



Senate Committee on Government Oversight

State Mandates

June 3, 2010

Senate Committee on Government Oversight Members

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Executive Summary

In response to the current economic climate of diminishing resources and growing budget obligations, the Senate Committee on Government Oversight was charged with collecting information on State mandates and their impact on local government. The Committee provided a public forum for municipalities, school committees and other interested parties to present the General Assembly with specific information on mandates. In an effort to facilitate the hearing process and to assist the Committee in addressing mandates, witnesses invited to testify were asked to provide the following information:

- Identify each mandate from which you seek relief and identify its annual estimated cost;
- Provide the specific source of each mandate (statutory, regulatory or other) and the authority that can provide relief from the mandate;
- Explain, to the best of your knowledge, the purpose for establishing the mandate; and,
- Identify the consequences of abolishing or modifying the mandate.

The Committee held a total of four hearings. Two hearings addressed municipal mandates, one addressed educational mandates and a final hearing provided an open forum to the general public. Despite the request for detailed information, the Committee received little in the way of data, particularly with respect to the costs of mandates. Consequently, the Committee is unable to accomplish its purpose of collecting data regarding mandates.

Therefore, the Committee does recommend legislation requiring each community to develop and maintain a comprehensive list identifying each State mandate and the cost associated with compliance. The proposed legislation requires each community to annually electronically file a copy of its mandates list and suggested costs of each mandate with the Division of Municipal Finance which will develop and maintain an inventory of mandates and the cost of complying with each mandate by community. The Committee recognizes that the legislation establishes a new mandate; however, the data is essential for the Legislature to make informed decisions regarding mandate relief.

The following report provides a summary of the testimony received by the Senate Committee on Government Oversight on the issue of State imposed mandates.

Background Information: Municipal Mandates

To introduce the topic of municipal mandates, the Committee invited the Chief of the Division of Finance in the Department of Revenue who provided the following background.

In 1979, RIGL §45-13-9, entitled *Reimbursement to cities and towns for the costs of state mandates*, was enacted to provide relief to cities and towns through the reimbursement of the cost of State mandates established after January 1, 1979. Exclusions from the mandate reimbursement law include individual mandates where the cost does not exceed \$500, State actions that impact revenues but not expenditures, and individual actions by the General Assembly that specifically exclude the act from reimbursement. Pursuant to RIGL §45-13-8, the Division of Municipal Finance prepares an annual report documenting existing reimbursable mandates, identifying mandates enacted during the previous Legislative Session and analyzing reimbursement requests submitted by the cities and towns.¹

Reimbursements were made under the statute from 1979 to 1992 through applications submitted by municipalities; however, during this time the State did not pay out more that \$125,000 in any given fiscal year.² The State did not make any reimbursements under this law from the early 1990's until 2006 with the passage of Public Law 2006, chapter 253, also known as 3050.³

Since 2006, the Division of Municipal Finance in the Department of Revenue (Division) re-evaluated enactments made by the General Assembly since 1992 and re-established the definitions and benchmarks used to identify mandates eligible for reimbursement. The Division resumed publishing annual reports pursuant to RIGL §45-13-8(b), identifying actions taken by the General Assembly in the preceding session that are eligible for reimbursement. Through the December 31, 2009 report, the Division has identified 86 mandates that are eligible for reimbursement.

To apply for a reimbursement, the municipality must provide a report of the cost of mandates eligible for reimbursement to the Division by April 1 for payments made in the previous fiscal year. The Division evaluates the requests and submits a report to the Budget Office by October 1 of the cost of state mandates to be reimbursed in the next fiscal year. The December 2007 report detailed reimbursable costs of \$1.1 million and the December 2008 report detailed reimbursable cost of \$1.2 million; however, no funds were appropriated in the FY2009 or the FY2010 budgets to cover these reimbursements. In the December 2009 report, the Division noted that no requests for reimbursement were submitted.

