

Senate Resolution 323 of 2010 Report

Study of Statutory Mandates Placed on Counties and Municipalities



Local Government Commission
General Assembly of the Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

October 9, 2012

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This report, prepared by the Local Government Commission staff, is the result of a collaborative effort of the Senate Resolution 323 Task Force, the municipal associations' member municipalities, state agencies, academics, and legislative staff. The Commission's release of this report should not be considered an endorsement of the report's findings, recommendations, and conclusions by the Commission or its individual Members.

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Senate Resolution 323 of 2010

Report Summary

On July 2, 2010, the Senate of Pennsylvania passed Senate Resolution (SR) 323, directing the Local Government Commission (LGC) to establish a task force to study unfunded and underfunded state statutory mandates that affect Pennsylvania's municipalities—its counties, cities, boroughs, town, and townships (Appendix A). The Senate recognized that the increasing costs of mandates undoubtedly put a strain on municipal resources and may well increase the local tax burden on citizens and businesses, thus ultimately impacting the economic health of communities. Moreover, prior to this report, no comprehensive published information existed on state mandates that may affect municipalities in the Commonwealth.

Senate Resolution 323 directed the Task Force to compile a comprehensive list of statutory mandates placed on municipalities, which describes for each mandate whether it is federal and/or state in origin, whether it is required or discretionary, the average annual cost to municipalities if determinable, and the amount of money provided by the federal government or the Commonwealth to implement the mandate. SR 323 further charged the Task Force with making findings and recommendations on cost savings that could be achieved through partial waiver or elimination of certain mandates and possible alternative procedures that could provide a mechanism to municipalities for mandate relief. The following findings and recommendations are the result of the SR 323 Mandate Study.

Findings

- 1. A review of 27 states' constitutional and/or statutory mandate provisions and certain states' mandate studies served as a basis for defining SR 323 Study methodologies and determining recommendations for mandate relief (pp. 2-1 – 2-15, Appendices B and C).**

Seven states have constitutional mandate provisions, twelve states have statutory provisions, and eight states have both constitutional and statutory provisions. Twenty-three of those states have some exceptions to what a state defines as a mandate, such as a duty imposed by, required to implement, or necessary to avoid violating the federal or a state constitution or a law approved by a voter referendum. Examples of mandate funding in other states, aside from an appropriation, include a reimbursement program and revenue or cost sharing. Examples of potential cost savings mechanisms include a mandate appeals process, a voter or governing body referendum to accept or reject an unfunded mandate, and gubernatorial authority to suspend a mandate. Examples of alternative measures for mandate relief include a municipal fiscal note process, sunset provisions, delayed effective dates, a required two-thirds vote of the legislature to pass

unfunded mandates, a mandate inventory or database, a periodic review or assessment of mandates, and an ongoing mandate task force.

2. **SR 323 Objective:** *Compile a comprehensive list of statutory mandates placed on municipalities, which describes for each mandate whether it is federal and/or state in origin and whether it is required or discretionary.*

As of December 31, 2011, Pennsylvania had 6,508 discrete statutory provisions that are mandates—a direct order, a condition of aid, an authorization, a condition of an authorization, or a combination thereof—placed on counties, cities, boroughs, town, and townships. Of those, 268 have been identified as possibly being no longer actively imposed or applied (pp. 2-16 – 2-20, Appendices D and E).

In 1982, the LGC developed a mandate database, which it has maintained since then. The first task involved validation of the database by 36 state agencies and the LGC staff, which resulted in a comprehensive list of 6,508 statutory mandates, excluding those only placed on authorities and/or school districts. Of that list, 87.6% are unconsolidated acts and 12.4% are in the Pennsylvania Consolidated Statutes. Looking at the origin of the mandates, 98.6% have a state origin, 1.2% have a federal and state origin, and 0.2% have a federal origin. In categorizing them by method of imposition, 58.1% may be considered “required” (i.e., a direct order [56.3%] or a condition of aid [1.8%]) and 42.8% may be termed “discretionary” (i.e., authorizations [33.1%] and conditions of authorizations [9.7%]), which add up to slightly more than 100% since a number of mandates have more than one method of imposition. The analysis also includes a breakdown of mandates by affected local government units. During the validation process, the state agencies and LGC staff conservatively identified 268 of the 6,508 mandates that *may* be no longer actively imposed or applied for further scrutiny and possible repeal.

3. **SR 323 Objective:** *Describe for each mandate the amount of money provided by the federal government or the Commonwealth to implement the mandate.*

During Fiscal Year 2011-2012, in response to a survey of 36 state agencies, 17 reported that they *did* allocate and 17 reported that they *did not* allocate federal or state funding for mandates on counties and municipalities. Seventeen agencies indicated that they collectively allocated over \$1 billion in state funding, more than \$173 million in federal funding, and in excess of \$240,000 in other funding for mandates that affect counties and municipalities (pp. 2-21 – 2-30, Appendices F and G).

State agencies implement 1,309 mandates or 16.0% of the 6,508 mandates in the LGC mandate database. The survey on funding addressed 938 mandates in that two of 36 agencies did not respond to the survey. The agencies verified 67.2% of the 1,039 mandates

as “required” and 35.0% as “discretionary,” with 2.2% of those as both. The Department of Auditor General, the Department of Environmental Protection, and the Department of Transportation together allocated 87.9% of the reported state funding and the Department of Environmental Protection allocated 98.5% of the reported federal funding. The largest allocations by far were for mandates in the Municipal Pension Plan Funding Standard Recovery Act, various Pennsylvania Department of Transportation-related laws, and the Clean Streams Law, which accounted for 83.2% of the reported funding. Nonetheless, these highlighted upper-end allocations by no means discount the significance and importance of allocations to counties and municipalities from the other 14 agencies that provided funding.

4. **SR 323 Objective: *Describe for each mandate the average annual cost to municipalities, if determinable.***

Achieving the objective entailed three tasks—clarifying the definition of mandate, limiting the number of mandates to those that are most burdensome on counties and municipalities, and surveying all counties and municipalities to ascertain costs of the most burdensome mandates, if determinable.

- **The purpose of “clarifying the definition of mandate” was to comport with the provisions of SR 323, and to exclude aspects of the law that are outside the effect of state statute, essential to the creation and function of local governments, and fundamental to democratic representation and the will of the electorate (pp. 2-31 – 2-34).**

The following adopted definition of mandate was used to delimit the most burdensome mandates for the purposes of ascertaining costs:

“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 [13 enumerated exceptions ranging from a court order to a voter referendum].

- **The purpose of “limiting the number of mandates to those that are most burdensome on counties and municipalities” was to make the Mandate Study feasible (pp. 2-34 – 2-49).**

In taking into account the value, accuracy, labor, and expense of costing numerous mandates, and to make the Mandate Study feasible, the SR 323 Task Force adopted clarifying language to limit the project scope:

Narrow the study’s scope for the purposes of costing the mandates and determining mitigation measures by focusing on the 20 or so most burdensome mandates as identified by the county and municipal associations.

Consequently, the County Commissioners Association of Pennsylvania (CCAP) identified their 17 most burdensome mandates:

Most Burdensome Mandates as Identified by CCAP <i>(not in order of importance)</i>	
	Public Safety Emergency Telephone Act (Act 78 of 1990) 911 services, particularly uncoordinated planning processes, funding streams, and funding mechanisms for different technologies.
Prisons	Department of Corrections standards for county jails.
	County jail inmate medical services, particularly county inability to approve services and recover costs.
Nursing Facilities	County portion of the nonfederal share of the costs for care of Medicaid residents in county nursing facilities.
	County nursing facility costs associated with a “preventable serious adverse event.”
	County nursing facility overlapping reporting requirements for alleged abuse, neglect, and misappropriation
	County nursing facility new staff photo identification badge requirement. (1)
Row Offices	Maintaining the office of jury commissioner versus electing to have the court administrator’s office perform the function.
	Statutorily mandated fees for constables and payment prior to collection of fines, fees, or costs from the defendant.
	Commonwealth’s unreimbursed share (65%) of the full-time district attorneys salaries.
	Duties and compensation of county auditors in consideration of possible auditors’ duties that may be performed by a certified public accountant firm.
	Collection of county real estate taxes by the local tax collector. (2)
	Department of Public Welfare subsequent quarterly payments for child welfare.
	Length of Pennsylvania Department of Transportation permitting process for bridge construction and repair. (3)
	Storm Water Management Act (Act 167 of 1979) stormwater planning requirements.
	Advertising/publication of legal notice requirements. (2)
	Competitive bid limits and related advertising requirements.

As a result of initial screening and pilot studies, the highlighted mandates were dismissed from the statewide county survey in that they: (1) were of little financial consequence to counties; (2) were being studied or had been studied recently for the same purposes as SR 323; or (3) necessitated an agency and regulatory streamlining process.

Separately, the Pennsylvania League of Cities and Municipalities (PLCM),¹ the Pennsylvania State Association of Boroughs (PSAB), the Pennsylvania State Association of Township Commissioners (PSATC), and the Pennsylvania State Association of Township Supervisors (PSATS) collectively identified their 23 most burdensome mandates:

Most Burdensome Mandates as Identified by the Municipal Associations
(not in order of importance)

Prevailing Wage Act (Act 442 of 1961), particularly the threshold for public works projects, method for determining prevailing wages, and definition of “maintenance.”

Policemen and Firemen Collective Bargaining Act (Act 111 of 1968), particularly the costs of the third-party arbitrator and arbitration process, and power vested in arbitrator.

Chesapeake Bay Program requirements. (1)

Small municipal separate storm sewer system (MS4) permit requirements pursuant to the United States Environmental Protection Agency NPDES Phase II Rule. (1)

Compliance with federal American with Disabilities Act requirements on state highways and rights-of-way. (1)

Traffic control requirements, particularly the adoption of federal Manual on Uniform Traffic Control Devices (MUTCD) standards. (1)

State highway and right-of-way maintenance requirements for signalization, signage, and pavement markings.

State highway and right-of-way maintenance requirements for stormwater facilities.

Highway occupancy permit fee schedules (67 Pa. Code Chapters 441, 459). (2)

Maximum highway security or bonding amounts (67 Pa. Code Chapter 189). (2)

Consolidated County Assessment Law exemptions from real estate taxation.

Act 32 of 2008 (amending Act 511 of 1965 [Local Tax Enabling Act]), providing for consolidated collection of earned income taxes. (3)

Advertising/publication of legal notice requirements (various laws). (4)

Competitive bidding and related advertising requirements (various laws).

Pennsylvania Separations Act (Act 104 of 1913) and corresponding provisions in the respective municipal codes.

Right-to-Know Law (Act 3 of 2008), particularly the timeframe for responses, costs of research, responses for frivolous requests, and costs of commercial requests.

Act 44 of 2009 (amending Act 205 of 1984 [Municipal Pension Plan Funding Standard and Recovery Act]). (5)

Workers’ Compensation Act (Act 338 of 1915) amendment (Act 46 of 2011), providing for firefighters with cancer. (3)

Act 51 of 2009 (amending Act 101 of 1976 [Emergency Law Enforcement Personnel Death Benefits Act]) (5)

¹ PLCM recently changed its name to the Pennsylvania Municipal League.

Most Burdensome Mandates as Identified by the Municipal Associations *(not in order of importance)*

Municipal police officer certification and annual in-service training requirements.

Act 101 of 1988 (Municipal Waste Planning, Recycling and Waste Reduction Act), particularly recycling requirements.

Pennsylvania Construction Code Act (Act 45 of 1999), particularly the triennial building inspector continuing education and certification requirements.

Act 46 of 2010 (amending Act 176 of 1929 [Fiscal Code]), providing, in part, for permit extensions. (6)

Similar to the county mandates, as a result of initial screening and pilot studies, the 12 highlighted mandates were dismissed from statewide municipal surveys and further study in that they: (1) are federal in origin; (2) in essence, are regulatory in nature; (3) were not measurable at the time; (4) had been studied recently for the same purposes as SR 323; (5) are not truly mandates and are possibly beneficial; or (6) are of little financial consequence to municipalities.

Nevertheless, the report does address the identified mandates that were dismissed from the statewide surveys. The Task Force carried forward the remaining mandates for inclusion in the county and municipal surveys.

- **The purpose of the third task, “surveying all counties and municipalities to ascertain costs of the most burdensome mandates, if determinable,” was to obtain not only local governments’ mandate costs for defined time periods, but also their ratings of how burdensome they perceived the mandates were on their municipalities and their recommendations for mandate relief (pp. 2-50 – 2-124).**

Survey results on costs of mandates were limited despite pilot studies, a pretest, multiple advance and follow-up survey notifications, survey deadline extensions, and resending the survey to those counties and municipalities that did not initially respond. The limited number of responses for each mandate most likely is attributable to whether a given mandate applied to a county or municipality, the length and complexity of the survey, the level of the local government’s capability and staff resources to respond to the survey, availability of the cost information in the municipality, and the interest of the municipality in responding. (pp. 2-50 – 2-53)

Although the survey responses are a sampling of costs, they likely are not indicative of affected counties and municipalities for the entire Commonwealth. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for local governments are increasing or decreasing and whether local officials would have responded differently if the economy was more robust are unknown. Therefore, the reported costs may be viewed only as a possible relative level of magnitude for each mandate.

It is noteworthy that this report supplements the descriptive statistics from the survey cost data with cost information from other primary and secondary sources if they were available. (pp. 2-59 – 2-81, 2-97 – 2-124)

Counties

Of 67 counties, 59 or 88% of the counties responded, in total or in part, to the survey on the costs of 13 mandates. The first question on the survey, to which an average of 46 or 69% of the counties replied, gave counties the opportunity to provide their ratings of the most burdensome mandates as identified by CCAP. Percentages of responses for the “Very Burdensome” rating range from 80% for “Prison Medical Costs” to 18% for “Mandatory Reporting of Alleged Abuse by Nursing Facility Employees.”

The reported costs for each mandate have a wide range, which generally has a positive correlation to the different classes of counties, with the more populated counties having a higher average cost than the less populated counties. Average reported costs among the 13 mandates also have a wide range, from close to \$13 million for “Prison Compliance with Department of Corrections Standards” to almost \$28,000 for “Mandatory Reporting of Alleged Abuse by Nursing Facility Employees.” Of the remaining mandates, three have an average cost of more than \$1 million, five have an average cost of less than \$1 million but more than \$100,000, and four have an average cost of less than \$100,000. In comparing the mandates by rating versus average cost, about half have comparable standings and about half have somewhat disparate standings. Disparate standings are possibly due to indirect costs, nonmonetary costs, and “hassle level” to implement a mandate, as well as perception of whether a mandate is necessary or important. (pp. 2-53 – 2-81)

Municipalities

Of the 2,562 surveys sent out to all cities, boroughs, first class townships, and second class townships, overall, 30% of them submitted completed surveys, ranging from 34% from second class townships to 24% from boroughs. Upon reviewing the raw data in order to conduct analysis of the survey responses, it became apparent that the most meaningful and practical approach was to evaluate city, borough, and first class township data separately from second class township data primarily because the former municipalities are more urban than the latter, hence the importance and costs of certain mandates most likely differ. (pp. 2-82 – 2-83)

Cities, Boroughs, and First Class Townships

Of 1,108 cities, boroughs, and first class townships, 274 or 25% responded, in total or in part, to the survey on the costs of 11 mandates. As with the county survey, the first question asked municipalities to rate the degree to which each mandate was burdensome on them. Although 274 municipalities completed the survey, 498 or 45% answered at least the first question. Percentages of responses for the “Very Burdensome” rating range from 71% for “Police and Firefighter Collective Bargaining Arbitration” to 3% for “Act 101 of 1988 Recycling Requirements.” (pp. 2-83 – 2-90)

In analyzing mandate costs for cities, boroughs, and first class townships, median² cost, versus average cost, was chosen as an indicator given the limited number of responses, the wide range of costs, and the large standard deviations.³ The mandates, “Prevailing Wage for Public Works Projects” and “Police and Firefighter Collective Bargaining Arbitration,” have the highest reported median costs, in excess of \$20,000, which is consistent with their perception ratings. “Act 101 of 1988 Recycling Requirements” is the third highest with a reported median cost of about \$18,000, which is contrary to the perception rating possibly because municipalities are able to largely recover those costs through fees. Four mandates are in a mid-range, with reported median costs between \$5,000 and \$10,000, including “Police Officer Certification and Training,” “Competitive Bidding and Related Advertising Requirements,” “Separate Specifications and Bids for Public Buildings,” and “Traffic Control Device Maintenance on State Roads.” The remaining three mandates have median costs below \$5,000, with lowest being for “Right-to-Know Law Compliance.” (pp. 2-83 – 2-90, 2-97 – 2-124)

Anywhere from 12% to 77% of the respondents indicated that they had supplied the service or engaged in the activity provided pursuant to a given mandate during the specified time period in the survey. However, of those, the percentage of responses to the pertinent survey question ranged from as low as 22% to as high as 64%, which shows that many municipalities opted not to provide cost data most likely for one or more of the reasons cited initially. A wide minimum-maximum range in the reported costs for each mandate probably is a reflection of the span in population from the smallest borough to the largest city that responded. (pp. 2-84 – 2-90)

Second Class Townships

Finally, of Pennsylvania’s 1,454 second class townships, 493 (34%) completed the survey of 11 state mandates placed on them. As in the other surveys, the first question asked townships to rate the degree to which each mandate was burdensome on them. Although 493 townships completed the survey, 708 (49%) answered at least the first question. Percentages of responses for the “Very Burdensome” rating range from 73% for “Prevailing Wage for Public Works Projects” to 11% each for “Act 101 of 1988 Recycling Requirements” and “Police Officer Certification and In-Service Training.” (pp. 2-90 – 2-91)

In analyzing mandate costs for second class townships, median cost was chosen again as an indicator considering the limited number of responses, the wide range of costs, and the large standard deviations. Identical to findings for the other types of municipalities, “Prevailing Wage for Public Works Projects” and “Police Collective Bargaining Arbitration” are at the top of the list based on perception and median cost. In mid-range, with median costs between \$2,500 and \$10,000, are “Act 101 of 1988 Recycling Requirements,” “Separate Specifications and Bids for Public Buildings,” “Stormwater Maintenance on State Roads,” and “Traffic Control Device Maintenance

² Median – The value in the middle of a set of data, or the average of two values nearest the middle, with the values having been sorted or arranged by size.

³ Standard Deviation – A measure of the spread or dispersion of a set of values from their average or mean.

on State Roads.” As with more urban municipalities, the townships’ median cost for “Act 101 Recycling Requirements” appears somewhat contrary to the perception rating, which, again, may be attributable to townships’ ability to largely recover those costs through fees. Finally, the lowest median costs, less than \$2,500, correlate to the four remaining mandates, with lowest being for “Right-to-Know Law Compliance.” The only inconsistency among those is with “Competitive Bidding and Related Advertising Requirements,” which received a relatively high perception rating most likely because of the level of effort involved in the competitive bidding process. (pp. 2-90 – 2-124)

Anywhere from 10% to 81% of the respondents indicated that they had supplied the service or engaged in the activity provided pursuant to a given mandate during the specified time period in the survey. However, of those, the percentage of responses to the pertinent survey question ranged from as low as 25% to as high as 88%, which shows that many municipalities opted not to provide cost data most likely for one or more of the reasons cited initially. A wide minimum-maximum range in the reported costs, again, probably is a reflection of the span in population among the townships that responded. (pp. 2-91 – 2-97)

Recommendations

SR 323 Objective: *Make findings and recommendations with regard to the potential for cost savings as well as alternative procedures which could provide counties and municipalities with a mechanism for mandate relief.*

This portion of the report presents general legislative, institutional, and specific legislative recommendations. Specific legislative recommendations separately deal with the most burdensome mandates as identified by CCAP and by PLCM, PSAB, PSATC, and PSATS, and largely reflect their priorities. Subsequently, the report provides recommendations for further study.

Pursuit of these recommendations would need to involve thorough additional first-hand research into the details of other states’ experiences, particularly how they may have implemented the suggested mandate impact statement and cost sharing provisions, and the periodic review of mandates and the state mandate task force. It also would obviously necessitate consultation and coordination with appropriate committees and agencies within the Pennsylvania General Assembly and Executive Branch, and with the statewide municipal associations.

1. General Legislative Recommendations (pp. 3-2 – 3-9)

- **Mandate Impact Statement Provisions:** Establish a prospective municipal mandate impact statement process in statute, modeled after that in other states, in which the Local Government Commission identifies proposed mandates that may have a defined greater than de minimis impact on local governments. At a given point in the legislative process, either the respective Appropriations Committees or, similar to other states, the nonpartisan Independent Fiscal Office develops an estimate based

on available cost data or, if unavailable, cost data from a local cost estimation network of qualified professionals. The estimate should reflect a net cost, if possible, taking into account any offsetting dedicated funding from federal, state, local, or other sources.

- **Cost Sharing Provisions:** Establish a prospective cost-sharing policy and strategy in statute that are limited to mandates which comport with an adopted definition of mandate and are based on the mandate impact statement developed during the legislative process. The cost sharing policy should provide that if a newly enacted law imposes increased expenditures or reduced revenues on local governments, the law should provide that the Commonwealth share in the cost, unless the law has a de minimis effect, as defined, or if the General Assembly overrides the cost-sharing requirement by two-thirds vote of the Senate and the House.
- **Sunset Provision:** Establish a prospective sunset provision in regulation, which would require a bill's prime sponsor and the appropriate standing committee in conjunction with the affected municipal association(s) to consider a sunset provision, possibly of five or ten years, in proposed mandate legislation for the purpose of causing the Legislature to revisit the law containing a mandate for which its nature, form, effectiveness, cost, durability, or lifespan may be questionable at the time of its enactment.

2. Institutional Recommendations (pp. 3-9 – 3-12)

- **Periodic Review and Evaluation of Mandates:** Establish in regulation a prospective review or assessment of statutory mandates placed on local governments every five years from the effective date of the mandate or its significant modification. The review would be limited to new mandates, newly identified mandates, mandates that have been so substantially modified as to create a new mandate, and mandates that a state mandate task force determines should be reassessed. No mandate becomes subject to assessment until it has been in effect for at least twenty-four months. A state mandate task force, with support of the Local Government Commission, would coordinate the review. The task force would make recommendations to the General Assembly on any mandates that might be modified or eliminated and the rationale for the recommendations.
- **Ongoing State Mandate Task Force:** Establish in statute an ongoing state mandate task force comprised of representatives from the General Assembly, certain legislative service agencies, statewide municipal associations, executive branch agencies, possibly the Independent Fiscal Office, and others with expertise in mandates on local governments at the discretion of the chair and upon approval of two-thirds of the task force members. The task force would have the purpose of helping to carry out the recommendations of this report and possibly conducting potential follow-up studies. Such a task force would be especially advantageous for the mandate impact statement process.

3. Specific Legislative Recommendations (pp. 3-12 – 3-27)

Specific legislative recommendations focus on the most burdensome mandates that the municipal associations identified and largely reflect the associations' priorities. They take into consideration the top recommendations from the surveys of counties and municipalities, which at least 50% of the respondents sanctioned, recommendations from other relevant studies, and current and recently enacted legislation. Nevertheless, the recommendations omit mandates for which legislation has recently been enacted that sufficiently address the mandates or for which the mandates receive reimbursement.

Notably, the legislation listed below provides recent examples of proposals to alleviate the mandates on counties and municipalities. With the current legislative session coming to an end, the municipal associations view these proposals as starting points for future mandate relief legislation.

- **Specific Legislative Recommendations for County Mandates (pp. 3-13 – 3-20)**
 - **County 911 Services Funding**
 - Assure that telephone system providers are properly collecting and remitting the subscriber fees that support the development, deployment, and operation of the 911 systems.
 - Increase subscriber fee to cover 100% of costs.
 - Balance methodologies for collection and distribution of subscriber-based funding.
 - Other Relevant Recommendations from the Legislative Budget and Finance Committee's Act 118 of 2010 report: *Pennsylvania's 911 Emergency Telephone System: Funding, Expenditures, and Future Challenges and Opportunities*.
 - **County Prison Compliance with Department of Corrections' Regulatory Standards**
 - Reduce the prison population by establishing intermediate punishment as an alternative sentencing mechanism for nonviolent criminals.
 - Support state initiatives promoting public awareness of limitations of incarceration and the value of increased investment in prevention, intervention, and diversion programs.
 - Create drug and mental health courts.

The recommendations are addressed, in part, by House Bill 135 of 2011 and Act 122 of 2012. Separately, CCAP is working with the Administrative Office of Pennsylvania Courts and others on "problem-solving courts."
 - **County Prison Inmate Medical Costs**
 - Prohibit health care providers from charging county prisons more than the maximum allowable rate under the medical assistance program for inpatient care.

- Permit the state portion of Medical Assistance (MA) benefits to be retained until there is a conviction, allowing for costs to be covered in part, although foregoing the federal share.
- Suspend, rather than terminate, inmate eligibility for MA, Medicare, and veterans benefits to allow those benefits to be more quickly restored at the time of release.

The recommendations are addressed, in part, by Act 22 of 2011.

- **County Portion of Costs for Medicaid Residents in Nursing Facilities**

- Amend the Public Welfare Code to adjust the county's share.

The recommendation is addressed by House Bill 1361 of 2011.

- **Preventable Serious Adverse Events Act**

- Increase Medical Assistance rates.
- Provide for a periodic adjustment of the per diem rate paid by the Department of Public Welfare to a nursing facility based on the nursing facility's case-mix index.

- **Mandatory Reporting of Alleged Abuse, Neglect, and Misappropriation of Property by Nursing Home Employees**

- Require all pertinent agencies to use uniform reports.
- Provide for one investigative clearinghouse.

- **Fees Paid to Constables**

- Direct that magisterial fees related to outstanding criminal warrants go to the county, not the Pennsylvania Department of Corrections.
- Modify the method of payment whereby constables receive a fee on a per-docket basis, possibly resulting in multiple payments for one service.
- Eliminate the requirement for a constable to be present at the polls on Election Day.

The third recommendation is addressed by Senate Bill 1175 of 2011.

- **Requirement for Counties to Have a Full-Time District Attorney**

- Make the annual 65 percent salary reimbursement to each county in a timely manner.
- Require quarterly reimbursement payments from the Commonwealth to the county.
- Relate the salary to the class of county, versus the salary of court of common pleas judges.

The first two recommendations are addressed by Senate Bills 1549 of 2012 and 1550 of 2012, as well as House Bills 2418 of 2012 and 2419 of 2012.

- **Duties and Compensation of County Auditors**

- Allow counties to use their certified public accountants to perform the required audits and reports, limiting elected auditors' responsibilities to other existing functions provided in statute.
- Amend the county salary law, allowing the annual salary for elected auditors to be established in the same manner as other elected officials, removing per diems and mileage pay.

- **Collection of County Real Estate Taxes by Local Tax Collector**

Relevant recommendations from the Legislative Budget and Finance Committee's Senate Resolution 250 of 2010 report, *Pennsylvania's Current Real Property Tax Collection System*:

- Permit counties, municipalities, and school districts to regularly enter into voluntary agreements for county collection of property taxes based on mutually agreed-to resolutions of the taxing bodies such as in Maryland.
- Facilitate the temporary appointment of a county treasurer to collect property taxes on behalf of municipalities and school districts in situations where a local elected tax collector is unable to serve a full term due to incapacity or other reasons.

The second recommendation is addressed by Act 115 of 2011.

- **Planning and Financial Reimbursement Requirements for County Children and Youth Service Programs**

- Require the Department of Public Welfare to provide advanced quarterly payment of children and youth funding, with reconciliation at the end of the year.
- Improve timeliness of reimbursement.

The recommendations are addressed fully by House Bill 829 of 2011 and, in part, by Act 80 of 2012. Separately, albeit not a legislative measure, the Department of Public Welfare Office of Children, Youth and Families is providing a waiver to the payment schedule to counties for children and youth services for Fiscal Year 2012-2013 and possibly beyond.

- **Stormwater Management**

- Establish definite funding for state Act 167 of 1978 planning grants.

- **Legal Advertising**

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.

The recommendation is addressed by Senate Bill 804 of 2011 and House Bill 633 of 2011. Other relevant proposed legislation includes Senate Bill 805 of 2011.

- **Specific Legislative Recommendations for City, Borough, and Township Mandates (pp. 3-20 – 3-27)**

- **Prevailing Wage for Public Works Projects**

- Raise the dollar threshold for public works projects requiring prevailing wage.
- Better define maintenance (exempt from prevailing wage) to include projects like road resurfacing and repair; bridge cleaning, resurfacing and painting; in-kind replacement of guide rails and curbs; and line painting.

- Restructure the method by which the Secretary of Labor and Industry determines prevailing wages to better ensure the use of comparable local wages in the area.
- Provide an automatic adjustment of the prevailing wage threshold for inflation.

The recommendations are largely addressed by House Bill 1271 of 2011, House Bill 1329 of 2011, and House Bill 1685 of 2011. Other relevant proposed legislation includes House Bill 1191 of 2011 and House Bill 1541 of 2011.

- **Collective Bargaining Arbitration**

- Require both parties involved in arbitration to equally share all costs.
- Require consideration of municipality financial status and local economic conditions in determining arbitration awards.
- Provide for limited judicial review of the determination of the board of arbitration.

The recommendations are largely addressed by Senate Bill 1570 of 2012.

- **Legal Advertising**

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.

The recommendation is addressed by Senate Bill 804 of 2011 and House Bill 633 of 2011. Other relevant proposed legislation includes Senate Bill 805 of 2011.

- **Property Exempt from Real Estate Taxes**

- Authorize municipalities to collect a municipal services fee or payments in lieu of taxes (PILOTs) from tax-exempt property owners to cover the costs of municipal services.

The recommendation was addressed previously by House Bill 2018 of 2007 and Senate Bill 1419 of 2008. Other relevant proposed legislation includes Senate Bill 1281 of 2011 and House Bill 34 of 2011.

- **Separate Specifications and Bids for Plumbing, Heating, Ventilating, and Electrical Work**

- Increase the dollar threshold for compliance with Separations Act requirements.
- Eliminate the Separations Act requirements to the extent that they may preclude design-build projects.

The first recommendation is addressed by Act 84 of 2011, Act 85 of 2011, Act 91 of 2011, Act 92 of 2011, and Act 93 of 2011, pertaining to the different classes of municipalities.

- **Right-to-Know Law (Act 3 of 2008)**

- Authorize municipalities to charge for staff time and legal review fees when fulfilling requests, including fulfilling e-requests.
- Authorize municipalities to charge additional fees for search, review, and duplication costs when responding to commercial requests.

- Authorize municipalities to charge expanded fees and take extended time when responding to excessively large requests.
- Deter or preclude frivolous requests.
- Extend the required response time for initial requests.

The recommendations are addressed, in part, by Senate Bill 247 of 2011, and Senate Bill 551 of 2011 and House Bill 2121 of 2012.

- **Requirements for Signage, Pavement Markings, and Traffic Signals on State Highways and Rights-of-Way**

- Require state to assume responsibility for all facilities on state roads and rights-of-way.
- Other relevant recommendations from the 2011 Pennsylvania State Transportation Advisory Committee’s *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, and the 2011 *Final Report, Transportation Funding Advisory Commission*.

Relevant recently enacted legislation includes Act 13 of 2012.

- **Stormwater Facility Maintenance Requirements along State Highways**

- Require state to assume responsibility for all facilities on state roads and rights-of-way.
- Other relevant recommendations from the Pennsylvania State Transportation Advisory Committee’s 2007 *Storm Water Facilities on State Highways, Final Report*.

Relevant proposed legislation includes Senate Bill 1261 of 2011. Separately, albeit not a legislative measure, PennDOT issued changes to its Maintenance Manual in 2011, specifying that the agency “will assume structural responsibility for existing enclosed surface drainage facilities within townships where a written agreement or highway occupancy permit does not assign responsibility otherwise.”

- **Act 101 of 1988 Recycling Requirements**

- Require increased state reimbursement for recycling costs by providing for an increased recycling fee for solid waste processed at resource recovery facilities or disposed of at municipal waste landfills, and for dedicated grant funding.

The recommendation is addressed, in part, by Senate Bill 825 of 2011, and House Bill 206 of 2011 and Senate Bill 863 of 2011.

- **Municipal Police Officer Certification and In-Service Training**

- Restore state funding for reimbursement of officer tuition, living and travel expenses, and salary while attending a municipal police training school.

Relevant proposed legislation includes House Bill 1258 of 2011.

4. Recommendations for Further Study (p. 3-28)

- **Conduct fiscal impact analyses of two of the most burdensome mandates as identified by the municipal associations that could not be examined as part of this study due to timing.**
 - **Act 32 of 2008** (amending Act 511 of 1965 [Local Tax Enabling Act]) to provide for Consolidated Collection of Earned Income Taxes.
 - **Act 46 of 2011** (amending Act 338 of 1915 [Workers' Compensation Act]) to provide for firefighters with cancer.
- **Evaluate mandates that are no longer actively imposed or applied for possible repeal.**

Conclusions

The SR 323 Mandate Study provides a starting point and basis for building a proactive approach to address the current and potential costs of statutory mandates that may be placed on Pennsylvania's counties, cities, boroughs, town, and townships. As is evident in the findings in this report, dealing with the costs of mandates is a very complex issue, which often obviously involves many variables and interests. Variables may range from attempting to ascertain the labor costs to implement a given mandate, to determining the extent to which a mandate is worthwhile and, if so, who should bear the cost. Stakeholders may vary from distressed municipalities to labor unions to the Commonwealth, many times with competing interests and limitations. As a result, effectively addressing a mandate often involves a negotiation and balancing process toward accommodating shared interests.

More specific observations and conclusions are as follows:

- At least 27 states have constitutional, statutory, and/or regulatory provisions, which address mandates on local governments with varying degrees of success. Pennsylvania is among those states that may have no or limited provisions.
- This report includes a comprehensive list of mandates, but to derive more meaning from this compendium requires further analysis. For example, it may be worthwhile to take a closer look at the most imposing mandates—the direct orders and conditions of aid—and over a period of time methodically determine which ones may have a significant unfunded or underfunded cost or which ones should be repealed in addition to those already identified.
- The executive branch agencies reported the allocation of over \$1 billion in state funding, more than \$173 million in federal funding, and about \$240,000 in other funding to municipalities in Fiscal Year 2011-2012, but this is just a snapshot in time. Periodic

surveys, similar to what Hawaii has done (p. 2-21), would provide a comparative reference. In addition, contrasting the amount that the state has allocated to the collective county and municipal budgets would provide a meaningful frame of reference.

- Attempting to obtain or estimate reliable costs of many of the mandates for *all* municipalities by surveying *all* municipalities generally appears to be a questionable approach. Putting all the other possible constraints—survey length and complexity, level and capability of staff resources, availability of cost information, and interest of the municipality—aside, it was apparent that mandates affect various municipalities differently, many times in an unpredictable manner. For example, for “Right-to-Know Law Compliance,” the majority of municipalities in Pennsylvania may not receive Right-to-Know requests, while a minority may receive an inordinate amount or a few large requests, which make the mandate truly burdensome to them. Hence, although it may not be a measurable or an onerous issue statewide, it does not diminish the impact it has on the affected municipalities.
- An important consideration, if the Legislature decides to take on the recommendations in this report, is ensuring adequate staff resources. For example, Virginia’s Commission on Local Government reportedly has a staff of three to prepare the municipal fiscal impact analyses on proposed legislation and provide support to the Governor’s Task Force for Local Government Mandate Review.⁴ Massachusetts’ Division on Local Mandates has a staff of five, who are “responsible for determining the local financial impact of proposed or existing state mandates” and responding to requests for opinions and cost impact analyses from local governments, the Legislature, and state agencies.⁵ Needless to say, requirements for staff resources depend on the assigned responsibilities and allocation of existing staff.
- The recommendations, especially the proposals for mandate impact statement, cost sharing, and sunset provisions, and the periodic review of mandates and an ongoing mandate task force, are a starting point for developing possible policies, regulations, and legislation, which may be modified with more in-depth investigations into other states’ efforts and further discussions. As is evident in the “Specific Legislative Recommendations,” many of the mandates identified by the municipal associations have been addressed by past or currently proposed, or recently enacted, legislation. Nonetheless, most likely, additional proposals will come forward should this initiative to address mandates progress. What became evident in looking at the most successful programs in other states is that having a multifaceted approach that addresses different variables is critical to dealing with the complexity of mandate issues.

⁴ Smith, Susan, Local Government Policy Manager, Virginia Commission on Local Government, September 5, 2012, telephone conversation.

⁵ McCarthy, Vincent, Director of Division of Local Mandates, Office of the State Auditor, Commonwealth of Massachusetts, September 6, 2012, telephone conversation; Division of Local Mandates, Office of the State Auditor, Commonwealth of Massachusetts, 2012, <<http://www.mass.gov/auditor/about-the-state-auditors-office/division-local-mandates.html>>, September 10, 2012.

Report Summary

- Pursuit of the recommendations also would obviously necessitate consultation and coordination with appropriate committees and agencies within the Pennsylvania General Assembly and Executive Branch, and with the statewide municipal associations.

An underlying tenant which became evident in reviewing how other states deal with mandates is that the most successful programs are those in which the stakeholders, particularly the local governments and the state, maintain a good working relationship.

1.0 Introduction

1.1 Purpose and Intent

On July 2, 2010, the Senate of Pennsylvania passed Senate Resolution (SR) 323, directing the Local Government Commission (LGC) to establish a task force to study unfunded and underfunded state statutory mandates that affect Pennsylvania’s municipalities—its counties, cities, boroughs, town, and townships (*see* Appendix A). The Senate recognized that the increasing costs of mandates undoubtedly put a strain on municipal resources and may well increase the local tax burden on citizens and businesses, thus ultimately impacting the economic health of communities. Moreover, prior to this report no comprehensive published information existed on state mandates that may affect counties and municipalities in the Commonwealth.

The purpose of the SR 323 Mandate Study was to compile a thorough list of statutory mandates placed on municipalities, which describes for each mandate:

- Whether it is federal and/or state in origin.
- Whether it is required or discretionary.
- Average annual cost to municipalities, if determinable.
- Amount of money provided by the federal government or the Commonwealth to implement the mandate.

... and make findings and recommendations on:

- Cost savings that could be achieved through partial waiver or elimination of certain mandates.
- Possible alternative procedures that could provide a mechanism to municipalities for mandate relief.

1.2 Senate Resolution 323 Task Force

Pursuant to SR 323, the Task Force included six legislators, five municipal association representatives, thirteen executive branch agency representatives, and six academic advisors. The LGC chair, Senator Robert Robbins, appointed two members of the Senate and two members of the House of Representatives—one from each caucus in each chamber—who served on the Local Government Commission. The majority leader and minority leader of the Senate also appointed a member from each of their caucuses. Senator Robbins further appointed Senator John Eichelberger—a member of the LGC—to serve as the SR 323 Task Force chair.

After preliminary meetings of the LGC staff with the Local Government Conference and the Pennsylvania Policy Forum, the LGC invited five municipal associations and 13 state agencies to

1.0 Introduction

appoint a representative from each to serve on the Task Force, and asked faculty from six institutions of higher learning to serve as academic advisors on the Task Force as well. The five represented municipal associations were the County Commissioners Association of Pennsylvania (CCAP), the Pennsylvania League of Cities and Municipalities (PLCM),¹ the Pennsylvania State Association of Boroughs (PSAB), the Pennsylvania State Association of Township Commissioners (PSATC), and the Pennsylvania State Association of Township Supervisors (PSATS). All were organizations included in SR 323 and their constituencies were the focus of the resolution. The resolution did not address authorities and schools. The municipal association representatives provided oversight and direction for the study and played a critical role in carrying out statewide surveys of counties and municipalities.

The 13 state agencies included those listed in the resolution along with others that, to the LGC's preliminary knowledge, are responsible for a large number of mandates that may affect municipalities. Agencies represented on the Task Force were the Governor's Office of the Budget, the Department of Aging, the Department of Agriculture, the Department of Community and Economic Development, the Department of Corrections, the Department of Environmental Protection, the Department of Health, the Department of Labor and Industry, the Department of Public Welfare, the Department of Revenue, the Department of State, the Department of Transportation, and the Pennsylvania Emergency Management Agency. These state agencies, along with 23 others, played an important role in validating, in part, the mandates in the LGC Mandate Database and completing a survey of funding for mandates that may affect counties and municipalities (*see* Sections 2.2 and 2.3).

The academic advisors, who were key in developing and helping to carry out the study methodology, represented differing areas of expertise and geographic locations, both of which were invaluable to the Mandate Study. Faculty from Drexel University's Center of Public Policy, Kutztown University's Department of Political Science, the Institute for Public Policy and Economic Development (Wilkes-Barre), Lafayette College's Meyner Center, Penn State Harrisburg's School of Public Affairs, University of Pittsburgh's Graduate School of Public and International Affairs, and Wilkes University's Political Science Program generously gave of their time and knowledge to serve on the Task Force.

Finally, staff from the Legislative Data Processing Center (LDPC) and the Legislative Office for Research Liaison, especially the LDPC, were instrumental in providing recommendations for academic advisors and mandate database manipulation and reports. They also served as a technical resource at Task Force meetings.

The Task Force held three meetings during the course of the study, and the municipal association representatives, agency staff, academic advisors, and LGC staff separately convened nine times, the outcomes of which are encompassed in this report. The objectives of each of the meetings were as follows:

¹ PLCM recently changed its name to the Pennsylvania Municipal League.

- **September 17, 2010, meeting of Academic Advisors** to develop a suggested methodology for determining the costs of mandates to municipalities and measures for mandate relief.
- **October 7, 2010, meeting of SR 323 Task Force** to: (1) provide an overview of the SR 323 Mandate Study, the outcome of a literature review of mandate provisions in other states, and a definition of “mandate” for purposes of the study; (2) learn about findings of Michigan’s Legislative Commission on Statutory Mandates for consideration in developing the parameters for the SR 323 Mandate Study; (3) review the academic advisors’ suggested methodology for determining the costs of mandates to municipalities and measures for mandate relief; and (4) establish committees of: (a) municipal associations to determine the definition of “mandate” and identify their most burdensome mandates for the study; (b) municipal associations and academic advisors to develop the municipal survey methods and instruments; and (c) state agencies and academic advisors to design and conduct a survey of federal and state funding for mandates that affect municipalities.
- **October 25, 2010, meeting of Municipal Association Representatives** to determine mandates most burdensome on the associations’ constituencies and the definition of mandate for the purposes of the SR 323 study.
- **January 6, 2011, meeting of Municipal Association Representatives with the Pennsylvania Department of Transportation** to obtain clarification on certain mandates that are under the Department’s purview.
- **January 20, 2011, meeting of Academic Advisors and Municipal Association Representatives** to determine the methodology for pilot studies as a basis for statewide surveys, determine the possible structure for the statewide surveys of counties and municipalities, and discuss the possible structure for the survey of federal and state funding for mandates that affect municipalities.
- **February 23, 2011, meeting of Municipal Association Representatives with the Pennsylvania Department of Environmental Protection** to obtain clarification on certain mandates that are under the Department’s purview.
- **April 7, 2011, meeting of SR 323 Task Force** to: (1) recap the outcome of the October 7 Task Force meeting; (2) review progress to date, including results of the pilot studies and approach for the statewide surveys; (3) delineate the approach for validating the mandates in the LGC mandate database as a precursor to a survey of federal and state funding for mandates affecting municipalities; and (4) discuss the method for the survey of federal and state funding for mandates.
- **July 13, 2011, meeting of Municipal Association Representatives and Academic Advisors** to review the pilot study results, and concur on statewide survey development and methodology and the means for analysis of survey results.
- **September 1, 2011, meeting of State Agency Representatives** to discuss the approach for a survey of the state agencies to determine the amount of funding provided by the federal government or the Commonwealth to implement statutory mandates placed on municipalities.
- **November 18, 2011, meeting of Municipal Association Representatives** to review preliminary statewide survey results and what might be done to mitigate insufficient responses.

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- **July 31, 2012, meeting of SR 323 Task Force** to present the preliminary draft report and solicit comments for recommendations.
- **August 24, 2012, meeting with the Municipal Association Representatives** to reach consensus on specific legislative recommendations for the most burdensome municipal mandates.

1.3 Overview of the Report

The report is organized in a manner commensurate with the requirements of SR 323 as outlined at the beginning of this section. Section 2.0 covers methodology and findings for the different objectives and Section 3.0 provides recommendations and conclusions.

Under Section 2.0, as the product of a preliminary task, Section 2.1 summarizes findings from a review of other states' mandate provisions and studies, including other states' definitions of "mandate," mandate provisions for defining the SR 323 methodology, measures for mandate relief, and mandate inventories, catalogs, studies, manuals, and reports. Section 2.2 provides a comprehensive list of state statutory mandates placed on counties and municipalities, including whether each mandate is federal and/or state in origin, and required (direct order or condition of aid) or discretionary (authorization or condition of authorization). Section 2.3 reports the amount of money provided by the federal government or the Commonwealth during Fiscal Year 2011-2012 to implement state statutory mandates. Section 2.4 focuses on the most burdensome mandates as identified by the municipal associations. It addresses the costs of those mandates to counties and municipalities, if determinable, and the counties' and municipalities' recommendations for mandate relief.

Section 3.0 summarizes findings and recommendations for cost savings and possible alternative procedures that could provide mandate relief. It also draws overall conclusions from the SR 323 Mandate Study.

2.0 Methods and Findings

As this section will reveal, a literature review and the outcome of meetings among the municipal association representatives, agency representatives, academic advisors, and LGC staff, and ultimately of the Task Force as a whole, resulted in a scope of study somewhat modified from the purpose and objectives as delineated in SR 323. This study, as required, *does* provide a “comprehensive” list of mandates placed upon local governments and *does* describe for each mandate:

- Whether it is federal and/or state in origin.
- Whether it is required or discretionary.
- The amount of funding provided by the federal government or the Commonwealth to implement the mandate.²

However, given that the LGC mandate database contains over 6,500 statutory mandates that may affect counties and municipalities, it quickly became apparent that it was physically and financially not feasible, and counterproductive, to determine the costs and possible relief measures for thousands of mandates for the purpose of SR 323. Therefore, the Task Force made a decision to closely examine only the most burdensome mandates as identified by the statewide county and municipal associations in order to:

- Ascertain the average annual cost to municipalities, if determinable.
- Make findings and recommendations on cost savings that could be achieved through partial waiver or elimination of certain mandates, and possible alternative procedures that could provide a mechanism to municipalities for mandate relief.³

The Task Force also chose to focus on mandates that have an express basis in state law, since the legislature has the ability to possibly provide some relief from those mandates.

2.1 Review of Other States' Mandate Provisions and Studies

As the first step in the SR 323 Mandate Study, the LGC staff conducted an extensive review of other states' constitutional, statutory, and/or regulatory mandate provisions, with two objectives:

- To determine how other states define “mandate” for the purpose of providing mandate relief to local governments.

² See Section 2.2, Comprehensive List of State Statutory Mandates Placed on Counties and Municipalities, and Section 2.3, Funding of Mandates by State Agencies.

³ See Section 2.4, Costs of Mandates to Counties and Municipalities and Their Recommendations for Relief.

2.1 Methods and Findings: Review of Other States' Provisions & Studies

- To see how other states' mandate provisions might help define the SR 323 Mandate Study methodology for determining:
 - Whether a mandate is federal or state in origin.
 - Whether a mandate is required or discretionary.
 - Average annual cost to municipalities, if determinable.
 - Amount of funding provided by the federal government or the Commonwealth to implement a mandate.
 - Potential cost savings through waiver or limitation.
 - Findings or recommendations on possible alternative procedures for mandate relief.

In having found constitutional, statutory, and/or regulatory provisions for mandates in 27 states, the LGC staff also sought out mandate inventories, catalogs, studies, manuals, and reports published by those states that might provide some guidance on how to best approach the SR 323 Mandate Study, and reviewed pertinent articles cited in those publications. This section provides a summary of the findings from the staff's research.

2.1.1 Other States' Definitions of "Mandate"

Appendix B provides a compilation of the mandate relief provisions adopted in 27 states, and indicates for each state the constitutional and/or statutory citation for mandates, key constitutional and/or statutory language pertaining to mandates, exceptions to what a state defines as mandates, and the definition of mandate. A breakdown of which states have constitutional and/or statutory mandate provisions is as follows:

- Only Constitutional Mandate Provisions: Alabama, Alaska, Florida, Hawaii, Louisiana, New Hampshire, and Oregon.
- Both Constitutional and Statutory Mandate Provisions: California, Colorado, Maine, Massachusetts, Michigan, Missouri, New Jersey, and Tennessee.
- Only Statutory Mandate Provisions: Connecticut, Illinois, Iowa, Minnesota, Montana, Nevada, Rhode Island, South Carolina, South Dakota, Virginia, Washington, and Wisconsin.

Twenty-three of the states have some type of exceptions to what a state defines as a mandate. Some of the more common exceptions include a duty imposed by, required to implement, or necessary to avoid violating the United States Constitution or a state constitution, a federal law, a court order, a law governing elections, a law relating to certain pension benefits, a law approved by two-thirds vote of each chamber in the state legislature, a law approved by voter referendum, a law with a fiscal impact that is "insignificant" or below a specified dollar threshold, or a law enacted prior to the adoption of the state's constitutional or statutory mandate relief provision.

Other states' definitions of mandate, including their exceptions to the definitions, in part provided a basis for the Task Force to develop its definition of "mandate" for the purposes of this study. Specifically, Section 2.4.1 presents the definition of mandate that was adopted by the Task Force and used to delimit the most burdensome mandates, as identified by the municipal

2.1 Methods and Findings: Review of Other States' Provisions & Studies

associations, in order to ascertain mandate costs to counties and municipalities, if determinable, and to make findings and recommendations for mandate relief.

