



## TAXATION AND BUDGET REFORM COMMISSION

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### Staff Analysis and Economic Impact Statement

Measure: CP 46

REFERENCE:

ACTION:

Sponsor: Commissioner Hogan

1. GPSC

Pre-meeting

2. PBPC

Subject: Unfunded Mandates

3.

Date: February 22, 2008

#### I. Summary:

Constitutional Proposal 46 requires bills proposing an unfunded mandate to “contain only the subject matter of an [unfunded mandate].” The measure further prohibits the Legislature from enacting an unfunded mandate until a public hearing is conducted after notice 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. Disputes involving alleged unfunded mandates must be resolved through a non-judicial process administered by the Legislative Committee on Intergovernmental Relations.

#### II. Present Situation:

Counties and municipalities are authorized by the Florida Constitution to levy ad valorem taxes, however, the imposition of any other county or municipal tax must be authorized by law.<sup>1</sup> As a result, the imposition of unfunded mandates may create difficulties for counties and municipalities with limited revenue sources.

##### ***Restrictions on Unfunded Mandates***

In the late 1980s, local governments became concerned about the growing cost of unfunded mandates imposed upon them by the Legislature. At that time, a citizen initiative amendment to the Florida Constitution was filed with the Secretary of State which would have banned all unfunded mandates. The proposed amendment stated:

The Legislature may not enact a general law if compliance with that law will require a county or municipality to spend local monies (which shall include all funds available from then existing revenue sources to counties or municipalities on the date the law is enacted), unless the Legislature

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<sup>1</sup> Article VII, sections 1(a) and 9, Fla. Const.

provides adequate state monies to fund the cost of compliance with the law. This provision shall not apply to laws dealing with the judiciary.<sup>2</sup>

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.

Article VII, section 18 of the Florida Constitution:

- Defines a mandate as a general law that requires the county or municipality to spend funds or to take an action requiring the expenditure of funds.
- Limits the circumstances under which a local government is bound by an unfunded mandate when the Legislature finds that the mandate fulfills an important state interest.
- Requires a two-thirds vote of each house of the Legislature to enact a bill that results in a reduction in the authority of cities and counties to raise revenues that they possessed on February 1, 1989.
- Requires a two-thirds vote of each house of the Legislature to enact a bill that is anticipated to reduce the percentage of a state tax that is shared with counties and municipalities, with some exceptions.
- Identifies unfunded mandates which are exempt from the restrictions on the Legislature's authority.
- Permits the Legislature to enact implementing legislation.

As a result of Article VII, section 18 of the Florida Constitution, legislative analysts must identify on staff analyses whether a bill proposes an unfunded mandate.

### ***Legislative Committee on Intergovernmental Relations***

The Legislative Committee on Intergovernmental Relations (LCIR):

is a public entity that facilitates the development of intergovernmental policies and practices. Housed in the legislative branch of state government, LCIR is statutorily authorized to do the following.

1. Serve as a forum for the discussion and study of intergovernmental problems.
2. Evaluate the interrelationships among local, regional, state, interstate, and federal agencies in the provision of public services and prepare studies and recommendations to improve organizational structure, operational efficiency, allocation of functional responsibility, and the delivery of service.
3. Analyze the structure, functions, revenue requirements and fiscal policies of the state and its political subdivisions.
4. Examine proposed and existing federal and state programs.

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<sup>2</sup> Information on the filed initiative is available at: <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=2782&seqnum=4>.

5. Review the research and recommendations of national commissions studying local government relationships and problems.
6. Analyze the fiscal impact of new state programs or amendments to existing programs on municipalities and counties.

When a study is completed, the Florida LCIR reports its findings and recommendations to the presiding officers of the Legislature and the Governor. Because the intergovernmental element is central to its purpose and functioning, the ultimate challenge facing the Committee is improving coordination and cooperation between state agencies, local governments, and the federal government.<sup>3</sup>

The LCIR is comprised of 15 members: four senators appointed by the Speaker of the House of Representatives; four representatives appointed by the President of the Senate; and seven members appointed by the Governor.

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

Constitutional Proposal 46 requires bills proposing an unfunded mandate to “contain only the subject matter of an [unfunded mandate].” The measure further prohibits the Legislature from enacting an unfunded mandate until a public hearing is conducted after notice 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. Disputes involving alleged unfunded mandates must be resolved through a non-judicial process administered by the Legislative Committee on Intergovernmental Relations.

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

This measure defines an unfunded mandate as a “law requiring a county or municipality to spend funds or take action requiring the expenditure of funds.” Other provisions of this measure implicitly define an unfunded mandate to include:

- laws to reduce the authority of a county or municipality to raise revenues;
- reduce the percentage of a state tax shared with a county or municipality;
- laws for which funding has been provided by the Legislature;
- laws for which the Legislature authorizes new funding sources; and
- agency action to implement a law.

Accordingly, the Commission may wish to clarify the definition of unfunded mandate. However, for purposes of other sections of this analysis below, an unfunded mandate is a:

- mandate for which no funding or no new revenue source is authorized;
- mandate required by federal law or for a federal entitlement;

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<sup>3</sup> Florida Legislative Committee on Intergovernmental Relations, About LCIR, [Http://www.floridalcir.gov/about.cfm](http://www.floridalcir.gov/about.cfm).

- bill or law to reduce the percentage of a state tax shared with counties and municipalities; or
- bill or law to reduce the authority of counties and municipalities to reduce revenues.