If a municipality applies for a reimbursement, but is denied, the municipality may appeal decisions of the Division of Municipal Finance; however, an appeal does not help a community if no funds have been appropriated to make the reimbursements.⁴

The Chief of the Division made two additional observations concerning the reimbursement law. First, he expressed concern about tax capacity. The Division of Municipal Finance noted that communities with greater financial capacity are able to submit the documentation necessary for reimbursement, while municipalities with greater financial need do not have the resources to complete the documentation.⁵ The second observation was that in many instances, the municipality would likely fulfill the mandate even if it were not required by State law.⁶

¹ The annual reports published by the Division of Municipal Affairs are available at <http://www.muni-info.ri.gov/documents/communications/09MandatesReport%20%2012.31.09.pdf> .

² See December 1, 2009 transcript, p. 10, lines 9-14.

³ See December 1, 2009 transcript, p. 10.

⁴ See December 1, 2009 transcript, pp. 32-34.

⁵ See December 1, 2009 transcript, p. 20, lines 3-20.

⁶ See December 1, 2009 transcript, pp. 20-21.

Municipal Mandates

The following is a summary of testimony concerning specific mandates identified by witnesses who appeared before the Oversight Committee.

Municipal Recycling Rates

Rhode Island General Laws §23-18.9-1 requires each city and town in the State to achieve a recycling rate of 35.0% effective July 1, 2012. While those who testified indicated that cities and towns should recycle more, requiring 35.0% recycling rates by July, 2012 increases costs to municipalities by approximately \$1.1 million in additional tipping fees.⁷

Requested Action:	Reduce the mandatory recycling rate of 35.0% required by FY2012. No alternative rate was provided.
Cost of Mandate:	Approximately \$1.1 million statewide in municipal tipping fees.

[Analyst Note: The Executive Director of the League of Cities and Towns testified before the Committee that this mandate would cost municipalities \$3.1 million in additional tipping fees.⁸ In a subsequent conversation with Senate Fiscal staff, the Executive Director estimated the cost to be approximately \$1.1 million in additional municipal tipping fees, based on 2007 data reflecting a statewide average municipal recycling rate of 18.0%.]

Municipal Leaf and Yard Debris

Rhode Island General Laws §23-19-3(17) authorizes Rhode Island Resource Recovery Corporation to charge municipalities \$25.00 dollars per ton for the disposal of leaf and yard debris for every ton that exceeds the per person cap (0.025 ton per person). According to those who testified, the per person cap is an arbitrary amount and is too costly for municipalities.⁹

Requested Action	Modify by increasing the per person cap. An alternative per person cap was not provided.
Cost of Mandate	Approximately \$1.1 million statewide. ¹⁰

⁷ See December 1, 2009 transcript, pp. 47-49.

⁸ See December 1, 2009 transcript, p. 49, lines 15-17.

⁹ See December 1, 2009 transcript, pp. 49-50.

¹⁰ See December 1, 2009 transcript, p. 49, line 24 – p. 50, line 1 (Testimony provided by the Executive Director of the League of Cities and Towns.)

Law Enforcement Incentive Pay

Chapter 42-28.1 of the General Laws establishes an incentive pay program which provides an annual stipend increase, in addition to annual salary, to State and municipal law enforcement officers who attain educational credits. The State is responsible for the costs of the incentive payments. The cities and towns pay all eligible tuition expenses of its law enforcement officers, defined as the cost of tuition, books, and supplies. According to testimony, reimbursable expenses include laptops, tuition at out-of-state institutions and on-line courses which can cost 2 to 3 times more than a class offered at an in-state institution. Collective bargaining agreements may include “eligible expenses” as mandated through the arbitration process. Thus, those who testified indicated that relief from this mandate should include legislation that excludes reimbursable expenses pursuant to Chapter 42-28.1 from the scope of collective bargaining.¹¹

Requested Action	No specific action requested.
Cost of Mandate	Coventry spent \$40,000 for one year. ¹² Data was not provided for the other 32 cities and towns.

Accidental Disability Allowance

Rhode Island General Laws §45-21-22 authorizes accidental disability retirement for municipal employees who are part of the Municipal Employee Retirement System in an amount equal to 66.66% of the employee’s salary at the date of retirement. Testimony proposed reducing the accidental disability retirement allowance, which is currently 66.66% to 50.0% of a municipal employee’s salary at the time of retirement, when the disabled employee is capable of gainful employment in another job to be consistent with benefits of State employees and teachers.¹³ During the Committee hearing, a question was raised as to whether the Legislature should pass a mandate impacting the State Municipal Employees Retirement System when the Legislature has no economic responsibility in funding municipal retirements.¹⁴

Requested Action	Reduce the accidental disability retirement allowance to equal 50.0% of an employee’s salary at the time of retirement when a municipal employee is capable of gainful employment in another context. ¹⁵ The governor proposed a similar change in Article 13 of House – 7105.
Cost of Mandate	Not provided.

