Calendar No. 12

104TH CONGRESS, *1st Session* | SENATE | REPORT 104–2

UNFUNDED MANDATE REFORM ACT OF 1995

REPORT

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

ON

S. 1

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

JANUARY 12 (legislative day, JANUARY 10), 1995.—Ordered to be printed

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Mr. DOMENICI from the Committee on the Budget
submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

I. PURPOSE

The primary purpose of S. 1—the "Unfunded Mandate Reform Act of 1995"—is to start the process of redefining the relationship between the Federal Government and State, local and tribal governments. In addition, the bill would require an assessment of the impact of legislative and regulatory proposals on the private sector.

The bill accomplishes this purpose by ensuring that the impact of legislative and regulatory proposals on those governments and the private sector are given full consideration in Congress and the executive branch before they are acted upon.

More specifically, S.1 achieves these objectives through the following major provisions:

A majority point of order in the Senate against consideration of legislation that established a Federal mandate on State, local and tribal governments unless the legislation provides funding to offset the costs of the mandate;

A majority point of order in the Senate against consideration of any reported legislation unless the report includes a Congressional Budget Office (CBO) estimate of the cost of Federal mandates to State, local and tribal governments as well as to the private sector;

A requirement that Federal agencies establish a process to allow State, local and tribal governments greater input into the regulatory process; and,

A requirement that agencies analyze the impact on State, local and tribal governments and the private sector of major regulations that include federal mandates.

II. BACKGROUND

The controversies that arise between the respective powers of the Federal government and the States date back to the country's origins. Concern about the cost and extent of Federal mandates on State, local governments, and Indian tribes as well as the private sector first reached its peak in the late 1970s.

With respect to State and local mandates, the Senate Budget Committee acted in 1980 and again in 1981, culminating in the enactment of the State and Local Government Cost Estimate Act of 1981. This law required the Congressional Budget Office (CBO) to prepare State and local cost estimates, but did not provide for any legislative enforcement procedures.

Since the enactment of the State and Local Government Cost Estimate Act, CBO has had 12 years of experience in preparing State and Local cost estimates. During this period, CBO has examined 6,690 pieces of legislation for the impact of Federal mandates. Twelve percent, or roughly 800 bills, contained some impact on State and local governments. A year-by-year summary of the number of estimates prepared by CBO is displayed in the following table.

STATE AND LOCAL COST ESTIMATES PREPARED BY CBO: TWELVE YEARS OF EXPERIENCE

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	Total	Average
Total estimates prepared	573	641	533	590	531	686	470	720	551	614	507	504	6,920	577
Estimates with no impacts	496	584	488	543	448	598	404	593	494	522	488	443	6,061	505
(Percent of total)	87	91	92	92	84	87	86	82	90	85	88	88	88	88
Estimates with some impacts	77	57	45	47	83	88	66	127	57	92	48	51	838	70
(Percent of total)	13	9	8	8	16	13	14	18	10	15	9	10	12	12
Esimates with impacts above $200 million	24	6	14	8	22	15	7	20	4	14	9	6	149	12
(Percent of Total)	4	1	3	1	4	2	1	3	1	2	2	1	2	2

Source: Congressional Budget Office: Bill Estimates Tracking System.

Although these past legislative efforts were designed to monitor and, presumably, to curtail the growth of Federal mandates, Federal mandates have grown while Federal resources to cover the costs of these mandates have shrunk.

While it is difficult to produce precise estimates of the costs of mandates, there is little doubt that these costs have grown and represent a sizeable proportion of the economy. One of the purposes of S. 1 is to, in fact, create a mechanism for better and more current accounting of these costs. One study prepared for the GSA Regulatory Information Service Center in 1992 found the cost of Federal mandates to State and local governments and the private sector was estimated to amount to $581 billion, or roughly 10 percent of GDP. According to the Vice President's report, The National Performance Review, the private sector alone spends $430 billion each year to comply with Federal regulations.

During a joint hearing with the Senate Governmental Affairs Committee on January 5, 1995, the Budget Committee heard these concerns from State and local officials regarding the cost of the mandates and the damaging impact of these mandates to our system of government. According to the National League of Cities, over the past two decades, the Congress has enacted 185 new laws imposing mandates on state and local governments.

In that hearing, the Mayor of Philadelphia, Edward Rendell, on behalf of the U.S. Conference of Mayors, testified that 314 cities will spend an estimated $54 billion over the next five years to comply with only 10 of these Federal mandates. His testimony included the following remarks on how Federal mandates severely diminish local government's ability to establish priorities:

> The problem with unfunded Federal mandates is that the Federal government has turned State and local officials into Federal tax collectors. We collect the taxes to implement Federal priorities and as a result we are not able to establish and fund local priorities.
>
> * * * In my city when I became mayor, we had 19 tax increases in 11 years prior to my becoming mayor, and we still had a quarter of a billion dollar deficit, and we had driven 30 percent of our tax base out of the city.
>
> So as a practical matter, I could not raise taxes to meet the new demands and mandates.

The Governor of Ohio, George V. Voinovich, made a similar point and concluded, "* * * the Federal government is bankrupt. And the Congress is on its way to bankrupting state and local governments."

Governor Voinovich also spoke to the lack of accountability on the part of Federal officials when mandates are enacted and regulations are promulgated to impose mandates on States and local governments. He cited an example of a Federal requirement that states use scrap tires to pave their roads with rubberized asphalt that will increase the cost of the State of Ohio's highway program by $50 million, money that could be spent to repave 700 miles of roads or rehabilitate 137 aging bridges. His testimony raised questions about the durability of rubberized asphalt and expressed grave concerns about its potentially harmful environmental effects.

III. LEGISLATIVE HISTORY

Senator Kempthorne introduced S. 1, the Unfunded Mandate Reform Act of 1995, on January 4, 1995.

S. 1 is based on similar legislation the Senate Governmental Affairs Committee reported last Congress. Senator Kempthorne introduced S. 993 on May 20, 1993 and this legislation was reported by the Governmental Affairs Committee on August 10, 1994. The Senate considered S. 993 on October 6, 1994, but no final action was taken on the bill during the 103rd Congress.

S. 993 as reported by the Governmental Committee proposed a number of changes in matters that are within the jurisdiction of the Senate Budget Committee. Pursuant to section 306 of the Budget Act, any legislation that affects any matter within the jurisdiction of the Budget Committee is subject to a point of order unless it is reported by the Budget Committee. This point of order can only be waived by an affirmative vote of 60 Senators.

On November 29, 1994, Senators Domenici and Exon wrote Senators Roth and Glenn regarding the consideration of unfunded mandates legislation and the Budget Committee's jurisdiction over this legislation (a copy of the letter follows).

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, November 29, 1994.

Hon. WILLIAM V. ROTH, Jr.,
Hon. JOHN GLENN,
Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR BILL AND JOHN: We expect the Senate to consider legislation early in the session regarding Federal mandates on State and local governments and the private sector. We may initiate such legislation in the Budget Committee and we want to work with you to assure that any state, local, or private sector mandate legislation moves quickly and is a constructive improvement to the congressional budget process.

Such legislation raises budget and economic issues that the Budget Committee must confront in writing a federal budget each year. Moreover, most versions of this legislation contain a significant expansion in the Congressional Budget Office's responsibilities. In the past, our committees have worked jointly on such legislation. In 1981, our two committees both reported legislation that led to the enactment of the State and Local Government Cost Estimate Act.

