



The Florida Senate

Interim Project Report 2000-24

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Committee on Comprehensive Planning, Local and Military Affairs

Senator Lisa Carlton, Chairman

REVIEW OF LEGISLATIVE STAFF GUIDELINES FOR SCREENING BILLS FOR MANDATES ON FLORIDA COUNTIES AND MUNICIPALITIES

SUMMARY

Local governments' expectations in reducing the number of mandates have not been fully met by Article VII, Section 18 of the State Constitution. This is apparent by the continuing stream of mandates passed since the constitutional amendment was enacted. However, when considered in light of its articulated purpose - to give local governments greater bargaining power on the subject of unfunded mandates and to protect local revenue sources - the provision reaches some level of success.

This report:

- C reviews the constitutional mandate restriction in Article VII, Section 18 of the State Constitution;
- C reviews Senate procedures for screening bills for mandates on cities and counties;
- C identifies related mandate screening issues; and
- C identifies the Legislative Committee on Intergovernmental Relations (LCIR) research on mandates.

This report also offers findings and legislative options for consideration.

According to the research by the Advisory Council on Intergovernmental Relations (or ACIR, now known as the Legislative Council on Intergovernmental Relations, or LCIR), Florida's Legislature enacted 362 mandates between 1981 and 1990, many of them unfunded. These mandates required Florida's cities and counties to manage growth, provide pension benefits, protect the environment, and otherwise take action to address various problems. The state mandates imposed in 1988 alone were estimated to cost local governments \$39 million. In response to pressure from local governments to curtail the enactment of mandate legislation, the Florida Legislature proposed an amendment to the state constitution that would restrict the imposition of mandates.

In 1990, the electorate approved Amendment 3, a constitutional amendment creating Article VII, Section 18 of the State Constitution. The intent of this provision is to give local governments bargaining power on the subject of unfunded mandates and to protect existing local revenue sources.

Article VII, Section 18, of the Florida Constitution

The mandate provision has two major components. First, it excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met; second, it prohibits the Legislature from enacting laws which reduce cities' and counties' revenue generating authority or level of state shared revenues unless certain conditions are met. This provision applies only to general laws, as opposed to special laws, affecting cities and counties. It does not apply to other local governments such as special districts or school districts.

SECTION 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.--

BACKGROUND

The Constitutional Mandate Restriction

In Florida, state "mandates" on local governments are generally defined in the State Constitution as general laws requiring counties or municipalities to spend funds, limit their ability to raise revenue, or to receive state tax revenue.

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

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

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

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

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

Section 18 is composed of five subsections:

- C (a) sets forth the limitation on laws requiring local governments to spend money and provides for exceptions that will allow their passage;
- C (b) sets forth limits on laws that reduce local government authority to raise revenues;
- C (c) limits legislation that would reduce local government's share of state taxes;
- C (d) sets forth the laws that are exempt from the first three subsections; and
- C (e) provides that the Legislature may enact implementing legislation.

Subsection (a) provides that counties and municipalities do not have to comply with general laws that require the expenditure of county or municipal funds unless the Legislature has "determined that such law fulfills an important state interest" and satisfies one of the following conditions:

- C the Legislature provides the funds "that have been estimated at the time of enactment to be sufficient to fund" the mandated activity or program;
- C the Legislature "authorizes or has authorized the county or municipality to enact a funding source not available to them before February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund" the mandate by a simple majority vote for the governing body;
- C the law passes by 2/3 membership of each house of the Legislature;
- C the expenditure is required to comply with a law that applies to all persons "similarly situated," including state and local governments; and
- C the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

Thus, subsection (a) sets out a two-part test that must be met by mandates that require local government expenditures. All mandates must fulfill an important state interest, and must additionally meet one of the five

conditions in order to effectively bind local governments to the general law. The condition that a mandate “fulfills an important state interest” has been easily met by inserting the words “this bill fills an important state interest” into the pending legislation. Outside of the legislative declaration, there is no formal process for arriving at this determination. How the courts will deal with this determination is currently unclear; however, it is likely that the courts will defer to the legislative declaration. See *Linscott v. Orange county Industrial Development Authority*, 443 So.2d 97 (Fla. 1983).

