

Joint Legislative Audit and Review Commission

The Virginia General Assembly

**Catalog of State
and Federal Mandates
on Local Governments**

**A Report in a Series
on State-Local Relations**

**REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION**

**Catalog of State
and Federal Mandates
on Local Governments**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 53

**COMMONWEALTH OF VIRGINIA
RICHMOND
1992**

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Preface

Senate Joint Resolution 45 and House Joint Resolution 156 of the 1990 General Assembly Session directed the Joint Legislative Audit and Review Commission (JLARC) to conduct a follow-up study to the 1983 JLARC report, *State Mandates on Local Governments and Local Financial Resources*. As part of the study, the Commission was requested to identify the "responsibilities of local governments for providing services" in several functional areas: education; mental health and mental retardation; public health; social services; and environmental protection.

This report was prepared in the form of a catalog, covering all current State and federal mandates on local governments and the source of each mandate. The catalog also identifies concerns about mandates voiced by local government officials, as well as State agency responses to those concerns. A companion report, *Intergovernmental Mandates and Financial Aid to Local Governments*, addresses the remaining study issues.

Local government operations are significantly affected by State and federal involvement through mandates. This report identifies 338 mandates on local governments, 81 of which have been implemented since 1983. Areas most affected by mandates are health and welfare, education, and public works.

Legislators and agency heads need up-to-date information on the number and extent of State and federal requirements to assess the ongoing impact of mandates on local governments. Toward that end, this report recommends that the Commission on Local Government annually prepare a catalog of all mandates on local governments. This document could serve as a starting point for such a catalog.

On behalf of the JLARC staff, I would like to thank the State agencies and local governments from which we collected information for their cooperation and assistance during this study.



Philip A. Leone
Director

February 26, 1992

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Chapter I: Introduction

Virginia's local governments are fundamentally affected by State and federal constitutional, statutory, and administrative mandates. These requirements affect the organization, staffing levels, service offerings, administrative procedures, budgets, and spending of all local governments. In some cases, mandates can require that local governments redirect their resources to meet State and federal rather than local objectives. The impact of State and federal mandates is therefore a continuing concern to local officials.

In 1983, the Joint Legislative Audit and Review Commission (JLARC) conducted a study of State mandates on local governments and local financial conditions. To address the continuing concerns of local officials, the General Assembly directed JLARC to conduct a follow-up to the 1983 study. The 1990 resolutions, House Joint Resolution 156 and Senate Joint Resolution 45, mandated JLARC to reexamine the major issues of the original report, including:

- (1) responsibilities of local governments for providing public services;
- (2) differences in the responsibilities of cities, counties, and towns;
- (3) sources of revenue available to localities;
- (4) additional revenue sources that could be used to provide public services; and
- (5) the Commonwealth's responsibilities for providing public services and procedures for aiding local governments.

In addition, the resolutions mandated JLARC to consider:

- (1) the fiscal impact for localities in attempting to achieve State-required standards in the fields of education, mental health and mental retardation, public health, social services, and environmental protection;
- (2) the types of intergovernmental relationships which would be necessary for localities to efficiently and effectively provide services at levels required by the Commonwealth;
- (3) the Commonwealth's responsibilities in providing technical and financial assistance to local governments; and
- (4) avenues or revenue sources that the Commonwealth and localities should consider utilizing in order to provide such public services.

This report focuses on "the responsibilities of local governments for providing public services." In order to determine these responsibilities, JLARC developed this catalog of State and federal mandates on local governments. It is important to note that, unlike in the 1983 report, this catalog identifies federal as well as State mandates imposed on local governments.

As shown in Table 1, JLARC identified 338 State and federal mandates affecting local governments. By determining the date of implementation for each mandate, JLARC identified the requirements imposed since the original study. Based on this review, JLARC identified 81 new mandates which have been imposed on local governments.

The remaining study issues are addressed in a companion report, *Intergovernmental Mandates and Financial Aid to Local Governments*.

Mandate Defined

In identifying mandates on local governments, JLARC defined a mandate as a constitutional, statutory, or administrative action that places a requirement on local governments. This definition includes three types of mandates:

- compulsory orders
- conditions of financial aid, and
- regulation of optional activities.

Table 1

Total Mandates by Functional Area

| <u>Functional Area</u> | <u>Total Number of Mandates</u> |
|---------------------------------------|-------------------------------------|
| Education | 68 |
| Health and Welfare | 89 |
| Public Safety | 40 |
| Public Works | 53 |
| Community Development | 35 |
| Parks, Recreation, and Libraries | 13 |
| Administration of the Judicial System | 3 |
| Administration of Government | <u>37</u> |
| TOTAL | 338 |

Source: JLARC staff surveys of State and local governments, summer 1991, and JLARC staff review of *Code of Virginia*.

Compulsory orders are requirements with which localities must comply regardless of aid, such as the Chesapeake Bay Preservation Act. Conditions of financial aid are requirements that arise as a condition of receiving financial aid. For example, to qualify for urban assistance payments, cities and towns (with populations greater than 3,500) which maintain their own roads must meet Virginia Department of Transportation standards for road maintenance. Regulation of optional activities includes activities which are not mandated but are subject to State and federal regulations if performed. For example, if localities choose to operate airports or air navigation facilities, they must maintain those facilities consistent with Department of Aviation standards.

Catalog Compilation

Mandates were identified through mail surveys of State and local governments and through a review of the *Code of Virginia*. On the State agency survey, agencies were requested to list each State and federal mandate on local governments that they monitored or administered. They were also requested to specify the type of each mandate. Forty-seven State agencies reported administering mandates on localities. The majority of mandates were identified through this process.

As the State body of statute law, the *Code of Virginia* also served as a primary source for the mandates inventory. By reviewing each section of the *Code*, JLARC staff identified mandates imposed by the Legislature and their implementation dates.

Finally, through the local government survey, local officials were asked to identify each federally mandated program imposed on them without State involvement. In addition, JLARC staff asked localities to rate the extent to which they considered mandates to be reasonable or unreasonable in specific mandate areas. It was requested that their judgments be based on the requirements they felt were inappropriate, unduly rigid, or burdensome. A total of 30 major mandate categories and 46 subcategories were rated by local officials. Responses to the survey were received from 108 of the 136 cities and counties.

Catalog Organization

Chapter I has provided a brief overview of the mandates study, including the research activities conducted in developing this catalog. Chapter II identifies the specific State and federal requirements imposed on local governments. In the listing of mandates, the following key is used to identify each type of mandate:

| | | |
|---------------------|---|---|
| ● Compulsory Orders | ⊗ Conditions of State & Federal Financial Aid | ○ State & Federal Regulation of Optional Activities |
|---------------------|---|---|

Abbreviations: USC = *United States Code*; CFR = *Code of Federal Regulations*

The legislative resolutions directing this study are included in Appendix A.

Chapter II: State and Federal Mandates on Local Governments

State and federal mandates on local governments are extensive, affecting most areas of local government activity. This chapter identifies those mandates. Mandates are divided into eight sections by functional area: education; health and welfare; public safety; public works; community development; parks, recreation, and libraries; administration of the judicial system; and administration of government. Each section is prefaced by a brief description of the mandates. In addition, JLARC staff requested localities to rate the reasonableness of mandates and provide explanatory comments on any mandates they judged to be unreasonable. The most frequently cited local concerns are presented. JLARC staff notified the relevant State agencies of these concerns. The responses they provided follow the local concerns.

EDUCATION

Public education is an area of substantial State and federal involvement. Elementary and secondary education requirements are dominated by the State's Standards of Quality. The Standards of Quality represent the minimum requirements for a high quality program in all school divisions across the State. JLARC staff identified 68 education mandates. Of these, 19 mandates have been implemented since 1983.

Local Concerns

The survey of local governments divided education into two major program areas — special education and elementary and secondary education. These areas were further divided into ten subcategories. Judgments of unreasonableness varied among the specific areas (Table 2).

No specific category of requirements was cited as unreasonable by over one-half of the respondents. However, a significant number of localities did identify special education requirements overall as unreasonable. In particular, staff-to-pupil ratio requirements were cited as unreasonable by 46 percent of the localities responding to the survey. In addition, over one-third of the localities responding rated staff certification requirements for special education as unreasonable.

Elementary and secondary education requirements received more favorable ratings by localities in comparison to special education. Yet, about one-third of the respondents identified teacher salary and administrative requirements as unreasonable. In contrast, one-third of the responding localities characterized curriculum mandates for elementary and secondary education as reasonable.

Table 2

**Percentage of Cities and Counties
Citing Education Mandates
as Reasonable, Neutral, and Unreasonable**

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|----------------------|-------------------|----------------|---------------------|------------|
| Special Education | 14% | 39% | 45% | 2% |
| Curriculum | 21 | 46 | 27 | 7 |
| Staff-to-Pupil Ratio | 14 | 36 | 46 | 4 |
| Staff Certification | 23 | 34 | 39 | 3 |
| Elementary/Secondary | 28 | 50 | 19 | 3 |
| Curriculum | 33 | 40 | 23 | 4 |
| Staff-to-Pupil Ratio | 27 | 41 | 28 | 4 |
| Staff Certification | 32 | 41 | 22 | 4 |
| Teacher Salary | 24 | 35 | 36 | 5 |
| Pupil Transportation | 31 | 51 | 14 | 5 |
| School Construction | 29 | 41 | 26 | 4 |
| Administrative | 20 | 44 | 32 | 4 |

Source: JLARC staff survey of local governments, summer 1991.

In addition to rating mandate areas, 37 localities provided additional comments on educational mandates. The majority of these comments centered on the unreasonableness of particular Standards of Quality. Fifteen localities addressed staff-to-pupil ratios in elementary and secondary education, and 13 respondents mentioned staff-to-pupil ratios in special education. The predominant concern was the inflexibility and restrictive nature of these ratios. One local official explained:

These [staff-to-pupil ratio] requirements are absolutely rigid and deny schools the opportunity to provide flexible instructional programming based upon a child's needs on a case-by-case basis. The State regulations assume all handicapped children fit the same fixed instructional mold.

Sixteen local officials mentioned concerns with teacher salary requirements. Localities commented that salaries should be established at the local level, because salary requirements deny local flexibility to distribute salary increases to areas of government which are most in need. According to one locality:

There are simply too many local considerations to be taken into account that have an effect on the total operations of a community and its local government. Teachers' salaries must be weighed in conjunction with other employees and should not be allowed to become skewed by State requirements across the board.

Staff certification requirements in both special education and elementary and secondary education were also described as inflexible and restrictive.

State Agency Response

The Department of Education (DOE) has provided comments directed at these local concerns. In general, DOE agreed with many of the comments voiced by local governments. Several requirements are currently being reviewed for potential modification. In particular, special education requirements are being examined to identify any streamlining changes that can be implemented.

DOE also stated that local governments have legitimate complaints about administrative reporting requirements. The agency agreed that there is duplication and has implemented a streamlining program designed to reduce redundancy. This program has eliminated on-site reviews for compliance with State requirements. Over the next one and one-half to two years, the agency hopes to reduce the local reporting requirements to only needed information.

Concerning elementary and secondary staff certification requirements, DOE agreed with local assertions of inflexibility. By broadening the certification categories, the agency intends to provide school systems more flexibility. However, DOE does support the current teacher salary mandates. The agency asserted that higher salaries will assist in attracting qualified people to the profession. One of DOE's goals is to move toward a statewide compensation plan for teachers.

General and Financial Administration of Education

- Each local education agency must adopt a written policy and establish procedures for the management of student's scholastic records consistent with minimum State and federal requirements.

Source: Family Educational Rights and Privacy Act (34 CFR 99) ;
Code of Virginia §§ 2.1-340 through 2.1-346.1; and
Department of Education regulation VR 270-01-0014

- School divisions must provide free education to each person of school age and localities must appropriate funds for this purpose.

Source: *Code of Virginia* §§ 22.1-2, 22.1-3, and 22.1-94

● Compulsory Orders ⊕ Conditions of State & Federal Financial Aid ○ State & Federal Regulation of Optional Activities

- There shall be a superintendent of schools for each school division. The superintendent shall be appointed by the school board of the school division from the entire list of eligibles certified by the State Board of Education. Each school division shall provide for the necessary travelling and office expenses of the superintendent.

Source: *Code of Virginia* § 22.1-58 et seq.

- School boards must have grievance procedures covering all school board employees except superintendents and probationary employees (probationary period not to exceed 18 months).

Source: *Code of Virginia* § 22.1-79

- Unless for good cause shown an extension of time not to exceed fifteen days is granted by the superintendent of public instruction, each school board shall issue an annual report to the State covering the work of the schools for the prior year, on forms supplied by the State.

Source: *Code of Virginia* § 22.1-81

- ⊕ In order for a school division to receive its full allocation of State aid, all schools within the division must maintain a length of term which does not fall below 180 days or 990 hours in any year.

Source: *Code of Virginia* § 22.1-98

- Each school division shall keep an accurate record of each handicapped child attending a school in the division, who is not a resident of the school division. Each school division shall certify its records to the State following the end of the school year.

Source: *Code of Virginia* § 22.1-101.1

- School divisions must comply with minimum standards for school facilities on new construction and renovation of existing facilities.

Source: *Code of Virginia* § 22.1-138

- All school construction or renovation plans must be submitted to the State.

Source: *Code of Virginia* § 22.1-140

- If transportation of non-handicapped children is provided, school divisions must conform to State regulations regarding equipment, insurance, and driver qualifications.

Source: *Code of Virginia* § 22.1-176 et seq.

- School divisions must provide free textbooks to pupils whose parents are financially unable to afford the cost of books.

Source: *Code of Virginia* § 22.1-251

- Each local school board shall revise, extend and adopt biennially a divisionwide six-year improvement plan which shall be developed with staff and community involve-

ment. Each public school shall prepare a biennial plan which shall be given consideration by its school board in the development of the divisionwide six-year improvement plan.

Source: *Code of Virginia* § 22.1-253.13:6

- Each local school board shall maintain and follow an up-to-date policy manual. Each local school board shall ensure that the policy manual includes certain policies which shall be developed giving consideration to the views of teachers, parents, and other concerned citizens.

Source: *Code of Virginia* § 22.1-253.13:7

- Local education agencies must certify on Department of Education forms that students wishing to get their drivers license either are attending school or have been counseled by the school system on the importance of school attendance.

Source: *Code of Virginia* §§ 22.1-254 and 46.2-334

- School divisions must verify that students have been immunized before admittance into the public school system. Certain medical and religious exemptions are allowed.

Source: *Code of Virginia* § 22.1-270 *et seq.*

- Each school board must adopt guidelines for school attendance for children with human immunodeficiency virus.

Source: *Code of Virginia* § 22.1-271.3

- School divisions must conduct a census of their school-age population once every three years.

Source: *Code of Virginia* § 22.1-281 *et seq.*

- School divisions must maintain student scholastic records in conformity with established guidelines regarding confidentiality, storage, maintenance, and disposal.

Source: *Code of Virginia* § 22.1-287 *et seq.*

- School divisions may only employ as principals those persons who hold certificates as prescribed by the State.

Source: *Code of Virginia* § 22.1-293

- Every school board shall require on its application for employment certification that the applicant has not been convicted for any offense involving child abuse or molestation.

Source: *Code of Virginia* § 22.1-296.1

- The school boards of the counties of Chesterfield, Fairfax, and Prince William and the cities of Alexandria, Manassas, and Richmond shall require any individual who accepts a position of employment to submit to fingerprinting and to provide personal descriptive information along with the fingerprints through the Central Criminal

● Compulsory Orders ⊕ Conditions of State & Federal Financial Aid ○ State & Federal Regulation of Optional Activities

Records Exchange to the Federal Bureau of Investigation to check for a criminal history record.

Source: *Code of Virginia* § 22.1-296.2

- School divisions may only employ as teachers those persons who hold certificates or provisional certificates issued by the State.

Source: *Code of Virginia* § 22.1-299

- School divisions are required to have all teachers enrolled in the Virginia Retirement System.

Source: *Code of Virginia* §§ 51.1-132 through 51.1-135

- ⊕ The governing bodies of the political subdivisions within a community college service region must provide sufficient land, both for the initial establishment of a community college and for future expansion, and all improvements thereon (i.e. roads, exterior lighting, parking lots, landscaping, and all utilities to the point of connection to the buildings).

Source: Section 4-4.01.j-2 of the 1991 Appropriation Act; Virginia Community College System Policy Manual pp. 2A-9, 10-4; and Virginia Community College System regulation VR 650-01-10

- ⊕ Local education agencies which receive funds from Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965 as amended by PL 100-297 must follow certain federal administrative regulations.

Source: Elementary and Secondary Education Act of 1965, Title I, Chapter 2; and the *Federal Register* of April 19, 1990.

- ⊕ Local school divisions which agree to participate in the School Breakfast Program must comply with regulations covering breakfast requirements; determination and service of free, reduced price and paid meals served; financial and resource management; non-profit status; procurement; effective use of commodity foods; record keeping; sanitation and health standards.

Source: 7 CFR 220 and 245

- ⊕ School divisions which employ itinerant teachers for the blind must agree to: hire a qualified teacher for the visually impaired, share information with Department for the Visually Handicapped, be responsible for equipment which is on loan from the Department for the Visually Handicapped, and require their itinerant teachers to attend training programs which are sponsored by the Department for the Visually Handicapped.

Source: Contract between the Department for the Visually Handicapped and school divisions employing itinerant teachers for the blind

- ⊕ In order to receive particular funding, local school divisions must comply with teacher salary requirements.

