

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1546

H. P. 1234

House of Representatives, March 28, 1979

On Motion of Mr. LaPlante of Sabattus, referred to the Committee on Local and County Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owl's Head.

Cosponsors: Mr. Drinkwater of Belfast, Mr. Nelson of Roque Bluffs, and Mr. Cloutier of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Require the State to Partially Reimburse Municipalities for Functions
which the State Requires of Municipalities.**

Be it enacted by the People of the State of Maine, as follows:

5 MRSA c. 142 is enacted to read:

CHAPTER 142

LOCAL FINANCIAL PROTECTION ACT

§ 1530. Purpose

The purpose of this Act is to require the State to reimburse every municipality, school administrative unit and county for at least 50% of the additional cost for state mandated activities imposed after January 1, 1980.

§ 1531. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. **Commissioner.** "Commissioner" means the Commissioner of Finance and Administration.

2. **Cost mandated by an initiative enactment.** "Cost mandated by an initiative enactment" means an increased cost incurred by a local unit on or after January 1, 1980, which is mandated by a statute enacted pursuant to an initiative petition, but only to the extent that the increased cost is not specifically reimbursed or funded by the terms of the initiative enactment.

3. **Court mandated costs.** "Court mandated costs" means an increased cost incurred on or after January 1, 1980, by a local unit in order to comply with a final court order, except a cost incurred as a result of a judgment in an eminent domain proceeding or a cost incurred in order to comply with a final court order mandating specific performance or awarding damages as a result of nonperformance of a contract or agreement. If a final court order or decision interprets that state law or state directive and the court interprets that state law or state directive as imposing a state mandate, the final court order or decision shall be considered to be a state mandate and not a court mandated cost.

4. **Local government.** "Local government" shall mean any municipality, school administrative unit and county.

5. **Mandated property tax revenue reduction.** "Mandated property tax revenue reduction" means a mandatory exemption of property from taxation or a mandatory reduction in the percentage of true cash value upon which assessments are determined, which exemption or reduction reduces the amount of revenue that would have been derived by a local unit if the exemption or reduction had not taken effect.

6. **Mandated reduction in state shared revenues.** "Mandated reduction in state shared revenues" means an exemption from or a change in the rate or base of a state tax which reduces the amount of revenue for distribution to local units below the amount of revenues which would have been distributed from that tax source if the exemption or change had not taken effect.

7. **State directive.** "State directive" means a rule or other administrative action by the Governor or by a state official or agency.

8. **State mandate.** "State mandate" means a state mandated cost or a state mandated local revenue loss.

9. **State mandated cost.** "State mandated cost" means a cost, financial obligation or expenditure which a local unit incurs as a result of any of the following:

A. A state law, the administration, implementation or interpretation of which operates to mandate on or after January 1, 1980, a new obligation, requirement or program, above the level required before January 1, 1980; or

B. A state directive, the administration or implementation of which operates to mandate on or after January 1, 1980, a new obligation, requirement or program, or an increase in the level of prior obligation, requirement or program, above the level required before January 1, 1980.

10. **State mandated local revenue loss.** "State mandated local revenue loss" means a state law or state directive which takes effect on or after January 1, 1980, and causes a reduction in a revenue to a local unit as a result of a mandated reduction in state shared revenues or a mandated property tax revenue reduction.

§ 1532. Appropriation and distribution of funds

The Legislature shall annually appropriate an amount sufficient to reimburse local units for at least 50% of the additional cost of each state mandated cost and each state mandated local revenue loss imposed by legislative or executive action after January 1, 1980, in accordance with this Act and if not otherwise excluded under section 1533.

The Governor shall include in the budget submitted to the Legislature an amount the Governor determines shall be required to provide full funding for state reimbursement required by this Act for the fiscal years for which the budget is submitted, and shall set forth a specific amount recommended for each identified state mandate.

If the amount appropriated by the Legislature is insufficient to fully fund reimbursement for any state mandates as required by this Act, the commissioner shall prorate the amount appropriated among the recipient local units which are eligible for reimbursement for that state mandate proportionate to the amount of their eligibility. The Governor shall recommend a supplemental appropriation bill to the Legislature for the amount required for full reimbursement.

The Department of Finance and Administration shall administer this Act and shall assign sufficient personnel to administer it. The department shall adopt rules and furnish forms for submitting claims by local units pursuant to this Act.

