

UNFUNDED MANDATE REFORM ACT OF 1995

—
JANUARY 13, 1995.—Ordered to be printed
—

Mr. SOLOMON, from the Committee on Rules,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 5]

[Including cost estimate of the Congressional Budget Office]

The Committee on Rules, to whom was referred the bill (H.R. 5) to curb the practice of imposing unfunded Federal mandates on States and local governments, to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and to provide information on the cost of Federal mandates on the private sector, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 39, strike line 23 and all that follows thereafter through page 40, line 9 (and redesignate the subsequent subsections accordingly).

Page 44, line 13, strike “the” and all that follows thereafter through line 19 and insert the following:

the question of whether a bill, joint resolution, amendment, motion, or conference report contains a Federal intergovernmental mandate shall be determined after consideration of the recommendation, if available, of the Chairman of the Committee on Government Reform and Oversight of the House of Representatives or the Chair-

man of the Committee on Governmental Affairs of the Senate, as applicable.

Page 44, after line 19, add the following:

“(e) LIMITATION ON APPLICATION OF SUBSECTION (a)(2).— Subsection (a)(2) shall not apply to any bill, joint resolution, amendment, or conference report that reauthorizes appropriations for carrying out, or that amends, any statute if enactment of the bill, joint resolution, amendment, or conference report—

“(1) would not result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and

“(2)(A) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate; or

“(B) in the case of any net reduction or elimination of authorizations of appropriations for such Federal financial assistance that would result from such enactment, would reduce the duties imposed by the Federal intergovernmental mandate by a corresponding amount

Page 44, lines 24 and 25, strike all after “425(a)” and insert in lieu thereof the following:

: *Provided, however*, That pending a point of order under section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if offered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.”.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 5, the Unfunded Mandate Reform Act of 1995, is to make Congress more accountable when imposing new Federal mandates on States, local governments, and tribal governments without providing adequate funding to comply with such mandates. It seeks to prevent Congress from passing “feel good” legislation that transfers the cost burden from the Federal Government to State and local governments.

To accomplish this objective, the bill establishes mechanisms to bring information about unfunded Federal mandates contained in legislation to the attention of the House and Senate before a vote is taken. The bill creates new points of order that would lie on the floor of the House of Representatives and the Senate to ensure that Members can have a vote on unfunded Federal mandates contained in future legislation.

The bill also establishes a Commission on Unfunded Federal Mandates to review existing unfunded Federal mandates and to make recommendations to the Congress and the President with respect to reconciling, terminating, suspending, consolidating or simplifying unfunded Federal mandates.

COMMITTEE CONSIDERATION

H.R. 5 was introduced on January 4, 1995, by Representatives William Clinger (R-PA), Rob Portman (R-OH), Thomas Davis (R-VA) and Gary Condit (D-CA). It was referred to the Committee on Government Reform and Oversight, and sequentially to the Committees on Rules, the Budget, and the Judiciary. The jurisdiction of the Rules Committee was limited to Title III.

The Rules Committee held a briefing for Members and staff on Thursday, January 5, 1995, in which Mr. James L. Blum, Deputy Director of the Congressional Budget Office, and Mr. Stanley Bach, a Senior Specialist in American National Government with the Congressional Research Service, described the provisions of H.R. 5 and the implications of the legislation with respect to the CBO and the various congressional committees.

On Wednesday, January 11, 1995, the Rules Committee held an open hearing on H.R. 5. The Committee heard from two panels. Witnesses on the first panel consisted of the Hon. William Clinger (R-PA), the Hon. Rob Portman (R-OH), the Hon. Thomas Davis (R-VA), and the Hon. Gary Condit (D-CA). Witnesses on the second panel consisted of: Ms. Nancy Donaldson, Director of Political Affairs, Service Employees International Union; Mr. Jim St. George, Assistant Director of State Fiscal Projects, Center for Budget Priorities; and Greg Wetstone, Director of Legislation, Natural Resources Defense Council.

The Committee met on Thursday, January 12, 1995, to mark-up H.R. 5. The Committee favorably reported H.R. 5 with amendments by a record vote of 9 to 4. During the mark-up, four amendments were agreed to.

BACKGROUND

H.R. 5 was introduced in response to the increased tendency on the part of Congress and the agencies of the Federal Government to enact laws and regulations imposing requirements on State and local governments without commensurate funding to carrying out those requirements.

One recent example of an unfunded Federal mandate is the National Voter Registration Act of 1993. It requires states to allow residents to register at motor vehicle offices, welfare offices and other state offices where public services are delivered. California Governor Pete Wilson estimates that enforcement of the law will cost the state more than \$35 million annually. As a result, Governor Wilson has filed suit in federal court to bar the Justice Department from enforcing the law until the Federal Government gives the State adequate funds to put the law into effect.

The Impetus for mandate reform was the election of Ronald Reagan as President of the United States in 1980. He made federalism a top policy priority and aggressively pursued an intergov-

ernmental reform agenda that included shrinking the size and function of the Federal Government, creating Federal-local partnerships, reducing Federal regulation of State and local governments, and establishing greater reliance on private sector institutions to achieve national priorities.

State and local organizations have recently sponsored a number of events to spotlight the unfunded mandates issue, increase public awareness, and build support in Congress for mandate relief legislation. They sponsored a National Unfunded Mandates Day in October 1993, and Unfunded Mandates Week in 1994, and "Stop the Mandate Madness" rallies on the Capitol steps.

There have been a number of studies that attempted to identify unfunded Federal mandates and to determine their costs. According to a 1984 report of the Advisory Commission on Intergovernmental Relations (ACIR) entitled "Regulatory Federalism," Federal laws containing mandates that affect State and local governments as of 1980 include: the Age discrimination Act of 1975, the Clean Air Act Amendments of 1970, the Emergency Highway Energy Conservation Act, the Family Educational Rights and Privacy Act of 1974, the Occupational Safety and Health Act, and the Wholesome Poultry Products Act of 1968.

Since 1980, according to a 1992 follow-up report of the ACIR entitled "Federal Regulation of State and Local Governments: Regulatory Federalism—A Decade Later," another 27 statutes were enacted that included mandates, including the Americans with Disabilities Act, the Cash Management Improvement Act of 1990, the Fair Housing Act Amendments of 1988, the Social Security Amendments of 1983, and the Voting Rights Act of 1982.

The National Association of Counties also constructed the following list of twelve unfunded mandates considered "most burdensome and costly":

- Underground Storage Tanks;
- Clean Water Act/Wetlands;
- Clean Air Act;
- Subtitle D of the Resource Conservation and Recovery Act;
- Safe Drinking Water Act;
- Endangered Species Act;
- Superfund;
- Americans with Disabilities Act;
- Fair Labor Standards Act;
- Davis-Bacon Act;
- Arbitrage (municipal bonds);
- Immigration Act.

Prospective legislation that might be considered unfunded mandates includes minimum wage increases for State and local employees, an increase in Social Security payroll taxes, welfare reform, health care reform, and crime control.