Some versions of this legislation may be referred to the Budget Committee under the standing order governing referral of budget-related legislation. If the Budget Committee does not report such legislation and it includes provisions affecting the Congressional Budget Office or the congressional budget process, such legislation could be in jeopardy under section 306 of the Budget Act.

We want to work with you to assure such legislation is considered expeditiously. Should you have any questions, please do not

hesitate to contact us or our staff (Bill Hoagland at 4–0539 and Bill Dauster at 4–3961).

Sincerely,

J. JAMES EXON.
PETE V. DOMENICI.

During December, the Budget Committee worked with the Governmental Affairs Committee and Senator Kempthorne to develop the legislation that was introduced as S. 1. The Senate Budget Committee worked to make the following three modifications to S. 993, which are now reflected in S. 1:

1. Strengthened the point of order in the bill so that it would apply to all legislation (bill, joint resolution, amendment, motion or conference reports) and not just reported bills;

2. Reduced the costs to the Congressional Budget Office (CBO) for its new duties required by the bill by 50 percent (from $8–10 million down to $4.5 million); and,

3. Strengthened the bill by incorporating this new mandate control process into the Congressional Budget Act and the Congressional budget process.

On January 5, the Budget Committee held a joint hearing with the Governmental Affairs Committee. On January 9, the Governmental Affairs Committee voted 9–4 to report the bill, S. 1, with three amendments. On the same day, after the Governmental Affairs action, the Budget Committee also voted by a vote of 21–0 to report S. 1 with four amendments.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section identifies the short title as the "Unfunded Mandate Reform Act of 1995."

Section 2. Purposes

This section establishes the purpose of the Act.

Section 3. Definitions

This section amends the Congressional Budget and Impoundment Control Act of 1974 by adding several new definitions. These definitions are applicable to the entire Unfunded Mandates Reform Act. However, one of the Committee amendments restricts their application within the Budget Act to the new Budget Act enforcement mechanisms established in Title I of this Act.

The term "Federal mandate" is defined as either a "Federal intergovernmental mandate" or a "Federal private sector mandate".

The term "Federal intergovernmental mandate" is defined to mean any legislation, statute, or regulation that imposes a legally binding duty on State, local, or tribal governments, unless the duty is a condition of Federal assistance or is a condition or requirement for participation in a voluntary discretionary aid program.

The term "Federal intergovernmental mandate" is further defined to include any legislation, statute, or regulation that would reduce or eliminate the authorization of appropriation for Federal financial assistance to State, local, or tribal governments for purposes of complying with an existing duty, unless the legislation,

statute, or regulation reduces or eliminates the duty accordingly. In the circumstances where the Federal government has imposed legal duties on State, local, and tribal governments and has provided financial assistance to those entities to comply with those duties, the Committee believes that the Federal government ought to be held accountable when the Federal government subsequently reduces or eliminates the Federal assistance to those governments while continuing to require compliance with the existing duties. This definition, together with the enforcement mechanism established in section 101, will provide this accountability.

The term "Federal intergovernmental mandate" is lastly defined to include any legislation, statute, or regulation concerning Federal entitlement programs that provide $500 million or more annually to State, local, or tribal governments, if it would either increase the conditions of assistance or would cap or decrease the Federal responsibility to provide funding, and the governments have no authority to amend their responsibility to provide the services affected. This subparagraph relates to nine large Federal entitlement programs, the spending projects for which are shown in the following CBO table:

ENTITLEMENT PROGRAMS THAT CONTAIN INTERGOVERNMENTAL MANDATES

[Outlays in billions of dollars]

	1996	1997	1998	1999	2000
Payments to states for AFDC work programs	0.9	1.0	1.0	1.0	1.0
Social services block grant (Title XX)	3.1	3.1	3.0	2.9	2.8
Payments to states for foster care and adoption assistance	3.9	4.3	4.7	5.0	5.5
Rehabilitation services and disability research	2.4	2.5	2.6	2.6	2.7
Medicaid	100.1	111.0	123.1	136.0	149.5
Food stamp program	26.0	27.4	28.8	30.3	31.1
State child nutrition programs	8.1	8.6	9.2	9.9	10.5
Family support payments to states [1]	17.5	17.9	18.3	18.8	19.4
Total	162.0	175.6	190.6	206.5	222.5

[1] Includes AFDC and child support enforcement

Source: CBO January 1995 Baseline

Any legislation or regulation would be considered a Federal intergovernmental mandate if it: (a) increases the stringency of State, local or tribal government participation in any one of these nine programs, or (b) caps or decreases the Federal government's responsibility to provide funds to State, local or tribal governments to implement the program, including a shifting of costs from the Federal government to those governments. The legislation or regulation would not be considered a Federal intergovernmental mandate if it a allows those governments the flexibility to amend their specific programmatic or financial responsibilities within the program while still remaining eligible to participate in that program. In addition to the nine previously-mentioned programs, also included are any new Federal-State-local entitlement programs (above the $500 million threshold) that may be created after the enactment of this Act.

The Committee has included this provision in the legislation because of its concern over past and possible future shifting of the costs of entitlement programs by the Federal government on to State governments.

"Federal private sector mandate" is defined to include any legislation, statute, or regulation that imposes a legally binding duty on the private sector.

"Direct costs" is defined to mean aggregate estimated amounts that State, local and tribal governments and the private sector will have to spend in order to comply with a Federal mandate. Direct costs of Federal mandates are net costs; they are the sum of estimated costs and estimated savings associated with legislation. Further, direct costs do not include costs that State, local and tribal governments and the private sector currently incur or will incur to implement the requirements of existing Federal law or regulation. In addition, the direct costs of a Federal mandate must not include costs being borne by those governments and the private sector as the result of carrying out a State or local government mandate.

The Governmental Affairs Committee has proposed an amendment change in the definition of "Private sector." The revised definition covers all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

The Committee is troubled by the exemption of independent regulatory agencies from the definition of a Federal "agency." An amendment by Senator Domenici to delete this exemption was withdrawn because of Senator Simon's request that the Committee and the Senate have an opportunity to study this exemption further. Many of these independent regulatory agencies are a major source of costly unfunded mandates, particularly on the private sector. The Committee notes section 4 of the bill provides a number of exclusions and believes this exemption needs to be, at a minimum, significantly narrowed.

The definition of "small government" is made consistent with existing Federal law which classifies a government as small if its population is less than 50,000. "Tribal government" is defined according to existing law.

Section 4. Exclusions

This section provides a number of exclusions from this Act.

Among these exclusions, the bill contains an exclusion for legislation that "establishes or enforces any statutory rights that prohibit discrimination." The Committee believes this language to mean provisions in bills and joint resolutions that prohibit or are designed to prevent discrimination from occurring through civil or criminal sanctions or prohibitions.

In order to maintain the discipline of S. 1 to control new unfunded mandates, the Committee believes that the exclusions must be interpreted so that the mandate in legislation completely fits within the confines of an exclusion.

