ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7357 SENATE COMMUNITY & REGIONAL AFFAIRS

Preparing Estimates for Amendments

Preparing cost estimates for federal legislative amendments containing substantial mandated state and local costs would help assure that important changes are not overlooked. Unlike the states, CBO prepares estimates for amendments, not routinely, but only when requested by a committee or member of Congress.

At the state level, preparing estimates for amendments is common. Of state cost-estimating units responding to our questionnaire, 38 percent reported that cost estimates were prepared for amendments most of the time; only 13 percent said it was seldom done. States that usually prepared cost estimates for amendments reported relatively high use of cost estimates, further questionnaire analysis showed. Similarly, states that seldom prepared estimates for amendments reported lower use of cost estimates.

Updating estimates for all amendments could increase CBO's workload and might not always be feasible, given the short time often allowed for considering them. But congressional committees or members, in consultation with state and local interest groups, could identify amendments containing mandates that would impose substantial additional costs on state and local government.

Preparing Estimates for All Types of Bills

At the federal level, tax legislation and appropriation bills are excluded from coverage under the state and local cost estimate process. Such exclusions ignore substantial costs passed on to state and local governments, state and local interest groups told us. For example, the Tax Reform Act of 1986 contained federal reporting requirements and restrictions on the use of tax exempt bonds to finance public facilities, which National League of Cities officials said resulted in significant additional costs to local governments.

On the state level, few estimating units exclude specific categories of bills from their process. For example, only 9 of 44 state estimating units responding said that they exclude tax and/or appropriation bills from their processes. Preparation at the federal level of cost estimates for tax and appropriation bills affecting state and local governments would provide information on a broader range of mandates. This would give legislators a more complete picture of the potential mandate burden imposed.

Reporting Aggregate State and Local Costs

Preparing a biennial report of federal legislation enacted during each Congress that imposed costs on subordinate levels of government would highlight the overall state and local cost impact of such legislation. Currently, the reporting of cost impacts on subordinate levels of government differs between the federal and state levels.

At the federal level, no periodic report aggregating state and local costs of all federal legislation is prepared. Such a report would be useful, we were told by officials from the National Governors' Association and the Conference of Mayors. It is important, they said, to be aware of the total package of existing mandates when considering new legislation containing mandates. For instance, legislation with the most significant state and local costs passed by the 99th Congress would cost state and local governments over $2 billion annually, according to CBO's estimates prepared at the time the bills were reported out of committee.

In some states, such a report is prepared to provide information on local mandates. Of state estimating units responding to our questionnaire, 13 reported that they aggregate local estimates in either an internal report or through a published annual report, e.g.:

- Illinois, Connecticut, and Tennessee. Estimating units maintain an internal report that aggregates their local cost estimates and is available for use by legislators or other interested parties.
- California. One of the state's two cost-estimating units publishes an annual report that lists enacted statutes with local cost implications.
- Florida. The state-level Advisory Commission on Intergovernmental Relations publishes an annual report that describes all bills passed having a local cost impact.

An annual report provides an overall picture of the aggregate cost impact of state legislation on local governments and is useful to legislators deliberating new state mandate proposals, officials from California and Florida said.

Preparation of a biennial report for each new Congress would help focus greater attention on total state and local cost burdens already mandated by existing federal legislation. Currently, CBO tracks on a computerized system all the estimates it prepares; this could serve as an initial database for preparing such a report. Follow-up based on enacted legislation would be needed, however, to update the estimates and identify any significant changes in state and local costs.

In addition to CBO, the national-level ACIR would be an appropriate agency to take the lead in preparing such a report. ACIR monitors the federal system and recommends improvements to cooperation among levels of governments and more effective functioning of the federal system. As a permanent national bipartisan body representing the executive and legislative branches of federal, state, and local government and the public, ACIR has the requisite intergovernmental sensitivity to place CBO's database in a broader perspective.

Increasing Interest Group Involvement

Involvement of state and local interest groups[1] in the federal legislative process can influence congressional use of cost estimates. State and local governments and interest groups became highly involved with the three bills (see pp. 17-18) where CBO's estimates had an impact on the course of the legislation because of the projected costs. In these cases, such involvement caused legislators to focus greater attention on the cost estimates prepared for each bill and influenced the legislative outcomes, committee staff said. State and local interest groups need to make themselves more visible on mandate issues, other committee staff told us. They suggested that, if the interest groups would track legislation and make themselves heard, committees would become more responsive.

At the state level, the degree of involvement by local interest groups also affects the legislators' use of cost estimates. For states in which cost estimates were used and influenced the outcomes of legislation containing mandates, state officials noted that interest groups played a meaningful role. Additionally, our questionnaire results showed that cost estimates were used to a greater extent in states where local interest groups were reported by state officials to be more involved.

The federal government could work with interest groups on legislation containing mandates. Interest groups could be more involved at the outset in working with congressional committees or members to select particular mandate bills for more extensive and earlier cost estimation. Congressional committees or members then could ask CBO to prepare estimates for these bills prior to full committee markup as well as for floor amendments.

[1]Principally, the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors.

Conclusions

Cost estimation accomplishes the basic objective of giving legislators additional or confirming information about cost impacts. But it is difficult to assess the effect of cost estimates on eliminating or modifying the mandate burden of proposed legislation. While legislators may be better informed as a result of cost estimates, the knowledge of such costs seems to have influenced legislators to eliminate or modify mandates only when coupled with strong legislative concern about mandating costs on state and local governments.

For preparing state and local cost estimates, CBO uses a reasonable approach and methodology that is similar to the process established by many states. At both levels, the processes are greatly affected by such constraints as the time available to prepare cost estimates and the need for data relating specifically to each bill being considered. In addition, there is a high level of uncertainty in preparing estimates of future costs when the specifics of an activity are not yet known.

Some features of state processes, if adopted at the federal level, could focus more attention on state and local cost issues at key points in the legislative process. Cost estimates could be prepared on proposed legislation containing significant mandates (1) before the full committee report stage, (2) for floor amendments, and (3) when included in tax and appropriation bills. Doing so could increase federal legislators' awareness of mandate costs.

CBO's current cost estimate process could be used without change to prepare individual estimates earlier in the process at committee request and to prepare estimates on floor amendments. To avoid overloading CBO, early estimates could be requested only on bills that state and local interest groups identified as containing significant mandate costs, perhaps as they are scheduled for subcommittee or full committee markup. Earlier cost information could help committee members become more fully informed about potential state and local cost impacts before they complete deliberations on proposed legislation. Similarly, committee leaders or members of Congress could ask CBO for estimates on amendments to reported legislation that were proposed during floor debates.

Including appropriation and tax bills in the state and local cost estimation process would enhance the information available on such cost impacts during congressional deliberations. A statutory change would be needed to require that state and local cost estimates be prepared routinely for appropriation and tax bills, as is now done for other bills reported out of committee. A change would not be needed, however, to provide for such estimates only on a request basis, similar to what we are suggesting for other legislation.

State and local interest groups may need to make a concerted effort to generate interest in requesting earlier estimates. By developing a priority listing of the proposed legislative mandates they are most concerned about, these groups could help (1) guide committees or members in determining which bills need earlier estimates and (2) assure that CBO's effort is directed toward the most significant proposed mandate legislation.

Finally, it would be useful for ACIR to prepare a biennial report identifying the total cost of new mandate legislation passed by each Congress, possibly using CBO's estimates as an initial database. Such a report could help increase congressional awareness of the overall cost impact of proposed legislation on state and local governments.

Matters for the Consideration of the Congress

We encourage the committees and members of Congress to ask CBO to prepare state and local cost estimates for selected proposed legislation scheduled for subcommittee or full committee markup. Consultation with state and local government interest groups could help legislators identify significant mandate legislation warranting these estimates. Committees and members should also consider requesting estimates for floor amendments with potentially significant effects on state and local costs. Finally, we encourage committees and members to similarly request estimates on appropriation and tax bills that are identified as potentially affecting state and local costs.

Recommendation to the Chairman of the U.S. Advisory Commission on Intergovernmental Relations

We recommend that ACIR prepare a biennial report on the total estimated state and local costs of new mandates contained in legislation passed by each Congress.

Agency Comments and Our Evaluation

Congressional Budget Office

CBO generally agreed with the report's description of federal and state cost estimation processes and our conclusions about the impact of state and local cost estimates.

CBO expressed concern with the suggestion made in our report that appropriation and tax bills be included in the state and local cost estimation process. CBO noted that, although it is not required to prepare such estimates, they could now be provided under existing authority at any time a request was made by a committee. CBO said it believed that appropriations committees would be concerned about adding a special reporting requirement for appropriation bills. In addition, CBO stated it generally had little time available to review those bills. It also noted that mandates affecting state and local governments are rarely contained in appropriation bills.

We spoke with staff of the Senate and House Appropriations committees regarding the issues raised by CBO. The staff confirmed that requiring CBO to prepare estimates routinely for all appropriation bills would not be feasible. These bills are often subject to numerous floor amendments that must be acted on in a short time frame. However, they did not object to having cost estimates prepared on a request basis, should an appropriation bill contain provisions that could potentially impact on state and local costs.

With regard to tax bills, CBO noted that preparing estimates of state and local costs before committee markup may not be feasible considering the manner in which tax legislation is developed. It further noted that any such estimates should be prepared by the Joint Tax Committee, given its current role in the legislative process.

