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MANDATE ABATEMENT ACTIVITY IN OTHER STATES

Over the last two decades, approximately one-third of the states have implemented programs directed specifically at the identification, control and reimbursement of state mandates. When legislation is proposed for a state mandates program, its usual objective is to control the creation of mandates and supervise their operation to avoid placing a glut of uncoordinated, unfunded requirements on local governments.

In 1972, California became the first state to enact state reimbursement provisions for certain types of state mandates. By 1978, the ACIR had prepared model legislation for states to use as a possible solution to local government complaints about unfunded state mandates. The following year, Illinois was the first to enact a state mandates law, based on the ACIR model. Since then, an additional 27 states have adopted their own versions, either through statutory enactment or constitutional provisions. Seven states have adopted both types of provisions.

Determination of which state mandates will be reimbursed and how reimbursement will be handled varies from state to state. For example, some states pay for increases in costs, while others pay for increases in service levels. There are states that pay for a mandate on a first-time only basis, while others continue to fund the mandate for its duration. Some exclude certain types of mandates from reimbursement; others reimburse all mandates.

Currently, 28 states have some type of mandate restraint program, established either by constitutional provisions, statutory provisions or both. Of the 28 states, 17 currently provide for the reimbursement of all mandates; nine provide for reimbursement of selected mandates; and Minnesota, Virginia, and Wisconsin do not address this issue. The extent of reimbursement may be full, partial, or a combination of the two.

Alabama. Under the Alabama constitution, no mandate can be enacted unless the local governing body (municipality or county) approves the legislation and the legislation provides new or additional revenues sufficient to fund new or increased expenditures.

Alaska. The Alaska constitution provides that the state legislature may not enact any law requiring funding by a local political subdivision, unless the law is approved by a majority of the electorate in that political subdivision.

California. California was the first state to institute major legislation reimbursing local governments for the costs incurred in providing new state-mandated services. This covered local costs that resulted from: 1) new state-mandated programs, 2) increased service levels mandated for existing programs, and 3) costs previously incurred in a local option program which subsequently was mandated by the state. The program covered mandates resulting from statutory changes or state executive regulations, but not those stemming from statewide initiatives or actions by the federal government or the courts, which local governments were permitted to finance by a change in tax rate. When a bill is introduced, the California Legislative Council decides whether it qualifies for reimbursement.

There is an appeals process against mandates that do not have state funding. Local governments can file a claim with the state's quasi-judicial appeals commission to determine whether the mandate should be reimbursable and to estimate the reimbursable cost. Commission-approved mandates are then submitted to the legislature for approval. If the commission rejects the claim of the local government, a final appeal is permitted to the courts.

> In an initiative election on November 6, 1979, the statutory provisions were incorporated into the California constitution**.** Exceptions were made for certain mandates, including legislative mandates requested by the local agency affected, legislation defining a new crime or changing an existing definition of a crime, and legislative mandates or executive orders or regulations initially implementing legislation which was enacted prior to January 1, 1975. According to the California Legislative Analyst, the purpose of the constitutional amendment is to allow local governments to seek a court order declaring a mandate unconstitutional if the jurisdiction has pursued all available administrative remedies for an unfunded mandate. ⁻

In 1980 the legislature enacted a "sunset" provision for state mandates. New laws which mandate a local program and require state reimbursement are automatically repealed after six years, unless reauthorized by the legislature.

Colorado. The Colorado Legislature instituted funding for state-mandated programs, beginning July 1, 1981, by requiring that all legislative actions that placed a new mandate on a unit of local government or expanded an existing program must provide for a sufficient state appropriation or a local source of revenue to cover the costs.

According to the ACIR, the Colorado statutory provisions . . . "may be more effective in eliminating hidden mandates than in guaranteeing state reimbursement . . . [because the law] provides lawmakers the alternative of stating explicitly that added costs shall be borne by property tax revenues subject to state and local revenue and spending limits."

Table 2: State Mandate Restraint Programs, By State State	Constitutional	Statutory	Year Enacted and/or Revised