Source: Item 171 of the 1991 Appropriation Act

Elementary and Secondary Education

- ⊗ School divisions must comply with State standards for driver education programs in order to receive State funds for driver education programs.
Source: *Code of Virginia* § 22.1-205
- Instruction concerning drugs and drug abuse shall be provided by each school division as prescribed by the State.
Source: *Code of Virginia* § 22.1-206
- School divisions shall emphasize physical and health education throughout their curriculums, in accordance with State regulations.
Source: *Code of Virginia* § 22.1-207
- School divisions shall emphasize moral education through lessons given by teachers and imparted by appropriate reading sections.
Source: *Code of Virginia* § 22.1-208
- School divisions shall make employment counseling and placement services available to secondary students, at no charge to students.
Source: *Code of Virginia* § 22.1-209
- Any vacation school or summer camp operated by a school division shall be open to persons of school age within the school division regardless of whether a person attends public or private schools.
Source: *Code of Virginia* § 22.1-211
- School divisions must use textbooks approved by the State, or selected by the school division in accordance with State regulations.
Source: *Code of Virginia* § 22.1-238
- Local school boards shall develop and implement a program of instruction for grades K through 12 which emphasizes reading, writing, speaking, mathematical concepts and computations, and scientific concepts and processes; essential skills and concepts of citizenship; fine arts and practical arts; knowledge and skills needed to qualify for further education or employment; and development of the ability to apply such skills and knowledge in preparation for eventual employment and in the case of handicapped children, to qualify for appropriate training.
Source: *Code of Virginia* § 22.1-253.13:1
- Local school boards shall implement remedial programs in grades K through 12.
Source: *Code of Virginia* § 22.1-253.13:1
- Local school boards shall implement programs based on prevention, intervention, or retrieval designed to increase the number of students who earn a high school diploma or general education development certificate.
Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement career education programs infused into the K-12 curricula that promote knowledge of careers and all types of employment opportunities.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement competency-based vocational education programs, career guidance, and job-seeking skills for all secondary students, including those identified as handicapped that reflect employment opportunities, labor market needs, applied basic skills, job-seeking skills, and career guidance.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement academic and vocational preparation for students who plan to continue their education beyond secondary school or who plan to enter employment.

Source: *Code of Virginia* § 22.1-253.13:1

- ⊕ Local school divisions which receive federal funds for vocational education are required to operate their educational programs in a manner that does not deny services or promote discrimination on the basis of race, sex, national origin, or handicap.

Source: 45 CFR 80

- Vocational education programs must be competency-based to ensure that students are prepared to enter employment and continue formal education. The following standards apply: (1) role-relevant competencies are identified and stated; (2) competencies must be specified to students prior to instruction; (3) criterion-referenced measures must be used to evaluate achievement; and (4) a system must exist for documenting the competencies achieved.

Source: State Board of Education regulation VR 270-01-0011, Section 3.3

- Each local education agency must establish a general vocational advisory council to provide advice to the local educational agency (or board) on current job needs and the relevancy of vocational programs offered to assist in the development of the local plan and application. Councils must be composed of representatives from business, industry and labor including representation of both sexes and racial and ethnic minorities. A report must be provided annually to the Department of Education describing activities of the advisory council.

Source: State Board of Education regulation VR 270-01-0011, Section 2.3

- Vocational student organizations must be an integral and active part of each vocational program. All vocational students must be provided opportunities to participate in instructional activities of the organization whether or not dues are paid.

Source: PL 101-392; and State Board of Education regulation VR 270-01-0011, Section 3.7

- Ⓐ Local education agencies which receive financial assistance for the operation of vocational education programs must submit a local vocational plan and application for review and approval to the Department of Education. The plan must (1) cover the same time period on the State plan for vocational education; (2) include all statements of assurance and meet all necessary conditions prescribed by federal legislation; (3) give consideration to vocational offerings by community colleges, adult education, employment training, proprietary schools and other organizations.

Source: State Board of Education Vocational
Education Regulations, Section 2.2

- Local school boards shall implement early identification of handicapped students and enrollment of such students in appropriate instructional programs consistent with State and federal law.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement early identification of gifted students and enrollment of such students in differentiated instructional programs.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement educational alternatives for students whose needs are not met in programs prescribed elsewhere in these standards. Such students shall be counted in average daily membership in accordance with the regulations of the Board of Education.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement adult education programs for individuals functioning below the high school completion level.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall implement a plan to make achievements for disadvantaged students a divisionwide priority which shall include procedures for measuring the progress of such students.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall employ a minimum number of certified, full-time equivalent instructional personnel for each 1,000 students in average daily membership as set forth in the appropriations act.

Source: *Code of Virginia* § 22.1-253.13:1

- Local school boards shall assign certified instructional personnel in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: 25/1 in kindergarten classes with no class being larger than 30 students, 24/1 in grade one with no class being larger than 30 students, 25/1 in grades

two and three with no class being larger than thirty students, 25/1 in grades four through six with no class being larger than 35 students, and 24/1 in English classes in grades six through twelve. In addition, instructional personnel shall be assigned by each school board in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of 25/1 in middle schools and high schools.

Source: *Code of Virginia* § 22.1-253.13:1

- Each local school board shall provide those support services which are necessary for the efficient and cost-effective operation and maintenance of its public support, pupil personnel services, student attendance and health, operation and maintenance of the buildings and management information systems.

Source: *Code of Virginia* § 22.1-253.13:2

- Each local school board shall provide a program of pupil personnel services for grades K through 12 which shall be designed to aid students in their educational, social, and career development.

Source: *Code of Virginia* § 22.1-253.13:2

- Each local school board shall maintain schools which meet the standards of accreditation as prescribed by the Board of Education. Standards include such requirements as elementary guidance counselors, class size maximums, graduation requirements, and maximum class periods per teacher.

Source: *Code of Virginia* § 22.1-253.13:3; and Department of Education regulation VR 270-01-0012

- Each local school board shall provide teachers and principals with periodic in-service training in preparing tests and other assessment measures and methods for assessing the progress of individual students, including Standards of Learning assessment materials or other criterion referenced tests which match locally developed objectives.

Source: *Code of Virginia* § 22.1-253.13:3

- Each local school board shall require the administration of criterion referenced tests and teacher made tests as well as the nationally normed test prescribed and provided by the Board including the tests for the Virginia State Assessment Program and the National Assessment of Educational Progress state by state assessment.

Source: *Code of Virginia* § 22.1-253.13:3

- Assessments of individual students shall be conducted at least annually through criterion-referenced tests and nationally normed tests. Each school board shall analyze, annually, the scores of nationally normed tests and report this analysis to the public. Each school board shall identify annually students who score in the bottom national quartile for the purpose of providing remediation.

Source: *Code of Virginia* § 22.1-253.13:3

- Each school board shall award literacy passports to all students including handicapped students, who achieve passing scores on the literacy tests established by the Board of Education.

Source: *Code of Virginia* § 22.1-253.13:4

- Each school board shall award diplomas to all secondary school students who earn the units of credit prescribed by the Board of Education, pass the prescribed literacy tests, and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education.

Source: *Code of Virginia* § 22.1-253.13:4

- Each local school board shall require its members to participate annually in in-service programs on personnel, curriculum and current issues in education as part of their service on the local board and require the division superintendent to participate annually in professional development activities at the local, State, or national levels.

Source: *Code of Virginia* § 22.1-253.13:5

- Each local school board shall provide a program of professional development, as part of the recertification process, to assist teachers and principals in acquiring the skills needed to work with gifted students and handicapped students and to increase student achievement and a program of professional development for administrative personnel designed to increase proficiency in instructional leadership and management.

Source: *Code of Virginia* § 22.1-253.13:5

Special Education

- Each school division shall provide special education services to handicapped children, ages two through twenty-one, residing within its jurisdiction, in accordance with State regulations.

Source: Individuals with Disabilities Education Act (20 USC 400 *et seq.*); Article VIII, Section 1 of the Virginia Constitution; *Code of Virginia* § 22.1-215; and Department of Education regulation VR 270-01-0007

- Each school division shall submit an annual plan for special education for the year following and report indicating the extent to which the plan required by law for the preceding year has been implemented. The plan must be acceptable to the State Board of Education.

Source: *Code of Virginia* § 22.1-215

- Any school division unable to provide free, appropriate public education to a handicapped child shall place the child in an appropriate special education facility.

The school division shall pay the reasonable tuition charges for the child, in accordance with State regulations.

Source: *Code of Virginia* § 22.1-218

- School divisions are required to provide free transportation to handicapped children who need it. That transportation should only be provided via specially equipped buses or vans where appropriate.

Source: *Code of Virginia* § 22.1-221

- Local education agencies must follow the special education program standards which specify criteria for class size maximums and the operations of programs for students with disabilities including self-contained, resource, and departmentalized models. In addition, criteria for special education teacher endorsements and educational interpreters for students with hearing impairments are provided.

Source: Individuals with Disabilities Education Act (20 USC 1400 *et seq.*); 34 CFR 300.600; and Department of Education regulation VR 270-02-0007, Section 4.1

HEALTH AND WELFARE

The State's involvement in health and welfare, measured by the absolute number of mandates (89), is greater than in any other area of local activity. The principal mandates have been grouped into the areas of public health; mental health, mental retardation, and substance abuse services; and social services.

PUBLIC HEALTH

JLARC staff identified 20 mandates in the area of public health, including seven new mandates. One of the most significant mandates is the requirement upon every city and county to participate in the State and Local Hospitalization Program. Mandates implemented since 1983 concern animal control, community education, acquired immunodeficiency virus testing and counseling, and inspection of wells and sewage treatment plants meeting certain requirements.

Local Concerns

The category of public health services is divided into two subcategories — service requirements and administrative requirements. Most localities do not appear to consider health requirements to be particularly unreasonable (Table 3). One-third of the respondents cited these mandates as reasonable, with 44 percent identifying them as neither reasonable nor unreasonable.

Table 3

Percentage of Cities and Counties Citing Public Health Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|------------------------|-------------------|----------------|---------------------|------------|
| Public Health Services | 33% | 44% | 10% | 13% |
| Service | 33 | 43 | 12 | 13 |
| Administrative | 22 | 51 | 14 | 13 |

Source: JLARC staff survey of local governments, summer 1991.

Although some local government officials identified problems with particular mandates, there was generally no consistency in the responses. However, the one concern repeatedly mentioned was the redundancy of required paperwork. As noted by local officials:

Redundant paperwork is not only time consuming but costly. More clients could be seen in the same amount of time if there was less paperwork.

* * *

There is a large and unnecessary amount of paperwork in all programs — especially WIC [Supplemental Food Program for Women, Infants, and Children], Home Health and Baby Care. Each program has its own set of data to be collected and reported and staff ends up recording and reporting the same or similar data over and over.

Other concerns voiced by a few localities addressed the lack of clarity of clinical service requirements and the lack of flexibility of nursing home licensure mandates.

State Agency Response

The Department of Health (DOH) understood the perceptions localities have concerning paperwork. Currently, the DOH has several efforts underway aimed at reducing the amount of paperwork and minimizing duplication of efforts. For example, a universal consent form has been developed which will eliminate the need for a client to report the same information more than once. It will soon be piloted in selected local agencies.

There is also an effort to reduce paperwork in the WIC program by modifying the annual district nutrition education plan requirements, streamlining the nutrition and administrative evaluation tools, and through publication of quarterly newsletters that reduce correspondence to the field related to WIC policies and developments. The DOH is also implementing modules through the Patient Care Management System which should minimize duplication of reporting identical information. Incorporation of the WIC module is planned for FY 1992.

The DOH also noted that the State's nursing home licensure mandates are based on federal certification requirements. While agreeing that the standards do lack some flexibility, the department stated that their intent is to protect the consumers of the services and ensure accountability of public funds.

Health

- Each county and city must establish and maintain a local department of health. The specific services to be provided via the local health department are contained in an annual contract between the locality and the State Board of Health.

Source: *Code of Virginia* §§ 32.1-30 through 32.1-34

- Local health departments must provide communicable disease services including childhood immunizations, sexually transmitted disease screening, diagnosis, and surveillance, acquired immune deficiency syndrome - human immunodeficiency virus testing and counseling, surveillance of reportable communicable diseases, food borne disease outbreaks, and other unusual disease outbreaks, tuberculosis control screening, diagnosis, treatment, and surveillance and community education.

Source: *Code of Virginia* §§ 32.1-11.3, 32.1-39, 32.1-45.1, 32.1-46, 32.1-49, 32.1-54, and 32.1-57; and Department of Health Agreement With Local Government

- Local health departments are required to provide child health services including child specialty services, screening for genetic traits and inborn errors of metabolism, and provision of dietary supplements, well child care, Supplemental Food Program for Women, Infants, and Children, and community education.

Source: PL 94-10; Social Security Act, Title V; *Code of Virginia* §§ 22.1-270, 32.1-11, 32.1-65 through 32.1-68, and 32.1-77; and Department of Health Agreement with Local Government

- Local health departments are required to provide maternal health services which include prenatal and post partum care for low risk and intermediate risk women, baby care services, Supplemental Food Program for Women, Infants, and Children, and community education.

Source: Social Security Act, Title V; *Code of Virginia* §§ 32.1-11 and 32.1-77; and Department of Health Agreement with Local Government

- Local health departments are required to provide family planning services which include clinic services, including drugs and contraceptive supplies, pregnancy testing and counseling, and community education.

Source: Social Security Act, Title X; and Department of Health Agreement with Local Government

- Local health departments are required to provide environmental health services which include investigation of communicable diseases; rabies control; regulation of ice cream/frozen desserts, marinas, migrant labor camps, milk, on site sewage disposal, water supply sanitation, wells, and restaurants; and inspections of sewage treatment plants serving single family homes with discharges of less than 1,000 gallons per day; and inspections of tourist establishments.

Source: PL 93-523, 92-500, and 95-217; *Code of Virginia* §§ 3.1-530.4, 3.1-562.1 through 3.1-562.10, 29-213.1 through 29-213.4;

| | | |
|---------------------|---|---|
| ● Compulsory Orders | ⊕ Conditions of State & Federal Financial Aid | ○ State & Federal Regulation of Optional Activities |
|---------------------|---|---|

32.1-13, 32.1-39, 32.1-163 through 32.1-176.6, 32.1-203 through 32.1-211, 32.1-246, 35.1-22, 62.1-44.18, and 62.1-44.19; and Department of Health Agreement with Local Government.

- Local health departments are required to provide Medicaid nursing home screening and Medicaid pre-authorizations.

Source: *Code of Virginia* § 32.1-330; and Department of Health Agreement with Local Government

- Each county and city health director shall serve as the county or city registrar of vital records and health statistics for his jurisdiction. The local registrar shall transmit at least twice monthly the records filed with him to the State Registrar.

Source: *Code of Virginia* § 32.1-254 *et seq.*

- Local health departments which provide optional communicable disease services, including foreign travel immunizations, must comply with Department of Health regulations, policies, and guidelines.

Source: Department of Health Agreement with Local Government

- Local health departments which provide optional child health services, including baby care services, sick child care, blood lead level testing, school health services, and outreach, must comply with Department of Health regulations, policies, and guidelines.

Source: Department of Health Agreement with Local Government

- Local health departments which provide optional maternal health services, including outreach, must comply with Department of Health policies and guidelines.

Source: Department of Health Agreement with Local Government

- Local health departments which provide optional family planning services, including outreach, must comply with Department of Health policies and guidelines.

Source: Department of Health Agreement with Local Government

- Local health departments which provide optional general medical services, including activities of daily living, general clinic services, home health services, outreach, occupational health services, personal care, pharmacy services, hypertension screening, referral, and counseling, and respite care services, must comply with Department of Health regulations, policies, and guidelines.

Source: Department of Health Agreement with Local Government

- Local health departments which provide optional dental health services, including preventive clinic services for children and adults, and restorative clinic services must comply with Department of Health regulations, policies, and guidelines.

Source: Department of Health Agreement with Local Government

- County, city, and town governments and regional authorities that own and operate State regulated health care facilities are required to comply with State licensure and/or certification requirements such as those governing operation of hospitals, nursing homes or blood banks.

Source: *Code of Virginia* §§ 32.1-123 through 32.1-144

- The governing body of each city and county in Virginia is required to participate in the State/Local Hospitalization Program. Localities are required to provide funds for a share of the total costs and to annually report data on rejected applications to the program.

Source: *Code of Virginia* §§ 32.1-345 and 32.1-347; and Department of Medical Assistance Services regulation VR 460-05-1000-0000

- Any local government that operates a restaurant, hotel, or summer camp would be required to meet the same licensing or permitting requirements as any other operator of same.

Source: *Code of Virginia* §§ 35.1-13 through 35.1-17; and Department of Health regulations governing licensure of hotels, summer camps, campgrounds, and restaurants

- ⊕ County, city, and town governments and regional authorities that own and operate health care facilities that provide care for Medicare and/or Medicaid patients, and wish to receive reimbursement from the government for such care are required to comply with federal mandates. The Division of Licensure and Certification acts on behalf of the federal government in connection with the survey and certification of such facilities.

Source: Social Security Act, Title XVIII and Title XIX

- Animal wardens, custodians, or animal control officers engaged in the operation of a pound must avail themselves of at least one training course offered by the Commonwealth for law-enforcement officers or for humane investigators, or any animal warden, humane officer, or law officer workshop approved by the State Veterinarian.

Source: *Code of Virginia* § 3.1-796.105

- Compliance officers under the direction of the State Veterinarian must enforce the comprehensive animal laws of the Commonwealth.

Source: *Code of Virginia* § 3.1-796.112

MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES

In the area of mental health, mental retardation, and substance abuse services there are currently nine mandates. This includes an increase of two new mandates since the 1983 study. A principal requirement is that all cities and counties must have established or joined an existing Community Services Board (CSB). Emergency services is the only service required to be provided by CSBs. Local financial participation in a CSB is a condition for receipt of State funds for community programs. Finally, CSBs are required to follow a number of administrative procedures for budgeting, services, and fiscal management as a condition for receiving State funds.

Local Concerns

Under the general category of mental health, mental retardation, and substance abuse services, localities were also asked to rate three subcategories: emergency services, licensing and certification, and administrative requirements (Table 4). Overall, mental health, mental retardation, and substance abuse services mandates were cited as unreasonable by only 14 percent of the localities responding to the survey. In the subcategories, emergency services requirements received the most favorable rating, with over one-third of the respondents citing them as reasonable. Licensing and certification and administrative requirements were cited as unreasonable by more localities.

