

CHAPTER 15: THE IMPACT OF UNFUNDED MANDATES IN SOUTH AFRICAN INTERGOVERNMENTAL RELATIONS

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15.1 Introduction

This chapter reports on the progress of the first phase of the work, which the Financial and Fiscal Commission (the Commission) began during the second half of 2010, into the impact of unfunded/underfunded mandates on provincial and local government. This phase focused primarily on the six metropolitan areas. Since their inception, some municipalities have raised the issue that they are compelled to perform functions which are not allocated to them in terms of the Constitution and legislation on powers and functions. Some provinces have also pointed out that they face unfunded or underfunded mandates as a result of policy decisions made at a national level. These decisions have financial implications, but come without the necessary funding for their implementation. To deal with unfunded mandates and the constraints they place on other spheres of government, the government has put in place several initiatives. The most notable are the 2003 amendments to the Municipal System Act of 2000, specifically to Sections 9 and 10, which aim to prevent unfunded mandates flowing from legislative assignments; and the 2003 amendments to the Financial and Fiscal Commission Act of 1997, which requires organs of state to assess the financial and fiscal implications (and obtain the Commission's recommendations) before functions that are assigned to other organs of state in another sphere of government become law. In evaluating the impact of unfunded mandates on service delivery at provincial and local government level, this chapter focuses on housing, health care services, roadworks, libraries and museums, as these are commonly cited services when unfunded mandates are discussed.

15.1.1 Methodology

The methodology consists of a review of legislative prescripts and literature relating to unfunded mandates nationally and internationally, an overview of what mandates have been given to provinces and local government, and an analysis of the legal and financial impact of unfunded mandates.

Legislative prescripts are used to define functions, the relationship between spheres of government and procedures for transferring functions to other spheres of government. They include the Constitution, Local Government Municipal Systems Act, No. 32 of 2000, Intergovernmental Fiscal Relations Act, No. 97 of 1997, and the Division of Revenue Act.

Data (budget/expenditure) from provinces and metropolitan municipalities is used to analyse and quantify unfunded mandates at a local and provincial government level. The information was obtained from provinces and through a questionnaire devised for metropolitan municipalities. The analysis distinguishes (a) disbursement metric (measure of government level at which public resources are disbursed); and (b) expenditure metrics (captures which government level public resources are actually spent or used).

The objectives of this chapter are threefold:

- To define and demonstrate the existence of unfunded mandates between the spheres of government.
- If unfunded mandates do exist, to establish their financial and legal impact on housing, health care services, roadworks, libraries and museums.

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- To identify key issues that must be addressed to improve the process of assigning and delegating functions among spheres of government.

15.2 Legislative Framework for Transferring Powers and Functions

Unfunded mandates can only be understood in the context of the constitutional and legislative framework for allocating and transferring powers and functions.

15.2.1 Allocation of powers in the Constitution

Sections 44, 104 and 156 (read with Schedules 4 and 5) of the Constitution allocate powers and functions to the three spheres of government. Provinces have concurrent powers in functional areas listed in Schedule 4 (shared with the national government) and exclusive powers with regard to Schedule 5 matters. Municipalities have powers in respect of the functional areas listed in Schedules 4B and 5B. All residual matters fall under the national government’s jurisdiction. This division of powers is not watertight, as defining the cut-off points between the schedules and the two parts of the schedules can be very difficult.

The point of departure is that provinces and municipalities may exercise their powers at their discretion in the listed functional areas. However, the Bill of Rights imposes duties on the various spheres of government in the areas covered by the listed socioeconomic rights.¹⁸¹ In addition, municipalities are also constitutionally bound to provide basic municipal services.¹⁸² The Constitution links a sub-national government’s functions and funding to perform those functions. As Section 227(1) states, “Local government and each province (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform functions allocated to it”. The entitlement to an equitable share is thus linked to the basic services to be provided.

Local government has a constitutional duty to be self-financing (as far as possible) in order to provide basic services and allocated functions; the equitable share transfers are complementary, rather than the sole source of revenue for such functions. Therefore, when determining the equitable share allocation, a municipality’s fiscal capacity must be taken into account.

Table 15.1 provides a summary of the role of each sphere of government in the provision of functions as they relate to housing, health-care services, libraries and museums, and highlights the sector-specific legislation that assign these functions.

Table 15.1 The role of each sphere of government and legislation for the assignment of functions

Functions in constitution				Sector-specific legislation for assigning specific functions
Function	Relationship to Schedule 4B and 5B	Provinces	Municipalities	Legislation
Health care services	A municipal health service is listed as a Schedule 4B function in the Constitution.	Undertake a function of primary health care services. Coordinate municipal health services.	Provide primary health care services as a delegation from provinces. Undertake a function of municipal health services.	The National Health Act, No. 61 of 2003, provides for the primary health care functions to be assigned to local government.
Housing	Housing appears as a competency in Schedule 4A. However, ‘Housing’ as a competency has not been defined in any statute or court judgment.	Facilitate and promote the provision of adequate housing in the province and within the framework of national policy.	Implement the process of integrated development planning within the framework of national and provincial housing legislation and policy.	The Housing Act, No. 107 of 1997, provides for ‘accreditation’ of municipalities to undertake housing activities.

¹⁸¹ Ss 26 and 27 Constitution.

¹⁸² Joseph v City of Johannesburg 2010 (3) BCLR 212 (CC).

Functions in constitution			Sector-specific legislation for assigning specific functions	
Libraries	“Libraries other than national libraries” are a Schedule 5A function that falls within the exclusive legislative competence of a province.	Provincial libraries and archives.	Provide libraries, although this is not a municipal function.	There is no legislation. The function is provided without formal delegations from provinces.
Museums	“Museums other than national museums” are a Schedule 5A functional area that falls within the exclusive legislative competency of a province.	Provincial museums.	Provide museums, although this is not a municipal function.	There is no legislation. The function is provided without formal delegations from provinces.

Source: Author

Although listed as a Schedule 4B function in the Constitution, the National Health Care Act, No. 61 of 2003, defines municipal health services as including “water quality monitoring; food control; waste management; health surveillance of premises; surveillance and prevention of communicable diseases, excluding: immunisations; vector control; environmental pollution control; disposal of the dead; and chemical safety”. From this definition, municipal health care appears to exclude the personal health aspects of primary health care. This interpretation is in keeping with the executive policy decisions and frameworks that accompanied the promulgation of the Act.

The above definition has been the subject of a legal challenge: *Independent Municipal and Allied Workers Union and Others versus President of the RSA and Others 3298/2006* argued that the definition is unconstitutional because it does not include “primary health care services”. The Court found that as the definition contains the word “includes”, the list of functions in the definition is not a closed list, but includes primary health care services.¹⁸³

Furthermore, housing appears as a competency in Schedule 4A, although it has not been defined as a competency in any statute or court judgement. The Housing Act, No. 107 of 1997, defines “housing development” as:¹⁸⁴

the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and potable water, adequate sanitary facilities and domestic energy supply.

