



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #1240

### **Waiver from State-Imposed Mandates on Local Governments (Shared Revenue and Tax Relief)**

[LFB Summary of the Governor's Budget Reform Bill: Page 81, #3]

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#### **CURRENT LAW**

Upon request of a school board, state law authorizes the Department of Public Instruction (DPI) to waive any school board or school district requirement included in chapters 115 to 121 of the state statutes or in the Department's administrative rules, unless the statutes or rules relate to the health or safety of pupils, pupil discrimination, the pupil assessment program, the standardized reading test, pupil records, the collection of data by DPI, the uniform financial accounting system, audits of school district accounts, licensure of teachers, certification of school nurses or the commencement of the school term.

State law requires the preparation of a fiscal estimate on any bill that increases or decreases general local government fiscal liability or revenues.

#### **GOVERNOR**

Specify that a political subdivision, defined as a city, village, town or county, may file a request with the Department of Revenue (DOR) for a waiver from a state mandate, except for a state mandate related to health or safety. Define a "state mandate" as a state law that requires a political subdivision to engage in an activity or provide a service or to increase the level of its activities or services. Require the political subdivision, in such a request, to specify its reason for requesting the waiver.

Require DOR, upon receiving a request for a waiver, to forward the request to the administrative agency that is responsible for administering the state mandate. Require the administrative agency to determine whether to grant the waiver and notify the political

subdivision and DOR of its decision in writing. Require DOR to determine whether to grant a waiver for a state mandate if there is no state agency responsible for administering the mandate and require the Department to notify the political subdivision of its decision in writing. Authorize administrative agencies and DOR to grant such waivers. Specify that a waiver granted from a state mandate is effective for four years and that the administrative agency, or DOR in the case of waivers granted by DOR, may renew the waiver for additional four-year periods.

Require DOR, by July 1, 2004, to submit a report to the Governor and the appropriate standing committees of the Legislature specifying the number of state mandate waivers requested, a description of each waiver request, the reason given for each waiver request and the financial effects on the political subdivision of each waiver that was granted.

## **DISCUSSION POINTS**

1. The state's original constitution directed the Legislature to establish and organize Wisconsin's local governments. Thus, most local government authority is granted through state statute, and most local government functions are associated with a state law. While the bill would define mandate as "a state law that requires a political subdivision to engage in an activity or provide a service, or to increase the level of its activities or services," this definition would encompass a broad range of activities and services. Consequently, much of what local governments do could be characterized as mandates.

2. If the Legislature approves the Governor's recommendations to impose levy limits on counties and municipalities and to eliminate shared revenue funding and funding for three related programs, adopting the Governor's recommendation on mandate waivers would be one way for the Legislature to provide some fiscal relief to local governments in a period where local financial resources are limited.

3. A program similar to the Governor's proposal was extended to school districts in 1995 and is administered by the Department of Public Instruction. From the program's creation in 1995 through the end of 2001, 122 requests for waivers had been sought, and 101 of the requests were approved, based on statistics provided by the Department. Most of the requests involved the number of instructional days in a school year and the state's foreign language requirement.

4. If some local governments receive waivers and others do not, the state's laws would be inconsistently applied. Thus, a county or municipality in one part of the state could be subject to different rules or procedures than a county or municipality elsewhere. Further, some statutes impose identical requirements on school districts and technical college districts, as on counties and municipalities. As a result, state agencies could be in a position to grant relief to one type of local government, but be unable to grant relief from the same provision to another type of local government. In some instances, the jurisdictions' boundaries could be coterminous, but they would still receive different treatment.

5. The proposal does not create standards for the state's agencies to apply when

deciding on requests for waivers. As a result, agencies may apply different standards, thereby treating local governments in an inconsistent manner. For example, one agency may agree to grant waivers upon a showing of financial hardship, while another agency might not employ financial considerations in making its decisions. The lack of standards could result in agencies being subject to political pressure to grant waivers. Even in instances where no political pressure is exerted, charges of favoritism could be raised and taint the waiver process.

6. Generally, the Legislature is empowered to enact and modify the state's laws, and the role of the Governor and the state's agencies is to administer those laws. The proposal would authorize state agencies to override the actions of the Legislature. As such, it may be an invalid delegation of legislative authority. There are instances where the Legislature has delegated its authority to state agencies, but that delegation is generally subject to legislative oversight. The administrative rule process is one example of this delegation. However, the Joint Committee for Review of Administrative Rules may suspend rules and introduce legislation to repeal the suspended rule, thereby providing a safeguard for the Legislature's authority.

7. Over time, the state has addressed mandates in a somewhat ad hoc fashion by changing state laws in response to complaints regarding specific statutes. A different approach would be to provide a systematic review of mandates. This could be done on a one-time basis through a Legislative Council study committee or on an ongoing basis through a joint survey committee.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to allow local governments to request waivers from state mandates and authorize state agencies to grant waivers from those mandates.

2. Request that the Legislative Council establish a study committee to develop a statewide policy on municipal and county mandates, review existing mandates and establish a procedure to evaluate specific requests for additional mandates.

3. Create a Joint Survey Committee on Mandates, composed of two majority party members and one minority party member from each house of the Legislature and three public members, appointed by the Governor to represent county, town and incorporated municipal governments. Require that any bill establishing a mandate, as defined in the bill, on municipal or county governments be referred to this Committee before the bill can be passed by either house of the Legislature.

4. Delete the Governor's recommendation.

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