



HAS SENATE BILL 5 PUT YOUR COMMUNITY UP MACK'S CREEK WITHOUT A PADDLE?

by Carl Lumley, Ken Heinz and Kevin O'Keefe

Missouri Senate Bill 5 imposes a variety of mandates upon Missouri municipalities. Some of the mandates are new and some reinforce or make more stringent existing requirements. None of the mandates are funded by the state. There are some significant legal issues regarding the validity of the Bill.

Section 105.145 RSMo has for many years required cities to submit financial reports to the state auditor. It has also required a suspension of payments to elected officials during periods of noncompliance. Beginning with the 2013 amendment to the "Mack's Creek" statutory limit on revenues from local traffic fines, such reports were to include information regarding the percentage of general operating revenues derived from traffic fines and the sanctions for noncompliance were expanded to include suspension of municipal court jurisdiction.

Now with the 2015 amendments, SB 5 has reduced the "Mack's Creek" cap from an "all-traffic-fines" limit of 30 percent to a maximum on general operating revenues to be derived from "minor traffic violations" of 12.5 percent for municipalities in St. Louis County and 20 percent for the rest of the state. The change in the cap will be effective with the start of each city's first fiscal year on or after Jan. 1, 2016. "Minor traffic violations" that are subject to the new revenue caps are defined as those charges that result in four or fewer points on a driver's license but exclude charges of speeding more than 19 miles per hour over the limit, offenses involving commercial vehicles, offenses in school or construction zones, and offenses involving any accident or injury. The percentage for prior periods (for all traffic fines and costs) remains 30 percent, although a pending lawsuit could still void the 2013 amendment that reduced the limit to that percentage.

The 2015 bill also clarified certain applicable terms by defining "annual general operating revenue" and "court costs", so that cities will better know how to calculate and report their "Mack's Creek" percentage. Department of revenue and state auditor rules are to be issued to assist with compliance in reporting and remitting any revenues beyond the cap. A beneficial aspect of the new law is that the auditor's rules must include "a reasonable opportunity for demonstration of compliance without unduly burdensome calculations." Presumably, this will mean that a city whose total court fine revenues not close to the limit can report without performing more specific calculations. However, unless a city is absolutely sure that it will be able to demonstrate compliance without specific calculations, it will need to establish systems to allow for more specific reporting as and when needed to comply with the new requirements. Third party providers

such as the Regional Justice Information Service (REJIS) will presumably be changing their systems as well.

SB 5 also will require an addendum to the annual financial report under Section 105.145 that is certified by a city's municipal judge, confirming "substantial compliance" with new court procedures "during the preceding fiscal year." There is no specific transition period for meeting these new requirements; therefore, the most conservative interpretation calls for immediate compliance so that the next report by a city can include such a certification. The new procedures are set forth in Section 479.360 and address limits on the duration of custody after arrest, protection of rights of indigent defendants, elimination of failure to appear charges on minor traffic violations, assurance of open court proceedings, and use of alternative payment plans, community service alternatives, and convenient payment methods.

Failure to meet the new reporting requirements can, after notice and

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opportunity for court review, result in transfer of all local court matters to the associate court and diversion of court revenues pending ultimate compliance. Additionally, the director of revenue must withhold sales tax revenues from a noncompliant city.

Moreover, a noncompliant city or county must hold a disincorporation election, and cannot avoid that requirement by subsequent compliance with the requirements of SB 5.

The 2015 bill adds additional "court reform" measures in Sections 302.341 and 479.350 that eliminate the penalty of suspension of driver's license for ignoring minor traffic violation court proceedings, limit fines and court costs for such violations to a maximum total of \$300, eliminate incarceration as a penalty for most such violations, and prohibit assessment of court costs against the indigent or in cases that are dismissed.

The bill does add a new collection tool for cities, involving interception of income tax refunds.

Finally, in new section 67.287, SB 5 enumerates "minimum standards" that cities in St. Louis County must meet by Aug. 28, 2018, regarding annual budgets, audits, cash management and accounting systems, "adequate" insurance, public access to ordinances, police policies, and construction code



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review. By Aug. 28, 2021, these cities must also achieve accreditation for their police department or contract with an accredited department. Compliance must be reported publicly on the city website, or if there is not one on the county website. Failure to comply can result in suit being filed by the attorney general to appoint a receiver for the city and potentially disincorporation. Needless to say, no funding has been provided to pay for the required police accreditation process or any of the other requirements of SB 5.

What remains to be seen? Is the new bill valid, or does it unconstitutionally divert municipal court revenues without any reduction in local government responsibilities? Is it legally permissible for St. Louis County communities to be singled out for a significantly lower cap on traffic fines and costly minimum standards than what will apply to other communities around the state, like Kansas City and the city of St. Louis? Will the likely disparate impact of the bill on minority communities result in litigation or yet another round of “Mack’s Creek” legislation? Will the Hancock Amendment’s prohibition of unfunded mandates trump any of the bill’s new requirements for cities?

If anyone raises such questions in court, it will take some time to learn the answers. So for now, cities must focus on immediate compliance with new court procedures and changes in revenue limits, tracking “minor traffic offenses” and revenue derived from related fines

and costs as a separate category of data, and, in St. Louis County (for now), timely compliance with the new “minimum standards” for local government. Among other things, cities should examine all applicable ordinances, finance practices, and police operating orders.

Of course, cities must also continue to find a way to deliver essential local services including but not limited to police protection and courts, with taxpayers now bearing even more of the costs than violators. The Missouri Legislature has been ratcheting down the “Mack’s Creek” limit on a regular basis in recent years, far down from the original

45 percent limit set in 1995. It has never at the same time provided an alternative source of revenue or reduced the service needs of local communities. With SB 5, the Legislature has instead imposed even more local requirements that cities are somehow expected to meet with even less resources. □

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