This definition describes integrated human settlements, which point to various public sector responsibilities, administered by different spheres and sectors. Central to the definition is the notion of permanent residential structures with secure tenure, privacy and protection against the elements. Although not defined in any statute, the housing competency in Schedule 4A broadly refers to the regulation, planning, funding and execution of government-subsidised housing schemes. As housing is located in Schedule 4A, both national and provincial government may adopt and administer housing legislation, but municipalities may not make housing legislation or administer the housing subsidy without assignment. However, there are two important legal qualifiers. Firstly, Section 26 of the Constitution instructs the State as a whole to realise the right of access to housing. As a consequence of this intersection between the right of access to housing and the constitutional division of authority, municipalities have been allocated, by statute and by court judgement, responsibilities to realise the right of access to housing. Secondly, under Section 10 of the Housing Act, No. 107 of 1997, municipalities may be accredited to assume a greater role in housing. This provision is given content to in a national framework for accreditation, captured in the National Housing Code, 2000 (revised in 2009).

¹⁸³ The Court proceeded to arrive at the curious conclusion that municipalities have the authority over primary health care, but that national and provincial health governments have the power to remove that authority from municipalities.

¹⁸⁴ Section 1 “housing development” Housing Act.

15.2.2 Transferring powers and functions between spheres of government

The constitutional allocation of powers and functions is not rigid but flexible; powers and functions may be shifted between spheres of government. The following modes of transfers of powers and functions are available:

General delegation and agency shift

According to Section 238(a) of the Constitution, “an executive organ of state in any sphere of government may delegate a power or function ... to any other executive organ of state”. The section also provides the legal basis for an agency agreement.

Legislative assignment

In terms of Sections 44(1)(a)(iii) and 104(1)(c) of the Constitution, national or provincial legislatures can assign any of their legislative powers to municipal councils. The assignment may grant municipalities the discretionary legislative or executive power to function in an identified functional area. For example, the National Housing Act, No. 107 of 1997, empowers a municipality to apply to a provincial government for accreditation to administer a housing subsidy scheme.

Executive assignment

Sections 99 and 126 of the Constitution allow Cabinet members and provincial MECs (members of the Executive Council) to assign executive powers to specific municipal councils. The assignment must be consistent with the Municipal Systems Act (No. 32 of 2000) in terms of which relevant power or function is exercised or performed. This mode of assignment differs from the previous assignments, as it concerns executive powers only and entails compulsion: the relevant sections speak of the assignment of a matter “that is to be exercised”. This executive assignment must be concluded by means of an agreement with a specific municipality. An example is where a provincial executive accredits a municipality to administer a housing subsidy scheme. Section 156(4) of the Constitution indicates under what circumstances such an assignment is compulsory for the provincial or national executive.

15.2.3 Procedures for assignment and delegation of functions

Where powers and functions are assigned, the question is whether any constitutional or statutory provisions require such an assignment to be accompanied by funds from the transferring sphere. The legislative framework comprises of the following:

The Municipal Systems Act (No. 32 of 2000). In terms of Section 9 and 10 of the Municipal Systems Act there are procedural and substantive requirements that must be complied with during the assignment process. A national minister initiating the assignment of a function to municipalities in general (or to any category of municipalities) by means of an Act of Parliament must go through a procedure of consultation with the various stakeholders within a reasonable time before the Bill is introduced in Parliament.

The Intergovernmental Fiscal Relations Act (No. 97 of 1997). The Act provides for consultation with the Financial and Fiscal Commission when any sphere of government intends to shift or delegate a function to another sphere of government.

The Financial and Fiscal Commission Amendment Act (No. 99 of 1997). Section 3 of the Act provides for consultation with the Commission on the financial and fiscal implications before an organ of state in one sphere of government assigns the power or function to an organ of state in another sphere of government.

Division of Revenue Act (DORA). When a function is shifted, the resources employed to render the function shift with the function. This principle arises from section 27(2) of the Annual Division of Revenue Act and requires that the equitable share allocations for the financing of particular functions and conditional grants (both operating and capital) must be paid to the organ of state that will become responsible for the function following an assignment.

The Public Finance Management Act (PFMA). This provides for the calculation of the financial implications for the transfer of function. In terms of Section 35, draft national legislation that assigns an additional function or power to, or imposes any other obligation on, a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province.

15.3 Literature Review

The term unfunded mandate is used loosely in the context of South African intergovernmental relations. An unfunded mandate can be viewed broadly as any obligation (mandate) imposed by a hierarchical superior body (the national or provincial government) on an inferior body (a provincial or local government) without matching funds. A narrow view of an unfunded mandate refers only to a mandate that falls outside a provincial or local government's constitutionally allocated functions.

15.3.1 Broad definition of unfunded mandate

Khumalo and Mokate (2007:271) define unfunded mandates as follows:

Unfunded mandates refer to situations in which subnational governments are legally mandated in terms of the Constitution or by policy pronouncement to undertake specific functions but do not receive funds from nationally raised revenues in order to fulfill these functions. This scenario is highlighted in cases where the framework underlying the provision of particular services require provincial or local governments to implement nationally determined minimum-service standards. However, the funding for the delivery of such services fails to reflect the cost of the service standards, forcing subnational authorities to divert scarce own-revenue funds to meet the standard set.

Unfunded mandates include both the assignment of functions and how allocated functions are to be performed. An example of a minimum-service standard is the provision of free basic services. Although the provision of water is a municipal function, a policy directive turns a discretionary function into an obligation. These obligations are also referred to as 'underfunded' mandates, as the national government may set policies that are based on input norms, but costing the service is not sufficiently accurate, which results in inadequate funding (Khumalo and Mokate, 2007:283).

A further instance may be imposing procedural requirements that slow down decision making or require substantial financial input from the municipality. Examples of these requirements include overly onerous reporting, multiple consultations and compulsory investigations.

15.3.2 Narrow definition

A narrower definition confines unfunded mandates to the transfer of new functions (not constitutionally assigned) to provinces and municipalities. The South African Cities Network (SACN, 2007:78) defines an unfunded mandate as when "cities perform the functions of other spheres of government and bear significant costs out of their own revenue sources". For example, at a recent South African Local Government Association (SALGA) meeting, one municipal manager presented the following list of unfunded mandates:¹⁸⁵ libraries, museums, environmental regulation enforcement (Biodiversity Bill), Environmental Protection Areas Bill, regional town planning, passenger transport management, traffic enforcement on provincial/national roads, vehicle licensing, drivers/learners licensing, roadworthy tests, roads, health (primary health), housing and ambulances.