We spoke with a staff official of the Joint Tax Committee who agreed with the points raised by CBO concerning the feasibility of preparing state and local estimates. He stated that tax legislation usually is considered in concept only, that specific language often is not drafted until a bill has been approved by Senate and House committees responsible for tax legislation. Further, when such legislation is submitted for floor consideration, it is not subject to amendment. Rather, it is simply passed or defeated. Thus, cost estimates at that time could not be used as a basis for seeking changes in a tax bill through floor amendment. He acknowledged that the Joint Tax Committee now receives requests for revenue estimates on bills and that if requested could at least look into potential implications of tax bills on state and local government. He cautioned, however, that such impacts are often indirect in nature and may be difficult to identify when legislation is being considered.

Our goal is to further the basic intent of the State and Local Government Cost Estimate Act, which is that state and local cost estimates serve as a caution light to the Congress before it enacts legislation that may pass on significant costs to state and local governments. Accomplishing that goal fully would include consideration of tax and appropriation bills. While requiring estimates to be prepared on all such bills routinely may not be feasible, in our opinion, they should be considered on a request basis. Authority to proceed this way currently exists. CBO can be requested to prepare estimates at any time by congressional committees or members. With respect to tax bills, as CBO noted, it may be more appropriate to direct such requests to the Joint Tax Committee.

CBO's complete comments are contained in appendix XI.

Advisory Commission on Intergovernmental Relations

Overall, ACIR was complimentary of our report. ACIR agreed with our recommendation calling for the Commission to prepare a biennial report on the total estimated costs to state and local governments. It noted, however, that additional budgetary resources would be needed for it to undertake such responsibility. It said the amount required would depend on how the reporting task was to be performed.

We have not identified a specific format or approach to be taken to prepare such a report. We believe this decision should be made by organizations with a direct interest in intergovernmental concerns. For example, ACIR may wish to consult with the major associations representing state and local governments that have also commented on our report. With regard to the two options put forth by ACIR (see app. XII), we would concur with its observations. At a minimum, the report should identify total costs resulting from legislative actions taken by each Congress. The report could be used as a basis for further analysis of the impacts that tax and appropriation legislation is having on state and local government. As discussed in our analysis of CBO's comments, requiring estimates to be prepared on a routine basis for tax and appropriation bills may not be feasible. The report we are recommending could provide a basis for periodic analysis of the impacts that previously enacted tax and appropriation legislation are having on state and local government. Such information would be beneficial to the Congress in assessing the desirability of seeking estimates of state and local impacts as such legislation is considered.

We have not attempted to estimate the resources that would be needed for this reporting effort. First, as discussed above, this would depend on the nature of the approach taken. Second, we believe this reporting effort would have to be considered in context with other ACIR activities in determining the level of additional resources required. We are sending this report to those committees having jurisdiction over ACIR's budget for their consideration in reviewing future budget requests of ACIR.

With respect to preparing estimates earlier, ACIR noted that many mandates are subject to periodic reauthorization or other recurring congressional oversight. Thus, the need for cost estimates could be anticipated in advance of legislative actions. We agree that, to the extent such conditions exist, they would provide a reasonable basis for requesting earlier estimates. ACIR's observation is consistent with our suggestion for earlier preparation of estimates. We have not specified a particular point in the legislative process for preparing these estimates. Although we have suggested requesting estimates at the time of subcommittee or committee markup, the timing of any requests for estimates should be based on the circumstances in each case. ACIR's observations should be considered by state and local interest groups when they consult with congressional committees to seek early estimates, as we have suggested.

ACIR commented that Executive Order 12612, issued in October 1987, should improve the timeliness and quality of cost estimates for executive branch legislative proposals having a federal mandate. This order requires that regulatory and legislative proposals be accompanied by an evaluation of "the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy." In our opinion, the additional availability of the evaluations called for by this order should enhance CBO's capability.

ACIR's complete comments are contained in appendix XII.

State and Local Interest Groups

We also obtained comments from the seven major state and local interest groups, which provided us with one letter representing their collective comments (see app. XIII). The interest groups essentially agreed with our observations and suggestions.

With regard to our recommendation for a biennial report on the costs of federal legislation to state and local governments, the interest groups suggested that CBO prepare such a report annually. We recommended a biennial report to correspond to the 2-year time frame encompassing each Congress so that the report could cover a complete period of legislative activity. We directed our recommendation to ACIR as an organization with a legislative charter to conduct studies of intergovernmental issues and one that broadly represents the various components of the intergovernmental community (federal, state, and local governments). The study we are recommending can not only serve as an aggregation of costs, but also provide a periodic assessment of the overall impacts of federal legislation on state and local government. In our view, ACIR would be better suited to fulfilling that broader role than would CBO.

Chapter 3

State Experiences With Mandate Reimbursement: Legislative Priority Is Key to Results

Nationwide, 14 states have established requirements for reimbursing local governments for the cost of state mandates. In four of the seven states we visited requiring mandate reimbursement, those requirements deterred passage of mandates, prompted modification of proposed mandates to reduce local costs, or—to a more limited extent—induced funding of mandates. In three states, however, reimbursement requirements had little impact in deterring, modifying, or funding mandates.

The critical factor prompting certain states to either restrain mandates or fund them was the legislators' concern about imposing costs on subordinate levels of government. Two other factors were important for the reimbursement process to work at the state level: a healthy fiscal climate and a reimbursement requirement established through either a voter-initiated statute, such as a local tax limitation law, or a constitutional amendment. Absent these, the prospects for a reimbursement process at the federal level are not bright.

State Mandate Reimbursement Intended to Relieve Financial Burdens on Local Governments

The 14 states that have general mandate reimbursement requirements cover most types of legislation and/or regulations that impose additional costs on local governments (see table 3.1).[1]

[1] In addition to these 14 states, other states provide revenue sources for some specific types of mandates, such as increased expenditures for wages and employee fringe benefits. In this chapter, we discuss results only from states that have adopted or considered general mandate reimbursement requirements.

Table 3.1: States With General Mandate Reimbursement Requirements

State	Year effective	Legal basis: Constitutional	Statutory
California[a]	1973		[b]
	1980	X	
Colorado[a]	1981		X
Florida[a]	1978		X
Hawaii	1979	X	
Illinois[a]	1981		X
Massachusetts[a]	1981		X
Michigan[a]	1979	X	
Missouri	1980	X	
Montana	1974		X
New Hampshire	1984	X	
New Mexico	1984	X	
Rhode Island	1979		X
Tennessee[a]	1978	X	
Washington	1980		X

[a]Included in GAO's fieldwork. Florida 1990 X

[b]The requirement, which initially was statutory, became constitutional, effective in 1980, as we discuss on p. 36.

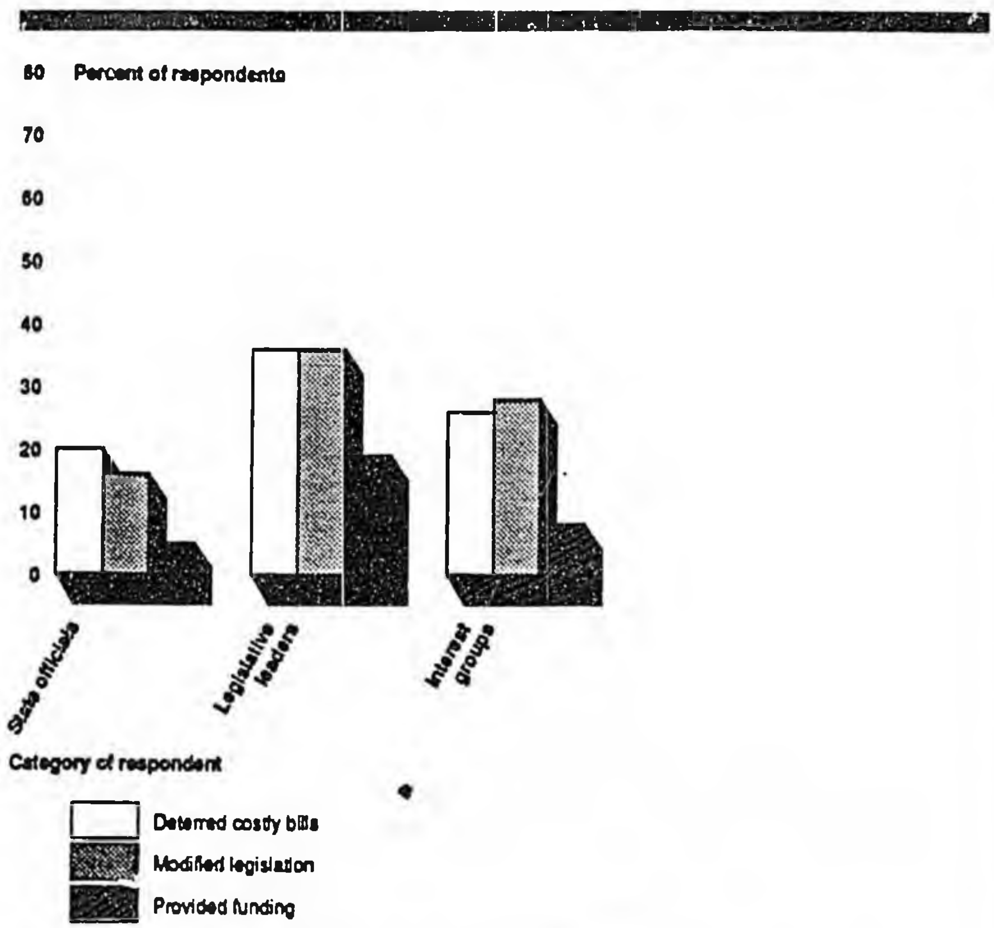
Of the eight states we visited, seven had a mandate reimbursement requirement (for details of the seven state programs, see app. VII). Five of the seven states said they implemented mandate reimbursement to ease the fiscal burden imposed by state mandates on local governments; three did so as part of voter-initiated measures to limit local taxes.