An October 1993 Price Waterhouse study for the U.S. Conference of Mayors, entitled "Impact of Unfunded Federal Mandates on U.S. Cities," contained a survey on the costs incurred by cities to implement the following ten unfunded Federal mandates:

- (1) Underground Storage Tanks;
- (2) Clean Water Act;
- (3) Clean Air Act;

- (4) Resource Conservation and Recovery Act;
- (5) Safe Drinking Water Act;
- (6) Asbestos Abatement;
- (7) Lead Paint Abatement;
- (8) Endangered Species Act;
- (9) Americans with Disabilities Act;
- (10) Fair Labor Standards Act.

The study estimated that the total cost of these mandates for 1993 was \$6.5 billion, and the estimated costs for the years 1994 through 1998 would total \$54 billion. The specific cost estimates identified in that study are noted in the following chart:

ESTIMATED COSTS OF UNFUNDED FEDERAL MANDATES TO CITIES
[Hours and costs in thousands]

| Mandates | Fiscal year 1993 | | | Total costs | Fiscal years 1994-1998 |
|--|--|------------------------------|---|------------------|---------------------------|
| | Estimated annual staff hours (excluding over-time) | Estimated annual staff costs | Estimated annual direct/indirect budget costs | | Projected total costs |
| 1. Underground Storage Tank Regulations (UST) | 862 | \$23,393 | \$137,755 | \$161,148 | \$1,040,627 |
| 2. Clean Water Act (CWA)/Wetlands ... | 57,378 | 1,185,549 | 2,426,984 | 3,619,533 | 29,303,379 |
| 3. Clean Air Act (CAA) | 12,138 | 195,526 | 208,294 | 403,820 | 3,651,550 |
| 4. Solid Waste Disposal/RCRA | 9,680 | 173,384 | 708,191 | 881,575 | 5,475,968 |
| 5. Safe Drinking Water Act (SDWA) | 4,444 | 94,549 | 467,783 | 562,332 | 8,644,145 |
| 6. Asbestos (AHERA) | 898 | 19,554 | 109,754 | 129,308 | 746,828 |
| 7. Lead Based Paint | 374 | 7,875 | 110,342 | 118,217 | 1,628,228 |
| 8. Endangered Species | 252 | 6,934 | 30,024 | 36,958 | 189,488 |
| 9. Americans With Disabilities Act | 4,701 | 114,935 | 240,746 | 355,681 | 2,195,808 |
| 10. Fair Labor Standards Act (Exempt Employee & Other Costs) | 1,227 | 22,765 | 189,358 | 212,123 | 1,121,524 |
| Total | 91,954 | 1,844,464 | 4,629,231 | 6,473,695 | 53,997,545 |

In response to the consequences of this extraordinary burden, unfunded mandate reform legislation has been endorsed by the National Governors Association, the U.S. Conference of Mayors, the National League of Cities, the Council of State Governments, the National Association of Counties, the National Conference of State Legislatures, the National Federation of Independent Businesses, the U.S. Chamber of Commerce and the National School Boards Association.

ANALYSIS OF LEGISLATION

H.R. 5 is divided into three titles.

Title I ("Review of Unfunded Federal Mandates") establishes a Commission on Unfunded Federal Mandates that is required to: (1) Review existing Federal mandates to state, local and tribal governments and to the private sector; and (2) make non-binding recommendations to the President and Congress, under criteria specified in the bill, regarding any proposed changes in these mandates.

The Commission is mandated by the Congress to conduct a thorough study of the role of unfunded Federal mandates in intergovernmental relations and their corresponding impact upon "State, local, tribal, and Federal government objectives and responsibilities." Final recommendations are to be made to the President and the Congress on issues pertaining to greater flexibility of compli-

ance by simplifying, suspending, or terminating unfunded Federal mandates that are determined by the Commission to be unnecessarily complex, duplicative, or obsolete. The Commission is also required to issue proposed criteria not later than 60 days after enactment of H.R. 5, and to provide 30 days for public comment. Final criteria will incorporate any public responses that the Commission deems relevant.

The Commission is required to submit a preliminary report of its activities no later than nine months after the date of enactment of H.R. 5. The Commission shall hold public hearings based on its preliminary recommendations, publish in the Federal Register a notice of availability of the report, and make copies available to the public. No later than three months after publication of the preliminary report, the Commission is required to issue a final report to the President and the Congress, the Senate Governmental Affairs Committee, and the House Committee on Government Reform and Oversight.

The nine-member Commission should have extensive knowledge in intergovernmental relations. Three members are to be appointed by the Speaker of the House, in consultation with the House Minority Leader; three members are to be appointed by the Senate majority leader, in consultation with the Senate minority leader; and three members are to be appointed by the President. Members are appointed without pay for the duration of the Commission, and vacancies are to be filled in the same manner as the original appointments. Members may receive per diem and travel expenses. The Commission Chairperson is to be appointed by the President. The first meeting will be convened within 45 days after the nine members have been appointed, and a quorum will consist of a majority of members.

The Director is appointed by the Commission, at a rate of basic pay of the Executive Schedule, Level IV. With the Commission's approval, the Director is authorized to appoint and set the rate of pay for a staff. Outside experts and consultants may also be hired. At the Director's request, Federal agency personnel may be detailed to the Commission on a reimbursable basis.

The Commission may hold hearings, obtain official information from a Federal agency, have franking privileges, and contract authority. The Commission will cease to exist 90 days after submission of its final report.

Title II ("Regulatory Accountability and Reform") generally requires Federal agencies to assess the effect of Federal regulations on state, local, and tribal governments and on the private sector and to make public such assessments for Federal mandates costing more than \$100 million to implement.

In addition, each agency is required to develop a process to permit elected officials of State, local, and tribal governments to provide input in the development of regulations containing significant Federal intergovernmental mandates. For regulations that will impact small governments, the agency must provide notice of the requirements, enable officials of the small government to have input, and advise small governments on compliance with the requirements.

Agencies must prepare a written statement before promulgating any regulations that include mandates on State, local, and tribal governments or the private sector that may result in expenditures of at least \$100 million in any year. The statement must include: (1) Estimates of the anticipated costs of complying with the mandate; (2) estimates of the future costs of the mandate and any disproportionate budgetary effects; (3) a qualitative and quantitative assessment of the costs and benefits anticipated from the mandates; (4) the effect of Federal private sector mandates on the national economy; (5) a description of the agency's consultations with State, local and tribal governments and representatives of the private sector and a summary of concerns raised by these representatives, a summary of the agency's evaluation of those comments and a summary of the agency's position supporting the need to issue the regulation.

The Office of Management and Budget (OMB) shall collect these statements from agencies and forward them to the Congressional Budget Office. In addition, OMB will establish pilot programs in at least two agencies to test innovative and flexible regulatory approaches.

Title III ("Legislative Accountability and Reform") establishes new congressional procedures for identifying and controlling legislation that includes unfunded Federal mandates.

The congressional procedures under Title III would control unfunded Federal mandates by establishing a method for identifying legislation that creates new mandates or changes existing mandates. It would prohibit the House and Senate from considering such legislation with direct costs over a statutory threshold unless it also includes a source of financing or a guarantee that any such mandates will be repealed if the financing is not provided.

