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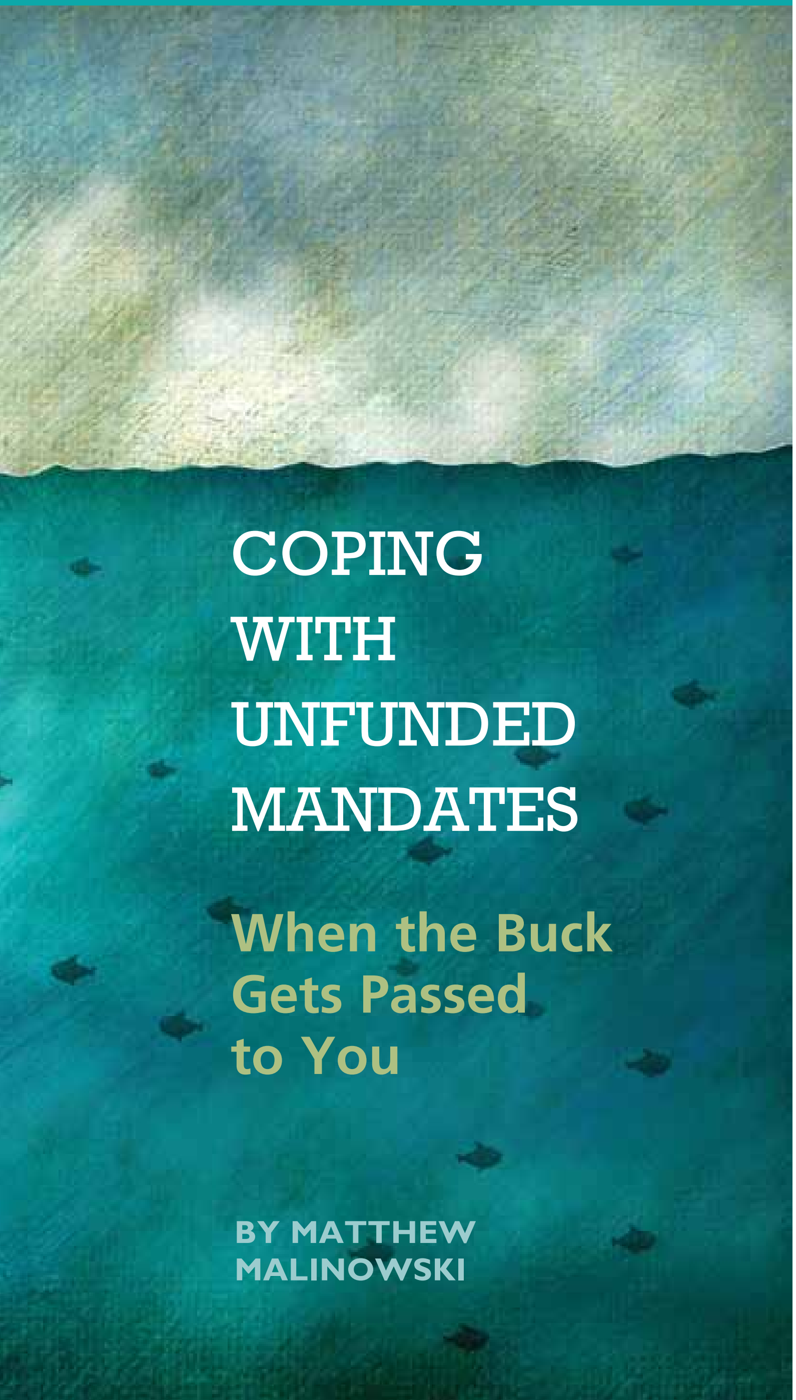

COPING WITH UNFUNDED MANDATES

When the Buck Gets Passed to You

BY MATTHEW MALINOWSKI

Am “unfunded mandate” is a requirement that is passed down from another party — often a governing body — without full funding or support for its implementation. These can be mandates for accessibility, services, and even operating functions such as audits.

Common mandates include the Every Student Succeeds Act (the new version of No Child Left Behind, which includes federally mandated state tests); a federally mandated wage paid to workers of a particular function, known as the prevailing wage (which stipulates that contractors on contracts for public works projects receive the same type of wages and benefits as laborers in the private sector would receive); and human resource mandates (including mandatory leave granted for the Family and Medical Leave Act, the Americans with Disabilities Act, workers' compensation, sick time, hourly rates, and so on).

Beyond just the budget implications, unfunded mandates can complicate a public manager's job in other ways. Consider, for example, a recent change to the Fair Labor Standards Act (FLSA) that raised the minimum salary necessary for an employee to be classified as exempt from certain provisions (e.g., overtime). Complying with this mandate would not be as simple as just converting an employee who formerly met the threshold for exemption to a non-exempt position. Managers had to consider how this might lead to additional overtime costs, whether a resulting change in schedule could lead to the loss of a supervisor, whether there would be an adverse effect on the jurisdiction's current salary versus hourly wage schedule, or if there might be a legal issue with non-compliance at some point. In the case of this mandate, claims can go back over multiple years, extending an employer's potential exposure.

