# the impact of state mandates

# The Impact Of State Mandates On Hampton Roads

State officials around the nation are shedding fiscal tears over the dire financial circumstances of their governmental units and are pointing fingers of blame at everything from economic recession and the collapse of the information technology industry to irresponsible, prescriptive federal programs and legislative excesses. Local government officials, in turn, often blame their fiscal woes on outmoded local government revenue structures, the burden of customs such as the Dillon Rule, and irresponsible and excessive mandated state programs and services. While the causes of the current fiscal situation can be debated, the fact remains that this latter phenomenon – intergovernmental mandates imposed upon one level of government by another – continues to be an important issue.

The debate over mandates is not new, but Virginia only began an attempt to keep track of mandates in 1981. In a recent speech to the annual convention of the Council of State Governments, Gov. Mark Warner chastised the federal government for introducing new, and extending existing, federal programs that have shifted more costs to states. He suggested that the federal government should dramatically reduce programs that: (1) provide federal funds only on a temporary basis; or (2) require matching state monies. Analogously, however, the president of the Virginia Association of Counties (VACo), Gerald Hyland, has asked the Virginia General Assembly to stop introducing new state programs that shift costs to local governments, or to provide full funding for its mandates. Specifically citing the Joint Legislative Audit and Review Committee (JLARC) report on the Standards of Quality (SOQ), Hyland suggested that the state could help localities deal with their fiscal crises if it simply addressed unfunded SOQ mandates.

It is no surprise, then, that "No more mandates" has been a rallying cry for local and state government for nearly two decades. It has become a political catchphrase for those in state and local government who seek relief from higher authority. VACo's position is clear. Its legislative strategy emphasizes local governments' inability to meet the requirements of unfunded state mandates.

Local governments criticize state mandates for, among other reasons, pre-empting local authority, being inflexible, neglecting particular or unique circumstances (a one-size-fits-all approach), overlapping regulations, and ignoring the very prominent and important issues of cost and funding. The state often rationalizes its mandates by saying they ensure social equity and the equal treatment of all its citizens. Other arguments for imposing mandates include regulating local actions that may have spillover effects on other cities and regions, and ensuring the proper functioning of local governments.

The mandate issue typically involves the proverbial passing of the fiscal buck: from Washington, D.C., to the states, from the states to the localities and from the localities to their constituents. But, it is with the citizens that the fiscal buck stops. Local governments have no other level of government to which they can pass on the cost of the mandate. **Thus, the cost of mandates is passed on to constituents either in the form of reduced services or in the form of increased taxes to pay for mandated services.** Therein lies one of the most contentious aspects of mandates. Local governments end up bearing the cost of carrying out the policies or programs originated by higher governing authorities.

**The irony is that while the Commonwealth often is indignant about the devolution of federal program responsibility and the accompanying lack of fiscal assistance, from the perspective of the local government, there appears to be very little reciprocal compassion from the Commonwealth when it, in turn, mandates programs and services.**

This chapter presents an overview of state mandates in Virginia and highlights some specific policy and cost issues for Hampton Roads. First, a working definition of mandates is provided, followed by a review of current state mandates. Second, we explore the costs of mandates for local communities. Third, we offer suggestions concerning how we might obtain a better understanding of cost issues.

# Defining Mandates

A mandate can be considered any action by the federal or state government that displaces local government priorities. Most of us are familiar with federal mandates, such as the Individuals with Disabilities Education Act and the Clean Air and Clean Water acts. Many are familiar with state mandates on cities and regions, such as the Chesapeake Bay Preservation Act and the Comprehensive Services Act. While these measures stipulate programmatic and service provisions touted as promoting equity and ensuring environmental safety, they carry a financial burden that taxpayers ultimately must bear. All mandates, whether federal or state, have some costs associated with their implementation.