In general, the following three-step enforcement mechanism is set forth under Title III of the bill for controlling new legislation that contains unfunded Federal mandates:

1. Identification by House or Senate committees, with the assistance of the Congressional Budget Office (CBO), of (a) Federal mandate provisions contained in any legislation reported to the House or Senate (except for annual appropriation measures) and (b) the "direct costs," if any, of such provisions to state, local, or tribal governments or to the private sector;
2. Publication in committee reports or in the Congressional Record of the CBO statements regarding Federal mandates and the direct costs of such mandates (if in excess of certain statutory thresholds) for every measure reported to the House or Senate (except for annual appropriations measures); and
3. Prohibition, under a new point of order, against House or Senate consideration of (a) any reported measure (except for annual appropriations measures) prior to publication of the CBO statement or (b) any legislation (including bills, joint resolutions, amendments, motions, or conference reports, except for legislation reported by the Appropriations Committees or amendment thereto) with Federal mandate provisions that have annual direct costs to states, localities, or tribal governments, exceeding \$50 million, unless the legislation offsets the annual direct costs with specific Federal spending or receipts

law changes or the mandate provisions are made effective only to the extent that funds are provided in annual appropriations acts.

A point of order would not apply to any bill, joint resolution, amendment, motion, or conference report for the reauthorization of laws already on the books provided that the enactment would not result in: (1) A net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; or (2) in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to comply with any such mandates if the reduction in authorizations does not reduce the duties imposed by the mandate by a corresponding amount.

Title III, provides a means for the House to debate and vote on a motion to waive points of order on an unfunded mandate. The motion could be offered after a point of order is made and prior to the ruling of the Chair. It would apply to points of order against a bill, resolution, amendment or conference report. It would be subject to 10-minutes of debate divided between the proponent and an opponent.

Title III of H.R. 5 amends Title IV of the Congressional Budget Act of 1974 (P.L. 93-344, as amended) to add a new "Part B—Federal Mandates" setting forth new sections 421-426 of the Act. Special rules reported by the House Rules Committee to waive the point of order are prohibited, and direct costs, for purposes of applying the point of order, are to be determined on the basis of estimates made by the House and Senate Budget Committees.

The procedures are an enforcement device for new legislation only. Existing mandates, which are to be the subject of review and recommendations by a Commission, are not covered by these enforcement procedures.

Further, the requirements of the bill, including the point of order, are set forth as an exercise of the constitutional rulemaking authority of the House and Senate and may be changed, under that general authority, in the same manner as other rules. Should Congress choose to waive the point of order, or if it is not raised, legislation inconsistent with the requirements of H.R. 5 may be enacted into law. Also, there is no fail-safe or automatic mechanism, such as the sequestration process under the Gramm-Redman-Hollings Act (P.L. 99-177, as amended), for ensuring that the requirements of H.R. 5 are enforced should legislation containing unfunded mandates be enacted into law.

SECTION-BY-SECTION ANALYSIS

UNFUNDED MANDATE REFORM ACT: H.R. 5

Section 1. Short title

Identifies the short title as the "Unfunded Mandate Reform Act of 1995."

Section 2. Purposes

Establishes the purposes of the Act: to strengthen the intergovernmental partnership, to provide for informed consideration of Federal mandates, to establish a mechanism to bring information on mandates before the Congress and a point-of-order vote on con-

sideration of legislation containing significant Federal mandates, to assist Federal agencies in their consideration and adoption of regulations, and to establish the general rule that congress shall not impose Federal mandates on States, local governments, and tribal governments without providing adequate funding to comply with such mandates.

Sec. 3. Definitions

States that certain terms have the meaning given those terms by Sec. 421 of the bill.

Defines "small government" as, generally, governments with less than 50,000 population.

Sec. 4. Limitation on application

Excludes from the requirements of this Act Federal regulation or legislation that: enforces individual Constitutional rights; enforces statutory rights to prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status; requires compliance with Federal auditing and accounting procedures; provides emergency relief assistance or is designated as emergency legislation; or, is necessary for national security or ratification or implementation of international treaties.

TITLE I—REVIEW OF UNFUNDED FEDERAL MANDATES

Sec. 101 Establishment

Establishes a "Commission on Unfunded Federal Mandates."

Sec. 102. Report on unfunded Federal mandates

Directs the Commission to study existing mandates and make recommendations allowing more flexibility, reconciling contradictory mandates, terminating duplicative, obsolete or impractical mandates, suspending mandates not vital to public health and safety but compounding fiscal difficulties, consolidating or simplifying mandates or their planning or reporting requirements, and establishing common definitions or standards.

Directs the Commission to establish criteria and make them available for public comment before issuing final criteria.

Requires publication of a preliminary report 9 months after the enactment of this Act, and public hearings on the preliminary report. A final report is to be published 3 months after the preliminary report, and submitted to the Committees on Government Reform and Oversight and Governmental Affairs, and to the President.

Sec. 103. Membership

The Commission shall be composed of 9 members: 3 appointed by the Speaker of the House in consultation with the minority leader; 3 appointed by the majority leader of the Senate in consultation with the minority leader; 3 appointed by the President, who will designate a member of the Commission as Chairperson at the time of the appointment of that member.

Sec. 104. Director and staff; experts and consultants

Provides for the appointment by the Commission of a Director. Provides for staff, authorizes use of experts, consultants, and Federal agency staff.

Sec. 105. Powers of commission

Authorizes Commission to hold hearings, obtain official data, use the mails, and secure administrative support and contract services.

Sec. 106. Termination

The Commission shall terminate 90 days after submitting its final report.

Sec. 107. Authorization of appropriations

Authorizes the appropriation of \$1 million for the Commission.

Sec. 108. Definition

For this Title only, "Federal mandate" means any provision in statute or regulation that imposes an enforceable duty upon State, local, or tribal governments, *including* a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

Sec. 109. Effective date

Takes effect 60 days after the date of enactment of this Act.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

Sec. 201. Regulatory process

Requires agencies to assess the effects of their regulations on State, local, and tribal governments, including resources available to carry out Federal mandates and to seek to minimize regulatory burdens.

Each agency is to develop a process to permit elected officials (or their designated representatives) to provide input into the development of regulations containing significant Federal intergovernmental mandates. In addition, a plan is to be developed for providing notice of contemplated regulations to potentially affected small governments, to enable them to provide input, and to inform, educate, and advise them on compliance.

Agencies are required to prepare estimates, based on available data, of the effect of Federal private sector mandates on the national economy.

Sec. 202. Statements to accompany significant regulatory actions

Before a Federal agency promulgates any final rule or notice of proposed rulemaking that includes any intergovernmental mandates estimated to result in aggregate expenditure by State, local, or tribal governments or the private sector of at least \$100 million (adjusted annually for inflation) in any one year the agency must complete a written statement containing the following:

Estimates of the anticipated costs to State, local and tribal governments of compliance, including the availability of Federal funds to pay for these costs;

Future costs of Federal intergovernmental mandates not estimated above, including estimates of any disproportionate budgetary effects on any particular regions or particular State, local, or tribal governments, or urban, rural, or other types of communities;

A qualitative and if possible a quantitative assessment of costs and benefits anticipated from Federal intergovernmental mandate, including enhancement of public health and safety and protection of the natural environment;

The effect of Federal private sector mandates on the national economy;

A description and summary of input, comments, and concerns received from State, local and tribal governments (including elected officials and their representatives) and other affected parties; and

A summary of the agency's evaluation of these comments and concerns, and the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates.