States requiring mandate reimbursement also authorize passage of unfunded mandates in specified circumstances. In six of the seven states, certain types of mandates are not covered by the reimbursement requirements. For example, five states need not provide funding for mandates that are beyond the control of the legislature, such as mandates imposed by the federal government or the courts. Two states do not cover mandates that apply to both the public and private sectors, such as worker compensation laws. (App. VIII shows the types of mandates the states in our review do not cover.) Also, two of the seven states formally allow their state legislatures to vote to exempt a mandate from the reimbursement requirement.

Reimbursement Requirements Have Reduced Mandates but Results Vary Among States

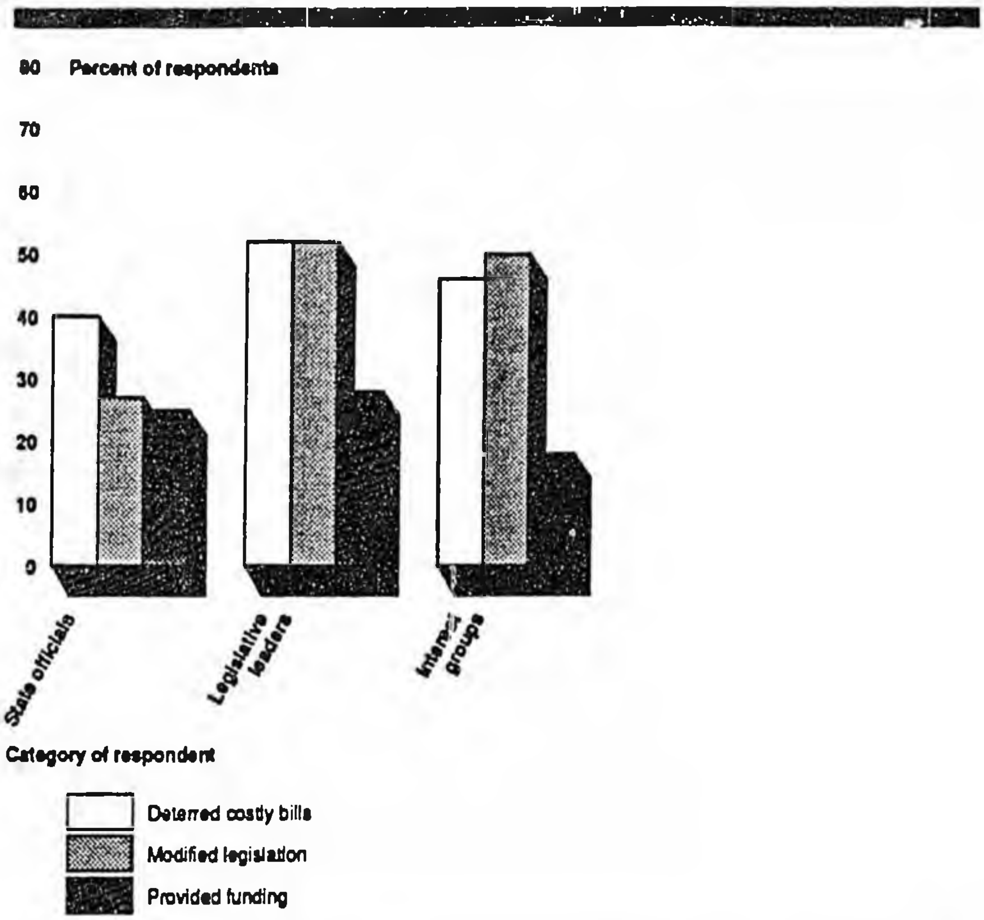
Overall, state reimbursement requirements have had some impact in deterring, modifying, or providing funding for local mandates. Reimbursement more often produced these results to a "great extent" than did cost estimation, according to respondents to our nationwide survey of state officials, legislators, and interest groups (see figs. 3.1 and 3.2). But even with reimbursement, generally fewer than half of those responding cited these outcomes as occurring to a great extent in their states.

Figure 3.1: Highest Cited Outcomes of Cost Estimation in Reducing Unfunded Mandates



Note: "Highest cited outcomes" was defined as outcomes occuring to a great or very great extent. See app. VI for complete data.

Figure 3.2: Highest Cited Outcomes of Reimbursement Requirements in Reducing Unfunded Mandates



Note:"Highest cited outcomes" was defined as outcomes occuring to a great or very great extent.See app. VI for complete data.

Also, the results from reimbursement requirements varied among the states. In four of the seven states we visited, officials believed reimbursement reduced unfunded mandates, primarily by deterring their passage or influencing legislatures to make local government compliance optional. In three states, however, the reimbursement provision had little effect on legislative deliberations of state mandates. Only in California was substantial funding provided for mandates, as shown in table 3.2.

Table 3.2: Direct Funding From Seven States for Cost of Mandates

Dollars in millions

State	No. of mandates funded, FY 1987	Total[a] appropriated/ paid, FY 1987	Funding as a percent of total state aid to local governments	Total[a] funding through FY 1987
California	66	$144	1.0	$2,000
Colorado	0	0	[c]	0
Florida	0	0	[c]	0
Illinois	0	0	[c]	0.2
Massachusetts	6	4.8(est.)	.2	14.4
Michigan	1	1.2	[d]	2.4
Tennessee	[b]	[b]	[c]	[b]

[a]The amounts listed are those appropriated directly due to the mandate reimbursement requirement. States do provide other aid, such as shared taxes, revenue sharing, and categorical aid, that local governments can use to help pay for the cost of state mandates. These amounts are not included in the table because there is no direct relationship between these other forms of assistance and the cost of state mandates.

[b]Unknown. Tennessee could not provide specific data but in some instances has provided appropriations in legislation containing mandates because of the state's reimbursement requirement.

[c]Not applicable.

[d]Less than .1 percent.

Unfunded Mandates Reduced in Four States

In four states—Massachusetts, Michigan, California, and Tennessee—officials believe reimbursement requirements have reduced unfunded state mandates, although some still are being imposed on local governments.

Mandating Slowed in Massachusetts and Michigan

Massachusetts' statutory reimbursement requirement was enacted in 1980 as part of a voter-initiated, tax-limitation statute known as Proposition 2 and 1/2 (see app. IX). The Division of Local Mandates in the State Auditor's Office is the key administering agency for the reimbursement requirement. In the absence of reimbursement, local governments can petition the courts to permit noncompliance with unfunded mandates (see app. X for details on state program administration).

Although about $14.4 million has been provided for six mandates through December 1986, the major result of the requirement has been the deterrence of mandates and modification of legislation containing mandates. Because they, not local governments, must pay the costs, Massachusetts legislators now are more reluctant to mandate new programs on local governments, according to the director of the Division of Local Mandates. Local government interest group officials agreed that fewer mandates were being passed. For example, the state had delayed updating landfill regulations to avoid dealing with the mandate issue, an official noted.

On at least 15 occasions, Massachusetts legislators have modified state mandates by making local compliance optional, several officials told us. This relieves the state of the responsibility to pay and reduces local financial burdens. For example, the legislature allowed optional compliance with the state's Omnibus Education Reform Act, which would have mandated increased teachers' salaries and other educational program costs. As a result, costs ranging from $400 million to $1.3 billion for the state and local governments were avoided.

Although Massachusetts is funding some mandates, the legislature has not yet appropriated funds to pay for four covered mandates with an estimated cost of $8.4 million, the director of the Division of Local Mandates noted. In addition, $11.7 million o[illegible] $14.4 million it has provided came from local aid monies that lo[illegible]vernments would have received anyway.

Michigan adopted a mandate reimbursement requirement in 1978 as part of a constitutional amendment initiated by the voters to limit local tax increases (see app. IX). Under the legislature's and court's interpretation, according to state and local officials, local governments faced with an unfunded state mandate have two avenues of recourse. They can submit reimbursement claims for mandate-related costs to the responsible executive agency or choose not to comply with the mandate until state funding is provided.

The main result of Michigan's reimbursement requirement has been to deter and modify mandates. It has reduced the number of mandates proposed and passed by the legislature, according to most officials of the state legislature and local government interest groups we interviewed. The state has passed only two covered mandates since the requirement passed, they observed. One was funded by the state with an appropriation of about $2.4 million covering 2 years; the other was not funded. For the latter, after a county government filed suit against the state, the courts ruled that the county did not have to comply until the state funded the mandate.

To avoid providing state funds for reimbursement, several state officials noted, the Michigan legislature made compliance with many mandates optional. For example, the state mandated changes in compensation for full-time county prosecuting attorneys, which resulted in increased salaries. It allowed the counties, however, to determine whether their prosecuting attorneys would be full- or part-time, thus giving them a way to avoid the mandate.