Although the list is restricted to areas not included in Schedules 4B and 5B of the Constitution, some functional areas highlight the definitional ambiguities of the schedules. For instance, the reference to health relates to the definition of municipal health services, yet also included is vehicle licensing, which is a mandate that results from agency agreements and has a funding stream attached.

15.4 International Case Studies on Eliminating Unfunded Mandates

The concern about unfunded mandates is widespread in federal and decentralised systems throughout the world and appears under various names. In Canada it is referred to as 'service responsibility downloading' (MacMillian, 2006) and 'cost shifting' in Australia (Sansom, 2009). The most concerted efforts to address the problem have been made in the United States, although Germany has also taken measures in this regard.

¹⁸⁵ Presentation on unfunded mandates to SALGA 28 February 2011.

15.4.1 United States

The concern is long-standing about unfunded mandates imposed by federal legislation and executive acts on state and local governments, and by states on local governments. Following initiatives that sought to curb states from imposing unfunded mandates on municipalities, the US Congress passed the Unfunded Mandates Reform Act of 1995 (UMRA). As this is a complex legislative instrument, the most important aspects are highlighted to illustrate the procedural method of curbing unfunded mandates.¹⁸⁶ Before focusing on the UMRA, the more substantive methods of control followed by state legislatures are reviewed.

State constitutions and statutes

During the 1970s/early 1980s and in the early 1990s, 15 states amended their constitutions to curb unfunded mandates, using the following methods (Zimmerman, 1995):

- Prohibiting the imposition of some or all types of state mandates;
- Requiring reimbursements of all or part of the costs associated with the mandates;
- Delaying the implementation date of a mandate;
- Authorising local governments to ignore an unfunded mandate;
- Requiring a two-thirds vote in each house of the state legislature before imposing a mandate;
- Authorising the governor of a state to suspend a mandate.

The Michigan State Constitution¹⁸⁷ provides one example: “The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government” (Williams, 2006).

A further 16 states used ordinary statutes to provide local government relief from mandates, and additional methods used include the following (Zimmerman, 1995):

- Appointment of legislative committees by state legislatures to receive complaints regarding unfunded mandates, determine their merit and then propose amendments to the offending legislation;
- Addition of a sunset provision, which requires a study of the impact of a mandate before the mandate is imposed;
- Pilot testing of new state mandates in selected local authorities, with the state assessing the cost of the mandate;
- Authorisation by state legislature of the governor (or another body with power) to suspend a mandate and refer it to the state legislature with recommendations.

Unfunded Mandates Reform Act of 1995 (UMRA)

The object of the UMRA was not to place a ban on unfunded mandates but to promote decision-making, by compelling Congress and federal agencies to consider the cost of imposing mandates on states, local and tribal governments and the private sector. It was called the “stop, look and listen” approach to mandates (Posner, 1997).

The advocates of the initiative argued that separating regulation (imposition of the mandate) from funding (responsibility of the state for local governments) discouraged accountability because it confused the public over which level of government was responsible. The priorities of sub-national governments also inevitably shift in order to make way for the federally imposed mandates.

¹⁸⁶ For detailed discussion on the UMRA, see Posner (1997; 2007) and Gromley (2006).

¹⁸⁷ Article 9 Section 25 of the Michigan state constitution (inserted in 1978).

Definition

According to the UMRA, a mandate arises from an enforceable duty imposed on state or local authorities. Importantly, certain mandates are exempted from the UMRA; the exemptions include any provision in legislation or a federal regulation that:

- enforces constitutional rights of individuals;
- establishes or enforces a statutory right that prohibits discrimination on a list of grounds;
- requires compliance with accounting and auditing procedures with respect to grants provided by the federal government;
- provides emergency assistance or relief at the request of a state or local government;
- is necessary for national security or the ratification or implementation of treaty obligations;
- is designated as emergency legislation by the President and the Congress; and
- relates to old-age, survivors and disability insurance.

Furthermore, a mandate does not arise when the duty is a condition of federal assistance or results from participation in a voluntary federal programme. The UMRA covers both federal legislation and regulatory actions of federal agencies (acting in terms of federal legislation).

A mandate may cover a broad spectrum of institutions – states, local authorities, tribal authorities or the private sector – and only direct costs are taken into account. The direct costs refer to the aggregate amounts that all state, local and tribal authorities would spend on implementation (or, in the case of federal legislation, lose because of limitations on revenue-raising powers).

A cost also arises when the federal appropriations are reduced or eliminated for a mandate that was previously imposed and funded. Furthermore, before the UMRA can apply, certain thresholds must be crossed: the costs must exceed \$50 million (in 1996 and adjusted annually for inflation) in any of the first five years of its implementation for states or local governments (\$100 million for private sector). The threshold for federal regulations is \$100 million (in 1996). However, the Act does not apply if the costs' threshold is breached, but the legislation authorises appropriations to cover the mandate.

Method

The principal means of avoiding an unfunded mandate is to provide Congress with information about the cost impact of the federal legislation. The Congressional Budget Office (CBO) must prepare so-called mandate statements, which identify and describe federal mandates in the proposed legislation, and quantify, where possible, the direct cost of such mandates. In addition the CBO must provide an estimate of anticipated indirect costs and secondary effects.

The CBO statement is part of the legislative process, as any bill or joint resolution is out of order without a CBO mandate. The procedural device provided by the UMRA is that a law, which creates an unfunded mandate (as defined in the Act), may be overruled by majority vote. Although any member of Congress may raise a point of order (stopping the bill), it can be overridden by a simple majority in the committee before which the bill is presented. Although weak, this procedural device forces the committee to consider the matter.

The UMRA was not designed to be self-executing, and its effectiveness would “ultimately rest on the commitment of the Congress itself to sustain the Act’s objectives of self-restraint because there is very little about the process that is automatic. First, a member of Congress must formally raise a point of order to trigger that covered unfunded mandates are out of order” (Posner, 1997). Posner (2007) thus describes the UMRA not as “an impenetrable barrier, but more of a ‘speed bump’ that could promote accountability which could embarrass mandate proponents and rally opponents” – the procedure “discourage[s] (but does not prevent) the imposition of unfunded federal mandates”.

In the case of mandates imposed by federal agencies, the Congressional Office of Management and Budget’s (OMB) Office of Information and Budgetary Affairs monitors compliance. The UMRA also allows limited judicial review of compliance: where federal agencies fail to prepare a written statement on the costs, the UMRA compels the agency to prepare such a statement.