Agencies are required to summarize the written statements and include the summary in the promulgation of the rule. These statements may be prepared in conjunction with other analyses.

Sec. 203. Assistance to the Congressional Budget Office

Requires the Director of the Office of Management and Budget to collect the reports required by Sec. 202 and make them available to the Congressional Budget Office.

Sec. 204. Pilot programs on small Government flexibility

Requires the Office of Management and Budget to establish at least two pilot programs to test innovative, more flexible regulatory approaches that reduce reporting and compliance burdens while continuing to meet overall statutory goals and objectives.

TITLE III—LEGISLATIVE ACCOUNTABILITY AND REFORM

Sec. 301. Legislative mandate accountability and reform

Amends Title IV of the Congressional Budget Act of 1974 by adding a new part: PART B—FEDERAL MANDATES.

SEC. 421. DEFINITIONS.

“AGENCY”: excludes the independent regulatory agencies from the definition of a Federal agency.

“DIRECTOR”: means Director of the Congressional Budget Office.

“FEDERAL FINANCIAL ASSISTANCE”: the amount of budget authority for any Federal grant assistance, or any Federal program providing loan guarantees or direct loans.

“FEDERAL INTERGOVERNMENTAL MANDATES”: any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, *except* a condition of Federal assistance or a duty arising from participation in a voluntary program, *or* that would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance for

complying with such duty unless the duty is reduced or eliminated by a corresponding amount; *or* any provision that relates to a then-existing Federal program under which \$500 million or more is provided annually under entitlement authority if the provision would increase the stringency of conditions of assistance, or place caps upon or otherwise decrease the Federal Government's responsibility to provide funding, and participating governments lack authority to amend their financial or programmatic responsibilities to continue providing required services.

"Federal Private Sector Mandate:" any provision in legislation, statute, or regulation that would impose an enforceable duty on the private sector *except* a condition of Federal assistance or a duty arising from participation in a voluntary Federal program or that would reduce or eliminate the available amount of authorization of appropriations for Federal financial assistance.

"Federal Mandate:" A Federal intergovernmental mandate or a Federal private sector mandate.

"Federal Mandate Direct Costs:" The aggregate estimated amounts that all State, local, and tribal governments or the private sector would be required to spend or to forego in revenues to comply with a Federal mandate.

Exclusion from direct costs.—The term 'direct costs' does not include estimated amounts that would be spent to comply with laws and regulations in effect at the time of the adoption of a Federal mandate for the same activity, or expenditures that will be offset by direct savings resulting from compliance with the mandate or other changes in Federal law or regulation that are included in the same measure as is affected by the mandate.

Determination of costs.—Direct costs shall be determined based 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. Increasing State, local, or tribal taxes or fees is not a "reasonable step."

"Local Government:" means unit of general local government, school district, or other special district established by State law.

"Private Sector" means individual, partnership, associations, corporations, business trusts, or legal representatives, organized groups of individuals, and educational and other nonprofit institutions.

"Regulation" or "Rule" means any rule for which the agency publishes a general notice of proposed rulemaking, or any other law, including any rule of general applicability governing Federal grants to State and local govern-

ments for which the agency provides an opportunity for notice and public comment.

“State” means State of the United States, the District of Columbia, territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State.

SEC. 422. LIMITATION ON APPLICATION.

This part shall not apply to any provision in a bill, joint resolution, motion, amendment, or conference report before Congress that—

- (1) enforces constitutional rights of individuals; establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status;
- (3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;
- (4) provides for emergency assistance or relief at the request of any State, local government, or tribal government or any official of such a government;
- (5) is necessary for the national security or the ratification or implementation of international treaty obligations; or
- (6) the President designates as emergency legislation and that the Congress so designates in statute.

SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.

Authorizing committees must include in their reports a list of Federal mandates in the measure, along with a report from the Director, if available; a qualitative and if possible a quantitative assessment of costs and benefits associated with the mandates; and an estimate of the effects on public and private sectors.

For Federal intergovernmental mandates, the report also must contain the amount of increase or decrease in authorization for new or existing Federal financial assistance programs provided in the measure; a statement of whether the committee intends that the mandate shall be partly or entirely unfunded, and the reasons; and a statement of existing sources of Federal financial assistance that might help pay the direct costs of the mandates.

The committee report must state whether the measure preempts State, local, or tribal law, and if so, explain the reasons why.

The statement required from the Director in Sec. 424 is to be included in the committee report or in the Congressional Record before floor consideration.

SEC. 424. DUTIES OF THE DIRECTOR.

(a) STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS

For each public bill reported by an authorizing committee, the Director shall prepare a statement as to whether the estimated direct costs will equal or exceed \$50 million in the first year or any of the 4 fiscal years following; the statement should include estimates of the total amount of direct cost and the amount of increase in authorization of appropriations or of budget or entitlement authority for existing programs or new authorization provided in the measure for the new activities.

A similar report must be prepared for any private sector mandate whose direct cost will equal or exceed \$100 million.

If the Director determines that a reasonable estimate is not feasible, he must so report, giving the reasons.

If the Director estimates that the direct costs will be less than the thresholds, he must so state, giving the basis of the estimate.

Conference committees must, to the greatest extent practicable, include a supplemental statement from the Director regarding the amended form of the measure.

(b) ASSISTANCE TO COMMITTEES AND STUDIES

The Director is required to consult with and assist any committee to analyze proposed legislation that might have a significant budgetary impact on State, local, or tribal governments or the private sector.

The Director is to conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

The Director is to conduct studies of legislative proposals containing a Federal mandate, when requested by a committee; in conducting the studies, the Director is to solicit and consider information from private sector and elected officials or their representatives, consider establishing advisory panels if the Director determines they would be helpful, and if feasible include estimates of long-term future direct costs and any disproportionate effects on particular industries or sectors of the economy, States, regions, and urban and rural or other types of communities. Similar studies are to be conducted on private sector mandates.

(c) VIEWS AND ESTIMATES OF COMMITTEES.

Committees are to include in their views and estimates to the Budget Committees information on proposed legislation establishing, amending, or reauthorizing any Federal program likely to have significant budgetary impact on State, local, or tribal governments or the private sector, including proposals submitted by the executive branch.

(d) AUTHORIZATION OF APPROPRIATIONS.

Authorizes the appropriation of \$4.5 million to the Congressional Budget Office annually for fiscal years 1996 through 2002.

SEC. 425. POINT OF ORDER.

(a) IN GENERAL.