Table 4

Percentage of Cities and Counties Citing Mental Health, Mental Retardation, and Substance Abuse Services Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|--|-------------------|----------------|---------------------|------------|
| Mental Health, Mental Retardation, and Substance Abuse Services | 28% | 43% | 14% | 15% |
| Emergency Services | 39 | 35 | 10 | 16 |
| Licensing and Certification | 23 | 37 | 23 | 16 |
| Administrative | 26 | 34 | 27 | 13 |

Source: JLARC staff survey of local governments, summer 1991.

Additional local comments addressed similar concerns. Reporting requirements, in particular quarterly performance contract reports, were frequently cited as unreasonable and unnecessary. Local officials expressed uncertainty over whether the data collected were actually used. The purpose and necessity of the biennial evaluation process was also questioned. In regard to the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS), one locality stated:

The agency is not clear about the purpose of its required evaluation efforts or data collection requirements, which places a burden on Community Services Boards to comply and decipher what the State agency needs.

Several localities also voiced concern with licensure and certification requirements. They do not believe that the requirements are directly related to assuring quality services.

State Agency Response

DMHMRSAS has addressed these local concerns. Regarding local assertions that reporting requirements are unreasonable and unnecessary, DMHMRSAS explained that the data collected are used by the department to monitor service delivery. In addition, some data are collected to fulfill federal reporting requirements. To assist CSBs with reporting requirements, the DMHMRSAS has provided them with \$2.5 million for additional staff and automated data processing systems. According to DMHMRSAS, the biennial evaluation process has been discontinued for the time being.

Mental Health, Mental Retardation, and Substance Abuse Services

- Cities and counties must establish or join a community services board.
Source: *Code of Virginia* § 37.1-194 et seq.
- ⊕ Community service boards must provide emergency, preadmission, and predischarge planning services for mentally ill, mentally retarded, and substance dependent individuals in their service areas.
Source: *Code of Virginia* § 37.1-194
- ⊕ Each local government establishing a single jurisdiction community services board or the local government which serves as the fiscal agent for a multijurisdictional community service board must audit the community service board's total revenues and arrange for the provision of legal services (with the other jurisdictions in a multijurisdictional community service board).
Source: *Code of Virginia* § 37.1-195

● Compulsory Orders ⊕ Conditions of State & Federal Financial Aid ○ State & Federal Regulation of Optional Activities

- Localities must approve the plan and budget of the community services board before it is eligible for State grants. In addition, localities must provide a share of the funds.
Source: *Code of Virginia* § 37.1-197 et seq.
- Community services boards must establish a prescription team which is responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for clients referred to community service boards.
Source: *Code of Virginia* § 37.1-197.1
- ⊕ Community services boards which receive State funds must ensure that their programs meet certification standards issued by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in the areas of mental health, mental retardation, and substance abuse.
Source: *Code of Virginia* § 37.1-199
- ⊕ Community services boards which receive State support must comply with administrative procedures and policies issued by the Department of Mental Health, Mental Retardation, and Substance Abuse Services.
Source: *Code of Virginia* § 37.1-199
- ⊕ All community service boards must participate in the Medicaid State Plan Option and Mental Retardation Waiver programs which fund community mental health and mental retardation services.
Source: Item 478 of the 1991 Appropriation Act
- Local governments establishing a Virginia Alcohol Safety Action Program must provide assessment, education and treatment of persons arrested and convicted of driving under the influence of alcohol or other self administered substances. Participating local governments must comply with the minimum standards and criteria for the implementation and operation of this program.
Source: *Code of Virginia* §§ 18.2-271.1 and 18.2-271.2; and Virginia Alcohol Safety Action Program regulation VR 647-01-02

SOCIAL SERVICES

JLARC staff identified 60 social services mandates, including six that have been implemented since 1983. For discussion and reporting purposes, these mandates have been divided into three categories of requirements: social services administration, financial assistance administration, and social services for the needy.

The eight social services administration mandates in this category address office space and facilities, record retention, reporting, budget development, confidentiality, and staffing. In the area of financial assistance to the needy, JLARC staff identified 18 requirements. Among the major benefit programs, local governments are required to determine client eligibility and perform activities for the food stamp program, Medicaid Program, and Aid to Dependent Children Program. There are seven major mandated social service programs for the needy: intake services, family preservation services, adult services, child protective services, foster care and adoption, child day care, and employment services.

Local Concerns

Local opinions of the reasonableness of these mandates are contained in Table 5. The category of social services administration has been divided into two subcategories – personnel and reporting requirements. Administrative requirements in social services received unreasonable ratings by 42 percent of the respondents. Both personnel and reporting requirements were rated as unreasonable by over 40 percent of the localities.

Local officials provided additional comments to emphasize problems with particular personnel and reporting requirements. To many localities reporting requirements appear to be cumbersome and duplicative. One locality explained that:

Local departments of social services are reporting a vast array of statistics to the various computer systems that the central office seems unable to properly utilize. Localities are constantly requested to respond to questionnaires and surveys of information already in the VACIS, LAPS, and CANIS systems.

Localities commented that these requirements can cause delays in the reimbursement process.

In the area of financial assistance to the needy, nearly one-half of the respondents rated the mandates as unreasonable. Program requirements received an unreasonable rating by over one-half of the responding local governments. Eligibility requirements also were cited as unreasonable by many localities.

Table 5

**Percentage of Cities and Counties Citing
Social Services Mandates
as Reasonable, Neutral, and Unreasonable**

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|-----------------------------------|-------------------|----------------|---------------------|------------|
| Social Services Administration | 15% | 40% | 42% | 3% |
| Personnel | 16 | 37 | 43 | 4 |
| Reporting | 13 | 38 | 46 | 4 |
| Financial Assistance to the Needy | 14 | 36 | 46 | 4 |
| Eligibility | 14 | 37 | 44 | 5 |
| Program | 11 | 34 | 52 | 4 |
| Social Services for the Needy | 22 | 37 | 39 | 3 |
| Eligibility | 22 | 41 | 32 | 4 |
| Service | 17 | 34 | 46 | 3 |

Source: JLARC staff survey of local governments, summer 1991.

Localities that provided responses to mandates in this area most frequently cited problems with eligibility requirements for the Medicaid and Aid to Dependent Children programs. According to one locality:

The Medicaid Program in particular, is a flawed program. It has such a multiplicity of special and projected categories, income levels, and resource levels for both families and adults that workers spend an inordinate time screening to assess an individual's potential eligibility.

Localities described these requirements as too complex and unreasonable.

In the category of social services for the needy, over one-third of the respondents rated mandates as unreasonable. Service requirements received an unreasonable rating by nearly one-half of the responding localities. But there was not any agreement among written responses as to specific problems with these mandates. Various officials addressed particular requirements such as protective service investigations, day care eligibility criteria, and foster care reviews.

State Agency Response

The Department of Social Services (DSS) has addressed these local concerns. Regarding local officials' description of reporting requirements as cumbersome and duplicative, DSS explained that the department is currently studying the issue of data access and reporting. DSS also added that:

The future direction for automation activities include improving automation so Local Agencies do not have to manually prepare reports and enter the information separately into state and local systems.

Concerning local comments on federal programs such as Medicaid and Aid to Dependent Children, DSS stated that they do not have control over the context of federal requirements.

Social Services Administration

- Local social service agencies must conform to policies for office space and facilities set by the Department of Social Services.
Source: *Code of Virginia* § 63.1-25
- Local social service agencies must destroy program records according to retention and disposition schedules set by the Department of Social Services.
Source: *Code of Virginia* § 63.1-25
- Local social service agencies must submit reports on staffing to the Department of Social Services.
Source: *Code of Virginia* §§ 63.1-33 and 63.1-52
- Local social service agencies must submit reports concerning administrative planning to the Department of Social Services.
Source: *Code of Virginia* §§ 63.1-33 and 63.1-52
- Localities must submit a budget for local social service agencies to the Department of Social Services annually and fund a share of the budget.
Source: *Code of Virginia* §§ 63.1-33 and 63.1-91
- Local social service agencies must ensure and maintain the confidentiality of administrative records.
Source: *Code of Virginia* § 63.1-53
- Local social service agencies must conform to a merit system of personnel administration for administrative staff.
Source: 5 CFR 900 Subpart F(b); and *Code of Virginia* §§ 63.1-61 and 63.1-87

- Local social service agencies are required to comply with civil rights regulations in the administration of their services/benefits programs.

Source: Civil Rights Act of 1964, as amended, Title VI, Section 601; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1975; and Food Stamp Act of 1977

Financial Assistance to the Needy

- Local social service agencies must determine the eligibility of clients for the refugee assistance program. They must follow certain procedures when determining if an individual is eligible for the program.

Source: 45 CFR 400; and *Code of Virginia* § 63.1-25

- Local social service agencies must determine the eligibility of clients for the energy assistance program. They must administer the energy assistance program using federal grant funds and any other available funds.

Source: PL 97-35; *Code of Virginia* §§ 63.1-25, 63.1-38, 63.1-50, 63.1-86, and 63.1-87; and Department of Social Services Manual Volume IX

- Local social service agencies must determine the eligibility of clients for the temporary assistance for repatriates program.

Source: *Code of Virginia* § 63.1-25

- Local social service agencies must administer the auxiliary grant program for supplemental security income recipients and provide local funding for a share of the program costs.

Source: PL 93-66; *Code of Virginia* § 63.1-25.1; and Department of Social Services Manual Volume II, Part III

- Local social service agencies are required to participate in the food stamp program. They must comply with State and federal requirements in administering the food stamp program including determining the eligibility of clients, submitting cases selected for quality control review, adjusting and/or correcting individual cases determined to be a quality control error case, allowing and facilitating appeals, and implementing hearing decisions.

Source: 7 CFR Subpart C and 273.15 through 273.16; Department of Social Services Food Stamp Policy Manual Volume V, Part XIX; and *Code of Virginia* §§ 63.1-25.2, 63.1-38, 63.1-50, 63.1-86, 63.1-87, 63.1-116, and 63.1-119

- Local social service agencies are required to establish and maintain methods and criteria for preventing, identifying, investigating and taking legal or administrative action in situations in which fraud in public assistance programs may exist.

Source: 45 CFR 235.110(a)(1)(2); 7 CFR 273.16; *Code of Virginia* §§ 63.1-124 through 63.1-124.2; Department of Social Services

Food Stamp Certification Manual, Part 17, C-1; and Department of Social
Services Aid to Dependent Children Policy Manual, Section 102.2

- Local social service agencies are required, subject to specific program policy, to initiate collection action on overpayments and payments to ineligible recipients or former recipients.

Source: 45 CFR 233.2(a)(13)(i); 7 CFR 273.18(d)(2); Comptroller's Directive 1-86; *Code of Virginia* § 63.1-127.2; Department of Social Services Aid to Dependent Children Policy Manual, Section 503.8; and Department of Social Services Food Stamp Certification Manual, Part 17, C-6

- Local social service agencies must submit reports on caseloads to the Department of Social Services.

Source: *Code of Virginia* §§ 63.1-33 and 63.1-52

- Local social service agencies must submit reports on expenditures for financial assistance programs to the Department of Social Services.

Source: *Code of Virginia* §§ 63.1-33 and 63.1-52

- Local social service agencies must determine the eligibility of clients for the Medicaid program. They must follow certain rules and regulations associated with determining Medicaid eligibility including submitting Medicaid cases selected for quality control review and adjusting and/or correcting individual cases determined to be a quality control error case.

Source: 42 CFR 431.10 and 431.800; *Code of Virginia* §§ 63.1-38, 63.1-50, 63.1-86, 63.1-87, 63.1-97.1, and 63.1-98; and Department of Social Services Manual Volume IX

- Local social service agencies must ensure and maintain the confidentiality of client records for financial assistance programs.

Source: *Code of Virginia* § 63.1-53

- Local social service agencies must conform to a merit system of personnel administration for employees handling financial assistance programs.

Source: 5 CFR 900, Subpart F(b); and *Code of Virginia* §§ 63.1-61 and 63.1-87

- Local social service agencies are required to participate in the Aid to Dependent Children Program. Required procedures include determining eligibility of clients, submitting Aid to Dependent Children cases selected for quality control review, adjusting and/or correcting individual cases determined to be a quality control error case, and allowing and facilitating appeals.

Source: 45 CFR 200, 205.10, 205.20, 205.40, and 233.20; *Code of Virginia* §§ 63.1-105, 63.1-105.1, 63.1-108 through 63.1-110; and Department of Social Services Aid to Dependent Children Policy Manual

- Local social service agencies must determine the eligibility of clients for the aid to dependent children in foster care program.
Source: *Code of Virginia* §§ 63.1-105, 63.1-105.1, 63.1-108, 63.1-109, and 63.1-110
- Local social service agencies must determine the eligibility of aid to dependent children recipients for the emergency assistance program.
Source: *Code of Virginia* §§ 63.1-105, 63.1-105.1, 63.1-108, 63.1-109, and 63.1-110
- Local social service agencies which elect to provide the general relief program must submit a plan and share in the costs of the program.
Source: *Code of Virginia* § 63.1-106
- All financial assistance grants shall be reconsidered by the local board as frequently as may be required by the rules and regulations of the State board.
Source: *Code of Virginia* § 63.1-113
- The local board shall preserve for such length of time as the Department of Social Services may prescribe, a record of the decision of the local board and all supporting documents and records including the findings and recommendations of the local superintendent.
Source: *Code of Virginia* § 63.1-115

Social Services for the Needy

- Local social service agencies are required to develop, with the community service boards, joint annual written agreements to specify what services will be provided to clients. Local social service agencies are required to serve on prescription teams to facilitate the integration of community services necessary for predischage planning for clients referred to community service boards.
Source: *Code of Virginia* § 37.1-197.1; and Department of Social Services Service Program Manual Volume VII, Section IV, Chapter D, 1d and 2b
- Local social service agencies are required to provide intake services, including accepting and processing service applications, arranging for family planning, and early and periodic screening, diagnosis, and treatment for children.
Source: Social Security Act, Title XIX; and State Board of Social Services Policy
- Local social service agencies are required to provide case management services including disposition of service applications, service planning, service delivery, monitoring and case closure.
Source: State Board of Social Service Policy 10-77

- The governing body of each county or city, or combination thereof, must designate a lead agency and member agencies to accomplish the coordination of local long-term care services. Representatives from the local department of public health, the local department of social services, the community services board or the community mental health clinic, the area agency on aging, and the local nursing home preadmission screening team must serve on the coordination committee.

Source: *Code of Virginia* § 2.1-373.7

- Local social service agencies are required to participate in a community based screening team to evaluate individuals who will be eligible for long term care services.

Source: *Code of Virginia* § 32.1-330; and Department of Social Services Service Program Manual Volume VII, Section IV, Chapter D

- Local social service agencies are required to assume responsibility for the provision of social services to persons discharged from State hospitals.

Source: *Code of Virginia* § 37.1-98

- Local social service agencies are required to provide home-based services to the extent that federal or State matching funds are available.

Source: *Code of Virginia* § 63.1-55.01; State Board of Social Services Policy, January 1975; and Department of Social Services Service Program Manual Volume VII, Section IV, Chapter B

- Local social service agencies are responsible for the development and delivery (or purchase) of family preservation services, including services to prevent or eliminate the need for foster care or other out-of-home placements.

Source: Social Security Act, Title IV-E, Section 471(a)(15); *Code of Virginia* §§ 63.1-25, 63.1-55, 63.1-56, and 63.1-248; and Department of Social Services regulation VR 615-50-4

- Local social service agencies participating in the adult, family care program must comply with State rules and regulations.

Source: *Code of Virginia* § 63.1-55.1:1; and Department of Social Services Service Program Manual Volume VII, Section IV, Chapter D

- Local social service agencies are required to 1) provide services directly to victims of spouse abuse to the extent that funds are available and 2) promote interagency cooperation for data collection, technical assistance and service delivery.

Source: *Code of Virginia* § 63.1-317.1

- Local social service agencies are required to identify specific protective services needed (by adults found to need protective services) and provide those services to the extent that federal or State matching funds are available. They must conduct

investigations into reports that older and/or incapacitated adults are abused, neglected, or exploited. They must also submit reports on protective services.

Source: *Code of Virginia* §§ 63.1-33, 63.1-52, 63.1-55.1, and 63.1-55; State Board of Social Services Policy; and Department of Social Services Service Program Manual Volume VII, Section IV, Chapter A

- If so ordered by the court, local social service agencies must assist in the preparation of a comprehensive evaluation of a person who is before the court for the appointment of a guardian.

Source: *Code of Virginia* § 37.1-128.1

- Local social service agencies are required to provide child protective services. This includes receiving, investigating, and providing services for all complaints of alleged child maltreatment. It also includes the responsibility for making the appropriate reports to the central office and the Commonwealth's Attorney and amending the Child Protective Service record based on a hearing officer's decision.

Source: PL 100-284 as amended by PL 101-126 and PL 101-226; *Code of Virginia* § 63.1-248.6; and Department of Social Services Service Program Manual Volume VII, Section III, Chapter A

- Whenever a local social service agency approves an application for public assistance on behalf of a child and it appears that the child has been abandoned by the non-custodial parent or that the person responsible for the child has failed or neglected to give proper care or support to such child, the local social service agency must refer the matter to the Department of Social Services.

Source: 45 CFR 232.11 and 232.12; *Code of Virginia* § 63.1-274.2; and Department of Social Services regulation VR 615-70-17, Sections 2.2 and 2.3

- Local departments of public welfare/social services must provide foster care. Services are to be planned and provided to the child, biological family, and foster parents. Required procedures include determining eligibility for the State/local foster care program, providing local funding for a share of the program costs, completing service plans, and submitting reports on services. In addition, local social service agencies must follow State board regulations for the interstate and intercountry placement of children.

Source: Social Security Act, Title IV-E, Section 470, 471, and 472; *Code of Virginia* §§ 16.1-281, 16.1-282; 63.1-33, 63.1-52, 63.1-55, 63.1-55.8, 63.1-56, 63.1-56.2, 63.1-206.1, 63.1-207, and 63.1-207.1; Department of Social Services regulation VR 615-42-1; State Board of Social Services Policy, 1977; and Department of Social Services Service Program Manual Volume VII, Chapters B, D, and E.