Effectiveness

It has been argued that legislative awareness has reduced the incidence of unfunded mandates, by allowing affected governments to lobby against them, restraining the federal government to some degree (Posner, 2007). When unfunded mandates are imposed, it is either with the consent of the affected governments or as a deliberative choice.¹⁸⁸

In practice, during the first decade of the UMRA, the CBO reviewed over 5,200 bills, resolutions and legislative proposals, of which 12% contained an intergovernmental mandate. Of those, 9% would have exceeded the threshold, but in the end only five bills were passed where the costs of the unfunded mandates exceeded the statutory threshold. During this period, a point of order was raised 12 times in the House of Representatives but never in the Senate (Anderson and Constantine, 2005). The UMRA has been successful because it has allowed state and local governments to access information that they can use for lobbying (ibid., p.17).

Both proponents and opponents of the UMRA criticise the Act. Proponents argue that the UMRA does not go far enough, as the cost estimates are restricted to direct costs only. Furthermore, the calculation of costs relates only to each individual mandate and not the aggregate impact of a range of mandates (ibid., p.5). The uncertainty of a mandate's scope adds to the difficulty. The CBO mandate report is also on the initial bill and does not cover changes during the legislative process. Lastly, the exceptions to the rule confine the UMRA to a narrow band of mandates (Posner, 2007). However, opponents argue that the UMRA has made it difficult to pass certain bills because the benefits cannot be as easily identifiable as the costs. Forcing the federal government to provide funds is also not conducive to good governance, as the state and local governments are not focused on efficiency savings.

15.4.2 Australia

The issue of unfunded mandates (or cost shifting) was a pertinent issue in Australia for many years. The matter came to a head in a wide-ranging inquiry by the Federal House of Representatives Standing Committee on Economics, Finance and Public Administration that reported in 2003 (Sansom, 2004). The Report, entitled *Rates and Taxes: A Fair Share for Local Government*, deals with both definitional questions and mechanisms to address the problem.

Definition

The first difficulty the Committee encountered was the definition of cost shifting. Not surprisingly, local governments defined the concept broadly. The Australian Local Government Association (ALGA) identified at least four forms of cost shifting. The first is where local authorities are required to provide services that were previously done by other spheres of government.¹⁸⁹ A variation on this theme is where local governments are "required to be the sole provider of new and innovative services that have no historical funding precedent".¹⁹⁰ The second is where the federal or state governments require local government to provide concessions or rebates on their revenue resources (mainly property rates) without compensation. A variation of this kind of unfunded mandate is where the supervising governments control the fees and charges that local governments are permitted to apply and do not index such fees and charges to increased costs in the provision of the services concerned. The third is where the supervising governments require that local government "undertake costly compliance activity".¹⁹¹

Although the Committee acknowledged the need for an agreed definition, supported by a robust methodology,¹⁹² no definition was offered. It seemed, however, that it was sympathetic to ALGA's broad definition by, in addition to shifting of responsibilities and functions, recognising the following five types of cost shifting:¹⁹³ The first is when the superior government withdraws or reduces funding once a programme has been established. The local authority can discontinue the programme but then "suffer the political odium of cancelling the service".¹⁹⁴ The second is the transfer of assets without supporting funding. The third is the imposition of concessions and rebates without compensation payments. The fourth is increased regulatory and compliance requirements. The final one is the lack of indexing service fees and charges when the

188 See Posner 2007 on the agreement of states and local governments to the imposition of unfunded mandates.

189 House of Representatives Economics Committee 2003, 25.

190 House of Representatives Economics Committee 2003, 25.

191 House of Representatives Economics Committee 2003, 25.

192 House of Representatives Economics Committee 2003, 27.

193 House of Representatives Economics Committee 2003, 30.

194 House of Representatives Economics Committee 2003, 30.

superior government controls increases. The Committee also defined unfunded mandates negatively; they do not include any activities that local government voluntarily undertakes, including where such services are already provided for by another sphere of government.¹⁹⁵

Because of the lack of a consensus definition, it was difficult to estimate the extent and cost of unfunded mandates. Moreover, the absence of an agreed allocation of responsibilities between the three spheres, added to this methodological problem.¹⁹⁶ ALGA did however offer an estimate for 2002 of between Aus\$500 million and Aus\$1.1 billion.¹⁹⁷

Measures to counter cost shifting

The Committee saw the definition of responsibilities of each sphere of government and then how each should be funded, as part of the solution to cost shifting.¹⁹⁸ Furthermore, local government must be involved in the negotiations before the shifts are made. The main recommendations of the Committee were to resolve the matter along intergovernmental relations route. The first step was a federal/states/local government intergovernmental agreement which identifies the roles and responsibilities of local government in delivering federal and state programmes, and the allocation of federal and state resources to fulfil those responsibilities.¹⁹⁹ It further recommended that in such an intergovernmental agreement, cost shifting should be recognised as a problem, that funds should follow the devolution of responsibilities, that unwarranted financial restrictions on local revenue raising powers be reduced, and that a local government impact statement be developed that identifies the financial impact of federal and state legislation.²⁰⁰

Evidence on the success of the intergovernmental relations agreement to curb cost shifting is not readily available. In terms of the Agreement itself, the Agreement had to be evaluated not more than five years after its commencements. This stipulation has not been adhered to as the five year period expired on 12 April 2011.

15.4.3 Germany

Unfunded federal mandates on local government also featured in the recent reform agenda of German federalism. In the major reform initiative of 2006, the Länder²⁰¹ asserted their constitutional dominance over local governments to the exclusion of the federal government. Articles 84(1) and 85(1) were thus amended by adding the following sentence to each: "Federal laws may not entrust municipalities and associations of municipalities with any tasks". Therefore, transfers of tasks would come from Länder only (Gunlicks, 2007). Länder constitutions have also contained some provisions to limit unfunded mandates.

The underlying principle is that of 'connectivity', requiring Länder to transfer not only administrative tasks to local governments but also the financial means necessary to execute the tasks. These reform measures are only prospective; they have not affected existing federal mandates on local government which are still causing much of the financial distress among local authorities.

15.4.4 Evaluation

It is apparent that there is no generally applicable definition of an unfunded mandate that is agreed upon by orders of government. The US legislation is the closest in recognising a broader concept of an unfunded mandate which includes limitation on the revenue raising measures. Even this broad definition has been criticised for not being inclusive enough, as monetary limits are placed on financial impact and the cost of regulation is also excluded. Although organised local government in Australia has argued for the recognition of the broad definition, the measures taken to curb unfunded mandate work with a narrow definition, confine the concept to the shift in responsibilities and functions. The methods of curbing or containing unfunded mandates are two-fold. The first, radical, intervention is to impose a clear prohibition on the imposition of unfunded mandates as implemented by some states in the USA and in Germany, on the federal legislature. The more common approach is to admonish the transferring legislature or authority to stop, assess and consider before imposing a mandate. This has been the

195 House of Representatives Economics Committee 2003, 26.

196 House of Representatives Economics Committee 2003, 26.

197 House of Representatives Economics Committee 2003, 29.

198 House of Representatives Economics Committee 2003, 30.

199 Recommendation 1.

200 Recommendation 6.

201 German state.

approach used by the US Congress and also underpins the Australian intergovernmental agreement. The US UMRA further institutionalises and formalises the financial impact assessment on state and local governments, while the Australian intergovernmental agreement has not done so.