Michigan still imposes some costs on local governments through mandates not subject to reimbursement, such as those applying equally to the public and private sectors. Furthermore, in some cases the legislature has avoided the reimbursement requirement by making the provision of the service, not the mandate itself, optional, state officials said. In reality, local governments often cannot avoid providing these services and thus must accept the mandate as well.

California Funds Some Mandates

Originally, California's mandate reimbursement requirement was enacted in 1972 as part of a statute limiting local government property tax assessments and school district revenues. In 1979, the mandate requirement was included as part of a constitutional amendment imposing appropriation limits on both state and local governments (see app. IX).

Although some California mandates have been deterred or modified as a result of the reimbursement requirement, the major result has been mandate funding. As discussed previously, California has provided substantially more direct financial assistance for state mandates—$144 million in fiscal year 1987—than any other state (see table 3.1). State funding is provided either (1) at the time the mandate is passed or (2) subsequent to a complex appeals process.

In only a small number of cases does the legislation containing the mandate also provide funding. While we cannot determine how much funding is provided in this manner, only 124 of 4,100 mandates enacted over a 10-year period (1975-85) also had funds provided in the legislation, according to a state official.

Should the legislature not appropriate funding up front, local governments do not have the right of optional compliance as in Michigan and Massachusetts. Rather, the burden of proof in California is on local governments to show that the mandate should be reimbursed. The appeal process is long and complex, starting with a petition to the Commission on State Mandates. Should the Commission certify that the mandate is eligible for reimbursement, it would submit an appropriation request to the legislature.

Although additional mandates are funded through this process, many mandates are never funded, state and local officials told us. For example, in 1978 the legislature extended unemployment benefits to public sector employees without state funding. The state Supreme Court ruled in 1984 that the legislation was a reimbursable state mandate retroactive to 1980. Although the state legislature agreed to pay local governments for unemployment benefits starting with fiscal year 1984, no funds had been paid as of September 1987.

If the legislature appropriates money through either means, local governments receive their funds by submitting reimbursement claims to the State Controller's office in conformance with detailed cost standards and guidelines. It can take up to a year before claims are certified for payment—long after the original mandated expense has been incurred, according to an official of the State Controller's office.[2] (For more details on California's administrative process, see app. X.)

Opinions Mixed on Impact in Tennessee

In 1978, Tennessee voters approved a mandate reimbursement requirement as part of a constitutional amendment imposing state spending limits (see app. IX). Unlike Massachusetts, Michigan, and California, Tennessee does not require specific funding for individual mandates. Rather, funds are earmarked from general purpose funds and provided through a formula. Specifically, the state is required to pay its fair share of mandated costs through return of a portion of state taxes (taxes collected on retailers and alcoholic beverages, and income tax on dividends and interest) to local governments. Each year, the state earmarks the first $1 million increase in these state taxes above the previous year's level to be used specifically by local governments to cover state mandate costs. Also, in some instances the legislature will appropriate money to pay for a state mandate. (For details on program administration, see app. X).

Opinion in Tennessee on the effect of the reimbursement requirement was mixed. Several respondents to our questionnaire said it had

[2] To expedite the process, the state has implemented a mandate claims fund to pay for mandates with statewide costs of less than $500,000 without having to seek a separate appropriation from the legislature. Also, to expedite the reimbursement process the state plans to pay for another group of mandates through a block grant to local governments.

deterred the passage of mandates or modified mandate legislation to a great extent. Two officials we interviewed confirmed these opinions, saying the requirement had deterred the passage of legislation. They could not cite, however, specific examples of mandates deterred or modified. But other officials noted that the requirement had not had much effect; they included the Deputy Commissioner for the Department of Finance and Administration and two officials of local government interest groups. The state was not operating any differently than before the requirement, they said.

Monies earmarked for mandates were largely funds that local governments would receive even if there were no reimbursement requirement. Although in some instances, the legislature provided special appropriations for state mandates, there appeared to be no connection between the cost of state mandates and the amount of state-shared taxes provided. Also, to what extent the cost of mandates was paid for by the state, either through appropriations or state-shared taxes, is not known.

Impact of Reimbursement Insignificant in Three States

In three of the seven states we visited—Florida, Illinois, and Colorado—mandate reimbursement requirements have had little impact on the passage or funding of state mandates.

No Major Impact in Florida

The Florida legislature passed the state's mandate reimbursement statute in 1978 (see app. IX). It applies to most legislation, but not regulations or laws affecting schools. (See app. VIII for information on state exclusions to mandate statute.) No state agency is in charge of enforcing the statute, no reimbursement policies or procedures have been established, and no provisions are made for a local appeals process.

Florida's reimbursement requirement has had no major impact on the passage of mandate legislation. Because it is largely ignored in legislative debate, as two state officials noted, unfunded mandates are being passed. The cost estimate requirement has greater influence in deterring or modifying mandates, several state officials noted. From 27 in 1983, the number of unfunded mandates increased to 31 in 1984 and 35 in 1985, according to Florida's Advisory Commission on Intergovernmental Relations. The number of mandates with a high dollar impact has increased, a Commission official said, and mandates are becoming a significant burden on local governments. The reimbursement requirement is not enforceable because it is a statutory provision, Florida officials told us, and the legislature enacting it in 1978 could not bind succeeding legislatures.

Illinois Mandate Reimbursement Little Used

The Illinois General Assembly enacted a mandate reimbursement requirement known as the State Mandates Act on November 15, 1979. Its general intent (see app. IX) was to relieve financial pressures on local governments caused by state mandates. In addition to specified areas excluded from the process, the General Assembly can exempt the state from the reimbursement requirement by a three-fifths majority vote.

Although the state has established processes for claims reimbursement and appeals, they are little used. During the year (1981) following its adoption, the State Mandates Act resulted in a reduction of state mandates passed, Illinois state and local government officials agreed. But this deterrent effect significantly diminished subsequently. Since that time, the General Assembly has passed 57 unfunded mandates with a total estimated annual cost to local governments of $148 million. Of this total, the General Assembly has voted to exempt itself from the funding requirement on 25 occasions, resulting in estimated annual costs to local governments of over $107 million. Of the remaining 32 mandates, estimated to cost $41 million, the General Assembly appropriated only $200,000 for one mandate, even though all are technically covered. In one instance, school districts sued the state, and the Illinois Appellate Court ruled that the local governments did not have to carry out the mandate in the absence of state money. The General Assembly then approved by a three-fifths vote an amendment to exempt this mandate from the reimbursement law, thereby requiring local governments to implement it.

Colorado Law Untested

In Colorado, the reimbursement requirement appears to have had no impact to date. The Colorado mandate provision was part of a larger tax limitation initiative passed by the legislature in 1981 (see app. IX). There is no state agency in charge of the requirement, no written procedures for enforcing the provision, and no established appeals process available to local governments.

Unlike Illinois and Florida, however, Colorado's law has not been tested. Costly mandates have not been passed in the past 5 years, according to state officials and interest groups representing local governments in the state. This, they said, was because of the depressed state fiscal condition and a cooperative working relationship between the state and local governments. There was general agreement among these parties that the mandate reimbursement provision had no impact on state legislation. Generally, the requirement did not influence legislators and its existence was not widely known, a former chairman of the state's House Appropriation Committee noted. In fact, the executive director of the state's association of cities responded on our questionnaire that the state did not have a mandate reimbursement requirement.

Some States Considering Reimbursement; Others Decided Against It

Another 18 states have considered or are considering instituting a reimbursement requirement (see app. I). For example, mandate reimbursement legislation has been proposed in New York and New Jersey, while Minnesota is actively researching the concept. Some of these states have decided against implementing mandate reimbursement, primarily due to limited funds in the state budget.

In Connecticut—a state we visited that has considered and rejected the reimbursement approach—the legislature established a commission to formally study instituting mandate reimbursement. The commission recommended against the concept, primarily on policy rather than fiscal grounds. Such a requirement could unduly constrain the legislature from passing needed legislation applying to all communities throughout the state, two state officials noted. Also, they said, the state wanted to retain the authority to require needed programs.

But the commission did seek to reduce the burden of unfunded state mandates through other means, according to state officials. Specifically, it analyzed existing state mandates and successfully promoted elimination of some of those most burdensome on local governments. Its study also increased legislative sensitivity. Mandates that increase local costs often are funded by increasing state aid to local governments under existing programs or authorizing local governments to increase property taxes. Connecticut's good fiscal condition has permitted it to provide local governments with additional funding for mandates.

Legislative Priority, Other Factors Influence State Outcomes

The existence of a reimbursement process alone is insufficient to reduce unfunded mandates, as illustrated by the variable outcomes in the seven states with mandate reimbursement we visited. Where the process successfully deterred, modified, or provided funding for mandates, state legislators' degree of concern about imposing mandates on local governments was the key factor. The legislative response to mandated costs can be affected by several variables, including the legal basis of the requirement, the fiscal condition of the state, and certain characteristics of the process itself. But for the reimbursement process to be workable, significant support for it must exist within the legislature.

Legal Basis a Key Factor

Where they have been made part of the state constitution or initiated by the voters, reimbursement requirements have had an impact on stopping unfunded state mandates (see app. VII for the legal bases of state programs). In all three states where reimbursement requirements were added by amendment to the constitution (California, Michigan, and Tennessee), unfunded mandates were reduced. A constitutional amendment can prompt the legislature to pay more attention to the requirement and make it more difficult to circumvent, state legislative officials told us. Incorporating a reimbursement requirement into California's constitution has slowed down the number of unfunded high cost mandates enacted by the legislature, according to both state and local officials. In Massachusetts, where reimbursement requirements also have restrained mandating, the requirement was statutory but was based on an initiative instituted by the voters. There, the legislature felt compelled to honor a direct expression of the electorate, state officials said.

