of requirements, standards, or guidelines of an activity or service that is not required of a local unit of government by existing law or state law, but that is provided at the option of the local unit of government.

(j) A requirement of a state law enacted pursuant to section 18 of article 6 of the state constitution of 1963.

Public Act 101 of 1979 created statutory definitions for several terms as they relate to state mandates. The courts do pay heed to the laws enacted to implement constitutional provisions, but they are not bound by that legislation. In the case of Act 101, the courts have not wholly agreed that the statutory definitions represent what the people intended when the Headlee Amendment was adopted. The most significant definitional problem in Act 101 is the exceptions to "state requirements" provided in Section 4.

The definition of "state requirements" is consistent with the words of the Constitution and has been expressly applied by the Supreme Court, but the courts have excluded some of the statutory exceptions.[1] Not all of those statutory exclusions have been expressly ruled upon by the courts.

The courts have agreed with subsections (a) and (b) excepting requirements created by amendment to the State Constitution and laws enacted to implement those amendments. In *Durant v State Bd of Education*[2], the courts held that Section 29 applies not to constitutional mandates, but only to services and activities required by state statutes and state agency rules.[3]

Ultimately the 1997 *Durant* case included the question of whether state laws are considered mandates if they were enacted to comply with federal requirements. The court rejected the idea that such laws did not create state requirements and said that state laws implementing federal requirements are not excluded from Section 29.

The courts agreed with subsection (h) excluding requirements that must be implemented as part of an optional service or activity. A number of cases have dealt with this question. In *Livingston County v Department of Management & Budget*, a case often cited as dealing with this question, the court held that language referring to "an increase in the level of activity or service" referred to in Section 29, "refers only to required, not optional, services or activities."[4]

If the laws are amended to better implement Section 29, it will be necessary to bring the statutory definitions and exceptions in Act 101 of 1979 in line with established case law. Furthermore, a revised Act 101 would have to address differences between the first and second sentences of Section 29. The first sentence provides that the State cannot decrease the state financed proportion of the necessary costs for activities or services that were required when the Headlee Amendment was adopted in 1978. The Court has stated that "the sections of the implementing act that refer to a 'state requirement' are useful only in interpreting the second sentence of Section 29 of Headlee."[5]

The second sentence provides that mandates that require new activities or services or require an increase in the level of activities or services that were required when the Headlee Amendment was adopted shall not be required unless a state appropriation is made and disbursed to pay the local governments for any necessary increased costs. Thus, the exceptions to state requirements provided for in Act 101 apply to new state requirements, but are not binding on state requirements that existed prior to 1978 for which the State provided a proportion of the funding.

In practical terms, the attention to the second sentence at the expense of the first sentence changes little relative to the ability of local governments to challenge for state funding under Section 29. A list of state required activities and services was compiled, but neither the State nor local governments took any actions in 1978-79 to document the proportion of costs of mandated local government services provided from state funds. Thirty years after the adoption of the Headlee Amendment, Michigan is far enough removed from 1978 that reconstructing that proportion is nearly impossible.

Appendix A details the exceptions to state mandates other states allow, thus exempting certain state requirements from funding requirements.

Joint Rules

Section 7 of Act 101 (MCL 21.237) set out a number of joint rules that the legislature would be required to establish for providing a method of estimating the cost to local governments of complying with state mandates and, thus, the amount the State would be required to appropriate to cover those costs.

A review of the House and Senate Journals performed by the Legislative Service Bureau found that the Joint Ad Hoc Task Force on Proposal E (the Headlee Amendment of 1978) was scheduled to meet on March 19,

Filling the Void Caused by the Failure of Act 101

At times since Section 29 was amended to the Michigan Constitution in 1978, both the Office of Attorney General and the House and Senate Fiscal Agencies have acted to fill the voids created because Act 101 was never fully implemented. The Attorney General has offered opinions on the applicability of proposed and current laws and the Fiscal Agencies have attempted to identify the fiscal impact of proposed laws on local governments. The effectiveness of these efforts has been limited.

Attorney General's Role. For a time the Attorney General's Office played a limited role in filling the vacuum created because rules specified by Section 7 were never promulgated. The Attorney General, a constitutional officer and an independently elected member of the executive branch, is the chief law enforcement officer of the state and is legal counsel for the legislature and for each officer, department, board, and commission of State government.

From 1980 through 1989, the Attorney General's office issued 14 opinions on proposed and recently enacted laws that had potential Section 29 implications. The legislation in question affected school districts, counties, transit agencies, and local governments with fire departments (See **Table 1** on pages 6-7). It is noteworthy that the opinions date from 1980, shortly after adoption of the Headlee Amendment, to 1989, about a decade later. Either legislators came to believe they understood what types of laws had Section 29 funding implications after 1989, or they grew less concerned about enacting laws that imposed state requirements on local governments, or they became less aware that state mandates require the accompaniment of state funding, as no questions to the Attorney General's office after June of 1989 rose to the importance of the issuance of an opinion.

It should be noted that during the time frame in which the Attorney General was issuing those opinions, that office was also defending the State in the Court of Appeals and later the Supreme Court against allegations that certain laws created state requirements. The office could not very well argue in court that certain laws do not rise to the level of a state requirement, thus warranting the need for state funding, while at the same time opining that similar proposed or enacted laws do rise to that level in response to legislators' requests.

Legislative Analysis by Fiscal Agencies. Estimates of the fiscal impact of bills introduced in the Michigan Legislature are produced by the House and Senate Fiscal Agencies. These agencies are responsible for providing legislative analyses, including fiscal impact statements, on all legislation that rises to the level of a committee hearing. It is current practice for the Fiscal Agencies to analyze the financial impact of bills that affect local governments. Some legislative committees are more involved in the affairs of local governments than others. Fiscal Agency staff assigned to committees that deal with education, community colleges, judiciary, community and mental health, local government and urban affairs are better acquainted with the operations of local governments and are able to analyze the fiscal impact legislation might have on local governments at a macro level.

The ability of the Fiscal Agencies to prepare local government fiscal analyses varies by the type of change proposed. Changes in the amount of funds available for distribution or to the formulas for distributing those funds are analyzed to a level that analysts can report the amount of funding each recipient can expect to receive. Boilerplate language in appropriations bills and requirements included in legislation not related to appropriations are analyzed to estimate how they might affect the state budget, but there is generally very little analysis of how individual local governments stand to be affected by the proposed legislation. Generally, the Fiscal Agencies' staffs do not have the time (because of the demands of the legislative process) or a strong enough familiarity with local government financial operations to determine how local governments would be affected by proposals. As a result of these deficiencies, the legislative analysis for the affect on local governments caused by boilerplate language and other proposed legislation usually says "the fiscal impact is indeterminate."

Table 1
Attorney General Opinions Regarding Section 29, Article IX of the 1963 Michigan Constitution

AG Opinion No.	Date of Opinion	Subject Matter	Crux of Opinion
5635	January 29, 1980	School lunch and breakfast programs	Lunch program predated the Headlee Amendment; breakfast program was funded in year in question. Therefore, neither constitutes violation of Sec. 29.
5667	March 6, 1980	School instruction of CPR	A proposed amendment to the School Code would require CPR instruction as part of health and physical education already mandated of school districts. Districts must use existing personnel and the State would pay for substitute teachers and cost of mannequins. Those provisions should satisfy Sec. 29 and state shouldn't have to pay for salary of existing personnel while teaching CPR.
6052	April 12, 1982	Administrative authority of county departments of social services	State requirement that counties reimburse the State at higher amounts does not amount to expansion of program. Counties may maintain expenditure levels by making more restrictive individual financial eligibility requirements. Not subject to Sec. 29.
6237	July 31, 1984	Utilization of licensed professionals on public works projects	Public works projects may be undertaken by local governments and must employ people with certain licensed professionals if they choose to do so. Optional services are not subject to Sec. 29.
6307	July 25, 1985	Levy of summer school taxes	School districts may voluntarily move to a summer tax collection so not subject to Sec. 29.
6330	January 2, 1986	School provision of services to autistic pupils	State law provided for services for emotionally impaired students, including autistic students, so new administrative rule requiring programs and teacher requirements does not constitute new service subject to Sec. 29.
6377	April 13, 1986	County as district control unit of district courts	In proposed amendment to Revised Judicature Act, change in district control unit would be authorized, but subject to approval of county board of commissioners and thus is not subject to Sec. 29.
6486	January 7, 1988	Fire department responsibilities regarding hazardous chemicals	State law does not require fire protection, so compliance with MiOSHA not subject to Sec. 29.

Table 1 (continued)

AG Opinion No.	Date of Opinion	Subject Matter	Crux of Opinion
6521	June 3, 1988	Funding of instruction on AIDS in communicable diseases curriculum	1987 amendment to School Code did not change elective nature of communicable disease instruction, but required AIDS instruction as part of curriculum, further AIDS always considered communicable disease. Not subject to Sec. 29.
6546	November 4, 1988	New or increased services of local	1982 Correctional Officers Training Act does not require that local corrections facilities correctional officers be certified or mandate new activities and is not subject to Sec. 29.
6548	November 16, 1988	Information relating to hazardous chemicals in workplace	1986 act requiring persons, corporations, and local governments to furnish to workers information regarding hazardous chemicals in workplace does not apply to Sec. 29 due to Act 101, Sec. 4 paragraph (5)(g) excluding such acts of wide implication.
6554	December 20, 1988	Obligation to pay increased costs for specialized transportation for persons	Transportation authorities are not required to provide transportation services to persons over 65 years, but if do so, have to provide 60 years of age or over at reduced rate. Not subject to Sec. 29.
6576	March 10, 1989	Prosecuting attorney activities / regulation of building officials	1985 Crime Victims Rights Act that created new requirements to be performed by prosecuting attorneys are subject to Sec. 29; 1986 act created new activity for prosecuting attorneys and is subject to Sec. 29; 1986 Building Officials and Inspectors Registration Act creates activities for the State and is not subject to Sec. 29.
6583	June 1, 1989	Employer contribution to MPSERS	Employers contribution to MPSERS not subject to Sec. 29 because does not constitute new or increased activity or service.

Source: Online database of Attorney General Opinions, Attorney General website, http://michigan.gov/ag/0,1607,7-164-20988—,00.html (accessed December 5, 2008).

1979; April 26, 1979; May 14, 1979; and June 14, 1979. The main product of these meetings was the preparation of the bill that was to become Act 101. The Legislative Service Bureau was not able to identify any further actions to establish joint rules consistent with the requirement in Section 7 of the act.[6]

In reviewing other sections of Act 101 that have not been implemented, the Legislative Service Bureau noted that provisions of Sections 5 and 8 could not be fully implemented because of the failure to establish joint rules pursuant to Section 7.[7] Section 5 (MCL 21.235) addresses the need for a method for disbursing necessary funds to local governments when state laws create activities or services that require state funding. Section 8 (MCL 21.238) creates requirements for certification of disbursements to local governments under this act, proration of claims when funds are insufficient to make full disbursements, and the actual payment of disbursements.

Reform of Act 101 would require the legislature to revisit these sections to at last put a process in place for identifying and funding state requirements, as well as a system for disbursing the funds to local governments.

Fiscal Notes for Administrative Rules

Section 6 of Act 101 (MCL 21.236) requires state agencies promulgating a rule that will require state funding under Section 29 to prepare and submit fiscal notes estimating the cost of the proposed rules during the first three years of operation. This section has been indirectly complied with because agencies do prepare Regulatory Impact Statements (RIS) for transmittal with proposed rules. The RIS requirement was added to the Administrative Procedures Act (Public Act 306 of 1969) by Public Act 455 of 1981.[8] State agencies are required to prepare an RIS and submit it to the Joint Committee on Administrative Rules (JCAR). A 1999 amendment added a requirement that the RIS be submitted to the State Office of Administrative Hearings and Rules (SOAHR) prior to an agency public hearing on a proposed rule.

The RIS serves the same purpose as would a fiscal note, estimating the cost of compliance for those affected by an administrative rule. The required content of a RIS demands only a general estimate of cost and that estimate is not specific to the first three fiscal years of the rule's operation.[9]

Local Government Claims Review Board

Section 10 of act 101 (MCL 21.240) created a Local Government Claims Review Board (LGCRB) within the Department of Management and Budget to "hear and decide upon disputed claims upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose" (paragraph 4). Act 101 required the LGCRB to adopt procedures for receiving claims; for providing hearings; and for the presentation of evidence to substantiate the alleged claims. Four months into each fiscal year, approximately corresponding with the beginning of the budget process, the Board was to report to the Legislature and the Governor on the number and amount of the claims the Board has approved or rejected.

Initial members were appointed to the LGCRB on March 27, 1980. An extended process of promulgating rules of procedure occupied most of the Board's activity over the next five years. Finally the Board held its inaugural meeting on June 21, 1985. Almost a year later, on May 19, 1986, the Board held its second meeting, to approve the proposed rules of procedure. Those rules (R 21.101-21.401 of the Michigan Administrative Code) were finalized on June 24, 1986. The LGCRB did not meet again for another 12 years after that despite the fact that they had claims before them.[10]

Following recommendations by the Headlee Blue Ribbon Commission in 1994, the LGCRB was reinvigorated.[11] New members were appointed to the Board by Governor Engler and six meetings were held during 1998 and 1999. The Board never met during the Granholm administration and it was finally abolished by Executive Order No. 2006-20. Its duties were to be assumed by the State Administrative Board.[12]

Local governments made 22 claims[13] to the LGCRB for disbursements. Of those 22, 13 were made between 1979 and 1984, before the Board held its inaugural meeting. Eight more were filed in the period between 1985 and 1987, when the Board briefly met and adopted rules of procedure. The final claim was filed in 2002.

Ten cities filed individual claims; two townships filed three claims; and the other claims were filed by a county, a school district, a circuit court district, a com-

munity mental health board, and a concealed weapons licensing board. In no case did the LGCRB determine that a state disbursement was necessary. One claim became moot when an Attorney General opinion (No. 6576) determined that the act in question imposed Headlee obligations and the Legislature made appropriations to cover costs. In another instance, the Board acknowledged that an annual appropriation was included in the amendatory act. Eight claims were rejected because the claims did not qualify under Section 29. One claim sat for 13 years before the LGCRB staff notified the claimant that because a new LGCRB Board had been appointed, all outdated claims were to be dismissed unless an objection to the dismissal was filed. The 2002 claim remains outstanding.[14]

The question of whether to recreate the Local Government Claims Review Board, or not, is discussed below.

The Fate of Act 101

On the whole, Act 101 has come to be disregarded not only by the State, but also by local governments who feel aggrieved by state requirements. Joint rules for providing a method of identifying whether legislation proposes a state requirement have never been promulgated. A method has never been created to identify state requirements that qualify for funding under the act. As a result of these failures, it has not been possible for other parts of the act to be implemented.

Local governments cannot seek determinations that proposed legislation would create state requirements nor seek fiscal notes to estimate the cost of those bills because administrative rules for such a process were never adopted. Although hundreds of laws are enacted each year, many of which affect local government, only 22 claims were submitted to the Local Government Claims Review Board over the 30 years since the Headlee Amendment was adopted. Rather than file claims for a process commonly viewed as flawed, local governments have instead sought relief through the courts for a few, select state requirements.

Executive Branch

Members of the executive branch since 1979 share responsibility equal to the legislature's indifference to the provisions of Section 29. During this period, Michigan has had four governors and four attorneys general that have done little to enforce this provision of the State Constitution. Except in rare circumstances, state budgets were introduced without regard to mandates on local governments. Laws were enacted by the Legislature during this period, some of which may have created new mandates on local governments, but actions by the attorneys general or the governors to investigate the applicability of Article IX, Section 29, and require the accompaniment of funding for legitimate mandates on local governments were rare.

Rather than enforce Section 29, the attorneys general since 1979 have endeavored to fight citizen and local government claims of State mandated activities and services. The following section details the shortcomings of the judicial system in this process, but it must be acknowledged that without the prolonged objections by the attorneys general and their continued efforts to thwart claims that ultimately were found to be state requirements, the courts may have been better able to handle the mandate claims before them.

The Challenges Caused by Article IX, Section 32

In 1980, a lawsuit was filed in the Michigan Court of Appeals on behalf of seven taxpayers, including one Donald Durant, who resided in the Fitzgerald School District.[15] The essence of the lawsuit was that State officials had reduced the proportion of educational costs paid by the State to a level below that required by the Headlee Amendment. Over the next 17 years, the *Durant* case would beat a well-worn path between the Court of Appeals and the Supreme Court, culminating with a final decision by the high court on July 31, 1997.

The *Durant* case was, when filed, one of first impression, meaning that the issues involved were being raised for the first time. However, there was nothing inherently difficult about those issues, and certainly nothing to foreshadow the fact that it would take the courts nearly two decades to resolve them. What made *Durant* unique was an initial unwillingness of the Court of Appeals to hear the lawsuit and what the State Supreme Court referred to as the "prolonged recalcitrance" on the part of State officials in defending it.

An Unwilling Court of Appeals

The *Durant* case was filed in the Michigan Court of Appeals pursuant to Article IX, Section 32, of the State Constitution. Section 32, which is a part of the Headlee Amendment, provides that "[a]ny taxpayer of the state shall have standing to bring suit in the Michigan Court of Appeals to enforce the provisions..." of the amendment.

The drafters' notes do not indicate why the authors of the Headlee Amendment chose the Court of Appeals as the forum in which taxpayers could bring original enforcement actions. As such, it cannot be determined whether the drafters anticipated the difficulty that that choice would produce.

That difficulty stemmed from the fact that the Court of Appeals is an appellate court. It was not established to handle complicated factual issues, which are often at the heart of taxpayer lawsuits, but to resolve issues of law raised on appeal from trial courts. Given the purpose that the Court of Appeals serves, the decision to assign to it responsibility to hear taxpayer lawsuits was arguably ill advised. Nevertheless, that is the decision voters made when they adopted the Headlee Amendment and the Court of Appeals was obligated to act accordingly.

Instead, the Court of Appeals essentially refused to consider *Durant* on its merits, choosing instead on two separate occasions to dismiss the case on technical grounds. While it is true that the case raised a number of complex factual issues, the court was not without options for dealing with them. For example, both State law and court rules authorized the court to appoint fact finders when factual issues were in dispute. However, in the early stages of *Durant*, the Court of Appeals refused to consider fact finding as an option.

Finally, late in 1985, the Supreme Court ordered the Court of Appeals to appoint a special master, which the latter did in the spring of 1986. By this time, however, *Durant* had been underway for nearly six years. In effect, nearly a third of the time that the case ultimately took to resolve was consumed, not in deciding the legal issues, but in forcing the Court of Appeals to accept its constitutional responsibility to hear taxpayer lawsuits.

A "Prolonged Recalcitrance"

A second factor contributing to the length of *Durant* was what the State Supreme Court referred to as the "prolonged recalcitrance" of State officials in defending the lawsuit. When *Durant* was filed, the State had argued that the Headlee Amendment applied only to specific educational programs such as special education and not to elementary-secondary education in general as plaintiff school districts were contending.