2.1.2 Other States' Mandate Provisions for Defining SR 323 Study Methodologies

In reviewing mandate provisions from 27 states, the LGC staff was able to glean relevant information as a basis for recommendations for the SR 323 Mandate Study methodology.⁴ Specifically, they were able to find useful information pertaining to the first four criteria for characterizing mandates: whether they are federal or state in origin, whether they are required or discretionary, the cost of mandates to counties and municipalities, and the amount of funding provided to implement mandates. Recommendations for each of these criteria are as follows.

- Recommendation for discerning between mandates of *federal or state in origin*:
 - Include only mandates of federal origin if they are implemented through state legislation (e.g., Maine, Missouri). (Most states that provide for mandate reimbursement exclude mandates of federal origin.)
- Recommendations for discerning between mandates that are *required or discretionary*:
 - Define a “required mandate” as imposing any direct service or cost obligation, or providing for exemptions from local taxation (e.g., Massachusetts).
 - Define a “discretionary mandate” as a requirement imposed on a municipality as a result of initiative and referendum, voter referendum, or the municipality opting to perform an authorized activity or service regardless of whether the municipality must comply with associated minimum standards, requirements, or guidelines (e.g., Michigan).
- Recommendations for determining the *cost to municipalities*:
 - Focus on the most egregious unfunded mandates imposed on municipalities as identified by each of the municipal associations (e.g., Michigan).
 - Limit costing to an annual cost for a given fiscal year (e.g., Hawaii, Illinois, Massachusetts, Rhode Island).
 - Allow for costing a high-low range (e.g., Michigan).
 - Allow for an explanatory note if costing is not determinable (e.g., Michigan).
 - Develop collaboration or a network among state agencies and municipal associations to determine costs (e.g., California, Massachusetts, Nevada).

⁴ See also Appendix C, Review of Other States' Mandate Provisions and Recommendations for Senate Resolution 323 Mandate Study.

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- Recommendation for determining the *amount of funding provided by the federal government or the Commonwealth to implement mandates*:
 - Conduct a survey of state agencies or a sampling of municipalities (Hawaii, Missouri, respectively).

2.1.3 Other States' Measures for Mandate Relief

Almost more important than the previous findings and resultant recommendations are the examples of measures for mandate relief, which the review of mandate provisions from other states revealed.⁵ In particular, the LGC staff found examples of relief measures pertaining to the last three criteria for characterizing mandates pursuant to SR 323: the amount of funding provided to implement mandates, potential cost savings provisions, and findings or recommendations for mandate relief. Examples of mandate relief measures for each of these criteria are as follows:

- Examples of *funding provided by the federal government or the Commonwealth to implement mandates*:
 - Most states that address mandates have a reimbursement program, which typically involves a bureaucratic process and numerous qualifiers and exceptions (e.g., California, Minnesota, Montana, New Jersey, Oregon).
 - Some states mitigate mandate costs through revenue or cost sharing or providing for local funding (e.g., Maine, Tennessee, Washington).
- Examples of *potential cost savings* provisions:
 - Many states with mandate relief provisions have a stipulation that if the state does not fund the mandate, the municipality need not comply (e.g., Alabama, California, Iowa, Louisiana, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, South Dakota).
 - Many states with mandate relief provisions have some sort of appeals process (e.g., California, Illinois, Massachusetts, New Jersey, Virginia, Wisconsin).
 - Some states, with certain qualifications and exceptions, have a municipal voter referendum or governing body vote to accept or reject an unfunded mandate (e.g., Alaska, Massachusetts).
 - Some states authorize the governor to suspend a mandate (e.g., New Jersey, Virginia).
 - At least one state has a provision whereby a mandate may be declared null and void (Tennessee).

⁵ See also Appendix C, Review of Other States' Mandate Provisions and Recommendations for Senate Resolution 323 Mandate Study.

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- Examples of *findings or recommendations on possible alternative procedures for mandate relief*:
 - Establish a credible fiscal note process (most states). *For example*, the **Missouri** Revised Statutes requires the Joint Committee on Legislative Research Oversight Division to prepare a fiscal note on each bill before action may be taken on it.⁶
 - Recommendations in **Hawaii** Legislative Reference Bureau Report No. 4, pertaining to federal mandates:
 - “[A]mending the executive budget law to require the Governor to submit federal mandate information as part of the budget proposals to the Legislature.”
 - “[Examining] those federal programs that were not reported as federally mandated programs.”
 - “[Examining] those programs that were reported as federally mandated, but whose sanctions or penalties for noncompliance are not intolerable.”⁷
 - Concurrent or subsequent to the development of the mandate database, the **Illinois** State Mandate Act directs the Department of Commerce and Economic Opportunity to review and report to the Governor and General Assembly:
 - . . . (2) extent to which the enactment of the mandate was requested, supported, encouraged or opposed by local governments or their respective organization; (3) whether the mandate continues to meet a Statewide policy objective or has achieved the initial policy intent in whole or in part; (4) amendments if any are required to make the mandate more effective; (5) whether the mandate should be retained or rescinded; (6) whether State financial participation in helping meet the identifiable increased local costs arising from the mandate should be initiated, and if so, recommended ratios and phasing-in schedules; and (7) any other information or recommendations which the Department considers pertinent.⁸
 - Establish a mandate reform proposals website for municipalities as in **Minnesota**.⁹

⁶ See Missouri General Assembly Joint Committee on Legislative Research Oversight Division, n.d., <<http://www.moga.mo.gov/oversight/overhome.htm>> (September 7, 2010); Missouri Revised Statutes, Title III, Chapter 23, Section 23.140, August 28, 2009, <<http://www.moga.mo.gov/statutes/C000-099/0230000140.HTM>> (September 7, 2010).

⁷ Sugano, Dean, “Fact Sheet,” *Federally Mandated State Programs during Fiscal Year 2001-2002*, Report No. 4. Honolulu: Hawaii Legislative Reference Bureau, 2001, p. 2.; see Sugano, Dean, *Federally Mandated State Programs during Fiscal Year 2001-2002*, Report No. 4, October 2001, <<http://hawaii.gov/lrb/rpts01/fedman01.pdf>> (September 7, 2010).

⁸ Illinois Compiled Statutes, Title 30, Section 805, n.d., <<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=575&ChapterID=7>> (September 7, 2010).

⁹ See “Mandate Reform Proposals,” Minnesota Office of the State Auditor, 2010, <<http://www.auditor.state.mn.us/default.aspx?page=MandateReformProposals>> (August 31, 2010).

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- Recommendations from the **Michigan** Legislative Commission on Statutory Mandates:
 - “Require that no statute which requires new activities and services or an increase in the level of activities or services . . . may become binding on those local units until funds are appropriated to pay . . . for the increased necessary costs of compliance.”¹⁰
 - “Establish and require that a *fiscal note process* in connection with *all* bills before enactment or the effective date
 - Require the House and Senate Fiscal Agencies working in consultation with representatives of local units of government affected by the bill, (i) to determine whether any new or increased costs are likely to occur as a result of the same being adopted, (ii) develop an estimate of the necessary new or increased costs that are likely to be incurred by local units statewide, and (iii) inform the Legislature of the estimated costs found in (ii) above while debate is occurring over the subject bill.
 - Tie . . . mandate legislation to an appropriation bill.
 - Create a disbursement process that provides for payments to local units from the appropriation on a current basis or as the subject expenses are being incurred by the local units.
 - Require that in the event legislation is enacted which imposes requirements on local units to provide activities and services without compliance by the legislature with the fiscal note process, such legislation shall be of no force and effect and shall not require compliance by the affected local units until such time as the fiscal note, appropriation and disbursement process has occurred.”¹¹
 - Establish an exclusive *adjudicatory framework* for suits brought against the state, including:
 - A special master as a permanent/sitting position within the Court of Appeals.
 - The burden of proof placed initially on the state.
 - Waiver of local government compliance with a mandate beyond six (6) months following the filing of a taxpayer suit, unless the Court of Appeals issues a declaratory judgment.¹²
 - Establish an ongoing process for *monitoring compliance and providing assistance* with the mandate mitigation requirements, working *in consultation with the local government associations*.¹³

¹⁰ Legislative Commission on Statutory Mandates, *Final Report of the Legislative Commission on Statutory Mandates*, December 31, 2009, p. 14, <http://council.legislature.mi.gov/files/lcsm/lcsm_final_report.pdf> (September 9, 2010) (emphasis added).

¹¹ *Id.*, p. 14.

¹² *Id.*, p. 15.

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- Identify past *underfunded mandates* to the extent possible:
 - Determine whether the requirements continue to be necessary in the public interest.
 - “[D]etermine how the required activities and services can be more cost effectively provided and to initiate any changes or amendments to the law necessary to implement changes for that purpose.”
 - “[D]etermine that [if] the required activities and services cannot be changed in the public interest, that the necessary increased costs for providing same be funded through adoption of an appropriation”
 - “Place responsibility in the Department of Management and Budget to create and implement accounting systems that accurately capture the necessary costs being incurred, going forward”
 - “[D]etermine if it is cost effective for local units to continue . . . to provide the required activities and services and to adopt whatever changes that may serve to reduce or eliminate the costs to local units for same.”
 - “Consider (i) relief from archaic mandates and (ii) funding for “voluntary” mandates.”¹⁴
- The **Missouri** Committee on Legislative Research may conduct program evaluations to determine efficiency, effectiveness and quality of a program, and make recommendations:

To meet the demands for more responsive and cost effective state government, [Missouri] legislators often desire to obtain information regarding the status of state programs they have created and the expenditure of funds they have authorized. The Committee on Legislative Research, through the Oversight Division, *can investigate and assess state agency performance in the implementation of laws and report the findings to the Legislature*. The Oversight Division conducts its work in an independent manner utilizing trained professional staff. An evaluation generally includes examination of state agency records, interviews of agency staff, surveys of affected citizens, on-site observation of program operations and review of similar programs in other states. *The objectives of the evaluation usually include determining efficiency, effectiveness and quality of the program*. Questions regarding sufficient funding levels, appropriate spending practices and the need for extension of sunset dates can often be answered in the course of the evaluation. In addition, recommendations are made to the legislature for changes that could be made to enhance the program or facilitate more efficient management of the program. The Division is *assigned evaluations pursuant to a*

¹³ Legislative Commission on Statutory Mandates, *Final Report of the Legislative Commission on Statutory Mandates*, December 31, 2009, p. 16, <http://council.legislature.mi.gov/files/lcsm/lcsm_final_report.pdf> (September 9, 2010) (emphasis added).

¹⁴ *Id.*, pp. 16-17.

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concurrent resolution of the General Assembly or a resolution adopted by the Committee on Legislative Research. Staff devotes time to completing the work during the interim, between June and December. Reports are typically presented to the Committee on Legislative Research for review and release to the public upon completion.¹⁵

- Recommendations from the **Minnesota** Office of the Legislative Auditor on tools to address mandate concerns:
 - *Local fiscal impact notes* “to measure the monetary impact of proposed legislation or administrative rules on counties and cities.”
 - *Fiscal impact summary report* to “document the costs to local governments of certain types of mandates passed after June 30, 1997.
 - *Funding or reimbursement provisions* that “[set] forth a very limited reimbursement program for certain types of mandates.
 - *Mandate explanations* “to inform policymakers of the rationale behind proposed mandates on local governments.”
 - *State agency variances* that give “state agencies the authority to grant variances to their rules.”
 - *Rule petitions* that “[allow] the governing body of a county or city to petition a state agency to amend or repeal a rule or portion of a rule under certain circumstances.”
 - *Board of Government Innovation and Cooperation*, with authority to grant waivers for school districts, counties, cities, and towns from procedural laws and administrative rules affecting local governments’ provision of services.
 - *Mandate studies* for the purpose of “giving responsibility to independent boards or agencies to review state mandates on local governments.”
 - *Pilot projects* “to test new mandates or changes in existing ones in selected local governments before applying them statewide.”
 - *Delayed effective dates* to “give local governments more time to accommodate additional responsibilities within their personnel, financial, and other resource limitations.
 - *Local government approval of unfunded mandates* “to help ensure that unfunded mandates address local concerns.”
 - *Two-thirds vote of the Legislature* “to pass unfunded mandates [which reportedly] is the most effective method of protecting local government from unfunded mandates.”
 - *Mandate inventories*—“a frequent starting point for addressing mandate concerns, states have developed complete inventories of existing mandates on local governments. Although the rationale for such an approach is largely informational, it is also hoped that outdated mandates will be identified and eliminated.”

¹⁵ Missouri General Assembly Joint Committee on Legislative Oversight, Oversight Division, n.d., <<http://www.moga.mo.gov/oversight/overhome.htm>> (August 9, 2010) (emphasis added).

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- *Sunset language* “To address the concern that some mandates represent permanent solutions to temporary problems.”¹⁶
- **Massachusetts** and **Virginia** conduct periodic review or assessment of mandates:

For example, Massachusetts General Laws direct the Division of Mandates to determine the costs and benefits of each relevant law and regulation to serve as a basis for recommending continuation, modification, or elimination of such law or regulation:

The [Division of Local Mandates] shall review every five years those laws and administrative regulations which have a significant financial impact upon cities or towns. For the purposes of this section ‘Significant financial impact’ is defined as *requiring municipalities to expand existing services, employ additional personnel, or increase local expenditures*. Said division shall *determine the costs and benefits* of each such law and regulation, and submit a report to the general court of each session together with its recommendation, if any, for the *continuation, modification or elimination* of such law or regulation.¹⁷

The **Virginia** Code empowers the Commission on Local Government to direct state agencies to conduct assessments of mandates imposed by them on localities. The Commission sets the schedule of assessments, but agencies are not required to perform an assessment of mandates more often than once every four years. The object of the periodic assessment is to determine if any mandates exist that can be modified or eliminated.

If an assessment reveals that such mandates may be altered or eliminated without interruption of local service delivery and without undue threat to the health, safety and welfare of the residents of the Commonwealth, the Commission shall so advise the Governor and the General Assembly.¹⁸

- Members of the **Pennsylvania** General Assembly have introduced a number of bills over the past two decades, which have not become law, to mitigate the financial impact of mandates on the Commonwealth’s municipalities. Examples of legislation¹⁹ include:
 - **House Bill 2081 of 2009 (Printer’s Number 2905), The Emergency Mandate Suspension Act**, would have created a Council on Mandates within the Governor’s

¹⁶ Office of the Legislative Auditor, State of Minnesota, *Program Evaluation Report, State Mandates on Local Governments*, January 2000, pp. 41-59, <<http://www.auditor.leg.state.mn.us/ped/pedrep/0001all.pdf>> (September 7, 2010).

¹⁷ The General Laws of Massachusetts, Chapter 11, Section 6B, April 30, 2009, <<http://www.mass.gov/legis/laws/mgl/11/11-6b.htm>> (September 7, 2010) (emphasis added).

¹⁸ Code of Virginia, Title 15.2, Counties, Cities and Towns, Chapter 29 (Commission on Local Government), Section 15.2-2903(6), July 1, 2010, <<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2903>> (August 2, 2010).

¹⁹ To view the referenced House and Senate bills, see Pennsylvania General Assembly Session Information, n.d., <<http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>> (September 10, 2010).

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Center for Local Government Services. Generally, this bill would have established procedures by which local governments may temporarily opt out of unfunded mandates for a period of up to five years.

- **Senate Bill 7 of 2009 (Printer's Number 198), The Taxpayer Protection Act**, would have reduced the Commonwealth's spending appropriation limit, as set forth in the bill, "by the amount of the reduction in State appropriations to a political subdivision for administration of a mandated service, without an equal or greater reduction in State-mandated expenses for said local government or a repeal of the mandate to provide a program or service."
- **House Bill 710 of 2003 (Printer's Number 837), Mandate Review Advisory Board**, would have established, within the LGC, the Mandate Review Advisory Board (MRAB). The LGC, in consultation with the MRAB, would have been charged with the responsibility of making recommendations to the General Assembly with regard to the termination, continuation, or revision of existing or future mandates.
- **Senate Bill 539 of 2003 (Printer's Number 568), A Joint Resolution proposing an amendment to the Pennsylvania Constitution regarding State mandates on local governments**, would have amended Article IX of the Pennsylvania Constitution to specify that no municipality would be bound by any statute enacted after the passage of this legislation that would require the municipality to spend funds, or to take an action requiring the expenditure of funds, unless specified conditions were satisfied.
- **House Bill 2040 of 2001 (Printer's Number 2690), Establishing a Council on Local Mandates; A Joint Resolution proposing an amendment to the Pennsylvania Constitution regarding State mandates on local governments** would have amended Article VIII of the Pennsylvania Constitution to specify that any statute or regulation deemed to be an unfunded mandate would cease to be mandatory in its effect, and expire. The bill would have established a Council on Local Mandates to resolve disputes about whether a law or regulation constituted an unfunded mandate. (*Note: House Bill 2815 of 2002 would have created a freestanding act to form the Council on Local Mandates for the purpose of prohibiting mandates relating to water or sewer systems. This bill did not propose a Constitutional amendment.*)
- **House Bill 917 of 1999 (Printer's Number 1017), The Federal Mandates Act**, would have established procedures by which to ensure that Federal mandates implemented by Pennsylvania comply with state policy as established by the General Assembly.
- **Senate Bill 697 of 1995 (Printer's Number 731), Constitutional Defense Council Act**, would have established the Constitutional Defense Council to examine and challenge by "legal action, proposed legislation, or any other legal means:
 - (1) Federal mandates.
 - (2) Court rulings.
 - (3) The authority granted to or assumed by the Federal Government.
 - (4) Laws, regulations and practices of the Federal Government.
 - (5) Any other activity that is deemed appropriate by the council."

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- **Senate Bill 696 of 1995 (Printer's Number 730), Joint Legislative Committee on Federal Mandates Act**, would have established the Joint Legislative Committee on Federal Mandates, the duties of which would include:
 - (1) Annually reviewing the activities of Congress and the federal government, including court rulings with regard to any laws, regulations, or other actions that may require the Commonwealth to comply with any federal mandate.
 - (2) Taking any action necessary to protect the constitutional rights and sovereignty of the Commonwealth against federal mandates.
 - (3) Arranging for and conducting an annual joint session of the General Assembly or a meeting of the committee and requesting the attendance of all members of Congress from Pennsylvania to discuss issues relating to federal mandates and the appropriate use of federal power to influence state policy.
- **Senate Bill 1841 of 1994 (Printer's Number 2363), Mandate Review Commission**, would have created the Mandate Review Commission. The Commission would have been authorized to investigate legislative enactments and regulations that require counties, municipalities, and school districts to take action, which necessitate the expenditure of new or additional funds. The Commission would be charged with making recommendations to terminate, continue, or revise the programs that it investigated.

2.1.4 Other States' Mandate Inventories, Catalogs, Studies, Manuals and Reports

The LGC staff located mandate inventories, catalogs, studies, manuals, and reports from 12 other states. Six of those states, Hawaii, Illinois, Michigan, Minnesota, Missouri, and Virginia, had reports or catalogs that were helpful in developing the SR 323 Study methods and preparing this report. A summary of those are provided as follows, with pertinent provisions highlighted in *italics*. The other six states with related publications included California, Colorado, New Jersey, New York, Tennessee, and Wisconsin.²⁰

²⁰ See, e.g., State Controller's Office, *Mandated Cost Manual for Local Agencies*, State Of California, November 16, 2009; Ten-County Budget Conference 2009, *Unfunded Mandates Overview*, Breckenridge, Colorado, September 24, 2009; Smith, Marianne, Township Manager, Township of Hardyston, New Jersey, "New Jersey State Spending Mandates on Local Governments," May 20, 2008, correspondence to the Honorable Louis D. Greenwald, Assembly Budget Committee Chairman, 1103 Laurel Oak Road, Suite 142, Voorhees, New Jersey 08043; New York State Commission on Property Tax Relief, *Final Report to Governor David A. Paterson*, December 1, 2008; White, James W., Executive Director, General Assembly of the State of Tennessee Fiscal Review Committee, "2010 Cumulative Fiscal Note," July 20, 2010, memorandum to Chairman Randy McNally, Chairman Craig Fitzhugh, and Chairman Bill Ketron; State of Wisconsin Legislative Reference Bureau, *Funding State and Federal Mandates*, Informational Bulletin 96-3, April 1996.

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- *Federally Mandated State Programs during Fiscal Year 2001-2002*, Report No. 4, published by the **Hawaii** Legislative Reference Bureau:²¹
 - The survey, as the basis for the report, covered *state and federal operating funds appropriated under the General Appropriations Act of 2001* to implement federally mandated state programs during *fiscal year 2001-2002*.
 - The survey also included *position ceilings authorized under the act to implement those mandated programs*.
 - Questionnaires were *distributed to all the principal state executive branch departments and the offices of both the governor and lieutenant governor*.
 - Survey recipients were *requested to provide the following information on federally mandated state programs* for which their respective department was the expending agency under the General Appropriations Act of 2001:
 - The name of the state program that implements a federal mandate: i.e., the program ID in the General Appropriations Act of 2001.
 - The name of the federal mandate: i.e., the official or popular name of the mandate, and a citation to its source.
 - A description of the mandate: What does the mandate require the state to do?
 - The sanctions and penalties for noncompliance: What can the federal government do to the state if the state does not comply with the federal mandate or does not participate in the federal program? Can the federal government impose fines, preempt state regulatory powers, or withhold federal funds?
 - The operating funds appropriated and the position ceilings authorized under the General Appropriations Act of 2001 for the fiscal year beginning July 1, 2001, and ending June 30, 2002, in order to fulfill the mandate.
 - *It was not necessary to report a mandated program if the program's total state and federal funding was zero, unavailable, unknown, or unquantifiable.*
- *2009 State Mandates Catalog*, published by the **Illinois** Department of Commerce and Economic Opportunity:²²
 - The catalog contains *mandates enacted by law upon local governments*, other than school districts and community college districts, from the second session of the 87th General Assembly through the second session of the 96th General Assembly (1992-2009).
 - It includes Public Acts that have been determined to *impose a cost on one or more local governments*, and describes for each act: (1) the type of local government

²¹ Sugano, Dean, *Federally Mandated State Programs during Fiscal Year 2001-2002*, Report No. 4, Hawaii Legislative Reference Bureau, October 2001, <<http://hawaii.gov/lrb/rpts01/fedman01.pdf>> (September 7, 2010) (for methods, see pp. 1-5, 106-109).

²² Department of Commerce and Economic Opportunity, *2009 State Mandates Catalog*, State of Illinois, n.d., <<http://www.iml.org/files/pages/5177/2009%20State%20Mandates%20Catalog.pdf>> (September 7, 2010) (for methods, see pp. 2-3).

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- affected; (2) *estimated annual cost necessitated by the mandate, if possible*; (3) the state entity charged with supervision, if any; (4) a brief description of the mandate; and (5) a citation of its origin in statute.
- The catalog is divided into two groups—“Non Reimbursable” and “Reimbursable,” the former of which includes Public Acts creating mandates that are exempt from the State Mandates Act, or creating due process or local government organization and structure mandates.
 - There are 149 Mandates in this catalog, including 30 due process mandates, 53 local government organization and structure mandates, 37 personnel mandates, 11 service mandates, and 18 tax exemption mandates.
- *Final Report of the Legislative Commission on Statutory Mandates*, published by the **Michigan** Legislative Commission on Statutory Mandates:²³
 - The Legislature charged the Legislative Commission, in part, with compiling: (1) “the most significant funded and unfunded mandates imposed on local units of government in state laws [over a 30-year period] as identified by those local units of government”; and (2) “the range of costs to local units of government with each funded and unfunded mandate identified.”
 - Due to the sheer cost of complying with the original scope of work, the study was limited to assembling the *ten most egregious unfunded mandates imposed on local units of government as identified by the representing associations*.
 - A product of the Legislative Commission’s study was a table, entitled “Costing Mandates Submitted by Associations,” which includes:
 - Mandate information from the Michigan Association of Counties, Michigan Community Colleges Association, Michigan Municipal League, Michigan Township Association, County Road Association of Michigan, and Michigan School Business Officials.
 - Information on the top ten mandates per association, including the type of mandate along with a brief description, “low” and “high” annual unfunded costs, an explanatory note if costing information was not determinable, and a recommendation as deemed appropriate by the association.
 - *Program Evaluation Report, State Mandates on Local Governments* published by the **Minnesota** Office of the Legislative Auditor:²⁴
 - Questionnaires were sent to 654 local government officials from counties, cities, and towns throughout the state. The sample included all 87 county administrators/

²³ Legislative Commission on Statutory Mandates, State of Michigan, *Final Report of the Legislative Commission on Statutory Mandates*, December 31, 2009, <http://council.legislature.mi.gov/files/lcsm/lcsm_final_report.pdf> (September 7, 2010) (for methods, see pp. 29-31, Exhibit B).

²⁴ Office of The Legislative Auditor, State of Minnesota, *Program Evaluation Report, State Mandates on Local Governments*, January 2000, <<http://www.auditor.leg.state.mn.us/ped/pedrep/0001all.pdf>> (September 7, 2010) (for methods, see Appendix A).

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- auditors, all 79 city managers/administrators from cities with 10,000 residents or more, a random sample of 288 city clerks from cities with populations under 10,000, and a random sample of 200 town clerks. The overall response rate was 69%.
- To assess whether survey respondents were representative of the population of local government units, the Legislative Auditor compared their characteristics with those of all local governments in Minnesota.
 - The Minnesota Report addresses the following questions:
 - What are the different types and sources of mandates?
 - According to local units of government, which state mandates have the most significant impact on their costs and practices? What types of mandates are the most burdensome?
 - To what extent have the various mechanisms that Minnesota has adopted to specifically address local government mandates been used? How well do those mechanisms address local governments' concerns?
 - What approaches have the federal government and other states taken to review proposed or existing mandates or to provide compensation for mandated activities?
 - The Report provides *a broad overview of state mandates*, not an inventory of all mandates. A comprehensive inventory would have required resources beyond the Legislative Auditor's capacity with limited benefit to legislators.
 - The Report *does not examine the cost or effectiveness of state mandates*. Documenting costs would have been very difficult, if not impossible, because such costs depend on the actions that local governments would have taken in the absence of mandates.
- *Unfunded Federal Mandate Annual Report*, published by the Oversight Division, **Missouri** General Assembly Joint Committee on Legislative Oversight:²⁵
 - The Division *surveyed all state departments, all 114 counties, and cities with populations greater than 5,000*.
 - In requesting the required information from the various governments affected, the Division provided the governments a *listing of those mandates it determined were likely to have financially affected the various levels of government*. (For example, the Division determined that 10 different mandates were the most likely to have major effects on local governments, and requested the local governments surveyed to respond in regards to those specific mandates only.)
 - *State departments* were also asked to *include all mandates that agency personnel identified as having a financial impact* on the agency.
 - The Division obtained the federal mandates provided to the governments from the *Mandate Watch List* published by the National Conference of State Legislatures.

²⁵ Oversight Division, Missouri General Assembly Joint Committee on Legislative Oversight, *Unfunded Federal Mandate Annual Report*, February 2000, <<http://www.moga.mo.gov/oversight/over00/audit/unfunded.pdf>> (September 7, 2010) (for methods, see pp. 3-5).

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- Responses received included *all* state departments surveyed, 92 counties and 62 cities. (*Note*: The Division determined that the information provided by the county and city respondents could not reasonably be projected to all counties and cities in the state, and therefore, used only the actual amounts provided by the respondents to determine local government cost.)
- *2009 Catalog of State and Federal Mandates on Local Governments*, published by the Commission on Local Government, **Virginia** Department of Housing and Community Development.²⁶
 - The catalog provides an inventory of all the state and federal mandates on local governments in Virginia that had been identified as of October 2009.
 - Executive Order 58 of 2007 limits assessment activities to *four types of mandates*: (1) new mandates; (2) newly identified mandates; (3) mandates that have been so substantially modified as to create a new mandate; and (4) mandates that the Commission on Local Government, after duly considering input from local governments, state agencies, interest groups, and the public, has determined should be reassessed.
 - No such mandate becomes subject to assessment until it has been in effect for at least twenty-four (24) months.
 - No mandate can be reassessed more than once every four (4) years unless it has been so substantially modified as to create a new mandate.
 - The catalog is organized into *two parts*. *Part A* contains mandates administered by the *executive agencies* of the Commonwealth. *Part B* lists the remaining mandates that either are administered by *nonexecutive agencies* or exist *without State administrative oversight*.
 - *Standardized data* for each agency administered mandate includes: (1) short title; (2) unique code number; (3) brief description of the mandated action; (4) identification of the type of mandate; (5) the name of administering agency and secretariat; (6) statutory, regulatory, or constitutional authority on which the mandate is based; (7) mandate assessment period; (8) assessment finding; and (9) additional applicable comments. (*Note: Mandate cost is not included.*)
 - *Five hundred seventy (570) mandates* are included in the catalog, of which 456 are subject to critical review by executive agencies.

²⁶ Commission on Local Government, Department of Housing and Community Development, Commonwealth of Virginia, *2009 Catalog of State and Federal Mandates on Local Governments*, November 2009, <http://www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/2009_mandates_catalog.pdf> (September 7, 2010) (for methods, see pp. 1-5).

2.2 Comprehensive List of State Statutory Mandates Placed on Counties and Municipalities

To provide a comprehensive list of state statutory mandates placed on counties and municipalities as required by SR 323, staff used the LGC’s mandate database, known as the Pennsylvania State Mandate Project, which it had developed in 1981 and 1982 and has maintained since then. However, prior to publishing the database in this report, it first had to be validated, which had not been done since 1983. This section provides an overview of the LGC’s mandate database, the validation process, and the comprehensive list of state statutory mandates.

2.2.1 Local Government Commission’s Pennsylvania State Mandate Project

In 1981, the LGC initiated a long-range program to develop and maintain a database of constitutional, statutory, and regulatory mandates imposed on Pennsylvania’s local government units—counties, cities, boroughs, townships, school districts, and authorities. In 1981 and 1982, the LGC researched and created the Pennsylvania State Mandate Project database with cooperation and assistance from the Pennsylvania Intergovernmental Council, the Pennsylvania Department of Community Affairs, the various local government associations, and the Legislative Data Processing Center (LDPC).²⁷

The definition of “mandate” adopted for the purpose of the Mandate Project is “any state requirement or constraint, whether constitutional, statutory or administrative, imposed by the Commonwealth upon Pennsylvania political subdivisions” as:

- A **Direct Order**: Mandates issued from the Commonwealth, its agencies or instrumentalities to political subdivisions and authorities, with which compliance is required.
- A **Condition of Aid**: Mandates actions or conditions which must be accepted and implemented for eligibility of or the acceptance of assistance.
- An **Authorization**: Mandates which constitute a locally adopted option authorized by the state.
- A **Condition of Authorization**: Mandates that are direct orders resulting from a local government unit’s acceptance of an "Authorizing" mandate.

Encompassed in this definition are federal requirements implemented through state mandates placed upon local governments, also known as federal “pass through” requirements.²⁸

²⁷ Young, JoAnne L., Ph.D., *User’s Manual to the Pennsylvania State Mandate Project*, Local Government Commission, Pennsylvania General Assembly, Harrisburg, July 1982, p. 1 and Appendix H.

²⁸ *Id.*, pp. 2, 8.

2.2 Methods and Findings: Comprehensive List of State Statutory Mandates

To identify all mandates covered by this definition, the project staff performed an extensive review of all source material relevant to state government mandates. They researched the Pennsylvania Constitution, Purdon's Pennsylvania Statutes, the Pennsylvania Consolidated Statutes, an LDPC key word search listing, and the published and unpublished Pennsylvania Code volumes on a section by section basis, with special attention paid to identify requirements and constraints upon all or any Pennsylvania local government units.²⁹ Moreover, when entering the identified mandates into the database, project staff cross classified them with an array of operational and functional categories to facilitate access and retrieval. Classification of the mandates included:

- Serial Number – A primary identifier.
- Citation Descriptors – Classification (constitutional, statutory, or administrative), specific citation, index number (for administrative mandates), enactment date, effective date, termination date, short title, mandate description.
- Six Component Typology Classification – Procedural requirement, program requirement, constraint, application of mandate, method of imposition, reimbursable impacts.
- Functional Classification – Twenty primary classifications, ranging from agriculture to transportation, each broken down into secondary classifications.
- Type and Class of Affected Local Government – Counties, institutional districts, cities, townships, boroughs, home rule, school districts, authorities, and their respective classifications.
- Implementing Agency – Seventy-one possible implementing state agencies.³⁰

Currently, there are 16 constitutional mandates, over 7,500 statutory mandates, and more than 650 administrative mandates recorded in the database. There are far more statutory mandates than administrative mandates in the database given that most statutory mandates do not have associated regulations, and statutory mandates are broken down in most instances by sections of laws, where administrative mandates often reflect multiple sections of regulations.

However, the number of mandates that are the focus of this study is somewhat less than the population in the database based on the scope of SR 323. The resolution only focuses on “statutory mandates placed by the Commonwealth upon Pennsylvania’s boroughs, townships, counties and cities”³¹ Hence, in compiling the comprehensive list of mandates placed upon local governments, staff eliminated constitutional and administrative mandates, and mandates that *only* affect school districts and/or authorities. The result was 6,524 mandates in the comprehensive list of state statutory mandates placed on counties and municipalities.

²⁹ Young, JoAnne L., Ph.D., *User's Manual to the Pennsylvania State Mandate Project*, Local Government Commission, Pennsylvania General Assembly, Harrisburg, July 1982, pp. 2-3.

³⁰ *Id.*, pp. 3-15.

³¹ Senate Resolution 323 of 2010.

2.2.2 Validation of Local Government Commission Mandate Database

Validation of the mandate database, which was last done in 1983, involved two components. As an initial undertaking, the LGC asked 36 state agencies, departments, offices, boards, authorities, and commissions to validate the approximately 1,500 mandates that they may implement. Concurrently, the LGC staff took on the task of validating the remaining 5,000 mandates. Validation involved determining:

- Whether a given mandate is repealed or in effect, and if in effect,
- Whether the mandate is federal or state in origin, and
- Whether the mandate is actively imposed or applied.

Subsequently, if a mandate was found to be repealed, the LGC staff deleted it from the database. If a mandate was determined to be probably no longer actively imposed or applied, it was added to a separate list for further scrutiny and possible repeal with the concurrence of affected entities, including municipal associations, state agencies, and legislative committees as appropriate.³² The implementing agencies and LGC staff completed this task during spring and summer 2011.

2.2.3 Comprehensive List of State Statutory Mandates

Completion of the validation process resulted in a comprehensive list of 6,508 state statutory mandates placed on counties, cities, boroughs, towns, first class townships, and second class townships dating from the early 1800s through 2011 (Appendix D). These mandates in many instances also affect school districts and authorities.

The list includes those mandates that may be no longer actively imposed or applied in that they are still law. As noted previously, those also have been listed separately in Appendix E for possible additional scrutiny and consideration for repeal. State agencies and the LGC staff identified 268 mandates that likely are no longer actively imposed or applied, which are about 4% of the comprehensive list. Nonetheless, staff conservatively identified those mandates; hence there doubtlessly are many more mandates that could be added to Appendix E.

It is important to emphasize that *the cutoff for the comprehensive list of statutory mandates provided in this report is December 31, 2011*, since staff required time to proof and analyze the listing prior to publication in this report. Furthermore, staff may not have the LGC mandate database updated with new laws until a few months after their enactment. Therefore, provisions in laws affecting municipalities enacted since January 1, 2012, such as those in the recodification of the Borough Code, are not evident. Nevertheless, the total number of mandates most likely will not vary greatly since many relevant provisions in laws enacted during 2012 replaced or modified previously existing provisions.

³² See Appendix E, Mandates Likely No Longer Actively Imposed or Applied, and Section 3.2, Recommendations for Further Study.

2.2 Methods and Findings: Comprehensive List of State Statutory Mandates

The mandates listed in Appendix D include consolidated statutes and unconsolidated statutes. The consolidated statutes, which occur first, are sorted in ascending order by title number, article, chapter, and section. The unconsolidated statutes, which follow, are sorted in ascending order by year, act number, article, chapter, and section.

The compilation includes the following information for each mandate. The list of mandates, along with the origin and method of imposition for each, in part fulfills the requirements of SR 323.

- **Serial Number:** A primary identifier for the mandate database.
- **Title:** A concise name for the mandate, generally the statutory title, often clarified by a more descriptive title for the specific mandate being described. If the title indicates a statutory mandate, the title will be the same as that used by the LDPC for the text of the statute.
- **Description:** A brief explanation of the precise intent, qualification or characteristic of the mandate; generally limited to 25 words or less, while being as specific as possible in the description of the mandate (e.g., “Counties of the third class are to file detailed financial data with the Department of Community and Economic Development by the first Tuesday in February of each year.”).
- **Statutory Citation:**
 - **Consolidated Statutes** (abbreviated with “C”): Identified by title number, chapter, section, subsection, and additional (i.e., additional sections, subsections, or paragraphs).
 - **Unconsolidated Statutes** (abbreviated with “U”): Identified by year, special session number (if applicable), pamphlet law (P.L.) number, act number, article, chapter, section, subsection, and additional (i.e., additional sections, subsections, or paragraphs).
- **Origin:** Whether the mandate is in state law, or in federal *and* state law (i.e., a federal mandate implemented through a state mandate; e.g., the federal Clean Water Act implemented through the state Clean Streams Law).
- **Method of Imposition:** Whether the mandate is a direct order, a condition of aid, an authorization, and/or a condition of authorization (abbreviated as “conditional”) (*see* Section 2.2.1 for a definition of each method).
- **Affected Local Government Units:** Types and classes of local government units affected by a mandate. “All Local Government Units” include counties, cities, townships, boroughs, towns, school districts, and authorities.

The comprehensive list of mandates includes 5,702 (87.6%) in the unconsolidated statutes and 806 (12.4%) in the consolidated statutes. Of the total 6,508 statutory mandates, 6,416 (98.6%) are state in origin, 80 (1.2%) are federal and state in origin, and 12 are federal in origin (0.2%). Those that are federal and state in origin include, among others, Department of Environmental Protection and Department of Public Welfare administered programs. Those that are federal in origin include Safe Drinking Water Act requirements, Community Development Block Grant programs, and Community Service Act programs.

2.2 Methods and Findings: Comprehensive List of State Statutory Mandates

An analysis of the listing also resulted in a breakdown by affected local government unit (Table 1) and method of imposition (Table 2).

Table 1
Comprehensive List of Statutory Mandates – Affected Local Government Units

Counties	1,499	Cities	993
1 st Class	266	1 st Class	666
2 nd Class	965	2 nd Class	679
2 nd Class A	931	2 nd Class A	529
3 rd Class	1,011	3 rd Class	827
4 th Class	935		
5 th Class	935	Boroughs	1,768
6 th Class	938		
7 th Class	929	Incorporated Town	1,104
8 th Class	929		
		Townships	1,306
		1 st Class	208
All Local Government Units	568	2 nd Class	233

To make sense out of the breakdown above, it is important to remember that a given mandate may well apply to multiple types or classes of municipalities. Hence, the numbers add up to a sum much greater than the total number of mandates in the comprehensive listing. In addition, to determine how many mandates, in total, apply to a given class of municipality, numbers for the class, type, and “all local government units” must be added together. For example, the number of mandates for third class cities, which totals 2,388, includes 827 mandates that distinctly affect third class cities, 993 mandates that affect all classes of cities, and 568 mandates that affect all local government units.

Table 2
Comprehensive List of Statutory Mandates
Method of Imposition

Direct Order	3,664
Condition of Aid	119
Authorization	2,155
Condition of Authorization (or “Conditional”)	634

Of the total number of mandates in the comprehensive list, 56.3% are direct orders, 1.8% are conditions of aid, 33.1% are authorizations, and 9.7% are conditions of authorization. These numbers add up to slightly more than 100% since a number of mandates have more than one method of imposition. It may be said that the most onerous mandates on counties and municipalities most likely are direct orders and conditions of aid since they are not optional.

2.3 Funding of Mandates Affecting Counties and Municipalities by the Federal Government and/or the Commonwealth

In order to address a requirement of SR 323, “the amount of money provided by the federal government or the Commonwealth to implement each statutory mandate,” the LGC staff reviewed their findings from the literature review and collaborated with representatives from the Office of the Budget and the other agencies on the Task Force. The result was a survey of 36 state agencies to determine the amount of funding provided during Fiscal Year 2011-2012 for mandates affecting counties and municipalities.

2.3.1 Survey Design

The purpose of the survey was to determine the amount of money provided by the federal government and/or the Commonwealth to implement each statutory mandate based on Pennsylvania General Appropriations Act of 2011, and if possible, the amount required from the municipalities.

In conducting a literature review of constitutional, statutory, and regulatory provisions pertaining to mandates in 27 other states (*see* Section 2.1), the staff discovered a publication of the Hawaii Legislative Reference Bureau (LRB) entitled *Federally Mandated State Programs During Fiscal Year 2001-2002*. The report documents the methodology and findings of a survey that “covers state and federal operating funds appropriated under the General Appropriations Act of 2001 . . . to implement federally mandated state programs during fiscal year 2001-2002.”³³ The Hawaii LRB did similar surveys for fiscal years 1993-1994, 1994-1995, 1997-1998, and 1998-1999.

As the outcome of meetings with the Task Force representative from the Office of the Budget as well as the Task Force meeting on April 7, 2011, the LGC staff adapted Hawaii’s approach in conjunction with the validated LGC mandate database to develop the survey instrument. The agency representatives on the Task Force met again on September 1, 2011, to review and comment on the draft instrument, which ultimately resulted in its finalization.

The survey instrument applied to the Pennsylvania General Appropriations Act of 2011. Therefore, it captured federal as well as state funding to counties and municipalities. Moreover, the Office of the Budget indicated that federal funding provided to local governments to offset the cost of state mandates generally occurs through state agencies, which the General Appropriations Act includes. Nevertheless, it is possible for local governments to receive funding from the federal government on an individual basis for specific projects or programs.

³³ Sugano, Dean., *Federally Mandated State Programs during Fiscal Year 2001-2002*, Report No. 4, Legislative Reference Bureau, Honolulu, Hawaii, October 2001, p. 1.

2.3 Methods and Findings: Funding of Mandates

The survey instrument included a Microsoft Excel workbook and an instruction sheet in Microsoft Word, which the Office of the Budget and the LGC sent out via e-mail, along with a cover memo (*see* Appendix F, Sample Survey of Funding for Mandates Affecting Counties and Municipalities). The workbook consisted of two worksheets. The first was a list of validated mandates from the LGC mandate database that the given agency implements, including the serial number, title, description, and statutory citation for each. The second was a blank worksheet hyperlinked to the first by mandate serial number. Agency personnel could fill in information for each mandate on the implementing state program, state funding, federal funding, local funding, and other funding. They could also indicate whether there was no cost or an insubstantial cost to the municipality for the mandate. In addition, each worksheet had blank lines at the bottom to allow for information on any additional mandates that the agency implements, which were not included on the worksheet and necessitate expenditures from municipal revenues.

2.3.2 Findings from Survey of State Agencies

Upon completing the LGC mandate database validation (*see* Section 2.2.2) and survey design, the Office of the Budget sent the Survey of Funding for Mandates Affecting Counties and Municipalities to 21 state agencies that are under its purview and the LGC sent it out to 15 others. The 36 agencies surveyed were those identified in the database as implementing mandates imposed on counties and municipalities. Those surveyed excluded the Pennsylvania courts and the Department of Education in that SR 323 did not include those entities. The survey was sent out via e-mail to the legislative offices in the respective agencies on or about November 1, 2011, asking them to work with their fiscal officers to provide the requested information. Although the initial deadline for completion was November 30, 2011, completed surveys were accepted through March 2012. Office of the Budget and LGC staff sent out an e-mail reminder during the survey and a number of e-mail reminders afterward, particularly to those agencies that did not provide a timely response.

Of the 36 agencies surveyed, all but two—the Department of Public Welfare and the Pennsylvania Emergency Management Agency—responded. Of the remaining 34 agencies, 17 indicated that they *did* allocate federal and/or state mandate-related funding to counties and municipalities during fiscal year 2011-2012 (Table 3). The Department of Environmental Protection (DEP) and PENNVEST are combined, since PENNVEST provides funding solely for mandates that DEP implements.

2.3 Methods and Findings: Funding of Mandates

Table 3: Agencies That *Did* Allocate Federal or State Funding for Mandates on Counties and Municipalities During Fiscal Year 2011-2012

Implementing Agency	Total Number of Mandates in LGC Database/Agency	Number by Method of Imposition				Mandates With No or Insubstantial Cost to Local Government
		Direct Order	Condition of Aid	Authorization	Condition of Authorization	
Department of Aging	6	2			4	
Department of Agriculture	57	34	7	8	10	
Department of Auditor General	26	21	4	2		
Department of Community and Economic Development	156	82	26	20	30	80
Department of Conservation and Natural Resources	15	2	4	7	2	
Department of Environmental Protection and PENNVEST	136	71	11	24	36	11
Department of Health	65	33		28	5	
Department of Revenue	47	37	3	6	2	
Department of State	50	40		5	5	48
Department of Transportation	102	52	4	38	8	96
Office of Attorney General	7	5		2		
Pennsylvania Commission on Crime and Delinquency	17	11	6			
Pennsylvania Fish and Boat Commission	4	2	1	1	1	
Pennsylvania Game Commission	5	1	1	4	3	5
Pennsylvania Treasury Department	20	17	2	1	2	10
State Tax Equalization Board	4	4				
Total	695	401	61	145	107	249

Seventeen agencies indicated that they *did not* allocate any federal and/or state mandate-related funding to counties and municipalities during fiscal year 2011-2012 (Table 4, pp. 2-23 – 2-24). Of the 17, three—the Department of Labor and Industry, the Pennsylvania Historical and Museum Commission, and the Pennsylvania State Police—together had four “subagencies” (a board, committees, or a commission) that also did not allocate any funding, bringing the total to 21 agencies.

Table 4: Agencies That *Did Not* Allocate Federal or State Funding for Mandates on Counties and Municipalities During Fiscal Year 2011-2012

Implementing Agency	Total Number of Mandates in LGC Database/Agency	Number by Method of Imposition				Mandates With No or Insubstantial Cost to Local Government
		Direct Order	Condition of Aid	Authorization	Condition of Authorization	
Civil Service Commission	3	1		1	1	
Department of Corrections	8	4		1	3	

2.3 Methods and Findings: Funding of Mandates

Table 4: Agencies That *Did Not* Allocate Federal or State Funding for Mandates on Counties and Municipalities During Fiscal Year 2011-2012

Implementing Agency	Total Number of Mandates in LGC Database/Agency	Number by Method of Imposition				Mandates With No or Insubstantial Cost to Local Government
		Direct Order	Condition of Aid	Authorization	Condition of Authorization	
Department of General Services	1	1				
Department of Labor and Industry (DLI)	89	80	2	5	2	
DLI, Labor Relations Board	14	10		4		
Department of Military and Veterans Affairs	13	10		3		
Governor's Office	7	3	2	1	1	
Liquor Control Board	6			6		6
Pennsylvania Board of Probation and Parole	1	1				
Pennsylvania Historical and Museum Commission (PHMC)	6	3		3		
PHMC/County Records Committee	2			1	1	
PHMC/Local Government Records Committee	5	1		1	3	
Pennsylvania Human Relations Commission	4	3		1		
Pennsylvania Municipal Retirement Commission	17	3		2	12	15
Pennsylvania State Police (PSP)	16	15		2		15
PSP/Municipal Police Officers Education & Training Comm.	7	6		1		
Pennsylvania Turnpike Commission	3			3		
Public Employee Retirement Commission	5	4			1	
Public Utility Commission	18	8			10	
State Employees' Retirement Commission	2	1		1		
State Ethics Commission	9	7		2		
Total	243	164	4	39	37	36

Of the 6,508 validated state statutory mandates in LGC's mandate database that may affect counties and municipalities, state agencies, with the exception of the Department of Education and the Pennsylvania courts, implement 1,039 or about 16.0%.³⁴ Of the 1,039 mandates, the results from the survey on funding address 938 mandates or 90.3%.

In total, nine of the agencies indicated that anywhere from 8% to 100% of the mandates which they may implement have no or insubstantial cost to counties and municipalities.³⁵ These amounted to 30% of the mandates for all the agencies that responded to the survey.

In looking at method of imposition, the agencies verified 60.2% as direct orders, 6.9% as conditions of aid, 19.6% as authorizations, and 15.4% as conditions of authorization. Notably, these percentages add up to over 102% since some of the mandates have more than one method of imposition.

³⁴ As stated elsewhere, mandates solely implemented by schools and courts are outside the scope of this study.

³⁵ For the purpose of the survey, "insubstantial cost" is defined as less than \$500 for any one municipality if the mandate does *not* apply statewide, or less than \$1,000,000 for all municipalities if the mandate does apply statewide.

2.3 Methods and Findings: Funding of Mandates

Results of the Survey of Funding for Mandates show that overall, during Fiscal Year 2011-2012, 17 agencies provided or facilitated \$1,164,056,611 in state funding, \$173,077,814 in federal funding, and \$240,165 in funding from other sources to Pennsylvania's counties and municipalities, which is a breakdown of 87.04%, 12.94%, and 0.02%, respectively (Table 5, Figure 1, and Appendix G). Of these agencies, three—the Department of Auditor General, DEP, and the Department of Transportation—together provided 87.90% of the state funding. DEP also administered 98.51% of the federal funding. The State Tax Equalization Board and the Pennsylvania Fish and Boat Commission were the only agencies to administer less than \$100,000 in funding with about \$30,000 and \$44,000, respectively. “Other” funding came through the Department of Agriculture, the Department of Community and Economic Development (DCED), and the Pennsylvania Fish and Boat Commission. As noted in the table, the survey asked for the “local” amount allocated, if known. Given the low level of response, it is doubtful that most agencies could readily provide this data, which make these results of limited value.