It shall not be in order to consider any bill reported by a committee unless the statement of the Director has been published by the Committee, or any bill, joint resolution, amendment, motion, or conference report containing a Federal intergovernmental mandate with direct costs of more than \$50 million or that would cause the direct costs of any other Federal intergovernmental mandate to exceed that level *unless*:

The measure provides new budget or entitlement authority in the House or direct spending authority in the Senate for each fiscal year that equals or exceeds the estimated direct costs; or

The measure provides an increase in receipts or a decrease in new budget or entitlement authority in the House or direct spending authority in the Senate and an increase in new budget or entitlement authority in the House or an increase in direct spending authority in an

amount that equals or exceeds the estimated direct costs;
or

The measure provides that the mandate shall be effective only if appropriations are provided for a given fiscal year, and the mandate is repealed on the first day of any fiscal year for which appropriations for all direct costs are not provided *or*

Requires a Federal agency to reduce programmatic and financial responsibilities for meeting the objectives so that the direct costs do not exceed the amount of Federal funding provided. The agencies are to establish criteria and procedures for such a reduction.

(b) LIMITATION ON APPLICATION TO APPROPRIATIONS BILLS.

Bills reported by the Committee on Appropriations are not covered by the requirements in Subsection (a).

(c) DETERMINATION OF DIRECT COSTS BASED ON ESTIMATES.

The Budget Committees, in consultation with the Director, shall estimate the amount of direct costs of a Federal mandate for a fiscal year.

(d) DETERMINATION OF EXISTENCE OF FEDERAL MANDATE.

The question of whether a measure contains a Federal intergovernmental mandate will be determined after consideration of the recommendation, if available, of the Chairman of the Committee on Government Reform and Oversight in the House or the Chairman of the Committee on Governmental Affairs in the Senate, as applicable.

(e) LIMITATION ON APPLICATION OF DIRECT COST THRESHOLD.

A point of order on any bill, joint resolution, amendment, motion, or conference report that contains a Federal intergovernmental mandate having direct costs that exceed \$50 million would not apply if the measure: (1) Would not result in a new increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and (2) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate, unless such reduction would be accompanied by a reduction in the duties imposed by the Federal intergovernmental mandate by a corresponding amount.

SEC. 426. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

It shall not be in order in the House to consider a rule or order that waives the application of Section 425 (a): provided, however, that pending a point of order under Section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if ordered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.

Section 302. Enforcement in the House of Representatives

(a) Amends Clause 5 of rule XXIII of the House by adding a provision making it always in order, unless specifically waived by the rule, to move to strike from the portion of the bill then open to amendment any Federal mandate whose direct costs exceed the \$50 million threshold.

(b) The Committee on Rules shall include in its annual report on the activities of the Committee a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

Sec. 303. Exercise of rulemaking powers

The terms of Title III are enacted as an exercise of the rule-making powers of the House and Senate and either House may change the rule at any time.

Sec. 304. Conforming amendment to table of contents

Provides for change in the table of contents of the Congressional Budget and Impoundment Control Act of 1974.

Sec. 305. Technical amendment

Repeals the State and Local Government Cost Estimate Act of 1981 (P.L. 97-109).

Sec. 306. Effective date

Title III shall take effect on October 1, 1995.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE VOTE

Clause 2(l)(2)(B) of rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to be reported, to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

On January 12, 1995, the Committee ordered H.R. 5, as amended, reported to the House by a record vote of 9-4, a quorum being present.

Rules Committee Roll Call No. 1

Date: January 12, 1995.

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995.

Motion By: Mr. Dreier.

Summary of Motion: Amend Sec. 426 (Enforcement in House) to allow for a motion to waive point of order under Act prior to the Chair's ruling, subject to 10-minutes of debate on waiver motion.

Results: Adopted, 10 to 2.

Vote by Members: Quillen—Yea; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Yea; Frost—Not voting; Hall—Nay; Solomon—Yea.

Rules Committee Roll Call No. 2

Date: January 12, 1995.

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995.

Motion By: Mr. Beilenson.

Summary of Motion: Strike sec. 425(b) which exempts appropriations measures from points of order under the Act.

Results: Rejected, 3 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Yea; Solomon—Nay.

Rules Committee Roll Call No. 3

Date: January 12, 1995.

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995.

Motion By: Hall.

Summary of Motion: Add to the list of exclusions from application of Act in sec. 422 all low income programs exempted from sequestration.

Results: Rejected, 3 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Yea; Solomon—Nay.

Rules Committee Roll Call No. 4

Date: January 12, 1995.

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995.

Motion By: Mr. Dreier

Summary of Motion: Substitute amendment for Hall amendment providing for Chair to make determination on points of order under sec. 425 after considering the recommendation, if available, of the chairman of the House Government Reform and Oversight Committee, or the Senate Committee on Governmental Affairs.

Results: Adopted, 9 to 4.

Vote by Member: Quillen—Yea; Dreier—Yea; Goss—yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Nay; Frost—Nay; Hall—Nay; Solomon—Yea.

Rules Committee Roll Call No. 5

Date: Jan. 12, 1995

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995

Motion By: Mr. Moakley

Summary of Motion: Change effective date of Title 3 from Oct. 1, 1995 to the day of enactment.

Results: Rejected, 4 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

Rules Committee Roll Call No. 6

Date: Jan. 12, 1995

Measure: H.R. 5, Unfunded Mandate Reform Act of 1995

Motion By: Mr. Quillen.

Summary of Motion: Favorably report bill with recommendation that it do pass as amended.

Results: Adopted, 9 to 4.

Vote by Member:

Vote by Member: Quillen—Yea; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Nay; Frost—Nay; Hall—Nay; Solomon—Yea.

COMMITTEE COST ESTIMATE

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended and, when practicable with respect to estimates of new budget authority, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(C) of rule XI requires each Committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the CBO cost estimate as required:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 12, 1995.

Hon. GERALD B.H. SOLOMON,
*Chairman, Committee on the Rules,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5, the Unfunded Mandate Reform Act of 1995.

Enactment of H.R. 5 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.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5.
2. Bill title: Unfunded Mandate Reform Act of 1995.
3. Bill status: As ordered reported by the House Committee on the Rules on January 12, 1995.
4. Bill purpose: H.R. 5 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. Costs would include any revenues forgone in order to comply with the mandates.

Mandates are defined to include provisions that impose duties on states, localities, or Indian tribes ("intergovernmental mandates") or on the private ("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 to provision that enforce the constitutional rights of individuals, that are necessary for national security, or that meet certain other conditions.

For legislation other than appropriation bills, the Congressional Budget Office (CBO) would be required to provide committees with estimates of the direct cost of mandates in reported bills and to the greatest extent practicable, for conference agreements. Specific estimates would be required for intergovernmental mandates costing \$50 million or more and, if feasible, for private sector mandates costing \$100 million or more in a particular year. (CBO currently prepares estimates of costs to states and localities of reported bills, but does not project costs imposed on Indian tribes or the private sector.) In addition, CBO probably would be asked to assist the Budget Committees by preparing estimates for amendments and at other stages of a bill's consideration. Also, at other times, 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. H.R. 5 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 October 1, 1995, and would be permanent.

