A Commission Report

Mandates: Cases in State-Local Relations

Advisory Commission on
Intergovernmental Relations

M-173
September 1990

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(September 1990)

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PREFACE

Mandates are a continual source of friction among governments; many policymakers and scholars foresee an increase in unfunded federal and state mandates. These factors suggest that intergovernmental tensions will continue to rise unless the Congress and state legislatures establish more successful and intergovernmentally cooperative methods for dealing with mandate issues.

In its 1978 study of state mandates, ACIR recommended a policy of deliberate restraint. The Commission endorsed inventories of mandates, review procedures for weeding out unnecessary mandates, statements of policy objectives to accompany all proposed state mandates, and state reimbursement for certain types of mandates. As the number of state mandates has risen and experience in dealing with the resulting state-local tensions has accumulated, ACIR's recommendations remain as sound today as when they were made in 1978.

Mandates show no signs of slowing. In fact, many types of mandates appear to be penetrating substantially deeper into the federal system. Some, such as those dealing with the environment and public employees, are touching virtually every unit of government, no matter how small or ill-funded. Consequently, mandates are being debated fiercely among policymakers. Mandates raise questions of accountability, equity, and legitimacy, but the greatest controversy, perhaps, is over what is reimbursable.

States justify the enactment of mandates on local governments by citing the need for uniform standards, increased levels of service, and accountability, as well as the need to pass on federal mandates. Local government officials counter that mandates substitute state priorities for local priorities and induce unknown, and often significant, costs on governments whose revenue-raising capabilities are limited, not only by economic factors but by state law.

The major issue for many local governments is whether they can meet the financial demands of federal and state mandates within the financial limits imposed by the state, by normal political forces, and by citizen initiatives. A number of grass-roots initiatives have been approved to limit local government taxes, most notably, Proposition 13 in California and Proposition $2\frac{1}{2}$ in Massachusetts. More such initiatives may lie ahead. Moreover, the federal and state courts have been particularly active in the last decade in issuing mandates affecting costly functions of state and local government, such as education, corrections, and mental health services.

The fundamental issue, however, is local self-government, which makes the motivation for reimbursement a very important consideration. If a mandate reimbursement rule restrains mandating by imposing fiscal discipline on legislators, then local self-government will be enhanced by default. If demands for reimbursement simply reflect local desires for compensation for services performed, however, then local self-government will not be enhanced because local governments will be viewed as mere service deliverers, happily providing whatever services are paid for by the state and in whatever manner is desired by the state. The "hired help" approach to mandate reimbursement, therefore, needs to be replaced by a principled federalist approach in which states and their local governments are seen as partners in self-government, sharing costs and responsibilities equitably in serving all citizens of the state. Under this approach, the state, as the larger jurisdiction, is seen as having a special responsibility to support and encourage citizen self-government in local jurisdictions.

This information report provides examples from seven states that have used a variety of approaches to address state-local tensions created by mandates. We hope this report will help state and local officials in all 50 states find acceptable intergovernmental means to resolve the inevitable tensions created by mandates and to restore vitality to local self-government. The success of any mandates strategy will depend on the extent to which it represents agreement between state and local governments and is followed in good faith by all parties.

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Robert B. Hawkins, Jr.
Chairman

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The views expressed in these papers are not necessarily those of ACIR. The Commission staff, which prepared the introductory chapter, takes responsibility for its contents. The authors of the individual papers in this report accept responsible for the contents of those papers.

John Kincaid
Executive Director

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CONTENTS

INTRODUCTION

States always have mandated functions, standards, tax limits, and other rules for their local governments. These mandates require local governments either to take certain specific actions (e.g., undertake obligations) or not to take certain specific actions (e.g., comply with prohibitions). In recent decades, the number and costs of state mandates have grown, sometimes substantially, in most states. Local officials, therefore, have voiced increasing concern about them—what New York City's former mayor, Edward I. Koch, referred to as the "mandate millstone."[1] This concern is particularly pronounced when considering unfunded state mandates.

The concern over state mandates centers around an array of issues, including the decline in federal aid relative to state and local own-source revenues, the shift of more programmatic responsibility from the federal government to state and local governments, questions of accountability, public opposition to rising taxes, the difficulties faced by many local governments in meeting the financial demands of mandates, and the implications of mandates for local self-government, including the willingness of citizens to hold office, especially in small jurisdictions that lack the administrative support to cope with mandates. These circumstances have produced a renewed focus on state-local relations in the **1980s** and **1990s.**

This information report on state mandates is an effort to shed more light on an increasingly controversial aspect of state-local relations. It continues a line of research begun by the Advisory Commission on Intergovernmental Relations (ACIR) in **1978**.[2] The initial report and a **1982** update[3] were the first systematic attempts to survey states' activities concerning mandates to local governments. On the heels of ACIR's 1978 report, Catherine Lovell et al. published a study of issues and impacts of federal and state mandates on local governments.[4]

Now, with renewed and growing concern about mandates, other organizations also are pursuing the issue. The **U.S.** General Accounting Office (GAO), the National Conference of State Legislatures (NCSL), and The Urban Institute have studied state mandates recently.

GAO's study viewed state experiences as a source of ideas for the treatment of this issue by the Congress. GAO found that the critical factors in prompting states to limit or to reimburse mandates included legislators' concern about imposing costs on local governments, a healthy fiscal climate, and a constitutionally established or voter-initiated requirement that the state reimburse local governments for the cost of mandates.[5]

NCSL's examination of mandates found them to be a major source of concern in state-local relations. It recommended that states review mandates to local governments and consider relaxing or eliminating those requirements, and in some cases assuming the cost of complying with them. NCSL encouraged states to develop some method, such as requiring fiscal notes, to assure that the costs of all prospective mandates are taken into account before they are enacted.[6]

The Urban Institute's book ***Coping with Mandates: what are the Alternatives?*** addresses several aspects of federal and state mandates. The contributing authors and editors examine the history of mandates and the recent experience of federal and state governments in responding to complaints from governments receiving the mandates. They place the mandates issue in three larger contexts: the policy goals that intergovernmental regulations are meant to achieve, the tensions among governments in the federal system, and the assessment of regulation as an instrument of government policy.[7]

The cases in this new ACIR volume come from seven states—Connecticut, Florida, Massachusetts, New York, Ohio, Rhode Island, and South Carolina. ACIR's state counterparts in Florida, New York, Ohio, and South Carolina contributed studies for this report. The Rhode Island Public Expenditure Council prepared the Rhode Island study, the General Assembly's Office of Fiscal Analysis provided the Connecticut paper, and staff members in the Division of Local Mandates furnished the two Massachusetts reports. The Connecticut and Massachusetts papers are revised versions of works that appeared originally in the 1990 Urban Institute publication.

The papers examine specific approaches to dealing with mandates, including information for legislating and rulemaking, reimbursement of local governments for the costs of individual mandates, equalization of the fiscal capacities of local governments as an alternative to reimbursement, and legal limits on enforcing unfunded state mandates.

DEFINITIONS OF MANDATES

In general, mandates arise from statutes, constitutional provisions, court decisions, and administrative regulations or orders that demand action from "subordinate" governments under pain of civil or criminal sanctions. There are, however, many variations on this basic definition.

Those who subscribe to a strict legal definition construe mandates as direct orders with clear intent to demand positive action allowing no legal choice but to carry out that action. Others view mandates from a broad financial perspective—considering the aggregate financial impact induced by a "superior" government. By this definition, mandates are interpreted as covering a wide array of governmentally induced costs. These added costs may result, for example, from conditions of grants-in-aid accepted "voluntarily" by recipients. These conditions may add a new function for local governments to administer; require that local governments fund part of this new function themselves; set higher standards of service than local governments would set for themselves; and require specific, unnecessarily expensive, or inappropriate means of achieving the mandate locally. In addition, mandates sometimes are defined to include commands that local governments not raise certain revenues, thereby causing revenue losses or "negatively" induced costs.

State laws contain many variations in the definition of mandates. For instance, Connecticut, Florida, Massachusetts, and Rhode Island focus on provisions that require local governments to spend more. Massachusetts mandates take effect only if the state assumes the cost.[8] Florida includes state actions that impose "costs" through an erosion of the local tax base[9] and encompasses actions that place limitations or requirements on local governments without compensating them for the costs necessary for compliance.[10] Connecticut specifically excludes court orders and any legislation necessary to comply with a federal mandate.[11] In Rhode Island, only that portion of a state mandate that exceeds the federal requirement is defined legally as a state mandated cost.[12]

In addition to the legal variations, different working definitions have been developed by state-local relations bodies assigned to catalog mandates or to prepare fiscal notes. For instance, the South Carolina ACIR's working definition includes "statutes, regulations or orders that require the locality to undertake an activity or comply with some standard, even when the locality would have undertaken the activity or complied with the standard voluntarily." By the same token, it includes actions that prevent the locality from undertaking the activity, "even when the locality would not consider undertaking it in the absence of statute, regulation, or order."[13] The definition crafted by the Ohio Local Government Advisory Commission includes any constitutional, statutory, or regulatory provision requiring local governments to establish or modify a specific activity or provide a service to meet minimum state standards.[14]

Much of the variation among definitions of mandates stems from the imposition of unfunded service mandates. For those who take a broad interpretation, what counts is the bottom line, namely, net costs. Those who subscribe to a narrow interpretation of mandates believe that money is secondary; if something is mandated, it must be done, regardless of the cost.

A central controversy, therefore, arises from the question of what is reimbursable. Some analysts think the term "mandate" is pejorative because it characterizes regulations as imposing excessive, and thus compensable, costs on state and local governments.[15] Others accept the term as a nonprejudicial descriptor of a common class of intergovernmental activities.

WHY THE MANDATE REVOLUTION?

The rise of mandating as a salient issue in the federal system still remains to be explained in an adequate fashion. No doubt, a number of factors have combined to spark the mandate revolution.

One likely factor is that the policy demands on the Congress and state legislatures often outrun the fiscal resources needed to meet the demands. In the absence of sufficient funds—whether by legislative choice or economic constraint—there is a strong temptation to satisfy policy demands by mandating that functions be performed by other governments. Furthermore, policy demands tend to grow continually. Many policy demands of the past are institutionalized in today's budgets, thus requiring policymakers to expand their budgets with new resources or to shift new demands onto other budgets.

Another possible factor has been the growing professionalization of state governments. Better staffing for governors and legislatures, four-year gubernatorial terms, annual legislative sessions, enhanced administrative capacities, and other reforms advocated during the post-World War II era were intended to increase the policymaking abilities of state governments. The situation is not unlike Parkinson's Law: work expands to fill the time available for its completion. Key assumptions underlying these reforms were that states are better able than local governments to raise revenue, and that states actually would raise sufficient revenues to exercise their new capabilities, especially in light of what was then a rising tide of federal aid. Furthermore, the reform of state courts, coupled with the models of activism forged by federal courts, has resulted in growing state judicial activism and, thus, more state judicial mandates.

In addition, the professionalization of state governments attracted more interest groups to state capitols, a trend that appears to have accelerated again as the federal government shifts more responsibilities to the states and as states assume more responsibilities on their own. Interest groups have incentives to focus on state government rather than on many different local governments, just as they have incentives to focus on the Congress rather than on 50 state legislatures.

Thus, state governments are much more powerful policy engines than they were in the past, but the fiscal fuel needed to operate those engines is often in short supply. To some extent, therefore, to make use of their policymaking abilities and also to comply with federal mandates, states must commandeer the engines of their local governments.

The reform of state government, moreover, often was accompanied by attempts to centralize policymaking so as to provide for better policy coordination, more efficient administration, and more uniform implementation of public policy. The logic of state centralization frequently benefited local governments when states could provide some support to fund new policies and assume the performance of certain local functions; consequently, there was a tendency to overlook the inevitability that centralization would produce unfunded mandates.

Another likely factor in the rise of mandating is that citizens expect governments to conform to much higher standards and to protect individual rights more extensively than was true in the past. Movements to improve individual rights protection, consumer protection, environmental protection, social welfare, public service provision, government efficiency, and public accountability, for example, all require governments to behave in new ways, some of which were virtually unheard of a few decades ago. Many of these issues, moreover, are not subject to local variability, at least below certain levels. If the environment is to be protected, for example, then all governments must conform to and enforce certain minimum standards. State and local governments might be permitted to set higher standards, but not lower ones. Hence, states are called on to set or enforce standards in a wide variety of fields—standards that must be applied uniformly to all local jurisdictions or to jurisdictions of a certain type, regardless of the variability of local jurisdictions' capacity to cope with the costs of compliance.

Ironically, it is quite possible that local innovations contribute to state mandating, too. That is, when a local government comes up with a good idea, the state legislature may think that it is a good idea for all local governments and, therefore, mandate it statewide, even though what works in one locality may not work well or at all in other localities.

Sometimes, local officials request state mandates, not usually for themselves but for other local officials. A mayor may desire a state mandate to counteract city council opposition to a policy, and vice versa. County officials may want the state to mandate certain municipal policies, and vice versa. Suburbs may want the state to mandate certain policies for central cities, and vice versa. Independently elected county treasurers or sheriffs may ask the state to mandate salary increases, jail conditions, service levels, and so on. As one observer has noted, "Counties can be their own worst enemies when it comes to mandates."[16]

Of course, mandates also stem from genuine deficiencies in local government performance. Where one or more local governments decline to remedy a problem, the state may be compelled to mandate a remedy. Local deficiencies may give rise to interest group activity and media coverage demanding state action.

SOURCES AND LEGITIMACY

State mandates come from many sources—constitutional provisions, citizen initiatives, legislative statutes, judicial decisions, and administrative regulations. It can be argued that those sources closer to the people have more democratic legitimacy, while those farther removed from the citizenry have less democratic legitimacy because their political accountability is less direct.

Constitutional mandates have the closest links to direct democracy because, in effect, the people are imposing these mandates on themselves by ratifying a new constitution or constitutional amendment. Citizen initiatives, whether they result in constitutional amendments or new statutes, also have direct linkages to the electorate and have a potentially high degree of accountability. Perhaps the principal problem with such mandates is that citizens are not always aware of the policy consequences or tax costs of the proposals they support at the ballot box.

Statutory mandates have less direct links to citizen consent because they come (with gubernatorial approval) from the legislature, which is elected to represent the people. Here, questions can be raised about whether a mandate is motivated merely by political pressures to shift costs from the state to local governments or by careful, disinterested consideration of the extent to which the mandate represents genuine statewide (or greater than local) interests and whether it really should be paid for by the state.

Mandates issued **by** state courts are linked to the people insofar as they are tied closely to specific provisions of state constitutions and statutes. Judges do interpret the law, however, and their interpretations adhere more or less to the intentions of the citizens or elected officials who made the law. Court mandates, especially those based on constitutional grounds, generally are perceived by voters as having a high degree of legitimacy, thus **making** the courts **an** attractive forum for interests seeking to promulgate mandates. If a mandate is perceived **as** being too onerous, however, citizens can respond by amending the constitution, initiating a new law where this is permitted, or, in most states, unseating judges in selection or retention elections.

Administrative mandates are more likely to be created by processes more insulated from the people than those that emerge from the legislative process. A classic problem with administrative mandates is that they can be more rigorous, detailed, and inflexible than originally envisioned by the governor or legislature. Once embedded in the bureaucracy, moreover, a mandate sometimes can be hard to dislodge. At times, however, the executive branch may weaken a mandate or decline to enforce it vigorously. Hence, the executive branch itself can become a battleground for mandate compliance and enforcement. Administrators, of course, can be held accountable by judicial challenge and by corrective action by the legislature and the governor.

GOVERNMENTS AFFECTED

State mandates also *can* be considered in terms of the governments they affect. The legitimacy of imposing requirements or induced costs perhaps can be said to differ for home rule municipalities and counties, cities and counties without home rule, school districts, and *special* districts. These differences depend on the relationship of a local government to the state.

It may be argued, therefore, that mandates undermine home rule and should be applied more sparingly to home rule municipalities and counties. By contrast, non-home rule municipalities are subject to many state restrictions in any event, and non-home rule counties usually are considered to be administrative arms of the state, at least in part, and naturally subject to a broad range of state mandates. School districts, once largely a local concern, now are viewed as so important to equal rights, equal opportunity, and economic development that states have come to play a stronger role in financing and setting standards for them. Some special districts, by contrast, perform such obviously local functions that they remain relatively removed from state regulation. Other districts, however, have responsibilities in such fields as environmental protection and transportation, in which district activities cross local boundaries and take on "state" purposes.

THE ISSUE OF FUNDING

Local governments face their public responsibilities with varying degrees of fiscal capacity to respond to federal and state mandates. Governmental theory aside, the major mandate issue for many local governments is whether they can meet the financial demands of state mandates within the financial limits imposed by the state, that is, limits on local taxing, borrowing, and/or spending authority, plus limits on state and federal funding. Decisionmakers in state governments are pressured strongly by policy advocates to consider only the substantive merits of individual programs when weighing whether to assign specific responsibilities and costs to local governments. Local governments, however, have to contend with the aggregate impact of all mandates, compared with their total taxing capacity and any federal and state aid that is available. State officials do not always consider local tax capacities before making decisions that require the expenditure of local revenues. In addition, states sometimes simultaneously place further limits on local taxing or borrowing authority as they expand mandates.

Much of the mandate controversy surrounds the mismatch between mandated responsibilities and local funding capacities. Several means can be used to close the gap. These include expansion of local revenue authority, increased state aid for specific and general purposes (with or without fiscal capacity equalization features), state reimbursement of specific mandates, and provisions making certain types of state mandates unenforceable if they are not funded by the state.

One potential side effect of state mandates when they place financial burdens on local governments is that they can induce privatization. Costs passed from the federal government to state governments, and from state governments to local governments, in turn, can be passed on to the private sector. One example is the rise of residential community associations (RCAs) that remove some demands for public services from the local budget.[17] Another example is the use of developer fees (and privately donated public facilities) in some states to cover a portion of the costs of new roads, schools, sewers, parks, and other facilities that must be built before development is allowed to proceed.[18] Such privatization can increase the influence of private developers in the development of communities and diminish the influence of public policies. Jurisdictions in need of economic development may be particularly prone to passing on mandated costs to the private sector.

Who *Should Pay?*

Obviously, someone has to pay for mandates, but answering the question of who should pay is not easy. This question is most complicated in the case of state-local relations because, unlike the relation of the states to the federal government, local governments do not have co-sovereign status with their state. In the absence of specific state constitutional provisions regarding mandates or local autonomy, a state has broad legal authority to promulgate mandates for local governments.

Responsible Parties?

One argument for reimbursement is that those who make policy should bear the responsibility of paying for it. By this reasoning, the state should either raise revenue or take revenue from other state sources to provide payment for local mandate compliance. A mandate reimbursement requirement would compel the state to confront the real costs of public policy and to weigh priorities. In the absence of a reimbursement requirement, state officials do not have a strong incentive to assess costs, short term or long term. Weighing priorities is also important because an unfunded mandate may displace not only a local priority but also another state priority embedded in another unfunded mandate with which local governments are expected to comply.

The Greater Good?

The counter argument is that the legislature and the governor represent all of the people of the state and therefore can be understood as representing the people's interests. As such, state officials may be said to have a broader perspective on policy issues and to be less tied, as a group, to particular parochial interests. Given that citizens must pay for a mandate in any event, the state is obligated to consider the wisdom of a mandate itself, but is free to decide whether the costs of compliance are to be paid through local revenues, state revenues, or some combination thereof. Furthermore, if a state is obligated to reimburse all mandates, then the state may at times be deterred from making policy where it should make policy. If local officials, who also represent citizens in their various local capacities, object to a mandate, then the appropriate arenas for settling this local-state difference can be said to be the legislative, judicial, and electoral arenas. If local officials cannot prevail in those arenas, then the state cannot be said to be obligated to reimburse local governments for the cost of complying with the mandate.

Equity

Meeting compliance costs with local revenues rather than state revenues is not necessarily inequitable if it means that citizens pay for their own jurisdiction's compliance and not for compliance by other jurisdictions. Reimbursement from state revenues could mean that citizens in some jurisdictions will bear the costs of compliance in other jurisdictions as well as their own. This arrangement could be inequitable if citizens in jurisdictions that already behave in ways that conform to the mandate must pay for compliance in those jurisdictions whose deficient behavior prompted the state mandate. Thus, under a reimbursement system, citizens of an environmentally progressive jurisdiction, for example, may end up paying for the environmental insensitivities of other jurisdictions. A reimbursement system, therefore, could encourage less enlightened jurisdictions to sit on their hands waiting for state money rather than acting on their own. Such behavior could produce a general climate of local reluctance to initiate change and innovation. At the same time, if the state is obligated to provide reimbursement for all or most mandates, the state, too, could become less open to change and innovation.

An argument for reimbursement, however, is the extent to which the state tax system imposes tax burdens more equitably than most local tax systems. If local tax systems are more regressive than the state tax system, or are too limited geographically to match costs with beneficiaries equitably, then unfunded mandates may exacerbate these conditions. Yet, a reimbursement system may aggravate other problems, such as fiscal disparities, if revenues are transferred to both poor and wealthy jurisdictions for mandate compliance.

When a state or the voters statewide impose limits on the taxing, borrowing, and spending authority of local governments, however, the state cannot then equitably impose unfunded mandates on those local jurisdictions. It also would appear inequitable for a state to set limits on its own taxing, borrowing, and spending authority, and then shift the costs of policy initiatives to local governments in the form of unfunded mandates.

Passing the Buck

Virtually everyone recognizes, however, that unfunded mandates sometimes represent little more than an unwillingness on the part of state officials to confront voters directly with the true costs of public policy. Unfunded mandates can give citizens the impression that they are getting something for nothing. If local officials later must raise taxes or fees to comply with mandates, they are not likely to be able to shield themselves from adverse voter reaction by pointing to a state mandate millstone. Consequently, a constitutional or statutory mandate reimbursement requirement can act as a check on the ability of state officials to pass the tax bill on to local officials.