Section 5. Agency assistance

Under this section, the Committee intends for Federal agencies to provide information, technical assistance, and other assistance to the Congressional Budget Office (CBO) as CBO might need and reasonably request that might be helpful in preparing the legislative cost estimates as required by Title I. Through the implementa-

tion of various Presidential Executive Orders over the last decade, agencies have developed a wealth of expertise and data on the cost of legislation and regulation on State, local and tribal government and the private sector. CBO should be able to tap into that expertise in a useful and timely manner. Other Congressional support agencies may also have developed information on cost estimates and the estimating process which might be helpful to CBO in performing its duties. CBO should not attempt to duplicate analytical work already being done by the other support agencies, but rather use as needed that information.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

Section 101. Legislative mandate accountability and reform

This section amends title IV of the Congressional Budget and Impoundment Control Act of 1974 by creating a new section 408 on Legislative Mandate Accountability and Reform. Subsection (a) establishes procedures and requirements for Committee reports accompanying legislation that imposes a Federal mandate. It requires a committee, when it orders reported legislation containing Federal mandates to provide the reported bill to CBO promptly. The Committee is concerned that this bill imposes significant new responsibility on CBO to provide a variety of estimates for legislation. Therefore, the Committee would urge the relevant authorizing committees to work closely with CBO during the committee process to ensure that legislation containing federal mandates, as well as possible related amendments to be offered in markup, be provided to CBO in a timely fashion so as not to impede the legislative process.

The Committee report shall include: an identification and description of Federal mandates in the bill, including an estimate of their expected direct costs to State, local and tribal governments and the private sector, and a qualitative assessment of the costs and benefits of the Federal mandates, including their anticipated costs and benefits to human health and safety and protection of the natural environment.

If a mandate affects both the public and the private sectors, and it is intended that the Federal Government pay the public sector costs, the report should also state what effect, if any, this would have on any competitive balance between government and privately-owned businesses. One of the Committee's amendments expanded this requirement to include an assessment of the impact of any mandate on the competitive balance between states, local governments, and tribal governments and privately-owned businesses if that mandate is contingent on funding provided in appropriations Acts.

Some Federal mandates will affect both the public and private sectors in similar and, in some cases, nearly identical ways. For example, the costs of compliance with minimum wage laws or environmental standards for landfill operations or municipal waste incineration are incurred by both sectors. There has been some concern expressed that the Federal subsidization of the public sector in these cases could create a competitive advantage for activities owned by State, local or tribal governments in those areas where they compete with the private sector. If future mandate legislation

causes this to be the case, S. 1 provides that Congress will be aware of this impact and the effect on the continuing ability of private enterprises to remain viable. The authorizing committees are required to provide an assessment in their report in order for Congress to carefully consider and decide whether the granting of a competitive advantage to the public sector is fair and appropriate.

For Federal intergovernmental mandates, Committee reports must also contain a statement of the amount, if any, of the increased authorization of appropriations for Federal financial assistance to find the costs of the intergovernmental mandates.

This section also requires the authorizing Committee to state in the report whether it intends the Federal intergovernmental mandate to be funded or not. There may be occasions when a Committee decides that it is entirely appropriate that State, local or tribal governments should bear the cost of a mandate without receiving Federal aid. If so, the Committee report should state this and give an explanation for it. Likewise, the Committee report must state the extent to which the reported legislation preempts State, local or tribal law, and, if so, explain the reasons why. To the maximum extent possible, this intention to preempt should also be clear in the statutory language.

Also set out in this section are procedures to ensure that the Committee publishes the CBO cost estimate, either in the Committee report or in the Congressional Record prior to floor consideration of the legislation.

Duties of the Director

Section 408(b) of the Congressional Budget and Impoundment Control Act, as added by section 101, requires the Director of CBO to analyze and prepare a statement on all bills reported by committees of the Senate or House of Representatives other than the appropriations committees. This subsection stipulates, first, that the Director of CBO must estimate whether all direct costs of Federal intergovernmental mandates in the bill will equal or exceed a threshold of $50,000,000 annually. If the Director estimates that the direct costs will be below this threshold, the Director must state this fact in his statement on the bill, and must briefly explain the estimate. Although this provision requires only a determination by CBO that the threshold will not be equalled or exceeded, if, in cases below the threshold, the Director actually estimates the amount of direct costs, this section is not intended to preclude the Director from including the estimate in his explanatory statement. If the Director estimates that the direct costs will equal or exceed the threshold, the Director must so state and provide an explanation, and must also prepare the required estimates.

In estimating whether the threshold will be exceeded, the Director must consider direct costs in the year when the Federal intergovernmental mandate will first be effective, plus each of the succeeding four fiscal years. In some cases, the new duties or conditions that constitute the mandate will not become effective against State, local and tribal governments when the statute becomes effective, but will become effective when the implementing regulations become effective. The Committee notes that current Federal comprehensive budget projections are made for five years and is aware

that estimates that reach beyond this five year window are more difficult to make with precision. The Committee is concerned about and recognizes the difficulty of making out-year estimates, particularly beyond the five-year window. The Committee notes that the new enforcement procedures are based on thresholds being exceeded. However, if a range of estimates is made and that range estimate is less than to greater than the threshold, the Committee believes the enforcement procedures would apply.

The $50,000,000 threshold in this legislation for Federal intergovernmental mandates is significantly lower than the threshold of $200,000,000 in the State and Local Cost Estimate Act of 1981 (2 U.S.C. 403(c)). The threshold in the 1981 Act also included a test of whether the proposed legislation is likely to have an exceptional fiscal consequence for a geographic region or a level of government. The bill provides that at the request of any Chairman or Ranking Minority Member of a committee, CBO must conduct a study on the disproportionate effects of mandates on specific geographic regions or industries.

If the Director determines that the direct costs of the Federal intergovernmental mandates will equal or exceed the threshold, he must make the required additional estimates and place them in the statement.

The Director of CBO must also estimate whether all direct costs of Federal private sector mandates in the bill will equal or exceed a threshold of $200,000,000 annually. In making this estimate, the Director must consider direct costs in the year when the Federal private sector mandate will first be effective, plus each of the succeeding four fiscal years. In some cases, the new duties or conditions that constitute the mandate will not become effective for the private sector when the statute becomes effective, but will become effective when the implementing regulations become effective.

Similar to State and local estimates, the Committee is concerned about and recognizes the difficulty of making out-year estimates, particularly beyond the five-year window. CBO has 12 years of experience of including estimates of the impact on State and local governments in its cost estimates for legislation. While CBO has conducted studies assessing the impact of mandates on the private sector, CBO has little experience with providing point estimates on private sector impacts as the part of its cost estimates to committees on legislation.

The Committee is aware that the most costly aspect of this legislation is the requirement on CBO to produce estimates on the impact to the private sector and is concerned about the cost of these new requirements. Even so, private sector mandates have an enormous impact on the economy and is critical that Congress understand these impacts as it considers legislation affecting the private sector.

If the Director estimates that the direct costs will equal or exceed the threshold, the Director must so state and provide an explanation. If the Director determines that it is not feasible for him to make a reasonable estimate that would be required with respect to Federal private sector mandates, the Director shall not make the estimate, but shall report in the statement that an estimate cannot be reasonably made.

If the Director estimates that the direct costs of a Federal private sector mandate will be below the specified threshold, the Director must state this fact in his statement on the bill, and must briefly explain the estimate. Although this provision requires only a determination by CBO that the threshold will not be equalled or exceeded, if, in cases below the threshold, the Director actually estimates the amount of direct costs, this section is not intended to preclude the Director from including the estimate in his explanatory statement.

Point of order in the Senate

This section provides two new Budget Act points of order in the Senate. The first makes it out of order in the Senate to consider any bill or joint resolution reported by a committee that contains a Federal mandate unless a CBO statement of the mandate's direct costs has been printed in the Committee report or the Congressional Record prior to consideration. The second point of order would lie against any bill, joint resolution, amendment, motion, or conference report that increased the costs of a Federal intergovernmental mandate by more than the $50,000,000, unless the legislation fully funded the mandate in one of three ways:

1. An increase in direct spending with a resulting increase in the Federal budget deficit (unless the new direct spending was offset by direct spending reductions in other programs);
2. An increase in direct spending with an offsetting increase in tax receipts, or
3. An authorization of appropriations and a limitation on the enforcement of the mandate to the extent of such amounts provided in Appropriations acts.

