Senate bill 1. This is about a process so that we can finally start casting votes around here based upon information before the act instead of after the act.

Therefore, Mr. President, with all due respect, I now move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GLENN. Mr. President, under the previous order, I believe it was agreed that we would go out for our recess for the respective party conferences at 12:30. The hour of 12:30 having arrived, is it the Chair's opinion we should recess?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Chair will recess.

Mr. GLENN. The hour of 12:30 having arrived, are we in recess now then, or does the Chair propose to put us in recess?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate is prepared to stand in recess, but the Senator from Iowa is seeking recognition.

Mr. GLENN. Is it, Mr. President, under the previous order or is it the desire of the Senator from Iowa to speak?

The PRESIDING OFFICER. The Chair, as a courtesy, will recognize the Senator from Iowa first. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that, irrespective of the previous order, I be granted 7 minutes to speak as in morning business on a subject unrelated to unfunded mandates.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and I will not object, on the condition that upon the completion of the Senator's statement, the Senate then stand in recess under the order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Iowa is recognized for 7 minutes.

AMERICORPS

Mr. GRASSLEY. Mr. President, we have recently heard in the news quite a bit about AmeriCorps, and that is President Clinton's new program on voluntarism.

As many of my colleagues know, I spent several months investigating this whole matter, and I continue to review and will continue to review for a long time into the future the merits of AmeriCorps. There has been bipartisan criticism of this program and this concept of so-called voluntarism.

This administration seems to have learned nothing from its recent efforts to force a top-down solution to programs, for instance, like health care. The American people rejected at the ballot box last November a bureaucratic solution that the administration had for health care reform.

Now the administration believes the answer to voluntarism is to have it driven from the top down. They want to bureaucratize voluntarism. In health care reform, they wanted to make the choice for each citizen's health care. In this program, they want to make the moral choice for each volunteer, and they want to pay him for that.

That subverts the concept of voluntarism, in my view. It turns the notion of voluntarism on its head. Nevertheless, the administration wants to go forward despite the fact that 1.9 million Americans are already volunteering on their own and doing it without pay and they are doing it all over the United States because they are doing it by making their own moral choices within their own communities as they see the needs of those communities.

Mr. President, it is discouraging that the President has completely disregarded the findings of Vice President GORE's National Performance Review when it comes to the question of AmeriCorps or the expansion of the program. A founding principle of reinventing Government is that, according to Vice President GORE, you should not increase funding a program until it is a proven success. This administration has sought dramatic increases for AmeriCorps with little to no support the proposition whether or not it is succeeding.

The problem with AmeriCorps is the same problem that I see in the boondoggles of the Defense Department. As you remember, a decade ago, $500 hammers got a lot of attention, the $500 hammers that the Defense Department was buying.

In AmeriCorps, we recently uncovered that President Clinton's AmeriCorps is paying over $70,000 for one—yes, Mr. President, that is one—volunteer for AmeriCorps. That $70,000 could instead be used to provide dozens of young people Pell grants so that they could attend college. This point was made on this very floor 2 years ago by the then chairman of the Appropriations Committee, the distinguished Senator from West Virginia, and that was when we were considering authorizing AmeriCorps at that particular time.

Instead, we are spending this money on creating one job with the Philadelphia Bar Association. That $70,000 job in Philadelphia is, unfortunately, not an anomaly. AmeriCorps has already provided me with many, many grants where the costs will be over $40,000 per year per job.

I am very pleased to announce to my colleagues today that the General Accounting Office has agreed to my request made in behalf of myself and Senator MIKULSKI to initiate an investigation into the actual costs of AmeriCorps. I am confident that the GAO investigation into AmeriCorps will help us all be better informed about the tremendous costs of this program.

As I read reports on the President's remarks, he intends to draw a line in the sand on this program. He intends to use this program to delineate the two political parties. I welcome this challenge because I believe the American people just repudiated the approach exemplified by the AmeriCorps Program. Just as they did not want to have a top-down bureaucratic solution on health care reform, they cannot fathom the same approach to voluntarism.

The American people do not want Government to make their moral choices for them. They do not want Government telling them for whom they should and should not volunteer, and they certainly can see through the rather thinly veiled attempt to subvert voluntarism by paying for it rather than using moral suasion.

Mr. President, I have received much data already from AmeriCorps pertaining to their grants. That data only further fuels my skepticism. I have also asked the General Accounting Office to independently analyze and evaluate the program. I will await their report this spring until I render a final judgment about the program.

But I must say, the celestial bodies seem to be aligned against the program, and the American people are against the approach embodied here. The administration would do better to more accurately apply the principles of reinventing Government to this concept. Rather than bureaucratizing and rather than drawing a line in the sand, we can be working together to make voluntarism work the way it has—and quite effectively and quite amazingly—since the earliest days of the Republic.

I yield the floor and yield back the remainder of my time.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m. today.

Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Ms. SNOWE].

UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

VOTE

The PRESIDING OFFICER. The pending question is now the motion to lay on the table the committee amendment beginning on page 15, line 6.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Texas [Mrs. HUTCHISON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 39, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—55

Abraham	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Grams	Nunn
Bingaman	Grassley	Packwood
Bond	Gregg	Pressler
Brown	Hatch	Roth
Burns	Hatfield	Santorum
Byrd	Heflin	Shelby
Chafee	Helms	Simpson
Coats	Inhofe	Smith
Cochran	Jeffords	Snowe
Cohen	Kassebaum	Specter
Coverdell	Kempthorne	Stevens
Craig	Kyl	Thomas
D'Amato	Lott	Thompson
DeWine	Lugar	Thurmond
Dole	Mack	Warner
Domenici	McCain	
Faircloth	McConnell	

NAYS—39

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Biden	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Breaux	Graham	Moynihan
Bryan	Harkin	Murray
Bumpers	Hollings	Pell
Campbell	Inouye	Reid
Conrad	Johnston	Robb
Daschle	Kerry	Rockefeller
Dodd	Kohl	Sarbanes
Dorgan	Lautenberg	Simon
Exon	Leahy	Wellstone

NOT VOTING—6

Bradley	Hutchison	Kerrey
Gramm	Kennedy	Pryor

So the motion to lay on the table the committee amendment on page 15, line 6, was agreed to.

Mr. KEMPTHORNE. Madam President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Mr. LEVIN. I thank the Chair.

Madam President, I am wondering if I could engage the managers in some colloquy and dialog as to how this bill will function in the real world. There are some real problems in terms of the process.

This bill is different from last year's bill. First, I want to make sure that our colleagues are aware of the fact that this is not Senate bill No. 993. There is a new point of order which is incorporated in this bill which is going to have some very serious ramifications in the way we function around here.

I am somebody who voted for last year's bill. I would like to vote for this year's bill. I came out of local office. I was in local government for 8 years. I understand the impact of unfunded mandates. I believe we have to do more than what we have done and that last year's bill was about the right balance to accomplish a greater awareness on our part to create a point of order in order to ensure that we would have an estimate before us. But this year's bill goes significantly beyond that. And that point of order in this year's bill is frequently an impossibility.

We are building into the structure here something which, at times, cannot be accomplished. The Congressional Budget Office has told us that. They have written to us that it is impossible, or nearly impossible, to make estimates as to the cost of mandates 5 or 10 years down the road on State and local government. They just simply cannot do it.

This bill says that on every bill and amendment—not just every bill, but every amendment—that comes to the floor, it will not be in order even to offer the amendment, or to offer the bill, unless there is an estimate in that amendment and in that bill which we know, going in, cannot be made at times. We know it. The Congressional Budget Office has told us.