Moral Objectives

Even if the principle of reimbursement is accepted, however, not all mandates carry a clear moral obligation for reimbursement. Is a state, for example, obligated to reimburse a jurisdiction for compliance with a mandate that is intended to remedy racially discriminatory policies or corrupt activities long practiced by the jurisdiction? In other words, some mandates fall into a category in which it can be said that the mandate is a state response to some abuse or dereliction of responsibility by a few or many local jurisdictions. In these cases, one might argue that local officials ought to be required to face up to their responsibilities.

State Policy Change

At the same time, however, a case for reimbursement can be made where a mandate requires local governments to do something previously prohibited by the state or to stop doing something previously permitted or required by the state. In other words, when a state changes its policy, it would seem to be under some obligation to bear some of the costs imposed on local governments by that change.

Cost Differentials

Reimbursement systems also can mask the true costs of living in particular kinds of communities. That is, certain kinds of costs to citizens arise from living in a big city, a suburban municipality, or a rural community, for example, and in different areas of a state. A particular mandate, therefore, may impose a heavier burden on one type of jurisdiction than another; yet, to the extent that citizens choose to live in one type of jurisdiction rather than another, a reimbursement system can mask the true cost of that choice and allow citizens to enjoy a residential choice at less than true cost to themselves and more cost to others.

Practical Problems

It is not always easy, of course, to estimate the fiscal impacts of mandates across time and across a multiplicity of jurisdictions. No matter how refined and nonpartisan the estimating techniques used in fiscal notes processes, those techniques are subject to error. Estimating equitable rates of reimbursement becomes all the more problematic when reimbursements are to be provided over a period of years or, theoretically, in perpetuity.

Another practical problem is that legislators are inclined to circumvent mandate reimbursement requirements. Debates arise over cost estimates, definitions of mandates, and whether a particular act is a mandate falling within a reimbursement requirement. Thus, the process can become politicized, with the state seeking to pay the least and local governments seeking to obtain the most.

Need for Mandates

The debate over reimbursement, however, obscures the more fundamental questions, namely, what and how should the state mandate? It is not self-evident that states need to enact a large number of mandates. The problem for local governments often lies in the proliferation of highly detailed mandates, and mandates that serve mainly to micromanage local governments and public services. Where such mandating occurs, an argument can be made for reimbursement because such detailed mandating converts local governments into mere administrative arms of the state, thus defeating one of the major purposes of having local governments in the first place.

THE ISSUE OF LOCAL AUTONOMY

State mandates are of considerable concern to local governments because they reduce local autonomy. Essentially, a mandate substitutes state priorities for local ones, although state and local priorities sometimes may coincide. Some local officials believe that by depriving local governments of control over a significant portion of their budgets, state mandates diminish local governments' ability to respond to their own citizens' needs and priorities. In some cases, however, localities may be happy to shift the political responsibility for a necessary but unpopular mandate to the state, and let state officials take the heat.

State mandates also may be inappropriate because the state is not close enough to the operating details of mandated programs to establish them in the most effective and efficient forms. On the other hand, being too close to the problem and all of its political controversies, as local officials often are, may paralyze needed public action. Although local government decisionmakers have to maintain their accountability to their own citizens, they also are accountable to the state and have a responsibility to help meet statewide needs that have effects beyond the borders of individual localities. This spillover effect, however, creates arguments for state financial responsibility.

MANDATES AS VIRTUE AND VICE

The issue of mandates is difficult to deal with, in part because mandates are both a virtue and a vice of a federal system. They are a virtue in the sense that citizens can turn from one government to another in order to obtain action on their concerns. If local government is not responsive to a particular concern, then citizens may turn to their state government or to the federal government. Such forum shopping, or "pragmatic federalism,"[19] expands citizen choice and opportunities to influence government. This is a major reason for not having centralized government.

At the same time, mandating is a vice in the sense that it encourages centralization and reduces accountability by removing decisionmaking from local arenas and, in the case of unfunded mandates, by allowing one government to satisfy a set of citizen concerns while requiring other governments to confront citizens with the tax bill. Mandating encourages citizens to do end runs around their local governments rather than engaging their fellow citizens in the debate and action that might be necessary to alter or introduce a local policy.

Mandates rarely are invented by legislators out of thin air; instead, they are generated by constituents seeking action for their own benefit or for the benefit of their neighbors. As more legislators become full-time legislators, moreover, they are likely to face more constituent pressures for mandates. Consequently, whether or not there are constitutional or statutory provisions for reimbursement or fiscal relief, local governments will have to be attentive to the political dynamics of mandating in today's highly interdependent and intergovernmentalized environment.

SUMMARY OF STATE MANDATING POLICIES

State mandating policies include a substantial number of different elements. Each of the following strategies has been drawn from the practices and recommendations of states represented in this report, as well as other states.

- A definition of mandates acceptable to all parties concerned.
- A comprehensive inventory of mandates, updated periodically.
- A mandate review program to modify or repeal mandates as appropriate.
- Use of mandating as a last resort, after other cooperative approaches fail, and after careful consideration of whether a state interest really needs to take priority over the right of local self-government.
- Involvement of local officials in the formulation of necessary mandates.
- Use of the state ACIR as a key point of interaction and mediation.
- Requirements that legislative intent and compliance criteria be clear, perhaps requiring the legislature to specify a policy objective in a statement attached to or combined with mandate legislation.
- Procedural requirements for committees and each house of the legislature for action on mandates (e.g., recommission to a substantive committee on a point of order, an extraordinary majority-vote rule)
- Emphasis on results rather than process in mandates.
- Provision for local flexibility in methods of compliance.
- An appeals process, especially for localities that may have particular compliance problems, and especially when process is detailed in a mandate.
- Inclusion of a sunset provision in mandates.
- A fiscal notes process—or at least establish that fiical notes are important in principle—to determine the probable fiscal impact of mandates on local governments. (About 42 state legislatures have some type of fiscal notes process, as does the Congress.)
- A mechanism for measuring local government fiscal stress, with mandate costs included in the measure.

Approaches to Mandate Funding

Several options are available to fund state mandates to local governments:

- Mandate reimbursement. As of 1988, at least 14 states had either a constitutional or a statutory general mandate reimbursement requirement[20] (*Constitutional*: California, Hawaii, Michigan, Missouri, New Hampshire, New Mexico, and Tennessee. *Statutory*: Colorado, Florida, Illinois, Massachusetts, Montana, Rhode Island, and Washington).[21]
- Rules that allow local governments to ignore certain mandates that are not funded by the state. (This still requires a definition of mandates, however.)
- State assumption of responsibility for selected local functions, or swaps of functions between the state and local governments. (A state ACIR could examine such issues and make recommendations.)

- Specific functions or services treated as shared state-local responsibilities and, therefore, financed on a cost-sharing basis.

- Expansion of local government revenue authority to help localities meet mandate compliance costs.

- Provision of more general aid to local governments, especially through a program of fiscal capacity and fiscal equalization revenue sharing. (So long as the state assumes responsibility for ensuring local capacity to perform functions, both mandated and non-mandated, state mandates are less likely to be burdensome, and the state itself can link policies with costs. This approach does not solve the problem of determining the costs of mandates, but it may simplify matters and be more equitable than mandate-by-mandate reimbursement.)

THE STATE CASES

The studies presented in this volume represent a variety of approaches to state mandates. They are organized along a continuum of responses to mandates: informational approaches (catalogs and fiscal notes) to aid in decisionmaking, reimbursement of individual mandates, legal limits on mandating, and fiscal equalization as an alternative to reimbursement.

The Ohio study, prepared by the Local Government Advisory Commission, describes the process of a state just beginning to deal with some of the effects of mandates by providing information about them in the legislative process.

The South Carolina report, written by the South Carolina ACIR, describes its experience with cataloging mandates and implementing fiscal note requirements. The study includes a comprehensive discussion of a variety of approaches to mandates drawn from an examination of six other states.

The Rhode Island case describes the state's experience with a statutory reimbursement requirement. The paper discusses the process of reimbursement, the direct fiscal impact of reimbursement, and the requirement's ability to make state officials more sensitive to local fiscal needs and conditions.

The Florida paper, prepared by the Florida ACIR, also discusses a statutory reimbursement requirement, along with other available strategies. It examines the state ACIR's monitoring and review activities, and explains that Florida reimbursements can take the form of either direct compensation for funds expended or additional local revenue-mising authority.

The two Massachusetts papers concern a provision in the Proposition $2^1/_2$ local tax limitation law initiated by the voters that requires state funding of state laws or agency rules or regulations that impose additional costs on cities or towns. If the commonwealth does not assume these costs, its mandates cannot be enforced. The first Massachusetts paper discusses the mandate funding rule itself; the second discusses the rule's implementation via cost estimation, reimbursement, and up-front funding.

The Connecticut and New York studies take a different approach to mandates. After careful study of the mandates issue and reviews of the use of fiscal notes, Connecticut rejected a reimbursement requirement and opted for voluntary reimbursement by the legislature, an option that has yet to be used. Like New York, Connecticut placed its primary reliance on increased general state aid to municipalities.

The New York study discusses the pros and cons of several approaches and concludes that increased general state aid answers most of the objections of local government officials. It cites significant administrative and financing problems with the reimbursement processes in California and Massachusetts, and calls for "sorting out" the proper state and local service responsibilities as a foundation for a strategy of better service delivery.

These studies are presented to help inform state and local officials in states considering mandate issues. These issues are at the heart of sound state-local relationships. The success of any given strategy will depend on the extent to which it represents agreement between state and local governments and is followed in good faith by all parties.

Notes

[1] Edward I. Koch, "The Mandate Millstone," *The* Public *Interest,* No. 61 (Fall 1980), pp. 42-57.

[2] U.S. Advisory Commission on Intergovernmental Relations, ***State Mandating of Local Expenditures*** (Washington, DC, 1978).

[3] U.S. Advisory Commission on Intergovernmental Relations, ***State Mandates: An Update*** (Washington, DC, November 1982)

[4] Catherine H. Lovell, Robert Kneisel, Max Neiman, Adam Z. Rose, and Charles A. Tobin, "Federal and State Mandating on Local Governments: An Exploration of Issues and Impacts," (Riverside, CA Graduate School of Administration, University of California, 1979)

[5] General Accounting Office, ***Legislative Mandates: State Experiences Offer Insights for Federal Action,*** September 1988, GAO/HRD 88 75, p. 30.

[6] Steven D. Gold, ***Reforming State-Local Relations: A Practical Guide*** (Denver. National Conference of State Legislatures, 1989), p. 105.

'Michael Fix and Daphne A. Kenyon, eds., ***Coping with Mandates: What are the Alternatives?*** (Washington. DC: Urban Institute Press, 1990), p. xiv.

[8] Massachusetts General Laws c. *29,* s. 27C.

'"Florida State Mandates on Local Governments," this volume, p. 29.

[10] Florida Statutes, Section **11.076.**

"Public Act **83** 12,(June Special Session), An *Act* Concerning State Mandates to Local Government.

[12] General **Laws** of Rhode Island, **45 13 7,** "State Mandated **Costs** Defined."

""South Carolina: State Mandated Local Government Expenditures and Revenue Limitations," this volume, p. **13.**

[14] "Ohio: Devising a Workable Solution to the Mandate Dilemma," this volume, p. **11.**

[15] U.S. Department of the Treasury, ***Fedeml-State-Local Fiscal Relations: Report to the President and the Congress*** (Washington, DC, **1985),** p. **80.**

[16] Jane Massey, "Approaches to the Mandate Problem," in Tanis J. Salant, ***ed., Rethinking State County Relations*** (Tucson: Office of Community and Public Service, University of Arizona, May **1990),** p. **79.**

[17] U.S. Advisory Commission on Intergovernmental Relations, ***Residential Community Associations: Private Governments in the Intergovernmental System?*** (Washington, DC, **1989).**

"Arthur C. Nelson, ***ed., Development Impact Fees Policy Rationale, Practice, Theory, and Issues*** (Chicago: American Planning Association, **1988).**

[19] Pams N. Glendening and Mavis Mann Reeves, ***Pragmatic Federalism,*** 2nd edition (pacific Palisades, ***C A*** Palisades Publishers, **1984).**

[20] U.S. Generalb u n t i n g **Office,** ***Legislative Mandates: State Experiences Offer Insights for Fedeml Action*** (Washington, DC, September 1988).

[21] Florida has a constitutional amendment for mandate reimbursement on the November **1990** ballot. Connecticut has a voluntary reimbursement program, but no reimbursements have been made yet. The state has increased general aid to local governments.

OHIO: DEVISING A WORKABLE SOLUTION TO THE MANDATE DILEMMA*

The State and Local Government Commission of Ohio chose state mandates to local governments as a topic for research and action in February 1987. Lieutenant Governor Paul R. Leonard, chairman of the commission, appointed six of the commissioners to a subcommittee to determine the effect of mandates on local governments and to devise a plan of action for the commission's approval.

Prior to the commission taking up the study of state mandates to local governments, other organizations had considered the dilemma. The Ohio Township Association, the Ohio Municipal League, and the County Commissioners' Association of Ohio had an interest in curbing state mandates. The County Commissioners' Association is continually making suggestions and recently appointed a Mandate Task Force. In Ohio, county government may perform only functions detailed by the General Assembly. Moreover, a county's ability to raise revenues is limited by the state constitution and the Ohio Revised Code. Within these limitations, counties usually bear the brunt of state mandates without additional funding, so they had ample reason to be concerned.

Bills had been introduced periodically in the state legislature to curb state mandates on local governments, without result. A few legislative task forces touched on the mandate problem, but none followed up with action. Finally, in "Helping Ohio's Communities Respond to Federal Cutbacks: Life after Dearth," the Select Committee to Study the Effects of Federal Cutbacks on Local Governments recommended that the State and Local Government Commission compile a catalog of mandates.

In 1977, the legislature passed a law requiring the Legislative Budget Office to prepare fiscal notes for bills that "appear to affect the revenues or expenditures of the state, a county, municipal corporation, township, school district, or other governmental agency" (ORC 103.14) and are ready for a floor vote. An actual dollar impact estimate was attempted but not always achieved because of the unavailability of reliable data.

* Lisa Patt McDaniel wrote this report.

THE COMMISSION STUDY AND RECOMMENDATIONS

An important starting point for the commission's work on mandates was deciding on a definition. Realizing that mandates come from various sources and take different forms, the commission chose the following broad definition. It defined a mandate as a legal requirement, a constitutional specification, a statutory provision, an administrative regulation, or a court order that local units of government must establish or modify a specific activity or provide a service to meet minimum state standards.

The commission's mandate subcommittee established an advisory committee to help review the issue and help develop final recommendations to the State and Local Government Commission. Both committees met together to review national studies of the mandate problem and other states' responses, and to listen to the local government associations' concerns.

The mandate subcommittee sent a survey to all state legislators in July 1988. It covered the major mandates for solid waste, contract bidding, prevailing wage, and jail standards. A follow-up letter in September brought the response rate up to 17 percent of the state representatives and 16 percent of the state senators. The returned surveys were split evenly among Democrats and Republicans. Overall, the legislators who responded were sympathetic to local governments and open to some kind of reform. Few, however, indicated any initiative in leading the battle against mandates.

By December, the mandate subcommittee submitted four recommendations to the State and Local Government Commission. The first recommendation was to compile a comprehensive document outlining legislative, administrative, and executive order mandates. This catalog would serve several purposes: (1) the total number of mandates currently imposed on local governments could be determined: (2) analysis would reveal time frames during which mandates were likely to be passed; (3) outdated and unnecessary mandates could be reviewed; and (4) funding, or lack thereof, could be analyzed.

The second recommendation called for the formation of a mandate review committee to work in conjunction with the legislative budget office and the local government associations. At the end of each legislative session, this committee would analyze laws passed for trends in mandates and funding. The committee also would devise a review procedure for weeding out unnecessary and outdated mandates.

The third recommendation called for a fiscal note network to be developed among representative cities, villages, townships, and counties to provide information on the fiscal consequences of various legislative proposals on local government. This information would be included in the fiscal notes attached to legislation. The idea behind this recommendation was to increase the accuracy of the fiscal note and to make the information more concrete in a legislator's mind by using actual local governments as examples.

The final recommendation called for strongly worded legislation to be introduced by the commission's legislative members. This legislation required that the state fund the cost of a mandate or provide a means of funding for the local government. It also provided that no bill be voted on by the General Assembly without a complete and accurate fiscal note attached. The last component of the legislation expanded the fiscal note requirement to include administrative rules and executive orders.

IMPLEMENTATION

The State and Local Government Commission approved all four recommendations and directed the staff to begin implementation. The fiscal note network was the first to be implemented. Local governments asked to participate were enthusiastic to be able to make a direct contribution to the legislative process, and the Legislative Budget Office was open to having access to more accurate fiscal information. The network was in operation by the first half of the legislative session.

The procedure for compiling the catalog was patterned after that developed by the South Carolina ACIR. A third-year law student was hired to review the Ohio Revised Code to extract all current mandates, each of which was categorized by the local governments it affected, approximate amount of fiscal impact, and the function of government to which the mandate applied. The process took three months. The information will be entered into a data base management program so that it can be used and printed in an easily understandable format.

Mandate legislation was introduced on January 30,1990, by the four legislative members of the State and Local Government Commission: Sen. Richard Schafrath, Sen. Lee Fisher, Rep. Jerry Krupinski, and Rep. Ron Amstutz. The commission made every effort to get as much input as possible on the legislation from the local government associations, key legislators, and other players in the process before it was introduced. The legislation did not pass in the 1990 session.

The legislation is summarized by its first section:

> Any bill that, according to the local impact statement [fiscal note] prepared by the Legislative Budget Office, has the effect of requiring a county, townships, or municipal corporation to perform or administer a new or expanded program or service having a net additional cost . . . for some or all affected counties, townships, or municipal corporations, shall include an appropriation sufficient to fund such net additional cost of compliance with that requirement.

If the legislature chooses to exempt itself from this requirement, it must take a separate vote on whether the bill will be exempt before voting on passage.

Other key points included are: Executive orders and agency rules must have fiscal notes attached. Fiscal notes for **bills** must be completed before the third hearing. Executive orders are exempt from the appropriation requirement.

The bill provided that the State and Local Government Commission would serve as an appeals board for local governments that argue that a mandate did not have sufficient appropriations. The decision of the commission would be final.

CONCLUSION

The mandate issue has been around for a long time. It is not unique to Ohio or to local governments. Every state has imposed unfunded mandates on its local governments. In turn, state governments, as well as local governments, are subject to mandates imposed by the federal government. Acknowledging that government is at a period of significant change, and that the relationship between state and local governments is an important component of that change, the State and Local Government Commission of Ohio will continue to work toward strengthening that relationship. A workable solution to Ohio's mandate problem will further that agenda.

SOUTH CAROLINA: STATE MANDATED LOCAL GOVERNMENT EXPENDITURES AND REVENUE LIMITATIONS*

A mandate, defined in its broadest sense, is a mechanism by which local decisionmaking authority is inhibited. The U.S. Advisory Commission on Intergovernmental Relations (ACIR), in a study of state mandates on local governments, focused on the substitution of state priorities for local priorities as a basis for examining the scope and influence of mandates. ACIR defined a mandate as a "legal requirement, constitutional provision, statutory provision, or administrative regulation that a local government undertake a specific activity or provide a service meeting minimum state standards."[1] The idea of substituting priorities suggests that the mandated activity is not desired mutually by the state and locality. If there is a mandate on the local government, then a strict interpretation of the definition forces the conclusion that the mandate represents a state objective and that a similar local objective does not exist.

Beyond the definitional problems, mandates tend to elicit strong feelings from state and local leaders. To many, at the core of the controversy is a power struggle between state and local leaders over control of the locality. Even when the state compensates the locality for the mandate, local leaders sometimes believe that their ability to do the job to which they have been elected is diminished. When there is no reciprocal support for an imposed mandate, the locality is forced to find new ways to generate revenue or strain existing revenue sources to comply with the mandate. There is no guarantee of support for many state mandates. Legislators can impose unwanted and possibly unnecessary standards on local governments effectively without taking any fiscal responsibility for having done so. One of the most frustrating situations encountered by localities involves a new mandate requiring additional revenue when an existing mandate limits the ability of the local government to raise revenues to fund the new mandate.

One of the more popular justifications for mandating is to shift responsibility for services from the state to local governments. While most agree that local service provision generally is more responsive to the needs of residents, local leaders argue that the shift comes without adequate fiscal assistance from the state or with preexisting mandates that make generating additional revenues impossible without raising property tax rates. Localities, on average, are amenable to receiving responsibility for local services when there is adequate fiscal assistance or fiscal flexibility from the state. When localities are given a service provision task without assistance or autonomy to provide it, local leaders charge that the state budget has been kept viable at the expense of local budgets. From a purely political standpoint, a mandate can ensure that the responsibility for unpopular tax increases rests with local officials rather than state legislators.

A PLAN OF STUDY

The South Carolina Advisory Commission on Intergovernmental Relations (SCACIR) responded to these concerns about mandates with a five-part series of reports.

Part one offered an elaboration of the issues and problems and a justification for a long-term commitment to the study of mandates. Part two examined selected mandate studies from other states, with careful attention to methodology, scope, policy recommendations, and implementation criteria. The results were considered in light of South Carolina's needs. Part three provided an indexed catalog of existing state mandates and a look at legislative and agency mandating behavior. Part four contended with the cost of mandates to the locality. The fii phase of study summarized the insights gained from the previous reports and translated them into policy recommendations.

THE BENEFIT OF EXPERIENCE

Decreasing federal and state revenues and increasing mandates to local political subdivisions have left many localities with a choice of either discontinuing services or raising property taxes. Because both alternatives are unpopular, local leaders have turned

* Janet Kelly wrote this report.

to their state legislatures to relieve the mandate burden, increase state aid to localities, or free localities to generate revenue from some source other than the property tax. When legislatures have attempted mandate reform, the approach generally has taken one of two forms.