The total amount most likely is conservative in that it does not capture other “variable” allocations through DCED attributed to bond issues, Community Service Block Grant program local administration funds, losses of tax revenue, and local/private matches. Moreover, as mentioned previously, the total does not reflect possible funding from the Department of Public Welfare³⁶ and the Pennsylvania Emergency Management Agency, which did not respond to the survey.

A summary of statutes that contain mandates for which state agencies administered funding from federal, state, and other sources during Fiscal Year 2011-2012 is provided in Table 6 (pp. 2-27 – 2-30). It is important to remember that the mandates are defined as a direct order, condition of aid, authorization, and/or condition of authorization. Moreover, for some of the agencies, such as the Department of Transportation, the statutes are still valid, but many have an historic application; hence, there was most likely no funding used during the fiscal year to implement those mandates. Finally, many of the laws contain multiple mandates and, in most laws, only certain provisions apply (*see* Appendix G). All allocations are solely *state funding* unless otherwise noted.

The largest allocations by far are for mandates in the Municipal Pension Plan Funding Standard Recovery Act (\$499,158,000), various Pennsylvania Department of Transportation related laws (\$340,966,000), and the Clean Streams Law (\$272,000,000), which account for 83.16% of the funding. Funding greater than \$10,000,000, excluding the aforementioned, include five laws—the Pennsylvania Safe Drinking Water Act (\$78,749,999), the Local Health Administration Law (\$34,802,176), the Public Utility Reality Tax Act (\$32,160,000), the County Intermediate Punishment Act (\$18,167,000), and State Food Purchase Program Act (\$15,338,000), which account for 13.40%. The remaining allocations collectively make up 3.44%. Again, these numbers do not take into account the “variable” allocations under several acts administered by DCED and allocations by the Department of Public Welfare and the Pennsylvania Emergency Management Agency.

³⁶ For Fiscal Year 2011-2012, the Pennsylvania Department of Public Welfare reported the following available federal, state, and other funds for county-administered human service programs: Intellectual Disabilities–Community Base Program: \$193,826,000; County Child Welfare: \$1,392,577,000; Mental Health Services: \$602,299,000; Behavioral Health Services: \$45,513,000; Human Services Development Fund: \$14,208,000; and Homeless Assistance: \$26,717,000 (*Governor's Executive Budget 2012-2013, General Fund/Tobacco Settlement Fund, prepared for Appropriations Committee Hearings*, Department of Public Welfare, February 2012). *See also Mandate Relief for County Human Services Programs, Conducted Pursuant to House Resolution 177 of 2011*, Legislative Budget and Finance Committee, June 2012.

2.3 Methods and Findings: Funding of Mandates

Table 5: Summary of Results of Survey of Funding for Mandates Affecting Counties and Municipalities
Fiscal Year 2011-2012¹

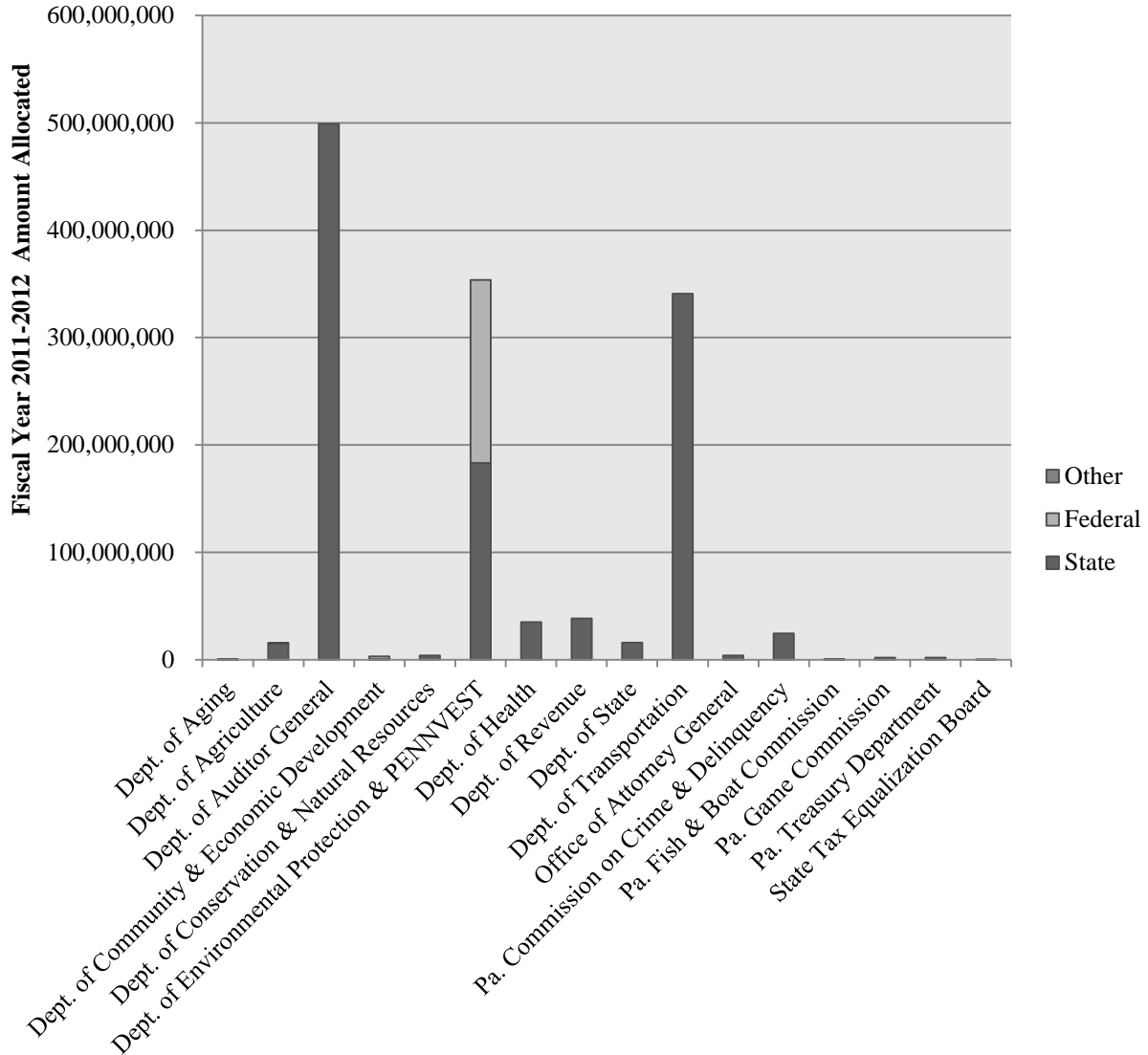
Implementing Agency	FY 2011-2012 Amount Allocated							
	State	%	Federal	%	Local ²	%	Other	%
Dept. of Aging	267,572	0.023	119,200	0.069				
Dept. of Agriculture	15,338,000	1.318					221,000	92.02
Dept. of Auditor General	499,158,000	42.881						
Dept. of Community & Economic Development	550,000	0.047	2,467,000	1.425			Variable ³	
Dept. of Conservation & Natural Resources	3,732,930	0.321						
Dept. of Environmental Protection & PENNVEST	183,076,385	15.727	170,491,614	98.506	11,800	17.665		
Dept. of Health	34,802,176	2.99						
Dept. of Revenue	38,447,140	3.303			55,000	82.335		
Dept. of State	15,763,000	1.354						
Dept. of Transportation	340,966,000	29.291						
Office of Attorney General	3,899,700	0.335						
Pa. Commission on Crime & Delinquency	24,400,000	2.096						
Pa. Fish & Boat Commission	24,801	0.002					19,165	7.98
Pa. Game Commission	1,738,907	0.149						
Pa. Treasury Department	1,862,000	0.16						
State Tax Equalization Board	30,000	0.003						
Total	1,164,056,611	100	173,077,814	100	66,800	100	240,165	100

¹ Results do not include possible funding from the Department of Welfare and the Pennsylvania Emergency Management Agency, since they did not respond to the survey.

² The survey asked for the local amount allocated, *if known*. Given the limited level of response, it is doubtful that most agencies could readily provide this data, which make these results of limited value.

³ The Department of Community and Economic Development (DCEd) "Other" allocation is attributed to costs covered by bond issue, Community Services Block Grant program local administration fund, loss of tax revenue, and local/private match. However, DCEd provided no dollar amounts for these allocations.

**Figure 1: Agency Funding Allocation
Fiscal Year 2011-2012**



**Table 6: Statutes Containing Mandates and
Associated Funding by Implementing Agency for Fiscal Year 2011-2012**

Department of Aging	Administrative Code of 1929 (Powers and Duties)	\$ 6,705
	Older Adults Protective Services Act	357,964 ³⁷
	Family Caregiver Support Act	22,103 ³⁸

³⁷ State funds: \$248,764; Federal funds: \$109,200.

³⁸ State funds: \$12,103; Federal funds: \$10,000.

2.3 Methods and Findings: Funding of Mandates

Table 6: Statutes Containing Mandates and Associated Funding by Implementing Agency for Fiscal Year 2011-2012

Department of Agriculture	Dog Law	221,000 ³⁹
	State Food Purchase Program Act	15,338,000
Department of Auditor General	Municipal Pension Plan Funding Standard Recover Act	499,158,000
Department of Community and Economic Development	Local Government Unit Debt Act	Variable ⁴⁰
	Authorizing Grants to Community Action Agencies; Community Services Act; Elm Street Program Act	1,536,000 ⁴¹
	Main Street Program Act	Variable ⁴²
	Local Economic Revitalization Tax Assistance Act	Variable ⁴³
	Flood Plain Management Act	150,000
	Community Development Block Grant Entitlement Program for Nonurban Counties and Certain Other Municipalities	931,000/ Variable ⁴⁴
	Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act	Variable ⁴⁵
	Pennsylvania Construction Code Act	400,000 ⁴⁶
Department of Conservation and Natural Resources	Vehicle Code (Dirt and Gravel Roads)	1,000,000
	Forest Reserves Municipal Relief Law	2,512,000
	Forest Lands Beautification Act	220,930
Department of Environmental Protection and PENNVEST	Nutrient Management Act	2,030,000
	Clean Streams Law	272,000,000 ⁴⁷
	Pennsylvania Sewage Facilities Act	779,000
	Bluff Recession and Setback Act	9,000 ⁴⁸
	Pennsylvania Safe Drinking Water Act	78,749,999 ⁴⁹
Department of Health	Local Health Administration Law	34,802,176
Department of Revenue ⁵⁰	Fiscal Code (Tax on Recording Deeds)	3,428,240

³⁹ Other funds: Dog Law Fund Restricted Account: \$221,000.

⁴⁰ Other funds: Costs are covered by bond issue.

⁴¹ Other funds: Community Services Block Grant monies have local administration fund.

⁴² Other funds: Local/private match is required.

⁴³ Other funds: Loss of tax revenue occurs.

⁴⁴ Other funds: Community Services Block Grant monies have local administration fund.

⁴⁵ Other funds: Loss of tax revenue occurs.

⁴⁶ State funds: \$400,000; Other funds: Uniform Construction Code fees are collected.

⁴⁷ State funds: \$158,229,200; Federal funds: \$113,770,800.

⁴⁸ Federal funds: \$9,000; Local funds: \$11,800.

⁴⁹ State funds: \$22,038,185; Federal funds: \$56,711,814.

⁵⁰ The Department of Revenue also is responsible for administering a writ tax for which a commission is kept by the counties. Local funds: \$55,000.

2.3 Methods and Findings: Funding of Mandates

**Table 6: Statutes Containing Mandates and
Associated Funding by Implementing Agency for Fiscal Year 2011-2012**

Department of Revenue (continued)	Tax Reform Code of 1971 (Inheritance and Estate Tax Act)	2,858,900
	Tax Reform Code of 1971: Public Utility Reality Tax Act	32,160,000
Department of State	Commercial Code; Home Rule Charter and Optional Plans Law; Parking Authority Law; Municipality Authorities Act; Authorities of Second Class Counties to Accept Federal Funds; Pennsylvania Election Code; Urban Redevelopment Law; Register of Wills in First Class Counties to Give Bond; Public Auditorium Authorities Law; Optional Third Class City Charter Law; Interstate Agreements Records Act	3,340,000
	Associations Code	5,016,000
	Pennsylvania Voter Registration Act; Pennsylvania Election Code; Vital Statistics Law of 1953	3,775,000
	Pennsylvania Election Code	2,000,000
	Funeral Director Law; Optometric Practice and Licensure Act	1,070,000
	Assessors Certification Act	562,000
Department of Transportation	Pennsylvania Voter Registration Act; Public Transportation Law; Aviation Code; Aviation Development Act; Vehicle Code; Administrative Code of 1929 (Road Improvements); Construction and Improvement of Highways; Certain Streets as Highways; Closing of Regulated Public Highways; Third Class City Code; Second Class Township Code; Supplementing Act Taking of Streets as State Highways; Establishing the "Rim Parkway"; Establishing Certain State Highways; Limited Access Highway Law; State Highway Law; Relating to Federal Aid (for Public Airports); Authorizing the Acquisition of Toll Bridges; Second Class County Code; County Code; Liquid Fuels Tax Municipal Allocation Law; County and Municipal State Highway Law;	

2.3 Methods and Findings: Funding of Mandates

Table 6: Statutes Containing Mandates and Associated Funding by Implementing Agency for Fiscal Year 2011-2012

Department of Transportation (continued)	Ramps for Handicapped Persons Installation at Crosswalks; Rail Freight Preservation and Improvement Act; Transportation Partnership Act; Oil Spill Responder Liability Act	325,966,000
	Vehicle Code (Automated Red Light Enforcement)	15,000,000
Office of Attorney General	County Code (district attorney salary reimbursement)	3,899,700
Pennsylvania Commission on Crime and Delinquency	County Intermediate Punishment Act Constables (Conduct and Insurance, Education and Training)	18,167,000
	Deputy Sheriffs' Education and Training Act	2,275,000 3,958,000
Pennsylvania Fish and Boat Commission	Fish Code (Boats and Boating: Issuing Agents)	19,165 ⁵¹
	Forest Reserves Municipal Relief Law	24,801
Pennsylvania Game Commission	Forest Reserves Municipal Relief Law	1,738,907
Pennsylvania Treasury Department	Emergency and Law Enforcement Personnel Death Benefits Act	1,862,000
	State Tax Equalization Board	State Tax Equalization Board Law

⁵¹ Other funds: \$19,165 (Issuing Agent Fees).

2.4 Costs of Mandates to Counties and Municipalities and Their Recommendations for Relief

In developing a practical and feasible method for determining the costs of mandates and recommendations for relief, the necessity for two parameters became apparent at the start of the Mandate Study:

- The definition of “mandate” had to be clarified.
- The number of mandates had to be limited.

The following respective sections, “2.4.1 Defining Mandate for the Purposes of SR 323” and “2.4.2 Establishing a List of Statutory Mandates Placed on Municipalities for Determining Costs of Mandates and Recommendations for Relief” provide the rationale and objectives for, and the outcome of, establishing these parameters. Section 2.4.3 focuses on “Costs of Mandates to Counties and Municipalities and Recommendations for Relief” based on the results of statewide surveys of counties and municipalities.

2.4.1 Defining Mandate for the Purposes of SR 323

For the purposes of the SR 323 county and municipal statewide surveys, which are to determine the costs of certain mandates to municipalities and to solicit suggestions that may provide relief, it became apparent that the definition of mandate had to be clarified to comport with the provisions of SR 323 and to exclude aspects of the law that are beyond the effect of state statute, essential to the creation and function of local governments, and fundamental to democratic representation and the will of the electorate. Robert Daddow, Deputy County Executive for Oakland County, Michigan, and Co-Chair of the Michigan Legislative Commission on Statutory Mandates, who made a presentation at the October 7, 2010, Task Force meeting, supported this direction, indicating that the definition of mandate has to be “tight” in that the term may be interpreted differently at the local level than from an institutional perspective.

As a basis for clarifying the definition, the LGC staff found constitutional and/or statutory definitions for mandates in 27 other states, including exceptions to those definitions in 23 of the states.⁵² Upon creating a definition, staff collaborated with municipal association representatives to come up with a final draft. The Task Force unanimously approved the definition at its April 7, 2011, meeting.

The adopted definition of mandate, as follows, was used to delimit the most burdensome mandates as identified by the municipal associations for the purposes of ascertaining costs, if determinable, and making findings and recommendations for mandate relief. It is annotated to

⁵² See Section 2.1, Review of Other States’ Mandate Provisions and Studies, and Appendix B, State Mandate Provisions.

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provide the rationale for the 13 exceptions. The term, “municipality” is also defined as used in the definition. Noteworthy is that the definition only pertains to mandates that have an express basis in state law, since the Legislature has the ability to possibly provide some relief from those mandates, and that it includes “direct orders” and “conditions of aid” but omits “authorizations” and “conditions of authorization,” as were included in the definition for the LGC mandate database.

“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 municipality⁵³ 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:

1. A court order. *Court orders, in the broadest sense, are remedial or punitive in effect. Although they are “mandatory,” they are intended to be the end result of the interpretation of laws in light of a case or controversy, rather than the law themselves. However, this exception does not necessarily preclude a recommendation for the General Assembly to amend a provision of law for which a court order has been issued that results in a partial waiver or elimination of a mandate.*
2. A federal law. *SR 323 does not direct the inclusion of federal mandates, per se. However, the study may include Commonwealth statutory mandates that emanate from federal directives or initiatives.*
3. The Constitution of the United States. *This exception is closely related to exception (1) above, and exceptions (10) and (11) below. Thus, both court orders and statutes governing administrative practice and judicial review sometimes impose “mandates” to the extent that they are intended to protect certain rights guaranteed by the Constitution of the United States. Similarly, laws and municipal expenditures related to the protection of individuals from discrimination, unreasonable searches and seizures, and the suppression of protected speech and participation in government (and, consequently, the municipality from suit), may have a mandatory effect, but represent a manifestation of a “baseline” of law or governance, as established by courts that the General Assembly and a municipality cannot alter. In effect, it could be argued that laws related to constitutional mandates have the attenuated effect of saving municipalities from unnecessary expenditures related to the inevitable litigation that could result if these laws are inappropriately interpreted or ignored.*
4. The Constitution of Pennsylvania. *This exception was chosen for largely the same reasons as exception (3). Although in many instances, the personal rights contained within Article I of the Pennsylvania Constitution are treated by our courts as similar in scope to their analogs in the United States Constitution, others may exist that have manifested themselves in Pennsylvania law with an arguably different “mandatory” effect. An excellent example of this exception is the requirement of uniformity of taxation contained within Article VIII, Section 1 of the Pennsylvania Constitution. This requirement, as interpreted by our courts, is reflected throughout Pennsylvania law in the context of both personal and real property taxation. The statutory provisions intended to be faithful to uniformity may be considered “mandates” to the extent that municipalities may be required to take affirmative action to ensure the equal apportionment of tax burdens or otherwise refrain from establishing progressive tax schemes. Nevertheless, again, conceptually, constitutional requirements like uniformity represent “baseline” restrictions on the General Assembly that will persist absent anything short of a constitutional amendment.*

⁵³ “Municipality” – A county, city, borough, incorporated town or township (1 Pa.C.S. § 1991).

5. With regard to a municipality of a particular class, a law or regulation relating to the powers applicable to that class as set forth in 53 Pa.C.S., Part III, Subpart E (relating to home rule and optional plan government) § 2962 (relating to limitation on municipal powers). *Pennsylvania law provides that home rule municipalities have any power not prohibited by the federal or state constitutions or the general laws of the Commonwealth. Furthermore, the statutory provisions cited above, in the context of optional plans, largely involve the governmental structure of municipalities choosing those forms of government. Thus, the “mandatory” effect of the cited statutory provisions is largely negative in nature, and is not so much a “duty imposed” on a governmental entity, but rather akin to a delineation of the organic power of the municipality as that municipality is established. The propriety or value of these restrictions on home rule or optional plan municipalities is largely a philosophical question rooted in principles of self-governance, and the preservation of the plenary power of the General Assembly over its subordinate political subdivisions. In the context of SR 323, one may take the position that a real qualitative difference exists between laws delineating the structural configuration, scope of powers, and state-local relationship of municipalities, and those that “impose a duty” on a municipality operating within those restrictions.*
6. A law concerning the form, organization, or structure of a municipality. *This exception has been included for largely the same reasons as exception (5). It is broader because it includes municipalities operating under the municipal codes and/or special legislation. This exception should not be confused with other statutory mandates included within the study that would require the creation of a local administrator or body as a mandate incident to the implementation of a mandatory program. In such a case, the cost of the new bureaucratic level is but one element of the cost of the mandate as a whole. In a manner similar to exception (5), the exception is intended to be restricted to those laws that dictate the structure, corporate formalities, and organization of municipalities that are not necessary correlatives to the administration of a mandate, but are rather incident to the creation and function of the municipality.*
7. A law governing elections. *These laws predominantly exist to promote orderly, fair, and accurate elections. They also implicate laws that require special elections in the case of a vacancy. Because these matters were considered essential to the continuing function of government and relate to fundamental democratic representation, it was thought to exclude them from the scope of the study.*
8. A law designating public officers, or their duties, powers and responsibilities. *As discussed in exception (6) above, this exception implicates laws related to the core structure of municipal government and should not be interpreted as including the designation of public officers incident to the implementation of a mandatory program.*
9. A law regarding the ethics of public officials or employees or the protection of the public from malfeasance, misfeasance, or nonfeasance by an official or employee of a municipality. *Laws related to ethics are largely personal responsibilities of public officials that are incident to the acceptance of powers and duties of office and are intended to promote government free of conflicts of interest. They are primarily negative in nature, and are only duties incidentally imposed on local governments themselves.*
10. A law prescribing administrative practices and procedures for local governing bodies. *This exception should not be interpreted as including administrative practices and procedures incident to a mandated program within the scope of the study. It is intended to exclude the laws relating to administrative practice and procedure themselves. The distinction is largely one of focus. For example, Title 2 of the Pennsylvania Consolidated Statutes, Chapter 5, Subchapter B governs administrative practice and procedure in matters before*

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local governments. The exception was intended to exclude this law, and others like it, from the scrutiny of the study. However, if a law imposes a mandate that requires adjudication subject to the provisions of that law, the costs associated with such adjudication may appropriately be considered in any quantification of the costs of the mandate.

11. A law that involves the administration of justice or procedures for administrative and judicial review of actions taken by local governing bodies. *See the explanation for exception (10). This exception is broader in that it contains laws related to judicial review of administrative decisions of municipalities.*
12. Existing contracts, including collective bargaining agreements. *Duties related to ensuring that existing contracts are not impaired have constitutional implications, and may only be modified under very limited circumstances.*
13. A voter referendum. *Conceptually, laws that enable the electorate to impose a mandate on a municipality are not directly a mandate of the General Assembly. They are more appropriately considered “bottom up” mandates rather than the “top down” legislation contemplated within the scope of SR 323.*

2.4.2 Establishing a List of Statutory Mandates Placed on Counties and Municipalities for Determining Costs of Mandates and Recommendations for Relief

In Robert Daddow’s presentation at the October 7, 2010, Task Force meeting, he described the journey of the Michigan Legislative Commission on Statutory Mandates in attempting to address unfunded or underfunded mandates on local governments. Daddow, whose commission initially was charged by the legislature with costing *all* of Michigan’s statutory mandates on local governments, emphasized the impossibility of costing over 6,500 statutory mandates in Pennsylvania, and the necessity and practicality of only identifying and costing the most egregious ones as his commission ultimately attempted to accomplish.⁵⁴ Daddow stressed that it is very difficult for municipalities to cost out mandates, stating that municipalities generally are not able to accurately track the costs of mandates apart from the costs of their core services. He also observed that municipalities are largely ill equipped to determine costs of personnel time applied to specific mandates.

Dr. Janet Kelly, professor at University of Louisville’s Department of Urban and Public Affairs with notoriety in the subjects of municipal mandates and performance budgeting, expands on Daddow’s commentary in her article, “Unfunded Mandates: The View From the States”:

One of the greatest sources of frustration and misunderstanding that surrounds the mandates issue is the problem of cost. Localities complain about the cost of mandates to their state legislatures and are invariably asked to identify these costs. However, the impact of mandates cannot be quantified definitively for several reasons. First, each mandate has a different cost in each locality affected by it. Second, while any one mandate may have a very low cost, several hundred of them

⁵⁴ See *Final Report of the Legislative Commission on Statutory Mandates Submitted to the Michigan Legislature and the Governor*, Lansing, Michigan, December 31, 2009.

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may have a very high cost, and that cost increases over time. Third, most mandates can be accommodated by using existing resources, especially personnel, more intensively; therefore the mandate can be asserted to have no cost. . . .

Some studies [reviewed for this article] have used careful methodology to assess the cost of certain mandates for a group of localities and have reached some conclusions about cost. All of the studies have avoided *the fool's errand of trying to estimate total mandate costs*. Total mandate cost estimates are technically possible only via site studies of hundreds of mandates in hundreds of local governments, but the results would be questionable. Cost data would not be generalizable and no compensation would follow. State studies aim at answering impact questions such as what is the burden of mandates and what are the consequences for localities.⁵⁵

Similar to Kelly, Daddow also recognized, based on his Michigan experience, that mandate cost estimates generally are not very accurate; they are an order of magnitude. As a pivotal point, Daddow stressed looking at the “end game” of what costing is aiming to achieve. He questioned, “If you get the [cost] information, what are you going to do with it? How will those mandates be affected?” Daddow surmised to cost existing mandates if data are available, but he also recognized that reliable costs were not obtainable for some mandates, such as those that are environmental in nature.

In considering the charge of possibly costing all 6,500 plus mandates, the LGC staff also looked at the 2006 study of *Cost Savings on Mandatory Legal Advertising by Local Government Entities*,⁵⁶ which was an examination of only one mandate. This project alone cost the LGC over \$10,000. Hence, there was immediate concern over a potential multiplied expense of performing similar studies on thousands of mandates.

In taking into account the value, accuracy, labor, and expense of costing mandates, and to make the Mandate Study feasible, the academic advisors proposed the following recommendation, which the Task Force ultimately adopted at its April 7, 2011, meeting:

Narrow the study's scope for the purposes of costing the mandates and determining mitigation measures by focusing on the 20 or so most burdensome mandates as identified by the county and municipal associations.⁵⁷

⁵⁵ Kelly, Janet M., “Unfunded Mandates: A View from the States,” *Public Administration Review*, Vol. 54, No. 4, July-August, 1994, pp. 405-408 (emphasis added).

⁵⁶ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006.

⁵⁷ Minutes of the Meeting of the Local Government Commission's SR 323 Task Force, Thursday, April 7, 2011.

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2.4.2.1 Mandates Identified by the Statewide Association for Counties

CCAP identified 17 mandates for study that are most burdensome to its members (Table 7). The mandates denoted by PLCM, PSAB, PSATC, and PSATS are grouped separately in that the mandates that affect their constituents generally differ from those that affect CCAP's constituents, given counties' and municipalities' dissimilar functions.

<p align="center">Table 7 Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania <i>(not in order of importance)</i></p>	
Public Safety Emergency Telephone Act (Act 78 of 1990) 911 services, particularly wireline, wireless, and VoIP technologies having uncoordinated planning processes, funding streams, and funding mechanisms.	
Prisons	Department of Corrections standards for county jails.
	County jail inmate medical services, particularly county inability to approve services and recover costs.
Nursing Facilities	County portion of the nonfederal share of the costs for care of Medicaid residents in county nursing facilities.
	County nursing facility costs associated with a "preventable serious adverse event."
	County nursing facility overlapping reporting requirements for alleged abuse, neglect, and misappropriation of property by employees.
	County nursing facility new staff photo identification badge requirement. (1)
Row Offices	Maintaining the office of jury commissioner versus electing to have the court administrator's office perform the function.
	Statutorily mandated fees for constables, and payment prior to collection of fines, fees, or costs from the defendant.
	Commonwealth's unreimbursed share (65%) of the full-time district attorneys salaries.
	Duties and compensation of county auditors in consideration of possible auditors' duties that may be performed by a certified public accountant firm.
Collection of county real estate taxes by the local tax collector. (2)	
Department of Public Welfare subsequent quarterly payments for child welfare.	
Length of Pennsylvania Department of Transportation permitting process for bridge construction and repair. (3)	
Storm Water Management Act (Act 167 of 1979) stormwater planning requirements.	
Advertising/publication of legal notice requirements. (2)	
Competitive bid limits and related advertising requirements.	

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As a result of initial screening and pilot studies (*see* Section 2.4.3.1), the highlighted mandates were dismissed from the statewide county survey in that they: (1) were of little financial consequence to counties; (2) were being studied or had been studied recently for the same purposes as SR 323; or (3) necessitated an agency and regulatory streamlining process.

(1) Mandate Was of Little Financial Consequence to Counties

- **County nursing facility new staff photo identification badge requirement:** Act 110 of 2010, which amends the Health Care Facilities Act (Act 48 of 1979), charges the Department of Health with promulgating regulations to require employees to wear a photo identification tag when the employees are working. There are specific requirements as to the correct titles that need to be used for the employees as well as requisites for the dimensions of the tags. The regulations require a recent photograph of the employee, the name and title of the employee, and the name of the health care facility where he or she is employed. Many facilities use their own system of identification and may use the identification tags for other purposes, such as card keys for other areas of a facility. The regulations may require the facilities to completely change their current process.⁵⁸

However, findings from the pilot studies (*see* Section 2.4.3) indicated that there were no significant additional direct costs associated with this mandate. In fact, there was some indication that the requirement was helpful due to centralized accounting through the use of badges. The only noted possible indirect cost was for the purchase of software. *Therefore, LGC staff recommended and CCAP concurred to dismiss this mandate from further study.*

(2) Mandates Were Studied Recently for the Same Purposes as SR 323

- **Collection of county real estate taxes by the local tax collector:** The Legislative Budget and Finance Committee studied Pennsylvania's current real property tax collection system pursuant to Senate Resolution 250 of 2010.⁵⁹ Section 2.4.3 provides a description of the mandate and results from the study relevant to SR 323.
- **Advertising/publication of legal notice requirements:** The LGC studied this mandate with assistance from The Pennsylvania State University Harrisburg School of Public Affairs and the Legislative Office for Research Liaison.⁶⁰ Section 2.4.3 provides a description of the mandate and results from the study relevant to SR 323.

⁵⁸ Wilt, Michael J., Executive Director, Pennsylvania Association of County Affiliated Homes, February 5, 2011, office e-mail.

⁵⁹ *Pennsylvania Current Real Property Tax Collection System Conducted Pursuant to Senate Resolution 2010-250*, Legislative Budget and Finance Committee, Harrisburg, June 2011.

⁶⁰ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006.

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(3) Mandate Necessitates an Agency and Regulatory Streamlining Process

- **Length of Pennsylvania Department of Transportation permitting process for bridge construction and repair:** The primary issue is that permit reviews by affected agencies for bridge construction and repair may not occur concurrently, which may extend the review process. CCAP contends that “the permit process can extend over a period of years and, given recent materials markets, that means that project costs increase considerably while waiting for the permit. Counties call on the Pennsylvania Department of Transportation (PennDOT) to streamline the permitting process, which will reduce overall project costs and expedite improvements needed to maintain safety for the traveling public.”⁶¹ *In that this concern is an integration and streamlining issue, which does not appear to have a distinct basis in state statute, LGC staff recommended and CCAP concurred to dismiss this mandate from further study.*

Nevertheless, to address this concern, DEP, the Fish and Boat Commission, and the Army Corps of Engineers as a standard practice concurrently review permit applications for PennDOT projects, including those for bridges and culverts. Furthermore, pursuant to an agreement between PennDOT and DEP, DEP reviews permit applications while the County Conservation Districts review erosion and sedimentation control plans.⁶²

PennDOT also has issued a number of publications that will help municipalities with streamlining local projects, which will result in completion on time and within budget:

Publication 39	Procedures for the Administration of Locally Sponsored Projects
Publication 70	Guidelines for the Design of Local Roads & Streets
Publication 98	A Guide for Local Public Agency Acquisition of Right-of-Way
Publication 535	Overview of PennDOT Local Project Processes
Publication 541	Local Bridge Program Delivery Manual ⁶³

In addition, PennDOT has implemented streamlining procedures for PennDOT bridge and culvert projects that should eventually benefit the local bridge permitting process, such as PennDOT’s Joint Permit Application System through which PennDOT and DEP can review permit applications and correspond with each other. The agency also has performed random quality assurance reviews of hydrology and hydrologic reports to reduce the number of technical deficiencies and consequently decrease the permit application review time. PennDOT indicated that it will evaluate implementing streamlining measures for permitting of local bridges.⁶⁴

⁶¹ “2011 County Government Priorities, Mandate Relief,” County Commissioners Association of Pennsylvania, Harrisburg.

⁶² Reed, R. Craig, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment.

⁶³ *Id.*

⁶⁴ *Id.*

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2.4.2.2 Mandates Identified by the Statewide Associations for Cities, Boroughs, First Class Townships and Second Class Townships

The municipal associations also developed their “20 or so most burdensome mandates.” Actually, representatives of PLCM, PSAB, and PSATC, and PSATS collectively determined 23 mandates for study that had the greatest impact on their respective constituencies (Table 8, pp. 2-39 – 2-40).

Table 8 Most Burdensome Mandates as Identified by the Municipal Associations <i>(not in order of importance)</i>	PLCM	PSAB	PSATC	PSATS
Prevailing Wage Act (Act 442 of 1961), particularly the threshold for public works projects, method for determining prevailing wages, and definition of “maintenance.”	✓	✓	✓	✓
Policemen and Firemen Collective Bargaining Act (Act 111 of 1968), particularly the costs of the third-party arbitrator and arbitration process, and power vested in arbitrator.	✓	✓	✓	✓
Chesapeake Bay Program requirements. (1)	✓	✓	✓	✓
Small municipal separate storm sewer system (MS4) permit requirements pursuant to the United States Environmental Protection Agency NPDES ⁶⁵ Phase II Rule. (1)	✓	✓		✓
Compliance with federal American with Disabilities Act requirements on state highways and rights-of-way. (1)	✓			
Traffic control requirements, particularly adoption of federal Manual on Uniform Traffic Control Devices (MUTCD) standards. (1)	✓			✓
State highway and right-of-way maintenance requirements for signalization, signage, and pavement markings.	✓		✓	✓
State highway and right-of-way maintenance requirements for stormwater facilities.	✓		✓	✓
Highway occupancy permit fee schedules (67 Pa. Code Chapters 441, 459). (2)			✓	✓
Maximum highway security or bonding amounts (67 Pa. Code Chapter 189). (2)				✓
Consolidated County Assessment Law exemptions from real estate taxation.	✓	✓		✓
Act 32 of 2008 (amending Act 511 of 1965 [Local Tax Enabling Act]), providing for consolidated collection of earned income taxes. (3)	✓	✓	✓	✓
Advertising/publication of legal notice requirements (various laws). (4)	✓	✓	✓	✓
Competitive bidding and related advertising requirements (various laws).	✓	✓	✓	✓
Pennsylvania Separations Act (Act 104 of 1913) and corresponding provisions in the respective municipal codes.		✓		✓
Right-to-Know Law (Act 3 of 2008), particularly the timeframe for responses, costs of research, responses for frivolous requests, and costs of commercial requests.		✓	✓	✓
Act 44 of 2009 (amending Act 205 of 1984 [Municipal Pension Plan Funding Standard and Recovery Act]). (5)	✓	✓	✓	

⁶⁵ NPDES - National Pollutant Discharge Elimination System.

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Table 8 Most Burdensome Mandates as Identified by the Municipal Associations <i>(not in order of importance)</i>	PLCM	PSAB	PSATC	PSATS
Workers' Compensation Act (Act 338 of 1915) amendment (Act 46 of 2011), providing for firefighters with cancer. (3)	✓	✓	✓	
Act 51 of 2009 (amending Act 101 of 1976 [Emergency Law Enforcement Personnel Death Benefits Act]) (5)			✓	
Municipal police officer certification and annual in-service training requirements.	✓		✓	
Act 101 of 1988 (Municipal Waste Planning, Recycling and Waste Reduction Act), particularly recycling requirements.	✓			
Pennsylvania Construction Code Act (Act 45 of 1999), particularly triennial building inspector continuing education and certification requirements.		✓	✓	
Act 46 of 2010 (amending Act 176 of 1929 [Fiscal Code]), providing, in part, for permit extensions. (6)		✓		✓

As a result of initial screening and pilot studies (*see* Section 2.4.3.1), the 12 highlighted mandates were dismissed from statewide municipal surveys and further study in that they: (1) are federal in origin;⁶⁶ (2) in essence, are regulatory in nature; (3) were not measurable at the time; (4) had been studied recently for the same purposes as SR 323; (5) are not truly mandates and are possibly beneficial; or (6) are of little financial consequence to municipalities.

(1) Mandate is Federal in Origin: In municipal association representatives' meetings with senior officials of DEP and PennDOT on February 23 and January 6, 2011, respectively, it became clear that four of the mandates are under the jurisdiction of the federal government. *Hence, the municipal association representatives concurred to dismiss these mandates from further study.*

- Chesapeake Bay Program Requirements and MS4 Permit Requirements:** In considering the *Pennsylvania Chesapeake Watershed Implementation Plan* (Phase 1 and Phase 2)⁶⁷ and the United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System Stormwater Phase II Final Rule,⁶⁸ and in meeting with DEP Executive Deputy Secretary for Programs, John Hines, and other senior staff on February 23, 2011, it was made apparent that the federal Clean Water Act, EPA, and implementation of a lawsuit settlement with the Chesapeake Bay Foundation were driving the subject requirements. Moreover, it was made evident that the mandate for achieving Chesapeake Bay Program total maximum daily load targets and MS4 permit requirements were interrelated.

⁶⁶ The definition of mandate for the purposes of this study only pertains to mandates that have an express basis in state law, since the legislature has the ability to possibly provide some relief from those mandates. *See* Section 2.4.1, Defining Mandate for the Purposes of Senate Resolution 323.

⁶⁷ *See* "Chesapeake Bay Program," Pennsylvania Department of Environmental Protection, 2012, <http://www.portal.state.pa.us/portal/server.pt/community/chesapeake_bay_program/10513> (April 18, 2012).

⁶⁸ *See* "National Pollutant Discharge Elimination System (NPDES) Stormwater Phase II Final Rule Fact Sheet Series," U.S. Environmental Protection Agency, March 15, 2012, <<http://cfpub.epa.gov/npdes/stormwater/swfinal.cfm>> (April 18, 2012).

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DEP, in *Pennsylvania's Chesapeake Bay Tributary Strategy*, published in 2004, reported that capital costs to implement Tributary Strategies in Pennsylvania alone are estimated at \$8.2 billion. On an annualized basis, capital costs are estimated to be \$735 million and operation and maintenance costs are estimated to be \$703 million. Estimated available resources, at that time, from various federal, state, and local programs were almost \$1 billion per year.⁶⁹ The Pennsylvania Chesapeake Watershed Implementation Plan, cited above, elaborates on a variety of funding sources available to municipalities to help offset these costs. Nevertheless, they reportedly continue to impose an onerous mandate on many municipalities within the Chesapeake Bay Watershed.

- **American with Disabilities Act (ADA) Requirements on State Highways and Rights-of-Way:** According to the Federal Highway Administration (FHWA):

The ADA and Section 504 [of the Rehabilitation Act of 1973] do not require public agencies to provide pedestrian facilities. However, where pedestrian facilities exist they must be accessible. Furthermore, when public agencies construct improvements providing access for pedestrians, the completed project also must meet accessibility requirements for persons with disabilities to the maximum extent feasible.

The FHWA is responsible for ensuring public agencies meet the requirements of the ADA and Section 504 for pedestrian access for persons with disabilities. Under [Department of Justice] regulations, FHWA divisions must work with their State [departments of transportation], [metropolitan planning organizations], and local public agencies to ensure ADA and Section 504 requirements are incorporated in all program activities for all projects within the public right-of-way regardless of funding source.⁷⁰

The federal government imposes the ADA requirements in conjunction with highway new construction and alterations, and defines what constitutes new construction and alterations versus maintenance. Moreover, PennDOT provides the following guidance in Chapter 6 (Pedestrian Facilities and the Americans with Disabilities Act) of its Design Manual, Part 2 (Highway Design):

Each project requiring pedestrian access requires an appropriate negotiated and finalized construction agreement between PennDOT and the local government that addresses financial and maintenance responsibilities.

⁶⁹ *Pennsylvania's Chesapeake Bay Tributary Strategy*, Pennsylvania Department of Environmental Protection, December 2004, p. 29 <<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-45267/3900-BK-DEP1656.pdf>> (May 2, 2012).

⁷⁰ Isler, Frederick D. and King W. Gee, Memorandum: "Clarification of FHWA's Oversight Role in Accessibility," Office of Civil Rights, Federal Highway Administration, U.S. Department of Transportation, September 9, 2006, <http://www.fhwa.dot.gov/civilrights/memos/ada_memo_clarificationa.htm> (April 20, 2012).

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A. Americans with Disabilities Act: Reimbursement and Maintenance for Curb Ramps with Local Municipalities. Resurfacing projects, including overlay, wearing course resurfacing and mill and fill projects, are considered an alteration to the roadway and to any pedestrian path that is crossed. As per Title II requirements under the ADA, when a facility is altered, the facility must meet the current standards. A federal court decision (*Kinney vs. Yerusalim*, 1993)⁷¹ determined the pedestrian crossing and the curb ramps are to be considered as a single unit. Therefore, when the pedestrian crossing is altered, the curb ramp is also considered altered and must be reconstructed or upgraded to meet the current standards by the entity performing the alteration. If PennDOT performs the resurfacing project or impacts the pedestrian path, PennDOT is ultimately responsible to see that all curb ramps meet the current PennDOT standards.

Coordination must be completed with the local municipality to discuss financial and maintenance responsibilities.

1. 100% Federal Funded Projects.
 - PennDOT will not seek any reimbursement from the municipality.
2. 100% State Funded Projects.
 - Pedestrian facilities that provide access across state routes – PennDOT will fully fund.
 - Pedestrian facilities that provide access across local roads – Municipality will fully fund.
 - Pedestrian facilities that provide access across both state routes and local roads – 50/50 cost sharing.
3. Federal, State and Local Funded Projects.
 - Each party will be responsible for their percentage of the total project cost.

Should municipalities choose not to participate in funding their curb ramps, the Department will adjust the project limits of work. The Department will address curb ramps along state routes only and adjust milling and resurfacing operations to follow along the face of curb thereby not impacting the curb ramps along the local roads. In some cases it will be necessary to upgrade the curb ramps along the local road in order to correctly upgrade the curb ramps along the state route. If the municipality chooses not to participate in funding curb ramps, the Department will fund the local curb ramps in order to comply with ADA regulations.⁷²

⁷¹ *Kinney v. Yerusalim*, 9 F.3d 1067, C.A.3 (Pa.) 1993.

⁷² *Design Manual, Part 2, Highway Design*, Publication 13M, Pennsylvania Department of Transportation, Harrisburg, August 2009, pp. 6-12–6-13, <<ftp://ftp.dot.state.pa.us/public/Bureaus/design/PUB13M/insidecover.pdf>> (April 18, 2012).

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In essence, ADA compliance for pedestrian facilities along state highways is a federal requirement and a state responsibility, although the PennDOT does require coordination with the local municipality on financial and maintenance responsibilities. Once curb ramps are constructed, municipalities are responsible for their maintenance.⁷³ However, *there are no waivers from ADA compliance.*

PennDOT estimates that there are 100,000 curb ramps crossing state routes and 70,000 curb ramps crossing local roads along state routes. The estimated PennDOT cost to install curb ramps is \$550 million or \$55 million per year for 10 years. The estimated municipal cost is \$385 million or \$38.5 million per year for 10 years. PennDOT spent \$25 million in American Recovery and Reinvestment Act funds for state and local curb ramp projects.⁷⁴

With respect to municipal funding sources, if a PennDOT development project is federally funded, the municipality can take advantage of the federal funds based on a pro-rata share. The new planning process, linking transportation planning with National Environmental Policy Act compliance, provides opportunities to compete for Transportation Improvement Program dollars. Municipalities may use liquid fuels funds for curb ramp construction. The Pennsylvania Infrastructure Bank provides low interest loans with a 10-year term. Municipalities can exercise their ability to assign maintenance responsibilities to adjacent property owners by passing ordinances.⁷⁵

- **Manual on Uniform Traffic Control Devices (MUTCD) Standards:** The federal government directly imposes the MUTCD standards and the associated compliance dates, and state law and regulation codify and further provide for the standards.⁷⁶ According to Title 23 (Highways) of the Code of Federal Regulations, Section 655.603 (Standards):

(a) National MUTCD. The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). . . .

⁷³ See “Sources of PennDOT Curb-to-Curb Maintenance Policy,” in *Storm Water Facilities on State Highways, Final Report*, Pennsylvania State Transportation Advisory Committee, February 2007, p. 7, <<ftp://ftp.dot.state.pa.us/public/pdf/STCTAC/TAC/Reports/Storm%20Water%20Facilities%20on%20State%20Highways%20-%20February%202007%20-%20Final%20Report.pdf>> (April 30, 2012).

⁷⁴ Melville, David, Bureau of Project Delivery, “Compliance with the American with Disabilities Act,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 6-9.

⁷⁵ *Id.*

⁷⁶ Relevant state statutory and regulatory provisions include: 75 Pa.C.S. § 6101 (Applicability and uniformity of title); 75 Pa.C.S. § 6105 (Department to prescribe traffic and engineering investigations); 75 Pa.C.S. § 6103(c)(d) (Promulgation of rules and regulations by department); 75 Pa.C.S. § 6121 (Uniform system of traffic-control devices); 75 Pa.C.S. § 6122(a) (Authority to erect traffic-control devices); Pa. Code § 212.2(a)(b) (Adoption of Federal standards).

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Title 23 of the United States Code, Section 109(d) states:

On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the [United States] Secretary [of Transportation], who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

Title 23 of the United States Code, Section 402(a), in relevant part, states:

Each State shall have a highway safety program approved by the [United States] Secretary [of Transportation], designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform guidelines promulgated by the Secretary. . . .

As the national standards set forth by federal law and regulation, Pennsylvania adopted the MUTCD. However, municipal issue with the MUTCD seems to primarily center on the designated target compliance dates for bringing existing traffic control devices into conformity with new or updated federal standards.⁷⁷ Requirements that most affect municipalities pertain to minimum reflectivity, street name signs, and large stop signs.⁷⁸

However, on May 14, 2012, effective June 13, 2012, the Federal Highway Administration issued a final rule that would eliminate compliance dates for many traffic control devices and extend or revise compliance dates for others:

The purpose of this final rule is to revise certain information relating to target compliance dates for traffic control devices. This final rule revises Table I-2 of the MUTCD by eliminating the compliance dates for 46 items (8 that had already expired and 38 that had future compliance dates) and extends and/or revises the dates for 4 items. The target compliance dates for 8 items that are deemed to be of critical safety importance will remain in effect. In addition, this final rule adds a new Option statement exempting existing historic street name signs within a locally identified historic district from the Standards and Guidance of Section 2D.43 regarding street sign color, letter size, and other design features, including retroreflectivity.

⁷⁷ Tenaglia, James, Highway Safety and Traffic Engineering, "MUTCD," in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 1-2.

⁷⁸ Alexander, Mark, Highway Safety and Traffic Engineering, "Signage," in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 2-4.

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Consistent with Executive Order 13563, and in particular its emphasis on burden-reduction and on retrospective analysis of existing rules, the changes adopted are intended to reduce the costs and impacts of compliance dates on State and local highway agencies and to streamline and simplify the information. The MUTCD, with these changes incorporated, is being designated as Revision 2 of the 2009 edition of the MUTCD.⁷⁹

Nevertheless, it is important to note that “there are potential tort liability concerns for non-compliance with the MUTCD; therefore, all traffic control devices should be installed and maintained in conformance with the MUTCD’s national standards.”⁸⁰

(2) Mandate is Regulatory in Nature: The January 6, 2011, meeting with PennDOT officials also clarified that, although state statute provides broad authority for two of the mandates, provisions in the Pennsylvania Code truly define them. *Therefore, the municipal association representatives concurred to dismiss these mandates from further study.*

- **Highway Occupancy Permit Fee Schedules:** The highway occupancy permit fee schedules have regulatory bases pursuant to Title 67 of the Pennsylvania Code, Chapters 441 (Access to and Occupancy of Highways) and 459 (Occupancy of Highways by Utilities), which have not been amended in more than 30 and 20 years, respectively.

PennDOT officials agree that the fee schedules require updating, since the agency is not recovering its cost to administer the permitting program. With respect to Chapter 441, PennDOT looks to propose higher fees that reflect actual person-hour review time and additional types of fees that currently are not captured in regulation. With respect to Chapter 459, PennDOT plans to propose an increase based on the Consumer Price Index (CPI), with a possible future escalator based on the CPI as well.⁸¹

- **Maximum Highway Security or Bonding Amounts:** The maximum highway security or bonding amounts have a regulatory basis pursuant to Title 67 of the Pennsylvania Code, Chapter 189 (Hauling in Excess of Posted Weight Limit). Similar to the Highway Occupancy Permit fee schedules, the bonding security or bonding amounts have not been amended since they were adopted in 1981. Increased truck traffic in certain parts of the Commonwealth associated with Marcellus Shale natural gas development has placed an increased emphasis on this issue for which PennDOT has great concern.⁸²

⁷⁹ Federal Register Volume 77, Number 93, Monday, May 14, 2012, p. 28460, <<http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/html/2012-11710.htm>> (July 18, 2012).

