

LOCAL GOVERNMENT MANDATES IN PENNSYLVANIA: HOW “BURDENSOME” ARE THEY?

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Although the issue of state mandates has been off the agenda in recent years, the fiscal constraints imposed by the “new normal” for state and local governments has brought the issue to the foreground once again at the state level. This article examines the impact of state mandates as perceived by local governments in Pennsylvania. Pennsylvania, as a Commonwealth, has a unique relationship with its many forms of local government, which results in policymaking by bargaining as well as by statute. This article is the result of a comprehensive 2010 survey of the types of state mandates and their impact and cost to local governments in Pennsylvania. This article focuses upon the different responses to state mandates generated by the varied types of local government in Pennsylvania. In particular, it focuses upon resource and administrative constraints for rural as opposed to urban municipalities.

While federal and state mandates have received a great deal of academic and legislative scrutiny in the past 40 years, they have recently taken a backseat to more pressing issues at the local level. But mandates have not disappeared and, in fact, continue to play a large role in policy decisions, resource allocation, and administrative practices at the local level. Recently, the state senate in Pennsylvania commissioned a comprehensive study of the effects of state mandates upon local governments. Although the study was prompted by complaints from local government associations, the question remains as to how important is this issue? Given the fiscal constraints of recent years, how burdensome do local governments perceive these mandates to be? Moreover, is this burden different for larger versus smaller or urban versus rural local governments? This research seeks to address these two questions by examining survey data gathered in 2011 by the Pennsylvania Local Government Commission. Descriptive statistics and

tests of differences among groups are used to determine how burdensome state mandates are in the opinion of local governments.

Background on Mandates

The issue of mandates imposed by the federal government upon state and local government and by state governments upon local governments was very prevalent in research and legislation in the early 1980s and throughout the 1990s. Mandates can be broadly defined to include direct orders from one level of government to another, a crosscutting requirement or condition of aid, or any partial preemption of government functions by another level of government (Gormley 2006). The issue of state mandates placed upon local governments came to the forefront with the U.S. Advisory Commission on Intergovernmental Relations report, which found that state priorities were replacing local priorities due to the expanded use of mandates (ACIR 1990). Other studies have shown that while state mandates can provide equity in both the type of service provision and the quality of those services, state mandates, and in particular unfunded or under-funded mandates, can displace local priorities (Lovell and Tobin 1981; St. George 1995). In addition, because the vast majority of state mandates involve administrative mandates rather than policy mandates, their effects and costs are much more difficult to track (Kelly 1997). Past strategies for dealing with the administrative and budgetary burdens caused by state mandates have included constitutional and legislatively mandated reimbursement requirements, fiscal notes or costs estimation for proposed mandates, voter approval, exceptions or exemptions from mandate provisions granted by the governor or legislature, and sunset legislation for existing mandates. However, the vast majority of these “fixes” have proven to be highly ineffective in dealing with fiscal and administrative costs (Lovell and Tobin; Zimmerman 1995; Grossback 2002).

The Pennsylvania Mandate Issue

The problems and costs associated with state mandates placed on local government appeared to have fallen off the issue agenda in recent years. However, the fiscal constraints imposed by the Great Recession and the associated decline in state and local revenue sources have brought the issue to the forefront once again. The “new normal,” as many researchers have dubbed the current crisis, involves shrinking local tax bases, permanent cuts in expenditures, layoffs, pension and benefit cuts, decreased capital spending, and cuts in local services (Martin et al. 2012). According to a 2012 report by the U.S. Census Bureau on the status of state and local governments, between 2007 and 2012, state and local government revenues declined by

1.1% with cash and security holdings declining 1.7%. During this same time period, indebtedness increased 22.2% from \$2.4 trillion to \$2.9 trillion. Local governments accounted for 61% of this debt (Barnett et al. 2014). It was in this atmosphere of retrenchment and fiscal austerity that Pennsylvania Senate Resolution 323 was commissioned on July 2, 2012. The Pennsylvania Local Government Commission, a state legislative agency, was directed to study the costs and the real and perceived effects of state statutory mandates upon all levels of Pennsylvania local government, counties, cities, boroughs, towns, and townships (PA Local Government Commission 2012).