First, some states have constitutional amendments that free localities entirely from the cost of state-imposed mandates. This approach follows from the belief that compensatory financial aid must follow a mandate. In cases where the mandate requires the locality to do something (mandates service or program quantity or quality), the state fully reimburses the cost of the activity. Less frequently, the state also will compensate the locality for any restrictive mandate. The more common restrictive mandates involve tax exemptions and other revenue limiting statutes. Fifteen states have some type of constitutional amendment regarding mandate costs. The experience of these states' programs suggests that the constitutional amendment approach is effective only when the legislative commitment to the amendment remains strong through changing membership. Many states that have chosen to restrict mandating through a constitutional amendment report routine circumvention of the intent of the amendment.

The second alternative, fiscal notes, usually accompanies any reimbursement or full funding constitutional amendment. Fiscal notes also are used in many states where there is no commitment to full or partial funding. A fiscal note statute ensures that each mandate will be accompanied by an economic impact statement that estimates the cost to localities. There are, however, few guarantees that the note will be prepared by a disinterested party, that there will be sufficient information, expertise, and resources to estimate costs accurately, and that legislators will consider the costs to localities and feel obligated to mitigate them when the mandate bill is before them. Most states that have a fiscal note statute report that the practice rarely accomplishes the intent of the statute.

The states selected for review were examined from the introduction of their study through the legislative process to implementation, with a discussion of the shortcomings and strengths of their programs based on interviews with those responsible for the programs. The six states discussed here—Pennsylvania, Vermont, Florida, Illinois, New York, and Virginia—were chosen for their diversity of experience with the mandates problem and not for their comparability with South Carolina. Some of the programs are successful, some are not. In each case, the state has a unique perception to bring to the mandates issue and a different message for other states.

South Carolina could benefit from the experience of these six states if fiscal notes and mandate reimbursement legislation prove to be warranted by further study.

Pennsylvania

The Pennsylvania Local Government Commission demonstrated how a well planned inventory methodology can serve as the basis for further mandates study. The necessity of describing the mandates problem in exact terms has been shown in Pennsylvania, as well as in other states. Pennsylvania reports that its catalog is used frequently by state and local agencies, local governments, public interest groups, and the academic community. The state also tackled another difficult issue—periodic investigation of previously enacted mandates to determine whether the intent is being preserved in implementation. This difficult and subjective task helps ensure that the meaning of the original legislation is not convoluted by practice and initiates the first step toward elimination of mandates that have outlived their usefulness.

Vermont

While Vermont and South Carolina have few common characteristics, the Vermont experience was helpful in pointing out the resentment that legislators and local government leaders may harbor toward each other, especially where mandates are concerned. Believing that the struggle for control over local functions inhibits good government, city and county leaders in Vermont suggested that they and state legislators should interact before, during, and after a mandate is passed. This point was reinforced by Florida ACIR.

Vermont—like New York—has offered an enhancement of state revenue sharing money as an alternative to difficult and controversial cost analysis of individual mandates. This approach requires only that legislators recognize that mandates exist and cost money. Both states have concluded that less-than-full reimbursement in the form of aid enrichment is better than no support while cost quantification issues are being debated.

Florida

The Florida experience was most instructive. The statutory limitation on the cost of mandates required a fiscal note and a financing plan for each mandate. Without the note, it is impossible to create a means of financing the mandate. The Florida legislature has been quite adept at circumventing the fiscal note statute, and the constitutional problem that prevents the legislature from being bound in advance is one that any state considering such legislation must research fully.

New York

The New York Legislative Commission on Expenditure Review (LCER) offered some startling conclusions about mandates based on its survey work with local government officials, who were guaranteed anonymity. The survey results suggest that local leaders are not burdened by mandates. Because New York restricted its analysis to active mandates and did not include revenue-restrictive mandates, the finding is plausible. Several other states, including Vermont and Virginia, concluded that revenue-restrictive mandates were much more troublesome than those that required localities to provide a service or program, or that established quality or quantity levels for a service or program.

New York made two substantial contributions to the literature. First, LCER concluded that local leaders cannot distinguish effectively between voluntary compliance and a mandate. This conclusion is supported by ACIR's **1978** study. While the finding points to a serious problem with local leaders and gives merit to the suggestion that interaction between state and local leaders is advisable, it calls into question other conclusions drawn from New York's survey. For instance, if an inventory of mandates is generated from a survey of respondents who cannot specify mandates, how accurate and comprehensive can the inventory be? Similarly, if respondents are unsure about the extent of mandates, how can they conclude that mandates are not a problem for local governments?

LCER offered a second important hypothesis. It suggested that some mandates may be perceived as state imposed while, in fact, they are "passed through" the state from the federal government to the localities. **So** far, little attention has been given to this problem, but the issue has considerable research merit and should be explored fully in a comprehensive study of mandates in any state.

Illinois

The Illinois reimbursement program benefits from the experiences of California and Montana, leaders in reimbursement legislation. The fiscal note flaws that trouble Florida *so* greatly have not surfaced in Illinois. From all indications, the economic impact statements are thorough, methodologically sophisticated, and always accompany any mandate bill. But Illinois has another kind of problem. Instead **of** circumventing fiscal notes to avoid reimbursing localities, the legislature has amended the reimbursement bill to exclude pending mandates. Five years after the bill was passed, the state never had reimbursed a locality for any mandate. But there have been only two mandates passed since **1981,** both involving pensions and both exempted by amendment to the original reimbursement bill. Despite this shortcoming, the conspicuous absence of additional mandates since the passage of the bill suggests that the Illinois system, while not perfect, is one of the more effective.

Virginia

Two things make the Virginia study unique. First, mandates were found to contribute to a larger problem—fiscal stress among local governments. The Legislative Audit and Review Council (LARC) took the position that when the causes of fiscal stress were identified and addressed, mandates would become less burdensome for the localities. It recommended full funding **of** mandates in conjunction with equalization legislation for cities and counties and increased state formula revenue sharing. The Virginia legislature made an historical commitment of support to local governments and directed that a study be undertaken on the impact of mandates. This contrasts with the experience of other states. whose legislatures have been either nonsupportive or antagonistic toward efforts to reduce the burden of mandates on local governments.

Recommendations from the Review

The South Carolina Advisory Commission on Intergovernmental Relations offered the following recommendations based on its study **of** other states' experiences:

- SCACIR should continue to study the mandates issue and provide local government leaders with timely information through a comprehensive inventory of state mandates.
- The comprehensive inventory should be generated and made available to all interested groups. **A** comprehensive classification indexed by subject and locality can serve informational needs best. Appropriate features of other states' inventories should be incorporated.
- Local government leaders should be encouraged to participate more fully in the state legislative process, and legislators should be encouraged to be more receptive to local government participation.
- Fiscal notes should accompany each mandate bill. **They** should be prepared **by** a disinterested group charged with preparation of all notes. They should be sophisticated methodologically and should **contain** precise language in referencing the cost of the bill under consideration.
- Previously enacted mandates should be reassessed periodically to determine whether their legislative intent is preserved in implementation. Recommendations for revision or repeal should follow each reassessment.

- If a constitutional amendment on state mandates is considered, the amendment should be researched carefully to ensure that it does not violate any other provisions of the state constitution.

- If a reimbursement program is considered, the six factors that contribute to success should be implemented fully.[2] Any exclusion to a reimbursement program should be identified clearly and well documented.

- Aid enhancement should be considered as an alternative to a constitutional amendment or full reimbursement program if the cost of such programs are prohibitive.

- The impact of mandates on local government finance should be incorporated into any composite index of fiscal stress designed to determine those localities that are most in need of financial assistance.

- If the purpose of possible mandates legislation or any other response to the burden of mandates on local governments is to address the source of the greatest fiscal stress, particular attention should be given to revenue-restrictive mandates.

MANDATES IN SOUTH CAROLINA

South Carolina appears to have more state mandates on local governments than any of its southeastern neighbors. Most mandates have been imposed legislatively (88 percent), while the remainder were imposed administratively (12 percent). The first mandate appeared in the late 17th century; it prohibited worldly work on Sunday, except by those who practice a faith that observes Saturday as the Sabbath and who happen to reside in Charleston County. One of the latest mandates involves the distribution of assets seized during arrests for trafficking in illegal substances.

The definition of mandates used by SCACIR to generate its catalog is broader than most others. Those statutes, regulations, or orders that require the locality to undertake an activity or to comply with some standard, even when the locality would have undertaken the activity or complied with the standard voluntarily, is a mandate. Similarly, any statute, regulation, or order that prevents the locality from undertaking an activity, even when the locality would not consider undertaking it in the absence of the statute, regulation, or order, is a mandate. Finally, even though pass-through mandates are not wholly'creations of the state, they still affect the decisionmaking ability of local governments and are treated as mandates.

Legislative Mandates

SCACIR research indicates that **608** legislative mandates had been enacted as of **1986.** Of these, **568** are enforceable; **34** either have been repealed or found unconstitutional by subsequent case law.

The first dramatic increase in legislative mandates occurred in the decade **1961-1970,** when **71** were enacted (approximately seven per legislative year). In the following decade, **1971-1980,** there were 105 mandates enacted, approximately ten per legislative year. From **1981** through **1986, 57** mandates were enacted, maintaining the ten per year average of the prior decade.

In **1983,** the legislature enacted a law that requires a fiscal impact statement to accompany all bills that impose an expenditure by local governments. Section One of the "fiscal note" bill states:

> Whenever a bill or resolution is introduced in the General Assembly requiring the expenditure of funds by a county or municipality, the principal author shall affix thereto a statement of estimated fiscal impact and cost of the proposed legislation. Prior to reporting the bill out of committee, if the amount is substantially different from the original estimate, the committee chairman shall cause a revised statement of the estimated fiscal impact of the bill to be attached to the bill. As used in this section, "statement of estimated fiscal impact" means the opinion of the person executing the statement as to the dollar cost to the county or the municipality for the first year and the annual cost thereafter."

The intent of such legislation generally is to require legislators to consider the economic consequences of their directives *to* local governments. The effect, in most states, is a significant reduction in the number of mandates passed by the legislature. In South Carolina, **43** mandates have been passed by the General Assembly between the time the fiscal note bill became law in **1983** and **1986,** an average of **14** per legislative year. Since ten mandates was the average per legislative year prior to the requirement, the fiscal note law does not seem to have had an inhibiting impact.

Administrative Mandates and Executive Orders

There are currently 72 mandates to local governments imposed by state agencies. All of them are enforceable. Seventy percent of the mandates are imposed by the Department of Health and Environmental Control. They deal with health care standards, communicable disease control, inspection of public areas and products, and standards for water and waste disposal systems. The state Budget and Control Board imposes **13** percent of these mandates, and the remaining **17** percent come from the state retirement system, Land Resources Commission, Tax Commission, Department of Education, Law Enforcement Division, Public Service Commission, Health and Human Services, and the Contractors Licensing Board.

Only three executive orders imposed mandates on local governments. One, issued during the administration of Governor James Edwards (1974-1978), requires magistrates to dispose of their cases expeditiously. The other two, issued by Governor Richard Riley (1978-1986), deal with issuance of tax-exempt private-activity bonds under the *Tax Reform Act of 1984* and the *Tax Reform Act of 1986.* The latter order was set to terminate when the legislature acted on the matter.

What is Being Mandated?

The mandates were classified by function. The most common mandates involve the general operation of local government. Other significant categories include education, public safety, and revenue exemptions.

Who is Responsible for Compliance?

Of the 683 mandates, 93 percent (638) were applicable to counties, 39 percent (268) to municipalities, and 17 percent (113) to special purpose districts. Many mandates apply to more than one unit of local government. Thirty-four of the mandates are no longer enforceable.

The total number of mandates to specific local government officials is 344. Law enforcement personnel (63), treasurers (36), auditors (29), magistrates (24), and clerks of court (20) account for 50 percent of the total state mandates to local government officials.

Federal Pass-Through Mandates

The analysis was expanded to include mandates originating from the federal government because they require as much compliance as those from the state. Frequently, studies have failed to make the distinction between state-initiated and federal pass-through mandates because the latter often appear in the state statutes and are not easily identifiable as pass-through mandates.

When a mandate is imposed by the federal government, the state often is charged with ensuring compliance. For this reason, the mandate is incorporated into the body of state laws affecting local governments and appears, at least on its face, to be a creation of the state. Further, some federal mandates are strengthened at the state level. When a state wishes to impose clean air standards on its localities at a level greater than that required by federal standards, it may do so in the form of a mandate. These also are incorporated into state law and are the most difficult pass-through mandates to categorize because they are not, strictly speaking, either federal or state mandates, but a combination. Of the 200 mandates reviewed by the agencies responsible for their enforcement, 13 (7 percent) were determined to be federal pass-through mandates.

Mandates by Budget Proviso

Each year, the South Carolina General Appropriations Act contains temporary provisos that affect state agencies, employees, and local governments in the same way as a permanent mandate. The locality is required to comply fully with the language of the provisos, some of which are repeated from year to year while others appear only once. These provisos cannot be incorporated into a catalog of state mandates because of their temporary nature, but they must be mentioned in any discussion of state authority over local decision processes.

Repealed and Unconstitutional Mandates

The state legislature has repealed 31 mandates since 1976. Most of these statutes set fee schedules that have become outdated. Other repeals, however, indicate some change in legislative attitude, such as repeal of the blue laws prohibiting certain sales on Sundays. The majority of mandates that have been repealed were enacted more than 50 years ago. There are many other mandates still in effect that might be candidates for repeal during future legislative sessions. Only three legislative mandates have been determined to be unconstitutional by case law.

Traditional Mandates

Some mandates exist not so much formally as in the perceptions of state and local government officials. Commonly called "traditional" mandates, these are based on custom rather than law. While there are many kinds of traditional mandates in South Carolina, none seems as irksome to local government officials as the provision of office space and supplies to state agencies. In some cases, this is specified by law, as for officers of the circuit court, but in other cases, an historical series of events has led to the common belief that the locality is responsible for housing and supplying a state agency.

Most traditional mandates have some justification in the general perception that the locality should carry out the function. Office space for state agencies and a requirement that localities provide free transportation to children enrolled in public schools seem unique to South Carolina localities. Another traditional (not obligatory) mandate with the perception of local benefit is the yearly payment to state-run mental health facilities for the care of the counties' retarded and handicapped citizens.

The examination of traditional mandates suggests that state and local leaders should reassess periodically the nature of state-local cooperation within a locality and reach new agreements about the cost burdens involved.

The Cost of State Mandates

SCACIR contracted with the Bureau of Government Research and Service of the University of South Carolina to study the problem of assigning costs to state mandates and to analyze the costs of selected mandates in localities throughout the state. The bureau selected six state mandates for cost analysis: medically indigent assistance funds, court administration, space provision for state agencies by county governments, landfill regulations, collection and payment of state additions to fines and fees, and the state Highway Department's policies relating to right-of-way acquisition. Two examples of constraint mandates—the local option income tax and the merchants' inventory property tax—also were analyzed. Data for the cost analysis were collected in 14 counties and ten municipalities. Cities with populations of 10,000 or more were divided into five groups based on their FY 1984 per capita revenue. A random number table was used to select municipalities from the groups.

Cost Analysis Results

The cost analysis results for each of the sixdirect mandates and the two constraint mandates are summarized below. The review of the state's fiscal impact statement law also is discussed.

Medically Indigent Assistance (MIAF). When county expenditures for assistance for the medically indigent in FY 1985 are compared to the MIAF administration costs, plus the mandated medicaid and MIAF assessments for FY 1987, the 14 counties in the study fall into three distinct groups. For four of the counties, the FY 1987 assessments, plus administrative costs, totaled less than the amount that had been spent on medical indigence in FY 1985. Two counties experienced little change between their FY 1985 expenditures and their mandated FY 1987 expenditures. Of the eight counties required to increase their efforts, five had to increase their expenditures by over 100 percent between FY 1985 and FY 1987. Mandated FY 1987 per capita expenditures for medical indigence assistance ranged from **$2.53** to **$4.89.** Based on the value of one mill of property tax (the amount of revenue that one mill will raise), counties estimated that the assessments represented from about 1.5 mills in Oconee County to about 4.5 mils in the poorer counties of Bamberg and Dillon. The timing of the mandate caused the financial impact to be particularly significant. The requirement by the state for counties to allocate a portion of their revenue for assistance to the medically indigent came at about the same time that South Carolina cities and counties were faced with a loss of over $71 million in federal General Revenue Sharing funds.

Court Administration. County officials perceive court-related mandates as the most costly. Surprisingly, court revenues tended to exceed expenses in most counties studied. On average, the courts generated a net revenue of $.66 per capita. Still, the constant growth in case loads and frequent changes in laws, procedures, and reporting requirements are a burden that has significant impact on county budgets, staffing, and space requirements.

Office Space for State Agencies. County officials perceive the requirement to provide office space for state agencies to be the second most costly state mandate. The 14 counties studied provide an average of almost one-half square foot of office space per capita to the departments of Social Services and Health alone. Using an imputed rent figure of $6.50 per square foot for full service leased space, the average per capita cost for the two departments is $3.17. That figure varies from **$6.03** in Orangeburg County to $1.97 in Cherokee County. Six of the seven counties with the highest per capita costs for space (based on imputed rent) also have the highest rates of poverty.

Landfill Regulations. All of the counties and one of the ten cities in the study group operated landfills under domestic waste permits issued by the state Department of Health and Environmental Control. Per capita landfill operation costs ranged from $1.40 in Richland County to **$13.48** in Colleton County. Landfill costs exceeded revenues in all but three of the counties. County officials were most concerned about the stricter regulations expected to be promulgated by the Environmental Protection Agency and the state department. Officials estimate that the proposed regulations will increase landfill costs from two to five times current levels. Unless federal and state funds are made available to assist local governments to comply with these proposed regulations, only the wealthiest localities will be able to continue to operate sanitary landfills.

Collection of State Fees. The state raises revenue for a variety of purposes by adding fees to fines and forfeitures. While this mandate is not overtly costly for local governments, it is perceived to be burdensome. The impact of this mandate is primarily in the administrative time needed to track and rebate the fees. The cost and burden of this activity is heavily dependent on the extent to which the municipal government utilizes computers for its court-related record keeping. Smaller and poorer municipalities still rely on manual records. The cost of administrative time spent complying with this type of state mandate is difficult to estimate. Most likely, for individual mandates, the cost would be negligiile. But the financial burden of this type of mandate might be termed insidious since the impact is gradual and cumulative.

State Highway Department Right-of-way Policy. The South Carolina Highway Department's policy is that, as a condition of selecting a municipal street to be added to the secondary system, the municipality is responsible for acquiring the right-of-way. The counties do not have to assume that responsibility. Only in a few cases was the acquisition of right-of-way a significant expense. Many municipal officials were concerned, however, about what appear to be unwritten and inconsistent Highway Department policies. These types of mandates are resented at the local level and are perceived to be burdensome.

Local Option Income Tax. The local option income tax was studied as an example of a constraint mandate. Since South Carolina local governments have limited revenue sources they are allowed to use, constraints or restrictive mandates have a significant impact. Because of their smaller share of state aid funds (21.67 percent in FY 1986), municipalities appear to be burdened particularly by revenue constraints. Estimates for 1979 local income tax receipts were developed because of the availability of **U.S.** Census data on household income. Based on those estimates and assuming a fairly low income tax rate of 10 percent of state income tax liability, the 14 counties studied could have raised from about 30 percent to 120 percent of 1979 property tax receivables with an income tax. Municipalities could have raised between about 20 percent and 117 percent of 1979 property tax revenues with an income tax.

Merchants' Inventory Tax. In 1984, the General Assembly passed legislation to phase out the merchants' inventory property tax over a period of three years (S.C. 12-37-450). Beginning in 1988, merchants' inventory is exempt from property taxation, and state reimbursement for this loss is capped at the 1987 tax level. Local government officials were most concerned about this growing local revenue source becoming another form of capped or declining state aid. Based on the General Assembly's need to produce a balanced state budget, most local officials expect less than full reimbursement. The state's reimbursement plan does not reflect merchants' inventory growth rates. In the counties studied, the average growth in the merchants' inventory assessed valuation from 1985 to 1986 was 16.64 percent. The growth from 1986 to 1987 was much slower, averaging only 8.48 percent. Merchants' inventory assessed valuation averaged slightly over **3** percent of the total assessed valuation of property in the 14 counties in 1985.

Fiscal Notes. Of the **35** state mandates to **local** government enacted since South Carolina passed the fiscal note law in 1983, only **six** were accompanied by a fiscal note, none of which addressed the fiscal impact on local government. The lack of compliance with the fiscal note requirement can be attributed, in part, to political realities. By passing mandates on local governments without raising state taxes, the legislature is able to ignore the actual costs and appear to be responsive to both interest groups and taxpayers. The burden is passed on to local officials, who must either raise taxes, cut local services, or postpone other local expenditures in order to comply with the mandates.

Conclusions about Local Mandate Costs

Based on the data collected, MIAF, the provision of space for state agencies, and sanitary landfill regulations account for 36 percent of the state aid funds received by counties. These mandates were selected for study because they were perceived by local government officials to be the most costly, but it is unclear that the current level of state aid is sufficient to offset the costs of state mandates. Additionally, it is apparent that mandates place more of a financial burden on the poorest counties, which are, by definition, least able to generate additional revenue to comply with state aid requirements.

Federal pass-through mandates regulating environmental protection are the most costly. While this study looked only at landfill operations, the mandates on air quality, water testing, waste water treatment, and the handling of hazardous wastes are expected to be increasingly stringent and expensive. Compliance with these regulations may be beyond the financial capacity of most local governments.

The major impact of mandates is in the cumulative effect of years of incremental change. The information collected on the selected group of mandates indicates that they tend to become more expensive over time. A recurrent theme during the interviews with local government officials was the feeling of powerlessness in the face of increasing demands and limited resources. Because mandates shift decision-making authority, local officials find it difficult to formulate plans that reflect local priorities.

FINAL RECOMMENDATIONS – A MATTER OF PERSPECTIVE

The 16-month study of mandates by SCACIR provided a clearer focus on the problem. That problem, it seems, is one of perspective. The state frames the issue in terms of individual mandates while the localities focus on the cumulative effect of all mandates.