¹¹ See December 1, 2009 transcript, pp. 50-54.

¹² See *Reimbursable State Mandates Not Reimbursed, Town of Coventry*.

¹³ See December 1, 2009 transcript, pp. 68-73. During the 2009 legislative session, the General Assembly reduced the accidental disability retirement allowance for State employees and teachers who are permanently disabled from performing the duties of their job but capable of gainful employment in another context from 66.66% to 50.0% of the employee’s salary at the time of retirement.

¹⁴ See December 1, 2009 transcript, pp. 77-80.

¹⁵ See December 1, 2009 transcript, pp. 71, lines 5-10.

Retail Inventory Tax Phase Out and Repeal

Rhode Island General Laws §44-3-40 provides for the phase-out and repeal of the municipal retail inventory tax. According to a 1995 survey by the Office of Municipal Affairs, \$27.9 million per year in local revenue was raised by the tax on inventory of retail businesses.¹⁶ According to testimony, the League of Cities and Towns did not oppose legislation because the State provided for reimbursement to cities and towns of the lost revenue via General Revenue Sharing. Further testimony indicated that, except for the first year of the 10 year phase-out, cities and towns have not been reimbursed for any lost revenue.¹⁷

Action Requested	None. Each city or town may wholly or partially exempt retail inventory from taxation.
Cost of Mandate	For Fiscal Year 1995, \$27.8 million in local revenue was raised. ¹⁸

[Analyst Note: RIGL §44-3-40(a) provides: “Each city and town, by resolution or ordinance adopted by the city or town council, may wholly or partially exempt from taxation the valuation of the stock in trade or inventory of retailers.”]

Collective Bargaining

Chapter 28-9.4 establishes that municipal employees have the right to collective bargaining concerning hours, salary, working conditions and all other terms and conditions of employment. *[Chapter 28-9.1 (firefighters), Chapter 28-9.2 (municipal police), Chapter 28-9.3(teachers)]*. Collective bargaining for municipal employees also includes firemen, police and teacher contracts. According to testimony, under Rhode Island law, everything is negotiable and results in contracts that are much too costly for municipalities.¹⁹

Action Requested	Limit the scope of what is negotiable under collective bargaining. No specifics were provided.
Cost of Mandate	Not provided.

State Labor Relations Act

Title 28 of Rhode Island General Laws serves as the umbrella law for all public sector collective bargaining laws in Rhode Island. According to testimony provided to the Committee, the Labor Relations Act is out-dated, pro-labor, and is a burdensome mandate in need of reform to create a more balanced process, fair to both labor and local government.²⁰

Action Requested	Revise the Labor Relations Act to be less pro-labor. ²¹ No specifics provided.
Cost of Mandate	Not provided.

¹⁶ See *Local Fiscal Note, Retail Inventory Tax*, dated March 3, 1995.

¹⁷ See December 1, 2009 transcript, pp. 73-74.

¹⁸ See December 1, 2009 transcript, pp. 73-74 (Testimony from the Executive Director of the Rhode Island League of Cities and Towns.); see also *Local Fiscal Note, Retail Inventory Tax*, dated March 3, 1995.

¹⁹ See December 1, 2009 transcript, pp. 88-95.

²⁰ See December 1, 2009 transcript, pp. 88-95; 97-105.

²¹ See December 1, 2009 transcript, pp. 103.

Binding Arbitration

Pursuant to Chapter 28-9.4, municipal employees have the right to submit to binding arbitration unresolved labor issues. [*Chapter 28-9.1 (firefighters), Chapter 28-9.2 (municipal police), Chapter 28-9.3(teachers)*]. According to testimony, over forty years ago, the General Assembly mandated compulsory binding arbitration as a means to prevent strikes – all labor disputes could be submitted to binding arbitration and labor would not have the right to strike. Further testimony indicated that this method of resolving labor impasses has cost municipalities over a billion dollars in unfunded liabilities contained in collective bargaining agreements.²² Those testifying stated that binding arbitration has a chilling effect on the negotiation process because labor believes an arbitrator’s award will be more generous than what could be obtained through negotiation. Consequently, labor may prefer binding arbitration.²³

Action Requested	Limit the scope of labor issues that can be resolved by compulsory binding arbitration. ²⁴ Remove minimum manning as an arbitratable issue. ²⁵ No other specifics were provided. ²⁶
Cost of Mandate	Not provided.