§ 1533. Reimbursement not required

The following do not require state reimbursement under this Act, whether or not they constitute a state mandate:

1. **Determination.** A final determination as to the state equalized valuation of taxable property situated in a local government, even though the final determination may have the effect of reducing the local government's property tax revenues or level of assessments;

2. **Disclaimer.** A state law or state directive which contains an expressly stated disclaimer indicating that reimbursement is not required for a state mandated cost or state mandated revenue loss contained therein because the law or directive does not impose new or additional duties or new or additional costs upon a local unit, or because the state law or state directive will result in offsetting savings to a local government to an extent that, when existing duties of a local unit are considered, the mandate will not result in identifiable or significantly adverse cost changes for a local unit;

3. **Minor revenue loss.** A state mandated cost or state mandated revenue loss which the commissioner determines to be minor or inconsequential and determines that the cost of identifying, requesting, providing and receiving reimbursement would exceed the reimbursement itself;

4. **Costs mandated by an initiative enactment.** Costs mandated by an initiative enactment; or

5. **Court mandated costs.** Court mandated costs.

§ 1534. Legislative procedure

Before the introduction of a bill in the Legislature, the Legislative Finance Officer shall determine whether the bill proposes a state mandate. The determination shall be printed as a fiscal note inserted above the statement of fact of the bill when the bill is introduced.

In making a determination under this chapter of whether a state mandate is contained in a bill, the Legislative Finance Officer shall disregard a disclaimer provision in the bill or any other provision which would make inoperative the reimbursement requirements of this Act, and shall make his determination irrespective of the disclaimer or other provision.

If the Legislative Finance Officer determines that a bill proposes a state mandate, he shall prepare an estimate of the full amount of reimbursement which would be required. The estimate shall be prepared for any committee to which the bill is referred, including a conference committee, and copies of the estimate shall be sent to the committees which consider taxation measures and appropriation measures.

The estimate required by this section shall include the amount estimated to be required to reimburse local government for the state mandated cost or the state mandated local revenue loss mandated by the bill during the first 2 fiscal years of the bill's operation.

If a bill, which upon introduction was determined not to contain a state mandate, is amended on the floor of either House, in a manner as to propose a state mandate, the Legislative Finance Officer shall immediately inform, respectively, the Speaker of the House and the President of the Senate of that fact. The notification shall immediately be printed in the journal of each House of that Legislature.

When a committee of the Legislature, including a conference committee, reports a bill upon which a determination of the existence of a state mandate has been made by the Legislative Finance Officer, the committee shall include in its report a statement as to the estimated amount of reimbursement the bill would require as determined by the Legislative Finance Officer.

When a committee of the Legislature, including a conference committee, reports a bill upon which the Legislative Finance Officer has determined that a

state mandate does not exist, and the committee determines that the bill as recommended by the committee proposes a state mandate that requires reimbursement under this Act, the committee shall prepare a statement to that effect, including an estimate of the amount of reimbursement required.

§ 1535. State agency directive

The commissioner shall by rule furnish guidelines to all state departments and agencies for the purpose of identifying state mandates contained in a state directive before the directive is issued, whether in writing or otherwise.

The guidelines shall:

1. **Review of mandates.** Provide for a review by the commissioner of all state mandates contemplated by a state directive before the directive is finally issued, except in emergency situations. The guidelines may also require concurrence by the commissioner before the inclusion of a state mandate within a state directive;
2. **Agency budget request.** Require inclusion in the agency's budget request the amounts necessary to provide full state reimbursement for state mandates to be contained in a state directive; and
3. **Copy.** Require a copy of every final state directive which includes state mandate requiring reimbursement under this Act to be sent to the commissioner by the department or agency which issues the state directive and to be accompanied by a request for a supplemental appropriation of the reimbursement funds for the state mandate or, alternatively, a request that the required reimbursement funds be included in the Governor's budget recommendations.

§ 1536. Reimbursement to local government

The Department of Finance and Administration shall allocate and cause to be paid to each local unit for state mandates from funds appropriated for that purpose as provided in this section.

Not later than October 1st of each year, each local government shall submit to the commissioner a claim for reimbursement for the fiscal year ending June 30th immediately preceding. The claim shall include whatever supporting information is requested by the commissioner.

The commissioner may review the records of a local unit to verify the actual amount of the state mandated cost or state mandated local revenue loss incurred. A local government shall provide whatever additional information is requested by the commissioner in support of the claim. The commissioner may reduce a claim which he determines is excessive or unreasonable, and shall adjust the payment to correct for an underpayment or overpayment which occurred in the previous fiscal year.

If the amount appropriated for reimbursement purposes is not sufficient to pay all of the approved claims for reimbursement, the commissioner shall prorate claims in proportion to the dollar amount of approved claims timely filed and on

hand at the time of proration. If the commissioner finds it necessary to prorate claims, he shall immediately report this to the Governor and to the President of the Senate and the Speaker of the House.

