

June 1, 2010

The Honorable Bob Ferguson
Chair, King County Council
Room 1200
COURTHOUSE

Dear Councilmember Ferguson:

Attached please find a report that responds to Motion 13074, which requested the County Executive “identify all increases in state distributions of revenue to the county occurring after January 1, 1998, and their permissible uses” and to “inventory all new programs or increased levels of service to the public that have been imposed by and required by the state legislature after July 1, 1995, the cost of which was not fully funded by the state by a specific appropriation or, to the extent known, by use of state distribution of revenue.” The Office of Management and Budget (OMB) surveyed all county departments to compile an initial list of potential unfunded mandates. Because Motion 13074 uses the same parameters as Revised Code of Washington (RCW) 43.135.060, OMB worked with the Prosecuting Attorney’s Office (PAO) to identify those items that fell within the state’s legal definition of an unfunded mandate.

Reports listing unfunded mandates have been prepared in the past, most recently in 2008. Unlike the 2008 report, the 2010 report only includes items that fall within the state’s definition of an unfunded mandate under RCW 43.135.060, as that statute has been interpreted by the Washington appellate courts and several Attorney General opinions. An unfunded mandate is a change 1) imposed by the state legislature after July 1, 1995; 2) requiring a local governmental entity to provide a new service or an increased level of service to the public at large; and 3) without providing reimbursement by the state for the costs associated with the new or increased service. Previous lists have included items that pre-date 1995, items that were not mandated by the state legislature, and items that did not result in an increase in the level of service provided to the public. The following examples are illustrative of mandated changes that do not fall within the state definition of an unfunded mandate.

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Court rulings or rules that require a new or additional level of service to comport with constitutional requirements are not the result of state legislative action; therefore, even if such requirements result in increased costs to the county, such rulings do not fit the state definition of an unfunded mandate. Similarly, an increase in public utilization of a service that pre-dates 1995, such as public disclosure requests, may result in greater costs to the county, but those costs do not stem from a statutory change that has increased the county's obligations. Also, statutory changes in the training, benefits, or compensation for county employees are not unfunded mandates because such changes, while costly, do not increase services to the public at large.

It must be emphasized that this report is preliminary and the numbers contained within may be subject to revision. The mandates and associated dollars were self-reported by county agencies and warrant further review by the County Auditor's Office per Motion 13074. It is impossible to know with certainty that the items presented in this report are exhaustive of all unfunded mandates incurred by King County; however, the list is a reasonable compilation of unfunded mandates imposed by the state legislature under the definition used in preparing the report.

Motion 13074 directs the County Auditor to review this report by September 1, 2010. OMB staff will be available as needed to work with Council Auditor staff as they review this report.

If you have any questions, please contact Dwight Dively, Director of the Office of Management and Budget , at 206-263-9687.

Sincerely,

Dow Constantine
King County Executive

Enclosure

cc King County Councilmembers
ATTN: Tom Bristow, Chief of Staff
Anne Noris, Clerk of the Council
Mark Melroy, Senior Principal Legislative Analyst
Dwight Dively, Director, Office of Management and Budget (OMB)
Krista Camenzind, Budget Supervisor, OMB
Larry Brubaker, Senior Principle Management Auditor, County Auditor's Office
Cynthia Gannett, Senior Deputy Prosecuting Attorney, PAO
Peggy Pahl, Senior Deputy Prosecuting Attorney, PAO

**UNFUNDED MANDATE REPORT
RESPONSE TO MOTION 13074
JUNE 1, 2010**

EXECUTIVE SUMMARY

Motion 13074 requests the executive to “identify all increases in state distributions of revenue to the county occurring after January 1, 1998, and their permissible uses” and to “inventory all new programs or increased levels of service to the public that have been imposed by and required by the state legislature after July 1, 1995, the cost of which was not fully funded by the state by a specific appropriation or, to the extent known, by use of state distribution of revenue.” The Office of Management and Budget (OMB) surveyed all county departments to compile an initial list of potential unfunded mandates and then worked with the Prosecuting Attorney’s Office (PAO) to identify those items that fell within the legal definition of an unfunded mandate.

The state distributions of revenue to the county grew \$2.3 million between 1998 to 2008, or from \$38.9 million to \$40.3 million. The average annual growth rate in distributions over the ten year period was 0.50 percent. The unfunded mandates included in this report have a combined average annual cost of \$350,000.