- Local social service agencies must provide adoption services. If reunification of a child with his family is not appropriate, this service may include the social and legal process to terminate parental rights and assist the child in becoming a member of

a new family unit through adoption. Services are also provided to the foster family and/or adoptive family including ongoing counseling and support, training and other pre- and post-placement services. Post-adoptive services may be included.

Source: Social Security Act, Title IV-B, Section 421, and Title IV-E, Section 47;
Code of Virginia § 63.1-220 *et seq.*; Department of Social Services regulations
VR 615-43-1 through 615-43-9; and Department of Social Services Service
Program Manual Volume VII, Section III, Chapters C and D

- ⊕ Local governments which are designated as planning and service areas and serve as the area agency on aging and receive Older Americans Act, Title V funds must comply with the regulations governing this Title of the Act. They are required to prepare an area plan for aging services which shows spending for in-home, access, legal services, congregate and home-delivered meals.

Source: PL 100-175; and Department for the Aging regulation VR 110-01-02

- Local elected officials shall appoint members to the Private Industry Council representing their jurisdiction(s). The appointments must be made according to statutory requirements.

Source: PL 97-100 as amended, Section 102; Executive Order 16 (90);
and *Code of Virginia* § 2.1-704

- ⊕ Local governments participating in the Job Training Partnership Act via the Private Industry Council, must comply with the regulations governing this Act. This includes submitting annual job training plans, meeting job training performance standards, maintaining a management information system, and establishing procedures/systems for identifying and selecting participants and for eligibility determination.

Source: PL 97-100, as amended, Sections 104, 106, 165; PL 100-418; Executive
Order 16 (90); *Code of Virginia* §§ 2.1-704 through 2.1-712; Governor's
Employment and Training Department regulations; and
Economic Dislocation and Worker Adjustment Assistance
Act Program Policies and Procedures Manual

- Local social service agencies must provide three services, chosen from a State list, to supplemental security income recipients.

Source: *Code of Virginia* § 63.1-25

- Local social service agencies must submit reports on caseloads for social service programs to the Department of Social Services.

Source: *Code of Virginia* §§ 63.1-33 and 63.1-52

- Local social service agencies must ensure and maintain the confidentiality of client records for social service programs.

Source: *Code of Virginia* § 63.1-53

- Local social service agencies must conform to a merit system of personnel administration for employees handling social service programs.

Source: *Code of Virginia* §§ 63.1-61 and 63.1-87

- Local social service agencies must provide needed child day care services to eligible recipients of food stamp assistance and Aid to Families with Dependent Children under specified circumstances. In addition, local social service agencies must provide transitional child day care services to eligible, employed former recipients of Aid to Families with Dependent Children for up to twelve consecutive months. It must be provided on a sliding fee scale basis.

Source: PL 100-485; Hunger Prevention Act (PL 100-435); Food Security Act of 1977, Part 273.7; and Department of Social Services regulations VR 615-53-01 and 615-48-01

- Local social service agencies must provide employment services for eligible recipients of general relief and food stamp assistance who are not exempt due to age, disability, etc.

Source: Hunger Prevention Act (PL 100-435); Food Security Act of 1977, Part 273.7; *Code of Virginia* §§ 63.1-133.8 through 63.1-133.28; State Board of Social Services Policy, February 10, 1987; Department of Social Services regulation VR 615-48-02; and Department of Social Services Service Program Manual Volume VII, Section II, Chapter C

- Local social service agencies must operate the Job Opportunities and Basic Skills Training (JOBS) program in all localities within the State. JOBS is designed to assist recipients of Aid to Dependent Children and Aid to Dependent Children-Unemployed Parents to become economically self sufficient by providing needed education and employment related activities, child care and support services.

Source: Family Support Act, Title II (45 CFR 205 etc.); Social Security Act, Titles IV-A and IV-B; *Code of Virginia* §§ 63.1-133.8 through 63.1-133.28; and Department of Social Services regulation VR 615-48-02

- Local social service agencies must submit and implement approved plans for refugee resettlement that meet federal and State criteria for eligibility, service delivery, and reporting.

Source: The Refugee Act of 1980 (PL 96-212)

- Local social service agencies must approve out-of-home providers and in-home providers.

Source: Department of Social Services regulation VR 615-50-1

- Local social service agencies are required to participate in the Department of Social Services Purchase of Service system. Using this system, local departments of social services purchase social services for eligible clients from approved vendors or community resources.

Source: Manual of Policy and Procedures for Local Departments of
Social Services, Volume VII, Section I, Chapter G

- ⊕ Local schools, correctional facilities, nursing homes, and social services agencies electing to receive foods donated by the U.S. Department of Agriculture must store, utilize, and account for foods they receive in accordance with federal regulations. Local social services agencies must file reimbursement claim vouchers with the Virginia Department of Agriculture and Consumer Services to receive reimbursement of expenses of distribution of foods to financially needy households. Local agencies must maintain records documenting such expenditures.

Source: 7 CFR 250 and 251

- Local governments which operate child care centers, nursery schools, child day care camps serving children of preschool age or younger, before and after school child care programs and child day care camps serving school age children, family day care or child caring institutions will be subject to licensure as of July 1, 1992.

Source: *Code of Virginia* § 63.1-196; Department of Social Services regulations VR 615-24-01 and 615-26-01; and Child Day Care Council regulations VR 175-09-01 and 175-08-01

- Local governments which operate adult day care centers for profit or homes for adults are subject to licensure.

Source: *Code of Virginia* § 63.1-172; and Department of Social Services regulations VR 615-21-02 and 615-22-02

- Local governments participating in the Head Start Program must comply with certain federal program requirements. The program's objectives are to provide comprehensive health, educational, nutritional, social, and other services primarily to preschool economically disadvantaged children.

Source: 42 USC 9831 *et seq.*; PL 97-35; and Omnibus Budget Reconciliation Act of 1981

- Local governments participating the Summer Food Service Program for children must comply with the program requirements. This provides nonprofit food service programs for needy children during the summer months and at other approved times, when area schools are closed for vacation.

Source: 7 CFR 225; 42 USC 1761(b); and PL 79-396

PUBLIC SAFETY

JLARC staff identified 40 public safety mandates, including 12 new mandates since 1983. These mandates have been divided into the categories of law enforcement and traffic control, corrections and detention, and emergency services.

Under law enforcement and traffic control, principal requirements consist of law enforcement training standards and submission of uniform crime reports to the State Police. Two new mandates have been implemented in this area since 1983, bringing the total to seven mandates.

With 21 mandates, State involvement in local corrections and detention of prisoners is more extensive. Localities must follow State guidelines in all phases of jail operations, including construction, staffing, equipment, and administration. The six new mandates JLARC staff identified in this area are primarily conditions of grant programs.

There has been an increase of four mandates in the emergency services area since the original study. Currently there are 12 requirements on localities. The principal requirements are that localities must prepare plans for handling local emergencies, establish an emergency management agency, participate in local emergency planning committees, and comply with the Board of Health's regulations addressing emergency medical services.

Local Concerns

Nearly one-half of the responding localities rated overall law enforcement requirements as reasonable (Table 6). Only nine percent of the respondents cited these mandates as unreasonable. Training requirements in particular received a reasonable rating by over one-half of the respondents to the local survey.

However, several localities provided written comments which specified particular concerns they had with law enforcement training requirements. Concern was expressed that the training courses are too general to be informative to officers. One local government official explained that:

Much of the basic training course is too general to be of value because the State mixes County sheriffs' deputies and city police officers in the same programs. The deputies must sit through too much material on traffic control and law which is not applicable to our deputies and, at the same time, the city police must sit through sessions on the legal requirements of process serving and papers which do not apply to city police. In general, we feel the State and its Criminal Justice Training Centers need to tailor courses to the specific roles of the various types of law officers.

Table 6

**Percentage of Cities and Counties Citing
Public Safety Mandates
as Reasonable, Neutral, and Unreasonable**

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|-------------------------------|-------------------|----------------|---------------------|------------|
| Law Enforcement | 46% | 45% | 9% | 0% |
| Training | 58 | 33 | 8 | 1 |
| Reporting | 41 | 46 | 12 | 0 |
| Corrections and Detention | 33 | 37 | 19 | 11 |
| Staffing | 25 | 31 | 29 | 15 |
| Jail Construction/Maintenance | 19 | 37 | 31 | 13 |
| Court Service Units | 28 | 36 | 21 | 15 |
| Reporting | 35 | 40 | 13 | 13 |
| Emergency Rescue Services | 30 | 48 | 11 | 11 |
| Training | 34 | 30 | 24 | 12 |
| Fire Protection | 43 | 43 | 6 | 7 |
| Training | 48 | 31 | 13 | 8 |

Source: JLARC staff survey of local governments, summer 1991.

Another locality emphasized the inadequate amount of time allowed for part-time deputy sheriffs to complete the training requirements. Another local concern was the lack of personnel resources to comply with in-service training every two years.

Overall, mandates in the area of corrections and detention did not receive as favorable a rating as law enforcement requirements, although one-third of the respondents did cite them as reasonable. Staffing requirements and jail construction and maintenance requirements were the two correctional subcategories with the highest percentages of unreasonable ratings. Several localities provided written comments addressing the unreasonableness of construction and maintenance requirements. They reported that the mandates were too excessive in some cases. Comments concerning jail staffing mandates focused on the inadequacy of funding provided by the State.

Neither emergency rescue services mandates nor fire protection requirements overall were rated as unreasonable by a significant number of respondents. However, just under one-fourth of the responding localities did cite emergency rescue training requirements as unreasonable. Six local governments, primarily rural, emphasized the unreasonable burden these training requirements place on them. One rural local government explained:

The training and certification requirements for volunteer rescue squad members is making the personal time commitment so great that recruiting and retaining adequate numbers of squad members is threatening the long term viability of volunteer rescue squads in rural and semi-rural areas.

No other emergency services requirements were consistently cited as unreasonable by local governments.

State Agencies' Responses

The Department of Criminal Justice Services (DCJS) responded to local comments concerning law enforcement training standards. DCJS explained that often sheriffs decide to have their staff attend courses that are not required by the State. They may want their staff to know more than their basic required duties. However, DCJS did admit that city police are required to sit through material on process serving. And deputies must attend sessions on traffic control that do not relate to their duties. Regarding the time allowed to complete the training, the department reported that it grants extensions of time to officers on a case-by-case basis.

The Department of Health (DOH) understood the initial perception that recent changes in requirements for training and certification of rescue squad members may be negatively impacting local squads. Some changes have required an increased commitment from squad members. Specifically, in 1985 the number of hours required for the Basic Emergency Medical Technician (EMT) was increased to reflect developments in the field. DOH noted that in rural areas the training of squad members is particularly important since the emergency medical services crew often has responsibility for patients for significantly longer time periods due to the greater distance to an appropriate hospital.

However, DOH asserted that other changes facilitate training and simpler return to service. DOH has developed a continuing education program which provides EMTs with various training opportunities to earn credit towards recertification. In addition, individuals who may need to take time off for personal reasons are now allowed to re-enter the system within two years, as opposed to the previous requirement of six months, of the expiration of their earlier certification. Further, a major recruitment and retention campaign was implemented in 1990 to aid in the recruitment of emergency medical services personnel.

Law Enforcement and Traffic Control

- Law enforcement officers in counties, cities, and towns must notify victims of crime of their rights by distribution of notices to each victim.
Source: *Code of Virginia* § 19.2-368.17
- Local law enforcement agencies are required to report arrests to the Central Criminal Records Exchange.
Source: *Code of Virginia* § 19.2-387 et seq.
- Localities must certify that motor vehicles will be used solely for police work to receive unmarked vehicle plates from the Division of Motor Vehicles.
Source: *Code of Virginia* § 46.2-750.1
- Vehicles inspected by local law-enforcement officers and found to be free of defects must be issued a 90-day sticker.
Source: *Code of Virginia* § 46.2-1001
- Upon certification by a locality that an inoperable motor vehicle left on property within the locality has been disposed of as provided in 46.2-1205, Department of Motor Vehicles shall reimburse the locality \$50 for each inoperable abandoned motor vehicle disposed of at the expense of the locality. Localities are required to complete forms provided by Department of Motor Vehicles to prevent the payment of undocumented claims.
Source: *Code of Virginia* § 46.2-1207; 1991 Virginia Acts of Assembly Chapter 723, Item 754; Motor Vehicle Dealers' Advisory Board regulation VR 486-01-01; and Department of Motor Vehicles Public Participation Guidelines
- Local law enforcement agencies that join the State Police's Communication System must bear a portion of the cost of establishing, operating, and maintaining such systems.
Source: *Code of Virginia* § 52-16 et seq.
- Local law enforcement agencies are required to submit monthly and annual crime reports to the State Police under the Virginia Uniform Crime Reporting Program.
Source: *Code of Virginia* § 52-28

Corrections and Detention

- ⊕ Recipient localities of the victim services grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving the objectives of the grant.

Source: PL 98-473; *Code of Virginia* § 9-170; Item 613 of the 1991 Appropriation Act; and Department of Criminal Justice Services Program Guidelines

- Ⓢ Recipient localities of the pre-trial release grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving the objectives of the grant.

Source: *Code of Virginia* § 9-170; and Department of Criminal Justice Services Program Guidelines

- Ⓢ Recipient localities of the alcohol detoxification centers grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving objectives of the grant.

Source: *Code of Virginia* § 9-170; Item 613 of the 1991 Appropriation Act; and Department of Criminal Justice Services Program Guidelines

- Ⓢ Recipient localities of the delinquency prevention grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving the objectives of the grant.

Source: PL 100-690; *Code of Virginia* § 9-170; and Department of Criminal Justice Services Program Guidelines

- Ⓢ Recipient localities of the drug control and system improvement grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving the objectives of the grant.

Source: PL 100-690 (Title VI, Subtitle C); *Code of Virginia* § 9-170; Item 613 of the 1991 Appropriation Act; and Department of Criminal Justice Services Program Guidelines

- Ⓢ Recipient localities of the electronic monitoring program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving the objectives of the grant.

Source: PL 100-690; and *Code of Virginia* § 9-170

- Local criminal justice personnel, including law enforcement personnel, courtroom security/process servers, jailors, dispatchers, undercover investigators, and criminal justice instructors, are required to meet training requirements established by the Criminal Justice Service Board.

Source: *Code of Virginia* § 9-170; and Department of Criminal Justice Services regulations

- Local criminal justice agencies must establish record keeping procedures which ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only to those legally entitled to receive such information. Sheriffs and police chiefs are required to report to the Central Criminal Records Exchange every arrest made for felonies and for most Class 1 and 2 misdemeanors. There are also detailed procedures that must be followed regarding the dissemination of criminal history record information and for expunging records.

Source: *Code of Virginia* §§ 9-170, 9-186, 9-188, 9-190, and 9-191; and Department of Criminal Justice Services regulations

- ⊕ Recipient localities of the Intensified Drug Enforcement Assistance grant program are required to establish programs, deliver services, or conduct activities as set out in grant documents. They are also required to report periodically on expenditures and on progress toward achieving objectives of grant.

Source: *Code of Virginia* § 15.1-131.12; Item 613 of the 1991 Appropriation Act; and Department of Criminal Justice Services Program Guidelines

- Cities and counties operating local service units for juvenile and domestic relations courts must comply with minimum State staff and personnel standards. In addition, such cities and counties must provide services determined by the Department of Youth and Family Services.

Source: *Code of Virginia* § 16.1-233; and Board of Youth and Family Services standards

- Cities and counties must provide office space, utilities, furniture, and telephone service for State operated service units for juvenile and domestic relations courts.

Source: *Code of Virginia* § 16.1-234

- Localities providing specialized court services must develop and operate probation, detention and related court services for the juvenile and domestic relations court in accordance with established regulations.

Source: *Code of Virginia* § 16.1-235; and Board of Youth and Family Services standards

- The detention home having custody or responsibility for supervision of a child shall be responsible for transportation of the child to all local medical appointments, dental appointments, psychological, and psychiatric evaluations. Transportation of youth to special placements shall be the responsibility of the court service unit.

Source: *Code of Virginia* § 16.1-254

- Local and regional detention homes, group homes and other residential care facilities for children in need of services, delinquent, or alleged delinquent youth, reasonably accessible to each juvenile and domestic relations court should be

operated in accordance with established regulations and standards. Cities and counties operating juvenile detention programs must comply with State Board of Youth and Family Services standards on housing and management.

Source: *Code of Virginia* §§ 16.1-310 through 16.1-315; and Board of Youth and Family Services standards

- ⊕ Each locality eligible to receive State funds for juvenile correctional facilities shall issue a monthly report to the State on the number of child care days registered.

Source: *Code of Virginia* § 16.1-322.3

- ⊕ Localities seeking to have State inmates assigned to their jails for work release must follow Department of Corrections guidelines for supervising the inmates.

Source: *Code of Virginia* §§ 53.1-60 and 53.1-131; and Department of Corrections guidelines

- Localities must have jails or lockups that comply with Department of Corrections regulations concerning construction, equipment, administration, and operation of local correctional facilities.

Source: *Code of Virginia* §§ 53.1-68 *et seq.*, 53.1-80 through 53.1-83; Item 642 of the 1991 Appropriation Act; and Department of Corrections regulations VR 230-30-008 and 230-30-005

- ⊕ Localities shall bear at least one-half of the cost of constructing or renovating correctional facilities. No State reimbursement shall occur unless plans and specifications have been approved in advance by the Governor. Correctional facility maintenance costs shall be borne by localities.

Source: *Code of Virginia* § 53.1-80 *et seq.*

- Localities seeking to operate a community diversion program that addresses offenders sentenced to incarceration in State and local correctional facilities must comply with Department of Corrections program requirements. In addition, such localities must create community corrections resources boards.