We can all close our eyes around here and pretend that these estimates can be made all the time. We know they can be made some of the time. By the way, it is current law that the Congressional Budget Office make these estimates whenever they can, whenever feasible. They have been making estimates for the last 10 years. They have made hundreds of estimates at the cost of these mandates on local and State government. I do not know how many times folks around here have looked at those estimates. But they have made hundreds of them. It is not new, attempting to make the estimate.

What is new in this bill is that there is so much that hangs on that estimate for the first time. A point of order will be available. It will be out of order to offer an amendment on this floor that does not contain an estimate. What happens if you cannot get the estimate? What happens if you just cannot get the estimate, or the Congressional Budget Office cannot make an estimate? Can they tell us they cannot make an estimate? Oh, no; they cannot tell us they cannot make an estimate.

If it were in the private sector, they can tell us. If this were a mandate that applied to the private sector, the bill says, yes, then they can tell us that they cannot do the estimate. But when it comes to the intergovernmental sector, to the State and local government, if the Congressional Budget Office cannot make the estimate, they are not allowed to tell us.

But the point of order still lies. You cannot offer an amendment unless it contains an estimate, and we know going in—I think each one of us knows—that there will be times when an estimate cannot be made of the cost of something 5 or 10 years down the road on 87,000 local jurisdictions.

We have to spend some time on this mechanism. This is too serious a change. This was not in last year's bill.

This year's bill, in Governmental Affairs, at least, was offered on a Wednesday night. This was filed on a Wednesday night. The hearing was on a Thursday, and the markup was scheduled for Friday. Well, we resisted, some of us, and said, ''There just isn't enough time. Can you at least give us a few more days on the markup?'' We fought for that and got a markup on a Monday.

We asked for a committee report. No, that was denied on a party line vote. We could not get a committee report in Governmental Affairs on the Monday markup. So we did not have a committee report. And then we had to delay consideration here using whatever means were available to us until we could at least get a committee report.

The same process in the Budget Committee. A request for a committee report. No effort to try to defeat this bill. Most of us are cosponsors of this bill. I think this bill has something like 60 or 70 cosponsors. Most of us, maybe 80 of us, would like to vote for this bill. This is not an effort to kill a bill. This is an effort to produce a bill that is workable, that has a decent balance in it that we can live with on the floor.

As I said, I cosponsored the bill last year. But this is a different bill this year, and it has a mechanism in it which is potentially going to create havoc for us, which we are either going to have to ignore, which no one should want to put in place. We do not want a point of order that is constantly ignored around here or it is going to have so much bite it is going to strangle this process. ''I send an amendment to the desk.'' Someone jumps up, ''Point of order. It does not contain the language that says that local and State governments will not have to comply with the mandate.'' ''There is no mandate in this amendment.'' ''Yes, there is.'' ''No, there isn't.''

Is the Parliamentarian going to decide whether there is a mandate? And then who is going to decide how much that mandate costs 5 or 10 years down the road? Is that just going to be decided here at 8 o'clock at night after an

amendment is sent to the desk, how much it will cost 87,000 jurisdictions 5 years from now? Are we seriously legislating when we put into place a point of order like that?

No provision for saying that they cannot make an estimate when we know full well they cannot. What about a range? Can we get a range? Well, some say yes, some say no. Some say this bill will allow for a range; some say it will not. What happens if it does? What happens if the CBO throws up its hands and says, ''You are asking us to figure what this will cost 87,000 local jurisdiction 5 years down the line. We say it will cost somewhere between $1 and $500 million. That is the best we can do.''

Well, now you have to have an estimate in a specific amount and you have to pay for it or you have to waive it as to local government, State government. Or you have to say, in order to avoid the point of order, if the Appropriations Committee 5 or 10 years down the line does not appropriate what you estimate today or what CBO estimates today, then it will be ineffective at that time.

We are building in a nightmare for ourselves. We have to try to solve the problem for State and local governments, and we can, I believe. We can force a greater awareness upon ourselves as to what they go through when we adopt a mandate. But we just cannot simply here, without spending some time on how a point of order would work such as has been constructed in this bill, unlike last year's bill, we cannot simply put ourselves into a potential grinder here where we have to ignore a point of order, routinely ignore it.

Since this is 50-vote point of order, some people say, ''Well, you can just vote down the point of order.'' Well, we do not want to put ourselves, on amendment after amendment after amendment, where a point of order lies because the amendment does not contain those words which are required, either ignoring it routinely or having this thing that has so much force that we are in a straitjacket. We have to be able to legislate.

Should we force ourselves in some way to consider what the costs are? Yes, I would like to do that. I used to have to live with these mandates. For 8 years in local government in Detroit, I had to live with these mandates.

One of the reasons I came to this town was because I was so upset with Federal mandates and the way Federal programs were operating. That was one of the reasons I ran for the Senate. I understand local officials and Governors who have to deal with what we do.

So we have tried in the last few years to put estimates into law and into the committee reports. We have required CBO to come up with estimates. And CBO has tried, with bills, at least, reported out of committee, to come up with estimates. Sometimes they cannot do it. They are unable to tells us. They just cannot do it. But we will not let them do it here on the intergovernmental mandates. We will not let them be honest. We are adding to the bills as they come to the floor a requirement that that same estimate in a specific amount be made by the CBO on every amendment that comes to the floor.

So, Madam President, what I would like to do, and before I go further, let me just commend the managers and the sponsors of this bill. While I have problems with certain aspects of the new bill, I must say they have been steadfast in their determination that we do a lot better to force ourselves to consider the costs of these mandates on State and local and tribal governments.

And while I have some disagreements with the new bill, I must say that they deserve a tremendous amount of credit and thanks of this Senate and of this country for keeping the issue before us. It is an important issue. And no one that I know of is trying to sink this bill. A number of people are trying to make this bill look more like last year's bill in terms of the balance that was struck, and that is going to take some time and I think legitimately should take some time of the Senate.

This bill simply goes too far. Unlike last year's bill, which had a point of order if there was no estimate and if the estimated amount was not authorized. This year's bill, in effect, requires that you either fund it or put language in your authorization bill which will direct the agency to ignore it for State and local governments unless the appropriators downstream put in the amount of money which the estimates indicate will be required for State or local governments.

Now, there is a very basic philosophical issue. What about cases where you have businesses competing with local government? My friend from Kentucky just mentioned the word ''business,'' which raises a very important point that I want to address. And I am not sure it is exactly the same point that crossed his mind, but there is a very significant issue here.

You have two incinerators that are competing for the same business. You have a government-run incinerator and you have a privately run incinerator. Do we want to imply or suggest that there will be a mandate that is either not applied to the government-run incinerator—on clean air for instance, a new clean air requirement—but it will be applied to the private incinerator? Do we want to create a presumption that when you have business competition between a private and public facility such as that, be it an incinerator or a hospital, that we are going to apply a new mandate to the private sector but not to the public sector? Is that the assumption we want to make? Is that the presumption we want to create?

That, I believe, creates a real problem. This is real, folks. We have private and public hospitals all the time. Are we saying that there will be a presumption that a new increase in the minimum wage will apply to the private hospital but not to the public hospital? Is that the message we want to send? Should we consider the impact on the public? Of course. Should we consider the impact on both public and private? I believe we should.

I hope that this bill will succeed in another one of its purposes, which is to get Members to look at the impact on the private sector, as well as on the public sector. That is one of the purposes of this bill.

This bill goes beyond that when it comes to the public sector. On the public sector, it creates this point of order that I just described, a point of order which does not exist relative to the private sector. I think there is a serious problem, philosophically, which is raised when we do that in areas where we have competition, where the greater impact of a mandate is on the private rather than on the public.