According to the Local Government Commission, Pennsylvania has over 6,500 local government mandates, which include “direct order, a condition of aid, an authorization, a condition of an authorization, or a combination...” (Local Government Commission 2012: S-2). Given this overwhelming number of mandates, the Commission chose a more restrictive definition of mandate for the commissioned study.

“Mandate” – A duty imposed by a law enacted by the General Assembly that is a direct order or condition of aid which requires that a municipality establish, expand or modify its activities or services in such a way as to necessitate expenditures from municipal revenues. A mandate shall not include any duty imposed by, required to implement, or necessary to avoid violating:... (Local Government Commission SRS 323 Study 2012: 2-31)

Excluded from this definition of mandate were any requirements imposed by a courts order, federal law, the U.S. Constitution, or the Pennsylvania Constitution as well as certain laws dealing with elections, municipal powers and structure, duties, powers and ethical considerations of public officials, collective bargaining agreements, and voter referendum (Local Government Commission).

Since local government administers roughly 84% of these state mandates, the Commission, with the assistance of a group of academic advisors, put together a multifaceted evaluation design to obtain measures of cost and perceived burden on local government. The methodology included a survey of state agencies (36) and all Pennsylvania local governments. This paper provides analysis of all the municipal survey results (excluding the counties) while providing more in-depth analysis of the results of the survey of Pennsylvania’s larger municipalities as classified by population and population density, cities, boroughs, and first-class townships.

Methodology—Local Government Surveys

The Commission requested the major local government associations in the state to have their membership identify the most burdensome mandates.

This was done by the use of mail and email surveys, through association newsletters, and by in-person surveys conducted at association annual meetings and conventions. The County Commissioners Association of Pennsylvania (CCAP) identified 17 mandates of which 13 were chosen as not being currently addressed or studied. Several municipal associations were surveyed: the Pennsylvania League of Cities and Municipalities (PLCM) (now the Pennsylvania Municipal League); the Pennsylvania State Association of Boroughs (PSAB); the Pennsylvania State Association of Township Commissioners (PSATC), which largely comprises more urban first-class townships; and the Pennsylvania State Association of Township Supervisors (PSATS), which is a more rural based organization of second-class townships. These associations identified 23 issues. Twelve of these issues were identified as either federal in nature and not state mandates, already studied, of little financial impact, or not measurable at this time, leaving 11 issues for the final survey. To develop survey questions based on the most burdensome issues identified by the associations, University led teams of students and professors then conducted field interviews with rural, urban, and suburban counties; cities; boroughs; first- and second-class townships in four regions across the state (three in Eastern Pennsylvania and one mix rural/urban in Western Pennsylvania).

The Commission then formulated and conducted a survey of all Pennsylvania counties, cities, boroughs, and first- and second-class townships. An online survey instrument was used as well as a mail survey for those municipalities without email. The survey gathered information on costs estimates of mandates as well as the ranking of the perceived burden of these mandates. Of the 67 counties surveyed, 59 or 88% responded (results not discussed here). The 2,562 municipalities surveyed generated a 30% overall completion rate. A total of 1,108 cities, boroughs and first-class townships responded (25%) to the entire survey but only 498 (45%) completed the ranking portion of the survey. Among the second-class, rural townships, 1,452 (34%) responded to the entire survey with 708 (49%) responding to the ranking questions.

Survey questions included rating mandates from not burdensome to very burdensome and estimates of costs associated with the implementation of these mandates. Costs were defined as direct costs of implementing mandates such as mandatory police collective bargaining arbitration and added costs to projects from mandated competitive bidding and advertising. In addition, the survey asked respondents to choose from a list of mandate “fixes” and to identify any other burdensome mandates not identified in the survey. The list of costs and mandate burden relief was generated by each of the municipal associations identified previously. Lastly the survey gathered general data on the location of the municipality and whether or not the municipality operated under a home rule charter.

Survey Findings

Appendices A and B provide a full list of the mandate-rating questions and responses for the municipal governments. Participants were asked to rate 11 issues on a scale from not burdensome to very burdensome. These issues represented the mandates identified by the municipal associations. Thus the municipal respondents, who ranged from professional administrators to full- or part-time elected officials to clerks, could be assumed to have familiarity with the issues posed. Table 1 summarizes the rankings of these issues from most to least burdensome excluding the not applicable responses.

