

# **"The Buck's Passed Here": Unfunded Mandates for State and Local Governments**

**By G. Tracy Mehan, III**

**So** many of the arguments over the costs and benefits of federal laws and regulations usually center on private businesses. Yet, increasingly, state and local governments are giving voice to many of the same complaints. Thus, we enter into the debate over what is usually referred to as "unfunded mandates" or the "cumulative burden" on states and municipal governments.

You may not have marked your calendar yet, but October 27th has now been designated National Unfunded Mandates Day by the U.S. Conference of Mayors. This new civil festival does not roll easily off the tongue. Still, the concept is a simple one. The federal government, in the form of laws passed by the U.S. Congress and signed by the President, mandates new and more costly programs for lower levels of government, without any corresponding increase in funding. Given the prevalence of this approach with respect to private business, it may not be surprising to many citizens that this occurs. But the sheer magnitude of the financial impacts to state and local governments, as well as to their taxpaying citizens, ought to give everyone pause.

In 1991, the city of Columbus, Ohio, undertook what became a landmark study of the cumulative costs of regulatory compliance with environmental legislation alone. The city identified 22 different federal and state mandates implemented in each of the three previous years. While noting that federal and state funding was decreasing, the city concluded that over the next ten years, its costs to comply with these mandates would amount to \$1,088,484,880 in 1991 dollars. This figure yielded a cost of \$850 per household per year. Keep in mind that Columbus's total city budget for 1991 was \$591 million. Of course, the figures rise with any uptick in the rate of inflation.

State and local governments confront different aspects of the unfunded mandate problem. Federal courts, in addition to the U.S. Congress, also torque the budgets of even the most responsibly managed jurisdiction. This is often a problem for state governments. Then-Governor John Ashcroft of Missouri lamented this situation in his 1991 State of the State Address. Noting several major court cases dictating higher spending for urban schools and state prisons, he pointed to fourteen new federal mandates for Medicaid and other federal mandates requiring state spending of \$112 million over the previous year's appropriation for these affected programs. This figure pretty well gobbled up the anticipated revenue growth of \$136 million for the year.

The bottom line, according to Governor Ashcroft, was hardly a triumph for federalism: "The federal Congress and courts now effectively tell us how we must spend 35 percent of our total budget and over 80 percent of our new general revenue."

And the beat goes on. According to the Midland, Michigan-based Mackinac Center for Public Policy, in the 102nd Congress, which ended in December 1992, 244 bills containing mandates were proposed. The Center also calculated that for 1993, \$95.3 million, or 30 percent of Michigan's

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revenue growth, would be consumed by Medicaid mandates. These same mandates were also projected to grow at an annual rate of 49.1 percent through 1995 while Michigan's General Fund lagged behind at 5.5 percent.

Recently, EPA published a proposed rule to reduce the discharges of persistent, bioaccumulative toxics to all of the Great Lakes and their tributaries. Eight different states are covered by this regulation. Michigan is pretty far along the curve in terms of its own strict water quality rules already in place. Despite the state's progressive regulatory regime, the Michigan Municipal League noted the significant costs of the new rule for its 93 largest wastewater treatment facilities with one million gallons per day capacity. Taking the proposed regulation as published, the League estimated the potential capital expenditure for those facilities requiring added treatment to be over \$265,000,000, with annual operation and maintenance costs over \$72,000,000. Again, this is for only one of eight states in the Great Lakes region, a state which has already absorbed higher costs under a fairly aggressive water quality program of its own. Fortunately, EPA has not yet finalized the rule and appears to be considering several cost-effective changes.

The spectacle of state after state, city after city, reeling from the torrent of federal mandates is really quite numbing. While EPA is a convenient whipping boy, the root of the problem is a string of laws, passed independently of one another, under the auspices of a sprawling congressional committee system, with little regard for the cumulative impact on lower levels of government. "Basically, it's a matter of buck-passing," says Mayor Victor Ashe of Knoxville, Tennessee.

The buck's passed here—to states, municipalities, towns, and villages who must expend limited political capital on revenue-raising measures (read "taxes") and tough budget cuts to accommodate the federal government's ambitious social agenda. Local governments must display the courage of Washington's convictions.

There seems to be no priority or hierarchy among the various and sundry mandates emanating from the Congress, the courts, and the federal regulatory agencies. All risks are equal. Resources are deemed to be infinite. No need to choose, prioritize, or sequence programs. Washington takes a lesson from Nike: "Just do it."

Just do the Americans with Disabilities Act. Just do Medicaid. Just do clean air, clean water, safe drinking water, leaking underground storage tanks, solid and hazardous waste control. And don't forget asbestos! Meanwhile, fire and police protection, hospitals, parks, roads, and everything else usually deemed to be the responsibility of local government, still needs attention. Is it any wonder that the U.S. Conference of Mayors passed a resolution this June calling on Congress to require risk assessments and cost-benefit analyses in all legislative mandates? The mayors also demanded that Congress and the President oppose any new mandates without full federal funding. The Conference is confident that over 1,000 cities and counties will participate in "NUM-Day" (for National Unfunded Mandates Day), October 27th.

Los Angeles Mayor Richard Riordan, vice chairman of the Conference's Task Force on Unfunded Mandates, told reporters at an October 4 meeting that "In Los Angeles alone, in this fiscal year we will spend \$576 million to comply with federal mandates." He went on to point out that four and one-half million staff hours would be commandeered for these mandated projects. He also forecasted that Los Angeles will spend over \$6 billion in capital expenditures, over the next five years, to stay in compliance.

Is anyone listening? The answer is not clear. Certainly, the mayors, just like the governors before them, are agitated and agitating for change. According to Matthew Rees, writing in the September 18th issue of *The Wall Street Journal*, there are twenty bills, sponsored by members of both parties, under consideration in Congress that would limit unfunded mandates. And Vice President Gore's National Performance Review recommends that President Clinton limit the use of unfunded man-

dates by the Administration. Yet, in the final analysis, nothing has changed with regard to those fundamental, underlying statutes which, ultimately, drive the regulatory agendas for the administrative agencies and guide the federal courts in their decisions.

Support does appear to be coalescing behind legislation sponsored in the U.S. Senate by Idaho Senator Dirk Kempthorne, a Republican, and in the House by California Representative Gary Condit, a Democrat. Philadelphia Mayor Edward Rendell, another vice chairman of the Conference Task Force, stated the intent of the legislation in no uncertain terms: "If you pass the bill, don't pass the buck to the local government. If you pass the bill, you pay for it yourself."

Basically, state and local governments are experiencing a rampage of cost shifting, which has been the fate of business and industry for many years. It is, however, very discouraging that these governmental entities, which do not carry any of the same political baggage as private enterprise, are faring no better.

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