This article will examine some of the ways in which unfunded mandates can make a public manager's life difficult, and some potential solutions.

BEYOND THE LETTER OF THE LAW: WHEN MANDATES MUDDY THE WATERS

Sometimes mandates mix with local conditions to create even more potential confusion and stress. For example, perhaps a municipal government is mandated by the state to contribute a certain amount of funding to the local school district each year. And perhaps, because of the importance of education to the community or other factors, the municipal government extends more financial assistance to the school district than it is legally obligated to provide. Eventually, that additional assistance is no longer distinguished from the mandated level of assistance, leading to potential conflict if the city or school district wishes to change the level of funding. The same sort of problem can even occur within a single government, when the mandate is used to justify a certain level of spending, even if the letter of the law does not require it.

To avoid this kind of confusion and ensure that mandates are accurately considered throughout the budgeting process, jurisdictions should clearly document mandates that apply to the budget process, and their effects. A budget document or financial report can be one way of accomplishing this, or a jurisdiction could even construct a mandate catalog. A catalog lists every mandate and the exact legal requirements, ensuring that there is no room for misunderstandings.

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PROBLEM OF TIME *AND* MONEY: WHEN MANDATES AFFECT SCHEDULES

Mandates can also cause problems with schedules. For example, the budget of Upper Moreland Township School District in Willow Grove, Pennsylvania, is affected by a number of mandates. The district's budget must be adopted by June 30 each year. However, the exact amount of money the state will contribute to the district in order to comply with the state's requirements may not be known until well after the preceding October or November — the point at which the district should be well into budget development. This is a significant challenge because the state's contributions could comprise up to half of the district's budget, and any shortfall any shortfall could lead to an unfunded mandate if requirements placed on the district do not change with the funding levels.

To maintain the budget development schedule and, thereby, the integrity of the financial planning process, Upper Moreland School district produces short- and long-term forecasts well before budget development begins. District officials use these forecasts to see where costs are for staffing, benefits, and instructional materials immediately after starting a school year. This way, the district can develop at least a working set of budget numbers. More importantly, it allows district officials keep their fingers on the financial pulse of the organization, helping them adapt quickly to the state's eventual funding decision and then develop a final budget in a streamlined manner. Upper Moreland has also developed flexible and adaptable policies and processes for other facets of district operations that are affected by the uncertainties of state funding, such as purchasing, cash flow, and debt payment. The district recently had to wait nine months into its fiscal year for a state budget, and it saw no effects on its programs as a result; in fact, it still received bond ratings good enough to enable a new bond issue.

DO LOOK A GIFT HORSE IN THE MOUTH: THE DANGERS OF PARTIALLY FUNDED MANDATES

Some mandates require a government to undertake very specific programs or activities. These can create financial stress not just from the resulting financial obligations, but also because they can divert the public manager's attention to activities that he or she wouldn't otherwise need to attend to. Grants can be surprising example of this. Grants are sometimes very beneficial, but if a matching grant entices a local government into activities it wouldn't otherwise pursue, it is, in effect, a "partially funded" mandate.

Some mandates can create financial stress not just from the resulting financial obligations, but also because they can divert the public manager's attention to activities that he or she wouldn't otherwise need to attend to.

The first part of the solution is careful planning. For example, Upper Moreland recently upgraded its entire fleet to alternative fuel. In doing so, the district received matching transportation grants, so it also improved portions of its bus facility as part of the match. Because these improvements were already part of the district's long-range capital plan, the project did not represent an entirely new area of spending; the grant provided a funding source for a project the district was already planning. The district timed the grant project with is capital improvement plan so the matching funds would be available and all relevant regulatory requirements met. Further, the district coordinated the grant opportunity with its procurement of buses. New, conventional buses would have offered some fuel efficiencies but would have presented the longer-term operating and maintenance challenges associated with running a mixed fleet. Planning allowed the district to use the grant funding to bring all of these purchases together into a coherent approach to fleet efficiency.

The general lesson from the Upper Moorland's bus experience is to recognize that grants have a hidden cost beyond just the dollars required to match the grant. There is an opportunity cost in terms of where those dollars could have otherwise been spent and where management could have been directing its efforts. After all, a government has limited resources and a number of demands on those resources — there could be cases where, even with grant support, a given program or service simply does not merit the use of those resources. Exhibit 1 presents some considerations for accepting funding that includes mandates.

Considering the questions above should allow the organization to make an informed and well-justified decision. That consideration should include more than the immediate financial implications; jurisdictions should also consider the impact of the decision on other goals, personnel resources required, programs and priorities, and the likelihood of continuation once funding ends.

FINDING ACCOMMODATION: WHEN A MANDATE RAISES YOUR COSTS

Sometimes mandates simply raise the cost of activities the government already does and must continue to do. When a government becomes aware of such mandate, there is a process it can follow. As a first step, financial, operational, and other programmatic staff should meet and review the exact requirements of the mandate and categorize its positive and negative effects (see Exhibit 2). Thus, the jurisdiction can better understand its choices and their implications.