In the three remaining states in which the mandate reimbursement requirement had little impact, the provision was statutory and originated with the legislature. In these states, the legislature can formally override the requirement at any time with another statute or simply not adhere to the requirement. In both Florida and Illinois, the statutory basis of the mandate requirement was cited as a major reason for the lack of impact. In Illinois, several state legislators, concerned with the lack of priority given by the General Assembly to the mandate statute, are attempting to change the requirement to a constitutional provision.

Fiscal Condition Can Affect Legislative Priority

A state's fiscal condition also can affect the state legislature's willingness to fund mandates. Generally, states with more funds are more willing to provide funding to local governments. In Massachusetts, its strong fiscal condition was an important factor in the legislature's willingness to fund most mandates, state and local interest groups said. In recent years, the state has been running a significant budget surplus, as much as $348 million in fiscal year 1986. California's fiscal condition directly affects the legislature's willingness to provide financial assistance to local governments, according to all four state legislators we interviewed.

Two said that state assistance for mandates had risen and declined in relation to the state's overall fiscal position.

From a different perspective, the amount of general purpose state assistance provided to local governments (such as state revenue-sharing) also helps defray the cost of mandates. For example, in Florida and Tennessee general assistance helps local governments pay for the cost of state mandates. This was the case in Florida, both state officials and local government interest groups agreed. Tennessee (as stated earlier) funds mandates by earmarking a portion of shared tax revenues.

In Some States, Local Compliance With Unfunded Mandates Optional

In three of the seven states, reimbursement requirements give local governments the right to not comply with state mandates unless the state provides funds for the cost of those mandates. This feature places added pressure on state legislatures to fund mandates if they wish all local governments to comply. In effect, optional compliance gives local governments new leverage in dealing with the legislature on mandate legislation.

In both Massachusetts and Michigan, the right of optional compliance affected the reduction in unfunded state mandates. When Massachusetts does not provide full funding for a state mandate, local governments can petition the courts for relief from the mandate. They need not carry it out until the courts have made a final determination. In Michigan, the courts ruled that local governments need not carry out state mandates unless the state funds their cost. Officials in both states cite optional compliance as a contributing factor to the lessening of the mandate burden.

Illinois is another state that has authorized local noncompliance when funding is not provided for mandates subject to reimbursement. On many occasions, however, the legislature has overridden this right by specifically exempting mandates from the reimbursement requirement. This essentially eliminates the local government's right of noncompliance.

Court Decisions Affect Results of Requirements

The courts can play a significant role in determining legislative authority over mandate reimbursement. State courts can expand or limit states' rights to impose unfunded mandates on local governments. In four of the seven states we visited—California, Massachusetts, Michigan, and Illinois—court rulings have directly affected the outcomes of the mandate reimbursement processes.

At times, the courts have expanded the rights of local governments under mandate reimbursement requirements. For example, courts in Massachusetts and Michigan have ruled that local governments need not comply with state mandates unless the state appropriates funds for reimbursement.

However, the courts also have limited the rights of local governments to obtain reimbursement for state mandates. For example, in 1987 the California Supreme Court ruled that increases in workers' compensation benefits are not reimbursable state mandates because they apply to the private sector as well as to local governments. The intent of California's constitutional provision, the court ruled, was to require reimbursement to local governments only for activities that are unique to government. This decision reversed 15 years of prior state practice, as the state had not differentiated between mandates affecting the private and public sectors. In a Massachusetts case, the courts upheld the state's right to use a conditional grant as an incentive or disincentive to carry out state mandates. If local governments did not implement the mandate, the state was permitted to hold back the grant funds, even if full state reimbursement for the mandate was not provided. Although legally free to ignore the mandate, local governments doing so would not get the state grant funds.

In some states, issues still are to be decided by the courts. As of January 1986 in California, for example, there were pending 29 court cases filed by local governments seeking reimbursement for state mandates. In one case concerning special education, schools are seeking to have a mandate declared unenforceable until the legislature appropriates an estimated $2 billion to carry it out. Although the courts cannot force the legislature to appropriate funds, they can declare that local governments need not enforce the mandate.

Conclusions

State requirements to provide reimbursement for mandates have reduced unfunded local mandates to some extent. But it seems unlikely, at least for now, that a similar reimbursement requirement would be workable at the federal level. Factors mitigating against this include

- the continued existence of large federal budget deficits,

- the absence of strong voter pressure to reduce the impact of federally mandated actions on state and local governments, and
- the perception that the federal government needs to mandate certain actions to ensure uniform application by the states, regardless of reimbursement.

Fiscal condition is a key factor affecting mandate funding. During times of large federal budget deficits, the Congress is less likely to authorize reimbursement for expenses incurred by state and local governments to comply with federally mandated actions. In this environment, pressures also increase to enact mandates prescribing national policy without federal funding.

By making local compliance optional for certain mandated actions, as opposed to providing funding for those mandates, some states have sought to ease burdens on local governments. Faced with continuing budget deficits, federal officials could give state governments the same option. But, if such action, while advantageous to state governments, caused mandates to be ignored, it could be deemed unacceptable by the Congress. The federal government uses mandates to help assure residents of every state at least a minimum level of benefits or protection in areas ranging from public assistance to occupational safety and health. Making compliance with federal mandates optional coud erode the capability of the federal government to accomplish these and other important purposes.

Agency Comments and Our Evaluation

Only one comment was made by those responding to this report concerning our discussion of mandate reimbursement.

ACIR raised questions about our position that reimbursement requirements initiated through constitutional amendment or by voters had more impact. Our comments were not intended to imply that a requirement initiated otherwise, such as by legislation, could not have an impact. For the states we visited, however, a distinction was apparent. In the four states where unfunded mandates were reduced, the requirement was either a constitutional provision or a statute resulting from a voter initiative. In the three states where reimbursement requirements had little impact in deterring, modifying, or funding mandates, the requirement was a statute that was not the result of a voter initiative.

States Requiring Local Cost Estimates and Mandate Reimbursement

State	Requires: Estimate of local cost burden	Requires: Mandate reimbursement	Legisla consider reimbursem requirem
Alabama	X		
Alaska			
Arizona	X		
Arkansas	X		
California	X	X	
Colorado	X	X	
Connecticut	X		
Delaware	X		
Florida	X	X	
Georgia	X		
Hawaii		X	
Idaho	X		
Illinois	X	X	
Indiana	X		
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine			
Maryland	X		
Massachusetts		X	
Michigan	X	X	
Minnesota			
Mississippi			
Missouri	X	X	
Montana	X	X	
Nebraska	X		
Nevada	X		
New Hampshire	X	X	
New Jersey	X		X
New Mexico	X	X	
New York	X		X
North Carolina	X		
North Dakota	X		
Ohio	X		
Oklahoma			X
Oregon	X		
Pennsylvania	X		X

(continued)

State	Requires: Estimate of local cost burden	Requires: Mandate reimbursement	Legislature considered a reimbursement requirement
Rhode Island	X	X	
South Carolina	X		
South Dakota	X		
Tennessee	X	X	
Texas	X		X
Utah	X		X
Vermont	X		X
Virginia	X		
Washington	X	X	
West Virginia	X		
Wisconsin	X		X
Wyoming			
Totals	**42**	**14**	**18**

CBO Case Examples From the 99th Congress

Bill subject	Bill no.	CBO estimate of state and local costs (millions)[a]	Bill status
Safe Drinking Water	H.R. 1650 S. 124	$3,500 (capital) and 200-300 (annual)	Passed
Education of the Handicapped	H.R. 5520 S. 2294	575 (annual) 530-2,700 (annual)	Passed
Water Resources Development	H.R. 6 S. 1567	524 (annual)	Passed
Rehabilitation Act Amendments	H.R. 4021 S. 2515	500 (annual)	Passed
Immigration Reform	H.R. 3810 S. 1200	225-250 (annual)	Passed
Housing Act of 1985	H.R. 1	274 (total)	Not passed
Ocean Dumping	H.R. 1957	30 (annual)	Not passed
Fair Labor Standards Act Amendments	H.R. 3530 S. 1570	500-1,500 (annual savings)	Passed

[a]CBO's estimates were identical for both Senate and House bills, except for Education of the Handicapped.

Technical Description of GAO's Survey Questionnaire Methodology

During March and May 1987, we sent three questionnaires to all 50 states to obtain information on state programs for estimating and reimbursing the cost of state mandates imposed on local governments. One questionnaire went to state officials responsible for cost estimation and reimbursement activities, another to state legislative leaders, and a third to interest groups representing cities, counties, and schools. This appendix contains the technical description of our survey designs, pretest procedures, sample selections, and overall response rates.

Survey Design

The questionnaire for state cost estimation and reimbursement officials was designed to elicit the respondents' experiences and views concerning state programs and procedures for estimating and reimbursing the cost of state mandates imposed on local governments. Specifically, we asked state officials about:

- Requirements and intent of local cost estimates,
- Preparation and reporting of local cost estimates,
- The impact of the local cost estimate process on the level of mandate burden imposed on local governments,
- Factors affecting the use of local cost estimates,
- The existence and operation of a mandate reimbursement provision,
- The impact of the mandate reimbursement provision on the level of mandate burden imposed on local governments, and
- Factors affecting outcomes of the mandate reimbursement provision.

