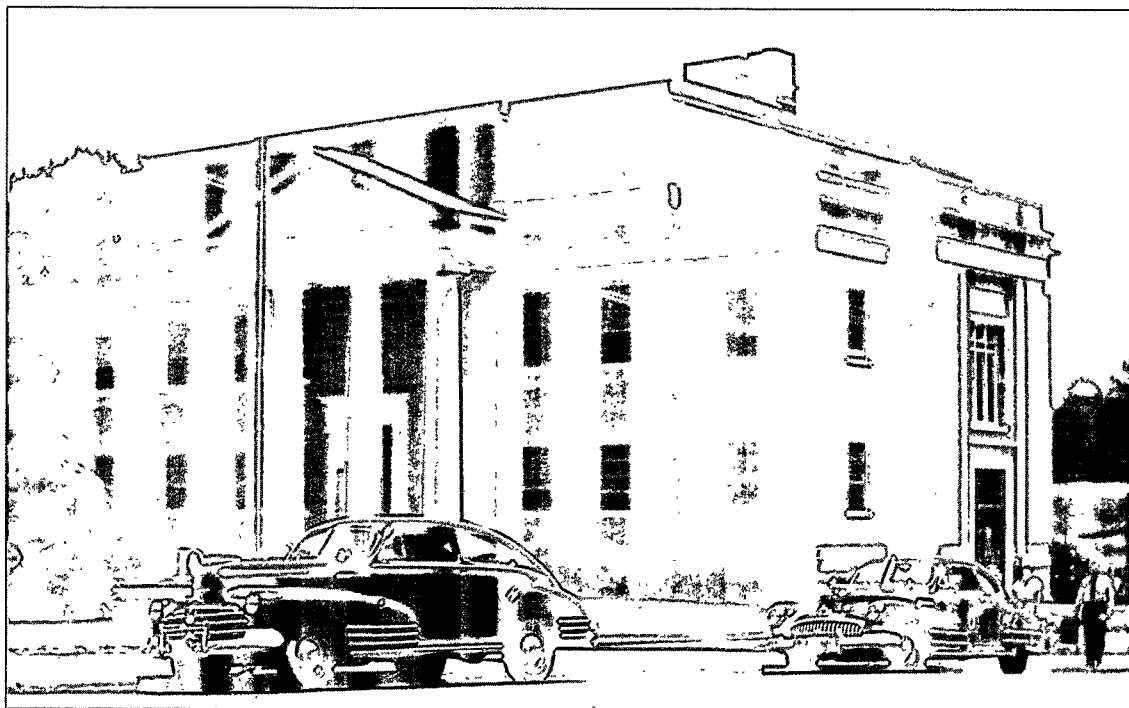

Mandates to Local Government: How Big a Problem?

by Mike McLaughlin and Jennifer Lehman

Local government officials have complained for years about the problem of unfunded mandates being handed down by higher levels of government. Their complaints finally appear to have caught the attention of both state and federal elected officials. In March 1995, Congress passed the Unfunded Mandates Reform Act in an attempt to address the issue. The N.C. General Assembly followed suit with mandate reforms of its own in the 1995 legislative session.

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. How serious is the problem of unfunded mandates? Does the expense of unfunded mandates prevent local elected officials from implementing local programs with a higher priority? Are further reforms needed to prevent the state and federal government from passing unfunded mandates down to the local level? The Center attempts to address these questions by: (1) reviewing existing literature on unfunded mandates; (2) analyzing state statutes to gain a better understanding of what is required of local officials; and (3) interviewing officials on the receiving end of mandates to determine what they view as unfunded mandates and what impact these requirements have on the day-to-day business of running the government. The Center also follows up with state officials to determine whether state and local officials agree on what various mandates actually require.

Our conclusion: unfunded mandates are, in the horticulture vernacular, more crab grass than kudzu. Like weeds in a garden, they are a serious problem, but they are not so prolific that they choke off all other life forms at the local level. New state and federal laws promise to increase participation by local officials in the development of rules and regulations springing from mandates. And the laws may even keep a few new mandates from germinating. Given the hierarchical nature of our federalist system, that may be all the reform local government can legitimately expect on the topic of unfunded mandates.



Greene County Courthouse, Snow Hill, circa 1948

In Greensboro, population 188,976, city officials worry that closing a landfill before it is full will cost local taxpayers with no benefit to the environment. Across the state in tiny Marion, population 4,840, town leaders are concerned they will become a farm team for water plant operators who get expensive training at town expense, then move on to higher-paying jobs in bigger cities. In both municipalities, officials believe their problems stem from a similar source: mandates handed down from a higher level of government.

Indeed, local government officials have been complaining about mandates for years, culminating in National Unfunded Mandates Week in October 1994. The clamor in the months leading up to the event moved CBS News personality Charles Osgood to compose a poem called "Sing a Song of Mandates" commemorating the occasion.

"Washington tells them what they have to do,
What policy all of them have to pursue,
And even if they must go out of their way for it,
Gives them no money whatever to pay for it."

Mike McLaughlin is editor of North Carolina Insight. Jennifer Lehman, a law student at the University of North Carolina at Chapel Hill, was a 1995 summer intern at the N. C. Center for Public Policy Research.

Whether because of Osgood's poetry or the justice of their cause, it appears that the complaints of local government officials are finally being heard. In March 1995, Congress passed the Unfunded Mandates Reform Act,¹ which institutes a number of procedural reforms and erects procedural barriers to discourage Congress from imposing unfunded mandates with a fiscal impact of more than \$50 million. (See "Highlights of the Unfunded Federal Mandates Reform Act of 1995," p. 49, for further details.) Closer to home in Raleigh, the state legislature adopted a law that requires notice and a fiscal note when mandates are imposed on lower levels of government. The law also grants local government greater involvement in the development of rules flowing out of legislation.² At least 25 other states have enacted statutory or constitutional provisions to govern mandates, including a dozen that have prohibited mandates unless funded. (See Table 1, p. 44.)

Despite these advances, skepticism reigns regarding the likelihood of stemming the flow of mandates. "Experience shows . . . that a stringent state unfunded mandate law does not necessarily translate into fewer unfunded mandates," writes Susan Bush, a policy analyst with the Council of State Governments in Lexington, Ky. "The same

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.

concern applies to legislation at the federal level.”³

But railing and rhetoric aside, how serious is the mandate problem at the local level? What services are local governments required to provide and where do the requirements come from? And how effective are laws likely to be that restrict the ability of higher levels of government to tell local government what to do? What, if anything, should be done to restrict state government’s ability to issue mandates to local government?

What Is a Mandate?

A good starting point for this discussion is to define the term mandate. At the simplest level, a mandate is a statute or requirement that a level of government provide a service or meet a particular standard. Most local government officials will concede that a certain number of mandates are appropriate or at least inevitable. They begin to grumble, however, when the requirements come with no funds to pay for their implementation. Thus, the debate is really not about mandates per se, but about *unfunded mandates*. And some local government officials concede that even an unfunded mandate may be acceptable if local government officials participate in the decision-making. In other words, a mandate may be OK if a local government agrees that it is needed.

But what if the legislature passed a law and then the rulemaking agency established unforeseen requirements that would be expensive to implement and politically unpopular at the local level? After

all, these things happen. Ask the local government officials who supported the seemingly innocuous Watershed Protection Act⁴ and wound up having to implement what amounted to state-mandated zoning in parts of North Carolina where the Z-word is hardly uttered in public. It is this type of mandate—passed along with little input from local officials and little or no money to pay for its implementation—that most arouses the ire of local government officials.

Are Mandates Good, Bad, or Something in Between?

With all the rhetoric surrounding mandates, it ought to be clear that they are terrible things that should be rooted from the federalist system, right? Well, not even the critics would go that far. “Most of our members recognize that some level of mandates is appropriate so maybe we can live in harmony,” says David Reynolds, executive director of the 509-city N.C. League of Municipalities. “But there has to be some balance.”

What possible good could there be in a mandate? It helps local elected officials give priority to problems that need to be solved or issues that need to be addressed but that may not be popular with local taxpayers. For example, standards imposed by the state may give county commissioners a reason to seek bond funding for a new jail instead of a softball complex.⁵ The Solid Waste Management Act of 1989 forced counties to spend money on recycling programs to help divert the flow of solid waste to landfills.⁶ And dollars counties are required to appropriate for food stamps and Aid to Families with Dependent Children (AFDC) provide at least some minimal level of financial sustenance that keeps local charities from being overwhelmed.⁷

Still, complaints about mandates seem to be rooted in more than just rhetoric. Local government officials interviewed for this article point to the following problems:

- **Lack of flexibility.** This is what local government officials bemoan as 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.
- **Differing abilities to pay.** A requirement that is perfectly affordable for a mid-sized city may work a severe hardship on a small town or rural county with a limited tax base.
- **Lack of input.** Local officials would like some voice in decision-making before they are left

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.

holding the bag for an expensive new program. They also would like field technicians to have input to assure that mandates implemented actually work.

- **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.

To add insult to injury, certain revenue sources such as federal revenue sharing that might have helped pay for mandates have eroded or disappeared entirely. The state still shares a significant amount of revenue with local government with no program

requirements attached, although much of it is reimbursement for revenue lost due to legislative actions such as repeal of the inventory tax. David Crotts, the legislature's senior fiscal analyst, says there are two primary sources of unrestricted state tax revenue returned to local government: (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 of the revenue generated through this tax to units of government that allow alcoholic beverage sales. Other significant sources of state revenue returned to local government include: Powell Bill funds, which return more than \$100 million annually from the state gasoline tax for city street con-

Sing A Song Of Mandates

*It's National Unfunded Mandates Week,
You'll hear the city council speak
Relief from the UFM's they seek,
How do you like it so far?
Washington tells them what they have to do,
What policy all of them have to pursue,
And even if they must go out of their way for it,
Gives them no money whatever to pay for it.
The federal government doesn't in fact,
Do such a very good balancing act,
But it tells local government it has to pay,
Don't do what we do but just do what we say.
An unfunded mandate, you understand,
Is Congress' method of forcing the hand,
Of the state and the local by Capitol Hill,
And sticking the locals with paying the bill.
It's National Unfunded Mandates Week,
And local government's up the creek,
There are things that it cannot afford now to pay,
But that Washington tells us to do anyway.
With the hundreds of federal mandates there are,
There are now bumper stickers to put on your car,
It's National Unfunded Mandates Week,
And how do you like it so far?*

—CHARLES OSGOOD, "THE OSGOOD FILE,"
CBS RADIO, OCTOBER 24, 1994.



Energy costs for public schools—the sole totally unfunded mandate from the state to the counties?

struction 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, and local sales tax revenues are lumped together, the state will provide some \$1.8 billion dollars in tax aid to local government during the 1995–96 fiscal year, according to the legislature's Fiscal Research Division.⁸ By these calculations, growth in tax aid to local government has averaged 11 percent per year since 1973.