Within the Commonwealth, mandates were officially defined by the Office of the Governor in Executive Memorandum 1-98 as "a constitutional, statutory, or administrative measure or action that places a requirement on local governments." Three categories of mandates are noted. *Compulsory Orders*, which require mandatory compliance by localities, are evident, for example, in the Chesapeake Bay Preservation Act, or in the establishment and licensing of community services boards. Other mandates are classified as *Conditions of Financial Aid* because they require local compliance as a condition of receiving either federal or state aid. Thus, in order to receive urban street assistance payments from the Commonwealth, cities and towns must meet Department of Transportation standards for road maintenance.

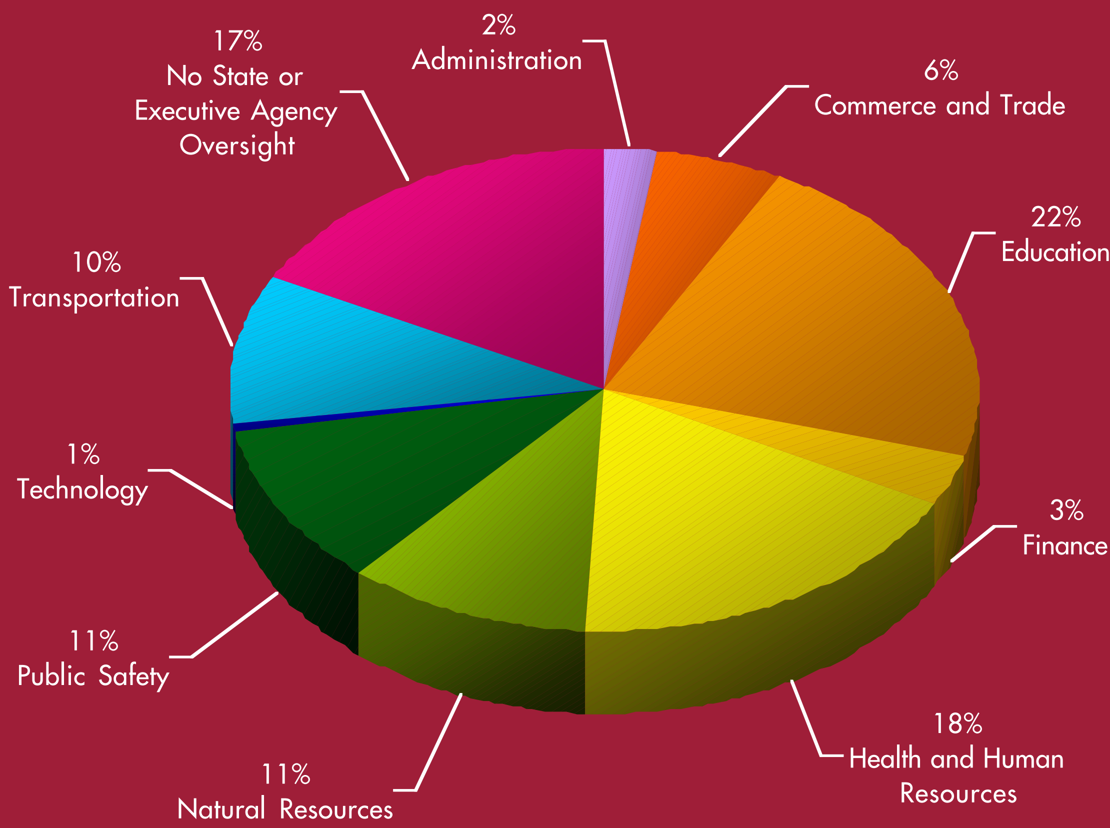
Still other mandates are classified as the *Regulation of Optional Activity*. They require compliance if cities and counties choose to perform or provide certain services. For example, if a community elects to place trash receptacles in a public place, then the community is responsible for removing the litter from those receptacles. Or, if a community has a designated enterprise zone, then it must comply with zone program requirements as well as file periodic reports. Another especially important example of this type of mandate is public water and sewer provision. Any community providing these services must comply with Department of Health regulations. It is important to note that while regulation of optional activities mandates may be classified as optional, many densely populated communities may have no choice but to offer these services.

The Commonwealth's mandate definition, while specific, is curiously not all-encompassing. For example, it does not include judicial mandates, as where a judge literally will take over a school district. Nor does the definition include state actions that result in reduced funding for programs carried out at the local level without any concurrent reduction in service or program provision.