Source: *Code of Virginia* § 53.1-180 *et seq.*; and Community Diversion Program Standards VR 230-30-002

- Local governments which operate jails, lockups, or community diversion incentive programs are required, by the Board of Corrections standards, to participate in a compliance audit once each two to three years. The standards require programs to address (1) life, health, and safety issues, (2) management/administrative matters, and (3) client programs and services.

Source: *Code of Virginia* §§ 53.1-68 and 53.1-182; and Department of Corrections regulations VR 230-30-001 and 230-30-002

- ⊕ To obtain funds for a delinquency prevention program from the Department of Youth and Family Services, localities must develop a comprehensive plan based on

an objective assessment of the community's needs and resources for developing, coordinating, and evaluating youth services within the locality and set up a youth services citizen board.

Source: *Code of Virginia* §§ 66-27 through 66-29; and Board of Youth and Family Services policies and standards

Emergency Services

- Local governments which have chosen to be a direct provider of emergency medical services are required to be licensed by the Department of Health and to comply with Rules and Regulations Governing Emergency Medical Services, promulgated by the Board of Health. The regulations stipulate the following: (1) requirements for emergency medical services agencies and record keeping; (2) requirements for emergency medical services vehicles and equipment; and (3) requirements for staffing and personnel certification. The requirements vary, depending on level of service provided, as determined by the emergency medical services agency.

Source: *Code of Virginia* §§ 32.1-148 through 33.1-156; and Emergency Medical Services regulation VR 355-32-01

- ⊕ To be eligible for the Fire Program Fund a locality must establish a fire department as provided in Section 27.6.1 of the Code of Virginia. Localities receiving funding from the Fire Programs Fund must use the funding solely for the purposes of fire service training, construction, improving and expanding training facilities, purchasing fire-fighting equipment or purchasing protective clothing and protective equipment for fire fighting personnel. Funds may not be used directly or indirectly to supplant or replace any other funds appropriated by localities for fire service operation.

Source: *Code of Virginia* § 38.2-401.B; and Department of Fire Programs Administrative Policies, Section 1.2 - Fire Programs Fund

- ⊕ Following a presidential declaration of a major disaster or emergency, State and local governments as well as certain private non-profit organizations may receive disaster assistance to save lives and protect property, and to supplement the efforts and available resources to alleviate damage, loss, and suffering caused by the event. Federal assistance is on a cost-share basis. Local level recipients agree to: assume the non-federal share of costs, complete work for which assistance is received, and comply with the provisions of a State-Applicant Disaster Assistance Agreement.

Source: Disaster Specific Law (44 CFR 206); PL 93-288; *Code of Virginia* §§ 44-146.13, 44-146.17, and 44-146.29.2; and Department of Emergency Services Disaster Assistance Administrative Plan

- ⊕ To receive funding from the Office of Energy and Emergency Services for their emergency services programs, localities must comply with a set of minimum program standards.

Source: *Code of Virginia* § 44-146.18

- Each county and city must appoint a director of emergency services. Towns with populations greater than 5,000 can operate a program separate from a county, but they must appoint a director.

Source: *Code of Virginia* § 44-146.19

- A jurisdiction must have an emergency management agency established by law and a full-time or part-time emergency program manager. Jurisdictions must also be in compliance with Title VI of the Civil Rights Act of 1964. They must have an approved personnel merit system consistent with personnel standards prescribed in the Office of Personnel Management Intergovernmental Personnel Act. They must have a four year exercise plan and perform a rotation of exercise type and scenario each year. In addition jurisdictions must have an exercise each year.

Source: 44 CFR 302, Amendments 1 and 2; and *Code of Virginia* § 44-146.19

- All cities and counties are required to develop and maintain a local emergency operations plan. These plans assign emergency duties and responsibilities to local government and support agencies and set forth procedures for emergency response and recovery. They must be updated annually and revised/readopted every four years.

Source: Federal Civil Defense Act of 1950, as amended; *Code of Virginia* § 44-146.19; and Current Program Guidance 1-3, Chapter 2-62

- Each political subdivision having a nuclear power station or other nuclear facility within fifty miles of its boundaries shall prepare and keep current an appropriate emergency plan for its area to respond to nuclear accidents at such station or facility.

Source: 10 CFR 50 (Appendix E); 44 CFR 350; and *Code of Virginia* § 44-146.19 (E)

- ⊕ Local governments receiving financial assistance from the Department of Emergency Services must sign an agreement with the Department of Emergency Services to furnish hazardous materials response teams.

Source: *Code of Virginia* § 44-146.36; and Item 726 of the 1991 Appropriation Act

- Local governments must establish and participate in local emergency planning committees. Local governments through a local emergency planning committee are required to develop emergency response plans to respond to spills or releases of extremely hazardous materials at facilities within their jurisdiction or at the scene of transportation accidents within their jurisdictions involving these chemicals. The local emergency planning committee is also required to develop a program to maintain a listing of extremely hazardous materials within the community and to handle citizens requests for information regarding the location, quantities, and properties of these materials.

Source: Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); Emergency Planning and Right to Know, Title III, Section 300;

***Code of Virginia* § 44-146.40; and Department of Waste Management
Virginia Hazardous Materials Emergency Response Program**

- If applicable, local governments are required to comply with the notification and reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Source: 42 USC 9601 *et seq.*; and Superfund
Amendments and Reauthorization Act of 1986, Title III

- ⊕ Volunteer fire departments receiving financial assistance for training, supplies, and equipment through the Rural Cooperative Fire Protection Program must provide matching funds. Grants are on a 50-50 matching basis. Funds limited based on federal appropriation and number of applications.

Source: PL 95-313

PUBLIC WORKS

JLARC staff identified 53 public works mandates in the current catalog. This signifies an increase of 22 new mandates in this area since 1983. Most public works mandates involve State regulation to protect general health and safety rather than to require a local service or activity. However, according to localities, several of these mandates have been particularly burdensome. Public works mandates have been organized into those affecting maintenance of roads and other facilities and those concerning sanitation and waste removal.

MAINTENANCE OF ROADS AND OTHER FACILITIES

JLARC staff identified 34 mandates in the area of maintenance of roads and other facilities. Ten of these mandates have been implemented since the 1983 study. These new requirements are diverse, including mandates addressing asbestos abatement, fire safety in buildings, bridge inspections, use of minority contractors, and bus testing.

Local Concerns

Most local officials did not cite as unreasonable mandates concerning the maintenance of highways, streets, bridges, and sidewalks (Table 7). Only nine percent of the respondents rated the overall category of these requirements as unreasonable. And nearly one-third of the respondents cited each of the subcategories as reasonable. In addition, over one-half of the responding localities rated inspection requirements as reasonable.

However, many localities provided additional responses which highlighted their concerns with some of the mandates. Right-of-way requirements received several comments dealing with the expensive and unreasonable nature of these mandates. One locality explained that:

The method of acquiring VDOT rights-of-way is antiquated and has created a need for county-funded rights-of-way. This should be recognized as a State mandate which has added millions of dollars to the cost of constructing roads in Northern Virginia. Acquisition should begin as soon as preliminary engineering is complete and any funds are available.

Additional comments varied, with few localities mentioning problems with the same mandates.

Table 7

**Percentage of Cities and Counties Citing
Maintenance of Roads and Other Facilities Mandates
as Reasonable, Neutral, and Unreasonable**

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|---|-------------------|----------------|---------------------|------------|
| Maintenance of Highways, Streets, Bridges, and Sidewalks | 31% | 30% | 9% | 31% |
| Planning | 35 | 29 | 9 | 27 |
| Construction | 35 | 25 | 10 | 30 |
| Maintenance | 31 | 28 | 12 | 29 |
| Right-of-Way | 29 | 32 | 15 | 24 |
| Inspections (housing code, etc.) | 52 | 41 | 7 | 0 |

Source: JLARC staff survey of local governments, summer 1991.

State Agency Response

The Virginia Department of Transportation (VDOT) has responded to this local concern. VDOT explained that the procedures for the transfer of private property to public ownership have been determined by the General Assembly. These are included in Titles 15.1, 25, and 33.1 of the *Code of Virginia*.

VDOT reported that in Title 15.1, proffers and other uses of zoning powers granted to local governments for potential right-of-way preservation are provided. Sections 25-248 and 33.1-89 outline the general rules for conducting acquisitions and the procedures for eminent domain. VDOT asserted that "these procedures are specific and are intended to protect the property owner's rights."

Section 33.1-139 grants VDOT authority to acquire properties for future use. VDOT noted that the same procedures for acquisition provided in Section 33.1-89 *et seq.* must be followed except that a metes and bounds survey may be used in lieu of a centerline description for property taking.

VDOT voiced no objection to the acquisition of right-of-way once preliminary engineering has been completed. However, VDOT explained that the plans must show the impact to each property owner and that all public hearings must be completed. The six-year construction program should include these projects. In addition, they should be subject to funding constraints.

Maintenance of Roads and Other Facilities

- Cities and counties must provide a dog pound facility that is constructed and operated according to the standards for animal care and health issued by the Department of Agriculture and Consumer Services.
Source: *Code of Virginia* § 3.1-796.96

- Localities which choose to operate airports or air navigation facilities must maintain those facilities consistent with State and federal standards.
Source: 14 CFR 139; *Code of Virginia* § 5.1-2.2; and Department of Aviation standards

- Local governments which sponsor airports must secure a license or permit from the Department of Aviation in order to operate or expand a commercial airport.
Source: *Code of Virginia* §§ 5.1-7 and 5.1-8

- An airport sponsor must obtain the approval of the Department of Aviation on all leases involving land that is airport property.
Source: *Code of Virginia* § 5.1-40

- ⊕ An airport sponsor who applies for federal funds for an airport planning or construction project must have the approval of his project application by the Department of Aviation prior to submitting it to the Federal Aviation Authority.
Source: *Code of Virginia* § 5.1-47

- ⊕ Airport sponsors in the acceptance of grant or loan funds from the Virginia Aviation Board must agree to terms and conditions as set forth by the Board. Such terms and conditions (called assurances) today require that the sponsor: maintain the airport for a minimum period of twenty years, carry out and complete the project in accordance with the plans and specifications, accomplish all procurements in accordance with the Virginia Public Procurement Act and that the airport is free and clear of hazards to air navigation and will not release title to any airport property without the approval of the Department of Aviation.
Source: *Code of Virginia* § 5.1-52; and Department of Aviation standards

- Localities which own dams must make any improvements necessary to correct deficiencies in construction or maintenance found during inspection by the Virginia Soil and Conservation Board.
Source: *Code of Virginia* § 10.1-604 et seq.

- ⊕ On non-federal aid highway projects, the Department of Transportation will construct and maintain reasonable and feasible noise abatement measures, provided; 1) the local jurisdiction through which the project traverses agrees to assume 50% of the cost of the abatement measure and 2) the local jurisdiction has an ordinance requiring developers to provide noise abatement for all new residential and other

noise sensitive developments adjacent to existing highways or known (approved) future highway corridors.

Source: *Code of Virginia* § 33.1-12

- Ⓐ Local governments requesting financial assistance for port facilities must submit a request to the Virginia Port Authority's Board of Commissioners showing that the project will further the interests of the Commonwealth. Localities are generally required to provide matching funds unless they certify that such an obligation constitutes an undue hardship.

Source: *Code of Virginia* §§ 33.1-23.03:2, 58.1-638, and 58.1-2425; and Virginia Port Authority Policy on Grants to Local Governments for Financial Assistance for Port Facilities

- Ⓐ Local governments above 3,500 population are eligible to participate in the State urban construction program. Eligibility requirements are for the requested improvement to be functionally classified as a collector or better and the locality must agree to provide 2% of the project cost.

Source: *Code of Virginia* §§ 33.1-23.3 and 33.1-44; and Department of Transportation's Urban Highway Manual

- Arlington and Henrico Counties maintain their own system of local roads. Each county is required to update and submit a report on the lane miles of eligible roads in each county as of December 31 of the preceding year.

Source: *Code of Virginia* § 33.1-23.5:1

- Ⓐ Cities and towns above 3,500 population maintain their own streets and receive State financial assistance. Eligibility requirements are for the streets to meet established pavement and right of way widths, established maintenance standards and quarterly certifications that none of the money has been expended for other than maintenance.

Source: *Code of Virginia* § 33.1-41.1; and Department of Transportation's Urban Highway Manual

- Counties must request funds from the Revenue Sharing Program by resolution of the local governing body and provide matching funds up to \$500,000.

Source: *Code of Virginia* § 33.1-75.1

- Localities must follow the Department of Transportation's Road Designs and Standards.

Source: *Code of Virginia* §§ 33.1-197 and 33.1-198

- Ⓐ Localities must request funds from the Industrial Access Program by resolution of the governing body, provide right of way at no cost to the program and provide matching funds up to \$150,000 for allocations over \$300,000.

Source: *Code of Virginia* § 33.1-221; and Commonwealth Transportation Board Industrial Access Policy (8/16/89 and 1/17/91)

- Ⓐ Localities which wish to participate in the Airport Access Program must request funds by resolution of the governing body and to provide right of way at no cost to the program.

Source: *Code of Virginia* § 33.1-221; and Commonwealth
Transportation Board Airport Access Policy (7/16/81)

- Ⓐ Localities must request funds from the Recreational Access Program by resolution of the governing body, to provide right of way at no cost to the program, to provide matching funds up to \$100,000 for allocations over \$250,000 for a road and up to \$15,000 for a bikeway; to adopt a zoning ordinance prior to requesting funds for a bikeway; and to designate the road as a scenic highway or byway.

Source: *Code of Virginia* § 33.1-223; and Commonwealth Transportation
Board Recreational Access Policy (10/25/89)

- Public transit systems must file annually with the Commonwealth Transportation Board financial and other required statistical data.

Source: *Code of Virginia* § 33.1-223.1

- Localities must develop subdivision streets to prescribed minimum requirements as a contingency to Department of Transportation's acceptance of these streets into the secondary system for maintenance.

Source: *Code of Virginia* § 33.1-229; and Department of
Transportation Subdivision Street Requirements

- Local building departments must enforce the Uniform Statewide Building Code which provides mandatory Statewide regulations for the construction, maintenance, and use of buildings and structures.

Source: *Code of Virginia* § 36-97 *et seq.*; and Department of Housing and
Community Development regulations VR 394-01-21 and 394-01-22

- School boards and other local entities which have ownership/responsibility for boilers and other pressure vessels must protect human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance, and repair of boilers and pressure vessels in the Commonwealth through periodic inspections, repair/replacement, and payment of fees for certificate of operation.

Source: *Code of Virginia* § 40.1-51.6 *et seq.*; and Department of
Labor and Industry regulation VR 425-01-63

- When traffic signs and traffic signals and markings are placed or erected by local authorities, they must conform in size, design, and color to those erected for the same purpose by the Department of Transportation.

Source: *Code of Virginia* § 46.2-1312

- Local employees who perform asbestos inspections, create project designs or management plans, or engage in asbestos abatement activity or monitoring activity must be licensed by the Department of Commerce.

Source: *Code of Virginia* § 54.1-503; and Department of Commerce regulation VR 190-05-1

- Localities must obtain an asbestos project permit prior to commencing each asbestos project and pay a fee for such permit. Localities must notify the Department of Labor and Industry at least 20 days prior to the commencement of each project, complete an application form, and submit same with the required fee.

Source: *Code of Virginia* § 54.1-507 B; and Department of Labor and Industry regulation VR 425-01-74

- Local government building officials are required to ascertain that a contractor holds a valid State contractors license prior to issuing a building permit.

Source: *Code of Virginia* § 54.1-1111

- The Statewide Fire Prevention Code establishes minimum Statewide standards for fire safety in building and structures and provides regulations regarding storage, handling, and use of certain substances, materials and devices such as explosives and blasting agents.

Source: *Code of Virginia* § 27-94 *et seq.*; and Department of Housing and Community Development regulation VR 394-01-6

- Where new sidewalk and storm sewer facilities are desired on a secondary construction project, but not essential to the basic roadway improvement, the locality is required to participate in the cost as set forth in the Commonwealth Transportation Board policy.

Source: Commonwealth Transportation Board Cost Participation Policy (2/18/88)

- ⊕ The Federal Aid Highway Act and the Urban Mass Transportation Act mandate that each urbanized area as a condition to the receipt of federal capital or operating assistance, have a comprehensive, cooperative, and continuing transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

Source: Federal Highway Procedures Manual 4-4-2

- ⊕ If a local government or municipality desires to use transportation funds for the construction of transportation facilities or if they desire the Department of Transportation to administer a contract using their funds for the construction of transportation facilities, the contracting process and quality control process must be in accordance with applicable State procurement statutes and Department of Transportation policies and procedures. These requirements include but are not limited to public advertisement for the contract, public reading and award of the contract to the lowest responsive and responsible bidder, and documentation to assure compli-

ance with contractual provisions including minimally accepted performance standards.

Source: *Code of Virginia* §§ 11-7 and 33.1; Commonwealth Transportation Board Policy and Procedures; Department of Transportation's Road and Bridge Sections; State orders pertaining to public procurement and contracting, equal employment opportunity directions; Federal Highway Administration requirements; Environmental Protection Agency requirements; Federal wage requirements; Federal Procurement requirements; etc.

- Local governments must have all bridges on public roads inspected at regular intervals not to exceed two years according to National Bridge Inspection Standards. The requirements for the inspections frequency of inspections, qualifications of personnel, inspection reports, and inventory are given in the standards.

Source: 23 CFR 650; and Subpart C

- ⊕ In order to receive federal mass transit grants, local governments must follow federal labor standards.

Source: 29 CFR 215; and PL 100-82

- ⊕ Local governments must have not less than 10% of the amounts authorized to be expended from mass transit federal aid grant funding with small business concerns owned and controlled by socially uneconomically disadvantaged individuals according to the Surface Transportation Assistance Act of 1987, as amended.

