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Senate

(Legislative day of Tuesday, January 10, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Blessed be the name of the Lord from this time forth and even for evermore! From the rising of the sun to its setting the name of the Lord is to be praised. The Lord is high above all nations, and His glory above the heavens.—Psalm 113:2–4.

We worship Thee, O Lord, not because Thou dost need our worship, but because we need to worship. We enrich our humanity when we praise and adore Thee; we diminish our humanity when we fail to worship Thee. Blessed be the name of the Lord.

Let Thy blessing rest upon all who labor here, not that we may exploit Thy blessings on ourselves, but that what is done here, what is decided here, will be a blessing to those who are served by the Senate.

Be with those who are in need—the ill, the discouraged, the frustrated, the lonely, the tempted, those without hope, those financially burdened, those alienated from friends or loved ones. In grace, touch their lives with healing and peace. Let Thy will be done in the Senate, in all the offices and homes represented here.

We pray in the name of Him who is the Great Physician, the Wonderful Counselor, the Prince of Peace. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

UNFUNDED MANDATE REFORM ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Levin amendment No. 174, to provide that if a committee makes certain determinations, a point of order will not lie.

Levin amendment No. 175, to provide for Senate hearings on title I, and to sunset title I in the year 2002.

Levin amendment No. 176, to clarify the scope of the declaration that a mandate is ineffective.

Graham amendment No. 189, to change the effective date.

Glenn amendment No. 195, to end the practice of unfunded Federal mandates on States and local governments and to ensure the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

Glenn amendment No. 197, to have the point of order lie at only two stages: (1) against the bill or joint resolution, as amended, just before final passage, and (2) against the bill or joint resolution as recommended by conference, if different from the bill or joint resolution as passed by the Senate.

Byrd amendment No. 200, to provide a reporting and review procedure for agencies that receive insufficient funding to carry out a Federal mandate.

Grassley amendment No. 208, to require an affirmative vote of three-fifths of the Members to waive the requirement of a published statement on the direct costs of Federal mandates.

Kempthorne amendment No. 210, to make technical corrections.

Kempthorne (for Dole) amendment No. 211, to make technical corrections.

Glenn amendment No. 212, to clarify the baseline for determining the direct costs of reauthorized or revised mandates, and to clarify that laws and regulations that establish an enforceable duty may be considered mandates.

Gramm amendment No. 216, to require an affirmative vote of three-fifths of the Members to waive the requirement of a published statement on the direct costs of Federal mandates.

Byrd modified amendment No. 217, to exclude the application of a Federal intergovernmental mandate point of order to employer-related legislation.

Levin amendment No. 218, in the nature of a substitute.

Levin amendment No. 219, to establish that estimates required on Federal intergovernmental mandates shall be for no more than ten years beyond the effective date of the mandate.

Brown amendment No. 220, to express the sense of the Senate that the appropriate committees should review the implementation of the Act.

Brown/Hatch amendment No. 221, to limit the restriction on judicial review.

Roth amendment No. 222, to establish the effective date of January 1, 1996, of Title I, and make it apply to measures reported, amendments and motions offered, and conference reports.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished acting majority leader is recognized.

Mr. KEMPTHORNE. Mr. President, thank you very much.

SCHEDULE

Mr. KEMPTHORNE. Mr. President, we will continue now the debate on Senate bill 1, our efforts to curb the unfunded Federal mandates.

Last night we were able to come to an agreement so that we can anticipate which amendments we will be debating today. We do not anticipate that there will be any votes prior to 11:30 this morning at which time we anticipate that there will be more than one vote so that we will be voting en bloc.

Mr. President, at this point, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THOMPSON). Without objection, it is so ordered.

AMENDMENT NO. 175

Mr. LEVIN. Mr. President, amendment 175 I believe is now before the Senate, which is the provision that would provide that there be a sunset of this bill on December 31, 2002.

The PRESIDING OFFICER. That is correct. Under the previous order, the Senator from Michigan is recognized to offer his amendment No. 175.

Mr. LEVIN. I thank the Chair.

This amendment would provide a sunset of the language which we will be adopting in S. 1 six years after the effective date of S. 1.

That is a pretty long sunset provision. We had a shorter sunset provision in S. 993 last year. And the shorter sunset provision was adopted unanimously by the Governmental Affairs Committee last year.

There was a discussion in the Governmental Affairs Committee last year relative to S. 993 as to whether or not a 3-, 4-, or a 5-year sunset was the appropriate length of time, and we finally agreed on 1998, which I believe was a 4-year sunset at that time.

S. 1 has no sunset provision. It should. We are skating out on a new pond, and I think probably every Member of this body wants to do a lot more to force us to consider the impact of what we do on State and local and tribal governments. My hunch is that everybody in this body agrees that we should give greater consideration to what the impact is of our actions on the expenditure of taxpayer dollars at a State and local level. I have felt that for a long time. One of the reasons I came to this body is because I felt that the Federal Government, the Congress, did not give adequate consideration to the impact of their actions on local government, in which I was an elected representative. I was president of a local city council in my hometown of Detroit and took great umbrage at what the Federal Government was doing to our budget as well as what its programs were doing to our neighborhood. I came here with that instinct and it has grown.

The question is, How do we do it? How far do we go? To what extent do we use our internal procedures to force consideration of these impacts? Do we go beyond forcing consideration of the estimates to make sure we have the estimates of the impacts? Do we create points of order affecting points of order down the road? That is one of the key differences between S. 1 and S. 993.

I think all of us feel that we should and must do better and that we have had too great an impact on local and State government. But there are procedures in these bills which are complicated, particularly, may I say, in S. 1. S. 1 goes significantly beyond S. 993, which had the support, by the way—S. 993 had the massive support of Governors and local officials last year. S. 1 goes beyond that and, of course, also has the support of State and local officials.

But the new mechanisms that we have in S. 1 are complicated mechanisms. We added a new mechanism yesterday in order to avoid a problem. We added a new mechanism in the Byrd amendment. And it was a good amendment because it got Congress back doing the legislating instead of the agencies down the road. But in order to do that, we created another process force, so we have a number of additional complicated processes in S. 1 now as amended. And we should make sure that we can function OK with them. It is just, to me, sort of the right thing to do, that when you start out on a new road, you make sure that you have a checkpoint along the way. We sunset legislation around here that has been in place a long time to make sure the programs work. As a matter of fact, one of the first votes that I cast to break a tie in the Governmental Affairs Committee was to force the sunset of legislation. It was kind of a controversial vote. I got a whole lot of my supporters mad at me. It was one of the first votes I cast, a few months after I came here. I cast a tie-breaking vote which would have required us to sunset all these authorization bills on programs. The people who supported all those programs were very unhappy because I had a lot of support from them in my first election. They thought I would be jeopardizing programs by sunsetting. I said we ought to review programs every once in a while. It is a pretty good idea. We ought to make sure programs are working. We ought to have action-forcing mechanisms to make sure this Congress, every once in a while, goes back and looks at how a program is operating, to make sure it is not wasteful, to make sure it is carrying out its purpose. I have been a supporter of sunset since the day I came here. I think most of us have talked about sunsetting laws.

It can be argued that this is a process, this is not a program. But we sunsetted some processes around here and when you have a new process, such as this in S. 1, this is very different from that point of order under the Budget Act which looks at what the Federal Government is going to spend and makes an estimate. This is an effort to get an estimate on how much tens of thousands of local governments will need to spend and puts great weight on that estimate, gives it a great effect down the road. Even with the Byrd amendment, it still has a massive impact down the road.

I do not know why, if last year by unanimous vote the Governmental Affairs Committee put a 4-year sunset on S. 993, which was far less complicated than S. 1, we should not put a 6-year sunset on S. 1. We should have some sunset provision. Now, I offered the sunset amendment, which was a lot shorter, in committee this year. It was a 3- or 4-year sunset. It was tabled, regrettably on a party-line vote.

I think part of the reason we have taken so much time on this floor, by the way, is because in committee we had a bill of this magnitude which was introduced on a Wednesday night a few weeks back, went to a hearing the next morning, was supposed to go to a markup the next morning, and we delayed that for a day, then was supposed to come to the floor a day later without a committee report. That kind of discipline which makes it difficult to legislate was enforced in a number of cases on a party-line vote, which is too bad because this was a bipartisan bill, with the then ranking member of the committee, the principal cosponsor, and Senator GLENN, the principal sponsor of S. 993 last year. Nonetheless, that is what happened in committee.

I believe it is reasonable that we have a sunset, just the way most of us, I believe, feel we should do an awful lot more in the area of forcing us to consider the impacts of what we do on State and local governments, since they are the folks who raise the taxes. We should be much more aware of the impact of what we do on their budgets. I think most of us also support sunset. Most of the time we support sunset and talk about it.

Why 2002? Well, two reasons. First of all, the sunset that was tried in committee which was tabled was too short. There was an argument raised that that could somehow or other affect the time that a constitutional amendment to balance the budget would take effect. While I was not sure I followed the argument, nonetheless, there was an argument made. I have to believe, knowing this person who made that argument, that there was a connection that was perceived. That is not the intent of a sunset. This is not to be connected with any effective date in the event we adopt a constitutional amendment to balance the budget. One is that I want to disconnect the date from that issue and make sure there is no

perception that there is some relationship between a sunset provision here and effective date on a balanced budget. So we need a longer sunset to take away that perception.

Second, we need a longer sunset than the one offered in committee, because 2002, which is the date that we would sunset this bill in this amendment, 2002 is the time when the money runs out for the CBO to do these analyses. We have to reauthorize dollars in 2002 to the CBO and that is a logical time to review this process.

So there is a reason to do both the process review as well as to see how much money it takes to keep the process going at the same time. And those are the reasons we have chosen the date 2002 for this sunset provision.

It may be argued that nothing prevents us from reviewing these processes like we can review any program at any time. ''We do not have to wait until 2002,'' it will be argued. ''You do not need a sunset to review a program.'' And that is always true; that is an argument against sunset generically.

But nothing is much more difficult around here than to take away something that already exists. Unless it runs out on its own and you have to review it, it is difficult to take it away, to change it. We may not want to take it away. We may not want to change it. This thing may work just absolutely beautifully.

My fear is that S. 1 goes too far and we are going to find ourselves tied up too often in either knots or in avoidance, and that we are going to concoct all kinds of boilerplate to evade something if it is too tight. If the shoes are going to fit too tightly, we are just going to find a new pair of shoes to get around it. And, believe me, there are ways to get around S. 1.

But we should not be pushed to evade. That should not be the purpose or the effect of what we are doing. The effect of what we are doing is for us to consider the impacts of what we do on State and local government, not to force us to find a way to evade that obligation and responsibility because we have created a process which does not work well. That is not what any of us I hope want to do around here.

But it is difficult to change. One way to make it easier, a little easier, is to sunset something. And, given a 6-year period that is in this sunset provision, different from the one I offered in committee and longer than the one that was in S. 993, I think it is a reasonable approach to give us not only the opportunity but to make sure that we look at this process and to make it a little easier for us to change it one way or another. We may want to tighten it further. But if you bring it to an end and make yourself look at it, you can modify it a lot more easily.

So, for all those reasons, Mr. President, and my colleagues, I believe we should adopt the sunset provision. The 2002 date is longer than the one that was in S. 993. It will permit us to do some review a lot more easily than we otherwise can, and will force us to do that review, as well. We should make sure that we have not put into place something which is either not working because it is being evaded or something which is too tight and can be adjusted or something which maybe should be tightened up in some regard because it has been too easily evaded.

I do hope we can adopt the sunset provision because, again, of all of the uncertainties that exist in this bill, we should really want to review at an earlier time. Let us make it easier on ourselves to do that review by having this reasonable sunset.

Mr. President, I was sorry that I did not yield myself time, because we are under a time agreement. I am wondering how much time I have remaining.

The PRESIDING OFFICER. The Senator has 14 minutes and 50 seconds.

Mr. LEVIN. I thank the Chair and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho has 15 minutes.

Mr. KEMPTHORNE. Mr. President, I yield 5 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my friend and I thank the Chair.

My friend from Michigan makes a very persuasive argument on why we need the sunset.

If there has been one thing that has changed the landscape of this body and the other body over the last year, it has been the added ingredient of more men and women being elected to this Congress who have freshly been serving in local government. I think that is why you see quite a lot of interest in this piece of legislation, and why the leader chose this bill to be S. 1.

I submit to my friend from Michigan that we have laws now that have created a lot of problems and still have sunsets, but yet the law and the programs created under the law still continue.

A case in point is we have not reauthorized the Endangered Species Act, yet it has been funded and it comes on today. Many of those kinds of rules and regulations that we are going to have to deal with that really have an impact on communities—wetlands, endangered species, clean water, all of these acts—are now being funded and are in place, but have not been reauthorized by this Congress.

I suggest, if we have created a problem through this piece of legislation, we can fix it or unfix it here. But when we rely on a sunset to fix the problem, it does not get fixed. In fact, it rolls on and it is a lot easier to say, ''Well, we will not reauthorize that this year. We will continue it and we will continue to fund it.''

If there is one thing that really has the American people mad or made them mad last November, it is this kind of a situation. So the sunset law really does not have much effect. But if there is no sunset law, it forces us to either fix or unfix the problem.

We have bills being funded now that should be brought up for reauthorization and debated on this floor of the Senate and in the House of Representatives.

So if we are trying to get away from this Federal Government, this Washington city, imposing unfunded mandates on local governments, then there should be something that forces us to either fix or unfix a problem created by this legislation.

I am not saying that there will not be some problems created by this legislation, because I have never seen a perfect piece of legislation come through this body or ever signed by the President. So let us make ourselves either fix it or unfix it as time goes on.

I come out of county government. I want to congratulate my friend from Idaho, who has been recognized here for his leadership not only on this piece of legislation, but I think we ought to recognize him for his stamina. He says it has been very good for his diet that he went off of over the holidays; it has been good for him and now he is getting back in shape.

Nonetheless, let Senators not take this piece of legislation and make it a meaningless piece of legislation because the Senator from Ohio said, ''This is a landmark piece of legislation.'' This is a new direction. This makes the Senate take a look at what we do and the impact it has on our State, county, and city governments. I appreciate that.

I would submit that the sunset makes no difference at all. In fact, it alleviates us from taking the responsibility from what we really do in this body. I would not support my friend from Michigan although he makes an argument that is very persuasive.

I would not support this amendment. I yield the floor. I thank my friend from Idaho.

Mr. KEMPTHORNE. Mr. President, I just wish to thank the Senator from Montana. I know of his experience as a local official in Montana, as a county commissioner, and I appreciate the support in not wanting to see a sunset take place in this legislation.

Mr. LEVIN. Mr. President, I am happy to yield 6 minutes to the Senator.

Mr. GLENN. Mr. President, I think this legislation may fall in the category where we put a lot of things that we considered on Governmental Affairs Committee to be some of the grunt work of Government. It is not the spectacular consideration of B–2 and M1–A1 tanks and things like that that are easy to visualize mentally and get a handle on.

I think the choice of the word ''sunset'' may be a very poor choice of words. The word might more properly be ''spotlight'' or ''searchlight,'' that

we will reexamine this thing under a microscope to see whether it is working or not working. It is not automatically terminated. Sunsetting, you are saying you are using that as a forcing device to say what we really will look at this thing and take a good look at it and see what is working and what is not working.

The Senator from Michigan very wisely, I think, tailored this to fit exactly the money flow that is already programmed for CBO. That runs out to 2002. So, in effect, before we reauthorize the money for CBO, we will have to take a look at it. This means that we really have to put the thing under a spotlight, a microscope, and really consider what is going on.

We know around here unless we are forced to do something like that we only rarely will go back and relook at a program and reanalyze it and make sure it is working right. I would say the reason I think this is so important that we do this is that this is historic legislation. It may be some of the grunt work of Government. It may be some of those mundane operations of Government that do not get that much public attention except a few editorials and the local officials who see this as being vitally important, as well as the State officials for the unfunded mandates that have been sent down to them over the years that are now just crushing them in, and crushing them in an economic vise from which they have no alternative but to do what they have been doing, scream to the Federal Government for relief.

This is historic. I believe that this piece of legislation is truly the first piece of legislation that is going to start redefining the Federal, State, and local relationships, the first such redefinition I think since clear back in the New Deal days of Franklin Delano Roosevelt. Prior to Roosevelt, people took care of people. Communities took care of their own people. Neighbors took care of neighbors then. We were not a mobile, flowing society with people and families moving all over the country. In those days, most of the people lived in the same community they grew up in and people took care of their own, and families took care of families, and so on. Then in the days of the Great Depression this country really lost control. The American experience was in danger of going down the tubes. We had whole sections of the country moving out, the Okie going to California, people no longer capable of families taking care of families and communities taking care of themselves. The New Deal came in with all of its proposals that assumed many of those responsibilities that the local communities had had before.

That resulted over the last 60 years in a mass of programs, some went too far, some were absolutely vital to the survival, to the social network and fabric of this country. So most of them were good. Some of them went too far. Now, some of the Federal mandates have so hit the States and local communities that they can no longer survive under this kind of an economic impact without saying the Federal Government has to fund those responsibilities being given to us, or we just can not do it anymore.

So this is truly landmark legislation. We have come to a point where we are redefining this Federal, State, and local relationship. Now, I give that little bit of background to say that is why I think what the Senator from Michigan has done is so important. Because I think to say that if at the end of 6 years when the money runs out for this and we are getting ready to reauthorize the money for CBO to carry out their particularly important responsibilities under this act, at that point, we really will see how this relationship is working. That is all he is saying.

''Let's force ourself to look at it, something we never probably will do unless we are forced to do it by some amendment like this,'' and say that at that time period it will sunset, we will reauthorize and look at it. Nobody is proposing it will just go out of existence at that time. What he is saying, it will sunset and we will have to reauthorize and make sure it is fine-tuned and doing the job it is supposed to do.