# What Mandates Do We Have?

Mandates are part of the complex intergovernmental arena of state-local relations in which our local governments operate. Virginia's Commission on Local Government (CLG) is charged with identifying and cataloging mandates on an annual basis. Through September 2002, the CLG had cataloged 535 mandates. Of these, 442 (83 percent) originate within the Commonwealth. The other 93 mandates originate from the federal government or other nonexecutive branch agencies. Education accounts for the largest share of mandates while Health and Human Resources has the next largest share. Natural Resources, Public Safety and Transportation secretariats each account for a little more than 10 percent of the identified total. Figure 1 shows the proportion of mandates imposed on local governments by Commonwealth secretariats.

**FIGURE 1**
**PROPORTION OF STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENT BY SECRETARIAT**



In 1991, JLARC identified 338 existing mandates on local government, but that number had grown to 535 by 2003. The difference in the number of mandates (197) is large, but reflects new, expanded and eliminated mandates. Since 1995, the CLG has cataloged 56 new mandates, 76 newly identified mandates and 30 expanded mandates. During the same period, 35 mandates were eliminated and 75 were changed.

The mandate listings sometimes disguise the dynamics underlying the numbers. For example, in 2000, the Governor's Employment and Training Department was eliminated by action of the legislature. Elements of two mandates administered by this department were captured in a new mandate under the supervision of the Virginia Employment Commission. In the 1996 catalog, two mandates originating with the Department of Social Services were reclassified as federal mandates. Within the same department, eight mandates were consolidated into five other mandates because they were deemed to be integral parts of larger programs. Examples such as these represent "a shuffling of the mandate deck." This makes comparisons over time difficult. Further, a number of mandates originate from the federal government and thus are outside the purview of state government actions, making their identification challenging. Nonetheless, there is little doubt that the number of mandates on local communities has grown substantially over the years.

Aside from cataloging mandates every year, the CLG is tasked with coordinating state agency review of existing mandates at least once every four years. To date, 777 assessments of known mandates have been made to determine which might be altered or eliminated without disruption of local services or cause any threat to the health and welfare of Commonwealth citizens. Further, the Code of Virginia stipulates that when any bill introduced in the General Assembly would require local governments to provide additional services or reduce local government revenue, that bill must be subjected to a fiscal impact study by the CLG. The fiscal impact statement is then provided to all legislators so that they may be aware of the likely fiscal consequences. This process of "fiscal noting" in Virginia appears to be helpful, at least if one believes fewer mandates are better. The average number of new state mandates from 1984 to 1991 was 10 per year, but that number fell to six between 1995 and 2003.

While this evidence suggests that the cataloging and review process of mandates has served some purpose, a larger issue looms. Apart from legislation, a state agency may recommend that a mandate be altered or eliminated. Between 1994 and 2001, administering agencies suggested changes to 75 mandates. Of this total, CLG recommended 19 for elimination and 56 for alteration. However, of the 75 mandates reviewed by CLG staff, no action ultimately was taken on 60 of them. In other words, the appropriate authority acted upon only 20 percent of the recommendations.

# Mandates: Funded, Unfunded Or Underfunded?

Mandates have multiple effects, some social and others financial. Some individuals focus on the social impact of a particular mandate, for example, a mandate that requires high schools to pursue gender equity in their interscholastic athletic programs. The long-term impact of such a mandate on students and society can be substantial. Yet, predictably, most local governments are interested primarily in the costs of mandates. Thus, when local officials meet with state officials to talk about mandates, the discussion tends to focus on money.

Noticeably absent from the state government's definition of mandates are terms such as "partially funded" or "unfunded." There is unanimity that many state mandates on localities are only partially funded, or not funded at all. The problem is no one really knows to what degree this is true. Over the years, there has been some attempt by statewide organizations such as VACo and the Virginia Municipal League to obtain local cost estimates of state mandates. However, these data are sparse and the information often unreliable, and therefore cannot be used for estimation purposes.