Source: PL 97-424; 49 CFR 23; and Surface Transportation Assistance Act of 1987, as amended, Section (f)

- Local governments must follow Clean Air Act Amendments to receive mass transit federal aid grant funding. The amendments mandate emission reduction goals for non-attainment areas. The Clean Air Act also mandates strict emission standards for diesel engines. Alternate fueled vehicles may be required in urban buses if diesel fueled buses cannot meet the emission standards by 1993.

Source: PL 101-549; and Clean Air Act Amendments

- ⊕ Local governments must have new model buses tested at a facility in Altoona, Pennsylvania in order to receive mass transit federal and grant funding.

Source: 49 CFR 665; and Surface Transportation and Uniform Relocation Assistance Act of 1987 (PL 100-17)

SANITATION AND WASTE REMOVAL

JLARC staff identified 19 sanitation and waste removal mandates. Twelve of these mandates have been implemented since the 1983 study. Although many of the mandates in this area are considered to be regulations of optional activities, the regulated activities, such as the operation of water and wastewater treatment plants, are often a necessity to local governments.

Mandates affecting sanitation and waste removal involve sewage treatment plant regulations, solid waste management facility standards, public water supply standards, water withdrawal and discharge regulations, and the requirement that localities adopt either a regional or local 20-year solid waste management plan which includes mandated recycling goals.

Local Concerns

The survey of local governments divided sanitation and waste removal mandates into several categories: water treatment and distribution, wastewater treatment, stormwater management, refuse collection, and refuse disposal.

Water treatment and distribution requirements did not receive unreasonable ratings by a large number of the respondents (Table 8). Overall, these mandates were cited by only 14 percent of the responding localities as unreasonable. Wastewater treatment requirements did not receive as favorable ratings. However, localities did not overwhelmingly cite these mandates as unreasonable. Permit requirements were considered unreasonable by one-third of the local officials. The other subcategories elicited unreasonable ratings by less than 17 percent of the respondents.

Stormwater management mandates were rated as reasonable by only 11 percent of the responding localities, with 44 percent citing them as neither reasonable nor unreasonable. Under refuse collection, the recycling requirements were rated as unreasonable by nearly one-half of the local respondents. Sanitary landfill mandates also received unfavorable ratings, with 57 percent citing them as unreasonable.

Sanitation and waste removal mandates received a great deal of attention from local governments on the survey. In the written comments, sanitary landfill mandates were cited by many localities as unreasonable. In particular, the recent mandate requiring double liners in landfills instead of single liners received significant criticism. Local governments commented that:

Waste management regulations requiring a double synthetic liner for sanitary landfills pose a financial hardship for municipalities who ultimately must bear the burden of financing construction costs. It is our opinion that a single composite liner would be sufficient while substantially reducing construction costs.

Table 8

**Percentage of Cities and Counties Citing
Sanitation and Waste Removal Mandates
as Reasonable, Neutral, and Unreasonable**

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|----------------------------------|-------------------|----------------|---------------------|------------|
| Water Treatment and Distribution | 27% | 38% | 14% | 22% |
| Permit | 26 | 35 | 17 | 22 |
| Plant Construction/Maintenance | 34 | 28 | 11 | 28 |
| Personnel | 38 | 28 | 10 | 24 |
| Reporting | 31 | 29 | 18 | 22 |
| Wastewater Treatment | 12 | 39 | 20 | 29 |
| Permit | 11 | 27 | 33 | 28 |
| Plant Construction/Maintenance | 23 | 32 | 14 | 32 |
| Personnel | 26 | 37 | 6 | 31 |
| Reporting | 21 | 31 | 17 | 31 |
| Stormwater Management | 11 | 44 | 27 | 20 |
| Refuse Collection | 23 | 44 | 27 | 6 |
| Recycling | 15 | 39 | 46 | 0 |
| Refuse Disposal | 11 | 46 | 36 | 6 |
| Sanitary Landfill | 7 | 29 | 57 | 6 |

Source: JLARC staff survey of local governments, summer 1991.

* * *

The requirement for double lining landfills constructed in 1992 and beyond will also place significant technical and financial burdens on local governments. The application of this requirement to the construction of additional cells in already approved landfills will prove particularly burdensome for technical as well as financial reasons. Reasonable waivers or other forms of relief for these situations are needed.

Recycling mandates also received a great deal of local criticism. Localities explained that although they recognized the importance of recycling, the specific goals mandated by the State are, in their opinions, unreasonable. One locality explained that:

Recycling goals are clearly necessary and desirable, but the mandatory 10 % in 1991, 15 % in 1993, and 25 % in 1994 are clearly arbitrary and not reflective of local needs. Some localities will meet the 25 % relatively easily because of particular industrial activities while rural areas with insufficient residential density to make curbside household solid waste separation and collection economically feasible will never meet the mandate or only meet it with extraordinarily expensive and inefficient operations.

Another set of mandates which received criticism from localities was the water withdrawal permitting requirements. Local government concerns included:

The State Water Control Board has put more emphasis on protecting aquatic life than protecting human life and welfare. Water withdrawals are being based on the needs of aquatic life and not on the needs of human life and welfare.

* * *

The allowable water withdrawal rates from a water source for municipal water treatment and distribution systems are based on a locality's present usage characteristics. These limits, as currently established, can have a negative impact on a locality's ability to recruit and/or service new industries.

Some localities asked for greater flexibility so that water withdrawal volumes could be adjusted to incorporate population growth and new industry.

Water and wastewater treatment mandates were some of the most frequently cited requirements in the written responses. Localities commented on different aspects of water and wastewater treatment, including permit, reporting, and plant construction requirements. Inadequate State and local communication and unreasonable compliance schedules were also mentioned as problematic. According to one locality:

The permitting process is not working...VPDES [Virginia Pollutant Discharge Elimination System] permit issuance can take two to three years. Communication from the State Water Control Board during the permit development period is minimal and, consequently, permit requirements are a surprise to the municipality.

More specific criticism addressed the discharge limits for water treatment facilities. One locality responded that:

The allowable contaminant levels for water and water residue (sludge) discharged back into the original water source are lower than the contaminant levels existing in the water source. Discharge provisions for water discharges resulting from flushing filters and settling basin residues needs to be established that incorporate the existing contaminant characteristics of each water source.

Other local comments addressed stormwater management mandates, toxic management requirements, and plant construction and maintenance standards.

State Agencies' Responses

The Department of Waste Management (DWM) responded to some of these local concerns. DWM maintained that the requirement for double liners was added to the regulations based on comments received during public hearings. Originally the DWM had not intended to require double liners. Inclusion or exclusion of the State's double liner requirement has since become a moot issue, because new federal regulations require landfills to have double liners. Regarding recycling mandates, DWM reported that it is working to develop markets for recyclable materials. In addition, it provides technical assistance to localities in developing these markets.

The State Water Control Board (SWCB) responded to local concerns about water withdrawal limits and permitting requirements. Regarding water withdrawal rates, the SWCB responded that it does not approve permits in which public health, safety, or welfare would be adversely affected. The agency does recognize that economic development may be negatively impacted in order to prevent negative impacts to aquatic life. This is primarily why this federal program exists.

Regarding the concern that the VPDES permits take several years for issuance, the SWCB noted that it does not consider the permit process to begin until the permit application is complete. The SWCB added that in some cases the initial application submitted by localities is incomplete, and thus, additional time must be spent by the locality to complete the application before processing begins.

Concerning local comments about the allowable contaminant levels for water and water residue, the SWCB explained that this situation occurred when the agency was considering a water quality standard for aluminum. The instream concentrations in some cases were higher than the proposed standard. This would have resulted in the discharge being more restrictive than the background level.

However, the SWCB noted that the aluminum water quality standard was never adopted. The agency does recognize this situation could occur again during the process of developing toxics standards. In response, the SWCB attempted to adopt a "net limitation" provision in its permit regulation. However, the proposed language was not approved by the U.S. Environmental Protection Agency (EPA). The SWCB plans to address this issue in future discussions with the EPA.

Sanitation and Waste Removal

- Local governments are required to comply with hazardous waste management requirements as possible generators, transporters, or for treatment, storage, or disposal. When hazardous wastes are shipped, they are required to use manifests and ship by permitted transporters. For generators of less than 1,000 kilograms per month of non-acutely hazardous waste who intend to have their wastes reclaimed, special provisions exist whereby the maintenance of contractual agreements may eliminate the need to use a manifest. Wastes must be shipped to designated facilities which are either permitted or engage solely in specific forms of recycling without prior storage or treatment. In general, any treatment, storage or disposal requires a permit. Special reduced requirements, exemptions, and/or exclusions do exist which, if met, may allow certain forms of on-site storage or treatment to take place without a permit. Publicly owned treatment works (POTWs) receiving hazardous wastes by methods other than direct pipeline discharge from the point of generation, i.e., via truck or rail, etc. may do so only if in compliance with the permit-by-rule provisions.

Source: 42 USC 6901 *et seq.*; 40 CFR 260-268; *Code of Virginia* § 10.1-1400 *et seq.*; and Department of Waste Management regulation VR-672-10-1 (Virginia Hazardous Waste Management Regulations)

- All Virginia local governments that choose to operate solid waste management facilities are required to have a permit from the Department of Waste Management. The permit is developed to ensure the proper siting, design, construction, operation, closure and a 10-year post closure care maintenance of the facility. For facilities operating without groundwater monitoring wells, wells must be installed and monitoring begun by July 1, 1991. For facilities permitted prior to December 21, 1988, such facilities must be brought into full compliance with the new regulations by July 1, 1992 or must close. All facility closures after December 21, 1988 must comply with the new regulations and plans were to be submitted to the Department of Waste Management to this effect by December 21, 1990. Facilities operating without groundwater monitoring wells were to have installed such wells and begun subsequent monitoring by July 1, 1991. For existing sanitary landfills compliance with the liner and leachate collection requirements may be deferred until January 1, 1994 upon written notice to the Department. Every holder of a permit or applicant for a permit to operate a solid waste management facility shall file a disclosure statement with the director.

Source: *Code of Virginia* § 10.1-1408.1; and Department of Waste Management regulation VR 672-20-10 (Solid Waste Management Regulations)

- Local governments may enact ordinances regulating the siting or solid waste management facilities within their boundaries. Such ordinances shall prescribe the criteria, form of application, and procedure, which shall include a public hearing, for siting approval. In establishing the criteria, local governments shall consider the potential effect of the siting of a solid waste management facility on the health, safety

and welfare of the residents of the locality. Local governments shall grant or deny siting approval within 120 days of receipt of applications filed in compliance with the provisions of applicable ordinances. A failure to act within 120 days shall constitute a granting of siting approval.

Source: *Code of Virginia* § 15.1-11.02

- Ⓐ Local governments receiving State aid to assist in the collection, transportation, disposal, and management of solid waste shall utilize the funds only for those purposes.

Source: *Code of Virginia* § 10.1-1423

- Upon receipt of a request for certification that the location and operation of a solid waste management facility are consistent with all applicable ordinances, the local government shall inform both the applicant and the Department of Waste Management of the facility's compliance or noncompliance within 120 days.

Source: *Code of Virginia* § 10.1-1408.1; and Department of Waste Management regulation VR 672-20-10 (Solid Waste Management Regulations)

- Solid waste management facilities must be operated under the direct supervision of a person certified by the Board of Waste Management Facility Operators.

Source: *Code of Virginia* §§ 10.1-1408.2 and 54.1-2209

- All Virginia localities either individually or joining together as a multijurisdiction "region," were to submit comprehensive 20 year solid waste management plans by July 1, 1991. On July 1, 1997 and each succeeding five year period thereafter, a report updating these plans must be submitted.

Source: *Code of Virginia* § 10.1-1411; Department of Waste Management regulation VR 672-50-01 (Regulations for the Development of Solid Waste Management Plans)

- All Virginia localities must develop and implement recycling programs to achieve the following minimum recycling rates: 10 percent by December 31, 1991, 15 percent by December 31, 1993, and 25 percent by December 31, 1995. Progress reports on attaining these recycling goals shall be submitted to Department of Waste Management within 120 days of the close of each prescribed date.

Source: *Code of Virginia* § 10.1-1411; Department of Waste Management regulation VR 672-50-01 (Regulations for the Development of Solid Waste Management Plans)

- Local governments operating sanitary landfills after October 9, 1991 must comply with new Federal RCRA Subtitle D requirements by October 9, 1993. For facilities electing to close rather than to comply with the new requirements, closure must still take place pursuant to the new requirements for final covers for any facilities continuing to receive waste after October 9, 1991. Financial assurance for closure, 30-year post closure care maintenance, and corrective action must be in place by

April 9, 1994. Facility design criteria will apply to new units or lateral expansions only. For existing facilities, the compliance dates regarding new groundwater monitoring and corrective action requirements are deferred to 1994, 1995, or 1996 depending upon the distance to the nearest drinking water intake.

Source: 42 USC 6901 *et seq.*; and 40 CFR Parts 257 and 258

- Ⓐ Localities receiving litter control grants must follow guidelines set by the Department of Waste Management.

Source: *Code of Virginia* § 10.1-1422; and Department of Waste Management guidelines

- Local governments which own/operate public water systems are required to have a waterworks operation permit. This permit requires: (1) continuous provision of safe drinking water; (2) monitoring requirements; and (3) reporting requirements.

Source: PL 93-523, as amended; *Code of Virginia* §§ 32.1-167 through 32.1-176; and waterworks regulation VR 355-18-01

- Local governments are required to assist the Department of Health in ensuring compliance with the sanitary regulations for marinas and other places where boats are moored. In certain cases, the local government may own and operate the sanitary and sewerage facilities serving marinas and other places where boats are moored and therefore, must conform to the requirements of the 1990 Sanitary Regulations for Marinas and Boat Moorings.

Source: *Code of Virginia* § 32.1-246; and Department of Health sanitary regulations for marinas and boat moorings VR 355-17-01

- Local governments which intend to conduct an activity in navigable waters which is required to be permitted by a federal agency must obtain a certification from the State that the activity will not result in violation of the State's water quality standards. The Section 401 certification applies to numerous types of activities; i.e., dredging, docks, water intakes, etc. The certification authorizes the activity and may contain special conditions necessary to protect water quality.

Source: 33 USC 1341; *Code of Virginia* § 62.1-44.2 *et seq.*; and State Water Control Board Procedural Rule No. 3

- Local governments which operate wastewater treatment facilities are required to have a permit authorizing the discharge from the facility to surface waters. The permit imposes controls on the quality of the discharge to ensure compliance with water quality standards, requirements for monitoring the discharge and reporting of the results.

Source: 33 USC 1251 *et seq.*; *Code of Virginia* § 62.1-44.15; and State Water Control Board regulation VR 680-14-01

- Local governments which operate facilities which have the potential to discharge to State waters but are not actually a point source discharge are required to obtain a

Virginia Pollution Abatement Permit (VPA). These permits contain requirements specific to the operation and include monitoring and reporting requirements. The types of operations which may be required to obtain a Virginia Pollution Abatement permit are land application of sludge or land treatment of wastewater.

Source: *Code of Virginia* §§ 62.1-44.15 and 62.1-44.18; and State Water Control Board regulation VR 680-14-01

- Local governments which own and operate sewage collection (sewerage) systems and sewage treatment works are required to provide an engineered design for any new or upgraded facility that is consistent with the public health and water quality objectives of the Commonwealth through submission of documents for a technical evaluation of the design, construction, installation, and operation of equipment and systems. Such information must verify that the proposed facilities will reliably achieve compliance with the sewerage regulations and with permit requirements.

Source: *Code of Virginia* §§ 32.1-164 and 62.1-44.19; and 1977 sewerage regulations VR 355-17-02

- Local governments which have underground storage tanks are required to upgrade or replace the tanks. The local governments are further required to ensure that the underground storage tanks are or have not leaked regulated substances into the ground. If leaks have occurred, further testing and, if necessary, clean up are required.

Source: 40 CFR 280 and 281; *Code of Virginia* §§ 62.1-44.34:9 and 62.1-44.34:12; and State Water Control Board regulations VR 680-13-02 and 680-13-03

- Local governments are required to report on their water withdrawals if the average daily withdrawal exceeds 10,000 gallons per day in any one month. The report is submitted annually and is required to contain monthly withdrawal information, source of water, and water sales to other entities.

Source: *Code of Virginia* § 62.1-44.38; and State Water Control Board regulation VR 680-15-01

- Any local government which withdraws ground water, for any purpose, in excess of 300,000 gallons/month in a ground water management area is required to obtain a permit prior to the withdrawal. The permit imposes maximum withdrawal amounts and monitoring and reporting requirements.

Source: *Code of Virginia* §§ 62.1-44.99 and 62.1-44.100; State Water Control Board Rules of the Board and Standards for Water Wells - Ground Water Permits/Certificates

COMMUNITY DEVELOPMENT

Community development mandates deal with planning, zoning, and development. This area also covers environmental management requirements such as wetlands management, air pollution control, and erosion and sediment control. JLARC staff identified 35 requirements in this area, including 12 mandates implemented since the 1983 study.

The most significant new community development mandate is the Chesapeake Bay Preservation Act which was enacted in 1988. Localities in the Tidewater region of Virginia must comply with the requirements of the Act, which include designating Chesapeake Bay Preservation areas, incorporating protection of the quality of State waters into comprehensive plans and zoning ordinances, and employing particular performance criteria. The other new community development mandates are primarily conditions of grant programs and administrative process requirements.

Local Concerns

On the survey of local governments, community development was divided into several categories: planning and community development, wetlands management, erosion and sediment control, and air pollution control. Nearly one-half of the responding localities rated planning and community development requirements as reasonable (Table 9). Wetlands management mandates did not receive as favorable a rating, with

Table 9

Percentage of Cities and Counties Citing Community Development Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|------------------------------------|-------------------|----------------|---------------------|------------|
| Planning and Community Development | 47% | 40% | 10% | 2% |
| Wetlands | 11 | 29 | 33 | 26 |
| Chesapeake Bay Preservation | 5 | 19 | 22 | 54 |
| Erosion and Sediment Control | 34 | 53 | 12 | 1 |
| Air Pollution Control | 23 | 50 | 9 | 18 |

Source: JLARC staff survey of local governments, summer 1991.

only 11 percent of the localities considering them reasonable. While the Chesapeake Bay Preservation mandates did not apply to 54 percent of the respondents, only five percent cited them as reasonable.