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

This measure states that a law containing an unfunded mandate may contain only the “subject matter [of an unfunded mandate].” This language appears to be modeled after the constitutional limitations on laws to create public records exemptions and trust funds.<sup>4</sup> A public records exemption or a trust fund typically is very discrete and may require only a paragraph of text in a bill. The Commission may wish to consider whether a mandate can be stripped out of a programmatic bill in the same manner as bills creating public records exemptions and trust funds.

Additionally, how one identifies the subject-matter of an unfunded mandate is not clear. A bill, for example, creating a misdemeanor potentially could require the expenditure of local revenues for a variety of purposes. Enforcement of the law could require spending to train local law enforcement officers, spending to jail violators of the law, and spending on addition court costs. Another bill, for example, could require the increased health care for state and local inmates. Such a bill might require multiple tests and treatment options. Would such legislation contain one or multiple mandates?

### ***Public Hearings***

Before the Legislature may enact a law containing an unfunded mandate, a public hearing must be held. Existing legislative procedures typically require all bills to be heard by committees during which public testimony is taken. During meetings, staff analyses are available which provide for a fiscal analysis. The public hearings required by this measure appear to require something other than the type of hearings provided by legislative committees. However, the measure does not specify how a public hearing must differ from a committee meeting.

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

Existing Article VII, section 18 of the Florida Constitution permits the legislature to enact a law containing an unfunded mandate upon a two-thirds vote of the membership of each house. This measure increases the vote required to three-fourths of the membership of each house. Both the current and proposed voting requirements are based on the full number of members of each house of the Legislature, rather than the number of members voting.

### ***Enforcement of Compliance with an Unfunded Mandate***

Existing Article VII, section 18(a) of the Florida Constitution states in part that “[n]o county or municipality shall be bound by” an unfunded mandate. This language places the onus on the state to force counties and municipalities to comply with the law. No appellate case law has been found by staff showing that the state has ever attempted to

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<sup>4</sup> Article I, s. 24 and Art. III, s. 19, Fla. Const.

force a county or municipality to comply with a law that a local government determined to be an unfunded mandate.

This measure retains the language from subsection 18(a), but also states “[t]he legislature may not enact a law containing an unfunded mandate . . . .” The measure also states that “no county or municipality shall be bound” by a law determined to be an unfunded mandate by the Legislative Committee on Intergovernmental Relations (LCIR). Thus, CP 46 is internally inconsistent.

Under the new procedure to challenge unfunded mandates, challenges by local governments must be heard by the LCIR. Decisions by LCIR are not subject to judicial review.

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

Existing Article VII, section 18(c) of the Florida Constitution restricts the authority of the Legislature to reduce the percentage of a state tax shared with counties and municipalities in aggregate. However, an increase in the rate of a state tax does not have to be shared.

This measure will require the state to share future revenue increases resulting from an increase in the rate of a state tax that is currently shared with local governments. Thus, the state may be forced to impose more taxes than its revenue needs. On the other hand, local governments may be able to either increase spending or reduce local taxes when the Legislature increases a tax rate on a shared revenue source.

Additionally, under this measure, the validity of the Legislature’s actions may be based on how a law affects the revenues of a single county or municipality, rather than the counties and municipalities in aggregate. Thus, the deletion of the words “in aggregate” from this measure may impose significant new restrictions on the Legislature.

### ***Repeal of Exceptions to the Restrictions on Mandates***

This measure repeals all of the existing exceptions to the restrictions on mandates in Article VII, section 18(c) of the Florida Constitution. These exceptions permit the Legislature to:

- increase a state tax without sharing an increase in the tax with local governments;
- reduce the percentage of a state tax shared with local governments during a fiscal emergency; and
- reduce the percentage of a state tax shared with local governments when the revenues are replaced with other revenues.

### ***Repeal of Exemptions to the Restrictions on Mandates***

This measure repeals all of the existing exemptions to the restrictions on mandates in Article VII, section 18(d) of the Florida Constitution. Laws exempt from the mandates restrictions include:

Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

When existing subsection 18(d) was approved by the Legislature, members were concerned that the Legislature would be unable to adopt appropriations acts unless they were made exempt.<sup>5</sup> Moreover, the exemption for laws having an insignificant fiscal impact was thought necessary to prevent lawsuits and reduce workloads on legislative staff.<sup>6</sup>

This measure as drafted would allow a county or municipality to decline to comply or enforce any law including criminal laws with an insignificant fiscal impact.

#### **IV. Constitutional Issues:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

See the Effect of Proposed Changes section of this analysis.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

This measure will require the Legislative Committee on Intergovernmental Relations to hire multiple attorneys. Procedures to resolve disputes must also be developed.

This measure will dramatically reduce the ability of the Legislature to enact unfunded mandates. This measure may also dramatically reduce the ability of the Legislature to pass any legislation that has any impact on a county or municipality.

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<sup>5</sup> Nancy Perkins Spyke, Florida's Constitutional Mandates Restrictions, 18 Nova L. Rev. 1403, 1414 (1994).

<sup>6</sup> *Id.* at 1415.

**VI. Technical Deficiencies:**

This measure contains several technical and formatting errors.

**VII. Related Issues:**

Persons interested in learning more about the issues surrounding unfunded mandates may wish to review the joint resolutions and related legislative history for related joint resolutions considered by the Legislature in 1989.