The questionnaire for state legislative leadership was sent to the majority leaders in each house of each state legislature. It was designed to obtain information about their views concerning the impact of estimation and reimbursement programs on mandate legislation.

The questionnaire sent to interest groups representing cities, counties, and schools was designed to elicit the respondents' views concerning the impact of state estimation and mandate reimbursement programs on legislation affecting their respective constituencies.

Pretesting of Questionnaire

We pretested the questionnaires through in-person visits with the respective state, legislative, and interest group officials in the states of Rhode Island and Maryland. With the information obtained, we refined the questions and terminology we used in the final questionnaires.

Survey Plan

To identify questionnaire respondents, we contacted several national organizations representing state and local governments.

We identified state officials responsible for cost estimation and reimbursement activities through a telephone survey of state members of the National Association of Legislative Fiscal Officers (NALFO). Where NALFO representatives could not identify the specific organization conducting such activities in their state, they gave us the name of an official knowledgeable about the state's activities. In 14 states, we identified two organizations with legislative responsibility for preparing local cost estimates. We sent separate questionnaires to each of the two organizations in those states.

Through a listing obtained from the National Conference of State Legislatures, we identified 99[1] state legislative leaders representing both chambers of each state legislature.

We identified 145 public interest groups representing cities, counties, and schools nationwide. Specifically, we surveyed the 46[2] state associations of counties identified by the National Association of Counties, the 49[3] state municipal leagues identified by the National League of Cities, and 50 state interest groups representing schools identified by the NALFO state members through our telephone survey or by the National Association of School Administrators.

Response Rates

The number of respondents surveyed, the number of questionnaires returned, and the response rates for each of the three sets of questionnaires are shown in table III.1.

[1]Nebraska has a unicameral legislature

[2]Alaska, Connecticut, Rhode Island, and Vermont have no state county associations

[3]Hawaii has no state municipal league

Table III.1: GAO Survey Universe and Response Rates

Respondent category	No. surveyed (universe)	No. of respondents	Response rate (percent)
State officials	64	54 (49 states)	84
Legislative leaders	99	70 (44 states)	72
County interest groups	46	41	89
City interest groups	49	47	96
School interest groups	50	44	88

We mailed questionnaires to state officials in March 1987 and to state legislative leaders and interest groups in May 1987. From June to September 1987, we sent three follow-up mailings to nonrespondents.

As we received the completed questionnaires, we reviewed the data provided for consistency and completeness before coding the responses for keying into our database. Where data appeared inconsistent or incomplete, we contacted the respondent by telephone and attempted to obtain the missing data or resolve the inconsistencies. Some respondents, however, could not provide all of the data requested. We did not verify the accuracy of the data provided.

Sources of Cost Information Used by State Estimating Officials (As Reported in GAO Survey)

Source of cost information	Percent of state estimating officials who used source: Always/most of the time	Half the time	Sometimes/never
State agencies	71	13	16
Local governments	49	7	44
Interest groups	27	11	62

Methods of Obtaining Local Government Data (As Reported in GAO Survey)

Method of obtaining data	Percent of state estimating officials who used method: Very great/ great extent	Moderate extent	Some/little extent
Case-by-case basis	57	16	27
Network of local contacts	34	18	48
Stratified sample of local governments	16	16	68
Random sample of local governments	9	5	86

Outcomes of Cost Estimation and Mandate Reimbursement (As Reported in GAO Survey)

	Percent[a] of respondents reporting outcome					
	State officials		Legislative leaders		Interest groups	
Outcome	C/E	M/R	C/E	M/R	C/E	M/R
Inform:						
Great/very great	56	31	63	60	39	56
Moderate	31	38	29	36	35	29
Some/little	13	31	8	4	26	15
Deter:						
Great/very great	20	40	36	52	26	46
Moderate	29	13	36	28	35	27
Some/little	51	47	28	20	39	27
Modify:						
Great/very great	16	27	36	52	28	50
Moderate	38	20	38	28	36	22
Some/little	47	53	26	20	36	28
Fund:						
Great/very great	5	25	19	28	8	18
Moderate	17	13	33	24	25	18
Some/little	78	63	48	48	68	64

[a]Percentages for each outcome may not total 100 percent due to rounding.

C/E = cost estimation

M/R = mandate reimbursement

Characteristics of States Visited by GAO That Require Mandate Reimbursement

Characteristics	Calif., 1980[a]	Colo., 1981	Fla., 1978	Ill., 1981	Mass., 1981	Mich., 1979	Tenn., 1978
	State and year requirement was effective						
Legal basis:							
Statute		X	X	X	X		
Constitution	X[a]					X	X
Initiated by:							
Legislature		X	X	X			X
Voters	X[a]				X	X	
Local government				X			
Covers:							
Legislation	X	X	X	X	X	X	X
Regulations	X			X	X	X	X
Specific legislation exemption allowed	No[b]	No[b]	No[b]	Yes	Yes	No	No
Up-front appropriations required	No	No	No	Yes	Yes	Yes	Yes
Noncompliance allowed in absence of funding	No	No	No	Yes	Yes	Yes	Yes
Formal appeals mechanism available	Yes	No	No	Yes	No	Yes	No

[a]As noted in ch. 3, prior to 1980, mandate reimbursement was required by statute, effective 1973, initiated by the legislature.

[b]These states do not allow specific legislative exemption, but can achieve the same result by not appropriating funds for mandates. Because these states do not allow the option of noncompliance, local governments must carry out mandates even in the absence of funding.

Types of Mandates Excluded From State Reimbursement in Six States

In six of the seven states reviewed, we found certain types of mandates that are formally excluded from state reimbursement. This appendix details the general and specific types of mandates excluded from reimbursement by each state.

General Exclusions

The following types of mandates generally are excluded from reimbursement by most states we reviewed:

- Federal,
- Court,
- Voter-approved, and
- Local government-requested.

Specific Exclusions

In addition to the general exclusions allowed by most states, each state has specified that certain types of mandates are not state-reimbursable. The principal exclusions are as follows:

California

- Cost-savings mandates,
- Self-financing mandates,
- Mandates enacted prior to January 1, 1975, and executive orders or regulations initially implementing legislation enacted prior to January 1, 1975,
- Mandates defining a new crime or changing an existing definition of crime, and
- Mandates applicable to both public and private sectors (based on recent California Supreme Court decision).

Florida

- Mandates affecting schools or other special districts, and
- Mandates applicable to specific local governments.

Illinois

- Mandates with no net cost increases,
- Cost-savings mandates,
- Mandates with costs recoverable through federal, state, or external aid,
- Mandates costing less than $1,000 per local government or less than $50,000 for all local governments,
- Local government organization and structure mandates, and
- Due process mandates.

Massachusetts	• Retirement and group insurance mandates, • Mandates affecting county and regional jurisdictions, • Criminal laws or civil violations, and • Penalties imposed by a state agency on a municipality due to violation of a law that resulted in hazard to the public.
Michigan	• Mandates applicable to a larger class of persons or corporations, such as the private sector, and not exclusively to local governments (public sector), • Mandates increasing salaries of circuit and probate court judges, • Mandates benefiting or protecting public employees of local governments, and • Due process mandates.
Tennessee	• Mandates applicable to specific local governments.
Colorado	• No specific exclusions listed.

Specific Definitions of Mandate Reimbursement Requirements in Seven States

The definitions of mandate reimbursement requirements vary by state. This appendix contains the specific definitions of mandate reimbursement requirements in the seven states we reviewed.

California

Article XIII B, section 6, California Constitution: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Colorado

Section 29-1-304, Session Laws of Colorado 1981: "(1) Every action by the general assembly which mandates a new program or the expansion of an existing program subsequent to July 1, 1981, upon a unit of local government shall either: (a) Provide sufficient state general fund appropriations to meet the cost thereof; (b) Provide for a local source of revenue to meet the cost thereof . . . ."

Florida

Florida statute 11.076 of 1978: "(1) Any general law, enacted by the Legislature after July 1, 1978, which requires a municipality or county to perform an activity or to provide a service or facility, ... which will require the expenditure of additional funds, ... must provide a means to finance such activity, service, or facility . . . . (2) This act shall not apply to any general law under which the required expenditure of additional local funds is incidental to the main purpose of the law."

Illinois

Chapter 85, sections 2201-2210, Illinois Revised Statutes: ". . . . 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 revenues, excluding any order issued by a court other than any order enforcing such statutory or executive action. State mandates may be reimbursable or nonreimbursable as provided in this Act. However, where the General Assembly enacts legislation to comply with a federal mandate, the State shall be exempt from the requirement of reimbursing for the cost of the mandated program . . . ."

Massachusetts

Chapter 29, section 27C, Massachusetts General Laws: ". . . . (a) Any law, rule or regulation taking effect on or after January first, nineteen hundred and eighty-one imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, ... unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption . . . ."

Michigan

Article IX, section 29, Michigan Constitution: "The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs . . . ."

Tennessee

Article 2, section 24, Tennessee Constitution: ". . . . No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost . . . ."

Administration of Mandate Reimbursement Programs

The administration of mandate reimbursement programs varies by state. This appendix details program administration in California, Massachusetts, and Tennessee.

