MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

APRIL 11, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum at 9:30 on Wednesday, April 11 in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exceptions of Senators Story, Rasmussen, Lockrem and Thomas.

Dennis Taylor, Staff researcher, was also present.

Chairman McCallum turned the chair over to to Senator O'Hara so that he could present the resolution.

CONSIDERATION OF SENATE RESOLUTION 38: Senator George McCallum of District 12, sponsor of Senate Resolution 38, gave a brief resume. This is a Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting assignment of a study of problems of state compensation to local governments for state-owned property and to begin to identify state mandates to local governments. Senator McCallum stated that this bill came about from a letter the Legislative Council received as did Senator McCallum from the National Conference of State Legislatures.

Bob Pearson, Research Director of the Legislative Council, reported on the letter from Mr. Tom Sutberry, of the NCSL , requesting grant proposals for state legislatures for up to $15,000.00. A letter was written on April 6th to the NCSL in which endoresements were to be enclosed. At that time, Senator Mathers suggested that perhaps a Senate Resolution would be very effective. And out of that conversation came, SJR 38.

Dan Mizner, of the League of Cities and Towns, stated his support of the bill. The concept of this will be an excellent program to work out some of the things that have been going piece meal.

Dave Goss, representing the City of Billings, stated that he strongly supports this study as it will eliminate some of the problems and really help the cities and towns.

With no further proponents, Chairman O'Hara called on the opponents. Hearing none, Senator McCallum made the closing remarks.

The meeting was opened to a question and answer period from the Committee. Discussion was held.

DISPOSITION OF SENATE JOINT RESOLUTION 38: A motion was made by Senator Watt that Senate Joint Resolution DO PASS, Seconded by Senator Peterson. Motion carried.

COMMENTS BY SENATOR WATT: Senator Watt reported to the Committee that Missoula area is not against subdivisions with news articles reporting that seven new subdivisions are now going in with more being considered.

ADJOURN: With no further business the meeting was adjourned.

George McCallum

CHAIRMAN, George McCallum

Date April 11

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
GEORGE MCCALLUM, CHAIRMAN	✓		
LLOYD LOCKREN, VICE CHAIRMAN			
MAX CONOVER	✓		
JESSE A. O'HARA	✓		
BOB PETERSON	✓		
A. T. (TOM) RASMUSSEN			
PETE STORY			
BILL THOMAS			
ROBERT D. WATT	✓		

Each Day Attach to Minutes.

SENATE

STANDING COMMITTEE REPORT

April 11 1979

MR. President:

We, your committee on Local Government

having had under consideration Senate Resolution Bill No. 38

Respectfully report as follows: That Senate Resolution Bill No. 38

DO PASS

GU.

STATE PUB. CO.
Helena, Mont.

Chairman, George McCallum Chairman.

4.115 State Compensation To Local Governments For State-Owned Property[1]

The extensive land and other property[2] holdings of federal and state governments have long been a problem for local governments since such holdings are generally exempt from state (in the case of federal holdings) or local property taxation.

Congress has waived intergovernmental tax immunity in some cases to permit direct taxation of certain federal activities or properties by local and state governments, but more frequently, has authorized federal payments to local governments in lieu of taxes.

State governments, likewise, hold substantial amounts of property largely exempt from local property taxation while requiring local governments to provide public services of one type or another to state-owned properties. For example, trash generated on, or by, state land or facilities must be disposed of by local public works or environmental agencies and state buildings and property must be provided local police and fire protection service.

In 1976, the Advisory Commission on Intergovernmental Relations (ACIR) surveyed the 50 states to determine their practices with respect to compensating local governments for the loss in tax revenues arising from state acquisition and ownership of real and personal property within those jurisdictions. The results of this survey are summarized below:

- Thirty-six states either make payments to local governments for state-owned property or allow local taxation of state property.
- Fourteen states neither provide compensation nor permit taxation.
- Financial payments for one or more categories of land are made in 33 states.
- Sixteen states allow local taxation of some type of state-owned land. Thirteen of these also provide one or more types of compensation payments.
- When states adopt payment programs or allow local taxation, they seldom provide for full coverage of all state property. In most cases, only a select category of property, such as forest land or parks, gives rise to a payment or is allowed to be taxed.

