

MEMORANDUM

DATE: April 14, 2009
TO: The Board of Supervisors
FROM: John E. McDonald, Manager, Financial and Management Services
SUBJECT: State and Federal Mandates on Local Governments

In 2008 the Commission on Local Governments published a catalog of State and Federal Mandates on Local Governments; it can be accessed using the following website:

<http://www.dhcd.virginia.gov/CommissiononLocalGovernment/pages/newcatalog.htm>.

It is 364 pages long, covers 560 mandates and, as the document itself indicates, is incomplete.

Compulsory Orders

These are orders that are requirements for local governments. They include a wide variety of mandates – the largest numbers involve education and social services.

Conditions of Financial Aid

Recent news headlines relating to stimulus funding for State unemployment programs illustrate one major source of mandates – conditional aid. The Federal government does not mandate that State unemployment funds offer benefits to part-time employees (and many States do not now include these benefits). If the State wants any Federal stimulus funds to replenish exhausted unemployment balances, however, the State must offer benefits to part-timers.

These conditional appropriations, including those for programs like the Federal “No Child Left Behind Act” create performance, operational, and reporting requirements that are required if funds are accepted. They become mandates for local governments if the funding is accepted by the State.

Regulation of Optional Activities

These are regulations that are implemented if a local government has an optional activity – for example, landfills, water/sewer systems, airports, marinas, childcare, etc.

Some of the optional activities are not entirely optional. An example is erosion and sediment control (optional). All the requirements under the Chesapeake Bay Act, wetlands, Resource Protection Areas (RPAs), and a range of environmental health services are compulsory, as are subdivision and site plan stormwater features, which tends to make Erosion and Sediment Control (E&S) less and less of an optional activity.

State Fiscal Pre-emption

It does not attempt to include burdens imposed by judicial decision or by circumstances where Federal and State financial assistance is reduced without a corresponding decrease in required services. The Compensation Board is an example – cities and counties are required to pay all bills for compulsory State offices and the level of State reimbursement can vary depending on each budget.

What is missing from this list?

Not included are requirements that are imposed on activities rather than specifically targeting localities. Payrolls, as an example, must withhold Federal and State taxes, among other amounts that the employer must pay directly. Remittance and reporting requirements come with financial penalties if not done correctly and the costs of a functioning payroll system are un-reimbursed. A payroll system is not mandated, *per se*, but the number of employees mandated under State law would require a payroll system.

Also not included are various administrative requirements. State Code simply states that certain agencies create standards (The Virginia Department of Transportation (VDOT), as an example, for anything having to do with transportation). The Library of Virginia, as an example, recently increased the retention period of local government personnel records (including those of part-time and temporary employees) from five years to 50 years.

The State Code includes a number of instances where the Code not only sets out what must be done, but how it must be done. There are no alternatives or exceptions offered in the Code so any expense incurred by the locality to meet the exacting requirements of the Code could be considered an unfunded mandate. An example – advertising for a real property tax rate – what the ad should say, how big it is as measured by a standard newspaper page, how big the font is, how many times and how soon before a public hearing it must be published, etc.

Some Dillon Rule provisions could be considered mandates; one locality can augment property tax revenue using cigarette, gas, or admissions taxes while another locality cannot.

Finally, the Constitution of Virginia exempts charitable organizations from local property taxes. The legislature has taken initiatives to expand on the Constitutional definitions. As an example, college alumni associations and foundations have been declared to be, legislatively, charitable organizations. This has resulted in a tax exemption for the William and Mary Foundation-owned commercial property in New Town available for lease as office space.

Discretionary Spending

Any County program or expenditure that does not directly or indirectly address a State or Federal mandate (or a legal requirement, such as debt service payments) can be considered as discretionary. I have attempted to estimate, based on a department-by-department review and in very broad terms, what portion of the County's budget could be considered as mandated, either directly or indirectly, and what portion could be considered discretionary. In round numbers, please refer to the chart below:

FY 2010 Operating Budget Spending	\$164,100,000
State Aid, Fees, Charges – Offset	<u>(23,400,000)</u>
FY 2010 Net Spending	\$140,700,000
Calculated as Mandated Spending	<u>(113,300,000)</u>
Calculated as Discretionary	\$27,400,000

What is included within Discretionary Spending?

Much of what might be considered an investment in the County's Quality of Life, as opposed to public health and safety, could be classified as discretionary.

School Operating Contribution – an estimated County expenditure of \$10 million above and beyond basic academic needs and minimum class sizes; interscholastic athletics, after-school art/chorus/theater/band and activity buses, school nurses, some administrative and operations staff, travel, vehicles, IT (except as needed for mandated programs like student records).

Library/Parks and Recreation – current spending net of fees of \$7.5 million – includes all County spending.

County Administrative/Support – \$2.4 million from FMS, Human Resources, County Administration, County Attorney, Treasurer, Commissioner, IT, Facility, Fleet, and Grounds Maintenance – attributed to support for discretionary functions.

County Divisions – \$2.2 million – all County funding, net of fees, for Housing, Transit, Economic Development, Neighborhoods, Communications, Satellite Services, and Cooperative Extension.

Outside Agencies – by \$900,000 – Funding, net of room tax proceeds, is almost exclusively discretionary. The only exceptions are basic dues to the Hampton Roads Planning District Commission (HRPDC), CAA, and State forestry. Under “public health and safety,” the contributions to the volunteer EMS and Fire could be added.

Solid Waste – by \$900,000 – Funding, net of fees, is discretionary for recycling, bulk pickups, convenience centers, litter, and “green” programs. Expenses mandated to monitor the closed landfill would continue.

Police – by \$700,000 – Funding for school resource officers, bike and marine patrol functions, community policing, accreditation, etc. is discretionary as are some administrative positions, including the grants writer and gang investigator.

Fire/EMS/Emergency Management and Dispatch – by \$700,000 – some administrative staff, equipment, staffing per fire apparatus, EMT bike patrols, accreditation.

Other Programs and Functions – \$1,500,000 – greenspace/Purchase of Development Rights (PDR) coordination, GIS, property information system, websites, televising meetings, some Social Services programs, benefit programs (Employee Assistance Program (EAP), dental, family health insurance, wellness), streetlights, the contribution to capital projects, and all non-departmental spending, except debt service.

Development Management, including Stormwater, has proven to be a challenge – attempting to separate mandated from discretionary spending. In many cases, such as code and environmental enforcement, comprehensive planning, stormwater permits – the expenses are mandatory. Other spending, such as the proffer system (cash and other), is discretionary.

Court spending is almost all mandatory, although there are programs, such as victim witness assistance within the Office of the Commonwealth Attorney, that are discretionary. Locally funded employees in the Sheriff’s office and in the Office of the Circuit Court Judge are discretionary.

Mandated spending includes the major share of the local contribution to schools. It also includes spending for debt service, most health and welfare spending, elections, real estate assessments, courthouse, jail, and juvenile detention.

Summary

Discretionary choices for investment and spending using local tax dollars are exclusively vested with the Board of Supervisors. In some cases, the spending may be trimmed or eliminated in a relatively short time frame. In other cases, the Regional Library is an example; contracts and agreements with other localities will require time to re-negotiate before decisions can be made.

John E. McDonald

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Attachment