

2005 DRAFTING REQUEST

Bill

Received: 12/06/2004

Received By: pdykman

Wanted: Today

Identical to LRB:

For: Carol Owens (608) 267-7990

By/Representing: Jackie

This file may be shown to any legislator: NO

Drafter: pdykman

May Contact:

Addl. Drafters:

Subject: Legislature - miscellaneous
State Finance - bud generally
State Govt - miscellaneous
Local Gov't - counties
Local Gov't - munis generally

Extra Copies: MES
JK
RAC
JTK

Submit via email: YES

Requester's email: Rep.Owens@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Mandate review

Instructions:

See Attached enrolled SB-15

Drafting History:

Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It contains two rows of drafting history data.

FE Sent For:

**<END>**

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<END>

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/?	pdykman						

FE Sent For:

Handwritten signatures and initials are present over the Drafting History table. One signature is written over the 'Typed' column, and another is written over the 'Proofed' column. The text '<END>' is written at the bottom of the page.

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- 1141/1

2005 BILL

Joint  
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work

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1 AN ACT *to amend* 13.093 (2) (b); and *to create* 13.59, 13.591, 16.59, 20.505 (1)  
2 (bm) and 227.112 of the statutes; **relating to:** creation of a Joint Committee on  
3 State Mandates and required funding of state mandates.

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*Analysis by the Legislative Reference Bureau*

This bill creates a legislative Joint Committee on State Mandates (committee). The committee consists of three majority party and two minority party members from each house.

The bill states that any bill placing a statutory requirement on a local governmental unit must be referred at once to the committee and the bill may not be considered further until the committee submits a report or 30 days have lapsed. If the committee's report concludes that the bill has a negative uncompensated fiscal effect on local governmental units, and the mandate is a wholly state-imposed mandate upon local governmental units, this bill states that the committee must offer an amendment to the bill appropriating funds to offset the cost of the mandate. The bill defines mandate to exclude certain provisions and those that have minimal fiscal effect.

The bill states that the legislature may not enact a bill that imposes future state-imposed mandates unless they receive a hearing before the committee or are funded. If an enacted mandate is not funded, either upon passage or in the future, the mandate may not be enforced until it is funded. The bill also states that a state agency may not promulgate a rule or take an action that imposes a mandate and that a state agency shall not take an action required by law if the action would impose a

**BILL**

mandate, unless there is a sufficient amount to fund the mandate. Under this bill, affected local governments are reimbursed annually for the approximate costs attributable to state-imposed mandates.

The bill directs the Legislative Fiscal Bureau, by May 1, 2007, to identify all mandates for the committee, other than ones having a minimal fiscal effect. The committee is directed to submit legislation repealing all mandates to each house of the legislature.

The bill also requires the committee to review and evaluate existing mandates. To carry out its duties, the committee may make investigations and hold hearings.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 13.093 (2) (b) of the statutes is amended to read:

2           13.093 (2) (b) Executive budget bills introduced under s. 16.47 (1) are exempt  
3 from the fiscal estimate requirement under par. (a) but shall, if they contain a  
4 provision affecting a public retirement fund or, providing a tax exemption, or  
5 imposing a mandate, as defined in s. 13.59 (1) (b), be analyzed as to those provisions  
6 by the respective joint survey committee or the joint committee on state mandates.  
7 If such a bill imposes a mandate, as defined in s. 13.59 (1) (b), the bill shall be  
8 simultaneously referred to the joint committee on state mandates and the joint  
9 committee on finance. If such a bill contains a provision providing a tax exemption,  
10 the bill shall be simultaneously referred to the joint survey committee on tax  
11 exemptions and the joint committee on finance. The report of the joint survey  
12 committee on tax exemptions shall be prepared within 60 days of introduction for  
13 bills introduced under s. 16.47 (1).

14           **SECTION 2.** 13.59 of the statutes is created to read:

15           **13.59 Joint committee on state mandates. (1) DEFINITIONS.** In this section:

16           (a) "Local governmental unit" has the meaning given in s. 19.42 (7u).

**BILL**

1 (b) "Mandate," except in sub. (6), means a statutory provision placing a  
2 requirement on a local governmental unit and, in sub. (6), has the meaning given in  
3 s. 227.112 (1) (b). The term does not include any statutory provision that relates to  
4 employment discrimination or the compensation, benefits, leave, collective  
5 bargaining rights, or conditions of employment of employees or retirees of a local  
6 governmental unit or prevailing wages under s. 66.0903.

