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Municipal Lawyer

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Message from the Chair

Unfunded state mandates remain one of the greatest threats to the financial security of municipalities across the state. Yet, the state legislature and the governor continue to turn a blind eye and a deaf ear to municipal pleas for relief. The cap on property tax increases (itself an unfunded mandate) has only exacerbated this problem. Indeed, in 2011 the Section issued comments for consideration by the Governor's Mandate Relief Redesign Team, detailing some of the significant problems raised by unfunded state mandates.

To be sure, Albany often pays lip service to assisting municipalities out of this fiscal hole into which the state has thrown them. In fact, in the current legislative session no fewer than a dozen mandate relief bills have been introduced,[1] including an "unfunded mandate reform act" (A3106/S4094) and a three-year moratorium on unfunded mandates from the legislature (A6343). But no significant mandate relief bill has been enacted, and most of the bills merely nibble around the edges of mandate relief or simply propose more study. In 2009, Senator Valesky did propose a relatively broad constitutional prohibition on unfunded mandates (S1640 (2009)). But that bill, which died in committee, would appear too complicated, too cumbersome, too narrow, and loaded with too many exceptions to serve as a model.

So, then, here is my personal, immodest proposal: by state constitutional amendment, prohibit *all* unfunded state mandates—past, present, and future. If the state wants it, then the state must pay for it. Period. Full stop.

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NYSBA

Something along these lines might do nicely:

STATE OF NEW YORK

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2015-2016 Regular Sessions
IN [SENATE/ASSEMBLY]

_____, 2015

Introduced by

_____

CONCURRENT RESOLUTION OF
THE SENATE AND ASSEMBLY

proposing amendments to article 9 of the constitution, in relation to prohibiting unfunded mandates

Section 1. Resolved (if the [Assembly/Senate] concur), That article 9 of the constitution be amended by adding a new section 4 to read as follows:

§ 4. **Prohibition on unfunded mandates. 1. a. The expenses of any existing or future action or program required by the state of any municipality shall be fully borne by the state.**

b. For purposes of this section, the term "municipality" shall mean a county, city, town, village, school district, consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal agency, a joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units, an industrial development agency and any local authority as defined in section 2 of the public authorities law and shall include a city having a population of one million or more and any county, school district, or other public agency or facility therein.

2. The provisions of subdivision 1 shall not apply to the following actions or programs:

a. those necessary to comply with federal law but only to the extent they are necessary to comply with federal law;

b. those for which no affected municipality as a result of such state mandated action or program shall incur an annual aggregate net increase in direct expenditures in excess of one thousand dollars;

c. those that have been requested by the affected municipality through a home rule message or other resolution.

§ 2. Resolved (if the [Assembly/Senate] concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

* * *

The first paragraph (§ 4(1)(a)) is based on N.Y. Const. art. vii, § 14 ("The expense of any grade crossing elimination…shall be borne by the state" and railroad and affected municipalities). If one believes that "action or program" is too broad, then the prohibition could be limited to any statute, executive order, or regulation or rule of a state agency. Thus, for example, Senator Valesky's proposed constitutional amendment would have prohibited unfunded mandates imposed by "a statute enacted by the legislature, an executive order issued by the governor, and a rule or regulation promulgated by a state agency, department, board, bureau, officer, authority or commission."[2]

The definition of "municipality" in the second paragraph (§ 4(1)(b)) is based on Gen. Mun. Law § 800(4) because of its breadth and adds local authorities within the meaning of Pub. Auth. Law § 2(2), which includes municipal-affiliated public authorities, public benefit corporations, not-for-profit entities, and their affiliates. If one does not wish to extend the prohibition on unfunded mandates to all municipalities, then the bill could be limited to specified types of municipalities but should include, at the very least, political subdivisions (counties, cities, towns, and villages) and school

districts. Senator Valesky's bill would have extended the prohibition only to counties, cities, towns, villages, school districts, and special districts and their agencies.

The exceptions set forth in subdivision 2 are taken from Senator Valesky's bill, with omissions and modifications. Specifically, this bill, unlike Senator Valesky's, would not except mandates:

- reapportioning responsibilities between or among municipalities (if the state mandates the reapportionment, the state should pay for any added cost);
- arising from an executive order of the governor exercising his or her emergency powers (the state should eventually pay);
- applicable to both government and non-government entities in the same or a substantially similar manner (stiffing the private sector provides no rationale for stiffing municipalities);
- in full force and effect prior to the effective date of the constitutional amendment, including any provision of law that extends or reauthorizes the mandate (the amendment should apply to existing state laws and programs).

An order or judgment by a state court may or may not be an "action" of the state, depending on whether the order or judgment enforces a state mandate or a municipal mandate.

In addition, unlike Senator Valesky's bill, this proposal makes clear that the federal mandate exception extends only to funds required to meet the federal mandate (§ 4(2)(a)), reduces the $10,000 threshold to $1,000 (§ 4(2)(b)), and omits "or which have been accepted by the affected [municipality]" because of the coercion inherent in "accept"(accept or get your state aid cut) (§ 4(2)(c)).

And there you have it. Simple, clean, and neat. Enough is enough. It's time for the state to pay its own way.

Tell us what *you* think by comment to the *Municipal Lawyer*, online, via the Section's listserv, or by email to our Section liaison, Beth Gould (bgould@nysba.org), or to me (davies@coib.nyc.gov).

Mark Davies

Endnotes

1. *See, e.g.,* A3106/S4094 (2013), A4861A/S1294A (2013), A4972 (2013), A5573 (2013), A6019 (2013), A6343 (2013), A6546 (2013), A7060 (2013), A7082 (2013), A8104 (2013), S1577A(2013), S5557A (2013).
2. Proposed N.Y. Const. art. 9, § 4(a), (d), in S1640 (2009).

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