Municipal Health Care Co-Pay

Testimony was provided recommending that the State mandate that all municipal collective bargaining agreements covering police, firefighters, teachers and municipal employees require co-share payment for health, dental and vision benefits of not less than 25.0%. Testimony was further provided recommending that the State require similar co-share payments for non-bargaining unit municipal employees.²⁷

Action Requested	Enact legislation mandating 25.0% co-pay for all municipal employees.
Cost of Mandate	Estimated to save approximately \$20.0 million per year. ²⁸

Extend Arbitration Awards

Testimony indicated that arbitration awards result in 1 year contracts and that the arbitration process is costly to a municipality, both in time and money. Testimony proposed changing the law to allow for a 3 year settlement agreement to be more cost effective than the 1 year agreements.²⁹

Action Requested	Extend arbitration awards from 1 to 3 years. ³⁰
Cost of Mandate	Not provided.

²² See December 1, 2009 transcript, p. 88, lines 19-24.

²³ See December 1, 2009 transcript, pp. 94-95.

²⁴ See December 1, 2009 transcript, pp. 90-94.

²⁵ See *Mandate Issues/Comments*, dated December 15, 2009, provided by the President of the Rhode Island City and Town Managers Association.

²⁶ See December 1, 2009 transcript, pp. 104-105.

²⁷ See December 15, 2009 transcript, pp. 17-19; see, *Mandate Issues/Comments*, dated December 15, 2009, provided by the President of the Rhode Island City and Town Managers Association.

²⁸ See December 15, 2009 transcript, p. 5, lines 10-15.

²⁹ See December 15, 2009 transcript, pp. 5-6, 13-14 and 32-33.

³⁰ See December 15, 2009 transcript, pp. 5-6.

Arbitration Awards within Maximum Levy Cap

Testimony was provided recommending that the State mandate that an arbitration award cannot exceed the 3050 cap percentage as applied to the total value of wages and benefits contained in the previous collective bargaining agreement. For example, if the 3050 cap limits a town’s levy increase to 4.5%, then the total value of salary and benefits awarded cannot exceed 4.5% of the total value of salary and benefits contained in the previous collective bargaining agreement.³¹

Requested Action	Statutorily mandate that arbitration awards cannot exceed the “3050” cap limits contained in RIGL §44-5-2.
Cost of Mandate	Not provided.

Arbitration Awards to Consider Community Salary and Benefits

Testimony was provided recommending that the State mandate that arbitration awards consider salary and benefits of other bargaining units within the community. For example, if North Kingstown were in arbitration with the police, the wages and benefits of other municipal employees within North Kingstown must be considered when making an award.³²

Action Requested	Enact new mandate.
Cost of Mandate	Not provided.

Suspend the Caruolo Act

It was proposed during testimony to suspend RIGL §16-2-21.4, the Caruolo Act, in any fiscal year when state aid, municipal or educational, is reduced or suspended.³³

Action Requested	Suspend the Caruolo Act when State aid is reduced.
Cost of Mandate	Not provided.

Repeal the Caruolo Act

It was proposed during testimony to repeal RIGL §16-2-21.4, the Caruolo Act, arguing that school departments should be made to operate within the same fiscal limitations as that of municipalities.³⁴

Action Requested	Repeal the Caruolo Act.
Cost of Mandate	Not provided.

³¹ See December 15, 2009 transcript, pp. 6-7.

³² See December 15, 2009 transcript, p. 6, lines 9-15.

³³ See December 15, 2009 transcript, p. 4 and p. 31.

³⁴ See December 15, 2009 transcript, pp. 4-5.

Amend the Caruolo Act

It was proposed during testimony to modify §16-2-21.4, the Caruolo Act, by prohibiting Superior Court judgments from exceeding the property tax caps set forth in §44-5-2 (3050 caps).³⁵

Action Requested	Impose limits on judgments awarded pursuant to the Caruolo Act.
Cost of Mandate	Not provided.