⁸⁰ Tenaglia, James, Highway Safety and Traffic Engineering, “MUTCD,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, p. 2.

⁸¹ Dzurko, Michael, Highway Safety and Traffic Engineering, “Highway Occupancy Permit (HOP) Fee Schedule,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 9-10.

⁸² Koser, Steve, Bureau of Maintenance and Operations, “Maximum Security and Bonding Amounts,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, p. 10.

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Although PennDOT realizes that the current rates do not reflect current actual costs, the agency has apprehension about singling out one industry or possibly impacting small businesses. Moreover, PennDOT recognizes that: the regulations contain a clause for “additional security”;⁸³ the excess maintenance agreement process provides a good mechanism for road repairs; and the contractors rarely default on their obligations. The last point meaning that it is in the contractors’ best interests to repair damaged roads because if they fail to do so and the state or municipalities collect on the bonds, the financial institutions may not provide the contractors with bonds in the future. PennDOT perceives that a primary issue is the definition of local traffic and municipal trucks being pulled over on posted roads. In response, the agency is proposing emergency regulations to address this issue by creating a free Type 4 permit process. In addition, PennDOT advocates more educational outreach for municipalities.⁸⁴

(3) Mandate Was Not Measurable at the Time:

- **Act 32 of 2008 (amending Act 511 of 1965 [Local Tax Enabling Act]) to Provide for Consolidated Collection of Earned Income Taxes:** This mandate requires municipalities to share in all costs associated with the establishment and operation of the tax collection committee and the appointment and initial compensation of a tax officer. Research by the Governor’s Center for Local Government Services in the Department of Community and Economic Development revealed that “at least \$100 million in local earned income tax revenues is lost annually due to inefficiencies created by the lack of uniformity and fragmentation of the system.”⁸⁵ Given that the municipal associations conducted the statewide survey of municipalities in fall 2011 to determine the costs of the “most burdensome” mandates and recommendations for relief (*see* Section 2.4.3), which was prior to the January 1, 2012, effective date for the consolidated collection of earned income taxes, it was not possible at that time to determine the net monetary cost or benefit of the mandate. *Therefore, the municipal association representatives concurred to dismiss this mandate from further study under SR 323.*

⁸³ *See* 67 Pa. Code §189.4(d)(3):

Additional security. When the amount of damage in excess of normal maintenance to a posted highway is estimated by the posting authority to constitute 75% or more of the amount of the security, the posting authority may require the highway to be maintained or reconstructed within 30 days unless the permittee agrees to provide such additional security as the posting authority shall determine.

⁸⁴ Koser, Steve, Bureau of Maintenance and Operations, “Maximum Security and Bonding Amounts,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, p. 10.

⁸⁵ *Pennsylvania’s Earned Income Tax Collection System: An Analysis with Recommendations*, Governor’s Center for Local Government Services, Pennsylvania Department of Community and Economic Development, August 2004, p. 11. “The estimate is based on the difference between school earned income tax collections reported to the Department of Education for fiscal year 2000-01 and an estimate of local earned income based on compensation and net profits reported on State personal income tax returns in calendar year 2000. The estimate of local earned income was adjusted to reflect differences in the base, crediting, time period and reporting methods.” *Id.*

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- **Act 46 of 2011(amending Act 338 of 1915 [Workers’ Compensation Act]) to provide for Firefighters with Cancer:** Act 46 amends the Workers’ Compensation Act to include cancer as an occupational disease for firefighters. At issue for the municipal associations are the potential additional costs for medical treatment, lost wages, and workers’ compensation insurance premiums. However, the amendment became law and effective in July 2011, just prior to the survey of municipalities in fall 2011. *The municipal association representatives concurred that it most likely would not be practical to solicit mandate cost information until the latter half of 2012, after municipalities had at least a year, to realize the financial implications of the act, so they decided to dismiss this mandate from further study under SR 323.*

(4) Mandate Was Studied Recently for the Same Purposes as SR 323:

- **Advertising/Publication of Legal Notice Requirements:** The LGC studied this mandate with assistance from The Pennsylvania State University Harrisburg School of Public Affairs and the Legislative Office for Research Liaison.⁸⁶ Section 2.4.3 provides a description of the mandate and results from the study relevant to SR 323.

(5) Mandate Was Not Truly a “Mandate” and Was Possibly Beneficial:

- **Act 44 of 2009 (amending Act 205 of 1984 [Municipal Pension Plan Funding Standard and Recovery Act]):** Act 44 made significant changes to the Municipal Pension Plan Funding Standard and Recovery Act by making available a number of actuarial tools intended to provide short-term relief. The act also regulates and establishes the operation of Deferred Retirement Option Plans (DROPs)⁸⁷ and establishes new disclosure standards related to municipal pension plans. A reported 69 DROPs existed as of 2009 without the benefit of enabling legislation.

Many municipalities who had been steadfast in resisting the implementation of DROPs claim they were “undercut” by the passage of this legislation. The municipal associations contend that Act 44 has resulted in the establishment of DROPs through negotiation or more importantly through arbitration awards.

However, *in that* “[a] local government that has established or maintains a defined benefit pension plan for a group of its employees which is self-insured in whole or in part . . . , except for a local government that has joined the Pennsylvania Municipal Retirement System, *may* establish by ordinance a DROP for those employees as part of the pension plan,”⁸⁸ *or* “[a] local government that has established or maintains a defined benefit plan

⁸⁶ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006.

⁸⁷ For more information on DROPs, *see Special Report: Deferred Retirement Option Plans (DROPS)*, Commonwealth of Pennsylvania Public Employee Retirement Commission, March 2002, <http://www.portal.state.pa.us/portal/server.pt/community/publications/3194/policy_development_reports/525539> (April 19, 2012).

⁸⁸ Act 205 of 1984, Section 1111(a) (emphasis added).

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for a group of its employees which is self-insured in whole or in part . . . and has joined the Pennsylvania Municipal Retirement System *may* establish a DROP for those employees as a part of the pension plan only through participation in the DROP established and administered by the Pennsylvania Municipal Retirement System,”⁸⁹ *the Act 44 amendment of Chapter 11 to Act 205 of 1984 is clearly an authorization or an option for municipalities. Moreover, it was reportedly justified to provide uniformity in the establishment of DROPs. Hence, the municipal association representatives concurred to dismiss this mandate from further study.*

- **Act 51 of 2009 (amending Act 101 of 1976 [Emergency Law Enforcement Personnel Death Benefits Act]):** Act 51 makes the Commonwealth directly responsible to the beneficiary(ies) for the killed-in-service death benefit of law enforcement and emergency personnel. In addition to a lump sum death benefit previously required, the Commonwealth is to pay “an amount equal to the monthly salary, adjusted [annually] in accordance with [the Consumer Price Index for All Urban Consumers], of the deceased paid firefighter, ambulance service or rescue squad member or law enforcement officer, less any workers’ compensation or pension or retirement benefits paid to such survivors, and shall continue such monthly payments until there is no eligible beneficiary to receive them.”⁹⁰ The act also repeals Section 5(e)(2) of Act 600 of 1955 (Municipal Police Pension Law), which provided that “[p]ensions for the families of members killed in service shall be calculated at one hundred per centum of the member’s salary at the time of death.”

Police officers covered by a collective bargaining agreement, which has a provision that stipulates a killed-in-service death benefit, may not be eligible for coverage by the State. Pennsylvania courts have held that the General Assembly cannot void or change the terms of an existing collective bargaining agreement. Therefore, a municipality must first negotiate this benefit out of the existing agreement before the municipality can realize the intent of Act 51.

In that Act 51 appears to relieve the municipality’s police pension fund from paying the killed-in-service death benefit at 100 percent of a police officer’s salary, and in that any killed-in-service death benefit in a collective bargaining agreement has a contractual versus a statutory basis, possibly subject to negotiated transitional elimination in the contract, the municipal association representatives concurred to dismiss this mandate from further study.

⁸⁹ Act 205 of 1984, Section 1111(b) (emphasis added).

⁹⁰ Act 101 of 1976, Section 1(d).

(6) Mandate Was of Little Financial Consequence to Municipalities:

- **Act 46 of 2010 (amending Act 176 of 1929 [Fiscal Code]), providing, in part, for permit extensions:** Act 46 amended the Fiscal Code, in part, by adding a new article entitled “Permit Extensions,” which, generally, provides an automatic extension period for defined approvals relating to development or construction. Pursuant to this article, the expiration date of an approval by a state or local government agency that is granted or in effect during the extension period shall be automatically suspended during the extension period, beginning after December 31, 2008, and ending before July 2, 2013. Act 87 of 2012 amended this provision of the Fiscal Code to extend the end date to July 2, 2016.

This amendatory provision is to provide relief to the private sector, particularly the building industry, in reaction to the recent economic downturn. The municipal associations contend that the permit extension amendment may provide an unessential and overly generous extension period and may possibly result in lost application or permit fee revenues.

However, findings from the pilot studies, which served as a basis for the county and municipal statewide surveys (*see* Section 2.4.3.1), indicated that there were no direct costs associated with this mandate and suggested that the possible lost revenues and additional staff time to track the extensions, and developers’ progress during extensions, was difficult or impossible for municipalities to determine. *Therefore, the municipal association representatives concurred to dismiss this mandate from further study.*

2.4.3 Costs of Mandates to Counties and Municipalities and Their Recommendations for Relief

The Task Force made a decision to only investigate the most burdensome mandates for purposes of determining the costs to counties and municipalities and recommendations for mandate relief. Hence, the association representatives and academic advisors in conjunction with the LGC staff decided on and, with concurrence of the Task Force, undertook a two-tiered approach to ascertain this information.⁹¹

- The **first tier** was to conduct **pilot studies** to assist with the development of the statewide survey, determine an optimum timeframe for costing the mandates, define the issues surrounding direct costs, obtain information on indirect and nonmonetary costs, and discover any municipal strategies to mitigate costs and elicit suggestions for Commonwealth action.
- The **second tier**, based on the pilot study findings, was to develop and conduct **statewide surveys** to determine the cost of each identified “most burdensome” mandate to counties and municipalities, and solicit suggestions that could provide mandate relief.

2.4.3.1 Pilot Studies

As a basis for developing the surveys, the academic advisors and association representatives determined the need to conduct pilot studies in four counties. They chose the counties based on demographics and proximity to the participating universities. The academic advisors who took the lead for selected counties were Dr. George Dougherty of the University of Pittsburgh for Armstrong County (a western county), Dr. Paula Holoviak of Kutztown University for Carbon County (a rural county), Dr. Thomas Baldino of Wilkes University and Teri Ooms of the Institute for Public Policy and Economic Development for Luzerne County (an urban county), and Dr. Richardson Dilworth of Drexel University for Montgomery County (a metropolitan county).

Prior to conducting the pilot studies, the LGC staff and academic advisors developed a standard list of questions and a unique pilot study interview form for each identified “most burdensome” mandate (*see* sample in Appendix H). Task Force Chair, Senator Eichelberger, sent out a notification letter to the appropriate official in each pilot study county or municipality at least one week in advance of being contacted by an academic advisor or a student to set up an interview. The relevant interview forms accompanied the letter so that the county or municipal official had the opportunity to prepare for the interview in advance.

⁹¹ The academic advisors and LGC staff developed the overall approach on September 17, 2010, which they reported and affirmed with the Task Force at its October 7, 2010, meeting. Subsequently, the association representatives, academic advisors, and LGC staff worked out the details and logistics of the pilot studies and statewide surveys on January 20 and July 13, 2011.

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During May and June 2011, the academic advisors, with the assistance of their students, interviewed officials in at least one class of municipality in each county, as well as the county itself, on four to eight of the mandates, so that they conducted at least two interviews on each mandate and ultimately interviews on all the identified most burdensome mandates. Prevailing wage and collective bargaining were the only two exceptions in that they were the subjects of interviews in all municipalities due to their level of importance to the municipal associations.

For the pilot studies, the academic advisors and students posed the following five questions on each of the mandates, with the questions slightly modified to reflect the issue central to a given mandate.

1. Can the county or municipal official obtain information on the cost for the mandate? How should the cost information be defined and in what format should it be provided? What are major hurdles, if any, in obtaining the cost information?
2. Is it possible to deduct and, if so, quantify any possible fees, state and/or federal funding, or other reimbursement to capture only that portion of the cost to the county or municipality that is unfunded?
3. What are the indirect costs, nonmonetary costs, and “hassle level” to implement the mandate (e.g., time displacement effects, inefficient procedure, and attitudinal paradigms)?
4. What is the optimum time parameter for costing the mandate (FY 2010 or other; specify)?
5. What are suggestions to reduce the fiscal impact of the mandate? How might the Commonwealth modify the mandate to provide a possible cost savings or relief?

Then they summarized their findings and Dr. Holoviak of Kutztown University compiled the findings in a report, which served as the basis to structure the statewide surveys. In her report, Dr. Holoviak synopsised the county and municipal responses for each of 14 county mandates and 12 municipal mandates, delineating variables to consider for each in developing the statewide surveys (*see* Appendix H). In sum, her report indicated the following.

- In general, the best timeframe for determining the cost of mandates is one fiscal/calendar year, except for competitive bidding and Separations Act-related mandates, for which the best timeframe is three years.
- In obtaining and defining cost information, it is best to ask for actual line item costs, such as wages and benefits, or percentage possibly added to a project.
- In taking into account indirect costs, they primarily include legal, secretarial, other staff, and opportunity costs (i.e., time and money that cannot be spent on other projects and services).
- With respect to recommendations for mandate relief, the counties’ biggest issues center on time delays in reimbursements and insufficient reimbursements, while the municipalities’ biggest issue centers on lack of funding of any kind.

2.4.3.2 Statewide Surveys Design and Review

Based on the requirements of SR 323, the purpose of the surveys was two-fold. One was to determine the cost of each identified mandate to municipalities. The other was to solicit suggestions that could provide mandate relief. As a result of the initial screening and pilot

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studies, 10 of the 23 mandates identified by PLCM, PSAB, PSATC, and PSATS, and 13 of the 17 mandates identified by CCAP were included in the respective surveys. The LGC staff and association representatives scheduled the surveys to go out in early fall 2011.

The academic advisors in conjunction with the municipal association representatives concluded early on that the tactic that would produce the most reliable results was to conduct one survey of *all* counties and a separate survey of *all* municipalities on their respective identified mandates. As indicated previously, the identified county mandates generally were different from the identified municipal mandates given the dissimilar functions of counties and municipalities.

The LGC staff developed the draft county and municipal survey forms, which underwent two levels of scrutiny prior to dissemination. Initially, they were sent to the association representatives and academic advisors for review and comment. Upon the LGC staff incorporating review comments, each of the four municipal associations, except for CCAP, sent out the draft survey to two of their member municipalities with instructions for the municipalities to pretest the survey. Given that Pennsylvania has 67 counties, CCAP staff pretested its survey internally as not to give up any potential survey results to a pretest, which might affect the validity of the county survey outcome. Following the pretests, the LGC staff again revised the surveys to reflect pretest and CCAP feedback, which resulted in the final county and municipal survey forms (*see* samples in Appendix I).⁹²

2.4.3.3 County and Municipal Surveys

For the efficient conduct of the statewide surveys, legislators, association representatives, academic advisors, and LGC staff concurred on using a combination of e-mail and U.S. mail for survey dissemination. The associations determined the breakdown of the municipalities that would receive the survey via e-mail versus U.S. mail based upon the municipalities for which the associations had valid e-mail addresses. It happened that the associations had valid e-mail addresses for all but about 260 boroughs, 20 first class townships, and 180 second class townships. Therefore, 67 counties and approximately 2,100 municipalities (82%) received the survey via e-mail and around 460 (18%) received the survey via U.S. mail. Based on the experience of some of the associations and academic advisors, there was general agreement to use SurveyMonkey for the surveys sent out via e-mail.⁹³

All the parties also agreed that the surveys should be sent out from the respective municipal associations in order to elicit a better response. Hence, the county and municipal surveys had to be customized for each association (CCAP, PLCM, PSAB, PSATC, and PSATS), to the extent necessary, in both hardcopy and SurveyMonkey format. The municipal associations sent out the surveys in mid-September 2011 with an initial deadline of October 14.

⁹² The surveys for the classes of municipalities were the same, except that the survey for second class townships did not contain a question pertaining to firefighter collective bargaining arbitration given that no second class township is known to have a fully paid fire department with a collective bargaining unit.

⁹³ SurveyMonkey is an online service for designing and distributing surveys and collecting and analyzing responses. *See* SurveyMonkey, 1999-2012, <<http://www.surveymonkey.com/>> (September 18, 2012).

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Extensive notification and follow-up took place prior to and during the survey process, informing counties and municipalities about the SR 323 Mandate Study and requesting participation in the surveys. Efforts included:

- A flier provided to each participant, and an announcement made, at each of the association's annual conferences in spring and summer 2011.
- A feature article in each of the association's magazines during midsummer-early fall 2011, including the CCAP September-October *County News*, the PLCM summer/fall *Municipal Reporter*, the PSAB August *Borough News*, and the PSATS July *Township News*.
- A survey advance notification e-mail or letter to each county and municipality from the chief executive officer of the respective municipal association.
- A reminder letter sent out about a week prior to the initial October 14 survey due date by the chief executive office of the respective municipal association.

In having received a low level of return from the counties and various types of municipalities prior to October 14, the academic advisors suggested and LGC and association staff implemented the following measures:

- An extended survey completion date of October 31, and ultimately of November 14.
- A reminder postcard from the associations in mid-October to all who had not responded.
- In addition, an e-mail with the survey link and a hard copy survey attachment, from the associations in mid-October to all counties and municipalities with e-mail addresses that had not responded.

Moreover, PSATS' staff, for example, promoted municipal response to the survey at the county associations of township officials' fall conventions. Certain LGC Members also followed up with the municipalities in their respective districts.

After all this effort, the resultant level of survey returns from municipalities, collectively, and counties was 30%. However, given the relatively small number of counties (67), a higher level of return was necessary to produce meaningful results.

Therefore, LGC and CCAP staff made a decision to resurvey all the 47 counties that did not respond to the fall 2011 county survey, but this time the strategy was to divide the survey into three parts—one with two questions pertaining to county prisons, one with three questions pertaining to county nursing facilities, and one with seven questions pertaining to counties, generally. County prison wardens, county nursing facility administrators, and county commissioner chairs received the respective resurveys in January 2012 under a cover letter from Task Force chair, Senator Eichelberger, as well as a reminder letter from the Senator in February 2012.

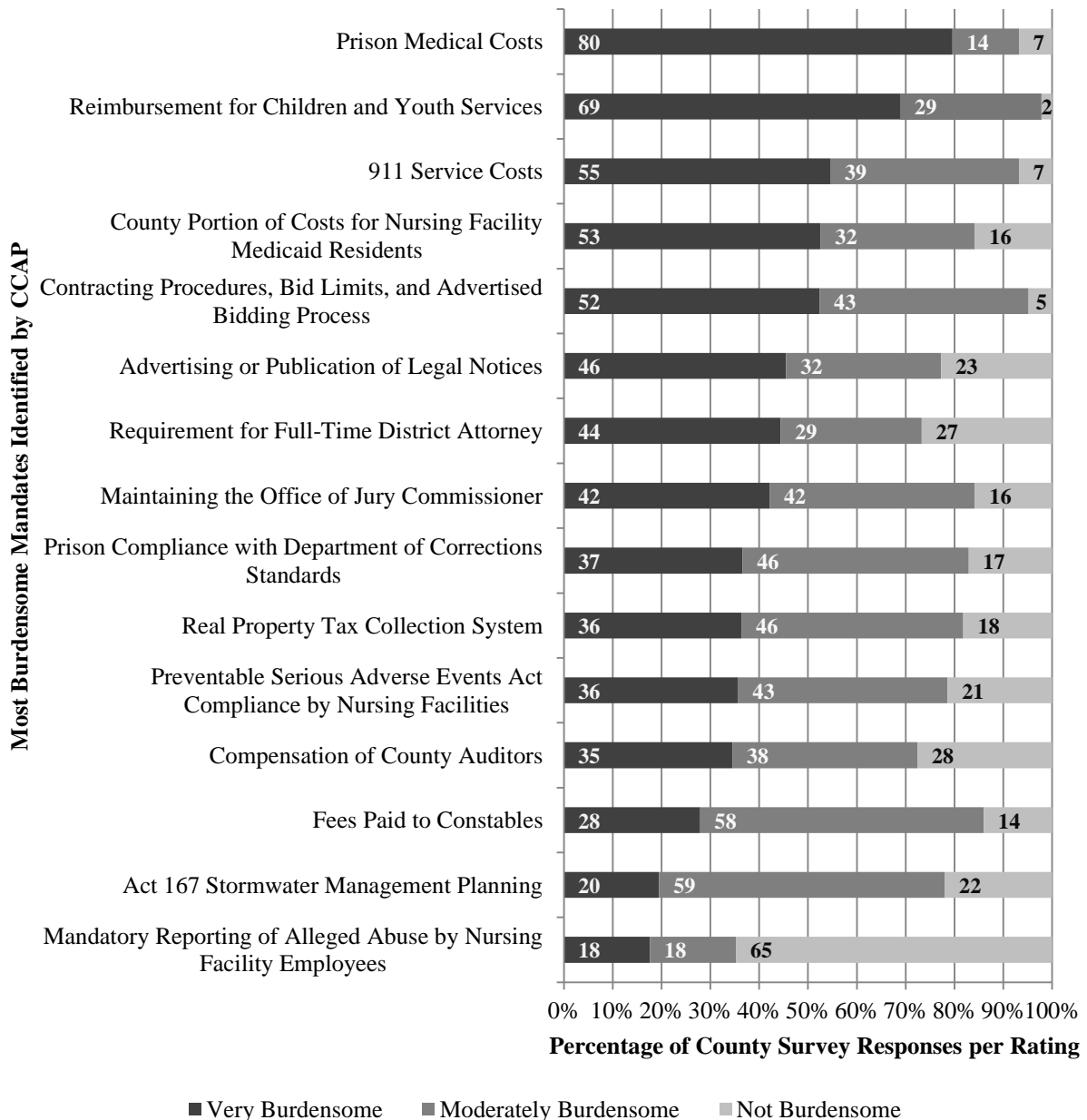
2.4.3.4 County Survey Results

Of 67 counties, 59 or 88% of the counties responded to the survey in total or in part. The first question on the survey, to which an average of 46 or 69% of the counties replied, gave counties

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the opportunity to provide their perception of the most burdensome mandates as identified by CCAP by rating them as “Very Burdensome,” “Moderately Burdensome,” “Not Burdensome,” and “Not Applicable.” The only exception from the average was the question pertaining to “Contracting Procedures, Bid Limits, and Advertised Bidding Process,” which received a 36% response, since it was omitted from the winter 2012 resurvey of counties because of the mitigating bid limit legislation enacted in 2011. Figure 2 depicts the percentage of county survey responses per rating, with the exception of “Not Applicable,” for each mandate in descending order, sorted by “Most Burdensome” and then “Moderately Burdensome” ratings.

Figure 2: County Ratings of Most Burdensome Mandates



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In summarizing the results of the survey of counties pertaining to costs (Table 9), staff generated descriptive statistics based on the following definitions and qualifications:

- **Population:** The unique population for each mandate is provided, if determinable (e.g., 67 counties with 911 service, 60 counties with prisons, 33 counties with nursing facilities). If undeterminable, 67 counties were used.
- **Number of Responses:** All responses that reflect a cost, generally excluding responses with zero or outlier amounts.
 - **Dollar Amounts Equal Zero:** The number of reported zero amounts as they pertain to costs are *excluded* in the statistical calculations so that the results only represent counties for which a given mandate gives rise to a cost. However, zero amounts are *included* in the calculations that reflect funding or reimbursement to show the effect of no state allocations in some instances (i.e., IGT funds for county portion of costs for nursing facility Medicaid residents, percent reimbursement for Act 167 stormwater management planning).
 - **Outlier Amounts:** Outlier amounts are defined as greater than plus or minus three times the standard deviation of the total population. Based on this definition, there are seven survey response outlier amounts for six mandates. These are *excluded* from the statistical calculations so as not to skew the results.

Mandate	Outlier Amount (\$)
911 Service Costs	13,000,000
Fees Paid to Constables	3,800,000
Requirement for Full-Time District Attorney: Salary	569,000
Requirement for Full-Time District Attorney: Benefits	103,925
Reimbursement for Children and Youth Services	7,617,212
	6,600,000
Contracting Procedures, Bid Limits, and Advertised Bidding Process	1,990,000

Outlier “911 Service Costs” (\$13,000,000), “Full-Time District Attorney: Benefits” (\$103,925), and “Reimbursement for Children and Youth Services” costs (\$6,600,000) are attributable to second class A counties. “Fees Paid to Constables” (\$3,800,000) are attributable to a third class county. “Full-Time District Attorney: Salary” (\$569,000) and “Reimbursement for Children and Youth Services” costs (\$7,617,212) are attributable to fourth class counties.

The results are sorted by average cost in descending order so that they are comparable to Figure 2. The “IGT Funds” are paired with the “County Portion of Costs for Nursing Facility Medicaid Residents” and the “Requirement for Full-Time District Attorney” salary and benefits were sorted in total.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

**Table 9: Descriptive Statistics of Survey Results
for Mandates Placed on Counties⁹⁴**

Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania	Population	No. of Responses	% of Responses	Minimum	Maximum	Average	Median ⁹⁵	Standard Deviation ⁹⁶
Prison Compliance with Department of Corrections Standards	60	36	60%	\$20,000	\$37,000,000	\$12,977,777	\$5,833,260	\$13,119,326
Prison Medical Costs	60	47	78%	\$70,250	\$8,857,143	\$2,224,517	\$636,596	\$3,053,957
County Portion of Costs for Nursing Facility Medicaid Residents	33	20	61%	\$158,227	\$4,000,000	\$1,322,479	\$758,000	\$1,136,062
County Portion of Costs for Nursing Facility Medicaid Residents: IGT Funds	33	20	61%	\$0	\$1,614,340	\$534,616	\$465,000	\$494,074
911 Service Costs	67	42	63%	\$46,356	\$5,862,260	\$1,142,104	\$532,500	\$1,406,269
Reimbursement for Children and Youth Services	67	32	48%	\$5,000	\$4,500,000	\$712,877	\$419,500	\$938,864
Fees Paid to Constables	64	40	63%	\$442	\$1,872,894	\$231,839	\$27,376	\$488,776
Contracting Procedures, Bid Limits, and Advertised Bidding Process	67	15	22%	\$5,000	\$1,058,000	\$133,616	\$18,000	\$261,377

⁹⁴ Although the number of most valid responses is greater than 50% of the population for a given mandate, it is still not adequate to accurately estimate county mandate costs. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for counties are increasing or decreasing and whether county officials would have responded differently if the economy was more robust are unknown. Therefore, these reported costs may be viewed only as a possible relative level of magnitude for each mandate.

⁹⁵ Median – The value in the middle of a set of data, or the average of two values nearest the middle, with the values having been sorted or arranged by size.

⁹⁶ Standard Deviation – A measure of the spread or dispersion of a set of values from their average or mean.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

**Table 9: Descriptive Statistics of Survey Results
for Mandates Placed on Counties⁹⁴**

Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania	Population	No. of Responses	% of Responses	Minimum	Maximum	Average	Median ⁹⁵	Standard Deviation ⁹⁶
Act 167 Stormwater Management Planning: Cost per Plan	56	25	45%	\$2,275	\$400,000	\$127,009	\$110,000	\$99,651
Act 167 Stormwater Management Planning: Percent Reimbursement	56	25	45%	0%	100%	63%	75%	26%
Requirement for Full-Time District Attorney: Salary	64	42	66%	\$1,200	\$160,850	\$87,464	\$56,481	\$45,850
Requirement for Full-Time District Attorney: Benefits	64	36	56%	\$2,500	\$100,000	\$37,463	\$35,913	\$18,752
Act 167 Stormwater Management Planning: Cost per Revised Plan	56	5	9%	\$10,000	\$200,000	\$76,711	\$60,000	\$66,571
Act 167 Stormwater Management Planning: Percent Reimbursement	56	5	9%	0%	65%	20%	10%	24%
Compensation of County Auditors	31	20	65%	13,035	\$214,545	\$71,262	\$65,279	\$48,717
Maintaining the Office of Jury Commissioner	58	39	67%	\$11,085	\$134,391	\$48,187	\$37,002	\$32,960
Preventable Serious Adverse Events Act Compliance by Nursing Facilities	33	11	33%	\$100	\$300,000	\$46,711	\$15,142	\$85,116
Mandatory Reporting of Alleged Abuse by Nursing Facility Employees	33	19	58%	\$600	\$96,600	\$28,931	\$13,794	\$28,518

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

A number of observations can be made from the survey data. The costs generally have a wide range, which generally has a positive correlation to the different classes of counties, with the more populated counties having a higher average cost than the less populated counties. Median costs overall are 44% lower than average costs and the standard deviations are relatively large, which is indicative of the wide range of costs despite the omission of outliers.

Another meaningful observation is the cost of the various mandates relative to each other. Average costs have a wide range, from \$12,977,777 for “Prison Compliance with Department of Corrections Standards” to \$28,931 for “Mandatory Reporting of Alleged Abuse by Nursing Facility Employees.” Of the remaining mandates, three have an average cost of more than \$1 million, five have an average cost of less than \$1 million but more than \$100,000, and four have an average cost of less than \$100,000.

In comparing the most burdensome county mandates by rating versus average cost, about half have comparable standings and about half have somewhat disparate standings (Table 10).

Table 10: Comparative Descending Sort (Most to Least) of Most Burdensome Mandates on Counties⁹⁷

Based on County Ratings	Based on Average Cost
Prison Medical Costs	Prison Compliance with Department of Corrections Standards
Reimbursement for Children and Youth Services	Prison Medical Costs
911 Service Costs	County Portion of Costs for Nursing Facility Medicaid Residents
County Portion of Costs for Nursing Facility Medicaid Residents	911 Service Costs
Contracting Procedures, Bid Limits, and Advertised Bidding Process	Reimbursement for Children and Youth Services
Requirement for Full-Time District Attorney	Fees Paid to Constables
Maintaining the Office of Jury Commissioner	Contracting Procedures, Bid Limits, and Advertised Bidding Process
Prison Compliance with Department of Corrections Standards	Act 167 Stormwater Management Planning ⁹⁸
Preventable Serious Adverse Events Act Compliance by Nursing Facilities	Requirement for Full-Time District Attorney
Compensation of County Auditors	Compensation of County Auditors
Fees Paid to Constables	Maintaining the Office of Jury Commissioner
Act 167 Stormwater Management Planning	Preventable Serious Adverse Events Act Compliance by Nursing Facilities
Mandatory Reporting of Alleged Abuse by Nursing Facility Employees	Mandatory Reporting of Alleged Abuse by Nursing Facility Employees

⁹⁷ The “Advertising or Publication of Legal Notices” and “Real Property Tax Collection System” were not included in the Table 10 since they were not included in the survey of counties for the purpose of determining costs.

⁹⁸ For comparative purposes, the table only reflects the “Act 167 Stormwater Management Planning: Cost per Plan”; it does not reflect the “Cost per Revised Plan.”

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

The notable differences in standing may be attributable to indirect costs, nonmonetary costs, and “hassle level” to implement the mandate (e.g., time displacement effects, inefficient procedures, attitudinal paradigms). For example, for “Reimbursement for Children and Youth Services,” the pilot studies revealed that counties experienced indirect costs, including opportunity costs such as delay of other county projects due to waiting for reimbursement, difficulty in obtaining Children and Youth Services providers, and lower quality of providers. The differences may also be caused by whether counties perceive certain mandates as necessary or important.

To help account for substantial differences in the cost of a given mandate among and within the different classes of counties, the following steps were taken to estimate statewide costs. The reported mandate costs for each county were sorted by class of county. The average cost for the mandate was calculated for each class of county excepting any outliers, and then multiplied by the total population for a given mandate within that class of county, again less any outliers. The results for the classes of counties were totaled, and any outliers were added in, to come up with a statewide estimate for the mandate.

Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Table 11 (pp. 2-60 – 2-81), in partial fulfillment of SR 323, reports for each mandate:

- Average cost and statewide cost estimate, along with any qualifiers
- Statutory and/or regulatory citation
- Description of the mandate
- Issue(s) to the counties
- Origin (federal and/or state)
- Implementing agency
- Method of imposition
- Federal and/or state funding, if any
- Survey recommendations for relief.

As was stated previously, although the number of most valid responses is greater than 50% of the population for a given mandate, it is still not adequate to accurately estimate county mandate costs. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for counties are increasing or decreasing and whether county officials would have responded differently if the economy was more robust are unknown. Therefore, these reported costs may be viewed only as a possible relative level of magnitude for each mandate.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Mandate/Citation:	County 911 Services Funding: Title 35 of the Pennsylvania Consolidated Statutes, Chapter 53 (Emergency Telephone Service)
Description:	Counties receive 911 funding from subscriber fees on wireline, wireless, and VoIP phones. As a condition, counties are required to develop and submit plans to the Pennsylvania Emergency Management Agency for provision of technology for each type of service. ⁹⁹
County Issue:	At issue is that the law contains three different technologies, each with its own planning process, funding stream, and funding mechanism. ^{100, 101} Section 5305 of the law provides for a monthly contribution rate per line on each local exchange access line, Section 5311.4 provides for a monthly wireless E-911 surcharge, and Section 5311.14 provides for collection and disbursement of VoIP 911 fee.
Origin:	State
Implementing Agency:	Pennsylvania Emergency Management Agency
Method of Imposition:	Direct Order
Costs (2010):	\$1,142,104 estimated average annual cost/county \$77,371,332 estimated annual total cost (excluding counties of the 1 st class and 2 nd class, which did not respond to the survey question)
Methodology:	The county survey requested data on the costs for counties to maintain their 911 systems, including operating costs and capital expenditures, but excluding subscriber fees and state reimbursements.
Federal/State Funding:	None
Recommendations:	Survey Recommendations: <ol style="list-style-type: none"> 1. Assure that telephone system providers are properly collecting and remitting the subscriber fees that support the development, deployment and operation of the 911 systems. (75% of respondents) 2. Increase subscriber fee to cover 100% of costs. (65% of respondents) 3. Balance methodologies for collection and distribution of subscriber-based funding. (50% of respondents)

⁹⁹ Hill, Douglas, Executive Director, County Commissioners Association of Pennsylvania, February 15, 2011, office e-mail attachment.

¹⁰⁰ *Id.*

¹⁰¹ See "9-1-1 Program," Pennsylvania Emergency Management Agency, 2012, <http://www.pema.state.pa.us/portal/server.pt/community/programs_and_services/4547/911_program/458019> (February 2, 2012).

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

4. Provide appropriate delineation of the relative roles of county, local governments, and the Pennsylvania Emergency Management Agency. (43% of respondents)
5. Other Recommendations. (18% of respondents)

Relevant Act 118 of 2010 Report Recommendations:¹⁰²

- Providers of wireline, wireless, and VoIP telephony services whose customers can connect to 911 services should be required to register with the Pennsylvania Emergency Management Agency (PEMA).
- As part of the surcharge remittance process, telephony providers should be required to attest to their compliance with Pennsylvania's 911 surcharge laws. The General Assembly may also wish to require providers to furnish subscriber account information.
- The General Assembly should adjust the maximum surcharge that counties are allowed to charge for wireline access lines for inflation, given that the maximum has remained the same since 1990.
- The General Assembly should amend Title 35 of the Pennsylvania Consolidated Statutes Chapter 53 to allow VoIP companies to submit their surcharges directly to PEMA.
- The General Assembly should clarify whether governmental entities are required to submit 911 surcharges.
- The General Assembly should amend Chapter 53 to allow PEMA to develop a formula for distributing wireless grant funds to counties, rather than approving expenditures on a case-by-case basis. This would provide an incentive for Public Safety Answering Points (PSAP) to control staffing and encourage PSAP consolidation.
- In any rewrite of Chapter 53, the General Assembly should consider deleting the provision allowing certain cities to maintain their own 911 systems.
- The General Assembly should amend Chapter 53 to be compatible with Next Generation technologies and allow PEMA greater authority to direct the statewide 911 system's transition to Next Generation (broadband) technologies.

¹⁰² *Pennsylvania's 911 Emergency Telephone System: Funding, Expenditures, and Future Challenges and Opportunities*, Legislative Budget and Finance Committee, Harrisburg, Pennsylvania, May 2012, pp. S1-S13

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Mandate/Citation:	<p>County Jail Compliance with Department of Corrections' Regulatory Standards:</p> <p>Act 175 of 1929 (The Administrative Code of 1929), Section 506 (Rules and Regulations); Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, Section 1105 (Powers and Duties of Department); Title 37 of the Pennsylvania Code Chapter 95</p>
Description:	<p>The Pennsylvania Department of Corrections (DOC) conducts field inspections and follow-up inspections of all 63 operating county prisons. This inspection and follow-up inspection process is performed by a prison inspector. The inspector determines prison compliance with controlling Commonwealth statutes and regulations (i.e., 37 Pa. Code Chapter 95), judicial case law, DOC policy and procedures, and professional standards established by such organizations as the American Correctional Association.^{103, 104}</p> <p>The Title 37 regulations establish minimum standards for a variety of jail operational and inmate treatment areas, including the provision of health services, drug and alcohol assessments, physical plant standards, including minimum square footage of inmate areas, recreation, types and standards for allowable bedding, food services, personal hygiene of inmates, and procedural standards that jails must set and maintain, among other provisions.¹⁰⁵</p>
County Issue:	<p>The standards are established in regulation, and jails may be prevented from admitting inmates for failure to comply with minimum standards. The DOC provides no funding of any kind for county jail operations, although there are payment agreements in place where the DOC will pay a county for housing a state-sentenced inmate.¹⁰⁶</p>
Origin:	State
Implementing Agency:	Pennsylvania Department of Corrections
Method of Imposition:	Direct Order
Costs (2010):	<p>\$12,977,777 estimated average annual cost/county</p> <p>\$702,987,024 estimated annual total cost</p> <p>(excluding counties of the 2nd class, which did not respond to the survey question)</p>
Methodology:	<p>The county survey requested data on the cost for counties to comply with Department of Corrections' minimum standards for prison operation and inmate treatment during 2010.</p>

¹⁰³ See *Performance-Based Standards for Adult Local Detention Facilities*, 4th Edition, American Correctional Association, Alexandria, 2004.

¹⁰⁴ Penyak, Brinda C., Deputy Director, County Commissioners Association of Pennsylvania, February 15, 2011, office e-mail attachment.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Federal/State Funding:	None. However, as noted above, there are payment agreements in place where the DOC will pay a county for housing a state-sentenced inmate.
Survey Recommendations:	<ol style="list-style-type: none"> 1. Reduce prison population by establishing intermediate punishment as an alternative sentencing mechanism for nonviolent criminals. (81% of respondents) 2. Support state initiatives promoting public awareness of limitations of incarceration and of value of increased investment in prevention, intervention, and diversion programs. (65% of respondents) 3. Create drug and mental health courts. (54% of respondents) 4. Allow warden responsibility for early release and daily reporting centers. (21% of respondents) 5. Other Recommendations. (17% of respondents)

Mandate/Citations:	<p>County Prison Inmate Medical Costs:</p> <p>Correctional Institution Medical Services Act (Title 61 of the Pennsylvania Consolidated Statutes, Section 3301 et seq., specifically Section 3303); Title 37 of the Pennsylvania Code, Section 93.12 (Prison Medical Services Program)</p>
Description:	Counties must provide medical services to every inmate processed into the county jail, even if the individual has some sort of coverage eligibility at the time of entry into the jail. Furthermore, the regulations define the minimum types of care. Counties must provide emergency care and treatment as needed for which there are no defined limits. ¹⁰⁷
County Issue:	<p>The mandate results in counties being held responsible for emergency bills, emergency transport, including air transport when warranted, and those bills can run into the hundreds of thousands of dollars for a single case. There is no ability for the county to approve the services provided to the inmate in an emergency. In addition, there is no clear ability for counties to seek recovery of costs from an inmate, post release, even if the inmate has the financial resources.¹⁰⁸</p> <p>Update: Act 22 of 2011 amended the Public Welfare Code to, among other things, afford some, but not total, relief from this mandate, providing anticipated cost savings for counties and the DOC. The act authorizes that inmates of state or county correctional institutions, who meet certain eligibility/income requirements, qualify for Medical Assistance (MA) for inpatient care. However, the inmate's county of residence must contribute the state share of the medical care costs for inmates in county correctional institutions.</p>

¹⁰⁷ Penyak, Brinda C., Deputy Director, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

¹⁰⁸ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

	In addition, a health care provider who provides <i>inpatient care</i> to an inmate may not charge the state or county correctional institution or its medical services contractor more than the maximum allowable rate payable under the MA program. Similarly, a health care provider who provides <i>outpatient care</i> to an inmate may not charge the state or county correctional institution or its medical services contractor more than the maximum allowable rate payable under the Medicare program.
Origin:	State
Implementing Agency:	Pennsylvania Department of Corrections
Method of Imposition:	Direct Order
Costs (2010):	\$2,224,517 estimated average annual cost/county \$125,420,553 estimated annual total cost (excluding counties of the 2 nd class, which did not respond to the survey question)
Methodology:	The county survey requested data on the counties' costs for medical services provided to inmates who were processed into county prisons.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Prohibit health care providers from charging county prisons more than the maximum allowable rate under the MA program for inpatient care (<i>see</i> Act 22 of 2011). (81% of respondents) 2. Permit the state portion of MA benefits to be retained until there is a conviction, allowing for costs to be covered in part, although foregoing the federal share. (73% of respondents) 3. Suspend, rather than terminate, inmate eligibility for MA, Medicare, and veterans benefits to allow those benefits to be more quickly restored at the time of release. (73% of respondents) 4. Promote the use of open beds at county prisons for state inmates. (33% of respondents) 5. Regionalize county prisons. (14% of respondents) 6. Other Recommendations. (8% of respondents)

Mandate/Citation:	County Portion of Costs for Medicaid Residents in Nursing Facilities: Act 132 of 1976, amending Act 21 of 1967 (Public Welfare Code), Section 472 (Other Computations Affecting Counties)
Description:	The Public Welfare Code requires county nursing homes to pay 10% of the nonfederal share of the cost to provide care to Medicaid residents in their facilities. ¹⁰⁹

¹⁰⁹ Wilt, Michael J., Executive Director, Pennsylvania Association of County Affiliated Homes, February 5, 2011, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

County Issue:	For the past several years, the requirement has been met using other funding sources, such as the Intergovernmental Transfer (IGT) or the Certified Public Expenditure funding process. However, this relief from the county responsibility is only provided through December 31, 2012, and unless a solution is found, this funding requirement will fall back to the counties and make the feasibility of maintaining their nursing homes even more tenuous. ¹¹⁰
Origin:	State
Implementing Agency:	Pennsylvania Department of Public Welfare
Method of Imposition:	Direct Order
Costs (2010):	<p>\$1,322,479 estimated average annual cost/county – <u>534,616</u> estimated average annual funding (e.g., IGT funds)/county <u>\$ 787,863</u> estimated average annual net cost/county</p> <p>\$34,135,449 estimated total annual cost –<u>13,544,936</u> estimated total annual funding (e.g., IGT funds) <u>\$20,590,513</u> estimated total annual net cost</p> <p>(excluding counties of the 2nd class A, three of which have nursing facilities, but either indicated no cost or did not respond to this survey question)</p> <p>\$24,000,000 per year estimated net total annual cost (Source: Pennsylvania Department of Public Welfare)</p>
Methodology:	<p>The county survey requested data on the cost for counties to pay 10% of the nonfederal share of the MA costs for their nursing facilities during 2010, including direct line item costs but excluding IGT funds. The survey also asked how much funding sources, such as IGT funds, compensated counties for 10% of the nonfederal share.</p> <p>The \$24 million figure was provided to the County Commissioners Association of Pennsylvania by the Pennsylvania Department of Public Welfare, Office of Long-Term Living. It is updated every year based on the federal matching percentage and the possible sale of county nursing homes.¹¹¹</p>
Federal/State Funding:	IGT or Certified Public Expenditure funds
Survey Recommendations:	<ol style="list-style-type: none"> 1. Amend the Public Welfare Code to adjust the county's share. (88% of respondents) 2. Promote county nursing home self-sustainability. (36% of respondents) 3. Other Recommendations. (36% of respondents)

¹¹⁰ Wilt, Michael J., Executive Director, Pennsylvania Association of County Affiliated Homes, February 5, 2011, office e-mail attachment.

¹¹¹ Wilt, Michael J., February 6, 2012, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Mandate/Citations:	Preventable Serious Adverse Events Act: Act 1 of 2009 (Preventable Serious Adverse Events Act); Title 55 of the Pennsylvania Code (Public Welfare) Chapter 1189 (County Nursing Facility Services)
Description:	Act 1 of 2009 prohibits health care providers, including nursing facilities, from knowingly seeking payment from a health care payer or patient for a preventable serious adverse event (“PSAE”), or any services required to correct or treat the problem created by a PSAE. In addition, Act 1 also requires a health care provider that unknowingly receives payment for services associated with a PSAE, or for services to correct a PSAE, to immediately notify the health care payer or patient, and refund the payment within 30 days of discovery or receipt of the payment, whichever is later. ¹¹²
County Issue:	Since county nursing homes are paid under the Chapter 1189 regulations that provide for essentially a flat rate, not adjusted by a nursing home’s case-mix index (acuity level of residents), there can be no additional cost to the state for a PSAE from a county nursing home. County facilities would be at risk for 100% of the costs associated with a PSAE, and thus, the Commonwealth’s application of a payment from the rate amounts to a penalty. ¹¹³
Origin:	State
Implementing Agency:	Pennsylvania Department of Public Welfare
Method of Imposition:	Direct Order
Costs (2010):	\$46,711 estimated average annual cost/county \$1,216,915 estimated annual total cost (excluding counties of the 2 nd class A, three of which have nursing facilities, and counties of the 5 th class, two of which have nursing facilities, but either indicated no cost or did not respond to this survey question)
Methodology:	The county survey requested data on the costs for county nursing facilities to comply with the Preventable Serious Adverse Events Act, including the estimated human resources costs, if possible.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Increase MA rates. (91% of respondents) 2. Provide for a periodic adjustment of the per diem rate paid by the Department of Public Welfare to a nursing facility based on the nursing facility’s case-mix index. (68% of respondents) 3. Other Recommendations. (18% of respondents)

¹¹² Wilt, Michael J., Executive Director, Pennsylvania Association of County Affiliated Homes, February 5, 2011, office e-mail attachment.

¹¹³ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Mandate/Citations:	<p>Mandatory Reporting of Alleged Abuse, Neglect, and Misappropriation of Property by Nursing Home Employees:</p> <p>Act 13 of 1997, amending Act 79 of 1987 (Older Adults Protective Services Act) to further provide for reporting, investigations, and reporting suspected abuse by employees; Act 52 of 2007, amending Act 13 of 2002 (Medical Care Availability and Reduction of Error (Mcare) Act) to add Chapter 4 (Health Care-Associated Infections)</p> <p>Title 28 of the Pennsylvania Code Chapter 51 (Health Facilities, General Information) and Section 201.14 (Applicability, Definitions, Ownership, and General Operation of Long-Term Care Nursing Facilities, Responsibility of Licensee)</p>
Description:	<p>Listed above are just some of the state reporting requirements when the above allegations are made. Act 13, for example, requires that an immediate oral report to the Area Agency on Aging (AAA) be made when an employee or administrator has reasonable cause to believe that a recipient is a victim of abuse. Within 48 hours of the oral report, a written report is to be provided to the AAA. If the alleged abuse involves sexual abuse, serious physical injury, serious bodily injury, or suspicious death, an immediate oral report to law enforcement and the Pennsylvania Department of Aging (PDA) is required, in addition to the report to the local AAA. AAA and PDA are considered two separate notifications. These contacts must be documented in the report. A written report to law enforcement is to be provided by the reporting individual, and the local AAA will forward the written report to the PDA.¹¹⁴</p>
County Issue:	<p>Nursing homes are confronted with a wide variety of reporting requirements at both the state and federal levels. Many of the above-referenced requirements overlap and cause confusing situations and additional work for nursing facility staff.¹¹⁵</p>
Origin:	State
Implementing Agency:	Pennsylvania Department of Health
Method of Imposition:	Direct Order
Costs (2006-2010):	<p>\$28,931 estimated average five-year cost/county (or \$5,786 per year)</p> <p>\$729,311 estimated five-year total cost (or \$145,862 per year)</p>
Methodology:	<p>The county survey requested data on the costs incurred during five years, 2006 through 2010, to fulfill mandatory reporting requirements for alleged abuse by county nursing facility employees pursuant to the Act 13 of 1997 amendment to the Older Adults Protective Services Act, which added Chapter 7, entitled, "Reporting Suspected Abuse by Employees."</p>

¹¹⁴ Wilt, Michael J., Executive Director, Pennsylvania Association of County Affiliated Homes, February 5, 2011, office e-mail attachment.