7 (2) CREATION. There is created a joint committee on state mandates, consisting  
8 of 3 majority party and 2 minority party senators and 3 majority party and 2 minority  
9 party representatives to the assembly appointed as are the members of standing  
10 committees in their respective houses.

11 (3) COMMITTEE PROCEDURES. (a) The committee shall meet at the call of its  
12 cochairpersons.

13 (b) All actions of the committee require the approval of a majority of all of the  
14 members.

15 (4) POWERS AND DUTIES. (a) The committee shall:

16 1. Provide the legislature with a report under sub. (5) concerning each bill that  
17 would impose a mandate.

18 2. On a regular basis, review existing mandates and evaluate their desirability  
19 as a matter of public policy, cost-effectiveness, and financial responsibility.

20 (b) The committee may make investigations and hold hearings.

21 (5) REPORT. (a) Upon the introduction in either house of the legislature of a bill  
22 that would impose a mandate, the bill shall at once be referred to the joint committee  
23 on state mandates by the presiding officer, unless the presiding officer determines  
24 that the mandate has a minimal fiscal effect on local governmental units. The bill  
25 may not be considered further by either house or any other committee until the



**BILL**

1 earlier of 30 days after referral or the time at which the joint committee on state  
2 mandates submits a written report, to the chief clerk of the house in which the bill  
3 is introduced, doing all of the following:

4 1. Describing the fiscal effect on state government and on local governmental  
5 units of the mandate contained in the bill.

6 2. Identifying the objective of the mandate contained in the bill.

7 3. Determining whether it is possible to achieve the objective without imposing  
8 a mandate.

9 4. Determining whether the mandate contained in the bill is state-imposed or  
10 is addressing a requirement imposed by the federal government.

11 5. Explaining the effect of the mandate contained in the bill on the revenues  
12 and expenditures of state government and local governmental units, including an  
13 explanation as to whether unrestricted or restricted state aid, grants, or tax benefits  
14 are currently being provided or potentially available under existing law to meet the  
15 costs of the mandate.

16 6. Identifying whether the mandate contained in the bill has a recurring or  
17 nonrecurring impact.

18 7. Identifying any method of reimbursement for any costs of the mandate  
19 contained in the bill or any method of waiver or appeal of the requirements contained  
20 in the mandate.

21 8. Addressing whether it is appropriate to consider an expiration date for the  
22 mandate contained in the bill.

23 9. Addressing the desirability of the mandate contained in the bill as a matter  
24 of public policy.

**BILL**

1           10. Providing any other information that the committee considers to be  
2 appropriate.

3           (b) If the committee's report concludes that the bill has a negative  
4 uncompensated fiscal effect on local governmental units, and that the mandate  
5 contained in the bill is wholly state-imposed, the committee shall prepare and offer  
6 an amendment to the bill that increases the amount of the appropriation under s.  
7 20.505 (1) (bm) or such other appropriation designated in the amendment and  
8 creates any other provisions required by s. 13.591 (2).

9           (c) The report under par. (a) shall be reproduced as an appendix to the bill and  
10 attached to it as are amendments. The reproduction shall be in lieu of inclusion in  
11 the daily journal of the house in which the bill is introduced.

12           **(6) IDENTIFICATION OF MANDATES.** (a) The legislative fiscal bureau shall identify  
13 all mandates, other than mandates that have a minimal fiscal effect, existing on the  
14 effective date of this paragraph .... [revisor inserts date], and submit that  
15 information to the joint committee on state mandates by May 1, 2007.

16           (b) The committee shall introduce one or more bills amending the statutes in  
17 each house of the legislature repealing all mandates that are wholly state-imposed  
18 and that have a negative uncompensated fiscal effect on local governmental units.

19           **SECTION 3.** 13.591 of the statutes is created to read:

20           **13.591 Funding of state-imposed mandates.** (1) **DEFINITION.** In this  
21 section, "mandate" has the meaning set forth in s. 13.59 (1) (b).

22           (2) **APPROPRIATION INCREASE.** The legislature may not enact a bill on or after the  
23 effective date of this subsection .... [revisor inserts date], that contains a mandate  
24 unless the bill has had a public hearing before the joint committee on state mandates  
25 or contains an appropriation to provide for reimbursement under s. 16.59 for the

**BILL**

1 current fiscal biennium, and requires that an appropriation be provided in all  
2 subsequent fiscal years in which the mandate is imposed, by the applicable amount  
3 specified in the report prepared under s. 13.59 (5), to provide for reimbursement  
4 under s. 16.59.