Most state compensation programs can be classified under three categories.[3]

1. Tax Equivalency. Twenty-one states have programs using assessed value and tax rate factors to determine the amount of payment. The broadest aid program of this type would set the payments equal to the taxes that would

[1] Deprived from ACIR, *The Adequacy of Federal Compensation for Federal Tax Exempt Land.* (forthcoming Commission Report, 1978).

[2] This model bill applies to real property but can be modified to cover personal property in states that tax personal property.

[3] Some states have more than one type of compensation program. Thus, totals will not add to the 33 cited above.

be received from the property if it were in private ownership. Few, if any, state programs completely match this description; that is, they do not attempt to pay full tax equivalency.

2. **Shared Revenue.** Eighteen states have programs which return a portion of the receipts the state earns from its property.

3. **Flat Per Acre Payment.** Seven states have programs which pay a fixed amount per acre of state-owned land.

Additionally, there are programs using other methods of compensation or a combination of the above methods.

When local governments are paid, a variety of factors are used to identify and delineate those properties entitling them to payments, including: use of the property; agency responsible for it; relative extent of the property in a locality; and services provided to the property. For example, state properties on which payments are sometimes made include state parks and forests, wilderness areas, highway interchange areas and future rights of way, recreation sites, office buildings, and educational institutions.

The legislation that follows provides for the establishment, maintenance, and periodical publishing of an inventory of state-owned property. The suggested legislation further provides three basic methods of compensation, each directed primarily to a broad category of state property.

The first method—service charges imposed upon state property holdings embracing both land and buildings—involves levying a variety of service charges of the same kind as may be imposed upon privately owned property, as well as certain other types of charges designed to approximate a portion of the local revenues expended in servicing the holding. They are most appropriate to institutions and other facilities comprised both of land and buildings. Such holdings usually require a range of local services not necessary in the case of undeveloped land. This section of the bill is from the Virginia code.[4]

The second approach is one of providing payments in lieu of taxes—a tax equivalency payment to those local governments in which state-owned land is located. The tax equivalency approach is most appropriate in cases in which the state holdings comprise undeveloped land. This section of the bill is drawn from Vermont and California statutes.[5]

The third approach—shared revenue—is most appropriate for land holdings that involve timber or mineral production. Using this approach, a percentage of the gross revenues obtained by the state agency administering the revenue producing land is allocated to the local government in which the land is located.

In the suggested legislation, the three compensation schemes are geared to the major types of holding for which a particular approach appears most appropriate (i.e., shared revenue for revenue producing property, tax equivalency for undeveloped land holdings, and service charges for improved properties involving land, buildings. In the legislation, compensation is also limited to the type of local government in which a particular type of property holding is *most likely* to occur. Compensation under the service charge approach is limited to those local governments actually providing the services specified. Compensation under the tax equivalency and shared revenue methods is limited primarily to county governments.[6] The model bill provides compensation to those local governments that are often required to service tax exempt state property, i.e., municipalities and counties. States may wish to use different combinations of compensation approaches and eligibility requirements for local governments depending on the prevalency and geographic distribution of major types of state-owned property, and the pattern of state-local financing of certain services, including elementary and secondary education.[7]

While a case can be made for direct local taxation of certain kinds of state property, the usual desire to reserve final determinations on financial commitments to the state argues against the inclusion of a direct tax option in the model legislation. Some states might, however, wish to consider such an approach.

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[4] *Code of Virginia*, Sec. 58-46.2. See also New York Legislative Commission on Expenditure Review, *The Optional Service Charge Law*, Albany, NY, March 1977.

[5] *Vermont Statutes*, Sec. 3656, California, Wests Ann. Rev. & I. Code, Sec. 38901, et. seq.

[6] The legislation does provide for the distribution of mineral rents and royalties among municipalities, counties, and school districts as is usually done with state severance tax revenues.

[7] See ACIR legislation on *State Mandates* for provisions governing state compensation for exempting new categories of property from taxation.

Section 1 states the short title of the act.

