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Background Brief on ...

Local Mandates

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Background

The 1995 Legislature referred a constitutional amendment to the voters requiring the state to pay local governments for costs of implementing state-mandated programs under certain conditions. Ballot Measure 30, known as the “unfunded mandate” law, was passed by the voters in November 1996 and took effect the following month. The original constitutional amendment included a sunset of the local mandate requirement on June 30, 2001, unless the law was reaffirmed by the voters at the 2000 General Election. The 1999 Legislature subsequently passed Senate Joint Resolution 39, which referred to the people a measure to eliminate the sunset and continue the local mandate law. The voters reaffirmed the local mandate requirement in November 2000. The full text of the local mandate law is encapsulated in Article XI, Section 15, of the Oregon Constitution.

Requirements

The local mandate law requires the state to fund future mandates on local governments. Without such funding, local governments are not required to comply with the mandates unless they are passed by a three-fifths vote of each house of the Legislature or are otherwise exempt (see below). The law applies to any measure passed by the Legislature that requires a local government to establish a new program or provide an increased level of service for an existing program. If such a measure imposes a cost to the local government and the Legislature does not provide an appropriation or allocation as reimbursement for the costs of the new program or the enhancement to an existing program in each succeeding year, the local government is not required to comply. To ensure compliance, the Legislature must provide an appropriation to cover at least 95 percent of the usual and reasonable costs incurred in conducting the program at the same level of service in the preceding fiscal year.

The law also has a separate provision that requires a three-fifths vote of each house of the Legislature to reduce state shared revenues to local government below specific aggregate 1996 distribution levels. State shared revenues are highway use, liquor, cigarette, and 9-1-1 emergency telephone taxes.

For purposes of the local mandate law, local government is defined as a city, county, municipal corporation, or municipal utility operated by a board or commission. This definition includes most special

districts, but excludes school districts and community colleges. Programs are defined as activities or projects under which a local government must provide administrative, financial, social, health, or other specified services to persons, government agencies, or to the public generally. Programs include those enacted by the Legislature by law and those imposed by rule or order of a state agency. An existing program is a program enacted by legislation prior to January 1997.

Exemptions to the Law

Besides being passed by a three-fifths vote of each chamber of the Legislature, other exemptions exist to the requirement that the Legislature fund the costs of local government mandates. Local government compliance is required and state funding is not required in any of the following cases:

- If the costs of the measure result from creating or changing the definition of a crime
- If the requirements of the measure are imposed by the judicial branch
- If the requirements were enacted by voter approval under an initiative or referendum
- If the required program is intended to inform citizens about the activities of local government
- If the required service or program is established pursuant to action of the federal government

If none of these exemptions apply, the Legislature has the option of identifying and directing the imposition of a fee or charge to be used by local government to recover the actual costs of the program. If there is no fee authorized, a determination must be made on whether the measure requires a local government to spend more than .01 percent of its annual budget to implement the program. If the budget standard is met, the Legislature is then required to appropriate revenue to pay for the cost of the program or the local government does not have to comply with the measure's requirements.

Legislative Measure Analysis

Fiscal Impact Statements prepared by the

Legislative Fiscal Office (**LFO**) on measures under consideration by the Legislature include an estimate of a measure's cost to local government, if information is available to make such an estimate. Since each individual unit of local government may need to make a separate determination on its need to comply with a measure, the LFO estimate is generally provided in aggregate, i.e., for all cities, or for all counties. However, to the extent unique information is available for individual cities or counties, that data will be included in the Fiscal Impact Statement.

For measures that potentially reduce aggregated state shared revenues, Revenue Impact Statements prepared by the Legislative Revenue Office (**LRO**) include estimates of the measure's revenue effect on local governments. Under the local mandate requirements, the revenue estimates are compared to the aggregate revenue distributed during the last distribution period of 1996.

Arbitration

If a local government determines that it has spent money to conduct a program that is a local mandate and has not received reimbursement from the state, the local government can submit the issue of reimbursement to non-binding arbitration by a panel of three arbitrators. The panel consists of one representative each from the Department of Administrative Services, the League of Oregon Cities, and the Association of Oregon Counties. The panel decides whether the usual and reasonable costs incurred by the local government are required to be reimbursed and the amount of reimbursement. The panel's decision is not binding and is not enforceable by any court in the state. To date, this process has not been used.

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