The Court of Appeals and, subsequently, the Supreme Court agreed with the State. However, shortly after prevailing on that issue, the State reversed its position by arguing that special education was not subject to the Headlee Amendment after all. The State's revised position was based on the argument that special education was a federal, rather than a State, mandate.

This maneuver by the State did not escape the attention of the Supreme Court, which observed in its July 31, 1997, decision that

> the history of defendants' [the State's] conduct justifies the conclusion that the state has been derelict too long. Not only did defendants argue to this Court in 1985 that we ought to hold that Section 29 [of the Headlee Amendment] applied to specific activities like special education (in order to escape a larger burden for education as a whole) but, having received a favorable response on the larger burden, they reversed their position on special education.[16]

Not only did the Supreme Court find the State's position on special education to be contradictory; it was also legally untenable after the Court of Appeals rejected it in 1990. Despite that ruling, however, the State refused to abandon its position. In turn, this refusal directly contributed to extending the length of the case and to the Supreme Court's decision to order the State to pay damages. As that Court summarized the matter, "... defendants' prolonged recalcitrance in this case necessitates a substantial recovery aimed primarily at providing a remedy for the harm caused by underfunding."

Other Section 29 Cases

Another school mandate case has taken more than seven years to work its way through the court system. *Daniel Adair, et. al., v State of Michigan* asked whether the record-keeping obligations imposed on schools as part of the Center for Educational Performance and Information (CEPI) constituted either a new activity or service or an increase in the level of state-mandated activity or service under Section 29. Like in *Durant*, in this case the Court of Appeals appointed a special master to hear the case and accept evidence. As of this writing, the Supreme Court has opined that these obligations constitute a mandate and that the State has failed to fund the necessary costs associated with the data collection and reporting mandates associated with the CEPI. The case remains in the court system as the sides determine the appropriateness and level of attorneys' fees.[17]

Other Section 29 cases have not taken as long to wind their ways through the court system, but none of those cases found a failure to provide state funding to necessitate a cost finding element in the trial process. The necessity of agreeing to the direct and indirect costs that are subject to state funding under Section 29 has proven to be a long and tedious process. Because the other cases only involved sorting through the issues of what constitutes mandated activities and services, with the conclusion that the alleged mandates do not fall into those categories, the judicial process was not as long for these cases.[18]

Alleged Mandates Enacted Since 1979

Besides the few programs identified as mandates in the *Durant* and *Adair* cases, the Legislative Commission on Local Government Mandates has created a list of activities and services that appear to require some degree of state funding under Section 29. Local government associations submitted lists of the most egregious state mandates on their member governments. To judge the applicability of Section 29 to these programs, it is necessary to apply the burden of proof standards that the courts have established.

Although local governments have initiated relatively few Section 29 cases, the burden of proof for plaintiffs has been established by the courts. The first sentence of Section 29 creates a maintenance-of-support provision. To show that the State has failed to maintain the level of support that was in place at the time of adoption of the Headlee Amendment, a plaintiff must show 1) that there is a continuing state mandate, 2) that the State actually funded the mandated activity at a certain proportion of necessary costs in the base fiscal year of 1978-1979, and 3) that the state funding of necessary costs has dipped below that proportion in a succeeding year.[19]

The second sentence creates a prohibition-of-unfunded-mandates provision. To show that the State has violated that prohibition, a plaintiff must show that the state-mandated local activity or service was originated without sufficient state funding after the Headlee Amendment was adopted in 1978 or, if properly funded initially, that the mandated local role was increased by the State without state funding for the necessary increased costs.[20]

The following is a sampling of the issues the Commission has identified that may qualify for state funding under Section 29 (CRC takes no position on the validity of these alleged mandates):

Local Governments

1. **National Pollutant Discharge Elimination System/Michigan Permitting** – This program is a federal program, however the State administers the program and is the determining governmental entity that sets up specifics within the program. Local governments located in defined geographical areas (as determined by federal law using population standards) or adjacent to an area within the defined area must be involved in administering the Storm Water Phase II program. Local governments included in this program must carry our six measures as determined by the Michigan Department of Environmental Quality: including reporting, education, drainage, and storm and sanitary sewer separation. This program primarily affects cities and county drain commissions, but several townships are involved either in carrying out the program or in sharing the burden of the program with their county governments.[21]

2. **Local Governments Conducting School Elections** – Public Act 71 of 2005 consolidated elections into four dates throughout a year. As a result of this consolidation, local governments, specifically cities and townships, are responsible for administering school elections. The law provides that the school districts are to reimburse the local governments for the cost of the elections, but local governments do not feel that they are fully reimbursed for their costs and because it is a state mandate, it should be the State that covers their costs, not the school districts.[22]

3. **Requiring Optical Scan Machines for Voting Equipment** – Following enactment of the federal Help Americans Vote Act, Michigan's Secretary of State took action to mandate the use of optical scan machines for the conduct of elections. The machines were provided to local governments at the State's expense (using federal funds). The contention that this constitutes an unfunded increase in activities above those required in 1978 depend on whether the cost for local governments to operate and maintain the optical scan machines exceeds state funding for this purpose and are in addition to the costs local governments incurred to operate and maintain election equipment prior to the change.

4. **Electronic Fingerprinting** – When the State began requiring the use of electronic fingerprinting by law enforcement agencies, it provided the necessary equipment to the county law enforcement

offices.[23] Local law enforcement agencies were also required to use electronic fingerprinting and had to choose between the cost of obtaining the equipment themselves or transporting individuals to the county sheriffs' office to use their equipment.

5. **Quarterly Reports Treasurer to Local Board/ Councils** – The act for Investment of Surplus Funds of Political Subdivisions, Public Act 20 of 1943, was amended by Public Act 196 of 1997 to increase the reporting obligations from annually to quarterly.[24] The time spent preparing quarterly reports above that needed to prepare annual reports would constitute a new activity subject to funding under Section 29.

6. **New Assessing Requirements** – Public Act 237 of 1994, enacted to implement the constitutional amendment adopted as Proposal A of 1994, created a homestead exemption for the owners of principal residences. The exemption is applied to the entire operating levy of up to 18 mills levied by local school districts. Act 237 specifies that the affidavit property owners submit seeking exemption must be filed "with the local tax collecting unit in which the property is located." Cities and townships, as the local tax collecting units, were given the added responsibility for administering the affidavits, assessing the qualifications of filers of affidavits, maintaining records of affidavits, and submitting copies of the affidavits to the Michigan Department of Treasury without funding to compensate them for these activities.[25] If these tasks qualify as new activities under Section 29, all duties related to administration of the homestead exemption affidavits should be reimbursable.

7. **Collecting, Transporting, or Disposing of Solid Waste** – In *Livingston County v Department of Management and Budget*[26] *the courts ruled* that the cost of operating or improving a landfill was not reimbursable under Section 29 because the Solid Waste Management Act does not require counties to operate a landfill site. The Court held "that [section] 29 applies only to services and activities required by state law and that operation of a sanitary landfill is not a required service or activity." The Solid Waste Management Act does not require local governments, including counties, to operate landfills, nor does it restrict the operation of landfills to units of local government, such as counties. It does, however, state that "A municipality or county shall assure that all solid waste is removed from the site of generation, frequently enough to protect the public health, and are [sic] delivered to licensed solid waste disposal areas, except waste which is permitted … to be disposed of at the site of generation."[27] With regard to the difference, the Court stated "It is important to note that [the County] has not, to our knowledge sought reimbursement of the costs of collecting, transporting, or disposing of solid waste. Rather, the county … seeks not the cost of disposing of solid waste, but upgrading its landfill irrespective of the cost of waste disposal…. However, the $260,000 cost of the landfill improvements … is part of the cost of ownership of the landfill, not the cost of its use. It is the latter that, arguendo, is mandated, not the former."

8. **Friend of the Court** – The Friend of the Court system has existed in Michigan since 1919. At the time the Headlee Amendment was adopted in 1978, the Friend of the Court provided few functions and costs were covered by the counties, some of it through fees. In 1983, the Friend of the Court statutes were repealed and replaced with the current statute that made significant changes to the Friend of the Court system and required new and additional services beyond those that were required in 1978.[28] An analysis of whether these changes qualify under Section 29 would begin by determining whether the Friend of the Court is a court or a county function, since Section 29 is not applicable to court functions. If Friend of the Court is a county function, then it would appear that the additional services required by the 1983 act should be reimbursable.

K-12 School and Community College Districts

9. **Retirement Plan for Employees of Public School and Community College Districts** – The Michigan Public School Employees Retirement System (MPSERS) was created by Public Act 136 of 1945. Act 136 was repealed and replaced by Public Act 300 of 1980. The new Act restructured MPSERS

and required contributions from participating local governments. Amendments to Act 300 since 1980 have caused the contribution rate primarily resulting from actuarial calculations to rise considerably.[29] Finally, acts enacted to implement Proposal A of 1994 shifted the remaining proportion of responsibility for the cost of retirement benefits, so that now school districts are responsible for 100 percent of the costs.

This alleged mandate affects K-12 school districts, intermediate school districts, community college districts, and some libraries (seven universities are part of MPSERS but would not have Section 29 implications). As noted in **Table 1** (pages 6-7), the Attorney General opined in 1989 that the changes shifting greater funding burdens away from the State do not constitute new or increased activities or services and, thus, are not subject to Section 29.[30] Attorney General opinions do not have the force of law, but are binding on state actions until overruled by statute or court decisions.

10. **Special Education Services** – The Michigan School Code and Michigan Department of Education rules and regulations require school districts to provide special education services, including specialized transportation to qualifying students. School officials claim that the Michigan requirements, which exceed federal requirements, go beyond what was recognized in the *Durant* case and beyond the costs recognized by the Department of Education.

11. **Curriculum and Diploma Requirements** – In 2006, a core curriculum was developed and the required credits students must obtain to receive a diploma were revised. Beyond the civics class that was required, students must now have a number of credits in math, English, science, and other courses to receive a diploma. School districts argue that the newly mandated core academic curriculum for students at each elementary, middle, and secondary school imposes costs to develop, maintain, and implement academic programs. School districts claim that new credits required for graduation imposed costs in the addition of new classes, including the hiring of accredited teachers to provide instruction, additional textbooks, and science lab equipment, as well as bureaucratic costs in counseling and monitoring the progress of each student.

12. **Intermediate School District Reporting Requirements** – A 2004 law requires ISDs to report data on several issues on their websites. The reporting requirements arose as part of a series of reforms in response to a financial scandal. Regardless of the motivation in enacting the reforms, all ISDs are required to comply and the law requires the conduct of new or increased activities.

13. **Testing Mandates** – The State has increased the number of standardized tests school districts must give, including the Michigan Education Assessment Program (MEAP) and Michigan Merit Exam (MME). School districts incur costs preparing to give these tests, proctoring the exams, and providing sufficient supplies. It is argued that because school districts administer the state tests, they are incurring costs associated with new or increased activities and services that should be subject to funding under Section 29.

14. **ACS Reporting** – Section 8 of Public Act 419 of 1979, boilerplate language in an appropriations bill, called upon the Michigan Department of Management and Budget, in cooperation with the Senate Fiscal Agency, House Fiscal Agency, the Department of Education, and the community colleges to develop a community college program activities classification structure (ACS) for use in documenting the financial needs of community colleges. That reporting structure was created and community colleges began to report data in 1981. It is argued that community colleges must perform new or increased activities in providing the ACS information that should qualify for funding under Section 29.

Other States' Requirements to Fund Mandates

A literature review[31] and examination of the constitutions and laws of other states reveals 28 states with constitutional or statutory requirements that state funding accompany any state laws that mandate local government services and activities (See **Table 2** and **Appendix B**). Other than Alaska, where the funding requirement was included in the state's constitution upon statehood, only two states had constitutional funding requirements that predated Michigan's Headlee Amendment.

Funding requirements are in the state constitutions of 15 states and are statutorily provided in the other 13. As pointed out by Professor Janet Kelly, an academic that has written extensively on state mandates on local governments, the strength of the provisions bears little relation to whether these requirements have constitutional backing or not. Michigan stands out as an example of a state in which the requirement is ingrained in the Constitution, but has proved very weak. The Virginia requirements are statutory, but are very effective at achieving their intended purpose. Ultimately, whether the requirement is created in the constitution or not, the state legislatures are charged with giving the requirement statutory implementation and are voluntarily or involuntarily writing laws to limit their ability to enact future laws. "It appears that the context of state-local relations is more important to understanding the end result of reimbursement legislation than the provision of the legislation itself."[32]

Table 2
States with Restrictions on State Mandates on Local Governments

State	Constitutional (C) or Statutory (S)	First Year of Adoption/ Enactment	State	Constitutional (C) or Statutory (S)	First Year of Adoption/ Enactment
Alabama	C	1988	Missouri	C	1980
Alaska	C	1959	Montana	S	1974
California	C	1976	Nevada	S	1993
Colorado	S / C	1991 / 1992	New Hampshire	C	1984
Connecticut	S	1993	New Jersey	C	1995
Florida	S / C	1978 / 1990	New Mexico	C	1984
Hawaii	C	1978	Oregon	S / C	1989 / 1996
Illinois	S	1979	Rhode Island	S	1979
Iowa	S	1983	South Carolina	S	1993
Louisiana	C	1991	South Dakota	S	1993
Maine	S / C	1989 / 1992	Tennessee	C	1978
Massachusetts	C	1980	Virginia	S	1991
Michigan	**C**	**1978**	Washington	S	1979
Minnesota	S*	1985	Wisconsin	S	1994

S / C – denotes states that began with a statutory restrictions on state mandates that later were given constitutional status. This is meant to show when the state began its attempt to control the issuance of state mandates on local governments. Other states with constitutional provisions are presumed to have implementing legislation that was enacted after adoption of the constitutional amendment.

* Rather than prohibit unfunded mandates, Minnesota has a set of statutes that indirectly attack unfunded mandates by requiring "local impact notes" be prepared. The intent is to force a legislative discussion of the "unfunded" aspect of mandates.

In 1980, **Massachusetts** voters adopted Proposition 2½ as an amendment to their Constitution creating property tax limitations similar to the property tax limitations created in Michigan by the Headlee Amendment in 1978. Provisions of Proposition 2½ established the Local Mandate Law and the Division of Local Mandates (DLM) within the independently elected auditor's office. DLM is responsible for determining the fiscal impact of any proposed or existing laws that impose mandates on local governments. The DLM values highly its perceived independence and objectivity, and to maintain that status it developed a rather painstaking process of deciding the applicability of proposed or existing laws to the funding provision.

Like the provisions of Section 29 in Michigan, Massachusetts' Local Mandate Law is prospective. Mandates carry with them the need for state funding only if they were imposed after the adoption of Proposition 2½ in 1980.[33] In general terms, the Local Mandate Law provides that any post-1980 law or regulation "imposing any direct service or cost obligation upon any city or town shall be effective only if" the community votes to accept the law or regulation, or the Commonwealth assumes the cost of compliance .

When the DLM receives a claim of an unfunded mandate from a local government, it begins by looking for the elements of a mandate finding. It considers whether the law or regulation was effective on or after January 1, 1981, and then it looks to see if costs are imposed and whether there has been an appropriation by the Commonwealth to assume the cost. DLM considers whether the contested law or regulation meets the statutory definitions of a mandate and whether any exceptions provided by law or interpretation would exclude it from reimbursement requirements.

On the occasions that the DLM has identified a mandate, its findings have gotten mixed acceptance by the Commonwealth. Sometimes the findings were immediately acted upon by the legislature and an appropriation is made to cover the cost of the law or regulation. The Commonwealth has contested other findings and appropriations were withheld until the issue was adjudicated by the courts. The Commonwealth and local governments have access to the courts to contest DLM decisions.[34]

A 1979 amendment to the **California** Constitution attempted to reduce pressure on local property taxes by providing relief from state mandates. Determinations of mandates take place at multiple times in the process. When a bill is introduced in the legislature, and as it is amended, the Legislative Counsel determines whether the bill mandates a new program or higher level of service.[35]

The implementing statutes for that constitutional provision were amended in 1984 to create the California Commission on State Mandates (CSM), a quasi-judicial body whose primary responsibility is to hear and decide test claims alleging that a law imposes a reimbursable mandate upon local governments.[36] Following a CSM determination, the parties to a test claim may file a petition for writ of mandate with the court to determine whether the CSM's findings are supported by substantial evidence and whether the CSM's interpretation of the constitutional requirements are correct as a matter of law.[37]

While the process created in California works, it does have problems. For example, because the constitutional amendment was meant to provide property tax relief, legislation can be enacted to create mandates with the disclaimer that they will not cause property tax increases.[38] That disclaimer does not always bear itself out in reality and multiple mandates can have compounding affects to increase the cost of local government sufficiently to warrant property tax increases.

The **Virginia** mandate laws were designed to promote efficiency for local government operations. In 1993, legislation was enacted to require all executive branch agencies to conduct an assessment of the mandates they impose on local governments to determine which mandates may be altered or eliminated without interruption of local service delivery or undue threat to the health, safety, and welfare of residents. The State is not required to fund local government mandates, but the process has illuminated the number of mandates in place, slowed the increase in the growth of mandates, and allowed relief from mandates for those local governments suffering fiscal stress.[39]

In 1989, **Maine** enacted a statutory reimbursement provision that required the State to fund mandates at 90 percent of the costs unless the law was enacted with a two-thirds vote exempting the mandate from the funding requirement.[40] The law was given the strength

of the Constitution in 1992. Responsibility for identification of bills with mandates and estimating the cost of implementation falls upon the Office of Fiscal and Program Review (OFPR), one of several nonpartisan offices operating under the direction of the Legislative Council. The OFPR collects, researches and analyzes fiscal and program information related to the finances and operation of State Government for legislators, legislative committees and commissions.[41]

In 1980, the **Missouri** Constitution was amended by the Hancock Amendment, a broad tax limitation that was modeled after the Headlee Amendment in Michigan. The Hancock Amendment included a provision similar to Article IX, Section 29 of the Michigan Constitution. The question of what constitutes a mandate was taken to the courts, but after a few cases were decided early in the history of the Hancock Amendment the understanding of what constitutes a mandate has been fairly settled and there have not been any suits on this matter for the past 20 years.[42] Implementation of this amendment calls upon the Oversight Division of the Joint Committee on Legislative Research to prepare fiscal notes on legislative bills and for the State to include sufficient funding for newly enacted mandates.