Section 2 sets forth the findings and purpose of the legislation.

Section 3 specifies (1) that any legislative or administrative action increasing the amount of state-owned property include a statement of the statewide policy objective to be furthered through such acquisition, an estimate of the loss of local tax revenues, and a statement of the extent to which state compensation for the loss of local tax revenues due to state property ownership would be appropriate; and (2) that to provide simplicity of administration and to preclude "double dipping," there be only one type of state compensation for each holding of state-owned property.

Section 4 requires a designated state agency, with local government assistance, to collect and maintain information concerning state-owned property, and to publish this information in a catalog every five years. The section also requires the designated agency to hear complaints on the compensation for state-owned property, and publish an annual report.

Section 5 authorizes local governments to impose service charges upon certain types of state real holdings, primarily improved land in urban settings. In the first part of the section the immunity of state property to local taxation is waived for purposes of imposing the service charge. Service charges include special property tax assessments, user charges based on volume of consumption, and an approximation at the amounts expended by local governments from their own revenue sources in providing services to the property. The types of services for which charges can be made include water, sewer, and other utilities, construction and maintenance of streets and water and sewer lines, collection and disposal of solid waste, police and fire protection, and optionally, public education. The total of all service charges is limited to a specified percentage of the ad valorem property tax that would be owed on the state property if not tax exempt. The ceiling prevents local governments from accumulating various kinds of charges that could equal or even exceed a full tax liability were the property not tax exempt.

Section 6 provides for a tax equivalency payment, or payment in lieu of taxes, to counties for large tracts of undeveloped state-owned land. State-owned land is to be assessed by the county assessor on the same basis as privately owned property of a similar type. In order to qualify for a tax equivalency payment, the assessed value of all other property in the county. The prevailing county tax rate is then applied to that portion above the minimum to determine the state compensation payment. No payment is made unless the amount due is greater than $500. The minimum percentage and minimum payment are included to eliminate situations where the state payment may be so small as to not justify the administrative costs involved.

Section 7 provides for the sharing of receipts from timber and mineral production occurring on state-owned properties. The timber revenues are provided to the county government while the mineral receipts are distributed to the county and school districts and municipalities in the county.

Section 8 sets forth a procedure for adjudication and appeal. The valuations of state-owned land assessed by county assessors are subject to review and correction by the state board of equalization or other property tax supervisory agency of the state in the same manner and degree as adjustments in the valuations of privately owned property. The affected local jurisdictions and state agencies may appeal valuations to the state assessment equalization agency.

Section 9 is an optional section providing for the legislature to appropriate funds for compensation payments and for a *pro rata* reduction in payments if the appropriation is less than the total due.

Sections 10 and 11 provide separability and effective date clauses, respectively.

[AN ACT TO PROVIDE STATE COMPENSATION TO LOCAL GOVERNMENTS FOR STATE-OWNED PROPERTY]

(Be it enacted, etc.)

SECTION 1. *Short Title.* This act may be cited as the "[*State*] Compensation to Local Governments for State-Owned Property Act."

SECTION 2. *Findings and Purpose.*

(a) *The* [*legislature*] finds that in some cases, state ownership of real property results in adverse intergovernmental fiscal effects upon local governments in this state. Among these effects are tax revenue losses, restrictions upon community development, and consequent fiscal hardship upon the local government and its residents.

(b) It is the purpose of this act:

(1) to provide for the collection, analysis, and publication of information on the extent and intergovernmental fiscal effects of property ownership by state government; and

(2) to establish policies, criteria, and procedures to govern the compensation of local governments for the loss of tax revenue attributed to property ownership by state government.

SECTION 3. *Specification of State Policy Objective.*

(a) Subsequent to the effective date of this act, any legislative, executive, or administrative action that has the effect of creating or enlarging amounts of state-owned property shall include, in addition to the estimated loss of local government property tax revenue from the acquisition of the property, a statement of the statewide policy objective to be furthered through such acquisition and the extent to which local governments are to be compensated by the state for loss of property tax revenues attributable to state-ownership of the particular property, as set forth in Sections (5), (6), and (7) of this act.