California

With a few exceptions, the state constitution requires the state to reimburse local government for all mandated costs arising from legislation or regulations that provide for a new program or an increased level of service in an existing program. Local agencies may obtain reimbursement for mandated costs in one of two ways:

1. The legislation initially imposing the mandated activity may contain an appropriation for reimbursement, and local agencies may file reimbursement claims with the State Controller to obtain a share of these funds.

2. If the legislation does not contain an appropriation, the local agency may file a "test claim" with the state's quasijudicial Commission on State Mandates (CSM). The test claim is the first claim that alleges the existence of mandated costs eligible for reimbursement. This claim initiates a fact-finding process that culminates in a decision by CSM. CSM holds several hearings to determine (1) the merits of the test claim, (2) the costs and types of localities eligible for reimbursement, and (3) the estimated amount of reimbursement. If CSM determines that a particular statute or regulation contains a reimbursable mandate, it requests an appropriation from the legislature to reimburse localities for costs incurred since the mandate became operative. If the legislature appropriates funding, the Controller notifies localities of the available funds and gives them guidelines for preparing reimbursement claims. Localities actually do not receive reimbursement until approximately 2 years after the initial test claim is filed.

Whether a mandate is funded through the appropriation or test claim processes, local agencies must annually file detailed reimbursement claims with the Controller for each approved mandate. Reimbursements to local agencies cover the prior year's actual costs and the estimated costs for the current year. These payments may be for total or incremental costs depending on the guidelines certified by CSM.

In 1985, two laws were enacted to reduce reimbursement delays for mandates funded through the appropriation and test claim processes. Under one law, reimbursement for certain ongoing mandates is provided on a block grant basis, with the amount of the grant equal to the average amount of reimbursement received during a 3-year base period. This amount is automatically disbursed to local agencies, who will no longer have to file reimbursement claims with the Controller. Under the second law, mandates approved for funding by CSM can be reimbursed from a newly created mandate claims fund, if the mandate's first-year statewide costs are less than $500,000. The amount of this new revolving claims fund is $10 million. Reimbursements from this fund can be made only after local agencies have gone through the test claim process. However, CSM will no longer have to seek funding approval from the legislature.

Massachusetts

The mandate reimbursement requirement was enacted by statute in 1980 through a voter tax relief initiative. Any law, rule, or regulation taking effect on or after January 1, 1981, is subject to the reimbursement requirement. The Division of Local Mandates (DLM), created within the State Auditor's Office in 1983, is the key administering agency of the reimbursement requirement. It has the authority to determine which statutes qualify for reimbursement by meeting the mandate criteria detailed in the reimbursement provision. DLM reviews a state program at the request of a city, town, or state legislator to determine within 60 days whether part or all of it originated after January 1981, when the reimbursement requirement became effective. If so, the requirement stipulates that the state must appropriate money for the mandate at the same session in which the law was enacted and in each successive year. The requirement also directs the state to pay cities and towns up-front and in full for the costs associated with mandates. The local governments need not comply with a mandate unless and until there is a state appropriation for the mandated provisions. They must, however, petition the courts to permit noncompliance.

DLM makes the final determination as to what qualifies as a mandate; however, the power of appropriation lies with the legislature. Thus, all legislative appropriations concerning mandates are based on DLM determinations. DLM determines reimbursable amounts through either an estimation or a claims process and alerts the state to its obligation through mandate determination reports. The reports are sent to affected local governments, appropriate state agencies, and state legislators. DLM's mandate determinations may be admitted as cost evidence in court should a city or town resort to legal action to recover its costs. In addition to DLM, the state's office of Administration and Finance (A&F) has been directed on three occasions to distribute reimbursable funds to affected cities and towns. A&F's role was written into legislative appropriation language for three separate mandates. Both DLM and A&F have required affected communities to itemize estimated and/or certify actual costs incurred in carrying out each mandated program prior to checks being drawn from the mandate appropriation.

Tennessee

The state constitution specifies that no laws of general application shall impose increased expenditure requirements on local governments unless the state shares in the costs. The state does not have a specific unit that administers the mandate reimbursement program. Local governments are reimbursed for state-mandated costs through either appropriations or state-shared taxes. For reimbursements provided through appropriations, the state agency that oversees the mandated activity is responsible for reimbursing local governments. Reimbursements are allocated to local governments on a formula basis. For reimbursements provided through state-shared taxes, the first $1,000,000 increase over the previous year in state-shared taxes must be made available to municipalities and counties to cover the state's share of mandated costs. However, localities would receive these state-shared taxes regardless of any new mandates imposed by the state. Thus, the state does not provide new funding for mandates when they require local governments to use state-shared taxes as reimbursement for mandated costs. Since state-shared taxes also are allocated on a formula basis, there is no relationship between the cost of mandates and the amount received from shared taxes. Local governments are not required to file reimbursement claims, as allocations are based on formulas.

Comments From the Congressional Budget Office

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

July 12, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
Human Resources Division
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Thompson:

We have reviewed your proposed report to Senator Durenberger on legislative mandates, which you sent to us on June 9, 1988. In general, we believe the report provides a good description of federal and state cost estimation processes and of the state experience with legislative mandate reimbursements.

We agree with the report's conclusion that state-local cost estimates have had only a limited impact during the last five years. In part, this is because there have been relatively few legislative initiatives that would impose new mandates on state and local governments. As the report notes, for example, during the 99th Congress, CBO estimated that less than 10 percent of over 1,100 bills reported from committees would have a state-local cost impact. Incidentally, we prepare state-local cost estimates for almost all bills reported from committee, including those that would impose no costs. The statement on page 16 of the draft report implies that cost estimates are prepared only for bills which would impose costs.

Now on p. 12.

The lack of impact of state-local cost estimates also results in part from the generally low-key presentation of state and local government concerns during the legislative process. In our experience, when the state and local governments and their representative organizations have been active, our state-local cost estimates have made an impact. As the proposed report notes, increased interest in cost impacts will come only when there is a strong legislative concern about mandating costs on state and local governments. We believe that this concern must be generated by the state and local governments and their representative organizations.

With regard to the suggestion that cost estimates be prepared for key bills before committee markup and for floor amendments, we believe the report draws the right conclusion. The effort involved in reviewing all bills at an earlier stage would be substantial, and such an increase in CBO cost estimation efforts would not be cost-effective unless there is a demand for the information. At this point, the demand for state-local cost impacts is fairly limited, but when there are committee or subcommittee requests, CBO

Mr. Lawrence H. Thompson
July 12, 1988
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does respond with cost estimates before bills are reported or at other stages of the legislative process. Therefore, we agree with the report's conclusion that Congressional committees should be encouraged to request earlier state-local estimates from CBO for selected bills where there are concerns about cost impacts.

We are less enthusiastic about the suggestion that the State and Local Cost Estimate Act be amended to include appropriation and tax bills. While the Act has not been interpreted as applying to tax measures and specifically excludes appropriation bills, we could provide information on state-local cost impacts under the authority of section 202(b) of the Congressional Budget Act if requested by a committee. A statutory change to extend section 403 coverage to appropriation and tax bills, therefore, is not needed to authorize CBO to prepare state and local cost estimates for these bills, but it would be needed to require us to do so.

We are also dubious about the value of preparing state-local cost estimates for appropriation bills. Legislative mandates affecting state and local governments are rarely contained in appropriation bills. This is because most mandates would be substantive legislation that would be subject to points of order if included in appropriation bills. For your information, we routinely provide estimates of the level of new budget authority for assistance to state and local governments provided in appropriation bills, as required by section 308(a) of the Congressional Budget Act, although this generates no interest as far as we know. Furthermore, we believe the Appropriation Committees would be concerned about adding another special reporting requirement for appropriation bills. There could be problems with the timeliness of CBO estimates because we frequently have little time in which to review appropriation bill language before bills are reported. This, in turn, could cause procedural problems for the Appropriation Committees if Budget Act waivers were required to begin floor debate.

With regard to tax bills, most significant changes in federal tax law--rate increases or decreases, the addition or elimination of preferences--affect state and local revenues. Estimating these effects would be an enormous undertaking. Moreover, providing state-local estimates for selected measures before committee markup is probably not feasible. The tax-writing committees mark up bills in concept only; the legislative language is drafted subsequently. CBO staff are usually unaware of the specific provisions of tax bills until they are drafted and reported from the committees.

Mr. Lawrence H. Thompson
July 12, 1988
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The Joint Tax Committee staff provides the tax-writing committees with revenue estimates during and following the markup of tax bills. Because of its official role in the legislative and revenue estimating process, only the Joint Committee staff could prepare state-local fiscal notes for tax legislation in a timely manner. Since this would impose a burden on the Joint Committee staff, we suggest that it be given an opportunity to review the proposed report.

We also note that in preparing cost estimates for tax legislation only revenue effects are estimated. Administrative costs and the costs of regulations are not included. The draft report defines "mandates" as "laws and regulations imposing requirements and related costs on subordinate levels of government." This definition may not be applicable to tax legislation under our current estimating practices.

We have a number of minor editorial comments on the report which we will give directly to Mr. Gadsby. Thank you for giving us an opportunity to review the proposed report.