The Committee notes that "direct spending" is a defined term in the Balanced Budget and Emergency Deficit Control Act. The Committee also intends that in order to avoid the point of order under this section, any direct spending authority or authorization of appropriations must offset the direct costs to states, local governments, and indian tribes from the Federal mandate.

If the third alternative is used (authorization of appropriations), a number of criteria must be met in order to avoid the point of order. First, any appropriation bill that is expected to provide funding must be identified. Second, the mandate legislation must also designate a responsible Federal agency that shall either: implement an appropriately less costly mandate if less than full funding is ultimately appropriated (pursuant to criteria and procedures also provided in the mandate legislation), or declare such mandate to be ineffective. To avoid the point of order, the authorizing committee must provide in the authorization legislation for one of two options:

1. The agency will void the mandate if the appropriations committee at any point in the future provides insufficient funding to states, local governments, and tribal governments to offset the direct cost of the mandate.
2. The agency can provide a "less money, less mandate" alternative, but this alternative requires the authorizing legislation to specify clearly how the agency shall implement that alternative.

When an intergovernmental mandate is either declared ineffective or scaled back because of lack of funding, these changes in the mandate will be effectuated consistent with the requirements of the Administrative Procedures Act. This will ensure that all affected parties including the private sector, state, local and tribal governments and the intended beneficiaries of the mandate will have adequate opportunity to address their concerns.

The bill provides that matters within the jurisdiction of the Appropriations Committee are not subject to a point of order under this section. However, this is not a blanket exemption for an appropriations bill. If an appropriations bill or joint resolution (or an amendment, motion, or conference report thereto) included legislation imposing a mandate on states, local governments, or tribal governments, such legislation would not be in the Appropriations Committee's jurisdiction. Therefore, these provisions would be subject to the point of order under this section.

One of the Committee amendments struck two provisions in the bill regarding determinations and the point of order. The first provision gives the Senate Governmental Affairs the sole authority to determine what constitutes a mandate. The second struck a provision in the bill that is identical to other provisions in the Budget Act providing that the determinations of the levels of mandates would be based on estimates made by the Senate Budget Committee.

The language the Committee struck regarding the Budget Committee's role in making determinations on budgetary levels is identical or similar to language in sections 201(g), 310(d)(4), 311(c), and 313(e) of the Congressional Budget Act, sections 258B(h)(4) of the Balanced Budget and Emergency Deficit Control Act, and sections 23(e) and 24(d) of the Concurrent Resolution on the Budget for Fiscal Year 1995.

The Senate, the Senate Parliamentarian's office and the Budget Committees have 20 years of experience with these Budget Act points of order and the Budget Committee's role in making determinations of levels for the purposes of enforcing these points of order. In practice, the Senate Budget Committee's staff monitors legislation, works with the Parliamentarian's office to determine violations, and works with CBO to provide the Parliamentarian's office with estimates to determine whether legislation would violate the Budget Act.

S. 1 would establish an identical process for state and local estimates. CBO would produce costs estimates on legislation. To the extent legislation, such as an amendment, did not have a cost estimate, Budget Committee staff would seek such an estimate from CBO, in order to determine whether the bill violated S. 1's point of order.

While there is 20 years of history and experience with the Budget Committee's role in determining levels for the purposes of enforcement of Budget Act points of order, there appears to be no precedent, as envisioned in S. 1 as introduced, to provide the Senate Governmental Affairs Committee the authority to make "final determinations" on what constitutes a mandate. This provision also raises a possibility where the two committees would have conflict-

ing opinions on the application of this new point of order and needlessly complicates the enforcement of S. 1.

Viewing the questions and problems this language creates and the fact that the Budget Committee relies on CBO estimates for the purposes of making these determinations, the Committee amendment struck the language regarding Budget Committees and Governmental Affairs Committee's determinations. The Committee does not believe that this authority needs to be explicitly stated in section 408. In the absence of a CBO estimate, the Committee intends that the determinations of levels of mandates be based on estimates provided by the Senate Budget Committee.

At the request of the House of Representatives, the Committee amendment retains these provisions for the House.

Section 102. Enforcement in the House of Representatives

This section specifies the procedures to be followed in the House of Representatives in enforcing the provisions of this Act.

Section 103. Assistance to committees and studies

This section adds among CBO existing duties under the Budget Act a requirement that the Director of CBO, to the extent practicable, to consult with and assist committees of the Senate and House of Representatives, at their request, in analyzing proposed legislation that may have a significant budgetary impact on State, local or tribal governments or a significant financial impact on the private sector. It provides for the assistance that committees will need from CBO to fulfill their obligations under the provisions of S. 1.

This section also states that CBO should set up a process to allow meaningful input from those knowledgeable, affected, and concerned about the Federal mandates in question. One possible way to establish this process is through the formation of advisory panels composed of relevant outside experts. The Committee leaves it to the discretion of the Director as to when and where it is appropriate to form an advisory panel.

This section encourages authorizing committees to take a prospective look at the impact of Federal intergovernmental and private sector mandates before considering new legislation by requiring committees to submit information on mandate legislation as part of their views and estimates to the Budget Committees.

The Committee is concerned about the potential workload that such studies could impose on CBO and how this might affect CBO's other responsibilities under the Act and intends that CBO consult with the Committee on the nature, the extent, and the cost of conducting these studies.

Section 104. Authorization of appropriations

This paragraph authorizes appropriations for CBO of $4,500,000 per year for FY 1996 through 2002. The Committee recognizes that additional resources and personnel are needed for CBO to fully perform its duties under this Act along with continuing to carry out its current responsibilities. The Committee understands that the current policy and practice at CBO is to rely on in-house personnel to conduct studies and cost estimates, rather than contracting

these duties to outside entities. The Committee supports this policy and urges the Appropriations Committee, in funding this authorization, to increase CBO's authority to hire additional personnel in order to fulfill its new duties under this Act.

The Committee is particularly concerned that if the Appropriations Committee does not provide sufficient funding for these new duties that CBO's existing responsibilities under Title II of the Budget Act should not be impeded.

Section 105. Exercise of rulemaking powers

The Constitution already reserves the rulemaking powers of each House. This section provides that the terms of title I are enacted as an exercise of the rulemaking power of the Senate and the House of Representatives, and that either house may change such rules at any time.

Section 106. Repeal of the State and Local Cost Estimate Act of 1981

This paragraph rescinds the provisions of the State and Local Cost Estimate Act of 1981.

Section 107. Effective date

Title I will take effect on January 1, 1996. One of the Committee amendments provided that this title would apply only to legislation considered on or after that date. This is to give Congress time to enact additional appropriations for CBO and to give CBO and the Budget Committees the necessary time to prepare for implementing the new requirements of this Act.

The Committee notes that there has been some confusion surrounding the question of retroactivity in S.1. This section makes clear that Title I only applies to new legislation considered after January 1, 1996. Laws enacted prior to that date are not subject to Title I of this Act. The Committee intends that when Congress considers legislation reauthorizing existing laws that this Title apply to how this reauthorization legislation would change existing mandates or add new mandates.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

Section 201. Regulatory process

This section requires agencies to assess the effects of their regulations on State, local and tribal governments, and the private sector. This section specifically requires agencies to notify, consult, and educate State, local governments, and tribal governments before establishing regulations that significantly affect these entities.