Washington's mandate reimbursement is statutory.[43] According to Professor Kelly, this citizen-initiated law was adopted as a statement by the citizens against government spending in general, and state government spending in particular. It included a provision that the state government should not transfer programs to the local levels of government unless it was prepared to have the state budget reduced by the amount appropriated for those programs. It required that the proportion of state revenue shared with local governments should not be reduced below the 1980 level unless the state budget itself is decreased or unless an emergency exists. State-imposed mandates have been offset by state-shared revenues to the extent that there has been no net cost to local governments for mandates.[44]

The **Rhode Island** program was considered a success when it was implemented, but the lack of use led to abandonment. A 1979 law created a process for reimbursing cities and towns for the cost of state mandates. The Office of Municipal Affairs, in the Department of Administration, was responsible for administering the mandate reimbursement program. The Office reviewed each proposed law for a mandate, identified reimbursable costs, made the rules governing municipal reimbursement requests, and forwarded the reimbursement request to the State Budget Office to be appropriated in the next state budget. Reimbursements were provided from 1982 to 1992. During that period, no more than 18 municipalities ever submitted claims for reimbursement and total payments never exceeded $125,000 in any year. In the 1990s, the State ended appropriations to municipalities and local governments ceased the process of filing for reimbursement. The law has been dormant in the time since, but recent efforts to identify and reimburse local governments may change that status.[45]

The 1978 constitutional convention included provisions in the **Hawaii** Constitution causing the State to share in substantial cost for some programs. This has aided local governments with the funding of some programs, but has provided only minimal support for others.[46]

A 1978 amendment to the **Tennessee** Constitution prohibits the State from imposing increased expenditure requirements on cities or counties unless the State shares in the cost involved. The law created a two-tiered procedure to meet the state mandate funding requirement. First, a fiscal note is prepared by the fiscal review committee indicating whether the legislation imposes an increased expenditure requirement on cities and counties in excess of $50,000. If it does, the legislation must be amended in committee to indicate the state share of the expenditure. This share establishes the funding base, which is apportioned to local governments in the same manner as state-shared taxes.[47] The wording of the Tennessee provision is relatively weak when compared to provisions in other states, but the administrative process and effective lobbying by Tennessee's local government associations has resulted in relatively strong enforcement of this provision.[48]

A 1979 law created mandate funding requirements in **Illinois**. The law comprehensively spelled out what constitutes a mandate, divided mandates into five groups (local government organization and structure, due process, service, tax exemption, and personnel), and identified the needed state participation to accom-

pany each category of mandate.[49] This law looks strong on paper because it is modeled after the Advisory Commission on Intergovernmental Relations recommended legislation, but the ability of the legislature to exempt state requirements from the provisions of this law has made it weak in practice and of little relevance to local government officials.[50]

The 1979 Drake Amendment to the **Montana** Constitution prohibits the legislature from enacting mandates unless it provides for payment.[51] The **Nevada** statutes also provide that laws that direct local governmental action and require additional expenditures of money must specify the source of the additional funding.[52] The Montana and Nevada provisions do not necessarily require the State government to provide funding for local government mandates. The legislatures can meet the requirements by authorizing the local governments to create a separate property tax millage to pay for the mandate.[53]

A 1984 amendment to the **New Mexico** Constitution requires the State to pay for mandates imposed by rule or regulation. It permits local governments to disregard mandates for which "sufficient funding" is not provided. A decade after adoption there had not been a court case or legislation to clarify the level of funding that should be considered sufficient.[54]

A 1984 amendment to the **New Hampshire** Constitution requires the state to fund fully any new, expanded, or modified mandate unless the local legislative body votes to approve. The mandate funding provision does not contain exclusions as are found in other states' provisions, but local governments are constantly battling the introduction of new mandates because the legislature gets consistent advice from the Attorney General that nothing ever rises to the level of an unconstitutional mandate.[55] The provision was weakened by a 1986 Attorney General's opinion that held the amendment did not mean to include state agencies in its definition of the state. The legislature seized upon the ruling to place new and expanded service and program burdens on local governments through administrative rules.[56]

In 1978, the **Florida** legislature attempted to tackle the mandate issue with a legislative solution. A law was enacted that required the state to provide a means for financing any general law affecting the program or service functions of local governments. On paper it appeared to be as strong a fiscal note and reimbursement statute as existed at the time, but it was effectively meaningless because the legislature could ignore the statute and still enact new mandates.

The failure of that statute to serve its intended purpose led to the 1990 adoption of a constitutional amendment. The amendment allows local governments not to comply with unfunded mandates unless the mandate is expressly exempted or is enacted with a supermajority vote in the legislature. It prevents the legislature from enacting, amending, or repealing any law that would reduce the revenue generating capacity of local governments, unless enacted by a supermajority vote of the legislature. It also requires a supermajority vote to enact laws that reduce the percentage of state-shared revenue to local governments.

The constitutional amendment attempted to give local governments the protection they desired, but it required legislative implementation. The legislature turned the onus of enforcement from the State to local governments. Rather than requiring the State to sue to force compliance with unfunded mandates, the legislative implementation requires the local governments to initiate the judicial challenge.[57] It has not prevented unfunded mandates because the legislature has a lot of "outs."

A **Colorado** statute became effective in 1981 requiring that legislative actions that placed new mandates on local governments or expanded existing mandates must provide for sufficient state funding or a local source to cover the costs. This law proved of little help to local governments as lawmakers could identify local property taxes as a funding source, but those tax revenues were subject to state and local revenue and spending limits. Local governments were forced to make budgetary decisions to afford the mandates handed down by the State.

In 1992, the Colorado voters adopted the Taxpayer's Bill of Rights, which includes a provision that except for public education, a local district may reduce or end its subsidy to any program delegated to it by the state legislature, thereby overriding state mandates.[58]

A Process for Identifying Laws that Constitute State Requirements

Clearly Michigan has struggled to carry out the protection of local governments created by Article IX, Section 29 of the Michigan Constitution. Reform is needed to create a new process for implementing this section. The processes adopted by other states with similar statutory or constitutional provisions offer examples of how those reforms could be shaped.

The programs implemented in other states fall into two camps.

- Some states, such as Maine, Minnesota, Missouri, Tennessee and Virginia, focus their efforts on the fiscal note process, prospectively identifying the cost that legislation would create for local governments before the laws are enacted.
- A few states, including Massachusetts, California and Rhode Island, have processes in place to prospectively identify the costs legislation would cause for local governments and, in addition, retrospectively identify mandates and their costs in existing laws.

In which camp should reform place Michigan? A new process should be able to look forward and to the past because, during the 30 years since adoption of the Headlee Amendment, laws requiring new or increased activities and services have been enacted without the accompaniment of state funding, in addition to identifying state requirements in new laws, and new laws surely will arise that create new mandates. It would not be sufficient for Michigan to create a process that solely focuses on preparation of fiscal notes that identify the costs of proposed laws that would impose requirements on local governments. Nor would Michigan be well served by a process that solely deals with identifying the mandated costs local governments incur to comply with existing laws. It would take identification of just a few costly state required activities or services before the legislature saw the wisdom of identifying the laws that create requirements, and their costs, before they are enacted. The process most relevant to Michigan would emulate Massachusetts and California, whose processes identify existing laws that impose mandates and determine their costs for reimbursement by the State in addition to identifying the cost of legislation that would impose mandates on local governments.

The following reforms draw upon the experiences of those and other states with mandate funding requirements, lessons from the failings of Public Act 101 of 1979, and the Attorney General Opinions and court cases concerning Article IX, Section 29. These reforms should:

1. Institutionalize a process for determining whether existing laws constitute state obligations to fund activities or services under Section 29.

2. Strengthen the powers of local governments in this process so they are not at the mercy of the State in identifying and funding mandates.

3. Establish a procedure in the state budget process for appropriating funding for state requirements and disbursing those funds to local governments when state laws require new or increased activities and services.

4. Establish a process for estimating the cost of proposed legislation that would impose costs on local governments.

Determining Whether Laws Constitute State Requirements

Reform of the implementation of Section 29 should provide an opportunity for local governments to seek timely, meaningful relief from state laws or regulations that require new or increased activities or services that were enacted since 1978. The only relief provided by the long, drawn-out court cases that characterize the current process is in eventually recognizing the mandates. During these cases, local governments continue to provide the required activities or services without requisite state funding and taxpayers receive no relief from local taxes (or receive lesser service levels for other programs as resources are diverted to the state required programs).

The *Durant* case provides the most extreme example of why a prolonged system does not serve enforcement of Section 29 well. By the time the case was finally settled 17 years after it was filed: children in school in 1980 graduated; some number of the taxpayers in the plaintiff school districts had moved to new school districts; and Michigan's school funding system had received an overhaul to address equity problems caused by reliance on local property tax revenues for school operations. Ultimately, it was determined that the level of funding had decreased for state requirements but rather than increasing school aid to compensate for the burden imposed on school districts, funding allocations were changed within the School Aid Fund to direct money to the mandated services. The net result was not to do more to fund the state mandated services, but to create more restrictions on how school districts can use existing school aid.

Even without this case, it should be plain that a protracted process for objecting to unfunded state mandates cannot serve as a deterrent to the State. Without a venue for local governments to take claims for immediate relief, it is possible for the State to impose mandates for only one or two years and then remove them or make them optional before the courts are engaged to seek relief, thus removing the need for the judicial action. The ability for this to occur is further complicated by the term limits currently placed on Michigan's executive and legislative officers. A court finding in favor of aggrieved local governments is likely to impose a funding solution on a set of public officials that were not in office when the suit was filed.

The Processes Used in Other States

The **Massachusetts** Division of Local Mandates (DLM) responds to requests from cities and towns to determine whether the Local Mandate Law applies to various laws that have the potential to impose costs, and determines the local cost impact, if any. Most of these requests come from municipal officials. Most of the remainder originate from the legislature, but a number come from state administrative agencies.

A municipality that requests a determination under the Local Mandate Law is entitled to an individual cost compliance analysis specific to that particular city or town. As a result, DLM often receives hundreds of requests related to a single law that is a potential mandate. Since adoption of Proposition 2½, DLM has determined the estimated or actual cost impact of dozens of issues for each of Massachusetts' 351 cities and towns.[59]

The DLM cannot determine the amount of costs imposed before it determines that there is truly a new obligation on a local unit of government that meets the elements of a mandate. Once it determines if the contested law or regulation meets the definition of a mandate and whether any exceptions provided for in the law or previous judicial interpretations of the law would exclude it from reimbursement requirements, it begins the cost-documentation process, first with the aggrieved local government, and then extending its findings to a statewide estimate.

Local governments that receive mandate determinations from the Auditor's Office have three options: (1) create a stream of state funding through the legislative process or (2) use the legislative process to soften the mandate language to make the activity or service optional, or (3) seek an exemption from the statute or regulation in question through the judicial process. Any local government that alleges that a law or regulation imposes a mandate but is not accompanied by funding from the Commonwealth may request an exemption from compliance in Superior Court (the general trial court level comparable to Michigan's circuit court), and submit DLM's fiscal impact determination as prima facie evidence of the amount of funding nec-

essary to sustain the mandate. Additionally, any ten taxable inhabitants of any city or town in a class action suit may also petition the superior court alleging the deficiency of funding to reimburse cities and towns for mandates.[60]

The process of identifying state laws that impose mandates on local governments in **California** begins with local governments or school districts filing a test claim with the Commission on State Mandates (CSM). The filing body must describe what new program or higher level of service resulted from the new law, regulation or executive order alleged to contain the mandate. The CSM then holds a hearing and makes a determination on each claim.

If the CSM approves a test claim, the test claimant is responsible for developing the proposed "parameters and guidelines" that describe the activities and costs that are eligible for reimbursement. The parameters and guidelines identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information.[61] The CSM hears and adopts, amends, or denies the claimant's proposed parameters and guidelines.

Next the CSM staff prepares an estimate of how much the mandate will cost statewide. That estimate must be adopted or rejected by the CSM. Upon adoption, the State Controller's Office develops a set of claiming instructions, which other local government claimants follow when filing reimbursement claims. Parameters and guidelines adopted by the CSM may be amended by the legislature.[62]

In **Rhode Island**, based on the laws and regulations identified by the Office of Municipal Affairs (OMA), the burden falls on the cities and towns to submit statements of actual costs incurred in the preceding fiscal year for activities and services eligible for reimbursement. Actual local costs are defined in accordance with "Uniform Accounting and Reporting Standards for Rhode Island Municipalities," promulgated by the Office of the Auditor General. OMA may review and audit all documentation required in support of reimbursement requests. After reimbursement requests are compiled and aggregated, OMA submits a report to the State Budget Office that shows the costs of all mandates for each municipality and serves as the basis for the state appropriation. Based on the level of state appropriation, the state treasurer reimburses local governments in accordance with the claims filed. Because reimbursement is based on actual costs, reimbursement occurs two years after the expense was incurred.[63]

A Determination Process for Michigan

After 17 years of wrangling with the *Durant* case, the Supreme Court felt obliged to address its vision of how future Section 29 cases should proceed through the courts. As a case of first impression, it might be expected that this case would prescribe a process for future cases. The Court stated,

> … there is every reason to hope that future cases will be much more straightforward. We anticipate that taxpayer cases filed in the Court of Appeals will proceed to rapid decision on the issue whether the state has an obligation under art 9, § 29 to fund an activity or service. The Court of Appeals would give declaratory judgment on the obligation of the state. If there was such an obligation, we anticipate that the state would either comply with that obligation no later than the next ensuing fiscal year, unless it could obtain a stay from this Court, or remove the mandate.[64]

A process well suited for Michigan would blend the California and Rhode Island models to achieve a process such as that envisioned in the *Durant* decision of identifying laws that constitute state obligations subject to funding under Section 29 and then determining the amount of funding needed to meet this obligation.

Declaratory Judgment. Section 29 should be implemented to provide an opportunity for local governments to seek an immediate declaratory judgment that state laws and regulations constitute state requirements subject to the funding requirements of Section 29. A hearing to determine the existence of state obligations under Section 29 should provide opportunities for local governments and the State to make arguments and provide evidence. As will be described below, the process for declaratory judgment should be separated from the process of determining the costs created by the mandate.

The declaratory judgment process should be structured to provide a decision within twelve months of the claim being made. Clearly that cannot be achieved if the process involves both determining a state requirement and establishing the level of funding needed to comply with Section 29.

Thus far, the courts have interpreted Section 29 to mean that mandates are created only when a new or increased activity or service is required of all local governments within a type. For example, special education, transportation of special education students, and school lunch programs were ruled to qualify as state requirements under Section 29 in the *Durant* case because all school districts are required to provide these services and the State reduced funding below the levels provided in 1978.[65] Requirements to perform certain activities or provide certain sub-services, when the overarching activity or service is optional, do not constitute state requirements under this reasoning. Contrasted with the mandated services in the *Durant* case, in *Livingston County v Department of Management and Budget* minimum standards to operate a landfill were ruled to not qualify as state requirements under Section 29 because counties are not required to operate solid waste disposal sites.[66]

The interpretation of the constitutional amendment to apply only when all local governments of the same type are affected creates the opportunity for a streamlined process for local governments to seek declaratory judgments. If it can be shown that one local government of a type is forced to incur costs to comply with a mandated activity or service, it can be assumed that all other local governments of that type are forced to incur costs to comply with the same mandate. Single units of local government – that is a single city, school district, county, etc. – should be authorized to bring test cases to determine whether a law or regulation is in fact a state requirement. In this arrangement, all other local governments of that type essentially become claimants in a "class action" suit.

The kinds of questions to be settled in court have been established. Although relatively few Section 29 cases have been brought to the courts, the burden of proof for plaintiffs has been established. The first sentence of Section 29 creates a maintenance-of-support provision. To show that the State has failed to maintain the level of support that was in place at the time of adoption of the Headlee Amendment, a plaintiff must show 1) that there is a continuing state mandate, 2) that the State actually funded the mandated activity at a certain proportion of necessary costs in the base year of 1978-1979, and 3) that the state funding of necessary costs has dipped below that proportion in a succeeding year.[67]

The second sentence creates a prohibition-of-unfunded-mandates provision. To show that the State has violated that prohibition, a plaintiff must show that the state-mandated local activity or service was originated without sufficient state funding after the Headlee Amendment was adopted in 1978 or, if properly funded initially, that the mandated local role was increased by the state without state funding for the necessary increased costs.[68]

Where Should Local Governments go for Declaratory Judgments?

Responsibility for making preliminary determinations could be vested with 1) an independent body that would be created to hear initial claims of state mandates and act as a fact finding body for bringing evidence to the courts (essentially recreating and empowering the Local Government Claims Review Board that was created by Public Act 101 of 1979); 2) either the Office of the Attorney General or the Office of Auditor General; 3) the court of claims; or 4) a special master within the Court of Appeals, institutionalizing the process already used by the Court of Appeals for Section 29 cases.

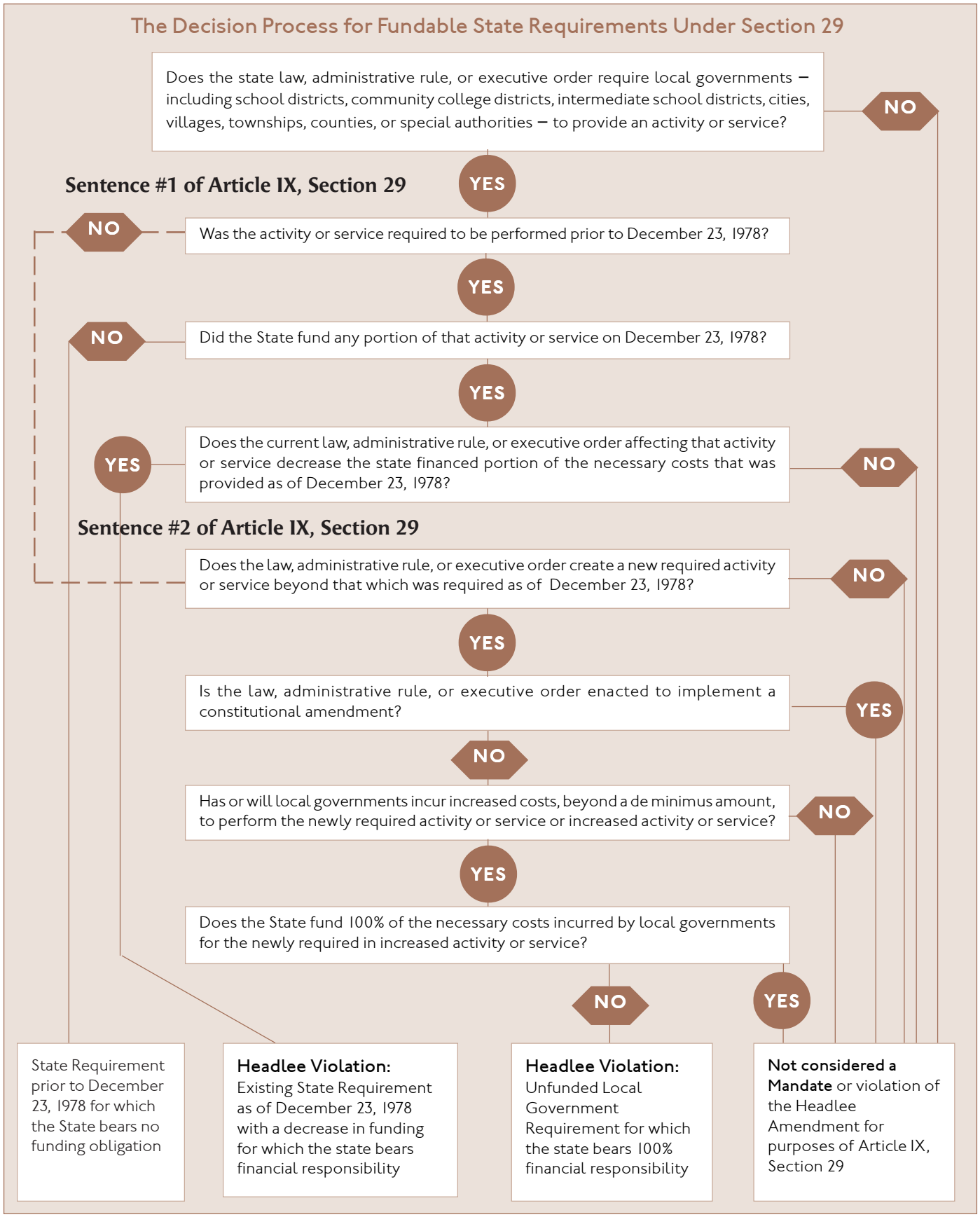
Create Independent Body

A few of the states with mandate funding provisions have independent bodies with the responsibility to hear and decide local government claims, assess the financial effects of proposed mandates on local governments, and interact with the legislature regarding proposed and previously enacted laws. These bodies are independent both of the States and local governments, who are bound to view a great deal of the state laws that affect them as mandates.

