



King County

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MEMORANDUM

DATE: September 21, 2010

TO: King County Councilmembers

FROM: Cheryle Broom, ^{ab} County Auditor

SUBJECT: Financial Review of Unfunded Mandates Submitted by the Executive

Summary

In September of 2009, the council passed Motion 13074 requesting the executive to collect program, funding, and revenue stream information for the purpose of identifying state unfunded mandates, and directing the county auditor to conduct a financial review of the information. The executive requested county agencies to identify unfunded state mandates, and the Office of Management and Budget (OMB), in consultation with the Prosecuting Attorney's Office (PAO), screened the list to include only those items that in the judgment of OMB and the PAO met the statutory definition of an unfunded state mandate. The executive transmitted the list of unfunded mandates to the council in June of 2010, and we have conducted a financial review of the list.

The list of unfunded mandates submitted by the executive included ten separate state mandates identified by four different county agencies with a total fiscal impact of \$385,530 to county agencies. We reviewed the methodologies used by the four agencies in estimating these costs, and while the degree of precision of the estimates varied, we found the estimates to be reasonable. We found one example in which the cost estimate of a mandate on the executive's list was not supported.

At the request of council staff, we also reviewed the rationale used by OMB and the PAO to screen items identified by agencies off the list. In our judgment, the vast majority of the items screened off the list probably do not meet the statutory definition of an unfunded state mandate. There were a few instances where the rationale wasn't entirely clear, and OMB and the PAO acknowledged that these involved gray areas of the law but in their judgment, do not meet the statutory definition of an unfunded mandate.

As stated in the executive's transmittal letter, the list includes items self-reported by county agencies, and we cannot tell whether this list is exhaustive of all unfunded mandates.

Background

RCW 43.135.060 provides that after July 1, 1995, the legislature shall not impose responsibility for new programs or increased level of service under existing programs on any political subdivision of the state unless the subdivision is reimbursed by the state by: (a) a specific appropriation or (b) increases in distributions of revenue to political subdivisions occurring after January 1, 1998.

Motion 13074 requested the executive to identify all increases of revenue to the county occurring after January 1, 1998 and to inventory all new programs or increased levels of service under existing programs imposed by the state legislature after July 1, 1995. Motion 13074 also directed the auditor's office to conduct a financial review of new programs or increased levels of service submitted by the executive. The county undertook similar efforts in 2000 and 2008 to identify unfunded mandates.

Earlier this year, the executive surveyed county agencies who submitted a list of 51 items totaling \$130 million of fiscal impacts in 2009. This compared to unfunded mandates totaling \$11.7 million and \$26.6 million in the 2000 and 2008 efforts.

OMB, in consultation with the PAO, screened the 2010 list to include only those items that in their judgment met the statutory definition of an unfunded mandate. This screening process narrowed the list to 10 items totaling \$385,530.

While Motion 13074 only directed the auditor's office to conduct a financial review of the items submitted by the executive, because the list of items submitted and their fiscal impact was small, council staff asked the auditor's office to review OMB and the PAO's process and rationale for screening the items off the list. The auditor's office agreed to discuss the screening process with OMB and the PAO and assess the screening rationale.

Financial Review of Items Submitted by the Executive

As mentioned above, the executive's list of unfunded mandates included ten items submitted by four agencies with a total fiscal impact of \$385,530 in 2009. We reviewed the calculations for each of the ten items on the executive's list and discussed the basis for each estimate with each of the four agencies. Several of the ten items were estimated to have very small fiscal impacts; for example, four of the ten items had estimated 2009 fiscal impacts of less than \$10,000.

We found that the level of precision of the estimates varied. In some instances, agencies could provide documentation of how they were able to measure the increased workload resulting from a mandate, and how they priced that increased workload to determine the fiscal impact. In other instances, the methodology for estimating the impact was less precise. We applied greater rigor to our financial review for items with a greater estimated fiscal impact than those with a small estimated fiscal impact.

We found that while the level of precision of the estimates for the fiscal impact of the ten mandates varied, in our opinion, the estimates are reasonable with one exception. The executive's report included an item requiring an increase in the amount of time that found property must be held by the King County Sheriff's Office before it could be disposed of. This item was estimated to have a \$62,113 fiscal impact in 2009. This item was first identified in the 2000 effort to list unfunded mandates, and the documentation for how the estimate was developed is no longer available. The chief financial officer for the sheriff's office stated that he doubts that this item actually costs the sheriff's office money. If this item were removed from the executive's list, the remaining list would total nine items with an estimated 2009 fiscal impact of \$323,417.