There is no substantive disagreement between the state and localities over the mandate-by-mandate issues. Any given mandate will have served a purpose or currently serves a purpose of making local government better. Are individual mandates outrageous? Generally, no. Are they expensive? Sometimes. Does that expense cripple the local budget? No. Would some localities, in the absence of a mandate, fail to meet the standard that the mandate requires? Probably. Is it necessary to look at ways to relieve the mandate burden in South Carolina, given that state officials believe that the more they intervene in the local process the better the result becomes? From the state perspective, not really. From the local perspective, a reexamination of the mandates issue is imperative.

Local officials in South Carolina believe that the state has a legitimate role to play in the operation of local government. From SCACIR research and interviews, it seems that resentment begins when the mandates create unreasonable burdens. Specifically, local government leaders ask for a mandates policy that embodies three principles:

- A mandates policy should make sense.
- Local input is necessary for a good policy process.
- State government must permit local flexibility in compliance with state mandates.

The SCACIR report elaborates on each of these three policy imperatives and concludes with ten practical recommendations for dealing with mandates in the future.

RECOMMENDATIONS

The policy recommendations grew from the better insights afforded by the review of the literature and discussion of the problem in part one of the study, the experience of other states offered in part two, the catalog of existing mandates summarized in part three, and the wealth of material on mandate costs and local concerns presented to the SCACIR by the University of South Carolina in part four of the mandates study.

Avoid Reinventing the Wheel

The SCACIR catalog of mandates is not without flaws. A few laws or rules likely are absent from the document. At times, the staff had to make a decision about whether something was a mandate, especially when a law required a standard but did not suggest who was responsible for ensuring that standard. On the whole, the SCACIR staff believes that the 683 mandates included in the catalog represent existing situation accurately.

Compiling this list was difficult, time consuming, and absolutely essential in order for state and local officials to discuss the mandates issue on the basis of fact rather than perception. There should be a firm commitment to keeping the catalog current so that an informed dialogue may continue. A compilation of fiscal notes to accompany the catalog would be an important and useful enhancement.

Continue Mandate Cost Analysis

The university's attempt at cost analysis is one of the most elaborate and comprehensive in local government literature today. Despite the fact that the marginal costs of all mandates never can be quantified precisely for all the reasons presented in the report, it is vitally important that students of local policy never stop trying to fiid better ways to quantify mandates. Monitoring the academic and professional literature, as well as attempting innovative quantification methods independently, will ensure that South Carolina remains at the forefront of this issue. The closer we come to comprehensive quantification, the more accurately the relationship between state aid to localities and state mandates to localities can be seen.

Clean Up the State Code

Our survey and discussions have led to the conclusion that local leaders would like to have more respect for the requirements with which they are expected to comply. In practical terms, that means striking archaic and inappropriate mandates from the code, amending mandates that may be outdated but appropriate, revising mandates that are vague, and enforcing mandates that pass all these tests. A committee should be formed and charged with taking those mandates to the legislature for action. While the composition of the committee is a flexible matter, some groups would seem appropriate for representation on the committee. The South Carolina Association of Counties, the Municipal Association of South Carolina, the Councils of Governments, the Advisory Commission on Intergovernmental Relations, the legislature, and the agency responsible for preparing fiscal notes might be represented on the committee. This group should publish an annual legislative update reporting the mandates for which change was proposed and the action taken on them.

Comply with the Fiscal Note Legislation

The Bureau of Research and Service reported widespread noncompliance and inappropriate compliance with the fiscal note bill. Mandates often did not have an accompanying economic impact statement when put before the legislature. Some of the fiscal notes that accompanied mandates missed the point. One reported that a state mandate to local government would not constitute an additional cost to the general fund. The statement was accurate given that it was the local government that would fund compliance with the mandate. There was never any mention of local cost in the note.

Make Fiscal Notes Work in South Carolina

The 1978 report on state mandates by the U.S. Advisory Commission on Intergovernmental Relations found that almost half of the states had a fiscal note requirement on state mandates, that notes usually pertained only to legislative mandates, and that cost estimates generally were accurate. Part two of the SCACIR study demonstrated that those states employing a professional staff to compute economic impact of proposed state mandates had more accurate and complete cost analysis. South Carolina should designate one qualified agency to prepare notes and recommend that a standard form or approach be used for cost analysis to permit comparability among mandates.

While the matter of designating a group to prepare fiscal notes should be handled by the legislature, the charge to the group should be to explore the individual and cumulative costs of a single mandate. When the cumulative perspective of a potential mandate that may be added to an existing pool of mandates is addressed by the group and delivered to the legislature, we can expect the gap in perspective between state and local leaders to narrow. The point of cumulative impact analysis might be explained best by an example of such a situation in South Carolina. When Rule 53 required the county clerk of court to review child support payments monthly and report those more than five days in arrears, the counties had to add staff and computers. These were the initial costs. The cumulative impact on the locality involved increased demands on law enforcement personnel to take action on the clerk's report, a new annex to one court house to store the additional paperwork (tripled by Rule 53), and finally undertaking the construction of a new office building in another county to house the county employees that had to be moved from the court house to accommodate those state officials required by mandate to be housed at the courthouse. While a fiscal note group could not be expected to explore each potential cost down to the penny, a note containing only the cost of two new clerks and a computer would not have done justice to the complexity of the local problem. If the note had been augmented by a plan for housing the tripled paperwork associated with the mandate and a discussion of the capacity of existing facilities to accommodate the increased personnel, the legislature would have a much clearer idea of the impact of its decision on the local level.

Finally, the group responsible for the preparation of fiscal notes should determine whether other mandates compete with or limit the locality's ability to comply with the prospective mandate. If, for example, the state directed a new and expensive service to be provided by the locality at local expense while another mandate limited the amount of property tax increase and prohibited alternative forms of local taxation, a conflict clearly would exist. The fiscal note group should be alert for such matters and offer resolutions to them.

Make Legislative Intent Apparent

When a legislator proposes a mandate, it should be indicated clearly how it is to be funded. When the locality sees that it is expected to fund the mandate fully or partially, it can make appropriate budget plans based on the estimated cost contained in the fiscal note. If the state intends to fund the mandate fully, the locality can proceed with budgeting for its needs without regard to the cost of the new mandate. Without a clear idea of the legislative intent for funding the mandate, the locality is forced to guess—a process that has a deserved reputation for inefficiency. The fiscal note bill should be amended to include a mandatory statement by the author detailing how the mandates will be funded.

Develop an Appeals Process

Even though a competent and unbiased group of people will be charged with preparing the fiscal impact statement and will consider the cumulative impact of the proposed mandate, they cannot be expected to understand fully the complexities of local conditions. The cost analysis portion of the study has demonstrated clearly that mandates affect different localities to different degrees. What may be a negligible expense for a metropolitan locality may be a crippling blow to a rural locality. Local governments should have an opportunity to respond to a fiscal note with additional information that would help the legislature with the mandate decision.

The appeal should be presented to the Mandates Advisory Group discussed earlier. In addition to being charged with periodic review of existing mandates, this group or a designated subcommittee also should serve as an ad hoc appeals committee. After review of the fiscal note and independent study of the problem, it should hear appeals and intervene with the legislature on behalf of the appealing localities if appropriate.

This process specifically addresses one of the most common complaints from local leaders regarding state mandates. In South Carolina, as in all other states studied, local leaders describe exclusion from the process as much more disturbing than any mandate, even the costly ones. When state and local officials contribute jointly into the policy process, enhanced understanding can lead to better voluntary compliance.

Formalize Traditional Mandates

According to the study, county leaders indicate that the provision of office space, equipment, and supplies to state agencies is one of the most difficult state-local issues with which they have to contend. While most county administrators are not particularly anxious to evict state agencies from county buildings, they ask that their responsibilities to those agencies be more clearly defined. Among the more pressing questions: Is there any limit to the ability of the state to demand equipment and supplies? Must the county comply with frivolous requests? What will happen if a county refuses a request? The tension between the state and its localities is never more evident than on this issue.

In order for the localities to understand the limits of their responsibilities to state agencies, traditional mandates must be codified. It may be more appropriate for them to appear as administrative regulations rather than legislative mandates, but they should be formally enacted. Effective wording would include the standards of accommodation required, limits to local responsibility, a formal appeals process, and the consequences of noncompliance.

Plan for Compliance in the Present

Mandates by budget proviso have much the same effect on the local budget as traditional mandates; they inhibit local efficiency in budgetary planning. When a locality can anticipate a mandate, decision-makers can budget for it. No city or county wants to collect more taxes than it needs, nor does it want to make difficult midyear adjustments. The proliferation of procedural mandates to local governments in South Carolina suggests that the legislature is concerned with local efficiency. The effect of traditional mandates and mandates by budget proviso have opposite consequences.

A mandate by budget proviso might be entirely appropriate in any single budget year, but if the intent of the mandate is permanent, it should be submitted to the legislature for enactment. Mandates to local governments should take one of three forms: legislative enactment, administrative regulation, or executive order. No mandate should appear as a proviso to the budget bill for more than two consecutive years.

Plan for Compliance in the Future

The university study reported an anticipated fourfold increase in the cost of landfill operations in order to comply with new standards of the Department of Health and Environmental Control. A 1986 amendment to the Safe Water Drinking Act requires localities to pay for water testing—a service previously supplied by the department at no charge—and simultaneously increases the number of tests and test stringency. All localities will find that these ever increasing pass-through mandate costs strain the budget. For some smaller localities and for those that are finding that the consequences of years of postponed capital improvement to their fiscal plant have caught up with them, the impact is devastating.

Development specialists agree unanimously that adequate infrastructure is one of the most important parts of the industrial location decision. Some South Carolina localities face a moratorium on development as a result of their outdated facilities—some so antiquated that compliance with federal and state standards is practically impossible. Other localities have adequate facilities at the present time but have no growth capacity at the existing site. The financial drain of ever-higher quality standards has made new construction difficult. Without new construction there will be no new development and, hence, no new sources for funding new development. Meanwhile, the costs of compliance rise.

The state should develop a stronger partnership approach to the solution of these problems. No general reimbursement bill has been proposed as a solution to the mandate burden as a result of the study, but state aid for compliance with these standards is *crucial* to continuing growth and development in South Carolina's localities. Without strong and prosperous local governments, the state cannot be strong and prosperous.

Legislation to assist localities in compliance with new and higher quality standards in environmental programs would help relieve the local budget, create a positive partnership between state and local leaders, and typify the kind of united commitment to strong infrastructure and strong state and local government that developers find so attractive.

SUMMARY AND CONCLUSIONS

South Carolina is not unlike other states with regard to the issue of state mandates to local governments, even though it has more mandates than most other states. Local leaders accept mandates as a part of the relationship localities have with the state. Local leaders in South Carolina want the state to review its mandates and eliminate those which no longer serve the purpose for which they were enacted. They want the impact of future mandates to be discussed thoroughly before enactment, and they want to participate in that discussion.

Many of South Carolina's mandates are procedural—enacted to enhance efficiency in local government. The intended effect and the actual effect are sometimes disparate. The disparity arises when the cumulative impact of mandates is ignored. Local leaders believe their participation in the enactment and review processes will result in a better understanding of cumulative consequences and a higher quality of state requirements, both in the present and in the future.

Finally, local leaders want an informed dialogue on mandates to continue. They want reliable and complete information on all the issues surrounding mandates, and they want to work in partnership with state government to find new ways to fund compliance with existing mandates and those that will result from higher environmental quality standards.

The specific policy recommendations offered by **SCACIR** are:

1) Future mandates should be incorporated into the existing catalog at the end of each two-year session and their fiscal notes retained for the record.

2) As new approaches and techniques for assessing the cost of mandates become available, they should be employed to study the costs of mandates to local governments.

3) Existing mandates should be subject to a periodic review of their relevance. Mandates that are archaic, not implemented, not enforced, or unclear either should be removed from the code or revised and enforced.

4) Fiscal note legislation should be complied with in the spirit in which the legislation was enacted. The notes should reflect the cost to local governments, as well as the cost to the state, and should accompany each legislative and agency mandate.

5) The fiscal note should be prepared by a neutral, quantitatively sophisticated group. Periodically, that group should conduct internal validity studies that compare their estimated economic impact of mandates with the actual economic impact. Predictions should include the cumulative impact of the proposed mandate. When a previous mandate competes with or limits ability to comply with a proposed mandate, a resolution method should be offered.

6) Fiscal note legislation should be amended to require a statement by the author of mandate legislation as to how the mandate is to be funded.

7) Local government officials should be permitted to appeal a prospective mandate and present an independent assessment of the cumulative economic impact of a proposed mandate and present their findings to the appropriate legislative committee before a mandate is enacted.

8) State government should clarify local government responsibilities regarding traditional mandates, such as provision of office space and supplies to state agencies.

9) Mandates should be in one of three forms—legislative enactment, administrative regulation, or executive order. While there may be good reason to include a mandate to local government in the budget bill one year, mandates by budget proviso should not recur.

10) The state should consider the impact of federal pass-through mandates on the localities, especially those that relate to water, air, and landfill standards, and work with local officials to find creative ways to fund compliance.

Notes

[1] U.S. Advisory Commission on Intergovernmental Relations, *State Mandating of Local Expenditures* (Washington, DC, July 1978), p. 2.

[2] The six factors of a successful reimbursement program, as recommended by the South Carolina study, are:

1. Mandates to be considered for reimbursement must be clearly identified.
2. Increased service mandates should be included along with service mandates.
3. Legislative and administrative regulations should also be eligible for reimbursement.
4. Reimbursement legislation should apply to revenue raising restrictions as well as to service requirements.
5. Costs must be accurately established for reimbursement to be fair.
6. A systematic and complete reimbursement process must be created, including a means of appeal.

RHODE ISLAND: EXPERIENCE WITH A MANDATE REIMBURSEMENT LAW*

In 1979, the Rhode Island General Assembly enacted the Property Tax and Fiscal Disclosure Act. The key provisions of this act were aimed at improving state-local fiscal relations by providing "truth in property taxation," including disclosure of local budget needs, limiting local deficit spending, requiring decennial revaluation, and reimbursing cities and towns for the cost of certain state-mandated programs.

This reform legislation was enacted in the heyday of the taxpayer revolt. In November 1978, the electorates in ten states approved tax and spending limitations, and an outcry was emerging in Rhode Island over the high level of property taxes. In 1979, for example, Rhode Island's per capita property tax burden was 35 percent above the national average, and ninth highest in the United States.

Political and community leaders recognized that something needed to be done to create a more accountable intergovernmental fiscal system. Therefore, at the request of then Governor J. Joseph Garrahy, the Rhode Island Public Expenditure Council and the Rhode Island League of Cities and Towns developed what was promoted as a thinking-man's response to the property tax revolt—the Property Tax and Fiscal Disclosure Act. It was hoped that this legislation would result in:

- Taxpayers being better informed regarding how tax rates are set, what their local budgets proposed, who was making certain program decisions affecting their tax bills, and whether their tax bills represented an equitable distribution of their local tax levy; and

- Local officials having some assurance that the state would reimburse them for mandates and would have a system in place ensuring their input toward the determination of mandates and which ones will be reimbursed.

* Gary Sasse of the Rhode Island Public Expenditure Council wrote this article.

This article focuses on Rhode Island's experience with one aspect of the property tax reform package—state mandate cost reimbursements.

WHAT IS A STATE MANDATE?

In Rhode Island, a state mandate is defined as "any state initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenue sources."[1] When state mandates are intended to comply with federal regulation, laws, and court orders, only that portion of the state mandate that exceeds the federal requirement is considered to be a state-mandated cost. Furthermore, there are seven specific types of state mandates that are not subject to state reimbursement. These are:

- Holding elections;
- Assuring due process;
- Notifying the public and conducting public meetings;
- Assuring procedures for administrative and judicial review of actions taken by cities and towns;
- Protecting the public from malfeasance, misfeasance, or nonfeasance by local government officials;
- Administering finances, including the levy, assessment, and collection of taxes; and
- Preparing and submitting reports necessary for the efficient administration of state laws.

Reimbursements are not required if a state aid program exists, even if that program provides for only partial reimbursement. Finally, state mandates costing less than $500 are not reimbursable.

HOW REIMBURSEMENTS ARE DETERMINED

The Office of Municipal Affairs in the Department of Administration is responsible for administering Rhode Island's mandated-cost reimbursement law. This responsibility involves the annual review of proposed mandates; determination of those that fit the definition of "reimbursable mandates"; identification of allowable reimbursable costs; and promulgation of regulations for the submission of reimbursement requests. Basically, the procedure operates as follows:

- By September 30, the Office of Municipal Affairs conducts a public hearing, at which time local officials and other interested parties identify proposed mandates and their related costs.

- By January 1, the Office of Municipal Affairs must issue a report identifying reimbursable state mandates established during the preceding fiscal year (July 1-June **30).** It should be noted that this report does not include all legislative mandates; it contains only those that have been defined to be reimbursable.

Cities and towns (Rhode Island does not have county governments) may submit a statement by April 1 of actual local costs incurred for items eligible for reimbursement and for state reimbursements that were effective in the preceding fiscal year. For statutory mandates, the effective date is the date the statute becomes law. For administrative rules and regulations, the effective date is the date stated in the rule or regulation.

Actual local costs incurred means the actual expenditures from local source revenues for the reporting period in accordance with "Uniform Accounting and Reporting Standards for Rhode Island Municipalities," promulgated by the Office of the Auditor General of the State of Rhode Island. The Department of Administration may review and audit all documentation required in support of reimbursement requests by cities and towns, as well as any other municipal records related thereto.

Once the Office of Municipal Affairs reviews municipal reimbursement requests, it submits a report to the State Budget Office. This report shows the cost of all mandates for each municipality and serves as the basis for the state appropriation to reimburse general purpose local governments for state mandated costs. Based on the adopted state budget, the state Treasurer will reimburse the communities in accordance with the Department of Administration's report. Because of the need to compile actual cost data, reimbursements to the cities and towns occur two years after the expense was incurred.

THE IMPACT OF RHODE ISLAND MANDATING STATUTES

There has been no comprehensive analysis of the Rhode Island state mandated-cost reimbursement, which makes it difficult to evaluate systematically what impact this law has had on state-local fiscal relations during the last eight years. In making such an assessment, two fundamental questions should be explored. First, what direct financial impact has the law had on state-local fiscal relations? Second, has the law served to heighten the legislature's consciousness about the effect state laws can have on local fiscal systems?

Direct Fiscal Impact

If Rhode Island's mandated-cost reimbursement program is measured by the level of payments, the conclusion would have to be that the law was nothing more than a paper tiger in the jungle of state-local relations.

Between fiscal years 1986 and 1990, statewide reimbursements totaled $225,000. In the current fiscal year, the General Assembly has appropriated approximately $75,000 out of a $1.5 billion budget to reimburse local governments for state mandated expenditures.

Included in this $75,000 are ten identified mandates that deal largely with personnel practices and environmental regulations. Over two-thirds of state reimbursements are for two mandates—educational incentive pay for tuition and supplies for police officers obtaining a master's degree and compliance with permit regulations for underground storage tanks.

Further evidence of the financial insignificance of the state-mandated reimbursement requirement can be seen in the number of localities that actually request state reimbursements. In fiscal year 1990, only about one-third (14 of 39 cities and towns) of Rhode Island's general local governments have asked to be reimbursed for state mandates.

The limited use of the reimbursement program is not attributable to a lack of interest in state-local fiscal relations in the Ocean State. The program has had little financial impact during a period of significant changes in state-local relations. For example, during the past five years, the General Assembly has enacted legislation prescribing personnel practices in several areas: teacher pension laws were modified to allow retirement with full pension after 28 years of service instead of 30 years; part-time municipal employees were given the right to bargain collectively; fire departments now are required to comply with the National Fire Protection Association's health and safety standards (NFRA 1500); and new impasse procedures were legislated to help resolve school district labor-management disputes. These types of mandates are examples of incremental adjustments to existing state requirements. One problem in administering a state cost reimbursement program is establishing the actual expense associated with incremental changes.

Also during the last five years, legislation and regulations were adopted requiring that local services meet certain standards. For instance, school bus safety legislation mandates the use of bus monitors, and the State Board of Regents for Elementary and Secondary Education adopted a so-called "Basic Education Program," which contains numerous service mandates in all phases of public school operations. School districts also were required to use a portion of their state aid for specific state mandated programs.

A National Conference of State Legislatures task force observed that mandates deserving the closest scrutiny are those dealing with personnel policies, environmental standards, service levels, and tax-base exemptions. The mandates outlined above indeed were concerned with personnel practices and service levels; however, the Rhode Island reimbursement process has not been utilized fully.

This limited application of the mandating statutes did not mean that the Executive and Legislative branches took a cavalier approach to state-local fiscal relations. Quite the contrary. The impact of state mandates on local governments was addressed in substantive legislation directed at major public policy concerns. For example, in return for comprehensive planning mandates, cities and towns received grants to develop plans consistent with statewide land use programs. School reform legislation was enacted that has made the state a senior partner in funding public schools as part of a comprehensive program that placed additional state imposed requirements on local school systems.

The salient point about these experiences is that decisionmakers viewed the delivery of specific services as a shared state-local responsibility and developed separate cost-sharing approaches to finance them outside the mandate statute. The cost-sharing programs generally were guided by the principle that state aid and reimbursement for major government functions should consider differences in local fiscal capacity and need. Nevertheless, mandates for relatively inexpensive administrative and procedural functions, such as providing information and keeping records, could be handled through the reimbursement program.

Rhode Island had mandates that relate to personnel practices long before there was a cost reimbursement program. As noted, since adoption of the mandating law, the General Assembly continued to enact statutes that affect retirement benefits of local employees and labor-management collective bargaining procedures.