Table 1
Most Burdensome Mandates (Most to Least)
Source (Local Govt. Commission Mandate Survey 2011–2012)

Rank	Cities, Boroughs, First-Class Townships	Second-Class Townships
Rank 1	Police and Firefighter Collective Bargaining Mandatory Arbitration	Prevailing Wage for Public Works Projects
Rank 2	Prevailing Wage for Public Works Projects	Police Collective Bargaining Mandatory Arbitration
Rank 3	Competitive Bidding & Advertising Requirements	Competitive Bidding & Advertising Requirements
Rank 4	Property Exempt From Real Estate Tax	Stormwater Facilities and Traffic Control Maintenance on State Roads
Rank 5	Right-to-Know Law Compliance	Advertising or Publication of Legal Notices
Rank 6	Uniform Construction Code Triennial Education & Certification	Separate Specifications and Bids for Public Buildings
Rank 7	Stormwater Facilities and Traffic Control Maintenance on State Roads	Right-to-Know Law Compliance
Rank 8	Police Certification and Training	Property Exempt From Real Estate Tax
Rank 9	Advertising or Publication of Legal Notices	Uniform Construction Code Triennial Education & Certification
Rank 10	Separate Specifications and Bids for Public Buildings	Act 101 of 1988 Recycling Requirements
Rank 11	Act 101 of 1988 Recycling Requirements	Police Certification and Training

But just how burdensome do the municipalities find these issues to be, given that the state associations strongly urged action on 23 different mandates? Table 2 summarizes the survey results for the top two ranked most burdensome mandates for cities, boroughs, and first-class townships.

Table 2
Police and Firefighter Collective Bargaining Mandatory Arbitration and Prevailing Wage for Public Works Projects (Cities, Boroughs, and First-class Townships)

	Mandatory Arbitration		Prevailing Wage	
	Frequency	Percent	Frequency	Percent
Not Burdensome	38	10.1	73	16.9
Moderately Burdensome	73	19.4	161	37.4
Very Burdensome	265	70.5	197	45.7
Total	376	100	431	100

It is interesting to note that the not applicable response number for the collective bargaining question was 86 (18.6%) and for prevailing wage only 31 (6.7%). Based on the field interviews, it was found that many municipalities do not deal with all of these mandates on a monthly or even yearly basis (Author 2011). In fact, in examining the bottom ranked issues, separate specifications and bidding for public building projects and mandatory recycling, only 8.9% and 2.7% of larger municipalities found these mandates to be burdensome.

Likewise for the top two most burdensome mandates for more rural second-class townships, while 72.9% of respondents rank prevailing wage as very burdensome and 62.1% find police collective bargaining mandatory arbitration very burdensome only a little over 10% find recycling or police certification to be an issue. Note that second-class townships do not have professional firefighters but rather rely upon a system of volunteer fire companies. In fact, upon examining the not applicable responses (Table 3), 23% of second-class townships had no opinion on prevailing wage and fully 77% of second-class townships found the police collective bargaining mandate to be not applicable. This may be a reflection of the small size of many 2nd class townships, some of which provide no police protection at all, relying upon agreements with other municipalities or upon the state police force.

Table 3
Prevailing Wage for Public Works Projects and Police Collective Bargaining
Mandatory Arbitration (Second-Class Townships)

	Mandatory Arbitration		Prevailing Wage	
	Frequency	Percent	Frequency	Percent
Not Burdensome	73	15.8	22	2.9
Moderately Burdensome	161	34.8	44	5.7
Very Burdensome	197	42.6	108	14.1
Total	431	93.2	174	22.7
Not Applicable	31	6.8	592	77.3
Total	462	100.0	766	100.0

So do size and municipal type matter? Do different levels or types of municipalities have differing perceptions regarding the burden of mandates? Since second-class townships are exempt from some mandates based on population size (recycling) or do not offer certain types of services (fire), we will examine two incorporated types of municipalities (cities and boroughs) and the more densely populated first-class townships to explore differences in perceptions based upon municipal type.

Chi-square analysis of the difference among the three groups was applied to all 11 mandates studied. In all cases the differences among the three types of municipal government (cities, boroughs, first-class townships) were statistically significant at the .05 level of significance. Table 4 summarizes the results.