Alabama	Amendments 474 & 491		1988
Alaska	Art. 2, Sec. 19		1959
California	Art. 13B, Sec. 6	1979	
Colorado	Art. 10, Sec. 20 (9)	Sec. 29-1-304, Colorado Revised Statutes	c: 1992; 1994 s: 1981; 1991
Connecticut		Sec. 2-32, General Statutes of Connecticut	1993
Florida	Art. 7, Sec. 18	Sec. 11.076, Florida Statutes	c: 1990 s: 1978
Hawaii	Art. 8, Sec. 5		1978
Illinois		Ch. 30, Sec. 805/1-805/10, Illinois Statutes Annotated	1979; 1981; 1993
Iowa		Ch. 25B, Iowa Code	1983; 1994
Louisiana	Art. 6, Sec. 14	1991	
Maine	Art. 9, Sec. 21	Sec. 5685, Maine Revised Statutes	c: 1992 s: 1993
Massachu-setts	Art. 115 of amendments	Ch. 11, Sec. 6B; Ch. 29, Sec. 27c, Massachusetts Annotated Laws	c: 1980 s: 1981; 1984
Michigan	Art. 9, Sec. 29	Sec. 21.231-21.412, Michigan Compiled Laws	c: 1979 s: 1979
Minnesota		Sec. 3.981-3.983, Minnesota Statutes	1985
Missouri	Art. 10, Sec. 21		1980
Montana	Sec. 1-2-112, Montana Code Annotated	1974; 1979	
Nevada	Sec. 354.599, Nevada Revised Statutes		1993
New Hampshire	Art. 28a		1984
New Jersey	Art. 8, Sec. 2		c: 1995
New Mexico	Art. 11, Sec. 8		1984
Oregon		Sec. 327.645, Oregon Revised Statutes	1989
Rhode Island	Sec. 45-13-9, Rhode Island General Laws	1980; 1987	
South Carolina		Secs. 4-9-55 and 5-7-310, South Carolina Code of Laws	1993
South Dakota		Ch. 6-15, South Dakota Codified Laws	1993
Tennessee	Art. 2, Sec. 24	Sec. 9-6-301 to 9-6-304, Tennessee Code Annotated	c: 1978 s: 1979
Virginia		Sec. 2.1-51-5:1, Virginia Code Annotated	Ás: 1991: 1993; 1994
Washington		Sec. 43.135.060, Revised Code of Washington	1979
Wisconsin		Sec. 79.058, Wisconsin Statutes	1994

Effective December 31, 1992, the Colorado constitution was amended to include the "Taxpayer's Bill of Rights", which stipulates 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 mandated expenses.

Connecticut. The Connecticut state mandate law, passed in 1993, was apparently based on the ACIR model. It provides for a definition of a state mandate, mandate categories, and a review procedure for possible cost reimbursement.

Connecticut defines a state mandate as "any state-initiated 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."

The categories of state mandates are local government organization and structure mandates, due process mandates, service mandates, interlocal equity mandates, tax exemption mandates, and personnel mandates.

Even prior to the 1993 law, proposed mandates had been subject to legislative scrutiny. Since January 1, 1985, any proposal reported by a joint standing committee that might create or expand a state mandate to local governments had to be referred to the joint standing committee responsible for appropriations and the state budget, unless referral was dispensed with by a two-thirds vote of the legislature. Legislative proposals favorably reported by the appropriations committee had to have a recommendation specifying: 1) whether or not the legislative proposal creates or expands a state mandate, and, if so, the type of mandate created; 2) whether or not the state should reimburse local governments for costs resulting from the new or expanded mandate; and 3) if so, which costs are eligible for reimbursement and the level and timetable for the reimbursement.

Florida. In Florida, state mandates are defined as those state actions that impose costs upon local government, either by causing erosion of the local tax base or by requiring the local unit to provide a service or facility. Florida requires that these mandates must be financed by the state.

Effective July 1, 1978, any laws passed by the Florida Legislature that mandate a municipality or county to perform an activity or provide a service or facility that would require additional local expenditures must include an estimate of the total cost and provide a means for financing it. When the legislature determines that a law serves both state and local objectives, the legislature may provide for local revenues to partially finance the activity. (If the expenditure of additional local funds is incidental to the main purpose of the law, state financing is not required.)

In 1990, Florida voters approved a constitutional amendment that protects local governments against the imposition of unfunded mandates. The amendment permits local governments to ignore a state law requiring them to spend funds unless: 1) the law was passed by two-thirds vote of both houses and 2) the legislature has declared the legislation fulfills an important state interest. If these two requirements are not met, the state must appropriate sufficient funds to pay for the mandate or provide a new local funding source.

There are some exceptions to this funding requirement, including laws that involve criminal and noncriminal infractions, funding of preexisting pension requirements, elections, appropriations, and reauthorizing (but not expanding) existing mandates.

Hawaii. The constitution of Hawaii was amended in 1978 to provide reimbursement for state mandates. Specifically, it requires the state to share in the costs of any new program or any increased level of service under an existing program when the change is mandated to any political subdivision by the legislature.