Increasing Sensitivity to Mandating Costs

Measured solely from the viewpoint of actual reimbursements, the Rhode Island law does not appear to have had a significant impact on state-local fiscal relations. Nevertheless, its success or failure cannot be measured only by direct financial impact. Of greater importance is whether the program has made state government more conscious of and sensitive to local fiscal needs and conditions. There is no empirical evidence to enable one to answer this question.

Procedurally, accountability mechanisms have been built into the system. This process, commonly referred to as a "fiscal note," is an attempt to identify the fiscal impact of proposed mandates as legislation is being considered. The law permits the Rhode Island League of Cities and Towns to request fiscal notes on any bill or resolution that it believes affects local government. This provision is particularly important because, as the principal lobbying organization for local government in Rhode Island, the league is in a position to monitor the legislative process. Therefore, if municipalities believe that any legislation could have a fiscal impact, they can demand that the legislature receive a fiscal note.

What influence fiscal notes have on legislative decisionmaking is not clear. A 1988 report of the United States General Accounting Office found that:

> Cost estimates provide important information to legislators, and the benefits of the process outweigh its costs, according to both federal and state officials. Nevertheless, the estimates had little effect in detemng, modifying, or funding mandates unless there was also strong legislative concern about the impact of imposing mandates on subordinate levels of governments.

In addition to legislative proposals, fiscal notes also are required for potential administrative rules. When a state agency proposes to adopt administrative rules that affect local government finances, it must prepare a fiscal note in cooperation with the Rhode Island League of Cities and Towns.

Another device to keep the public informed about the cost of state mandates is an annual inventory of mandates and their costs. An inventory of mandates in existence before 1979 was published, and an annual report identifies additional mandates that are subject to reimbursement. Unfortunately, a complete inventory of mandates and their costs, whether reimbursed or not, is not published.

CONCLUSION

In Rhode Island, a state mandated-cost reimbursement program was included in a program to help control the growth in local property taxes. This initiative was part of a broader strategy that included full disclosure of property tax levies, reform of revaluation procedures, and control of potential municipal deficits. These reforms, enacted in 1979, were necessary first steps in strengthening the state-local fiscal structure.

Nevertheless, these reforms largely were process-oriented and aimed at promoting greater accountability for local fiscal decisions. As such, they were not expected to address the fundamental fiscal problem in Rhode Island—an over-reliance on the property tax to fund municipal services. Therefore, subsequent legislation has reformed the method of funding public schools and replaced the defunct federal revenue sharing program with state tax dollars with the "quid pro quo" of limits on the growth in future property tax burdens. Nonetheless, the state mandating law has helped focus attention on intergovernmental fiscal relations, and the impact of the state mandated-cost reimbursement system should be viewed in the overall context of state-local relations.

Endnote

[1] General Laws of Rhode Island, 45 13 7, "State Mandated Costs Defined."

FLORIDA: STATE MANDATES ON LOCAL GOVERNMENTS*

The enactment of state mandates on local governments is not a new phenomenon in Florida. Plagued by the perceived and real inadequacies of the current taxing and revenue structure for local governments, the issue of state mandates on local governments is a perennial source of friction among Florida's governmental entities. When enacting legislation, state policymakers cite the need for statewide uniformity, higher levels of service, and accountability. Local officials, on the other hand, argue that their limited revenue sources, coupled with the unknown cost implications of state mandates, lead to the dismantling of locally established priorities. The struggle to find an equitable solution to the competing perspectives continues.

OVERVIEW

General law passed in 1978[1] required the Florida legislature to estimate the cost of state mandates on municipalities and counties and to provide funds or a means of funding to pay for the cost of new mandates.

Even though the relevant statutory provisions have been relatively ineffective, clarifying provisions allow for partial funding of joint state-local objectives and require that the means of financing bear a reasonable relationship to the actual costs incurred. General laws in which the required expenditure of additional local funds is "incidental to the main purpose of the law" are exempted.

The Florida Advisory Council on Intergovernmental Relations (Florida ACIR) assumed responsibility for the identification of state mandates on local government beginning in 1978.[2] Each year, Florida ACIR prepares a report on mandates and submits it to the governor, the Senate, and the House of Representatives. Florida's approach is relatively comprehensive, encompassing a wide range of fiscal impacts on local governments.

Even with the enactment of home rule for municipalities and counties,[3] unrestricted discretionary revenue sources available to local governments appear to be limited. Ad valorem or property taxes are reserved for local governments in the Florida Constitution,[4] but are limited to 10 mills for municipal purposes and 10 mills for county purposes.[5] All "other forms of taxation" are "preempted to the state except as provided by general law."[6] Other forms include municipal utility taxes, which are limited to 10 percent of the payments received by the seller,[7] and occupational license taxes, which, with one exception in 1980, have been frozen since 1971.[8]

Another component of the revenue structure, state revenues shared with local governments, appears to present a more favorable picture of state mandates. The Florida Constitution allows the state to share "state funds" with local governments.[9] The major programs are the local government half-cent sales tax program, enacted in 1982,[10] and the county and municipality revenue sharing program, enacted as part of the Revenue Sharing Act of 1972.[11] According to estimates from the state Department of Revenue, for fiscal year 1988-89, $683 million was returned to the municipalities and counties in the "half-cent program," and $210 million went to the counties and $212 million to municipalities through the Revenue Sharing Act program. Another program, the Municipal Financial Assistance Trust Fund, provided $27 million for municipalities. The state revenue sharing programs are important for ensuring limited success of state mandates on local governments. Nevertheless, there is no clear indication that these programs come close to covering the costs of state mandates on local governments.

DEFINITION OF MANDATES

The most critical aspect of any attempt to study state mandates on local governments is the definition of a "mandate." In Florida's statutes, state mandates

*The contributions of the staff of the Florida *Advisory* Council on Intergovernmental Relations are acknowledged in the preparation of this report, in particular, Robert Bradley, Mary Kay Falconer, Beth Lines, and David Cooper.

on local governments are labeled "general laws affecting local financing" and defined as:

> Any general law . . . which requires a municipality or county to perform an activity or to provide a service or facility, which activity, service, or facility will require the expenditure of additional funds. . . . Additionally, any general law which grants an exemption or changes the manner by which property is assessed or changes the authorization to levy local taxes. . . [12]

Simply stated, state mandates on local governments are laws that place requirements on municipalities or counties through:

1) An erosion of the local tax base;
2) A requirement to perform an activity; or
3) A requirement to provide a service or facility.

A definition appearing in the Florida ACIR 1980 ***Catalogue of State Mandates*** includes any duty, activity, responsibility, procedural, or programmatic requirement, constraint, limitation, or exemption that imposes costs in time or money, without compensation, on a local unit of government.

Using the mandates definition to prepare the annual mandates review has led to the development of complex criteria that accommodate a more complete analysis of the actual fiscal impacts associated with mandates. These criteria are:

1) Acts that require a municipality or county to perform an activity or to provide a service or facility;
2) Acts that restrict a municipality's or county's revenue-generating capacity;
3) Acts that repeal or amend previously imposed mandates or previously imposed restrictions;
4) Acts that will reduce costs, increase the revenue-generating capacity, or share additional state funds with municipalities and counties;
5) Acts that have a significant long-range fiscal impact on municipalities and counties; and
6) Acts that preempt, or place limits **on,** local discretionary authority.

Using a more balanced approach in identifying legislation for review, the first, second, fifth, and sixth criteria cover the actual mandates. The remaining criteria identify legislation that potentially reduces the negative fiscal impacts. In addition, it should be noted that school districts and special districts have not been included in the review.

Number of Mandates

Florida municipalities and counties must comply with hundreds of state mandates. **A** single mandate is actually one piece of legislation or Chapter Law. In some cases, more than one mandate is included in a bill, and a primary mandate is then identified. For example, a primary mandate might be a requirement that county building departments forward the fees collected with building permits to a trust fund for radon testing. A secondary mandate might be to require that an annual report documenting the transfer of this money be submitted to a state agency by a specified date. The primary mandate serves **as** "the mandate" used for tabulations and subsequent classification.

Using a single piece of legislation as the unit for enumeration purposes, from the beginning of state laws through **1987,** the Florida **ACIR** 1988 ***Catalogue of State Mandates*** cites **342** mandates on local governments.[13] An additional 65 mandates were identified in **1988,** and **38** in **1989,** resulting in **a** total of **445** through **1989** (see Table **1).**

Types of Mandates

Further classification of state mandates has relied on a typology that appeared in ***Federal and State Mandating on Local Governments: An Explanation of Issues and Impacts***[14] and in the U.S. Advisory Commission on Intergovernmental Relations publication ***State Mandating of Local Expenditures.***[15] Each mandate is labeled as either a requirement or a constraint. Requirements are subdivided as programmatic and procedural. Between **1981** and **1989,** the majority of mandates imposed procedural requirements **(57.9** percent). Constraints **(24.4** percent) and programmatic requirements **(17.7** percent) were enacted less often (see Figure **1).**

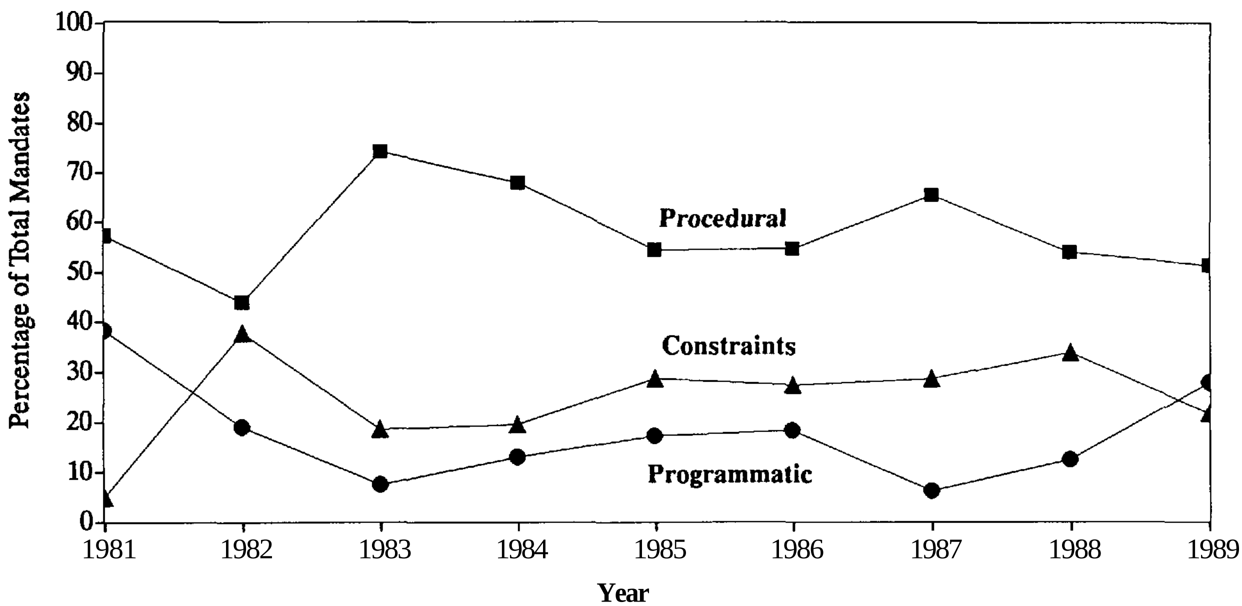
Mandates also are assigned to the following functional categories:

community service
community development
environment
general government
health
personnel
public assistance and welfare
public protection and the judiciary
recreation and culture
taxation and exemption, and
transportation.

Table 1
Distribution of Mandates Enrolled, by Mandate Type, 1981-89
(percent)

Mandate Type	1981	1982	1983	1984	1985	1986	1987	1988	1989	**Average**
Programmatic										
Program	4.8	—	3.7	3.2	8.6	9.1	6.1	12.3	28.9	8.5
Program Quality	14.3	12.5	3.7	9.7	5.7	6.8	—	—	—	5.8
Program Quality	19.0	6.3	—	—	2.8	2.3	—	—	—	3.4
Total	38.1	18.8	7.4	12.9	17.1	18.2	6.1	12.3	28.9	17.7
Procedural										
Reporting	4.8	6.2	18.6	12.9	8.6	22.7	12.2	20.0	13.4	13.3
Fiscal	19.0	18.8	11.1	9.7	—	2.3	—	6.2	—	7.5
Personnel	19.0	12.5	22.2	16.1	5.7	15.9	6.1	9.2	5.2	12.4
Planning/Evaluation	—	—	11.1	12.9	8.6	—	—	—	—	3.6
Record Keeping	14.3	—	—	—	—	—	4.1	3.1	2.6	2.7
Performance	—	6.2	11.1	16.1	31.4	13.6	42.9	15.4	28.9	18.4
Other	—	—	—	—	—	—	—	—	—	—
Total	57.1	43.7	74.1	67.7	54.3	54.5	65.3	53.9	50.1	57.9
Constraints										
Revenue Base	4.8	31.3	18.5	19.4	25.7	18.2	22.5	32.3	18.4	21.2
Revenue Rate	—	6.2	—	—	2.9	9.1	4.1	1.5	—	2.7
Expenditure Limit	—	—	—	—	—	—	2.0	—	2.6	.5
Total	4.8	37.5	18.5	19.4	28.6	27.3	28.6	33.8	21.0	24.4
Total Number of Mandates Enrolled	21	16	27	31	35	44	49	65	38	326

Figure 1
Distribution of Mandates by Mandate Type, 1981-89



Public protection and the judiciary accounted for an average percentage of **26.4** percent—the highest—of all mandates enacted from **1981** through 1989. The three functions with the next highest numbers included general government **(19.3** percent), taxation and exemption **(19.1** percent), and personnel **(14.2** percent). In **1989** alone, the percentage of mandates in the public protection and judiciary category reached 28.9 percent, and general government, 23.7 percent (see Figure **2).**

Cost of Mandates

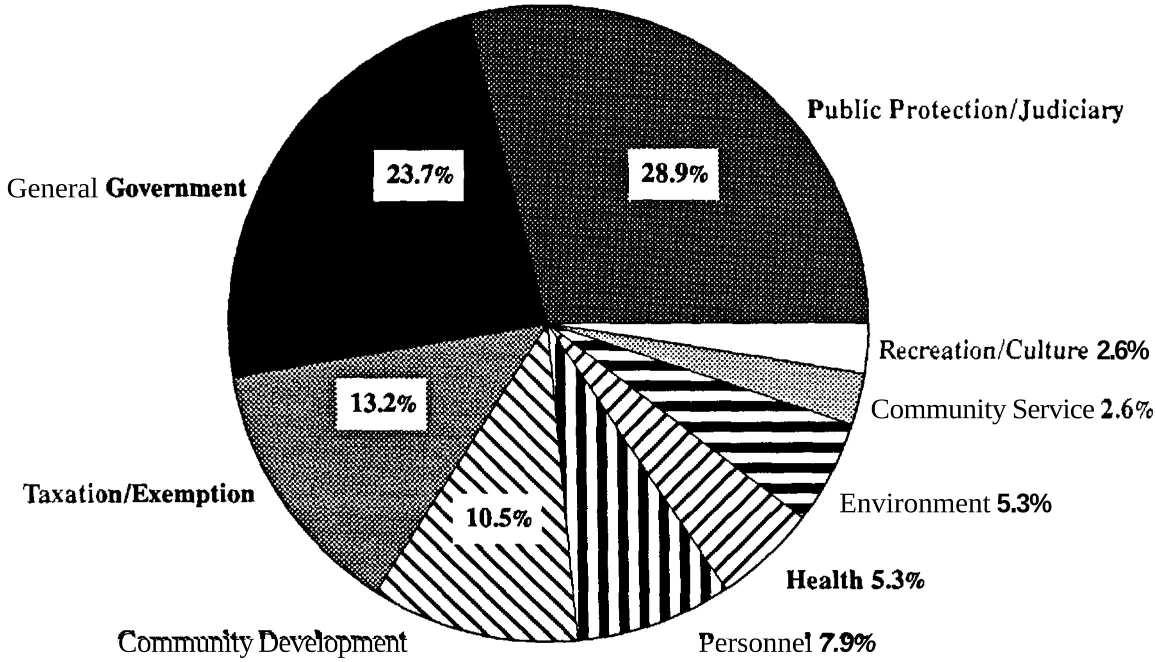
The most difficult—and most often desired—part of any examination of mandates is determining the fiscal impact. While fiscal notes on local impacts generally are available for all **legislation,**[16] most will not have an identified dollar amount. Typically, a local fiscal impact will be acknowledged with a generic indication of magnitude: minimal, insignificant, negligible, or **substantial.**[17] Review of **1989** legislation indicated that 36 mandates, or **94.7** percent, had unidentified costs for municipalities and counties in fiscal notes available during the legislative session. The fiscal impact of the two mandates for which a cost could be determined amounted to **$4.9** million. **Only** four of the mandate bills had **a** significant **fiscal impact.**

Procedures implemented during and following the legislative session have elevated, to some extent, the importance of conducting a complete analysis of the fiscal ramifications of enrolled legislation. Efforts to derive better estimates of the fiscal impact of legislation on state revenues and programs have helped stimulate attempts to improve the identification of state mandates on local governments and the resulting fiscal impacts. Florida ACIR's development of a facsimile network intended to allow immediate **com**munication with local officials and a quick turnaround of requests for information also has improved the availability of complete and accurate information on fiscal impacts. Nevertheless, a complete inventory of these costs has not been produced.

Overview of the Past and a Look into the Future

In retrospect, it appears that Florida's attempts to provide scrutiny of mandates have had some effect. In **1985,** a review of the role of fiscal notes and legislative scrutiny in the enactment of statutory mandates indicated that the number of prefiled mandates had decreased. Moreover, when the fiscal note identified the costs of a state mandate on local governments, it was less likely to be enacted. From the perspective of local governments, however, the mandate problem has not disappeared. It is possible that increased awareness of mandates simply pushed their enactment to the end of the 60-day legislative session. More than **75** percent of mandates identified in **1985** were enrolled during the last three days of the session, while **48** percent of all bills were enrolled during that same three days. Whatever the case, the enactment of mandates is likely to continue despite efforts

Figure *2*
1989 ***Mandates, by Functional Classification***



to elevate awareness of their negative fiscal impacts and pull in the reins on the state legislature.

One proposal to limit state mandates on local governments was advanced successfully during the 1989 legislative session. A joint resolution, or constitutional amendment, was passed and in accordance with the constitutional referendum requirement will appear on the November **1990** general election ballot. While the wording of the amendment is relatively cumbersome (see page 35), with several qualifications and a few exceptions specified, it provides that municipalities and counties would not be bound by any general law requiring these local entities to spend funds or take action necessitating the expenditure of funds unless several conditions are present. The conditions include the following:

1) The law fulfills an important state interest.

2) Funds have been appropriated to cover the cost of the necessary expenditure.

3) The law is approved by two-thirds of the membership of both houses.

4) The expenditure covers a requirement to comply with a law that applies to all persons similarly situated.

5) The law is required for compliance with a federal requirement or with eligibility requirements for a federal entitlement for which the participation of municipalities or counties is essential.

In addition, the amendment exempts laws that require funding for pension benefits, criminal laws, election laws, and general and special appropriations acts, and laws having an "insignificant" impact. The outcome of the general election and the subsequent implementation of the constitutional amendment will present several challenges to the Florida legislature. At a minimum, the scrutiny of legislation will facilitate a closer look at local impacts.

DRAWING FROM THE FLORIDA EXPERIENCE

For all **of** the successes resulting from a review of mandates, there have been an equal number of difficulties and some failures. **This** section highlights several key points and presents some of the approaches that are feasible and effective for a monitoring program.

Limitations of Statutory Provisions

As mentioned earlier, Florida's first attempt to control and limit state mandates appeared in the statutes in 1972. While it was an ambitious attempt to guide lawmakers in their deliberations regarding legislation that affected local government, the provisions have not been enough. The legislature will be bound only by the state constitution. When considering the enactment of general law intended to limit unfunded state mandates, constitutional provisions are necessary.

Definition of Mandates – Narrow or Broad

The mandates definition must be the center of the program selected for review. A narrow definition, while more manageable in a number of respects, is limited. For instance, excluding (1) statutes that implement "constitutional mandates," such as the duties and responsibilities of constitutional officers, (2) conditions-of-aid programs that require matching funds from local sources, (3) any mandate that readily is deemed a statewide necessity, such as law enforcement functions, or (4) statutes that attempt to achieve uniformity or that are applied uniformly in the public and private sectors, such as workers' compensation and unemployment compensation, will bias the analysis and make it increasingly difficult to maintain uniform standards over time. Keeping a larger mandate universe, including legislation that amends existing mandates, reduces costs, increases capacity to generate revenue, or authorizes additional sharing of state funds with local governments offers greater opportunity for a more complete treatment of the issue and an understanding of the ramifications.

Measures of Multitude and Magnitude

While it is not always evident in the initial stages of considering ways to prevent mandates without funding, developing a method for measuring the number of mandates and the extent of the fiscal impact is important. Selecting a unit for enumerating and an appropriate set of labels indicating the extent of the fiscal impact will help in attempts to monitor the variations in mandates over time. Standardization is critical and, when done correctly, will allow an objective evaluation of the performance of a review or monitoring program.

Monitoring Mandates

This approach typically involves the identification and evaluation of mandates prior to as well as after their enrollment. Ideally, all legislative committee staff should be involved, as should an entity similar to Florida **ACIR.** The involvement of lobbying groups for local governments also increases the effectiveness of monitoring efforts. Information must come from **a** variety of sources, including local governments. Nevertheless, methods for evaluating the quality of the information and the conclusions drawn from any fiscal figures submitted must be in place. Several techniques have been useful in Florida, as highlighted below.

