

## 2017-18 Constitution Revision Commission

### Proposal:      **Unfunded Mandates, Article VII, Fla. Const., Section 18**

#### **Summary Analysis**

Under the current Florida Constitution, an unfunded mandate is a general law that requires a county or municipality to spend funds or to perform an action, with no funding provided for fulfilling the requirement. The imposition of unfunded mandates creates difficulties for counties and municipalities with limited revenue sources to ensure local taxes are used exclusively for local services, projects, and initiatives.

Additionally, the state is constitutionally prohibited from levying ad valorem taxes on any personal or real property.<sup>1</sup> Unfunded mandates, which fund state interests, can only be funded by the general revenue of local governments, the overwhelming majority of which are funds derived from ad valorem tax revenues. Thus, unfunded mandates achieve indirectly what the state cannot achieve directly – levying ad valorem property taxes for state purposes.

This Constitutional Proposal prohibits the Legislature from binding counties or municipalities by any general law that is an unfunded mandate unless the law is enacted in accordance with heightened Legislative procedures. The measure requires bills proposing an unfunded mandate to “contain only the subject matter of an [unfunded mandate].” The measure defines an unfunded mandate. The measure further prohibits the Legislature from enacting an unfunded mandate until a public hearing is conducted after notice and for which a legislative fiscal analysis is available. After the hearing, the Legislature may enact the unfunded mandate upon a three-fourths vote of the membership of each house of the Legislature. Laws creating unfunded mandates expire eight years after enactment, unless reenacted by the Legislature.

#### **Full Analysis**

##### **I.      Background**

In 1978, Florida's legislature passed a general law that prohibited the state legislature from passing unfunded state mandates on local government. It required the legislature to develop an economic impact statement, estimating the total cost to local government to fund the mandate, and it required the legislature to provide local government a means to finance the mandate. It also required a general law that granted a tax exemption or limited local authority to levy a tax to provide a means to finance the change<sup>2</sup>.

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<sup>1</sup> Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Ch. 78-274, Laws of Florida, codified as Sec. 11.076, Fla. Stat. (1978).

But, then existing constitutional law permitted the legislature to ignore the statute.<sup>3</sup> Over the next 10 years, the legislature imposed requirement after requirement on local governments without providing a means to pay for them. In short order, the legislature passed growth management laws, environmental protection laws, laws mandating increased fire and police pension benefits, laws mandating public employee protections, and laws governing the operation of the state courts system; all laws that imposed requirements on local governments without providing a means to pay for them.

The frustration of local officials grew. If local officials had to raise property taxes, they felt the resulting revenues should be devoted to local priorities, not state programs. This frustration led to a citizen initiative amendment to the Florida Constitution being filed with the Secretary of State. The citizen initiative would have banned all unfunded mandates. This citizen initiative proved to be the catalyst for the Legislature to propose the existing limits on unfunded mandates in Article VII, section 18 of the Florida Constitution.

During the 1989 legislative session, the resulting proposal, CS/HJR 139/40, passed the House 101-13 and the Senate 38-1.<sup>4</sup> This constitutional amendment appeared on the 1990 General Election Ballot as "Amendment 3". On November 6, 1990, 64% of Florida's voters approved Amendment 3.<sup>5</sup>

## The Mandates Amendment

### II. Current Situation

Article VII, Fla. Const., Section 18 contains five subsections: one that restricts substantive mandates; two that restrict financial mandates; one that exempts certain mandates; and one that authorizes the state legislature to implement the provision.

Subsection (a) defines a mandate as a general law that requires a local government to spend funds or to take an action that requires the expenditure of funds. It excuses a local government from complying with a mandate *unless* the legislature determines the law fulfills an important state interest *and* one of the following conditions is met:

1. The legislature appropriates sufficient funds to pay for the requirement. "Sufficient funds" is determined at the time of enactment.

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<sup>3</sup> A legislature may not bind the hands of future legislatures by placing restrictions on the passage of future general laws. *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985). Moreover, a more recently enacted general law prevails over an older general law. *Palm Beach Co. Canvassing Bd. v. Harris*, 772 So. 2d 1273 (Fla. 2000).