5 (3) ENFORCEMENT PROHIBITED IF UNFUNDED. If a bill that contains a mandate is  
6 enacted after the effective date of this subsection .... [revisor inserts date], is not in  
7 compliance with sub. (2), or if the legislature does not provide an appropriation as  
8 required by sub. (2) for the mandate, the mandate contained in the enacted bill may  
9 not be enforced until the required appropriation is provided.

10 (4) EXISTING UNFUNDED MANDATES. If the joint committee on state mandates  
11 determines that a law enacted or rule promulgated on or before the effective date of  
12 this subsection .... [revisor inserts date], contains a mandate that is wholly  
13 state-imposed and that has a negative uncompensated fiscal effect on local  
14 governmental units, the committee shall introduce a bill in each house of the  
15 legislature repealing the law or making the rule ineffective unless the committee  
16 determines that the uncompensated fiscal effect is minimal.

17 **SECTION 4.** 16.59 of the statutes is created to read:

18 **16.59 State funding of mandates.** (1) In this section:

19 (a) "Local governmental unit" has the meaning given in s. 19.42 (7u).

20 (b) "Mandate" has the meaning given in s. 227.112 (1) (b).

21 (2) From the appropriation under s. 20.505 (1) (bm) or such other  
22 appropriations designated by law for such purpose, on the basis of the report  
23 prepared under s. 13.59 (5) and other relevant information available to the  
24 department, the department shall reimburse local governmental units for their  
25 approximate costs not otherwise funded by the state that are attributable to

**BILL**

1 mandates that are subject to the funding requirements under s. 13.591 or 227.112.  
 2 Reimbursements under this subsection shall be made on an annual basis and shall  
 3 be accompanied by a statement identifying each mandate for which reimbursement  
 4 is made and the amount of reimbursement for each mandate.

5 **SECTION 5.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
 6 the following amounts for the purposes indicated:

7 2005-06      2006-07

8 **20.505 Administration, department of**

9 (1) SUPERVISION AND MANAGEMENT; LAND INFORMATION  
 10 BOARD

11 (bm) State funding of mandates      GPR      C      -0-      -0-

12 **SECTION 6.** 20.505 (1) (bm) of the statutes is created to read:

13 20.505 (1) (bm) *State funding of mandates.* As a continuing appropriation, the  
 14 amounts in the schedule to reimburse local governmental units as provided under  
 15 s. 16.59.

16 **SECTION 7.** 227.112 of the statutes is created to read:

17 **227.112 State funding of mandates.** (1) In this section:

18 (a) "Local governmental unit" has the meaning given in s. 19.42 (7u).

19 (b) "Mandate" has the meaning given in s. 13.59 (1) (b), and includes a provision  
 20 in a rule placing a requirement on a local governmental unit. The term does not  
 21 include any rule provision that relates to employment discrimination or the  
 22 compensation, benefits, leave, collective bargaining rights, or conditions of  
 23 employment of employees or retirees of a local governmental unit or prevailing wages  
 24 under s. 66.0903.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

114/1/14n  
LRB-1157/1dn

PJD:kjf/rs

December 7, 2004  
8

This draft is 2003 Senate Bill 15, as enrolled (SSA-1, as amended by SA-1 thereto). The language of proposed ss. 13.59 (5) and 13.591 (2), stats., to the effect that the legislature or the Joint Committee on State Mandates may not or must take specified action creates a rule of procedure under article IV, section 8, of the Wisconsin Constitution. The Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

For this draft, I have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 2005-06 and 2006-07. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

Atty. Peter J. Dykman  
General Counsel  
Phone: (608) 266-7098  
E-mail: Peter.Dykman@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1141/1dn

PJD:kjfrs

December 8, 2004

This draft is 2003 Senate Bill 15, as enrolled (SSA-1, as amended by SA-1 thereto). The language of proposed ss. 13.59 (5) and 13.591 (2), stats., to the effect that the legislature or the Joint Committee on State Mandates may not or must take specified action creates a rule of procedure under article IV, section 8, of the Wisconsin Constitution. The Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

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Atty. Peter J. Dykman  
General Counsel  
Phone: (608) 266-7098  
E-mail: Peter.Dykman@legis.state.wi.us

**Northrop, Lori**

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**From:** Dicks, Jacque  
**Sent:** Wednesday, January 26, 2005 10:27 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1141/1 Topic: Mandate review

It has been requested by <Dicks, Jacque> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1141/1 Topic: Mandate review