It seems to me that we have a serious issue philosophically as to whether we want to create the expectation that this mandate is going to be waived or paid for when it comes to that public incinerator or to the public hospital, but not going to be waived or paid for when it comes to that private incinerator or that private hospital.

What I would like to do, if I could, with my friends from Idaho and Ohio, is to take a hypothetical case and walk through the steps. What I have done is just set forth a hypothetical Senate bill. I believe I have given a copy of this description to each Senator so they can have it in front of them. This hypothetical bill mandates controls on dangerous levels of mercury from incinerator emission after October 1, 2005. That is the bill. It also designates the EPA to determine what constitutes a mercury level dangerous to human health.

I would like to focus on that hypothetical and ask a number of questions of the managers. First of all, what is the effective date of that mandate? Now, the reason that that becomes critical is that that triggers the estimate, the estimate upon which so much hangs—including a point of order—the estimated cost to State and local governments in the first fiscal year after a mandate is effective, and in each of the 4 fiscal years thereafter.

So the first question I would like to ask the Senators from Idaho and Ohio is, what is the effective date of that mandate?

Mr. DOMENICI. Madam President, will the Senator repeat the last part of the precise question?

Mr. LEVIN. Madam President, I am sorry, I did not give a copy of this to my friend from New Mexico. Let me get this to the Senator.

The PRESIDING OFFICER. If there is no objection, Members may engage in a colloquy.

Mr. DOMENICI. Madam President, I yield the floor.

Mr. LEVIN. Madam President, I ask unanimous consent, then, that I be allowed to engage in a colloquy with the managers relative to the way in which this bill would be implemented, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEMPTHORNE. Madam President, in response, first a few points.

I appreciate the fact that both the chairman of the Budget Committee and the chairman of the Governmental Affairs Committee are here. I think what is most important, as the Senator from Michigan poses these questions, is that either myself, the ranking member on Governmental Affairs, the Senator from Ohio, or the two chairmen respond to that so we can lay this issue out there.

Also, a couple of other points I will make, because the Senator from Michigan gave a bit of an overview. One of the points that was stated is what if CBO simply cannot estimate this? What if we cannot come to terms with it?

The alternative, then, is that we will continue the process we now have, which is we do not require this information and we do not really make the effort. So we want to have as much information as possible before the vote, instead of after the vote, so that if at some future point we know the impact to local or State government after the fact, then we do the calculation.

Mr. LEVIN. Madam President, I wonder if my friend will yield on that point.

We do require such a calculation now. We have had something like 850 of those calculations, I think, in the last 12 years. There is a law, the Congressional Budget Act, which requires the Director of the Congressional Budget Office, to the extent practicable—very important words, to the extent practicable—to prepare for each bill or resolution an estimate of the cost, which would be everything incurred by State or local governments.

We do currently require these estimates. Now, sometimes, those estimates cannot be made. We have gotten a report from the Congressional Budget Office that they cannot make the estimate at times. They just simply cannot estimate. They say it. When they cannot estimate it, they say they cannot estimate it.

What this bill does, is say, ''You have to estimate.''

Mr. KEMPTHORNE. Madam President, if I may, to continue our discussion; yes, we do ask CBO to make an estimation. The Senator is correct. Since about 1981, CBO has been required to do some estimating. They have begun to build some years of information that will help them, I think, in making future estimates.

Now, in the event that CBO undertakes to accomplish what is required in this bill, to estimate the cost of the mandate, we asked them to make that effort. If they come back and their report says, ''We are unable to do so for these reasons,'' then they have fulfilled their responsibility.

Mr. LEVIN. With an intergovernmental mandate.

Mr. KEMPTHORNE. With an intergovernmental mandate. If they simply cannot—but they must make the effort. That is the point.

Mr. LEVIN. If the Senator will yield, that is not the way I read this bill, because this bill explicitly permits in the private sector that statement. But there is no such explicit permission to make that statement with the intergovernmental sector.

As a matter of fact, I believe the committee report explicitly notes the difference. I think the Budget Committee report explicitly takes note of the fact that in the private sector, we do permit the Director of the CBO to say that he cannot make the estimate.

On page 20, line 24, of the bill, it says:

> If the Director determines that it is not feasible to make a reasonable estimate that would be required, 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 the determination in the statement.

That is referring to ''private sector mandates,'' subsection B. That provision is explicitly part of the private mandates section. When it comes to the intergovernmental mandates, there is no such language which allows the Director to be honest. We have an honesty provision when it comes to the private sector. We say, ''If you cannot do it, you can tell us,'' but when it comes to the intergovernmental sector, there is no such language.

Mr. KEMPTHORNE. Again, Senator, that is correct. We require, on an intergovernmental, that there not be an estimate. But in going through that process, it may be that the conclusion of that estimate is that they just cannot provide the data that we are after.

So, Senator, because of the process, there is a waiver. That may be the rationale, the justification, to come to the floor and to seek a waiver of that point of order.

Mr. LEVIN. Why, then, do we not have the same language on the intergovernmental as we do on the private?

Mr. KEMPTHORNE. If there is no estimate for CBO, the Chair will have no alternative but to rule that the point of order will not lie, because there would be nothing upon which to base a decision.

Mr. LEVIN. But the question is, if we allow for the fact that a director in the private sector is unable to make the estimate, why do we not have the same language relative to the intergovernmental mandates? Why not the same honesty? Why not the same honesty allowance relative to the intergovernmental mandate as we have in the private sector? Why that distinction in the bill?

Mr. DOMENICI. Will the Senator yield for an observation?

Mr. KEMPTHORNE. Sure.

Mr. DOMENICI. Madam President, first of all, I want to say to my good friend, who is managing the bill, I would very much like to be here for the whole dialog. I am not sure I can. I have to leave for a little while, but I will just address this one this way.

Mr. LEVIN. If I could interrupt, I will be happy to try to schedule this to accommodate my friend, the chairman of the Budget Committee, if that would be helpful. Please just let us know and we can try to schedule this.

Mr. DOMENICI. I am one who has been preaching reform measures around here that the Senate floor ought to come first, and here I am telling the Senate that I have something else that, obviously, is more important. But I already had these appointments, and I cannot get out of them.

Let me just answer the precise question and then try to come back here.

I say to both Senators and the managers, if there is something further that I might accomplish later on, I will come down again and I will go back through the RECORD and answer them as I see them.

First of all, let me suggest, on your last question about why in one section and not in the other, with reference to the impossibility of doing it, we have 11 years, my staff tells me, of experience in estimating the cost of public mandates. We do not have any experience in estimating the cost of private sector mandates, to speak of. That means that clearly the Congressional Budget Office, which has to gear up for this entire episode, both public and private—we know it is going to take some additional money, but we also know it is going to take brand-new staff, and we are fully aware, while we are cutting everything, that has to go up a little. We need to give some latitude on the private end because we have not done it, and we follow up and say since we have been doing it on the public we ought to be able to.

Let me proceed and take your specific statute and just give a few observations. Frankly, while I understand we have passed environmental laws in the past that are even harder to estimate than this, because we leave to the EPA or some other department almost full latitude, I am advised that probably the way the Congressional Budget Office would handle this—this is from people who have been there and are experienced. I went and called when the Senator from Michigan started asking questions—they would get in touch with each other and maybe even visit and talk about this mandate. The Environmental Protection Agency would hopefully give every bit of information they have as to the parameters of this mercury level. It is apt to be here or at least give them something to work with. Then they would probably take that, in terms of that level and they would give us the best estimate they could with reference to maybe either of two levels, but we would get something.