H.R. 5 would establish a point of order in both the House and the Senate against any bill or joint resolution reported by an au-

thorizing 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. It also would be in order if it provided that the mandate shall be effective for any fiscal year only if sufficient funds are appropriated in that year to pay for the direct costs of carrying out the mandate, or if it required the relevant federal agency to reduce state, local, and tribal responsibilities under the mandate such that their costs would not exceed the amount of federal funding provided.

Finally, H.R. 5 would require executive branch agencies to take actions to ensure that 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. Before establishing new regulations, agencies would be required to determine the effect that private sector mandates could have on the national economy, the international competitiveness of the United States, and other factors. 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 years, 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 | 4.5 | 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 fall 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: H.R. 5 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 H.R. 5 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: On January 9, 1995, CBO prepared cost estimates for S. 1, the Unfunded Mandate Reform Act of 1995, as ordered reported on January 9, 1995, by both the Senate Committees on Governmental Affairs and on the Budget. The estimated cost of each version of S. 1 is identical to the estimated cost of H.R. 5.

10. Previous CBO estimate: None.

11. Estimate prepared by: Mary Maginniss.

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

INFLATION IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee has determined that H.R. 5 has no inflationary impact on the nation's economy.

OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(l) of rule X. The Committee has no oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Rules has received no such findings or recommendations from the Committee on Government Reform and Oversight.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (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):

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

* * * * *

SHORT TITLES: TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLES.—This Act may be cited as the “Congressional Budget and Impoundment Control Act of 1974”. Titles I through IX may be cited as the “Congressional Budget Act of 1974” and title X may be cited as the “Impoundment Control Act of 1974”.

(b) TABLE OF CONTENTS.—

Sec. 1. Short titles; table of contents.

* * * * *

TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

PART A—GENERAL PROVISIONS

Sec. 401. Bills providing new spending authority.

* * * * *

PART B—FEDERAL MANDATES

Sec. 421. Definitions.

Sec. 422. Limitation on application.

Sec. 423. Duties of congressional committees.

Sec. 424. Duties of the Director.

Sec. 425. Point of order.

Sec. 426. Enforcement in the House of Representatives.

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TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

PART A—GENERAL PROVISIONS

BILLS PROVIDING NEW SPENDING AUTHORITY

SEC. 401. (a) CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report, as reported to its House which provides new spending authority described in subsection (c)(2) (A) or (B), unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2) (A) or (B) is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

* * * * *

*PART B—FEDERAL MANDATES***SEC. 421. DEFINITIONS.**

For purposes of this part:

(1) *AGENCY.*—The term “agency” has the meaning stated in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined by section 3502(10) of title 44, United States Code.

(2) *DIRECTOR.*—The term “Director” means the Director of the Congressional Budget Office.

(3) *FEDERAL FINANCIAL ASSISTANCE.*—The term “Federal financial assistance” means the amount of budget authority for

any Federal grant assistance or any Federal program providing loan guarantees or direct loans.

(4) *FEDERAL INTERGOVERNMENTAL MANDATE.*—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—

(i)(I) the provision 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.

(5) *FEDERAL PRIVATE SECTOR MANDATE.*—The term “Federal private sector mandate” means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty on 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 purpose of ensuring compliance with such duty.

(6) *FEDERAL MANDATE.*—The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (4) and (5).

(7) *FEDERAL MANDATE DIRECT COSTS.*—

(A) *FEDERAL INTERGOVERNMENTAL DIRECT COSTS.*—In the case of a Federal intergovernmental mandate, the term “direct costs” means the aggregate estimated amounts that all States, local governments, and tribal governments would be required to spend or would be required to forego in revenues in order to comply with the Federal intergovernmental mandate, or, in the case of a provision referred to in paragraph (4)(A)(ii), the amount of Federal financial assistance eliminated or reduced.

(B) *PRIVATE SECTOR DIRECT COSTS.*—In the case of a Federal private sector mandate, the term “direct costs” means the aggregate estimated amounts that the private sector would be required to spend in order to comply with a Federal private sector mandate.

(C) *EXCLUSION FROM DIRECT COSTS.*—The term “direct costs” does 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 a Federal mandate for the same activity as is 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 a Federal mandate for the same activity as is affected by that mandate; or

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

(I) their 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.

(D) *DETERMINATION OF COSTS.*—Direct costs shall be determined based on the assumption that States, local governments, 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.

(8) *LOCAL GOVERNMENT.*—The term “local government” has the same meaning as in section 6501(6) of title 31, United States Code.

(9) *PRIVATE SECTOR.*—The term “private sector” means individuals, partnerships, associations, corporations, business trusts, or legal representatives, organized groups of individuals, and educational and other nonprofit institutions.

(10) *REGULATION.*—The term “regulation” or “rule” has the meaning of “rule” as defined in section 601(2) of title 5, United States Code.

(11) *STATE.*—The term “State” has the same meaning as in section 6501(9) of title 31, United States Code.

SEC. 422. LIMITATION ON APPLICATION.

This part shall not apply to any provision in a bill, joint resolution, motion, amendment, or conference report before Congress that—

- (1) enforces constitutional rights of individuals;
- (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status;
- (3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;
- (4) provides for emergency assistance or relief at the request of any State, local government, or tribal government or any official of such a government;
- (5) is necessary for the national security or the ratification or implementation of international treaty obligations; or
- (6) the President designates as emergency legislation and that the Congress so designates in statute.

SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.

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

(b) *COMMITTEE REPORT.*—

(1) *INFORMATION REGARDING FEDERAL MANDATES.*—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraph (2) and, in the case of a Federal intergovernmental mandate, paragraph (3).

(2) *REPORTS ON FEDERAL MANDATES.*—Each report referred to in paragraph (1) shall contain—

(A) an identification and description of each Federal mandate in the bill or joint resolution, including the statement, if available, from the Director pursuant to section 424(a);

(B) a qualitative assessment, and if practicable, a quantitative assessment of costs and benefits anticipated from

the Federal mandate (including the effects on health and safety and protection of the natural environment); and

(C) a statement of the degree to which the Federal mandate affects each of the public and private sectors and the extent to which Federal payment of public sector costs would affect the competitive balance between States, local governments, or tribal governments and privately owned businesses.

(3) **INTERGOVERNMENTAL MANDATES.**—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report referred to in 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 for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of States, local governments, or tribal governments subject to Federal intergovernmental mandates; 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) a statement of any existing sources of Federal financial assistance in addition to those identified in subparagraph (A) that may assist States, local governments, and tribal governments in paying the direct costs of the Federal intergovernmental mandates.

(4) **INFORMATION REGARDING PREEMPTION.**—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a 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 whether the bill or joint resolution, in whole or in part, is intended to preempt any State, local, or tribal law, and if so, an explanation of the reasons for such intention.

(c) **PUBLICATION OF STATEMENT FROM THE DIRECTOR.**—

(1) **IN GENERAL.**—Upon receiving a statement (including any supplemental statement) from the Director pursuant to section 424(a), a committee of the House of Representatives or the Senate shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available to be included in the printed report.

(2) **OTHER PUBLICATION OF STATEMENT OF DIRECTOR.**—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 House of Representatives or the Senate 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.