Dissatisfaction with the Chesapeake Bay Preservation Act requirements was evident in the written comments as well. Out of the 27 localities citing particular problems with community development mandates, 21 localities specified the Chesapeake Bay Preservation Act. In particular, several localities described the Chesapeake Bay Preservation Act's definition of wetlands as vague. According to one locality:

The current "definition" of wetlands is too broad based and vague. As such, the regulator has too much room for interpretation and personal bias. The result is that inconsistencies result depending upon the reviewer.

Other local comments addressed resource management areas and septic tank pump out and maintenance requirements.

State Agency Response

The Chesapeake Bay Local Assistance Department (CBLAD) responded to local concerns about the wetlands definition. The CBLAD said the wetlands definition is the same one that has been used for many years in other wetlands policy. In addition, the State is dependent upon the federal wetlands definition. The department further noted that it "provided Tidewater localities with an information bulletin in March, 1991, clarifying the definition of 'Wetlands' intended for designation of preservation areas."

Planning and Community Development

- If localities elect to have a Virginia Tech extension program, they must provide office facilities and share some salary and operating costs.

Source: *Code of Virginia* § 3.1-40 et seq.

- ⊕ Localities that participate in the Gypsy Moth Appalachian Integrated Pest Management Project are required to hire a county gypsy moth coordinator and additional wage personnel as needed to carry out the program. Localities are also responsible for the procurement of most supplies and equipment. Except for office space, all costs are paid by the federal government under the program which is administered by the Department of Agriculture and Consumer Services.

Source: *Code of Virginia* §§ 3.1-188.20 through 3.1-188.31:2

- ⊕ Localities must comply with specific provisions described in the Virginia Cooperative Suppression Program Guidelines for participation in order to receive State and federal funding.

Source: *Code of Virginia* §§ 3.1-188.20 through 3.1-188.31:2

● Compulsory Orders ⊕ Conditions of State & Federal Financial Aid ○ State & Federal Regulation of Optional Activities

- ⊕ In order to qualify for Public Beach Conservation and Development Act funds, localities must establish local erosion advisory commissions.
Source: *Code of Virginia* § 10.1-711

- Localities must create a local planning commission to advise on matters pertaining to land use development.
Source: *Code of Virginia* § 15.1-427.1

- Localities must adopt a comprehensive plan for land use development. In preparation of a comprehensive plan, the local commission shall survey and study such matters as set forth in statute. At least once every five years the comprehensive plan shall be reviewed by the local commission to determine whether it is advisable to amend the plan.
Source: *Code of Virginia* §§ 15.1-446.1, 15.1-447, 15.1-454, and 15.1-456

- Localities must adopt ordinances regulating the subdivision of land and its development.
Source: *Code of Virginia* § 15.1-465

- Airport safety zoning requires that localities with airspace needed for safe ingress and egress to public-use airports adopt overlay zoning that keeps that airspace free from obstruction to the safe passage of aircraft. Affected localities are ones in which a public-use airport is located and those whose close proximity to such an airport places its airspace in protection.
Source: *Code of Virginia* § 15.1-492.02

- Localities enacting zoning ordinances are required to establish a board of zoning appeals to hear appeals on specific sections of the ordinances which create undue hardships on the public.
Source: *Code of Virginia* § 15.1-494

- Adjoining counties wishing to create a primary highway transportation improvement district must adhere to a petition, notification, hearing, and resolution process set forth in statute. Any annual special improvements tax is subject to a rate limitation of twenty cents per \$100 of the assessed fair market value.
Source: *Code of Virginia* § 15.1-1372.1 *et seq.*

- The board of supervisors for each county, in cooperation with designated Department of Transportation representative, must finalize and adopt the six-year secondary improvement plan for the county. Further, this plan is to be officially updated at least once every two years.
Source: *Code of Virginia* § 33.1-70.01

- Localities must adopt a suitable ordinance for control of the development of subdivision streets as prerequisite to taking certain streets into the secondary system.

Source: *Code of Virginia* §§ 33.1-72.1 and 33.1-229; and Commonwealth Transportation Board Rural Addition Policy (2/18/88)

- Local governments must establish a procedure to ensure that plans, specifications, or calculations prepared in connection with improvements to real property be prepared by a licensed or certified architect, professional engineer, land surveyor or landscape architect.

Source: *Code of Virginia* § 54.1-410

- Localities must have pari-mutual wagering approved in a local referendum before the Virginia Racing Commission can grant a license to own or operate a horse racetrack in any city or county.

Source: *Code of Virginia* § 59.1-391

- ⊕ Southwest Virginia localities are required to comply with federal and State guidelines and requirements to participate in the Appalachian Regional Commission Program.

Source: Appalachian Regional Commission Code

- ⊕ Localities are required to meet State established guidelines and matching fund requirements to participate in the Rural Economic Development Grant Fund Program.

Source: Item 105 A of the 1991 Appropriation Act

- ⊕ Localities must comply with State and federal requirements to participate in the Community Development Block Grant Program.

Source: Housing and Community Development Act of 1974, Title I

- ⊕ Eligible localities are required to meet State established guidelines and matching fund requirements to participate in the Southwest Virginia Economic Development Grant Fund Program.

Source: Item 105C of the 1991 Appropriation Act

- ⊕ Recipients of funds from the Virginia Appalachian Housing Development Program are required to use the funds to stimulate the construction and rehabilitation of low and moderate income housing through one of three mechanisms; (1) project planning locals to sponsors or developers; (2) site development grants to developers; or (3) technical assistance grants to public or private applicants to establish and maintain local technical assistance programs.

Source: Appalachian Development Act, Section 207

- ⊕ Localities which participate in the Virginia Rental Rehabilitation Program must identify target areas for the program and make funds available to landlords on a matching basis for the rehabilitation of low income rental units.

Source: 24 CFR 511

- Ⓐ Local governments who wish to participate in the Section 8 Housing Assistance Payments Program must elect to administer it by resolution. Through these programs eligible families (very low income) receive rental assistance paid directly to their landlord or his representative. Program administration at the local level includes: (1) out-reach to landlords and applicants through advertising in local media, meetings, and interviewing prospective participants; (2) determining the eligibility of applicants and housing units according to guidelines; and (3) certification of tenant income to determine the actual level of rent and utility assistance.

Source: 24 CFR 882 and 887

- Ⓐ Local governments which wish to receive federal funding of state housing programs through the 1990 National Affordable Housing Act must submit a five year comprehensive housing affordability strategy.

Source: 24 CFR 91

- Ⓐ Local governments receiving federal funding through the Home Investment Partnerships Act must comply with certain conditions. The Act specifies eligible uses of investment funds and sets conditions on the use of funds.

Source: 24 CFR 92; and National Affordable Housing Act, Title II

- Ⓐ Local governments receiving federal funding through the Homeownership and Opportunity for People Everywhere Programs must comply with program requirements. The program provides grants for public and Indian housing homeownership in order to expand the number of tenants in such housing who can purchase their units.

Source: National Affordable Housing Act, Title III

- All areas of the State are required to be covered by an erosion and sediment control program that is consistent with State guidelines and minimum standards. Coverage is provided by local governments through ordinances and local programs which provide for plan review, inspections, and enforcement.

Source: *Code of Virginia* § 10.1-560 *et seq.*; and Virginia Soil and Water Conservation Board regulation VR 625-02-00

- Ⓐ Local governing bodies receiving money from the Flood Prevention and Protection Assistance Fund must comply with requirements established by the Virginia Soil and Water Conservation Board.

Source: *Code of Virginia* § 10.1-603.16 *et seq.*

- Ⓐ Localities must reimburse the Department of Forestry for expenditures for forest protection, forest fire detection, forest fire prevention, and forest fire suppression not to exceed in any one year an amount not to exceed five cents per acre of privately owned woodland.

Source: *Code of Virginia* § 10.1-1124

- If local governments choose to establish their own air pollution control programs, they must conform to regulations of the State Air Pollution Control Board and federal laws.

Source: *Code of Virginia* § 10.1-1312

- Counties, cities, and towns in Tidewater Virginia are required to designate Chesapeake Bay Preservation Areas within their jurisdictions.

Source: Article XI of Virginia Constitution; *Code of Virginia* § 10.1-2109.A; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Sections 1.3, 2.2.A, 5.5.A; and 1987 Cooperative Bay Agreement

- Counties, cities, and towns in Tidewater Virginia are required to incorporate protection of the quality of State waters into each locality's comprehensive plan consistent with the provisions of the Act.

Source: *Code of Virginia* § 10.1-2109.B; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Sections 1.3, 2.2.C, 5.6.A; and 1987 Chesapeake Bay Agreement

- Counties, cities, and towns in Tidewater Virginia are required to have zoning ordinances which incorporate measures to protect the quality of State waters in the Chesapeake Bay Preservation Areas.

Source: Article XI of Virginia Constitution; *Code of Virginia* § 10.1-2109.C; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Sections 1.3, 2.2.D, 5.6.B; and 1987 Chesapeake Bay Agreement

- Counties, cities, and towns in Tidewater Virginia are required to have a plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of State waters.

Source: Article XI of Virginia Constitution; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Section 2.2.G; and 1987 Chesapeake Bay Agreement

- Counties, cities, and towns in Tidewater Virginia are required to incorporate protection of the quality of State waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the Act and Regulations. They are further required to ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Chesapeake Bay Local Assistance Board.

Source: Article XI of Virginia Constitution; *Code of Virginia* § 10.1-2109.D; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Sections 1.3, 2.2.E, 5.6.D; and 1987 Chesapeake Bay Agreement

- Counties, cities and towns in Tidewater Virginia are required to have erosion and sediment control ordinances that require compliance with the regulations.
Source: Article XI of Virginia Constitution; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Section 2.2.F; and 1987 Chesapeake Bay Agreement
- Counties, cities, and towns in Tidewater Virginia are required to employ performance criteria promulgated by the Chesapeake Bay Local Assistance Board to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner consistent with the Act and regulations.
Source: Article XI of Virginia Constitution; *Code of Virginia* § 10.1-2111; Chesapeake Bay Local Assistance Department regulation VR 173-02-01.1, Section 4.1.A; and 1987 Chesapeake Bay Agreement
- Tidewater localities which have adopted an ordinance of local regulation of tidal wetlands under State overview and oversight must supply meeting spaces and reasonable secretarial, clerical, legal, and consulting services as needed.
Source: *Code of Virginia* § 62.1-13.8
- Certain designated localities in the Tidewater area which have adopted an ordinance of local regulation of coastal primary sand dunes and beaches under State review and oversight must supply meeting spaces and reasonable secretarial, clerical, legal, and consulting services as required.
Source: *Code of Virginia* § 62.1-13.27
- Localities which establish a wetlands board must adopt the model wetlands zoning ordinance set forth in State law and comply with operating requirements of the ordinance.
Source: *Code of Virginia* § 62.1-13.5 *et seq.*
- ⊕ Localities participating in the America the Beautiful grant program must agree to accomplish tree management or tree preservation activities.
Source: Catalog of Federal Domestic Assistance, 10.664
- ⊕ Local governments accepting federal funding through the Virginia Coastal Resources Management Program must meet all requirements of the contract they execute with Council on the Environment. Those requirements include completion of all work and submission of all deliverables as described in the locality's approved proposal as well as compliance with all State and federal administrative requirements.
Source: PL 92-583; USC 1451 *et seq.* as amended; and Executive Order 15 (90)
- ⊕ Localities receiving grants from the Department of Air Pollution Control must comply with Environmental Protection Agency requirements.
Source: Environmental Protection Agency 105 Grant Regulations

| | | |
|---------------------|---|---|
| ● Compulsory Orders | ⊕ Conditions of State & Federal Financial Aid | ○ State & Federal Regulation of Optional Activities |
|---------------------|---|---|

PARKS, RECREATION, AND LIBRARIES

The area of parks, recreation, and libraries is not subject to extensive federal and State mandates. Thirteen mandates were identified, including one which had been implemented since the 1983 study. These requirements address local hunting and boating ordinances, public libraries, and grant programs.

Most of the responding local governments did not consider mandates in the area of parks, recreation, and libraries to be unreasonable (Table 10). In particular, public library requirements were cited as reasonable by 60 percent of the respondents. Parks and recreation requirements were rated as reasonable by over one-third of the respondents, with only three percent of these localities describing them as unreasonable.

The limited number of comments provided by local governments reflects this favorable attitude toward the functional area. One locality expressed concern with current parks and recreation mandates. Specifically, it cited:

Administrative processes requirements are constantly changing, along with terminology and definitions. By the time the Park Authority has completed the required changes in its processes to comply with State mandates, they are out of date due to other State changes. Requirements are so cumbersome that they are impossible to comply with, resulting in diminished efforts for compliance.

This concern was not addressed by other localities on the survey of local governments.

Table 10

Percentage of Cities and Counties Citing Parks, Recreation and Libraries Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|----------------------|-------------------|----------------|---------------------|------------|
| Parks and Recreation | 41% | 36% | 3% | 20% |
| Public Libraries | 60 | 26 | 10 | 4 |

Source: JLARC staff survey of local governments, summer 1991.

Parks and Recreation

- Localities must notify the Commission of Game and Inland Fisheries by May 1 annually of local ordinances that restrict carrying loaded firearms and hunting or trapping near public roads otherwise they are not enforceable.

Source: *Code of Virginia* §§ 18.2-287.1 and § 29.1-528

- Localities which require hunters who hunt deer or bear to purchase a damage stamp must report disbursements and collections to the Department of Game and Inland Fisheries annually.

Source: *Code of Virginia* § 29.1-358

- Localities which have adopted ordinances prohibiting hunting or trapping near primary or secondary highways must report such ordinance to the Department of Game and Inland Fisheries no later than May 1 of the year in which the ordinance is passed, otherwise it is not enforceable.

Source: *Code of Virginia* § 29.1-526

- Localities which have adopted ordinances placing limits on the type and caliber of weapons used to hunt within the boundaries of the locality must report such ordinance to the Department of Game and Inland Fisheries no later than May 1 of the year in which the ordinance is passed, otherwise it is not enforceable.

Source: *Code of Virginia* § 29.1-528

- Local boating ordinances and regulatory markers must be approved by the State Board of Game and Inland Fisheries.

Source: *Code of Virginia* § 29.1-744

- ⊕ Localities participating in the Virginia Outdoors Fund Grants Program must follow administration requirements to maintain parks and open spaces for outdoor recreation in perpetuity. These requirements are based on the Federal Land and Water Conservation Fund mandates.

Source: 1991 Virginia Acts of Assembly, Chapter 723, Item 577

- ⊕ Political jurisdictions receiving funds from the Land and Water Conservation Fund are required to maintain park and open spaces for outdoor recreation in perpetuity. The program requires continuous post inspections by the State to effect the program mandate.

Source: PL 88-578; and Item 577 of the 1991 Appropriation Act

Libraries and Cultural Enrichment

- Public libraries serving a population of over 5,000 must employ State licensed librarians.

Source: *Code of Virginia* § 42.1-15.1

- To promote the voluntary cooperation and networking of all public, academic, special, and school libraries throughout the Commonwealth, participating agencies must follow standards, procedures, and processes established by the State Library Board.

Source: *Code of Virginia* §§ 42.1-32.1 through 42.1-32.7

- ⊕ To qualify for State or federal grants-in-aid, local libraries must meet State requirements for personnel, materials and operating procedures.

Source: *Code of Virginia* § 42.1-46 *et seq.*; and State Library Board procedures

- ⊕ Localities must follow the standards endorsed by the State Library Board to assist in planning and development of public library services.

Source: State Library and Archives Planning for
Library Excellence standards

- ⊕ In order to receive matching funds through the Local Government Challenge Grants from the Virginia Commission for the Arts, localities must give financial support to not-for-profit arts organizations in their jurisdictions. The Commission will match dollar for dollar, up to \$5,000, money donated from local tax revenues to the arts.

Source: Virginia Commission for the Arts 1990-92
Guidelines for Funding

- ⊕ In order to receive funds through the Artist Residency Grants Program from the Virginia Commission for the Arts, elementary and secondary schools must match the grant at least dollar for dollar. This funding program supports residencies by professional working artists in elementary and secondary schools.

Source: Virginia Commission for the Arts
1990-92 Guidelines for Funding

ADMINISTRATION OF THE JUDICIAL SYSTEM

Mandates which relate to administration of the judicial system deal mainly with support services that are provided by local governments. Localities must provide facilities and equipment for courts and magistrates. They must also process payments to attorneys, jurors, and witnesses. Another mandate requires localities to pay legal fees for indigents charged with local offenses. There have been no new mandates in this area since 1983.

Most localities did not consider these mandates to be unreasonable. Nearly one-third rated the court-related mandates as reasonable while just over one-tenth described them as unreasonable (Table 11). Construction and maintenance, administrative, and prosecution requirements received similar distributions.

Table 11

Percentage of Cities and Counties Citing Administration of the Judicial System Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|------------------------------|-------------------|----------------|---------------------|------------|
| Courts | 33% | 45% | 11% | 11% |
| Construction and Maintenance | 30 | 43 | 15 | 12 |
| Administrative | 29 | 49 | 12 | 10 |
| Prosecution | 32 | 48 | 10 | 10 |

Source: JLARC staff survey of local governments, summer 1991.

Administration of the Judicial System

- Localities must process payments to attorneys, jurors, and witnesses for later reimbursement by the State.
Source: *Code of Virginia* §§ 14.1-189, 14.1-195.1, 14.1-195.2, 15.1-66.4 and 15.1-131.6
- Localities must provide quarters, equipment, furniture, and other necessary support for courts and magistrates.
Source: *Code of Virginia* §§ 15.1-19, 15.1-257, 16.1-69.50, 16.1-69.51:1, 16.1-234, 17-19.1, 17-42, 17-47, 17-71, 17-76, and 19.2-48.1
- Localities must provide representation for indigents charged with local offenses which might result in imprisonment.
Source: *Code of Virginia* § 19.2-163

ADMINISTRATION OF GOVERNMENT

Administration of government mandates fall into three areas: general administration, personnel administration, and financial administration. Overall, JLARC staff identified 37 mandates in this functional area. There have been no new general administrative mandates imposed on local governments since 1983.