I see this only as common sense. That is the reason why I am so glad to cosponsor the amendment and speak in support of it. I think this truly is landmark legislation, and I think it is only common sense that we require ourselves to reexamine this new Federal-State relationship at the end of this first 6-year period. It will probably take a good part of that period, the first 3 or 4 years, to really get this system working well.

We have forced upon ourselves the discipline here saying that we will no longer just pass things without taking into consideration in advance the economic impact on the States and local communities. We are saying we are forcing ourselves to do that, have to make these estimates and we have to have a vote that is required. It is not funded or not authorized for funding. Then we say a point of order will lie against it and we have to have a specific vote to go beyond that point and even consider that legislation.

The PRESIDING OFFICER. The time yielded has expired.

Mr. LEVIN. I am happy to yield one minute additional.

Mr. GLENN. Mr. President, we are saying we force ourselves to do that. This is very complicated, what we have gotten into with the proposed amendments here on the floor. It is very, very complex, very, very, intricate.

Dr. Weiss, our staff director on Governmental Affairs, drew up overnight a flowchart which I wish we had a print of it but I know this proposal will not be visible on TV, but it shows the intricate pattern of what can happen to an amendment once it is submitted, and it either goes through a ''yes'' track or a ''no'' track. This is a very complicated piece of legislation. I know flowcharts like this always look more complicated than maybe are real and practical in every day life, but this is not a simple bill. It redefines the whole Federal, State, and local relationship.

I think Senator LEVIN is quite right in saying we should force ourselves, put in law that we know at the end of this period we will truly have to reconsider this thing. That is exactly what we will do. At that time we will fine-tune it and see where we will go from there. This is redefining the whole Federal-State relationship. It is landmark legislation. The least we can do is look at it at the end of this funding period and make absolutely concern it is working. If not, we will correct it then. I yield back the balance of my time.

Mr. KEMPTHORNE. Mr. President, I yield 5 minutes now to my friend from Maine, who like me is also a former mayor.

Mr. COHEN. Thank you, Mr. President, I rise in opposition to the amendment. I do so with some hesitation since I have very high regard for the former chairman of the Governmental Affairs Committee, now ranking member, and my good friend from Michigan, Senator LEVIN.

I must say that when the Senator from Ohio talked about this being grunt work on the Governmental Affairs Committee, coming from him I think that is a bit of an overstatement. A former marine-aviator-astronaut, we like to joke from time to time, saying what on Earth was he doing, and the fact is he has done a lot. He has done a lot and he continues to do a lot on the Governmental Affairs Committee, but the notion that somehow the Governmental Affairs Committee would not be reviewing and overseeing this particular piece of legislation, I think, is not entirely accurate.

I have worked with Senator LEVIN since I have been in the Senate. If there is one thing we do, it is conduct oversight. Week after week after week we conduct oversight on virtually every facet of our Government. I must say that they are correct, this is landmark legislation. This is a new concept that we are undertaking. A new relationship that we are trying to establish with the States and local communities.

But the notion that somehow, because we passed landmark legislation, that it is cast in concrete, I think, is simply inaccurate. It is subject to change each and every year. We can anticipate that there will be complications developed in the implementation of this act. It will be subject to the law of unintended consequences. We will see permutations and changes and complaints at certain points in terms of how it is going to ultimately function. But that is what our responsibility is on the Governmental Affairs Committee, to oversee exactly how a law is working and is being carried out through regulation and through its implementation.

So the notion that we are passing this law and it will never be subject to change is simply not a reflection of what goes on in virtually every other statutory provision, and certainly not with something as controversial as this.

I am not fond of recalling our experience with the special prosecutor law. Senator LEVIN and I have worked on that for many years now, since 1978, where it has come up for reauthorization every 5 years, and we had a sunset provision. We have discussed on several occasions making that law permanent because we felt we had a vital interest in seeing to it that we had a provision on the books that remained there and did not have to go through that period of time where we were under the gun, the guillotine coming down to chop off that bill.

We knew it was subject to political pressures and, in fact, it happened. At the very end of the Bush administration, because of the opposition that developed for political reasons—mostly on this side but not all—we lost that bill. Nearly half a year or more went by before we could bring it back up because of the political complications that developed with this administration.

So I would like to see the special prosecutor law made permanent and not be subject to sunset because of exactly the kind of pressures that were generated against that legislation.

Mr. President, we can repeal this law if we find that it is not working, if we find that it is contrary to the best interests of our country. If it is not really establishing a proper balance between the Federal and State relationship, we can repeal it at any time. We can change it, we can alter it, we can reshape it. We can do anything we want provided we exercise proper oversight. That is the function of the Governmental Affairs Committee. That is the function of the oversight committee that I now chair, with Senator LEVIN as the ranking member.

So the notion that somehow we need to have a cutoff period with the guillotine coming down unless we take action to reauthorize it, I think, is a mistake. I am sure there will be opportunities for us to reshape and modify the law to make it consistent with our articulated goals.

So for those reasons, I urge that we reject the amendment, or, if a motion is going to be made to table, I urge my colleagues to, once again, support the motion to table.

I want to reiterate my compliments to the Senator from Michigan for offering an amendment that relates to the bill, that is germane and relevant and important.

My compliments also to the Senator from Ohio for his steadfast performance on the Governmental Affairs Committee, doing the grunt work as well as the astronautic work he does and the more exotic items we share in the Armed Services Committee and even the Intelligence Committee.

Of course, I will conclude by commending my colleague who is managing this bill. He has been on the floor, I think, at least a week and a half. It seems like 3 weeks. I commend him for his endurance and his steadfastness in purpose in passing this legislation. I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

Mr. KEMPTHORNE. Mr. President, I just want to thank the Senator from Maine. Throughout the course of this debate, which has gone on for many days, he has often been a strong voice on this legislation, S. 1, to help us curb these unfunded Federal mandates and to deal with mandates across the board. I thank him.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining.

Mr. LEVIN. Mr. President, first, let me thank my good friend from Maine for his usual courtesies. We disagree on this one. We actually agreed on this last year when the Governmental Affairs Committee unanimously put a sunset provision in S. 993. Senator ROTH at that time, who was the ranking member, said—now this relates to S. 993, a less complicated bill than S. 1—Senator ROTH said before we had that unanimous vote that:

> It does strike me that a 5-year period is a pretty reasonable time to test these proposals.

I am not suggesting Senator ROTH supports the sunset in this bill, by the way. I am simply saying that last year on a less complicated bill, with an even shorter sunset, we had a unanimous vote on the Governmental Affairs Committee. And then Senator ROTH last year said:

> It is not that extended, and most sunset provisions that I have been acquainted with have been on a 5-year basis.

Then we took a unanimous vote. In fact, I believe that the Senator from Idaho last year, who is the prime sponsor of the bill, original sponsor of the bill, brought a bill to the floor, and supported a bill that had a sunset provision, a shorter sunset provision and a less complicated bill.

As a matter of fact, last year we received letters from all the mayors and all the Governors and everybody else saying, ''S. 993 is just terrific, don't amend it, don't amend S. 993,'' we were told. Well, S. 993, as it came to the floor, had a sunset provision in it last year.

I am not a former mayor. I am only a former city council president, but I have great respect for local officials, as a former local official, and even if I was not, I would have tremendous respect for local officials. I know what they go through. I know firsthand from 8 years on that firing line. I have been through this grind. So I respect what we are trying to do, what the Senator from Idaho is trying to do and what the Senator from Ohio is trying to do.

I happen to think S. 1 goes too far in terms of a point of order that is going to tie up this place. In terms of its general purpose, I happen to agree. But we have a national purpose to serve as well. We should force ourselves to consider the impact of these bills on local and State governments. We have not done it sufficiently. We should force ourselves to do it, to get these estimates.

But we should also realize that with a new mechanism—a new mechanism—this complicated that it makes sense to have a sunset provision, for all the reasons that sunset provisions are put in laws.

I was intrigued when the Senator from Montana said, ''Well, we don't have sunset provisions in all these other laws,'' like a bunch of environmental laws that he mentioned. I think we ought to. I would have cast votes for sunset provisions in those kind of laws.

As I said before my friend from Maine came to the floor, I cast a tie-breaking vote my first few months in office which got everybody back home who supported me mad at me because I wanted to put sunset provisions in authorization bills to force us to take a look every once in a while and make it a little easier for us to cut back on some of those authorizations.

No one has had more experience with the independent counsel law than the Senator from Maine. My experience with him has only been for two reauthorizations, and he was on it right at the beginning. He was there at the birth. In fact, I think he was the midwife—I do not know if that is the correct gender—but he helped bring it into existence.

On the first reauthorization of the independent counsel law—and we set a time limit on it—we made some changes which were important. I think the history of the independent counsel law shows the value, actually, of setting a time limit. We have made some changes in that law. There was a gap which created a problem, and the Senator correctly points that out, but we have also made some changes to make that a little more accountable. We had an independent counsel that frequently has been subject to criticism, and I think legitimate criticism, for going too far, for spending money which he was not accountable for, for using personnel, for using offices, for travel. And so we have reined in that independent counsel. At least we tried to in some ways. And the reason we did it is we were forced to do it. We had a 5-year limit. Without that 5-year limit, would we have done it? Maybe. I hope so. My

friend from Maine is an optimist and an idealist in many ways, too, and I think his hope and belief is we would have done it. He may be right, but it would have been a lot harder if it had not run out and we were not forced to do it.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Michigan has 1 minute and 20 seconds.

Mr. LEVIN. I will simply close by saying that we had a bill last year which had a sunset, which was unanimously adopted by Governmental Affairs. It was a less complicated bill. It was a shorter sunset. I think good government tells us now have a sunset so that after 6 years we can take a look and either tighten it or loosen it.

By the way, some people assume that we would loosen it after 6 years. Not necessarily. There may be so many loopholes in this law we may want to tighten it after 6 years. And an action-forcing mechanism is a good thing when you have something this complicated. We ought to at least sunset it once—once—to make sure we are forced to come back to it and can more easily change it. It is tough to change things around here, but if they run out it is a lot easier to change things around here. When they expire, you have to do something. Then change becomes a little more easy.

I yield the floor, and if I have any time remaining, I reserve it.

The PRESIDING OFFICER. Who yields time?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, with regard to the comment that the Senator from Ohio made, which I think sets the stage for the historic nature of this legislation, that is, that this is the first legislation since the New Deal in which we are redefining this partnership between the Federal Government, between the national, State, and local components of that—when you put it in that context, it is even harder for me to think that in 6 years we are going to wipe it off the books.

The Senator from Michigan has said that we ought to review programs every once in awhile. Boy, I agree totally. S. 1 may need modifications, but I would not be content, nor do I think would the Senator from Michigan nor do I think would the Senator from Ohio, or any Senator, to wait for 6 years until the point of sunset before we would make those modifications if there was something that truly needed to be changed. We would not wait. I would not wait.

When you talk about what S. 1 provides, S. 1 is about accountability—accountability—so that we will know the cost and the impact of these mandates before we enact them, so that we will know what funds need to be provided to the State and local governments.

So with this being based on accountability, why would you sunset accountability? I do not think that it follows. In our partnership that we are forging in this new relationship with the Governors and mayors, I will tell you that I can stand here and quite enthusiastically affirm that the mayors, the Governors, the county commissioners, the school board administrators, do not want to see a sunset provision in S. 1.

If there is a problem, correct the problem. If there is a problem, correct the problem. But do not wipe the entire legislation off the books.

How long have we been working to deal with these unfunded Federal mandates? I remember at the joint hearing we had, my friend from Michigan, who was the president of the city council in Detroit, saying one of the reasons he came to the Senate was to deal with these types of issues, these mandates. I know that my friend from New Hampshire, the Presiding Officer of the Senate, has talked about this many times. We all want to do something about unfunded Federal mandates. So why is it, now that we are finally going to do something about it, we want to say in 6 years we will take this effort off the books?

What sort of a signal does that send to our State and local partners; what sort of signal does that send to the business leaders of this country that try to base their decisions on some predictability, to say that, well, we will do that but only for 6 years, and then we will see what happens, because at that point who knows what happens.

Mr. President, the sunset is not the solution. The solution is to review, make modifications when necessary, but not to wipe this off the books.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The time of the Senator from Idaho has expired.

Mr. LEVIN. How much time do I have remaining? How many seconds do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 14 seconds remaining.

Mr. LEVIN. Mr. President, I will simply say that last year we were told any amendment to last year's bill would be viewed as a bill killer. That is what we were told by the National Governors Association, the legislatures, and counties. Last year's bill had a sunset in it. They opposed knocking out the sunset last year because they opposed any amendment and sunset was in the bill.

What has changed since last year? The Senator from Idaho supported sunset last year. What has changed since last year? You do not have to wait until 6 years comes to change the bill. There is no implication in a sunset amendment that you have to wait. You can change it tomorrow. It just makes sure we can change things more easily if we decide to do so.

My time is up.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that I be yielded 1 minute, 30 seconds for me, 30 seconds for the Senator from Ohio, so we can just conclude this comment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. KEMPTHORNE. Clarification. The State and local partners last year on S. 993 did not want weakening amendments. Also, last year in the draft on S. 993, I never included a sunset. I did not support a sunset. I did not vote for a sunset last year. But I understand the process. There were some things in S. 993 I may not have agreed to, sunset being one of them, but S. 993 in its form was fine.

I will now yield 30 seconds to the Senator from Ohio.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, last year in support of the Senator from Michigan, we had a letter from the National Governors Association, the National Conference of State Lesislatures, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors.

In their letter to all Senators, they said:

> Not only will we oppose any amendments not supported by the bill managers, Senators GLENN, WILLIAM ROTH, and DIRK KEMPTHORNE, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments.

The reason I support Senator LEVIN is not to say we are going to put this out there and sunset it and there will not be any unfunded mandates in legislation. My view is that we put it out there as a forcing mechanism to make sure that we have to consider fine-tuning. We know around here we have lethargy, we have inertia; we never get around to some of these things unless we put a forcing mechanism on ourselves. So that is the reason I support this. It is not going to sunset it and do away with unfunded mandates. We force ourselves to do it. We are forced to take a look at it.

I yield my time, if I have any remaining.

Mr. EXON. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Michigan which would establish a sunset date for the unfunded mandates bill.

Mr. President, this is a fair and reasonable amendment. Quite frankly, I was surprised that a sunset provision was not included in the legislation before us today. I remind my colleagues that last session's version of the unfunded mandates bill, S. 993, contained a sunset date.

It was my understanding, and also that of many of the negotiators who hammered out this bipartisan compromise, that we would have a sunset date. It is unclear why it fell off the radar screen.

Mr. President, I believe a sunset provision is crucial to the success of this bill. A sunset provision will help—not

hurt—this important piece of legislation. Let me spell out a few of the reasons why.

First, sunset provisions are a common sight on the legislative landscape. For example, the revenues used to fund the Superfund Program sunset this year. We have had sunset provisions in everything from the crime bill to school-to-work to the 1990 farm bill. This is not an alien provision.

Second, we are dealing with brand, spanking new legislation. It is untried and untested. Like a product coming off the assembly line for the first time, this bill needs a trial period so that any problems and bugs can be worked out.

The Congressional Budget Office has expressed concern over the analyses that are required by the bill. In testimony last year before the Senate Committee on Governmental Affairs, Director Reischauer gave a candid assessment of the difficulty in completing these analyses on a timely basis, not to mention, culling reliable information for them.

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

Third, a sunset provision is not going to kill the Unfunded Mandates Program. This bill's time has come and I see nothing on the horizon to lead me to believe that it would be scrapped 4 years hence.

I would also point out that we have 57 cosponsors to date. If the legislation lives up to expectations, we should have no problem marshaling the same support we have today. if not, then Congress can begin the process anew.

Fourth, Mr. President, the unfunded mandates bill does not operate in a vacuum. We have to look at the unfunded mandates bill in the context of the Budget Act.

The caps and other major provisions of the act—including the supermajority points of order—expire in 1998.

Since we will have to revisit the entire Budget Act in 1998, it makes sense to be consistent and provide for a 1998 sunset provision in this piece of legislation as well.

Mr. President, this is a reasonable, well-thought-out amendment. I believe most of our colleagues can support it. In no manner does the sunset provision diminish the effect of the legislation. It merely demonstrates our commitment to quality legislation that meets not only today's needs, but tomorrow's as well.

Mr. ROTH. Mr. President, I strongly oppose this amendment, which would sunset the reforms of this legislation in the year 2002. There may be changes we might want to make to the statute, after it has been in effect a few years. But requiring that it is be sunsetted is another matter entirely.

This is not a Government program, whose value might become obsolete in the future. What we are talking about here mainly is establishing a process for congressional consideration of certain types of legislation. I greatly doubt that the premises underlying this bill will become irrelevant in the foreseeable future. We should always be cognizant of the potential harm of unfunded mandates, not just for a few years.

What makes this amendment additionally objectionable is what it does to the chances of ratifying a balanced budget constitutional amendment. It greatly hinders that likelihood. The Governors and State legislators have spoken loud and clear on this issue. They have said that without protection against unfunded Federal mandates, they have little incentive to ratify such an amendment.

They fear, perhaps not unreasonably, that we might balance our budget on their backs—by shifting our costs to them through unfunded mandates. They would prefer that the protection against this be a part of the balanced budget amendment itself. They would certainly, at a minimum, want the statutory protections of this bill in place—and for a period longer than a few years.

Every statute is of course repealable. But this one, especially, ought not have that fact built into it. To do so would undercut the very purpose of this legislation—to assure State, local, and tribal governments that they have gained respect at the Federal level.

Therefore, I strongly urge rejection of this amendment.

Mr. GRAMS. Mr. President, as a strong proponent of sunset legislation, it is with some irony that I stand today in opposition to this amendment. But there is a clear distinction between sunset amendments that promote fiscal responsibility and those that promote political gamesmanship. And I submit that this amendment is the latter.

Because I believe firmly that Congress must act as gatekeeper when it comes to spending the taxpayers' hard-earned dollars, I authored the Budget Accountability Act as a Member of the House of Representatives. This is sunset legislation that helps ensure greater accountability of Federal programs and Federal tax collections.