Table 4
Summary Statistics for Cross Tabulations (Cities, Boroughs and First-Class Townships)

Mandate	Chi-square	Probability	Cramer's V
Police and Firefighter Collective Bargaining	34.842	.000	.197
Police Certification	26.452	.000	.243
Prevailing Wage	18.383	.005	.143
Tax Exempt Property	61.389	.000	.262
Competitive bidding	25.448	.000	.168
Right- to-Know	20.057	.003	.250
Stormwater and Traffic Control Devices	29.281	.000	.180
Separate Bidding Public Buildings	68.576	.000	.277

**Table 4
(Continued)**

Mandate	Chi-square	Probability	Cramer's V
Uniform Construction Code Certification	13.269	.039	.122
Recycling Requirements	22.604	.001	.158
Publication of Legal Notices	36.222	.000	.252

The strength of the relationship between municipal type and mandate rating varies from moderate to fairly strong. Tables 5 and 6 examine the top two most onerous mandates as rated by the cities, boroughs, and first-class townships

**Table 5
Police and Firefighter Collective Bargaining Mandatory Arbitration**

	First-Class Township	Borough	City
Not Burdensome	0%	9.7%	1.9%
Moderately Burdensome	0%	17.5%	11.5%
Very Burdensome	100%	53.4%	86.5%
Not Applicable	0%	19.4%	0%

**Table 6
Prevailing Wage for Public Works Projects**

	1 st Class Township	Borough	City
Not Burdensome	18.8%	16.5%	13.5%
Moderately Burdensome	6.3%	38.8%	25.0%
Very Burdensome	75%	40.2%	61.5%
Not Applicable	0%	4.7%	0%

Both first-class townships and cities find these two mandates to be very burdensome while boroughs find them less so and in some cases even not applicable to the daily or yearly functioning of boroughs. Again, small rural boroughs have fewer police officers and more part-time officers. Likewise small boroughs are less likely to engage in public works projects, which trigger the prevailing wage standard (Holoviak 2011).

The large number of properties exempt from real estate taxes due to their nonprofit status can cause financial hardships for cash strapped municipalities. Hospitals, schools, universities, public charities, and churches all require police and fire protection, and other municipal services, but they are not required to pay property tax under Pennsylvania law. As seen in Table 7, both first-class townships (most of which are

Table 7
Properties Exempt from Local Real Estate Taxes

	First-Class Township	Borough	City
Not Burdensome	6.3%	28.2%	9.6%
Moderately Burdensome	12.5%	39.3%	15.4%
Very Burdensome	81.3%	28.2%	71.2%
Not Applicable	0%	4.2%	3.8%

located adjacent to urban centers and are densely populated) and cities find this mandate to be very burdensome. Boroughs that tend to be more rural are less inclined to rate this as very burdensome.

Discussion: Rethinking the Burden of Mandates

Previous research has indicated that the best approach to the issue of local government mandates involves a partnership or collaborative approach between state and local government to address the issues of cost estimation, cost reimbursement, and best methods for meeting state standards for policy and services (Grossback; Zimmerman; Kelly 1994, 1997). In fact, in a 1995 *National Civic Review* essay on lessons learned regarding mandates, Kelly goes so far as to state that not only are mandates an essential part of governing but that local governments do not resist all state mandates (Kelly 1995). What the Pennsylvania study has shown is that the burden of mandates is really tied to the capacity of local governments to deal with the fiscal and administrative burdens generated by these mandates. According to the Center for Rural Pennsylvania's 2014 data, 99% of Pennsylvania's first-class townships are classified as urban while 80% of Pennsylvania's second-class townships are classified as rural. Boroughs are split 56% urban and 44% rural. (Johnson 2015). Cities, with larger professional staffs and full-time executives, are less likely to see mandates as burdensome but more likely to see state requirements such as recycling or police and fire arbitration as part of the regular administrative activities of municipal government. Similarly, boroughs, which tend to be smaller in population and more limited in administrative and governmental capacity, often do not

have to deal with many of these requirements. Boroughs are less likely to engage in a series of capital projects or to maintain a large police or fire department.