¹¹⁵ *Id.*

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

	The survey specified that the costs were to include estimated human resources costs, if possible, and legal fees.
Federal/State Funding:	None
Survey Recommendations:	1. Require all pertinent agencies to use uniform reports. (91% of respondents) 2. Provide for one investigative clearinghouse. (70% of respondents)
Mandate/Citation:	Maintaining the Office of Jury Commissioner: The County Code, Section 401 (Enumeration of Elected Officers)
Description:	Section 401 of the County Code requires the election of two jury commissioners in every county (except in home rule counties and in some counties, under subsections (d) and (e) of Section 401, in which special exceptions have been granted by the Legislature). ¹¹⁶
County Issue:	In the majority of counties, the functions of jury selection and administration are now almost entirely handled by other staff in the court administrators' offices. ¹¹⁷ <i>Update:</i> Act 108 of 2011 amended the County Code, thus providing relief from this mandate by: (1) permitting the governing body in counties of the second class A through eighth class to abolish, by resolution, the office of jury commissioner provided that procedures are in effect which ensure that the county possesses a list of jurors that are a cross section of the community; (2) specifying that, in the event that the office of jury commissioner is abolished, it will become effective upon expiration of the current term of office of the jury commissioner; and (3) prohibiting the resolution from being passed in any year in which the office of jury commissioner is on the ballot.
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs (2010):	\$48,187 estimated average annual cost/county \$2,884,791 estimated annual total cost
Methodology:	The county survey requested data on the costs incurred during 2010 to provide for the office of jury commissioner, including salary, noncash compensation or benefits, payroll taxes, association dues, travel expenses, convention expenses, office space costs, and secretarial support costs, to the extent practicable.

¹¹⁶ Schaefer, Lisa, Government Relations Manager, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

¹¹⁷ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Authorize abolition of the office by a vote of the county commissioners, effective at the end of the current terms of the jury commissioners. (83% of respondents) 2. Continue unification of court-related employees so that jury commissioners become employees of the state, not the county. (24% of respondents) 3. Sanction abolition of the office by referendum, effective at the end of the current terms of the jury commissioners. (11% of respondents) 4. Other Recommendations. (11% of respondents)
Mandate/Citations:	<p>Fees Paid to Constables:</p> <p>Title 44 of the Pennsylvania Consolidated Statutes Chapter 71 (Constables), previously known as the Constable Fee Law, sets specific fees for each activity, and requires a constable to be paid by the county within 15 days of billing by the constable.</p> <p>Title 204 of the Pennsylvania Code, Section 29.405 (Costs, fines and fees under Title 42 of the Pennsylvania Consolidated Statutes, Section 3502(a)) establishes the distribution of fines/fees and costs paid by defendants and sets the order of how payments will be applied.</p>
Description:	Counties must pay constables using the statutory fee schedule and must pay them prior to collection of fines, fees, or costs from the defendant. ¹¹⁸
County Issue:	The defendant may be found innocent, or the fines, fees, and costs may be discharged by the courts. The county does not control the use of constables by the courts, yet is responsible for payment to the constables. ¹¹⁹
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs (2010):	\$231,839 estimated average annual cost/county \$15,678,705 estimated annual total cost (excluding counties of the 2 nd class, which did not respond to the survey question)
Methodology:	The county survey requested data on the costs incurred during 2010 to provide for the office of constable, including per usage fees for papers served (e.g., writs, summonses), mileage, and election day fees, but deducting service fees paid by defendants and reimbursements from the state.
Federal/State Funding:	None

¹¹⁸ Penyak, Brinda C., Deputy Director, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

¹¹⁹ *Id.*

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Survey Recommendations:	<ol style="list-style-type: none">1. Direct that magisterial fees related to outstanding criminal warrants go to the county, not the Pennsylvania Department of Corrections. (77% of respondents)2. Modify the method of payment whereby constables receive a fee on a per-docket basis, possibly resulting in multiple payments for one service. (57% of respondents)3. Eliminate the requirement for a constable to be present at the polls on Election Day. (47% of respondents)4. Charge a fee for civil warrants. (38% of respondents)5. Raise constable fees attached to defendants. (28% of respondents)6. Other Recommendations. (6% of respondents)
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Mandate/Citations:	Requirement for Counties to Have a Full-Time District Attorney: The County Code, Section 1401(a), (m), (p) Title 204 of the Pennsylvania Code, Section 211.2 (Judicial salaries effective January 1, 2010) sets annual judicial salaries
Description:	Counties are required to have a full-time district attorney (DA), except in limited cases in eighth class counties, and counties are required to pay 35% of the full-time DA salary; the Commonwealth is to pay the remaining 65%. The act also sets the salary at \$1,000.00 less than that of the judge of the court of common pleas (CCP). ¹²⁰
County Issue:	Counties must have a full-time district attorney, and must pay his or her salary. Counties are to be reimbursed by the Commonwealth for 65% of the salary, but if the Commonwealth portion is not paid, the county must cover the entire salary until reimbursed. The state is several years behind in paying counties for their portions of the costs. Additionally, with the DA salary linked to the CCP judicial salary, counties have no control over annual increases in salary for DAs. ¹²¹
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs (2010):	\$ 87,464 estimated average annual salary/county <u>+ 37,463</u> estimated average annual benefits <u>\$124,927</u> estimated average annual salary and benefits/county Estimated net average annual cost per county: \$56,852 (\$87,464 x 0.65)

¹²⁰ Penyak, Brinda C., Deputy Director, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

¹²¹ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

	<p>\$5,857,115 estimated total annual salary <u>+2,222,657</u> estimated total annual benefits <u>\$8,079,772</u> estimated total annual salary and benefits statewide</p> <p>Estimated net total annual cost for counties: \$3,807,125 (\$5,857,115 x 0.65) (excluding counties of the 1st class and 2nd class, which did not respond to this survey question)</p>
Methodology:	The county survey requested data on the costs incurred during 2010 for the salary, payroll taxes, and noncash compensation or benefits for the full-time district attorney, less possible Commonwealth reimbursement for 65 percent of the salary.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Make the annual 65 percent salary reimbursement to each county in a timely manner. (92% of respondents) 2. Require quarterly reimbursement payments from the Commonwealth to the county. (68% of respondents) 3. Relate the salary to the class of county, versus the salary of court of common pleas judges. (64% of respondents) 4. Eliminate full-time district attorney mandate for small counties. (30% of respondents) 5. Other Recommendations. (4% of respondents)
Mandate/Citations:	<p>Duties and Compensation of County Auditors:</p> <p>The County Code Article XV.1 (Salaries of County Officers), Article XVII(b) (Accounts, Audits and Reports by Controller or Auditors); Section 1721 (Audit of Accounts by Auditors; Report to Common Pleas; Publications; Financial Report to Department of Community and Economic Development); Article XVII(f) (Budgets), Section 1785 (Committee to Prepare Uniform Forms)</p>
Description:	Counties of the sixth through eighth class elect three auditors every four years. The auditors have authority under the Code to reconcile county accounts on a monthly basis, and are required to perform annual audits and file a report of those audits with the Department of Community and Economic Development (DCED). They also may surcharge elected officials for improper expenditures. ¹²²
County Issue:	Because the auditors are not independent, their audits do not count for state or federal single-audit purposes, so instead, the county must hire an independent CPA firm for this mandatory task. Moreover, because the bookkeeping and

¹²² Schaefer, Lisa, Government Relations Manager, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

audit standards have been increased for counties, only some elected auditors have the capacity to do an audit that qualifies even for DCED purposes. Form DCED-CLGS-20 is the uniform form adopted by the County Forms Committee for use by all counties in Pennsylvania to fulfill their statutory reporting requirements, and DCED suggests referring to the Government Finance Officers Association's (GFOA) accounting and reporting guide, *Government Accounting, Auditing, and Financial Reporting Using the GASB 34 Model* (commonly referred to as the "Blue Book"), 2005 edition. Given the scope and complexity of county services, the accounting and reporting standards under the County Code and Governmental Accounting Standards Board are necessarily stringent, and are frequently outside the capacity of the elected auditors.

As a result, most auditors routinely ask for extensions of the filing deadline, and many counties simply have the CPA firm prepare the report and have the auditors sign off. In almost every case, however, even where the work is performed primarily by the CPA firm, the auditors are entitled to a minimum number of hours for compensation.¹²³

Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs (2010):	\$71,262 estimated average annual cost/county \$2,269,589 estimated annual total cost (excluding counties of the 4 th class, which did not respond to this survey question)
Methodology:	The county survey requested data on the costs incurred to fund the office of auditor during 2010, including the costs of salary, noncash compensation or benefits, payroll taxes, association dues, conventions, and travel expenses, as well as support staff and office space, to the extent practicable.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Allow counties to use their certified public accountants to perform the required audits and reports, limiting elected auditors' responsibilities to other existing functions provided in statute. (87% of respondents) 2. Amend the county salary law, allowing the annual salary for elected auditors to be established in the same manner as other elected officials, removing per diems and mileage pay. (52% of respondents) 3. Eliminate requirements to provide noncash compensation or benefits. (44% of respondents) 4. Other Recommendations. (17% of respondents)

¹²³ Schaefer, Lisa, Government Relations Manager, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Mandate/Citations:	<p>Collection of County Real Estate Taxes by Local Tax Collector:</p> <p>The Third Class City Code, Section 2532 (City Treasurer to Be Tax Collector); The Borough Code, Section 1086 (Powers and Duties of Tax Collector); The First Class Township Code, Section 805 (Powers as Tax Collector); The Second Class Township Code, Section 1001 (Tax Collector; Powers, Duties and Liabilities) (see exceptions below) The Local Tax Collection Law, Section 3 (Application of Act), and Sections 32-36.2 (relating to compensation)</p>
Description:	<p>The local tax collector is the municipal officer designated, in most cases, to collect county real estate taxes. In boroughs and second class townships, the office is designated as tax collector, where in third class cities and first class townships, the elected treasurer is designated as tax collector. Under special legislation, county taxes in Allegheny County are collected by the county treasurer (Act 136 of 1929 (Treasurers, Authority to Collect Taxes in Second Class Counties), Section 1; Allegheny County Administrative Code, Part 8 (Fiscal Affairs)). Other special local laws enacted in the nineteenth century, which are still in effect, make the county treasurer the collector of county taxes in the counties of Beaver (Act 6 of 1853), Chester (Act 561 of 1868), Lawrence (Act 147 of 1852), and Greene and Washington (Act 546 of 1855). These are commonly referred to as “Venango Act” counties. Counties adopting home rule charters may opt to collect their own taxes. Currently, Delaware, Lackawanna, and Northampton counties collect their own taxes under their home rule charters.</p> <p>Tax collectors in other jurisdictions, through the various municipal statutes noted above, are elected every four years. In 2005, the Department of Community and Economic Development counted nearly 2,400 elected tax collectors in the Commonwealth.¹²⁴</p>
County Issue:	<p>If counties were given the option to collect their own real estate taxes, the County Commissioners Association of Pennsylvania maintains that even small counties could save \$100,000 or more each year. Compensation of the tax collector is either jointly fixed and equally paid by the taxing authorities, up to a limit (Third Class Cities), or is fixed by the respective governing body up to a certain percentage of taxes and moneys collected (Boroughs, First Class Townships, Second Class Townships). As noted above, there are a limited number of counties, including home rule counties that are authorized to collect their own real estate taxes, which reportedly have resulted in cost savings.¹²⁵</p>
Origin:	State

¹²⁴ Schaefer, Lisa, Government Relations Manager, County Commissioners Association of Pennsylvania, February 11, 2011, office e-mail attachment.

¹²⁵ *Id.*

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Implementing Agency:	None
Method of Imposition:	Direct Order
Costs:	\$14.3 million ¹²⁶
Methodology:	The Legislative Budget and Finance Committee (LBFC) staff estimated the “costs to collect property tax for most taxing districts in the state” based on “various samples’ average per parcel compensation and printing and mailing cost data and statewide county parcel and property tax revenue data for all taxing districts in the state (i.e., about 75% of all parcels statewide).” ¹²⁷
Federal/State Funding:	None
Recommendations:	<p>In contemplating the consolidation of real estate tax collection at the county level, it is important to take into consideration the following:</p> <ul style="list-style-type: none"> • <i>The method of collection compensation</i> as determined by the taxing district versus the parcel volume <i>most directly affects property tax collection costs</i> (i.e., percent of revenue collected versus per bill basis). • The county may not have the will or capacity to take on added collection duties. • Third Class City collection costs. <p>Moreover, such a consolidation may have unintended consequences for local governments, including:</p> <ul style="list-style-type: none"> • Potential higher collection costs in some taxing districts. • The need for municipalities to still collect other local taxes and fees (e.g., per capita, occupational, amusement, or street light taxes), or forego such revenue. • The necessity for many municipalities to continue to maintain the local per capita tax rolls.¹²⁸ <p>Hence, this report reaffirms the following LBFC recommendations:</p> <ul style="list-style-type: none"> • Permit counties, municipalities, and school districts to regularly enter into voluntary agreements for county collection of property taxes based on mutually agreed-to resolutions of the taxing bodies such as in Maryland. • Facilitate the temporary appointment of a county treasurer to collect property taxes on behalf of municipalities and school districts in situations where a local elected tax collector is unable to serve a full term due to incapacity or other reasons.¹²⁹

¹²⁶ *Pennsylvania Current Real Property Tax Collection System Conducted Pursuant to Senate Resolution 2010-250*, Legislative Budget and Finance Committee, Harrisburg, June 2011, p. S-6.

¹²⁷ *Id.*

¹²⁸ *Id.*, pp. S-9–S-10.

¹²⁹ *Id.*, pp. S-10–S-11.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Update: Act 115 of 2011 addresses the second recommendation. It amends the “Local Tax Collection Law” by: (1) including certain county treasurers in counties of the third through eighth class under the definition of “tax collector”; (2) adding provisions permitting county treasurers in those counties to collect all taxes levied in a municipality if a vacancy in the office of elected tax collector exists in a municipality in those counties, provided: (a) the county treasurer has been appointed or directed by the county commissioners to collect all county taxes, and (b) the governing body of the municipality and the county commissioners provide by agreement for the collection of all municipal taxes; (3) stipulating that such an agreement shall only be effective through the end of the calendar year in which a successor tax collector is elected; and (4) providing for the contents of the agreement, which is to be executed by resolution.

Mandate/Citations:	<p>Planning and Financial Reimbursement Requirements for County Children and Youth Service Programs:</p> <p>Public Welfare Code Articles II (General Powers and Duties of the Department of Public Welfare), VII (Children and Youth), and IX (Departmental Powers and Duties as to Supervision)</p> <p>Title 42 of the Pennsylvania Consolidated Statutes Chapter 63 (Juvenile Act)</p> <p>Title 23 of the Pennsylvania Consolidated Statutes Chapter 63 (Child Protective Services Law)</p> <p>Title 55 of the Pennsylvania Code Chapter 3140 (Planning and Financial Reimbursement Requirements for County Children and Youth Social Service Programs), Sections 3140.41-48 (Payments to Counties)</p>
Description:	<p>Section 3140 of the regulations prescribes the process by which counties submit their plan and budget estimate, and expenses for reimbursement, and defines state and federal participation in the costs of substitute care and adoption assistance. Sections 3140.41-48 set the schedule and amounts of quarterly payments by the Department of Public Welfare of the state share of reimbursement for eligible expenses by the county agency as follows:</p> <ul style="list-style-type: none"> • 1st quarter advance is 12.5%. (1st quarter actuals are reimbursed along with 3rd quarter advance payments, not to exceed 25% of the total state share.) • 2nd quarter advance is 12.5%. (2nd quarter actuals are reimbursed along with the 4th quarter advance payment, not to exceed 50% of the total state share.) • 3rd quarter payment is adjusted to not exceed 75% of the total state share. • 4th quarter payment is adjusted not to exceed 100% of the total state share.¹³⁰

¹³⁰ Songer, Charles R., Jr., Executive Director, Pennsylvania Children and Youth Administrators, February 11, 2011, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

County Issue:	<p>Counties are proposing that they would receive 25% of their annual allocation for each calendar quarter and would reconcile funds with the state at the end of the fiscal year. Twenty-five percent quarterly advances would:</p> <ul style="list-style-type: none"> • Streamline payments to counties, which would increase predictability without affecting the state budget. • Would promote continuity for mandated services by improving cash flow to counties. • Would reduce the necessity for limited county funds, designated for children, youth and families, to be spent on Tax Revenue Anticipation Notes. <p>In sum, for children and youth services, the General Assembly appropriates funding to the Department of Public Welfare in an amount that will cover the entire fiscal year, yet the Department only releases funds to counties on a quarterly basis, and after the county has expended county funds on behalf of the state to cover costs. Counties are seeking advanced quarterly payments that would be made to counties before the start of the quarter for which they are allocated, with an audit periodically to assure against overpayments. By advancing the funds, counties would be able to control cash flow more effectively, and avoid the cost of short-term borrowing that sometimes occurs until the state reimburses the county for what is owed.¹³¹</p>
Origin:	State
Implementing Agency:	Pennsylvania Department of Public Welfare
Method of Imposition:	Direct Order
Costs (2010):	<p>\$712,877 estimated average annual cost/county \$50,973,600 estimated annual total cost (excluding counties of the 1st class and 2nd class, which did not respond to this survey question)</p>
Methodology:	<p>The county survey requested data on the costs associated with subsequent quarterly reimbursement for children and youth services during 2010, after the county had expended funds on behalf of the state, <i>versus</i> advance quarterly receipt of state funds prior to expenditure. The survey specified that the costs were to include expenses associated with borrowing to cover services until the state provided reimbursement, and funds permanently diverted from other programs or projects to cover children and youth services.</p>
Federal/State Funding:	None
Survey Recommendations:	<p>1. Require the Department of Public Welfare (DPW) to provide advanced quarterly payment of children and youth funding, with reconciliation at the end of the year. (90% of respondents)</p>

¹³¹ Songer, Charles R., Jr., Executive Director, Pennsylvania Children and Youth Administrators, February 11, 2011, office e-mail attachment.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

2. Improve timeliness of reimbursement. (77% of respondents)
3. Focus on adoption, placement, and prevention. (37% of respondents)
4. Other Recommendations. (16% of respondents)

Update: Act 80 of 2012, an omnibus amendment to the Public Welfare Code, may address this mandate by establishing a state block grant program from which the Department of Public Welfare will make timely quarterly payments to counties. The Department will allocate block grant funds for the Human Services Development Fund Act, mental health and intellectual disability services, behavioral health services, drug and alcohol services, homeless services, and county child welfare agencies as certain additional grants. The act also provides for a single planning process and financial reporting system and a more timely provision of allocation letters from the Department.¹³²

Mandate/Citation:	Stormwater Management: Act 167 of 1978 (Storm Water Management Act)
Description:	<p>The act requires counties within designated watersheds to develop stormwater management plans for each watershed in the county, in consultation with the municipalities in the watershed. There are 367 designated watersheds throughout the state, although Act 167 permits joint plans among counties that share watersheds. For each watershed, counties must establish a watershed plan advisory committee to advise the planning process, and hold a public hearing prior to adoption or amendment of a plan.</p> <p>These plans must include a survey of existing runoff characteristics as well as existing obstructions, an assessment of land development patterns in the watershed (including flood hazard areas), and several other surveys, reviews, and assessments. The plans must be reviewed and revised at least every five years. The Department of Environmental Protection has provided technical, administrative, and financial assistance to counties in preparing Stormwater Management Plans, including 75% of the costs that counties have incurred in preparing plans.¹³³</p>
County Issue:	The annual appropriation for reimbursement has been cut during the past four years.
Origin:	State
Implementing Agency:	Pennsylvania Department of Environmental Protection

¹³² “Acts Affecting County Government, 2012,” County Commissioners Association of Pennsylvania, n.d., <<http://www.pacounties.org/GovernmentRelations/Documents/ActsAffectingCountyGov2012.pdf>> (July 19, 2012).

¹³³ Schaefer, Lisa, Government Relations Manager, County Commissioners Association of Pennsylvania, February 3, 2011, office e-mail attachment.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

Method of Imposition:	Direct Order
Costs (2006-2010):	\$127,009 estimated average cost/plan – 80,016 estimated average state reimbursement/plan (63%) <u>\$ 46,993</u> estimated average county cost/plan \$4,220,381 total reported cost of 31 plans for 25 counties –2,658,840 total calculated reimbursement (63%) <u>\$1,561,541</u> total estimated cost of 31 plans for 25 counties \$76,711 estimated average cost/revise plan –15,342 estimated average state reimbursement/revise plan (20%) <u>\$61,369</u> estimated average county cost/revise plan \$393,556 total reported cost of 6 revised plans for 5 counties – 78,711 total calculated reimbursement (20%) <u>\$314,845</u> total estimated cost of 6 revised plans for 5 counties
Methodology:	The county survey requested data for five fiscal years, 2006-2010, on: (1) the individual cost or average cost, as applicable, to prepare new and revised watershed stormwater management plans including engineering firm costs and implementation costs; (2) the individual or average percentage reimbursement from the Department of Environment Protection for new and revised plans; and (3) the number of new and revised plans prepared.
Federal/State Funding:	None
Survey Recommendations:	1. Establish definite funding for state planning grants. (92% of respondents) 2. Require regional-level watershed stormwater planning versus county-level. (31% of respondents) 3. Create a process to authorize needed delays. (12% of respondents) 4. Other Recommendations. (19% of respondents)

Mandate/Citations:	Legal Advertising: Various Laws¹³⁴
Description:	Legal notices must be placed in designated newspapers by counties and municipalities pursuant to various laws for a number of purposes, including: <ul style="list-style-type: none">• Annual budget adoption and amendment• Auditor’s report• Bid for purchases of materials, services, and contracts• Certified public accountant appointment• Intermunicipal liquor license transfer• Local Tax Enabling Act ordinance adoption or amendment• Meetings and public hearings

¹³⁴ See Appendix J for a listing of statutes that require legal advertising

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

- Municipal ordinance adoption, amendment, or consolidation
- Sale of personal property
- Sale of real estate
- Shade Tree Commission regulations
- Tax exoneration list
- Pennsylvania Municipalities Planning Code provisions, including: comprehensive plan, subdivision and land development ordinance, official map, and zoning ordinance adoption or amendment; curative amendment to zoning ordinance; planned residential development; zoning hearing board hearing; and conditional use hearing.

County Issue:	Local governments are required to spend a significant amount of money on newspaper advertisements to publish information on annual budgeting and financial reports, bids for supplies and equipment, government contracts, adoption of ordinances and resolutions, and public meetings and hearings. However, printed media is not the only vehicle that governments can use to post information. Some governments at the state and local levels are providing information electronically via websites; however, this method of distribution is neither standardized nor comprehensive. ¹³⁵
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order or Condition of Authorization
Cost (2003-2006):	\$3,711,747 (annual average cost for 2003, 2004, and 2005) ¹³⁶
Methodology:	The methodology involved two surveys. The first was a mail survey of local governmental entities in Pennsylvania, primarily to determine the amount of money being spent on legal advertising. ¹³⁷ The second involved interviews with two state agencies and the five local government associations that represent counties and municipalities for the purpose of establishing estimates of website start-up expenses, annual maintenance costs, and member fees. ¹³⁸ The above cost reflects the annual average cost over three years for legal advertising less possible website start-up, annual maintenance, and member costs. ¹³⁹ (Note: The first survey also covered school districts, housing and

¹³⁵ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006, p.1, citing Ryan, J., *Guide to Government Information Available on the Internet*, Ryan Information Management Press, Syracuse, 1995.

¹³⁶ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006, p. 15.

¹³⁷ *Id.*, pp. 7-8.

¹³⁸ *Id.*, p. 8.

¹³⁹ *Id.*, pp. 9-16.

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

redevelopment authorities, local authorities, and municipalities, but those results were omitted from the average annual cost provided above in that this portion of the study only focuses on counties.)

Federal/State Funding: None

Recommendations:

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.
- Authorize local government entities to electronically publish legal notices on the Internet, but require an entity that opts to electronically publish a legal notice to place a brief description of the notice in a newspaper of general circulation.

Mandate/Citations: **Competitive Bidding and Related Advertising Requirements:**

Various Laws¹⁴⁰

Description:

The various laws pertaining to competitive bidding and related advertising requirements generally provided that all contracts in excess of \$10,000, unless specifically exempted, must be given to the lowest responsible bidder following public notice. The laws further required written or telephonic price quotations from at least three qualified and responsible contractors for all contracts that exceeded \$4,000, but were less than \$10,000. They also compelled separate bids for plumbing, heating, ventilating and electrical work when the entire cost of the project exceeded \$10,000. The laws did not provide for indexing of these thresholds or a methodology for indexing.

Update: The legislature amended the respective laws, effective January 1, 2012, to: (1) increase from \$10,000 to \$18,500 the advertising and bidding limit for contracts and purchases, subject to delineated adjustments; (2) increase from \$4,000 to \$10,000 the amount for which written or telephonic price quotations are required, subject to specified adjustments; (3) direct the Department of Labor and Industry to adjust the base bidding amounts subject to the annual percentage increase in the Consumer Price Index for all urban consumers, limited to a maximum annual adjustment of 3% of the respective base amounts; and (4) require the Department to advertise the new limits in the Pennsylvania Bulletin before the end of each year.¹⁴¹

¹⁴⁰ See Act 130 of 1955 (County Code) §§ 1801, 1802, 2317; Act 253 of 1953 (Second Class County Code) §§ 2511-A, 2517; 53 Pa.C.S. Ch. 23 (Intergovernmental Cooperation Law) § 2308; Act 118 of 1937 (Political Subdivision Joint Purchases Law) § 2.

¹⁴¹ See Act 86 of 2011 (amending the County Code) and Act 89 of 2011 (amending the Second Class County Code).

Table 11: Summation of Findings on the Most Burdensome Mandates as Identified by the County Commissioners Association of Pennsylvania

County Issues:	<p>Until recently, pursuant to the various laws cited above, counties have been required to obtain competitive bids for any purchase that is more than \$10,000. This amount, last adjusted in or about 1990, had resulted in driving up the costs of purchasing even the most commonplace items, such as office supplies and/or equipment. Adjusting the bid limits provided some needed financial relief for counties.</p> <p>The cost of the competitive bidding process is a result of administrative functions required of a county in bid preparation and administration and the direct cost of advertising. These expenses can add up to hundreds of dollars per purchase. An increased threshold provides relief from operational costs, as well from the issuance of requests for proposals for somewhat incidental commodity purchases. In addition, including an indexing process to adjust the threshold on a regular basis averts this issue in the future.</p> <p><i>Update:</i> With the amendment of the various laws pertaining to competitive bidding on November 3, 2011, effective January 1, 2012, which increased the bidding thresholds and tied those thresholds to the Consumer Price Index, the Legislature largely addressed the county issues with this mandate.</p>
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Cost (2010):	<p>\$133,616 estimated average annual cost/county</p> <p>\$8,058,123 estimated annual total cost</p> <p>(excluding counties of the 1st class and 2nd class, which did not respond to the survey question)</p>
Methodology:	<p>The county survey requested data on how much counties spent on the competitive bidding process during 2010, including the cost of legal notices, engineer and/or consultant fees for preparation of specifications and review of bids, legal fees for solicitor preparation and review, and staff time for preparing instructions, specifications, and advertisements, and evaluating bids.</p>
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Increase the bidding thresholds. (100% of respondents) 2. Authorize electronic advertising. (85% of respondents) 3. Annually adjust the thresholds to account for increases in the Consumer Price Index or the Construction Cost Index. (65% of respondents) 4. Allow the option of separate or combined bids for elements of construction projects as warranted. (65% of respondents) 5. Other Recommendations. (15% of respondents)

2.4.3.5 Municipal Survey Results

Of the 2,562 surveys sent out, which covered all municipalities, overall, 30% of them submitted completed surveys, ranging from 34% from second class townships to 24% from boroughs (Table 12).

Table 12: Municipal Survey Returns

Type of Municipality	Number of Municipalities	Number of Completed Returns	Percent of Completed Returns
Cities	56	17	30
Boroughs	959	228	24
First Class Townships	93	29	31
Subtotal	1,108	274	25
Second Class Townships	1,454	493	34
Total	2,562	767	30

Upon reviewing the raw data in order to conduct analysis of the survey responses, it became apparent that the most meaningful and practical approach was to evaluate city, borough, and first class township data separately from second class township data. This conclusion came about for two reasons: (1) generally, cities, boroughs, and first class townships are more urban than second class townships, hence the importance and costs of certain mandates most likely differ; and (2) of lesser importance, the survey instruments for cities, boroughs, and first class townships varied slightly from that for second class townships, particularly with respect to firefighter collective bargaining arbitration, which apparently does not occur in second class townships since no second class township is known to have a fully paid fire department with a collective bargaining unit.

Survey results on costs of mandates were limited despite pilot studies, pretests, multiple advance and follow-up survey notifications, survey deadline extensions, and resending the survey to those municipalities that did not initially respond. The limited number of responses for each mandate most likely is attributable to a number of factors:

- Whether a given mandate applied to a municipality. (For example, of the boroughs that responded to the survey, 53% indicated that police and firefighter collective bargaining did not apply to them.)
- Length and complexity of the survey.
- Level and capability of staff resources to respond to the survey.
- Availability of the cost information in the municipality.
- Interest of the municipality in responding.

Dr. Janet Kelly of the University of Louisville reinforces this rationale, “Most states have used surveys at some time to estimate costs. The results have been uniformly poor, with response rates typically between 10 and 20 percent of all jurisdictions surveyed. The enormity of the task and the varying expertise among local respondents account for the poor response.”¹⁴²

¹⁴² Kelly, Janet M., “Institutional Solutions to Political Problems: The Federal and State Mandate Cost Estimation Process,” *State and Local Government Review*, Vol. 29, No. 2, Spring 1997, 92.

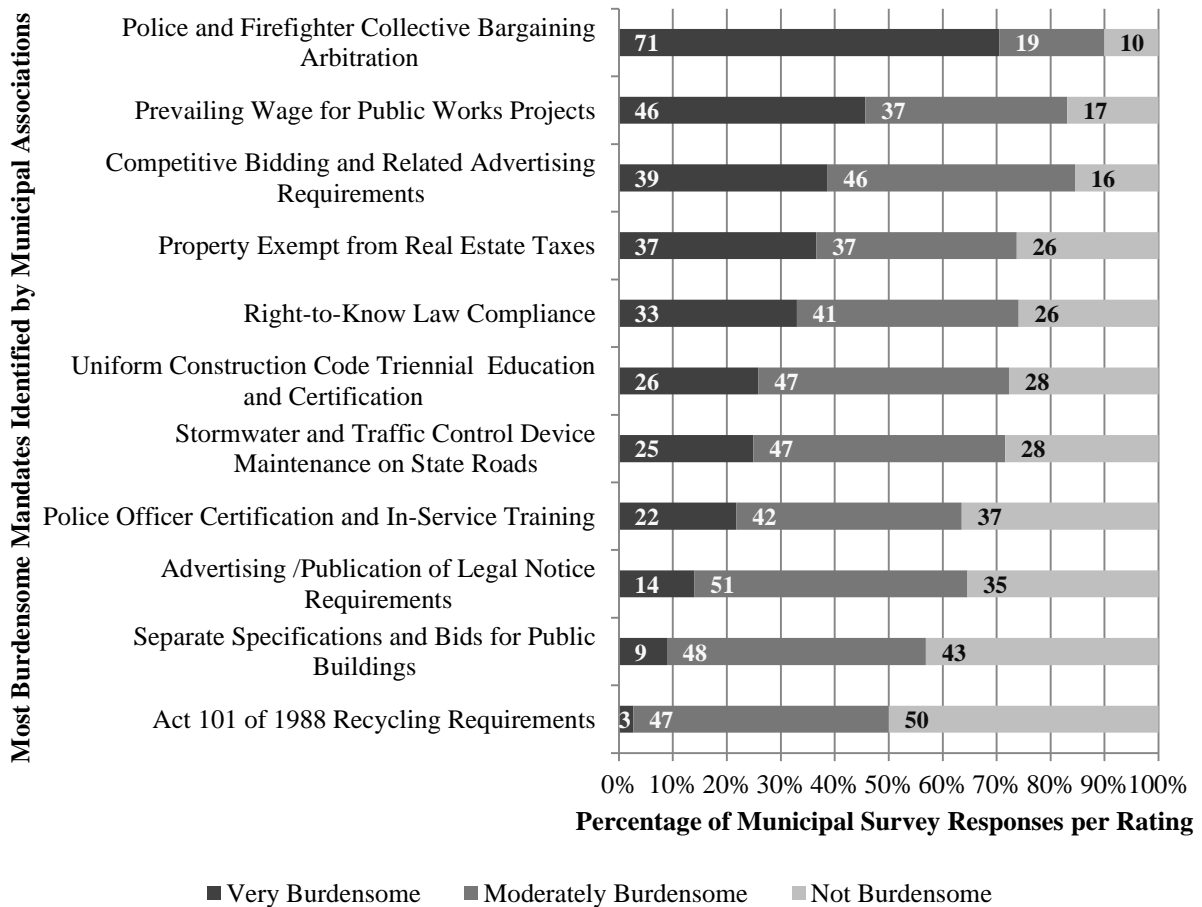
2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

This portion of the report first provides descriptive statistics for cities, boroughs, and first class townships followed by the same for second class townships. Finally, similar to Table 11 in the previous section pertaining to counties, Table 17, “Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations,” is a culmination of the data analysis for all four classes of municipalities (pp. 2-98 – 2-124).

Cities, Boroughs and First Class Townships

As with the county survey, the first question asked municipalities to rate the degree to which each mandate was burdensome on them. Although 274 cities, boroughs, and first class townships completed the survey, 498 or 45% answered at least the first question. Those respondents indicated that, overall, 17% of the mandates were not applicable to their respective municipalities. Figure 3 portrays the percentage of municipal survey responses per rating, with the exception of “Not Applicable,” for each mandate in descending order, sorted by “Most Burdensome” and then “Moderately Burdensome” ratings.

Figure 3: City, Borough and First Class Township Ratings of Most Burdensome Mandates



2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 13
Descriptive Statistics of Survey Results for Mandates Placed on Cities, Boroughs,
and First Class Townships^{143, 144}

Mandate (Time Period for Which Costs Provided)		No. of Municipal Respondents to Which Mandate Applied ¹⁴⁵	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁴⁶	Mode ¹⁴⁷	Standard Deviation ¹⁴⁸	
Prevailing Wage (PW) for Public Works Projects ¹⁴⁹	2007	with PW	94	47/72	50	\$10,000	\$22,500,000	\$1,123,585	\$250,000	\$125,000	\$3,248,239
		w/out PW	94	47/72	50	\$15,000	\$18,500,000	\$893,018	\$187,500	\$175,000	\$2,549,482
		> or (<) w/out PW	94	47/72	50	—	—	\$230,567 26%	\$62,500 33%	—	—
	2008	with PW	66	33/49	50	\$35,000	\$17,700,000	\$1,086,650	\$210,000	\$200,000	\$2,951,392
		w/out PW	66	33/49	50	\$17,500	\$12,400,000	\$824,123	\$175,000	\$30,000	\$2,104,350
		> or (<) w/out PW	66	33/49	50	—	—	\$262,527 32%	\$35,000 20%	—	—
	2009	with PW	69	35/52	51	\$33,000	\$12,200,000	\$772,388	\$218,623	\$50,000	\$1,941,080
		w/out PW	69	35/52	51	\$18,500	\$11,000,000	\$656,003	\$174,800	\$40,000	\$1,710,138
		> or (<) w/out PW	69	35/52	51	—	—	\$116,385 18%	\$43,823 25%	—	—

¹⁴³ Although the survey responses are a sampling of costs, they likely are not indicative of municipalities for the entire Commonwealth. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for municipalities are increasing or decreasing and whether municipal officials would have responded differently if the economy was more robust are unknown. Therefore, these reported costs may be viewed only as a possible relative level of magnitude for each mandate.

¹⁴⁴ This table does not include “Property Exempt from Real Estate Taxes,” since the survey did not produce meaningful results on the mandate, and “Advertising or Publication of Legal Notices,” since it was not included in the survey because the mandate was studied previously.

¹⁴⁵ Includes the number of municipalities that indicated they provided the service or engaged in the activity during the specified time period.

¹⁴⁶ Median – The value in the middle of a set of data, or the average of two values nearest the middle, with the values having been sorted or arranged by size.

¹⁴⁷ Mode – The value that occurs most frequently. If an asterisk (*) is next to the dollar amount, multiple modes exist, but only the smallest value is shown.

¹⁴⁸ Standard Deviation – A measure of the spread or dispersion of a set of values from their average or mean.

¹⁴⁹ Under “No. of Responses to Survey Question,” the first number is the total number of municipalities that provided valid responses. The second number is the total number projects, which is greater since many municipalities identified, and provided costs for, more than one project.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 13
Descriptive Statistics of Survey Results for Mandates Placed on Cities, Boroughs,
and First Class Townships^{143, 144}

Mandate (Time Period for Which Costs Provided)	No. of Municipal Respondents to Which Mandate Applied ¹⁴⁵	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁴⁶	Mode ¹⁴⁷	Standard Deviation ¹⁴⁸
Police Collective Bargaining Arbitration (2008, 2009, 2010) ¹⁵⁰	76	44	58	\$1,000	\$148,339	\$30,639	\$23,100	\$1,000*	\$32,651
Arbitrator Fees	76	40	53	\$150	\$93,339	\$15,689	\$5,627	\$1,500*	\$23,205
Arbitrator Food, Lodging & Related Costs	76	22	29	\$300	\$54,000	\$9,011	\$2,000	\$1,000	\$14,561
Municipal Staff Costs	76	27	36	\$420	\$45,000	\$11,149	\$5,000	\$5,000*	\$12,742
Other Costs	76	7	9	\$3,000	\$50,000	\$31,620	\$42,669	\$3,000*	\$20,659
Firefighter Collective Bargaining Arbitration (2008, 2009, 2010) ¹⁵¹	32	19	59	\$2,500	\$320,000	\$61,022	\$21,200	\$2,700*	\$83,022
Arbitrator Fees	32	19	59	\$1,000	\$220,000	\$32,345	\$12,500	\$55,140	\$50,451
Arbitrator Food, Lodging & Related Costs	32	7	22	\$1,500	\$6,000	\$2,929	\$2,000	\$1,500	\$2,110
Municipal Staff Costs	32	17	53	\$775	\$100,000	\$15,197	\$7,200	\$775*	\$23,841
Other Costs	32	4	13	\$3,000	\$130,000	\$66,500	\$66,500	\$3,000*	\$73,323
Act 101 of 1988 Recycling Requirements (2010)	94	50	53	\$100	\$700,000	\$74,409	\$18,058	\$1,000	\$126,926

¹⁵⁰ Note: In addition to the number of municipal respondents to which the mandate applied for 2008, 2009, and 2010, 67 municipalities indicated that they *do* have collective bargaining with their police departments, but did not bargain during the three-year period, and 8 municipalities indicated that they *do not* have collective bargaining agreements with their police departments.

¹⁵¹ Note: In addition to the number of municipal respondents to which the mandate applied for 2008, 2009, and 2010, 15 municipalities indicated that they *do* have collective bargaining with their fire departments, but did not bargain during the three-year period, and 94 municipalities indicated that they *do not* have collective bargaining agreements with their fire departments.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 13
Descriptive Statistics of Survey Results for Mandates Placed on Cities, Boroughs,
and First Class Townships^{143, 144}

Mandate (Time Period for Which Costs Provided)	No. of Municipal Respondents to Which Mandate Applied ¹⁴⁵	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁴⁶	Mode ¹⁴⁷	Standard Deviation ¹⁴⁸
Police Officer Certification & Training (2010) ¹⁵²	212	46	22	\$581	\$754,000	\$74,984	\$9,500	\$3,000	\$197,611
Number Received Academy Training & Certification	212	149	70	1	152	10	4	2	19
Number received Annual In-Service Training	212	153	72	1	174	20	5	1	43
Competitive Bidding & Related Advertising Requirements (2010)	185	105	57	\$1	\$758,765	\$41,462	\$8,300	\$8,000*	\$109,595
Legal Notices	185	101	55	\$100	\$250,000	\$9,989	\$4,750	\$5,000	\$27,237
Engineer and/or Consultant Fees	185	95	51	\$30	\$726,965	\$28,462	\$1,700	\$1,000	\$106,393
Legal Fees	185	68	37	\$1	\$40,000	\$4,005	\$1,000	\$1,000	\$8,462
Staff Time	185	29	16	\$1	\$53,165	\$12,707	\$5,400	\$10,000	\$16,726
Separate Specifications and Bids for Public Buildings (2008, 2009, 2010)	38	24	63	\$600	\$253,200	\$34,581	\$7,127	\$2,550*	\$63,891
Staff Time	38	24	63	\$300	\$250,000	\$28,954	\$3,844	\$300*	\$62,468
Engineering Fees	38	20	53	\$100	\$37,000	\$5,601	\$875	\$300	\$11,197
Legal Advertisement Expense	38	14	37	\$242	\$5,000	\$1,631	\$800	\$242*	\$1,777
Additional Inspection Costs	38	2	5	\$100	\$100	\$100	\$100	\$100	\$0

¹⁵² Note: In addition to the number of municipal respondents to which the mandate applied in 2010, 47 indicated that they did not incur expenses for police officer certification and training in 2010.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 13
Descriptive Statistics of Survey Results for Mandates Placed on Cities, Boroughs,
and First Class Townships^{143, 144}

Mandate (Time Period for Which Costs Provided)	No. of Municipal Respondents to Which Mandate Applied ¹⁴⁵	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁴⁶	Mode ¹⁴⁷	Standard Deviation ¹⁴⁸
Traffic Control Device Maintenance on State Roads (2010) ¹⁵³	142	91	64	\$50	\$129,000	\$22,505	\$5,500	\$50*	\$35,148
Crosswalk Pavement Markings	142	74	52	\$50	\$43,600	\$3,481	\$1,493	\$1,000	\$6,185
Traffic Signal Signs and Markings	142	59	42	\$200	\$25,000	\$3,599	\$1,916	\$1,000	\$5,167
Operation of Traffic Signals	142	51	36	\$230	\$69,000	\$9,271	\$3,000	\$300.00*	\$13,934
Maintenance of Traffic Signals	142	39	27	\$50	\$100,000	\$22,491	\$5,500	\$25,000	\$31,809
Installation of Traffic Signals	142	15	11	\$175	\$10,000	\$2,465	\$1,000	\$1,000	\$2,665
Traffic Control Signs (Including Compliance with Requirements for Retroreflectivity)	142	12	8	\$1,000	\$10,000	\$4,250	\$4,000	\$5,000	\$3,130
Other Costs	142	2	1	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$0
Stormwater Facilities Maintenance on State Roads (2010) ¹⁵⁴	109	64	59	\$25	\$4,904,000	\$98,505	\$2,718	\$100	\$612,473
Maintain Stormwater Facilities	109	34	31	\$100	\$4,400,000	\$157,696	\$5,000	\$3,000*	\$751,796
Upgrade Stormwater Facilities	109	19	17	\$500	\$500,000	\$38,245	\$9,500	\$1,000	\$112,753
Engineering Expense	109	13	12	\$100	\$12,500	\$5,038	\$5,000	\$1,000	\$4,174
Staff Time	109	15	14	\$250	\$12,000	\$3,578	\$2,000	\$800*	\$3,787
Legal Expense	109	46	42	\$25	\$22,000	\$2,105	\$775	\$100*	\$3,931

¹⁵³ Note: In addition to the number of municipal respondents to which the mandate applied in 2010, 113 indicated that they did not know how much traffic control device maintenance on state roads costs them.

¹⁵⁴ Note: In addition to the number of municipal respondents to which the mandate applied in 2010, 148 municipalities indicated that they did not incur such costs in 2010, and 58 municipalities indicated that they did not know how much stormwater facilities maintenance on state roads costs them.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

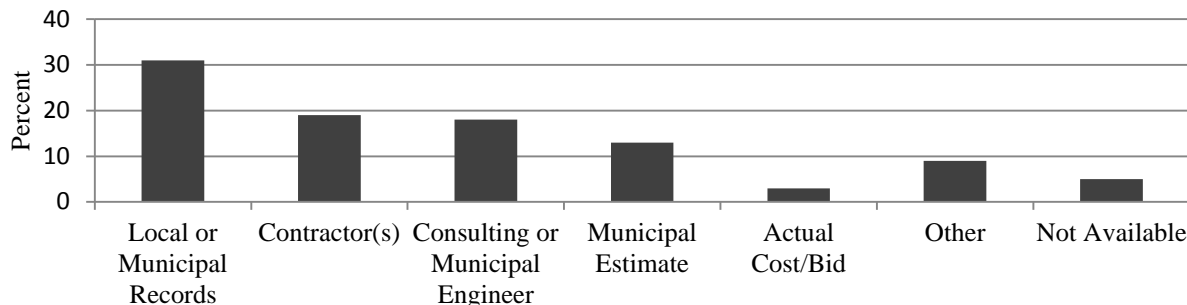
Table 13
Descriptive Statistics of Survey Results for Mandates Placed on Cities, Boroughs,
and First Class Townships^{143, 144}

Mandate (Time Period for Which Costs Provided)	No. of Municipal Respondents to Which Mandate Applied ¹⁴⁵	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁴⁶	Mode ¹⁴⁷	Standard Deviation ¹⁴⁸
Uniform Construction Code Triennial Education & Certification (2010)	116	68	59	\$125	\$75,000	\$4,627	\$1,834	\$5,000	\$10,903
Number of Certifications	116	99	85	0	19	5	—	—	6
Right-to-Know Law Compliance (2010)	184	71	39	\$3	\$49,525	\$6,756	\$1,000	\$500	\$12,725
Staff Time	184	70	38	\$50	\$49,525	\$5,215	\$1,000	\$100*	\$10,886
Legal Fees	184	21	11	\$3	\$27,000	\$5,457	\$2,500	\$2,000*	\$7,717
Court Costs for Appeals	184	0	0	—	—	—	—	—	—

The main part of the survey focused on the cost of 11 mandates, as identified by the municipal associations, to cities, boroughs, and first class townships. Descriptive statistics of survey results, presented in Table 13 (pp. 2-84 – 2-88), are sorted by the overall median cost for each mandate, as highlighted, in descending order. Median cost, versus average cost, was chosen as an indicator given the limited number of responses, the wide range of costs, and the large standard deviations. Most mandates also include a breakdown of contributing costs as were requested on the survey (e.g., municipal staff time costs, engineering fees, arbitrator food, lodging and related costs).

In viewing the prevailing wage data, the reported sources for estimated project costs without prevailing wage are about 70% from local or municipal records, contractor(s), a consulting or municipal engineer, or an actual cost/bid (Figure 4). “Other” sources include the municipal manager, bond issues, loans, government publications, and tax increment financing.

**Figure 4: Sources of Estimated Project Costs
without Prevailing Wage
for Cities, Boroughs and First Class Townships**



Given the extent of the results, they obviously are not necessarily representative or indicative of cities, boroughs, and first class townships for the entire Commonwealth. Nevertheless, they do provide some useful information. The mandates, “Prevailing Wage” and “Police and Firefighter Collective Bargaining Arbitration,” have the highest reported median costs, in excess of \$20,000, which is consistent with their perception ratings (Table 14). “Act 101 of 1988 Recycling Requirements” is the third highest with a reported median cost of \$18,058, which is contrary to the perception rating possibly because municipalities are able to largely recover those costs through fees.

**Table 14: Comparative Descending Sort (Most to Least)
of Most Burdensome Mandates
on Cities, Boroughs and First Class Townships**

Based on Municipal Ratings	Based on Median Cost
Police and Firefighter Collective Bargaining Arbitration	Prevailing Wage or Public Works Projects
Prevailing Wage for Public Works Projects	Police and Firefighter Collective Bargaining Arbitration
Competitive Bidding and Advertising Requirements	Act 101 of 1988 Recycling Requirements
Right-to-Know Law Compliance	Police Officer Certification & Training
UCC Triennial Education and Certification	Competitive Bidding & Advertising Requirements
Stormwater Maintenance on State Roads	Separate Specifications and Bids for Public Buildings
Traffic Control Device Maintenance on State Roads	Traffic Control Device Maintenance on State Roads
Police Officer Certification and In-Service Training	Stormwater Facilities Maintenance on State Roads
Separate Specifications and Bids for Public Buildings	UCC Triennial Education & Certification
Act 101 of 1988 Recycling Requirements	Right-to-Know Law Compliance

In the mid-range, with median costs between \$5,000 and \$10,000, are “Police Officer Certification and Training,” “Competitive Bidding and Related Advertising Requirements,” “Separate Specifications and Bids for Public Buildings,” and “Traffic Control Device Maintenance On State Roads.” The remaining three mandates have median costs below \$5,000. Other disparities exist with “Uniform Construction Code Triennial Education and Certification

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Requirements” and “Right-to-Know Law Compliance,” which have moderate ratings but reported low median costs, and “Police Officer Certification and Training,” which has a relatively low rating but a reported moderate median cost. As mentioned for the county survey results, such differences may be attributable to indirect costs, nonmonetary costs, and “hassle level” to implement the mandate (e.g., time displacement effects, inefficient procedures, attitudinal paradigms). For example, pilot study findings indicated that for “Right-to-Know Law Compliance,” municipalities experienced competitors using the law to undercut vendors and frivolous requests, which likely contribute to time displacement effects and attitudinal paradigms.