Independent Bodies in Other States

The independent bodies in other states show that independence can be created in a number of ways. In

The Decision Process for Fundable State Requirements Under Section 29



Massachusetts, independence from the legislative process and local governments was created by placing the body in the office of an independently elected official, beholden to neither the legislature, the executive branch, nor local governments. The DLM is a division of the Office of State Auditor. This independence helps to ensure the impartiality of the process for determining whether a proposed or existing law qualifies as a reimbursable mandate.

As DLM established its independence and legitimacy, more and more legislative committees and state agencies contacted DLM before promulgating laws and regulations. DLM works with those bodies to draft legislation or rules consistent with the Local Mandate Law and provides them with statewide cost studies that identify the financial impacts proposed laws and regulations would have on local governments.

One strength of DLM is the varied backgrounds and experience of staff. Some came from local governments as clerks, city council members, and assessing officers. Others came from local and state agencies.[69]

The organizational arrangement of DLM field services and legislative liaison units have helped to create good working relationships with both local government officials and state legislative personnel.[70]

Another notable provision in Massachusetts is that the findings of DLM can be used as evidence in a court case. This strengthens the role of an independent body and encourages working through that body to initiate claims.

In **California**, CSM hears and decides claims alleging that the State Controller's Office has incorrectly reduced payments to a local agency or school district. In 1993, the Commission gained the added responsibility of reviewing county applications for a finding of significant financial distress.[71] Its independence is created through membership on the body. Originally, the Commission was composed of five members: the State Controller, State Treasurer, Director of the Department of Finance, Director of the Office of Planning and Research, and a public member with experience in public finance. In 1997, the Commission was expanded to include two elected officials from local government. The Governor may appoint a governing board member of a school district, a city council member, or a member of a county board of supervisors to the local elected official positions, provided that no more than one member shall come from the same category. The public member and the two local elected officials are subject to Senate confirmation and serve for a term of four-years, subject to reappointment.[72]

Other states have strategically placed responsibility for this function in state offices that are perceived independent of the legislature.

In **Virginia**, the Commission on Local Government (COLG), located in Department of Housing and Community Development, has the broad responsibility to promote and preserve the viability of Virginia's local governments by fostering positive intergovernmental relations. COLG was formed in 1979 to assist local governments and the courts in the review of local boundary changes and governmental transition issues.[73] The COLG is made up of five members who are appointed to five-year terms by the Governor and confirmed by the General Assembly. They are required by law to have knowledge of and experience in local government. Among the COLG's responsibilities are oversight and technical assistance on the state's boundary change and governmental transition processes; analyzing the comparative revenue capacity, revenue effort, and fiscal stress of Virginia's counties and cities; developing an annual catalog of state and federal mandates on local governments; assessing state and federal mandates on local governments; and examining proposed state legislation for its potential fiscal impact on the state's localities; and assisting the oversight of Virginia's planning district commissions.[74]

Rhode Island makes up for the lack of true independence with a process designed to weigh the interests of all concerned parties. The Office of Municipal Affairs in the Department of Administration is responsible for administering the mandate reimbursement program. The office reviews each law for a mandate, identifies reimbursable costs, makes the rules governing municipal reimbursement requests, and forwards the reimbursement requests to the State Budget Office to be appropriated in the next budget.[75]

Rhode Island has a part-time legislature and legislative sessions are complete by spring of each year. Following the legislative sessions, but before September 30 of each year, the OMA conducts a public hearing at

which local officials and other interested parties identify proposed mandates and their related costs. OMA uses the results of that hearing to compile a report that identifies reimbursable state mandates established during the preceding fiscal year. This report includes all mandates that have been determined to be reimbursable in earlier processes.[76]

An Independent Body in Michigan

Public Act 101 of 1979 created the Local Government Claims Review Board to be an independent body in the implementation of Section 29. As chronicled above, that Board hardly met, made no hard decisions relative to local government claims, was very ineffective, and eventually the powers and authority of the Board were melded into the Administrative Board by executive order. Those who would reform the Section 29 process must judge whether a reincarnated Local Government Claims Review Board could play a meaningful enough role to be effective.

For that to happen, the role of the Board would have to be ingrained in the process sufficiently so that a local government claimant could not, or would not want to, proceed to court without first taking part in a hearing before the Board. In Massachusetts, it is in the interest of the local government to work with the DLM. The findings of DLM can be used as prima facie evidence in a court case. In California, a case cannot go to court without first visiting the CSM. The primary responsibility of the CSM is to hear and decide test claims alleging that the Legislature or a state agency imposed a reimbursable mandate upon local agencies and school districts.

In Michigan, a controversial court rule was promulgated in 2007 requiring that actions alleging violations of the Headlee Amendment must be stated with "particularity."[77] Specifically, the new court rule requires that any actions involving Article IX, Section 29, must state with particularity the type and extent of the harm and whether there has been a violation of the first or second sentence of that section. The plaintiff must state with particularity the activity or service involved and the statutes involved in the case, and copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense, must be attached to the pleading.

In other words, since 2007 Michigan court rules have required claimants to develop the cases alleging unfunded state requirements before even knowing that the cases would be accepted by the court. Ordinary practice in Michigan allows a plaintiff to plead that an application of a law has caused harm without stating the full substance of their complaint. If the court agrees to hear the case, time and energy is exerted into building their case and documenting damages. The 2007 court rule was controversial because it seemed to run contrary to the provisions in Article IX, Section 32: "*Any taxpayer* of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article…" [emphasis added] The extraordinary filing requirements placed on plaintiffs for cases involving Section 29 are perceived by some[78] to create a burden that might be prohibitive to many taxpayers.

Short of amending this court rule to facilitate taxpayer suits for enforcement of the Headlee Amendment, as was the intent of Article IX, Section 32, establishment of an independent body such as Massachusetts' DLM or California's CSM, with authority to collect evidence admissible in court would facilitate the ability of local governments to bring action under that court rule. An independent body could serve the role of performing preliminary determinations of whether state requirements qualify for funding under Section 29.

It would be important that this body be made up of individuals representing both state and local government interests.

Offices of the Attorney General or Auditor General

As in Massachusetts, a division could be established within either the Office of Attorney General or Auditor General to make preliminary determinations on local government allegations of unfunded state requirements. Such a determination would necessitate interpretation of the law and analysis of costs and revenues. Staff in the Michigan Attorney General's office regularly interprets laws. Staff in the Michigan Auditor General's office determines compliance with state laws and analyzes costs and revenues as a course of their duties.

A number of problems present themselves with this option for Michigan. The Attorney General's office has made a history of arguing that most allegations of mandates filed in the courts do not qualify as state requirements qualified for funding under Section 29. The history of the office related to prior court cases creates the impression that officials in this office are opposed to a process that implements Section 29 as the drafters intended.

Unlike Massachusetts, where the Auditor General is an independently elected official, the Michigan Auditor General is appointed by the legislature, which may appoint and remove him or her for cause. It was noted earlier how mandate funding requirements put legislators in the odd position of creating laws or rules to limit their ability to enact future laws affecting the conduct of local government. It would put a further ironic twist on that role to have the legislatively appointed Auditor General upholding claims for funding against the legislature. While the skills necessary to serve in this office match well with those needed to assess the existence of mandates and determine their costs, the position of Auditor General as a servant of the legislature gives little confidence that such a change would be an improvement over the current arrangement.

Neither Michigan's Attorney General nor the Auditor General would suitably provide the appearance of an impartial office for the purpose of declaratory judgments regarding Section 29.

The Court of Claims

Article IX, Section 32, of the Michigan Constitution provides that suits brought on matters related to the sections of Article IX constituting the Headlee Amendment (25 to 31) are to be initiated in the Court of Appeals. Article IX, Section 32, provides that "Any taxpayer of the state shall have standing to bring suit in the Michigan State *Court of Appeals* to enforce the provisions of Sections 25 through 31 …." [emphasis added] As noted earlier, the drafters' notes do not indicate why the authors of the Headlee Amendment chose the Court of Appeals as the forum in which taxpayers could bring original enforcement actions. Therefore, it cannot be determined whether the drafters anticipated the difficulty that choice would produce. Presumably, the drafters hoped to expedite the process by eliminating one level of court hearings, at a level with usually full dockets, and one set of appeals. This practice is an exception to the ways in which citizens may challenge other matters related to the organization and application of state laws.

Michigan law provides that the settlement of disputes concerning laws related to the organization and application of state laws is to be initiated in the circuit courts. Article VI, Section 1 of the 1963 Michigan Constitution provides that, "The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, *one trial court of general jurisdiction known as the circuit court*…" [emphasis added]

In addition to hearing felony criminal matters and civil matters, judges of the General Trial Division of the 30th Circuit Court (Ingham County) also serve as judges for the State of Michigan, Court of Claims. The Court of Claims has exclusive jurisdiction over all claims made in excess of $1,000 against the State of Michigan and any of its departments, commissions, boards, institutions, arms, or agencies. Judgments entered by the Court of Claims either against or in favor of the State are res adjudicata (An adjudicated issue that cannot be relitigated) of that claim.[79]

Other states with mandate funding requirements – notably **Massachusetts** and **California** – provide that the suits alleging unfunded mandates are to be initiated in the general trial court level (Superior Court) comparable to Michigan's circuit court.

Michigan laws could be expanded to empower the Court of Claims to hear initial claims under Section 29. Designating the Court of Claims to hear initial Section 29 claims would keep the number of judges involved in this process to a minimum and allow those individuals to develop the knowledge, expertise, and court processes for dealing with these mandate issues. Because the initiation of Headlee Amendment claims in the Court of Appeals is provided for in the Constitution, a change of this sort would necessitate a constitutional amendment taking this responsibility away from the Court of Appeals.

Refine Current Court of Appeals Process

The final alternative is to institutionalize the special master process used to deal with complicated fact finding matters in the *Durant* and *Adair* cases by the Court of Appeals. Both state law[80] and court rules authorized the court to appoint fact finders when factual issues were in dispute. After years of inaction in the *Durant* case, the Supreme Court in 1985 ordered the Court of Appeals to appoint a special master. That practice was repeated in the *Adair* case. The special masters essentially rule on the cases, as would a circuit court, and the cases are presented immediately to the Court of Appeals to adjudicate the findings of the special master.

If this is the preferred option, legislation should be introduced to lay out the manner in which a special master should be appointed and the role to be played specifically in the Section 29 process. The special masters would preside over the declaratory judgments and in determining the costs that would be subject to reimbursement. The *Durant* and *Adair* cases show that the court processes require the acceptance of more testimony and evidence in the determination of costs. The Court of Appeals has shown that it is not well suited to such court proceedings, so a strong option would be for the judicial process to continue the use of special masters throughout the entire process. The process should clearly be spelled out and the powers of the special master enumerated.

A potential problem with the current process, as it pertains to the recommendation to provide a venue for immediate declaratory judgment, is that special masters are not assigned until cases are accepted by the Court of Appeals. Time spent dealing with procedural issues is time that cannot be spent hearing arguments related to each claim. Keeping with the goal of a declaratory judgment being issued within the same year that the claim is filed, time is of the essence and potential procedural issues should be streamlined.

Venue Options for Declaratory Judgments

As long as court rules require legal actions alleging violations of the Headlee Amendment to be stated with "particularity," an independent body (recreating the Local Government Claims Review Board whether in the same name or not) with representatives of state and local government serving as members should be created to hear claims of unfunded state requirements pursuant to Article IX, Section 29. As with the DLM in Massachusetts and CSM in California, this body in Michigan should be the first stop for local governments. This body should have the power to make declaratory judgments establishing that the laws or regulations qualify as state requirements pursuant to Section 29.

All material and testimony gathered by this body should be admissible in the Court of Appeals pursuant to the Michigan Court Rules as revised in 2007 (see discussion on p. 25). Local governments could use the board to build their cases before heading to court. Proceedings of the Board could be used as prima facie evidence in courts to document the existence and cost of state requirements.

Alternatively, if the 2007 amendments to the Court Rules that created requirements that alleged violations be stated with "particularity" are amended to revert to pre-2007 standards, thus removing the extraordinary burden placed on taxpayers to enforce Section 29, then reform could build off of the court processes developed over the past 30 years. Special masters would be authorized to make declaratory judgments establishing that the laws or regulations qualify as state requirements pursuant to Section 29.

Post Declaratory Judgment

Notwithstanding an appeal by the State challenging a declaratory judgment that the State requires local governments to provide activities or services under Section 29, after the State and local governments would have several options following a declaratory judgment:

Preferably before, but perhaps concurrent with any ensuing judicial proceedings, the legislature should be engaged to

(1) provide sufficient funding to comply with Section 29 or

(2) amend the law (or the promulgating agency could amend the regulation) to eliminate the mandatory nature of the law (or regulation).

If the legislature does not choose to take either of those actions,

(3) Local governments should be allowed to seek a ruling that they need not comply with the law or regulation until such time as state funding accompanies the mandate.

Should none of those actions occur, the judicial process would move from the declaratory judgment to a fact finding exercise to determine the costs incurred by all local governments that are required to comply with the mandate. At this point, the case would move from a test case, involving only a single unit of government, to a cost finding case, involving all local governments of the type in question (all school districts, counties, cities, etc.). The result of this exercise should be a judicially ordered dedication of state funds to adequately fund the required activity or service.

If the process works for deciding whether declaratory judgments are necessary and the legislature recognizes its responsibilities to establish reimbursable costs and appropriate funding to meet those costs, or amend the law to eliminate the mandate, few cases will proceed to the cost finding phase in the courts.

Strengthen the Powers of Local Governments

Thus far, local governments have had only the judicial process, a process that has proved prolonged and expensive, to force the State to comply with the will of the people as expressed in Article IX, Section 29 of the Michigan Constitution. Other than cases involving requirements imposed on school districts, it appears that local governments, as a group, have eventually surrendered hope that the State would choose to comply with Section 29 and have stopped objecting to laws and regulations that require new activities and services.

Courts generally are reluctant to issue writs for the enactment of laws, recognizing the separation of powers inherent in the State Constitution. It is the responsibility of the legislative branch to make laws, the executive branch to carry out those laws, and the judicial branch to interpret those laws. Thus, while the courts cannot force the legislative and executive branches to make laws or to spend money on certain programs, the courts are well suited to interpret and enforce the State Constitution.

Force a Process to Implement Section 29

As a beginning the courts could tell the legislature that it has failed to implement Section 29 and needs to take corrective actions to address the shortcomings. Article IX, Section 34 of the State Constitution requires the legislature to enact laws to implement the concepts encompassed by the Headlee Amendment. As documented above, Public Act 101 of 1979 was enacted to serve that purpose but the failure to promulgate joint rules and the wholesale abandonment of that law leaves the State lacking in the implementation of Section 29.

The legislature would retain the prerogative to implement Section 29 as they see fit, consistent with existing case law, but a court directive would force the legislature to finally take action and recognize the State Constitution as the fundamental law that cannot be unilaterally ignored. It would be a unique circumstance in Michigan for the courts to direct the legislature to address a specific issue, but courts in other states have taken such actions to deal with apportionment and, more recently, school funding.

While it is in the interest of local governments for the legislature to enact reforms, members of the legislature may continue to be resistant to the proper implementation of this section. The potential financial impact that reform could have on the state budget if existing laws are found to qualify for funding under Section 29 serves as a disincentive for reform. As a result, local governments may need the support of the courts in directing the State to put the necessary laws, rules, agencies, and processes in place to implement Section 29.

Optional Compliance when State Requirements Are Not Funded

On an ongoing basis, local governments may need support from the courts to provide relief if the legislature continues to resist the funding of state requirements. The option of choosing not to comply when a law is not accompanied by the requisite funding is the most common recourse from unfunded mandates granted to local governments in other states. The states of **Colorado**, **Florida**, **Illinois**, **Louisiana**, **Maine**, **Massachusetts**, **New Hampshire**, **New Mexico**, **Virginia**, and **South Carolina** all have provisions allowing local governments to appeal to either the courts or an elected official in state government for relief from the unfunded mandates. The processes require the local governments to demonstrate that the laws impose mandates and that no funding is provided from the state governments for implementation. If their claims are upheld, the governments are allowed to opt out of compliance with the mandate.

In **Massachusetts**, any local government that alleges that a law or regulation imposes a mandate but is not accompanied by funding from the Commonwealth may request an exemption from compliance in Superior Court, and submit Division of Local Mandates' fiscal impact determination as prima facie evidence of the amount of state funding necessary to sustain the mandate.