Section 202. Statements to accompany significant regulatory actions

This section sets out requirements for Agencies prior to issuing final regulations. Before promulgating any final regulation with a cost of more than $100 million annually to State, local, tribal governments, and the private sector.

Section 203. Assistance to the Congressional Budget Office

This section requires the Director of the Office of Management and Budget to collect the written statements prepared by agencies under Section 202 and submit them on a timely basis to CBO. OMB and CBO already work closely regarding the Federal budget. This section will assist the CBO in performing its duties under Title I.

Section 204. Pilot program on small government flexibility

This section requires OMB to establish pilot programs in at least two agencies on regulatory flexibility.

Section 301. Baseline study of costs and benefits

This section establishes a Commission on Unfunded Federal Mandates.

Section 302. Report on unfunded Federal mandates by the commission

This section requires the Commission to issue a preliminary report within 9 months of enactment and a final report within 3 months thereafter.

Section 303. Membership

This section provides that the Commission shall be composed of 9 members and establishes the requirements for their appointment.

Section 304. Director and staff of commission; experts and consultants

This section provides for the appointment of the staff and Director of the Commission.

Section 305. Powers of commission

This section provides the Commission with the authority to hold hearings, obtain official data, use the U.S. mails, acquire administrative support services from the General Services Administration, and contract, subject to the appropriations, for property and services.

Section 306. Termination

This section provides that the Commission shall terminate 90 days after submitting its final report.

Section 307. Authorization of appropriations

This section authorizes the appropriations to Commission of $1 million.

Section 308. Definition

This section defines the term "unfunded federal mandate", as used in title III.

Section 309. Effective date

This section provides that Title III takes effect 60 days after the date of enactment.

TITLE IV—JUDICIAL REVIEW

Section 401. Judicial review

This section provides that nothing under the Act shall be subject to judicial review.

V. REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires Committee reports to evaluate the legislation's regulatory, paperwork, and privacy impact on individuals, businesses, and consumers.

S. 1 addresses Federal government process, not output. It will directly affect and change both the legislative and regulatory process. It will not have a direct regulatory impact on individuals, consumers, and businesses as these groups are not covered by the bill's requirements.

However, the implementation of S. 1 will likely have an indirect regulatory impact on these groups since a primary focus of the bill is to ensure that Congress assess the cost impact of new legislation on the private sector before acting. In so much as information on private sector costs of any particular bill or resolution may influence its outcome during the Congressional debate, it is possible that this bill may ease the regulatory impact on the private sector—both on individual pieces of legislation as well as overall. However, it is impossible at this time to determine with any specificity what that level of regulatory relief may be.

S. 1 does address the Federal regulatory process in three ways:

(1) It requires agencies to estimate the costs to State, local and tribal governments of complying with major regulations that include Federal intergovernmental mandates;

(2) It compels agencies to set up a process to permit State, local and tribal officials to provide input into the development of significant regulatory proposals; and

(3) It requires agencies to establish plans for outreach to small governments.

However, with the exception of the third provision, the bill will not impose new requirements for agencies to implement in the regulatory process that are not already required under Executive Orders 12866 and 12875. The bill merely codifies the major provisions of the E.O.s that pertain to smaller governments.

The legislation will have no impact on the privacy of individuals. Nor will it add additional paperwork burdens to businesses, consumers and individuals. To the extent that CBO and Federal agencies will need to collect more data and information from State, local and tribal governments and the private sector, as they conduct their requisite legislative and regulatory cost estimates, it is possible that those entities will face additional paperwork. However, although smaller governments are certainly encouraged to comply with agency and CBO requests for information, they are not bound to.

VI. CBO Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, January 9, 1995.

Hon. Pete V. Domenici,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1, the Unfunded Mandate Reform Act of 1995.

Enactment of S. 1 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1.
2. Bill title: Unfunded Mandate Reform Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on the Budget on January 9, 1995.
4. Bill purpose: S. 1 would require authorizing committees in the House and Senate to include in their reports on legislation a description and an estimate of the cost of any federal mandates in that legislation, along with an assessment of their anticipated benefits. Mandates are defined to include provisions that impose duties on states, localities, or Indian tribes ("intergovernmental mandates") or on the private sector ("private sector mandates"). Mandates also would include provisions that reduce or eliminate any authorization of appropriations to assist state, local, and tribal governments or the private sector in complying with federal requirements, unless the requirements are correspondingly reduced. In addition, intergovernmental mandates would include changes in the conditions governing certain types of entitlement programs (for example, Medicaid). Conditions of federal assistance and duties arising from participation in most voluntary federal programs would not be considered mandates.

Committee reports would have to provide information on the amount of federal financial assistance that would be available to carry out any intergovernmental mandates in the legislation. In addition, committees would have to note whether the legislation preempts any state or local laws. The requirements of the bill would not apply in provisions that enforce the constitutional rights of individuals, that are necessary for national security, or that meet certain other conditions.

The Congressional Budget Office (CBO) would be required to provide committees with estimates of the direct cost of mandates in reported legislation other than appropriation bills. Specific estimates would be required for intergovernmental mandates costing $50 million or more and, if feasible, for private sector mandates costing $200 million or more in a particular year. (CBO currently prepares

estimates of costs to states and localities of reported bill, but does not project costs imposed on Indian tribes or the private sector.) In addition, CBO would probably be asked to assist the Budget Committees by preparing estimates for amendments and at later stages of a bill's consideration. Also, at times other than when a bill is reported, when requested by Congressional committees, CBO would analyze proposed legislation likely to have a significant budgetary or financial impact on state, local, or tribal governments or on the private sector, and would prepare studies on proposed mandates. S. 1 would authorize the appropriation of $4.5 million to CBO for each of the fiscal years 1996–2002 to carry out the new requirements. These requirements would take effect on January 1, 1996, and would be permanent.

S. 1 would amend Senate rules to establish a point of order against any bill or joint resolution reported by an authorizing committee that lacks the necessary CBO statement or that results in direct costs (as defined in the bill) of $50 million or more in a year to state, local, and tribal governments. The legislation would be in order if it provided funding to cover the direct costs incurred by such governments, or if it included an authorization of appropriations and identified the minimum amount that must be appropriated in order for the mandate to be effective, the specific bill that would provide the appropriation, and a federal agency responsible for implementing the mandate.

Finally, S. 1 would require executive branch agencies to take actions to ensure that state, local, and tribal concerns are fully considered in the process of promulgating regulations. These actions would include the preparation of estimates of the anticipated costs of regulations to states, localities, and Indian tribes, along with an assessment of the anticipated benefits. In addition, the bill would authorize the appropriation of $1 million, to be spent over fiscal years 1995 and 1996, for a temporary Commission on Unfunded Federal Mandates, which would recommend ways to reconcile, terminate, suspend, consolidate, or simplify federal mandates.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Congressional Budget Office:						
Authorization of appropriations	.....	4.5	4.5	4.5	4.5	4.5
Estimated outlays	.....	4.0	4.4	4.4	4.4	4.4
Commission on unfunded Federal mandates:						
Authorization of appropriations	1.0	.....	.....	.....	.....	.....
Estimated outlays	0.4	0.6	.....	.....	.....	.....
Bill total:						
Authorization of appropriations	1.0	5.5	4.5	4.5	4.5	4.5
Estimated outlays	0.4	4.6	4.4	4.4	4.4	4.4

The costs of this bill within budget function 800.