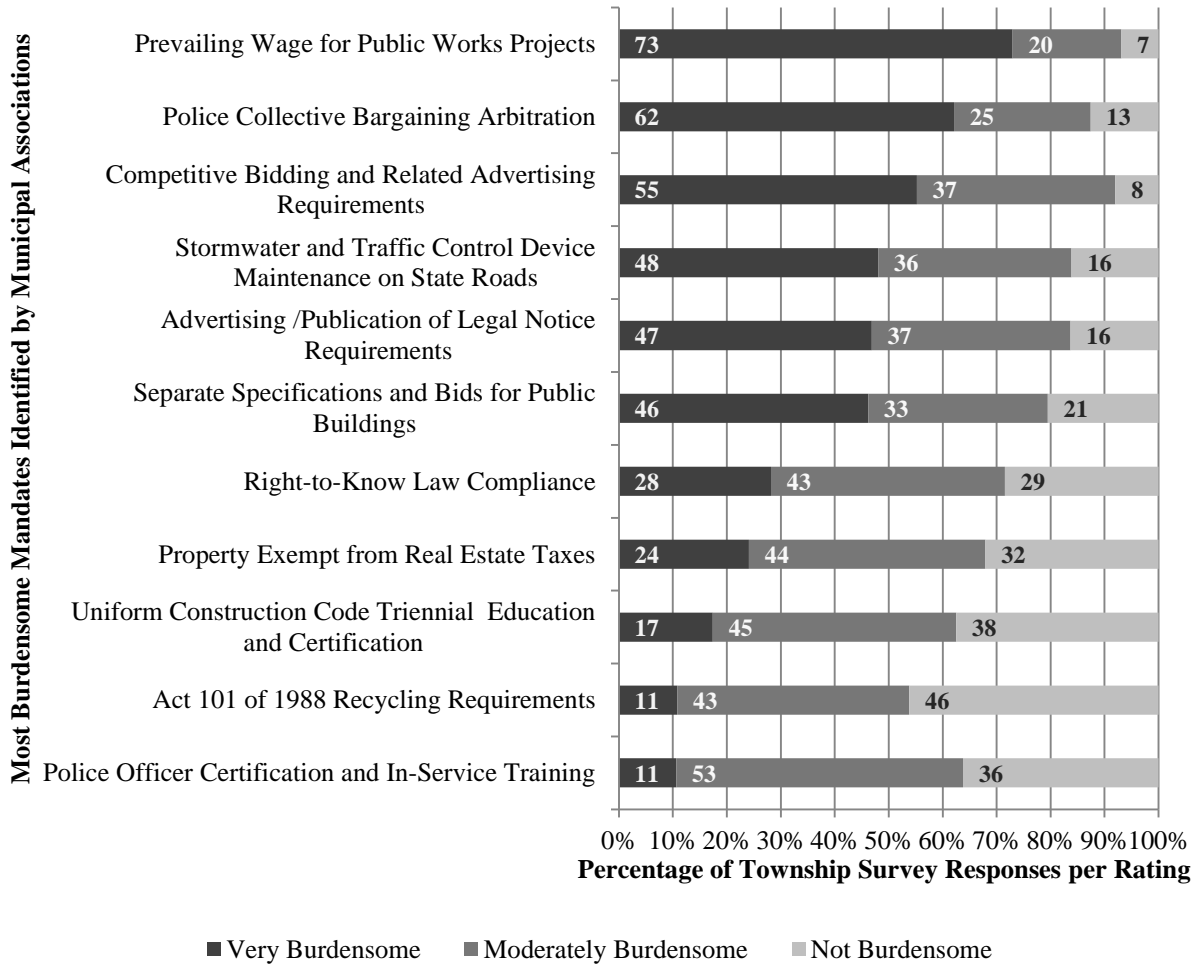
Two other noteworthy variables in the previous Table 13, in addition to the limited data, are the relative “Number of Municipal Respondents to Which the Survey Applied” in conjunction with the “Number of Responses to the Survey Question,” and the generally wide minimum-maximum range. Of the 274 cities, boroughs, and first class townships that completed the survey, anywhere from 32 (12%) for “Firefighter Collective Bargaining Arbitration” to 212 (77%) for “Police Officer Certification and Training” indicated that they had provided the service or engaged in the activity during the specified time period in the survey. However, of those, the percentage of responses to the survey questions ranged from as low as 22% (“Police Officer Certification and Training”) to as high as 64% (“Traffic Control Device Maintenance on State Roads”), which shows that many municipalities opted not to provide cost data most likely for one or more of the reasons cited at the beginning of this section. The wide minimum-maximum range in the reported costs probably is a reflection of the span in population from the smallest borough to the largest city that responded.

Second Class Townships

Of Pennsylvania’s 1,454 second class townships, 493 (34%) completed the survey of state mandates placed on them. As in the other surveys, the first question asked townships to rate the degree to which each mandate was burdensome on them. Although 493 townships completed the survey, 708 (49%) second class townships answered at least the first question. Those responding indicated that, overall, 27% of the mandates did not apply to them. Figure 5 portrays the percentage of municipal survey responses per rating, with the exception of “Not Applicable,” for each mandate in descending order, sorted by “Most Burdensome” and then “Moderately Burdensome” ratings.

As with the survey of cities, boroughs, and first class townships, the main part of the survey focused on the cost of 11 mandates as identified by the municipal associations, except that it did not include “Firefighter Collective Bargaining Arbitration” since no second class township is known to have a fully paid fire department with a collective bargaining unit.

Figure 5: Second Class Township Ratings of Most Burdensome Mandates



Descriptive statistics of survey results, presented in Table 15 (pp. 2-92 – 2-95), are sorted by overall median cost for each mandate, as highlighted, in descending order. Median cost, versus average cost, was chosen as an indicator because of the overall limited number of responses, somewhat wide range of costs, and relatively large standard deviations, and to be consistent with the descriptive statistics and analysis for cities, boroughs, and first class townships. Again, most mandates also include a breakdown of contributing costs as were requested on the survey (e.g., municipal staff time costs, engineering fees, arbitrator food, lodging and related costs).

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 15
Descriptive Statistics of Survey Results for Mandates
Placed on Second Class Townships^{155, 156}

Mandate (Time Period for Which Costs Provided)		No. of Township Respondents to Which Mandate Applied ¹⁵⁷	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁵⁸	Mode ¹⁵⁹	Standard Deviation ¹⁶⁰	
Prevailing Wage (PW) for Public Works Projects ¹⁶¹	2007	with PW	99	38/51	38	\$7,021	\$2,750,000	\$323,318	\$125,000	\$125,000	\$531,664
		w/out PW	99	38/51	38	\$4,000	\$2,062,500	\$238,121	\$92,110	\$45,000	\$388,272
		> or (<) w/out PW	99	38/51	38	—	—	\$85,197 36%	\$32,890 36%	—	—
	2008	with PW	92	44/54	48	\$7,076	\$4,500,000	\$297,447	\$108,606	\$50,000	\$661,045
		w/out PW	92	44/54	48	\$4,950	\$3,600,000	\$238,222	\$81,813	\$45,000	\$533,439
		> or (<) w/out PW	92	44/54	48	—	—	\$59,225 25%	\$26,793 33%	—	—
	2009	with PW	124	62/71	50	\$12,000	\$5,771,800	\$491,591	\$129,514	\$40,000	\$950,084
		w/out PW	124	62/71	50	\$8,000	\$5,592,059	\$401,845	\$98,900	\$800,000	\$25,611
		> or (<) w/out PW	124	62/71	50	—	—	\$89,746 22%	\$30,614 31%	—	—

¹⁵⁵ Although the survey responses are a sampling of costs, they likely are not indicative of second class townships for the entire Commonwealth. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for townships are increasing or decreasing and whether township officials would have responded differently if the economy was more robust are unknown. Therefore, these reported costs may be viewed only as a possible relative level of magnitude for each mandate.

¹⁵⁶ This table does not include “Property Exempt from Real Estate Taxes,” since the survey did not produce meaningful results on the mandate, and “Advertising or Publication of Legal Notices,” since it was not included in the survey because the mandate was studied previously.

¹⁵⁷ Includes the number of townships that indicated they provided the service or engaged in the activity during the specified time period.

¹⁵⁸ Median – The value in the middle of a set of data, or the average of two values nearest the middle, with the values having been sorted or arranged by size.

¹⁵⁹ Mode – The value that occurs most frequently. If an asterisk (*) is next to the dollar amount, multiple modes exist, but only the smallest value is shown.

¹⁶⁰ Standard Deviation – A measure of the spread or dispersion of a set of values from their average or mean.

¹⁶¹ Under “No. of Responses to Survey Question,” the first number is the total number of municipalities that provided valid responses. The second number is the total number projects, which is greater since many municipalities identified, and provided costs for, more than one project.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 15
Descriptive Statistics of Survey Results for Mandates
Placed on Second Class Townships^{155, 156}

Mandate (Time Period for Which Costs Provided)	No. of Township Respondents to Which Mandate Applied ¹⁵⁷	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁵⁸	Mode ¹⁵⁹	Standard Deviation ¹⁶⁰
Police Collective Bargaining Arbitration (2008, 2009, 2010) ¹⁶²	51	34	67	\$1,000	\$48,000	\$19,099	\$18,785	\$20,000	\$12,111
Arbitrator Fees	51	28	55	\$1,000	\$40,000	\$11,047	\$5,800	\$20,000	\$10,011
Arbitrator Food, Lodging & Related Costs	51	9	18	\$500	\$6,000	\$2,094	\$1,000	\$500	\$2,116
Municipal Staff Costs	51	23	45	\$200	\$29,894	\$5,830	\$4,000	\$1000	\$6,906
Other Costs	51	17	33	\$500	\$30,000	\$11,008	\$10,000	\$2,000*	\$8,492
Act 101 of 1988 Recycling Requirements (2010)	76	36	47	\$150	\$286,000	\$44,051	\$8,750	\$500*	\$72,626
Separate Specifications and Bids for Public Buildings (2008, 2009, 2010)	49	31	63	\$231	\$252,801	\$25,751	\$4,550	\$2,400*	\$53,063
Staff Time	49	22	45	\$37	\$15,000	\$2,188	\$400	\$100*	\$3,881
Engineering Fees	49	26	53	\$150	\$243,831	\$24,161	\$5,000	\$5000	\$50,643
Legal Advertisement Expense	49	26	53	\$100	\$5,000	\$1,060	\$625	\$200*	\$1,163
Additional Inspection Costs	49	17	35	\$85	\$50,000	\$5,553	\$500	\$100*	\$13,549
Stormwater Facilities Maintenance on State Roads (2010) ¹⁶³	106	26	25	\$150	\$209,852	\$16,169	\$3,925	\$1,000*	\$42,028

¹⁶² Note: In addition to the number of municipal respondents to which the mandate applied for 2008, 2009, and 2010, 24 municipalities indicated that they *do* have collective bargaining with their police departments, but did not bargain during the three-year period.

¹⁶³ Note: In addition to the number of municipal respondents to which the mandate applied in 2010, 393 municipalities indicated that they did not incur such costs in 2010, and 53 municipalities indicated that they did not know how much stormwater facilities maintenance on state roads costs them.

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 15
Descriptive Statistics of Survey Results for Mandates
Placed on Second Class Townships^{155, 156}

Mandate (Time Period for Which Costs Provided)	No. of Township Respondents to Which Mandate Applied ¹⁵⁷	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁵⁸	Mode ¹⁵⁹	Standard Deviation ¹⁶⁰
Maintain Stormwater Facilities	106	19	18	\$400	\$12,176	\$3,807	\$2,000	\$1,000*	\$3,789
Upgrade Stormwater Facilities	106	9	8	\$150	\$184,893	\$23,555	\$2,500	\$2,500	\$60,573
Engineering Expense for Stormwater Facilities Maintenance	106	13	12	\$150	\$48,000	\$7,442	\$1,000	\$1,000	\$13,965
Staff Time for Stormwater Facilities Maintenance	106	13	12	\$50	\$5,000	\$1,056	\$695	\$500	\$1,356
Legal Expense for Stormwater Facilities Maintenance	106	5	5	\$1,000	\$12,000	\$5,100	\$1,500	\$1,000	\$5,436
Traffic Control Device Maintenance on State Roads (2010) ¹⁶⁴	204	180	88	\$50	\$522,000	\$20,972	\$2,693	\$300	\$66,674
Crosswalk Pavement Markings	204	29	14	\$50	\$50,000	\$4,594	\$1,500	\$1,500*	\$10,472
Traffic Signal Signs And Markings	204	66	32	\$50	\$300,000	\$9,674	\$1,000	\$500	\$42,615
Operation of Traffic Signals	204	108	53	\$63	\$50,000	\$3,472	\$1,225	\$400	\$6,990
Maintenance of Traffic Signals	204	91	45	\$50	\$124,000	\$6,164	\$1,530	\$500	\$14,779
Installation of Traffic Signals	204	12	6	\$80	\$480,000	\$101,844	\$7,497	\$80*	\$160,543
Traffic Control Signs (Including Compliance with Requirements for Retroreflectivity)	204	62	30	\$50	\$10,000	\$2,381	\$1,500	\$500*	\$2,322
Other Costs	204	19	9	\$300	\$136,686	\$14,596	\$1,680	\$1,000	\$32,973

¹⁶⁴ Note: In addition to the number of municipal respondents to which the mandate applied in 2010, 295 indicated that they did not know how much traffic control device maintenance on state roads costs them.

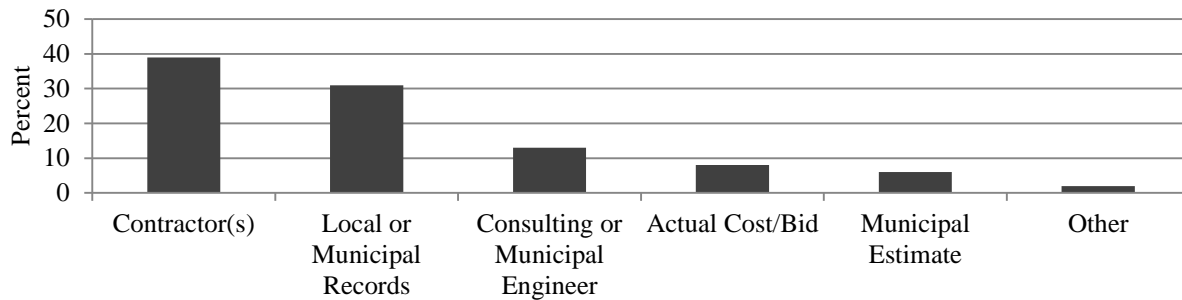
2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Table 15
Descriptive Statistics of Survey Results for Mandates
Placed on Second Class Townships^{155, 156}

Mandate (Time Period for Which Costs Provided)	No. of Township Respondents to Which Mandate Applied ¹⁵⁷	No. of Responses to Survey Question	% of Responses to Survey Question	Minimum	Maximum	Average	Median ¹⁵⁸	Mode ¹⁵⁹	Standard Deviation ¹⁶⁰
Police Officer Certification & Training (2010)	152	97	64	\$100	\$54,975	\$5,941	\$2,400	\$5,000	\$8,878
Number Received Academy Training & Certification	152	53	35	1	13	3	2	2	3
Number received Annual In-Service Training	152	125	82	1	62	9	6	1	9
Competitive Bidding & Related Advertising Requirements (2010)	401	306	76	\$13	\$111,250	\$5,046	\$1,000	\$200	\$11,866
Legal Notices	401	297	74	\$30	\$44,620	\$1,365	\$500	\$200*	\$3,528
Engineer and/or Consultant Fees	401	90	22	\$100	\$65,750	\$6,970	\$3,000	\$2000	\$10,256
Legal Fees	401	109	27	\$25	\$72,000	\$2,502	\$900	\$500	\$7,509
Staff Time	401	244	61	\$13	\$35,000	\$978	\$200	\$100	\$2,810
Uniform Construction Code Triennial Education & Certification (2010)	123	51	41	\$50	\$25,000	\$1,774	\$962	\$2,000	\$3,570
Number of Certifications	123	93	76	0	20	7	—	—	7
Right-to-Know Law Compliance (2010)	289	233	81	\$8	\$27,000	\$1,206	\$200	\$100	\$3,250
Staff Time	289	232	80	\$8	\$10,000	\$657	\$113	\$100	\$1,341
Legal Fees	289	89	31	\$10	\$20,000	\$1,259	\$400	\$200	\$2,908
Court Costs for Appeals	289	6	2	\$10	\$10,000	\$2,793	\$825	\$10*	\$3,990

In analyzing survey data for estimated project costs without the prevailing wage, about 90% reportedly came from contractor(s), local or municipal records, a consulting or municipal engineer, or an actual cost/bid (Figure 6). The remaining costs were derived from municipal estimates or “other” sources, such as rate tables for the county or liquid fuels allocations.

**Figure 6: Sources of Estimated Project Costs
without Prevailing Wage
for Second Class Townships**



Like the results for the cities, boroughs, and first class townships, those for the second class townships likely are not representative or indicative of second class townships throughout Pennsylvania, but they do reveal worthwhile information. Identical to findings for the other types of municipalities, “Prevailing Wage for Public Works Projects” and “Police Collective Bargaining Arbitration” are at the top of the list based on perception and median cost (Table 16). In mid-range, with median costs between \$2,500 and \$10,000, are “Act 101 of 1988 Recycling Requirements,” “Separate Specifications and Bids for Public Buildings,” “Stormwater Maintenance on State Roads,” and “Traffic Control Device Maintenance on State Roads.” However, as with more urban municipalities, the townships’ perception rating of Act 101 recycling requirements is relatively low, somewhat contrary to the median cost, again, which may be because townships are able to largely recover those costs through fees. Finally, the lowest median costs, less than \$2,500, correlate to the four remaining mandates. The only inconsistency among those is with “Competitive Bidding and Related Advertising Requirements,” which received a relatively high perception rating most likely because of the level of effort involved in the competitive bidding process.

**Table 16: Comparative Descending Sort (Most to Least)
of Most Burdensome Mandates on Second Class Townships**

Based on Township Ratings	Based on Median Cost
Prevailing Wage for Public Works Projects	Prevailing Wage or Public Works Projects
Police Collective Bargaining Arbitration	Police Collective Bargaining Arbitration
Competitive Bidding and Advertising Requirements	Act 101 of 1988 Recycling Requirements
Stormwater Maintenance on State Roads	Separate Specifications and Bids for Public Buildings
Traffic Control Device Maintenance on State Roads	Stormwater Facilities Maintenance on State Roads
Separate Specifications and Bids for Public Buildings	Traffic Control Device Maintenance on State Roads
Right-to-Know Law Compliance	Police Officer Certification & Training
UCC Triennial Education and Certification	Competitive Bidding & Advertising Requirements
Act 101 of 1988 Recycling Requirements	UCC Triennial Education & Certification
Police Officer Certification and In-Service Training	Right-to-Know Law Compliance

2.4 Methods and Findings: Costs of Mandates & Recommendations for Relief

Two other noteworthy variables in the previous Table 15 stand out, similar to those in Table 13 for cities, boroughs, and first class townships. In addition to the data being limited, the relative “Number of Municipal Respondents to Which the Survey Applied” in conjunction with the “Number of Responses to the Survey Question,” and the generally wide minimum-maximum range are worth examining. Of the 493 second class townships that completed the survey, anywhere from 49 (10%) for “Separate Specifications and Bids for Public Buildings” to 401 (81%) for “Competitive Bidding and Advertising Requirements” indicated that they had provided the service or engaged in the activity during the specified time period in the survey. However, the percentage of responses to the survey questions ranged from as low as 25% (“Stormwater Facilities Maintenance on State Roads”) to as high as 88% (“Traffic Control Device Maintenance on State Roads”), which shows that many municipalities opted not to provide cost data most likely for one or more of the reasons cited at the beginning of this section. The wide minimum-maximum range in the reported costs probably is a reflection of the span in population among the townships that responded.

Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Table 17 (pp. 2-98 – 2-124), in partial fulfillment of SR 323, reports for each municipal mandate:

- Average cost and statewide cost estimate, along with any qualifiers
- Statutory and/or regulatory citation
- Description of the mandate
- Issue(s) to the municipalities
- Origin (federal and/or state)
- Implementing agency
- Method of imposition
- Federal and/or state funding, if any
- Survey recommendations for relief.

As stated previously, although the survey responses are a sampling of costs, they likely are not indicative of municipalities for the entire Commonwealth. Moreover, the survey data represent a one-time “snapshot” notably taken during a period of economic downturn. Consequently, whether mandate costs for municipalities are increasing or decreasing and whether municipal officials would have responded differently if the economy was more robust are unknown. Therefore, these reported costs may be viewed only as a possible relative level of magnitude for each mandate.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Mandate/Citation:	Prevailing Wage for Public Works Projects: Act 442 of 1961 (Prevailing Wage Act)
Description:	It shall be the duty of every public body that proposes the making of a contract for any project of public work to determine from the Secretary of the Department of Labor and Industry the prevailing minimum wage rates that shall be paid by the contractor to the workmen upon such project. Reference to such prevailing minimum rates shall be published in the notice issued for the purpose of securing bids for such project of public work. Whenever any contract for a project of public work is entered into, the prevailing minimum wages as determined by the Secretary shall be incorporated into and made a part of such contract and shall not be altered during the period such contract is in force. ¹⁶⁵
Municipal Issues:	<ul style="list-style-type: none"> • Use of prevailing wage rates may add a notable cost to a project for municipalities. Wage rates vary considerably throughout the Commonwealth, and therefore, prevailing wage rates may not actually reflect wages being paid on union and nonunion jobs in a given location. • Use of prevailing wage may create considerable paperwork for municipalities as well as contractors.¹⁶⁶
Origin:	State
Implementing Agency:	Pennsylvania Department of Labor and Industry
Method of Imposition:	Direct Order
Costs:	<p>Reported Costs from Municipal Survey (2007, 2008, 2009):</p> <p>Cities, Boroughs, First Class Townships:¹⁶⁷</p> <p style="padding-left: 40px;">Average percentage greater with prevailing wage than without prevailing wage: 26% (2007), 32% (2008), 18% (2009)</p> <p style="padding-left: 40px;">Median percentage greater with prevailing wage than without prevailing wage: 33% (2007), 20% (2008), 25% (2009)</p> <p style="padding-left: 40px;">(based on 47 respondents with 72 projects (2007), 33 respondents with 49 projects (2008), 35 respondents with 52 projects (2009))</p>

¹⁶⁵ Act 442 of 1961, Section 4 (Duty of Public Body).

¹⁶⁶ Cornell, Paul, representing Pennsylvania State Association of Township Commissioners, February 17, 2011, office e-mail attachment.

¹⁶⁷ Sources of estimated project costs *without* prevailing wage for cities, boroughs, and first class townships: Local or municipal records (31%), contractor(s) (19%), consulting or municipal engineer (18%), municipal estimate (13%), actual cost/bid (3%), other (9%), not available (5%). (*Note:* Total does not equal 100% due to rounding.)

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Second Class Townships:¹⁶⁸

Average percentage greater with prevailing wage than without prevailing wage: 36% (2007), 25% (2008), 22% (2009)

Median percentage greater with prevailing wage than without prevailing wage: 36% (2007), 33% (2008), 31% (2009)

(based on 38 respondents with 51 projects (2007), 44 respondents with 54 projects (2008), 62 respondents with 71 projects (2009))

For the survey question on what projects municipalities placed on hold during 2007, 2008, and 2009, and the reasons why, 102 municipalities listed a total of 159 projects placed on hold, comprised of 57% for roads, 21% for building construction/renovation, 9% for water/sewer/stormwater, 5% for bridges, and 2% each for intersections, equipment, parks, and other. Of those 102 municipalities, 92 cited reasons for delaying a total of 147 projects with a breakdown of 30% due to prevailing wage, 30% due to cost of materials and prevailing wage, 13% due to cost of materials, 8% due to funding, 6% due to overall costs, 6% due to a combination of reasons, and 7% due to other reasons. This is an unquantifiable indirect cost to municipalities.

Reported Costs from Other Sources:¹⁶⁹

Although reported costs from the municipal survey are limited and are not a representative sampling of costs for the Commonwealth, they appear to somewhat parallel reported costs from secondary sources for Pennsylvania and other states, but are considerably higher. For example:

- The Pennsylvania State Association of Boroughs in 2011 released study findings based on 2009 data, which showed that, among the Commonwealth's 67 counties, average prevailing wage rates exceeded occupational wage rates by 30% to 77%.¹⁷⁰ If labor costs are estimated at 21% of construction costs,¹⁷¹ use of prevailing wage may increase the total costs by 6% to 16% based on PSAB's findings.
- In Michigan, Dr. Richard Vedder of Ohio University in Athens and the Mackinac Center for Public Policy in 1999 estimated a 40% increase in labor costs because of prevailing wage laws, which, based on labor costs at 25% of a construction contract, would increase total construction costs

¹⁶⁸ Sources of estimated project costs *without* prevailing wage for second class townships: Contractor(s) (39%), local or municipal records (31%), consulting or municipal engineer (13%), actual cost/bid (8%), municipal estimate (6%), and other (2%). (Note: Total does not equal 100% due to rounding.)

¹⁶⁹ Resource for "other sources": Osmun, Caitlin, *Mandate Reform Will Lead to More Sustainable Municipalities, The Effect of Pennsylvania Prevailing Wage Act on Its Local Governments*, Kutztown University, May 2, 2012.

¹⁷⁰ "Pennsylvania Prevailing Wages Compared to Pennsylvania Occupation Wages," Pennsylvania State Association of Boroughs, Harrisburg, Pennsylvania, 2011, <[http://boroughs.org/legislative/Pennsylvania%20Prevailing%20Wage%20Comparison.pdf#search=%22prevailing wages compared to occupation wage%22](http://boroughs.org/legislative/Pennsylvania%20Prevailing%20Wage%20Comparison.pdf#search=%22prevailing%20wages%20compared%20to%20occupation%20wage%22)> (July 19, 2012).

¹⁷¹ "Industry Statistics Sampler, NAICS 23, Construction, Geographic Distribution -- Construction: 2007," U.S. Bureau of the Census, <<http://www.census.gov/econ/industry/geo/g23.htm>> (July 18, 2012); percentage determined by dividing annual payroll by value of business done.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

by 10%.¹⁷² Similarly, Paul Kersey, also of the Center, in 2007 concluded that prevailing wage would add 10% to 15% to the cost of construction.¹⁷³

- In Kentucky, Mike Clark of the Kentucky Legislative Research Commission during 1999 and 2000 studied “the wages paid to workers on prevailing wage projects and the wages paid to the same workers during the same time for work on projects not covered by prevailing wage regulations.” The data suggested that the prevailing wage increased the cost of wages for the studied projects by 24%, though this is not the effect on the total project cost.¹⁷⁴
- In Ohio, the Legislative Budget Office of the Legislative Service studied the effects of school districts’ exemption from the prevailing wage over five years, 1997 through 2001, and found an overall savings during the period of 10.7%. However, the Office also noted that the savings is dependent on the location of the school district and the size of the project.¹⁷⁵

Methodology:

The municipal survey requested data on municipalities’ actual project costs *with* the prevailing wage and estimated costs *without* the prevailing wage, including sources of estimated costs, for their two most expensive projects that were bid out each year in 2007, 2008, and 2009. In addition, the survey asked municipalities if they had placed any projects on hold for the same three-year period and the reasons why. The primary objective of this survey question was to determine any potential percent differences in costs of public works projects that may have been attributable to the prevailing wage.

The survey covered the three-year period for two reasons: (1) to capture large projects that municipalities may bid out, and (2) to possibly realize the effect of the 2008 Pennsylvania Supreme Court decision, *Borough of Youngwood v. Pennsylvania Prevailing Wage Appeals Board*, in which the court held that the borough’s street resurfacing project “did not constitute maintenance work and, thus, was subject to prevailing minimum wages.”¹⁷⁶

Federal/State Funding: None

¹⁷² Vedder, Richard, “Michigan’s Prevailing Wage Law and Its Effects on Government Spending and Construction Employment,” Mackinac Center for Public Policy, September 2, 1999, <<http://www.mackinac.org/2380>> (June 27, 2012).

¹⁷³ Kersey, Paul, “The Effects of Michigan’s Prevailing Wage Law,” Mackinac Center for Public Policy, August 27, 2007, <<http://www.mackinac.org/8907>> (June 27, 2012).

¹⁷⁴ Clark, Mike, “The Effect of Prevailing Wage Laws: A Comparison of Individual Workers’ Wages Earned on and off Prevailing Wage Construction Projects,” *Journal of Labor Research*, Vol. XXVI, No. 4, Fall 2005, pp. 726, 735.

¹⁷⁵ Ohio Legislative Service Commission, “S.B. 102 Report, The Effects of the Exemption of School Construction Projects from Ohio’s Prevailing Wage Law,” Staff Research Report No. 149, May 20, 2002, pp. 21-25, <<http://www.lsc.state.oh.us/research/srr149.pdf>> (June 27, 2012).

¹⁷⁶ 596 Pa. 603, 947 A.2d 724 (Pa. 2008).

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Survey Recommendations:	<ol style="list-style-type: none"> 1. Raise dollar threshold for public works projects requiring prevailing wage. (81% of respondents) 2. Better define maintenance (exempt from prevailing wage) to include projects like road resurfacing and repair, bridge cleaning, resurfacing and painting, in-kind replacement of guide rails and curbs, and line painting. (79% of respondents) 3. Restructure the method by which the Secretary of Labor and Industry determines prevailing wages to better ensure the use of comparable local wages in the area. (56% of respondents) 4. Provide an automatic adjustment of the prevailing wage threshold for inflation. (43% of respondents) 5. Other Recommendations. (12% of respondents)
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Mandate/Citation:	<p>Collective Bargaining Arbitration:</p> <p>Act 111 of 1968 (Policemen and Firemen Collective Bargaining Act)</p>
Description:	<p>Policemen or firemen employed by a political subdivision, through designated labor organizations or other representatives, shall have the right to bargain collectively with their public employers concerning the terms and conditions of their employment. If the collective bargaining process reaches an impasse and stalemate, or if the governing body does not approve the agreement and the parties are unable to effect a settlement, then either party may request the appointment of a board of arbitration as prescribed in the act. The determination of the majority of the board of arbitration shall be final and binding on both parties. Labor shall pay the compensation of its appointed arbitrator. The political subdivision shall pay compensation of the other two arbitrators as well as other expenses incurred by the board of arbitration.¹⁷⁷</p>
Municipal Issues:	<ul style="list-style-type: none"> • With respect to the cost of the third-party neutral arbitrator and arbitration process, both parties should bear the responsibility of paying for the neutral arbitrator when collective bargaining negotiations go to arbitration, not just the local government. • The economic terms of the settlement, be they in wages or benefits (including pension benefits), may exceed those of similar public sector or private sector employee classifications in the local area. • The act places much power for determining labor costs associated with these agreements in the hands of the arbitrators. It does not impose any requirements for arbitrators to consider in making their awards.¹⁷⁸
Origin:	State
Implementing Agency:	None

¹⁷⁷ Act 111 of 1968.

¹⁷⁸ Knittel, Ed, Pennsylvania State Association of Boroughs, February 11, 2011, office e-mail attachment.

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Method of Imposition:	Direct Order
Costs:	<p>Reported Costs from Municipal Survey (2008-2010):</p> <p>Cities, Boroughs, First Class Townships: Police: Average: \$30,639; Median: \$23,100 (based on 44 respondents) Firefighters: Average: \$61,022; Median \$21,200 (based on 19 respondents)</p> <p>Second Class Townships: Police: Average: \$19,099; Median: \$18,785 (based on 34 respondents)</p>
Methodology:	<p>The municipal survey requested data on municipalities' costs for the third party, neutral arbitrator and the arbitration process in police and firefighter collective bargaining during 2008, 2009, and 2010, including arbitrator fees, arbitrator food and lodging expenses, and municipal staff costs for preparation and negotiation. The survey question covered a three-year period to capture the periodicity of collective bargaining agreements.</p> <p>In 2010, Pennsylvania had 67 fire departments with collective bargaining agreements. Of these, four were authorities and one, Luzerne County, contained eight locals in its collective bargaining unit.¹⁷⁹ The number of police departments with collective bargaining agreements was not obtainable.</p>
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Require both parties involved in arbitration to equally share all costs. (78% of respondents) 2. Require consideration of municipality financial status and local economic conditions in determining arbitration awards. (74% of respondents) 3. Modify process to require mediation before arbitration. (47% of respondents) 4. Other Recommendations. (12% of respondents)

Mandate/Citations: **Advertising/Publication of Legal Notice Requirements:**
Various Laws¹⁸⁰

Description: Legal notices must be placed in designated newspapers by counties and municipalities pursuant to various laws for a number of purposes, including:

- Annual budget adoption and amendment
- Auditor's report
- Bid for purchases of materials, services, and contracts
- Certified public accountant appointment
- Intermunicipal liquor license transfer
- Local Tax Enabling Act ordinance adoption or amendment
- Meetings and public hearings

¹⁷⁹ Martynuska, Art, Pennsylvania Professional Firefighters Association, February 15, 2012, office e-mail.

¹⁸⁰ See Appendix J for a listing of statutes that require legal advertising.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

- Municipal ordinance adoption, amendment, or consolidation
- Sale of personal property
- Sale of real estate
- Shade Tree Commission regulations
- Tax exoneration list
- Pennsylvania Municipalities Planning Code provisions, including: comprehensive plan, subdivision and land development ordinance, official map, and zoning ordinance adoption or amendment; curative amendment to zoning ordinance; planned residential development; zoning hearing board hearing; and conditional use hearing.

Municipal Issue:	Local governments are required to spend a significant amount of money on newspaper advertisements to publish information on annual budgeting and financial reports, bids for supplies and equipment, government contracts, adoption of ordinances and resolutions, and public meetings and hearings. However, printed media is not the only vehicle that governments can use to post information. Some governments at the state and local levels are providing information electronically via websites, but this method of distribution is neither standardized nor comprehensive. ¹⁸¹
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order or Condition of Authorization
Cost:	\$9,424,637 (estimated annual average cost for 2003, 2004, and 2005) ¹⁸²
Methodology:	The methodology involved two surveys. The first was a mail survey of local governmental entities in Pennsylvania, primarily to determine the amount of money being spent on legal advertising. ¹⁸³ The second involved interviews with two state agencies and the five local government associations that represent counties and municipalities for the purpose of establishing estimates of website start-up expenses, annual maintenance costs, and member fees. ¹⁸⁴ The above cost reflects the annual average cost over three years for legal advertising less possible website start-up, annual maintenance, and member costs. ¹⁸⁵ (<i>Note:</i> The first survey also covered school districts, housing and

¹⁸¹ Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006, p.1, citing Ryan, J., *Guide to Government Information Available on the Internet*, Ryan Information Management Press, Syracuse, 1995.

¹⁸² Crone, John, Jennifer Harding, Erica Melton, Monica Minter, and Daniel Stone, *Cost Savings on Mandatory Legal Advertising by Local Governmental Entities*, The Pennsylvania State University Harrisburg School of Public Affairs, Middletown, May 2006, p. 15.

¹⁸³ *Id.*, pp. 7-8.

¹⁸⁴ *Id.*, p. 8.

¹⁸⁵ *Id.*, pp. 9-16.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

redevelopment authorities, local authorities, and counties, but those results were omitted from the average annual cost provided above in that this portion of the study only focuses on municipalities.)

Federal/State Funding: None

Recommendations:

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.
- Authorize local government entities to electronically publish legal notices on the Internet, but require an entity that opts to electronically publish a legal notice to place a brief description of the notice in a newspaper of general circulation.

Mandate/Citation: **Property Exempt from Real Estate Taxes:**

**Title 53 of the Pennsylvania Consolidated Statutes
Chapter 88 (Consolidated County Assessment), Section 8812¹⁸⁶**

Description: The Consolidated County Assessment Law merged several real property assessment statutes into a combined whole, removing outdated language and codifying pertinent case law. The act repealed the “Third Class County Assessment Board Law,” “The Fourth to Eighth Class and Selective County Assessment Law,” and portions of “The County Code.” It also repealed inconsistent acts as well as “The General County Assessment Law” as the Law applies to counties of the second class A through the eighth class. The Consolidated County Assessment Law provides for 15 exemptions, with limited exceptions, from all county, borough, town, township, road, poor, county institution district, and school real estate taxes. The General County Assessment Law provides for property tax exemptions for counties of the first and second class.

Municipal Issue: Municipalities should be allowed payments in lieu of taxes for essential services; particularly fire, police, and ambulance, which municipalities often provide to tax exempt properties without any payment or compensation.¹⁸⁷

Origin: State

Implementing Agency: None

Method of Imposition: Direct Order

¹⁸⁶ The Consolidated County Assessment Law stipulates, “Each provision of this chapter is to be read *in pari materia* with the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act, and to the extent that a provision of this chapter is inconsistent with the Institutions of Purely Public Charity Act, the provision is superseded by that act.” 53 Pa.C.S. § 8812(c).

¹⁸⁷ Morgan, Melissa, Research Analyst, Pennsylvania State Association of Township Supervisors, February 16, 2011, office e-mail attachment.

**Table 17: Summation of Findings on the Most Burdensome Mandates
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Cost:	<p>An annual cost to municipalities associated with tax-exempt properties is not obtainable. The municipal survey results did not provide adequate data. The Legislative Budget and Finance Committee in its 2008 report, <i>Tax-Exempt Property and Municipal Fiscal Status</i>, in essence justifies this outcome, stating:</p> <p style="padding-left: 40px;">In Pennsylvania, counties are responsible for real property assessments. Since they do not have standard ways in which they define and record tax-exempt property, and since the State Tax Equalization Board's (STEB) mission is to determine annually the aggregate market value of taxable real property, <i>but not tax-exempt property</i>, it is not possible to assign a value to tax-exempt properties in Pennsylvania.¹⁸⁸</p>
Methodology:	<p>The municipal survey attempted to obtain information on the total estimated assessed value of all property in the municipality, total estimated assessed value of tax-exempt property in the municipality, the municipality's total cost of providing fire, police and ambulance services, and the estimated percentage of the total cost of providing police, fire, and ambulance services attributed to tax-exempt properties, if any. The objectives were to apply the municipality's property tax millage to determine the amount of unrealized property tax revenue from tax exempt properties, and to determine the estimated amount that the municipality was spending on emergency services for tax exempt properties. This survey question was an effort to obtain information for which the source information most likely was either unobtainable or an unsubstantiated estimate at best.</p>
Federal/State Funding:	<p>The above-referenced report, <i>Tax-Exempt Property and Municipal Fiscal Status</i>, provides information on an array of federal and state funding, services, and authorizations that may help to offset the possible burden of tax exempt properties on municipalities. These include:</p> <ul style="list-style-type: none"> • Local taxes other than real estate taxes, including earned income tax, real estate transfer tax, local services tax (LST), local sales tax (Philadelphia and Allegheny Counties), and liquor sales tax (Philadelphia and Allegheny Counties). <i>For example</i>, Municipal LST revenue in Calendar Year (CY) 2010: \$156 million;¹⁸⁹ school district LST revenue in Fiscal Year (FY) 2009-2010: \$13.8 million.¹⁹⁰ • Revenue sharing from the Liquid Fuels Tax, General Municipal Pension System State Aid Program, Foreign Fire Insurance Tax, Public Utility Realty Tax, liquor license fees, recycling and waste management grants, state police fine revenue, Pennsylvania Property Tax or Rent Rebate

¹⁸⁸ *Tax-Exempt Property and Municipal Fiscal Status, Conducted Pursuant to Senate Resolution 2008-363*, Legislative Budget and Finance Committee, Harrisburg, p. S-1 (emphasis added).

¹⁸⁹ *2010 Local Services Tax Revenue – Financial Report*, Pennsylvania Department of Community and Economic Development.

¹⁹⁰ "Summaries of Annual Financial Report Data, 2009-2010, Act 1/Act 511/First Class School District Taxes," Pennsylvania Department of Education.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Program, and Property Tax Relief Fund. *For example*, Public Utility Realty Tax Act distributions in FY 2011-2012: \$32.2 million; DEP recycling and waste management grants in CY 2010: \$20 million for 113 municipalities;¹⁹¹ State Police fine revenue distributions in 2011: almost \$13.6 million;¹⁹² Property Tax or Rent Rebate Program in 2009: \$179 million to 412,944 property owners and \$102.9 million to 192,916 renters.¹⁹³

- Payments in lieu of taxes (PILOTs) by the U.S. Department of Interior for certain federal lands, U.S. Department of Housing and Urban Development for public housing, and Pennsylvania Department of Conservation and Natural Resources (DCNR), Pennsylvania Game Commission (PGC), and Pennsylvania Fish and Boat Commission (PFBC) for certain state lands. *For example*, U.S. Department of Interior payments in 2011: \$539,161 for 654,594 acres in 47 counties;¹⁹⁴ DCNR payments for 2011: \$2.5 million; PGC payments for 2011: \$1.7 million; PFBC payments for 2011: \$24,801.
- Local State Police services. In 2012, of the 2,562 municipalities, the Pennsylvania State Police is providing full-time coverage to 1,296 municipalities (51%) and part-time coverage to 424 municipalities (17%).¹⁹⁵
- State programs that aid municipalities, including the Municipalities Financial Recovery Act, Department of Community and Economic Development's New Communities Program (Main Street Program, Elm Street Program, and Enterprise Zone Program), Keystone Innovation Zone Program, and Neighborhood Improvement Districts.¹⁹⁶

For more information on these programs, see the referenced report.

**Survey
Recommendations:**

1. Authorize municipalities to collect a municipal services fee or payments in lieu of taxes (PILOTs) from tax-exempt property owners to cover the costs of emergency services. (58% of respondents)
2. Reduce the types of tax-exempt properties. (48% of respondents)
3. Require the state to provide a PILOT when the assessed values of tax-exempt properties are equal to more than a certain percentage of the municipal tax base. (32% of respondents)
4. Authorize a county sales tax and regional revenue sharing. (23% of respondents)

¹⁹¹ Santanna, Tom, Director of Legislative Affairs, Pennsylvania Department of Environmental Protection, March 8, 2012, office e-mail.

¹⁹² Reed, R. Craig, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, February 23, 2012, office e-mail.

¹⁹³ *2009 Property Tax/Rent Rebate Program Statistical Report*, Pennsylvania Department of Revenue, pp. 4-5.

¹⁹⁴ *Payments in Lieu of Taxes*, "County Payments," U.S. Department of the Interior, <<http://www.doi.gov/pilt/county-payments.cfm>> (Jul 24, 2012).

¹⁹⁵ McGinley, Lt. Sean, Pennsylvania State Police, March 1, 2012, telephone conversation.

¹⁹⁶ *Tax-Exempt Property and Municipal Fiscal Status, Conducted Pursuant to Senate Resolution 2008-363*, Legislative Budget and Finance Committee, Harrisburg, March 2009, pp. 70-86; see Legislative Budget and Finance Committee, A Joint Committee of the General Assembly, Reports Released, n.d., <<http://lbfc.legis.state.pa.us/>> (January 20, 2012).

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5. Authorize a gross receipts tax. (13% of respondents)
6. Other Recommendations. (12% of respondents)

Mandate/Citations:

Competitive Bidding and Related Advertising Requirements:

Various Laws¹⁹⁷

Description:

The various laws pertaining to competitive bidding and related advertising requirements generally provided that all contracts in excess of \$10,000, unless specifically exempted, must be given to the lowest responsible bidder following public notice. The laws further required written or telephonic price quotations from at least three qualified and responsible contractors for all contracts that exceeded \$4,000, but were less than \$10,000. They also compelled separate bids for plumbing, heating, ventilating and electrical work when the entire cost of the project exceeded \$10,000.¹⁹⁸ The laws did not provide for indexing of these thresholds or a methodology for indexing.

Update: The Legislature amended the respective laws, effective January 1, 2012, to: (1) increase from \$10,000 to \$18,500 the advertising and bidding limit for contracts and purchases, subject to delineated adjustments; (2) increase from \$4,000 to \$10,000 the amount for which written or telephonic price quotations are required, subject to specified adjustments; (3) direct the Department of Labor and Industry (Department) to adjust the base bidding amounts subject to the annual percentage increase in the Consumer Price Index for all urban consumers, limited to a maximum annual adjustment of 3% of the respective base amounts; and (4) require the Department to advertise the new limits in the Pennsylvania Bulletin before the end of each year.¹⁹⁹

Municipal Issues:

Until recently, pursuant to the various laws cited above, municipalities have been required to obtain competitive bids for any purchase that is more than \$10,000.²⁰⁰ This amount, last adjusted in or about 1990, had resulted in driving up the costs of purchasing, even the most commonplace items such as office supplies and/or equipment. Adjusting the bid limits provided some needed financial relief for municipalities.

The cost of the competitive bidding process is a result of administrative functions required of a municipality in bid preparation and administration and the direct cost of advertising. These expenses can add up to hundreds of dollars per purchase. An increased threshold provides relief from operational

¹⁹⁷ See Act 317 of 1931 (Third Class City Code) § 1901; Act 43 of 2012 (Borough Code) § 1402; Act 331 of 1931 (First Class Township Code) § 1802; Act 69 of 1933 (Second Class Township Code) § 3102; Act 34 of 1953 (Incorporated Towns Contracts Regulated) §§ 2, 3.1; 53 Pa.C.S. Ch. 23 (Intergovernmental Cooperation Law) § 2308; Act 38½ of 1936, 1st Sp. Sess. (Municipal Flood Control) § 3; and Act 118 of 1937 (Political Subdivision Joint Purchases Law) § 2.

¹⁹⁸ See the subsequent mandate, “Separate Specifications and Bids for the Plumbing, Heating, Ventilating, and Electrical Work.”

¹⁹⁹ *Id.*

²⁰⁰ Act 104 of 1913 requires separate competitive bids for a purchase that is more than \$4,000.

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	costs, as well as from the issuance of requests for proposals for somewhat incidental commodity purchases. In addition, including an indexing process to adjust the threshold on a regular basis averts this issue in the future. ²⁰¹
	<i>Update:</i> With the amendment of the various laws pertaining to competitive bidding on November 3, 2011, effective January 1, 2012, which increased the bidding thresholds and tied those thresholds to the Consumer Price Index, the Legislature largely addressed the municipal issues with this mandate.
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs:	Reported Costs from Municipal Survey (2010): Cities, Boroughs, First Class Townships: Average: \$41,462; Median: \$8,300 (based on 105 respondents) Second Class Townships: Average: \$5,046; Median: \$1,000 (based on 306 respondents)
Methodology:	The municipal survey requested data on how much municipalities spent on the competitive bidding process during 2010, including the cost of legal notices, engineer and/or consultant fees for preparation of specifications and review of bids, legal fees for solicitor preparation and review, and staff time for preparing instructions, specifications, and advertisements, and evaluating bids.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Increase the bidding limits. (90% of respondents) 2. Authorize municipalities to use the Internet as a means of legal advertising. (64% of respondents) 3. Authorize legal advertising alternatives, such as allowing municipalities to place advertisements in free community newspapers or shoppers, or on a state website. (60% of respondents) 4. Authorize a periodic increase in the bidding limits based on the consumer price index. (50% of respondents) 5. Other Recommendations. (3% of respondents)
Mandate/Citation:	Separate Specifications and Bids for Plumbing, Heating, Ventilating, and Electrical Work: Act 104 of 1913 (Separations Act), Section 1
Description:	For the construction or alteration of a public building, this act requires solicitation of separate bids for plumbing, heating, ventilating, and electrical

²⁰¹ Knittel, Ed, Pennsylvania State Association of Boroughs, February 11, 2011, office e-mail attachment.

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work, in addition to the bid for constructing or altering the building, if the entire project cost exceeds \$4,000. The corresponding provisions in the municipal codes supersede the provisions in Act 104 for the respective types of municipalities, which were repealed from Act 104.^{202, 203}

Update: The Legislature amended the various municipal codes, effective January 1, 2012, to: (1) increase from \$10,000 to \$18,500 the advertising and bidding limit for contracts and purchases, subject to the delineated adjustments; (2) direct the Department of Labor and Industry (Department) to adjust the base bidding amounts subject to the annual percentage increase in the Consumer Price Index for all urban consumers, limited to a maximum annual adjustment of 3% of the respective base amounts; and (3) require the Department to advertise the new limits in the Pennsylvania Bulletin before the end of each year.

Municipal Issues: This requirement increases the expense for preparing the specifications and advertisements, paying for the advertisements, and administering the bidding process. The law also effectively prevents using a design-build procedure for new building, which could provide a substantial cost savings.²⁰⁴

Update: With the amendment of the various laws pertaining to competitive bidding on November 3, 2011, effective January 1, 2012, which increased the bidding thresholds and tied those thresholds to the Consumer Price Index, the Legislature partially addressed the municipal issues with this mandate.

Origin: State

Implementing Agency: None

Method of Imposition: Direct Order

²⁰² See Act 317 of 1931 (Third Class City Code) § 1909 (Separate Bids for Plumbing, Heating, Ventilating and Electrical Work, Elevators and Moving Stairs); Act 43 of 2012 (Borough Code) § 1405 (Separate Bids for Plumbing, Heating, Ventilating and Electrical Work); Act 34 of 1953 (Incorporated Towns Contracts Regulated) § 5 (Separate Bids for Plumbing, Heating, Ventilating and Electrical Work); Act 331 of 1931 (First Class Township Code) § 1805 (Separate Specifications for Branches of Work); and Act 69 of 1933 (Second Class Township Code) § 3107 (Separate Specifications for Branches of Work).

²⁰³ The stipulation for separate bids is optional in the Borough Code:

Section 1405. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work.--In the preparation for the erection, construction and alteration of any public building, when the entire cost of the work shall exceed the amount specified or adjusted under section 1402(a), the architect, engineer, or other person preparing the specifications may, if so requested by the borough council, prepare separate specifications for the plumbing, heating, ventilating and electrical work. The person or persons authorized to enter into contracts for the erection, construction or alteration of the public buildings may, if the separate specifications shall have been proposed, receive separate bids upon each of the branches of work and shall award the contract to the lowest responsible bidder for each of the branches.