Illinois. Illinois adopted all the major provisions of the ACIR model when the legislature enacted the State Mandates Act, effective on January 1, 1981. The act includes several state mandate definitions based on the ACIR recommendations. State mandate is broadly defined as "any State-initiated 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. . ." The act classifies state mandates into five groups: 1) local government organization and structure, 2) due process, 3) service, 4) tax exemption, and 5) personnel.

Reimbursement levels are divided into three categories of mandates: service (50-100%), tax exemption (100%), and personnel and pension (100%). If the state fails to appropriate funds to cover the costs of the mandates, local governments are not obligated to implement them.

Certain mandates are excluded from reimbursement if they: 1) accommodate a request from local governments or their organizations, 2) impose no appreciable new costs, 3) impose new costs but create offsetting revenues, 4) impose costs that are recoverable from federal, state or other sources, or 5) impose an additional annual net cost of less than $1,000 for each of the several local governments affected or an aggregate of less than $50,000 for all local governments affected. The state can also release itself from the obligation of reimbursing local governments by amending the State Mandates Act, and it has used this release on nine occasions related to tax items.

The State Mandates Act did little to deter legislative passage of new requirements for local governments. According to a 1992 study by the Illinois Department of Commerce and Community Affairs, 326 new state mandates have been enacted since 1981. In November 1992, the Illinois voters approved an advisory referendum which has resulted in introduction of 1996 Senate Joint Resolution Constitutional Amendment 76, currently before a legislative committee. This proposal would amend the Illinois constitution to prohibit the legislature from adopting new unfunded state mandates. Should the amendment be passed by the legislature and approved by the voters as scheduled, it would apply to legislation introduced after November 5, 1996.

Iowa. The purpose of Iowa's state mandate statutory provisions, as established in 1983 and subsequently revised in 1994, is to establish policies, criteria and procedures to govern future state-initiated mandates. Commencing on July 1, 1994, if a new state mandate is not fully funded, the political subdivision is not required to perform the activity or provide the service. A state mandate is defined as activities that necessitate additional combined annual expenditures of local revenue of at least $100,000 or more, or additional combined expenditures of local revenue of $500,000 or more within five years of enactment. Cost estimates for legislation containing a

state mandate are required when requested. In addition, state agencies can not propose or adopt administrative rules which necessitate additional combined annual expenditures exceeding $100,000.

Louisiana. Under the Louisiana constitution, except for educational programs, no law or regulation that requires increased expenditures can take effect until the local governing body enacts an ordinance and the legislature provides sufficient funds.

Maine. The Maine constitution, supplemented by statutory law, provides that, commencing November 24, 1992, the state legislature may not require a local unit of government to provide additional expenditures for a specified program unless the law provides for 90% state funding. Mandates include "laws, rules or executive orders that primarily affect the performance of a local unit's governmental activities".

Massachusetts. In November 1980, the Massachusetts voters approved Proposition 2-1/2, a tax limitation initiative measure that amended the state's constitution to prohibit unfunded state mandates. This provision resulted in the creation of statutory law, effective January 1, 1981, related to legislative action that: 1) mandates direct service or cost obligations on cities and towns; 2) grants or increases local tax exemptions; or 3) imposes additional costs through administrative rules or regulations. Any law that does any of these must provide for state funding before being enacted.

The 1981 law attempts to protect cities and towns from mandates which impose more than incidental service or cost obligations upon local governments. However, any city or town may choose to submit to any law or administrative rule or regulation, whether it is state funded or not.

Michigan. Michigan voters in an initiative conducted on November 7, 1978, amended the state constitution to provide for state mandate cost reimbursement. As a result, the state is prohibited from reducing the proportion of expenses it covers for existing state mandates. A new state mandate or an increase in the level of an existing mandate, whether created by legislative or administrative action, must be accompanied by a state appropriation to reimburse local governments.

In 1979, the Michigan Legislature enacted statutory provisions to implement the constitutional change. These prescribed the powers and duties of certain state agencies and public officers with reference to state mandates and provided for the administration of state mandate financing.

Minnesota. In 1985, Minnesota enacted legislation defining a mandate as a requirement applied to "local agencies or school districts and which, if not complied with, results in civil liability, criminal penalty, substantial economic sanction such as loss of funding, or severe administrative sanctions such as closure or nonlicensure of a facility or program." The law requires fiscal notes when the state proposes that a local agency or school district take an action whereby "reasonable compliance" would result in increased costs. There is no statutory mechanism by which a local government can appeal lack of funding for state-created mandates.

Missouri. The Missouri voters adopted a constitutional amendment in 1980 to provide for state mandate funding. The Missouri constitution prohibits the state from reducing financial support for state-imposed mandates on local governmental units, and it prevents the establishment of additional mandates (new programs or additional services within an existing program) without full state funding. State mandate reimbursement is tied to revenue and expenditure limits as in California's constitution.