The general government section includes mandates concerning elections, constitutional officers, and management of public records. Requirements under the heading of personnel administration affect grievance procedures, personnel classification and uniform pay plans, employee leave and retirement benefits, and employee safety. The principal financial administration mandates require localities to use competitive procurement procedures, submit uniform fiscal reports, and have an annual audit performed.

Local Concerns

Administration of government mandates were rated as reasonable by over one-third of the responding localities (Table 12). Elections and voter registration requirements were cited as reasonable by 46 percent of the respondents.

Table 12

Percentage of Cities and Counties Citing Administration of Government Mandates as Reasonable, Neutral, and Unreasonable

| <u>Requirements</u> | <u>Reasonable</u> | <u>Neutral</u> | <u>Unreasonable</u> | <u>N/A</u> |
|---|-------------------|----------------|---------------------|------------|
| General and Financial Administration | 35% | 49% | 13% | 3% |
| Elections | 46 | 36 | 16 | 2 |
| Voter Registration | 46 | 41 | 12 | 1 |
| Revenue Assessment and Collection | 33 | 53 | 12 | 2 |

Source: JLARC staff survey of local governments, summer 1991.

Although many respondents rated these mandates favorably, eight local governments commented on the unreasonableness of particular mandates in this area. Two local governments commented on the constitutional requirement for maintaining both a treasurer and a commissioner of the revenue. The respondents stated that State requirements to have both positions are unnecessary and inefficient. According to one of the localities:

This antiquated requirement places assessment and collection responsibilities on two elected officials with limited local oversight control. Staffing is provided by State and local funds for peak periods of work flow in each office. With appropriate internal control, these functions could be combined.

Other comments addressed a variety of mandates, including redistricting, workers compensation, building expansion approval, registrars' salaries, tax notification, payment cycles, and local financial commitments.

General Administration

- Local governments must comply with the Virginia Freedom of Information Act by providing ready public access to records in the custody of public officials and by allowing free entry to meetings of public bodies where public business is being conducted.

Source: *Code of Virginia* § 2.1-340.1 et seq.

- Local employees or constitutional officers and those employees of the court, as well as general receivers and clerks are required to participate in the blanket surety bond program established and administered by the Department of General Services, Division of Risk Management.

Source: *Code of Virginia* §§ 2.1-526.9 and 2.1-526.9:1

- Each city and county must elect a treasurer, clerk of court, commissioner of revenue, sheriff, and attorney for the Commonwealth. All constitutional officers shall file, on or before February 1 of the fiscal year for which the request is made, a written request for the expense of their offices. The requests shall be made on forms prescribed by the Compensation Board.

Source: Article VII, Section 4 of the Virginia Constitution; *Code of Virginia* § 14.1-50 et seq.; and Items 79 through 85 of the 1991 Appropriation Act

- The governing body of each county and city shall provide offices for the treasurer, attorney for the Commonwealth, sheriff, commissioner of revenue, commissioner of accounts, and division superintendent of schools for such county or city.

Source: *Code of Virginia* § 15.1-258

- Each county and city is required to have an electoral board and a general registrar and they must follow State and federal procedures for voting and registration. The cost of conducting elections shall be born by the locality.

Source: Voting Rights Act of 1965; 42 USC; Article II, Section 8 of Virginia Constitution; *Code of Virginia* §§ 24.1-29, 24.1-32, and 24.1-43; and Item 75 of the 1991 Appropriation Act

- The governing body of each county and city shall adopt for use at elections a voting machine or system that has been approved by the State Board of Elections.

Source: *Code of Virginia* § 42.1-17

- Localities shall comply with regulations issued by the State Library Board to inventory, schedule and, microfilm official records of counties and cities.

Source: *Code of Virginia* § 42.1-76 et seq.

- Localities must provide notice by mail to each property owner of any reassessment of real estate, or of any change in the assessed value of any real estate.

Source: *Code of Virginia* § 58.1-3330 et seq.

Personnel Administration

- Local governments having more than fifteen employees must establish a grievance procedure that is approved by the Department of Personnel and Training; otherwise the State's grievance procedures will apply. Local government grievance procedures must be certified. A copy of the certification must be filed with the director of the Department of Employee Relations Counselors.

Source: *Code of Virginia* §§ 15.1-7.1 and 15.1-7.2

- Local governments having more than fifteen employees must adopt a personnel classification plan for service and a uniform pay plan.

Source: *Code of Virginia* § 15.1-7.1

- Every county and city for which employees work shall annually provide for each employee at least two weeks paid vacation, at least seven paid sick days and such holidays as are prescribed by State law. If any such employee or deputy is required to work on a legal holiday, she will be provided with an equal amount of paid compensatory time in the same calendar year.

Source: *Code of Virginia* § 15.1-19.3

- Localities must provide for the safety, health, and welfare of employees through compliance with the Virginia Occupational Safety and Health Act, its rules and regulations. Requirements cover minimum standards that must be maintained in such areas as general safety and health provisions, occupational health and

environmental controls, trenching, machine shops, toxic and hazardous substances, electrical, confined space, and maintenance shops, etc.

Source: 29 CFR 1926 and 1910; PL 91-596; *Code of Virginia* §§ 40-1.1, 40-2.1, and 59.1-406 through 59.1-414; *Administrative Regulations Manual*; and Department of Labor and Industry regulations VR 425-02-12 and 425-02-30

- Localities must provide instruction, curriculum development, supervision, and administrative services consistent with the related and supplemental instruction needs of apprentices and sponsors.

Source: 29.29 CFR; *Code of Virginia* § 40.1-118(10); Item 118 of the 1991 Appropriation Act; and Department of Labor and Industry regulations that have been promulgated and are to become effective July 1, 1992

- Local governments must provide all officers and employees of local governments with paid leave of absence for military duty, not to exceed 15 workdays per federal fiscal year.

Source: *Code of Virginia* § 44-204

- ⊕ Localities receiving State and federal financial assistance must abide by State and federal anti-discrimination policy as it applies to people with disabilities. The Americans with Disabilities Act provides a comprehensive mandate for elimination of discrimination against individuals with disabilities. It provides enforceable standards for public transit systems to provide accessible services.

Source: Americans with Disabilities Act; PL 101-336; and *Code of Virginia* § 51.5-40

- Local governments must comply with federal anti-discrimination policy.

Source: Civil Rights Act of 1964

- Localities with a population over 5,000 must provide a retirement system for employees either by establishing a local retirement system which equals or exceeds two-thirds of the service retirement allowance to which the employee would have been entitled had the allowance been computed under the provisions of the Virginia Retirement System or by participating directly in the Virginia Retirement System. Localities will forfeit Alcoholic Beverage Control profits if they fail to comply with the set standards. Localities must also submit an annual financial report to the Virginia Retirement System.

Source: *Code of Virginia* § 51.1-800

- Local governments must provide benefits to workers under the Virginia Workmen's Compensation Act for injuries or occupational diseases which are the result of employment.

Source: *Code of Virginia* § 65.2-100 *et seq.*; and Rules 6 and 7 of the Rules of the Industrial Commission

Financial Administration

- Localities must do their purchasing of goods and services, including professional services, in accordance with the Virginia Public Procurement Act or adopt alternative provisions based on competitive principles. Towns having a population of fewer than 3,500 are exempt from most provisions of the Act.
Source: *Code of Virginia* § 11-35 et seq.
- The salaries, expenses, allowances, and office equipment of constitutional officers (except sheriffs) shall be paid for in full by all counties and cities and the State shall reimburse the counties and cities for their proportional share.
Source: *Code of Virginia* §§ 14.1-63 through 14.1-65
- Localities must use a uniform fiscal year that begins on July 1 and ends on June 30. Towns having a population of less than 3,500 are excluded, but any school district they operate must use this fiscal year.
Source: *Code of Virginia* § 15.1-159.8
- Localities must follow a budget process that complies with State requirements for content, form, publication and public hearings. These requirements are optional for localities that have a charter or special law containing budget provisions.
Source: *Code of Virginia* § 15.1-160 et seq.
- Localities must submit a financial report with the Auditor of Public Accounts annually. Towns having a population of fewer than 3,500 are excluded unless they maintain a separate school division.
Source: *Code of Virginia* § 15.1-166
- Localities must have an annual audit performed on all accounts and records by either the Auditor of Public Accounts or an independent certified public accountant. Towns having a population of less than 3,500 are excluded unless they maintain a separate school division.
Source: *Code of Virginia* § 15.1-167
- Localities which issue refunding bonds must follow guidelines and procedures set forth by the State Council on Local Debt. All issuers of advance refunding bonds subject to the Public Finance Act must have the approval of the State Council on Local Debt prior to the pricing or sale of the bonds.
Source: *Code of Virginia* §§ 15.1-227.4 and 15.1-227.46
- Local treasurers are required to report to the appointed escheator (and State Treasurer), properties which appear to be abandoned on his records in May of each year. Following the auction of property, local treasurers are required to request the delinquent taxes on each parcel sold. In instance of improper escheat, commissioners of revenue are required to certify this fact.

Source: Article VIII, Section 8 of the Virginia Constitution;
and *Code of Virginia* §§ 55-168 through 55-201.1

- The Disposition of Unclaimed Property Act requires local administrators to identify, collect, and return property which has been held for specified dormancy periods to rightful owners. Local treasurers, directors of finance, clerks of court, general receivers or any other local government entity holding property for unlocatable owners, are required to report and remit this property to the administrator by November 1 of each year.

Source: *Code of Virginia* §§ 55-210.1 through 55-210.30

- The commissioner of the revenue must provide taxpayer assistance necessary for the preparation of any return required to be filed with his office or as directed by the tax commissioner.

Source: *Code of Virginia* §§ 58.1-202 and 58.1-3108

- Local assessing officers must record and make available to the tax commissioner data necessary to conduct an annual assessment sales ratio study. Upon publication, the local assessing officer must post a copy of the study in her office.

Source: *Code of Virginia* §§ 58.1-207 and 58.1-208

- Cities and counties must obtain income and fiduciary tax returns, audit the returns, make any necessary assessments, deposit any tax due payments, and forward the returns to the Department of Taxation.

Source: *Code of Virginia* §§ 58.1-305, 58.1-307, 58.1-382, and 58.1-3107

- Certain individuals, trusts, and estates must file a declaration of estimated tax with the commissioner of the revenue and make necessary payments to the treasurer. The commissioner of the revenue and treasurer are required to record the payment information daily and submit the information to the Department of Taxation.

Source: *Code of Virginia* §§ 58.1-493 through 58.1-495

- Clerks of the circuit court for each city and county must collect and deposit recordation taxes and taxes on wills.

Source: *Code of Virginia* §§ 58.1-803, 58.1-1714, 58.1-3803, and 58.1-3807

- Each treasurer shall deposit promptly upon receipt all State moneys collected or received from all sources directly into the account of the State treasury without any deduction and make a statement of all State revenue collected by him since the last report to the comptroller.

Source: *Code of Virginia* § 58.1-3201

- Cities and counties must reassess real estate at certain intervals. The intervals are determined by the locality type and the population of the locality. Local governments must assess real estate at 100 percent fair market value.

Source: *Code of Virginia* §§ 58.1-3168, 58.1-3256,
and 58.1-3270 through 58.1-3276

● Compulsory Orders ⊕ Conditions of State & Federal Financial Aid ○ State & Federal Regulation of Optional Activities

- County, city, or town assessing officers must make and maintain an inventory and assessment of all tax-exempt real property and all property immune from real estate taxation. A total of assessed valuations and a computation of the percentage of the exempt and immune property to all property assessed must be published annually and a copy must be filed with the Department of Taxation.

Source: *Code of Virginia* § 58.1-3604

- Local governments are required to review non-local government applicants for federal funding.

Source: Federal Executive Order 12372

- ⊕ In order to receive grant funding, local governments must comply with the single audit requirement.

Source: 31 USC 7501-750; Office of Management and Budget Circular A-128; Comptroller's Compliance Assurance Manual Section 3850; and Single Audit Act of 1984

Appendix A

GENERAL ASSEMBLY OF VIRGINIA--1990 SESSION

HOUSE JOINT RESOLUTION NO. 156

Requesting the Joint Legislative Audit and Review Commission to study state and federal mandates on local governments and the fiscal impact of the mandates.

Agreed to by the House of Delegates, March 9, 1990

Agreed to by the Senate, March 7, 1990

WHEREAS, the Legislative Program Review and Evaluation Act of 1978 (§ 30-66 et seq. of the Code of Virginia) provides for the Joint Legislative Audit and Review Commission to conduct a systematic evaluation of state government according to schedules and areas designated for study by the General Assembly; and

WHEREAS, increased service costs, slowed revenue growth, and reduced federal aid have created financial stress for many localities; and

WHEREAS, local governments are recognized as political subdivisions of the Commonwealth and many localities have unique characteristics and capabilities which need to be considered; and

WHEREAS, local governments have been required to comply with a growing number of statutory and regulatory requirements in order to serve useful public purposes which have been identified by the state and federal governments; and

WHEREAS, local efforts to comply with such requirements have continued to impose additional fiscal pressures upon local governments; and

WHEREAS, local governments have continued to rely primarily upon real property taxes for an average of forty percent of their revenues, and the real property tax effort among Virginia's localities ranks second among all Southern states; and

WHEREAS, the rate of increase in the true value of real estate has slowed in recent years, and the local governments should have methods other than real property taxes to deal with state mandates; and

WHEREAS, in 1984, the Joint Legislative Audit and Review Commission reported that localities consistently cited lack of funding as the primary problem in complying with state mandates; and

WHEREAS, there is a continuous need to study the many complex issues concerning federal, state, and local relations, including but not limited to, federal and state mandates on local governments and their fiscal impact on local government; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission shall conduct a follow-up study focusing on the (i) responsibilities of local governments for providing public services; (ii) differences in the responsibilities of cities, counties, and towns; (iii) sources of revenue available to localities; (iv) additional revenue sources that could be used to provide public services; and (v) the Commonwealth's responsibilities for providing public services and procedures for aiding local governments.

The Joint Legislative Audit and Review Commission shall also consider the following issues: (i) the fiscal impact for localities in attempting to achieve state-required standards in the fields of education, mental health and mental retardation, public health, social services, and environmental protection; (ii) the types of intergovernmental relationships which would be necessary for localities to efficiently and effectively provide services at levels required by the Commonwealth; (iii) the Commonwealth's responsibilities in providing technical and financial assistance to local governments; and (iv) avenues or revenue sources that the Commonwealth and localities should consider utilizing in order to provide such public services.

Local governments and state agencies are requested to cooperate by providing any information that the Joint Legislative Audit and Review Commission deems necessary for the purpose of completing its study.

The Commission shall submit an interim report of its progress to the Governor and the 1991 Session of the General Assembly and shall complete its work in time to submit its recommendations and final report to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The Commission is further encouraged to present its study plan and interim and final reports to the Local Government Advisory Council for its review and consideration.

SENATE JOINT RESOLUTION NO. 45

Requesting the Joint Legislative Audit and Review Commission to study state and federal mandates on local governments and the fiscal impact of the mandates.

Agreed to by the Senate, March 9, 1990

Agreed to by the House of Delegates, March 7, 1990

WHEREAS, the Legislative Program Review and Evaluation Act of 1978 (§ 30-66 et seq. of the Code of Virginia) provides for the Joint Legislative Audit and Review Commission to conduct a systematic evaluation of state government according to schedules and areas designated for study by the General Assembly; and

WHEREAS, increased service costs, slowed revenue growth, and reduced federal aid have created financial stress for many localities; and

WHEREAS, local governments are recognized as political subdivisions of the Commonwealth and many localities have unique characteristics and capabilities which need to be considered; and

WHEREAS, local governments have been required to comply with a growing number of statutory and regulatory requirements in order to serve useful public purposes which have been identified by the state and federal governments; and

WHEREAS, local efforts to comply with such requirements have continued to impose additional fiscal pressures upon local governments; and

WHEREAS, local governments have continued to rely primarily upon real property taxes for an average of forty percent of their revenues, and the real property tax effort among Virginia's localities ranks second among all Southern states; and

WHEREAS, the rate of increase in the true value of real estate has slowed in recent years, and the local governments should have methods other than real property taxes to deal with state mandates; and

WHEREAS, in 1984 the Joint Legislative Audit and Review Commission reported that localities consistently cited lack of funding as the primary problem in complying with state mandates; and

WHEREAS, there is a continuous need to study the many complex issues concerning federal, state, and local relations, including but not limited to, federal and state mandates on local governments and their fiscal impact on local government; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission shall conduct a follow-up study focusing on the (i) responsibilities of local governments for providing public services; (ii) differences in the responsibilities of cities, counties, and towns; (iii) sources of revenue available to localities; (iv) additional revenue sources that could be used to provide public services; and (v) the Commonwealth's responsibilities for providing public services and procedures for aiding local governments.

The Joint Legislative Audit and Review Commission shall also consider the following issues: (i) the fiscal impact for localities in attempting to achieve state-required standards in the fields of education, mental health and mental retardation, public health, social services, and environmental protection; (ii) the types of intergovernmental relationships which would be necessary for localities to efficiently and effectively provide services at levels required by the Commonwealth; (iii) the Commonwealth's responsibilities in providing technical and financial assistance to local governments; and (iv) avenues or revenue sources that the Commonwealth and localities should consider utilizing in order to provide such public services.

Local governments and state agencies are requested to cooperate by providing any information that the Joint Legislative Audit and Review Commission deems necessary for the purpose of completing its study.

The Commission shall submit an interim report of its progress to the Governor and the 1991 Session of the General Assembly and shall complete its work in time to submit its recommendations and final report to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The Commission is further encouraged to present its study plan and interim and final reports to the Local Government Advisory Council for its review and consideration.

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