If the **California** legislature deletes funding for a mandate from the claims bill, local governments or school districts may file actions for declaratory relief in the Superior Court of the County of Sacramento to declare the mandate unenforceable and enjoin its enforcement.[81]

A 1990 amendment to the **Florida** Constitution provides that local governments do not have to comply

with any unfunded mandates that are not expressly exempted or passed by a two-thirds majority.[82]

A 1990 **New Hampshire** Supreme Court decision held that local compliance was optional when any mandate (legislative or administrative) was not funded by the state.[83]

The **Maine** Constitution provides that state mandates must be enacted with funding to cover implementation by local governments or may act, by a two-thirds vote, to exempt the mandate from the funding requirement. If a bill is passed without either of these occurring, local governments affected may refuse to implement the mandate.[84] Similarly, a local government must receive the required state funding prior to implementing a mandate in each fiscal year or it is not obligated to conform to the mandate.[85]

Illinois law provides that if the State fails to appropriate funds to cover the costs of mandates, local governments are not obligated to implement the requirement.[86]

South Carolina state law provides that counties and municipalities are not bound by any general law requiring the expenditure of funds unless the legislature determines that the law fulfills a state interest and a funding source is provided.[87]

In **Virginia**, upon request of a local government, the governor can suspend, for up to one year, any administrative mandate imposed on a locality (except for those administered by the Department of Education) if the requesting local government faces fiscal stress and the governor determines that the suspension of the mandate would help alleviate the fiscal hardship.[88]

An optional compliance provision would strengthen local government and call more attention to the State's role in funding state mandates. However, optional compliance would not be the saving grace for local governments for all mandates. Some state mandates – for example, special education and clean water laws – are in place to carry out federal mandates. With or without state funding, local governments have little recourse but to provide some mandated services.

In other states, the net result of optional compliance has been a checkerboard of some local governments agreeing to comply with state mandates, even though there is no funding, and others opting not to comply. Optional compliance provisions focus on the needs of the local governments for mandate relief and not on the needs of citizens of the state for comparability and fairness across jurisdictions. It may not be clear to the average citizen why some laws apply in some jurisdictions but not in others. Or why people in a neighboring jurisdiction are benefiting from a program, but they are not because of the question of who pays for it.[89] In the end these programs are all paid for with tax dollars, regardless of whether the taxes were paid to the State or to a local government.

Options to Strengthen Local Governments

As imperfect as "opt out" provisions might be, the hand of Michigan local governments must be strengthened before they can expect the State to take seriously its role in funding laws and regulations that create mandates. One option to achieve this goal is to enable local governments to petition the courts so that compliance with statutory requirements is not mandated without the proper funding obligated by Section 29. The petition should be submitted to the Court of Appeals, the judicial body identified to handle Headlee Amendment cases in Article IX, Section 32.

A law that enables the courts to provide relief from state requirements until such time as funding is appropriated should also stipulate that the State could not be permitted to invoke penalties to force compliance with unfunded mandates. In this era of fiscal federalism, it has become commonplace for higher levels of government to shape activities and services at lower levels of government with provisions that threaten to withhold or cut distribution of revenues for particular services unless the local governments carry out their desires. A recent example of this practice is the withholding of state revenue sharing distributions from the City of Detroit until annual financial reports were filed with the Michigan Department of Treasury. Other penalties threaten to take authorities to perform certain activities away from local governments unless an activity or service is provided. The State's intentions are altruistic in shaping these penalties, but their use to enforce state requirements that should be funded to comply with Article IX, Section 29, is contrary to the intent of this constitutional provision.

Authorization should not be granted to opt out of compliance if the mandate is a state law enacted to carry out a federal mandate or otherwise imperils the health, safety, or welfare of Michigan residents.

A Process for Appropriating and Disbursing State Funds

A process needs to be created for appropriating and disbursing state funds to local governments for eligible costs associated with the provision of state required activities and services.

Appropriating Funds for State Requirements

The process of translating the finding of a state requirement in the *Durant* case into a state appropriation left a lot to be desired. As a tax limitation tool and part of the Headlee Amendment, Section 29 was intended to control the growth of costs for local governments and to provide funding in addition to that received prior to the mandate if new or increased activities or services are imposed. The enduring, long-term result of the *Durant* decision was only to dedicate a portion of existing education funding to the functions adjudicated in the case. The settlement provided a one time compensatory payment to participating school districts for their endurance and let the State know that the pattern of prolonged recalcitrance was not without costs. Otherwise, the State took no action to provide additional funding to school districts in recognition of their Section 29 responsibilities.

The first issue was the compensatory finding, ruling that the participating school districts were subject to monetary damages for the prolonged period during which the State continued to fund education without compliance with Section 29. That the *Durant* plaintiffs sought monetary damages from the State was understandable. Both the State Court of Appeals and the Supreme Court had found that the State had unconstitutionally reduced its share of financing for special education programs. Given this fact, a remedy consisting only of judicial recognition that the State Constitution had been violated for 17 years running would have been a hollow victory.

It was expected that the compensatory ruling in the *Durant* case would lead to reforms that would expedite the judicial process pertaining to Section 29 so that the State would no longer be rewarded for conduct contrary to the Constitution and the necessity of monetary damages should never arise again. The *Adair* case, which has now been in the courts for nine years, gives little indication that this desire has been realized.

The second issue was the ongoing manner in which the legislature appropriates funding to adequately fund the state requirement. The total amount of funding dedicated to education (for all purposes) was not increased to comply with the *Durant* ruling, instead a portion of the total was dedicated to special education services and specialized transportation to qualifying students.

Changes in the amount of funding for education and specifically special education between the time the *Durant* case was filed in 1980, argued over the next 17 years, and finally settled in 1997 was complicated by Proposal A of 1994 that shifted the majority of responsibility for school funding from local school districts to the State. But Proposal A did not aim to increase the total amount of funding for public education. It aimed to provide property tax relief and equalize the disparities in spending among school districts.

Even with that shift in funding, the State has skirted the finding that it must maintain funding for special education since settlement of the *Durant* case. The State's initial actions to comply with the ruling were to take funds out of the School Aid Fund to pay the lawsuit. Thus school districts would not receive any more funding because the general K-12 student populations received less funding as school resources were diverted to special education to make up for the reduced state funding for special education. The courts found that this action did not meet the requirements of Section 29.

The corrective action only forced the State to do things differently. The new system first determines the level of funding for the constitutionally required portions of the foundation grant, which is the amount of funding per pupil each district receives. Then funding is set aside for special education, calculated as a percentage of all education spending, in accordance with the court ruling. The balance of funding available for education is then divided among the other categorical purposes. The net amount of funding for education

was not changed because of the settlement. Instead, there is now an extraordinary dedication of funds for special education and the other services that were part of the *Durant* case.

The Headlee Amendment was a tax limitation and Section 29 was designed to prevent one unit of government, the State, from staying within its tax limitation by creating higher cost pressures for other units of government – cities, townships, counties, school districts, etc. In the event a new state requirement is created, new funding is required to accompany it. The redirection of existing funds currently distributed to the type of local government to specifically fund the state requirement is not within the spirit of the provision. This does not mean that taxes must be increased any time a mandate is imposed on local governments. Funding can be redirected from other programs to provide funding for the mandated activity or service. But if laws are determined to create state obligations under Section 29, and the costs for local governments to comply can be estimated (for newly enacted laws) or determined (for laws retrospectively identified as imposing state requirements), then the net result must be an increase in the level of state funds distributed to that type of local government.

Disbursing Funds for State Requirements

Recall that **California's** Commission on State Mandates hears test claims and adopts "parameters and guidelines" for local governments to claim reimbursement. Those serve as the basis for the State Controller's Office to develop a set of claiming instructions.

At least twice each year, the CSM informs the legislature of the number of approved mandates since the last report, the estimated statewide cost of each mandate, and the reasons for recommending reimbursement. It is also required to report denied claims once a year. Upon receipt of the CSM's report on approved mandates, a local government claims bill is introduced to appropriate funding. This process occurs external to the drafting of the governor's budget, but introduction in the legislature coincides with the overall budget.

The CSM report also may include information on deficiencies that occur when appropriated funds from the prior fiscal years were not sufficient to pay all claims filed with the State Controller. When deficiencies occur, the Controller is required to prorate reimbursement across all claiming local governments.[90]

California also provides for a State Mandates Apportionment System, which is meant to streamline the process of reimbursing local governments for approved state-mandated costs by allowing certain ongoing mandates to be funded automatically through the state budget process. Local governments do not have to file a claim for reimbursement, funding for those mandates that remain stable from year to year are given a separate line item in the budget and adjusted from year to year according to changes in the Implicit Price Deflator and the workload of the affected local governments.[91]

In **Rhode Island**, the Office of Municipal Affairs in the Department of Administration, is responsible for administering the mandate reimbursement program. The Office reviews each proposed law for reimbursable mandates, identifies specific costs that qualify as reimbursable, makes the regulations governing municipal reimbursement requests, and forwards the reimbursement request to the State Budget Office to be appropriated in the next state budget.

By April 1 of each year, local governments could submit a statement of actual costs incurred for items eligible for reimbursement that were effective in the preceding fiscal year. By September 30 of each year, the Office is to conduct a public hearing at which local governments have the opportunity to identify mandates and the costs associated with their compliance. That information is disseminated and by January 1, the Office must submit a report identifying reimbursable mandate costs. That information is submitted in a report to the State Budget Office. That report becomes the basis for state appropriations to reimburse local governments for state mandated costs. Because of the need to compile and submit statements, document costs, and aggregate data in reports, reimbursements are made two years after the expense was incurred.

De Minimus Costs

In assessing the costs imposed by state mandates, local government will need to discriminate de minimus costs from those significant to the finances of local governments. Michigan's Public Act 101 of 1979 exempts de minimus costs from the definition of state requirements. It defines de minimus, for the purpose of the act, as requirements that impose a net cost to a local government that do not exceed $300 per claim.

In **Alabama**, the mandate funding provisions do not apply to acts determined to have an aggregate fiscal impact on affected local governments, defined as any impact less than $50,000 annually.

The law in **Illinois** exempts mandates that impose costs of less than $1,000 for each of the several local governments affected or less than $500,000 in aggregate for all local governments affected.

The **Iowa** law exempts mandates that impose less than $100,000 for all affected local governments or less than $500,000 within five years by all affected local governments.

The law in **Minnesota** exempted mandates if the cost for an affected local government was less than 0.5 percent of the local revenue base, or $50,000, whichever was less, if the mandate did not apply statewide, or less than $1 million if the mandate applied statewide.

The **Montana** law exempts mandates if the cost is equivalent to approximately one mill levied on taxable property of the local government, or $10,000, whichever is less.

In **Nevada**, mandates are exempt from funding requirements if the cost of compliance for a local government is less than $5,000.

The **South Carolina** law exempts mandates from funding requirements if the cost is less than 10 cents per capita on a statewide basis.

Oregon does not define the minimal costs that do not have to be funded by the state in absolute dollar amounts, but by any costs that are less than 1/100 of one percent of a local government's annual budget.

In **California**, the State Mandates Claims Fund was established in 1984 to finance low-cost mandates. The enabling statutes appropriated $5 million for the Fund to provide eligible claimants with funding for relatively minor mandates without the need for legislation. For a mandate to qualify for funding from this Fund, the CSM must estimate the cost of the mandate to be less than $1 million in the first full year of operation and the legislation imposing the new mandate must authorize monies from the Fund. This Fund was used for about a decade, but since 1994 the legislature has dealt with these mandates in the same manner as all other mandates.[92]

Options for Michigan

If new or existing laws are identified to impose state mandates that are subject to state funding under Section 29, a process needs to put in place that results in a state appropriation that provides funding additional to the state funding sent to that type of local government prior to imposition of the mandate.

For the actual disbursement of funds to local governments, the process best suited to Michigan replicates the systems used in California and Rhode Island. Identification of a mandate and definition of reimbursable costs should result in an opportunity for local governments to apply for reimbursement.

If a single local government can get a declaratory judgment establishing that a state obligation to fund an activity or service exists under Section 29, cost determination would establish the types of costs local governments of that type must incur to comply with the mandate. This process would establish guidelines – identifying the mandated program, eligible claimants, the period for which local governments should provide accounts of costs incurred, reimbursable activities, and other necessary claiming information – for all other local governments subject to that mandate to use in calculating their costs.

Based on those guidelines, all local governments subject to the state requirement would have to submit statements of actual costs incurred in the preceding fiscal year for the activities or services mandated. The statements would be subject to audit to ensure compliance with the guidelines. Eventually the statements would be compiled and aggregated to create a total cost for local governments to comply with the state requirement.

That total cost would be submitted to the State Budget Office in the Department of Management and Budget to be used as the basis for a recommendation for an appropriation. Consistent with Section 29, the legislature would appropriate funds sufficient to reimburse local governments for the cost of complying with mandates. That appropriated funds would be used disbursed to the local governments, reimbursing them for their costs, two to three fiscal years (because local governments have fiscal years starting at various times throughout the year) after the costs were incurred.

Oregon defines de minimus costs any requirements that impose costs that are less than 1/100 of one percent of a local government's annual budget. This makes sense for a state with as diverse a range of local governments as is found in Michigan. In the cities of Detroit, Grand Rapids, and Warren, the counties of Wayne and Oakland, the school districts of Detroit, Grand Rapids, and Livonia, a de minimus cost can be as large as the entire budgets of the smallest townships, counties, and school districts found in Michigan. By determining de minimus amounts on individual bases, the amounts will better reflect the potential impact a state requirement will have on the ability of the individual local governments to continue providing the services they had been providing before the requirement was enacted.

A Process for Estimating the Cost of Proposed Laws

Up to this point, this paper has dealt with the needed reform of implementation of Section 29 dealing with creating a system that expedites recognition of existing state mandates under Section 29. This part of the paper addresses a system to estimate the cost of proposed laws on local government before they are enacted.

Janet Kelly suggests that mandate funding laws should be written in such a way that preparation of a fiscal note is compulsory for the enactment of laws and the promulgation of rules and those enacted/promulgated without a fiscal note would not be binding on those local governments. She recommends a provision within the mandate funding law to read as follows:

> No legislation or agency rule originating from the state of (state name) constituting a mandate to local governments shall be binding to those local governments in the absence of the preparation of a cost estimate, hereafter referred to as a fiscal note, to inform the legislature of the impact of any mandate to local government prior to its enactment.[93]

Such a provision serves two purposes. First, laws affecting the finances of local governments are subjected to examination prior to enactment. Some state requirements create processes or local government services that improve government operations for citizens and businesses. This gives legislators the opportunity to assess whether the goal pursued is worth the costs imposed. Secondly, it creates difficulty in enacting laws in abbreviated time frames, such as those introduced in a lame duck or special session.

Triggering Preparation of a Fiscal Note

The first step in establishing a fiscal note process is to establish a trigger(s) for initiating preparation of fiscal notes. This was one of the major hurdles that confounded legislators attempting to draft and implement Act 101 of 1979. Act 101 was written to require a joint rule establishing a process for identifying state requirements and then another process for estimating the potential price of funding identified state requirements, but these joint rules were never promulgated.

The methods of triggering an analysis of the effect proposed legislation will have on local government finances vary among the states, but they share a common characteristic: the automatic nature of the analysis moving forward once it is triggered.

In addition to investigating and pricing existing unfunded mandates, **Massachusetts'** DLM is responsible for estimating the cost on local governments of proposed laws. A 1984 law expanded the DLM's mission by authorizing DLM to examine any law or regulation that has a significant local cost impact, regardless of whether it satisfies the more technical standards for a mandate determination.[94] The DLM reviews every piece of proposed legislation to assess whether it possesses mandate implications. This role causes DLM to review hundreds of proposed law and regulations every year, but "big ticket" proposed mandates are given special attention.[95]

Serving the role of identifying and assessing the cost of existing local government mandates, gives the Massachusetts DLM an important edge in its role of analyzing proposed legislation. First, it gives the DLM a process and set of guidelines with which to examine the bills. Drafted bills can be compared to existing, known mandates to determine if the method of imposing activities or services falls within the same context as laws that are considered mandates. Second, it gives DLM staff ongoing contact with local government officials, thus facilitating both the role of preparing fiscal notes and determining the cost of existing unfunded mandates.

The **Missouri** Oversight Division of the Joint Committee on Legislative Research prepares fiscal notes on each bill introduced in the legislature before action may be taken on it. Among the matters the fiscal note must address is whether the proposal would have significant direct fiscal impact upon any political subdivision (including cities, counties, school districts, special authorities, hospitals) of the state.[96] The Oversight

Division uses surveys of the political subdivisions to analyze the potential local impact. Information is sent to all participants on the Oversight Division's mailing list and email list with the expectation that information will be returned within two days time.[97] Because the lists of volunteer participants includes multiple employees from the same units of local government in several instances, the results are heavily subject to bias.

Virginia law requires the Commission on Local Government (COLG) to investigate and prepare a fiscal note for any bill introduced during any session of the General Assembly that requires a net additional expenditure by any county, city, or town or requires a net reduction of revenues by any county, city, or town. The law requires the Division of Legislative Services, the bill drafting agency, to examine all bills filed during a legislative session for the purpose of identifying and forwarding potential bills to the COLG for this purpose.[98] In the event legislation slip past the Division of Legislative Services, a request from the Virginia Municipal League and Virginia Association of Counties automatically leads to a review by the Commission.

In **Maine**, responsibility for identification of bills with mandates and estimating the cost of implementation falls upon the Office of Fiscal and Program Review (OFPR), one of several nonpartisan offices operating under the direction of the Legislative Council. OFPR takes a wait-and-see approach to estimating the fiscal impact of mandates on local governments. Before the initial public hearing on any bills, OFPR attempts to identify state mandates and performs a rough estimate of the costs and number of local governments potentially affected.

At the point a bill reaches committee consideration, the committee must decide whether to fund the mandate, exempt it from the funding requirement by pursuing a two-thirds vote in both houses of the legislature, address the language to remove the mandate, or defer the decision for consideration by the full legislature. A decision to exempt the law from the funding requirement or to amend the language to remove the mandate requires no further fiscal analysis of the bill's potential impact on local governments. A decision to fund the mandate triggers a more detailed assessment of the total cost of the mandate in order to include an appropriation section or other funding mechanism in the bill. A decision to defer to the full legislature triggers more in depth analysis.[99]

The **Rhode Island** law permits the League of City and Towns to request fiscal notes on any bill, resolution, or administrative rule that it believes will affect local government.[100]

Professor Kelly's work found that states with mandate funding requirements that are less than effective, legislators are expected to identify mandate provisions and submit them for fiscal note preparation, thus creating the need for an accompanying funding stream. Several state laws have loopholes that can be used to skirt these requirements. **Illinois** allows legislators to exempt bills from the funding requirements by a three-fifths vote. Rhode Island's law has been ineffective because legislators can simply disregard it. **California's** law was created as a means of controlling the property tax burden. The mandate funding law allows legislators to issue disclaimers, one of which permits unfunded mandates as long as the local government does not have to raise property taxes to comply with it. Laws in **Colorado**, **Louisiana**, and **Montana** were similarly written as property tax control measures and disclaimers allow ready escape from the funding requirements.[101]

New Jersey's Office of Legislative Services relies on administrative data sources in their estimates of mandate costs. The Office is charged with assessing local costs only when the bills' sponsors estimate its cost to exceed $10,000 in any given locality or $100,000 in the aggregate. Legislators have used this to their advantage by consistently underestimating the cost of proposed mandates. **Nebraska** and **Nevada** have similar provisions and have had similar results.[102]

Arkansas, **Kentucky**, **North Dakota**, **West Virginia**, and **Wisconsin** authorize the sponsor of the mandate to prepare or arrange for the preparation of the fiscal note, either directly or indirectly. This is done by consulting with the state agency in the functional area of the mandate or the agency promulgating the administrative mandate. The most common conclusion is that the mandates will have some cost to local governments of an indeterminate amount.