15.5 The Existence of Unfunded Mandates

15.5.1 Health service (primary health care)

Municipalities also often cite primary health care as an unfunded mandate.²⁰² In 2005 the National Health Council resolved that primary health care would be a provincial responsibility, and municipal health services (comprising selected components of the environmental health package of services) would remain a municipal responsibility. In terms of the 2005 resolution, municipal clinics were to be transferred under the provincial health structures, in a process known as “provincialisation”. This policy will be reviewed in 2015 and may be amended or reversed if a single public service has been established by then.

Following this resolution, the provincialisation process started, with provinces making different levels of progress. However, in October 2007, the South African Local Government Association (SALGA) advised municipalities to halt all further transfers of primary health care to the provincial government until clarity has been reached on what constitutes primary health care, and research has been done on whether municipalities are best placed to provide effective and efficient primary health care services. According to Versteeg *et al.* (2009), since then, no primary health care services have been provincialised from any metropolitan municipality in the country.

Relation to Schedules 4B and 5B

The Constitution lists “Municipal health services” as a Schedule 4B function. The National Health Care Act, No. 61 of 2003 defines municipal health services as water quality monitoring, food control, waste management, health surveillance of premises, surveillance and prevention of communicable diseases excluding immunisations, vector control, environmental pollution control, disposal of the dead, and chemical safety.

Municipalities that provide primary health services must adhere to national standards, which deal with, among other things, the free provision of health services. In addition, municipalities are under considerable situational pressure to perform the service or to maintain quality standards. These municipalities feel compelled to provide the service and to uphold a legally prescribed standard in doing so – which comes at a cost. Municipalities that perform primary health services do so in terms of agency agreements, which reportedly provide for inadequate funding arrangements.

15.5.2 Libraries

Relationship to Schedules 4B and 5B

“Libraries other than national libraries” are a Schedule 5A functional area that fall within the exclusive legislative competence of a province. Municipalities have no comparable competence. As an exclusive provincial competence, provinces are active in this functional area, but to a limited degree. For example, in the Western Cape, the core functions of the provincial library service are the selection, ordering, professional preparation and processing of library materials, the provision of an information service, the promotion of the use of libraries and library materials, and the maintenance of a computerised library information system. Municipalities perform the bulk of the function, i.e. employing staff, managing the operations of libraries and maintaining library buildings.

Furthermore, municipal libraries also perform a strong supplementary role in primary and secondary education (a Schedule 4A function). They are a reference source for school projects, particularly in light of the poor quality of many school libraries. Many libraries also provide study space for learners.

²⁰² Metropolitan municipalities provide primary health care services in terms of agency agreements with their provincial departments.

Duty or discretion?

There has been no legislative or executive assignment by the provinces of the library function to municipalities. However, until the 1996 Constitution came into operation, libraries were a local government matter, and most public libraries are currently still administered and funded by municipalities.

In the Western Cape, for example, there are 148 library sites in non-metropolitan areas (130 public libraries, three multi-purpose community centres, five mobile libraries and ten satellite libraries) and 105 in the City of Cape Town (98 public libraries, three mobile libraries and four others). The province administers libraries in only three municipalities, which was apparently due to the refusal of the municipalities to continue with the library function in 2000, and the province was willing to take them over. The question is then, why do municipalities continue to perform a function that is not legally theirs. The answer is situational: it is socially and politically unacceptable for municipalities to close their libraries knowing that the provincial governments may not take over or provide adequate compensation for this function.

15.5.3 Museums

Relation to Schedule 4B and 5B

“Museums other than national museums” are a Schedule 5A functional area that falls within the exclusive legislative competence of a province. Provinces have been active in exercising their constitutional powers by administering or supporting museums. Although “museums” are not listed in local government’s constitutional functional areas in Schedules 4B or 5B, municipalities are conducting similar activities (a practice that, like libraries, predates the Constitution), ostensibly as part of their local tourism function (a Schedule 4B functional area).

Duty or discretion?

There has been no legislative or executive assignment by the provinces of the museum function to municipalities. As museums were a local government matter until the 1996 Constitution came into operation, most museums are currently still administered and funded by municipalities.

Museums are not a basic service, and no obligation is imposed on municipalities to either establish or support them. Should the province assign the legislative function to municipalities, it would merely be extending a discretionary competence. Thus, there can be no compulsion to establish, run or support a museum. However, should a municipality decide to venture into this functional area, the province could set minimum standards for managing museum collections, visitor services and facilities.

Costs

As suggested above, since the functional area of museums is discretionary power, any costs incurred would be for the account of the municipality concerned.

15.5.4 Housing

Although the precise content of the housing competency in Schedule 4A is not defined in any statute, it broadly refers to the regulation, planning, funding and execution of government-subsidised housing schemes. The location of housing in Schedule 4A means that both national and provincial government may adopt and administer housing legislation. However, without assignment, municipalities may not make legislation with regard to housing or administer the housing subsidy.

There are two important legal qualifiers. Firstly, municipalities may be accredited to assume a greater role in housing, and the process of accreditation does not result in an unfunded mandate as defined in this chapter. Secondly, the Constitution instructs the State, including municipalities, to realise the right of access to housing. Municipalities have been allocated, by statute and by court judgment, responsibilities to realise the right of access to housing. For example, the Prevention of Illegal Evictions from and Unlawful Occupation of Land (PIE) Act instructs municipalities to submit information to the eviction court about alternative accommodation, and courts have instructed municipalities to make alternative land available to evictees whose eviction will result in homelessness. Municipalities have argued that, in practice, these obligations are no longer a small

component, but go to the heart of the housing function. The imposition of the obligations emanates not only from PIE but mostly from the Bill of Rights, which removes the issue from the definition of unfunded mandates adopted here. Duties, arising from the Bill of Rights and imposed on municipalities through court orders, should not be considered unfunded mandates. Furthermore, while the provision of subsidised housing falls outside of the municipality’s constitutional mandate, the same cannot be said of the provision of serviced sites or the facilitation of access to unoccupied buildings.

A responsibility would qualify as an unfunded mandate, as defined in this chapter, to the extent that government has transferred responsibility to local government to submit reports to eviction courts. It is a responsibility, imposed by national government through legislation that falls outside Schedule 4B and 5B, and is not accompanied by a dedicated funding stream from national government. The Act predates the assignment framework of the Municipal Systems Act and the FFC Act. However, the courts appear to attenuate this duty by requiring municipalities to act ‘reasonably’. Municipalities may therefore limit their involvement to evictions of the desperately poor that will result in homelessness. This involvement is based on the municipality’s duty to implement the right of access to housing. Evictions that do not result in homelessness do not fall within that category.