Basis of estimate: CBO assumes that the specific amounts authorized will be appropriated and that spending will occur at historical rates.

We estimate that executive branch agencies would incur no significant additional costs in carrying out their responsibilities associated with the promulgation of regulations because most of these tasks are already required by Executive Orders 12875 and 12866.

6. Comparison with spending under current law: S. 1 would authorize additional appropriations of $4.5 million a year for the Congressional Budget Office beginning in 1996. CBO's 1995 appropriation is $23.2 million. If funding for current activities were to remain unchanged in 1996, and if the full additional amount authorized were appropriated, CBO's 1996 appropriation would total $27.7 million, an increase of 19 percent.

Because S. 1 would create the Commission on Unfunded Federal Mandates, there is no funding under current law for the commission.

7. Pay-as-you-go considerations: None.

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

10. Estimate prepared by: James Hearn.

11. Estimate approved by: Paul Van de Water, Assistant Director for Budget Analysis.

VII. Rollcall Votes in Committee

Pursuant to paragraph 7 of rule XXVI of the Standing Rules of the Senate, each committee is to announce the results of rollcall votes taken in any meeting of the committee on any measure or amendment. The Senate Budget Committee met on Monday, January 9, 1995, at 2 pm to mark up S. 1. The following rollcall votes occurred on S. 1 and amendments proposed thereto:

(1) The Boxer amendment to sunset S. 1 on January 1, 1998. The amendment was not agreed to: 9 yeas, 12 nays.

YEAS:	NAYS:
Mr. Exon	Mr. Domenici
Mr. Hollings [1]	Mr. Grassley [1]
Mr. Lautenberg [1]	Mr. Nickles [1]
Mr. Simon	Mr. Gramm [1]
Mr. Conrad	Mr. Bond [1]
Mr. Dodd	Mr. Lott [1]
Mr. Sarbanes [1]	Mr. Brown
Mrs. Boxer	Mr. Gorton
Mrs. Murray	Mr. Gregg
	Ms. Snowe
	Mr. Abraham
	Mr. Frist

(2) The Boxer amendment to sunset S. 1 on January 1, 2000. The amendment was not agreed to 9 yeas, 12 nays.

YEAS:	NAYS:
Mr. Exon	Mr. Domenici
Mr. Hollings [1]	Mr. Grassley [1]
Mr. Lautenberg [1]	Mr. Nickles [1]
Mr. Simon	Mr. Gramm [1]
Mr. Conrad	Mr. Bond [1]
Mr. Dodd	Mr. Lott [1]
Mr. Sarbanes [1]	Mr. Brown
Mrs. Boxer	Mr. Gorton
Mrs. Murray	Mr. Gregg
	Ms. Snowe
	Mr. Abraham
	Mr. Frist

(3) The Boxer amendment to sunset S. 1 on January 1, 2002. The amendment was not agreed to 9 yeas, 12 nays.

YEAS:	NAYS:
Mr. Exon	Mr. Domenici
Mr. Hollings [1]	Mr. Grassley [1]
Mr. Lautenberg [1]	Mr. Nickles [1]
Mr. Simon	Mr. Gramm [1]
Mr. Conrad	Mr. Bond [1]
Mr. Dodd	Mr. Lott [1]
Mr. Sarbanes [1]	Mr. Brown
Mrs. Boxer	Mr. Gorton
Mrs. Murray	Mr. Gregg
	Ms. Snowe
	Mr. Abraham
	Mr. Frist

(4) Motion to report S. 1, as amended. The motion was adopted: 21 yeas, 0 nays.

YEAS:	NAYS:
Mr. Domenici	
Mr. Grassley [1]	
Mr. Nickles [1]	
Mr. Gramm [1]	
Mr. Bond [1]	
Mr. Lott [1]	
Mr. Brown	
Mr. Gorton	
Mr. Gregg	
Ms. Snowe	
Mr. Abraham	
Mr. Frist	
Mr. Exon	
Mr. Hollings [1]	
Mr. Lautenberg [1]	
Mr. Simon	
Mr. Conrad	
Mr. Dodd	
Mr. Sarbanes [1]	
Mrs. Boxer	
Mrs. Murray	

(5) Motion that the Committee report S. 1 without filing a written report. The motion was agreed to: 12 yeas, 9 nays.

YEAS:	NAYS:
Mr. Domenici	Mr. Exon
Mr. Grassley [1]	Mr. Hollings [1]
Mr. Nickles [1]	Mr. Lautenberg [1]
Mr. Gramm [1]	Mr. Simon
Mr. Bond [1]	Mr. Conrad [1]
Mr. Lott [1]	Mr. Dodd
Mr. Brown	Mr. Sarbanes [1]
Mr. Gorton	Mrs. Boxer
Mr. Gregg	Mrs. Murray
Ms. Snowe	
Mr. Abraham	
Mr. Frist	

[1] Indicates a vote by proxy.

VIII. Views of Members of the Committee

ADDITIONAL VIEWS OF SENATOR CONRAD

With the consideration of S. 1, Congress is taking a big step in addressing the continuing issue of unfunded federal mandates upon state, local, and tribal governments, as well as mandates upon those in the private sector.

Some federal mandates serve important purposes and have helped to accomplish safer, better lives for all Americans. These mandates have ensured our health and safety with regard to things like radiation contamination, hazardous waste, and other health and safety concerns.

However, unfunded mandates have grown in recent years and have, at times, become unrealistic and overly oppressive. As the federal government tried to cut spending and reduce the federal budget deficit, it passed responsibilities onto state and local governments without providing money to pay for them. I oppose placing unreasonable fiscal demands on states and localities.

I am pleased that S. 1 includes provisions to study to the disproportionate impact mandates may have on rural communities. Last year, during the Government Affairs Committee's consideration of S. 993, the unfunded mandates bill of the 103rd Congress, Susan Ritter of North Dakota, testified that one-half of the annual budget of Sherwood, ND, is spent to test their water supply. In April 1994, the Minot Daily News reported that each resident of Mohall, ND, population 931, would need to contribute to a water testing bill of $2,400 for the year. The Minot Daily News further stated that the water testing budget for Minot, ND, was $3,300 five years ago, but had since risen to $26,100. These numbers illustrate the difficulties local governments face in meeting their budgets in the face of federal mandates.

The federal government must do a better job of listening to local governments when developing laws and regulations. It is important for Congress to consider the actual impact that federal legislation can have on state and local governments, as well as the private sector. It is always essential to weigh costs and benefits of legislation when enacting new laws.

I am proud to be a cosponsor of S. 1, however I do recognize there are some areas of the legislation which can be fine-tuned. For example, S. 1 amends provisions of the Congressional Budget Act of 1974. Attempts to amend, or improve, provisions of S. 1, which are incorporated into the Budget Act, will be subject to a super-majority point of order under the Budget Act. Also, we cannot be one hundred percent sure how this legislation will work; it may be too weak or it may be too restrictive. It is for these two reasons that I support including a sunset date for S. 1.

It is also my hope that my colleagues in the Senate will join me in a colloquy during consideration of this bill, so that questions regarding application to reauthorization bills, the competitive balance between local governments and the private sector, a sunset provision, and exclusions within S. 1 are thoroughly discussed. Given the fast pace with which S. 1 is moving, it is only appropriate that all aspects of S. 1 are addressed to remove concern.

I am greatly pleased to see this important issue before the Budget Committee and it is my hope that a fair and comprehensive bill regarding this issue is favorably considered by the Senate.