The list of unfunded mandates included in this report is substantially shorter than that compiled for reports in 2000 and 2008 because the strict legal definition of “unfunded mandate” under state law was used for this report. The use of this definition has several consequences: First, certain programs or services on previous lists were mandated by the courts or the constitution, not imposed by the legislature. Second, other items have been excluded by state court decisions, which have narrowly construed the unfunded mandate statute and limited the programs and services that are required to be funded. Given this narrow interpretation of unfunded mandates, OMB and PAO staff culled through the list of potential items provided by county agencies and only included items in this report that have been directly imposed by the state legislature, result in an increase in service directly to the public, and have no apparent offsetting state revenue.

It must be emphasized that this report is preliminary and the numbers contained within may be subject to revision. The mandates and associated dollars were self-reported by county agencies and may warrant further review. It is impossible to know with certainty that the items presented in this report are exhaustive of all unfunded mandates incurred by King County; however, the list is a reasonable compilation of unfunded mandates imposed by the state legislature under the definition used in preparing the report.

Motion 13074 directs the County Auditor to review this report by September 1, 2010. OMB staff will be available as needed to work with council auditor staff as they review this report.

STATE DISBURSEMENT OF REVENUES

OMB used the State Auditor's Local Government Financial Reporting System¹ to identify state disbursement of revenues from 1998 to 2008. (Data are not available for 2009.) This system segregates county revenues into 10 categories. State distributions of revenue are from a state levied tax, fee or profit-sharing source that is shared with the county and may or may not be dedicated for a specific purpose. Revenue sources like property and sales tax are not included because they are levied by the county. State grants were not included because they are costs appropriated in the State budget and not state distributions of revenue. All revenues listed as "Revenues for Distribution" in the website were included. In some cases statute and permissible uses were not found.

¹ The site is located at <http://www2.sao.wa.gov/applications/lgfrs>.

WHAT IS AN UNFUNDED MANDATE?

The Revised Code of Washington (RCW) 43.135.060 defines an unfunded mandate as follows:

(1) After July 1, 1995, 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. Reimbursement by the state may be made by: (a) A specific appropriation; or (b) increases in state distributions of revenue to political subdivisions occurring after January 1, 1995.

(2) If by order of any court, or legislative enactment, the costs of a federal or local government program are transferred to or from the state, the otherwise applicable state expenditure limit shall be increased or decreased, as the case may be, by the dollar amount of the costs of the program.

(3) The legislature, in consultation with the office of financial management or its successor agency, shall determine the costs of any new programs or increased levels of service under existing programs imposed on any political subdivision or transferred to or from the state.

(4) Subsection (1) of this section does not apply to the costs incurred for voting devices or machines under *RCW [29.04.200](#).

RCW 42.135.060 and case law were used to define the criteria the OMB and the PAO employed in identifying unfunded mandates where King County may be entitled to state reimbursement. The county is only entitled to state reimbursement where:

- The mandate was imposed after July 1, 1995.
- The mandate is imposed directly by the state legislature through statute. *[Note: If the legislation enables but does not require the county to perform a service, this does not constitute a mandate. If a mandate is imposed by court order, then the county is not entitled to reimbursement from the state.]*
- The mandate requires a new program or an increased level of service that is provided to the public. The new program or service must be designed to accomplish a specific goal that benefits the public; i.e., the benefit must be measureable or quantifiable. *[Note: If the legislation only modifies procedures of existing program to increase the efficiency of the same service, this is not an increase in the level of service. Similarly, costs associated with a legislative change in the type of service are not reimbursable unless the change increased the level of service overall. Increased requirements for training or reimbursement for county employees are not direct services to the public and therefore not unfunded mandates.]*

- The amount of the reimbursement does not equal the costs that are a direct result of the legislation imposing the new program and/or the increased level of service.
[Note: Legislation directing the county to provide a new service typically includes a fiscal note that identifies the estimated costs of the service and the associated revenue. In passing the legislation, the state legislature asserts that the cost and revenue in the fiscal note are sufficient to support the program being legislated.]

Under the narrow legal definition of an unfunded mandate, many county services that have commonly been thought of as unfunded mandates were screened out from this report. For example, the statute referencing public defense for dependency cases predates July 1, 1995 and is therefore not an unfunded mandate under RCW 42.135.060. References to counsel for children over the age of 12 involved in dependency cases are more recent; however, there is no requirement that the county provide indigent defense counsel to children. Instead, RCW 13.24.100 allows the court to appoint an attorney if one is requested. This does not constitute a state unfunded mandate because the appointment is not required by statute, although it may be necessary to comply with due process requirements in the federal constitution.

