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For more information,
call Mike McLaughlin at the
N.C. Center at (919) 832-2839

UNFUNDED STATE MANDATES LESS A PROBLEM THAN RHETORIC SUGGESTS, N.C. CENTER SAYS

Unfunded mandates handed down to local governments from the state may be less a problem than the rhetoric suggests, says the N.C. Center for Public Policy Research in a study released today. Local officials must provide certain mandated services and meet required standards when they provide optional services, the Center says, but they also receive a great deal of revenue with no strings attached.

"Unfunded mandates are more crabgrass than kudzu," says Mike McLaughlin, editor of the Center's magazine, *North Carolina Insight*. "Like weeds in a garden, they are a serious problem, but they are not so prolific that they choke off all life forms at the local level."

The Center studied the problem of unfunded mandates from the state and federal government to the local level as part of a theme issue of *Insight* examining the relationship between state and local government in North Carolina. Among the Center's findings are the following:

-- Local governments do face mandates from higher levels of government, although not as many as one might expect given the level of rhetoric from local elected officials and their advocacy groups in recent years.

-- Federal mandates flowing from such legislation as the Clean Water Act, the Davis-Bacon Act wage laws, and the Americans with Disabilities Act are a more serious problem than state mandates. And, many local officials don't make a distinction between federal and state requirements.

-- Mandates are a larger problem for cities than counties, and federal mandates in particular are a problem for cities.

-- The state sends revenues such as taxes on beer and wine and on utilities back to local governments with no strings attached, which could be viewed as helping to pay for unfunded mandates. And the 1996 legislature will consider a $950 million statewide school bond issue to help local governments.

P.O. BOX 430 RALEIGH, N.C. 27602 (919) 832-2839 FAX (919) 832-2847

Unfunded mandates are program requirements handed down from a higher level of government to a lower level without providing the revenue to pay for implementing the requirements. Local government officials have complained vigorously about the problem in recent years and have finally gotten the attention of state and federal elected officials.

In March 1995, the U.S. Congress passed the Unfunded Mandates Reform Act, which institutes a number of procedural reforms and erects procedural barriers to discourage Congress from imposing unfunded federal mandates with a fiscal impact of more than $50 million. Closer to home, the 1995 N.C. General Assembly passed reforms that require notice and cost estimates when state mandates are imposed on local governments. The state law also grants local governments greater involvement in the development of rules flowing out of legislation. At least 25 other states have enacted statutory or constitutional provisions governing mandates, including a dozen states that have prohibited unfunded mandates.

Yet even critics of mandates acknowledge that there are times when mandates serve the public good. For example, local jail standards imposed by the state help provide minimum standards and avoid federal takeover of prison and jail systems, as has happened in other states. The Solid Waste Management Act of 1989 forced counties to spend money on recycling programs to help reduce the flow of solid waste to landfills. And, counties are required to appropriate funds for food stamps and Aid to Families with Dependent Children (AFDC). These programs provide at least some minimal level of sustenance and also help keep local charities from being overwhelmed.

Still, local officials interviewed by the Center point to a number of problems with mandates, including the following:

-- **Lack of flexibility**. Local government officials criticize the "one size fits all" mentality that requires local officials to apply a uniform solution to a problem that may vary from place to place -- if it exists at all in some localities. Officials in Greensboro and Greene County, for example, complain that their unlined landfills must be closed by January 1, 1998, even though both landfills have space left for more garbage and are not known to be causing any problem.

-- **Differing abilities to pay**. A requirement that is perfectly affordable for a large county like Guilford County may work a severe hardship on a small town or rural county with a limited tax base. Greene County, for example, must maintain minimum staffing levels in its register of deeds office even though the office operates at a deficit and does not record enough land transactions to justify the cost.

-- **Lack of input**. Local officials would like some voice in decision-making before they are left holding the bag for an expensive new program. They also would like local field technicians to have input with state and federal officials to assure that mandates implemented actually work. Officials in the city of Marion, for example, say the law requires them to have smaller chlorine tanks for water treatment, even though they believe smaller tanks would create a greater hazard of a chlorine leak.