Fiscal Notes in Analyses **of Legislation. A** complete and accurate **analysis** of each piece of legislation is necessary. Adopting a format that includes or requires a section related to local governments is one way to encourage obtaining state mandate information. Often, the appropriate format refers to a "fiscal note," which specifies the anticipated **fiscal** impact of the legislation on **all** governments. While these sections are not always completed, they are an important **beginning.**

Sunrise Program. Requiring actions by legislative committees or each house of the state legislature is another technique for elevating the attention directed to mandates. Requiring extraordinary majorities for the passage of a mandate at one **or** more steps in the legislative process can be a useful exercise. Another approach recommended by Florida ACIR in **1978** was that the legislature specify a policy objective in a statement attached to or combined with any mandate legislation. Both chambers then would be required to "update" the information in the fiscal note process to reflect changes in the fiscal impact when the legislation is amended. In **1982,** Florida ACIR recommended allowing legislation containing state mandates on local governments to be recommitted to a substantive committee on a point of order.

Sunset Program. Not discussed earlier, but still important from the perspective of state mandates in Florida, **is** a sunset program for the review of state regulatory activities. A sunset law enacted in **1978** specifies **a** timetable by which major regulatory laws expire unless explicitly reenacted. During the year prior to the expiration of such a law, staffs for both houses of the legislature review the law. Legislators then make the decision to renew or to repeal the law.

Reimbursement Program. Probably the most difficult to enact is a program that requires the reimbursement of local governments for all state mandates. Implementation of this approach would require a constitutional provision and an elaborate system for determining costs and reimbursement procedures. ***An*** extension of current state shared revenue programs could be part **of** this approach, but the complexities involved could be overwhelming.

CONCLUDING COMMENTS

The Florida approaches have proponents and opponents. The fate of the proposed constitutional amendment that attempts to restrain the legislature in its enactment **of** state mandates on local governments is not known. Even with its passage, there will continue to be debates over the issue.

What is clear among the approaches tried and others considered is the lack of complete, reliable information on state mandates on local governments. Failure to obtain the information needed to conduct objective and thorough analyses of the fiscal impacts has contributed to the ineffectiveness of monitoring efforts in the past. Effective implementation **of** any of the approaches mentioned in this report and others will require accessibility to sound financial information.

Cooperation between both houses of the legislature, legislative committee staff, and other interested parties is an objective that, if met, ultimately will ensure the success of identifying state mandates on local governments and determining their "real" impact. Whether this cooperation will limit or possibly eliminate mandates is not a likely scenario. State mandates on local government are endemic to federalism. Perhaps, though, there can be procedural redress in a system that provides a forum for competing values and philosophies.

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APPENDIX A

House Joint Resolution Nos. 139 and 40

A joint resolution proposing the creation of Section 18 of Article VII of the State Constitution, relating to general laws that require counties or municipalities to spend funds or that limit the ability of counties or municipalities to raise state tax revenue.

Be It Resolved by the Legislature of the State of Florida:

That the creation of Section 18 of Article VII of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November **1990:**

Article VII
Finance and Taxation

SECTION 18: Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.

(a) **No** county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February **1,1989,** that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February **1, 1989.**

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February **1,1989.** The provisions of this subsection shall not apply to enhancements enacted after February **1,1989,** to state tax sources, or during fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February **1, 1989.**

(d) Law adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

Be IT FURTHER RESOLVED that in accordance with the requirements of section **101.161,** Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

LAWS AFFECTING LOCAL GOVERNMENTAL EXPENDITURES OR ABILITY TO RAISE REVENUE OR RECEIVE STATE TAX REVENUE

Excuses counties and municipalities from complying with general laws requiring them to spend funds unless: the law fulfills an important state interest; and it is enacted by two-thirds vote, or funding or funding sources are provided, or certain other conditions are met. Prohibits general laws that have certain negative fiscal consequences for counties and municipalities unless enacted by two-thirds vote. Exempts certain categories of laws from these requirements.

Filed in Office Secretary of State June **21,1989.**

Notes

[1] Florida Statutes, Section 11.076.

[2] Florida Statutes, Section 163.705(3), states, As soon as practicable after the enactment or adoption of any new state program or increase in the level of services rendered in an existing program, which action substantially increases the expenditures of or reduces the revenue or revenue producing ability of counties or municipalities, the council shall analyze such action. The council shall send its analysis and report thereon to the Governor and presiding officers of the Legislature no later than 30 days prior to the convening of the next regular legislative session. Each analysis shall include the council's recommendation and its identification of new sources of revenue required to fund the increased cost of, or to offset the revenue loss incurred because of the action.

[3] Florida Statutes, Chapter 166, Municipalities; Florida Statutes, Chapter 125, Counties.

[4] Florida Constitution, Article VII, Section 1.

[5] Florida Constitution, Article VII. Section 9.

[6] Florida Constitution, Article VII, Section 1(a).

[7] Florida Statutes, Section 166.231.

[8] Florida Statutes, Chapter 205.

[9] Florida Constitution, Article VII, Section 8.

[10] Florida Statutes, Part VI, Chapter 218.

''Florida Statutes, Part II, Chapter 218.

[12] Florida Statutes, Section 11.076.

[13] The figures are not consistent with the total in Table 1 because of a change in the definition of mandates. The time period covered also is different. The catalogue counts mandates before 1981.

[14] Catherine Lovell, et al., ***Federal and State Mandating on Local Governments: An Explanation of Issues and Impacts*** (Riverside: University of California, 1979).

[15] U.S. Advisory Commission on Intergovernmental Relations, ***State Mandating of Local Expenditures*** (Washington, DC, 1978).

[16] Economic impact required in Florida Statutes, Section 11.076, and in rules for the Senate and House.

''Thresholds used for determining the presence of a "significant" mandate vary. Two used as references in the work of Florida ACIR are fiscal impacts that exceed $50,000 annually or those requiring one additional full time staffperson or the equivalent.

MASSACHUSETTS: THE MANDATE STATUTE AND ITS APPLICATION*

This chapter explains how the Massachusetts mandate statute came about and how it functions; gives a nutshell summary of the law, what it requires, major elements of mandate findings, and exceptions to the general mandate-funding rule; and briefly describes other functions of the Division of Local Mandates (DLM).

The Massachusetts mandate statute came about as part of what is called the Citizens Taxpayers Revolt, Proposition $2^1/_2$, similar to the Proposition 13 initiative in California.[1] It was overwhelmingly approved at the general election in November 1980. Particularly interesting, and very important to the administration of the mandate statute, is that the voters adopted this initiative after the legislature had had the opportunity first to act on bills that would have accomplished similar aims. The house and the senate both rejected proposals to implement a version of Proposition $2^1/_2$, which also included a section to create a DLM and the mandate-funding rules that now govern legislation and regulations in Massachusetts.

The local mandate statute is an important element of what some call the Proposition $2^1/_2$ success story in Massachusetts. Opponents of the tax reform measure argued before the fact that it would bankrupt local governments. Vastly increased amounts of local aid, general revenue sharing from the state government to cities and towns, were probably the major reason for the success story. The fact that Massachusetts has a local mandate statute requiring state funding of new programs is almost an equally important element of the fact that cities and towns have not gone bankrupt—and still continue to provide a reasonable level of public services at the local level in Massachusetts. Recent limits on the growth in state tax revenues[2] and a number of major new state programs, however, are likely to inhibit the legislature's ability to continue the trend of large annual local aid increases. Predictably, this may result in more municipal court challenges to unfunded state mandates.

The Bay State local mandate law is prospective. It constrains state activities imposing costs on local governments that take effect on or after January 1, 1981. The original version of the citizens initiative would have had the Commonwealth paying for all mandates, even those enacted prior to 1981. That requirement was easily seen as unworkable. Accordingly, the first year after the statute was enacted, the legislature made several corrective amendments. One was to insert the January 1, 1981 trigger date. This was reasonable because the problem of identifying past mandates and the cost of assuming them were prohibitive. Further, by having a certain trigger date of January 1, 1981, the legislature and state agencies were now on notice that the rules were different, and they would have to think carefully about the local impact before they would act.

In summary, this mandate-funding rule provides that any law or agency rule or regulation taking effect on or after January 1, 1981, that imposes additional costs on any city or town is effective only if the Commonwealth assumes the cost. In the absence of state funding, the statute allows communities to comply voluntarily with a state mandate, but it does not require compliance. It does not, however, allow the community to make this decision on its own. The state auditor, for that matter, cannot make a decision that a law will be ineffective due to lack of state funding. . . because of the separation-of-powers doctrine. Only the judicial branch can declare an act of the legislature to be ineffective.

Accordingly, the local mandate law allows an aggrieved city or town to petition Superior Court for declaratory relief. The court may order that the complaining city or town be exempted from having to comply with the law or regulation if, in fact, the court agrees with the allegations. In one such case, the state Supreme Court exempted municipalities from having to carry out more private-school transportation responsibilities than were previously required. This is known as the Lexington[3] decision, discussed below.

*Emily D. Cousens wrote this article, which first appeared in Michael Fix and Daphne A. Kenyon, eds., *Coping with Mandates: What are the Alternatives* (Washington, DC Urban Institute Press, 1990). Reprinted with permission of The Urban Institute.

One section of Proposition $2^1/_2$ created DLM. It is a new division within the state auditor's office. The law requires that division to review any post-1980 law or regulation that a municipality suggests is imposing new costs and to determine the amount of that cost. In any litigation, the amount of the cost imposed, as determined by DLM, would be prima facie evidence of the amount of state funding that would be necessary to sustain the mandate.

By the express terms of the statute, it might appear that the work is limited to providing evidence for mandate litigation. But, in practice, more has to be done because DLM cannot determine the amount of cost imposed before it determines that there is truly a new obligation on a city or town that meets the elements of a mandate finding. DLM is very strict about this procedure because it is important to the auditor that he not be seen necessarily as a municipal advocate or as a state advocate. Toward that end, the office goes through a rather painstaking process in making decisions.

Note that the statute only allows a city or town to submit written notice to DLM to ask for a mandate ruling. This provision does not include regional school districts, other regional entities, or counties. The statute is so written, and the statute is what governs the work.

Even though DLM's decision is not necessarily final, it has to come to a firm conclusion that there is, in fact, a new cost imposed on a community. Upon proper petition from a city or town, it looks for the elements of a mandate finding. In doing so, it establishes that the regulation or law was, in fact, effective on or after January 1,1981. Then it determines that there is a cost imposed and that there has been no appropriation by the Commonwealth to assume the cost. Determining that there is, in fact, a cost imposed on a city or town by the law or regulation is often the most difficult part of the legal determination to be made. Clearly, as DLM sees them, conditional grants—compliance conditions that would be prerequisite to receiving a state grant—would not be costs imposed by the Commonwealth. They would not because a municipality would have a way to avoid the expense. If the city or town does not wish to perform this service, then it may decline the grant. Local option or the ability of a community to rescind prior acceptance of a law would defeat a mandate finding. This point can be made even when it is difficult for a city or town to decline local acceptance. An example is the recent amendments to the state Workers Compensation Act that imposed many new costs on communities. In the final analysis, even though realistically no community is going to rescind its acceptance of the Workers Compensation Act, that option was there. Court authority requires this type of interpretation. DLM calls it the Lexington hard choices doctrine.[4] It would be a hard choice and sometimes an impossible one as far as labor negotiations go to rescind acceptance of the Workers Compensation Act or many other local option programs. But there is that choice. And the State Supreme Court in the *Lexington* decision stated that when there is such choice, there is not a mandate within the meaning of the statute.

Another interesting point from the *Lexington* decision provides that when DLM determines whether a state appropriation has been made to assume the cost of any given new program, undesignated increases in general local aid will not satisfy. DLM has to find a specific appropriation for the specific program within the state budget.

Like most states, Massachusetts has several exceptions to the mandate-funding rule. By statute, there is an explicit exception for costs imposed by a court decision or costs imposed by a law or regulation adopted as a direct result of a court decision. With this in mind, mandate scrutiny has to include a review of all relevant court decisions on a given topic to ensure that the court exception/exclusion does not apply in any given case.

By interpretation, DLM also makes exceptions for federal pass-through laws and regulations. An example is the federal handicapped Accessibility to Polling Places Act and accompanying state regulations. In the final analysis, DLM concluded that state regulations implementing the act required no more than was required by the federal law. Accordingly, there was no new state-mandated cost. Although it is sometimes difficult to draw the line, DLM finds in favor of a municipality if a state regulation imposes costs beyond the federal requirement.

Also by interpretation, DLM makes exceptions for laws that regulate private industry and indirectly increase the costs of running municipal government. An example is the recent Solid Waste Management Act, a major initiative in Massachusetts, whereby private owners and operators of certain solid waste facilities had to make expensive environmental protection improvements to their equipment. The result is increased tipping fees for municipalities. Nonetheless, DLM concluded—again trying to be just as fair to the state as it is to the cities and towns—that this tipping-fee increase resulted more from the contractual relationship with the facility than from the state statute. Law or regulation must be found to impose the cost on a city or town before state funding obligations attach.

Generally, the Massachusetts mandate statute applies to all types of laws. They include educational, environmental, and public-safety laws, but not laws regulating the benefits of municipal employment. At the same time Proposition $2^1/_2$ was enacted, the voters also adopted an amendment to the Massachusetts constitution; it provides that the types of laws regulating the wages, hours, benefits, and conditions of municipal employment can be imposed against municipalities if there is a two-thirds vote of each branch of the legislature.[5]

The Massachusetts mandate law requires state funding for even meritorious programs. This requirement is contra? to Janet Kelly's observations on South Carolina. Some South Carolina officials seem not to mind social-policy state mandates—they do not complain about *costs* for new programs they see **as** justifiable. In Massachusetts, local officials seek reimbursement even when they agree with the **policy** behind a new mandate. They have this statutory right. If the legislators want to implement a statewide policy and it is important enough to them, they **will** have to find the money to fund it. This attitude fits into the economic context in which the local-mandate statute was created. Massachusetts cities and towns are restrained **by** Proposition $2^1/_2$. They cannot raise additional revenues to support even meritorious programs. So the legislature has to put its money where its mouth is.

Generally, if DLM establishes the elements of a mandate finding with no exceptions, it begins the cost-documentation process, first with the individual petitioners. It then makes statewide estimates.

The effects of a mandate determination under the Massachusetts statute are varied. On clear issues when the auditor finds a state mandate, the legislative response is generally positive. It is on clear issues in which the legal arguments are straightforward and the price tag is not too high. DLM communicates its findings to legislative leaders, and very often the funds are appropriated. The legislators benefit **by saving** their constituent communities the expense and time of litigation.

Other times, particularly on expensive items, legislators are reluctant to fund DLM determinations until an issue is decided in court. One landfill-related matter has been pending for three years. Throughout this period, several legislators whose constituent communities are affected by this new landfill regulation have filed bills to fund the costs imposed upon their communities as determined by DLM. But, in each case, the funding bills were defeated during the floor debate pending court determination of the issues. This controversy is currently pending before the Massachusetts Supreme Judicial Court.

When there is a no-mandate finding, a community **still** has the opportunity to go to **court** and challenge DLM's decision. But that has not happened yet. No-mandate determinations are turned over to a DLM section known **as** the Sunset **Program.**[7] It has authority to make recommendations concerning any law, even if it was effective before 1981. In this way, DLM *can* offer some further level of review for municipalities. Even if a law does not require state funding in the strict sense, DLM tries to determine whether the law maybe unreasonable or should be modified in some other way.

A mandate-reimbursement law like the Massachusetts version provides a reasonable balance between the interest of local and state policymakers. There is **a** general expectation that mandated programs will be state funded. This feeling provides more independent decision-making authority for local budgetmakers who must work within the limits of Proposition $2^1/_2$. On the other hand, strategies are available to the legislature for implementing statewide policy initiatives affecting local spending.

Should the legislature specifically desire, it can override the local mandate-funding rule. It can include explicit language in any law providing that a new service must be funded by municipalities, notwithstanding the provision of the local mandate law. The legislature has not yet exercised this option.

New programs can be imposed as irresistible conditions to state-aid distributions. This provision is a twist on the *Lexington* private-school transportation case. After the court held the communities no longer had to provide certain unfunded mandated transportation services, the legislature attached a proviso to the local aid item that has traditionally given state aid for several kinds of transportation: regular transportation, bilingual, and so forth. Any community that did not furnish private-school transportation would not receive its general school-transportation aid—truly an irresistible condition, because it involved large sums of money for most communities. Nonetheless, the court concluded that imposing such a condition was within the prerogative of the legislature.

DLM is seeing a growing use of local option legislation, particularly in the property tax exemption areas. Quite often, the Ways and Means Committees call the office, and after discussing a matter. they amend a bill to include local option language. The DLM staff is pleased when that happens because some say that this exchange is really what Proposition $2^1/_2$ is all about, giving more decision-making power to the local level of government.

Few laws have passed since 1980 without some discussion of the local mandate issue if a matter impacts local government. The auditor's decisions are often quoted during house and senate floor debates. And local officials rely heavily upon DLM to continue this kind of work. Again, the state auditor's office is an important factor in having made it possible for municipalities to live within the limits of Proposition $2^1/_2$.

The legislature is keenly aware that the local mandate-funding rule was a voter initiative. It knows now that if it does not stick with its part of this bargain, the citizens can go back to the polls and give them an even more stringent local mandate statute that they would have to live with.

Several states are doing just that. The Massachusetts mandate law is not a constitutional amendment, so the legislature has some leeway. And, states may want to consider this point as a defensive measure. Of course, no legislature would voluntarily bind itself to a mandate-funding rule. But, if states at least take some steps up front to ease the burden of costs imposed on local governments, they may find themselves in a better position to resist what might be a citizens' initiative to require funding of any statewide policy.

POSTSCRIPT

Since initial publication of this article in early 1990, the Massachusetts Supreme Judicial Court reversed an earlier superior court decision regarding local versus state funding duties for liner installations at municipal landfills. In ***Town of Norfolk*** v. ***Department*** of ***Environmental Quality Engineering,***[8] the state's highest court stated that the Massachusetts mandate law ". . . applies to regulatory obligations in which the municipality has no choice but to comply and to pay the *costs."* The court reasoned that **(1)** since there is no state requirement that a municipality operate a landfill, and (2) since the majority of cities and towns contract for this service, the cost of state regulations requiring liners could be avoided by contracting trash disposal with a commercial enterprise. Accordingly, the court ruled that the state could require the Town of Norfolk to line its municipally owned landfill at local expense.

The Massachusetts State Auditor's Division of Local Mandates (DLM) reads the ***Norfolk*** decision narrowly. DLM analysis indicates that relatively few state mandates can meet all criteria cited by the court as grounds for exclusion from the local mandate law.

Notes

[1] St. 1980, c.580 provides that property taxes assessed in any city or town may not exceed 2.5 percent **of** the total full and fair cash value **of** taxable property within the town. This sum is capped at 102.5 percent of the maximum levy limit of the municipality in the prior fiscal year.

[2] **At** the November 1986 state election, Massachusetts voters approved **a** measure limiting the allowable growth in state tax revenues to the average growth in wages and salaries over the prior three years. Any excess raised over allowable revenues must be refunded to income taxpayers. See M.G.L. c.62F.

[3] Town of Lexington v. Commissioner **of** Education, 393 Mass. 693 Mass. (1985).

[4] Town of Lexington **v.** Commissioner **of** Education, 397 Mass. 593 (1986).

[5] See Massachusetts Constitution, 115th Article of Amendment.

[6] See Janet M. Kelly, "Assessing the Extent of the Mandate Problem in South Carolina," in Michael Fix and Daphne **A.** Kenyon, eds., ***Coping with Mandates: What*** are ***the Alternatives?*** (Washington, DC: Urban Institute Press, 1990), pp. 63–68.

[7] M.G.L. c.11, s.6B

[8] 407 Mass. 233 (1990)

MASSACHUSETTS: COST ESTIMATION AND REIMBURSEMENT OF MANDATES*

The Massachusetts Division of Local Mandates (DLM) is placed within the Office of the State Auditor, headed by an independent elected official. Its genesis is important because it means that DLM's rulings on whether post-1980 state laws, rules, and regulations violate Proposition 2½ and the local mandate statute[1] and should therefore be state funded are impartial. If the state requirements are based on pre-1981 authority, allow for local acceptance, or stem from court orders or federal mandates, then the local mandate statute does not apply.

It also means that DLM's determination of the expenses municipalities incur or anticipate due to state-mandated programs are calculated accurately and fairly. For example, financial cost models are used to compute the estimated costs of pending legislation and draft state regulations. In addition, the anticipated cost savings a particular proposed or effective law or regulation may generate for cities and towns are considered, when appropriate, in arriving at the state's net funding obligation. For unfunded state programs already in effect, DLM requires municipalities to submit cost documentation, such as bill receipts, payroll data, cost quotes, and so on, as evidence that expenses were incurred or are anticipated. In other instances, a cost claim form is forwarded to local officials, who are then asked to detail incremental state-mandated expenditures and to sign a verification clause to attest that the costs are genuine.

In summary, DLM believes that the way to maintain the respect and credibility of both state and local officials is to continue issuing sound, impartial legal rulings on the applicability of the local mandate law to state-mandated programs, to employ the latest in computer cost-modeling techniques to estimate potential statewide costs, and to require verification of mandated expenses from municipal officials.

As DLM strives toward these ends, more and more legislative committees and state agencies are contacting DLM before the fact—before promulgating costly laws and regulations. Today, DLM frequently works with these state officials to help draft new state programs that will be consistent with the local mandate law. It also provides them with statewide cost studies that identify the financial impacts proposed unfunded laws and regulations would have on municipalities. This practice is consistent with the auditor's proactive stance, seeking consensus to fund state-mandated programs in the initial proposal stages.

UP-FRONT FUNDING VERSUS REIMBURSEMENT

An important interpretation of the local mandate provisions of Proposition 2½ is found in a 1985 Massachusetts Supreme Judicial Court decision, *Town of Lexington v. Commissioner of Education*.[2] The state's highest court ruled that laws are ineffective when they are enacted without provisions for state assumption of local costs in each year the costs are imposed. The decision also stated that this funding should come in the form of up-front monies.

Nevertheless, new state programs continue to become effective without this state funding commitment. Although exact numbers are hard to come by, DLM has an overall sense that these instances are stages of enacting new state programs. Surprisingly, more and more legislators and state agency heads are complying with this spirit of Proposition 2½, for it can result in the smooth local implementation of programs important to them, while avoiding the risk of DLM's determining that the program is subject to the local mandate law and the courts' ruling them ineffective. This latter ruling would essentially exempt municipalities from the mandated provisions until state funding is provided, and provided up front.