<sup>4</sup> Final Legislative Bill Information, 1989 Regular Session, History of House Bills, pp. 259-260.

<sup>5</sup> Florida Department of State, Division of Elections, Initiatives/Amendments/Revisions

2. The legislature provides the local government a new funding source to pay for the requirement. The funding source must not have been available to the local government on February 1, 1989, and the local government must be able to tap the funding source by a simple majority vote of its governing body.
3. The requirement is approved by two-thirds of the membership of the House and the Senate. This exception is used by the legislature far more than any other exception to avoid the Amendment's requirements.
4. The law applies to all persons similarly situated, including the state and local governments. This is the window the legislature uses to mandate local governments pay for laws that provide additional environmental protections (e.g., the law applies to both public and private water and sewer systems or to both public and private stormwater systems); and to laws that provide increased unfunded employee benefits (e.g., the increased pension benefit applies to both state and local firefighters; the increased employment protection applies to both state highway patrolmen and local law enforcement officers).
5. The law is required to comply with a federal mandate, which mandate specifically contemplates actions by the local government to comply with the mandate. Recently announced EPA numeric nutrient requirements are an example of where this exemption could come into play. Clearly, EPA's new requirements contemplate local governments will have to spend funds to improve their water and sewer systems and stormwater systems to comply with the requirements. Should the legislature pass a state law designed to comply with the federal requirement, then the law would likely avoid the Amendment under this exception.
6. The law is required for eligibility for a federal entitlement, which federal requirement specifically contemplates action by the local government to comply with the mandate. This exception, for example, applies to mandates placed on counties in the administration of Medicare benefits and Medicaid benefits. It also contemplates, for example, state laws governing the distribution of federal transportation funds through the state to local governments.

Subsection (b) requires a general law that reduces the authority of municipalities or counties to raise revenues be approved by a two-thirds vote of the House and the Senate. It applies to the reduction of authority as such authority existed on February 1, 1989. It also applies to "revenues in the aggregate;" in other words, the Amendment doesn't apply when the legislature replaces an existing authority with some other authority to raise revenues. Moreover, the requirement wouldn't apply if, for example, the legislature passed legislation that resulted in a decrease in municipal revenues if, at the same time, the legislation called for a corresponding increase in county revenues.

Subsection (c) requires a two-thirds vote of the House and Senate to pass a general law that reduces the percentage of a state tax shared with local government. This requirement does not apply:

1. To revenues derived from increases in state taxes enacted after February 1, 1989. So, for example, say the state shares a percentage of the revenues it derives from its sales tax with local government. This requirement would not apply to a law that increases the sales tax or expands the sales tax's base even if the legislature elected not to share the increase in revenues with local government.
2. During a fiscal emergency declared by the Senate President and the House Speaker.
3. When the legislature replaces revenues shared from one tax source with revenues shared from another tax source provided the amendment applies to the replacement tax source. Thus, for example, the requirement would not apply if the legislature elected to take back the state sales tax revenues it shares with local government and replace it with state cigarette tax revenues.

Subsection (d) exempts the following laws from the requirements contained in the Mandates Amendment:

1. Laws adopted to require funding of pension benefits existing on the effective date of the Amendment (November 6, 1990). Thus, for example, the Amendment doesn't apply to a law that requires the local government to contribute an increased amount to the Florida Retirement System to fund the 3% special risk retirement benefit because the benefit existed prior to November 6, 1990.
2. Criminal Laws. Thus, for example, the Amendment doesn't apply should the legislature provide a minimum mandatory sentence for the conviction of a crime even though it increases the cost of county jail operations.
3. Election Laws. Thus, for example, the Amendment doesn't apply to a bill that requires the county supervisor of elections install a specific type of voting machine.
4. The general appropriations act and special appropriations acts. Thus, the Amendment doesn't apply should the legislature, for example, give a local government a one time appropriation to fund a baseball park or an arts festival or the like and then not provide the same appropriation in the next appropriations cycle.
5. Laws reauthorizing but not expanding then-existing statutory authority. At the time of the passage of the Amendment, the state legislature routinely went through a process commonly referred to as "sunset review." Under the process, most state laws regulating professions (e.g., physicians) or subjects (e.g., insurance) were routinely repealed at a future date. The repeal in turn forced the state legislature to periodically review state laws

regulating various professions or services to determine whether continued regulation was appropriate. The Amendment wouldn't apply to mandates resulting from a similar process.