Subsections (b) and (c) of the provision prohibits, with some exceptions, the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority or aggregate percentage of state shared revenues as they exist on February 1, 1989. The principal exception to these prohibitions is if the Legislature passes such a law by 2/3 of the membership of each chamber. Mandates affecting state-shared revenues are exempted if they affect enhancements enacted after February 1, 1989, “state tax sources,” if the law is enacted during a declared fiscal emergency, or when offsetting revenues are provided for.

The use of the term “aggregate” is significant, since it clarifies that fiscal estimates will be made on the basis of all local governments grouped together, not just on the basis of the effect on one municipality or county. Also noteworthy is that subsection (c) places limits only on those laws reducing the percentage, rather than the amount, of state tax shared with local governments.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision. These exemptions include:

- C laws adopted to require funding of pension benefits existing as of 6/11/90;
- C criminal and election laws, and laws creating, modifying, or repealing non-criminal infractions;
- C general and special appropriations acts;
- C laws reauthorizing but not expanding then-existing statutory authority; and
- C laws having insignificant fiscal impact.

Finally, subsection (e) authorizes the Legislature to enact laws “to assist in the implementation and enforcement of this section.”

Representatives of the Florida Association of Counties and Florida League of Cities state that they are unaware of any local governments not complying with a state law because they determined it was enacted in violation of the constitutional mandate provision.

Senate Procedures for Screening Mandates

To ensure compliance with the constitutional mandate provision, the Senate developed a screening process to identify bills with potential mandates. Senate Rule 3.13 states, in part, that:

Upon being favorably reported by a standing committee, all general bills or joint resolutions affecting revenues, expenditures, or fiscal liabilities of state or local governments shall be accompanied by a fiscal note.

A fiscal note is an estimate of the fiscal impact on the affected entity. Fiscal notes are prepared by committee staff, typically with assistance from the agency or entity affected. To assist staff in preparing fiscal notes on bills affecting cities and counties, the LCIR developed the LCIR/Local Government Facsimile Network (FAXNET). With FAXNET, the LCIR is able to gather data quickly and efficiently with counties and municipalities representing various population sizes and geographical locations across the state.

Bills with fiscal implications for cities and counties are referred to the substantive committee dealing with local government issues. Senate Rule 4.8 requires, in part, that:

...All bills which are affected by the provisions of Article VII, Section 18, Florida Constitution shall be referred to the Committee on Comprehensive Planning, Local and Military Affairs. A bill that is amended to substantially affect expenditures or revenues as set forth in Article VII, Section 18, Florida Constitution shall, before being placed before the Senate for final passage, be referred along with all amendments to the ... Committee on Comprehensive Planning, Local and Military Affairs, as appropriate for review and recommendation to the Senate....

After passage of the constitutional amendment, both the Senate and the House of Representatives added a new section to the staff analysis to specifically address the mandate restriction. It appears as Section IV of the Senate Staff Analysis and Economic Impact Statement. If an accurate measure of costs to local governments cannot be determined, the notes will explain which of the other exemptions or exceptions may be applicable.

"3-8-3"
LOCAL MANDATE ANALYSIS PROCEDURE

Every general bill and amendment offered to a general bill, must be reviewed to determine if one of the three following CRITERIA are met. If "hooked" by one or more criteria, the bill must be reviewed for EXEMPTIONS which would "unhook" it. If not exempted, the bill must be reviewed for applicable EXCEPTIONS which would "unhook" it. See the accompanying analysis for substantive guidelines.