If they said it is absolutely impossible, then it appears to me that we cannot ask for anything more, and one of two things will happen: Either what the distinguished manager has said, that the Chair would rule that a point of order cannot be made against it, or the point of order could be made and waived on the basis that we do not know.

But let me suggest that there might be a third thing that could happen. It may very well be that the looseness with which we delegate might be tightened up somewhat. I am not suggesting that a bill with that in it is wrong, but I am suggesting that if this bill is saying to the American people, ''We want to honestly tell you the cost before we pass it to the maximum extent,'' then we may be finding that we have to get more clarity in the legislation that passes so it can be evaluated more properly.

I thank the Senator, and I yield the floor.

Mr. LEVIN. I certainly agree with the third point that the Senator from New Mexico made. Let me go back to the first point, the fact we have had experience with these estimates. This is not new, making estimates on intergovernmental mandates. We have had hundreds of them. We are required by current law. What we have never done is hung a point of order on it the way this bill does when it is impossible, in some cases—and we know it will be—to make the estimate.

This is the experience of the Congressional Budget Office. Based on their experience in intergovernmental mandates, they have told us it is impossible sometimes to make these estimates. That is on a bill where they are being given a bill in advance of consideration of the floor. Multiply that by 100 times when it comes to amendments, because this current bill, S. 1, does not just cover bills that come to the floor, it covers amendments.

I believe if we are going to be straight with ourselves, we have to acknowledge two things: That with this experience that the Congressional Budget Office has in making estimates, they are telling us there are times when they cannot make estimates on intergovernmental mandates. That is based on their experience.

Second, I think if we are being straight with ourselves and with this process, we are going to have to acknowledge that there is no way that when you include all amendments under this point of order process that we are going to be able, with any intellectual accuracy, to get an estimate of the cost of every amendment and its mandate which is offered here so it can be properly considered.

Every amendment is subject to a point of order. The language of the bill is it will not be in order to offer a bill or an amendment unless certain language exists in that amendment, unless there is an estimate of the cost of an intergovernmental mandate in that estimate.

There are a number of questions: Can I even get an estimate as an individual Member of the Senate so I can offer my amendment? There is no provision for an individual Senator to get an estimate. The way I read this, the only estimates that are required by the Congressional Budget Office are estimates after a bill is marked up in committee and is sent to the floor. The chairman and ranking members of committees can also seek estimates, as I read the bill. But there is no provision in this bill which gives me any assurance as an individual Member, or it gives 100 of us an assurance that we can even get the estimate, and if we do not get the estimate, a point of order lies.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. LEVIN. I will be happy to yield. I will just conclude this point.

What this bill requires us to do, unlike last year's bill, is to get an estimate which at times we know is impossible to make from the experience of CBO, even on a bill, and we know it is even more impossible on more amendments to get. There is no provision in the bill that we even have standing as individual Members of the Senate to obtain the estimate, in any event, since the only ones that seem in the bill to be guaranteed that estimate from the CBO would be bills that come to the floor that have been approved by committees and, to the extent practicable, Chairs and ranking members of committees.

I will be happy to yield. I do want to go back, however, to my first question, which is, what is the effective date of the mandate in this hypothetical that I have given? And again, so that we are all working from the same hypothetical, it mandates reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005, and the EPA is designated to determine what constitutes a mercury level dangerous to human health.

My specific question is, What is the effective date of that mandate since that is what triggers the estimate? It is critical that we know the effective date because that is when the 5 fiscal year estimates begin.

Mr. KEMPTHORNE. If the Senator will yield?

Mr. LEVIN. I will be happy to.

Mr. KEMPTHORNE. We are calculating that so we can respond to that specifically.

I also, though, want to respond to the point that we are creating something unusual, we are creating—I do not know what terms were used—but suddenly we are going to make this very difficult for legislation to proceed or for amendments.

If I may, I think this is important. Yes, S. 1 establishes a new point of order under the Budget Act against incineration mandate legislation in the Senate unless the mandate is paid for. I believe strongly in that. So do local and State governments and tribal governments. The point of order—this applies to all legislation including bills, joint resolutions, amendments, motions or conference reports and can be waived by majority vote. It is a process.

This point of order and the Budget Committee's role in its enforcement are modeled after similar provisions in the 1974 Budget Act. The language in S. 1, and I think this is very important, applying the mandate point of order to amendments, is identical—identical to language in the Budget Act. Madam President, 21 separate provisions of the Budget Act provide a point of order in the Senate against consideration of amendments; five of these provisions establish points of order that only apply to amendments.

This is not new ground. This is not something unprecedented. Madam President, 21 separate provisions have a point of order. The Senate, the Senate Parliamentarian's office, the budget committees, have 20 years of experience with these Budget Act points of order and their application to amendments.

In practice, the Senate Budget Committee staff monitors legislation, works with the Parliamentarian's office to determine violations, and works with CBO to provide the Parliamentarian's office with estimates to determine whether legislation would violate the Budget Act. In instances where the press of Senate business does not allow CBO sufficient time to prepare such estimates, the Senate Budget Committee is called on to provide them. Regardless of what estimate is used, the Senate is the final arbiter of its rules, that is the rules of the Senate. Should a Senator disagree with the estimate, he or she could appeal the ruling of the Chair. But as these amendments are brought forward, the burden of proof that they exceed—in case of intergovernmental, a $50 million threshold—that burden of proof lies with the Senator who would make the point of order.

You can bring your amendment to the floor of the Senate without having had it scored by CBO. But, in all reality, it just seems to me and it seems to a lot of other folks that if you have an amendment that is somehow close to this threshold, it makes sense that you would call and get CBO to give you an estimate of the cost, or that you would work with the Budget Committee because soon we would be voting on that amendment.

Are we saying that because we may want to take a few minutes to call and get that estimate that we should not do that because the hour is late? And it is a multimillion-dollar decision that we are going to cast votes on, and the implications that it would have?

Mr. LEVIN. I am saying quite the opposite, if the Senator would yield. Quite the opposite.

It is worth getting an estimate. It is worth getting an honest estimate. And

there is no way that in a few minutes, or in a few hours—indeed in a few days, if you listen to the Congressional Budget Office—that you can get an estimate of the cost of a mandate on 87,000 jurisdictions. Of course we have points of order in the Budget Act. They have to do with levels of Federal spending of the Federal Government. What is new here is that a new point of order is going to be created, unless you have an estimate in a specific dollar amount of the cost. It could be years away—on 87,000 State and local units of government. That is very new.

Is it worth getting? Of course it is worth getting, if you can. But you say you can bring an amendment to the floor even without an estimate. The way I read the bill: ''It shall not be in order in the Senate to consider''—and then the words are ''any bill, joint resolution, amendment, motion, or conference report.''

It is not in order for the Senate to consider those.

Several Senators addressed the Chair.

Mr. KEMPTHORNE. I am sorry. If I could just complete that thought. It is not self-executing.

Mr. LEVIN. Someone could raise a point of order.

Mr. KEMPTHORNE. Someone could raise a point of order but you could allow amendments in a given event without anybody making that point order.

Mr. LEVIN. Is that the intent of the Senator, that a point of order not be raised when an estimate is not present?

Mr. KEMPTHORNE. I think I have made it clear. I think it is a responsible thing. But if you are going to offer a multibillion-dollar amendment, certainly that did not just come to mind that night. Certainly you have talked with either the Budget Committee or CBO.

But, again, it is not self-executing. That would be the basis that a ruling could be made that the point of order lies. Then you could seek the waiver.

Mr. LEVIN. I think we are in a way on the same wavelength because I think it is important that we get honest estimates, too. My question is, If the CBO cannot estimate it—cannot estimate it, it is still out of order.