KENT CONRAD.

ADDITIONAL VIEWS OF SENATOR JIM EXON

I support S. 1, the unfunded mandates legislation of which I am an original co-sponsor. Unfunded mandates are not merely a thorn in the side of the nation's governors and state and local officials, they have burrowed deep into the nation's landscape and present a problem of the utmost gravity.

THE REPORT

Although I am an ardent supporter of this legislation I feel compelled to criticize the procedure under which it was taken up.

The Senate Budget Committee met on January 9th to mark up this legislation. We adopted 8 amendments in the committee. At the end of the markup, I asked Chairman Domenici whether we would be filing a report on this important measure. Senator Domenici answered that the Republican leader had asked that the committee not file a report, so as to expedite the Senate's consideration of the bill by Wednesday morning, January 11th. Several members on our side of the table objected to this procedure.

Senator Domenici then made a motion that the committee report the bill without a report. The committee adopted that motion on a straight party-line vote of 12–9. The following evening, January 10th, the majority asked us whether they could file a report on the following night, on the condition that there be no objection to shortening the normal 3 day period for the submission of minority views. Two Senators objected to that request. They wanted the full 3 days to do their minority views and review the report. The majority then filed a statement in the record in lieu of the report.

This morning, January 12th, the majority extended us the opportunity to review the proposed report and add minority views until January 17th. Yet, this afternoon on the Senate floor they announced that they intended to file the report immediately. While the majority may have been prepared to file its report, the members of the committee in the minority did not have a straight story on when their views were due.

For this reason, I objected to the unanimous consent agreement requested on the Senate floor because I was not sure that all the minority members had the opportunity to submit their views and I was concerned that members might still be working on their minority views. I believe that it is extremely important that anything purporting to be a report on this bill include such minority views.

Unfortunately despite my objects, I have been informed that the report will be filed at 6 PM tonight, January 12th.

And so we have discovered a means to evade both the Committee's requirement of 3 days for the preparation of minority views and the Senate Rules requirement for a report to be available for 48 hours before proceeding to a bill. You simply say that you are not going to file a report. Then you proceed to the bill, as early as

the next day. Then you file a report. This procedure evades both the Committee and Senate rules, but apparently cannot be enforced in either forum. I find this practice very troubling and am extremely concerned about the precedent that it sets.

THE SUNSET PROVISION

Last years version of the Unfunded Mandates Bill, S. 993 contained a sunset date. It was my understanding, and also that of many of the negotiators who hammered out this bi-partisan compromise, that we would have a sunset date. It is unclear why the provision was not included in the bill introduced to the Senate. Despite former assurances that a sunset provision would be included in the legislation or added during markup, a sunset provision was voted down 3 times during the Budget Committee markup in a straight 12–9 party line vote.

I believe a sunset provision is crucial to the success of this bill. A sunset provision will help—not hurt—this important piece of legislation. Sunset provisions are a common sight on the legislative landscape. For example, the revenues used to fund the superfund program sunset this year. We have sunset provisions in everything from the crime bill to school to work to the 1990 farm bill.

We are dealing with an entirely new concept. It is untried and untested. This bill needs a trial period so that any problems and bugs can be worked out. The Congressional budget office has expressed concern over the analyses that are required in the bill. In testimony before the Senate Committee on Governmental Affairs, Director Reischauer gave a candid assessment of the difficulty in completing these analyses on a timely basis, not to mention, culling reliable information for them.

A sunset provision in 1998 would allow Congress to pause and examine the job that CBO has performed to date. We could then fine tune and if necessary retool the process to make this bill even more effective.

A sunset provision is not going to kill the unfunded mandates program. The bill's time has come and there is no reason to believe that the bill would be scrapped four years from now. Currently the legislation has 57 co-sponsors. If the legislation lives up to its expectations, there should be no problem marshalling the same support in 1998.

Lastly, the unfunded mandates bill does not operate in a vacuum. It must be viewed in the context of the budget act. The caps and other major provisions in the Budget Act—including the supermajority points of order—expire in 1998. Since we will have to revisit the entire budget act in 1998, it makes sense to be consistent and provide for a 1998 sunset provision in this piece of legislation as well.

MINORITY VIEWS OF SENATOR BOXER

My first elected office in California was in 1976 when I won a seat on the Marin County Board of Supervisors. In that capacity I encountered laws passed by the state government and the federal government that impacted on our governance. Some of these were very good laws, paid for in whole or in part, and some of these were bad laws which made no sense.

The example that stands out in my mind was a law which came down from the federal government and was tied to our receipt of emergency planning monies. This law required our Board of Supervisors to plan for the orderly exit from the county of all our citizens in the case of nuclear war with the Soviet Union. It was very clear to public health and law enforcement people as well as all other residents of the county that there was no way a county so close to a targeted Soviet site in San Francisco could survive in any condition worth living under. Yet, that never stopped the federal bureaucracy then.

They had certain rules laid out for us. We were to all get in our cars and go to a county to the north which was dubbed the "host" county. It was like a party * * * with the Marin County guests and the Sonoma County hosts. We were instructed by the feds to make sure we had cash as we all would have to get gasoline for our cars because the attendants at the gas stations would be quite busy.

I am happy to report that the Marin Board of Supervisors, a bipartisan board at the time, chose to give all the planning monies back to Uncle Sam rather than give our constituents the false hope that they could survive an all-out nuclear war.

With regard to S. 1, I think the goal of this bill makes a lot of sense. If a federal mandate places an undue financial burden on state and local governments, then Congress should recognize and address the problem. There should be exceptions to this rule, however, and S. 1 deals with areas which are of vital importance to the nation that should be protected from the provisions of this bill.

S. 1 currently shields bills and federal rules that help secure our constitutional rights, prevent discrimination, ensure national security, and implement international agreements such as NAFTA from its requirements. In my view, unfortunately, two other areas of nation-wide importance have been overlooked.

I am deeply concerned that bill fails to adequately ensure our ability to protect the most vulnerable members of our society: our children, our pregnant women, and our elderly. Why should we deny our children, pregnant women, and elderly the same protections? I am prepared to offer an amendment to add legislation involving children and others to the list of S. 1 exemptions. It will simply provide that any bill which "provides for the protection of

the health of children, pregnant women, or the elderly" would not be subject to S. 1's point of order and other requirements.

I am also concerned that S. 1 fails to distinguish between mandates that affect state and local governments as "employers" and state and local governments as "governments." I plan to offer an amendment on the floor that will add labor standards to the list of mandates exempted from S. 1's requirements.

I am also disappointed that the bill fails to directly address one of the biggest unfunded federal mandates faced by California: the costs imposed by illegal immigration. I therefore plan to offer an amendment on the floor to ensure that the costs to states and local governments from illegal immigration be addressed in bill.

One point of concern was particularly overlooked and I offered an amendment in the Committee markup to address this area. The amendment which I offered with the support of the ranking member would have added a provision to sunset S. 1 in 1998. Since the enforcement mechanisms of the Budget Act will expire in 1998, I believe that it is only reasonable to revisit the unfunded mandates issue at the same time that we revisit the whole budget process to ensure that it is working as it should.

However, the Committee rejected this amendment, along with two additional amendments to sunset the bill in 2000 and 2002, respectively, by a party line vote. This deeply upsets me. How will we know whether the whole new process will work? S. 1 may simply not work. It is crucial that we set a reasonable time to revisit the bill and make any improvements—either strengthening or weakening—that our experience with it will have shown to be necessary.