The duty of local government to respect, protect, promote and fulfil the right of access to housing is not an unfunded mandate as defined in this chapter. It forms part of the responsibilities allocated to the municipality by the Constitution and must be catered for in the equitable share. However, it may very well be an underfunded mandate in that the equitable share is not designed to incorporate a municipality’s constitutional responsibilities concerning the right of access to housing in the context of evictions.

15.6 The Impact of Unfunded Mandates between Spheres of Government

This section provides an analysis of the financial impact of unfunded mandates as they relate to local government and provinces, looking at the financial impact of unfunded mandates on the metropolitan municipalities of eThekweni, City of Johannesburg, Nelson Mandela Bay, Ekurhuleni, Tshwane and City of Cape Town. A questionnaire was administered to the six metros to assess the financial impact of unfunded mandates. The focus is only on metropolitan municipalities and KwaZulu-Natal, Eastern Cape and Gauteng provinces, and is part of the Commission’s first attempt to assess the impact of unfunded mandates in South African intergovernmental relations. The Commission plans to undertake further research into the impact of unfunded mandates on local municipalities, district municipalities and other provinces over the next Medium-Term Expenditure Framework cycle.

15.6.1 The financial impact of unfunded mandates in practice

Metropolitan municipalities

What emerged from the questionnaire was that municipalities perform functions on behalf of provinces. These functions include health care services, libraries, housing services, museums and roadworks.

Table 15.2 Unfunded mandates by Metropolitan Municipality (nominal terms)

Type of unfunded mandate	eThekweni		City of JHB		Nelson Mandela		Ekurhuleni		Tshwane		City of Cape Town Bay	
	08/09	09/10	08/09	09/10	08/09	09/10	08/09	09/10	08/09	09/10	08/09	09/10
R million/year												
Health care services	115.3	112.4	308.2	330.8	42.4	45.3	90.2	274.8	215.2	277.4	88.9	120.3
Library services	131.4	155.6	121.1	139.9	45.1	42.7	15.3	45.6	54.2	60.1	203.0	274.0
Museums	29.6	35.5	44.4	54.6	8.5	16.8	0.0	0.0	13.1	14.2		
Housing: new develop.	578.6	492.8	446.7	547.4	0.0	0.0	432.7	519.2	318.9	53.5		
Formal housing	89.8	120.6	205.8	130.6	18.7	-53.9	0.0	0.0	197.6	379.0		
Roadworks subsidies	0.0	0.0	0.0	0.0	4.0	5.0	0.0	0.0	0.0	0.0		
Total	944.7	916.9	1126.2	1203.3	118.7	55.9	538.2	839.6	799.0	784.2	291.9	394.3
Total 2008/09	3818.7											
Total 2009/10	4194.2											

Source: Metropolitan Municipalities: eThekweni, City of Johannesburg, Nelson Mandela Bay, Ekurhuleni, Tshwane and City of Cape Town

Table 15.2 summarises the cost of unfunded mandates by metropolitan municipalities. It reflects that, in addition to the total amount received from provinces and other sources, the six metros have used/spent from their own budget on existing unfunded mandates. They spent an additional amount of R3,819 billion in 2008/09 and R4,194 billion in 2009/10. The City of Johannesburg spent more on unfunded mandates than other metros did for the 2008/09 and 2009/10 financial years, allocating R1,126 billion and R1,203 billion respectively. The eThekweni municipality spent about R945 million in 2008/09 and R917 million in 2009/10.

Based on the figures above, municipalities clearly perform functions on behalf of provinces without assigning full expenditure to the functions. This has implications for the equitable sharing of nationally collected revenue and the delivery of services.

The findings of the research also highlighted the following challenges related to the delivery of these services as a result of unfunded mandates:

Health Care Services	Libraries
<p>Infrastructure is inadequate and does not address the needs of the patients and the health care services. Extensions, upgrading and maintenance of the health care facilities is for the account of the local government.</p> <p>There is a critical shortage of personnel to render the promotive and preventative health care.</p> <p>In some instances non-governmental organisations are used to fund staff and implement certain programmes in primary health care facilities. Once the service is provided, the funding of the non-governmental organisations is stopped or limited, and the staff have to continue rendering services, which creates an even higher workload for the remaining staff.</p> <p>Financial constraints are experienced as stock, equipment and records required for primary health care (e.g. needles, syringes, dressings) have to be funded by the local government budget.</p>	<p>The Library Grant published in the Gazette is inadequate to fund the expenses of the Library service.</p> <p>The Library service has been curtailed in its functionality to save on costs.</p> <p>There is a shortage of staff.</p> <p>Existing buildings need maintenance.</p> <p>There is lack of funding for programmes and projects.</p> <p>Municipal operational and capital budgets allocated internally are not sufficient to maintain/improve/expand services, resources and facilities. The standard of library services and facilities is declining slowly, instead of growing to satisfy the ever-changing and increasing needs of communities.</p>
Housing	Museums
<p>The rental collection rates are poor.</p> <p>There is scarcity of suitable land for development.</p> <p>Inherited aging stock leads to high maintenance costs.</p> <p>The subsidy quantum does not relate to the cost of delivery.</p> <p>Additional facilities are needed.</p>	<p>There is a shortage of education and support staff.</p> <p>Most museums have inadequate infrastructure for storage and exhibitions.</p> <p>The space for visiting schools and practical workshops is limited.</p>

Other issues related to the exercise of powers and functions among the three spheres of government include:

- In some instances, the Service Level Agreements (SLAs) for the last three years have not been signed by provincial departments.
- Provincial departments do not adhere to the principles of these agreements with regard to the provision of all resources.
- Some allocations from the province are not transferred on time according to the agreed payment schedule.
- Some services are devolved to municipalities without consultation and additional funding.

Provinces

In addition to a questionnaire devised for metropolitan municipalities, the existence of unfunded mandates between national and provincial government (where metropolitan municipalities are funded through the respective provincial treasuries) was investigated. The findings of the investigation are summarised below. KwaZulu-Natal Provincial Treasury indicated

that unfunded mandates exist between national level and the province. These arise because of policy decisions made at a national level, which have financial implications but come without the necessary funding to the province for implementation. The Treasury further argued that these unfunded mandates place pressure on the provincial fiscus. The total cost of unfunded mandates in the province amounts to R310,888 million, with the bulk emanating from the Departments of Education (R130,000 million) and Agriculture, Environmental Affairs and Development (R85,070 million).

