

## §5685. Funding for required activities

**1. Definitions.** As used in this section and in the Constitution of Maine, Article IX, Section 21, unless the context otherwise indicates, the following terms have the following meanings.

A. "Local revenues" means revenues generated by local units of government, including property taxes, other locally levied taxes and user fees and other revenues, such as excise taxes collected and retained by local units of government pursuant to statutory authority. [PL 1993, c. 351, §1 (NEW).]

B. "Local unit of government" or "local unit" means a municipality, as defined in this Title; a plantation, as governed by chapter 301; a county; a school administrative unit, as defined in Title 20-A, section 1; or a governmental entity that is:

- (1) Created or authorized by special act of the Legislature or authorized to be created by a general purpose unit of government under a general act of the Legislature;
- (2) Established to provide public services;
- (3) Funded by local revenues;
- (4) Governed by a locally elected body or a body appointed by a municipality or county; and
- (5) Not an agency of State Government or other entity having statewide authority, jurisdiction or purpose. [PL 1993, c. 351, §1 (NEW).]

C. "Mandate" means any law, rule or executive order of this State enacted, adopted or issued after November 23, 1992 that requires a local unit of government to expand or modify that unit's activity so as to necessitate additional expenditures from that unit's local revenues. "Mandate" includes laws, rules or executive orders that primarily affect the performance of a local unit's governmental activities. [PL 1993, c. 351, §1 (NEW).]

D. "Mandate payment distribution schedule" means a schedule for distribution of state payments required by the Constitution of Maine, Article IX, Section 21, to be made to local units of government during the state fiscal year. [PL 1993, c. 351, §1 (NEW).]

E. "Required state mandate funds" means those state funds required to be paid to local units of government under the Constitution of Maine, Article IX, Section 21. [PL 1993, c. 351, §1 (NEW).]

[PL 1993, c. 351, §1 (NEW).]

**2. Requirement for state funding.** The State may not impose a mandate on a local unit of government unless the State provides annually at least 90% of the funding for those expenditures from state funds not previously appropriated, allocated or otherwise designated for payment to that local unit of government. The Legislature may impose a mandate on a local unit of government without providing 90% funding as an exception to the provisions of the Constitution of Maine, Article IX, Section 21 if enacted upon the votes of 2/3 of all members elected to the Senate and the House of Representatives. [PL 1993, c. 351, §1 (NEW).]

**3. Implementation.** In implementing this section and the provisions of the Constitution of Maine, Article IX, Section 21, the following provisions apply.

A. The State may not meet its obligation to provide required state mandate funds by authorizing a local unit of government to levy fees or taxes not previously levied by that local unit of government. [PL 1993, c. 351, §1 (NEW).]

B. The State may not meet its obligation to provide required state mandate funds by requiring a local unit of government to spend funds previously appropriated to that local unit of government. [PL 1993, c. 351, §1 (NEW).]

C. Reduction of state funds that are the State's share of the cost of mandates that have been suspended or reduced does not preclude imposition of a new mandate if the required state mandate funds are provided for that new mandate. [PL 1993, c. 351, §1 (NEW).]

D. Required state mandate funds do not include the costs incurred by local units of government to comply with a federal law or regulation or to become eligible for the receipt of federal funds, except to the extent that the State imposes requirements or conditions that exceed the federal requirements. [PL 1993, c. 351, §1 (NEW).]

E. Required state mandate funds do not include for the costs to local units of government of implementing laws, rules, executive orders or judicial decisions or orders that are required to comply with the following provisions of the Constitution of Maine:

- (1) The reapportionment requirements of Article IV, Part First, Section 2 and Article IV, Part Second, Section 2;
- (2) The constitutional referenda provisions of Article X, Section 4;
- (3) The people's veto of legislation provisions of Article IV, Part Third, Section 17; and
- (4) The direct initiative of legislation provisions of Article IV, Part Third, Section 18. [PL 1993, c. 351, §1 (NEW).]

F. Legislation, even though enacted by a 2/3 vote of each House of the Legislature, may not be construed to override the funding requirements of the Constitution of Maine, Article IX, Section 21, unless the legislation contains specific language indicating that it is the intent of the Legislature to create an exception to the Constitution of Maine. [PL 1993, c. 351, §1 (NEW).]

[PL 1993, c. 351, §1 (NEW).]

**4. Local units of government not bound.** A local unit of government is not bound by any mandate unless funded or exempted from state funding in accordance with this section and the Constitution of Maine, Article IX, Section 21.

[PL 1993, c. 351, §1 (NEW).]

**5. Appropriation and payment of state funds.** The State must appropriate, allocate or otherwise designate for payment in each state fiscal year a sum sufficient to meet at least 90% of the cost of each mandate imposed on local units of government.

A. The state agency to which state funds are appropriated, allocated or otherwise designated for payment to fund a mandate, referred to in this subsection as the "agency," shall pay to each local unit of government in each state fiscal year the required state mandate funds. The agency need not pay to local units of government the entire amount at the beginning of each fiscal year. However, the agency must make payments to local units of government in accordance with the mandate payment distribution schedule. [PL 1993, c. 351, §1 (NEW).]

B. A mandate payment distribution schedule describes the number of annual payments, the time of each payment and the amount of each payment to be made during the state fiscal year to ensure that the State pays local units of government the required state mandate funds prior to the local units of government having to make expenditures required by a mandate. [PL 1993, c. 351, §1 (NEW).]

C. A mandate payment distribution schedule must be established for each mandate that requires state funding under this section. The agency shall establish a mandate payment distribution schedule for a mandate by consulting with the affected local unit or units of government or with a representative sample of affected local units of government. If necessary, different mandate payment distribution schedules may be established for a single mandate. [PL 1993, c. 351, §1 (NEW).]

D. Following public hearing and in accordance with the Maine Administrative Procedure Act, the State Controller shall adopt rules necessary to implement this subsection. At a minimum, those rules must include a process for establishing mandate payment distribution schedules for distribution of payments under this subsection, including the provision of public notice and an opportunity for comment on the schedules by local units of government and other affected persons. [PL 1993, c. 351, §1 (NEW).]

E. [PL 2015, c. 44, §8 (RP).]

F. In accordance with the Maine Administrative Procedure Act, a local unit of government may appeal the number, amount and timing of payments under this section to the agency making payments. Decisions on appeals from the number, amount and timing of payments awarded under the schedule constitute final agency action. [PL 1993, c. 351, §1 (NEW).]

[PL 2015, c. 44, §8 (AMD).]

**6. Collection of data; report.** A state agency making payments to local units of government under this section shall submit a report to the Department of Administrative and Financial Services by September 1st each year. The report must identify specific mandates administered by the agency during the previous fiscal year, describe the payment schedule developed by the agency for each mandate and contain any other information requested by the department. The Department of Administrative and Financial Services shall compile that information and shall issue a report annually not later than January 15th to the Governor and the Legislature summarizing state agency activities under this section. [PL 1993, c. 351, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 351, §1 (NEW). PL 2015, c. 44, §8 (AMD).

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