SEC. 424. DUTIES OF THE DIRECTOR.

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

(1) *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 House of Representatives or the Senate, the Director shall prepare and submit to the committee a statement as follows:

(A) 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 such a Federal intergovernmental mandate (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(B) The estimate required by subparagraph (A) 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 or budget authority or entitlement authority 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 States, local governments, or tribal governments for activities subject to the Federal intergovernmental mandates.

(2) *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 House of Representatives or the Senate, the Director shall prepare and submit to the committee a statement as follows:

(A) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed \$100,000,000 (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.

(B) The estimate required by subparagraph (A) shall include estimates (and brief explanations 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.

(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), 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.

(3) *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 threshold specified in paragraph (1)(A) or (2)(A), the Director shall so state and shall briefly explain the basis of the estimate.

(4) *AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.*—If the Director has prepared the statement pursuant to subsection (a) for a bill or joint resolution, and if that bill or joint resolution is reported or passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in an amended form, the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a supplemental statement for the bill or joint resolution in that amended form.

(b) *ASSISTANCE TO COMMITTEES AND STUDIES.*—

(1) *IN GENERAL.*—At the request of any committee of the House of Representatives or of the Senate, the Director 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) *CONTINUING STUDIES.*—The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

(3) *FEDERAL MANDATE STUDIES.*—

(A) At the request of any committee of the House of Representatives or the Senate, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

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

(i) solicit and consider information or comments from elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and such other persons as may provide helpful information or comments;

(ii) consider establishing advisory panels of elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and other persons if the Director determines, in the Director's dis-

cretion, that such advisory panels would be helpful in performing the Director's responsibilities under this section; and

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

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

(II) any disproportionate budgetary effects of the Federal mandates concerned 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.

(c) **VIEWS OF COMMITTEES.**—Any committee of the House of Representatives or the Senate which anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on the States, local governments, or tribal governments, 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 provide its views and estimates on such proposal to the Committee on the Budget of its House.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Congressional Budget Office to carry out this part \$4,500,000 for each of fiscal years 1996 through 2002.

SEC. 425. POINT OF ORDER.

(a) **IN GENERAL.**—It shall not be in order in the House of Representatives or the Senate to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, ex-

cept that this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4); or

(2) any bill, joint resolution, amendment, motion, or conference report that contains a Federal intergovernmental mandate having direct costs that exceed the threshold specified in section 424(a)(1)(A), or that would cause the direct costs of any other Federal intergovernmental mandate to exceed the threshold specified in section 424(a)(1)(A), unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that equals or exceeds the estimated direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts or a decrease in new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate and an increase in new budget authority or new entitlement authority in the House of Representatives or an increase 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 equals or exceeds the estimated direct costs of such mandate; or

(C) the bill, joint resolution, amendment, motion, or conference report—

(i) provides that—

(I) such mandate shall be effective for any fiscal year only if all direct costs of such mandate in the fiscal year are provided in appropriations Acts, and

(II) in the case of such a mandate contained in the bill, joint resolution, amendment, motion, or conference report, the mandate is repealed effective on the first day of any fiscal year for which all direct costs of such mandate are not provided in appropriations Acts; or

(ii) requires a Federal agency to reduce programmatic and financial responsibilities of State, local, and tribal governments for meeting the objectives of the mandate such that the estimated direct costs of the mandate to such governments do not exceed the amount of Federal funding provided to those governments to carry out the mandate in the form of appropriations or new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate, and establishes criteria and procedures for that reduction.

(b) **LIMITATION ON APPLICATION TO APPROPRIATIONS BILLS.**—Subsection (a) shall not apply to a bill that is reported by the Committee on Appropriations or an amendment thereto.

(c) *DETERMINATION OF DIRECT COSTS BASED ON ESTIMATES BY BUDGET COMMITTEES.*—For the purposes of this section, the amount of direct costs of a Federal mandate for a fiscal year shall be determined based on estimates made by the Committee on the Budget, in consultation with the Director, of the House of Representatives or the Senate, as the case may be.

(d) *DETERMINATION OF EXISTENCE OF FEDERAL MANDATE BY GOVERNMENT REFORM AND OVERSIGHT AND GOVERNMENTAL AFFAIRS COMMITTEES.*—For the purposes of this section, the question of whether a bill, joint resolution, amendment, motion, or conference report contains a Federal intergovernmental mandate shall be determined after consideration of the recommendation, if available, of the Chairman of the Committee on Government Reform and Oversight of the House of Representatives or the Chairman of the Committee on Governmental Affairs of the Senate, as applicable.

(e) *LIMITATION ON APPLICATION OF SUBSECTION (a)(2).*—Subsection (a)(2) shall not apply to any bill, joint resolution, amendment, or conference report that reauthorizes appropriations for carrying out, or that amends, any statute if enactment of the bill, joint resolution, amendment, or conference report—

(1) would not result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and

(2)(A) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate; or

(B) in the case of any net reduction or elimination of authorizations of appropriations for such Federal financial assistance that would result from such enactment, would reduce the duties imposed by the Federal intergovernmental mandate by a corresponding amount.

SEC. 426. 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 section 425(a): Provided, however, That pending a point of order under section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if offered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.

* * * * *

**STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT
OF 1981**

AN ACT To amend the Congressional Budget Act of 1974 to require the Congressional Budget Office, for every significant bill or resolution reported in the House or the Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That this Act may be cited as the "State and Local Government Cost Estimate Act of 1981".

[SEC. 2. (a) Section 403 of the Congressional Budget Act of 1974 is amended—

[(1) by inserting "(a)" before "The";

[(2) by striking out "and" after the semicolon in clause (1) of subsection (a) (as redesignated by clause (1) of this subsection);

[(3) by inserting after clause (1) the following new clause:

["(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 with the basis for each such estimate; and";

[(4) by redesignating clause (2) of such subsection as clause (3);

[(5) by striking out "(1)" in clause (3) of subsection (a) (as redesignated by clauses (1) and (4) of this subsection) and inserting in lieu thereof "(1) and (2)";

[(6) by striking out "estimate" each place it appears in clause (3) of subsection (a) and in the last sentence of such subsection, and inserting in lieu thereof "estimates"; and

[(7) by inserting at the end thereof the following new subsections;

["(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.".

[(b) The amendments made by subsection (a) shall apply with respect to bills or resolutions reported by committees of the House of Representatives and the Senate after September 30, 1982.

[SEC. 3. There are authorized to be appropriated such sums as may be necessary to carry out this Act.]

CHANGES IN THE RULES OF THE HOUSE OF REPRESENTATIVES MADE
BY THE BILL, AS REPORTED

In compliance with clause 4(d) of rule XI of the Rules of the House of Representatives, changes in the Rules of the House of Representatives made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RULE XXIII OF THE RULES OF THE HOUSE OF REPRESENTATIVES

RULE XXIII

OF COMMITTEES OF THE WHOLE HOUSE

* * * * *
5. (a) * * * * *
* * * * *

(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 424(a)(1)(A) of the Unfunded Mandate Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.