Table 15.3 Unfunded mandates by Province and Department – 2011/12

Department (R'000)	KwaZulu-Natal	Eastern Cape
Provincial legislature	11,445	
Agriculture, Environmental Affairs and Rural Development	85,070	
Rural Development and Agrarian Reforms		1,040,040
Economic Development and Tourism	4,000	1,239,669
Education	130,000	2,514,233
Health		1,242,500
Social Development		38,900
Human Settlements		131,922
Public Works	47,114	155,339
Arts and Culture	33,259	
Total	310,888	6,362,603

Source: KwaZulu-Natal Provincial Treasury and Eastern Cape Provincial Treasury

The Eastern Cape Provincial Treasury also highlighted that unfunded mandates exist between national level and the province. It indicated that, in the current financial year, the total cost of unfunded mandates amounts to R6,363 billion. Similar to KwaZulu-Natal, the bulk emanates from the Department of Education, followed by the Departments of Health, Economic Development and Rural Development and Agrarian Reforms with estimated costs of R2,514 billion, R1,243 billion, R1,240 billion and R1,040 billion respectively.

According to the above, Section 35 of the Public Finance Management Act (PFMA) is contravened, as it requires the financial implications for the transfer of a function to be calculated, which is not the case. It also states that draft national legislation that assigns an additional function or power to (or imposes any other obligation on) a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications to the province of that function, power or obligation.

In the case of Gauteng, the Provincial Treasury's understanding is that an unfunded mandate is a statute or regulation that requires a provincial government or local government to perform certain functions, yet provides no money for fulfilling the requirement. Thus, in the strictest sense of this definition, the province does not have unfunded mandates. However, over the years the province has suffered from the misalignment between policy and the manner in which funds are allocated to the province, which has resulted in partial funding. The Gauteng Provincial Treasury highlighted that:

- There is a gap in the manner in which the province has been compensated for occupation specific dispensation (OSD). This gap will remain in the system for the years to come.
- In the last two years, Human Settlement Departments are now expected to register new houses built with the National Home Builders Registration Council. However, the conditional grant does not make provision for this and the cost of other related professional fees.
- Through a conditional grant called Public Transport Operations, the province has been mandated to provide a bus subsidy on behalf of the National Department of Transport. Being aware that such a grant will not be sufficient to cover everything, national government has classified this grant as Schedule 4, which creates problems for the province at implementation stage.

15.7 Observations

The Commission is of the view that unfunded mandates possibly exist between the spheres of government, as municipalities perform provincial functions without the necessary funding. For instance, what emerged from the metropolitan municipalities questioned was that in total, the six metros spent an additional amount of R3,819 billion in 2008/09 and R4,194 billion in 2009/10 in the provision of existing unfunded mandates. In this case, it was the responsibility of the metros to use/spend their

own budget for these functions. There are examples of unfunded mandates in the fields of libraries, museums, health and, to some extent, housing. However, numerous claims by municipalities may not be sustained, based on the narrow definition of unfunded mandates. It is suggested that they must therefore be addressed through the equitable share. However, determining whether a mandate falls outside Schedules 4B and 5B is not always easy, as the cut-off points between functional areas are not readily ascertained, which becomes apparent in the area of health services.

Essential legal procedures clearly need to be followed when assigning and delegating additional functions or powers to other spheres of government. However, in some instances metros are allocated functions without the SLAs governing such delegations. Where agreements exist, allocations from the provinces are not always transferred on time according to the agreed payment schedule. There are also problems with a shortage of staff to render the services. This raises serious concerns, as Section 27(2) of the Annual Division of Revenue Act (DORA) requires that the resources employed to render a function are shifted with the function. It requires equitable share allocations for the financing of particular functions and conditional grants (both operating and capital) to be paid to the organ of state that will become responsible for that function following an assignment.

The assignment framework that binds national and provincial governments and seeks to prevent unfunded mandates is not effective. Despite the overlapping of the various pieces of legislation dealing with assignments (and which sometimes makes the framework difficult to apply), it is clear that Sections 9 and 10 of the Systems Act are honoured in their breach rather than in their application. This is even more pertinent to Section 3(2D) of the Financial and Fiscal Commission Act. Local government's ability to discharge its mandate effectively is damaged when the lack of compliance results in an unfunded mandate.

In a number of functional areas, there is no legal basis for local government's activities. The clearest example is libraries. A further troublesome example is primary health services. While it is permissible for 'municipal health services' to be defined in national legislation (subject of course to judicial scrutiny), the (informal) administrative reallocation of tasks to metros has no secure legal basis and tends to disadvantage municipalities.

Lastly, prior consultation with the Commission before assignment legislation is introduced in a legislature, can be regarded as a formal validity requirement of such legislation. It may be argued that the provisions of the Systems Act and the FFC Act do not necessarily 'overrule' provisions contained in other statutes. However, the 'manner and form' provisions of the Systems Act and the FFC Act apply before the new legislation becomes a reality. They regulate the actions of the executive in preparing assignment legislation or making assignment decisions. With regard to assignments done by executive act, Section 3(2A) (b) of the FFC Act is clear. It provides that an assignment 'has no force' unless the Commission's recommendation has been considered.²⁰³ In response to the problems identified above, the following advisories are made by the Commission:

- Government should undertake a review of the extent of compliance with legal procedures for the assignment and delegation of functions, as set out in the Intergovernmental Fiscal Relations Act, the Financial and Fiscal Commission Act, the Division of Revenue Act and the Local Government Municipal Systems Act. In particular, it is recommended that compliance with the following legal requirements is assessed:
 - i. The financial and fiscal implications of a function shift on the sphere of government or organ of state. The organ of state initiating a general assignment must provide these implications to the Commission for its recommendations to the Minister of Finance in line with Section 3 of the FFC Act 2003 as amended and the Minister of Finance. The Commission tabled a compliance checklist for this specific purpose in 2007.
 - ii. All resources associated with delivering a service associated with a function to be shifted are transferred. These should include current assets, budgets and all future resources. There must be evidence of a decision taken by the Executing Authority of the assigning or delegating department or organ of state that this is acknowledged and pledged.
- Government should take steps to ensure that all mandates have a legal basis. The functions performed by each sphere of government must have a secure legal footing. Performing functions falling outside their mandate impinges upon the lawfulness of their budgets (although their expenditure is not necessarily illegal).
- Government should develop a time-bound programme to regularise the functional assignment of libraries and museums.

²⁰³ A consultation requirement in the Constitution with regard to legislation dealing with local government's taxing powers (s 229(5) Constitution), was successfully challenged in court. See *Robertson v City of Cape Town* 2004 (9) BCLR 950 (C). The invalidity of the contested Act was not upheld by the Constitutional Court on a different ground. See *Steytler & De Visser* 2007, para 1.2.1.