For far too long, Congress has conveniently opted out of its oversight responsibilities. Without sunset legislation, Congress allows programs to live on in perpetuity, unchecked, often far beyond any intended usefulness. And without better oversight of our revenue code, we end up with excessive layering of taxes.

Under sunset legislation, revenue, and spending bills are reined in, no longer automatically renewed without regard to their viability or impact on the deficit.

I successfully attached sunset amendments to nearly two dozen bills during my 2 years in the House. But I cannot support my colleague's sunset amendment today. Mr. President, sunsetting the Unfunded Mandate Relief Act has nothing to do with fiscal responsibility. I fact, this amendment runs counter to the principles of fiscal responsibility.

S. 1 is about relief—relief from Government waste, relief from an overreaching Federal Government that can't seem to get its hands out of our pockets. Sunsetting a bill which finally provides this desperately needed relief doesn't make any sense, and distorts the original intent of sunset provisions.

Instead of sunsetting good legislation like the Unfunded Mandate Relief Act, we should be sunsetting the burdensome and inflexible mandates from which S. 1 is designed to protect us.

Mr. President, as everyone in my home State of Minnesota knows, you won't stop a dog from barking by cutting off its tail. If we truly are serious about eliminating wasteful spending and providing tax relief, then I invite the gentleman from Michigan to join me in introducing real sunset legislation. In the meantime, I urge my colleagues to reject an amendment which is strong on politics, weak on policy, and runs counterproductive to the very agenda the American people sent us here to carry out.

The PRESIDING OFFICER. All time has expired.

Mr. KEMPTHORNE. I now move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 197

Mr. GLENN. Mr. President, what is the regular order of business?

The PRESIDING OFFICER. The vote on the motion to table the Levin amendment will be held at 11:30. Under the previous order, the question is on agreeing to amendment No. 197, offered by the Senator from Ohio. There will be a period of 45 minutes for debate prior to a motion to table, 30 minutes under the control of Senator GLENN, and 15 minutes under the control of Senator KEMPTHORNE.

Mr. GLENN. I thank the Chair.

Mr. GLENN. Mr. President, I call up my amendment No. 197 at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Amendment No. 197 is the pending question.

Mr. GLENN. Mr. President, I rise to offer this amendment to ensure the point of order requirements in S. 1 lie in only two places. One of those would be just prior to final passage, before we are getting ready to vote on the bill, for its consideration once it has been through the whole process. The other point where a point of order would lie would be when the bill comes back from a conference where it might have been changed somewhat, and so a point of order could lie at that point also.

I think we need to think about the purpose of this legislation. The purpose is to know what the total impact of a

bill is going to be on State and local governments. They are not really interested, as we go along, in each little piece of legislative maneuvering that we do here in the Senate Chamber. What they want to know when a bill is passed is does it hit them with a $1 billion bill, no bill, or does it hit them with a new responsibility they did not have before? States and local governments want to know what does this legislation do to them? That is what this unfunded mandates bill was all about.

This bill was not supposed to be designed to create a legislative quagmire, some great swamp of procedural difficulties, that would make it so difficult to get things passed that even the finest of legislation would have trouble getting through.

A moment ago, I held up a flow chart that my staff director put together overnight that shows some of the procedures under this bill. I wish we had time to get this thing lined up in a better order on a chart so people could really see all the intricate maneuvers that go on here with the introduction of a bill. Basically, each amendment under the bill as it is now—this would be each amendment:

Step 1, the Parliamentarian would have a ruling on whether a mandate exists.

No. 2, there can be an appeal of that ruling.

No. 3 would be a vote on that appeal.

The fourth step an amendment would have to go through is the Parliamentarian would make a ruling on whether the cost exceeds the $50 million threshold—determining once again if a mandate exists.

No. 5 would be an appeal of that ruling.

And No. 6 six would be a vote on the appeal of that ruling.

No. 7, the Parliamentarian would rule on whether requirements for funding have been met.

No. 8 would be appeal of that ruling.

And No. 9 would be a vote on the appeal.

That is what is in the bill now, and I do not quarrel with that as a procedure except to say what we are trying to do on each piece of legislation is to find out what the total overall impact on the States and local governments will be. That is what they are interested in as a bottom line. That is the purpose of this legislation.

My concern in applying the point of order requirements for CBO cost estimates for State and local funding to floor amendments, as S. 1 currently does, is that the procedure has the serious potential of just unnecessarily bogging down the whole legislative process. Why, when the final total, the final checkout counter total is what we are really interested in, do we want to go through all this self-flagellation of putting ourselves through a tortuous process where an amendment could have a point of order against it when it is proposed and then, if it is still approved, that will have an impact on it being included at as part of the bill because it has been approved. So then another point of order could lie back against the bill itself. We have had appeals from those rulings of the Chair.

At each point, then, as I see it, you have a possibility—if someone is interested in setting up another means of filibuster, this would be an excellent means of doing it. All you have to do is put in a whole bunch of amendments that exceed the $50 million threshold and exceed the point of order and you have bogged this Chamber down for days and days on end. I guarantee it. I do not think there are many Members of this Chamber who would vote to put in a new filibuster process, yet that is basically what we are talking about doing.

We talk about the election last year. Everybody putting something down hangs it on the election of last year, November 8, as to: We want a leaner, better working Government. We want to cut out all the complexities of Government. We want to make Government flow. We want to make Government efficient.

If I ever saw anything that is going to make Government inefficient here in the Senate Chamber, it is a process such as we have before us now that basically sets up a brandnew filibuster process. I know my colleagues on the other side of this issue will say we have to have accountability. The accountability that I think we need to provide in this bill is the final checkout counter accountability of saying we have made our very best effort to assess the costs of legislation. We have considered the costs on the Senate floor. Here is the relationship with the States. And here is the final checkout counter tab, after all the amendments have been considered.

I know they will say at each one of these points, if someone is thinking about putting in a $50 million addition to something or $75 million addition, the accountability requirements of having a point of order lie at that time will mean they will think twice before they put that in.

I do not think that applies in this case. Because at each point where someone thinks about putting in an amendment like that, they are also going to have to consider that total at the time of reckoning at the end of consideration of all the amendments. We still will have a point of order lying against this whole process. In fact, in the amendment process someone may say, we think your $75 million back there was too much so we modify it to another amount by this amendment.

Why should we have gone through a point of order and all the other unnecessary legislative procedures along the way, when what we really want is the final checkout tab? So the accountability requirement here, of making people think twice, I think, is just as strong under this as it would be if we kept this point of order lying at every point along the way, which just sets up another potential filibuster procedure.

I want to pass an unfunded Federal mandate reform bill. I have been wed to this idea with both S. 993 last year and S. 1 this year. We have been on the floor now for 2 weeks with this legislation and much of it has been misinterpreted. Some of this legislation has been misinterpreted back home by some of our papers. I have been castigated as though I was delaying this, which I am not. I have fought and fought to get going on this legislation and get it through. But I want to do it right. I want to do it properly. However, I want it to be very clear I want to pass an unfunded Federal mandate reform bill.

I do not want, at the same time, to tie this legislative process in such a Gordian knot that it will delay good legislation unnecessarily, and I think that is the important point.

Applying points of order to floor amendments will just add bureaucratic overlay nonsense and accomplish very little in this whole process. I believe that kind of nonsensical bureaucratic overlay is not in the interests of the Senate nor is it in the interests of the State and local governments with whom we are trying to deal with in this legislation. To set up new, unnecessary procedures that can be misused by someone who, even with very good legislation, might want to set up a filibuster procedure by putting in new points of order and so on, just does not make any sense to me.

I understand points of order can currently be raised under the Budget Act on amendments that affect direct Federal spending but have not been scored by CBO. However, we are not talking about direct spending here; we are talking about estimates.

CBO has already told us that estimates in some of these areas will be fuzzy estimates at best. But we are still required to consider the best estimates we can get up front in this legislation. That is the purpose of this whole legislation. Fuzzy estimates for mandates, which are a different animal entirely, involve cost estimates for 87,000 different State and local jurisdictions.

Therefore, we should not overload the Senate with these new procedural requirements that are just not necessary on floor amendments. Nor should we at the same time overload CBO. CBO told my staff there is no way they could score all amendments containing possible intergovernmental mandates under the short timeframe that might be required on the floor. They might be able to provide a rough estimate, but it would require them a little longer timeframe to get a better estimate for us that could not be done in the time that legislation completes its consideration here on the floor. I think leaving each amendment subject to a point of order is just a prescription

for additional slowing down of the legislative process for possible real mischief if somebody's objective is to stop a good piece of legislation by overloading it with amendments that would exceed the $50 million threshold limitation.

My amendment would see that the points of order lie in two places. I think this is a very logical. First would be after we know the cost of the bill. We will know the cost of all of the amendments, will have totaled them up and be able to say here is the cost, here is the impact on State and local governments, and now we have to decide. Is that too much? At that point, prior to final passage, the point of order would lie. Then the legislation, if approved, goes to a conference with the House of Representatives and we come back out of that conference. Sometimes the House has different money amounts involved, different requirements.

The conference report, as it comes back after having been negotiated with the House in conference, is sometimes different. At that point, it may have changed dramatically. So we need a second point of order that will lie at that point. That was the second point of order. The main one, of course, was just for the legislation. We have completed it, and ran through it. We have a point of order apply when we know what the total tab is. That is where the main point of order will lie. If it goes to conference, comes back with no change or tiny changes, then the point of order would probably not be required against it again. But if there are big changes that come back out of conference, then a point of order would lie at that point also.

The amounts themselves that have been offered under my bill would not be subject to individual points of order, as is the case in S. 1 where this whole procedure can get so bogged down. My amendment would reduce the potential burden on CBO. It gives them a little more time to refine their estimates as we are considering bills on the floor, and get them to us. This means we will probably have more accurate information. Most importantly, it will prevent us from having the potential of playing a 100-person game of negotiating a complex legislative labyrinth of some kind anytime we consider legislation with intergovernmental ramifications.

Further, my amendment would ensure the conference reports would still be scored, as is the case under S. 1. I have also indicated my willingness to modify the amendment to have the point of order lie against only the mandates at the third reading rather than against the whole bill. The bill would come out—a point of order could possibly lie against it at that point before you even get into amendments—then take all of the amendments in toto and have a vote on the impact of all amendments as a separate point of order.

So I would be willing to do that, if someone thought that was more satisfactory. But there has been no agreement at this time by the other side. I repeat that I think what the States and local governments are interested in is not our legislative quagmire here in the Senate and how we may be able to use something like this as another way of filibustering. What they want to know is—when the final deliberations have been made—what is the total impact on the States and local governments? That is what they want, and that is what should be concentrated on.

I do not agree that this is some great force mechanism of accountability on each person who will somehow hesitate to offer an amendment for fear that they are going to be the ones that put us over the limit of $50 million. I just do not think many people are going to be persuaded that is a big consideration for them, and, in addition, the points of order will be taken up later. A point of order will lay against the accumulation of all of these amendments anyway.

So they are under that same kind of accountability restraint whether the point of order would lie on their individual amendment or the cumulative effect of all of the amendments considered for a point of order at the end of the amending process.

If we allow points of order to lie on each floor amendment as it comes up, it seems to me we are sort of going down the road that will lead to a legislative traffic jam of grand proportions. Amendments will bottleneck legislation like cars on the beltway at rush hour here in Washington.

In trying to fix the problem with unfunded mandates, let us not go down that road. Let us not create legislative gridlock. I believe that my amendment makes sense. I urge its adoption.

I reserve the remainder of my time.

Mr. KEMPTHORNE. Mr. President, I yield now to the chairman of the Budget Committee such time as he would need.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Thank you very much, Mr. President, and I thank the Senator from Idaho for yielding time.

How much time does Senator GLENN have?

The PRESIDING OFFICER. The Senator from Ohio has 15 minutes and 11 seconds, and the Senator from Idaho has 14 minutes and 35 seconds.

Mr. DOMENICI. Mr. President, first, let me say to Senator GLENN that clearly I am not one—and I want to set the record straight from our side—accusing Senator JOHN GLENN of delaying, as an instrumentality here; that he has been on the floor trying not to have this happen. Quite to the contrary. I am reminded, one of the Republican Senators said yesterday, I believe at lunch, ''What are we in for this year when it takes almost 3 weeks on a measure that the Democrats are for?'' That is sort of befuddling. This is going to pass very heavily I believe. We have been here an awful long time. This is an important bill. I want to address it.

First of all, there should be no doubt, Mr. President, that this unfunded mandate legislation and its enforcement are intended to change the culture of the United States Congress when it comes to voting out of committee and on the floor unfunded mandates as defined in this bill. This cannot be approached cavalierly, and there will be a very big burden on committees that have jurisdiction over bills that come to the floor that mandate costs on local government that we do not pay for. Let me describe why I think what the bill does is precisely right and why what Senator GLENN offers is not what we ought to do because of the basic philosophy of what we are trying to accomplish.

First, there should be no misunderstanding. Points of order are not self-executed. They are not self-executed. Somebody has to raise a point of order; point No. 1. A manager of a bill has to be very, very careful that the bill that is brought to the floor is not subject to a point of order, or clearly that manager and that committee understands that it is subject to a point of order, and could fail. That means there will be a lot of care and a lot of political analysis before you bring the bill to the floor. That is number one.

No. 2, we used to say one of the great qualities of the Senate is that if you think of an amendment here on the floor and you are smart enough, you just write it out; send it up there. There is no doubt about that. That is one of the fantastic qualities. And the person I remember so vividly over the years that did that the best was Senator Jacob Javits of New York. He did not need a staff. He would just write one up.

What we are saying now is you can do that. You can dream up an amendment while the bill is working its way through here. But we are changing things a little bit as to one kind of legislation, legislation and amendments that mandate local governments to do things and we do not want to pay for them. In that regard, we say you had better be prepared. You had better be prepared and get the estimated costs. And, if you do not have them or if they exceed the threshold, you had better be prepared to defend on the basis that if someone raises that point of order the Senate of the United States would want to say on that amendment, look, we want to waive it. We think it is so important and we do not think we can quite work out how we pay for it and the like, we think it is so important, we are going to waive it.

Frankly, I think it is important that we understand that the United States Senate understands that after the adoption of this legislation, if the Glenn amendment fails—and I hope it is tabled—when you get ready to offer amendments that affect mandates that are unfunded, you had better be prepared to defend them against the costs

you are sending down. Having said that, if a bill comes to the floor and it exceeds the threshold, it is subject to a point of order. Frankly, then a point of order could be made, it would fail, fall, or it would not. But now we have another tree coming along, and people want to offer an amendment.

If an amendment was subject to a point of order and the Senate, in its wisdom, waives it, then that amount of mandate is waived and there cannot be a point of order against the bill because that was added and increased the threshold. We make the decision, and if we want to waive it, we waive it. If we waive it, then my understanding of what we have done is you cannot then raise the point of order against the bill because the waived mandate makes the bill subject to the threshold dimensions.

On the other hand, it is true that if we do nothing and let the amendment go through—and that is the prerogative of the Senate—then at some point in time, if it made the bill subject to a point of order, you can still raise it at a later time, because that has never been waived.

Frankly, I believe the Senator from Ohio is overly concerned about how this is going to be used. I believe the way it is really going to be used is that people are going to want to get their amendments passed, and they are going to do everything they can to make it right by the Senate and to make it right by this law, and if it is a political issue instead of a dollar issue, they are going to win it. That will be a vote around here. Do you indeed want to do it, even though it breaks the threshold?

I am very proud that we made that simple. There is only a simple majority there, not a supermajority to do that waiving. I think that means that since we do not know the details of the future, we cannot guess everything in the future. We are giving Americans insurance that it can be voted in, if it is very important to America, even if it violates the threshold requirement.

The whole theme of this bill is a process for accountability. Heretofore, at best, we did not know what we were doing in terms of the mandate costs. At worst, we knew it and we were cavalier about it. So what, change this Clean Air Act and if it costs the States $650 million over the next 3 years, so what. Anybody that likes that approach should not like this bill. But we are not going to be doing that anymore.

So when you have a serious amendment and you bring it here to the floor, it is at risk, I say to fellow Senators, if in fact it costs out such that it makes the bill subject to a point of order. And you have to work that. You cannot just come down here and say it is such a neat thing, I dreamt it up; I am running for office and I would like to get it down here. It is going to be put right up front, to the best of our ability, to analyze and if some Senator is careful, he is going to stand up and say I raise a point of order. Again, this is not self-executing. The Senate can clearly, implicitly or explicitly, decide that it does not want to do anything about the fact that we break the threshold and order some mandates that are unfunded.

So in summary, I think we will too narrowly change the culture, change it into a narrow way, and if we let in all the amendments and at the end of it all, we address them. I think the culture has to be changed such that amendments are subjected to the highest scrutiny in terms of the mandate. Essentially, that is the difference between the two. Yes, there is a little more difficulty and it could be a little more cumbersome. But do we really want to make amendments heavily scrutinized and subject to a point of order then and there, or do we want to do less and let them get through because under this amendment there would be no point of order?

You could have a report saying it is a $300 billion mandate on an amendment, and under this you wait until the end when everything is there and then take it up. I think it ought to be done in a very powerful, direct attack on the kind of willy-nilly way that we have assigned these mandates to our cities, States and counties.

Therefore, I hope the Senate will leave the bill intact. I commend my friend from Ohio for his thoughtfulness on this bill. I just believe that we have a basic disagreement. The Senator from New Mexico has a basic disagreement on this. I hope the Senate agrees with the Senator from New Mexico.

I reserve the remainder of my time.

Mr. GLENN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Ohio has 15 minutes 11 seconds.

Mr. GLENN. Mr. President, we disagree, obviously, on this particular amendment. I want to respond first to the comment of my distinguished friend from New Mexico—and he is distinguished and he is head of the Budget Committee. He is very learned in that area and I appreciate that. He commented in the Republican caucus yesterday that one of their persons said, ''If it takes this long for the Democrats to get something through that they want, what does that spell out for the rest of the year,'' or words to that effect.