CRITERIA

IF:

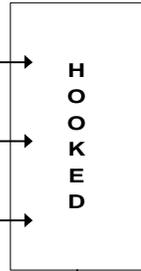
A. General Bill requiring cities/counties to spend money or take action that requires expenditure of money

OR

B. General Bill anticipated to reduce authority of cities and counties to raise total aggregate revenues over 2-1-89 levels

OR

C. General Bill reducing total aggregate city/county percentage share of a state tax below 2-1-89 levels

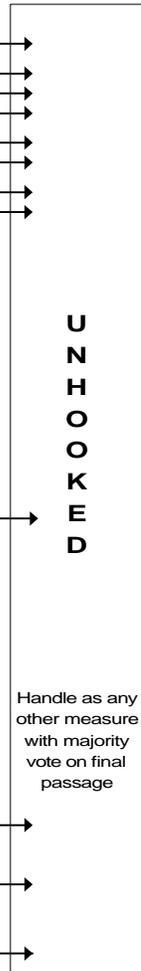


THEN

Determine if any EXEMPTION applies:

IF:

- 1. Funding of pre-1-8-91 pension benefits
- 2. Criminal laws
- 3. Election laws
- 4. General Appropriations Act
- 5. Special Appropriations Acts
- 6. Re-authorization (but not expansion of existing statutory authority)
- 7. Insignificant fiscal impact
- 8. Non-criminal infractions



IF: Still "hooked," determine if any EXCEPTION applies:

Criterion A: Applicable EXCEPTIONS

- 1. Legislature (not staff) formally determines an important state interest

AND

- 2. any one of the following:

- a. Estimated funds are appropriated to cover the mandate
- b. New, post 2-1-89, simple majority funding source provided locally
- c. Similarly situated persons are all required to comply
- d. Federal requirement

IF:

Still "hooked," under criterion A, the bill must be found to fulfill an important state interest and have a 2/3 vote of the membership of each house

Criterion B: Applicable EXCEPTIONS

There are no substantive exceptions
The bill must have a 2/3 vote of membership of each house

Criterion C: Applicable EXCEPTIONS

- 1. Post 2-1-89 enhancements to state tax sources

OR

- 2. Proclaimed fiscal emergency

OR

- 3. Revenue replacement anticipated to offset reduction in percentage share of cities/counties

IF:

Still "hooked," under criterion C, the bill must have 2/3 vote of the membership of each house.

As a tool to aid in the screening process, the “Local Mandate Analysis Procedure” matrix was developed (See “3-8-3” Local Mandate Analysis Procedure on page 4). This document serves as a quick reference to insure uniform application of the constitutional provision. Under this approach, each bill is reviewed by a substantive committee to determine if the bill can be classified as one of the following three types:

- C a general bill requiring local governments to spend money or take action requiring the expenditure of money;
- C a general bill anticipated to reduce local government authority to raise aggregate revenue; or
- C a general bill reducing the aggregate local government percent share of state-shared revenue.

If the bill can be classified as one of these three types of bills, staff must then determine if any of the subsection (d)’s eight exemptions apply. If any of the exemptions apply, the bill is deemed exempt. If no exemptions apply, staff must determine if any of the exceptions specified in subsections (a), (b), or (c) apply. While each type of mandate has specific exceptions, passage by 2/3 vote of the membership of each house of the Legislature, and a declaration of “important state interest” for subsection (a) mandates, is enough to overcome the constitutional restriction.

The screening process is further aided by “guidelines” issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell. Because the constitutional provision fails to provide important definitions and parameters, and the information is not provided by statute or joint rule, this guideline was determined to be necessary for assuring the constitutional restriction is uniformly applied between each chamber. In 1996, the House issued an updated version of the guidelines.

As previously stated, the constitution fails to define important terms referred to within the mandate provision. The 1991 “Guideline” defines the following terms in this way:

- C “Similarly Situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.
- C “Authority” applies to the power to levy a tax; the vote required to levy the tax; the rate which the tax

may be levied; and the base against which the tax is levied.

- C “Criminal Laws” are those laws defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors; laws relating to the processes of arrest and pretrial detention; laws relating to defense and prosecution; and laws relating to adjudication, sentencing, and implementation of criminal sanctions.
- C Insignificant Fiscal Impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents, which is \$1.5 million for FY 2000/01; the average fiscal impact, including any offsetting effects over the long term, is also considered.

Significantly, there have been no legal challenges to the legislative application of the constitutional provision.