Maintenance of Effort

Rhode Island General Laws §16-7-23 requires each municipality to provide local funds to its school committee in an amount not less than its local contribution in the previous year. Testimony indicated that given the current economic situation, school committees must learn to operate with less funding.³⁶

Action Requested	Repeal maintenance of effort mandate.
Cost of Mandate	Not provided.

[Analyst Note: Article 9 of the FY2010 Supplemental Budget as passed by the House allowed communities to contribute an amount not less than 95.0% of its local contribution as of June 30, 2009 for the fiscal year ending June 30, 2010.]

Flexibility to Exceed the Tax Levy Caps

Testimony proposed that the State amend RIGL §44-5-2 to allow a municipality to petition the Department of Revenue or the Auditor General for approval to exceed the property tax cap when new businesses expand the local tax base. Testimony indicated that new business adds to the property tax base but also requires additional local services such as police and fire. Further testimony provided that increased taxes from new businesses may not cover a municipality's costs associated with increased services or funding projects such as installing new sewers.³⁷

Action Requested	Amend §44-5-2 to allow a municipality to petition the Department of Revenue for approval to exceed the property tax cap when new business expands the local tax base.
Cost of Mandate	Not provided.

[Analyst Note: RIGL §44-5-2 currently allows a city or town under certain circumstances to exceed the percent increases if approved by a four-fifths vote of the city or town council. New business expansion is not one of the circumstances set forth in the statute.]

³⁵ See December 15, 2009 transcript, p. 5.

³⁶ See December 15, 2009 transcript, pp. 9-11.

³⁷ See December 15, 2009 transcript, pp. 7-8 and 20-23.

Background Information: Educational Mandates

To introduce the topic of education mandates, the Committee invited the Commissioner of Education to testify. The Commissioner noted that in visiting each school district in the State and speaking with teachers, students, school committee members and others, one issue that came up frequently in conversations with school committee members was concern about unfunded mandates.³⁸ Upon further inquiry, the Commissioner found that there was not much specificity as to what these unfunded mandates are.³⁹ Currently, the Commissioner does not see the issue of mandates as an immediate objective for the Department of Education; however, the issue would fit within the Department's long-term strategic plan and the fifth goal of using resources wisely.⁴⁰

In addition to the Commissioner, the Committee received testimony from the Rhode Island School Superintendents' Association, the Rhode Island Association of School Committees, the Rhode Island Federation of Teachers and Health Professionals, and the National Education Association.

The over-arching theme of the testimony provided to the Committee was the request for flexibility. Witnesses did not ask the Committee to eliminate mandates, but instead to provide more flexibility for districts to meet the intent of the legislation. One suggestion involved empowering the Commissioner of Education to waive certain mandates.⁴¹ Another suggestion involved allowing some measured relief from mandates whenever State aid is reduced.⁴² The American Civil Liberties Union submitted written testimony asking the Committee to examine the costs involving private and parochial school mandates, such as transportation, textbooks, and nursing services.⁴³

³⁸ See January 12, 2010 transcript, pp. 4-5.

³⁹ See January 12, 2010 transcript, pp. 11-12.

⁴⁰ See January 12, 2010 transcript, pp. 44-45.

⁴¹ See January 12, 2010 transcript, pp. 110-111.

⁴² See January 12, 2010 transcript, p. 73.

⁴³ See February 2, 2010 transcript, pp. 4-5.

Education Mandates

The following is testimony regarding specific mandates identified by witnesses who appeared before the Committee.

Text Books

In accordance with §16-23-2 and §16-23-3, the school committee in each district must provide textbooks to resident students in nonpublic schools. The books are returned at the end of the school year requiring each school district to store the books during the summer. The list of available textbooks includes all the textbooks in use in grades K through 12 in the public schools of Rhode Island in the fields of mathematics, science, modern foreign languages, English/language arts and history/social studies. The school districts bear the costs of purchasing, distributing and storing the books.

The witnesses provided several ideas to modify this mandate and provide greater efficiency. For example, centralizing either at the State level (RIDE) or through several regional collaboratives would require no changes to existing law and result in greater efficiency. Another suggestion proposed limiting or freezing the number of loaned textbooks when there is a decrease in education aid or a decrease in a school district's ability to pay.