Sincerely,

James L. Blum

James L. Blum
Acting Director

cc: Mr. J. William Gadsby

Comments From the U.S. Advisory Commission on Intergovernmental Relations

ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON D C 20575

July 7, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Human Resources Division
Washington, DC 20548

Dear Mr. Thompson:

Thank you for giving the Advisory Commission on Intergovernmental Relations (ACIR) an opportunity to review the draft of your report entitled "Legislative Mandates: State Experiences Can Offer Insights for Federal Response" (HRD-88-75). Several staff members and I have reviewed the report. Specific editorial comments and suggestions are included on the enclosed copy of the report. ACIR staff narrative comments follow herewith.

General Evaluation

Overall, we believe that the GAO report is carefully researched, thorough, and enlightening. For the most part, the report is well written and easy to read.

Recommendation Regarding ACIR

We are pleased that the GAO has recognized ACIR in its recommendation calling for a biennial report on the total estimated costs to state and local governments of new mandates contained in legislation enacted by each session of the Congress. ACIR is well suited to perform this task and has a strong interest in undertaking the reporting responsibility. Our reservation, however, is that because ACIR's appropriations have thus far declined by 36 percent since 1985 and staff has been reduced by 30 percent, ACIR would need additional budgetary resources to undertake this new responsibility. The amount of resources required would depend on how the reporting task was to be performed by ACIR.

Basically, there are two ways to prepare such a report.

1. ACIR could perform the task by compiling the CBO figures routinely every two years, with little or no analysis. The utility of this approach could be questioned easily, however, and the activity would run the risk of being cancelled after the first several reports. This would be similar to what happened when ACIR administered OMB Circular A-85 in the 1970s.

Mr. Lawrence H. Thompson
July 7, 1988

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2. ACIR could perform independent analyses, examine different estimating methods, and analyze the implementation of legislation over time to compare actual costs with estimated costs. ACIR could also put the estimates into some context every two years in terms of what both the states and the federal government are doing to institute and implement mandate reimbursements. This approach would allow us to evaluate the process, show cumulative trends, and assess the actual costs of mandates over the long term. This would be the best way to proceed, but this approach is well beyond ACIR's current resource capabilities.

Comments on Text of the Report

The finding that reimbursement requirements which have been made a part of the state constitution or initiated by the voters have had an impact on stopping unfunded mandates is very interesting in terms of ACIR's work on state and federal constitutional law. The underlying data support for that conclusion does not appear to be especially strong, however. More needs to be said about how GAO arrived at that conclusion. The wording of the Executive Summary also makes it unclear as to whether constitutional amendments regarding reimbursement have to be initiated by voters in order to be effective. In other words, does "public initiation" modify both referendum and amendment?

Another good point made in the report is the recommendation that the cost-estimating process be extended to tax and appropriations bills. Perhaps this should be highlighted more in the report.

The discussion of the sample states and their experience is otherwise thorough and interesting, and the backup material in the appendices is very helpful. The description of methodology is a model of clarity and precision. It would be useful, though, to include the survey instrument.

With regard to the timing of cost estimates, we believe that waiting until the last minute to prepare cost estimates disables the process. The GAO recommendation to initiate the cost-estimate process earlier—when the committees and the public interest groups identify a bill that is likely to be seriously considered and have significant impact—is good as far as it goes. However, it still leaves the process in the realm of case work.

It would be preferable to evaluate mandates in a longer range way. For example, many of the mandates now on the books must be reauthorized every four or five years, or are slated for Congressional oversight on a relatively regular basis. This is somewhat like a sunset review process. Although there is not a formal process of that type at present, mandate

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reviews could be scheduled far ahead in many cases; adequate data bases could be built and maintained by ACIR in anticipation of recurring reviews; and major alternatives could be set up in anticipation of legislative action. This type of preparedness would produce information for policymakers based on actual experience, and would be vastly superior in many ways to any information that an ad hoc, case-by-case approach could produce.

Finally, because of requirements set forth in Executive Order 12612, the timeliness and quality of cost estimates can be expected to be considerably improved for any legislative proposals having a federal mandate that originate from an Administration. That Order calls for the use of federalism criteria in developing Executive Branch policies, and requires that regulatory and legislative proposals be accompanied by an evaluation of "the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy" (Sec. 6(c)(3)). Some mention of this related provision should be made in the GAO report.

We hope these comments will be useful to you in finalizing this excellent report.

Sincerely,

John Kincaid

John Kincaid
Executive Director

Comments From State, County, and City Government

State, County, and City Government

444 N. Capitol Street, N.W./Suite 349
Washington, D.C. 20001
Phone: (202) 638-1445

July 27, 1988

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Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

We appreciate the opportunity to review the draft of GAO's study Legislative Mandates: State Experiences Can Offer Insights for Federal Response.

We are in agreement with your comment to Senator Durenberger that "the best approach for reducing unfunded mandates at this time would be to focus more attention at key points in the congressional process on estimated costs of such mandates on state and local governments." We would go even further to set up procedures that require Congressional committees to both receive and consider cost estimates throughout the legislative process.

We are in complete agreement with the finding that cost estimates have a greater impact when they are prepared early in the legislative process and when they are also prepared for important amendments to proposed legislation.

We note your recommendation for a biennial review of the total costs imposed by federal mandates and feel that such a review should be done annually and should cover the baseline, as well as the incremental costs, of mandates. We believe that CBO would be the best organization to accomplish this task.

In addition, we strongly urge that the cost estimate requirement be extended to tax and appropriation bills inorder to truly ascertain costs that are being passed on to state and local governments.

We appreciate the work of CBO in cost estimation. We believe that the process should be strengthened and that CBO be given additional resources to insure the successful implementation of the recommendations of this report. The public interest groups are willing to work with CBO more closely than we have in the past to determine the most important and costly pieces of legislation expected that session. This would make it possible to obtain estimates earlier in the process.

While the current models for state reimbursement may not be workable at the federal level, we believe that further study could develop workable federal legislation for cost reimbursement. Regardless of the reimbursement question, we are totally supportive of the need for keeping and improving the cost estimation process.

We are enclosing a list of specific suggestions that were made last September at the time that CBO's cost estimate legislation was reviewed.

We found your study of state and local experience provided helpful suggestions at the federal level.

Sincerely,

Alan Beals

Alan Beals
Chairman

cc: Big 7 Executive Directors

- The intergovernmental cost estimate should be performed earlier in the legislative process; currently a fiscal note is only done for bills reported out of committee. At that point its role can only be negative. If available earlier in the process, the cost information could contribute constructively to the development of legislation.

  While many state legislatures require fiscal notes on every bill introduced, this might prove burdensome for CBO. We therefore recommend that a fiscal note be made available prior to subcommittee markup.

- The fiscal note should be updated for subsequent amendments. This is usually done at the state level, and is really necessary if the estimate is to provide useful information through out the legislative process.

- The threshold should be lowered. The present $200 million is too high; $100 million might be reasonable.

- The fiscal note requirement should be extended to include appropriations and revenue bills. Frequently tax and spending bills have very important intergovernmental impacts.

- The estimate should include the baseline plus the incremental cost. This would provide a clearer picture of the total impact on states and localities.

- The cost estimate requirement should be extended to OMB.

- CBO and OMB should each prepare an annual report detailing the intergovernmental impact of legislation enacted during the year.

- An Office of State and Local Finance should be established within CBO.

*U.S. G.P.O. 1988-201-749:60264

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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.

This report was approved for publication by the Commission on June 22, 1990.

Robert B. Hawkins, Jr.
Chairman

ACKNOWLEDGMENTS

This information report resulted from the combined efforts of several individuals and organizations. It was developed by Jane Roberts and the staffs of several state ACIRs. Andree Reeves completed the collection and initial editing of the state papers and helped to prepare the introductory chapter. Lou Coffel provided secretarial assistance. Joan Casey was responsible for the final editing.

The Commission gratefully acknowledges the assistance of the following state ACIR counterparts that contributed papers for this volume: Florida Advisory Council on Intergovernmental Relations, Ohio State and Local Government Commission, New York State Legislative Commission on State-Local Relations, Rhode Island State-Local Relations Commission, and South Carolina Advisory Commission on Intergovernmental Relations.

The Commission wishes to thank especially Robert Bradley, Mary Kay Falconer, Elizabeth Lines, and David Cooper of Florida; Lisa Patt McDaniel and Craig Zimmers of Ohio; Paul Moore and Margaret Sherman of New York; Gary S. Sasse of Rhode Island; and Janet Kelly and Dan B. Mackey of South Carolina.

The Commission also would like to thank The Urban Institute for permission to reprint the articles on Connecticut and Massachusetts. The Commission expresses its thanks to Geary Maher, who prepared the Connecticut study; to Emily D. Cousens, who wrote the article on the application of the Massachusetts mandate statute; and to Anthony D'Aiello, who contributed the chapter on cost estimation and reimbursement of mandates in Massachusetts.

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

Bruce D. McDowell
Director, Government Policy Research

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 fiscal 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-raising 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.

[7] 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.

[9] "Florida State Mandates on Local Governments," this volume, p. 29.

[10] Florida Statutes, Section 11.076.

[11] 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."

[13] "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, *Federal-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).

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

[19] Parris N. Glendening and Mavis Mann Reeves, *Pragmatic Federalism*, 2nd edition (Pacific Palisades, CA: Palisades Publishers, 1984).

[20] U.S. General Accounting Office, *Legislative Mandates: State Experiences Offer Insights for Federal 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 final 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 requiremen . 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 six direct 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 negligible. 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 find 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 deterring, 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."