(b) There shall be no more than one type of state compensation payment for each holding of state-owned property.

SECTION 4. *Collection and Maintenance of Information Concerning State-Owned Property.*

(a) The [*department of community affairs*] [*state comptroller*] [*state taxation department*] [*or other designated state agency in the executive branch*] in consultation with the fiscal, revenue, or other officer of each affected local government shall be responsible for

(1) collecting and maintaining information on state-owned property within the respective local government boundaries, including a legal description of the properties, the assessed value of the properties

(c) Services for which charges against state-owned property may be imposed are:

(1) provision of water, sewer, and other utility services;

(2) debt service, or amortization, and maintenance costs for capital improvements that directly serve the property, including, but not limited to, street and sidewalk construction and improvement, water and sewer line construction to serve the property;

(3) collection and disposal of solid waste generated by, or on, the property;

(4) general police and fire protection services, and specialized police or fire services provided especially for the property;

[(5) public education;]

[(6) [*list other services*]].

Service charges shall not be applicable to [maintenance costs of roadways abutting the property and serving the general public in an unrestricted manner] [*list other exclusions desired*].

(d) Service charges for those services specified in subsection (c) of this section shall be computed, levied, and collected as follows:

(1) for those services for which a fee or user charge is normally levied against property in private ownership, a like fee or charge shall be levied against the state;

(2) for those services for which a special ad valorem property tax is normally levied against property in private ownership, a like levy shall be made against the state;

(3) for those services normally financed through general tax revenues, the service charge levied against the state shall be an amount equal to the amount the local government shall have expended in the previous year [from its own sources of revenues] [from local ad valorem property tax revenues] for providing such services, exclusive of any funds received from the U.S. government, state government, or any other source specifically for such service, multiplied by the ratio resulting from the division of the total assessed value of state-owned property in the taxing jurisdiction of the local government by the total assessed value of all property in the taxing jurisdiction of the local government.

(e) The service charges specified in paragraphs (1) and (2) of subsection (d) shall not exceed those levied for such services against property in private ownership.

(f) A service charge shall not be levied or collected if the cost of a service is covered by any other assessment, levy, charge, or financial arrangement between the local government and the state or any of its agencies or instrumentalities.

(g) The total of all service charges levied against a property holding of the state under this section shall not exceed [50%] [75%] [*other*] of the ad valorem property taxes that would be owed on the property holding to the local government levying such service charges were the property subject to such ad valorem taxes.[2]

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[2] Few, if any, states approach full tax equivalency

established on a basis comparable to that used by the local government in assessing other properties of a similar kind, the rates of tax otherwise payable on the properties each year, a statement of all income or rental payments stemming from the use of the properties, and any other information which may be required for effective implementation of this act;

(2) processing local government applications for reimbursement submitted pursuant to this act;

(3) hearing complaints from local or state agencies with reference to compensation for state-owned property; and

(4) reporting annually to the Governor, [*legislature*], affected state agencies, and local governments on the extent and amounts of state compensation for state-owned property.

(b) [12 months] following the effective date of this act, the [*state agency specified in subsection (a) above*] shall collect and tabulate the information required under Section 4(a)(1) and publish such information in a catalog. As new properties are acquired, or existing properties are disposed of by the state, the [*state agency*] shall record each change and the estimated impact on state and local tax revenues. A revised version of the catalog shall be published every [five] years beginning with the publication date of the first catalog.

[(c) The information contained in Section 4(a)(1) of this act shall be collected for [*specify federal government land holdings to be included*] and shall be included in the initial and subsequent versions of the catalog.]

SECTION 5. *Locally Imposed Service Charges on Certain Property Holdings.*[1]

(a) The provisions of this section shall apply to parcels of state-owned property consisting primarily of land and improvements thereon which receive the governmental services specified in subsection (c) of this section including, but not limited to, state offices, hospitals, institutions, schools, colleges, universitities, garages, inspection stations, warehouses, barracks and armories, together with abutting vacant land held for future development or used for the same purposes. The provisions of this section shall not apply to state-owned property used or held for future use for highway, bridge or tunnel purposes, excepting highway administration and maintenance purposes, agricultural purposes, timber or mineral production, open space, park or recreation uses, or to state-owned property which qualifies for another type of state compensation under this act.