Let me put it a different way. If the CBO cannot estimate it—it is tough. They have to. Because you do not have the language on the intergovernmental side that you do on the private side that allows them to say they cannot make the estimate. You could still keep your point of order, because there is no estimate that meets your test. But what you do not do in this bill, for the intergovernmental sector, is to allow the CBO to be honest the way you do in the private sector.

We tried this amendment in conference, to simply say if the CBO cannot make the estimate in the—excuse me. We offered an amendment in markup, where we said if the CBO cannot make the estimate—which has been true in many cases before—that they should be allowed to say so on the intergovernmental side, the same as they are allowed to do on the private side, so we can know that.

Mr. GLENN. Will the Senator yield?

Mr. LEVIN. I will be happy to yield. This may be something where we have asked weeks in advance, by the way, not just minutes in advance, weeks or months in advance, assuming we can get answers as individual Senators from the CBO, which we have no right to do in this bill.

But assuming we could get an answer from the CBO, they may tell us they cannot make this estimate. We have been diligent. We have tried for weeks and weeks and weeks and months to get an estimate and cannot get it because they say there is no way they can make this estimate for various reasons. It may be that the EPA is going to determine a level after a public hearing, notice and comment, as to what an unsafe level of mercury is. And they are not willing to say in advance of a public hearing and comment what that unsafe level of mercury is. And the CBO comes back to us and says we cannot make this estimate.

Why not allow them to say that in the intergovernmental side the way we allow them on the private side? The Senator from New Mexico says they have more experience on the intergovernmental side. That works exactly the opposite way because their experience tells them they cannot do it in some cases. Why not let them say it? We offered an amendment in committee to allow them to say it, allow them to be honest on the intergovernmental side the way we do on the private mandate. But that was defeated.

So, I think it is a matter of just honesty, frankly, in legislating, to allow the CBO to say what we all know is true. That there are times that, even with a lot of notice, they cannot estimate the cost of intergovernmental mandate the way they cannot do a private mandate. I will be happy to yield.

Mr. GLENN. Madam President, If the Senator will yield, I think, backing up the Senator from Michigan, I would have to say, in law—whether being misconstrued or not—but to leave any doubt that CBO can say there are things we cannot score, there are things we do not know the answers to, there are things we cannot make estimates on, and they say that—and to say, ''but you have to whether you can or not,'' or something is not going to apply on the floor here, I think is the height of folly. I do not see the point of this, in trying to say if you cannot make an estimate that you have to anyway.

What is the worst thing that happens if we say OK, we recognize the fact that you cannot make an estimate and if the CBO, with all their expertise cannot, I am not going to say that the Budget Committee is going to be any more able to do some of these things? There will be occasions where the Budget Committee also will say CBO could not and we cannot either.

Does that say that a bill cannot come to the floor? No. I will tell you what it says. It says we will not have the waiver and the point of order and the waiver vote on it. But the worst that happens is a bill comes to the floor like it does now. We say, Here is what we think, and debate it, and we pass it or we do not pass it. But to say that a bill that CBO has considered and the Budget Committee has considered and say there is no estimate we can possibly make on this just by the nature of it—we already have a letter from CBO saying that would be the case sometimes—but to say you have to have one no matter what or you cannot bring a bill to the floor sort of seems to me a little bit ludicrous.

Mr. DOMENICI. Will the Senator yield?

Mr. GLENN. Yes.

Mr. DOMENICI. I have just been called by the leader, so I am leaving. But I wanted to make an observation, and then I will come back. If you want to come, you and I, sometime to further clarify, I will be here.

First of all, everybody should know that since the Budget Act has been in existence—how many years?—20 years, this same puzzle has been there. Some things cannot be estimated—very difficult to do it, I should say. Amendments are hard to examine. I give you the best example of just forcing it to work. That is health care. The Senator spoke of how many thousands of jurisdictions? About 87,000 would be affected. We had millions in health care. We never took up an amendment without an estimate. In our debate some things had to wait awhile. Some amendments had to be set aside. CBO had to beef up. They had to ask for lots of help.

I think those of us who are looking at the effect of mandates on the Federal Government versus the States in terms of governance and a lot of other things are saying times must change, we have to find a system. This system is not perfect, but let me suggest that if the Senate desires in the future to offer a bill or an amendment that is so tough to estimate that as hard as we try somebody comes down here and says, ''Senators, that is it,'' what it will permit is for the U.S. Senate to work its will, not this bill. The Senate will then have before it what is probably an onerous mandate. If it is not very onerous on its face, nobody would ever be worried about it. So you probably will have an onerous mandate. It is going to cost a lot of money. And the Senate will be put to the test. Do you want to pass it anyway? That is by a simple majority. Or do you want to say something different for a change, and you probably, in living up to the spirit of this, will do something different for a change. You will probably say we are not going to pass this. I would think that is one alternative. We have to get some better way to define what we are

trying to do. Or you might find another way. You might pass it and put an amendment in that 3 years from now we will come back to the floor because by then we ought to have mandates and it still will not be in effect. Then we will pass on that.

In other words, we will make the kind of senatorial, in the Senate, on-the-floor changes to accommodate. But it will be an accommodation to a very, very different set of precepts—which I believe my friend agrees with—precepts of getting it done if you can, not hanging them out there without anything about them, if you can do other business. I think he agrees with that. I think that is what this process is going to yield. It has been tried a long time.

Sometimes it is very befuddling when we try to use a point of order. But I also say that those who want to amend the 51-vote point of order to 60, there is another example why whoever crafted it crafted it well because a point of order is a majority vote, not a 60-vote point of order. That clearly makes the U.S. Senate work its will on the kind of cases you are describing which are brought up by this amendment.

Mr. LEVIN. If the Senator will yield on that point, it is fine for the Senate to work its will, but it ought to have an estimate in front of it, if it is feasible, which is reasonably accurate when it works its will because a point of order is hanging on this unlike any point of order in the Budget Act. This point of order does not relate to Federal spending and the level thereof. It relates to what it would cost 87,000 jurisdictions. This is a different kind of an animal from anything that we have ever had in the Budget Act, No. 1.

No. 2, I think here my friend would agree with me. If the Senate is expected to work its will on waiving the point of order—and both the Senator from Idaho and the Senator from Ohio are absolutely correct; this is not a no money/no mandate. This says under some circumstances, if there is no money, there will be no mandate.

But what is unique about this is that you are not allowing in this bill the Congressional Budget Office to say that you cannot make the estimate. We do it in the bill for the private sector. We do it in the bill for the private sector, but it does not allow the CBO to be honest. Why not allow the CBO to be honest when it comes to the intergovernmental mandate?

It is true, we still have a 50-vote point of order. If they say they cannot make the mandate, that point of order still lies. But now you have something that you can be aware of. The CBO says it is impossible to estimate the cost of that mandate and why. That may cause some people to vote no. I think my friend from New Mexico is right. A lot of people will vote ''no'' if the CBO says it is impossible to estimate the cost. It may on the other hand cause other people to vote to waive the point of order because there had been an honest effort made to get the estimate and it is simply impossible; it is too far out. It depends upon agency determination to have closed rulemaking.