Annexure 15A Summary Tables

eThekwini Municipality

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	147.0	4.7	4.1	36.4	0.0	115.3
Health care services 09/10	150.1	4.9	4.4	42.6	0.0	112.4
Library services 08/09	134.6	4.8	4.9	4.5	3.5	131.4
Library services 09/10	156.9	4.6	5.3	2.2	3.7	155.6
Museums 08/09	29.5	0.5	1.4	0.1	0.3	29.6
Museums 09/10	26.9	8.9	1.3	0.1	0.2	35.5
Housing: new develop. 08/09	310.7	665.0	30.8	345.4	81.7	578.6
Housing: new develop. 09/10	349.8	390.0	10.0	183.8	63.2	492.8
Formal housing 08/09	120.0	7.4	14.0	0.0	37.6	89.8
Formal housing 09/10	124.0	34.7	11.1	0.0	38.1	120.6
Roadworks 08/09 subsidies	0.0					
Roadworks 09/10 subsidies						
Total 2008/09	741.8	682.4	55.2	386.4	93.1	944.7
Total 2009/10	807.7	443.1	32.1	228.7	95.2	916.9

Source: eThekwini Municipality

City of Johannesburg

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	380.7	7.0	7.7	75.9	3.6	308.2
Health care services 09/10	405.2	12.0	1.8	80.9	5.5	330.8
Library services 08/09	126.1	10.7	2.2	6.5	9.2	121.1
Library services 09/10	132.2	26.3	0.3	13.2	5.4	139.9
Museums 08/09	55.1	8.5	1.5	7.8	11.4	44.4
Museums 09/10	57.3	0.7	0.3	1.1	2.3	54.6
Housing: new develop. 08/09	735.1	276.5	14.8	448.6	116.3	446.7
Housing: new develop. 09/10	473.3	275.0	6.8	158.9	42.0	547.4
Formal housing 08/09	53.2	205.1	8.3	15.1	37.4	205.8
Formal housing 09/10	64.2	126.5	9.0	11.7	48.4	130.6
Roadworks 08/09- subsidised	0.0	0.0	0.0	0.0	0.0	0.0
Roadworks 09/10- subsidised	0.0	0.0	0.0	0.0	0.0	0.0
Total 2008/09	1,350.2	507.8	34.5	553.9	177.9	1,126.2
Total 2009/10	1,132.2	440.5	18.2	265.8	103.6	1,203.3

Source: City of Johannesburg

Nelson Mandela Bay

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	102.1	16.4	2.7	76.1	0.0	42.4
Health care services 09/10	115.7	11.7	2.2	82.1	0.0	45.3
Library services 08/09	45.6	5.0	1.1	3.5	2.0	45.1
Library services 09/10	40.4	6.7	1.5	3.5	0.9	42.7
Museums 08/09	8.8	0.0	0.1	0.0	0.3	8.5
Museums 09/10	9.8	7.0	0.3	0.0	0.0	16.8
Housing: new develop. 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Housing: new develop. 09/10	0.0	0.0	0.0	0.0	0.0	0.0
Formal housing 08/09	190.9	0.0	0.0	172.2	0.0	18.7
Formal housing 09/10	322.7	0.0	0.0	376.6	0.0	-53.9
Roadworks 08/09- subsidised	0.0	4.0	0.0	0.0	0.0	4.0
Roadworks 09/10- subsidised	0.0	5.0	0.0	0.0	0.0	5.0
Total 2008/09	347.4	25.4	3.9	251.8	2.3	118.7
Total 2009/10	488.6	30.4	4.0	462.2	0.9	55.9

Source: Nelson Mandela Bay

Ekurhuleni

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	223.0	80.8	8.0	213.6	0.0	90.2
Health care services 09/10	413.7	85.1	7.8	224.0	0.0	274.8
Library services 08/09	16.3	10.6	0.6	11.6	0.0	15.3
Library services 09/10	28.9	17.3	0.6	0.6	0.0	45.6
Museums 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Museums 09/10	0.0	0.0	0.0	0.0	0.0	0.0
Housing: new develop. 08/09	205.0	268.0	19.8	29.9	10.4	432.7
Housing: new develop. 09/10	313.8	284.0	17.4	34.2	44.4	519.2
Formal housing 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Formal housing 09/10	0.0	0.0	0.0	0.0	0.0	0.0
Roadworks 08/09 subsidies	0.0	0.0	0.0	0.0	0.0	0.0
Roadworks 09/10 subsidies	0.0	0.0	0.0	0.0	0.0	0.0
Total 2008/09	444.3	359.4	28.4	255.1	10.4	538.2
Total 2009/10	756.4	386.4	25.8	258.8	44.4	839.6

Source: Ekurhuleni

City of Tshwane

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	270.4	8.7	32.4	63.9	0.0	215.2
Health care services 09/10	320.3	11.2	38.4	54.1	0.0	277.4
Library services 08/09	58.2	0.0	7.0	4.0	0.0	54.2
Library services 09/10	66.1	0.14	7.9	6.1	0.0	60.1
Museums 08/09	13.1	0.0	1.6	0.0	0.0	13.1
Museums 09/10	14.2	0.0	1.7	0.0	0.0	14.2
Housing: new develop. 08/09	135.0	211.9	16.2	28.0	0.0	318.9
Housing: new develop. 09/10	0.0	96.7	0.0	27.2	16.0	53.5
Formal housing 08/09	228.5	70.7	27.4	101.6	0.0	197.6
Formal housing 09/10	303.0	94.9	36.4	18.9	0.0	379.0
Total 2008/09	705.3	291.3	84.6	197.5	0.0	799.0
Total 2009/10	703.6	202.9	84.4	106.3	16.0	784.2

Source: City of Tshwane

City of Cape Town

Type of unfunded mandate	Operational cost to municipality to provide the service	Capital expenditure related to provision of service	Repairs and maintenance cost (if any)	Amount received from province	Amount received from other sources	Amount spent (unfunded mandate)
	R'm	R'm	R'm	R'm	R'm	R'm
Health care services 08/09	229.4	17.2	7.2	157.7	0.0	88.9
Health care services 09/10	312.8	22.7	8.0	215.2	0.0	120.3
Library services 08/09	211.8	24.3	9.9	14.6	18.7	203.0
Library services 09/10	294.0	16.6	10.0	18.1	18.5	274.0
Museums 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Museums 09/10	0.0	0.0	0.0	0.0	0.0	0.0
Housing: new develop. 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Housing: new develop. 09/10	0.0	0.0	0.0	0.0		
Formal housing 08/09	0.0	0.0	0.0	0.0	0.0	0.0
Formal housing 09/10	0.0	0.0	0.0	0.0	0.0	0.0
Roadworks 08/09 subsidies	0.0	0.0	0.0	0.0	0.0	0.0
Roadworks 09/10 subsidies	0.0	0.0	0.0	0.0	0.0	0.0
Total 2008/09	441.2	41.5	17.1	172.3	18.7	291.9
Total 2009/10	606.8	39.3	18.0	233.3	18.5	394.3

Source: City of Cape Town

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