

APPENDIX 2

CONTENT OF MEMORANDUM ADDRESSING THE IMPLEMENTATION OF CONSTITUTIONAL LANGUAGE REFERRING TO MANDATES (Circulated by House Speaker Wetherell and Senate President Margolis, March 7, 1991)

COUNTY AND MUNICIPALITY MANDATES ANALYSIS

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provisions relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

OVERVIEW:

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

GENERAL CONSIDERATIONS:

- * In analyzing a bill or amendments to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.
- * The mandates analysis applies only to general laws and not to special laws (local bills).
- * The requirements of Article VII, Section 18 apply only to cities and counties.

CRITERIA:

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

- A. A law requiring cities or counties to spend funds or to take action requiring expenditure.
- B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases in such authority.

2. The term "authority" applies to:

- a) the power to levy a tax;
- b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
- c) the tax rate which can be levied; and
- d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

- C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.

EXEMPTIONS:

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991** -- This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.
2. **Criminal law** -- This applies to any bill relating to the following:
 - * Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.
 - * Relating to the processes of arrest and pretrial detention.

- * Relating to defense and prosecution.
 - * Relating to adjudication, sentencing, and implementation of criminal sanctions.
3. **Election Laws** -- Generally, this applies to any bill relating to the required processes and procedures of holding public elections.
 4. **The General Appropriations Act**
 5. **Special Appropriations Acts**
 6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority** -- Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.
 7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

EXCEPTIONS:

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

A. General bills requiring cities and counties to spend funds or to take action requiring expenditure.

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

1. The Legislature Determines That It Fulfills an Important State Interest:

This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

2. Condition #1 must be met and any one of the following exceptions:

- a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

- b. The Legislature authorizes or has authorized a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

- c. This expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are treated similarly, even though the group may only contain governmental entities or even only local governmental entities.

The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local

governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

- d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.

If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest and the bill must pass by a 2/3 vote to effectively bind cities and counties.

B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

The exceptions by which this criterion does not apply are:

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.
2. During a fiscal emergency; or
3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.

APPENDIX 3

CONTENT OF MEMORANDUM ADDRESSING THE IMPLEMENTATION OF CONSTITUTIONAL LANGUAGE REFERRING TO MANDATES (Circulated by House Speaker Webster, March 6, 1997)

The Florida Constitution place requirements on this body concerning the passage of bills that impose mandates on counties and municipalities. (Article VII, Section 18) A set of guidelines and procedures for interpreting this constitutional provision is attached. It is my intention that the House follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18.

PROCEDURE FOR ANALYZING BILLS FOR MANDATES

1. Staff for the committee of initial reference have responsibility to review all assigned bills for potential mandate issues in accordance with the provisions of the Constitution and the guidelines issued by the Speaker. Council staff are available for consultation during this process.

Members and staff should raise any new mandate issues introduced to bills by amendments that are adopted throughout the process.

2. If the bill is identified as a potential mandate, the Chair makes a final decision about language to include in the bill analysis.
3. If the Chair is uncertain, the potential mandate is referred for discussion by the Council. If the bill is heard by the committee before the Council makes a determination, the analysis will reflect that a potential mandate issue is identified. The analysis should be updated by the committee of initial reference as soon as the Council makes a determination.
4. The Chair of the Council may request that the issue also be reviewed by the staffs of the Fiscal Responsibility Council, the Rules committee, and House Bill Drafting. Those staff, with the Council staff, would have the responsibility to develop options for the Chair's or Council's consideration.
5. Before any bill with a mandate is sent to the floor, the mandate issued will be reviewed by the Council with responsibility for calendaring the bill. The members should specifically decide whether the mandates portion of the analysis should be changed. The Council will also consider any bills raised by members as potential mandates that do not have a mandate identified in the analysis.
6. Final decision on whether a bill contains a mandate is made on the floor by the Speaker.