The list of county services identified as part of responding to Motion 13074 that meet the definition of an unfunded mandate under RCW 43.135.060 are provided in Table 2.

Table 2								
Fund	Appropriation Unit	Department	Short Title	Citation	2007	2008	2009	Description
0010	0200	KCSO	Found Property	RCW 63.21.010, 63.21.030	\$58,495	\$60,304	\$62,113	The 1997 legislature increased the amount of time found property must be held by the Sheriff's Office before it can be disposed of to ninety days. Complying with this mandate resulted in increased costs of storage.
0010	0200	KCSO	Register kidnapers	RCW 9A.44.130	unknown	unknown	unknown	Register Kidnapers
0010	0510	Superior Court	Anti-Harassment Hearings	RCW 10.14.0220 & RCW 10.14.055	\$32,186	\$33,903	\$36,575	The anti-harassment statute was amended in 2002 to require the waiver of filing and service fees, even if a petitioner was able to pay, if the petitioner alleges "stalking." The number of filings have increased from 371 in 1999 to 1,892 in 2009.
0010	0510	Superior Court	Translated Signs and Forms	RCW 2.43.090	\$0	\$10,250	\$12,000	The state added language requiring courts to develop language assistance plans. Included in that are mandates requiring that "high priority" materials be translated and that signs notifying the public of the availability of interpreter services be displayed in five different languages.
0010	0530	District Court	Translation	RCW 2.43.090	\$34,013	\$35,431	\$36,397	The state added language requiring courts to develop language assistance plans. Included in that are mandates requiring that "high priority" materials be translated and that signs notifying the public of the availability of interpreter services be displayed in five different languages. District Court utilizes staff interpreters to translate forms and signage (.50 FTE). An outside interpreter reviews the materials for accuracy.
0010	0540	Judicial Administration	Sexual Assault Protection Orders.	RCW 7.90	\$5,992	\$7,088	\$9,050	Effective June 7, 2006, the Clerk shall provide forms and assistance in obtaining a civil sexual assault protection order. Also provides for a sexual assault protection order in a criminal case. The Clerk is required to enter the orders into the statewide judicial information system within 1 judicial day and to forward copies to law

0010	0540	Judicial Administration	Vulnerable Adult Protection Orders	RCW 74.34	\$3,900	\$5,700	\$6,975	Effective 7-22-07, 2007, the Clerk shall provide forms and assistance in obtaining a civil vulnerable adult protection order. The Clerk is required to enter the orders into the statewide judicial information system within 1 judicial day and to forward copies to law enforcement for entry into the Washington Crime Information Center, on or before the next judicial day.
0010	0540	Judicial Administration	Shift of collections responsibility for gross misdemeanors to county clerks	RCW 9.94A.760	\$188,142	\$202,590	\$211,706	The 2005 legislature passed legislation (SSB 5256) which transferred responsibility for the collection of approximately 26,300 additional legal financial obligations for gross misdemeanors away from the Department of Corrections to the Department of Judicial Administration. Previous legislation had similarly transferred collection responsibility for felony cases, but had come with a limited amount of funding to support the effort necessary. This legislation came without funding. The added work requires approximately 1.6 FTE for a project/program manager I, at a cost of about \$210,000 annually. If DJA did not perform this task, presumably either no one would do it, or crime victims would be forced to collect restitution from criminal defendants themselves.
0010	0540	Judicial Administration	Shift of collections responsibility for gross misdemeanors to county clerks	RCW 9.94A	\$0	\$0	\$8,600	SB5288 became effective 7/26/2009, transferring responsibility for collections work on approximately 2,150 additional legal financial obligations to the Department of Judicial Administration. This added responsibility came without additional funding. The added work requires approximately 0.13 FTE for a project/program manager I, at a cost of about \$17,500 annually. If DJA did not perform this task, presumably either no one would do it, or crime victims would be forced to collect restitution from criminal defendants themselves.
0010	0540	Judicial Administration	Sealing Vacated Juvenile Deferred Dispositions	RCW 13.40.127(10)	\$0	\$0	\$2,114	Effective July 2009, The Clerk's Office seals juvenile offender cases where the juvenile was given a deferred disposition and the conviction is later vacated. A report is generated by AOC which lists potential cases that may be eligible for sealing. DJA researches each case and seal the ones that meet the criteria of the law. DJA is required to generate a document for each case reviewed (whether the case is sealed or not) and also seal the eligible cases in JIS and ECR, the clerk's imaging system.
				Total	\$322,728	\$355,266	\$385,530	