The Fiscal Note Content

Janet Kelly created a model fiscal note process in the National League of Cities publication *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies.*[103] This model suggests that fiscal noting should be thought of as a process and not a product. Her model suggests the following elements are important to successful fiscal notes:

Use of Language. The fiscal note should address the estimated cost of the proposed mandate to all local governments affected. When necessary, the fiscal note should address future costs. Notes should recognize differential impacts on local governments relative to size, functional scope, or tax base. When it is not possible to quantify the cost with a numerical estimate, the note should include a detailed explanation of the reason why it is not possible and a thought out description of the bills' consequences should be offered in substitute for the numeric estimate. Every agency and department of the state should be directed to cooperate with the preparer whenever and to the extent requested.

Sampling and Data Resources. Preparation of fiscal notes should employ sampling data and secondary data developed in cooperation with the local government associations. Past estimates should be retained for a historical record and to serve as a baseline for future estimates of similar mandates.

Timing. Estimates should be submitted within 14 working days of the first reading of the bill. The law or rule establishing the process should include provisions banning the committee or subcommittee to which the bill is referred from acting upon the bill until the fiscal note has been attached. Each time the bill is amended, one working day should be allowed to adjust the estimated cost before the bill is reconsidered.

Sampling Local Governments

Most states that require fiscal notes for legislation that would impose state mandates employ loose sampling of local government finance officials to estimate the costs.

Accuracy and reliability are important in survey methodology to provide some confidence that the responses given by those questioned are representative of all others that are not surveyed. This is achieved when there is a random selection of participants to take part in the survey and the sample size is significantly large that participants have a reasonable chance to represent all interests. Thus, local governments in an ideal arrangement would be randomly selected to participate in the fiscal note preparation process. However, a random sampling, in which all local governments have an equal chance of being selected, has the potential of skewing the results of a questionnaire if those selected are not proportional in size (measured by population, geographic size, or the size of the budget). It also could draw local governments without the time or wherewithal to respond to the questionnaire. For the purposes of learning how a proposed law would affect local governments, it is important to have active participants that represent all sizes of government. As a result, states have tended to concentrate their efforts on larger communities. The sampling results tend to have an urban bias, but those results do not differ wholly from the relative levels of spending by urban and rural local governments.

The request for feedback from local government financial officers typically occurs only once for each bill. Local governments cannot realistically be sent new questionnaires each time a bill is revised during the legislative process. Unless the bill revision results in wholesale changes to the bill's intent, the result of resampling would be marginal changes to the cost estimates. Thus, local governments are questioned at the beginning of the legislative process and informed adjustments are made to the cost estimates as bills wind their way through the legislative process.

The **Virginia** Commission on Local Governments establishes a network of about 50 (15 percent) volunteer local fiscal contacts in cities and counties. Those cities and counties are strategically selected to represent geographic and size differences throughout the state. Because bills imposing mandates must be introduced on or before the first day of the legislative

session (Virginia has a part-time legislature), the COLG receives notification of the bills to be examined as soon as the session commences and advances to the local fiscal contacts the material needed to begin their analysis. In consultation with the Virginia Municipal League and Virginia Association of Counties, the bills introduced are prioritized and the 25 bills with the highest priority are submitted for analysis.

Most contact with volunteer local fiscal contacts occurs by e-mail and the COLG website. That website includes publications with instructions on how to receive, complete, and return fiscal impact estimate forms, what makes a good fiscal impact statement, and links to prior fiscal impact statements that can be used for reference.[104]

In **Massachusetts** the DLM legal staff begins the process by determining whether a bill would impose new financial impacts on local governments. If so, the research unit attempts to attach a price tag to the proposed bill or regulation. It does so by sampling 40 (11 percent) cities and towns (the Massachusetts law does not apply to school districts or other types of local government). Those cities and towns are selected from a stratified sampling to ensure they are representative of the entire state in terms of population and other demographic variables.

DLM created a computer cost model. Data from each round of cost estimation are entered into a program. This has allowed DLM to take input from the sample cities and towns and translate it into a statewide cost estimate for all local governments over a three year period. It also allows for more informed decisions as cost estimates are adjusted with changes to bills during the legislative process.[105]

In **Minnesota**, the local impact note preparation is coordinated by the State Department of Finance but the bulk of the analytical work is conducted by a volunteer group of local officials (generally finance officers). That group works with the appropriate chairs of legislative committees to request local impact notes.

The **Missouri** Oversight Division maintains a list of contacts in the political subdivisions of the state. The list includes multiple contacts for some local governments. Participation is voluntary and response rates tend to increase for legislation judged to be of higher significance to the local governments. Distribution of the fiscal note worksheet is facilitated by the use of email and the Oversight Division web page, so the division does not feel constrained to manage the number of participants.[106]

The Oversight Division does not have to deal with the problem of sampling, as all political subdivisions may volunteer to participate, but they still must deal with problems of reliability. Participation is voluntary, so responses may become biased if an issue affects local governments of a particular size or type more than others. Additionally, the potential to have multiple responders from a single unit of government could lead to problems of double counting that lead to bias in the results.

Connecticut, **Iowa**, and **New Jersey** have nonpartisan preparation units, either composed of city and county representatives or not directly affiliated with the state legislature. The Connecticut Office of Fiscal Analysis employs nonrandom sampling to make their estimates. It is clear that the results may have diminished accuracy, but they are confident that the process is the most equitable of all practical alternatives.

Nevada's Legislative Council Bureau contacts larger municipalities and counties directly for cost estimates when the Council determines that the proposed mandate is likely to cost more than $2,000. The state municipal league and county association prepare fiscal notes on behalf of smaller municipalities and counties. Local governments tend to be satisfied with the accuracy of the fiscal notes, but not with fact that the legislature is able to ignore the estimates of mandate costs.

Options for Michigan

As suggested earlier, it is likely that a system that works well in identifying existing laws and regulations that mandate new activities and services subject to Section 29 funding requirements will add pressure to put an effective fiscal note system in place. Legislators will surely prefer to know about the cost of funding local government mandates before they are enacted, rather than finding out afterwards that a major obligation has been created.

Identifying Bills Subject to Fiscal Notes

Three factors give rise to a process in which all bills affecting local governments should be subjected to a fiscal note process: (1) Michigan's full time legislature; (2) the confidentiality provisions governing bill drafters and the fiscal agencies; and (3) the overall intent of the Headlee Amendment.

Michigan is one of only ten states with a full-time legislature. Other states have the luxury of time in analyzing bills before they are submitted at the beginning of the legislative session. Bills can be analyzed and the local government associations can draw attention to worrisome legislation that otherwise might not be subjected to a fiscal note. With an ongoing legislative session throughout the year in Michigan, bills are introduced at all times during a legislative session. It would be difficult to identify bills that meet specific circumstances in a single process without putting more responsibilities on the chamber and committee leadership. The end result may be a political process used to stall or expedite bills in the legislative process.

Confidentiality provisions would prohibit the Legislative Service Bureau staff, the legislative staff responsible for the actual drafting of bills, from referring proposals for fiscal note preparation. As legal advisors for the legislators, staff members are not at liberty to discuss or share drafted bills with outsiders. Likewise, fiscal agency staff must not cross interests with legislators. Therefore, it would be incumbent upon the bill sponsors and the leadership in each chamber to submit bills for cost estimates.

Finally, there is the intent of the constitutional provision. The Headlee Amendment was adopted in 1978 as a tool for limiting growth in the cost of state and local government. The Headlee Amendment attempted to limit the growth of local government costs in multiple ways. In addition to Section 31's property tax growth limitations (i.e., property tax rate rollbacks caused when tax bases grow faster than the rate of inflation) and requirements that tax rate increases take effect only with approval of a majority of voters at a local election, the Headlee Amendment attempted to prevent the State from taking actions that indirectly increased the cost of providing local government services and activities. Section 30, prohibits the state from reducing the proportion of total spending paid to all units of local government below the proportion in effect in 1978-79.[107]

Many laws are enacted with the net result of increasing the cost of local government services and activities even though they do not constitute a state requirement under current interpretations of Section 29. These laws impose requirements for local governments that choose to provide an optional service or activity. One example is the requirements on fire departments and authorities for the use of specific gear or training. No type of Michigan local government is required to provide fire protection, so this service is seen as an optional service. If local governments opt to provide fire protection, as most urban jurisdictions of the state are compelled to do, they must comply with the requirements. The optional nature of fire protection makes all such requirements on gear and training exempt from the Section 29 state funding requirements. The net affect is a new requirement that increases the cost of operating local government for those jurisdictions that provide fire protection.

It would be consistent with the overall intent of the Headlee Amendment to establish a process for cost estimations for proposed legislation regardless of whether or not the proposed law rises to the level of a state requirement on local governments as defined by Section 29. Therefore, a fiscal note process should be established to estimate the cost of all proposed legislation that would affect local governments. Michigan should take the same approach that was adopted in Massachusetts. This process could include a provision allowing the local government associations

to call for the preparation of a fiscal note for bills that have not been subjected to an estimate in other ways.

Sampling Local Governments

The only real way to know how a proposed law or regulation stands to create costs for local governments is to ask. Therefore, to understand how legislation would affect local governments, Michigan should join the many other states with mandate funding requirements by establishing a network of local governments to participate in voluntary information sharing for the purposes of preparing fiscal notes.

In Michigan, the House Fiscal Agency and the Senate Fiscal Agency possess the technical expertise to analyze legislation and estimate the fiscal impact. It would make far more sense to expand the abilities of these agencies to survey local governments for the purposes of preparing fiscal notes than to establish a new agency solely for the purposes of analyzing legislation with potential financial consequences for local governments. Besides the additional administrative costs that would be created by a new agency, the turf battles that could be created between existing and new fiscal analysts would be counterproductive to the cause. It does not, however, make sense for the House and Senate Fiscal Agencies to each have their own programs for sampling local governments. Therefore, sampling of local governments should be a joint effort between the two Fiscal Agencies. Each Fiscal Agency should be responsible for preparing fiscal notes based on sampling of local governments for the bills introduced in its chamber. This process should include a means of bundling multiple bills germane to the same issue, regardless of the chamber in which they are introduced.

Many of the states that sample local governments have an advantage over Michigan because their mandate funding laws apply only to a subset of all local governments. For instance, the Massachusetts law applies only to cities and towns. Section 29 in Michigan applies to all local governments – counties, cities, villages, townships, school districts, intermediate school districts, community college districts, special authorities – numbering almost 3,000 in total. Thus, representative groups would have to be established to allow each type of local government to respond to surveys when bills are introduced that affect that type of government.

Options to Reform the Process

A process is needed not only to create a process to identify existing laws that constitute state obligations subject to funding under Section 29, and then determining the amount of funding needed to meet this obligation, but also to identify the potential cost to local governments of complying with legislation that could create state requirements if enacted.

Determining Whether Laws Constitute State Requirements

To provide an opportunity for local governments to seek an immediate declaratory judgment that state laws and regulations constitute state requirements subject to the funding requirements of Section 29, single units of local government – that is a single city, school district, county, etc. – should be authorized to file test cases to determine whether a law or regulation is in fact a state requirement. In this arrangement, all other local governments of that type essentially become claimants in a "class action" suit.

The Venue for Declaratory Judgments in Michigan

The proper venue for hearing local government claims alleging Section 29 violations should hinge on a 2007 amendment to the Court Rules that created requirements that alleged violations be stated with "particularity."

As long as court rules remain in place, an independent body (recreating the Local Government Claims Review Board whether in the same name or not) with representatives of state and local government serving as members should be created to hear claims of unfunded state requirements. Local governments could use the board to build their cases before heading to court. Proceedings of the Board could be used as prima facie evidence in courts to document the existence and cost of state requirements.

Alternatively, if the rules are amended to revert to pre-2007 standards, thus removing the extraordinary burden placed on taxpayers to enforce Section 29, then reform could refine the Court of Appeals' use of special masters. Legislation should be introduced to lay out the manner in which a special master should be appointed and the role to be played specifically in the Section 29 process. The special masters would preside over the declaratory judgments and in determining the costs that would be subject to reimbursement.

Options to Strengthen Local Governments

If local governments successfully gain a declaratory judgment that state laws or regulations impose state requirements, and the State continues to not provide the necessary funding, then local governments could be enabled to petition the courts so that compliance with statutory requirements is not mandated without the proper funding.

A Process for Appropriating and Disbursing State Funds

Rather than distributing funds based on estimates of costs, local governments should have a process to be reimbursed for their actual costs. Based on a set of guidelines – identifying the mandated program, eligible claimants, the period for which local governments should provide accounts of costs incurred, reimbursable activities, and other necessary claiming information – all local governments subject to the state requirement would have to submit statements of actual costs incurred in the preceding fiscal year for the activities or services mandated.

Identifying Bills Subject to Fiscal Notes

A fiscal note process should be established to estimate the cost of all proposed legislation that would affect local governments, regardless of whether or not the proposed law rises to the level of a state requirement on local governments as defined by Section 29. This process could include a provision allowing the local government associations to call for the preparation of a fiscal note for bills that have not been subjected to an estimate in other ways.

That total cost would be submitted to the State Budget Office in the Department of Management and Budget to be used as the basis for a recommendation for an appropriation. Consistent with Section 29, the legislature would appropriate funds sufficient to reimburse local governments for the cost of complying with mandates.

Sampling Local Governments

To understand how legislation would affect local governments, Michigan should establish a network of local governments to participate in voluntary information sharing for the purposes of preparing fiscal notes. It would be consistent with the overall intent of the Headlee Amendment to establish a process for cost estimations for proposed legislation regardless of whether or not the proposed law rises to the level of a state requirement on local governments as defined by Section 29. Representative groups would have to be established to allow each type of local government to respond to surveys when bills are introduced that affect that type of government.

Conclusion

The Headlee Amendment was adopted at a time commonly referred to as the "taxpayers' revolt". It was also an era in which many states recognized the costs imposed on local governments by statutory mandates and took action to provide relief. The Headlee Amendment served both of those purposes. Because Article IX, Section 26, limits State government revenues in any given year to a fixed percentage of total personal income, drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the State, in order to save the money the State would have needed to spend if it continued to provide such services.

Over the 30 years since adoption of the Headlee Amendment, the Section 29 obligation to fund state requirements has been both actively opposed and ignored by state officials. It is understandable that state officials would be adverse to funding mandates that would create large costs in the state budget, but those officials are not given discretion in their oaths of office to enforce only those provisions of the State Constitution they find favorable. The Constitution expresses the will of the people and, until sections are amended or repealed, is expected to be enforced as written and interpreted by the courts.

This paper offers a number of alternatives and recommendations to bring about enforcement of Article IX, Section 29, based on best practices identified in similar mandate funding requirements in other states' laws. Reform must encompass identification of existing mandates as well as a process for determining the potential cost proposed mandates would impose on local governments. Reform should touch on all branches of state government – legislative, judicial, and executive. New processes are recommended 1) to identify laws that constitute state obligations under Section 29 to fund activities or services and their associated costs; 2) to estimate the cost of proposed state obligations under Section 29 to fund activities or services before enacted into state law; and 3) to disburse state funds to local government to fund mandated activities and services.

Chronic struggles with structural budget deficits, those that will not be cured by economic growth, and more recent struggles with cyclical budget deficits, those caused by the contraction in economic activity, suggest that the State is not in a position to take on the cost of funding local government mandates. The State's structural budget struggles and the effect on local government revenues caused by the housing crises have translated to contracting local government budgets as well. As local governments endeavor to balance their budgets, state mandates stand out as a fixed cost for which they have no latitude to achieve savings. Reform of the way in which Section 29 is implemented may not provide immediate relief from existing mandates, but it could prevent the enactment of future mandates and the costs they will impose.

Endnotes

[1] See *Oakland County v State of Michigan*, 456 Mich. 144, 159 (1997). Cited in memorandum from Dennis R. Pollard, Thrun Law Firm, P.C., to the Commission on Statutory Mandates regarding judicial precedents and statutory definitions for terms used in Section 29 of the Headlee Amendment, January 30, 2008, p. 3.

[2] *Durant v State Bd of Education*, 424 Mich. 364; 381 NW2d 662 (1985)

[3] Cited in Attorney General Opinion No. 6583, June 1, 1989.

[4] *Livingston County v Department of Management & Budget*, 430 Mich. 635; 425 NW2d 65 (1988), cited in Attorney General Opinion No. 6554, December 20, 1988.

[5] *Oakland County*, *supra* at 160, cited in Pollard memorandum, p. 3.

[6] Implementing Section 29 of the "Headlee Amendment," At-a-Glance, Research Services Division of the Michigan Legislative Service Bureau, Volume 5, Issue 5, March 2008.

[7] At-a-Glance, Volume 5, Issue 5, March 2008.

[8] See Public Act 306 of 1969 at legislature.mi.gov/doc.aspx?mcl-Act-306-of-1969.

[9] Memorandum from Colleen S. Curtis, Joint Committee on Administrative Rules to the Legislative Commission on Statutory Mandates regarding the State Disbursements to Local Government Units Act, 1979 PA 101, MCL 21.236, March 20, 2008.

[10] *Local Government Claims Review Board*, At-a-Glance, Research Services Division of the Michigan Legislative Service Bureau, Volume 5, Issue 3, March 2008.

[11] Report to Governor John Engler of the Headlee Blue Ribbon Commission, September 1994.

[12] At-a-Glance, Volume 5, Issue 3, March 2008.

[13] A 23rd action remains in the LGCRB files. Harrison Charter Township passed a resolution asking the LGCRB for relief but no action was taken as a resolution is not a claim.

[14] At-a-Glance, Volume 5, Issue 3, March 2008.

[15] *Durant v. State of Michigan*, 456 Michigan 175, 566 NW2d 272 (1997).

[16] *Durant* supra at 218.

[17] *Adair v Mich*, 474 Mich. 1027; 709 NW2d 567.

[18] See *Livingston County v Michigan Department of Management and Budget*, 430 Mich 635 (1988); *Schmidt v Michigan Department of Education*, 441 Mich 236 (1992); and *Judicial Attorneys Association v State of Michigan*, 460 Mich 590, 597 NW2d 113 (1999).

[19] *Adair v Mich*, 474 Mich. 1027; 709 NW2d 567.

[20] *Adair v Mich*, 474 Mich. 1027; 709 NW2d 567.

[21] MCL §§ 324.3103-3133, http://legislature.mi.gov/doc.aspx?mcl-451-1994-II-1-31 and 324.4101-4113 http://legislature.mi.gov/doc.aspx?mcl-451-1994-II-1-SEWAGE-DISPOSAL-AND-WATERWORKS-SYSTEMS-41.