I want to set the record straight on that, because I think there has been a great deal of gobbledygook about, and misrepresentation of, the Democrats on this side with regard to what we have done on legislation this year—deliberate misrepresentation, as the Congressional RECORD will show. Last year, we passed S. 993. I was part of that, along with Senator KEMPTHORNE. The mayors and Governors said: Do not amend it, do not do anything, put it through. Senator LEVIN brought that up a little while ago. I read that into the RECORD. It was looked upon as very good legislation. Why did we not get it through last fall? We had it out of committee in August, and the Republicans that now accuse us of all kinds of delay had a 3-month scorched-earth, do-not-let-anything-through policy that prevented consideration of unfunded mandates or the Congressional Coverage Act last year.

We finally got down to trying to get a unanimous consent requirement to let those two bills get through last year and could not do it. That is the reason we did not have unfunded mandates and congressional coverage passed last fall, because there was a policy on the Republican side, apparently, to not let anything get through. One day, after one of the votes on an amendment, I followed one of the more vocal members of the Republican Party and happened to walk out by the elevators, and he was saying, ''We beat another one.'' The press people out there said, ''What was it?'' He said, ''Who cares, we beat it.'' That was the general attitude last fall that prevented unfunded mandates, which I was all for. I worked with Senator KEMPTHORNE, who took the lead in this area, and we had that legislation ready and could not get it through. That was the policy last fall. That is the reason we did not get it through. Some of the press look at it this year as just tit-for-tat. The shoe is on the other foot, so we are doing the same thing back to them. That is not true.

When we came in this year, S. 1—which is the successor to S. 993—had been made a priority and was given the prime designation of S. 1. It was designated as the prime bill that we are going to put through this year. I favored that. That designation is great, as far as I am concerned, because I am for unfunded mandates legislation. But the way they wanted to put it through was to ramrod it through with absolutely no changes, to show we are in some sort of legislative drag race with the House, apparently, and that we can beat them. So what was the procedure that was set up? It was set up this way: We will introduce the bill one day, have a hearing the next day, a markup the third day, and include on that third day sending it back to the Senate. That meant when we got to committee, there was not time to do anything on it.

I go to markup usually considering, OK, let us deliberately look at this and make sure we are doing the right job with this piece of legislation. Yet, when we came to markup, they had the hearing the second day, went to markup the third day. We came over with some perfecting amendments. They were not delaying amendments. They were to take care of some of the real problems with this bill. There were some things that had been omitted. Color and race had been left out of the discrimination clauses—substantive matters that had to be taken care of.

We were told there would be no amendments. We tried to put amendments in. They were voted down on a party-line basis, straight across the board. We were informed that there would no amendments approved that day, and we are going to vote this thing back to the floor. They told us that on the floor you can put in all the amendments you want— we will consider all these things on the floor. That is what we were told over and over again. OK. We could not do anything about that. It was also stated we are not going to have a committee report.

Normally around here, for those that are not as familiar with Senate procedure as others may be, a committee report is a very important document. These bills that are put in are in legalese, they refer to different parts of the code, and you have to really decode them to know what you are doing. And so the committee report is what most people rely on to look through and see the provisions that are put in layman's language so you can understand it.

They would not even put a committee report in. They said we are going to bypass that. The minority asked, ''How are you going to take care of explaining this to people?'' They responded, ''Put something in the CONGRESSIONAL RECORD?'' ''How about minority views that are normally considered important?'' ''If you want to put minority views in, you should put them in the CONGRESSIONAL RECORD.''

I have never seen such cavalier treatment of the minority since I have been in the Senate, and that has been over 20 years now.

We object. We had a rollcall vote on the committee report and the minority lost. So it was voted out and brought back here to the Senate.

To show my commitment to unfunded mandates, I voted even then to send it out of committee and back to the floor. I voted with the Republicans to get it out of committee and back to the floor, even though I objected strenuously to the whole procedure at that time.

Now, what happened when S. 1 came to the floor? This is where they say we have been on the floor now 2 weeks with this thing. Actually, what happened is Senator BYRD took up the issue of the absence of a report and objected to it, and for the first 2 to 2½ days, we had a debate on the committee report.

The majority finally agreed that they would do a committee report. ''We will have it for you by tomorrow evening.'' Tomorrow evening came and went and there was no report, so we had to wait another day to get the committee report.

Then it turned out that the Budget Committee had not submitted its report, and there was another day's wait.

So all these things on procedure could have been taken care of had we been able to consider this legislation in committee, as we should have been able to do. This representation that we have somehow delayed this legislation is beginning to wear a little thin with me. That is how we lost the first week.

Then they wanted us to consider immediately taking up the bill because the report was filed. Well, people had not even had a chance to see what was in the report. So it was finally agreed to put it off over the weekend.

So the first whole week of consideration, all last week, was because of the way we were cavalierly treated in committee and because Senator BYRD insisted on those reports being available so all Members would have a chance to know what was in this landmark, historic legislation. And I view this bill as being that kind of legislation.

Now, once we got into the bill on the Senate floor and got past the committee report problem, then what happened? Then the majority said, ''Let's limit amendments.'' Limit amendments.

We had been told repeatedly in committee that we would be able, on the Senate floor, to go through the regular amending process. What happened? Now they want us not to put in amendments. Now they want to move the bill real quick, in a drag race with the House. And we objected to that.

In spite of being told that we would be able to bring up anything we wanted on the floor, cloture was filed when we tried to bring things up.

Well, cloture then flushes out amendments all over the place. Because if cloture is invoked, you cannot put amendments in after that. So everybody had a pet amendment. And in the Senate, not having germaneness rules, you can put in anything you want. We wound up with 117 amendments, which was unnecessary. We could have taken care of the important ones in committee had we been permitted to do that, instead of having this legislative process where we were rolled on the minority side.

Then, meanwhile, negotiations were on as to what amendments were really important. And so we finally wound up with the list being culled down earlier this week, and the ones that are important, we will consider those.

That is an abridgement of how we got to where we are right now.

So I tell you, I am wearing very thin on this thing. I have been accused back home by one of our major Ohio papers of being one who favored this legislation last year but, for political reasons, opposes it this year. That just is flat not true. It just shows that they were not paying attention to what was going on up here on the Hill during the committee process, what we tried to do, my commitment to this legislation, and working it out.

Finally, this week, we were able to work it out. Last night, working until after midnight, we finally got a time agreement on the final amendments that are important. These are substantive amendments.

The Senator from Michigan, who has brought these issues up, is a pit bull on this. He goes into these discussions in committee on how the wording is going to affect the council back in Detroit, where he used to be on the council, and the States, Michigan and every other State across this country.

These are substantive matters that are being proposed here. These are not delay tactics.

If there were any delay tactics, it was because we were trying to get a committee report out that could explain this legislation to every Senator, including the 11 new Senators on the Republican side that have not been familiar with this process at all. There was objection during that first week and that is how we lost the whole first week.

And so, when these little barbs keep flying across the aisle about how we are delaying things, I will tell you, we are not being anti anything. I will tell you what the Democrats are being on this bill. We are being constructive, trying to put legislation through that has the fine points worked out in it so it is operable, so we can make these estimates, so we can make sure that States and local governments are taken care of properly. That is the purpose of this legislation.

The delay that we have had for the first week was all because of the procedures that were used in trying to ram this thing through. We were responding by saying, ''OK, we want to have the normal procedures here so that every Senator will be informed.''

That is sort of how we got to where we are now.

To say that somehow the Democrats are at fault on this is incorrect. I will tell you what the Democrats are doing. They are trying to protect Senate procedure that protects Republicans as well as Democrats.

I am just as committed to getting this unfunded mandate legislation through as I was last year. I think we worked it out. The amendment that Senator BYRD proposed took care of a lot of the problems, and I think makes this legislation a better bill.

Was that substantive? Are we delaying because of the Byrd amendment that was put through yesterday? No, that was excellent legislating of a very important nature on a bill that is landmark legislation. The majority said it was a delay mechanism when we changed the process of how things operate when bills go over to an agency, and what they can do, we would have given up our legislative authority to those agencies. It was agreed on the other side that this was something that we should correct, and we corrected it. Was that substantive? You bet it was substantive; very important for this legislation.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. THOMAS). The Senator has 3 minutes and 17 seconds.

Mr. GLENN. Mr. President, I reserve the remainder of my time.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, we have had these discussions from time to time as to what side of the aisle brought up objections, what side of the aisle delayed progress, and what have you.

I refuse to engage in that, Mr. President, because we have in S. 1 an effort to stop unfunded Federal mandates. And, on behalf of the mayors, Governors, county commissioners, school board administrators, and business men and women of the country, I am not going to engage in what has happened in the past on the fingerpointing.

It is time for us to use that finger and to draw a line in the sand and say, ''From this time forward, let us look to the future in what we can do together.''

This is a bipartisan bill. The prime partner on this bill that I have had has been the Senator from Ohio. I am a Republican; he is a Democrat. This is a bipartisan bill.

It is about time that we quit just saying ''bipartisan'' if we do not mean it, but instead demonstrate to the American people that we can work together, because that is what they told us they wanted us to do on November 8: Stop the fingerpointing at one another and start looking to the future on behalf of the American public that sent us here to do a job for them, instead of being on each other.

I could bring up that last year, when we tried to get S. 993 through, it was the Republicans that cleared the deck. They agreed, even though I had some that wanted desperately to offer amendments, they would withhold all amendments. But we could not clear the deck on the Democratic side, but it does not matter now. That is past. Maybe in different social settings we could go over those war stories. I do not think the public wants the war stories right now. They want the Senate to enact this legislation.

So, Mr. President, with regard to the specifics of the amendment before the Senate, I have to defer to what the chairman of the Budget Committee stated. He has pointed out why he feels this is an objection. I know the Senator from Ohio is sincere in thinking that this may pose another filibuster tool. But in the 2 years I have been here, if there is one thing I have learned, it is that there are ample tools for filibuster, if that is what a Senator wants to do. I do not think this will be used as a new ploy in order to enact a filibuster because there are a variety of other opportunities to do that.

Mr. President, again, I would ask everyone, just as Senate bill 1 is prospective and not retroactive, let the Senate continue, in the debate, to be prospective and not retroactive and show the American people that we can take something that is bipartisan. Let Members pass it in this body today, send it to the House of Representatives, get bipartisan support there, send it to the President, and have him enact this. Then the mayors and Governors and the American taxpayers will say, ''Thank you, folks, you did what we asked you to do, and now why not do it again on something else.''

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I yield myself such time as I may require.

I could not agree more with the distinguished Senator from Idaho. He has been an absolute delight to work with all through the last 2 years on this legislation. We were very cooperative. We have not tried to backstab each other. We have been upfront on every place we have had differences. In some areas we do have differences.

We have a little difference of opinion on this particular item. My proposal, I think, would improve the legislation. The other side does not think that is quite the case, so we have a little difference of opinion. But the basic bill itself will go through.

All through the first part of this debate, through the first week of this debate on the Senate floor, I outlined the procedure that was used to get this legislation through committee, which we objected to. But all through that first week on the Senate floor, I refrained from getting into some of these partisan barbs back and forth and so did the Senator from Idaho. He did not take part in those remarks. All the things that were coming up about the political nature of what the Democrats are trying to do, as though this is a political hotfoot we are using to reply to last year's scorch policy of 3 months in the fall, I stayed out of that. There were many of those remarks back and forth.

I finally got involved with it because I thought it was so unfair. Lo and behold all that drumbeat, drumbeat, drumbeat of how bad the Democrats were and how we were trying to stall this thing, drumbeat, drumbeat, over and over, apparently had some effect, as one of our major papers back in Ohio made scathing remarks about me, sort of implying that I have sold out. The paper implied that the only reason I am participating in the debate in this manner is because of some kind of party retaliation. That is not like me. Well, I would say to the papers, in reference to the little special they had on their editorial page, no, it is not like me, and that has not been me. If they had been paying attention to what was going on here, they would know that is not what was going on.

So when I hear my friend from New Mexico get up this morning and once again make a crack about the Democrats being at fault, and will this be the pattern all through the legislative session, that someone remarked to him about yesterday, obviously my skin is beginning to get a little thin on some of these things—blaming this particular delay just on the Democrats, when I enunciated a little while ago the processes that were used in committee—high handed, cavalier. I cannot put any other words to it than that. I have never seen any minority treated like that in my 20-some plus years here in the Senate.

So that is the reason that I wanted to use some of my time on this amendment. My remarks did not apply directly to this amendment.

Let me say to my friend from Idaho, I think his remarks are exactly on, and I hope he takes the opportunities in the conference to get some of the other people to stop making these zingers across the aisle that are so unwarranted because we know what happened in committee and we know what happened last year.

He and I worked together to try to get this together. He said we could not get it through on the Democratic side, we finally were delayed, could not get it through the floor for regular debate as would normally be the case. We were only able to get it on a unanimous consent. And one Senator objected to unanimous consent at that time and that prevented us from getting it through last year without amendments.

Mr. President, if this bill is enacted as currently written, with points of order applied to amendments, it will be almost impossible to escape a point of order on an amendment whose cost estimate—assuming you can get it—exceeds the threshold.

I ask unanimous consent to print in the RECORD what every amendment will have to contain, according to section c(1)B of the bill, if it contains a mandate of at least $50 million.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

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

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

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

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

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

the estimate determined under paragraph (5) for each fiscal year;

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

''(III)(aa) provides that if for any fiscal year the responsible Federal agency determines that there are insufficient appropriations to provide for the estimated direct costs of the mandate, the Federal agency shall (not later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

''(1) a statement that the agency has determined, based on a re-estimate of the direct costs of a mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of the mandate; or

''(2) legislative recommendations for either implementing a less costly mandate or making the mandate ineffective for the fiscal year;

''(bb) provides expedited procedures for the consideration of the statement or legislative recommendations referred to in item (aa) by Congress not later than 30 days after the statement or recommendations are submitted to Congress; and

''(cc) provides that the mandate shall—

''(1) in the case of a statement referred to in item (aa)(1), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60 day period;

''(2) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under item (aa)(2) unless Congress provides otherwise by law; or

''(3) in the case of a mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

Mr. GLENN. Could we have unanimous consent to have Senator LIEBERMAN have 1 minute?

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

Mr. LIEBERMAN. Mr. President, and my colleagues, I just want to add a word to say, as this debate has gone on, the Senator from Ohio, as is not just his habit but is at the very core of his nature, has conducted himself in a most thoughtful and serious way. In the 6 years I have been privileged to be a Member of the U.S. Senate, I do not think I have known a less partisan Member than JOHN GLENN of Ohio.

This complicated bill, with ramifications on just about every section of the United States Code annotated, I think we made a better bill as this process has gone on. A good part of the responsibility for making it better goes to the former chairman of the Governmental Affairs Committee, on which I am privileged to serve, and now the ranking Democrat, the Senator from Ohio. Whatever is being said in Ohio by any newspaper, I do not know, but if they are critical of Senator GLENN in his conduct on this bill, in my respectful opinion, they are wrong.

I thank the Chair.

Mr. KEMPTHORNE. Mr. President, I yield back the remaining time. I 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.

The yeas and nays were ordered.

AMENDMENT NO. 174

The PRESIDING OFFICER. Under the previous order, the question recurs on amendment No. 174, offered by the Senator from Michigan. Debate will be limited to 30 minutes equally divided and controlled by the Senator from Idaho and the Senator from Michigan.

Mr. KEMPTHORNE. Mr. President, acknowledging that we have a unanimous-consent agreement, I believe that votes would begin to occur at 11:30.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, could I make an inquiry on that. Do I understand that the vote on the first amendment whose debate has been completed pursuant to the unanimous-consent would begin at 11:30?

The PRESIDING OFFICER. We have two votes beginning at 11:30.

Mr. LEVIN. But if debate is not completed with the time allotted by the unanimous consent, the vote would occur on that amendment at a later point, is that correct?

The PRESIDING OFFICER. In the opinion of the Chair, the Senator is correct.

Mr. KEMPTHORNE. Mr. President, what I am suggesting is to offer another unanimous-consent agreement that we would move the votes that have been ordered, so that they would not occur at 11:30, but they would move to a time after we have completed the debate on this next amendment.

Mr. LEVIN. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the previous vote time, which was to occur at 11:30, be moved so that the first vote will occur after all time has been consumed in debate on the remaining two amendments.

Mr. GLENN. Reserving the right to object, and I will not object, is there any idea of how much that would move the vote forward?

The PRESIDING OFFICER. It will be approximately 30 minutes before the next vote.

Mr. GLENN. I will not object.

Mr. KEMPTHORNE. It is my understanding it will be no later than 12 o'clock noon.

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

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I would like to ask a few questions of the manager relative to the way in which amendments would be dealt with.

The PRESIDING OFFICER. The Chair advises Senators time has been deducted equally. There was not the suggestion of the absence of a quorum.

Mr. LEVIN. I thank the Chair. How many minutes do I have remaining?

The PRESIDING OFFICER. Two and a half minutes.

Mr. LEVIN. Mr. President, two questions I would like to ask my friend from Idaho about how the amendment process would work. It really goes back to the Glenn amendment. First, the bill says that the requirement that there be an estimate apply to bills and resolutions. Is it the intent of the manager, the sponsor, that amendments offered on the floor are not subject to a point of order because they fail, when they are offered, to have a cost estimate?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. It is correct then that they would not be subject to a point of order?

Mr. KEMPTHORNE. Mr. President, not based strictly because they do not have a cost estimate.

Mr. LEVIN. No, but a point of order would not lie for the failure of an amendment, as it is offered, to have a cost estimate in it, is that correct?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. However, a point of order might lie if an argument is made that that amendment exceeds the threshold of $50 million, is that correct?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. And if the Budget Committee is unable to make that determination and so informs the Chair, would a point of order lie? As a general matter, would it lie?