Yet many local officials consistently have claimed that mounting state and federal mandates outstrip the ability of local officials to pay for services, as evidenced by a 1993 letter sent to former House Speaker Dan Blue (D-Wake) by Parks Helms, then chairman of the Mecklenburg County Board of Commissioners. "As a former member of the House and now chairman of the Mecklenburg County commission, I am persuaded that among the most serious and far reaching problems facing state and local governments in North Carolina are the state and federal mandates that place increased fiscal responsibilities on local governments without providing for increased financial support or revenue generating authority," writes Helms.⁹

How serious is the mandate problem and what can be done about it? There, the issue becomes cloudy. Mandates are difficult to trace and hard to pin down. A committee of the N.C. Association of County Commissioners appointed by the association's president in 1993 to investigate unfunded state and federal mandates acknowledged as much up front. In fact, the committee noted that several of the most talked-about mandates had been adopted as association legislative goals before they ever were enacted by the General Assembly.¹⁰ These included mandates in solid waste management, watershed protection, and expanded AFDC and Medicaid eligibility.

In its deliberations, the committee focused on four major policy areas: public education; human services; environmental protection; and criminal justice. Within these four policy areas, the committee looked at 12 sources of local spending. Yet it could find few examples of purely unfunded state mandates on local government. "Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money," says Jim Blackburn, the association's general counsel and author of the committee's report on unfunded mandates. "Almost nothing is

"Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money. Almost nothing is a purely unfunded mandate."

—JIM BLACKBURN, LEGAL COUNSEL, N.C.
ASSOCIATION OF COUNTY COMMISSIONERS

a purely unfunded mandate."¹¹

While some local officials would consider anything less than full funding an unfunded mandate, the committee could find only one mandate that was totally unfunded—energy costs for the public schools, required under the statutory provision that counties provide "adequate school buildings equipped with suitable school furniture and apparatus."¹² The state froze its contribution to local schools' energy costs in 1986–87 and by 1992–93 had eliminated it completely, "thus, creating a totally unfunded state mandate costing counties \$120 million in 1992–93," according to the committee.

In the *human services* policy area, a source of much local grumbling, the committee found no purely unfunded mandates. It did, however, lament that the local shares of public assistance programs are eating up increasing percentages of county budgets, creating particular stress on counties with smaller tax bases.¹³ Total spending for public assistance jumped 55.1 percent over a three-year period (1989–90 to 1992–93)—from \$200.7 million to \$311.3 million. And over the same time period, the share of property taxes going to pay for public assistance increased from 13.8 percent to 16.2 percent. (See "Local Governments Face Increasing Service Demands, Tighter Budgets," pp. 2–17 for a thorough discussion of the budgetary stress caused by such factors as increasing human services caseloads and population growth. See particularly Table 5, p. 13.)

Under *environmental* policy, the committee cited two legislative actions, the Solid Waste Management Act and the Watershed Protection Act, both passed in 1989, as "imposing added and expensive . . . responsibilities on county governments." The committee acknowledged that the Solid Waste Management Act was not entirely unfunded, since it gave local governments the right to charge solid waste disposal fees to pay for waste management programs.¹⁴ But it complained that technical assis-

tance and state funding lagged behind what had been hoped for when the bill was passed. As for the Watershed Protection Act, the committee noted that it created friction at the local level for a number of reasons: (1) it imposed the unfunded mandate of requiring that local governments prepare and approve watershed protection ordinances; (2) it foisted zoning-style restrictions upon citizens unused to having such controls placed upon their use of land; and (3) it left some local officials with the conclusion that the restrictions stunted the growth of their tax base by curtailing development, requiring them to raise taxes to meet increasing service demands, whether the services were mandated or not.

Under *criminal justice*, the committee examined jails and courts in the quest for the unfunded mandate. It cited a "historical mandate" for jails, since there is no direct requirement that counties authorize jails. If counties do operate jails, however, they are subject to expensive standards established by the state. In 1991, these standards were updated to include two requirements of particular concern to local budgets: single cells must be at least 50 square feet in size; and supervision rounds must be made at least every 30 minutes. The committee also cited medical care for inmates as another major mandated cost for counties operating local jails. District Court facilities also are mandated, although fees charged in civil and criminal cases are supposed to help offset the expense. The committee noted that cases are often dismissed and prisoners are often indigent, making court facility fees a limited source of revenue.

But if the committee found few smoking guns in its review of unfunded mandates from the state, there is still the matter of certain services being required. The counties, being subdivisions of the state, are in this sense a service-providing arm of state government. Cities, too, operate under the constraints of Dillon's Rule, which provides that local governments have only those powers and duties assigned to them by the state legislature. That's opposed to Home Rule, which grants greater independence to local government. (For more on this distinction, see "Dillon's Rule and Home Rule: Two Models for State-Local Government Relationships," p. 34.)

To gain a more thorough understanding of actual service and program requirements imposed by the legislature, the Center reviewed the North Carolina General Statutes. While the review produces a long list of requirements—everything from accounting procedures to staffing levels for the county register of deeds office—many of these requirements

Highlights of the Unfunded Federal Mandates Reform Act of 1995

- The Act took effect October 1, 1995.
- It creates a new procedural obstacle in the House and Senate against considering legislation with mandates of \$50 million or more to state and local governments or \$100 million or more to the private sector in the first fiscal year of effectiveness or any of the following four fiscal years unless funding is to be provided.
- The Congressional Budget Office must provide detailed cost estimates for each bill reported by an authorized committee that would have an impact of at least \$50 million to state and localities or at least \$100 million to the private sector in the first fiscal year of effectiveness or any of the following four fiscal years.
- Federal agencies must prepare statements assessing the costs and benefits of proposed or final rules expected to cost states and localities at least \$50 million or the private sector at least \$100 million in the first fiscal year of effectiveness or any of the following four years.
- Lawsuits are permitted against federal agencies that fail to conduct cost-benefit analyses of any significant unfunded mandate.
- Federal agencies must consider regulatory alternatives in the rulemaking process. If they do not select the least costly or most cost-effective option, they must explain why another option was selected.
- The act excludes legislation or regulations regarding civil and constitutional rights, auditing and accounting procedures, emergencies, national security, and Title II of the Social Security Act.
- It excludes unfunded mandates to the extent that such expenditures will be offset by any direct savings to the governmental unit or private sector as a result of compliance.
- The act is not retroactive. However, the U.S. Advisory Commission on Intergovernmental Relations is charged with reviewing and making recommendations to Congress and the President on existing mandates as well as examining interpretations by federal courts.

Summary reprinted from *State Trends Bulletin*, Council of State Governments, Lexington, Ky., Vol. 1, No. 3, April/May 1995, p. 2. Compiled by Susan Bush of the Council staff.

were structural in nature and fairly inexpensive. Moreover, since the counties exist largely to provide state services at the local level, it is entirely logical that the law require them to do so. And as the N.C. Association of County Commissioners readily admits, few—if any—of these service requirements could be labeled totally unfunded mandates. (For a list of selected required services for cities and counties, see Table 2, pp. 58–68).

Yet many of the complaints of local government officials spring not from the statutes but from regulations developed to implement them. In addition, the federal government often promulgates rules and requires the state to administer them, particularly in the environmental arena. These generally are adopted as state rules and included in the Code of Federal Regulations and the North Carolina Administrative Code. Thus, the counties also want a larger voice in rulemaking. “Rulemaking is fairly closed,” says Blackburn. “What we want to do is be looped in to the *development* of rules—not after they’re drafted and at the hearing stage.”

Through legislation passed by the 1995 General Assembly and an earlier executive order by Gov. James B. Hunt Jr.,¹⁵ the cities and counties have gained additional input into rulemaking, Blackburn says. Yet he doesn’t expect the tension between state and local officials to subside entirely. “I call it creative tension and sometimes there’s more tension than at others,” Blackburn says. “It’s always going to be a schizophrenic situation for the commissioner who wants to spend to fulfill local wishes. . . . It’s sort of understanding where you are on the government food chain, and that’s not easy. The miracle is it works as well as it does.”

North Carolina Municipalities Face Fewer State Mandates

Compared to the counties, North Carolina municipalities have fewer mandated services required by the state. In fact, the state absolutely requires only three services: fire inspection, building inspection, and watershed protection.¹⁶ Yet cities are organized to provide a higher level of service, says Margot Christensen, public affairs director for the N.C. League of Municipalities. Such services as water and sewer treatment, garbage pickup, and police protection are necessary to keep the local economy vital and protect the public health, she says. Plus, citizens demand these services, so there is a political mandate. It’s easier to start a service than to stop it, and once a city elects to provide a service, state and federal standards apply. “The ex-

pensive mandates tend to be in water and sewer,” says Christensen.

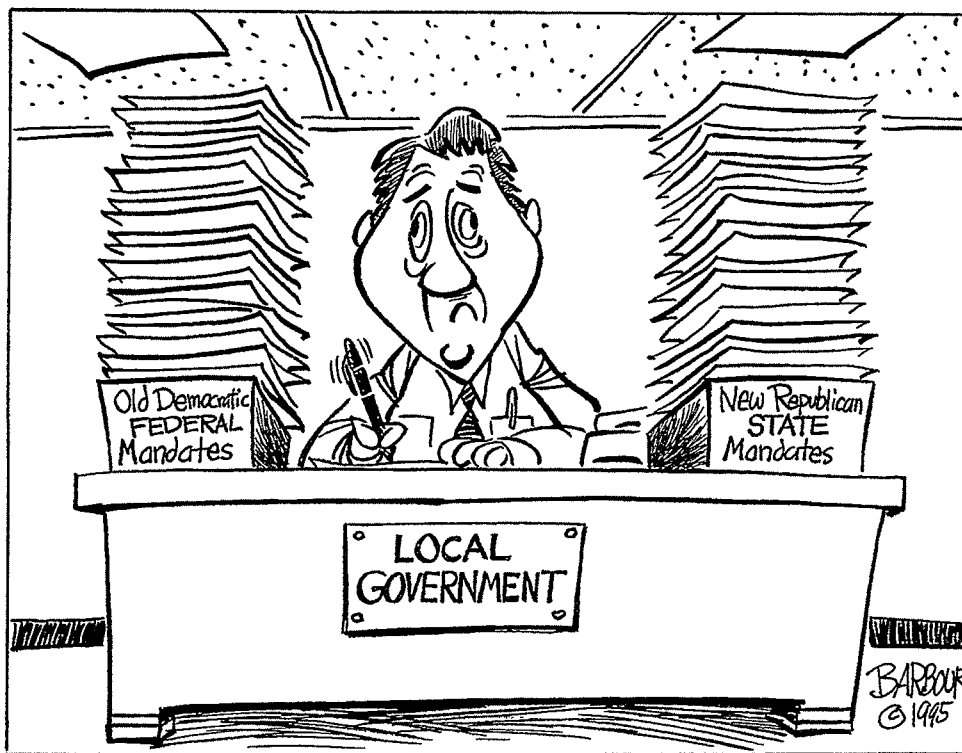
Of course, local property taxes are a major funding vehicle for providing such services, and the cities and counties have not approached the legal limits of this revenue source. State statutes allow both cities and counties to set tax rates of up to \$1.50 per \$100 of property valuation. Property tax levies used to pay for schools, social services, and certain other services do not count towards the total.¹⁷ So there is a source of funding. And in some instances there is a direct appropriation. The state has provided additional help with an array of new revenue sources, although some of these restrict how the money can be spent. These include the local option sales tax, hotel-motel taxes in some cities and counties (largely restricted to local tourism promotion), and fees for solid waste disposal and vehicle ownership. (See related article, pp. 76–89, for a thorough discussion of the revenue options available to local governments.)

