

## APPENDIX C

### A BRIEF EXPLANATION OF THE “STATE MANDATE” LAW

The Constitutional Amendment prohibiting unfunded state mandates applies to cities, towns, plantations, counties, school units and other local governmental entities that are established under legislative authority to perform a public function and are funded by local revenues and administered by governing bodies that are responsible to the public. The State may not impose any law, rule or executive order requiring a local unit of government to expand or modify its actions in a way that primarily affects that unit's performance of its governmental functions and that directly results in new spending from local revenues by that unit of government.

If the State does impose a mandate without the approval of 2/3 of both Houses, it must fund at least 90% of the new local costs. The State may not meet its funding obligations by requiring a local unit of government to use funds previously appropriated to the unit for another purpose or by authorizing new local taxes or fees to be raised. The State may reduce or eliminate existing mandates that result in savings to local units and, in effect, use those funds to provide funding for new mandates. State actions to comply with federal requirements need not be funded by the State, except to the extent that the State's requirements exceed the federal requirements.

In each fiscal year, a local unit of government must receive the required state funding prior to implementing a mandate or it is not obligated to conform to the mandate. State agencies must develop mandate payment distribution schedules for each mandate they administer. The schedules are designed with local input to periodically pay local units the costs of complying with mandates prior to incurring the additional costs.

When analyzing whether a law, rule or executive order represents a state mandate according to the Maine State Constitution, Article IX, §21, and the implementing statutory language in 30-A M.R.S.A., §5685, two questions must be asked.

1. Does this law or rule require a local unit of government (see attached list of qualifying local governmental units) to take some action or perform some function? A state mandate must require a local unit of government to expand or modify their activities.
2. If the law, rule or executive order does require some action, does that requirement result in direct costs to any local unit of government?

**Based on OFPR’s understanding of the law and the guidance OFPR and the legislature have received from the Office of the Attorney General, mandates include the following:**

- **Bills introduced on behalf of local units of government** are mandates, despite being initiated and favored by the local units, if those local units are required to do something that requires additional expenditures, such as hold a special election.
- **Bills generating revenue at the local level or net savings in aggregate** are mandates if they include any requirements that may result in any local unit of government incurring additional costs to implement.

- **Bills establishing a new state requirement that all or some municipalities may already have implemented or bills prohibiting cuts in programs** are mandates even though many local units may be in compliance.

**Mandates do not include the following:**

- **Bills of general applicability**, such as bills that affect employers generally or environmental regulations that are not directed at operations specific to local units of governments, are not state mandates because they do not “primarily affect” a local unit’s governmental activities.
- **Bills setting new standards for discretionary programs**, such as bills that require local units of governments to perform certain activities if those units choose to implement a particular program, are not state mandates because they do not actually require those local units of government to do something.
- **Bills adding new crimes or enhancing the class of certain crimes** are not state mandates because enforcement at the local level is discretionary and the laws are not directed specifically at local units of government.
- **Bills reducing state subsidies** are not state mandates because reducing state subsidies alone does not actually require local units to expand or modify their activities.
- **Constitutional Amendments** are not state mandates because they are not “enacted” by the legislature; they are submitted to the voters. If approved by the voters, a new constitutional amendment would have equal weight in the eyes of the court as the constitutional amendment prohibiting state mandates.

### **Cost Estimation of Mandates**

The Office of Fiscal and Program Review is the agency solely responsible for preparing all fiscal notes on bills and amendments introduced before the legislature. Since fiscal notes should identify state mandates and estimate the cost, the Office of Fiscal and Program Review, by implication, is responsible for identifying and estimating the cost of mandates.

Some issues related to cost estimation of mandates include:

- **Net costs versus component costs.** Since local revenues generated by a bill may not be counted to offset the cost of a mandate and some local savings generated by a bill may not be eligible to offset the cost of a mandate, the fiscal impact of a mandate must be evaluated by each individual requirement or component. The State is allowed, however, to repeal an existing mandate and use the savings to fund the imposition of a new mandate.
- **Funding of existing programs.** If a mandate applies to an existing activity of some local units of government but a new activity for other units, the state must fund 90% of the cost to those units that already have implemented the required activity as well as those units that have not implemented the required activity.

- **Timing of Funding.** The timing of the costs to be incurred by local units of government is also very important. The constitutional amendment and implementing statutory language require the establishment of a payment distribution schedule for each funded state mandate so that payments are received by a local unit of government prior to that unit incurring the additional expenditure.

### **Rules and Executive Orders**

Executive Orders and minor technical rules that propose new “mandates” on local units of government are not voted on by the legislature; consequently, there are limited options with respect to funding the new mandate. If the rulemaking was authorized or required by a bill or resolve and that legislation included a mandate preamble, the exemption from the funding requirement provided by the mandate preamble and the 2/3’s vote of the legislature is extended to the rules adopted pursuant to the exempted law. However, if a law authorizing rulemaking did not include a mandate preamble, the only method to exempt a rule with a new mandate from the funding requirement is to add a mandate preamble to the resolve indicating approval by the legislature of the “major substantive” rule or to submit the rule or executive order to the legislature as a bill or resolve with a mandate preamble for a 2/3’s vote.

### **Local Units of Government Covered by the “State Mandate” Law**

A Local Unit of Government, for the purposes of the “State Mandate” Law, means any city, town, plantation, county, school administrative unit or governmental entity that is:

1. Created or authorized by special act of the legislature;
2. Established to provide public services;
3. Funded by local revenues;
4. Governed by a locally elected body or a body appointed by a municipality or county; and not an agency of State Government or other entity having statewide authority, jurisdiction or purpose.

Therefore, Local Units of Government include but are not limited to the following:

- All cities and towns;
- Counties;
- Plantations;
- School Administrative Units;
- Water Districts; and
- Sewer Districts.

Local Units of Government do not include the following:

- The Unorganized Territories;
- The University of Maine System;
- The Maine Maritime Academy;
- The Maine Technical College System;
- The Maine State Retirement System; and
- The Maine Turnpike Authority.