My question is why not allow honesty on the part of the CBO and, if they cannot make an estimate, to say so in the intergovernmental mandate the way we do in the private mandate? We being the bill. If the bill says, CBO, be honest, if you cannot estimate the cost in the private sector, tell us for whatever impact that has on the Senate floor, that may cause some of us to vote no on the whole bill. That may cause others to vote ''yes.'' We do not know the impact of that information. But we do know that, when it comes to the private sector, we allow the CBO to tell us if they cannot make the estimate, but when it comes to the intergovernmental side, there is no such authority to CBO; you must make an estimate. And I want the Senate to work its will. But I want it to work its will on the basis of information which is solid. If we are going to force the CBO to make an estimate when they cannot make an estimate, we are going to be getting bum information from the CBO. They are going to take wild, out-of-the-blue guesses as to what this thing costs. In order to comply with the law, they must make an estimate.

Is that legislating in the light? Is that legislating knowing the cost of estimates? No; what that is saying is we are going to go through a formalistic process forcing the CBO to do something which they have told us at times they cannot do, and somehow or other we are going to feel better if we therefore now know the estimated cost of a mandate on State and local government. Do we really feel then that we now have information which is usable to us, that we can make a decision based on information because we have forced the CBO to do something that they have told us at times they cannot do? So what happens if they come up with a range? They just throw up their hands. This will cost from $1 million to $500 million. That is their estimate.

By the way, it is unclear that they can even give us a range. But to the extent that they are allowed to give us a range—again it is very unclear in the bill. We get two different answers on that question. But assuming they are allowed to give us a range, is that helpful to us? This will be from $1 million to $500 million. Now, are we really legislating knowing the impact on local government? That does not tell us anything. What level does the appropriations have to reach in order to avoid the requirements of this bill? Is it the $1 million or the $500 million? Is it a range?

So, again, I agree with what this bill is trying to do. I think last year's bill did it. Last year's bill had the support of all the Governors, by the way. This year's bill has even stronger support of the Governors, I am sure. But the Governors association and local governments supported last year's bill where we did not have this point of order that we have in this year's bill. We had the estimates. We had a requirement that they get an estimate. But we did not say that a point of order would lie, unless there is an estimate in a specific amount with certain ramifications.

I know my friend from Delaware is the chairman of the committee, and he has been attempting to get the floor. I certainly do not want to, in any way, control the floor. I am in the middle of a colloquy, with the unanimous consent of the body, with the manager of the bill. I will be happy to either yield further, or whatever it requires, to allow the Senator from Delaware to get a question in here.

Mr. ROTH. Madam President, I say to my distinguished friend and colleague, if he will yield without his losing the floor, it does seem in a very real way to me that you are comparing apples and oranges. The reason I say that is that in the case of a mandate being imposed on the public sector, then it is the rule or the general requirement of this legislation that funds be provided to finance it.

On the other hand, in the case of the private sector, while they are asking that an estimate be made, if there is no estimate, there is no requirement that funds be provided. So there is a very real difference between the public sector and the private sector.

I do not think there is anything being said that says the Congressional——

Mr. LEVIN. If my friend will yield——

Mr. ROTH. If I may finish. What we are saying is that in the case of a mandate on the public sector, it is the general rule that either funds be made available to finance it, or a waiver be obtained. So there is a very real difference in the policy between the two situations.

But I do not think anything is being said that the Congressional Budget Office cannot come back and say: We cannot make an estimate. But if they come back and say they cannot make an estimate, and it is a mandate on the public sector, then I, as author of that legislation or that amendment, either have to clarify the amendment so an estimate can be made, or I have to make sure that funds are provided. Or the third option is, of course, to get a waiver.

So it seems to me we are hanging up on whether or not the CBO, in the one case, can say it cannot make an estimate. If it cannot make an estimate, then we have those three options. Otherwise, we cannot move ahead. In the case of the private sector, we can still move ahead because the legislation does not require funding.

Mr. LEVIN. Madam President, the point the chairman makes, it seems to me, cuts exactly the opposite way. Since an appropriation is hanging on the estimate when it comes to the intergovernmental money, it seems to me that is more of a reason that estimate should be accurate.

We should not force the CBO to make wild guesstimates in order to comply with the requirement. They have told us over and over again that there are times when they cannot make estimates. But this bill says, ''Tough.'' That is what you are basically telling the CBO when it comes to the intergovernmental estimate: Make it anyway.

Mr. ROTH. If the Senator will yield.

Mr. LEVIN. Yes, I yield to the Senator.

Mr. ROTH. What I am saying is, if the Congressional Budget Office—in either situation, whether it involves the private or public sector—can make the statement that it cannot make an accurate estimate——

Mr. LEVIN. I beg to differ with the chairman, because the bill explicitly says——

Mr. ROTH. Where does it forbid CBO, in the case of the public sector, from coming back and advising the author or authorizing committee that it cannot make an estimate? What this legislation——

Mr. LEVIN. Here is where it does it, if I may tell you.

Mr. ROTH. I will make one further statement, and then yield back to the Senator who has the floor.

What we are saying in that situation is that, as a general rule, whoever is authorizing the legislation should clarify it so that an estimate can be made. What we are really trying to provide and really require is a reasonable estimate so that when Congress acts, it knows what it is acting on. That is the whole intent, as I understand this legislation.

Mr. LEVIN. Madam President, it is a very good intent. We have a current law which says exactly the same thing. The Budget Act now requires the Congressional Budget Office to make the estimate, where practicable. The chairman, my friend from Delaware, asks, ''Where does this bill say that they have to make an estimate in the intergovernmental sector?''

The answer is what it does is it has the explicit language relative to the private sector that:

> If the Director determines it is not feasible to make a reasonable estimate that would be required, 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 therefore.

Mr. ROTH. Will the Senator yield for a question?

Mr. LEVIN. If I may read from the committee report of the Governmental Affairs Committee on this point.

It says:

> If the Director determines that it is not feasible for him to make a reasonable estimate that would be required with respect to Federal private-sector mandates, the Director shall not make the estimate but shall report in the statement that the reasonable estimate cannot be reasonably made.

And then the committee report goes on to say this:

> No corresponding section applies for Federal intergovernmental mandates.

That is very clear. We allow them to be honest when it comes to the private sector, yet do not permit them to be honest when it comes to the intergovernmental sector. It says they shall estimate. It does not have the possibility that they cannot make an estimate in the intergovernmental sector the way it does to the private sector.

Mr. ROTH. If the Senator will yield, the point I was trying to make is that nowhere, as far as I am aware, does the legislation forbid expressly the CBO from saying that it cannot make an estimate.

Mr. LEVIN. Why not allow it to do so, to say that?

Mr. ROTH. The important fact is what flows from that determination. The present language permits, in my judgment, CBO to say exactly that.

Mr. LEVIN. May I then ask the chairman why do we not explicitly say that?

Mr. ROTH. One reason is that it is difficult. You cannot fund a mandate for which there is no estimate. So what we are trying to——

Mr. LEVIN. The point of order would lie.

Mr. ROTH. So we are trying to require the authors of the legislation to go back and spell out the legislation in such a manner that an estimate indeed can be made.

Mr. LEVIN. Which is a good goal. But if the author of the legislation attempts to obtain that estimate, and it is impossible for the CBO to make it, even if there is a diligent request, why not allow the Director to be honest? Why force the Director to make an estimate which is absolutely a wild, out-of-the-blue estimate, just so he can comply with the law? Is that helpful to us in terms of our legislative process?

Do we really know more about the cost of intergovernmental mandates when a Director of the CBO, faced with this kind of a requirement that he estimate the specific amount of a mandate, throws up his or her hands and says, ''I cannot do it, and if I have to do it—and that is what the law says when it comes to intergovernmental mandates—I am going to say it is from $1 million to $1 billion; that is the best I can do''; is that really helpful to us in terms of understanding the impact of mandates?

I do not think it is helpful. I think we ought to be honest and acknowledge that there will be occasions when the Director of the CBO cannot estimate. The point of order would still lie if we want to keep the point of order in this area, because there is no estimate. But at least you would have had the statement as to why there is no estimate.