Yet the property tax is the pack mule bearing much of the load for local government, and the property tax—along with the federal income tax—consistently has been found to be *the* least popular tax.¹⁸ (See “What Polls Have Shown about Public Attitudes on Federalism,” pp. 36–41, for more on what various polls have shown about the popularity of the property tax.) Meanwhile, service demands are outstripping local officials’ ability to pay. Mandates—unless there is an appropriation from the state tied directly to the program or service and paying the full cost—eat up discretionary funding that could be used for other local priorities. And they strap local elected officials with the powerless feeling that they are merely passing along dictates from above, with no real power and authority.

To get a picture of how mandates look from the receiving end, the Center discussed the topic with officials from two counties—an urban and a rural one, and three municipalities—small (< 5,000 residents), medium (about 10,000 residents), and large (>100,000 residents). The counties are Guilford in the Piedmont and Greene in the east. The municipalities: Marion in the west, Southern Pines in the Sandhills, and Greensboro in the Piedmont. Here’s what local officials in these units of government had to say on the topic:

Greensboro: Costs Mount for Mandates

While cities and counties across North Carolina have attempted to build the case against man-



dates by compiling lists and documenting costs, Greensboro has done one of the most thorough jobs. City officials came up with a list of 38 mandates, with estimated one-time and recurring costs totaling nearly \$38 million. Among the culprits: the Fair Labor Standards Act, which through a court ruling in the *Garcia* case, subjected public employees to the same wage and hour restrictions that apply to the private sector,¹⁹ and the Americans with Disabilities Act,²⁰ which required such adjustments as special van service for disabled citizens unable to use the bus service. Both mandates are of federal origin—the first from the U.S. Supreme Court and the second from Congress.

The city's greatest source of angst, however, has been a state requirement that landfills failing to meet tough new design standards be closed by Jan. 1, 1998.²¹ The requirement—adopted in anticipation of federal regulations to protect groundwater beneath landfills from pollution—forced public and private entities that wish to operate landfills to invest in expensive high-tech facilities.

Greensboro is developing a high-tech landfill that meets the new regulations, but city officials say they want to close the existing landfill properly. They maintain this cannot be accomplished in the time available. The city is mounding waste at the site, and needs enough garbage to build a hill with sufficient slope to shed rainwater. "We don't re-

ceive enough solid waste, based on projected volume, to meet a 5 percent slope [by the required closure date]," says Elizabeth Treadway, the city's Environmental Services Director. "Long term for us, that means the site fails. You end up with water infiltration that winds up contaminating the aquifer beneath the cell."

City officials say the state regulations affecting the landfill provide an example of a one-size-fits-all approach that doesn't make sense for Greensboro. But their fight for an extension has created a regulatory row in Raleigh, where public and private landfill operators have argued that Greensboro should not be excused from the deadline for closing its landfill while others comply.

But if Greensboro faces a crunch over its landfill, budget analyst Larry Davis acknowledges that the city's larger tax base gives it an advantage over neighbors in meeting the cost of mandates. As an example, he mentions the relative tax burden on Greensboro citizens if the city had to renovate its government complex to meet the requirements of the Americans with Disabilities Act. "If we have to retrofit this building [city hall] to meet ADA requirements, the cost would be similar to what it would be for smaller cities," says Davis. "We just have a lot of people to help pay that off."

Aside from funding, what kind of relief would Greensboro like to see from mandates? "Clearer

final goals and obvious steps that will get us there," says Davis. To achieve that objective, state and federal regulators would need more input from field technicians who must implement mandates. If the objective is cleaner streams and rivers, for example, the expensive stormwater control programs that cities with a population of more than 100,000 have been required to implement will not alone do the job, Davis says.²² Runoff from new homes and commercial development, he says, represents only a small percentage of the problem. "The rest is agriculture."

Guilford County: Hands Tied by Mandates

Guilford County's greatest blessing also is its biggest curse. The county is blessed with the tax bases of two of the seven largest cities in North Carolina—Greensboro and High Point. It is cursed with the need to provide two of everything to serve the populations of cities located at opposite ends of the county. "Most counties have one courthouse. We have two," says J.W. Rowland, county budget director. "Most counties have one public health department. We have two. We have two jails. Everything we have in Greensboro, we have in High Point." Of course, none of this duplication is mandated by the state or federal government. If anything, it would fall under the category of political mandate.

On the plus side of the ledger sheet: the burgeoning tax base allowed for a tax cut and \$13 million in new revenue for the 1995–96 fiscal year. On the minus side: "Before we considered anything at all," says Rowland, "70 percent [of the increase] had to go to support some mandate."

For Guilford, public assistance mandates gobble up much of the revenue growth—particularly Medicaid and AFDC. "That's where we feel the pressure much more than in any other area in terms of providing services," says Rowland. Rowland

believes the two urban centers increase the number of low-income citizens with a high need for public assistance in such areas as Medicaid, AFDC, foster care, and the Women, Infants, and Children (WIC) nutrition program for pregnant women and young children. "We've got to make sure those dollars are there before we even consider putting in dollars for a recreation facility."

And Rowland says these programs are encased in a regulatory straitjacket that frustrates their purpose. "We see the problems. We know the needs far exceed the resources to meet those needs, and we're somewhat stuck," says Rowland. "A social worker should be able to make sure you are receiving the services you need to be a productive citizen. But as a social worker, you spend more of your time doing paperwork. . . . It's eligibility and fraud prevention. . . . It should be about measuring outcomes, seeing if we're making a difference in a mother's life."

Rowland also cites public education as an area where the county provides the local funding but gets little control over policy. "We don't make a lot of decisions at the local level," says Rowland. "The county provides the local funds, but as a board of commissioners, they have no impact on curriculum and how the dollars are spent." The school board exercises most of the local authority for the public schools while the county controls the purse strings, as is the case throughout North Carolina.²³ "This creates inherent conflicts," says Rowland, although the current school board has a good working relationship with the county commissioners.

Solid waste disposal is less an issue for Guilford than for many North Carolina counties. Here again the two urban centers come into play. Guilford has ceded the landfill business to Greensboro and High Point, and the agreement with the two municipalities lasts until 1999.

Rowland's advice on the subject of mandates? "If you have a mandate, fund it. But that is only part of it. Even if the state provided all the funds, we still would like to have some flexibility as to how things are done at the local level."

Increased flexibility would allow the county to provide better service, says Rowland, particularly in the area of human services. For example, the county would like to have a single office where eligibility could be determined for a range of programs—from mental health to Medicaid. At present, the county must maintain three separate databases for three human services departments. That means three separate application processes and three separate intake offices, and it makes the

"Even if the state provided all the funds, we still would like to have some flexibility as to how things are done at the local level."

—J. W. ROWLAND,

GUILFORD COUNTY BUDGET DIRECTOR



Mike McLaughlin

Greene County Manager Allen Hardison, pictured here with Election Board Director June Monroe, says the federal Motor Voter Act forced the office to move from part-time to full-time with no additional funding.

process three times harder than it has to be.

To Rowland, getting approved for public assistance should be as easy as getting a building permit, which takes about 30 minutes. "If a contractor wants a building permit, he can get it all done in the same place," says Rowland. "He goes to the Planning and Development Department and he's in and out in 30 minutes. Can you imagine doing that in social services?"

Greene County: Little Things Mean A Lot

In the Coastal Plain of eastern North Carolina, the growth curve is as flat as the landscape. Greene County lies at the heart of this economically stagnant region. It is one of 19 North Carolina counties that lost population during the 1980s and one of 20 counties projected to lose population in the decade of the '90s.²⁴ Here, the poverty rate approaches 20 percent and the per capita income ranks in the bottom fourth of North Carolina counties.²⁵ The mandate problem gets magnified in small, low-wealth

counties like Greene, says County Manager Allen Hardison.

Consider the requirement that counties have a register of deeds office to catalogue land transactions.²⁶ Many of these offices generate enough revenue through fees charged on land transactions to pay their operating costs. Greene County must pay the \$23,500 net annual loss out of its operating budget. "It's a matter of economies of scale," says Hardison. "You've got to have a certain minimum staffing level to be open, whether you have the transactions or not."

And even programs with noble intent, such as the federal Motor Voter Act, have surprising consequences. A requirement that people be allowed to register to vote through public agencies such as social services departments tripled the workload in the county's elections office. This along with increased reporting requirements forced the office to move from a three-day work week to a five-day work week and increased costs. Hardison says when citizens seek social services benefits, for example, they must fill out a form indicating whether they would like to

"There's a great disparity between the more affluent counties and poor counties in the burden that mandated social services put on a county and what is left over to go to education and other services."

—ALLEN HARDISON,
GREENE COUNTY MANAGER

register to vote. The forms are sent to the elections office, and if the applicant checks yes, the elections office must follow up and process the necessary paperwork to get the person registered. In the first quarter of 1995, Hardison says, there were 373 voter registrations in Greene County. That compares to only 83 registrations for the same quarter in 1994—an election year when more registrations would have been expected.

But Hardison's chief complaint is the requirement that local governments share in the cost of funding for social services programs, such as Medicaid and Aid to Families with Dependent Children.²⁷ Poor counties that can least afford it often have to pay a larger share of their local budget because they have more eligible citizens. Greene County's tax rate is 83.5 cents per \$100 of property valuation for the 1995–96 fiscal year. Of that amount, 22.9 cents goes to pay the \$940,926 local social services bill. Only \$5,000 of the social services spending is discretionary for local officials, Hardison says. That \$5,000 is "a safety net type of account," says Hardison. The discretionary fund is used to help families in emergency situations who don't qualify for mandated programs. "We might spend \$200 at a time to help a family out of a bad situation," Hardison says. Other than that, he says, "We don't take on any optional services unless they take in as much as they cost."