(b) Notwithstanding the provisions of [*cite statute relating to exemption of state-owned property from local taxation*], the governing body of any local government providing one or more of the governmental services specified in subsection (c) of this section to one or more parcels of state-owned property of the type specified in subsection (a) is authorized to levy and collect a service charge upon the state or any of its agencies or instrumentalities as the owners of real property within its taxing jurisdiction.

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[1] The service charge approach is best suited for improved property primarily in urban settings. Compensation is limited to local governments actually providing the specified services.

SECTION 6. *Payment-in-Lieu of Taxes for Certain Property Holdings.*[3]

(a) The provisions of this section shall apply to parcels of state-owned property consisting primarily of undeveloped land including, but not limited to:

(1) state conservation areas including state forests, swamp land wildlife refuge areas, land held for open space, parks and recreation areas, wilderness areas, tidal and submerged lands;

(2) state prison farms;

(3) state agricultural experiment stations;

(4) lands being held for roads, airports, and other structure;

(5) abandoned state rights of way;

(6) land held in trust by the state; and

(7) land to which the state has acquired title because of tax delinquency.

(b) All state-owned land shall be assessed at fair market value, or such fraction thereof as applies to privately owned projects of a similar type by the [*assessor*] of the county wherein it is located, and such land shall be listed separately and apart from other property on [*the local tax roll*]. If a parcel of state-owned property is located in two or more counties the [*state property tax supervisory agency*] shall determine the proportion of the assessed value to be allocated to each county wherein the land is located.

(c) If the total assessed value of all state-owned property in a county is greater than [10%] of the total assessed value of all other property on the tax roll of such county, that portion greater than [10%] may qualify for a tax equivalency payment by the [*state agency designated in Section 4*] to the county in which it is located. The payment shall be the amount of tax that would be payable upon such portion if the portion were subjected to the ad valorem tax rate of the county for that particular year. No tax equivalency payment shall be made unless the amount due is greater than $500. Upon receipt of appropriate notification from [county official], the [*state agency*] shall transmit, subject to any required modification or corrections, the payment to the county [*treasurer*].

(d) On or before [*insert date*] of [each year] following the effective date of this act, the county [*assessor*] shall notify the [*state agency*] of:

(1) the assessment by fair market value, or appropriate fraction thereof, of the state-owned land located in the county;

(2) the local tax rate or rates applicable for the year; and

(3) the tax equivalency payment due for the year, based on the calculations set forth in subsection (c) of this section.

SECTION 7. *State Timber and Mineral Holdings --Shared Receipts with Local Governments.*[4]

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[3]The tax equivalency approach is best suited to large tracts of undeveloped land in unincorporated areas. Compensation is limited to county governments. Other local governments, such as school districts, could be included although the additional enrollment from such holding is probably minimal.

[4]The shared revenue approach is designed for timber and mineral producing properties. Revenues from timberlands are shared only with counties in the bill, but other local governments could be added.

(a) Any state department or agency owning timberland or leasing, controlling, or administering timberland owned by the state, shall pay to each county in which said timberland is situated an amount equal to [15%] of the gross proceeds from the sale of trees, timber, pulpwood, and any forest products from said timberland. Such funds shall, when received, be placed in the account of the [*county general fund*]. If said timberland consists of a tract situated in more than one county and the timber, trees, pulpwood, or forest products are sold, or cut, removed, and sold from the entire tract, then the percentage of gross sales as herein prescribed shall be divided among such counties in proportion to the total acreage of the particular tract located in each county.

(b) Any state department of agency administering forests or timberlands owned by the state, instead of sharing gross sales receipts with counties as provided in subsection (a) of this section, may elect permanently to subject such state forests and timberlands to county taxes assessed and levied on the same basis as privately owned lands and pay said taxes from revenues received by such departments or agencies to the county in which such forests or timberlands are situated.