LCIR Annual Compilation of Mandates

Since its inception in 1977, the LCIR has compiled annual reports identifying and explaining the effect of state mandates on municipalities and counties. For this report, the LCIR compared the number of mandates imposed by the Legislature on counties and municipalities both before and after the adoption of Amendment 3 in 1990. (See TABLE 1)

In the 1980's there were, on average, 36 laws enacted each year that contained mandates or revenue restrictions on counties and municipalities. The average between 1991 and 1998 was 48. (1999 totals have not yet been tallied.) Comparison between the decades is hindered by the new expanded definition of what constitutes a mandate or revenue restriction under the constitution. In addition, the actual fiscal impact of these mandates, and any corresponding offsetting provisions, are generally unavailable. For this reason, the comparative usefulness of the table is limited.

TABLE 1 also shows the number of laws enacted since 1991 that create newly or expanded existing revenues. These laws may not necessarily correspond to mandates or revenue restrictions imposed on local governments.

The LCIR’s annual reports also indicate that legislative staff may not be identifying all bills with mandates as they are progressing through the legislative process. In many cases, staff is entering “None” or “Not Applicable” in Section IV of the Senate Staff Analysis on those laws later identified by the LCIR as containing mandates. This

discrepancy may be due to different applications of the mandate restriction, or by staff’s failure to explain that a bill is an exception to or exempt from the mandate restriction when “not applicable” is entered in Section IV.

- C The constitutional mandate restriction is easily circumvented because of the extensive exceptions and exemptions in the constitution, and because the restriction can be overcome by a declaration of important state interest and a 2/3 vote of the Legislature.
- C The provision has resulted in new procedures for screening of mandates by legislative staff, and a heightened awareness by members, which increases deliberation by the Legislature on bills with mandates. In addition, representatives of counties and municipalities can and do use the restriction as a tool to thwart or delay legislative action on particularly onerous mandates.
- C There is no indication that counties and municipalities are not complying with mandates they determine to be in violation of the constitutional mandate restriction.

Table 1
Annual Listing of Laws With Mandates

Year	# of Laws w/ Mandates	# of Laws w/ Revenue Restrictions	Total	# of Laws Creating or Expanding Rv. Sources
1981	18	3	21	--
1982	9	7	16	--
1983	18	9	27	--
1984	24	7	31	--
1985	24	11	35	--
1986	32	12	44	--
1987	35	14	49	--
1988	43	22	65	--
1989	30	8	38	--
1990	27	9	<u>36</u>	--
			362	--
1991	16	5	21	12
1992	25	9	34	7
1993	31	15	46	21
1994	27	10	37	34
1995	34	16	50	32
1996	40	7	47	17
1997	53	20	73	10
1998	63	18	<u>81</u>	<u>11</u>
			389	144

Source: LCIR, 1999

METHODOLOGY

Staff reviewed the constitutional provision, the history of the issue, current mandate screening guidelines, and interviewed legislative staff. Staff also reviewed the LCIR’s annual reports on *Mandates and Measures Affecting Local Government Fiscal Capacity*.

FINDINGS

- C It has been almost ten years since the voters approved the constitutional mandate restriction. While there has been an increase in the number of unfunded mandates imposed on cities and counties in the 1990’s, it is difficult to assess the relative cumulative fiscal severity of these mandates between the decades.

RECOMMENDATIONS

While no action is necessary, the committee could consider the following actions:

- 1- Update the “3-8-3” Local Mandate Analysis Procedure Chart to include general definitions of key terms that are provided in the 1991 Guidelines.
- 2- Draft implementing legislation to require notification of noncompliance, requiring counties and municipalities to notify the Governor and Legislature that they have determined a law to be in violation of the constitutional mandate restriction and do not intend to comply with it.
- 3- Draft implementing legislation to require a notification of noncompliance and to define key terms in the constitutional provision, such as “criminal law” and “insignificant fiscal impact.”

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)
 Committee on Comprehensive Planning, Local and Military Affairs, 404 South Monroe Street, Tallahassee, FL 32399-1100,
 (850) 487-5167 SunCom 277-5167
 Committee on Fiscal Resource

MEMBER OVERSIGHT
 Senators Carlton and Myers