To close the affordability gap for small rural counties, Hardison believes the state should assume the local share of social services costs. "There's a great disparity between the more affluent counties and poor counties in the burden that mandated social services put on a county and what is left over to go to education and other services," Hardison says. "The counties that can least afford to pay the matching share have to pay the largest [proportional] matching share." If the state picked up the local

share, he says, "the burden would be equal from one geographic part of the state to another."²⁸

Like Greensboro, Greene County shares the concern about rigid environmental rules, Hardison says. He says the county has a fairly new landfill dug into densely packed clay that does not allow leachate—the toxic soup that collects at the bottom of landfills—to seep into the groundwater. Yet it must be closed by Jan. 1, 1998, and the county plans to ship its waste elsewhere at twice the cost of burying it in the local landfill. That's a wasted resource brought about by inflexible rules, Hardison says. "We have a 77-acre site," says Hardison. "We'll have about eight acres covered when we have to close."

Hardison also provided insight on why some local government officials don't want to take matching funds or seed money to establish new programs. The higher level of government often provides a share of the initial funding, then pulls it away. To continue the program at the same level, the county must raise taxes. But if it raises taxes, the public expects expanded service. If it cuts back on the program to make up for the lost funds, citizens expect a tax cut. Thus, the higher level of government has created a mandate of citizen service expectations.

That's what occurred in Greene County several years back when the federal government decided to cut Comprehensive Employment and Training Act (CETA) funds that had allowed the county to take on extra workers in a number of agencies, including the library. "When the CETA program ceased, the public was used to having the library open on a certain time schedule," Hardison says. The county, he says, was faced with a dilemma. "Do we reduce back the hours of service or pick up the extra cost?" In this case, the county picked up the extra cost, Hardison says. But to avoid such dilemmas, some local officials would just as soon say no at the outset.

Southern Pines: Rankled by Recycling Requirement

Ask Southern Pines Town Manager Kyle Sonnenberg about mandates, and the first thing he mentions is the requirement that local governments recycle a portion of their waste, rather than disposing of it in the landfill. "It costs three times as much to recycle a ton of waste as it does dumping it in the landfill," says Sonnenberg. "That does not make economic sense for the town of Southern Pines. We have a [recycling] program with a fair amount of participation, but from an economic

sense, it would make much more sense to just pick up a minimal amount of additional garbage."

Sonnenberg says the recycling requirement, which flowed from the Solid Waste Management Act of 1989,²⁹ was implemented based on the notion that the state has a dwindling amount of landfill space. That argument, he says, has been rendered moot by the amount of landfill space—much of it private—that has come on line since the passage of the act.

"It's a ridiculous argument," says Sonnenberg. "Since the law was passed, plenty of landfill space has opened up across the state. Many of these landfills are owned by private industry, but that doesn't mean the supply is limited."³⁰

And Sonnenberg is only beginning to warm to the subject of unfunded mandates. He ticks off a list of items, some of them seemingly worthwhile, that higher-ups in the federalist system have required of towns like Southern Pines. Take police retirement. A 1987 state law required local governments to set up a special retirement system for law enforcement officers and provide a separation allowance if they retire early.³¹ "We had an officer retire early a couple of years ago, and we're paying him \$6,000 a year," says Sonnenberg. "Why should we do that?"

This year, the town will pay more than \$39,000 into the special police retirement system. This amount is over and above what police officers receive as participants in the regular town employees'

retirement system. Each penny on the property tax rate generates about \$66,000 in revenue. So special police retirement costs the equivalent of two-thirds of a cent of the town's 51 cent property tax rate. "It's an insidious thing, these mandates," says Sonnenberg. "They add a little one here and add a little one there, and it starts to add up to real money over time."

Sonnenberg's list of troublesome mandates includes:

■ **Rules regulating underground storage tanks.**

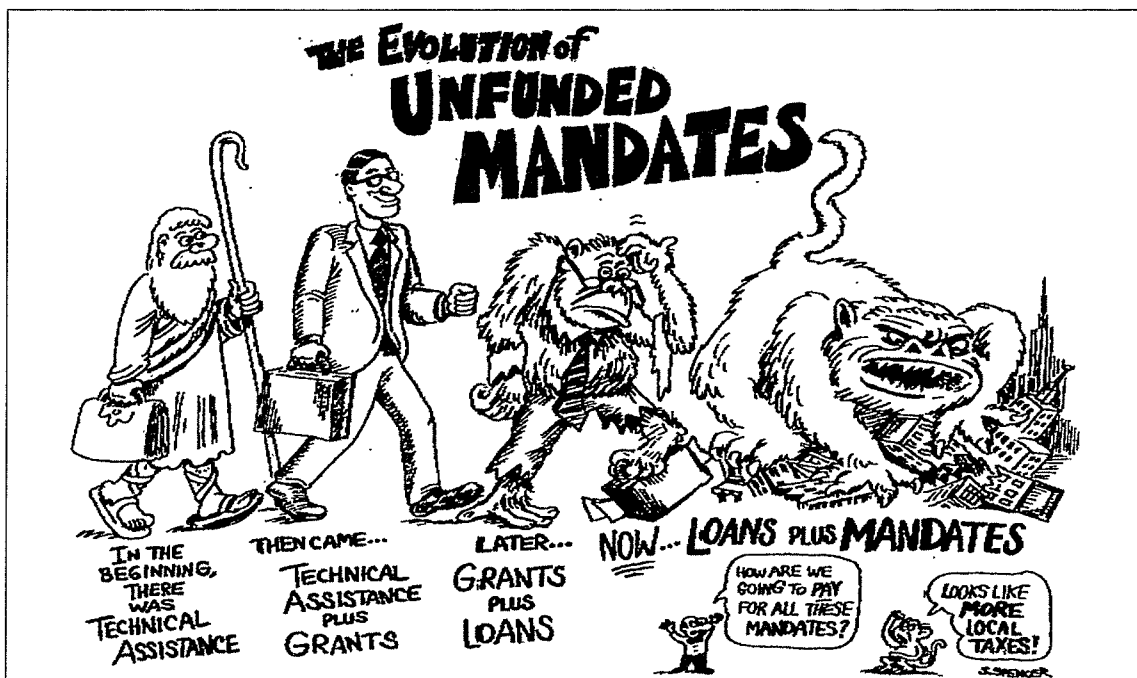
"We spent \$80,000 replacing fuel tanks in Southern Pines because they changed the standard for protection from leaks."³²

■ **The Americans with Disabilities Act.**

"We spend thousands each year making buildings handicapped accessible, putting curb cuts in sidewalks.... It's really, really costly." Sonnenberg's complaint is not so much about new construction but about retro-fitting—making 100-year-old buildings handicapped accessible and placing curb cuts in existing sidewalks. "It's expensive because it's almost all piecework," he says.

■ **State regulations governing treatment of drinking water.**

"A couple of years ago, a portion of our water treatment process had to change to meet a new state mandate. It cost us \$100,000." Sonnenberg says the city had what is called a closed system, in which backwash—the liquid waste produced when filters are cleaned by reversing the flow of water through a treatment



plant—is recycled through the system and treated for drinking. The new rules required that certain conditions be met in order to recycle backwash. If these conditions cannot be met, the water must be discharged rather than recycled.³³

But Sonnenberg's chief complaint about mandates boils down to this: "The entity coming up with the idea isn't the one paying for it. If state government decides something is a wonderful idea, state government ought to pay for it. If the federal government thinks something is a wonderful idea, the federal government ought to pay for it. The federal government gets the credit for improving the environment, and we get the blame for increased cost. People at higher levels don't have the guts to pay for it, but they want the glory of having passed these laws."

Sonnenberg sees the unfunded mandate problem as of fairly recent vintage, brought on by the tight federal budget picture. In the 1960s and '70s, he says, new programs and requirements routinely were accompanied by grants to help pay for their implementation. "The flow of revenue has dried up," says Sonnenberg. "If the dollars were coming in, I don't know that most local governments would be complaining."

The City of Marion: Troubled by Wide Paint Brushes

The way town officials in Marion see it, higher levels of government try to micromanage affairs at the local level and wind up making mistakes. "They want to solve all these little problems, and they paint with too broad of a brush," says Marion Police Chief Tom Pruett. As one example, Pruett cites OSHA regulations requiring that "material safety data sheets" be placed at every work station.³⁴ "A police car is considered a work station," says Pruett. This means each car must have a safety data sheets for its shotgun and ammunition, its pepper spray, its fire extinguisher, and any other materials in the car that might be considered hazardous. "It's hard to put all these things in a police car," says Pruett. The sheets get crammed into the tire well in the trunks of the cruisers and never get read, he says. "It's just one example of where federal government bureaucrats have got too wide of a paintbrush."

In another example of OSHA overkill, Pruett says that to protect the ears of officers, speakers can no longer be mounted with the light bar that perches atop police cars. "We've had to disconnect these \$100-plus speakers and buy another \$100 plus

speaker and put it on the front of the car," says Pruett.³⁵

City Manager J. Earl Daniels says these are just a couple of the nettlesome mandates that make governing a small town like Marion an increasingly expensive and difficult task. Here are a few more of Daniels' complaints:

- **The Davis-Bacon Act.**³⁶ This federal law requires that if the city of Marion uses more than \$2,000 in federal funds for a project, it must pay the prevailing wage rates for the Atlanta region. "In most cases, those wage rates are higher than local wage rates," says Daniels. "It can drive the cost of a project out of sight by having to pay wages considerably higher because of that act."
- **Federal requirements that certain city employees holding commercial drivers licenses submit to random drug testing.**³⁷ "If you're a long-distance hauler, you may not see your boss once a week or even once a month," says Daniels. "Our employees are seen daily. If they've got a problem with drinking or even prescription medication, we're going to recognize it pretty quickly."

Daniels' chief complaint regarding the commercial drivers license requirement is with the town's garbage-packer truck drivers. The town has only two regular drivers. They report to work before dawn and are off by 2 p.m. If one gets called off for a drug test, the garbage won't get picked up without transferring another driver to drive the truck. That employee also must have a commercial drivers license. In addition, the town's larger trucks are fitted with snow plows when needed to clear streets in the winter. Employees must have commercial drivers licenses and submit to drug testing to operate these snow plows. The town must foot the bill for these licenses, and Daniels believes having such a license gives workers the impression they deserve higher pay.

"People at higher levels don't have the guts to pay for it, but they want the glory of having passed these laws."

—KYLE SONNENBERG,
SOUTHERN PINES TOWN MANAGER

■ **Police retirement.** The same requirement that rankled town leaders in Southern Pines ruffled feathers in Marion—special treatment of police retirees. Although it was not required to do so, the Marion City Council responded by awarding other town employees the same amount of extra retirement pay the state mandated they give police. That amounted to 3.6 percent of salary annually as a pension contribution. Still, the police pension contribution included a state match and Marion did not provide that for its other employees, nor were they eligible for the separation allowance mandated for police. Daniels says the mandate unfairly created an elite within the ranks of town employees. “It separates the classes of employment,” says Daniels. “Certain classes of

employees get better treatment than other classes of employees.” Daniels estimates that this mandate alone costs the town more than \$62,000 annually.

