

State Mandates

The law

The Maine Constitution, Article IX, Section 21 (adopted in 1992), prohibits the State from requiring a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenues unless:

1. The State annually provides 90% of the funding; or
2. The Legislature votes to establish an exemption by a 2/3 vote of the elected membership of each chamber.

In accordance with the Constitution, the Legislature enacted implementing legislation (30-A MRSA §5685), which, among other things, clarifies that if the Legislature passes legislation that constitutes a State mandate and does not create an exception for that mandate or provide the required state funding, affected local units of government are not bound by the mandate.

Interpretation

Whether a proposal falls within the terms of Article IX, Section 21 is sometimes the subject of debate. A proposal that may fall within the provision will be identified as a potential State mandate in the fiscal note prepared by the Office of Fiscal and Program Review (OFPR), thus flagging the matter for further legislative consideration. Once identified by OFPR as a potential State mandate, the committee has several options as outlined below and may consult with their committee analyst on any questions concerning whether a legislative proposal constitutes a mandate.

Options if proposal identified as potential mandate in fiscal note

Determination that proposal does not constitute a mandate. If a committee determines that a provision identified by OFPR as a potential mandate is not in fact a mandate, the committee may direct its analyst to draft language to insert in the summary of the committee amendment that states the committee's determination. A recommended template has been developed for use by committee analysts. If inserted into a summary, the intent of the language is to explain the committee's finding that the provision the fiscal note identifies as a potential mandate does not require any expansion or modification of activities so as to necessitate additional expenditures from local revenue. The committee may then report the proposal out without funding and without a Mandate Preamble. In that case, the proposal will normally be placed on the Special Appropriations Table and a decision regarding final enactment will be deferred until the Joint Standing Committee on Appropriations and Financial Affairs makes decisions on bills placed on this table, which usually occurs near the end of a legislative session.

Determination that proposal does constitute a mandate. If a committee determines that a proposal does constitute a mandate, the committee has various options it may pursue, including:

1. Amending the proposal to eliminate the requirement (for instance, making the expanded or modified activity optional);
2. Amending the proposal to provide funding for 90% of the necessitated additional local expenditures; or
3. Amending the proposal to add a Mandate Preamble stating that the legislation is being enacted as an exception to Article IX, Section 21 and that the legislation is exempt from the funding requirement. To accomplish this third option, enactment of the proposal requires a two-thirds vote of the elected members in each chamber of the Legislature.

Determination that no further action is necessary. If a committee decides to report out a proposal without addressing the issue in the summary of a committee amendment and without funding or a Mandate Preamble, the proposal will likely still be placed on the Special Appropriations Table. A decision regarding final enactment will be deferred until the Joint Standing Committee on Appropriations and Financial Affairs decides how to address the potential mandate as part of its review of bills placed on the table, which usually occurs near the end of a legislative session.

Failure to add a Mandate Preamble or funding

If the Legislature passes legislation that constitutes a State mandate without providing the funding or exempting the legislation from the funding requirement by adding a Mandate Preamble, affected local units of government are not bound by the mandate.