Mr. KEMPTHORNE. Mr. President, again, in looking to the Budget Act and what may be some precedent that we could point to, if in fact CBO were to determine and so state that regardless of how much time they had they simply could not come up with an estimate, the Parliamentarian, as I understand it, may use that as a basis to recommend that no point of order would lie because there would not be basis.

However, it is not to suggest that that would exclude other elements that the Parliamentarian might consider in still coming to the conclusion that a point of order could still lie.

Mr. LEVIN. Is it fair to say that it is the understanding of the manager that generally, if there is no basis upon which to rule that the threshold is exceeded, if there is no basis to rule, that generally a point of order would not lie? However, it is not your intention to preclude the Chair from ruling that a point of order would lie if the Chair has information from other sources

than the Congressional Budget Office and the CBO that the threshold is exceeded?

Mr. KEMPTHORNE. I would suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, I will restate my question.

I understood the Senator from Idaho to say that the Chair would not be precluded basically from upholding a point of order, or ruling that the threshold has been exceeded even if there is a statement from the Congressional Budget Office and the Budget Committee that it is unable to state that the threshold is exceeded. The Chair would not be precluded, from what the Senator said.

However, my question is, is it his intention that it would generally be the case that if the Chair has no basis to rule that a point of order would lie for the threshold being exceeded, that it would therefore not rule that a point of order lies?

It is my intent to ask the chairman of the Budget Committee, by the way, these questions as well when he is able to return to the floor. But I think it is important we get the intent of the manager on this question. It is a very important question as to whether this process can function.

Mr. KEMPTHORNE. Mr. President, in response, it is our intention that it would be the prerogative of the Parliamentarian to make that determination. We would not then establish here the parameters by which the Parliamentarian would make his recommendation.

Mr. LEVIN. I understand.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator has 5 additional minutes.

Mr. LEVIN. I am wondering if I could ask the Senator from Idaho on his time since——

Mr. KEMPTHORNE. Mr. President, I will yield 2 minutes, depending upon the questions, to the Senator from Michigan.

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

Mr. LEVIN. I thank the Chair and my friend from Idaho.

Now, this is the situation I wish to give to the Senator. CBO and the Budget Committee say there is no basis that they have to make an estimate that the threshold is exceeded. They have no basis, and they so inform the Chair. This is relative to an amendment.

If there is a statement from the CBO and the Budget Committee that there is no basis for them to state that the threshold is exceeded, then what other sources would the Chair go to to have a basis to uphold the point of order?

I ask this because the bill itself states on page 25, line 20, that ''for purposes of this subsection, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.'' That is what it says in the bill.

Now, if there is some other basis besides the Budget Committee or the CBO upon which a Chair could rule that a threshold is exceeded, I think then we ought to have it in the bill. Does the Chair read newspapers or does the Chair—what are the other sources that the Chair would rule on if the Budget Committee and the CBO has told the Chair that there is no basis upon which it can say that the threshold is exceeded?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, we have been instructed by the Parliamentarian that two other elements that could be considered will be the actual legislation from the committee itself, and it could be precedent that has been established.

Mr. LEVIN. But the legislation would be available to the CBO and to the Budget Committee, would it not? And precedent would be available to the CBO and the Budget Committee, would it not?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. I am sure that it would. I do not know it necessarily then would be the only tool that CBO and the Budget Committee would use in determining the estimate, but again I would not preclude the Parliamentarian from examining the legislation or precedents in their purview as to whether or not the point of order will lie.

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. KEMPTHORNE. Mr. President, as I understand it we have 2 minutes remaining on the amendment that is pending before us?

The PRESIDING OFFICER. The Senator is correct.

Mr. KEMPTHORNE. I ask my friend from the State of Michigan if he would like to use additional time remaining?

Mr. LEVIN. I thank my friend. I ask unanimous consent I be allowed to use 3 minutes from my next amendment so I do not take up additional time of the Senate.

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

There being no further request for time, the Senator intends to use it now, 3 minutes to be extracted from then?

Without objection, it is so ordered. The Senator may proceed.

Mr. LEVIN. That is correct.

I thank my friend for his offer, but I do not want to delay the Senate so I have pulled forward 3 minutes from my next amendment.

Mr. KEMPTHORNE. Mr. President, just a parliamentary inquiry, it will be my intention to move to table the amendment. But would I do that following the expiration of the Senator's 3 minutes?

The PRESIDING OFFICER. The Senator is correct.

The Senator may proceed.

Mr. LEVIN. Mr. President, I am just going to use a couple of minutes because I want my friend from Connecticut to at least have a minute. We can pull forward more time from my next amendment. This amendment is intended to address the situation where there is a significant negative competitive impact on the private sector when you have a situation where there is competition, be it with a hospital, be it with a waste disposal, be it with an incinerator—whatever it is.

The amendment I have offered says if the committee certifies that there is a significant negative competitive impact on the private sector that then this special point of order would not lie. They would have to make that certification that there is added protection in that point of order, which takes us a step beyond last year's bill.

Where the committee itself certifies that there be a significant competitive disadvantage to the private sector if the public sector were paid to do it, or if the mandate were waived as to the public sector, then this additional step should not be taken.

I have sought to modify my amendment to make it a sense-of-the-Senate resolution. I have not been allowed to modify it. That is the rules of the game. So we will be voting on my original amendment.

If I have run out of time—I ask the Chair if I have any time left?

The PRESIDING OFFICER. The Senator has about a minute and 15 seconds.

Mr. LEVIN. I yield that time to my friend from Connecticut, and if the Senator from Connecticut needs additional time I then ask unanimous consent to pull forward some additional time from my next amendment.

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

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Michigan. I am glad to rise in support of the amendment that is currently being discussed, offered by the Senator from Michigan.

Last week I discussed at some length concerns that I have about the competitive disadvantage that will result to the private sector from this legislation. In particular, I discussed my concerns with the provision that creates a presumption that the Federal Government will pay 100 percent of the costs of the mandates, even where those mandates apply in the same manner to

the public and private sector. Even the opponents of the amendment I introduced last week, which was defeated, acknowledge that there were in fact many areas covered by the provisions of this bill, S. 1, where the public and private sectors do compete.

The sponsors of the legislation have stated in response to inquiries from colleagues they have sought to address that concern about the disadvantage to the private sector by requiring that the authorizing committee state in its report the degree to which Federal payment of public sector costs or the termination of the mandate would affect the competitive balance between State or local governments and the private sector, and any steps that the committee has taken.

Mr. President, I ask unanimous consent for an additional 2 minutes to complete my statement pursuant to the generous offer of the Senator from Michigan, that coming from the time which he has been allocated on the next amendment.

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

Mr. LIEBERMAN. Mr. President, as I set forth during the discussion of my amendment last Thursday, I do not believe it is appropriate to create a presumption of 100-percent Federal payment in any case where a law applies in the same manner to both the public and private sector. But certainly where we have a committee finding that such a disadvantage to the private sector will be created, the presumption of 100-percent funding is totally inappropriate. Otherwise, what is the point of the committee stating whether or not there will be a competitive disadvantage created? The Levin amendment would make certain that the presumption does not apply in those circumstances.

Mr. President, I strongly support the Levin amendment, but I want to emphasize that it does not go far enough. As Senator ROTH indicated in the debate relating to my amendment: we know right now that the public and private sector compete in many areas covered by S.1.

Let me take a few minutes to read from two letters I received on these issues after the debate on my amendment concluded. The first letter is from the International Association of Environmental Testing Laboratories dated Jan. 19, 1995, in support of the amendment I offered last Thursday. It states:

S. 1 as currently written threatens public health and the environment and disadvantages commercial environmental testing laboratories that provide the same services as government laboratories. * * * (B)y exempting government laboratories from costs associated with important quality standards compliance, this legislation disadvantages commercial testing laboratories that provide the same services as government laboratories. Such a double standard not only hurts private sector laboratories, it also reduces tax revenues resulting from commercial laboratory operations:

I ask unanimous consent that the full text of this letter be included in the RECORD.

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

(See exhibit 1.)

Mr. LIEBERMAN. The second letter is from the American Legislative Exchange Council to Speaker GINGRICH dated Jan. 12, 1995. This group describes itself in the first paragraph of the letter as the ''nation's largest bipartisan individual membership organization of state legislators dedicated to the principles of free enterprise and individual liberty''. The letter states:

We are concerned that efforts underway to address mandates on state and local governments will unfairly impede the balance of competition, regulating private industry to meet standards not required by the public sector. Everyday private industry competes against the public sector to provide Americans with goods and services in areas such as transportation, the environment and many others. One example of this is waste water treatment facilities. Under the current mandate reform scenario, regulations on state and local governments would be lifted on many services. Unfortunately, private industry would not be exempted from these same regulations. Instead, they would continue to be forced to pass the costs of these regulations on to the consumer. This problem would obviously create an unfair advantage in favor of publicly operated services.

I ask unanimous consent that the full text of this letter be included in the RECORD.

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

(See exhibit 2).

Mr. LIEBERMAN. Mr. President, the Levin amendment would take an important step forward in eliminating unfair advantages to the private sector that may result from this legislation. I urge adoption of the amendment.

EXHIBIT 1

INTERNATIONAL ASSOCIATION OF ENVIRONMENTAL TESTING LABORATORIES,
Alexandia, VA, January 19, 1995.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LIEBERMAN: The International Association of Environmental Testing Laboratories (IAETL) is writing to support the Kerry, Levin, Lieberman proposed amendment to Senate Hill No. 1 concerning unfunded mandates. As a trade association representing two-thirds of the environmental testing industry, IAETL supports your proposed amendment concerning the even-handed application of environmental laws to apply to both the public and private sectors. S. 1 as currently written threatens public health and the environment and disadvantages commercial environmental testing laboratories that provides the same services as government laboratories.

Environmental laboratories provide critical analysis of soil, air, and water for toxic contaminants. Such analysis is the basis for important public health and environmental decisions. IAETL believes that public health and the environment are threatened by exempting government laboratories from standards designed to ensure the quality and reliability of laboratory data.

In addition, by exempting government laboratories from costs associated with important quality standards compliance, this legislation disadvantages commercial testing laboratories that provide the same services as government laboratories. Such a double standard not only hurts private sector laboratories, it also reduces tax revenues resulting from commercial laboratory operations.

Accordingly, IAETL supports your proposed amendment to S. 1 and suggests that you add the following bullet to your ''Dear Colleague'' letter concerning this issue:

Public laboratories, which provide analysis of soil, air, and water to protect public health and the environment from toxic contaminants, would be exempt from quality standards that apply to commercial laboratories performing the same critical services.

IAETL looks forward to working with you on the issue of unfair competition between the public and private sector. Please feel free to contact me should you have any questions concerning this issue.

Sincerely,

LINDA E. CHRISTENSON,
Executive Director and General Counsel.

EXHIBIT 2

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
Washington, DC, January 12, 1995.

Hon. NEWT GINGRICH,
House of Representatives, Washington, DC.

DEAR SPEAKER GINGRICH: The American Legislative Exchange Council (ALEC), the nation's largest bipartisan individual membership organization of state legislators dedicated to the principles of free enterprise and individual liberty, wishes to express concern with the issue of federal mandates as it relates to services provided by both the public and the private sectors.

We are concerned that efforts underway to address mandates on state and local governments will unfairly impede the balance of competition, regulating private industry to meet standards not required by the public sector. Everyday private industry competes against the public sector to provide Americans with goods and services in areas such as transportation, the environment and many others. One example of this is waste water treatment facilities.

Under the current mandate reform scenario, regulations on state and local government would be lifted on many services. Unfortunately, private industry would not be exempted from these same regulations. Instead, they would continue to be forced to pass the cost of these regulations on to the consumer. This problem would obviously create an unfair advantage in favor of publicly operated services.

As we have see in the early days of the 104th Congress, just as laws are applicable to its citizens, they should also apply to Members of Congress. The same premise holds true in this case. Private industry should not be made to comply with regulations that exempt public sector providers. The rules must be consistent.

Thank you for your time. We appreciate your attention in this matter.

Respectfully,

Senator RAY POWERS (CO),
National Chairman.
SAMUEL A. BRUNELLI,
Executive Director.

AMENDMENT NO. 174

The PRESIDING OFFICER. The question occurs on amendment No. 174.

Mr. KEMPTHORNE. Mr. President, I yield back my time and move to table.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. This vote will occur after the previous two already ordered.

AMENDMENT NO. 219

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 219 offered by the Senator from Michigan [Mr. LEVIN]. Debate on the amendment is limited to 10 minutes equally divided.

The Senator from Michigan has already utilized his time and so the remaining time is under the control of the Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I suggest the absence of a quorum and ask unanimous consent it be charged to my time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant 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. Without objection, it is so ordered.

Mr. KEMPTHORNE. Mr. President, I yield 2 minutes to the Senator from Michigan so that he can explain his amendment.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I have expressed the concern that there is a feature in this bill that would require estimates for the life of a mandate which could go 20, 30, 40 years. It could be unlimited, and that becomes an impossible task. We are kidding ourselves if we think we can get anything reasonable beyond the first 5 years, frankly, or 10 years, surely.

So this amendment puts a cap on the estimate requirement and says that in no event shall the estimate have to be for any year beyond 10 years. We have already acknowledged that the CBO has the right to tell us that they cannot estimate these costs, and that holds through for any number of years. The CBO usually estimates direct costs for 5 years, and that is it.

So this says for a maximum of 10 years, and, if the CBO can only do 5, obviously it will do 5. But this finally will set a cap on what otherwise would be an impossible task.

I understand that the managers of the bill will accept this amendment. I will be happy to have a voice vote on it. I do not need a rollcall if they accept the amendment.

Mr. KEMPTHORNE. Mr. President, I appreciate the efforts of the Senator from Michigan. I am prepared to accept this amendment.

Mr. GLENN. Mr. President, I accept it on our side, also.

Mr. KEMPTHORNE. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 219) was agreed to.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 175

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table amendment numbered 175 offered by the Senator from Michigan [Mr. LEVIN]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

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

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—54

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

NAYS—43

Akaka	Feingold	Mikulski
Baucus	Ford	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Harkin	Murray
Boxer	Hollings	Nunn
Bradley	Jeffords	Pell
Bryan	Johnston	Pryor
Bumpers	Kennedy	Reid
Byrd	Kerrey	Robb
Campbell	Kerry	Rockefeller
Conrad	Kohl	Sarbanes
Daschle	Lautenberg	Simon
Dodd	Leahy	Wellstone
Dorgan	Levin	
Exon	Lieberman	

NOT VOTING—3

Gramm	Inouye	McCain

So the motion to lay on the table was agreed to.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the two remaining stacked rollcall votes be reduced to 10 minutes each.

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

VOTE ON AMENDMENT NO. 197

The PRESIDING OFFICER. Under the previous order, the question recurs on the motion to table amendment No. 197, offered by the Senator from Ohio [Mr. GLENN]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN], are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] and the Senator from Louisiana [Mr. JOHNSTON], are necessarily absent.

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

The result was announced—yeas 53, nays 43, as follows:

[Rollcall Vote No. 58 Leg.]

YEAS—53

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

NAYS—43

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Glenn	Murray
Boxer	Graham	Nunn
Bradley	Harkin	Pell
Breaux	Hollings	Pryor
Bryan	Kennedy	Reid
Bumpers	Kerrey	Robb
Byrd	Kerry	Rockefeller
Campbell	Kohl	Sarbanes
Conrad	Lautenberg	Simon
Daschle	Leahy	Wellstone
Dodd	Levin	
Dorgan	Lieberman	

NOT VOTING—4

Gramm	Johnston	
Inouye	McCain	

So the motion to lay on the table the amendment (No. 197) was agreed to.

Mr. KEMPTHORNE. Mr. 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.

AMENDMENT NO. 174

The PRESIDING OFFICER. Under the previous order, the question recurs on the motion to table amendment

numbered 174, offered by the Senator from Michigan, Senator LEVIN.

The yeas and nays have been ordered. The clerk will call the roll. This will be a 10-minute vote.

The bill clerk called the roll.

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

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Hawaii [Mr. INOUYE], and the Senator from Louisiana [Mr. JOHNSTON] are necessarily absent.

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

The result was announced—yeas 52, nays 43, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—52

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

NAYS—43

Akaka	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Bryan	Heflin	Pell
Bumpers	Hollings	Pryor
Byrd	Kennedy	Reid
Campbell	Kerrey	Robb
Conrad	Kerry	Rockefeller
Daschle	Kohl	Sarbanes
Dodd	Lautenberg	Simon
Dorgan	Leahy	Wellstone
Exon	Levin	
Feingold	Lieberman	

NOT VOTING—5

Breaux	Inouye	McCain
Gramm	Johnston	

So the motion to lay on the table the amendment (No. 174) was agreed to.

Mr. KEMPTHORNE. Mr. 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. KEMPTHORNE. Mr. President, I ask unanimous consent that the following amendments be withdrawn from consideration of the bill: Graham, No. 189; Levin, No. 176; Glenn, No. 195; Byrd, No. 200; Wellstone, No. 205; Grassley, No. 208; Kempthorne, No. 211; Glenn, No. 212; Byrd, No. 217; Brown, No. 220; Graham, No. 216; Brown, No. 221.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

So the amendments (Nos. 176, 189, 195, 200, 205, 208, 211, 212, 216, 217, 220, and 221) were withdrawn.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, under the unanimous-consent agreement that was entered into last night, the order provided that after consideration of the next amendment, which involves S. 993, the bill of last year, which Senator LEVIN will present, 45 minutes for Senator LEVIN's use, 15 minutes for Senator KEMPTHORNE's use, Senator BYRD was to be recognized for 20 minutes prior to the vote on S. 993.

I ask unanimous consent that Senator BYRD's 20 minutes be moved to the time period following third reading of the bill before the final vote.