■ **Requirements governing water treatment.** Daniels says that because of the size of the town’s chlorine tanks, it is required to comply with certain OSHA safety standards. These require a Central Safety and Health Committee and nine different task groups or teams. Marion only has five employees in its water plant—too few to staff all these committees and fully implement the requirements.³⁸ “We can either violate the law or convert to smaller tanks that allow us to store less than 1500 pounds of chlorine on site,” says Daniels. “That means you have to change tanks more often, which creates more of a danger of a gas leak than using one large tank.” And it’s more expensive.

—continues on page 69



Marion Police Chief Tom Pruett takes issue with state OSHA requirements that safety data sheets be kept in patrol cars. The sheets get packed into already overstuffed trunks and forgotten, Pruett says. “At the station would suffice,” respond state OSHA officials.

**Table 2. Selected Local Government Services And Programs
Authorized Or Required In N.C. General Statutes¹**

CHAPTER 7A: JUDICIAL DEPARTMENT

Description	Citation	Mandate?
Requires the board of county commissioners to study youth needs in the county	N.C.G.S. 7A-289.16	Yes
Requires counties and municipalities to be responsible for physical facilities of the district court	N.C.G.S. 7A-302	Yes
Requires the Director of the Dept. of Social Services in each county to establish protective services for juveniles	N.C.G.S. 7A-542	Yes
Requires state assistance to counties for child protective services to be matched by counties at a rate of 25% effective July 1, 1993; allows use of federal or county funds	1993 Appropriations Act	Yes

CHAPTER 108A: SOCIAL SERVICES

Requires every county to have a board of social services	N.C.G.S. 108A-1	Yes
Requires county board of social services to meet at least once per month	N.C.G.S. 108A-7	Yes

¹ This table covers major subject areas such as social services, public health, education, cities, and counties. As a result, there are chapters of the N.C. General Statutes that were not consulted, some of which contain additional mandates or authorizations. In addition, the federal government often promulgates rules and requires the states to administer them, particularly in the environmental arena. These generally are adopted as state rules and included in the North Carolina Administrative Code. They also may appear in the state implementation plan but not in the statutes or code. Finally, many of local officials' complaints about mandates are directed at federal laws and regulations, which are not included in this table.

"Yes" indicates a mandate that is required regardless of funding.

"Yes*" indicates a mandate that is required as a condition of financial aid.

"Yes**" indicates a mandate that is required if a locality chooses to perform an optional activity.

Table researched and prepared by Jennifer Lehman

Table 2, continued**CHAPTER 108A: SOCIAL SERVICES, continued**

Description	Citation	Mandate?
Sets out duties of county board of social services	N.C.G.S. 108A-9	Yes
Requires the board of social services of every county to appoint a director of social services	N.C.G.S. 108A-12	Yes
Sets out duties of the director of social services	N.C.G.S. 108A-14	Yes
Sets out duties of the special county attorney for social service matters	N.C.G.S. 108A-18	Yes
Requires the following public assistance programs to be administered by the county department of social services or the state Dept. of Human Resources: Aid for Families with Dependent Children (AFDC); food stamps; special assistance; foster care payments; low income energy assistance. Requires Medicaid to be administered by county dept. of social services	N.C.G.S. 108A-25	Yes
Requires AFDC to be administered by the county depts. of social services under federal regulations	N.C.G.S. 108A-27	Yes
Specifies eligibility requirements for AFDC recipients	N.C.G.S. 108A-28	Yes
Requires compliance with federal regulations on work requirements for AFDC	N.C.G.S. 108A-29	Yes
Requires boards of county commissioners through the county departments of social services to be responsible for administration and operation of food stamp programs	N.C.G.S. 108A-51	Yes

Table 2, continued**CHAPTER 108A: SOCIAL SERVICES, continued**

Description	Citation	Mandate?
Gives the Secretary of Dept. of Human Resources power to promulgate rules and regulations for counties to follow in financing programs of public assistance and social services	N.C.G.S. 108A-86	No
Requires the nonfederal share of annual cost of public assistance and social services programs to be divided by state and counties as determined by the General Assembly	N.C.G.S. 108A-87	Yes
Requires board of commissioners of each county to levy and collect taxes required to meet county's share of public assistance expenses	N.C.G.S. 108A-90	Yes
Allows the state to withhold money from counties failing to pay public assistance costs	N.C.G.S. 108A-93	Yes*

CHAPTER 113A: POLLUTION CONTROL AND ENVIRONMENT

Requires local governments in coastal region to participate in cooperative state-local land use planning program	N.C.G.S. 113A-101	Yes
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CHAPTER 115C: ELEMENTARY AND SECONDARY EDUCATION

Requires that special education be provided by all local school administrative units	N.C.G.S. 115C-110	Yes
Requires county board of commissioners to pay school-related clothing and travel expenses for blind students who meet the eligibility requirements	N.C.G.S. 115C-133	Yes
Requires funding of garage and maintenance equipment for school buses	N.C.G.S. 115C-249(e)	Yes

Table 2, continued**CHAPTER 115C: ELEMENTARY AND SECONDARY EDUCATION, *continued***

Description	Citation	Mandate?
Sets out maximum class size and teaching load for various grade levels in the public schools	N.C.G.S. 115C-301	Yes
Requires schools to provide duty-free period for all full-time assigned classroom teachers	N.C.G.S. 115C-301.1	Yes
Requires children between ages 7 and 16 to attend school	N.C.G.S. 115C-378	Yes
Requires local boards of education to provide adequate classroom facilities, including furniture and equipment, and long-range plans for meeting school facility needs	N.C.G.S. 115C-521	Yes
Requires local boards of education to provide equipment and water for school buildings	N.C.G.S. 115C-522	Yes
Requires local boards of education to repair school property	N.C.G.S. 115C-524	Yes
Requires board of every local school administrative unit to insure school property	N.C.G.S. 115C-534	Yes

CHAPTER 115D: COMMUNITY COLLEGES

Requires county funding of land acquisition, building construction, vehicle purchases, and maintenance-related equipment for local community colleges	N.C.G.S. 115D-32	Yes
Requires county funding of operating and maintenance expenses for local community colleges	N.C.G.S. 115D-32	Yes

CHAPTER 122C: MENTAL HEALTH

Requires counties to provide mental health, developmental disability, and substance abuse services through area mental health authority	N.C.G.S. 122C-115	Yes
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Table 2, *continued*

CHAPTER 130A: PUBLIC HEALTH

Description	Citation	Mandate?
Requires counties to provide public health services	N.C.G.S. 130A-34	Yes
Requires local health departments to provide sickle cell syndrome testing and counseling at no cost to persons requesting these services	N.C.G.S. 130A-130	Yes
Requires local health directors to report cases of disease, conditions, and laboratory findings to the Dept. of Environment, Health, and Natural Resources	N.C.G.S. 130A-140	Yes
Requires local health departments to provide immunizations and file monthly immunization reports to DEHNR	N.C.G.S. 130A-153	Yes
Requires physician or local health dept. administering a required vaccine to give a certificate of immunization to the person who presented the child for immunization	N.C.G.S. 130A-154	Yes
Requires counties to provide county rabies vaccination clinics	N.C.G.S. 130A-187	Yes
Establishes local solid waste reduction goals of 25% and 40%	N.C.G.S. 130A-309.04(c)	No
Requires development of comprehensive solid waste management plan, which shall address how to meet the state's waste reduction goals	N.C.G.S. 130A-309.04(e)	Yes
Requires determination by each county and municipality of cost of solid waste management, and requires users of services to be informed of cost	N.C.G.S. 130A-309.08	Yes
Requires each designated local government to initiate a recyclable materials recycling program by July 1, 1991; requires construction and demolition debris to be separated from the solid waste stream effective July 1, 1993	N.C.G.S. 130A-309.09B	Yes

Table 2, continued**CHAPTER 153A: COUNTIES**

Description	Citation	Mandate?
Requires county to have a Board of Commissioners	N.C.G.S. 153A-34	Yes
Sets out powers and duties of county manager, if appointed	N.C.G.S. 153A-82	Yes**
Requires elected register of deeds with minimum of two deputies to record real estate transactions, requires elected sheriff with minimum of two deputies	N.C.G.S. 153A-103	Yes
Requires county to have an attorney	N.C.G.S. 153A-114	Yes
Allows the county to plan and execute training and development programs for law enforcement agencies	N.C.G.S. 153A-211	No
Requires the Secretary of Human Resources to develop standards for operation of local jails	N.C.G.S. 153A-221	Yes**
Requires supervision of local jails; requires the unit operating the facility to pay the cost of emergency medical services	N.C.G.S. 153A-224	Yes**
Requires development of plan for providing medical care for prisoners in local jails	N.C.G.S. 153A-225	Yes**
Requires counties to meet certain standards for jail work release programs	N.C.G.S. 153A-230.3	Yes**
Allows counties to establish and support a fire department	N.C.G.S. 153A-233	No
Allows counties to appoint a fire marshal	N.C.G.S. 153A-234	No
Authorizes provision of public health services	N.C.G.S. 153A-247 through 153A-250	No
Requires counties to provide social service programs	N.C.G.S. 153A-255	Yes

Table 2, continued

CHAPTER 153A: COUNTIES, continued

Description	Citation	Mandate?
Requires counties to reimburse Department of Transportation for cost of labor and equipment for solid waste disposal facilities	N.C.G.S. 153A-291	Yes
Limits fee to no more than the cost of operating the solid waste collection and disposal facility	N.C.G.S. 153A-292	Yes**
Sets out required services for new, extended, and consolidated county service districts	N.C.G.S. 153A-305	Yes
Sets out duties and operating procedures for building inspection department	N.C.G.S. 153A-352 through 153A-375	Yes

CHAPTER 159: LOCAL GOVERNMENT FINANCE

Requires each local government to appoint a finance officer	N.C.G.S. 159-24	Yes
Requires each local government to use a modified accrual accounting system	N.C.G.S. 159-26	Yes
Requires each local government to conduct annual audit and submit annual financial information to Local Government Commission	N.C.G.S. 159-33.1, 34	Yes

CHAPTER 143: STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

Requires county to adhere to bid procedures	N.C.G.S. 143-129, 131	Yes
Requires local watershed protection program	N.C.G.S. 143-214.5	Yes
Requires local governmental units to whom wastewater pretreatment program authority has been delegated to establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received	N.C.G.S. 143-215.1(d)(1)	Yes

Table 2, continued**CHAPTER 143: STATE DEPARTMENTS, INSTITUTIONS, & COMMISSIONS, continued**