* * * * *

VIEWS OF COMMITTEE MEMBERS

Clause 2(l)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although neither requirement applies to the Committee, the Committee always makes the maximum effort to provide its members with such an opportunity. The following views were submitted:

ADDITIONAL VIEWS OF HON. DEBORAH PRYCE

The Unfunded Mandate Reform Act of 1995 (H.R. 5), reported by the House Committee on Rules on January 12, 1995, is a fitting first step in restoring balance to the vital partnership that exists between the federal government and state, local and tribal governments—a balance that has been steadily eroded in recent years by the growing federal practice of imposing unfunded mandates.

Clearly, no level of government in our country has the luxury of unlimited financial resources. Yet, increasingly Congress has been content with enacting costly and onerous federal mandates without providing the financial assistance necessary for states and localities to achieve compliance.

As governors, mayors, and city managers across the country scramble to reorder their priorities and revamp their budgets in order to respond to new federal mandates, they send a clear message to Washington: Congress must take responsibility for the laws it passes. They have been forced to cut vital services and raise taxes just to pay for mandates that Congress believes are necessary to address what is often a local problem in search of a local solution.

At a minimum, Congress needs to have better information on the costs of the mandates it considers. We need to build a solid legislative record with respect to any such mandates, and we need to bring accountability back to the legislative and federal regulatory processes. In my opinion, H.R. 5 accomplishes these essential objectives and I was pleased to support it during the Rules Committee mark-up session.

In H.R. 5, we have the opportunity to restore public faith in basic federalism by asking ourselves, “What should government do, and what level of government should do it?” Furthermore, the legislation goes a long way toward restoring honesty and accountability in governing. It forces Congress to recognize that mandates impose real costs on taxpayers. It strongly encourages Congress to fund new federal mandates, and it sets up procedural barriers to passing new mandates.

The required cost estimates, new points of order, and additional enforcement mechanisms, among other provisions in the bill, will help ensure that Members of Congress are fully aware of the financial burdens imposed on state and local governments by unfunded mandates before they are enacted.

H.R. 5 is the end-product of strong bipartisan efforts to relieve state and local governments of the burden of unfunded mandates. The “Big-7” group of associations representing state and local leaders has worked very hard to advance mandate relief legislation in the 104th Congress. From my own State of Ohio, Governor George Voinovich and Mayor Greg Lashutka of the City of Columbus have

worked tirelessly to reform the way Congress considers, and then enacts mandates.

As a cosponsor of H.R. 5, I congratulate the Republican leadership on our committee and in the House for moving the legislation forward in a timely manner. I encourage Members to support H.R. 5, without any weakening amendments, when it reaches the House floor.

DEBORAH PRYCE.

MINORITY VIEWS

While we agree that the issue of unfunded mandates needs to be addressed by Congress, we take serious issue with both the substance of H.R. 5 and the manner in which it is being moved through the legislative process.

First, the bill was referred to four House committees: the Government Reform and Oversight Committee, the Budget Committee, the Judiciary Committee, and the Rules Committee. However, of those four committees, only the Rules Committee heard testimony from private and public witnesses. The Government Reform and Oversight Committee, which has been designated the lead committee on the issue of mandates took no testimony at all. We find this very troubling considering the fact that over one-half of its current membership are freshmen who have had no opportunity to examine this bill. By excluding outside experts from testifying, the Committee's new majority denied the basic right of other committee Members to hear opposing views and opinions on this major piece of legislation which will impact every other piece of legislation considered after this Congress. These new members deserve the opportunity to ask questions and to have those questions adequately answered.

In addition, the other two committees of jurisdiction are not going to consider a bill which greatly impacts the way these committees will conduct their business. We owe the American people much more deliberation on this legislation than this.

Secondly, from the testimony given before the Rules Committee during its one day of hearings, many questions were raised about the effects of the bill and its implementation. For example: will this bill lower food safety and clean air standards or will it require the deficit-ridden federal government to pay more to maintain current standards? What will be the future of Medicaid, Food Stamps and other nutrition programs, or the lead and asbestos removal programs under this bill? The Federal government has a basic responsibility to protect its citizens from harm. Will one state be concerned with the effects of its air pollution on the states that are down wind? No one can deny that all U.S. citizens deserve equal treatment and protection under the law. How can the basic Constitutional principle of "promoting the general welfare" be carried out when basic standards of protection and decency are not uniform throughout the nation? These questions have not been answered to our satisfaction nor does it appear they will be answered before the vote.

Of major concern to us are questions about the bill's implementation. Why is the Appropriations Committee not covered by the provisions of the bill? It would seem that this exemption creates a large loophole. While the House rules tend to safeguard against such action in the House, the other body may use an Appropria-

tions bill as a vehicle to circumvent the process. Also, how does the point of order work on the House floor against an amendment which has an unfunded mandate, but does not provide the required information? The bill requires the Budget Committee to consult with the Director of the Congressional Budget Office (CBO) in determining whether a mandate is unfunded. How is that supposed to happen in the middle of floor debate?

In addition, there are thousands of pages of new studies, reports and supplemental reports for CBO to prepare. CBO has to consult and be available to all committees at all times. How much additional money and staff will it take for CBO to carry out the new duties imposed by this bill? Is \$4.5 million annually enough?

The bill, as amended by the Rules Committee, requires that the presiding officer look to the Chairman of the Government Reform Committee for advice in making a final determination if legislative language is an unfunded mandate. This is both risky and unusual. What is the definition of the term “unfunded mandate”? An examination of testimony before the Rules Committee and of the various bills that have been introduced on the subject indicates no consensus. The definition of a mandate could be easily clouded by the viewpoint and level of support that an individual has for a legislative matter. Also, should the Chairman of one legislative committee be given the authority to determine whether a bill or language from another committee qualifies as a “mandate”? If the House is going to grant this type of authority to one committee chairman, should the House grant the authority to determine the “germaneness” of a bill or amendment to another committee chairman? We are sure that most Members would think that ludicrous. What happens if the presiding officer of the House disagrees—is the determination binding on the chair? That point is not clear. No one knows because the House has never operated under this type of procedure before.

The Chair in making rulings is supposed to be an independent voice following the rules and precedents of the House. Granting such authority to a committee chairman clearly constrains the ability of the presiding officer to make rulings. While it has been the tradition of the House for the Chair to consult with the Chairman of the Budget Committee on cost estimates—estimates of dollar figures—it marks a drastic change to place the final determinations about the quality of legislative language with a committee chairman. Furthermore, what is the meaning of “if available” in relation to the advice of the Government Reform Committee chairman? Does it mean that he has to be on the House floor to present his arguments for his determination? Does he make a telephone call or send a letter to the Chair? We see absolutely no way the chair can be consistent or efficient in its ruling when it must be based on the advice of a partisan committee chairman, regardless of party affiliation.

We believe that it is imperative that the House take more time to study the impact this legislation will have on the quality of life of the American people. We would much prefer sacrificing a little speed in the interest of enacting sound, well thought out legislation.

JOE MOAKLEY.
ANTHONY C. BEILENSON.
MARTIN FROST.
TONY P. HALL.