(c) If minerals or mineral rights are covered by any permit or lease on lands held by the state [or by the state in trust for local governments], the rentals and royalties paid under any such permit or lease shall be distributed annually by the [*state agency*] on the first day of [*insert month*] as follows: [*insert percent*] to the [*general funds*] of the state, and [*insert percent*] to the respective counties in which the lands lie, to be apportioned among the governments located therein as follows: county, [30%]; municipalities, [25%]; and school districts, [45%].[5]

SECTION 8. *Adjudication and Appeals.*

(a) Valuations of state-owned lands by the [*county assessor*] pursuant to this act are subject to review and correction by the [*state board of equalization or other property tax supervisory agency*] in the same manner and degree as are valuations of privately owned property.

(b) The [*state agency*] and municipal and county governing boards shall have the same right of appeal from valuations set by the [*county assessor*] pursuant to this act are subject to any affected or interested individual pursuant to [*cite relevant statute concerning appeals from property tax assessments*].[6]

[*Optional Section*]

[SECTION 9. *Appropriation of Compensation Payments.*

(a) The [*state agency designated in Section 4*] shall include in its budget request the funds necessary for making the compensation payments required under Sections 5 and 6 of this act. If the funds

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[5]In most cases, the state-local division will be an arbitrary one imposed by the legislature in the light of various factors and considerations. The subcounty allocation to municipalities and school districts on the other hand, may be a statewide, uniform apportionment as provided in California, with all local units of the same type receiving the same percentage. Or, the legislature may prefer the subcounty allocation to be based on such factors as (1) unincorporated population and population of each constituent unit; (2) assessable property tax base of each jurisdiction; (3) "adjusted taxes" as used in the federal revenue sharing program; or a combination of these and other factors.

[6]See, *ACIR State Legislative Program, 3 State and Local Revenues*, 3.305 "Assessment Notification, Review, and Appeal Procedure," Washington, DC, U.S. Government Printing Office, November 1975, pp. 32-40.

appropriated in any year are less than the total of all compensation payments due under these sections, each compensation payment shall be reduced in the same proportion as the appropriation made is to the amount required for full payment.

(b) The [*state agency*] shall in accordance with [*cite administrative procedure act*] promulgate rules and regulations to govern the process for local governments to apply for state compensation under this act.]

SECTION 10. *Separability.* [*Insert separability clause.*]

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

4.116 State Mandates*

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

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

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

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

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

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

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

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

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

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

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

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

[1] *Constitution of the State of Alaska*, art. II, sec. 19, provides that "local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected." The constitution also forbids a political subdivision to contract a debt "unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question." *Constitution of the State of Louisiana*, art. VI, sec. 14, provides that "No law requiring increased expenditures for wages, hours, working conditions, pension and retirement benefits, vacation, or sick leave benefits of political subdivision employees, except a law providing for civil service, minimum wages, working conditions and retirement benefits for firemen and municipal policemen, shall become effective until approved by ordinance enacted by the governing authority of the affected political subdivision or until the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided." Art. II, sec. 24, of the *Tennessee Constitution* provides in part: "Laws imposing increased expenditures on local governments must provide method of funding, and, in case of bills of general application, provide state share in the cost."

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

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

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

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

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

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

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

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

Section 1 gives the short title of the bill.

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

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

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

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

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

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

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

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

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

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

Section 8 calls for the state agency charged with oversight of mandates to complete and submit to the Governor and the legislature, within three months of the publication of the catalog prescribed in *Section 4*, a review and report on mandates existing prior to the effective date of the act. This report is to include but not be restricted to matters relating to the history of the mandate, its costs, and extent of state reimbursement and whether the mandate continues to meet a statewide policy objective and whether reimbursement should be undertaken. The report is to include any other information or recommendations which the agency considers pertinent. The objective of this required review would be to highlight those mandates that no longer meet a current statewide policy objective, and at the same time to uncover mandates that continue to meet current statewide policy but need to be strengthened or changed if they are to be effective.

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

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

States having a general revenue sharing or per

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

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

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

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

(Be it enacted, etc.)

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

SECTION 2. *Findings and Purpose.*

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

(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 state-initiated specification of local government services, standards, employment conditions, and retirement benefits 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 actions needed to produce a consistent and equitable framework of state-local relations regarding mandated services, standards, and expenditures.