Description	Citation	Mandate?
Requires municipalities that operate a wastewater treatment plant to meet certain notification requirements regarding release of untreated or partially treated wastewater	N.C.G.S. 143-215.6D	Yes**
Authorizes counties and municipalities to spend money for water resources development	N.C.G.S. 143-215.39	No
Allows resolutions concerning local cooperation for a federal water resources development project to bind counties and municipalities	N.C.G.S. 143-215.41	No
Empowers local governments to establish application forms and require information as necessary for the issuance of permits for use of floodways	N.C.G.S. 143-215.57	No
Requires DEHNR to make advances to the county, subject to repayment from proceeds of bonds or grants, for beach erosion control and hurricane flood protection projects	N.C.G.S. 143-215.62	Yes**
Allows air permit applicant to request determination from local government as to whether a facility is consistent with zoning ordinances; requires determination to be verified by affidavit	N.C.G.S. 143-215.108(f)	Yes
Authorizes administration of local air pollution control program	N.C.G.S. 143-215.112	No
Establishes Community Child Protection teams in every county	N.C.G.S. 143-576.1	Yes
Sets out duties of director of county dept. of social services	N.C.G.S. 143-576.4	Yes
Sets out duties of director of local dept. of health	N.C.G.S. 143-576.5	Yes

Table 2, continued**CHAPTER 163: ELECTIONS**

Description	Citation	Mandate?
Requires counties to establish local board of elections	N.C.G.S. 163-30	Yes

CHAPTER 160A: CITIES AND TOWNS

Requires powers, functions, rights, privileges, and immunities of the municipal corporation to be exercised by the city council	N.C.G.S. 160A-12	Yes
Requires the city council to appropriate sufficient funds for continuing contracts	N.C.G.S. 160A-17	Yes**
Requires current city boundaries to be drawn on a map	N.C.G.S. 160A-22	Yes
Requires electoral districts to be shown on map	N.C.G.S. 160A-23(a)	Yes**
Requires evaluation of existing district boundaries after the 1990 census	N.C.G.S. 160A-23.1	Yes
Requires cities and towns to follow strict guidelines when annexing property	N.C.G.S. 160A-29 through 160A-58.24	Yes**
Requires each city to be governed by a mayor and a council of three or more members	N.C.G.S. 160A-66	Yes
Requires management of city to be vested in the city council	N.C.G.S. 160A-67	Yes
Requires minutes of city council proceedings to be kept and open to public inspection	N.C.G.S. 160A-72	Yes
Requires each city having a population of 5,000 or more to adopt and issue a code of its ordinances	N.C.G.S. 160A-77	Yes**
Requires council to appoint a city manager in cities with a council-manager form of government	N.C.G.S. 160A-147	Yes**
Requires that there be a city clerk	N.C.G.S. 160A-171	Yes
Requires city council to appoint a city attorney	N.C.G.S. 160A-173	Yes

Table 2, continued

CHAPTER 160A: CITIES AND TOWNS, continued

Description	Citation	Mandate?
Requires city ordinances to be consistent with constitution and laws of N.C. and the U.S.	N.C.G.S. 160A-174(b)	Yes
Lays out requirements for financing projects by special assessments	N.C.G.S. 160A-223 through 160A-238	Yes**
Outlines procedures for sale of city-owned property to private entity	N.C.G.S. 160A-266 through 160A-279	Yes**
Authorizes city to appoint fire chief and maintain fire dept.	N.C.G.S. 160A-291	No
Requires annexing city to take certain steps if the annexation results in loss of rural fire dept. and fire dept. having to terminate a full-time employee	N.C.G.S. 160A-294	Yes**
Gives cities general authority and control over streets, sidewalks, bridges, etc., and includes duty to keep in proper repair	N.C.G.S. 160A-296	Yes
Outlines cost sharing requirements between cities and railroad companies for improvements and installation of safety equipment at railroad crossings	N.C.G.S. 160A-298	Yes**
Establishes notice requirements when a city proposes to permanently close any street or alley	N.C.G.S. 160A-299	Yes**
Requires governing board to consider alternative sites before choosing a new site located within one mile of an existing landfill	N.C.G.S. 160A-325	Yes**
Requires provision for affected residents to be represented on planning or zoning boards when a city elects to exercise extraterritorial zoning powers	N.C.G.S. 160A-362	Yes**
Requires city council to hold public hearing before adopting or amending ordinances addressing planning and regulation of development	N.C.G.S. 160A-364	Yes**

Table 2, continued**CHAPTER 160A: CITIES AND TOWNS, continued**

Description	Citation	Mandate?
Requires city council to designate a planning agency	N.C.G.S. 160A-387	Yes
Requires establishment of historic preservation commission before designating historic landmarks	N.C.G.S. 160A-400.7	Yes**
Requires cities to provide building inspections, outlines process for inspection, condemnation, etc.	N.C.G.S. 160A-411 through 160A-49	Yes
Authorizes creation of regional councils of governments, outlines powers	N.C.G.S. 160A-470 through 160A-478	No
Authorizes creation of Community Appearance Commission; outlines powers, duties, and responsibilities	N.C.G.S. 160A-454	Yes**
Authorizes creation of regional sports authority, outlines powers	N.C.G.S. 160A-479	Yes**
Authorizes cities to set up urban redevelopment commissions; outlines procedures and requirements for commission operations	N.C.G.S. 160A-508	Yes**
Authorizes establishment of municipal service districts, lays out service levels to be provided within districts, taxing authority, etc.	N.C.G.S. 160A-535 through 160A-544	Yes**
Authorizes cities to set up parking authorities, establishes purpose and powers of authorities, provides guidelines for operation	N.C.G.S. 160A-550 through 160A-565	Yes
Authorizes regional public transportation authorities; specifies organizational requirements; outlines purpose and powers	N.C.G.S. 160A-600 through 160A-625	Yes

CHAPTER 160B: CONSOLIDATED CITY-COUNTY ACT

Outlines service requirements for consolidated city-county governments	N.C.G.S. 160B-9	Yes**
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In addition, the town is required to have a certified water plant operator working at the plant at all times.³⁹ Marion currently has four certified operators, but a resignation could put the town in a bind. "Our chief operator can be there in a matter of minutes," says Daniels. "We would never have someone there who can't operate the water plant, and if there's a problem, they're instructed to shut it down and call." One problem with requiring all operators to be certified, Daniels says, is that it takes training, and there is heavy competition for certified workers. "There are a lot of people looking for operators, and there are only so many out there," says Daniels. The danger, he says, is that small towns like Marion will become the training ground for larger towns that can pay more.

Daniels despairs that the mounting mandates make it increasingly difficult to provide services while keeping the tax and utility rates at affordable levels. "How in the world are we going to pay for all this and continue to operate our city?" he asks. Even keeping up with what the mandates require, he says, is costly. "You don't have a place in the

"You don't have a place in the budget that says, 'administrative record keeping for mandates.' There is no such critter."

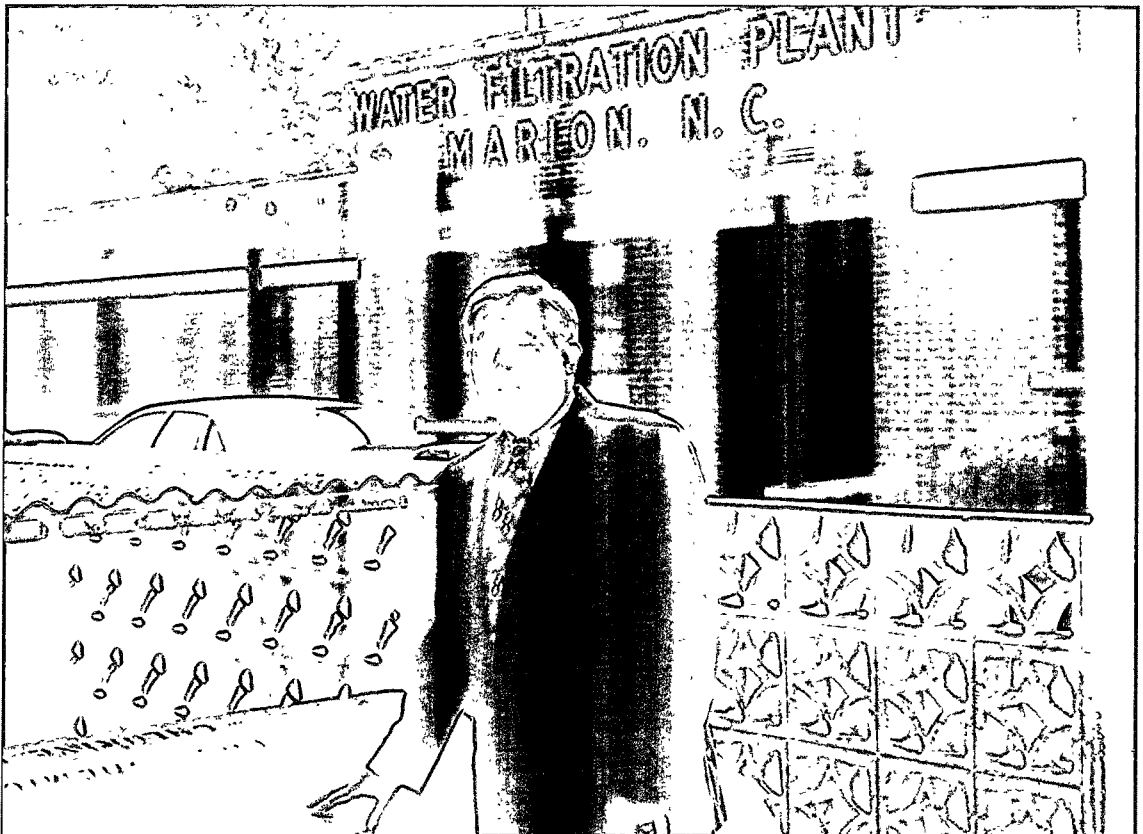
—J. EARL DANIELS,
MANAGER, CITY OF MARION

budget that says, 'administrative record keeping for mandates.' There is no such critter."

Are Recent Reforms Enough?

With federal legislation restricting Congress from imposing mandates with a fiscal impact of more than \$50 million, and state legislation giving local government a larger role in rulemaking, has the problem of unfunded mandates been solved? Local government officials say the answer probably is no. "It's more of a moral victory than anything

Marion City Manager J. Earl Daniels at the municipal water plant, where many mandates hit home



Mike McLaughlin

else,” says Terry Henderson, director of advocacy for the N.C. League of Municipalities. “Congress can do anything it wants, and there are escape hatches in [the law].”

Neither the state nor the federal legislation is retroactive. “Existing regulations are not affected, and there may be some existing regulations that need some help and work,” says Henderson. In addition, getting accurate estimates of the cost of implementing mandates is difficult, whether at the state or federal level. Both levels of government are depending on increased local government involvement in estimating program costs and crafting rules to implement legislation. To some extent, the success of these new efforts depends upon the quality of local government input.