I do hope that this bill will truly meet its very fair goal of reimbursing the states and local governments for laws that we pass. However, I will reserve judgement on final passage of the bill until the amendment process has been completed.

Unrelated to the bill, but very timely, I plan to offer a Sense of Senate Resolution that the campaign of violence against women's health clinics must end. My amendment calls on the Attorney General to take all necessary steps to protect reproductive health clinics and their staff. I know all of my colleagues share my view that this violence is deplorable.

IX. CHANGES TO EXISTING LAW

Paragraph 12 of rule XXVI of the Standing Rules of the Senate requires that Committee reports indicate the changes to existing law of the proposed legislation. Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman.

THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

DEFINITIONS

SEC. 3. IN GENERAL.—For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean * * *

(2) The term "budget authority" means * * *

* * * * * * *

(11) The term "Federal intergovernmental mandate" means—

(A) any provision in legislation, statute, or regulation that—

(i) would impose an enforceable duty upon States, local governments, or tribal governments, except—

(I) a condition of Federal assistance or

(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

(ii) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to States, local governments, and tribal governments under entitlement authority, if the provision—

(i)(I) would increase the stringency of conditions of assistance to States, local governments, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to States, local governments, or tribal governments under the program; and

(ii) the States, local governments, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required

services that are affected by the legislation, statute or regulation.

(12) The term "Federal private sector mandate" means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty upon the private sector except—

(i) a condition of Federal assistance; or

(ii) a duty arising from participation in a voluntary Federal program; or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

(13) The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (11) and (12).

(14) The terms "Federal mandate direct costs" and "direct costs"—

(A)(i) in the case of a Federal intergovernmental mandate, mean the aggregate estimated amounts that all States, local governments, and tribal governments would be required to spend in order to comply with the Federal intergovernmental mandate; or

(ii) in the case of a provision referred to in paragraph (11)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced;

(B) in the case of a Federal private sector mandate, mean the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

(C) shall not include—

(i) estimated amounts that the States, local governments, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as if affected by that Federal mandate; or

(II) to comply with or carry out State, local governmental, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the States, local governments, and tribal governments, or by the private sector, as a result of—

(I) compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate; and

(D) shall be determined on the assumption that State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations. Reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees.

(15) The term "private sector" means all persons or entities in the United States, except for State, local, or tribal governments, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

(16) The term "local government" has the same meaning as in section 6501(6) of title 31, United States Code.

(17) The term "tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (83 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

(18) The term "small government" means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

(19) The term "State" has the same meaning as in section 6501(9) of title 31, United States Code."

(20) The term "agency" has the meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code.

(21) The term "regulation" or "rule" has the meaning of "rule" as defined in section 601(2) of title 5, United States Code.

(23) For the purposes of this Act, the definitions in paragraphs (15) through (22) shall only apply to section 408.

DUTIES AND FUNCTIONS

SEC. 202. (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be * * *

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE.—At the request * * *

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—

*(1) At the request * * **

(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

(A) a significant budgetary impact on State, local, or tribal governments; or

(B) a significant financial impact on the private sector.

[2] *(3)* At the request * * *

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(h) STUDIES.—[The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.]

(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

(2) FEDERAL MANDATE STUDIES.—

(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a Federal mandate legislative proposal.

(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year period referred to in subparagraph (B)(iii)(I);

(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full

employment, creation of productive jobs, and international competitiveness of United States goods, and services.

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

SEC. 301. * * *

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(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a) and (b) which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946. Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committee on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a) and (b) which relate to matters within its jurisdiction or functions. *Any committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.*

[ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

[SEC. 403. (a) The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

[(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

[(2) an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together the basis for each such estimate;

[(3) a comparison of the estimates of cost described in paragraphs (1) and (2), with any available estimates of costs made by such committee or by any Federal agency; and

[(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

[(b) For purposes of subsection (a)(2), the term "local government" has the same meaning as in section 103 of the Intergovernmental Cooperation Act of 1968.

[(c) For purposes of subsection (a)(2), the term "significant bill or resolution" is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State and local governments of $200,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.]

* * * * * * *

SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraphs (3) and (4).

(2) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

(3) REPORTS ON FEDERAL MANDATES.—Each report described under paragraph (1) shall contain—

(A) an identification and description of any Federal mandates in the bill or joint resolution, including the expected direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

(B) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under subsection (c)(1)(B)(iii)(IV) would affect the competitive balance between State, local, or tribal governments and privately owned businesses.

(4) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under paragraph (1) shall also contain—

(A)(i) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution to pay for the costs to State, local, and tribal governments of the Federal intergovernmental mandate; and

(ii) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

(B) any existing sources of Federal assistance in addition to those identified in subparagraph (A) that may assist state, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

(5) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution preempts any State, local, or tribal law, and, if so, an explanation of the reasons for such preemption.

(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

(A) Upon receiving a statement (including any supplemental statement) from the Director under subsection (b)(1), a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

(B) If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

(b) DUTIES OF THE DIRECTOR.—

(1) STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—

(A) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(i) If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted

annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(ii) The estimate required under clause (i) shall include estimates (and brief explanations of the basis of the estimates) of—

(I) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution; and

(II) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

(B) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(i) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $200,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(ii) Estimates required under this subparagraph shall include estimates (and a brief explanation of the basis of the estimates) of—

(I) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(II) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(iii) If the Director determines that it is not feasible to make a reasonable estimate that would be required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the

reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

(C) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in paragraphs (A) and (B), the Director shall so state and shall briefly explain the basis of the estimate.

(c) LEGISLATION SUBJECT TO POINT OF ORDER IN THE SENATE.—

(1) IN GENERAL.—It shall not be in order in the Senate to consider—

(A) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration; and

(B) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A)(i) to be exceeded, unless—

(i) the bill, joint resolution, amendment, motion, or conference report provides direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that is equal to the estimated direct costs of such mandate;

(ii) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts and an increase in direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to the estimated direct costs of such mandate; or

(iii) the bill, joint resolution, amendment, motion, or conference report includes an authorization of appropriations in an amount equal to the estimated direct costs of such mandate, and—

(I) identifies a specific dollar amount estimate of the full direct costs of the mandate for each year or other period during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (3) for each fiscal year;

(II) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under subclause (IV)(aa);

(III) identifies the minimum amount that must be appropriated in each appropriations bill referred to in subclause (II), in order to provide for full Federal funding of the direct costs referred to in subclause (I); and

(IV)(aa) designates a responsible Federal agency and establishes criteria and procedures under

which such agency shall implement less costly programmatic and financial responsibilities of State, local, and tribal governments in meeting the objectives of the mandate, to the extent that an appropriation Act does not provide for the estimated direct costs of such mandate as set forth under subclause (III); or

(bb) designates as responsible Federal agency and establishes criteria and procedures to direct that, if an appropriation Act does not provide for the estimated direct costs of such mandate as set forth under subclause (III), such agency shall declare such mandate to be ineffective as of October 1 of the fiscal year for which the appropriation is not at least equal to the direct costs of the mandate.

(2) RULE OF CONSTRUCTION.—The provisions of paragraph (1)(B)(iii)(IV)(aa) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(3) COMMITTEE ON APPROPRIATIONS.—Paragraph (1) shall not apply to matters that are within the jurisdiction of the Committee on Appropriations of the Senate or the House of Representatives.

(d) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of subsection (c) to a bill or joint resolution reported by a committee of authorization.

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