In short, DLM's position and, naturally, that of local officials, is that state funding should be up front so communities do not have to appropriate and expend limited financial resources in anticipation of

*Anthony V. D'Aiello wrote this article, which first appeared in Michael Fix and Daphne A. Kenyon, eds., *Coping with Mandates: What are the Alternatives?* (Washington, DC: Urban Institute Press, 1990).

state reimbursements later. For this reason, provisions of the local mandate law were incorporated into Proposition 2½ to balance the fiscal constraints Proposition 2½ placed on local governments' property tax revenue-raising capabilities.

Up-Front Funding Process

In keeping with its proactive stance, DLM follows legislation through a computer tracking system tied into the legislature's computer system. More than 6,000 pieces of legislation are reviewed by staff yearly for mandate implications. "Big ticket" unfunded mandate bills are pulled out and action is taken. Hundreds of proposed regulations are also reviewed yearly.

DLM legal staff checks that the bills would in fact impose new financial impacts on cities and towns. The research unit then attempts to attach a price tag to the legislation. It does so by sampling **40** cities and towns representative of the entire state in terms of population and other demographic variables. The survey instruments are concise and not burdensome to local officials, so that local cost data can be quickly gathered and tabulated. DLM also creates computer cost models to calculate the numbers and to translate them on a statewide basis for **351** cities and towns over a three-year period. Future-year costs are sometimes tabulated using inflation factors. Public and private sectors provide other relevant information and cost data. For instance, if unit costs for mandated equipment purchases can be obtained from private-sector sources, this information can be plugged into the cost model and statewide costs computed in a matter of seconds, without going the survey route. DLM sometimes works with legislative committees and state agency officials in a combined effort to cost out proposed mandated programs.

DLM's legislative unit then takes over, contacting legislative committees and state agencies and advising them of DLM's concerns and cost findings. Ideally, a consensus is formed that the new program requires a state funding commitment, and either the funding is appropriated and provided to communities up front *so* that local finances are not affected, or the program is not mandated.

This system has worked on several issues. The **1984** suicide prevention law[3] required in part that local lockups make their jail cells suicide proof. DLM advised the legislature—based on information received from local police chiefs and their association—that this proposition was expensive, that it would require more than the $1 million reimbursement appropriated for renovation costs. **A** total of **$10** million was soon appropriated and has been provided to cities and towns on an up-front basis by the Governor's Office for Administration and Finance.

In **1983,** DLM reviewed an added-polling-hours bill that, in effect, mandated cities and towns to keep their polling precincts open an additional three hours for state elections.[4] Through a representative sampling of communities, DLM projected the statewide added-personnel and other fixed costs (e.g., rent, heating, and lighting) that the bill would impose on cities and towns. **A** funding commitment was soon added to the bill, and the legislature authorized DLM to certify local costs for each election. ***As*** a result, since **1984, $3** million has been provided to cities and towns in up-front monies for election costs.

DLM also identified a **1984** right-to-know bill as potentially costly mandate legislation. **A** quick survey estimated statewide costs. DLM presented its findings to the legislature, and since then, nearly $1 million in up-front monies has been made available to local officials for costs incurred complying with the environmental investigative and reporting requirements of the new law.[5] In handling this funding issue, the executive branch is using an up-front funding vehicle that forwards cities and towns per-capita monies that are then drawn down on a quarterly basis, providing that local governments give an account to the governor's office on how the money is spent. DLM considers this mechanism an ideal way of satisfying the funding requirements of the local mandate law.

In **1986,** DLM assisted the legislature and the Department of Education in estimating three-year costs for the school breakfast bill.[6] Through survey information and by deducting federal funding for school breakfast expenses, DLM estimated costs for affected school systems. Today, about **$710,000** has been targeted in up-front state funding.

A final example is a **1987** bill[7] that would have required local police agencies to pay for enrolling their part-time police in full-time police officer training courses. Based on information gathered from the Executive Office of Public Safety and through surveys, DLM estimated these costs at nearly **$25** million. The bill was refiled in **1988,** but again it did not pass, given the costs involved.

In short, by getting involved early in the process and by establishing positive relationships with state officials, DLM can ensure that state funding is provided before, not after, the fact, and can ensure that, in any case, it is provided.

The Reimbursement Process

In reality, new mandated programs become effective without state funding. The local fiscal impact is not considered until local officials begin compliance. These local officials turn to DLM when they are faced with mandated costs they have not anticipated and budgeted for. Then DLM's role is to determine what affected municipalities have spent or expect to spend. ***As*** mentioned above, verifiable proof is required of incurred or anticipated expenses. DLM's determination of this amount can then be submitted in court as prima facie evidence in suits brought by cities and towns to seek an exemption from the mandate until state funding is provided.

During DLM's cost-documentation process, DLM attempts to determine the statewide costs imposed. This process enables DLM to recommend to state agencies or to the legislature the amount of reimbursement necessary not only for one petitioning community but for all 351 cities and towns. The process may require municipal officials to submit cost documentation or complete signed cost claim forms. DLM's job then is to make its findings available to the legislature and state agencies with the hope that state reimbursement will be appropriated and distributed to affected cities and towns.

An example of how this system works was in 1986, when the legislature enacted the Race and Primary Language law.[8] This unfunded statute required a new one-time census taken by municipal census officials. They were to identify and report to the Secretary of State the race and primary language of residents. Through cost claim forms and by unit costs gathered from private computer service bureaus for new census lists, DLM determined statewide costs that it presented to the state agency. The state agency then requested and was granted an appropriation of $900,000 to reimburse the expenses incurred by cities and towns, as certified by DLM.

A last example is the 1983 State Department of Public Health ambulance service regulations,[9] which were promulgated without state funding. Today the legislature still reimburses affected cities and towns for past costs. These costs are first gathered and certified by DLM.

ROADBLOCKS TO SUCCESS

Concerns are raised when the legislature pays for the mandates it imposes on cities and towns out of the local aid fund. This fund, officials believe, should be state revenues shared with local officials without any strings attached; they should not be used to fund mandates. When the economy of the state is less than healthy, legislators and the executive branch may not be inclined to agree with DLM to fund new state-mandated programs.

Massachusetts experienced tremendous revenue growth during the 1980s. However, a recent trend of spending growth in excess of revenue growth, along with severe revenue shortfalls, has created a structural revenue-spending gap, which has existed for at least three years. Consequently, the governor and legislative leaders are considering both temporary and permanent new taxes, among other measures, to assist in balancing the FY 1989 and FY 1990 budgets. Given the state's new fiscal reality, FY 1990 budget proposals call for a reduction in direct local aid. Total local aid (comprised of direct and indirect aid, lottery aid, and resolution aid) almost doubled from FY 1983 to FY 1989 ($2.1 billion to $3.9 billion). But proposed FY 1990 total local aid will increase only 2 percent or $83 million from FY 1989, in contrast to average yearly increases of 11 percent (an average of $297 million yearly).

This anticipated downturn in infusions of state financial assistance, along with an overall decline since 1981 of property tax revenues brought about by Proposition 2½, has led the legislature to propose further modification of Proposition 2½. One proposal would allow city councils and town meetings by a two-thirds vote to assess property taxes for debt service outside the limits of Proposition 2½ without obtaining voter approval. Also in 1987. Chapter 229 of the Acts of 1987 allowed communities to pass an override of Proposition 2½ to increase general revenues with a simple majority vote, instead of the previously required two-thirds voter approval. However, less than half the Proposition 2½-override attempts in the state's 351 cities and towns have been successful, even with this less-restrictive override provision,

Sometimes legislators and state officials label DLM as a roadblock to successful local implementation of important state programs because it raises the mandate issue. Although the merits of a new law or regulation are commendable, cities and towns must be assisted in paying for them, especially today, given state and municipal financial problems. DLM has thus increased its efforts to provide state policymakers with timely local cost impacts of proposed state programs. As a result, these officials are far more reluctant to pass costly local mandates.

Another roadblock can be gathering cost data from part-time officials of small communities. Of the 351 cities and towns in Massachusetts, 123 towns have less than 5,000 residents. However, because input from these local officials is needed, for it is these small towns that most often feel the biggest negative impact from state mandates, DLM keeps in constant contact with them through its field services staff, and designs surveys and cost claim forms that are quick and easy to complete.

FACTORS AFFECTING DLM'S SUCCESS

DLM staff has varied and experienced backgrounds. Some are also part-time town clerks, selectmen, city councilors, and assessing officers. One was a three-term mayor. Some have worked in other municipal and state agencies. Many have, or are working toward, law and master's degrees. They also participate in courses and seminars intended to further educational and professional careers.

Another factor contributing to DLM success is its field services and legislative liaison units. DLM has established positive working relationships with local officials and their various municipal associations, legislators, and state agency staff. *As* a result, DLM receives about 500 written inquiries a year concerning state-mandated programs from local and state officials. It also responds to about 600 phone **calls** annually, providing information and assistance to municipal and state officials, and reviews and certifies hundreds of cost claim forms and ***surveys*** yearly for state funding.

Another factor contributing to DLM's effectiveness is the continuing refinement of its computer cost model. The data bank and cost-modeling techniques are more advanced than those of most state agencies. Costing out mandates is as much an art as a science—there are relatively few rules to follow. DLM staff is given considerable leeway for judgment and for coming up with innovative methods of cost analysis and estimation. All activities are accomplished on an annual budget of $860,000.

DLM work is easier when the legislature completes its own estimates on the local costs of legislation. It is also easier when the executive branch fulfills the intent of the Governor's Executive Order 145, which requires state agency heads to estimate the municipal fiscal impacts of the regulations they propose. Given the author's personal experience, there continues to be a need for DLM. It will not become extinct for lack of unfunded state mandates proposed or enacted.

CONCLUSION

Since DLM's beginning in 1983, nearly $20 million in state funding has been provided to cities and towns for mandated requirements, either up front or in reimbursements. More important, millions of other dollars in potential state-imposed costs were not imposed because of concerns DLM raised. DLM intends to continue meeting its objectives.

POSTSCRIPT

Since initial publication of this article in early 1990, concerns expressed about the status of the Massachusetts fiscal picture have grown. A $1.2 billion tax package was passed in mid-July, raising income taxes by about 20 percent, nearly doubling the state gasoline tax, and expanding the sales tax to a wide variety of business and personal services. Nonetheless, some analysts project that the $13.6 billion state budget proposal for fiscal 1991 will be $300 million to $400 million out of balance. This shortfall does not include approximately **$240** million needed to finance bonding to pay off the fiscal 1990 spending deficit.

Moreover, a citizens' taxpayer group anticipated the tax increase measure and has obtained signatures to place an initiative petition on the November 1990 ballot. **This** petition would repeal the tax increases and roll back state fees, fines, and taxes to 1988 levels. Analysts project that the citizens' initiative would require state spending cuts of $5 billion over the next three years.

In such **a** climate, it is reasonable to expect that the legislature might look more to local resources for funding necessary services. At the same time, Massachusetts cities and towns no longer will enjoy the significant annual local aid increases to which they had become accustomed. The Massachusetts State Auditor's Division of Local Mandates (DLM) foresees a growing importance of its cost estimation work for the legislature. Many of the same factors impairing state finances are at work on local finances. With all of this, DLM expects more aggressive resistance from municipalities to state mandated spending, and more intense debate on legislative proposals containing such mandates.

Notes

1 M.G.L. c. 29, s. 27C.

2 Town of Lexington v. Commissioner of Education, 393 Mass. 693 (1985).

3 M.G.L. c. 40, s. 36B.

4 Chapter 503 *of* the Acts of 1983.

5 Chapter 470 of the Acts of 1983.

6 Chapter 356 of the Acts **of** 1986.

7 **House** No. 84.

8 Chapter 165 of the Acts of 1985.

9 105 CMR 170 et seq.

CONNECTICUT: CONSIDERATION AND REJECTION OF A MANDATE REIMBURSEMENT PROGRAM*

Connecticut has exhibited great caution with regard to the mandatory reimbursement concept. A phrase that perhaps summarizes Connecticut's experience with this concept is the rise and fall of the reimbursement issue in the land of steady habits.

About eight years ago, the state began to consider seriously the adoption of a mandatory reimbursement program, but, after a year and a half of careful consideration, decided against it.

Some background information outlining the responsibilities of the Office of Fiscal Analysis and the emergence of the state mandates issue in Connecticut is important as a background for understanding Connecticut's reluctance.

The Office of Fiscal Analysis (OFA), the legislature's budget office, consists of 20 professionals who handle the following three major responsibilities:

- Assisting the two fiscal committees (Appropriations and Finance) in the formulation of their budgetary recommendations to the full legislature.
- Researching fiscal issues for any of the 187 legislators who might ask for assistance (although **OFA** works primarily for the fiscal committees).
- Preparing state and municipal fiscal impact statements (fiscal notes) on legislation. OFA analysts append a fiscal note to each bill favorably reported by nonfiscal committees. The bill, along with the fiscal note, is then distributed to all members of the house and senate. In addition, analysts provide preliminary fiscal notes on bills being seriously considered by the fiscal committees before these bills are favorably reported. OFA analysts complete approximately 2,000-3,000 fiscal notes per year on bills, amendments, and amended bills. It began preparing state fiscal notes in the mid-1970s and started providing municipal fiscal notes in 1979. The work on municipal fiscal notes exposes OFA to the state mandates issue.

Interest in the possibility of adopting state mandates legislation in Connecticut was spurred by passage of legislation around 1978 regarding hypertension benefits for local police and firefighters. The legislation passed before OFA started preparing municipal fiscal impact statements; it had serious cost implications for municipalities that became apparent once the legislation was implemented.

Several organizations that represent municipalities were sensitive to the legislation and pushed for a legislative remedy to avoid this type of development in the future. Some form of reimbursement was suggested for state mandates. These organizations joined forces with a legislator from a rural community who believed philosophically that the state should bear at least part of the costs associated with imposing mandates on municipalities.

As a result of this concern, the State Mandates Interim Study Committee, composed of five members of the Appropriations Committee, was established pursuant to 1983 legislation.[1] The committee is required to report on the feasibility of a pilot program for reimbursing municipalities for the cost of new or expanded state mandates.

Connecticut's cautious approach is evident in this 1983 legislation. **A** mandatory reimbursement program would be considered, but any implementation would occur on a limited pilot basis within one specific program area of government. Implementing the pilot program in the environment/economic development area of government subsequently was considered. The 1983 legislation also:

- Defined state mandate as "any state initiated constitutional, statutory or execu-

*** Geary Maher wrote this article, which first appeared in Michael Fix and Daphne Kenyon, eds., *Coping with Mandates: What are the Alternatives?* (Washington,** D C **Urban Institute Press, 1990).**

tive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a state court and any legislation necessary to comply with a federal mandate."

- Required OFA to prepare fiscal notes on state mandates. Because OFA had already been providing them since **1979,** for practical purposes, analysts began indicating state mandate in capital letters on the fiscal note to alert legislators to the existence of legislation that would impose a state mandate.

- Required OFA to review state mandates and the cost of such mandates passed during the **1983** legislative session. Approximately **40** out of the 800 bills passed were identified as state mandates.

- Defined various types of mandates and other conditions related to the mandates (e.g., disclaimers that were conditions under which the state would not provide reimbursement if a reimbursement procedure had been subsequently enacted) and required that the types of mandates and related conditions be indicated on fiscal notes. This requirement subsequently was repealed through **1984** legislation.

The next year, the State Mandates Interim Study Committee thoroughly researched the issue, with a thrust toward establishing a pilot-reimbursement program in **1984** in the environment/economic development area of government. In the process of its deliberations, there was an effort to:

- Collect comparative information from other states, especially California and Illinois, regarding their reimbursement programs;

- Identify costs that would be reimbursed and the timetable for reimbursement;

- Improve OFA's ability to get more complete information from municipalities on a timely basis (e.g., developing a contact list of up to **10** small, medium, and large municipalities out of the total **169** cities and towns in Connecticut); and

- Assess the administrative costs associated with instituting **a** reimbursement procedure in Connecticut.

Although most of the study committee's efforts centered on devising an elaborate scheme of reimbursement that would have been implemented on a pilot basis, the ultimate legislation that passed did not go that far, and only relatively modest legislation was enacted in **1984.** Connecticut's reluctance can be attributed to the following types of issues that were not completely resolved:

- How to define reimbursable costs (e.g., should reimbursements include indirect as well as direct costs?);

- Which timetable for reimbursement should be chosen (e.g., provide reimbursement in the first year or wait two or three years until the overall impact becomes more evident), what amount of reimbursement should be provided (e.g., institute a percentage share arrangement with municipalities), and whether the reimbursement should be phased in (e.g., 25 percent for the first year, 50 percent for the second year, etc.);

- Whether the state should provide reimbursement for mandates requested by municipalities or for those mandates already in place;

- How to ensure that quality data could be obtained quickly from cities and towns and how to obtain reasonable fiscal estimates given that municipalities do not often know initially how a proposed mandate will be implemented;

- How much money should be spent by the state reviewing, processing, and auditing claims and establishing an appeals board to resolve complaints (annually, Illinois and California were spending approximately $500,000 and $750,000, respectively, to support the administrative components of their state mandates programs, and Connecticut was not only hesitant about incurring these additional costs but also was unwilling to establish this layer of bureaucracy); and

- Reluctance on the part of the Appropriations Committee chairs and other legislative leaders to give up some control over expenditures by instituting a mandatory reimbursement procedure due to the state's uncertain fiscal condition at the time.

The following two reactions to some extent typify Connecticut's cautiousness with regard to adopting a mandatory reimbursement procedure. The Appropriations Committee chair had serious concerns about relinquishing some control over state appropriations to an automatic reimbursement mechanism; she often questioned whether the mandatory reimbursement approach made sense and whether the state's best interests would be served by moving in that direction.

In addition, one highly respected Connecticut state auditor who has held several important positions in state government expressed **his** concerns as follows:

> **As** you know, I don't think this concept makes any sense. Further, assuming acceptance of the concept, the method of dealing with it as proposed in the working draft is *crazy.*
>
> The draft (legislation) **raises** so many questions that it is unproductive to go through them in this memo. . . .
>
> The process **of** computing the costs consistently among all the local government entities and setting up the procedures, staff and timetable for **OPM** (the Governor's budget office) to approve requests and hear appeals would be a nightmare. . . .
>
> If there is a compulsion to proceed with this concept, **I** think that each bill establishing or expanding a mandate should include an appropriation and a formula for distributing the appropriations. The Assembly (state legislature) would have the choice of adopting or removing the appropriation. . . .[2]

As a result of the technical implementation problems that were identified but not completely resolved and the concerns expressed by some legislative officials, Connecticut began to consider more seriously a voluntary rather than mandatory reimbursement scheme. In lieu of a mandatory reimbursement procedure being enacted in 1984 on a pilot basis with regard to the state's environment/development programs, a voluntary reimbursement procedure was adopted.

After a year and a half of careful consideration, legislation was enacted in 1984. It requires that any bills creating or enlarging state mandates be referred to the Appropriations Committee.[3] The statute requires that any such bill that is favorably reported by the Appropriations Committee contain a determination concerning:

- Whether such bill creates or enlarges a state mandate, and if so, which type of mandate is created or enlarged; and
- Whether the state shall reimburse local governments for costs resulting from such new or enlarged mandates, and if so, which costs are eligible for reimbursement and the level of, timetable for, and duration of reimbursement.

The Appropriations Committee provided these determinations in the first year but has not done ***so*** subsequently because interest in the state mandates issue has declined. No direct reimbursement ever has been provided through this legislation. Bills that would impose state mandates are still referred to the Appropriations Committee; however, the general issue and the potential for reimbursing municipalities for new or expanded mandates imposed by the state have received relatively little attention in the last four to five years.

It is somewhat difficult to measure the effectiveness of Connecticut's state mandates law. Perhaps the law has reduced the number of additional mandates being imposed by making legislators more aware of the consequences of their actions on municipalities. Fewer such bills seem to be introduced, and even fewer are given serious consideration and eventually passed. Most bills affecting municipalities that pass do not impose significant burdens and often create relatively simple administrative changes that usually result in either no cost or in minimal municipal costs that can be absorbed.

In addition, immediate attention was diverted from the mandates issue because the fiscal pressures on Connecticut's state and local governments that existed prior to passage of the state mandates legislation were temporarily alleviated. The state enjoyed sizable general fund surpluses totaling $1.146 billion over four consecutive fiscal years as follows: $165.2 million for 1983-84, $365.5 million for 1984-85, $250.1 million for 1985-86, and $365.2 million for 1986-87. In lieu of funding any new state mandates or directly funding existing ones, Connecticut was in a better financial position to provide more indirect assistance to municipalities through general state aid, including property tax relief grants. ***As*** a result of the improved fiscal condition **of** the state, legislative and municipal officials became less concerned about direct reimbursement for specific state mandates.

This attitude could change, however, if the state's fiscal picture continues to worsen in future years. Connecticut ended FY 1987-88 with a $115.6 million deficit, and FY 1988-89 with a $28.0 million deficit, and is likely to end FY 1989-90 with a $160.8 million deficit. Connecticut has attempted to enhance revenues and slow the rate of growth in expenditures to avert a deficit in 1990-91. Although the 1989-90 and 1990-91 budgets either reduce or slow the rate of growth in some grants to municipalities, overall state aid continues to increase. Table **2** indicates the appropriated level of state aid to municipalities from FY 1982-83 through FY 1990-91.