Mr. KEMPTHORNE. If the Senator will yield, I think that may be the crux of this. When it is a public-sector mandate, we are saying that we should pay for that.

Mr. LEVIN. Unless it is waived.

Mr. KEMPTHORNE. Unless it is waived. On the private sector, we say we will not be paying for that, but we ought to know the cost and impact up front.

With the private sector, if the Congressional Budget Office comes back and says, ''We just cannot make an estimate,'' then no point of order can lie. The Chair will not rule. They have no alternative. It does not lie, because the CBO has said there is no estimate, and so there can be no point of order.

That is the difference with the public sector. The CBO may come back and, in their report of estimate, state, ''We have tried this method and we have tried that, and we have consulted with the public entities, our partners, and this is the conclusion: Our estimate is that we cannot come to some conclusive information.''

But then we have a report. We have a report. We have not allowed a loophole that we are not going to deal with the issue of whether or not we should still fund it.

It may cause us to rethink this because if in fact you have the Congressional Budget Office—and I underscore the term ''Budget'' in Congressional Budget Office—and they say, ''We don't know what this will cost; it may well be beyond $50 million,'' if we allow them the same language as in the private sector, then we are not going to deal with it.

Mr. LEVIN. Why?

Mr. KEMPTHORNE. We are just going to vote. There is no point of order because the Chair cannot rule that a point of order lies.

Mr. LEVIN. May I ask my friend from Idaho why not? Why cannot the Chair rule that there is no estimate?

Mr. KEMPTHORNE. Because there will be nothing upon which to base the decision. There would be nothing to base the decision upon.

Mr. LEVIN. There is a failure of the amendment to have an estimate.

Mr. KEMPTHORNE. But I say to the Senator, with the process as prescribed, you will have that report from CBO. You then, as the Chair of that committee, can use that and come down to this floor, and you can get a majority to vote to waive that. Because you now have a report from CBO saying, ''We do not know what it is going to cost. We do not know how to estimate this.''

Mr. LEVIN. What is the amount going to be, then?

Mr. KEMPTHORNE. That is what we are going to decide. The will of the Senate is going to determine that.

Mr. LEVIN. The Senate has no basis. The CBO told us that they cannot make the estimate. You say they can be honest. You ought to say that in the bill, they can be honest. But you do not want to say that in the bill because then the point of order might be in effect.

But then my question is, you say they can be honest and tell us they cannot make the estimate, but you do not want to put that in the bill the way we have for the private sector; then what is the amount of the estimate

upon which the point of order will be based? What are we going to vote on?

Mr. KEMPTHORNE. I say to the Senator, it might cause us to then rethink the mandate.

But the Senator keeps going back, saying, let us be honest; let us be honest. S. 1 gives us this process to be honest. it is going to give us the best information possible.

Mr. LEVIN. With one exception.

Mr. KEMPTHORNE. By allowing the private sector process which is prescribed here, if you were to apply that to the public sector, then we will not come back for that sort of discussion because there is no basis from which to make that decision. The Chair cannot rule that a point of order exists. But, again, I say this with all sincerity, if the Congressional——

Mr. LEVIN. Why would the Chair rule there is no estimate?

Mr. KEMPTHORNE. If the Congressional Budget Office comes back and says, ''We have run the calculations on the estimate and our conclusion is we cannot give you a good number,'' what is wrong with that, to come back here with that information?

Mr. LEVIN. I think that is exactly what they should say, but you do not allow for it. I am the one who says the bill should allow for it.

Let me make sure there is no confusion as to who is saying what. I am the one who says that we ought to allow them to do precisely what the Senator from Idaho said they should be allowed to do.

Mr. KEMPTHORNE. The difference, I say to the Senator, is he is saying the same language used in the private sector. If you do so, then there is no way the point of order can lie.

Mr. LEVIN. Does the Senator from Idaho believe if they cannot make the estimate, that they should be allowed to tell us that?

Mr. KEMPTHORNE. Of course they should.

Mr. LEVIN. Should we so state in the bill?

Mr. KEMPTHORNE. We do not want to provide it so that the CBO can make the determination that we do not come back here and deal with the point of order. That is what I am saying. I mean, there may be some way we can craft this.

Mr. GLENN. Will the Senator yield?

Mr. KEMPTHORNE. I am happy to yield.

Mr. GLENN. It would seem to be going the route my colleague from Idaho wants to go on this, where you cannot say there is no cost, which seems to me preeminently sensible that you are going away from the $50 million threshold, because on every single thing that comes before the Senate, the $50 million threshold would mean nothing. It means there is some expense, even if it is on a postage stamp. If they say they cannot estimate this, but you are going to bring it to the floor on a point of order, the $50 million threshold means nothing.

We are now saying, in effect, that on every single bill, every single thing that comes before the Senate, even though we cannot make an estimate on it, that it is going to have a point of order and it is going to have the same treatment as everything else, and the $50 million threshold, it seems to me, just went down the drain.

I do not see what is wrong with doing exactly, by amendment, what the Senator from Michigan is doing. All he is saying is that where the authority is charged with making these estimates, they can say they cannot make it. And we have a letter here from them that says on occasion it is going to be extremely difficult, if not impossible, to make that kind of a judgment.

If it is impossible, who are we to say you have to do it anyway? ''You do what you say you don't have the staff, don't have the people, don't have the estimates to do on some of these 87,000 communities around the country.''

Why would we tell them to do something that they say they cannot do, or the Budget Committee itself say, ''Well, if CBO cannot do it, we will,'' just to get a figure out there, when it would be an absolutely fictitious, false figure on which nobody could base any vote on the floor.

It seems to me the way to go, which I thought you were about to agree to a moment ago, is with language that would say if the CBO cannot make an estimate, then they just say that. They say we cannot make an estimate and the bill would come to the floor and everybody would know that they cannot make an estimate. They would make their own judgment on the bills, just as we do now when they come to the floor without an estimate.

But the point is, probably 95 or 98 percent of the bills that would come before us would in fact have an estimate hooked up with them, and we would have taken much better cognizance of the cost in advance, which is the purpose of this bill.

I think we are all bogged down here on sort of a technicality. The purpose of this bill was really to say, we are going to force the Senate, where possible—and I underline that; where possible—to take account up front of what the cost of the bills are going to be and what the Federal mandates to the States are going to be, which we have never done before. And that will cover probably 95 or 98 percent of the bills that come before us.

It would seem to me just sensible that when the Budget Committee says it cannot make an estimate, with the people and the expertise and experience they have had for the last 20 years, and they say, ''We can't do that,'' and we are, in effect, telling them, ''You have to do it; we are forcing you to do it, even though you cannot do it,'' what are they going to do?

Well, they come up with some fictitious figure just to comply with what we have told them to do, and that figure will not mean anything because it will not be based on their best judgment. It will be based on what they somehow had to do when they told us they could not.

I think it would be common sense to me to do exactly what the Senator from Michigan is saying: Permit them in law—no fudging around; no alternate message here or no unclear message to them—to say that if you cannot make a judgment, you cannot make a judgment. You tell us that, and then the Senate proceeds to work its will, as we do now when we have bills where we do not have an estimate.

So it seems to me very fair to do that. I do not yet see the logic, with all due respect, of saying we are going to force them to say something that they tell us they cannot say. It just does not make any sense to me.

Mr. KEMPTHORNE. If the Senator will yield, I really believe that—and the good Senator from Michigan keeps referencing the 87,000 jurisdictions—they would be arguing what I am trying to say. Maybe I am not very eloquent in saying it.