[22] MCL § 168.315, http://legislature.mi.gov/doc.aspx?mcl-168-315.

[23] MCL § 28.161, http://legislature.mi.gov/doc.aspx?mcl-28-161.

[24] MCL § 129.96, http://legislature.mi.gov/doc.aspx?mcl-129-96.

[25] MCL § 211.7cc, http://legislature.mi.gov/doc.aspx?mcl-211-7cc.

[26] *Livingston County v Department of Management and Budget*, 430 Mich. 635 (1988).

[27] The Solid Waste Management Act of 1979, (specifically MCL 299.424) was repealed and replaced by Public Act 451 of 1994, the Natural Resources and Environmental Protection Act. See MCL 324.11531 for current provision, http://legislature.mi.gov/doc.aspx?mcl-324-11531.

[28] MCL § 552.505, http://legislature.mi.gov/doc.aspx?mcl-552-505, § 505a, http://legislature.mi.gov/doc.aspx?mcl-552-505a, § 511, http://legislature.mi.gov/doc.aspx?mcl-552-511, § 527, http://legislature.mi.gov/doc.aspx?mcl-552-527, § 600.2530, http://legislature.mi.gov/doc.aspx?mcl-600-2530.

[29] MCL § 38.1301 et seq, http://legislature.mi.gov/doc.aspx?mcl-Act-300-of-1980.

[30] Opinion of the Attorney General No. 6583, www.ag.state.mi.us/opinion/datafiles/1980s/op06583.htm (accessed December 5, 2008).

[31] A key finding in the literature review was the work of Janet M. Kelly, formerly of Bowling Green State University that is noted throughout the balance of this paper. The papers she authored for the National League of Cities and others were of great assistance in focusing in on a few key states and developing recommendations on various components of a process of recognizing and funding state mandates on local governments.

[32] *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, Janet M. Kelly, Bowling Green State University, a Research Report of the National League of Cities, February 1992, p. 58.

[33] Massachusetts Office of State Auditor, Division of Local Mandates Frequently Asked Questions web page, www.mass.gov/sao/faq.htm (accessed December 10, 2008).

[34] Emily D. Cousens, Massachusetts: The Mandate Statute and Its Application, p. 38.

[35] *Guide to the State Mandate Process*, California Commission on State Mandates, section 2-5, www.csm.ca.gov/docs/Guidebook.pdf.

[36] *Guide to the State Mandate Process*, California Commission on State Mandates, section 2-1.

[37] *Guide to the State Mandate Process*, California Commission on State Mandates, section 2-7.

[38] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, The American Review of Public Administration, Volume 24, Number 4, December 1994, arp.sagepub.com/cgi/content/abstract/24/4/351, p. 362.

[39] *Did You Know... That the Commonwealth requires state agencies to assess the local government impact from state mandates?*, The Mandate Review, Fairfax County [Virginia] Department of Management and Budget, Volume 1, Issue 2, p. 2, www.fairfaxcounty.gov/dmb/mandates/V1_N2.pdf (accessed December 17, 2008).

[40] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 362.

[41] Office of Fiscal and Program Review website, www.maine.gov/legis/ofpr/ (accessed December 12, 2008).

[42] Conversation with Gary Markenson, Executive Director of Missouri Municipal League, December 11, 2008.

[43] Section 43.135.060, Revised Code of Washington.

[44] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 357.

[45] Letter from Peder Schaefer, Office of Municipal Affairs in the Rhode Island Department of Administration, to Municipal Officials regarding State Mandates – Report required by Section 45-13-8 (b), December 29, 2006. www.muni-info.ri.gov/communications/.

[46] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 357.

[47] State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, Informational Bulletin 96.3, April 1996, p. 19, www.legis.state.wi.us/LRB/pubs/ib/96ib3.pdf.

[48] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 358.

[49] State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, p. 15.

[50] *Mandate Reimbursement Measures in the States*, p. 358 and communication with Lise Valentine from the Civic Federation.

[51] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 358.

[52] State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, p. 15.

[53] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 358.

[54] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 358.

[55] Communication to Connecticut Conference of Municipalities from Maura Carroll, General Counsel, New Hampshire Municipal Association on National League of Cities list serve, June 2008.

[56] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 365.

[57] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 361.

[58] *Funding State and Federal Mandates*, State of Wisconsin Legislative Reference Bureau, Informational Bulletin 96.3, April 1996, p. 12, www.legis.state.wi.us/LRB/pubs/ib/96ib3.pdf.

[59] Massachusetts Office of State Auditor, Division of Local Mandates Mandate Determination web page, www.mass.gov/sao/mandatepage.htm (accessed December 10, 2008).

[60] Massachusetts Office of State Auditor, Division of Local Mandates Frequently Asked Questions web page, www.mass.gov/sao/faq.htm (accessed December 10, 2008).

[61] *Guide to the State Mandate Process*, California Commission on State Mandates, section 3-12.

[62] *Guide to the State Mandate Process*, California Commission on State Mandates, section 2-3.

[63] Gary Sasse, Rhode Island Public Expenditure Council, Rhode Island: Experience with a Mandate Reimbursement Law, in *Mandates: Cases in State-Local Relations*, U.S. Advisory Commission on Intergovernmental Relations, M-173, September 1990, p. 26.

[64] *Durant v State of Michigan*, 456 Mich. 206, 566 NW2d 303 (1997).

[65] *Durant v State of Michigan*, 456 Mich. 175, 566 NW2d 272 (1997).

[66] *Livingston County v Department of Management and Budget*, 430 Mich. 635 (1988).

[67] *Adair v Mich*, 474 Mich. 1027; 709 N.W.2d 567.

[68] *Adair v Mich*.

[69] Emily D. Cousens, Massachusetts: The Mandate Statute and Its Application, p. 38.

[70] Emily D. Cousens, Massachusetts: The Mandate Statute and Its Application, p. 38.

[71] *Guide to the State Mandate Process*, California Commission on State Mandates, section 2-1, www.csm.ca.gov/docs/Guidebook.pdf.

[72] California Commission on State Mandates website, CSM History page, www.csm.ca.gov/history.shtml (accessed November 19, 2008).

[73] Hollie S. Cammarasana, Commission on Local Government Welcomes New Policy Manager, Virginia Review, January 2007, www.vareview.com/mag/article.asp?is=ja07&ar=a3 (accessed December 17, 2008).

[74] Virginia Commission on Local Government website, www.dhcd.virginia.gov/CommissiononLocalGovernment/default.htm (accessed November 19, 2008).

[75] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 356.

[76] Gary Sasse, Rhode Island Public Expenditure Council, Rhode Island: Experience with a Mandate Reimbursement Law, in *Mandates: Cases in State-Local Relations*, U.S. Advisory Commission on Intergovernmental Relations, M-173, September 1990, p. 26.

[77] Michigan Supreme Court, ADM File No. 2003-59, Amendment of Rules 2.112 and 7.206 of the Michigan Court Rules.

[78] See Justice E. Weaver's dissent beginning on page 5 of court rule, Justice J. Cavanagh concurring. Michigan Supreme Court, ADM File No. 2003-59, Amendment of Rules 2.112 and 7.206 of the Michigan Court Rules.

[79] The Court of Claims Act, Chapter 64 of the Revised Judicature Act of 1961, MCL 600.6401 et. seq., http://legislature.mi.gov/doc.aspx?mcl-236-1961-64.

[80] See Section 308a of Public Act 236 of 1961, Revised Judicature Act, http://legislature.mi.gov/doc.aspx?mcl-600-308a.

[81] *Guide to the State Mandate Process*, California Commission on State Mandates, section 4-2.

[82] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 361.

[83] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 366.

[84] *The Fiscal Note Process: An Overview*, Appendix B – Fiscal Notes and Cost Estimates for State Mandates, Maine Office of Fiscal and Program Review, www.maine.gov/legis/ofpr/FN_Appendix_B.pdf (accessed December 12, 2008).

[85] *The Fiscal Note Process: An Overview*, Appendix C – A Brief Explanation of the "State Mandate" Law, Maine Office of Fiscal and Program Review, www.maine.gov/legis/ofpr/FN_Appendix_C.pdf (accessed December 12, 2008).

[86] State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, p. 15.

[87] State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, p. 18.

[88] *Did You Know...*, The Mandate Review, Fairfax County Department of Management and Budget, p. 2.

[89] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 369.

[90] *Guide to the State Mandate Process*, California Commission on State Mandates, section 4-2.

[91] *Guide to the State Mandate Process*, California Commission on State Mandates, section 4-4.

[92] *Guide to the State Mandate Process*, California Commission on State Mandates, section 4-3.

[93] *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, Janet M. Kelly, Bowling Green State University, A Research Report for the National League of Cities, February 1992, pp. 36-39.

[94] Massachusetts Office of State Auditor, Division of Local Mandates website, www.mass.gov/sao/localmandate.htm (accessed December 10, 2008).

[95] Emily D. Cousens, Massachusetts: The Mandate Statute and Its Application, p. 38.

[96] Oversight Division webpage on the Missouri Joint Committee on Legislative Research website, www.moga.mo.gov/oversight/overhome.htm (accessed December 11, 2008).

[97] Conversation with Shanna Stark, Oversight Division staff and Oversight Division webpage, www.moga.mo.gov/oversight/overhome.htm (accessed December 11, 2008).

[98] Virginia Commission on Local Government, What Makes a Good Estimate of Local Fiscal Impact?, p. 3, www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/FI.Good.estimate%20(2008).pdf.

[99] *The Fiscal Note Process: An Overview*, Appendix B – Fiscal Notes and Cost Estimates for State Mandates, Maine Office of Fiscal and Program Review, www.maine.gov/legis/ofpr/FN_Appendix_B.pdf (accessed December 12, 2008).

[100] Gary Sasse, Rhode Island: Experience with a Mandate Reimbursement Law, p. 26.

[101] Janet M. Kelly, *Mandate Reimbursement Measures in the States*, p. 368.

[102] Janet M. Kelly, Bowling Green State University, *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, a Research Report of the National League of Cities, February 1992, p. 30.

[103] Janet M. Kelly, *State Mandates: Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, pp. 33-40.

[104] Virginia Commission on Local Government, Fiscal Impact Analysis webpage, www.dhcd.virginia.gov/CommissiononLocalGovernment/pages/fiscalanalysis.htm (accessed December 10, 2008).

[105] Anthony V. D'Aiello, Massachusetts: Cost Estimation and Reimbursement of Mandates, in *Mandates: Cases in State-Local Relations*, U.S. Advisory Commission on Intergovernmental Relations, M-173, September 1990, p. 42.

[106] Conversation with Shanna Stark, December 11, 2008.

[107] *State Ballot Issues: Proposal I — The Tax Limitation Proposal of Taxpayers United*, Citizens Research Council of Michigan, Council Comments No. 899, August 1978, www.crcmich.org/PUBLICAT/1970s/1978/cc0899.pdf.

Appendix A: Exceptions to Mandate Funding Requirements in States

Some states constitutionally or statutorily provide for exclusions or exemptions from requirements that state funding accompany state mandates. The following is an attempt to classify those exclusions to find commonalities. (States are split into two groups for formatting purposes.)

	California	Florida	Illinois	Iowa	Louisiana	Minnesota	Montana	Nevada	New Jersey	South Carolina	South Dakota
Laws that implement provisions of the state constitution									X		
Laws that implement something other than law or executive order, such as federal, court, or voter-approved mandate and administered, implemented, or enacted by the state				X	X	X			X		X
Laws clarifying or expanding then-existing statutory authority		X				X			X	X	X
Legislative mandates requested by the local agency affected	X		X		X	X					
Laws creating, modifying, or repealing the definition of a crime	X	X			X					X	X
Funding of pensions existing on date of enactment		X								X	
Election laws		X	X			X				X	X
Laws related to constitutional law or federal statute for the operation of government, including due process, equal protection, ethics mandates, personal and employment mandates, record keeping requirements, or the organizational structure of local governments			X			X	X				X
General Appropriation Acts		X									
Special Appropriation Acts		X									
Laws relating to financial administration, including the levy, assessment, and collection of taxes						X					

	California	Florida	Illinois	Iowa	Louisiana	Minnesota	Montana	Nevada	New Jersey	South Carolina	South Dakota
Laws designating public officers, and their duties, powers, and responsibilities			X								
Laws that can be carried out by existing staff and procedures at no appreciable net cost increase			X								
Laws that create additional costs but also provide offsetting savings resulting in no aggregate increase in net costs			X			X					
Laws that impose a cost that is wholly or largely recovered from Federal, State or other external financial aid			X								
Any allocation of federal money conditioned upon enactment of state law or rule				X							
Laws that lead to revenue loss from exemptions to taxes						X					
Laws that require uniform standards to apply to public and private institutions without differentiation						X			X		
Laws relating to the judicial department										X	X
Laws relating to provision of education										X	
Laws relating to welfare system											X
Laws enacted by a supermajority in each house of the legislature					3/4				3/4		
Laws that have an insignificant fiscal impact	X		X[a]	X[b]	X	X[c]	X[d]	X[e]		X[f]	

[a] less than $1,000 for each of the several local governments affected or less than $50,000, in aggregate, for all local governments affected

[b] less than $100,000 by all affected local governments or less than $500,000 within 5 years by all affected local governments

[c] less than 0.5% of local revenue base, or $50,000, whichever is less for any single local gov't if mandate does not apply statewide, or less than $1 million if applies statewide

[d] expenditure equivalent to approximately 1 mill levied on taxable property of the local gov't or $10,000, whichever is less

[e] less than $5,000

[f] less than 10 cents per capita on a statewide basis

Source: Various state legislation and constitution websites.

Appendix B: State Constitutional and Statutory Provisions Requiring State Funding for Local Government Mandates

The following constitutional and statutory provisions regarding prohibitions on unfunded local government mandates, estimating the cost of state mandates on local governments, and programs to reimburse local govts for state mandates was developed from the various website for state legislation and constitutions.

Alabama (1988 constitutional amendment)

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

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

Amendment 491 ratified: Effectiveness of Laws Providing for Expenditure of Municipal Funds.

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

Alaska (1959 Constitution)

Article 2, Section 19. Local or Special Acts

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

California (1979 constitutional amendment)

Article 13b, Government Spending Limitation, Section 6.

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

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

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

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

(b) (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

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

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

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

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

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

Colorado (1992 constitutional amendment)

Article 10, Section 20(9)

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

Connecticut

Section 2-32, General Statutes of Connecticut

Sec. 2-32. Effective date of public and special acts. All public acts, except when otherwise therein specified, shall take effect on the first day of October following the session of the General Assembly at which they are passed, and special acts, unless otherwise therein provided, from the date of their approval.

Sec. 2-32a. Effective date of public acts imposing state mandate. No public act which imposes a state mandate on any political subdivision of this state which requires the appropriation of funds for the budget of such political subdivision in order to comply with the provisions of such act shall be effective as to such political subdivision earlier than the first fiscal year of such political subdivision beginning after five months following the date of passage of such act.

Sec. 2-32b. State mandates to local governments. Definitions. Cost estimate required. Procedures re bills creating or enlarging mandates. (a) As used in this section:

(1) "Local government" means any political subdivision of the state having power to make appropriations or to levy taxes, including any town, city or borough, consolidated town and city or consolidated town and borough, any village, any school, sewer, fire, water or lighting district, metropolitan district, any municipal district, any beach or improvement association, and any other district or association created by any special act or pursuant to chapter 105, or any other municipal corporation having the power to issue bonds;

(2) "State mandate" means any constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a state court and any legislation necessary to comply with a federal mandate;

(3) "Local government organization and structure mandate" means a state mandate concerning such matters as: (A) The form of local government and the adoption and revision of statutes on the organization of local government; (B) the establishment of districts, councils of governments, or other forms and structures for interlocal cooperation and coordination; (C) the holding of local elections; (D) the designation of public officers, and their duties, powers and responsibilities; and (E) the prescription of administrative practices and procedures for local governing bodies;

(4) "Due process mandate" means a state mandate concerning such matters as: (A) The administration of justice; (B) notification and conduct of public hearings; (C) procedures for administrative and judicial review of actions taken by local governing bodies; and (D) protection of the public from malfeasance, misfeasance, or nonfeasance by local government officials;

(5) "Benefit spillover" means the process of accrual of social or other benefits from a governmental service to jurisdictions adjacent to or beyond the jurisdiction providing the service;

(6) "Service mandate" means a state mandate as to creation or expansion of governmental services or delivery standards therefor and those applicable to services having substantial benefit spillover and consequently being wider than local concern. For purposes of this section, applicable services include but are not limited to elementary and secondary education, community colleges, public health, hospitals, public assistance, air pollution control, water pollution control and solid waste treatment and disposal. A state mandate that expands the duties of a public official by requiring the provision of additional services is a "service mandate" rather than a "local government organization and structure mandate";

(7) "Interlocal equity mandate" means a state mandate requiring local governments to act so as to benefit other local governments or to refrain from acting to avoid injury to, or conflict with neighboring jurisdictions, including such matters as land use regulations, tax assessment procedures for equalization purposes and environmental standards;

(8) "Tax exemption mandate" means a state mandate that exempts privately owned property or other specified items from the local tax base;

(9) "Personnel mandate" means a state mandate concerning or affecting local government: (A) Salaries and wages; (B) employee qualifications and training except when any civil service commission, professional licensing board, or personnel board or agency established by state law sets and administers standards relative to merit-based recruitment or candidates for employment or conducts and grades examinations and rates candidates in order of their relative excellence for purposes of making appointments or promotions to positions in the competitive division of the classified service of the public employer served by such commission, board or agency; (C) hours, location of employment, and other working conditions; and (D) fringe benefits including insurance, health, medical care, retirement and other benefits.

(b) The Office of Fiscal Analysis shall append to any bill before either house of the General Assembly for final action which has the effect of creating or enlarging a state mandate to local governments, an estimate of the cost to such local governments which would result from the passage of such bill. Any amendment offered to any bill before either house of the General Assembly which has the effect of creating or enlarging a state mandate to local governments shall have appended thereto an estimate of the cost to such local governments which would result from the adoption of such amendment.

(c) The estimate required by subsection (b) of this section shall be the estimated cost to local governments for the first fiscal year in which the bill takes effect. If such bill does not take effect on the first day of the fiscal year, the estimate shall also indicate the estimated cost to local governments for the next following fiscal year. If a bill is amended by the report of a committee on conference in such a manner as to result in a cost to local governments,

the Office of Fiscal Analysis shall append an estimate of such cost to the report before the report is made to either house of the General Assembly.