As a result of continued increases in state aid to municipalities despite the more recent worsening in

Table 2
Connecticut's Aid to Municipalities: All Appropriated Funds, FY 1982-83 to FY 1989-90

Fiscal Year	Amount	Increase	Percent Increase
1982-83	$667,333,259	$52,258,120	8.50%
1983-84	747,036,140	79,702,881	11.94
1984-85	836,353,011	89,316,871	11.96
1985-86	905,527,991	69,174,980	8.27
1986-87	1,058,987,397	153,459,406	16.95
1987-88	1,155,538,857.	96,551,460	9.12
1988-89	1,297,171,601	141,632,744	12.26
1989-90	1,397,944,189	101,472,588	7.82
1990-91[1]	1,510,430,913	111,786,724	7.99

[1] To provide a consistent basis of comparison with prior years, $146.5 million shifted from appropriated to nonappropriated funding sources for various grants to towns has been included in the 1990-91 figures.

the overall fiscal condition, the sensitivity associated with the state mandates-reimbursement issue **has** not reemerged. However, if state and municipal resources become strained by more intense fiscal pressure, a renewed interest in terms of reconsidering a mandatory reimbursement mechanism could result.

It is ironic, however, that although Connecticut was in **a** good financial position from 1983-84 to 1986-87 to reimburse specific mandates, it chose not to **do so.** Instead, the state opted to provide more indirect assistance to cities and towns by increasing state aid to municipalities. Now that the state is in a more difficult fiscal situation, resources may be too limited to provide reimbursement for specific mandates. **If** the fiscal situation deteriorates further, it might become increasingly difficult to enact a mandatory reimbursement procedure in Connecticut.

Notes

[1] P.A. 83 12 (June Special Session), An Act Concerning State Mandates to Local Governments.

[2] State Auditor Leo V. Donohue's memorandum to Representative Janet Polinsky, Chair of the Appropriations Committee, January 1984.

[3] PA. 84 124, An Act Establishing Procedures with Respect to Bills Creating or Enlarging State Mandates Which May Result in Costs in Local Governments.

NEW YORK THE "NON-ISSUE" OF MANDATES*

Mandates, particularly the "unfunded" kind, are an issue that all local officials can rally around with shared distaste. After all, who would want to be required (mandated) to do something for somebody else, using his own money, and not be compensated (reimbursed)? Worse, local officials must pay the political price for raising taxes to fund services while state or federal governments take credit for providing them.

So it is no wonder that unfunded mandates are local governments' "battle cry" of the **1980s.** They are the most persistent source of friction in intergovernmental relations. New York City Mayor Edward **I.** Koch, talking about the "mandate millstone," outlined the fiscal consequences of unfunded mandates.

> The City **of** New York, as an example, is driven by **47** federal and state mandates. The total cost to the city of meeting these requirements over the next four years will be **$711** million in capital expenditures, $6.25 billion in expense-budget dollars, and **$1.66** billion in lost revenue.[1]

For the most part, however, state government imposition of mandates on local governments is a "non-issue." Once funding questions are separated from the home rule issue, the level of criticism drops off rapidly.

> The most frequent local complaint about mandates, however, **is** that they are rarely funded at adequate levels. . . . Mandates appear to be more a lightning rod of discontent for local officials than a significant substantive problem.*

With respect to funding, there are more politically positive and cost-effective ways than using current strategies. "Politically positive" means that benefits accrue to both the mandator and mandatee, and "cost effective" means the use of methods requiring less time, cost, and effort per dollar of benefit flowing back to local governments.

True home rule provides that local governments are masters of their own destinies, free from unwanted and unnecessary intrusion from the state or federal government. Local autonomy must be balanced **by** state government's responsibilities to ensure the provision of services that are in the broader public interest, and **by** the constitutional and historical fact that municipalities are creations of the state government.

The right or desirability of the state to mandate and the appropriateness of compensating local governments for the cost of compliance are not in question. Both parts of this state-local dynamic can and will be pursued.

Instead, this article summarizes what appears to be the current strategy of lawmakers in many states for relieving the friction caused by state-imposed mandates, and argues that this strategy is flawed. Alternative strategies will be discussed, and a more comprehensive state-local cooperative approach will be outlined within the context of political benefit and cost effectiveness.

CURRENT STRATEGIES

Most good faith efforts to resolve (or at least understand) the mandate funding issue now involve a three-step strategy:

1) Cataloging existing mandates to provide some sense of the nature and extent of the problem;

2) Strengthening controls over the enactment of new mandates to minimize additional costs imposed on local governments, usually through a "fiscal note" procedure; and

3) Shifting the cost for the mandate from the level of government performing the function to the level of government mandating the function.

Political perception of this strategy is negative, however, and its overall cost effectiveness is questionable. Furthermore, each of these steps is fraught with difficulty and ignores a prerequisite "first step" that has to be resolved—defining what constitutes a mandate.

• **Paul Moore wrote this chapter.**

Step 1: The Catalog

For the catalog strategy to be successful, it must include a definition and process of identification that can be understood and accepted by both state and local officials, and it must lead to a result that is quantifiable enough to facilitate a **fiscal** note or reimbursement scheme. The U.S. Advisory Commission on Intergovernmental Relations (ACIR) incorporated the following definition of a state mandate in its 1981 publication *Measuring Local Discretionary Authority:*

> A legal requirement—constitutional, statutory, or administrative—that local governments provide a specific service, meet minimum state standards, engage in an activity (such as collective bargaining with employee organizations), or establish certain terms and conditions of local public employment.

In New York State, the only inventory of mandates on local governments was compiled by the Legislative Commission on Expenditure Review (LCER). Although it focused only on mandates affecting counties, the LCER study used ACIR's definition and expanded the taxonomy to differentiate between three types of mandates: those that commanded action, those that authorized discretionary action, and those that required action only after a discretionary decision had been made. A further important distinction was made between mandates that affected programs and those that related more to the administration of county government. LCER noted, however, that:

> **. . .** the **2,632** mandates identified are less than the **5,200** originally estimated by LCER's research staff in the early stages of this survey. This difference can be explained largely as resulting from changes made in classifying mandates once the survey was under way.[3]

The extreme sensitivity of the number of mandates identified to the definition being used has significant implications. A recent survey conducted for New York's Legislative Commission on State-Local Relations revealed a substantial amount of confusion at the local level over which services are mandated and which ones are not—confusion caused in large part by definitional problems and by a lack of current, comprehensive information. This kind of confusion also intensifies the level of state-local friction, often resulting in the state (and its mandates) becoming the scapegoat for local fiscal problems.

Development of a catalog listing all mandates is usually the first response state and local policymakers can agree to when the friction builds. At best, such a catalog will give some indication of the nature and magnitude of past decisions mandating local actions. It even might provide some incentive to clean up those that now might seem ill considered.

The staff time and effort to compile such a catalog, however, and then to maintain it, is not insignificant. In Florida, for example, the Advisory Council on Intergovernmental Relations has compiled an initial directory and is required to update it annually. The maintenance function requires **15** percent of the council's available staff time and costs between $50,000 and $100,000. That effort identified **44** new mandates enacted last year and two existing mandates that were repealed. Still, this step is not enough to relieve the friction, and Florida local governments are pressing hard for a mandate reimbursement program.

Step 2: The Fiscal Note

No matter what definition ultimately is used, such catalog compilations will result in the identification of "a large number" of mandates and local government assertions that the system is "out of control." The most called-for "solution" to bringing the system back into control, at least initially, is to slow or stop the escalation in enactment of unfunded mandates. The standard such control device is a "fiscal note," which essentially is a statement accompanying each piece of proposed legislation that evaluates its potential fiscal impact on local governments. The idea is that state legislators will be less inclined to enact an unfunded mandate if they are more conscious of its impact back home. This solution has at least three deficiencies:

1. The fiscal note does not help correct *existing* mandate burdens.
2. Proper analysis requires a high level of skills, resources, and independence, and often produces results that are not of sufficient detail to show the impact back home.
3. State and local government information systems are not sophisticated enough to support the analysis required to compute such marginal impacts, especially prospectively, with any degree of precision.

Although ACIR counts more than 40 states having a fiscal note procedure, none have reported success in being able to ascertain the incremental cost associated with every piece of proposed legislation and its affect on each unit of local government. This conclusion is only common sense. The sheer volume of legislation and the estimating difficulties involved are formidable obstacles. In fact, most fiscal notes simply state that (1) either there are or are not costs to local government and (2) that the costs are "insignificant" or "cannot be determined." If an estimate is provided, it is most often an aggregate for all local governments within the state or a class of local government, such as counties. It is little wonder that most local officials are disappointed with this result.

> Local officials generally believe that fiscal notes accord political subdivisions little protection against mandated costs. The Association County Commissioners of Georgia recently commented on the Fiscal Note Act by observing that "in practice the Act has been ignored more often than observed."[4]

The time and cost of administering a fiscal note process is even greater than compiling and maintaining a catalog. **As** part of the real property tax limitations imposed on Massachusetts local governments by Proposition $2^1/_2$, the state has established a sophisticated program, built around fiscal notes, to limit the imposition of new mandates. The Division of Local Mandates, located within the Office of the State Auditor, administers the 'program. The division has a staff of **36** and an annual budget of $860,000.[5] Yet, even with this staff commitment, probably the largest of any state, not all bills receive the same intensity of analysis. To do so would require a level of resources no state yet has been willing to commit.

The New York State legislature considers about 20,000 bills during each two-year term, with over 85 percent having some fiscal implications for the state or its local governments.[6] It is doubtful that apolitical consensus could be forged to devote the kind of resources necessary to strengthen a fiscal note process dealing with that level of work load.

The Congressional Budget Office (CBO) has been preparing "fiscal notes" since November 1982 on all bills whose estimated state and local cost impacts exceed $200 million. Their experience, summarized below, shows that a great deal of time and money must be expended to review all bills, and that a smaller than expected number exceeded that threshold.

> In general, the number of bills having state and local cost impacts has been smaller than we anticipated. On average, about 11 percent of all bills reviewed were determined to have some state and local cost impact. When CBO was preparing to do state and local estimates in 1981, we projected that about 20 percent of the bills reviewed would have such impact. We also thought that we would be doing about 100 - 150 estimates per year with some state and local impact, when in fact that figure has averaged around 60 over the past five years. Despite these lower numbers, CBO has devoted considerable resources and time to the state and local effort.[7]

Step 3: The Mandate Reimbursement

This strategy is what all local governments want, what some state governments hope to avoid, and what is not cost effective. Once a catalog has been compiled and a fiscal note process put in place, the "ideal" mandate reimbursement process would hold local governments harmless from any additional costs identified by the fiscal note. Yet, a major flaw, pointed out above, is that such costs cannot be determined prospectively with any exactitude. Consistent with the best aggregate estimates that can be made, some reimbursement methods may evolve into a block grant, allocated to individual communities on some basis other than the cost to comply with the mandate. Other reimbursements may be calculated from claims based on actual after-the-fact expenditure data.

California is usually cited as having the most elaborate mandate reimbursement program. Like Massachusetts, California voters passed a constitutional referendum severely limiting local governments' ability to levy taxes. Additional costs to comply with state mandates would have posed exceptional hardships on local governments. **As** a result, California provides the largest amount of monetary aid of any state. Its mandate reimbursement program is established constitutionally and is based on claims supported by audited expenditure data. The program distributed about $271 million to local governments during the state's 1987-88 fiscal year.

The California operating statutes make an important distinction between a mandate and a "reimbursable" mandate. For a local government to be reimbursed, the mandate must require a new service or a higher level of an existing service. ***As*** might be expected, a large number of newly enacted bills are challenged by local governments as being reimbursable mandates. These challenges have resulted in a substantial amount of pending litigation that could increase state costs dramatically.

The distinction between an ordinary mandate and one that requires a new or higher level of service emphasizes the importance of definitions. In California, New York, and virtually every other state, the imposition of unfunded service mandates is the root of the problem. This is a problem of a much smaller dimension. The previously mentioned LCER study in New York, for instance, identified 2,632 mandates. Yet, of these, only 608—just 23 percent—required new or expanded levels of service. Even in California, only 80 mandates currently are subject to reimbursement, and several have been repealed.

A major factor to be considered is the relatively large administrative cost compared to the level of reimbursement provided. California spends far more per dollar distributed to administer its mandate reimbursement program, for example, than New York does in providing unrestricted, general purpose aid. Careful examination of the California experience shows that **23** people are needed to administer the mandate reimbursement program at an annual cost to the state of about $6.6 million. Interestingly, about $15 million of the $271 million total (5.5 percent) going to local governments is to compensate them solely for the costs to comply with the reimbursement program itself. Also, reimbursement for 11 of the less significant mandates is based on prior years' amounts adjusted to reflect inflation. Shifting to this "block grant" form of reimbursement helps to ease the time and cost of administration, and begins to resemble an unrestricted general purpose aid grant.

New York annually distributes over $1.0 billion in unrestricted general purpose aid to local governments, in part to reimburse for the cost of state mandates. Although there is no specific information, fewer than two full-time employees administer the program, and the total annual costs do not exceed $100,000. Even if aid payments were tripled to $3.0 billion, New York's level of administrative overhead would not increase. On the other hand, California's administrative overhead certainly will increase substantially as the number of reimbursable mandates and related claims for payment increase.

Both California and Massachusetts, the trendsetters in addressing friction caused by the costs of complying with state imposed mandates, operate in an environment of strict, voter imposed, constitutional limits on the amount of revenues their local governments can raise. These states have devoted substantially more resources to various parts of the three-step process discussed earlier than does any other state. Yet, for states not under the gun of a voter-initiated proposition limiting tax revenues, this mandate strategy is not an attractive policy alternative. It is built on the precarious assumption that an acceptable definition of reimbursable mandates can be developed. It also operates in a negative atmosphere that implies that mandates are wrong and costs of reimbursement are "penalty payments." Further, the cost to administer such a program—versus the amount of aid being provided—is just too high.

ALTERNATIVE STRATEGIES

Joseph Zimmerman presented eight alternative strategies for trying to reimburse the marginal costs of mandates.[8] Five deal with preventing the mandate, such as some form of prohibition or tighter controls for enacting, or by allowing local governments to "opt out." The other three relate to forms of money aid and do not require complicated and costly administrative mechanisms. In that respect, they are a more cost-effective way to compensate local governments. Most such programs are related directly to the provision of local services and, as such, would serve to eliminate (or reduce substantially) the root cause of the friction. Just as important, aid programs usually are perceived as a "positive response."

Two of these money strategies, categorical grant-in-aid programs and unrestricted general purpose aid, should be relatively more attractive to state policymakers than current reimbursement strategies. In addition to building on existing administrative machinery, these strategies are a direct, ***and positive,*** linkage between the state and local governments.

To understand this proposition, consider that New York distributed from its general fund more than $17.5 billion in aid to local governments through 231 separately identifiable programs during its 1987-88 fiscal year (ending March 31, 1988). The bulk of this total was distributed through 216 grant-in-aid programs. The largest amounts went to education ($8.2 billion) and social services ($5.1 billion). The remaining 15 programs provided unrestricted aid, the largest distributing just over $1 billion annually.[9]

Each of these programs has attained political acceptability by providing state lawmakers with a clear and positive linkage between the state revenues they take the political heat to raise and the benefit of new or enhanced local services bought with those aid distributions. Diverting a portion of that money through some new, additional, administrative machinery, simply to reimburse for mandated expenses, has the negative connotation that legislators should not mandate, and if they do, they should pay a penalty.

Some might argue that the California approach is ***more*** cost-effective, since only the precise amount necessary to reimburse for a narrowly defined set of mandates is required. More traditional state aid programs, at least for the purpose of mandate reimbursement, are less targeted and necessarily more expensive. This argument is reasonable, yet states not saddled by a constitutional requirement to reimburse for mandated costs have been slow to move to the California model. They have found simpler solutions in selective enrichment of existing aid programs or in the assumption of a larger portion of the state-local program cost.

That last option, state assumption of a larger portion of the total state-local program cost, is Zimmerman's third money strategy and the one that points the way to a potentially better approach to removing the friction caused by mandates.

A BETTER APPROACH?

State assumption of the cost of locally provided services might result from a careful study of the service: who should provide it, how should it be produced (i.e., public, private, or nonprofit), and what is the most efficient and equitable way to finance it. This kind of "sorting out process" can and should be the foundation of a strategy for achieving a better system of service delivery. In doing so, the root cause of state-local mandate friction, compensating those who are forced to comply, will be removed.

Sorting out is based on the premise that government services can be provided more efficiently and effectively if there are clear and logical linkages between the service, the layer of government providing the service, the clientele receiving the service, and the funding mechanism that supports the service. If this premise is reasonably accurate, then the goals of the sorting out process might be summarized as: **(1)** defining the scope of the existing service delivery system; **(2)** identifying areas of duplication or unclear service responsibility; **(3)** identifying areas of service delivery inconsistent with generally accepted theorems of good government; **(4)** realigning the service delivery system to remove duplication, fill gaps, and clarify as many roles as possible; and (5) adjusting the flow of intergovernmental aid to support, reflect, or encourage these changes.[10]

Sorting out the proper division of service responsibilities is neither quick nor *easy.* It must start with a genuine commitment from state and local leaders to make changes, and culminate with a service delivery system that is responsive to all. Such change most often occurs incrementally, with a small part of a service transferred. Systemwide changes, such as state assumption of the entire cost of local courts, also has occurred.

Commitment begins with providing a policymaking framework that will allow all affected parties to participate. A state level advisory commission on intergovernmental relations can serve that purpose. More than half the states have such an intergovernmental agency, and both the **U.S.** Advisory Commission on Intergovernmental Relations and the National Conference of State Legislatures' State-Local Task Force have recommended that the other states follow suit.

An understanding of how tax revenues, aid payments, and borrowed moneys are translated into local services is vital to this sorting out process. If the New York aid system is any guide, then states have a complex web of fiscal supports that also should be reviewed as part of the sorting out process. At the least, this ought to show that there are few, if any, programs being mandated by states without some level of fiscal support. Research in New York, for instance, has shown a surprising diversity of service delivery, a relative lack of mandates below the county level, and hundreds of separate aid programs.

Leadership also is needed from **U.S.** ACIR. Thorough examination of a complete state-local service delivery system requires comparison to accepted "benchmarks" or "theorems" of good government. Although universally applicable standards may not be feasible or desirable, ACIR has the research skill and credibility to begin the task and the obligation to facilitate the efforts of individual states.

CONCLUSION

Friction from unfunded mandates is the symptom of a much larger problem. Evolution of each of the 50 state-local service delivery systems has resulted in a complex and interrelated maze of responsibilities and fiscal supports that few people, if any, understand completely. Gaining that understanding is now imperative as the federal government's fiscal retrenchment enters its second decade with no turnaround in sight.

Local officials also have to be conscious of a potential "backlash" from constant criticism of their state service delivery partners. In New York. Governor Mario Cuomo has launched what might be viewed as a "counterattack" by questioning how accountable local governments have been with the hundreds of millions of dollars in unrestricted aid they currently are receiving. Strictly interpreted, of course, the question is rhetorical. Unrestricted aid payments are completely fungible with revenues raised by the local government. Consequently, they can never be traced with accountant's precision to specific services and programs.

States following the three-step approach of catalog, fiscal note, and reimbursement to remove the friction caused by mandates will spend a lot of time and resources in the effort and probably not be completely satisfied with the result.

Mandates themselves are not the issue, and a new level of leadership and commitment is needed *to* address the bigger problem of properly sorting out state-local service responsibilities. The twin irritants of less federal aid and intense mandate friction have stimulated a major examination of programs, funding, and service delivery that, if done correctly, will result in more cost-effective government. That result is too important to be obscured by the non-issue of mandates.

Notes

[1] Edward I. Koch, "The Mandate Millstone," *The Public Interest*, Fall 1980, p. 42.

[2] Virginia Joint Legislative Audit and Review Commission, *State Mandates on Local Governments and Local Financial Resources,* House Document No. 15, 1984, pp. II and III.

[3] New York State Legislative Commission on Expenditure Review, *State Mandates* to *Counties* (Albany: New York State Legislative Commission on Expenditure Review, August 1981), p. 4.

[4] As reported in Joseph F. Zimmerman, *The Mandate Problem,* a paper prepared for a conference entitled "State Mandates: Room for Reform?" Albany, New York, September 9, 1986, p. 14.

[5] Anthony V. D'Aiello, *Comments,* presented at an Urban Institute conference on "Coping with Mandates: What are the Alternatives?" Washington, DC, May 20, 1988.

[6] Many bills are duplicates, either introduced separately in the Assembly and in the Senate as companion bills, or sim-

ply duplicates introduced independently. Numerous bills are reintroduced every **two** years (bills *carry* over one year unless there is an election) and have been in the legislature for years. Many are "press release" bills; i.e., the sponsor introduces a bill, issues a press release, and forgets the bill. Only slightly more than **1,100** bills receive **serious** consideration in both houses each year.

'Theresa **A. Gullo**, ***Estimating the Impact of Federal Legislation on State and Local Governments,*** presented at an Urban Institute conference on "Coping with Mandates What **are** the Alternatives?" Washington, **DC,** May **20, 1988.**

[8] Ibid., pp. **27-28.**

[9] New York State Legislature, *Report* of ***the Fiscal Committees on the Executive Budget: Fiscal Year April 1, 1987 to March 31, 1988*** (Albany, **1987),** p. **267;** and New **York** State Legislative Commission on State Local Relations, ***Catalogue of State and Federal Programs Aiding New York's Local Governments: A Legislator's Guide*** (Albany, December **1986),** pp. **7-36.**

[10] Paul D. Moore, "The Sorting Out **Process:** Who Is **Sup** posed To Plow Route **999?"** ***New York State Town and County Government,*** June **1983,** p. 26.

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What is ACIR?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members—nine representing the federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three federal executive officials directly, and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Representatives by the Speaker of the House of Representatives.

Each Commission member serves a two-year term and may be reappointed.

As a continuing body, the Commission addresses specific issues and problems, the resolution of which would produce improved cooperation among governments and more effective functioning of the federal system. In addition to dealing with important functional and policy relationships among the various governments, the Commission extensively studies critical governmental finance issues. One of the long-range efforts of the Commission has been to seek ways to improve federal, state, and local governmental practices and policies to achieve equitable allocation of resources and increased efficiency and equity.

In selecting items for the research program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR, and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policy recommendations.

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