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

AMENDMENT NO. 218

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of amendment No. 218 offered by the Senator from Michigan [Mr. LEVIN]. There will now be 1 hour for debate, controlled as follows: 45 minutes under the control of Senator LEVIN, and 15 minutes under the control of Senator KEMPTHORNE.

Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, last year we had a bill which came out of the Governmental Affairs Committee, S. 993. It was a good bill, a bill that I believe had something like 60 cosponsors or more, 67 cosponsors, including the Senator from Ohio, the Senator from Idaho, and many others. It was a bipartisan bill with strong bipartisan support.

The bill not only had the support of about two-thirds of the Senate as cosponsors, but S. 993, which came out of the Governmental Affairs Committee last year, had the strong support of the Governors, the mayors, local elected officials, the State legislators, the counties, the cities.

We got letters about S. 993 last year, strongly urging the support of S. 993, going so far as to say that the Governors and the State legislators and the counties and the cities' mayors would oppose any amendments to S. 993. That is this document, October 6:

> The nation's State and local elected officials strongly urge the U.S. Senate to pass the state-local mandate relief bill, S. 993, before adjournment.

Later on in the letter:

> We view all amendments as an attempt to defeat our legislation.

The Conference of Mayors, in a letter to Senator KEMPTHORNE last year said:

> On behalf of the United States Conference of Mayors, I am writing to express my strong support for the Kempthorne-Glenn bill, S. 993, and to urge immediate passage of the legislation by the U.S. Senate.

They concluded by saying:

> It is our belief that the bipartisan consensus we have built on this critical legislation will carry S. 993 to enactment and we pledge to oppose any and all amendments which would weaken the consensus bill.

They say, ''any and all amendments.''

Then the President of the Conference of Mayors said:

> I would also like to echo a statement that you [addressed to Senator KEMPTHORNE] often make when talking about unfunded Federal mandates. The enactment of the Kempthorne-Glenn bill will not be the end in our mutual battle against unfunded Federal mandates, but the true beginning. S. 993 will provide us with a powerful weapon against new individual mandates bills, but it will remain our responsibility to carry on the battle with all the strength we can muster.

If not a consensus, we had a near consensus of local officials for S. 993.

S. 993 achieved a major goal. When you read the purposes of the bill in front of us, S. 1, S. 993 had the same purposes. If not verbatim it is pretty close to precisely the same purposes. Now I am reading from S. 1, but stating that S. 993 had the same purposes as S. 1, same stated purposes as S. 1:

> To end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential [State, local and tribal] governmental priorities.

That was also a purpose of S. 993; to assure full consideration by Congress of Federal mandates.

Next:

> To assist Congress in its consideration of proposed legislation, establish and revise Federal programs containing Federal mandates affecting States, local governments, tribal governments and the private sector, by providing for development of information, establishing a mechanism to bring such information to the attention of the Senate and the House, to promote, inform and deliberate decisions on the appropriateness of Federal mandates in any particular instance.

These are important purposes. They are also the purposes of S. 993. S. 993 accomplishes what S. 1 does in all but a few ways. And it is those few ways I will get to in a moment.

S. 993 requires a CBO estimate for both the private and the sector public costs. S. 993 contains a point of order if there is no cost estimate when a bill comes from a committee to the floor. S. 993 contains a point of order if the committee fails to authorize appropriations to the level of the cost estimate. But that is where S. 993 stops. It does not go further and create this Rube Goldberg mechanism which is in S. 1, which has become more and more complicated in some ways on the floor, and, happily, improved in some ways on the floor.

But the mechanism, that Rube Goldberg mechanism that S. 1 has for that additional point of order, remains and will bedevil this body to the benefit of nobody, including local officials. Because the more we try to tie ourselves up in a knot to protect the substantive

issue, the greater is the instinct to circumvent it with boilerplate, with loopholes, and there are many.

So if we do not come up with a mechanism which is workable, if we really think we are going to create here, by a mechanism which is going to so tie this place up that we are going to reduce mandates purely from the weight of the process, what we are underestimating is the capability of Members of Congress to write boilerplate into authorization bills which avoids the cumbersome mechanism. So we are not doing the State and local officials any good by adding this new point of order with its cumbersome mechanisms.

I believe the Senator from California wanted me to yield at this time, as she has done some wonderful work on a chart which actually fits in perfectly at this time. Ordinarily I would ask unanimous consent I be allowed to yield to another Senator without it showing as an interruption in the RECORD, but in this case I think, with the chart behind her, it is going to fit in very nicely with where I am in my remarks.

So I yield to the Senator from California 4 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I say to the Senator from Michigan, I thank him on behalf of many Senators for the role he has played in this debate. Along with both managers, I think he has brought these issues to the fore, and he has been persistent. Some of them have not been glamorous, but he has tried to protect the rights of Senators to offer amendments, he has tried to make everyone understand what this legislation really does.

For many days I have had this chart on the floor. I am not much of a chart person, but I guess I am turning into one because I think a picture is worth many words and we have had many words to describe this bill.

S. 993, which Senator LEVIN has offered to us as a substitute bill, is, in my view, a far superior bill to the bill that is before us, S. 1. It is intelligent. It reaches to the problem.

I come from local government, as does the Senator from Michigan. I did not like the unreasonable mandates when they came, but I want to make sure this U.S. Senate can respond to the people, to the children, to the elderly, to our families, to our people if in fact we need to move swiftly. And look what has happened with S. 993.

It started off as a very good concept and a very good bill. If you look here at the chart, I say to my friend, S. 993 stopped the process right here. All this green did not apply. We had the committee report a bill out and get an estimate from the CBO. That estimate of costs came here to the Senate floor, and if it was not done there would be a point of order and that was it. We would have to know, if we were doing something, what it costs. That is smart. That is right. And we would have to take action. Then we got to S. 1, and all this green was added. Let me explain to the people what this means.

Everything in the green here deals with parliamentary procedure. Everything in the green here, and that is half the procedure. So half of S. 1 deals with unelected people making decisions for this Senate. People in the CBO are unelected. They may be wonderful, but they are unelected. People in the Parliamentarian's office may be great, brilliant—but they are not elected. They will be making life or death decisions for the American people. Because if they come up with a number that is over $50 million, we can get caught in a debate over a point of order.

I say to my friend, one of the comanagers of the bill, Senator GLENN—he tried to improve this bill. He wanted to make sure when a Senator had an amendment it did not have to go through this process all over again. But the Glenn amendment was defeated. Amendments that would have streamlined this bureaucratic nightmare were systematically defeated by the other side.

My own amendments were defeated. Although we did very well, we could not get 51 votes to protect the children.

There is an ''exceptions'' section in this bill, S. 1. We wanted to say that any bill that would protect against child pornography, child sexual abuse, child labor law violation, or any bill that would protect the health of the frail elderly, pregnant women, or young children should also be added to the list of exceptions.

But our Republican colleagues said ''No way.''

Why? It is my view that the ultimate goal of this bill is in fact to tie our hands, to make it much more difficult for us to act. That is not why I came here. That is not why the people of my State sent me here. They want me to act if we find out new information about what lead in the water does to children and pregnant women. They want me to act to help protect them. This bill will make it very difficult to do so.

So I say to my friend from Michigan, thank you for offering us this amendment. I tried to make sure that the issue of illegal immigration would be acted on. That is one of the biggest unfunded mandates for California. All we have in this bill—God bless Senator GRAHAM for getting it through—is an amendment preserving the status quo so that we will not cut the Border Patrol. We have to increase the Border Patrol. The Graham amendment does not help us one bit in terms of adding more Border Patrol agents. It does protect us from cuts, but nothing in this bill will begin payments to my State of California for educating, incarcerating, or providing medical services to illegal immigrants.

So this bill, S. 1, is a giant disappointment. It sets up a bureaucratic nightmare that no local government could really support if they saw what it did. S. 993 is the unfunded mandates bill that I am very proud to support. It would take this chart, take all of this off, and make it reasonable.

I am very proud to support my friend, Senator LEVIN, who is a great leader on this whole issue.

I yield my time to the Senator.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from California.

One of the problems with S. 1 is that this new point of order that was created originally delegated significant authority to the agency. That language was corrected by the Byrd amendment yesterday. But the Byrd amendment created in the process another complication, another wrinkle; worth doing in order to avoid the delegation for the agencies, but nonetheless, it created another hoop, another hurdle, for this legislation and for any appropriations bill.

The Byrd amendment said that we are not going to delegate the cuts to the agencies if the appropriation down the road does not equal the amount of the estimate. Instead, we will have the agency make a recommendation back to the Appropriations Committee which can then go back to Congress which can then adopt it or not adopt it. It is another step after the appropriations process is completed. Another step was added—as far as I am concerned, worthwhile doing again, in order to avoid the delegation, but it is another complication.

There are great and grave uncertainties in this process that we have created in S. 1. It is really processing wild. You have to leap this hurdle, you have to evade this trap, you have to swim this moat, you have to jump this hoop. It goes too far in this additional point of order that it adds which was not present last year. It puts tremendous new emphasis on an estimate, emphasis which is excessive. We want the estimate. We should insist on the estimate of costs. We should allow a point of order if there is no estimate when a bill comes to the floor. But S. 1 goes beyond that and requires certain additional language be added which would require the reduction of the mandate in outyears if in fact appropriation levels do not reach the estimate, which could be as much as 10 years earlier, unless the Congress adopts a resolution saying to the contrary.

The thing sounds simple to say the CBO or the Budget Committee will estimate. When is the mandate first effective? I gave an example the other day on the floor to show just how uncertain that issue is. I used the example of a hypothetical Senate bill which says the reduction in dangerous levels of mercury from incinerator emissions will be required after October 1, 2005, and that the EPA is designated to determine what constitutes a mercury level dangerous to human health. It is

a simple process; it sounds simple. It is stated simply. But it is not.

The question was asked: ''Well, when is that mandate effective? What is the first fiscal year that it is effective?'' Of course, when you read the bill, it sounds as if that would be October 1, 2005; that this hypothetical bill mandates reductions of these levels of mercury from incinerator emissions after October 1, 2005. So the commonsense answer is that is the fiscal year which the committee says it is first effective. The trouble with that is, if it is first effective in 2005, then it is useless because all the costs are going to be expended before 2005 in order that the incinerator complied by the October 1 deadline of 2005.

Then the statement is made: ''Well, let us take a look at that CBO estimate.'' So I came up with the CBO direct cost estimate for 87,000 jurisdictions. Mind you, every amendment and bill is going to have to be estimated for 87,000 jurisdictions. But this is what the estimate comes back as. This is in this hypothetical. They say in the year 1, $6 million; year 2, $8 million; year 3, $10 million; year 4, $15 million, year 6, $20 million; year 7, $30 million; year 8, $50 million; year 9, $100 million; year 10, the last year before they must be in compliance, it comes out at $200 million.

What is the first year of the direct costs that are levied or required by local governments? If we read the answers to the questions which I submitted to Senator KEMPTHORNE, it comes out one of two ways. It seems to me it is either the first year that the committee says is the effective date—it sounded like 2006, the way I read it—or the first year that the Budget Committee determines that local governments are going to be spending money as a direct result of the mandate. Well, the first year they do that is 1996 under this hypothetical estimate.

If you go 5 years from 1996, under the rule of this new process, if any of those first 5 years after the mandate is effective, it goes over $50 million. If in any of the 5 years you go over the $50 million, then you cross the threshold, and certain very significant things happen if you cross the threshold.

The trouble with that is you do not cross the threshold under this hypothetical if none of those first 5 years is above $50 million. But then what year do you start? Based on what? The Parliamentarian, the Chair, the CBO, or the Budget Committee just picking a year out of the air? They now have a CBO estimate. Those are the numbers. They have looked. They have consulted with local officials. They have done all the consultations which they should with local officials to estimate what those 87,000 jurisdictions are going to do with this incinerator to comply. That is what they come up with.

What it results in is, if you follow the language of the bill or if you ignore the language of the bill, then you are in violation of what period of time in the bill seems to be required.

So a critical issue, when is the first fiscal year when there is direct cost, is left vague. I have read the answers of my good friend Senator KEMPTHORNE to my questions, and it is still vague. The truth of the matter is we do not know. If the bill is going to determine the fiscal year, then it would seem to me it is going to be 2006. And at that point the purpose of the statute, which is to help local governments and to help us understand impacts, would be thwarted. If it is the first year where there are direct expenses, on the other hand, then it seems that the purpose of the bill might also be thwarted.

By the way, I just mentioned the fact that local governments are supposed to be consulted, assuming you can get a cross-section of local governments, or figure out how you would do this in this kind of case. You have an incentive here which is perverse. The higher the local governments say their costs are going to be, the more likely it is they are going to be off the hook or have the mandate paid for by the Federal Government.

The CBO is going to be required to consult with local government, and if it is in the interest of local governments to have a high estimate instead of a low estimate because it means the funds from the Federal Government will be greater rather than less, or it means that there will be something triggered which will let them off the hook altogether from the mandate, we have a perverse incentive.

These are estimates, I emphasize that there is no science to try to figure out how many new incinerators and in what period of time they are going to have to be put in place by some of the 87,000 jurisdictions. We know it is not an exact science; it is a wild guess. Even if any guesstimate can be made, it is still going to be a wild one, in many cases. We had a chart from CBO going through previous instances where they have made estimates of impacts on State and local governments, and they tell us that in many cases they cannot do it. We have taken care of that, to an extent, with an earlier amendment which says at least if the CBO cannot make an estimate, they are allowed to do so in the intergovernmental mandate, the way the bill originally allowed them to be honest relative to a private concern.

We should be aware of the fact that the incentive being created by this process will be for local governments not to be giving us their lowest estimates but their highest estimates. The more it is inflated, or the higher it is, if they come in at the top of the range instead of the bottom of the range, the more likely it is that they are going to get funding from the Federal Government, or that a point of order will lie which will force us to waive a mandate. I do not think it makes great sense to put so much reliance on an estimate which contains one of these kinds of a perverse incentive.

Mr. President, I wonder how much time I have left under the time I have yielded myself.

The PRESIDING OFFICER. The Senator from Michigan has 20 minutes remaining. The Senator from Utah still has 15 minutes remaining.

Mr. LEVIN. Mr. President, earlier today, I asked the Senator from Idaho some questions about how this whole process would work on an amendment. He gave me the best answers he could, which were that, well, if the CBO was unable to make an estimate and if the Budget Committee was unable to make an estimate as to the cost to local and State governments of an amendment, that, first of all, a point of order would not lie for the failure to make an estimate. That estimate requirement does not apply to amendments. But what does apply to amendments is the threshold, the cost.

So if an amendment is offered and a point of order is raised that the cost of that to State and local governments is above $50 million in any of the 5 fiscal years after it is effective, somehow or other the Chair is going to have to make a ruling. How does the Chair make a ruling? Talk about uncertainties. It is going to ask the Budget Committee. The Budget Committee is going to ask the CBO. My question to the Senator from Idaho was, ''What happens if the CBO and Budget Committee cannot take an estimate? They say there is no way we can make an estimate on this amendment. What happens? Does the point of order lie if there is no way to make an estimate?'' The answer was, ''Maybe yes, maybe no. We cannot tell.''

I gather from the answer that most of the time the Chair would rule, in the absence of any information from the Budget Committee or from the CBO, that a threshold has been crossed, and that the Chair would rule that a point of order does not lie. At least that would seem to be the case some or most of the time. But the Senator from Idaho said, ''We cannot say how often that would be true,'' basically. I do not want to put words in his mouth, but I think the summary that I could best describe is that we are not precluding the Chair from ruling that a threshold has been crossed, even though it has no basis for making that ruling from the Congressional Budget Office or from the Budget Committee; that the Chair could turn to other resources, perhaps.

What are those other resources if it is not the CBO or Budget Committee? Is it newspapers? Is it the last Senator the Chair has talked to? The bill tells us that these estimates are going to be based on the CBO and on the Budget Committee. That is what the bill tells us. When it comes down to the critical issue, the absolutely critical issue as to whether a point of order lies because a threshold has been crossed on an

amendment, we are left with the uncertainty and ambiguity doubled. We always have an uncertainty and ambiguity when CBO and Budget Committee make estimates. But now we have added the Chair and the Parliamentarian to this process. It is no longer, as the bill suggests, that we are going to be able to rely on the Budget Committee and the CBO. We are now told, no, even if they cannot give the Chair information upon which to rule on whether or not a threshold has been crossed, nonetheless the Chair still is not precluded from ruling that that threshold is crossed because the Chair could use other sources. A couple were mentioned by the Senator from Idaho. One was the bill itself and, of course, that was available to the CBO and Budget Committee. And another source that the Chair might look at, we were told, was precedent which, of course, is also available to the CBO and the Budget Committee.

So we have introduced another uncertainty, a great uncertainty, in this process. Were there uncertainties in S. 993? Of course, there were. S. 993, last year's bill on mandates, which I am offering as a substitute to S. 1, was not free of ambiguities, but there was not so much hinging on an ambiguity. It did not have this final point of order which got into the appropriations process down the road. That is what is new about S. 1.

Let us put ourselves into a real world situation. Let us say that my hypothetical bill has been offered, which would mandate reductions of dangerous levels of mercury in incinerator emissions after October 1, 2005. The EPA is designated to determine what constitutes a level of mercury that is dangerous to human health. Well, when is the EPA going to determine that? The first fiscal year in which the mandate is effective could, to a significant extent, be dependent on when is the EPA going to issue its ruling, how long it will take, and at what level will it be? What is the level? Someone has to make that estimate as to when that is. But that is complicated enough. An amendment comes along that says, no new incinerator can be built within 300 yards of a school or hospital after October 1, 2005. That is an amendment offered on the floor. No new incinerator after 2005.

Someone has to, presumably, figure out, ''Well, how many new incinerators might be built within 300 yards of a school and during what time period in 87,000 jurisdictions?'' Someone has to make that estimate.