²⁰⁴ Morgan, Melissa, Research Analyst, Pennsylvania State Association of Township Supervisors, February 16, 2011, office e-mail attachment.

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Costs:	<p>Reported Costs from Municipal Survey (2008- 2010):</p> <p>Cities, Boroughs, First Class Townships: Average: \$34,581; Median: \$7,127 (based on 24 respondents)</p> <p>Second Class Townships: Average: \$25,751; Median: \$4,550 (based on 31 respondents)</p>
Methodology:	<p>The municipal survey requested data on how much municipalities spent on separate bidding requirements for public buildings during 2008 through 2010, including the cost of staff time for preparing bids and specifications and monitoring contractors, engineering fees for preparation of additional specifications and review of additional bids, and legal advertisement expense.</p>
Federal/State Funding:	<p>None</p>
Survey Recommendations:	<ol style="list-style-type: none"> 1. Increase the dollar threshold for compliance with Separations Act requirements. (61% of respondents) 2. Eliminate the Separations Act requirements to the extent that they may preclude design-build projects. (54% of respondents) 3. Authorize a modified single prime system that would require prime contract bidders to list their major subcontractors in their bid. (43% of respondents) 4. Permit municipalities to opt out of multiple prime project delivery systems. (36% of respondents) 5. Other Recommendations. (8% of respondents)

Mandate/Citation:	<p>Right-to-Know Law:</p> <p>Act 3 of 2008</p>
Description:	<p>The “Right-to-Know Law” repealed Act 212 of 1957, also referred to as the “Right-to-Know Law,” and certain provisions of “The Administrative Code of 1929” and the “Commonwealth Procurement Code” for the purpose of providing greater access to the records of Commonwealth agencies, local agencies, legislative agencies, and judicial agencies. Among other things, certain records of these entities are presumed to be public records unless the record is exempt under a specified enumeration, protected by a privilege, or exempt from disclosure under any federal or state law, regulation, or judicial order or decree. Additionally, the statute creates an “Office of Open Records” in the Department of Community and Economic Development, requires agencies to appoint an open records officer, provides for administrative appeals and judicial review, reduces the time period for responses by a Commonwealth agency from 10 to 5 days, and increases the financial penalties for noncompliance.</p>

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Municipal Issues:	<p>Although government should be open and make public documents readily available, the reenactment of the law creates several issues for municipalities:</p> <ul style="list-style-type: none"> • The timeframe to respond to requests is very short—only five business days. • The law does not provide financial resources for research or for recovery of research expenses. • Costs for determining whether records are public, in whole or in part, must be borne entirely by the local government. • The law does not provide an ability to prevent frivolous requests or stop ongoing frivolous requests. • The law does not allow municipalities to charge additional fees for requests that are for commercial purposes.²⁰⁵
Origin:	State
Implementing Agency:	None
Method of Imposition:	Direct Order
Costs:	<p>Reported Costs from Municipal Survey (2010):</p> <p>Cities, Boroughs, First Class Townships: Average: \$6,756; Median: \$1,000 (based on 71 respondents)</p> <p>Second Class Townships: Average: \$1,206; Median: \$200 (based on 233 respondents)</p>
Methodology:	The municipal survey requested data on how much municipalities spent to evaluate and respond to Right-to-Know requests for public records during 2010, including staff time, legal fees for solicitor review and preparation of responses, and court costs for appeals of denied records.
Federal/State Funding:	None
Survey Recommendations:	<ol style="list-style-type: none"> 1. Authorize municipalities to charge for staff time and legal review fees when fulfilling requests. (78% of respondents) 2. Authorize municipalities to charge additional fees for search, review, and duplication costs when responding to commercial requests. (74% of respondents) 3. Authorize municipalities to charge expanded fees and take extended time when responding to excessively large requests. (71% of respondents) 4. Deter or preclude frivolous requests. (64% of respondents) 5. Extend the required response time for requests. (55% of respondents) 6. Other Recommendations. (7% of respondents)

²⁰⁵ Morgan, Melissa, Research Analyst, Pennsylvania State Association of Township Supervisors, February 16, 2011, office e-mail attachment.

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Mandate/Citations:	<p>Requirements for Signage, Pavement Markings, and Traffic Signals on State Highways and Rights-of-Way:</p> <p>Title 75 of the Pennsylvania Consolidated Statutes, Sections 6122 (Authority to erect traffic-control devices), 6124 (Erection of traffic-control devices at intersections); Title 67 of the Pennsylvania Code, Section 212.5 (Installation and maintenance responsibilities)</p>
Description:	<p>Signage, markings, and traffic signals are addressed in the Federal Highway Administration <i>Manual on Uniform Traffic Control Devices for Streets and Highways</i> (MUTCD) standards. Therefore, to the extent the issue relates to MUTCD standards and associated compliance dates, federal jurisdiction dictates (<i>see</i> Section 2.4.2.1). However, to the extent that the issue relates to municipal responsibility for installation and maintenance of signage and signals, the requirements are pursuant to state regulation²⁰⁶ under broad state statutory authority.²⁰⁷</p> <p>According to PennDOT, “The Department continues to approve new traffic signal installations only if a traffic signal maintenance agreement is executed for state and federally funded projects and through the Department’s Highway Occupancy Permit process on developer initiated projects. Most of the project upgrades are currently developer driven.”²⁰⁸</p>
Municipal Issues:	<p>There are a number of issues related to the regulation:</p> <ul style="list-style-type: none"> • As a condition of traffic signal permits, PennDOT requires municipalities to maintain pavement markings for crosswalks and signage related to the signals. • Sign replacement on state highways is required to conform to the federal MUTCD requirements as a condition of state aid. • The municipality is required to pay for all operating costs for traffic signals and, in some cases, the municipality is required to pay for the installation of traffic signals on state highways as well as on local streets.²⁰⁹
Origin:	Federal and State
Implementing Agency:	Pennsylvania Department of Transportation
Method of Imposition:	Direct Order

²⁰⁶ 67 Pa. Code § 212.5, adopted February 3, 2006, effective February 4, 2006 (36 Pa.B. 537).

²⁰⁷ 75 Pa.C.S. §§ 6122, 6124.

²⁰⁸ Farley, Daniel, Bureau of Maintenance and Operations, “Traffic Signal Ownership, Maintenance, and Operations,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 4-5.

²⁰⁹ Fountaine, Thomas, representing Pennsylvania League of Cities and Municipalities, February 17, 2011, office e-mail attachment.

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Costs:	<p>PennDOT/TAC²¹⁰ Estimates (2011/2012):</p> <p>\$178 million annually for operating, maintaining, and upgrading traffic signals along state highways (in 2011 dollars). \$30 million annually for maintaining signage and pavement markings (in 2012 dollars).</p> <p>Reported Costs from Municipal Survey (2010):</p> <p>Cities, Boroughs, First Class Townships: Average: \$22,505; Median: \$5,500 (based on 91 respondents) Second Class Townships: Average: \$20,972; Median: \$2,693 (based on 180 respondents)</p>
Methodology/Source:	<p>PennDOT/TAC:</p> <p>Signs and Pavement Markings: According to PennDOT, the total cost for maintaining pavement markings on state highways in calendar year 2011 was \$18 million. The total material cost for maintaining signs along state highways in fiscal year 2010-2011 was \$3.5 million. Added labor and equipment costs of about \$5.5 million brought the total cost for sign maintenance to about \$9 million. Hence, PennDOT estimates the total annual cost for maintaining signs and pavement markings in 2012 dollars at about \$30 million.²¹¹</p> <p>However, according to PennDOT, this estimate does not include signs or markings installed by contractors. Only PennDOT District 8-0 has a significant amount of markings done by contract, which is at a cost of about \$1 million. Nevertheless, the cost of signs erected by contract can be substantial, since these signs are virtually all of the overhead signs and associated structures and many of the large ground-mounted signs.²¹²</p> <p>Traffic Signals: The estimated cost of operating, maintaining, and upgrading traffic signals along state highways is derived from the December 2011 Pennsylvania State Transportation Advisory Committee Report, <i>Financial Needs of Counties and Municipalities for Highways and Bridges</i>. According to the report, host municipalities are responsible for properly operating and maintaining Pennsylvania's 14,000 traffic signals.²¹³ PennDOT's Bureau of Highway Safety and Traffic Engineering calculated the estimated costs of maintaining and operating traffic signals, including retiming every five years, and upgrading all traffic signals over a 10-year period to total \$231 million annually.²¹⁴ The report also indicates that</p>

²¹⁰ TAC – Pennsylvania State Transportation Advisory Committee.

²¹¹ Reed, R. Craig, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 30, 2012, office e-mail.

²¹² *Id.*

²¹³ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, December 2011, p. 51.

²¹⁴ *Id.*, p. 51-52.

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approximately 77% of the traffic signals involve state highways; the remaining 23% involve only local roads.²¹⁵ Since the issue with this mandate only pertains to traffic signals that involve state highways, the annual cost is calculated at 77% of the \$231 million total.

Municipal Survey:

The survey requested cost data on how much municipalities spent during 2010 to maintain traffic control devices on state roads, specifically for crosswalk pavement markings, traffic signal signs and markings, installation, operation and maintenance of traffic signals, and traffic control signs.

Federal/State Funding: Estimated \$325,966,000 (Fiscal Year 2011-2012) allocated as determined by Liquid Fuels Tax distribution formulas for various highway construction and maintenance projects by counties and municipalities, including, *but not limited to*, operation, maintenance, and upgrading of traffic signals, and maintenance of signage and pavement markings.^{216, 217}

\$15,000,000 (Fiscal Year 2011-2012) allocated to the Automated Red Light Enforcement Fund for municipal grants to install and upgrade traffic signals.²¹⁸

Recommendations:

Survey Recommendations:

1. Require state to assume responsibility for all facilities on state roads and rights-of-way. (81% of respondents)
2. Require state to partially reimburse municipalities for costs to maintain facilities on state roads and rights-of-way. (53% of respondents)
3. Redesignate state and local responsibilities for the installation and maintenance of traffic-control devices on state roads and rights-of-way. (43% of respondents)
4. Other Recommendations. (4% of respondents)

Transportation Funding Advisory Commission/TAC Recommendations:

- Provide additional funding to the state and local governments in accordance with the recommended funding package in the *Transportation Funding Commission Final Report*, which would make available an added \$1.9 billion and \$300 million to state and local governments, respectively, in five years.²¹⁹

²¹⁵ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, December 2011, pp. 23-24.

²¹⁶ See Appendix G, Results of Survey of Funding for Mandates Affecting Municipalities – Fiscal Year 2011-2012, specifically Department of Transportation.

²¹⁷ Reed, R. Craig, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 26, 2012, office e-mail. According to Mr. Reed’s communication, because PennDOT neither requires approvals for signage or pavement markings nor specifically monitors or tracks whether such projects are on state highways, it is difficult to say how much liquid fuels moneys are being spent on state highways.

²¹⁸ See Appendix G.

²¹⁹ *Final Report, Transportation Funding Advisory Commission*, Pennsylvania Governor’s Transportation Funding Advisory Commission, August 2011, p. 46.

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- Enact enabling legislation to give local governments more options to raise revenue for transportation investments.²²⁰ Some potential local government options include a local option sales tax, a local option gas tax, a local option vehicle registration, a vehicle personal property tax, a transportation utility fee, and public-private partnerships.²²¹
- Enact a Marcellus Shale impact fee to mitigate impacts on roads and bridges attributable to natural gas development.²²²
- Advance modernization, including PennDOT overseeing the modernization of traffic signals and optimization of their operation, eliminating the local cost share for construction of American with Disabilities Act compliant curb ramps at all affected cross streets, and formalizing cooperation between PennDOT and local governments through Agility Agreements.²²³

Update: Act 13 of 2012 amended Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in part, by adding Chapter 23 (Unconventional Gas Well Fee), which, among other things, authorizes counties to impose a fee on unconventional gas wells, and provides for fee distribution to various state agencies and programs and to counties and municipalities for specified purposes, including associated construction, reconstruction, maintenance and repair of roadways, bridges, and public infrastructure.

Mandate/Citations:	Stormwater Facility Maintenance Requirements Along State Highways: Act 428 of 1945 (State Highway Law) Article V (Rural State Highway System and State Highways in Cities, Boroughs and Towns) §§ 501 (townships), 513 (boroughs and incorporated towns), 522 and 521 (2A and 3rd class cities), 542 and 543 (1st and 2nd class cities)
Description:	According to the Pennsylvania State Transportation Advisory Committee's (TAC's) 2007 publication, <i>Storm Water Facilities on State Highways, Final Report</i> , "The management of storm water on state highways is a complex issue. Legally, cities and boroughs have the responsibility for maintenance of storm water facilities along PennDOT highways. PennDOT policy requires townships to maintain storm water systems, as well." ²²⁴

²²⁰ *Final Report, Transportation Funding Advisory Commission*, Pennsylvania Governor's Transportation Funding Advisory Commission, August 2011, p. 62.

²²¹ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, December 2011, pp. 63-65.

²²² *Id.*, p. 63.

²²³ *Id.*, pp. 22-32.

²²⁴ *Storm Water Facilities on State Highways, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, February 2007, p. vii.

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Although the TAC report only states that “PennDOT policy requires townships to maintain storm water systems [along state highways],” Section 501 (Structures on Rural State Highways) of Act 428 of 1945 appears to provide a similar requirement in statute:²²⁵

[The Pennsylvania Department of Transportation] shall not assume for the Commonwealth any obligation to maintain, construct, or reconstruct any structure of any kind or character whatsoever situate upon or forming part of any township road taken over or designated as a part of the rural State highway system,^[226] except only drainage structures with a total spanned length not exceeding ten (10) feet, measured along the center line of the highway, and which were the sole obligation of the townships prior to the taking over of such road by the Commonwealth. Responsibility for the construction, reconstruction, and maintenance of any other structures shall remain with the county, township, person, association or corporation responsible therefor at the date of the approval of the act taking over the road.

²²⁵ This authority, however, is not universally acknowledged as sufficiently clarifying the Commonwealth’s responsibility for state highway stormwater facilities. An existing provision in an earlier law, specifically Section 6 of Act 193 of 1911, has been cited as a statute “competing” with Act 428 of 1945. It requires the Commonwealth to mark, build, rebuild, construct, repair, and maintain “main traveled roads or routes leading to the State line, and between principal cities, boroughs, and towns,” which could be construed to include storm water facilities:

From and after the adoption of this act, all those certain existing public roads, highways, turnpikes, and toll-roads, or any parts or portions thereof, subject to the provisions hereinafter made in the case of turnpikes and toll-roads, forming and being main traveled roads or routes between the county-seats of the several counties of the Commonwealth, and *main traveled roads or routes leading to the State line, and between principal cities, boroughs, and towns, shall be known, marked, built, rebuilt, constructed, repaired, and maintained by and at the sole expense of the Commonwealth; and shall be under the exclusive authority and jurisdiction of the State Highway Department, and shall constitute a system of State Highways*, the same being more particularly described and defined.

(Emphasis added; see *Report of the Subcommittee [on] Boroughs to the House Local Government Committee Pursuant to House Resolution 31 [of 2001]*, Parts IV, V, and X.)

²²⁶ “Rural State highway system” shall mean and include all roads and highways taken over by the Commonwealth as State highways under the provisions of [Act 203 of 1931] . . . and all other roads and highways specifically designated as rural State highways” (Act 428 of 1945 § 102(2)).

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Municipal Issue:	<p>The issue centers on municipal versus PennDOT maintenance responsibility for stormwater facilities, particularly repair and replacement, along state highways, outside eligible services covered by an Agility Agreement.²²⁷</p> <p>As a result of extensive discussions with representatives of the statewide municipal associations, PennDOT issued changes to its <i>Maintenance Manual</i> on August 9, 2011, specifically Section 8.5 (Drainage Maintenance Responsibilities Concerning Municipalities and Utilities).²²⁸ In summary:</p> <p style="padding-left: 40px;">The major change is that PennDOT will assume structural responsibility for existing enclosed surface drainage facilities within townships where a written agreement or highway occupancy permit does not assign responsibility otherwise. PennDOT already assumes responsibility for open systems in townships. Townships would still be responsible for capacity issues generated by drainage from upstream development and local streets. PennDOT has also implemented a policy for ensuring that private applicants for driveways are ultimately responsible for the cost of drainage facilities within highway right-of-way relating to their private improvements.^{229, 230}</p> <p>Moreover, “PennDOT prefers that developers either maintain their water on site or develop their property with the use of grass swales or curb cut infiltration as opposed to creating closed stormwater facilities within the right of way that need to be maintained.”²³¹</p>
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²²⁷ Agility Agreements are contracts between PennDOT and municipalities that provide the legal authority for in-kind services for a period of five years. . . . Among those services eligible for municipalities are several maintenance activities relevant to storm water:

- Inlet, endwall or basin cleaning
- Ditch or drain channel cleaning
- Swale cleaning
- Pipe and culvert cleaning
- Replacing inlets and endwalls
- Repairing or replacing pipe and culvert

Storm Water Facilities on State Highways, Final Report, Pennsylvania State Transportation Advisory Committee, Harrisburg, February 2007, pp. 13-14 (citation omitted).

²²⁸ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, December 2011, p. 59.

²²⁹ “Enclosed surface drainage facilities” are defined as “storm water cross pipes/culverts and parallel pipes/culverts including any attached inlets, headwalls, and end walls.” “Open surface drainage facilities” are defined as “swales, gutters, roadway crowns, shoulders, and curbs.” *Maintenance Manual*, Publication 23, Section 8.5: Drainage Maintenance Responsibilities Concerning Municipalities and Utilities, Bureau of Maintenance and Operations, Pennsylvania Department of Transportation, revised August 9, 2011.

²³⁰ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, pp. 59-60.

²³¹ St. Clair, Daryl, Bureau of Maintenance and Operations, “Traffic Signal Ownership, Maintenance, and Operations,” in R. Craig Reed, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 24, 2011, office e-mail attachment, pp. 4-5.

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Origin:	State
Implementing Agency:	Pennsylvania Department of Transportation
Method of Imposition:	Direct Order
Costs:	<p>PennDOT/TAC Estimate:</p> <p>\$294,000,000 annually for regular maintenance and cyclical replacement of stormwater structures along state highways, statewide (2007 dollars).²³²</p> <p>Reported Costs from Municipal Survey (2010):</p> <p>Cities, Boroughs, First Class Townships: Average: \$98,505; Median: \$2,718 (based on 64 respondents)</p> <p>Second Class Townships: Average: \$16,169; Median: \$3,925 (based on 26 respondents)</p>
Methodology:	<p>PennDOT/TAC:</p> <p>A statewide cost estimate was derived by the TAC based on PennDOT's Roadway Management System, Maintenance Operations and Resources Information System, and Engineering and Construction Management System, as well as actual unit costs and estimated maintenance and replacement cycles.²³³</p> <p>Municipal Survey:</p> <p>The survey requested cost data on how much municipalities spent during 2010 to maintain stormwater facilities on state roads, specifically to maintain and upgrade stormwater facilities and for related engineering expenses, staff time for permit review, and legal expenses.</p>
Federal/State Funding:	Estimated \$325,966,000 (Fiscal Year 2011-2012) ²³⁴ allocated according to Liquid Fuels Tax distribution formulas for various highway construction and maintenance projects by counties and municipalities, including, <i>but not limited to</i> , maintenance of stormwater facilities along state highways. ²³⁵
Recommendations:	<p>Survey Recommendations:</p> <ol style="list-style-type: none"> 1. Require state to assume responsibility for all facilities on state roads and rights-of-way. (81% of respondents) 2. Require state to partially reimburse municipalities for costs to maintain facilities on state roads and rights-of-way. (53% of respondents)

²³² *Storm Water Facilities on State Highways, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, February 2007, p. 17.

²³³ *Id.*, p. 15.

²³⁴ See Appendix G, Results of Survey of Funding for Mandates Affecting Municipalities – Fiscal Year 2011-2012, specifically Department of Transportation.

²³⁵ Reed, R. Craig, Director, Bureau of Municipal Services, Pennsylvania Department of Transportation, January 26, 2012, office e-mail.

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3. Authorize municipalities to levy a special tax for stormwater facility maintenance. (14% of respondents)
4. Other Recommendations. (4% of respondents)

Transportation Funding Advisory Commission/TAC Recommendations:

- Implement funding recommendation for the previous mandate, pertaining to requirements for signage, pavement markings, and traffic signals on state highways and rights-of-way.
- Enact legislation to enable formation of special purpose authorities, under the Municipality Authorities Act,²³⁶ which could provide for collection of appropriate fees to maintain stormwater facilities along state highways.²³⁷

Mandate/Citations:	<p>Uniform Construction Code Triennial Education and Certification Requirements:</p> <p>Act 45 of 1999 (Pennsylvania Construction Code Act); Title 34 of the Pennsylvania Code Part XIV (Uniform Construction Code), Chapter 401 (Uniform Construction Code Training and Certification of Code Administrators), Chapter 403 (Administration), Chapter 405 (Elevators and Other Lifting Devices)</p>
Description:	<p>Title 34 of the Pennsylvania Code Chapter 401 regulations, in part, require:</p> <p style="padding-left: 40px;">§ 401.8. Certification renewal.</p> <p style="padding-left: 40px;">(a) A certification holder shall renew a certification every 3 years from date of issuance to continue to act as a code administrator. . . .</p> <p style="padding-left: 40px;">***</p> <p style="padding-left: 40px;">§ 401.9. Continuing education.</p> <p style="padding-left: 40px;">(a) Prior to certification renewal, an applicant shall complete 15 credit hours of continuing education in courses relating to the professional competency of code administrators.</p> <p style="padding-left: 40px;">An applicant with multiple certification areas shall complete 15 credit hours of continuing education for each category after the issuance of the certification or most recent renewal of certification. The applicant is not required to complete more than 45 credit hours for renewal. . . .</p> <p>The certification renewal fee for a municipal building inspector is \$50, and for a third party agency is \$250 (34 Pa. Code § 401.2(a)).</p>

²³⁶ 53 Pa.C.S. § 5601 et seq.

²³⁷ *Storm Water Facilities on State Highways, Final Report*, Pennsylvania State Transportation Advisory Committee, February 2007, pp. 29-30.

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Municipal Issue:	This state mandate was enacted in 1999 and ultimately implemented in 2004. Basing the Uniform Construction Code (UCC) on the most recently adopted triennial version of the International Codes Council codes does prompt uniformity, yet municipalities have to adjust their code practices frequently. While state law does allow for municipal variation at the local level, as long as the municipality adopts a construction code that equals or exceeds the UCC, it still does not address the financial impacts of a code that is periodically being revised. ²³⁸
Origin:	State
Implementing Agencies:	Pennsylvania Department of Labor and Industry Pennsylvania Department of Community and Economic Development
Method of Imposition:	Direct Order
Costs:	Reported Costs from Municipal Survey (2010): Cities, Boroughs, First Class Townships: Average: \$4,627; Median: \$1,834 (based on 68 respondents) Second Class Townships: Average: \$1,774; Median: \$962 (based on 51 respondents)
Methodology:	The municipal survey requested data on how much municipalities, which employed their own building inspectors, spent on required continuing education courses and certification renewals during 2010. The estimated expense was to include tuition, mileage, lodging, and wages while attending continuing education, as well as certification renewal fees.
Federal/State Funding:	None ²³⁹
Survey Recommendations:	1. Reduce the number of continuing education hours required for building code officials. (69% of respondents) 2. Other Recommendations. (40% of respondents)
Mandate/Citations:	Recycling Requirements: Act 101 of 1988 (Municipal Waste Planning, Recycling and Waste Reduction Act) Chapter 7 (Recycling Fee) and Chapter 15 (Recycling and Waste Reduction)
Description:	Act 101 mandates municipalities with populations of 10,000 and greater to implement curbside recycling programs. Municipalities with populations

²³⁸ Knittel, Ed, Pennsylvania State Association of Boroughs, February 11, 2011, office e-mail attachment.

²³⁹ *Note:* A cogent argument can be made that education and certification are not an “unfunded mandate” for municipalities, given that: (1) municipalities were not required to “opt-in” for administration and enforcement of the UCC; (2) if they did decide to opt-in, they are able to hire a third party agency or contract with another municipality to perform the inspections; and (3) if they have their own inspector, they are able to set inspection fees so that the permit applicants are bearing the costs associated with education and certification, not the municipality.

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

	<p>between 5,000 and 10,000 and more than 300 persons per square mile must also establish curbside programs. The act mandates municipalities to separate leaf waste from other municipal wastes. Grants were originally made available to all municipalities to establish recycling programs.</p> <p>Affected municipalities must collect at least three of the following materials: clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper, and plastics. Commercial, municipal, and institutional establishments and community activities within an affected municipality are also required to recycle aluminum, high-grade office paper, corrugated paper, and leaf waste, in addition to other materials chosen by the municipality.</p> <p>The recycling grants, which lessen the impact of the mandate, are funded by a \$2 per ton recycling fee for solid waste processed at a resource recovery facility or, with limited exceptions, for solid waste disposed of at a municipal solid waste landfill.²⁴⁰</p>
Municipal Issue:	The General Assembly established the \$2 per ton fee in Act 101, but has not adjusted it since the law's inception in 1988 to compensate for inflation and increasing costs of recycling program operations. In essence, the recycling grant program does not have enough revenue coming in to keep pace with municipal needs for compliance with the relevant Act 101 requirements. ²⁴¹
Origin:	State
Implementing Agency:	Pennsylvania Department of Environmental Protection
Method of Imposition:	Direct Order
Costs:	<p>Reported Costs from Municipal Survey (2010):</p> <p>Cities, Boroughs, First Class Townships: Average: \$74,409; Median: 18,058 (based on 50 respondents)</p> <p>Second Class Townships: Average: \$44,051; Median: \$8,750 (based on 36 respondents)</p>
Methodology:	The municipal survey requested data on the total municipal <i>unreimbursed</i> expenses for complying with the mandatory Act 101 requirements for recycling. The cost should <i>not</i> include expenses that are reimbursed through state grants.

²⁴⁰ Fountaine, Thomas, representing Pennsylvania League of Cities and Municipalities, February 17, 2011, office e-mail attachment.

²⁴¹ *Id.*

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

State Funding: ²⁴²	<ul style="list-style-type: none"> • \$12,471,000 in Recycling Program Development and Implementation Grants (Act 101, Section 902) • \$1,600,000 in County Recycling Coordinator Grants (Act 101, Section 903) • \$18,000,000 in Recycling Program Performance Grants (Act 101, Section 904) • \$1,000,000 in Household Hazardous Waste Collection Grants (Act 190 of 1996, Small Business and Household Pollution Prevention Program Act)
Survey Recommendations:	<ol style="list-style-type: none"> 1. Require state reimbursement for recycling costs. (66% of respondents) 2. Increase the recycling fee of \$2 per ton for solid waste processed at resource recovery facilities or disposed of at municipal waste landfills. (46% of respondents) 3. Reduce mandatory recycling requirements. (21% of respondents) 4. Other Recommendations. (14% of respondents)

Mandate/Citations:	<p>Municipal Police Officer Certification and In-Service Training:</p> <p>Title 53 of the Pennsylvania Consolidated Statutes Chapter 21, Subchapter D, Section 2161 et seq. (Municipal Police Education and Training); Title 37 of the Pennsylvania Code Chapter 203 (Administration of the [Municipal Police Officers’ Education and Training] Program)</p>
Description:	<p>The municipal police education and training law provides for the formation, powers, and duties of the Municipal Police Officers’ Education and Training Commission (MPOETC). The law charges the Commission with establishing “certification and training standards for police officers employed in the Commonwealth of Pennsylvania.”²⁴³ Regulations published pursuant to statute “guide the process for determining eligibility for certification and standardize the basic academy and annual in-service training curriculum provided to all certified police officers.”²⁴⁴ This law mandates certification basic training of all police officers in the Commonwealth and annual in-service training to maintain certification.</p>
Municipal Issue:	<p>Through 2008, the state provided reimbursement for tuition, 60% of salary, travel, lodging, and subsistence for basic training, and reimbursement for tuition and instructor costs for mandatory in-service training. However, since 2008, the state provides neither as a result of funding cuts. Municipalities must now bear the total costs for both types of training.</p>

²⁴² Commonwealth of Pennsylvania Governor’s Executive Budget 2011-2012, Environmental Protection, Summary of Fund by Appropriation, p. E16.6.

²⁴³ “Welcome to the Municipal Police Officers’ Education and Training Commission Web Site,” Municipal Police Officers’ Education & Training Commission, 2012, <<http://www.mpoetc.state.pa.us/portal/server.pt/community/mpoetc/7545>> (February 2, 2012).

²⁴⁴ *Id.*

Table 17: Summation of Findings on the Most Burdensome Mandates as Identified by the Municipal Associations

Origin: State

Implementing Agency: Pennsylvania State Police/Municipal Police Officers' Education and Training Commission

Method of Imposition: Direct Order

Costs: **MPOETC Actual Costs (2008):**²⁴⁵
 \$ 9,154,503 for Basic Training
 1,318,035 for Mandatory In-Service Training
\$10,472,538 total for Basic and In-Service Training

Reported Costs from Municipal Survey (2010):

Cities, Boroughs, First Class Townships:

	Average		Median	
	Cost	Officers	Cost	Officers
Academy training & certification	\$74,984	10	\$9,500	4
Annual in-service training		20		5

(costs based on 46 respondents)

Second Class Townships:

	Average		Median	
	Cost	Officers	Cost	Officers
Academy training & certification	\$5,941	3	\$2,400	2
Annual in-service training		9		6

(costs based on 97 respondents)

Methodology: **MPOETC:**
 Actual costs are derived from actual reimbursements by the MPOETC in 2008, which was the last year when MPOETC was fully funded to provide reimbursements for basic and mandatory in-service training. However, the actual reimbursements for basic training were \$2,809,734 less than indicated, since MPOETC, pursuant to statute, only reimbursed 60% of regular salaries of police officers while attending training. The total *reimbursed costs* in 2008 for basic and in-service training were \$7,662,804.

Municipal Survey:

The survey requested data on the municipality's expense during 2010 for Academy training and certification and annual in-service training of police officers, including tuition, room, board, and travel costs, as well as salary while attending course(s), and certification renewal fee(s). It also asked how many officers received training and certification and how many received annual in-service training as a means to correlate the municipal costs to the numbers of officers trained.

²⁴⁵ Young, Beverly, Ph.D., Administrative Officer 3, Pennsylvania State Police/Municipal Police Officers' Education and Training Commission, January 3-4, 2012, office e-mail.

**Table 17: Summation of Findings on the Most Burdensome Mandates
as Identified by the Municipal Associations**

Federal/State Funding: None

Survey

Recommendations:

1. Restore state funding for reimbursement of officer tuition, living and travel expenses, and salary while attending a municipal police training school. (77% of respondents)
2. Require prospective officers to receive training prior to employment. (36% of respondents)
3. Require officers to pay for a portion of costs. (29% of respondents)
4. Reduce training requirements. (8% of respondents)
5. Other Recommendations. (8% of respondents)

3.0 Recommendations and Conclusions

To address the objective of SR 323, which requires making findings and recommendations on the potential for cost savings as well as alternative procedures that could provide counties and municipalities with a mechanism for mandate relief, this section presents general legislative, institutional, and specific legislative recommendations. Specific legislative recommendations separately deal with the most burdensome mandates as identified by the statewide association representing counties and the associations representing the other classes of municipalities, and largely reflect their priorities. Subsequently, this section provides recommendations for further study and ends with a general conclusion.

3.1 Recommendations for Mandate Relief

Conducting the SR 323 mandate study has brought a number of recommendations for mandate relief to light. They include fiscal noting or impact statements, reimbursement or cost sharing, appeals processes, a mandate reform proposals website, periodic reviews and assessments of mandates, sunset provisions, delayed effective dates, waivers, and two-thirds vote of the legislature to pass unfunded mandates among others.²⁴⁶ Selected measures have been incorporated into this report's recommendations for mandate relief, which are divided into three categories:

- **General Legislative Recommendations** based on what other states may have adopted and implemented, such as fiscal impact statement, cost sharing, and sunset provisions.
- **Institutional Recommendations**, such as a periodic review and evaluation of mandates, and an ongoing mandate task force.
- **Specific Legislative Recommendations** focused on the most burdensome mandates as identified by the municipal associations.

The general legislative and institutional measures were chosen since they were most used and had some degree of success in other states, and because, in combination, they provide a holistic prospective mandate relief program.

Pursuit of these recommendations would need to involve thorough additional first-hand research into the details of other states' experiences, particularly how they may have implemented the suggested mandate impact statement and cost sharing provisions, and the periodic review of mandates and the state mandate task force. It also would obviously necessitate consultation and

²⁴⁶ See Section 2.1.3, Other States' Recommendations for Mandate Relief, Appendix B, State Mandate Provisions, and Appendix C, Review of Other States' Mandate Provisions and Recommendations for Senate Resolution 323 Mandate Study.

3.1 Recommendations and Conclusions: Recommendations for Relief

coordination with appropriate committees and agencies within the Pennsylvania General Assembly and Executive Branch, and with the statewide municipal associations.

3.1.1 General Legislative Recommendations

This section provides three general legislative recommendations, which may be viewed as a collective strategy to prospectively address unfunded or underfunded mandates. This is especially true for the mandate impact statement and cost sharing provisions. Individually, neither of them may be perceived as a complete solution based on findings from research of mandate provisions in other states.

A critical underlying tenant of these recommendations is a strong state-local relationship. States that have good communications between state and local governments generally have local governments that are more satisfied with the result of mandate legislation even though it may not always work out in the local governments' favor. The challenge is to use mandate impact statement and cost sharing provisions as part of a strategy to facilitate discussions on how to more equitably share the costs of state goals. Also key is expanding these discussions to address the legitimacy of the proposed policy behind the mandate so that the basis for any decision is beyond that of cost.²⁴⁷

3.1.1.1 Mandate Impact Statement Provisions

Recommendation: Establish a prospective municipal mandate impact statement process in statute, modeled after that in other states, in which the Local Government Commission identifies proposed mandates that may have a defined greater than de minimis impact on local governments. At a given point in the legislative process, either the respective Appropriations Committees or, similar to other states, the nonpartisan Independent Fiscal Office develops an estimate based on available cost data or, if unavailable, cost data from a local cost estimation network of qualified professionals. The estimate should reflect a net cost, if possible, taking into account any offsetting dedicated funding from federal, state, local, or other sources.

According to *The Council of State Governments 2010 The Book of the States*, 48 states and three U.S. territories have some sort of fiscal note requirement. Of those, 42 states and two territories have fiscal note requirements that address financial impacts on local governments.²⁴⁸

In Pennsylvania, the Pennsylvania Code and the Senate and House rules provide for fiscal notes. Title 101 of the Pennsylvania Code, Section 9.64 (Fiscal Notes), only requires a fiscal note in the

²⁴⁷ Kelly, Janet M., *State Mandates, Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, National League of Cities, Washington, D.C., 1992, pp. vii-viii.

²⁴⁸ Wall, Audrey, "Chapter 3: Legislative Branch," in: *The Council of State Governments 2010 The Book of the States*, The Council of State Governments, Lexington, Kentucky, 2010, <http://knowledgecenter.csg.org/drupal/system/files/Table_3.18.pdf> (July 14, 2012).

3.1 Recommendations and Conclusions: Recommendations for Relief

Senate if a bill entails expenditure of Commonwealth funds or in the House if a bill entails expenditure of Commonwealth funds or loss of revenues. Senate Rule XII, Section 1(b) (pertaining to the passage of bills) additionally provides for fiscal notes on qualified bill amendments if they have a fiscal impact on the Commonwealth or a political subdivision, in part stating:

If a bill has been amended after being reported by the Appropriations Committee and if the amendment may require the expenditure of Commonwealth funds or funds of a political subdivision or cause a loss of revenue to the Commonwealth or a political subdivision, the Appropriations Committee shall make a fiscal note reflecting the impact of the amendment available to the Senators.²⁴⁹

House Rule 19(a) (pertaining to fiscal notes) also seems to imply a fiscal note that relates to political subdivisions, in relevant part providing:

(1) No bill, except a General Appropriation bill or any amendments thereto, which may require an expenditure of Commonwealth funds or funds of any political subdivision or which may entail a loss of revenues overall, or to any separately established fund shall be given third consideration reading on the calendar until it has first been referred to the Appropriations Committee for a fiscal note, provided however that the Rules Committee may by an affirmative vote of three-quarters of the entire membership to which such committee is entitled:

(a) Waive the recommittal to the Appropriations Committee and provide that the fiscal note be attached to the bill while on the active calendar. The providing of such note shall be a priority item for the Appropriations Committee; or

(b) Waive the necessity of a fiscal note on any bill which it deems to have a de minimis fiscal impact or which merely authorizes, rather than mandates, an increase in expenditures or an action that would result in a loss of revenue.²⁵⁰

The objective of the subject recommendation is to clarify and somewhat expand upon these provisions to more definitively address potential fiscal impacts of proposed legislation on local governments.

Generally, the two most notable shortcomings of fiscal notes have been: (1) getting the fiscal notes into the legislative process early enough, and (2) determining accurate and reliable cost estimates for a legislature.²⁵¹ To overcome the first shortcoming, a number of legislative

²⁴⁹ “(2011-2012) Rules of the Senate of Pennsylvania,” June 7, 2011, amended March 6, 2012 <<http://www.pasen.gov/rules/2011SenRules.html>> (July 26, 2012).

²⁵⁰ “(2011-2012) General Operating Rules of the House of Representatives,” January 4, 2011, <<http://www.house.state.pa.us/rules/2011HouRules.htm>> (July 16, 2012).

²⁵¹ MacManus, Susan A., “Mad About Mandates: The Issue of Who Should Pay for What Resurfaces in the 1990s,” *Publius: The Journal of Federalism*, 21, Summer 1991, p. 60.

3.1 Recommendations and Conclusions: Recommendations for Relief

agencies in other states, which the LGC staff contacted, prepare the fiscal note or impact statement prior to the bill being considered in committee. To overcome the second shortcoming, a number of states, particularly Florida, North Carolina, Texas, and Virginia, as well as the Congressional Budget Office (CBO), reportedly have established successful local cost estimation networks or “fiscal impact teams” to develop reliable cost estimates.²⁵² However, so as not to overwhelm these networks or teams, it is suggested to never use them when a reliable alternative source of cost data is available.²⁵³

If the Legislature’s best option is to use the cost estimation network or fiscal impact team because a reliable alternative source of data is unavailable, possibly an Appropriations Committee or, as in other states, a qualified bipartisan legislative agency such as the Independent Fiscal Office, conceivably could facilitate this task for the mandate impact statement, providing precisely framed questions, a legitimate, objective information gathering process, and a supportive relationship with the local estimators.²⁵⁴ Fiscal impact team volunteers should possess the analytical skills necessary to produce high quality estimates.²⁵⁵ According to Dr. Janet Kelly of the University of Louisville:

The CBO network of cost estimate volunteers consists of professionals in states and localities (primarily, but not exclusively, city and county managers and finance officers) who agree to provide the data the CBO needs to generate a cost estimate for a legislative proposal. . . . There is no shortage of local governments willing to be represented, nor of local government professionals willing to provide analysis on the CBO’s terms.²⁵⁶

In having successfully contacted legislative staff in three states—Florida, Texas, and Virginia—for this study, the LGC staff found those states’ use of fiscal impact teams to prepare municipal fiscal notes or impact statements ongoing and successful. Richard Herring, who worked for the **Florida** Legislature for 27 years, most recently as special counsel to the President of the Senate, indicated that in preparation of a bill analysis, which includes a fiscal impact statement:

[Professional staff] typically rely heavily on 1) the Florida Association of Counties, which will poll its 67 members; 2) the Florida League of Cities, which will poll a large sample of its municipality members; and 3) the legislative Office of Economic and Demographic Research, which has the lead role in Florida’s formal consensus estimating process (from the national economy and state demographics to next year’s revenues and public school enrollments).²⁵⁷

²⁵² Kelly, Janet M., “Institutional Solutions to Political Problems: The Federal and State Mandate Cost Estimation Process,” *State and Local Government Review*, Vol. 29, No. 2, Spring 1997: 90-97, 92.

²⁵³ *Id.*, p. 95.

²⁵⁴ *Id.*, pp. 92-93.

²⁵⁵ *Id.*, p. 92.

²⁵⁶ *Id.*, p. 95.

²⁵⁷ Herring, Richard, Capital Analytics, August 17, 2012, office e-mail. *Note:* Mr. Herring retired from the Florida Senate less than two years ago to help form Capital Analytics.

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Tyra Peterson, an analyst on the Texas Legislative Budget Board (LBB) Estimates and Revenue Analysis Team, indicated that after a bill is filed and read, she makes a determination whether it may have a local government fiscal impact. If so, it is sent to the appropriate network for cost estimation; that is the Texas Municipal League (all cities), select cities if certain factors (such as population) come into play, special districts, or the Texas Association of Counties. To minimize bias, Ms. Peterson asks the association or municipality only for actual numbers, along with the municipal/local government budget and the department budget to place the numbers in context (i.e., “only the facts”), and reports numbers from and names of the localities on the fiscal note for accountability and legitimacy.²⁵⁸

Susan Smith, Local Government Policy Manager for the **Virginia** Commission on Local Government (CLG), described a system similar to that of Texas. Generally, the Virginia Division of Legislative Services makes a determination whether a legislative proposal may have a fiscal impact on local governments and if so, the CLG prepares a local fiscal impact analysis. For most bills, the CLG relies on a network of the Virginia Municipal League (of cities), the Virginia Association of Counties, and less frequently Virginia’s towns for estimates. The Commission requests that estimates provide a net expenditure increase and/or a net revenue reduction, along with the local government’s methodology, factors affecting the impact, and other considerations. Like the Texas LBB, the CLG reports numbers from and names of the municipalities, which increases accountability and legitimacy.²⁵⁹

One option for delimiting mandates that require mandate impact statements is to exclude aspects of the law that are beyond the effect of state statute, essential to the creation and function of local governments, and fundamental to democratic representation and the will of the electorate. This rationale, consistent with the definition of mandate in this report, could restrict impact statements to mandates that are a direct order or condition of aid, and that are not any duties imposed by, required to implement, or necessary to avoid violating:

- A court order.
- A federal law.
- The Constitution of the United States.
- The Constitution of Pennsylvania.
- Statutory restrictions on home rule or optional plan municipalities.
- A law concerning the form, organization or structure of a municipality.
- A law governing elections.
- A law designating public officers, or their duties, powers and responsibilities.
- A law regarding the ethics of public officials or employees or the protection of the public from malfeasance, misfeasance or nonfeasance by an official or employee of a municipality.

²⁵⁸ Peterson, Tyra, Estimates and Revenue Analysis Team, Texas Legislative Budget Board, August 20, 2012, telephone conversation. *See also* Legislative Budget Board, n.d., <<http://www.lbb.state.tx.us/>> (September 5, 2012).

²⁵⁹ Smith, Susan, Local Government Policy Manager, Virginia Commission on Local Government, September 5, 2012, telephone conversation. *See also* “Legislative Fiscal Impact Review, 2012 General Assembly Session,” Commission on Local Government, Department of Housing and Community Development, Commonwealth of Virginia, n.d., <<http://www.dhcd.virginia.gov/index.php/commission-on-local-government/legislative-fiscal-impact-review.html>> (September 5, 2012).

3.1 Recommendations and Conclusions: Recommendations for Relief

- A law prescribing administrative practices and procedures for local governing bodies.
- A law that involves the administration of justice or procedures for administrative and judicial review of actions taken by local governing bodies.
- Existing contracts, including collective bargaining agreements.
- A voter referendum.²⁶⁰

Another option is to provide for a “process waiver,” possibly expanding on the type of provision in House Rule 19(a)(1)(b). Such a waiver could be predicated on general agreement on a legislative proposal among legislators, local governments, and other stakeholders. Beyond saving staff resources for impact statement preparation, this option could be especially advantageous for legislation that has to move quickly.

3.1.1.2 Cost Sharing Provisions

Recommendation: Establish a prospective cost-sharing policy and strategy in statute that are limited to mandates which comport with an adopted definition of mandate and are based on the mandate impact statement developed during the legislative process. The cost sharing policy should provide that if a newly enacted law imposes increased expenditures or reduced revenues on local governments, the law should provide that the Commonwealth share in the cost, unless the law has a de minimis effect, as defined, or if the General Assembly overrides the cost-sharing requirement by two-thirds vote of the Senate and the House.

Of the 27 states identified as having constitutional, statutory, and/or regulatory provisions that address mandates on local governments, at least 22 of those have provisions that in some way address reimbursement.²⁶¹ The reimbursement provisions somewhat vary from state to state, ranging from Massachusetts where a state law or regulation imposing any direct service or cost obligation upon any city or town shall be effective only if the community votes to accept the law or regulation or the Commonwealth assumes the cost of compliance unless such law has been enacted by two-thirds vote of the legislature,²⁶² to Washington where “the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any political subdivision of the state unless the subdivision is fully reimbursed by the state for the costs of the new programs or increases in service levels.”²⁶³ More states have constitutional than statutory reimbursement provisions.

The Pennsylvania Constitution authorizes the General Assembly to “establish as a class or classes of subjects of taxation the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, and for any such class or classes, uniform standards and qualifications. . . . No exemption . . . from any tax upon real property shall be granted by the General Assembly

²⁶⁰ See Section 2.4.1 (Defining Mandate for the Purposes of Senate Resolution 323) for an explanation of the exceptions.

²⁶¹ See Appendix B, State Mandate Provisions.

²⁶² Mass. Gen. Laws ch. 29, § 27C(a).

²⁶³ Wash. Rev. Code § 43.135.060.

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under this clause unless the General Assembly shall provide for the reimbursement of local taxing authorities by or through the Commonwealth for revenue losses occasioned by such exemption.”²⁶⁴ However, the Legislature has not enacted any legislation that provides for real property tax exemptions for the above-cited classes that contains an express Commonwealth reimbursement to local governments.

All but three of the 22 states have varying numbers and types of exceptions to the definition of mandate, which limit the extent of reimbursement. This report captures many of the common exceptions in its definition of mandate, which the previous recommendation enumerates and Section 2.4.1 (Defining Mandate for the purposes of SR 323) explains.

In researching the mandate reimbursement provisions in other states for possible application in Pennsylvania, there were four objectives: (1) minimize the bureaucracy necessary to implement a reimbursement program; (2) keep the method of determining reimbursement as simple as possible; (3) consider state reimbursement programs that have demonstrated success; and (4) recommend a program that was not too aggressive, since the Commonwealth currently has no general reimbursement program for local governments. Taking these objectives into consideration, programs in two states stood out, those in Tennessee and Massachusetts.

Tennessee has a very simple provision in its constitution, “No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.”²⁶⁵ Tennessee’s joint Fiscal Review Committee reportedly prepares a fiscal note for every bill that would result in a local cost. The municipal associations work together to ensure that Members of the General Assembly are aware of the cost and to facilitate a cost-sharing arrangement with the state. Even though the cost estimates may be politicized at times and cost sharing may be inequitable at times, Tennessee’s local governments purportedly are generally satisfied with the reimbursement process and its outcomes. Although Tennessee has one of the weakest mandate reimbursement provisions, it allegedly has fewer unfunded mandates than other states with much stronger provisions.²⁶⁶

The Tennessee Code enumerates certain taxes—retailers’ sales tax, gross receipts tax, income tax on dividends and interest, special privilege tax on beer, gross receipts tax on alcoholic beverages consumed on premises, and tax on sale or distribution of wine and spirits—from which a statutorily specified percentage of each provides “the base apportionment for the purpose of determining the availability of additional state revenues to meet the requirement of the Constitution of Tennessee.”²⁶⁷ In addition, the annual appropriations act provides that a law of general application mandating a local cost over \$1,000,000 must be specifically appropriated or be deemed invalid.²⁶⁸

²⁶⁴ Pa. Const. art. VIII, § 2(b)(ii).

²⁶⁵ Tenn. Const. art. 2, § 24.

²⁶⁶ Kelly, Janet M., “Mandate Reimbursement Measures in the States,” *American Review of Public Administration* Vol. 24, No. 4, December 1994, p. 359, 370.

²⁶⁷ Tenn. Code § 9-4-5301.

²⁶⁸ Geise, Lucian, Executive Director, Fiscal Review Committee, Tennessee General Assembly, September 13, 2012, office e-mail.

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(a) Notwithstanding any provision of the law to the contrary, no law of general application which imposes increased expenditure requirements on cities and counties in excess of one million dollars (\$1,000,000.00) shall take effect unless the state share of the cost of such law is specifically appropriated by the provisions of this act.

(b) From the growth in state-shared taxes apportioned to cities and counties and from the increase in local revenue generated from passage of any general law during the 2012 annual session of the 107th General Assembly not otherwise appropriated pursuant to this act, a sum sufficient hereby is appropriated to fund the state share of the cost of any law of general application which requires, without local discretion, that incorporated municipalities or county governments increase expenditures as a direct consequence of passage of any general law.²⁶⁹

In general, the Tennessee constitutional provision is not a prohibition on unfunded or underfunded mandates, but is an acknowledgement of need. Nevertheless, local governments and the General Assembly reportedly maintain a good working relationship.²⁷⁰

Massachusetts is known for the strong reputation of its mandate bureaucracy, not necessarily for its mandate constitutional and regulatory provisions. The Commonwealth's Division of Local Mandates in the Office of State Auditor is said to have one of the most adept institutionalized cost estimation systems in the country because of its level of accuracy and its complement of "highly skilled professionals with no political agenda" as perceived by both states and localities.²⁷¹

3.1.1.3 Sunset Provision

Recommendation: Establish a prospective sunset provision in regulation, which would require a bill's prime sponsor and the appropriate standing committee in conjunction with the affected municipal association(s) to consider a sunset provision, possibly of five or ten years, in proposed mandate legislation for the purpose of causing the Legislature to revisit the law containing a mandate for which its nature, form, effectiveness, cost, durability, or lifespan may be questionable at the time of its enactment.