-- **The cumulative effect of mandates**. Individual mandates may have merit, but cumulatively, they rob local government of resources that already are being used to address other local priorities. In a 1994 study, Greensboro officials estimated the one-time and recurring costs of mandates at $38 million.

But the sources of mandates are difficult to trace. In a 1993 investigation of state and federal mandates, a committee of the N.C. Association of County Commissioners noted that several of the most talked-about state mandates had been adopted as part of the Association's legislative goals before they were enacted by the General Assembly. These included mandates in solid waste management, watershed protection, and expanded AFDC and Medicaid eligibility. "Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money," says Jim Blackburn, legal counsel for the N.C. Association of County Commissioners. "Almost nothing is a purely unfunded mandate."

Indeed, the Association's committee found only one mandate that was totally unfunded -- energy costs for the public schools, required under the statute that counties provide "adequate school buildings with suitable school furniture and apparatus." The state froze its contribution to local schools' energy costs in 1986-87 and by 1992-93 had eliminated it completely. According to the committee, this mandate cost counties $120 million in 1992-93.

In the human services area, a source of much local grumbling, the commissioners' committee found no purely unfunded mandates. It did, however, lament that local shares of public assistance budgets are eating up increasing percentages of county budgets. Rising caseloads and costs in public assistance programs create particular problems in low-wealth counties like Greene County in eastern North Carolina, where more than a quarter of the property tax levy goes to pay for social services.

John Witherspoon, a long-time county manager in Guilford and Cabarrus counties, says many county commissioners would consider an unfunded mandate to be any program requirement that is only partially funded. "To them, unfunded simply means the state forces counties to spend something for a program . . . whether 5 percent or 100 percent," Witherspoon says. "I maintain that if the program is mandated and not 100 percent funded by the mandating authority, it's unfunded."

Yet the state passes along a great deal of money to local governments with no strings attached. David Crotts, the legislature's senior fiscal analyst, says there are two primary sources of *unrestricted state tax revenue returned to local governments*: (1) the gross receipts tax on utilities, which generates $130 million annually for municipalities; and (2) the excise tax on beer and wine, which returns about $21.5 million to units of government that allow the sale of beer and wine. Other significant sources of state revenue returned to local governments include: Powell Bill funds ($100 million returned annually) for city street construction and maintenance; and 0.5 percent of the 7.75 percent corporate income tax, which is earmarked for school facilities. Indeed, when tax sharing, tax reimbursement (for revenue lost through such legislative actions as repeal of the inventory tax), and local sales tax revenue are lumped together, the state provides some $1.8 billion dollars in tax aid to local governments during the 1995-96 fiscal year.

To gain a more thorough understanding of mandates imposed by the legislature, the Center conducted an extensive review of the North Carolina General Statutes for mandates imposed on cities and counties. While the review produced a long list of requirements -- everything from accounting procedures to staffing levels for the county register of deeds office -- many of these requirements were structural or procedural in nature and fairly inexpensive. For example, one mandate requires that county social services boards meet once a month. Another requires the counties to appoint a fire marshal. Yet another requires that city boundaries be drawn on a map.

Municipalities are organized to provide a higher level of services than counties, and the state only *requires* municipalities to provide a handful of services. Yet municipal officials face a host of program demands from voters, and once they opt to participate in a program, state and federal mandates apply. "The expensive mandates tend to be in water and sewer," says Margot Christensen, the League of Municipalities' public affairs director.

Environmental mandates such as water and wastewater treatment and testing requirements drew a number of complaints from municipal officials, who maintain requirements are excessive and that the costs often outweigh the benefits. Larry Davis, a budget analyst with the city of Greensboro, mentioned stormwater controls required of cities with a population of more than 100,000 as an example. Runoff from new homes and commercial development, he says, represents only a small percentage of the problem. "The rest is agriculture," Davis says.