Review of Items Screened Off the Executive's List

As stated above, while Motion 13074 only required the auditor's office to conduct a financial review of the unfunded mandates submitted by the executive, because the list of items submitted and their financial impacts were so small relative to the items identified by the agencies, council staff requested and we agreed to discuss the screening process and rationale with OMB and the PAO.

In order for an item to meet the statutory definition of an unfunded state mandate, according to the PAO, it must meet the following criteria:

- It must be imposed by the *legislature after July 1, 1995*.
- It must require a local government to provide a new service or increased level of service *to the public at large*.

Therefore, mandates that predate July 1, 1995, mandates imposed by an entity other than the legislature (e.g., the courts), or mandates that do not create a new program or service that benefits the public at large are not considered by the PAO to meet the statutory definition of an unfunded mandate. Further, increased public utilization of a service that was required prior to 1995 (e.g., public disclosure) is also not considered to be an unfunded mandate.

With those criteria in mind, we discussed with OMB and the PAO the rationale for excluding each item identified by county agencies with an estimated 2009 fiscal impact of \$200,000 or greater that was screened from the list of unfunded mandates submitted by the executive. We found that the screening process was informal and was not documented in writing. Nevertheless, we believe that the vast majority of the items that were screened from the executive's list probably do not meet the statutory definition of an unfunded mandate.

For example, the largest item by far submitted by county agencies was an item submitted by the Mental Health, Chemical Abuse, and Dependency Services Division of the Department of Community and Human Services in which the division cited a state requirement to provide all medically necessary mental health services to eligible Medicaid recipients. The division stated the fiscal impact of this mandate is \$100,313,841; however, in its written explanation the division indicated that the state

actually provides this amount, but it is insufficient to provide the level of services needed. The amount of the insufficiency was not quantified. In discussing this item with OMB and the PAO, it was pointed out that the county voluntarily contracts with the state to provide this service, and the county could choose to let the state provide mental health services. Therefore, this item is neither a mandate nor is it unfunded. Removing this item from the list brings the total 2009 fiscal impact of items identified by county agencies from \$130.8 million to \$30.5 million.

Many other items identified by county agencies with a significant estimated fiscal impact also appear to not meet the statutory definition of an unfunded mandate. For example, the Office of the Public Defender estimated a 2009 cost of \$4.1 million to meet a requirement to provide legal counsel for parents and most children 12 years of age or older, in dependency and termination of parental rights cases. OMB and the PAO indicated that this requirement is imposed by court decisions, not by the legislature, and therefore does not meet the statutory definition of an unfunded mandate. Other significant items and the rationale for screening them off the list include:

- Department of Juvenile and Adult Detention (DAJD) estimated a 2009 cost of \$8 million to house inmates incarcerated by the Washington State Patrol – mandate predates 1995.
- DAJD estimated a 2009 cost of \$3.1 million to provide mandated training to corrections officers. However, this is not a mandate by the legislature; some training is required by the federal government, and in other instances it is required by court decision. Also training arguably does not benefit the public at large.
- The Office of Elections estimated a 2008 cost of \$4.5 million to provide even-year elections – mandate predates 1995.
- The Department of Transportation estimated a 2009 cost of \$1.6 million to provide required transportation of Medicaid eligible people to adult day health services – federal mandate.

While the rationale for the vast majority of the items that were screened from the executive's list seems relatively clear, there were a few items where the rationale is less clear, and OMB and the PAO acknowledged that they may involve gray areas of the law. For example:

- The Superior Court submitted an item with an estimated 2009 cost of \$251,600 to meet a 2007 requirement that the courts check for relevant information in the judicial information system and database before entering a parenting plan. While this was a mandate required by the state legislature, OMB and the PAO did not consider this requirement as meeting the definition of an unfunded mandate because it did not require a new program or increased level of service under an existing program, but rather changed how a program is carried out.
- The same rationale was used by OMB and the PAO to screen items submitted by the Department of Judicial Administration (\$225,209 estimated 2009 cost to

comply with a 2007 mandate to input data into a statewide domestic violence database) and two items submitted by the King County Sheriff's Office (\$186,704 estimated 2009 cost to meet a mandate to conduct background checks for concealed weapons permits and an estimated 2009 cost of \$267,092 to comply with a mandate to register sex offenders).

While OMB and the PAO have acknowledged that some of the items they screened from the list of items submitted by county agencies involve gray areas of the law, the auditor's office is not in a position to argue that these items should have been included. Instead, we note that even if the items that appeared most questionable were included, the cost of the identified unfunded mandates would still be relatively modest.

CB:LB:yr

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