Further testimony indicated that in some cases, the loaned books are newer and more expensive than the textbooks used in the district where purchases have been put aside due to other budget considerations. The possibility was raised that perhaps districts should consider using electronic information to support curriculum and reduce reliance to textbooks.⁴⁴

Action Requested	Modify by centralizing either at the State level (RIDE) or through regional collaboratives. Limit or freeze the supply of textbooks when there is a decrease in education aid or ability to pay.
Cost	Jamestown spent \$9,500 ⁴⁵ ; Lincoln spent \$15,000. ⁴⁶ Additional school district data not provided.

[Analyst's Note: In FY2009, \$316,677 was reimbursed to school districts for actual expenditures through the Textbook Loan Program. In FY2010, the program was enacted at \$240,000. Please note, however, that the districts are reimbursed only for the cost of providing English/language arts and history/social studies textbooks to students in grades K-8. The cost of providing textbooks in the fields of mathematics, science, and modern foreign languages are not reimbursed by the State.]

⁴⁴ See January 12, 2010 transcript, pp. 22-23, 81-86, 113-116, 121-122.

⁴⁵ See *Jamestown School Committee Submission for Senate Committee on Government Oversight*, dated January 12, 2010.

⁴⁶ See *Study of Mandate Impact on Educational Costs*, Town of Lincoln.

Vocational Education

General Law §16-45-1.1 requires each school committee to provide vocational education to students who choose it. According to testimony, the costs of this mandate are significant. North Providence spent \$62,625 for transportation (tuition is paid by the State at Davies). Testimony proposed modifying this mandate to allow municipalities more flexibility to decide which programs to support based on available funds and choices authorized by voters, without having the cost of a specific vocational program a mandatory expense. The testimony highlighted how these costs may distort school budgets especially in smaller communities that cannot take advantage of State supported programs.⁴⁷

Action Requested	Give municipalities more flexibility to choose a vocational program.
Cost of Mandate	North Providence spent \$62,625 for transportation. ⁴⁸ No other data for other school districts was provided.

[Analyst's Note: The FY2010 Enacted Budget provided \$1.5 million for the Vocation Technical Equity Fund, freezing distribution to each community at FY2006 levels without updating for current data. The education funding formula proposed by the Department of Education would require districts sending students to State vocational schools to pay a portion of tuition.]

Teacher Salary Schedule

General Laws §16-7-29 mandates salary steps recognizing years of service, experience, and training for all certified personnel regularly employed in the public schools and having no more than twelve (12) annual steps. According to testimony and documents provided to the Committee, this mandate has significant costs: North Providence spent \$539,000 and Lincoln spent \$200,000 complying with this mandate. Testimony proposed eliminating or modifying the statute to provide more flexibility to implement salaries based on other factors. Further testimony suggested temporary relief from mandatory steps during times of fiscal stress, or cap the percent increase permitted at each step.

Witnesses discussed that, while the steps are required by statute, the current percent increases tied to each step are the result of local contract negotiations. However, districts do not negotiate a new contract every year; instead, the contracts build on each other and making changes to the current system through negotiations would be difficult. Union officials testified that the step system saves money since the prevailing wage for a teacher is the top step, not the first.⁴⁹

Action Requested	Eliminate or provide more flexibility to implement salaries based on other factors rather than salary steps, provide temporary relief from mandatory steps during times of fiscal stress, or cap the percent of increase permitted at each step.
Cost of Mandate	North Providence spent \$539,000; ⁵⁰ Lincoln spent \$200,000. ⁵¹ No other data was provided for the remaining school districts.

⁴⁷ See January 12, 2010 transcript, pp. 70-73.

⁴⁸ See *Mandate Information for Senate Committee on Government Oversight*, dated January 12, 2010, Town of North Providence.

⁴⁹ See January 12, 2010 transcript, pp. 70, 77-79, 104-106, 111-113, 119, 147-1515, and 161-163.

⁵⁰ See *Mandate Information for Senate Committee on Government Oversight*, dated January 12, 2010, Town of North Providence.

⁵¹ See *Study of Mandate Impact on Educational Costs*, Town of Lincoln.