

MAINE STATE LEGISLATURE

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L.D. 779

(Filing No. H-530)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 574, L.D. 779, Bill, "An Act to Implement the Constitutional Requirement for State Funding of Mandates Imposed on Local Units of Government"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

Mandate implementation preamble. Whereas, this measure constitutes legislation implementing the Constitution of Maine, Article IX, Section 21 and requires the vote of two thirds of all of the members elected to each House for approval; and

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Article IX, Section 21 of the Constitution of Maine, which was approved by the voters effective November 23, 1992, prohibits the imposition of mandates on local units of government unless 90% of the costs of those mandates are funded by the State or unless the mandates are approved by a 2/3 vote in each House of the Legislature; and

Whereas, implementing legislation is immediately necessary to carry out the intent of the constitutional amendment; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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Sec. 1. 30-A MRSA §5685 is enacted to read:

§5685. Funding for required activities

1. Definitions. As used in this section and in the Constitution of Maine, Article IX, Section 21, unless the context otherwise indicates, the following terms have the following meanings.

A. "Local revenues" means revenues generated by local units of government, including property taxes, other locally levied taxes and user fees and other revenues, such as excise taxes collected and retained by local units of government pursuant to statutory authority.

B. "Local unit of government" or "local unit" means a municipality, as defined in this Title; a plantation, as governed by chapter 301; a county; a school administrative unit, as defined in Title 20-A, section 1; or a governmental entity that is:

(1) Created or authorized by special act of the Legislature or authorized to be created by a general purpose unit of government under a general 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

(5) Not an agency of State Government or other entity having statewide authority, jurisdiction or purpose.

C. "Mandate" means any law, rule or executive order of this State enacted, adopted or issued after November 23, 1992 that requires a local unit of government to expand or modify that unit's activity so as to necessitate additional expenditures from that unit's local revenues. "Mandate" includes laws, rules or orders that primarily affect the performance of a local unit's governmental activities.

D. "Mandate payment distribution schedule" means a schedule for distribution of state payments required by the Constitution of Maine, Article IX, Section 21, to be made to local units of government during the state fiscal year.

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2 E. "Required state mandate funds" means those state funds
3 required to be paid to local units of government under the
4 Constitution of Maine, Article IX, Section 21.

6 2. Requirement for state funding. The State may not impose
7 a mandate on a local unit of government unless the State provides
8 annually at least 90% of the funding for those expenditures from
9 state funds not previously appropriated, allocated or otherwise
10 designated for payment to that local unit of government. The
11 Legislature may impose a mandate on a local unit of government
12 without providing 90% funding as an exception to the provisions
13 of the Constitution of Maine, Article IX, Section 21 if enacted
14 upon the votes of 2/3 of all members elected to the Senate and
15 the House of Representatives.

16 3. Implementation. In implementing this section and the
17 provisions of the Constitution of Maine, Article IX, Section 21,
18 the following provisions apply.

20 A. The State may not meet its obligation to provide
21 required state mandate funds by authorizing a local unit of
22 government to levy fees or taxes not previously levied by
23 that local unit of government.

24 B. The State may not meet its obligation to provide
25 required state mandate funds by requiring a local unit of
26 government to spend funds previously appropriated to that
27 local unit of government.

28 C. Reduction of state funds that are the State's share of
29 the cost of mandates that have been suspended or reduced
30 does not preclude imposition of a new mandate if the
31 required state mandate funds are provided for that new
32 mandate.

33 D. Required state mandate funds do not include the costs
34 incurred by local units of government to comply with a
35 federal law or regulation or to become eligible for the
36 receipt of federal funds, except to the extent that the
37 State imposes requirements or conditions that exceed the
38 federal requirements.

39 E. Required state mandate funds do not include for the
40 costs to local units of government of implementing laws,
41 rules, executive orders or judicial decisions or orders that
42 are required to comply with the following provisions of the
43 Constitution of Maine:

44 (1) The reapportionment requirements of Article IV,
45 Part First, Section 2 and Article IV, Part Second,
46 Section 2;

2 (2) The constitutional referenda provisions of Article
3 X, Section 4;

4 (3) The people's veto of legislation provisions of
5 Article IV, Part Third, Section 17; and

6 (4) The direct initiative of legislation provisions of
7 Article IV, Part Third, Section 18.

8 F. Legislation, even though enacted by a 2/3 vote of each
9 House of the Legislature, may not be construed to override
10 the funding requirements of the Constitution of Maine,
11 Article IX, Section 21, unless the legislation contains
12 specific language indicating that it is the intent of the
13 Legislature to create an exception to the Constitution of
14 Maine.

15 4. Local units of government not bound. A local unit of
16 government is not bound by any mandate unless funded or exempted
17 from state funding in accordance with this section and the
18 Constitution of Maine, Article IX, Section 21.

19 5. Appropriation and payment of state funds. The State
20 must appropriate, allocate or otherwise designate for payment in
21 each state fiscal year a sum sufficient to meet at least 90% of
22 the cost of each mandate imposed on local units of government.