Likewise, second-class townships who do find themselves subject to certain mandates such as police arbitration find them to be very burdensome upon their tiny staffs, which often include only three part-time supervisors and at best one professional manager and some clerical staff (Holoviak 2011). Overall, second-class townships often don't deal with issues such as prevailing wage or police certification at all. These mandates simply don't apply to them even if they exist on the legislative books.

The type of local government caught most in the crosshairs of mandates appears to be Pennsylvania's first-class townships. More densely populated and often adjacent to a large urban center, these suburbs and exurbs are expected to provide a higher level of municipal services but are restricted under Pennsylvania law from expanding their revenue sources. They are squeezed at both ends, unable to implement various taxes but required to meet all state standards for police, fire, prevailing wage, building codes, inspector certifications, etc.

In conclusion, a one-size-fits-all approach to mandate reform in the Commonwealth of Pennsylvania will not address the real impact of mandates upon its local governments. Only a targeted approach, taking into account the disparate impact of state mandates upon municipalities with very different administrative and fiscal capacities and very different populations may truly offer mandate relief. Other states that rely on a one-size-fits-all approach, such as mandatory legislative review or cost estimation requirements, may want to revisit their mandate strategies. In Pennsylvania, the Local Government Commission study recommends the possible creation of a state level review commission for mandates, similar to efforts in other states (Local Government Commission). While this may provide some relief, it will only be effective if the review takes into account the disparate impact of mandates based upon municipal size and municipal fiscal and administrative capacity.

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Appendix A
First-Class Townships, Boroughs, and Cities Mandate Ratings

Mandate	Not Burdensome		Moderately Burdensome		Very Burdensome		Not Applicable	
	Frequency	%	Frequency	%	Frequency	%	Frequency	%
Police & Firefighter Collective Bargaining Arbitration	38	8.2	73	15.8	265	57.4	86	18.6
Police Certification and Training	146	31.6	167	36.1	87	18.8	62	13.4
Prevailing Wage for Public Works Projects	73	15.8	161	34.8	197	42.6	31	6.7
Property Exempt from Real Estate Taxes	113	24.5	159	34.4	157	34.0	33	7.1
Competitive Bidding and Related Advertising Requirements	58	12.6	172	37.2	145	31.4	87	18.8
Right-to-Know Law Compliance	92	19.9	146	31.6	117	25.3	107	23.2
Stormwater and Traffic Control Device Maintenance on State Roads	106	22.9	174	37.7	93	20.1	89	19.3
Bidding Requirements for Public Buildings	151	32.7	168	36.4	31	6.7	112	24.2
Uniform Construction Code Education and Certification	122	26.4	205	44.4	114	24.7	21	4.5
Act 101 of 1988 Recycling Requirements	225	48.7	213	46.1	12	2.6	12	2.6
Advertising or Publication of Legal Notices	101	21.9	144	31.2	40	8.7	177	38.3

Appendix B
Second-Class Townships Mandate Ratings

Mandate	Not Burdensome		Moderately Burdensome		Very Burdensome		Not Applicable	
	Frequency	%	Frequency	%	Frequency	%	Frequency	%
Police & Firefighter Collective Bargaining Arbitration	22	2.9	44	5.7	108	14.1	592	77.3
Police Certification and Training	75	9.8	110	14.4	22	2.9	559	73.0
Prevailing Wage for Public Works Projects	41	5.4	119	15.5	431	56.3	175	22.8
Property Exempt from Real Estate Taxes	210	27.4	287	37.5	158	20.6	111	14.5
Competitive Bidding and Related Advertising Requirements	58	7.6	267	34.9	400	52.2	41	5.4
Right-to-Know Law Compliance	206	26.9	314	41.0	204	26.6	42	5.5
Stormwater and Traffic Control Device Maintenance on State Roads	90	11.7	200	26.1	268	35.0	208	27.2
Bidding Requirements for Public Buildings	115	15.0	187	24.4	259	33.8	205	26.8
Uniform Construction Code Education and Certification	220	28.7	264	34.5	102	13.3	180	23.5
Act 101 of 1988 Recycling Requirements	219	28.6	204	26.6	51	6.7	292	38.1
Advertising or Publication of Legal Notices	119	15.5	269	35.1	342	44.6	36	4.7