It is not in any stretch of the imagination to say that CBO is to come up with some number, no matter how fictitious it is. I am saying there is a process that says they are to do their best effort in coming up with that estimate. That is the report they will receive. But it does not stop there.

Mr. GLENN. What If their estimate is zero?

Mr. KEMPTHORNE. That is the report, I say to the Senator.

Mr. GLENN. But they just say: We cannot say whether it is zero or $50 billion. Then what do we do?

Mr. KEMPTHORNE. Then I think we ought to rethink the mandate itself.

Mr. LEVIN. That is a good argument on the floor.

Mr. KEMPTHORNE. Exactly.

Mr. LEVIN. The question is, should they be able to tell us they cannot make an estimate. The Senator from Idaho keeps saying sure, they ought to. A minute ago, he said a good-faith effort. The words ''good-faith effort'' are not in the bill. The words ''good faith effort'' are not in the bill. It says they shall make an estimate in a specific amount, acknowledging in the private sector it may be impossible. They have told us in the public sector it may be impossible. They told us that over and over again for the last 12 years.

Most of the time they can do it, by the way, and should do it. And 95 or 98 percent of the time they can do it.

The Senator from Idaho keeps saying if they cannot do it, they should tell Members they cannot do it. All I am saying is, great, let Members put that in the bill. If they cannot do it, they should tell Members they cannot do it. And it is up to Members whether we waive a point of order.

Mr. KEMPTHORNE. Madam President, I agree with that but it is up to Members not CBO to certify by note that they cannot do it. So there is no

point of order, there is no basis for the Chair.

I think we may be caught in a bit of a technicality or semantics issue. I would be happy to sit down with the Senator and see if we cannot craft something here. Again, I am simply saying I do not want to see the Senate go with the same procedure as prescribed on the private sector because it will then allow the Senate to no longer deal with whether or not, as the Senator just said, we ought to come to the floor and seek a waiver. We would not be required to do that. I think we should when we are using the taxpayers' money in the million- and billion-dollar categories.

Mr. LEVIN. Madam President, the Senator from Michigan simply said we should allow the CBO to state that they cannot make an estimate in the intergovernmental site, in the same way they are allowing Members to say that on the private sector.

I did not say we should use the same procedure, but I say we allow them to be honest when it comes to the inability to estimate the cost of a private mandate. We should allow them to be honest when it comes to the cost of an intergovernmental mandate. That is all I am saying. It is an honesty amendment.

By the way, it will allow the Senate to legislate a lot better. We will not be gaining useful information if we force someone to make an estimate which is impossible to make. We are not doing ourselves a favor legislatively. Believe me, we are not legislating in a knowledgeable way, which is one of the purposes of this bill, and I have to say I totally agree with, that we know, where feasible, the cost of these estimates to State and local governments. By the way, where it is not feasible to know it, that it is a pretty good argument for not imposing.

There may be circumstances, by the way, where you still want to impose it. It may be the reasoning it is not feasible is it is dependent upon EPA estimates and there is no way, prior to a public hearing, prior to notice, prior to an administrative procedure, that EPA is going to whisper into the ear of the Budget Committee what their level of mercury will be 3 years in advance of their decision. So, there may be good reasons to just simply vote ''no'' on the mandate because we cannot get an estimate.

On the other hand, the majority may say, no, that would be unreasonable in this case to require and we do want to impose that mandate on local and State governments. We want all levels to reduce their level of mercury in incinerators, not just the local.

Mr. FORD. Madam President, as I understand, the Senator from Michigan retains his right to the floor regardless of the colloquy here.

The PRESIDING OFFICER. That is correct, the Senator from Michigan has unanimous consent.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I am not trying to control the floor here at all. I am trying to have a colloquy which will help to illuminate, hopefully, and I would be happy to ask unanimous consent that I be allowed to yield the floor to the Senator from Kentucky, or if there is objection to this process from any one of the colloquies, I am happy to yield the floor, period.

Mr. GLENN. Madam President, reserving the right to object, the Senator wanted a couple of minutes, and I wanted to make another point on this before we leave this.

Mr. FORD. Madam President, I will be happy to yield to the Senator.

Mr. GLENN. Madam President, go ahead and we will come back.

Mr. FORD. Madam President, the thing that disturbs me here, and I think it is a legitimate disturbance, that those in the Senate that would like to help business, those that would like to see that business gets a fair shake, I think applying the laws to the Senate, that we apply to our constituents, was something that was very significant.

Now in this language we are saying that we can stick it to business out there as hard as we want to because we cannot get an estimate. But to reverse that and say to the intergovernmental agencies, the communities, the counties, and the States that they are going to be exempt. So we are coming down as a business-oriented climate, I hope, and we are saying that we are going to stick it to business, but we will let Government, intergovernmental agencies, cities, counties, States, et cetera, I just think that this is wrong.

If it is fair for Members to say that business—the regulations, et cetera, will be imposed on business, but not imposed upon public operations, then we have a real problem. It is my judgment, if I was business, I would be up here trying to defeat this bill because then I would not be allowed to compete because the regulations and fees, or whatever, to be imposed upon business, would be excluded from the public sector.

Therefore, we are in competition with incinerators, and Lord, do we have problems out there trying to find disposal sites. It would just be horrendous in my opinion.

Hospitals. I see hospitals now trying to make it work where they have a private hospital and a public hospital trying to come together on some sort of HMO and it makes it difficult. So, in that category we would apply rules to the private hospital that we would not apply to the public hospital and, therefore, they would not be able to come together in an ability to cover communities with health care.

Schools. What are we going to do to asbestos and all its removal in private schools? And the cost is over $50 million, so therefore we exclude public schools.

I think it is time that we all sit down and rethink this. When people say we are trying to filibuster this, we are not. I am not. I am for the bill. I am for the bill that says we should not put in unfunded mandates. I introduced a bill 8 years ago, 6 years ago. The Senator from Ohio and I have been on there for a long time. Got two cosponsors first time I introduced this legislation. And $50 million was a threshold then. Still is the threshold.

So I am not against this legislation. But we have just gone so far, so far and attempted to jam it down our throat here, that some have just said, ''No, let's wait a minute.''

I think the public has benefited, particularly business has benefited, by the debate that has developed here. Now this, in my opinion, is what the Senate is all about: The right to debate. Now that we have had the right to debate, even though we are trying to be painted into a different position here, different image, I think this debate has been very successful and very useful, particularly as it applies to the business community.

So I want people who are saying this is a filibuster, it is not. Want to file cloture? Members can file cloture. Thirty-six amendments are floating out there in various and sundry types, on both sides of the aisle.

So we have, I think, played the role that our forefathers expected of the Senate when we are now questioning the aspects of this particular piece of legislation. So, it is not a filibuster. Not a filibuster in any stretch of the imagination. But it sure is, in my opinion, developing into something we better take a second look at because it has become so broad.

So I thank the Chair. I thank my friend from Michigan. I hope there will be a way to accommodate each side here so that the public and private sectors of our economy, both will be treated the same. Right now they are not.

If we are going to help business, we better sit down and try to help it out so business will not be placed at a disadvantage rather than the public being placed at an advantage. I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. Madam President, if I could just briefly, to my friend from Ohio, thank the Senator from Kentucky, my good friend, for focusing on a very important fundamental issue, which is whether or not we want to send a message, create a presumption, however we want to phrase it, that we are going to put the private sector at a competitive disadvantage in those areas where there is a lot of competition. And there are a lot of those areas. In the environmental area, we have gotten letters, by the way, from the environmental disposal community—I think three or four associations—strongly opposing what we are doing