Let us assume the offeror of the amendment has submitted the amendment to the CBO and to the Budget Committee prior to offering his amendment. Now we have a second-degree amendment that is offered on the floor that says, ''No, we are going to reduce that to 100 yards of the incinerator instead of 300 yards from the incinerator.'' A second-degree amendment, with no possibility of an estimate, is now offered on the floor and the maker of the amendment, of course, the second-degree amendment, did not know that the first amendment was going to be forthcoming. He did not have an opportunity to get his estimated. He suddenly is confronted with that first-degree amendment and he is trying to get a second-degree amendment in place. And now he is going to wildly scramble around to try to get an estimate from the CBO or the Budget Committee as to how much that second-degree amendment is going to cost.

And on this process, we are placing all of this weight. What is going to happen?

When we plunge ourselves into a procedural morass in order to prevent ourselves from being able to act, if we want to, in an easier, reasonable way, we are likely to force ourselves into evasion, into boilerplate, and we are tempted to use this for other purposes.

Yesterday, we had an amendment which was adopted, the Graham amendment, where a point of order now lies if you try to reduce Federal spending on immigration. Now a new process is being applied to a spending cut; the argument being that, if that cut were made, that would lead to more local spending. Well, the same thing can be true for dozens of amendments. We can start putting points of order on the reduction of spending by the Federal Government for all kinds of reasons where their may be a resulting increase in local spending.

My cities have to spend an awful lot more trying to fight the drug war if we do not stop drugs at their source. This is what we did yesterday, basically. Now we are going to use points of order to say any reduction in the level of expenditures to fight drugs at their source, which is the responsibility of the Federal Government, surely not the State or local governments. Drugs in Colombia, when the fields are being burned, are not the responsibility of my home State or my home city. The Federal Government does that. And to the extent it does not do that, we have more expenses for drug enforcement in my State. Now we will use the same process.

This is the temptation when you start using this kind of a process to achieve a substantive result to the degree that we have. This is all a matter of degree. It is all a matter of whether or not S. 1 goes too far and, in doing so, is going to create evasion and create the temptation to use the same kind of a process for other kinds of related purposes. The evasion of S. 1 is not difficult to conceive and it will do nobody any good if it is evaded. The evasion of S. 1 can simply be in the authorization bill, that ''Nothing in this bill is permitted to cost local and State governments more than $49 million in any fiscal year, and here are the criteria upon which that can be achieved.''

So we will start using boilerplates. And then we will start using language in appropriations: ''Notwithstanding any prior law, we are going to appropriate to this level,'' a level, let us say, that is less than the estimate that was made 10 years before or 5 years before. So we end up with notwithstanding language in appropriations bills in order to get around this. If we go too far now, if we put too much weight on this kind of a process now, we are inviting people to evade them later.

If we do this right, if we have the right balance now, if we do what we did last year in S. 993, which is to require the estimate and, yes, we could even require the authorization, too—which it did last year—but stop short of this new point of order relative to the appropriations process, we will be striking a balance where we will be forcing ourselves in a reasonable way to consider these costs, a way which was so reasonable that last year all of the local organizations, mayors, States, and legislators supported our effort. But we will be avoiding the excess process, the Rube Goldberg mechanisms which are going to create such difficulty for us in the implementation.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining, the Senator from Utah still has 15 minutes.

Mr. LEVIN. I thank the Chair and I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, 3 weeks of debate on this bill seems now to be coming to an end and the vote in favor of a restriction on unfunded mandates imposed on State and local governments almost certainly will be overwhelming.

During the course of this 3 weeks, however, we have been faced with votes on literally dozens of amendments. Those amendments have covered two fundamentally different sets of subject matter. The first set, the normal politics, a set of amendments that had nothing to do with unfunded mandates but cover much of what the agenda of this Senate is likely to be during the course of the next 6 months with regard to votes that will be overwhelmed by votes on the merits of those issues when they are brought up in due course. So that, in most respects, that debate has been irrelevant to the agenda of the Senate and of the Congress of the United States.

But dozens of other amendments, I think, including this last one which is about to be voted on, do relate to unfunded mandates themselves and almost without exception they have attempted to restrict the ambit, the scope of this unfunded mandates bill.

Now the bill itself, it seems to me, is already relatively modest. It does not ban unfunded mandates as most States

and local governments would have us do. It simply states that, if an unfunded mandate crosses modest threshold, it must consciously be weighed if a point of order is raised against it. Unfunded mandates will still be possible on the part of the Congress of the United States, as long as the Congress has voted on and is conscious of the fact that it is creating such mandates.

Even so, or perhaps particularly because this is the case, because it is not an absolute ban, what these amendments evidence, it seems to me, is a tremendous lack of trust in those who are elected in our States and in our local governments.

It appears to me that there is a high degree, literally, of legislative arrogance involved in the proposition that somehow or another only we know what is best for people in local communities; that only here in Washington, DC, in this body and in the House of Representatives, is lodged a degree of wisdom and responsibility necessary to see to it that there is proper protection for individuals in our society; that somehow or another without unfunded mandates our States and local governments will ignore the young and their schools, will ignore working people, will ignore the elderly, will ignore the very quality of the environment in which these locally elected officials themselves live.

I wonder how it is that responsible elected officials are only found here in Washington, DC, and not in our communities. I submit, of course, that that is not the case. The reason for this bill, the reason for an even stronger bill, would be that the responsibility for the lives and careers of people, in most cases, is best conducted by governments which are closest to them. That has been the genius of the American experiment. That is the direction in which many other free countries are moving and the direction in which we should move.

We need more personal humility. We need more belief that people elected in the States, in our counties, and our cities and towns, not only have the best interest of their constituents in mind but are able and willing to act on those best interests.

This bill is a modest start to return to a system of federalism which has made this country great. I, for one, am delighted that the great bulk of these amendments have been rejected and that we will pass a bill which will have at least some effect in restoring authority to the units of government which can best use it and which were conceived by our Constitution as the units which should exercise those powers.

Mr. BENNETT. Mr. President, I yield 5 minutes to the Senator from Indiana.

Mr. COATS. Mr. President, we are nearing the time when we are going to have a final vote on this very important piece of legislation. There has been extensive debate, numerous amendments, attempts to specify, clarify, declassify, and I think bring more complication into this issue than need be.

The voters on November 8 said they wanted some very significant, major change in the way that Washington does its business, in the way it relates to the citizens which we were sent here to serve. There are some basic fundamental underlying principles that we pledged to the people in the fall of 1994 and which they endorsed on November 8: Live by the laws that you ask us to live by. Get your fiscal house in order. Do what we have to do. Do not spend more money than you take in.

Fundamental to and a big part of that mandate was the request from Governors and mayors and local units of government to ''quit sending us mandates to comply with certain laws that you think are best for our communities, that you think are best for our people, and, by the way, that you think we ought to pay for.''

I have here a chart of the State of Indiana with just nine cities highlighted, with the amounts that these cities have to spend on mandates sent by this body, on priorities that they do not feel are the top priorities in their communities. They are diverting money from police on the streets. They are diverting money from essential services that our local communities have determined are most important for the citizens that they represent. Yet those are shoved down the list, down the priority list, because the Federal mandate comes with a stamp that says, ''Now, we have ordered it. You do it now. You figure out a way to pay for it.''

Their Hobson's choice is either to raise taxes on citizens that do not want taxes raised for the mandates that are coming down, or to cut essential services. Given the tax climate that exists, the deficit climate that exists in our country today, what happens is that essential services are cut.

I have listed here city after city in Indiana, including Fort Wayne, IN, that has had to cut essential services that are necessary to the functioning of that community and reach the real needs of the people.

We have a very basic choice here. We can follow the mandate of the fall, the mandate of the people, and return authority back to the units of government that are closest to the people and back to the people; or we can continue to take the attitude that Washington knows best, that we can decide here what is best for every community in Indiana. It may be what is best for a particular community somewhere in our Nation. But one size does not fit all. One community's needs are not every other community's needs.

So we have a very basic decision to make. That decision is: Do we want to return authority and power to those units of government that are much closer to the people and give them the flexibility of providing the priorities; or, if we are going to mandate something that we believe is so important that ought to be mandated on a national basis, are we going to provide the funds necessary to so that they can accomplish that mandate without subordinating other top, important priorities that affect that particular local community? I think it is that basic.

Some would say that oversimplifies it; you do not understand how it works. We have seen charts on how complicated this procedure is. There is a basic, fundamental question on which we will vote in just a couple of hours. That fundamental question is: Are we going to continue to dictate out of Washington decisions that our local citizens must live by, or are we beginning to turn that back to the people?

The very first act of the new Congress was to pass a bill which ensures that Congress will live under the same laws it imposes on the rest of America. It was an important first step in fundamentally altering the culture of Congress. We will pass better laws if we must live by them; if they cannot be complied with, they will not pass.

The bill before us today is equally important, because it ends business as usual. For too long, Congress has legislated with impunity. Not only has Congress exempted itself from provisions of the law; often we have indemnified ourselves from the costs. It has passed laws imposing burdens on States, communities, and businesses with little regard for the cost, and no accountability to the taxpayer. The $4.7 trillion in accumulated debt only begins to tell the story of a Congress addicted to deficits; when we have lacked the resources we have simply passed on the costs.

Under current practice, Congress does not have to consider the cost of the mandates it imposes on State and local government and the private sector. This is an irresponsible way to legislate.

The bill we are considering will ensure that we know the cost of Federal mandates on localities before a bill passes, and it will require that we provide a funding mechanism to pay for them.

Under S. 1, mandates with costs to State and local government of more than $50 million must have a CBO cost estimate. Congress must then include the funds by finding an offset or by raising revenues.

Legislation which imposes financial burdens of more than $200 million on the private sector must also have a CBO estimate or be ruled out of order.

The cost of mandates to communities is significant, perhaps a sampling of communities around my State will shed some light on why this legislation is so important.

City:	*Total cost, fiscal year 1993*
Anderson	$6,831,940
Columbus	1,382,719
Elkhart	2,162,928
Fort Wayne	5,837,492
Hammond	1,051,701
Lafayette	132,000
Mishawaka	162,447
South Bend	2,751,150

Terre Haute	151,585

These are big numbers for Indiana communities, yet they just begin to tell the story. When we require State and local government to respond to Washington's priorities—priorities Washington did not see fit to pay for—we preempt the spending priorities of local communities, regardless of their urgency. When a Federal mandate comes down, it moves to the top of the list.

This means that State and local leaders are forced to deal first, not with local concerns, but with Washington's agenda. One Indiana mayor characterized this as the my-way, but-you-pay approach to Federal policy.

As a result, our States and localities are faced with a Hobbsien choice—raise taxes, or forgo dealing with the real problems of the community.

Let me cite an example. There is no area of public concern more profound than crime. Yet many cities divert funds away from local law enforcement to pay for Federal mandates.

In a survey of 146 cities, conducted by the National Conference of Mayors and Price Waterhouse, it was estimated that over $800 million annually—an average of $5.5 million per city—would be available in 1995 if Federal mandates were funded.

Many of those cities said they would spend the freed moneys on crime prevention. Most of it, 62 percent, would be spent putting new police officers on the street. The rest would be spent upgrading patrol cars, modernizing equipment, and providing overtime pay for officers.

Bloomington, IN, estimates it would spend an additional $90,000 on law enforcement. South Bend would spend over $1½ million on new police protection for its citizens.

Federal mandates are hampering the ability of our cities to provide for the basic safety and security of their citizens.

Unfunded mandates also dramatically increase the cost of doing business. Complying with Federal regulations, as well as the liability exposure that results from Federal mandates and regulations, adds billions of dollars every year to basic business costs.

These burdens thwart growth and job creation. They increase costs for consumers. And they discourage people from going into business.

It is critical that Congress pass this legislation. We must return power and resources to States and communities so that they can deal effectively and creatively with the unique problems and priorities they face. We must relieve the burdens we have placed on the businesses of this country, and allow them to unleash their creative power to build a strong and growing economy.

The mayor of my home town, Fort Wayne, IN, expressed the sentiments of many when he said:

> We need to change this irresponsible habit. If the same people who wrote the laws and drafted the regulations had to raise the funds to pay for them, they would be much more careful about the costs.

In passing this legislation we take an important second step toward significant congressional reform and greater accountability to the American taxpayer.

Mr. LEVIN. I yield 4 minutes to the Senator from Delaware.

Mr. BIDEN. Mr. President, I will necessarily make this quick. I am fascinated by these arguments, particularly the last two arguments I have heard.

The fundamental question here is: Do we want to, in fact, deal with Federal mandates which should be local decisions or paid for by the Federal Government, or do we want to set in motion more gridlock? If we want to do the former and not the latter, we should vote for this amendment, No. 1.

No. 2, my friend from Washington is engaging in what I think is part of the litany that we have been hearing. Why do we in Washington think we know so much, and why, in fact, do we not have more personal humility?

If he means it, why are there exceptions in it? Why are there any exceptions? If he means what he says, why is there an exception here for civil rights? I will tell you why. We got in the business of being involved federally because States acted irresponsibly on occasion.

So if my friend from Wyoming has such humility, let him come and offer an amendment to strike out all the exceptions. Why are we keeping in here ''constitutional rights of individuals''? They are not mandates. ''Discrimination on the basis of race, religion, gender, national origin, handicap or disability status.'' Why is that not a mandate? It costs the States money to do those things. Why is that not a mandate?

So this unusual argument about whether or not we have humility or do not have humility, or Washington knows all or does not know all, that is a nice campaign rhetoric. What it is about is, why do we not stop telling the States to do things which are not essential unless we pay for them? Why do we not do it in a simplistic, straightforward way that does not allow a minority to tie up this body in gridlock for greater political purposes having nothing to do with looking out for the interest of the States? If we want to do that, we have a bill that was introduced last year that the manager of this bill was a cosponsor of last year, that does not create that complex chart that allows any one or two or several U.S. Senator or Parliamentarians to get involved in gumming up the works and creating gridlock.

Mr. President, like many of my colleagues, I was a local official before coming to the Senate. I know what it means to have to comply with legal duties imposed from a higher government. As a former county council member, I understand, and am sympathetic to, many of the complaints and concerns we have heard from State and local officials who must respond to Federal mandates.

The bill before us today, S. 1, is not the legislation that we worked on so long and hard last year to address the issue of Federal mandates. That bill, S. 993, is being offered now as an amendment by Senator LEVIN; it will focus the Senate's attention on the costs involved in setting new requirements to be met by States and local governments. It will raise our awareness of the financial price that must be paid to meet our goals, and permits us to determine how that price will be paid.

Senator LEVIN'S amendment changes the way we handle mandate legislation in this body, but it makes those changes subject to a sunset, in 1998, when the new process would end unless we choose to extent it. It will be an experiment—I believe a worthy experiment—to be sure that our attention is directed to all the consequences of new legislation.

Last year S. 993 had the enthusiastic support of a broad bipartisan coalition. Senator KEMPTHORNE, the acknowledged leader on this issue, was the original author of that proposal.

But I am afraid, Mr. President, that S. 1 could prove to be a recipe for confusion, frustration, and more political gridlock in the legislative process. It was rushed through committee, with no debate and no amendments. Indeed, it came from committee without a report explaining how it would work.

This should not be how we legislate.

The public debate about unfunded mandates over the past few years has been a healthy one, and has succeeded in bringing to the forefront the continual need to examine the costs associated with Federal requirements and, indeed, the appropriate role of the Federal Government. There are limits to what the Federal Government should do and should require.

We need to approach our many real public policy problems with common sense, to give greater flexibility to those who implement our laws, to be more goal-oriented and less process-oriented, and to reign in bureaucrats that get carried away with their charge.

As one example, I spent quite a bit of time last year, along with the Governor of Delaware, trying to demonstrate to the EPA that our State could meet new clean air standards without making all our citizens run their cars through an expensive treadmill test that yielded little pollution reduction. EPA got the message; the treadmill test is out.

We will pass an unfunded mandates bill this afternoon. If I had my first choice, it would be the substitute before us now. It had the full support of State and local government leaders last year, and is free of the hastily drafted, last-minute additions of this year's version.

But whichever version we vote for here today, we will assure that decisions that materially affect State and local governments are made from now on with a clearer view of their costs as well as their benefits.

Mr. President, if I have any time left—I may not—if I have any time left, let me say that this is about making local decisions that deserve to be local decisions at a local level. And if we impose more on local organizations, then what they have a right to ask for we should pay for.

But let me close by saying, I live in a city, in a State that has the highest cancer rate in the Nation. We, coincidentally, are on the border of southeastern Pennsylvania which has more oil refineries per square inch than any place in the Nation, including Houston, TX, and the prevailing winds are south.

If we did not have the Federal Government setting out a Clean Air Act, the idea that the people of Pennsylvania would vote to expend the money to clean up the air, the ambient air quality in Marcus Hook, PA, to save the lives in Delaware is zero. That is why we have national legislation.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BENNETT. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Utah has 5 minutes remaining.

Mr. BENNETT. I yield myself 4 minutes.

Mr. President, I have enjoyed this debate. I have enjoyed many of the things I have heard. The Senator from Michigan told us that S. 993 had near consensus from mayors, Governors, et cetera, and spoke very proudly of it. I was an original cosponsor of S. 993, and I was proud of it. I will point out to the Senator from Michigan, and everyone else, that S. 1 continues to enjoy exactly the same consensus, indeed, if anything, the consensus is stronger from the same people.

I will quote a letter addressed to the original cosponsors of S. 1, the Unfunded Mandate Reform Act of 1995, telling us:

> Thank you for your leadership in listening to and acting on the nationwide call of State and local governments to pass S. 1.

I will not read the entire letter. I ask unanimous consent that it, and other letters in support of S. 1, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BENNETT. Mr. President, I will quote this relating to S. 1. They say:

> The bill is reasonable, workable and long overdue. It has our unanimous bipartisan support, without weakening amendments.

Signed by Howard Dean, Governor of Vermont, chairman of the National Governor's Association; George Voinovich, Governor of Ohio; and Benjamin Nelson, Governor of Nebraska. They are the co-lead Governors.