Once the positives and negatives are analyzed, the organization should develop a plan of attack, including educating relevant stakeholders about the mandate. The rules of the

Exhibit 1: Considerations for Accepting Funding that Includes Mandates

1. Is the funding aligned to the organization's strategic plan?
2. What will be required to "match" the funding?
3. What won't the jurisdiction be able to accomplish if it reallocates funds?
4. What gains will be made in the realignment of funding?
5. How will the decision to approve or disapprove the acceptance of restricted funding benefit the organization long term? What will the long-term costs be, especially once the funding ends?
6. What activities or programs won't the jurisdiction be able to do as result of accepting this funding?

Exhibit 2: Weighing the Positives and Negatives

Impact of mandate to bid a "prevailing wage" for construction projects of more than $25,000

Positives	Negatives
Higher local wages	Impacts planned improvements such as parking or road construction with higher budgets
Increased tax assessments on projects to governing municipality	May affect the availability of project vendors
No effect on lower-cost improvements	Increased record keeping
	Projects around the threshold limit may or may not apply, which will not be known until bids are opened

Exhibit 3: Timeline Showing the Impact of a Mandate

Task	Due Date
Identify construction projects in the strategic plan	September 2016
Reevaluate cost estimated for projected projects	December 2016
Incorporate revised estimated into financial plan	February 2017
Review priorities against funding and adjust planned implementation timeline for fiscal 2018 and future years	April 2017

mandate must be well understood so an effective response can be made. The organization should define the specific programs and projects the mandate applies to, and the people affected should have the chance to ask questions. A timeline showing the mandate's impact cab be helpful (see Exhibit 3).

Once the jurisdiction has a sense of what the mandate's impact might be, governments don't simply have to accept increased costs. Entrepreneurially minded local officials seek latitude in the implementation of a mandate or other requirement (e.g., waiver, increased flexibility). Getting latitude on a mandate is often just a mindset that latitude is possible and taking the initiative to seek it.[1]

Improved efficiency in operations is another way of dealing with unfunded mandates. For example, the State of Pennsylvania issued a mandate for more frequent background checks by contractors and employees — from one check at hiring to every five years, by the anniversary date. This required employers to track, to the day, the expiration of three clearances per employee and contractor. Faced with a mandate such as this, an organization might decide to implement a portal that could not only provide information to vendors instantaneously, but also reduce calls and inquiries to from vendors regarding questions or status checks. Additionally, there could be opportunities to improve internal controls in a situation such as this with an electronic solution.

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Collaborating with other organizations is another means of dealing with a mandate efficiently. For example, when it comes to filing reports, jurisdictions can form a consortium that has a uniform submission format for all members. This can be effective in particular with some federal reimbursement funding, as the person who reports to the federal government does not always need to be an employee of the local government. Instead, one person could act as the liaison for all the local governments and the granting authority.

LIVING WITH UNFUNDED MANDATES: A MINDSET

Unfunded mandates can be stressful and frustrating, but they need not be paralyzing. A few important attitudes that are the hallmark of good financial management can generally be of particular help for coping with unfunded mandates.

First is an attitude of continuous improvement. Just as many local governments periodically review their goals and objectives to verify that they remain relevant and that the right actions are being taken to achieve the organization's goals, mandates should be periodically reviewed. The goal of this review is to make sure that: 1) the letter of the law is properly understood and the government is not inadvertently doing more than is required; and 2) the government is responding in the most cost-effective way. For example, four California counties responded to an unfunded mandate to take on prisoners formerly handled by the state by adopting new programs that were proven to reduce recidivism, thereby reducing the counties' long-term costs of handling prisoners.[2]

Perhaps one of the most difficult issues regarding unfunded mandates is dealing with the unknown. In a school district, a mandate for lower class sizes can increase personnel and other operational costs. A mandate for reporting can increase workload and disrupt the way information has historically been presented. Hence, local public managers need a mindset of being adaptable to change. Strategic plans should be layered with options to pursue and align with goals, depending on funding.

CONCLUSIONS

Local governments need to be aware of relevant risks and maximize the value the organization provides the community. Mandates are not handled in isolation. Jurisdictions need to manage both the initial impact of a mandate and the review process, which should include a review of the mandate's alignment with budget and planning practices — GFOA best practices recommend promoting positive change and minimizing a government's exposure to potential loss. (See *Creating a Comprehensive Risk Management Program* at www.gfoa.org.)

What separates local governments that are successful in getting latitude on a mandate from those that don't is often just a mindset that latitude is possible and taking the initiative to seek it.

Notes

1. Based on personal interview with Michael McGuire, executive associate dean and professor at Indiana University's School of public and Environmental Affairs, and co-author (along with Robert Agranoff), of *Collaborative Public Management: New Strategies for Local Government* (Georgetown University Press, January 2004).
2. "Results First at the Local Level: Evidence-based Policymaking in Four California Counties," Pew Charitable Trusts and the MacArthur Foundation, September 2015.

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