Why are mandate cost data so difficult to find? First, mandates impact each community differently. Hampton Roads communities are very different in population, wealth and urban density. Therefore, the cost of a mandate often varies from one community to the next, and each city has to do its own study. Second, the impact of any one mandate may be low, even though the cumulative cost of all mandates over many years is high. It may not be worthwhile for a city to do a cost study of a single mandate. Third, many mandates are accommodated by using existing local resources more intensively. For example, in 1999, the state mandated all school superintendents to develop an Internet use policy. In most cases, this was accomplished when the superintendent directed a staff member to do so. Therefore, the cost of the mandate was the value of the staff time, or perhaps the price of what was not accomplished by the staff member. Most local government units are not accustomed to thinking in these terms and don't keep track of staff hours in the same fashion as, say, a legal firm keeps track of the time of its attorneys. Fourth, most mandates impact the administration of local governments. These mandates dictate the "what," but not the "how," of local government programs and services. Hence, cost estimation often reflects subjective interpretations of how much staff time is involved and how efficient the mandate is. In other words, such cost estimations are not precise to the fourth decimal. Fifth, many of the mandate costs quickly become ingrained in local operating budgets and soon cannot be easily identified. After the initial increase in cost of the mandate is absorbed, it becomes part of the ongoing cost of doing business.

Given these challenges to mandate cost estimation, it is not surprising that existing research presents a wide range of cost estimates for implementing federal and state mandates. According to the 2002 Municipal Yearbook, local governments spend anywhere from 20 to 80 percent of their budgets on mandates. However, an informal survey of local government budget offices suggests that very few communities have hard data on the specific costs of mandates.

Given the lack of detailed information at the community level, cost estimating for state mandates is an inexact science. However, if we apply the lower-bound cost estimate of 20 percent to the region's local government operating budgets, this suggests the cost of satisfying these mandates is $705 million annually. If, however, we use the upper-bound 80 percent estimate, the annual cost to the region of state mandates is $2.8 billion. On a per capita basis, state mandates cost each and every citizen of Hampton Roads between $454 and $1,854 yearly. Whether one prefers the low-end or the high-end estimate, these are not trivial amounts of money. It's no wonder local governments in Hampton Roads are concerned about the costs of mandates.

# Final Comments

While "Stop non-funded mandates" is not as catchy a phrase as "No more car tax," it may have even more relevance to local governments. Generally, local government officials recognize the need for most mandates and are willing to assume their responsibilities with compliance. For example, nearly everyone would agree that Virginia should educate its children to a certain level or standard, and this is made explicit in Virginia's constitution.

That said, the relevant issue is: Who is going to pay for mandates? State and local representatives are loath to increase taxes, and many legislators and more than a few local officials campaigned for their offices on a "no new taxes" pledge, or even on a platform of tax reductions. Yet, at the same time, they want to be able to tell their constituents that they have dealt with a problem that has come to the fore. Mandates – non-funded – are an excellent political way to handle this. Elected officials, particularly those in the General Assembly, can tell their constituents that they took care of a problem, when actually they shifted the onus to local officials. The result is a lethal mixture of mandates that appears to address problems, but really doesn't because no funding or inadequate funding is attached to the mandates. This milieu is perfectly suited to finger-pointing and we observe copious amounts of this occurring in the media and in political campaigns.

Of course, some portion of this unfortunate chain of events occurs because legislators honestly do not know the actual costs of the mandates they impose. A pressing problem arises, citizens demand action and legislators feel forced to take timely action even though appropriate cost and impact data may not be available. Needless to say, both the Commonwealth and localities need to sponsor studies to determine, to the extent possible, the actual costs of state mandates. Ideally, these studies would take place before any legislation is written in stone. As a result, localities would be able to provide hard evidence of the burdens they face and legislators would be able to make more rational decisions. These studies should focus especially upon mandates already imposed, as they clearly produce the greatest ongoing fiscal burden. This recommendation may sound like a full-employment proposal for economists and statisticians, but it is essential if the Commonwealth and the Hampton Roads region are to make intelligent decisions. The result will be better (and more realistic) government.