Montana. The statutory provisions for Montana's state mandate reimbursement, as established in 1974 and subsequently revised in 1979, provide that any law that requires a local governmental unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds must provide for a specific means to finance the mandate. Furthermore, if the legislature fails to provide specific financial means for a state mandate, the law mandating the service or facility does not become effective. The legislature may fulfill the financing requirements through additional state funding or by authorizing increased mill levies, but the financing must be reasonably related to the actual cost. Additional expenditures which are only incidental to the main purpose of the law are exempt from the funding requirement.

Nevada. Under the Nevada statutes, laws which direct local governmental action and
require additional funding must specify the source of the additional funding.

New Hampshire. As a result of a 1984 constitutional convention resolution, the State of New Hampshire adopted the following constitutional requirement for state reimbursement of mandate costs:

> 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 subdivisions unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities

are approved for funding by vote of the local legislative body of the political subdivision.

New Jersey. The New Jersey constitution, as amended by the voters in November 1995, prohibits the passage of any legislation after July 1, 1996, that would impose unfunded mandates on school boards and local governments. Specific exceptions are provided, however, for mandates that are: required by federal law; uniformly imposed on both government and nongovernment entities; enacted to revise or ease an existing mandate; necessitated by a failure to comply with previously enacted laws; or designed to implement provisions of the state constitution or of laws passed by 3/4s vote of both houses. A bipartisan Council on Local Mandates was established by statute to determine whether an unfunded mandate has been imposed. Legislation to implement the constitutional amendment is currently pending (1996 Senate Bill 2).

New Mexico. On November 6, 1984, the New Mexico constitution was amended to require the state to reimburse costs of mandated programs. It reads:

> A state rule or regulation mandating any county or city to engage in a new activity, 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. Because programs adopted by the legislature and various state and federal agencies have fiscal and revenue impact on school districts, the Oregon statutes require the state to pay, to the greatest extent possible, an appropriate share of expenses imposed on school districts by mandates.

Rhode Island. Since the early 1980s, under the general laws of Rhode Island, the state must reimburse cities and towns for the state mandate costs. Reimbursement is a three-step procedure:

1) The Department of Administration submits an annual report to the State Budget Office indicating, by city and town, the cost of all state mandates established after January 1, 1979.

2) The State Budget Office includes a line item appropriation in the annual state budget equal to the statewide total of the reported state mandate costs that must be reimbursed.

3) The state treasurer distributes the annual reimbursements to cities and towns for state-mandated costs in accordance with the Department of Administration's report.

South Carolina. State law in South Carolina 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.

South Dakota. Under South Dakota law, except for specific exemptions, no law, rule or regulation creating a mandate on a local unit of government is effective unless sufficient state

funding is provided. The exemptions pertain to conduct of elections; federal requirements; funding the unified judicial system and the welfare system; criminal law; and any law reauthorizing, but not expanding, existing statutory authority.

Tennessee. Under the Tennessee constitution, established in 1978, the state is prohibited from imposing increased expenditure requirements on cities or counties unless the legislature provides that the state share in the costs involved. The Tennessee statutes require that the legislature be given a certified listing of new spending increases within the meaning of the constitutional provision, broken out by incorporated municipality or county. The law also establishes a funding base, which is apportioned to local governments in the same manner as state-shared taxes.

A two-tiered procedure is used to meet the state mandate funding requirement when the cost of any law is estimated to exceed $50,000:

1) A fiscal note, prepared by the fiscal review committee, indicates whether the legislation imposes an increased expenditure requirement on cities and counties.

2) If it does, the legislation must be amended in committee to indicate the state share of the expenditure. Furthermore, the sponsor of the legislation must also introduce an amendment to the general appropriations act to fund the state share of the cost.

Virginia. Except for educational programs, the governor of Virginia is allowed by statute to temporarily suspend specifically identified state mandates. The governor is required to submit an annual report to the legislature that identifies each locality and petitioning body, the mandate or portion of the mandate for which suspension has been sought, and the response provided to the locality.

Washington. A Washington law, created by an initiative measure in 1979, provides for reimbursement of state-imposed mandates on local governments. The intent is to:

1) Establish a limit which will assure that the growth of state tax revenue does not exceed the growth rate of state personal income.

2) Assure that local governments are provided funds adequate to render those services deemed essential by their citizens.

3) Assure that the state does not impose responsibility for new programs or increased levels of service under existing programs on any taxing district unless the costs are paid by the state.

4) Provide for adjustment of the tax revenue limit when costs of a program are transferred between the state and another political entity and establish a procedure for exceeding this limit in emergency situations.