Steven J. Levitas, deputy secretary of the Department of Environment, Health, and Natural Resources, acknowledges that some complaints are valid and gives this example of the state's attempts to alleviate the burden: "[U]nder the federal Safe Drinking Water Act and regulations, our local governments were going to have to do expensive testing of their drinking water supplies every quarter, even if they had previously tested clean and were not threatened by any known source of contamination. Everyone agreed that imposing these costs on local government did not make sense. Our department was able to develop a streamlined waiver program approved by the EPA that has saved an estimated $10 million in testing costs through improved monitoring." Levitas makes a distinction between unfunded versus "unfounded" mandates.

"Laws and regulations flow downhill, and local governments lie at the bottom of the hill," says the Center's McLaughlin. "Recent federal and state legislation should at least assure that communications between various levels of government improve and help local officials have a larger voice in the development of regulations. An outright ban on mandates is probably too much to expect."

The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public issues facing North Carolina and to evaluate state government programs. The Center is supported in part by grants from the Z. Smith Reynolds and Mary Reynolds Babcock Foundations, both in Winston-Salem. Additional funding comes from 13 private foundations, 190 corporate contributors, and more than 900 individual and organizational members. In addition to publishing *North Carolina Insight* magazine, the Center issues book-length research reports and publishes biennial rankings of legislators' effectiveness. Recent studies by the N.C. Center have examined school vouchers, pesticide regulation, state-owned railroads, and how the state's public universities evaluate and reward teaching.

Copies of *North Carolina Insight* containing the Center's research on state mandates to local governments in North Carolina are available for $11.50, including tax, postage, and handling. To order, write the Center at P.O. Box 430, Raleigh, NC 27602, call (919) 832-2839, or fax (919) 832-2847.

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For more information on state mandates to local governments, contact Mike McLaughlin at the N.C. Center for Public Policy Research at (919) 832-2839.

Table 1. State Mandate Relief Provisions

State	Constitutional Relief					Statutory Relief									Total	
	Prohibit Unless Funded	Require Reimbursement	Local Government Must Approve	State Authorize New Local Funding Source	Two-Thirds Vote to Impose Mandates	Governor May Suspend Mandate	State Must Reimburse	Authorize New Local Funding Source	Prohibit Unless Funded	Delay Effective Date	Local Government Must Approve	General: Waivers/Appeals/Fiscal Impact	Provides Specific Relief	Two-Thirds Vote of Legislature Required	Constitutional	Statutory
Alabama[1]			●												●	
Alaska[2]			●												●	
California		●													●	
Colorado			●						●						●	●
Connecticut										●						●
Florida	●			●	●										●	
Hawaii		●													●	
Illinois							●		●							●
Louisiana			●												●	
Maine	●	●			●		●								●	●
Massachusetts	●		●		●		●								●	●
Michigan	●	●													●	
Minnesota												●				●
Missouri	●	●													●	
Montana							●	●	●							●
Nevada								●	●							●
New Hampshire	●		●				●				●				●	●
New Mexico		●		●											●	
New York													●			●
North Carolina[3]												●				●
Pennsylvania		●													●	
Rhode Island							●									●
South Carolina								●	●					●		●
South Dakota							●	●								●
Tennessee[4]	●														●	
Virginia						●						●				●
Totals	7	7	6	2	3	1	7	4	5	1	1	3	1	1	15	15

Source: 1994 survey data collected by Joseph F. Zimmerman, State University of New York, Albany.

Table reprinted from *Intergovernmental Perspective*, U.S. Advisory Commission on Intergovernmental Relations, Washington, DC, Spring, 1994, p. 29.

Notes to Table 1

[1] Alabama prohibits enforcement of a state law increasing expenditures or decreasing revenues in the current fiscal year, which ends on September 30, unless the law is approved by a governing body.

[2] Alaska provides that special acts necessitating appropriations by local governments do not become effective unless ratified by the concerned voters in a referendum.

3 North Carolina data by N.C. Center for Public Policy Research

[4] The Tennessee General Assembly is authorized to impose mandates on cities and counties only if the state shares the cost