23 A. The state agency to which state funds are appropriated,
24 allocated or otherwise designated for payment to fund a
25 mandate, referred to in this subsection as the "agency,"
26 shall pay to each local unit of government in each state
27 fiscal year the required state mandate funds. The agency
28 need not pay to local units of government the entire amount
29 at the beginning of each fiscal year. However, the agency
30 must make payments to local units of government in
31 accordance with the mandate payment distribution schedule.

32 B. A mandate payment distribution schedule describes the
33 number of annual payments, the time of each payment and the
34 amount of each payment to be made during the state fiscal
35 year to ensure that the State pays local units of government
36 the required state mandate funds prior to the local units of
37 government having to make expenditures required by a mandate.

38 C. A mandate payment distribution schedule must be
39 established for each mandate that requires state funding
40 under this section. The agency shall establish a mandate
41 payment distribution schedule for a mandate by consulting
42 with the affected local unit or units of government or with

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2 a representative sample of affected local units of
3 government. If necessary, different mandate payment
4 distribution schedules may be established for a single
5 mandate.

6 D. Following public hearing and in accordance with the
7 Maine Administrative Procedure Act, the State Controller
8 shall adopt rules necessary to implement this subsection.
9 At a minimum, those rules must include a process for
10 establishing mandate payment distribution schedules for
11 distribution of payments under this subsection, including
12 the provision of public notice and an opportunity for
13 comment on the schedules by local units of government and
14 other affected persons.

15 E. Following public hearing and in accordance with the
16 Maine Administrative Procedure Act, the State Auditor shall
17 adopt rules establishing a process for oversight of local
18 unit of government compliance with mandates and use of state
19 funds provided under this subsection.

20 F. In accordance with the Maine Administrative Procedure
21 Act, a local unit of government may appeal the number,
22 amount and timing of payments under this section to the
23 agency making payments. Decisions on appeals from the
24 number, amount and timing of payments awarded under the
25 schedule constitute final agency action.

26 6. Collection of data; report. A state agency making
27 payments to local units of government under this section shall
28 submit a report to the Department of Administrative and Financial
29 Services by September 1st each year. The report must identify
30 specific mandates administered by the agency during the previous
31 fiscal year, describe the payment schedule developed by the
32 agency for each mandate and contain any other information
33 requested by the department. The Department of Administrative
34 and Financial Services shall compile that information and shall
35 issue a report annually not later than January 15th to the
36 Governor and the Legislature summarizing state agency activities
37 under this section.

38 Emergency clause. In view of the emergency cited in the
39 preamble, this Act takes effect when approved.

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This bill implements statutory language the intent of which is to clarify the constitutional amendment prohibiting unfunded

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2 state mandates. These statutory provisions are essentially
3 consistent with current legal interpretations of the
4 constitutional prohibition.

6 The Department of Administrative and Financial Services and
7 the Department of Audit will incur additional costs to adopt
8 rules and oversee the funding processes of mandates that the
9 Legislature decides to fund. State agencies designated to
10 administer funding for mandates will also incur additional costs
11 to establish the payment distribution schedules and to administer
12 the mandates. The amounts and timing of the additional General
13 Fund appropriations required will depend on the timing and the
14 extent of the mandates that are funded.

16 The Department of Administrative and Financial Services can
17 absorb within existing budgeted resources the costs associated
18 with compiling mandate information collected from affected
19 agencies and reporting annually to the Governor and the
20 Legislature.'

22 **STATEMENT OF FACT**

24 This amendment replaces the bill and contains statutory
25 language to implement the Constitution of Maine, Article IX,
26 Section 21, which was approved by the voters effective November
27 23, 1992. Section 21 prohibits the State from imposing new
28 requirements on local units of government without paying 90% of
29 their cost, except by approval of 2/3 of both Houses of the
30 Legislature.

32 The amendment defines necessary terms. The constitutional
33 amendment applies to cities, towns, plantations, counties, school
34 units and other local governmental entities that are established
35 under legislative authority to perform a public function and are
36 funded by local revenues and administered by governing bodies
37 that are responsible to the public. The State may not impose as
38 a mandate any law, rule or executive order requiring a local unit
39 of government to modify its actions in a way that primarily
40 affects that unit's performance of its governmental functions and
41 that directly results in new spending from local revenues by that
42 unit of government.

44 If the State does impose a mandate without the approval of
45 2/3 of both Houses, it must fund at least 90% of the new local
46 costs. The State may not meet its funding obligations by
47 requiring a local unit of government to use funds previously
48 appropriated to the unit for another purpose or by authorizing
49 new local taxes or fees to be raised. The State may reduce or
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2 eliminate existing mandates that result in savings to local units
and, in effect, use those funds to provide funding for new
4 mandates. State actions to comply with federal requirements need
not be funded by the State, except to the extent that they exceed
the federal requirements.

6
8 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
10 develop mandate payment distribution schedules for each mandate
they administer. The schedules are designed with local input to
12 periodically pay local units the costs of complying with
mandates. A single mandate may have more than one payment
14 schedule.

16 The amendment also adds an emergency preamble, an emergency
clause, a fiscal note and a preamble indicating that a 2/3 vote
18 is necessary for enactment of this bill as implementing
legislation under the Constitution of Maine, Article IX, Section
20 21.

Reported by the Committee on State and Local Government
Reproduced and distributed under the direction of the Clerk of the
House
6/2/93 (Filing No. H-530)

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