At the state level, groups like the N.C. Association of County Commissioners and the N.C. League of Municipalities are focusing their attention on strengthening their relationship with people who make administrative rules. “We’re taking a much closer look at our relationship with the regulators,” says the League’s Margot Christensen. “We’re making sure they know what we’re doing, so they don’t just have blinders on with the science of regulation.”

Both the league and the association have developed advisory groups of city and county managers, finance officers, and field operations specialists such as wastewater treatment plant operators and landfill operators to help administrative rule makers develop regulations that are practical and workable.

Buck Byrd, chief water plant operator for the city of Marion, has decades of experience to offer in the production of clean drinking water. And he offers free samples to visitors at the plant. Field operators like Byrd represent a wellspring of common sense advice for regulators.



Mike McLaughlin

**Table 3. Top 10 Most Expensive State Mandates to
Local Government in North Carolina**

Rank	Mandate	Units Affected
1	Provide adequate facilities for public schools	counties
2	Pay local share of Medicaid costs	counties
3	Pay local share of Aid to Families with Dependent Children costs	counties
4	Various water testing requirements	primarily cities
5	Wastewater monitoring	cities
6	Comply with Solid Waste Management Act through recycling, land-fill construction regulations, and increased tipping fees	cities and counties
7	Provide certain pension benefits for law enforcement officers	cities and counties
8	Comply with federal Occupational Safety and Health Act (state administered)	cities and counties
9	Conduct fire inspections	cities and counties
10	Adopt watershed protection ordinance	cities and counties

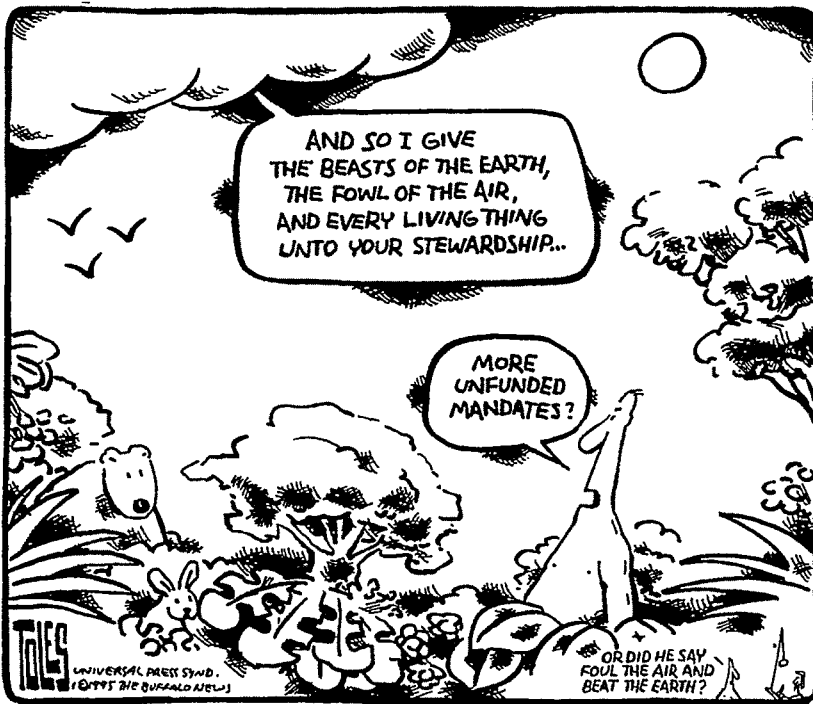
Source: Opinions of Jim Blackburn, legal counsel for the N.C. Association of County Commissioners and Terry Henderson, director of advocacy for the N.C. League of Municipalities

And local government officials are winning appointments to rule-making bodies such as the Environmental Management Commission, which is the chief state policy-making board on environmental issues.

Given that there is little sentiment for an outright ban on mandates, what else do local government officials want? A ranking state environmental official argues that local officials want laws and regulations that make sense. "The real reason these measures have generated such a hue and cry is that specific requirements imposed on local governments have too often been unreasonable—requiring local governments to spend a lot of money with little return to human health or environmental protection," says Steven J. Levitas, deputy secretary of the Department of Environment, Health and Natural Resources.

Levitas makes the distinction between unfunded versus "unfounded" mandates. "For example, under 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 governments 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 reduced monitoring."

Levitas argues that complying with certain other mandates is simply a cost of doing business. "Most Americans would agree that local governments should not build landfills that contaminate groundwater or run drinking water systems that poi-



son their customers. When such mandates are imposed on local government, there is no reason why the federal or state government should pick up the cost of compliance, any more than they do for the many private parties that provide the same services—often in competition with local governments.”

The league’s Henderson takes a slightly different slant. “We want what’s reasonable and feasible,” he says. “And if it’s a major priority, we want some funding.” Like a number of local officials interviewed for this article, Henderson holds that the level of government that makes the policy should be the one that pays for it. “Who should pay for the state and federal government’s priorities?” he asks.

Conclusion

It is difficult to gauge the magnitude of the unfunded-mandate problem. Higher levels of government often pass along at least part of the funding, and when the funding isn’t forthcoming, local government has the authority to raise property taxes. Still, raising taxes to pay for new programs at any level of government is becoming increasingly difficult, and the property tax is among the least popular of all taxes. Local government officials make a compelling case that at least from a *political* standpoint, paying for mandated programs interferes with their ability to fund local priorities. That’s because even though the authority is there,

the political *will* is increasingly lacking to raise property taxes to pay for local priorities.

The result is a funding crunch for local government, and mandates may be a part of the problem. Yet as long as there is a federalist system, there will be instances when higher levels of government work their will on the next level down. And if local taxpayers must pick up some of the cost, they also receive such benefits as clean drinking water, safer workplaces, more accessible public facilities, and better public health. Local government officials resent being dictated to from above, and

they raise credible concerns about the need for flexibility in applying rules at the local level. But the evidence suggests that mandates—at least *unfunded* mandates—are less of a problem than the rhetoric might suggest.

That’s particularly the case with mandates handed down from the state. The N.C. Association of County Commissioners, for example, uncovered only one clear example of a totally *unfunded* mandate, despite a thoroughgoing search—that one created when the state withdrew financial assistance for the provision of energy in the public schools but left the mandate.⁴⁰ In fairness, there were plenty of programs in which the state picked up only part of the cost, but that should not be surprising in a system in which the counties are political subdivisions of the state responsible for direct service delivery. (See Table 3, p. 71, for a list of the top 10 most expensive state mandates to local government in North Carolina.) And in some cases, instead of mandating a program with no revenue, the state provides revenue with no mandate, such as utilities tax revenue returned to cities, as well as portions of beer and wine tax revenue returned to cities and counties that allow sale of these beverages.

Many of the complaints leveled by local officials interviewed for this article took issue with *federal* mandates, rather than those handed down by the state. This is particularly the case with cities, which are more likely to engage in water and sewer

treatment and thus get hit with expensive federal environmental mandates. (See Table 4 below for a list of selected federal mandates affecting state and local governments and their estimated cost.) Clearly, these requirements can have a cumulative impact that results in significant costs for cities, as Greensboro officials were able to document.

Yet the Center's research suggests that part of the problem has been poor communications between various levels of government. Local government officials are not always certain what is required of them when a higher level of government passes a new law, and it seems as important for the higher level of government to communicate what is required as it is for the lower level to receive the message.

State and federal legislation passed in 1995

will at least assure that communications improve. Local government officials will have a larger voice in the development of legislation and regulations that affect the way they do business. There also will be a stronger effort to assure that the cost has been weighed against the benefit, and that the dollars have been identified to pay the tab. If these reforms can be made to work—resulting in more reasonable regulation, a greater awareness of the cost of new programs versus the benefit, and increased attention to the need to make sure that local governments have the wherewithal to pay for new priorities—local governments will have achieved much in the way of mandate reform. A guarantee of full funding for every program requirement handed down by a higher level of government is probably too much to expect. ■■

Table 4. Cost Estimates of Selected Federal Mandates to State and Local Governments

Title of legislation (Year passed)	Estimated cost (in millions)	
	1991	Multi-year*
Social Security Amendments (1983)	\$838	\$5,334
Medicare Coverage for New State and Local Employees—COBRA (1985)	306	1,382
Pipeline Safety Authorization (1986)	57	213
Water and Reclamation Projects (1986)	9	23
Water Resources Development (1986)	548	1,458
Employment for the Disabled (1986)	7	19
Education of the Handicapped (1986)	600	1,175
Veterans Benefits and Health (1986)	2	10
Lead Contamination Control Act (1988)	6	14
Medicare Catastrophic Coverage (1988)	190	780
Family Support Act (1988)	160	136
Ocean Dumping Ban Act (1988)	33	165
Medicare Catastrophic Repeal (1989)	460	1,115

* Estimates are generally for a five-year period.

Source: Congressional Budget Office

Table reprinted from *State Trends Bulletin*, Council of State Governments, Lexington, Ky., Vol. 1, No. 3, April/May, 1995, p. 3.

FOOTNOTES

¹ Public Law 104-4 (2 USC 1501).

² Chapter 415 of the 1995 Session Laws (HB 895), now codified as N.C.G.S. 150B-21 ff., 120-30.45 ff., and 120-36.8.

³ Susan Bush, "Mandate Relief: Reality or Rhetoric?" *State Government News*, Lexington, Ky., May 1995, pp. 6-10.

⁴ N.C.G.S. 143-214.5.

⁵ N.C.G.S. 153A-221.

⁶ For more on the solid waste disposal woes of local government, see Tom Mather, "Trying to Make Molehills out of Mountains of Trash," *North Carolina Insight*, Vol. 10, Nos. 2-3 (March 1988), pp. 40-52. See also Mike McLaughlin and Amy Carr, "Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste," *North Carolina Insight*, Vol. 12, No. 1 (December 1989) pp.2-39.

⁷ N.C.G.S. 108A-87.

⁸ "Local Government Tax Aid—Historical Data (table)," *Overview: Fiscal and Budgetary Actions*, Fiscal Research Division, N.C. General Assembly, 1995 session, p. 378.

⁹ As quoted in the editorial "Rusty Knife Surgery," *The Charlotte Observer*, May 26, 1993, p. 10A.

¹⁰ *Report of the Committee to Investigate Unfunded State and Federal Mandates*, N.C. Association of County Commissioners, April 1994, p. C-1.

¹¹ 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 that the state forces counties to spend something for a program... whether 5 percent or 100 percent," Witherspoon says.

¹² N.C.G.S. 115C-521.

¹³ Public assistance included Medicaid, Aid to Families with Dependent Children, food stamps, and special assistance.

¹⁴ A number of local government officials, in reviewing this

article prior to publication, noted that providing authority to raise revenue—whether through a new tax or a fee—is not the same as providing funding. Therefore, they would consider any new requirement to be unfunded unless dollars were appropriated to pay for it.