SECTION 3. *Definitions.*

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

(b) "State mandate" means 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, including any order issued by a state court except judgments in

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

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

(1) the form of local government and the adoption and revision of local government charters,

(2) the establishment of multicounty districts, councils of governments, or other forms and structures for interlocal cooperation and coordination;

(3) the holding of local elections;

(4) the designation of public officers, and their duties, powers, and responsibilities; and

(5) the prescription of administrative practices and procedures for local governing bodies.

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

(1) administration of justice,

(2) notification and conduct of public hearings,

(3) procedures for administrative and judicial review of actions taken by local governing bodies, and

(4) protection of the public from malfeasance, misfeasance, or nonfeasance by local government officials.

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

(f) "Service mandate" is 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 act, applicable services are

(1) elementary and secondary education,

(2) community colleges,

(3) public health,

(4) hospitals,

(5) public assistance,

(6) air pollution control,

(7) water pollution control,

(8) solid waste treatment and disposal,

(9) non-local public transportation, and

(10) [*other statewide or non-local services for which the state might be expected to establish levels or delivery standards.*]

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."

(g) "Interlocal equity mandate" is 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

(1) land use regulations,

(2) tax assessment procedures for equalization purposes, and

(3) environmental standards.

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

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

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

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

(1) salaries and wages,

(2) 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 of 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).

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

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

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

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

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

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

(3) hearing complaints or suggestions from local governments and other affected organizations as to existing or proposed state mandates; and

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. *Specification of State Policy Objective.*

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

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

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

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

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

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

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

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

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

[(c) [100%] of the loss in revenue of a local government directly attributable to a mandated classification or exemption of property for purposes of ad valorem property taxation enacted subsequent to the effective date of this act shall be reimbursed by the state. The loss of revenue does not include potential revenue from property of a type which was not being assessed and taxed on January 1, [*insert year in which this act is to be effective*].][5]

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

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

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[5]States may wish to provide total or partial reimbursement in case of mandated exemptions of business inventories (see ACIR, *State Legislative Program*, Vol. 3, M-94, *State and Local Revenues*, 3 107, pp. 49-52, Washington, DC, U.S. Government Printing Office, November 1975). See suggested legislation, *State Compensation Programs for State-Owned Property*.

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

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

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

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

SECTION 8. *Review of Existing Mandates.*

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

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

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

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

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

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

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

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

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

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

[(c) Any mandate not renewed, revised, or dealt with otherwise by the [*legislature*] shall terminate at the end of three years following the publication of the initial version of the catalog prescribed in Section 4(b).][7]

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

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

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

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

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

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

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

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

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

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

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

(b) *Reimbursement Estimation and Appropriation Procedure.*

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Reimbursement Application and Disbursement Procedure.*

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

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

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

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

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

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

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

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

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

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

(d) *Appeals and Adjudication.*

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

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

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

hours to the [attorney general; Governor.]]

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

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

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

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

[11]See AB 1563, California Assembly, 1977.

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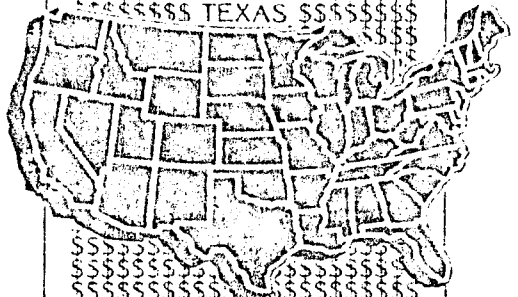

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State Selection

State legislatures interested in participating in the project must submit proposals for review by the project's advisory committee. Three states (New York, New Hampshire and Massachusetts) have been selected for technical assistance during the first six months of 1979.

Questions should be directed to Ken Kirkland, director (Denver office) or Joy Johnson, research assistant (Washington office).

Funding is provided by the Department of Housing and Urban Development (HUD) as part of its Local Government Financial Management Capacity Sharing Program. ACIR is coordinating the state component of the overall HUD effort.