6. Laws having an insignificant fiscal impact. The legislature's current rules provide an unfunded mandate has an "insignificant fiscal impact" if the cost to local governments to comply isn't expected to exceed an amount equal to \$.10 x Florida's population (currently approximately \$19 million).
7. Laws creating, modifying, or repealing non-criminal infractions. Thus, for example, the Amendment doesn't apply to a law that decreases the penalty for a non-criminal infraction committed within a local government even though a portion of the penalty is shared with the local government.

Subsection (e) authorizes the legislature to enact laws implementing the Mandates Amendment. The legislature passed an implementation bill during the 1991 session, but it was vetoed by then Governor Lawton Chiles. Another was proposed in 1992, but it failed to pass. Thereafter, the idea of an implementation bill gave way to more pressing affairs of state.

## **CRC Unfunded Mandates Proposal**

### **III. Effect of Proposed Changes**

#### 1. Subsection 18(a)

The Constitutional Proposal prohibits the Legislature from binding counties or municipalities by any general law that is an unfunded mandate unless the law is enacted in accordance with heightened legislative procedures.

#### ***Definition of Unfunded Mandate***

The proposal defines an unfunded mandate as:

- a law requiring a county or municipality to spend funds or to take an action requiring the expenditure of funds.
- a law requiring a county or municipality to accept the transfer of a responsibility or function, or to accept an increase in a responsibility or function, performed by the state

#### ***Unfunded Mandates do not Include***

Under the Proposal, unfunded mandate does not include:

- a law for which funds are appropriated by the legislature at the time of enactment and annually thereafter to fund municipal or county expenditures required by law.
- a law either required to comply with a federal requirement or required for eligibility for a federal entitlement, which requirement specifically contemplates actions by counties or municipalities for compliance.

#### ***Laws Containing Unfunded Mandates***

The Proposal prohibits the Legislature from enacting a law containing an unfunded state mandate unless the law:

- Contains only the subject matter described in subsection 18(a)
- Is enacted only after a public hearing, held after public notice provided 24 hours before the hearing that an unfunded state mandate will be considered
- Is accompanied by a fiscal analysis prepared by the legislature that is available at the time of the hearing
- Is passed by three-fourths affirmative vote of the membership in each house of the legislature

### ***Sunset Proposal***

The measure calls for any law enacting an unfunded mandate to expire on October 1 in the eighth year after enactment, unless reenacted by the legislature.

### 2. Subsection 18(b)

#### ***Voting Requirements***

The proposal prohibits the Legislature from:

- enacting, amending, or repealing any general law if the anticipated effect of doing so would be to reduce then existing authority that counties or municipalities have in raising revenues in the aggregate; unless
- the law contains only the subject matter described in subsection 18(b) and is enacted after a public hearing, held 24 hours after public notice and a fiscal analysis has been provided and prepared by the Legislature; and
- is passed by three-fourths affirmative vote of the membership of each house of the Legislature.

### 3. Subsection 18 (c)

#### ***Taxes Shared with Local Governments***

The proposal prohibits the Legislature from:

- enacting, amending, or repealing any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax in the aggregate that is shared with counties or municipalities.

#### ***Exceptions under 18 (c)***

The proposal does not apply to

- enhancements to a state tax source enacted after January 1, 2019,
- during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house
- where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties or municipalities, which source of replacement revenues shall be subject to the same

requirements for repeal or modification as provided for the replaced state-shared tax source.

4. Subsection 18 (d)

The proposal would exempt laws adopted to require funding of a statewide governmental retirement system or plan existing on the effective date of section 18, criminal laws, and laws having an insignificant fiscal impact.

5. Subsection 18 (e)

The proposal would continue to authorize the Legislature to enact laws to assist in the implementation and enforcement in section 18.