(d) On and after January 1, 1985, (1) any bill reported by a joint standing committee of the General Assembly which may create or enlarge a state mandate to local governments, as defined in subsection (a) of this section, shall be referred by such committee to the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies, unless such reference is dispensed with by a vote of at least two-thirds of each house of the General Assembly, and (2) any bill amended by either house of the General Assembly or by the report of a committee on conference in such a manner as to create or enlarge a state mandate shall be referred to said committee, unless such reference is dispensed with by a vote of at least two-thirds of each house of the General Assembly. Any such bill which is favorably reported by said committee shall contain a determination by said committee concerning the following: (A) Whether or not such bill creates or enlarges a state mandate, and, if so, which type of mandate is created or enlarged; (B) whether or not the state shall reimburse local governments for costs resulting from such new or enlarged mandate, and, if so, which costs are eligible for reimbursement, the level of reimbursement, the timetable for reimbursement and the duration of reimbursement.

Sec. 2-32c. Submission to General Assembly of list of state mandates. Not more than ninety days after adjournment of any regular or special session of the General Assembly or September first immediately following adjournment of a regular session, whichever is sooner, the Connecticut Advisory Commission on Intergovernmental Relations, established pursuant to section 2-79a, shall submit to the speaker of the House of Representatives, the president pro tempore of the Senate, the majority leader of the House of Representatives, the majority leader of the Senate, the minority leader of the House of Representatives and the minority leader of the Senate a report which lists each state mandate enacted during said regular or special session of the General Assembly. Within five days of receipt of the report, the speaker and the president pro tempore shall submit the report to the Secretary of the Office of Policy and Management and refer each state mandate to the joint standing committee or select committee of the General Assembly having cognizance of the subject matter of the mandate. The secretary shall provide notice of the report to the chief elected official of each municipality.

Florida (1990 constitutional amendment)

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

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

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

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the

percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing non-criminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

Hawaii (1978 constitutional convention)

Article VIII, Sections 4 Mandates; Accrued Claims and 5. Transfer of Mandated Programs

Sec. 4. No law shall be passed mandating any political subdivision to pay any previously accrued claim.

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

Illinois

Ch. 30, Sec. 805/1-801/10, Illinois Statutes Annotated

Sec. 2. (b) It is the purpose of this Act:

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

(2) to enunciate policies, criteria and procedures to govern any future Stateinitiated specification of local government services, standards and employment conditions that has the effect of necessitating increased local government expenditures in such a way as to accommodate the constitutional obligations of the State government in addressing problems of Statewide concern, while avoiding the imposition of State standards upon essentially local responsibilities without appropriate reimbursement or other appropriate fiscal participation on the part of the State government; and

(3) to provide for a review of existing mandates and an identification of the nature and magnitude of corrective action needed to produce a consistent and equitable framework of Statelocal relations regarding mandated services, standards, and expenditures.

Iowa

Ch. 25B, Iowa Code

3. If, on or after July 1, 1994, a state mandate is enacted by the general assembly, or otherwise imposed, on a political subdivision and the state mandate requires a political subdivision to engage in any new activity, to provide any new service, or to provide any service beyond that required by any law enacted prior to July 1, 1994, and the state does not appropriate moneys to fully fund the cost of the state mandate, the political subdivision is not required to perform the activity or provide the service and the political subdivision shall not be subject to the imposition of any fines or penalties for the failure to comply with the state mandate unless the legislation specifies the amount or proportion of the cost of the state mandate which the state shall pay annually. However, this subsection does not apply to any requirement imposed on a political subdivision relating to public employee retirement systems under chapters 97B, 410, and 411.

For the purposes of this subsection, any requirement originating from the federal government and administered, implemented, or enacted by the state, or any allocation of federal moneys conditioned upon enactment of a state law or rule, is not a state mandate.

For the purposes of this subsection, "political subdivision" includes community colleges and area education agencies.

Louisiana (1991 constitutional amendment)

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

(A)(1) No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by ordinance enacted, or resolution adopted, by the governing authority of the affected political subdivision or until, and only as long as, the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the political subdivision for the purpose and the affected political subdivision is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to a school board.

(2) This Paragraph shall not apply to:

(a) A law requested by the governing authority of the affected political subdivision.

(b) A law defining a new crime or amending an existing crime.

(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 1991.

(d) A law enacted, or state executive order, rule, or regulation promulgated, to comply with a federal mandate.

(e) A law providing for civil service, minimum wages, hours, working conditions, and pension and retirement benefits, or vacation or sick leave benefits for firemen and municipal policemen.

(f) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature and any rule or regulation adopted to implement such instrument or adopted pursuant thereto.

(g) A law having insignificant fiscal impact on the affected political subdivision.

(B)(1) No law requiring increased expenditures within a city, parish, or other local public school system for any purpose shall become effective within such school system only as long as the legislature appropriates funds for the purpose to the affected school system and only to the extent and amount that such funds are provided, or until a law provides for a local source of revenue within the school system for the purpose and the affected school board is authorized by ordinance or resolution to levy and collect such revenue and only to the extent and amount of such revenue. This Paragraph shall not apply to any political subdivision to which Paragraph (A) of this Section applies.

(2) This Paragraph shall not apply to:

(a) A law requested by the school board of the affected school system.

(b) A law defining a new crime or amending an existing crime.

(c) A law enacted and effective prior to the adoption of the amendment of this Section by the electors of the state in 2006.

(d) A law enacted to comply with a federal mandate.

(e) Any instrument adopted or enacted by two-thirds of the elected members of each house of the legislature.

(f) A law having insignificant fiscal impact on the affected school system.

(g) The formula for the Minimum Foundation Program of education as required by Article VIII, Section 13(B) of this constitution, nor to any instrument adopted or enacted by the legislature approving such formula.

(h) Any law relative to the implementation of the state school and district accountability system.

Maine (1992 constitutional amendment)

Article IX, Section 21

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

Massachusetts (1980 constitutional amendment)

Article CXV of Amendments

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

Chapter 29 – STATE FINANCE: Section 27C. Certain laws, rules, etc. relating to costs or assessments effective only by vote of acceptance or appropriation; written notice requesting determination; class actions

Notwithstanding any provision of any special or general law to the contrary:

(a) Any law taking effect on or after January first, nineteen hundred and eighty-one imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, in the case of a city by the city council in accordance with its charter, and in the case of a town by a town meeting, unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption.

(b) Any law taking effect on or after January first, nineteen hundred and eighty-one granting or increasing exemptions from local taxation shall be effective in any city or town only if the general court, at the same session in which such law is enacted, provides by general law and by appropriation for payment by the commonwealth to each city and town of any loss of taxes resulting from such exemption.

(c) Any administrative rule or regulation taking effect on or after January first, nineteen hundred and eighty-one which shall result in the imposition of additional costs upon any city or town shall not be effective until the general court has provided by general law and by appropriation for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses, and unless the general court provides by appropriation in each successive year for such assumption.

(d) Any city or town, any committee of the general court, and either house of the general court by a majority vote of its members, may submit written notice to the division of local mandates, established under section six of chapter eleven of the general laws, requesting that the division determine whether the costs imposed by the commonwealth by any law, rule or regulation subject to the provisions of this section have been paid in full by the commonwealth in the preceding year and, if not, the amount of any deficiency in such payments. The division shall make public its determination within sixty days after such notice.

(e) Any city or town, or any ten taxable inhabitants of any city or town may in a class action suit petition the superior court alleging that under the provisions of subsections (a), (b) and (c) of this section with respect to a general or special law or rule or regulation of any administrative agency of the commonwealth under which any city or town is required to expend funds in anticipation of reimbursement by the commonwealth, the amount necessary for such reimbursement has not been included in the general or any special appropriation bill for any year. Any city or town, or any ten taxable inhabitants of any city or town may in a class action suit petition the superior court alleging that under the provisions of subsections (a), (b) and (c) of this section with respect to any general or special law, or rule or regulation of any administrative agency of the Commonwealth which imposes additional costs on any city or town or which grants or increases exemptions from local taxation, the amount necessary to reimburse such city or town has not been included in the general or any special appropriation bill for any year. The determination of the amount of deficiency provided by the division of local mandates under subsection (d) of this section shall be prima facie evidence of the amount necessary. The superior court shall determine the amount of the deficiency, if any, and shall order that the said city or town be exempt from such general or special law, or rule or regulation of any

administrative agency until the commonwealth shall reimburse such city or town the amount of said deficiency or additional costs or shall repeal such exemption from local taxation.

(f) Any of the parties permitted to submit written notice to the division of local mandates under subsection (d) of this section may submit written notice to the division requesting that the division determine the total annual financial effect for a period of not less than three years of any proposed law or rule or regulation of any administrative agency of the commonwealth. The division shall make public its determination within sixty days of such notice.

(g) Notwithstanding the provisions of subsection (a), (b) and (c), any city or town shall be allowed to accept the provision of any law, rule or regulation specified by said subsections whether or not such law, rule, or regulation is funded by the commonwealth.

(h) This section shall apply to regional school districts and educational collaboratives organized pursuant to section four E of chapter forty, to the same extent as it applies to cities and towns. A regional school district may accept a law, rule or regulation by vote of its school committee, and an educational collaborative by vote of its board of directors.

The provisions of this section shall not apply to any costs to cities and towns or exemptions to local taxation resulting from a decision of any court of competent jurisdiction, or to any law, rule or regulation enacted or promulgated as a direct result of such a decision.[1]

Missouri (1980 constitutional amendment)

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

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

Montana

Sec. 1-2-112, Montana Code Annotated Statutes imposing new local government duties

(1) As provided in subsection (3), a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds and that is not expected of local governments in the scope of their usual operations must provide a specific means to finance the activity, service, or facility other than a mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) Subsequent legislation may not be considered to supersede or modify any provision of this section by implication. Subsequent legislation may supersede or modify the provisions of this section if the legislation does so expressly.

(3) The mandates that the legislature is required to fund under subsection (1) are legislatively imposed requirements that are not necessary for the operation of local governments but that provide a valuable service or benefit to Montana citizens, including but not limited to:

(a) entitlement mandates that provide that certain classes of citizens may receive specific benefits;

(b) membership mandates that require local governments to join specific organizations, such as waste districts or a national organization of regulators; and

(c) service level mandates requiring local governments to meet certain minimum standards.

(4) Subsection (1) does not apply to:

(a) mandates that are required of local governments as a matter of constitutional law or federal statute or that are considered necessary for the operation of local governments, including but not limited to:

(i) due process mandates;

(ii) equal treatment mandates;
(iii) local government ethics mandates;
(iv) personnel and employment mandates;
(v) recordkeeping requirements; or
(vi) mandates concerning the organizational structure of local governments;

(b) any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 1 mill levied on taxable property of the local government unit or $10,000, whichever is less, may be considered an insubstantial amount.

(c) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31.

Nevada

Sec. 354.599, Nevada Revised Statutes

If the Legislature directs one or more local governments to:

1. Establish a program or provide a service; or

2. Increase a program or service already established which requires additional funding, and the expense required to be paid by each local government to establish, provide or increase the program or service is $5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute.

New Hampshire (1984 constitutional amendment)

Article 28-a. [Mandated Programs.]

The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

New Jersey (1995 constitutional amendment)

Article VIII, Section II, 5.

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

(b) The Legislature shall create by law a Council on Local Mandates. The Council shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. The Council shall consist of nine public members appointed as follows: four members to be appointed by the Governor; one member to be appointed by the President of the Senate; one member to be appointed by the Speaker of the General Assembly; one member to be appointed by the minority leader of the Senate; one member to be appointed by the minority leader of the General Assembly; and one member to be appointed by the Chief Justice of the New Jersey Supreme Court. Of the members appointed by the Governor, at least two shall be appointed from a list of six willing nomi-

nees submitted by the chairman of the political party whose candidate for Governor received the second largest number of votes at the most recent gubernatorial general election. The decisions of the Council shall be political and not judicial determinations.

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

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

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

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

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

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

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

New Mexico (1984 constitutional amendment)

Article X, Section 8

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed.

Oregon

Sec. 327.645, Oregon Revised Statutes

327.645 Financing of programs mandated by state and federal programs. The Legislative Assembly recognizes that:

(1) Various programs adopted by the Legislative Assembly and by various state and federal agencies have fiscal and revenue impact on school districts.

(2) To the greatest extent possible, state government should pay an appropriate share of expenses incurred by the districts as the result of mandates from the Legislative Assembly and state agencies.

Rhode Island

Sec. 45-13-9, Rhode Island General Laws

No mandate shall be enacted or promulgated after July 1, 2006, unless the body enacting or promulgating the same shall first, after public hearing, determine the cost of the proposed mandate to the city, town or school districts of the state. Any rule, regulation or policy adopted by state departments, agencies or quasi-state departments or agencies which require any new expenditure of money or increased expenditure of money by a city, town or school district shall take effect on July 1 of the calendar year following the year of adoption. Provided, however, should funding be provided for the said expenditure, then such rule, regulation or policy shall take effect upon adoption.

South Carolina

Secs. 4-9-55 and 5-7-310, South Carolina Code of Laws

(A) A county may not be bound by any general law requiring it to spend funds or to take an action requiring the expenditure of funds unless the General Assembly has determined that the law fulfills a state interest and the law requiring the expenditure is approved by two-thirds of the members voting in each house of the General Assembly provided a simple majority of the members voting in each house is required if one of the following applies:

(1) funds have been appropriated that have been estimated by the Division of Budget and Analyses at the time of enactment to be sufficient to fund the expenditures;

(2) the General Assembly authorizes or has authorized a county to enact a funding source not available for the county on July 1, 1993, that can be used to generate the amount of funds estimated to be sufficient to fund the expenditure by a simple majority vote of the governing body of the county;

(3) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments;

(4) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

(B) Except upon approval of each house of the General Assembly by two-thirds of the members voting in each house, the General Assembly may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993.

(C) The provisions of this section do not apply to:

(1) laws enacted to require funding of pension benefits existing on the effective date of this section;

(2) laws relating to the judicial department;

(3) criminal laws;

(4) election laws;

(5) the Department of Education;

(6) laws reauthorizing but not expanding then-existing statutory authority;

(7) laws having a fiscal impact of less than ten cents per capita on a statewide basis; laws creating, modifying, or repealing noncriminal infractions.

(D) The duties, requirements, and obligations imposed by general laws in effect on July 1, 1993, are not suspended by the provisions of this section.

(E) A provision of, or amendment to, an appropriation bill that contains a permanent or temporary provision of law must be adopted by a separate vote of the General Assembly in the manner provided in subsections (A) through (D) of this section. Provided, however, that once a provision or amendment to an appropriation bill is adopted, the vote to adopt or reject an appropriation bill on second reading, third reading, or adoption of the conference committee or free conference committee report is not subject to the provisions of subsections (A) through (D) of this section.

South Dakota

Ch. 6-15, South Dakota Codified Laws

No state law, rule, or regulation which mandates any county, municipality, or school district to engage in any new activity, to provide any new service, to increase any current level of activity or to provide any service beyond that required by existing law has the force of law unless or until the state provides sufficient new funding or a means of new funding to the county, municipality, or school district to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed.

Tennessee (1978 constitutional amendment)

Article II, Section 24

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

Virginia

Section 15.2-2903, Code of Virginia

> § 15.2-2903. General powers and duties of Commission.
>
> The Commission shall have the following general powers and duties:
>
> 6. To receive from all agencies, as defined in § 2.2-128, assessments of all mandates imposed on localities administered by such agencies. The assessments shall be conducted on a schedule to be set by the Commission, with the approval of the Governor and the Secretary of Commerce and Trade, provided that the assessments shall not be required to be performed more than once every four years. The purpose of the assessments shall be to determine which mandates, if any, may be altered or eliminated. If an assessment reveals that such mandates may be altered or eliminated without interruption of local service delivery and without undue threat to the health, safety and welfare of the residents of the Commonwealth, the Commission shall so advise the Governor and the General Assembly;
>
> 7. To prepare and annually update a catalog of state and federal mandates imposed on localities including, where available, a summary of the fiscal impact on localities of all new mandates. All departments, agencies of government, and localities are directed to make available such information and assistance as the Commission may request in maintaining the catalog;

Section 2.2-113, Code of Virginia

> § 2.2-113. Temporary suspension of state mandates.
>
> A. The Governor may suspend, temporarily and for a period not to exceed one year, any mandate, or portion thereof, prescribed by any unit of the executive branch of state government on a county, city, town, or other unit of local government upon a finding that it faces fiscal stress and the suspension of the mandate or portion thereof would help alleviate the fiscal hardship.
>
> B. No application shall be made by the locality until approved by resolution of the governing body.
>
> C. At the time of application, the following information shall be published in the Virginia Register: (i) the name of the petitioning locality, (ii) the mandate or portion thereof requested to be suspended, (iii) the impact of the suspension of the mandate on the ability of the local government to deliver services, (iv) the estimated reduction in current budget from the suspension, and (v) the time period requested for suspension. Publication in the Virginia Register shall occur at least 20 days in advance of any suspension by the Governor.
>
> D. No later than January 1 of each year, the Governor shall submit to the General Assembly a report that identifies each petitioning locality, the mandate or portion thereof for which suspension was sought, and the response provided to the locality.
>
> E. Nothing in this section shall apply to the Department of Education.
>
> In making a determination of fiscal stress, the Governor may consider, but is not limited to, the following factors: any changes in anticipated revenue, income distribution of residents, revenue effort, revenue capacity, and changes in local population and employment levels.

Washington

Sec. 43.135.060, Revised Code of Washington

(1) After July 1, 1995, the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any political subdivision of the state unless the subdivision is fully reimbursed by the state for the costs of the new programs or increases in service levels. Reimbursement by the state may be made by: (a) A specific appropriation; or (b) increases in state distributions of revenue to political subdivisions occurring after January 1, 1998.

(2) If by order of any court, or legislative enactment, the costs of a federal or local government program are transferred to or from the state, the otherwise applicable state expenditure limit shall be increased or decreased, as the case may be, by the dollar amount of the costs of the program.

(3) The legislature, in consultation with the office of financial management or its successor agency, shall determine the costs of any new programs or increased levels of service under existing programs imposed on any political subdivision or transferred to or from the state.

(4) Subsection (1) of this section does not apply to the costs incurred for voting devices or machines under

Wisconsin

Sec. 79.058, Wisconsin Statutes: County mandate relief

(1) Ending with the distributions in 2003, each county is entitled to a mandate relief payment equal to the per person distribution under sub. (2) times the county's population for the year in which the statement under s. 79.015 is provided as determined under s. 16.96 (2).

(2) The per person distribution is determined by dividing the total amount to be distributed to counties from s. 20.835 (1) (f) by the state population for the year in which the statement under s. 79.015 is provided as determined under s. 16.96.

(3) The total amount to be distributed to counties under sub. (1) from s. 20.835 (1) (f) is:

(a) In 1994, $4,725,200.

(b) Beginning in 1995 and ending in 1999, $20,159,000.

(c) In the year 2000 and in 2001, $20,763,800.

(d) In 2002, $20,971,400, less amounts paid from the appropriation account under s. 20.855 (4) (rb), 2001 stats.

(e) In 2003, $21,181,100, less the reductions under s. 79.02 (3) (c) 3.

(4) Beginning in 2004, no county may receive a payment under this section.