¹⁵ Gov. James B. Hunt Jr., "Fiscal Notes on Administrative Rules Affecting Local Governments," Executive Order No. 49., May 17, 1994.

¹⁶ N.C.G.S. 160A-411.

¹⁷ For county authority to levy the property tax, see N.C.G.S. 153A-149. For cities, see N.C.G.S. 160A-209.

¹⁸ *Changing Public Attitudes on Governments and Taxes*, 1994, U.S. Advisory Commission on Intergovernmental Relations, p. 3.

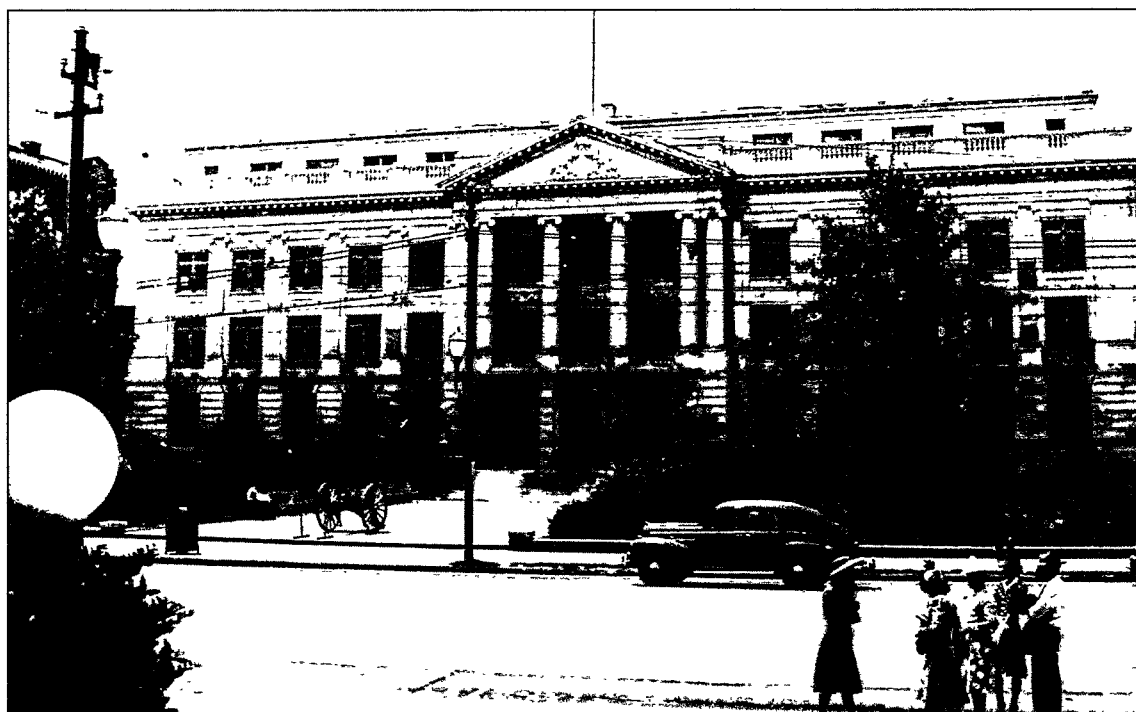
¹⁹ *Garcia v. San Antonio Metropolitan Transit Authority et al.*, 105 S. Ct. 1005 (Feb. 19, 1985).

²⁰ Americans with Disabilities Act of 1990 (Public Law 101-336). Ken Franklin, director of the state Office on the Americans with Disabilities Act in the Department of Administration, says there are some misconceptions among local government officials about what the act requires. For example, the act does not require local governments to make *buildings* accessible. Instead, *programs* must be accessible. If a program is operated in a building where there is a continual need for persons with disabilities to have access, the program must be moved or the building made accessible. If a person with a disability has a random or occasional need for a program or service in an inaccessible location, a temporary accessible location or other alternative provisions can be used to serve that person.

²¹ 15A NCAC 13B.1627(10)(A)

²² The requirements for removing pollutants from stormwater runoff flow from federal law— Sec. 402P of the Clean Water Act, 1987 Amendments (40 CFR 122.26)—and currently apply to cities with a population of more than 100,000. In North Carolina, these cities are Charlotte, Durham, Fayetteville, Greensboro, Raleigh, and Winston-Salem. Bradley

Guilford County Courthouse, circa 1950



Bennett, supervisor of the stormwater group in the Water Quality Section, N.C. Division of Environmental Management, says the emphasis of the program is on preventing pollution by reducing the flow of pollutants to be carried by stormwater runoff. The regulations require affected cities to "reduce pollutants from the storm system to the maximum extent possible," Bennett says.

²³ G.S. 115C-429.

²⁴ *Population Projections: 1991-2020, North Carolina and Its Counties*, N.C. Office of State Planning, July 1992, pp. 8-9.

²⁵ U.S. Census Bureau, 1990 data.

²⁶ N.C.G.S. 153A-103.

²⁷ According to the N.C. Division of Social Services, counties are responsible for 50 percent of AFDC administrative costs and about 16 percent of AFDC payments. As for Medicaid, the county share is 50 percent of administrative cost and 5.2 percent of payments to vendors.

²⁸ John Witherspoon, a former county manager in Guilford and Cabarrus counties, says that Hardison's suggestion that the state pick up the cost of social services programs is understandable but too expensive, since it would cost the state more than \$300 million. A more feasible approach, Witherspoon argues, would be to have the counties responsible for a maximum property tax rate—say 8 cents—for such programs. The rest would be raised from statewide taxes. "In this way, all taxpayers would have the same exposure for bearing the cost of the program," Witherspoon says.

²⁹ N.C.G.S. 130A-309.

³⁰ Paul Crissman, supervisor of the Special Wastes Branch, Solid Waste Section, DEHNR, acknowledges that landfill space has become widely available since the passage of the Solid Waste Management Act. But Crissman takes a broader view of the benefits of recycling. He notes that properly designed, recycling programs can be operated in a cost-effective manner. Constructing a new landfill, on the other hand, is "incredibly difficult politically, as well as financially expensive." Sonnenberg, however, says the town seeks competitive bids from private operators for both its recycling and solid waste disposal programs, and solid waste disposal in a landfill is cheaper. Crissman touts the conservation benefits of reusing a resource instead of burying it in the ground and notes that the recycling industry has become a major jobs creator in North Carolina since the passage of the act.

³¹ The separation allowance requirement is contained in G.S. 143-166.42, while the requirement for a special 401(K) plan for law officers is outlined in G.S. 143-166.50. The N.C. League of Municipalities estimates the statewide cumulative cost of special retirement benefits for local law enforcement officers at \$61.79 million from the 1987-88 fiscal year through 1993-94. Concord Police Chief Robert Cansler, chair of the N.C. Association of Police Chiefs legislative committee, says the legislation requiring 401(K) contributions and a separation allowance stemmed from a decision to disband the local N.C. Law Enforcement Officers Retirement System and cover law officers through the local government pension fund, a move which cost officers benefits. The legislation was intended to restore the benefits officers enjoyed under the old system. Nonetheless, Sonnenberg says towns didn't pay for the old police retirement system and wouldn't choose to pay for the new one without the mandate.

Cansler says there is a policy consideration behind encouraging older officers to retire early. "You don't want a 65-year-old man standing beside the road trying to wrestle with a drunk driver and an intoxicated passenger," says Cansler. "That's not going to work. You're going to be paying death benefits instead of retirement benefits." Sonnenberg says this policy decision should be made by policymakers who have to pay for it—not state legislators.

Finally, Cansler says local governments were granted additional sales tax authority during the same session in which the pension benefits were enacted, so the mandate wasn't truly unfunded. Local government officials disagree with this assertion, arguing that local governments already faced more costs than the additional sales tax authority could cover and that the move to add the optional penny to the local sales tax was unrelated to the pension issue.

³² Rules governing underground storage tanks are found in 15A NCAC 2 N. However, Jeanne Hartzell, a hydrogeological technician in the Department of Environment, Health, and Natural Resources, says there is nothing in the regulations that immediately requires that tanks be replaced. Regulated tanks must be monitored for leaks, she says, and will have to have corrosion protection by Dec. 22, 1998. If corrosion protection can't be added to an existing tank (i.e. because the tank is structurally unsound), it will have to be removed, closed in place, or replaced, she says. Sonnenberg says the monitoring requirement was a new requirement with its own implementation schedule. "Due to the mandated cost of monitoring, it was more cost effective to replace the tanks early than to pay the monitoring cost," Sonnenberg says.

³³ 15A NCAC 18C .0404 (k). Richard Durham, Section Chief in the Public Water Supply Section, Division of Environmental Health, says conditions governing recycling of backwash were established primarily to control the formation of organic compounds called trihalomethanes in public drinking water. These compounds are formed when chlorine reacts with organic matter in the treatment process. While microbial contaminants can cause immediate outbreaks of waterborne disease, long-term exposure to excessive levels of trihalomethanes also carries health risks, says Durham. Thus, water treatment is a balancing act. Backwash can be recycled if the conditions in the rules intended to control the formation of trihalomethanes can be met, Durham says, but not all cities can meet the conditions.

³⁴ Requirements for material safety data sheets are laid out in 29 CFR (Code of Federal Regulations) 1910.1200 (g) (9). Ed Geddie, health standards officer in the OSHA Division, N.C. Department of Labor, believes that in the case of police officers, material safety data sheets would not have to be in each car as long as police could have access to them by radio in an emergency. "At the station would suffice," he says.

³⁵ Geddie says that although OSHA does have standards regarding on-the-job noise exposure, they do not specify that speakers be removed from the tops of police cars. Robert Cansler, police chief for the town of Concord, offers a different perspective on speaker placement. "There's considerably less risk to the officer's ear to put it at the front of the car than to put it right over the top of his head within inches," says Cansler. "I don't know if it's an OSHA requirement or not, but it's the right thing to do, and we're doing it," he says of moving the speakers.

³⁶ Public Law 74-403.

³⁷ Omnibus Transportation Employee Testing Act of 1991 (regulations are in 49 CFR 382).

³⁸ Geddie says because Marion's chlorine tank holds more than 1,500 lbs., its operation is subjected to a federal process safety management standard (29 CFR 1910.119). However, he says the process safety management standard does not specifically require eight employees to implement. He does agree that switching chlorine tanks frequently creates a greater risk of leaks than having a large tank, but says the standard was developed following incidents such as an explosion in Texas caused by failure to follow adequate safety procedures.

³⁹ 15A NCAC 18D .0206(b).

⁴⁰ Former County Manager Witherspoon argues that use of the term "totally unfunded mandate" sets up a straw man. "I maintain that if the program is mandated and not 100 percent funded by the mandating authority, it's unfunded," he says.