A number of reasons have been cited to consider a sunset provision in legislation that may impose a mandate on local governments. At times, legislatures enact mandates as permanent solutions to temporary problems. They may be reacting to an isolated incident or a crisis situation. In some cases, the mandate may not work very well. In others, it may be enforceable but not enforced; municipalities may stop complying and the state may react through lack of enforcement. Often, it is not possible to determine the cumulative costs of mandates when they

²⁶⁹ 2012 Tenn. Public Acts Ch. 1029 § 42.

²⁷⁰ Jenkins, Chad, Deputy Director, Tennessee Municipal League, September 14, 2012, telephone conversation.

²⁷¹ *Id.*, pp. 355, 369. See also Division of Local Mandates, Massachusetts State Auditor, 2012, <<http://www.mass.gov/auditor/about-the-state-auditors-office/division-local-mandates.html>> (September 6, 2012).

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are enacted. Moreover, legislation on compelling issues typically takes precedent over the possible repeal of mandates that are no longer actively imposed or applied, thereby maintaining archaic mandates by default.²⁷²

In contacting the Council of State Governments in reference to its *Book of the States 2012*, Chapter 3: State Legislative Branch, specifically Table 3.27, Summary of Sunset Legislation, Audrey Walls, author of the chapter, indicated that the states' sunset provisions in statute by and large apply to agencies, boards, commissions, and the like. They overall do not apply to laws of general applicability, such as those that may contain mandates. She further observed that sunset laws were more pervasive historically, but that fewer states currently have such laws. Ms. Walls believed that presently most legislatures incorporate sunset provisions, as they may deem appropriate, in individual pieces of legislation.²⁷³

3.1.2 Institutional Recommendations

This section suggests two institutional recommendations—periodic review and evaluation of mandates, and an ongoing state mandate task force. Programs in Massachusetts and Virginia served as the basis for the first recommendation, and legislation in Connecticut and Virginia provided the impetus for the second. Sufficient staff is essential to carrying out both recommendations. An ongoing state mandate task force is central in facilitating the success of most of the recommendations.

3.1.2.1 Periodic Review and Evaluation of Mandates

Recommendation: Establish in regulation a prospective review or assessment of statutory mandates placed on local governments every five years from the effective date of the mandate or its significant modification. The review would be limited to new mandates, newly identified mandates, mandates that have been so substantially modified as to create a new mandate, and mandates that a state mandate task force determines should be reassessed. No mandate becomes subject to assessment until it has been in effect for at least twenty-four months. A state mandate task force, with support of the Local Government Commission, would coordinate the review. The task force would make recommendations to the General Assembly on any mandates that might be modified or eliminated and the rationale for the recommendations.

A few states, including Massachusetts and Virginia, conduct periodic reviews or assessments of mandates. In **Massachusetts**, statute provides for the review requirement, which charges a central local mandate agency with the task:

²⁷² Kelly, Janet M., *State Mandates, Fiscal Notes, Reimbursement, and Anti-Mandate Strategies*, National League of Cities, Washington, D.C., 1992, pp.76-77.

²⁷³ Walls, Audrey, Council of State Governments, September 10, 2012, telephone conversation.

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The [Division of Local Mandates] shall review every five years those laws and administrative regulations which have a significant financial impact upon cities or towns. For the purposes of this section ‘Significant financial impact’ is defined as requiring municipalities to expand existing services, employ additional personnel, or increase local expenditures. Said division shall determine the costs and benefits of each such law and regulation, and submit a report to the general court of each session together with its recommendation, if any, for the continuation, modification or elimination of such law or regulation.²⁷⁴

In **Virginia**, an executive order provides for the assessment, which a central agency on local government coordinates, but responsibility lies with the executive branch agencies:

. . . [I]n order to examine the fiscal as well as other impacts of existing mandates on localities, all State executive branch agencies are required to review mandates that they administer on local governments, and to report which, if any, might be altered or eliminated without interruption of local service delivery or undue threat to the health, safety, and welfare of citizens of the Commonwealth. The Commission [on Local Government] is responsible for coordinating the scheduling of the assessments and for notifying the Governor and the General Assembly when an agency assessment recommends the alteration or elimination of a mandate.

The assessment . . . is governed by Executive Order 58 that took effect in October 2007 Executive Order 58 . . . limited assessment activities to four types of mandates: (1) new mandates; (2) newly identified mandates; (3) mandates that have been so substantially modified as to create a new mandate; and (4) mandates that the Commission, after duly considering input from local governments, state agencies, interest groups, and the public, has determined should be reassessed. In any case, no such mandate becomes subject to assessment until it has been in effect for at least twenty-four months, and no mandate can be reassessed more than once every four years unless it has been so substantially modified as to create a new mandate.²⁷⁵

The recommendation incorporates key provisions from both states.

3.1.2.2 Ongoing State Mandate Task Force

Recommendation: Establish in statute an ongoing state mandate task force comprised of representatives from the General Assembly, certain legislative service agencies, statewide municipal associations, executive branch agencies,

²⁷⁴ The General Laws of Massachusetts, Chapter 11, Section 6B, April 30, 2009, <<http://www.mass.gov/legis/laws/mgl/11/11-6b.htm>> (September 7, 2010) (emphasis added).

²⁷⁵ Commission on Local Government, Department of Housing and Community Development, Commonwealth of Virginia, *2009 Catalog of State and Federal Mandates on Local Governments*, November 2009, p. 2-3, <http://www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/2009_mandates_catalog.pdf> (September 7, 2010).

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possibly the Independent Fiscal Office, and others with expertise in mandates on local governments at the discretion of the chair and upon approval of two-thirds of the task force members. The task force would have the purpose of helping to carry out the recommendations of this report and possibly conducting potential follow-up studies. Such a task force would be especially advantageous for the mandate impact statement process.

The **Connecticut** Senate passed a bill more than 20 years ago that would have established a State Mandate Task Force, which provided in relevant part:

(b) There is established a task force on state mandates to local governments, which shall be composed of: (1) The chairpersons and ranking members of the joint standing committee on appropriations, or their designees; (2) the chairpersons and ranking members of the joint standing committee on government administration and elections, or their designees; (3) the secretary of the office of policy and management, or his designee; (4) the president of the Connecticut Conference of Municipalities, or his designee; (5) the chairperson of the Council of Small Towns, or his designee; (6) a member of the University of Connecticut Institute of Public Service, who shall be designated by the president of The University of Connecticut; and (7) the president of the Connecticut Public Expenditure Council, or his designee. The chairpersons of the joint standing committee on government administration and elections, or their designees, shall serve as chairpersons of the task force. The chairpersons may request assistance from persons having expertise in the mandates specified in subsection (c) of this section to assist the task force in carrying out the purposes of this section.

(c) The task force shall: (1) Identify and catalog existing state mandates to local governments, including local government organization and structure mandates, due process mandates, service mandates, interlocal equity mandates, tax exemption mandates and personnel mandates; (2) estimate the cost of such mandates to local governments and the extent to which local governments are not fully reimbursed by the state for the cost of such mandates; (3) evaluate the fiscal, programmatic and other consequences of such mandates on local governments; (4) recommend mandates (A) which should be eliminated, (B) which should be modified, (C) for which local governments should be fully or more fully reimbursed and (D) which should remain as currently written and funded, and document the reasons for the recommendations under subparagraphs (A), (B) and (C) of this subdivision.²⁷⁶

More recently in 2011, Governor McDonnell of **Virginia** created the Governor's Task Force for Local Government Mandate Review. The five-member Task Force is a result of legislation enacted during the 2011 General Assembly Session for the purpose of reviewing state mandates

²⁷⁶ "An Act Concerning State Mandates to Local Governments," State of Connecticut, Substitute Senate Bill No. 801, General Assembly January Session, A.D., 1991.

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imposed on localities and recommending temporary suspension or permanent repeal of such mandates as appropriate.²⁷⁷ Pursuant to the Code of Virginia, Section 15.2-2903:

The Commission [on Local Government] shall have the following general powers and duties:

8. At the direction of the Governor, to assist a five-member task force appointed by the Governor to review state mandates imposed on localities and to recommend temporary suspension or permanent repeal of such mandates, or any other action, as appropriate. The Governor shall have all necessary authority granted under § 2.2-113 [Temporary suspension of state mandates], or any other provision of law, to implement the task force recommendations or may recommend legislation to the General Assembly as needed. The task force shall be appointed by and serve at the pleasure of the Governor and shall serve without compensation. The task force may include city or town managers, county administrators, members of local governing bodies and members of appointed or elected school boards. All agencies of the Commonwealth shall provide assistance to the Commission, upon request. The provisions of this subdivision shall expire July 1, 2014.

The Task Force submitted its first interim report to the Governor on January 16, 2012.

3.1.3 Specific Legislative Recommendations

Specific legislative recommendations focus on the most burdensome mandates that the municipal associations identified and largely reflect the associations' priorities. They take into consideration the top recommendations from the surveys of counties and municipalities, which at least 50% of the respondents sanctioned, recommendations from other relevant studies, and current and recently enacted legislation. Nevertheless, the recommendations omit mandates for which legislation has recently been enacted that sufficiently address the mandates or for which the mandates receive reimbursement.

In evaluating the priority of these mandates, it is worth reflecting on the ratings and costs of the mandates provided by the survey results.²⁷⁸ The mandates with reported high costs and high ratings or low costs and low ratings are relatively easy to differentiate. However, mandates for which some disparity exists between reported ratings and costs, such as "Fees Paid to Constables" for counties or "Act 101 Recycling Requirements" for municipalities, may be more difficult to prioritize due to the discrepancy between the nonmonetary or perceived effect of the mandate versus the cost.

²⁷⁷ "Governor McDonnell's Task Force for Local Government Mandate Review, First Interim Report to the Governor," January 16, 2012, p. 1. *See also* "Task Force for Local Government Mandate Review," Virginia Department of Housing and Community Development, n.d., <<http://www.dhcd.virginia.gov/index.php/commission-on-local-government/mandates-on-local-governments/force-for-local-government-mandates-review.html>> (September 6, 2012).

²⁷⁸ *See* Section 2.4.3.4, County Survey Results, and Section 2.4.3.5, Municipal Survey Results.

3.1.3.1 Specific Legislative Recommendations for County Mandates

Of the identified most burdensome mandates by the County Commissioners Association of Pennsylvania, the recommendations do not address “Maintaining the Office of Jury Commissioner” and “Competitive Bidding and Related Advertising Requirements.” Act 108 of 2011, which amended the County Code to authorize abolishing the office of jury commissioner, provided relief from the former. Act 86 and Act 89 of 2011, which amended the County Code and Second Class County Code, respectively, to increase the bidding limits, provided relief from the latter.

Notably, the legislation listed below provides recent examples of proposals to alleviate the mandates on counties. With the current legislative session coming to an end, CCAP views these proposals as starting points for future mandate relief legislation.

County 911 Services Funding

Recommendations:

- Assure that telephone system providers are properly collecting and remitting the subscriber fees that support the development, deployment, and operation of the 911 systems.
- Increase subscriber fee to cover 100% of costs.
- Balance methodologies for collection and distribution of subscriber-based funding.

Other Relevant Recommendations from the Act 118 of 2010 Report:²⁷⁹

- Providers of wireline, wireless, and VoIP telephony services whose customers can connect to 911 services should be required to register with the Pennsylvania Emergency Management Agency (PEMA).
- As part of the surcharge remittance process, telephony providers should be required to attest to their compliance with Pennsylvania’s 911 surcharge laws. The General Assembly may also wish to require providers to furnish subscriber account information.
- The General Assembly should adjust the maximum surcharge that counties are allowed to charge for wireline access lines for inflation, given that the maximum has remained the same since 1990.
- The General Assembly should amend Title 35 of the Pennsylvania Consolidated Statutes Chapter 53 to allow VoIP companies to submit their surcharges directly to PEMA.
- The General Assembly should clarify whether governmental entities are required to submit 911 surcharges.
- The General Assembly should amend Chapter 53 to allow PEMA to develop a formula for distributing wireless grant funds to counties, rather than approving expenditures on a case-by-case basis. This would provide an incentive for Public Safety Answering Points (PSAP) to control staffing and encourage PSAP consolidation.

²⁷⁹ *Pennsylvania’s 911 Emergency Telephone System: Funding, Expenditures, and Future Challenges and Opportunities*, Legislative Budget and Finance Committee, Harrisburg, Pennsylvania, May 2012, pp. S1-S13.

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- In any rewrite of Chapter 53, the General Assembly should consider deleting the provision allowing certain cities to maintain their own 911 systems.
- The General Assembly should amend Chapter 53 to be compatible with Next Generation technologies and allow PEMA greater authority to direct the statewide 911 system's transition to Next Generation (broadband) technologies.

County Prison Compliance with Department of Corrections' Regulatory Standards

Recommendations:

- Reduce the prison population by establishing intermediate punishment as an alternative sentencing mechanism for nonviolent criminals.
- Support state initiatives promoting public awareness of limitations of incarceration and the value of increased investment in prevention, intervention, and diversion programs.
- Create drug and mental health courts.

The recommendations are addressed, in part, by the following proposed legislation, which is needed in conjunction with Act 122 of 2012, summarized below, to truly save state and county financial resources; otherwise Act 122 is an administrative unfunded mandate.

House Bill 135 of 2011 (Printer's Number 1710) would amend the act of November 22, 1978 (P.L. 1166, No. 274), referred to as the Pennsylvania Commission on Crime and Delinquency Law, in relevant part, by: (1) providing for advisory committees among the powers and duties of the Pennsylvania Commission on Crime and Delinquency (PCCD); (2) enumerating powers and duties of the Juvenile Justice and Delinquency Prevention Committee (JJJPC) to include: (a) participating in the development of a comprehensive plan for juvenile justice and delinquency prevention; (b) performing functions related to the direct approval and disbursement of financial assistance; (c) providing advice to the PCCD on the definition, development, and correlation of programs and projects, and the establishment of priorities for juvenile justice and delinquency prevention; (d) developing standards, methods, and procedures for evaluating and monitoring services; (e) providing advice to the PCCD in defining and collaborating with all state agencies on planning and programming related to juvenile delinquency prevention, and reduction and prevention of violence by and against children; (f) providing advice and assistance to the PCCD in designing and promoting comprehensive research-based initiatives; and (g) submitting such reports to the Governor and General Assembly as may be required by federal law; and (3) clarifying the powers and duties of the Targeted Community Revitalization and Crime Prevention Advisory Committee, making them similar to those of the JJJPC, but instead pertaining to crime prevention efforts and revitalization of high-crime and distressed communities. Status: Passed by the House (191-0) and, after first consideration, re-referred to the Senate Appropriations Committee on June 4, 2012.

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The recommendations are addressed, in part, by the following recently enacted legislation:

Act 122 of 2012 will partially address the above recommendations and thus purportedly will save the state and county financial resources, even though it does not directly address the subject mandate. Generally, the act “amends Title 18 (Crimes and Offenses), Title 42 (Judiciary) and Title 61 (Prisons & Parole) to implement the policy recommendations of the Governor’s Justice Reinvestment Work Group, providing a data-driven approach to reduce corrections spending and reinvesting a portion of the savings in strategies that can improve public safety, including components impacting county and state alternative sentencing programs, safe community reentry, state parole, accountability of community corrections, and placement of technical parole violators.”²⁸⁰

*Separately, CCAP is working with the Administrative Office of Pennsylvania Courts and others on “problem-solving courts.” Their cooperation has meant that, with proper planning, counties can develop these alternatives on a cost-effective basis. Diversion and treatment is in most cases less expensive than incarceration, with better results for the offender and the community.*²⁸¹

County Prison Inmate Medical Costs

Recommendations:

- Prohibit health care providers from charging county prisons more than the maximum allowable rate under the medical assistance program for inpatient care (*see* Act 22 of 2011).
- Permit the state portion of Medical Assistance (MA) benefits to be retained until there is a conviction, allowing for costs to be covered in part, although foregoing the federal share.
- Suspend, rather than terminate, inmate eligibility for MA, Medicare, and veterans benefits to allow those benefits to be more quickly restored at the time of release.

The recommendations are addressed, in part, by the following recently enacted legislation:

Act 22 of 2011 amended the Public Welfare Code to, among other things, afford some, but not total, relief from this mandate, providing anticipated cost savings for counties and the Pennsylvania Department of Corrections. The act authorizes that inmates of state or county correctional institutions who meet certain eligibility/income requirements qualify for medical assistance for inpatient care. However, the inmates’ county of residence must contribute the state share of the medical care for inmates in county correctional institutions. In addition, a health care provider who provides inpatient care to an inmate may not charge the state or county correctional institution or its medical services contractor more than the maximum allowable rate payable under the medical assistance program. Similarly, a health care provider who provides outpatient care to an inmate may not charge the state or county correctional institution or its medical services contractor more than the maximum allowable rate payable under the Medicare program.

²⁸⁰ “Acts Affecting County Government 2012,” County Commissioners Association of Pennsylvania, 2012, <<http://www.pacounties.org/GovernmentRelations/Documents/ActsAffectingCountyGov2012.pdf>> July 22, 2012.

²⁸¹ Hill, Douglas, Executive Director, County Commissioners Association of Pennsylvania, office e-mail, August 31, 2012.

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County Portion of Costs for Medicaid Residents in Nursing Facilities

Recommendation:

- Amend the Public Welfare Code to adjust the county's share.

The recommendation is addressed by the following proposed legislation:

House Bill 1361 of 2011 (Printer's Number 1602) would repeal Section 472 of the Public Welfare Code, which provides for funding of indigents in nursing homes with Medicaid resources and county funding. The repeal of this section would relieve the county from paying the remaining costs not covered by Medicaid payments. Status: Referred to the House Health Committee on April 25, 2011.

Preventable Serious Adverse Events Act

Recommendations:

- Increase Medical Assistance rates.
- Provide for a periodic adjustment of the per diem rate paid by the Department of Public Welfare to a nursing facility based on the nursing facility's case-mix index.

Mandatory Reporting of Alleged Abuse, Neglect, and Misappropriation of Property by Nursing Home Employees

Recommendations:

- Require all pertinent agencies to use uniform reports.
- Provide for one investigative clearinghouse.

Fees Paid to Constables

Recommendations:

- Direct that magisterial fees related to outstanding criminal warrants go to the county, not the Pennsylvania Department of Corrections.
- Modify the method of payment whereby constables receive a fee on a per-docket basis, possibly resulting in multiple payments for one service.
- Eliminate the requirement for a constable to be present at the polls on Election Day.

The third recommendation is addressed by the following proposed legislation:

Senate Bill 1175 of 2011 (Printer's Number 2049) would amend Title 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, Chapter 71 (Constables), by: (1) making a constable's service at a polling place during an election and while votes are being counted optional; and

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(2) repealing the criminal penalty for a constable who neglects or refuses to perform the duties under the Pennsylvania Election Code. Status: Given first consideration by the Senate and subsequently re-referred to the Senate Appropriations Committee on May 2, 2012.

Requirement for Counties to Have a Full-Time District Attorney

Recommendations:

- Make the annual 65 percent salary reimbursement to each county in a timely manner.
- Require quarterly reimbursement payments from the Commonwealth to the county.
- Relate the salary to the class of county, versus the salary of court of common pleas judges.

The first two recommendations are addressed by the following proposed legislation:

The LGC introduced companion bills in the Senate and House to address this mandate. Specifically, **Senate Bill 1549 of 2012** (Printer's Number 2254) along with **Senate Bill 1550 of 2012** (Printer's Number 2255), and **House Bill 2418 of 2012** (Printer's Number 3619) along with **House Bill 2419 of 2012** (Printer's Number 3620) would amend the County Code and Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, respectively, to provide that 65% of the district attorney's annual salary shall be paid in equal quarterly installments at the beginning of each quarter from the Criminal Justice Enhancement Account. Status: Senate Bills 1549 and 1550 referred to the Senate Judiciary Committee on June 6, 2012, and House Bills 2418 and 2419 referred to the House Local Government Committee and the House Judiciary Committee, respectively, on May 31, 2012.

Duties and Compensation of County Auditors

Recommendations:

- Allow counties to use their certified public accountants to perform the required audits and reports, limiting elected auditors' responsibilities to other existing functions provided in statute.
- Amend the county salary law, allowing the annual salary for elected auditors to be established in the same manner as other elected officials, removing per diems and mileage pay.

Collection of County Real Estate Taxes by Local Tax Collector

Relevant Recommendations from Senate Resolution 250 of 2010 Report:²⁸²

- Permit counties, municipalities, and school districts to regularly enter into voluntary agreements for county collection of property taxes based on mutually agreed-to resolutions of the taxing bodies such as in Maryland.

²⁸² *Pennsylvania's Current Real Property Tax Collection System*, Legislative Budget and Finance Committee, Harrisburg, Pennsylvania, June 2011, p. S-11.

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- Facilitate the temporary appointment of a county treasurer to collect property taxes on behalf of municipalities and school districts in situations where a local elected tax collector is unable to serve a full term due to incapacity or other reasons (*see* Act 115 of 2012).

The second recommendation is addressed by the following recently enacted legislation:

Act 115 of 2011 amends the “Local Tax Collection Law” by: (1) including certain county treasurers in counties of the third through eighth class under the definition of “tax collector”; (2) adding provisions permitting county treasurers in those counties to collect all taxes levied in a municipality if a vacancy in the office of elected tax collector exists in a municipality in those counties, provided: (a) the county treasurer has been appointed or directed by the county commissioners to collect all county taxes, and (b) the governing body of the municipality and the county commissioners provide by agreement for the collection of all municipal taxes; (3) stipulating that such an agreement shall only be effective through the end of the calendar year in which a successor tax collector is elected; and (4) providing for the contents of the agreement, which is to be executed by resolution.

Planning and Financial Reimbursement Requirements for County Children and Youth Service Programs

Recommendations:

- Require the Department of Public Welfare to provide advanced quarterly payment of children and youth funding, with reconciliation at the end of the year.
- Improve timeliness of reimbursement.

The recommendations are addressed by the following proposed legislation:

House Bill 829 of 2011 (Printer’s Number 861) would amend Section 704.1 of the Public Welfare Code to require that payments be made to counties from the Department of Welfare for welfare services for children in equal quarterly installments. The installment payments would be made on July 1, October 1, January 1, and June 1 each year. The local contribution required would not be required to be paid until the fourth quarter payment is due. At the close of the fourth quarter, the total payments made to the county institution district or its successor would be reconciled and adjusted. Status: Referred to the House Children and Youth Committee on February 28, 2011.

The recommendations may be addressed, in part, by the following recently enacted legislation:

Act 80 of 2012, an omnibus amendment to the Public Welfare Code, may partially address this mandate by establishing a pilot state block grant program from which the Department of Public Welfare will make timely quarterly payments to counties. The Department will allocate block grant funds for the Human Services Development Fund Act, mental health and intellectual disability services, behavioral health services, drug and alcohol services, homeless services, and county child welfare agencies as certain additional grants. The act also provides for a single

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planning process and financial reporting system and a more timely provision of allocation letters from the Department.

Separately, albeit not a legislative measure, the Department of Public Welfare Office of Children, Youth and Families (OCYF), upon collaborating with the Pennsylvania Children and Youth Administrators and the County Commissioners Association of Pennsylvania, is providing a waiver to the payment schedule to counties for children and youth services, effective July 1, 2012. The waiver permits quarterly advance payments of funds to counties for the first three quarters of the state fiscal year, potentially amounting to 87.5% of the funds by March, with timely reports. The OCYF will process the fourth advance payment—12.5% of the allocation—in February or upon acceptance of the current year second quarter report, whichever is later. The OCYF will process a fifth and final payment in conjunction with the fourth quarter report.²⁸³ This waiver is only good for Fiscal Year 2012-2013; however, the intent is to make it permanent.²⁸⁴

Stormwater Management

Recommendation:

- Establish definite funding for state Act 167 of 1978 planning grants.

Legal Advertising

Recommendation:

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.

The recommendation is addressed by the following proposed legislation:

Senate Bill 804 of 2011 (Printer's Number 810) and **House Bill 633 of 2011** (Printer's Number 634) would amend Title 45 (Legal Notices) of the Pennsylvania Consolidated Statutes to authorize local government units to electronically publish legal notices on the Internet in lieu of newspaper advertisement as currently required by law. The bills provide for administrative requirements relating to the availability of the website, availability of printed notices, website and webpage requirements, complaint procedures on accessibility, period of electronic publication, and proof of electronic publication. Status: Senate Bill 804 referred to the Senate Local Government Committee on March 8, 2011, and House Bill 633 referred to the House Local Government Committee on February 14, 2011.

²⁸³ "Bullets, August 13, 2012," State News, Pennsylvania Association of County Administrators of Mental Health and Developmental Services, 2012, <<http://www.mhdspa.org/Pages/default.aspx>> (September 4, 2012).

²⁸⁴ Marker, Jim, Director of Bureau of Budget and Fiscal Support, Pennsylvania Department of Public Welfare, September 6, 2012, office e-mail.

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Other relevant proposed legislation includes:

Senate Bill 805 of 2011 (Printer's Number 811) would amend Title 45 (Legal Notices) of the Pennsylvania Consolidated Statutes to require a local government unit that opts to electronically publish its legal notices to place brief descriptions of the legal notices in a newspaper of general circulation. Status: Senate Bill 805 referred to the Senate Local Government Committee on March 8, 2011.

3.1.3.2 Specific Legislative Recommendations for Municipal Mandates

Of the identified most burdensome mandates by the Pennsylvania League of Cities and Municipalities,²⁸⁵ the Pennsylvania State Association of Boroughs, the Pennsylvania State Association of Township Commissioners, and the Pennsylvania State Association of Township Supervisors, the recommendations do not address “Competitive Bidding and Related Advertising Requirements” given that 2011 enactments, which increased the bidding limits for the different classes of municipalities, provided relief from this mandate. Enactments specific to the subject classes include Act 84 of 2011 amending the Second Class Township Code, Act 85 of 2011 amending the First Class Township Code, Act 91 of 2011 amending the Third Class City Code, Act 92 of 2011 amending the Borough Code, and Act 93 of 2011 amending an act pertaining to contracts of incorporated towns.

In addition, the recommendations do not address the “Uniform Construction Code Triennial Education and Certification Requirements” given that: (1) municipalities were not required to “opt-in” for administration and enforcement of the UCC; (2) if they did decide to opt-in, they are able to hire a third party agency or contract with another municipality to perform the inspections; and (3) if they have their own inspector, they are able to set inspection fees so that the permit applicants are bearing the costs associated with education and certification, not the municipality.

Notably, the legislation listed below provides recent examples of proposals to alleviate the mandates on local governments. With the current legislative session coming to an end, the municipal associations view these proposals as starting points for future mandate relief legislation.

Prevailing Wage for Public Works Projects

Recommendations:

- Raise the dollar threshold for public works projects requiring prevailing wage.
- Better define maintenance (exempt from prevailing wage) to include projects like road resurfacing and repair; bridge cleaning, resurfacing and painting; in-kind replacement of guide rails and curbs; and line painting.
- Restructure the method by which the Secretary of Labor and Industry determines prevailing wages to better ensure the use of comparable local wages in the area.
- Provide an automatic adjustment of the prevailing wage threshold for inflation.

²⁸⁵ PLCM recently changed its name to the Pennsylvania Municipal League.

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The recommendations are largely addressed by the following proposed legislation:

House Bill 1271 of 2011 (Printer's Number 2467) would amend the Pennsylvania Prevailing Wage Act to exempt defined road maintenance work from the act. Status: Given first consideration in the House on October 3, 2011.

House Bill 1329 of 2011 (Printer's Number 3097) would amend the Pennsylvania Prevailing Wage Act to increase from \$25,000 to \$185,000 projects which would be defined as a "Public work" under the act and exempt from the prevailing wage requirements. The threshold would be adjusted annually based on changes in the Consumer Price Index. Status: Given second consideration with amendments in the House on February 13, 2012.

House Bill 1685 of 2011 (Printer's Number 2469) would amend the Pennsylvania Prevailing Wage Act to require the Pennsylvania Department of Labor and Industry to develop one set of job classification definitions for use by contractors statewide. The job classifications must be posted online. Status: Given first consideration in the House on October 3, 2011.

Other relevant proposed legislation includes:

House Bill 1191 of 2011 (Printer's Number 1304) would amend the Pennsylvania Prevailing Wage Act to exclude a political subdivision or an authority, agency, or instrumentality of a political subdivision from the jurisdiction of the act. The bill would authorize these agencies to elect, by ordinance or resolution, to be subject to the provisions of the act. Status: Given first consideration in the House on October 3, 2011.

House Bill 1541 of 2011 (Printer's Number 1890) would amend the Pennsylvania Prevailing Wage Act to require at least 51% of a construction, reconstruction, demolition, alteration, and/or repair work project be paid for by public monies before it is covered by the act. Status: Given first consideration in the House on October 3, 2011.

Collective Bargaining Arbitration

Recommendations:

- Require both parties involved in arbitration to equally share all costs.
- Require consideration of municipality financial status and local economic conditions in determining arbitration awards.
- Provide for limited judicial review of the determination of the board of arbitration.

The recommendations are largely addressed by the following proposed legislation:

Senate Bill 1570 of 2012 (Printer's Number 2366) would amend the Policemen and Firemen Collective Bargaining Act by, among other things: (1) prohibiting inclusion of nonrequired postretirement health or pension benefits, or any other specifically exempted term or condition of employment, as a term or condition of employment subject to collective bargaining; (2) upon

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failure of employer and labor arbitrators to appoint a neutral third arbitrator, expanding the list provided by the American Arbitration Association (AAA) from three to seven members; (3) providing the labor-appointed arbitrator with the first of alternate strikes of names from the AAA list; (4) subjecting a hearing, and all documents and evidence of record submitted at such hearing, to Right-to-Know Law compliance, with the exception of bargaining sessions, executive sessions, and other meetings before and after the hearing; (5) enumerating exceptions for why a determination by a board of arbitration may be taken to court, including exceeding powers and duties, requiring an unconstitutional act or depriving a constitutional right, exceeding jurisdiction, or failing to include a detailed explanation supported by substantial evidence and calculations based on specified criteria; (6) establishing parameters by which a board of arbitration shall formulate an award based on its determination of “total new costs” as prescribed; and (7) providing that the fees and costs billed by the neutral third arbitrator, and stenographic and other arbitration expenses, be divided equally between the employer and labor. Status: Referred to the Senate Local Government Committee on August 16, 2012.

Advertising/Publication of Legal Notice Requirements – Legal Advertising

Recommendation:

- Authorize local government entities to electronically publish legal notices on the Internet in lieu of a newspaper advertisement.

The recommendation is addressed by the following proposed legislation:

Senate Bill 804 of 2011 (Printer’s Number 810) and **House Bill 633 of 2011** (Printer’s Number 634) would amend Title 45 (Legal Notices) of the Pennsylvania Consolidated Statutes to authorize local government units to electronically publish legal notices on the Internet in lieu of newspaper advertisement as currently required by law. The bills provide for administrative requirements relating to the availability of the website, availability of printed notices, website and webpage requirements, complaint procedures on accessibility, period of electronic publication, and proof of electronic publication. Status: Senate Bill 804 referred to the Senate Local Government Committee on March 8, 2011, and House Bill 633 referred to the House Local Government Committee on February 14, 2011.

Other relevant proposed legislation includes:

Senate Bill 805 of 2011 (Printer’s Number 811) would amend Title 45 (Legal Notices) of the Pennsylvania Consolidated Statutes to require a local government unit that opts to electronically publish its legal notices to place brief descriptions of the legal notices in a newspaper of general circulation. Status: Senate Bill 805 referred to the Senate Local Government Committee on March 8, 2011.

Property Exempt from Real Estate Taxes

Recommendation:

- Authorize municipalities to collect a municipal services fee or payments in lieu of taxes (PILOTs) from tax-exempt property owners to cover the costs of municipal services.

The recommendation was addressed by the following past proposed legislation:

House Bill 2018 of 2007 (Printer's Number 3589) and **Senate Bill 1419 of 2008** (Printer's Number 2173), cited as the Tax-exempt Property Municipal Assistance Act, required: (1) each county to compile a list of the fair market value of tax-exempt property and submit the list, along with other specified related information, in an annual report to the Department of Community and Economic Development (Department); (2) establishment of the Tax-exempt Property Municipal Assistance Fund in the State Treasury, funded by redirected liquor tax revenues; and (3) annual allocation of the fund by the Department to eligible municipalities, as defined, pursuant to certain criteria. Status upon adjournment sine die: House Bill 2018 given first consideration and recommitted to the Appropriations Committee on April 9, 2008, and Senate Bill 1419 referred to the Finance Committee on June 11, 2008.

Other relevant proposed legislation includes:

Senate Bill 1281 of 2011 (Printer's Number 1636) would amend the Institutions of Purely Public Charity Act by authorizing the governing body of a municipality or county to levy a real estate tax on a portion of the assessed value of land (not buildings) owned by a purely public charity. The tax would be imposed on 100% of the aggregate assessed value of the land. The first \$200,000 of aggregate assessed value would be exempt. The tax would be applicable to all institutions of purely public charity owning tax-exempt property within the municipality. However, a governing body could not impose a real estate tax on a property owned by the Commonwealth, a political subdivision of the Commonwealth, Commonwealth and local authorities, police, fire, including volunteer fire and relief, public works or emergency services, or the federal government. Status: Referred to Senate Finance Committee on October 3, 2011.

House Bill 34 of 2011 (Printer's Number 2541) would create the Municipal Service Grant Act, the purpose of which is to provide municipal service grants to municipalities that provide primary municipal services to universities within the State System of Higher Education. The grants would be awarded to reimburse municipalities for: (1) the cost of providing primary municipal services to the university, and (2) the loss of tax revenue incurred by the presence of tax-exempt properties owned by the university. The Department of Community and Economic Development would be charged with distributing these grants. Grants would be allocated beginning with Fiscal Year 2011-2012 and each year thereafter based upon a delineated formula. Status: Referred to the House Finance Committee on October 13, 2011.

3.1 Recommendations and Conclusions: Recommendations for Relief

Separate Specifications and Bids for Plumbing, Heating, Ventilating, and Electrical Work

Recommendations:

- Increase the dollar threshold for compliance with Separations Act requirements.
- Eliminate the Separations Act requirements to the extent that they may preclude design-build projects.

The first recommendation is addressed by the following recently enacted legislation:

Act 84 of 2011 amended the Second Class Township Code, **Act 85 of 2011** amended the First Class Township Code, **Act 91 of 2011** amended the Third Class City Code, **Act 92 of 2011** amended the Borough Code, and **Act 93 of 2011** amended an act pertaining to contracts of incorporated towns, effective January 1, 2012, to: (1) increase from \$10,000 to \$18,500 the advertising and bidding limit for contracts and purchases, subject to the delineated adjustments; (2) direct the Department of Labor and Industry (Department) to adjust the base bidding amounts subject to the annual percentage increase in the Consumer Price Index for all urban consumers, limited to a maximum annual adjustment of 3% of the respective base amounts; and (3) require the Department to advertise the new limits in the Pennsylvania Bulletin before the end of each year.

Right-to-Know Law (Act 3 of 2008)

Recommendation:

- Authorize municipalities to charge for staff time and legal review fees when fulfilling requests, including fulfilling e-requests.
- Authorize municipalities to charge additional fees for search, review, and duplication costs when responding to commercial requests.
- Authorize municipalities to charge expanded fees and take extended time when responding to excessively large requests.
- Deter or preclude frivolous requests.
- Extend the required response time for initial requests.

The recommendations are addressed, in part, by the following proposed legislation:

Senate Bill 247 of 2011 (Printer's Number 229) would amend the Right-to-Know Law by, among other things: (1) amending the definitions "independent agency," "personal financial information," and "State-affiliated entity;" (2) permitting a request for a record to be submitted to the head of an agency as well as the open records officer; (3) specifying that access to a record may be provided at a reasonable, specific appointment time if the request is voluminous, records must be obtained from a remote location, or extensive redaction is required; (4) adding an exception for an agency's bank account numbers, bank routing numbers, credit card numbers, and passwords; (5) extending from 5 to 10 days the amount of time that an agency has to respond to a request for a record if the request was submitted by first class mail or similar means;

(6) making changes to the timeframe for the appeal process and allowing the appeals officer to extend the deadline for a response by 15 days; (7) clarifying that certain tax forms are “personal financial information” and not subject to disclosure; and (8) reducing the prepayment fee from \$100 to \$50. Status: Referred to the Senate State Government Committee on January 26, 2011.

Senate Bill 551 of 2011 (Printer’s Number 654) and **House Bill 2121 of 2012** (Printer’s Number 2951) would permit local agencies to charge additional reasonable standard fees for the search and review of records when records are requested for a “commercial purpose,” as defined. The search and review fee rate could not exceed the quarter-hour rate of pay of the agency employees fulfilling the request plus 20%. Status: Senate Bill 551 referred to the Senate State Government Committee on February 5, 2011, and House Bill 2121 referred to the House State Government Committee on January 17, 2012.

Requirements for Signage, Pavement Markings, and Traffic Signals on State Highways and Rights-of-Way

Recommendation:

- Require state to assume responsibility for all facilities on state roads and rights-of-way.

Other relevant recommendations from the Pennsylvania State Transportation Advisory Committee²⁸⁶ and Pennsylvania Governor’s Transportation Funding Advisory Commission:²⁸⁷

- Provide additional funding to the state and local governments in accordance with the recommended funding package in the Transportation Funding Commission Final Report, which would make available an added \$1.9 billion and \$300 million to state and local governments, respectively, in five years.
- Enact enabling legislation to give local governments more options to raise revenue for transportation investments. Some potential local government options include a local option sales tax, a local option gas tax, a local option vehicle registration, a vehicle personal property tax, a transportation utility fee, and public-private partnerships.
- Enact a Marcellus Shale impact fee to mitigate impacts on roads and bridges attributable to natural gas development (*see* Act 13 of 2012).
- Advance modernization, including PennDOT overseeing the modernization of traffic signals and optimization of their operation, eliminating the local cost share for construction of American with Disabilities Act compliant curb ramps at all affected cross streets, and formalizing cooperation between PennDOT and local governments through Agility Agreements.

²⁸⁶ *Financial Needs of Counties and Municipalities for Highways and Bridges, Final Report*, Pennsylvania State Transportation Advisory Committee, Harrisburg, December 2011.

²⁸⁷ *Final Report, Transportation Funding Advisory Commission*, Pennsylvania Governor’s Transportation Funding Advisory Commission, August 2011.

3.1 Recommendations and Conclusions: Recommendations for Relief

Relevant recently enacted legislation includes:

Act 13 of 2012 amended Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in part, by adding Chapter 23 (Unconventional Gas Well Fee), which, among other things: (1) authorizes counties to impose a fee on unconventional gas wells and, upon their failure to do so, authorizes municipal governing bodies representing at least 50% of the municipalities in the county or at least 50% of the county's population to adopt resolutions imposing an impact fee on such wells, and (2) provides for fee distribution to various state agencies and programs, including the Marcellus Legacy Fund, and to counties and municipalities for specified purposes, including associated construction, reconstruction, maintenance and repair of roadways, bridges, and public infrastructure.

Stormwater Facility Maintenance Requirements along State Highways

Recommendation:

- Require state to assume responsibility for all facilities on state roads and rights-of-way.

Other relevant recommendations from the Pennsylvania State Transportation Advisory Committee:²⁸⁸

- Implement funding recommendation for the previous mandate, pertaining to requirements for signage, pavement markings, and traffic signals on state highways and rights-of-way.
- Enact legislation to enable formation of special purpose authorities, under the Municipality Authorities Act, which could provide for collection of appropriate fees to maintain stormwater facilities along state highways (*see* Senate Bill 1261).

Relevant proposed legislation includes:

Senate Bill 1261 of 2011 (Printer's Number 1625) would amend Title 53 of the Pennsylvania Consolidated Statutes Chapter 56 (Municipal Authorities) by adding stormwater management planning and projects to the scope of projects permitted under the purposes and powers of municipal authorities. Status: Passed the Senate (48-0) and referred to the House Local Government Committee on March 27, 2012.

Separately, albeit not a legislative measure, PennDOT issued changes to its Maintenance Manual in 2011, specifying that the agency "will assume structural responsibility for existing enclosed surface drainage facilities within townships where a written agreement or highway occupancy permit does not assign responsibility otherwise."

²⁸⁸ *Storm Water Facilities on State Highways, Final Report*, Pennsylvania State Transportation Advisory Committee, February 2007.

Recycling Requirements

Recommendation:

- Require increased state reimbursement for recycling costs by providing for an increased recycling fee for solid waste processed at resource recovery facilities or disposed of at municipal waste landfills, and for dedicated grant funding.

The recommendation is addressed, in part, by the following proposed legislation:

Senate Bill 825 of 2011 (Printer's Number 843) would amend the Municipal Waste Planning, Recycling and Waste Reduction Act by, among other things, providing for the levy of an "affected municipality" benefit fee upon the operator of each municipal waste landfill or resource recovery facility. The affected municipality fee would be 50¢ per ton of weighed solid waste or 50¢ per three cubic yards of volume-measured solid waste for all solid waste received at a landfill or facility. Status: Referred to the Senate Environmental Resources and Energy Committee on March 14, 2011.

House Bill 206 of 2011 (Printer's Number 158) and **Senate Bill 863 of 2011** (Printer's Number 887) would amend the Municipal Waste Planning, Recycling and Waste Reduction Act by, among other things, authorizing a county to impose a recycling and waste management fee on municipal solid waste generated within its borders and disposed of at resource recovery facilities or municipal waste landfills designated in the county's municipal waste management plan. The fee initially may not exceed \$4 per ton. Status: House Bill 206 referred to the House Environmental Resources and Energy Committee on January 25, 2011, and Senate Bill referred to the Senate Environmental Resources and Energy Committee on March 22, 2011.

Municipal Police Officer Certification and In-Service Training

Recommendation:

- Restore state funding for reimbursement of officer tuition, living and travel expenses, and salary while attending a municipal police training school.

Relevant proposed legislation includes:

House Bill 1258 of 2011 (Printer's Number 1382) would direct the Municipal Police Officers' Education and Training Commission (Commission) to develop a pilot program to determine the feasibility of allowing a police officer to complete a portion of in-service training through the use of distance education. "Distance education" is defined as "education in which a police officer participates in the educational activity by use of a computer rather than a classroom where faculty and the police officer are physically located in the same room." The Commission is required to submit a written report to the Governor and General Assembly regarding the progress made with the program by July 1, 2011. Status: Referred to the House Judiciary Committee on April 1, 2011.

3.2 Recommendations for Further Study

Recommendation: Conduct fiscal impact analyses of two of the most burdensome mandates as identified by the municipal associations.

Two of the most burdensome mandates as identified by the municipal associations could not be examined as part of this study due to timing.²⁸⁹

- **Act 32 of 2008 (amending Act 511 of 1965 [Local Tax Enabling Act]) to provide for Consolidated Collection of Earned Income Taxes:** Given that the municipal associations conducted the statewide survey of municipalities in fall 2011 to determine the costs of the “most burdensome” mandates and recommendations for relief, which was prior to the January 1, 2012, effective date for the consolidated collection of earned income taxes, it was not possible at that time to determine the net monetary cost or benefit of the mandate.
- **Act 46 of 2011(amending Act 338 of 1915 [Workers’ Compensation Act]) to provide for firefighters with cancer:** The amendment became law and effective in July 2011, just prior to the survey of municipalities in fall 2011. Task Force members concurred that it most likely would not be practical to solicit mandate cost information until the latter half of 2012, after municipalities had at least a year, to realize the financial implications of the act.

Recommendation: Evaluate mandates that are no longer actively imposed or applied for possible repeal.

Appendix E to this report lists mandates, which the LGC staff or implementing agencies, as part of the validation of the LGC mandate database, determined are likely no longer actively imposed or applied.²⁹⁰ A potential task would be for a mandate task force to systematically vet these mandates with the affected entities and investigate whether their repeal would result in any direct or indirect undesirable consequences. If the affected entities have no issues and there are no foreseen direct or indirect consequences, the task force could recommend the mandates for repeal.

An abundance of caution should be exercised in repealing a mandate that may be no longer actively imposed or applied so that it does not result in any unintended consequences. For example, there may be a unique circumstance to which the mandate still applies, or a mandate no longer actively applied may relate to a mandate that is still actively applied. Moreover, if the General Assembly introduces and passes a seemingly harmless mandate repeal bill, the bill could be amended with other provisions during the legislative process that may have unknown or detrimental consequences.

²⁸⁹ See Section 2.4.2.1, Mandates Identified by the Statewide Associations for Cities, Boroughs, First Class Townships and Second Class Townships.

²⁹⁰ See Section 2.2.2, Validation of Local Government Commission Mandate Database.

3.3 Conclusions

The SR 323 Mandate Study provides a starting point and basis for building a proactive approach to address the current and potential costs of statutory mandates that may be placed on Pennsylvania's counties, cities, boroughs, town, and townships. As is evident in the findings in this report, dealing with the costs of mandates is a very complex issue, which often obviously involves many variables and interests. Variables may range from attempting to ascertain the labor costs to implement a given mandate, to determining the extent to which a mandate is worthwhile and, if so, who should bear the cost. Stakeholders may vary from distressed municipalities to labor unions to the Commonwealth, many times with competing interests and limitations. As a result, effectively addressing a mandate often involves a negotiation and balancing process toward accommodating shared interests.

More specific observations and conclusions are as follows:

- At least 27 states have constitutional, statutory, and/or regulatory provisions, which address mandates on local governments with varying degrees of success. Pennsylvania is among those states that may have no or limited provisions.
- This report includes a comprehensive list of mandates, but to derive more meaning from this compendium requires further analysis. For example, it may be worthwhile to take a closer look at the most imposing mandates—the direct orders and conditions of aid—and over a period of time methodically determine which ones may have a significant unfunded or underfunded cost or which ones should be repealed in addition to those already identified.
- The executive branch agencies reported the allocation of over \$1 billion in state funding, more than \$173 million in federal funding, and about \$240,000 in other funding to municipalities in Fiscal Year 2011-2012, but this is just a snapshot in time. Periodic surveys, similar to what Hawaii has done (p. 2-21), would provide a comparative reference. In addition, contrasting the amount that the state has allocated to the collective county and municipal budgets would provide a meaningful frame of reference.
- Attempting to obtain or estimate reliable costs of many of the mandates for *all* municipalities by surveying *all* municipalities generally appears to be a questionable approach. Putting all the other possible constraints—survey length and complexity, level and capability of staff resources, availability of cost information, and interest of the municipality—aside, it was apparent that mandates affect various municipalities differently, many times in an unpredictable manner. For example, for “Right-to-Know Law Compliance,” the majority of municipalities in Pennsylvania may not receive Right-to-Know requests, while a minority may receive an inordinate amount or a few large requests, which make the mandate truly burdensome to them. Hence, although it may not be a measurable or an onerous issue statewide, it does not diminish the impact it has on the affected municipalities.

3.3 Recommendations and Conclusions: Conclusions

- An important consideration, if the Legislature decides to take on the recommendations in this report, is ensuring adequate staff resources. For example, Virginia’s Commission on Local Government reportedly has a staff of three to prepare the municipal fiscal impact analyses on proposed legislation and provide support to the Governor’s Task Force for Local Government Mandate Review.²⁹¹ Massachusetts’ Division on Local Mandates has a staff of five, who are “responsible for determining the local financial impact of proposed or existing state mandates” and responding to requests for opinions and cost impact analyses from local governments, the Legislature, and state agencies.²⁹² Needless to say, requirements for staff resources depend on the assigned responsibilities and allocation of existing staff.
- The recommendations, especially the proposals for mandate impact statement, cost sharing, and sunset provisions, and the periodic review of mandates and an ongoing mandate task force, are a starting point for developing possible policies, regulations, and legislation, which may be modified with more in-depth investigations into other states’ efforts and further discussions. As is evident in the “Specific Legislative Recommendations,” many of the mandates identified by the municipal associations have addressed by past or current proposed, or recently enacted, legislation. Nonetheless, most likely, additional proposals will come forward should this initiative to address mandates progress. What became evident in looking at the most successful programs in other states is that having a multifaceted approach that addresses different variables is critical to dealing with the complexity of mandate issues.
- Pursuit of the recommendations also would obviously necessitate consultation and coordination with appropriate committees and agencies within the Pennsylvania General Assembly and Executive Branch, and with the statewide municipal associations.

An underlying tenant which became evident in reviewing how other states deal with mandates is that the most successful programs are those in which the stakeholders, particularly the local governments and the state, maintain a good working relationship.

²⁹¹ Smith, Susan, Local Government Policy Manager, Virginia Commission on Local Government, September 5, 2012, telephone conversation.

²⁹² McCarthy, Vincent, Director of Division of Local Mandates, Office of the State Auditor, Commonwealth of Massachusetts, September 6, 2012, telephone conversation; Division of Local Mandates, Office of the State Auditor, Commonwealth of Massachusetts, 2012, <<http://www.mass.gov/auditor/about-the-state-auditors-office/division-local-mandates.html>>, September 10, 2012.