The commissioner shall adjust prorated claims if supplementary funds are appropriated for that purpose.

The Treasurer of State, upon certification by the commissioner, shall immediately pay all reimbursements directly to the appropriate local government.

§ 1537. Local Government Claim Review Board

The Local Government Claim Review Board is created in the Department of Finance and Administration and shall advise the commissioner on the administration of this Act and shall perform other duties as required by this section.

The board shall consist of 5 persons appointed by the Governor. Each member shall be appointed to serve for 3-year terms or until a successor is appointed, except that the members first appointed, 2 shall be appointed for terms of 3 years, 2 shall be appointed for terms of 2 years and one shall be appointed for a term of one year. Not less than 2 of the members shall be representatives of local governments. The board shall be paid a per diem and expenses at the same rate as is paid to Legislators. The board shall hear and decide upon disputed claims or upon an appeal by a local unit alleging that the local unit has not been reimbursed for all costs or losses incurred due to a state mandated local revenue loss or a state mandated cost. The board shall not consider or approve a claim for an amount less than \$50. A vote of a majority of the board members appointed and serving shall be required to sustain a claim submitted to the board.

The board shall adopt procedures for receiving claims under this section and for providing a hearing on a claim if a hearing is requested by an affected person, local unit or agency. The procedures shall provide for the presentation of evidence by the claimant, the Department of Finance and Administration and any other affected department or agency.

An appeal submitted under this section for reimbursement of a state mandate shall be limited to the following:

1. Appeal; incorrect reduced payments. An appeal alleging that the commissioner has incorrectly reduced payments to a local unit pursuant to section 1536 or incorrectly made a determination under section 1533, subsection 3; or
2. Appeal; incorrect specification. An appeal alleging that a state directive incorrectly specified that it does not involve a state mandated cost.

In deciding upon an appeal, the board, after reviewing the evidence presented to it, may approve, increase or reduce the amount requested by the claimant or may disallow the claim.

By January 31st of each year, the board shall report to the Legislature on the number of claims it has allowed on appeal pursuant to this section. Immediately upon receipt of the report, a local government claims bill shall be introduced in the House of Representatives by the House chairman of the committee that considers appropriations. The local government claims bill, at the time of its introduction, shall include an appropriation sufficient to pay all claims approved by the board pursuant to this section during the preceding calendar year.

Upon the appropriation of an amount to pay the approved claims, the commissioner shall cause the claims to be paid to the appropriate local units.

§ 1538. Miscellaneous provisions

Reimbursement funds received from the State by a local government under this Act may be used for any lawful purpose.

If a local government, at its option, has been incurring costs which are subsequently mandated by the State, the State shall reimburse the local government for the state mandated costs incurred after the effective date of the state mandate in the same manner as if the local government had not been incurring the costs before the state mandate.

§ 1539. Report

After the end of each calendar year, the commissioner shall review all statutes enacted during the calendar year which require reimbursement under this Act, contain disclaimers or other provisions making inoperative the reimbursement provisions of this Act, have resulted in costs or revenue losses mandated by the State which were not identified before the statute was enacted, or were the subject of a determination under section 1533, subsection 3. The review shall identify the local government costs involved in complying with those statutes. Not later than March 1st, the commissioner shall submit to the Governor and the Legislature an annual report of the review required by this section, together with recommendations the commissioner deems appropriate to carry out the intent of this Act.

STATEMENT OF FACT

The purpose of this bill is to require the State to reimburse every municipality, school administrative unit and county for 50% of the additional cost for state-mandated activities imposed after January 1, 1980.

The reimbursement requirement extends to costs imposed upon local government as a result of legislative or executive branch action, and includes costs resulting from state mandated local revenue loss. Reimbursement is not required for final determination as to state equalized valuation of taxable property; legislative or executive actions imposing costs which are offset; inconsequential costs or revenue losses; costs mandated by initiative enactments; and certain court mandated costs.

A procedure is established to assure consideration of state mandates during the legislative process.

Under the reimbursement procedure, once a state mandate is enacted, a local government submits a claim to the Commissioner of Finance and Administration. The claim is to be submitted by October 1st for the fiscal year ended the previous June 30th. The commissioner then approves the claim (he may disapprove all or part of it according to certain criteria in the bill), and includes all claims in the Governor's budget submitted to the Legislature early in the succeeding year. An appropriation then is made to fund the claims. If the appropriation is less than the full amount required for claims, then the commissioner is to prorate payments to local governments.

A Local Government Claims Review Board is established to review appeals from the decision of the commissioner and to recommend to the Legislature whether his decision should be changed and the change funded.

The Commissioner of Finance and Administration is required to report annually on the operation of the Act.