Carolyn Long Banks, the president of the National League of Cities; Randall Franke, commissioner of Marion County, OR, the president of the National Association of Counties; Jane Campbell of the Ohio House of Representatives, president of the National Conference of State Legislatures; and Victor Ashe, mayor of Knoxville, president of the U.S. Conference of Mayors.

They are not talking about S. 993. They are talking about S. 1, which they want passed without weakening amendments.

I am relatively new to this body. I find it fascinating to go through the learning experience that comes to a freshman Senator. I was here on the floor for my first 2 years, and I learned about the filibuster. Indeed, I participated in the filibuster. I participated in and supported the filibuster that killed the President's stimulus package, and I did it because I thought it was the right thing to do and also a majority of the American people agreed.

It was, frankly, good politics. It helped us win the election because we stood against something that the majority of the American people were against. I participated in a filibuster on land use issues relating to the ownership of land in my State. Once again, I believed in it, we won it, and most of the people in my State and the Western States agreed. It redounded to our political benefit to participate in that filibuster.

I participated in a filibuster on campaign reform because I thought the bill, as written, supported one party to the detriment of the other. I believed in it. I understood that. The thing I have not understood about this debate, and I hope when it is over someone will explain to me, is why the minority party has chosen to mount the same kind of filibuster that we mounted on the minority 2 years ago against a bill that is supported by all of the Governors, all of the mayors, the President of the United States and a large number of the Members of their party.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. BENNETT. I thank the Chair and reserve the 1 minute.

EXHIBIT 1

January 10, 1995.

To The Original Co-Sponsors of S. 1, the Unfunded Mandate Reform Act of 1995:

Thank you!

Thank you for your leadership in listening to and acting on the nationwide call of state and local governments to pass S. 1.

As the elected leaders of all state and local governments, we appreciate your support for this critical legislation. We unanimously and strongly support S. 1 without weakening amendments. We are urging every Member of the 104th Congress to join you in support of S. 1 and the future savings it will bring to every taxpayer we serve.

S. 1 will bring an open, accountable, and informed decision making process to future federal proposals and regulations that impact state and local governments. S. 1 applies the same pay-as-you-go rules that Congress now requires for the federal budget to any mandates it would impose on state and local governments. The bill is reasonable, workable, and long overdue. It has our unanimous bipartisan support, without weakening amendments.

Thank you again for your support.

Sincerely,

HOWARD DEAN,
M.D., Governor of Vermont, Chairman, National Governors' Association.
GEORGE V. VOINOVICH,
Governor of Ohio, Co-Lead Governor on Federalism, National Governors' Association.
E. BENJAMIN NELSON,
Governor of Nebraska, Immediate Past President, Council of State Governments, Co-Lead Governor on Federalism, National Governors' Association.
CAROLYN LONG BANKS,
Councilwoman-at-Large, Atlanta, Georgia, President, National Leagues of Cities.
RANDALL FRANKE,
Commissioner of Marion County, Oregon, President, National Association of Counties.
JANE CAMPBELL,
Assistant Minority Leader, Ohio House of Representatives, President, National Conference of State Legislatures.
VICTOR ASHE,
Mayor of Knoxville, Tennessee, President, U.S. Conference of Mayors.

NATIONAL ASSOCIATION
OF HOME BUILDERS,
Washington, DC, January 9, 1995.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the 180,000 members of the National Association of Home Builders (NAHB), I would like to urge your strong support for S. 1, the Unfunded Mandate Reform Act of 1995, scheduled for committee mark-up on Monday, January 9 and floor consideration on Wednesday, January 11. It is essential that we try to control the ''unfunded mandates'' crisis facing America today.

What is known as ''unfunded mandates'' to Washington insiders is really a cruel hidden tax on the housing consumer. It is time to stop these unfunded mandates. It is time to address the housing affordability crisis in this country. Supporting S. 1 is an important first step. Without this bill, unfunded mandates will continue to be passed on to the housing consumer.

The problems created by unfunded mandates are not limited to state and local government budget concerns, but affect all Americans and uniquely affects the housing consumer and homebuilding industry. Unfunded mandates often result in ''impact fees'' on new housing and housing subdivisions. These impact fees come in various forms such as sewer and water hookups fees, fees for new streets and infrastructure, fees for fire and police protection, assessments for schools, libraries, museums, parks and solid waste facilities. In addition, taxes are often levied or increased in the form of bedroom taxes, contribution-in-aid of construction (CIAC) taxes on utilities, increased property taxes, increased sales taxes, real estate transfer taxes, gasoline taxes.

These impact fees and special assessments add substantially to the cost of housing and represent one of the most dramatic price increases to the housing consumer. In California, for example, impact fees often exceed $20,000 per new house. More common examples of impact fees include $5,000 assessments per house in Florida and $3,000 per house assessments in Maryland. The impact can really be seen when one considers that 20,000 housing consumers are driven out of the housing market for every $1,000 increase in the price of a house.

Of equal concern is that the community as a whole suffers from such actions. Unfunded mandates reduce the ability of local governments to prioritize their own needs. In a time when everyone is working on limited budgets, compliance with federal mandates often requires funds to be diverted from other areas of state/local budgets such as education, emergency services or capital improvements.

S. 1 is a critical step in addressing this crisis by requiring that any bill to be considered by Congress be accompanied by a cost analysis as to the bill's potential effect on state and local governments and the private sector. Congress should be aware of the potential impact its laws will have on local governments and the private sector before they are voted on. Likewise, the American people should to be informed of the impact of the laws being considered by Congress.

Again, I would like to strongly urge your support for S. 1 and opposition to any weakening amendments. We need to address this crisis and alleviate the imposition of unfunded federal mandates.

Sincerely,

THOMAS N. THOMPSON,
NAHB President.

THE UNITED STATES
CONFERENCE OF MAYORS,
Washington, DC, December 30, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the United States Conference of Mayors, I want to thank you for your continued leadership in our fight against unfunded federal mandates and to express strong support for the new bill, S.1.

S. 1 is serious and tough mandate reform which will do more than simply stop the flood of trickle-down taxes and irresponsible, ill-defined federal mandates which have come from Washington over the past two decades. S. 1 will begin to restore the partnership which the founders of this nation intended to exist between the federal government, and state and local governments.

S. 1, which was developed in bipartisan cooperation with the state and local organizations, including the Conference of Mayors, is even stronger than what was before the Senate last year in that it requires Congress to either fund a mandate at the time of passage or provide that the mandate cannot be enforced by the federal government if not fully funded. However, the bill is still based upon the carefully crafted package which was agreed to in S. 993 and which garnered 67 Senate cosponsors in the 103rd Congress. The bill would not in any way repeal, weaken or affect any existing statute, be it an existing unfunded mandate or not. This legislation only seeks to address *new* unfunded mandate legislation. In addition, S. 1 would not infringe upon or limit the ability of the Congress or the federal judicial system to enforce any new or existing constitutional protection or civil rights statute.

The mayors, are extremely pleased that our legislation, which was blocked from final passage in the 103rd Congress, has been designated as S. 1 by incoming Majority Leader Bob Dole. We also understand and appreciate the significance of the Governmental Affairs and Budget Committees holding a joint hearing on our bill on the second day of the 104th Congress at which our organization will be represented.

I remember the early days in our campaign when many questioned our resolve. How could a freshman Republican Senator from the State of Idaho move the Washington establishment to reform its beloved practice of imposing federal mandates without funding? We responded to these doubters by focusing the national grass-roots resentment of unfunded mandates into a well orchestrated political machine, and by joining with our state and local partners in taking our message to Washington.

The United States Conference of Mayors will continue in its efforts to enact S. 1 until we are successful. We will not let up on the political and public pressure. And we will actively oppose efforts to weaken our bill.

The time to pass our bill is now. Those who would seek to delay action will be held accountable, and those who stand with state and local government will know that they have our support and appreciation.

Thank you again for all of your hard work and commitment, and rest assured that we will continue to stand with you.

Sincerely yours,

VICTOR ASHE,
Mayor of Knoxville, President.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, December 29, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the National Association of Counties, I am writing to express our strong support for S. 1, the Unfunded Mandate Reform Act of 1995. We sincerely appreciate the leadership you have provided in crafting this new, strong bipartisan bill to relieve state and local governments from the growing burdens of unfunded federal mandates. Our NACo staff has reviewed the latest draft and they are convinced it is much stronger than S. 993, the bill approved in committee last summer.

While this legislation retained many of the basic principles from the previous bill, there were many improvements. Most significant among them is the provision that requires any new mandate to be funded by new entitlement spending or new taxes or new appropriations. If not, the mandate will not take effect unless the majority of members in both houses vote to impose the cost on state and local governments. Although the new bill will not prevent Congress from imposing the cost of new mandates on state and local taxpayers, by holding members accountable we believe it will discourage and curtail the number of mandates imposed on them.

Again, thank you for your leadership on this important legislation. County officials across our great nation stand ready to assist you in any way we can to ensure the swift passage to S. 1. If you have any questions, please contact Larry Naake or Larry Jones of the NACo staff.

Sincerely,

RANDALL FRANKE,
Commissioner, Marion County, Ore., NACo President.

NATIONAL LEAGUE OF CITIES,
Washington, DC, December 30, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR KEMPTHORNE: I am writing on behalf of the elected officials of the nation's cities and towns to commend you for sponsoring the Unfunded Mandate Reform Act of 1995. Of all the measures introduced to date, this legislation is undoubtedly the strongest, best crafted, and most comprehensive approach to provide relief for state and local governments from the burden of unfunded federal mandates.

The National League of Cities commits its strongest support for the Unfunded Mandate Reform Act. We will fight any attempts to weaken the bill with the full force of the 150,000 local elected officials we represent. Local governments and the taxpayers we serve have borne the federal government's fiscal burden for too long. We will not have such an important relief measure thwarted in the final hour by special interests.

We commend you for continuing to foster the bipartisan support which your original mandate relief bill so successfully garnered in the last Congress. We will work hard to gain bipartisan support for mandates relief in the 104th Congress, because, as you are well aware, this bill will benefit all states, all counties, all municipalities, and all taxpayers, regardless of their political allegiance.

Again, please accept our sincere gratitude for your efforts.

Sincerely,

CAROLYN LONG BANKS,
President.

NATIONAL SCHOOL BOARDS ASSOCIATION,
Alexandria, VA, December 30, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Dirksen Senate Office Building, Washington, DC

DEAR SENATOR KEMPTHORNE: The National School Boards Association (NSBA), on behalf of the more than 95,000 locally elected school board members nationwide, would like to offer its strong support for the ''Unfunded Mandate Reform Act of 1995'' (S. 1). This legislation would establish a general rule that Congress shall not impose federal mandates without adequate funding. This legislation would stop the flow of requirements on school districts which must spend billions of local tax dollars every year to comply with unfunded federal mandates. We commend you for your unending leadership on this critical issue.

Today, school children throughout the country are facing the prospect of reduced classroom instruction because the federal government requires, but does not fund, services or programs that local school boards are directed to implement. School boards are not opposed to the goals of many of these mandates, but we believe that Congress should be responsible for funding the programs it imposes on school districts. Our nation's public school children must not be made to pay the price for unfunded federal mandates.

S. 1 would prohibit a law from being implemented without necessary federal government funding. S. 1 would allow school districts to execute the future programs which are required by the federal government without placing an unfair financial burden on the schools.

Again, we applaud your leadership in negotiating and sponsoring this bill which would allow schools to provide a quality education to their students. We offer any assistance you need as you quickly move this bill to the Senate floor.

If you have questions regarding this issue, please contact Laurie A. Westley, Chief Legislative Counsel at (703) 838–6703.

Yours, very truly,

BOYD W. BOEHLJE,
President.
THOMAS A. SHANNON,
Executive Director.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC., December 30, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate,
Washington, DC.

DEAR SENATOR KEMPTHORNE: The National Conference of State Legislatures enthusiastically supports S. 1, the Unfunded Mandate Reform Act of 1995. We join you in urging your colleagues to co-sponsor this bill and approve this legislation in Committee and on the floor of the Senate. The National Conference of State Legislatures commends

your efforts, along with those of Senator Bill Roth, incoming Chairman of the Senate Governmental Affairs Committee, and Senator John Glenn, the outgoing Chairman of the Senate Governmental Affairs Committee, in forging the bipartisan mandate relief bill that is to be presented to the Senate next week as S. 1. We deeply appreciate your leadership in developing legislation that takes significant steps toward correcting the problem of unfunded federal mandates and for your openness to listen to our concerns during the negotiation process.

Your bill is a fitting first step in restoring the balance to our federal system by recognizing that the partnership with state and local governments has been significantly weakened by the growing federal practice of imposing unfunded mandates. No government has the luxury of unlimited resources, and the taxpayers of this country, our shared constituents, recognize that having the federal government pass its obligations down to the state and local governments does nothing to reduce their overall tax burden.

This bill is about information and accountability. The cost estimate, points of order, rules changes and other provisions contained in this legislation are absolutely necessary to get us back on track and have the federal government take responsibility for its actions. To make responsible decisions, members of Congress need to be fully aware of the financial burdens that federal legislation often places on state and local governments, and to understand the implications of those burdens.

As has been said often over the past year, the level of cooperation among state and local governments and members of the United States Senate during the negotiation process is unprecedented. Again, we appreciate your efforts, and those of the other Senators who helped forge this compromise, and wholeheartedly support passage of S. 1, the Unfunded Mandate Reform Act of 1995.

Sincerely,

JANE L. CAMPELL,
President, NCSL.

CITY OF SAN CLEMENTE,
San Clemente, CA, January 6, 1995.

Re: Support of House and Senate legislation on unfunded federal mandates.

Hon. DIRK KEMPTHORNE,
Senate Dirksen Building,
Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the City Council of the City of San Clemente, California, I am urging your support and early passage of the proposed House and Senate Legislation on unfunded Federal mandates.

Implementation of current unfunded Federal mandates have significantly increased local government costs, and are severely hampering our ability to fund and provide highly critical basic services, such as public safety, to our citizens. Proper compliance with current Federal mandates has forced closer scrutiny over environmental issues, imposed additional reporting requirements and forced cities to absorb higher employee costs.

The City of San Clemente strongly urges your SUPPORT and early passage of the proposed House and Senate legislation on unfunded Federal Mandates, and further requests that you oppose any weakening amendments. Local government revenue has been steadily decreasing for many years. We cannot afford the additional funding and staffing required to comply with Federal mandates, unless the legislation includes funding for such mandates.

Sincerely,

CANDACE HAGGARD,
Mayor.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, January 3, 1994.

Hon. DIRK KEMPTHORNE,
U.S. Senate,
Washington, DC.

DEAR DIRK: On behalf of the over 600,000 members of the National Federation of Independent Business, I urge you to vote in favor of S. 1, the unfunded mandates legislation, when it is considered by the Senate in January.

Unfunded federal mandates on the states and local governments end up requiring these entities to raise taxes, establish user fees, or cut back services to balance their budgets. Small business owners are affected by all of these actions.

Between 1981 and 1990, Congress enacted 27 major statutes that imposed new regulations on states and localities or significantly expanded existing programs. This compares to 22 such statutes enacted in the 1970s, 12 in the 1960s, 0 in the 1950s and 1940s, and only two in the 1930s. The Congressional Budget Office estimates that the cumulative cost of new regulations imposed on state and local governments between 1983 and 1990 was between $8.9 billion and $12.7 billion. These include environmental requirements, voters registration requirements, Medicaid, and others.

It was not the states and cities who paid roughly $10 billion in unfunded mandates during the 1980s; it was taxpayers—small business owners as well as everyone else. In June 1994, a poll of all NFIB members resulted in a resounding 90% vote against unfunded mandates.

I urge you to strongly support S. 1.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, January 3, 1995.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR DIRK: On behalf of the U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, and 1,200 trade and professional associations, I sincerely commend your hard work and tenacity on the ''Unfunded Mandate Reform Act of 1995,'' S. 1. The Chamber membership identified unfunded mandates on the private sector and state and local governments as their top priority for the 104th Congress. Accordingly, the Chamber supports this legislation and will commit all necessary time and resources to ensuring its passage early in this session.

I particularly want to thank you for responding to our concerns about the role of the private sector in this debate and the potential impact it could have had on the business community, especially small businesses. Your willingness to include the private sector in Title II of S. 1, ''Regulatory Accountability and Reform,'' and your recognition of the potential unfair competition issue between business and state and local government, make this a much stronger bill that can have a significant impact on the current regulatory burden.

Again, Dirk, we appreciate your commitment to this issue. I look forward to working with you to secure passage of S. 1 as well as other issues that we can join forces on for the 104th Congress.

Sincerely,

RICHARD L. LESHER.

NATIONAL RETAIL FEDERATION,
January 4, 1995.

Hon. DIRK KEMPTHORNE,
U.S. Senate, Senate Dirksen Office Building,
Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the nation's retail community and its 20 million employees—1 in 5 U.S. workers—we are writing to commend you for your sponsorship of S. 1, The Unfunded Mandates Reform Act of 1995. This legislation is the most effective way to confront the problem of unfunded federal mandates while simultaneously resuscitating the concept of federalism and giving the states back control of their budget obligations.

The problem is well documented and the solution is clear—unfunded federal mandates must end. Over the past decade, an unprecedented increase in unfunded federal mandates in environment, labor and education, to name just a few, has forced state and local governments to undertake actions that drain their resources and are often in conflict with the best interests of their citizens as well as our industry.

As representatives of the retail industry in each of the fifty state capitals, we have experienced firsthand the profound adverse impact of unfunded federal mandates on our industry and our state's economic well-being.

Unfunded federal mandates are simply another Washington practice of circumventing a fundamental responsibility in governing, the obligation to bring desires into line with revenues. Such mandates are Washington's way to dictate to the states, even though it has exhausted its resources. S. 1, which would restore accountability and responsibility at the federal level, is the strongest legislative initiative in which to counter this growing problem.

Again, we sincerely appreciate your leadership on this important matter.

Sincerely,

Tracy Mullin, President, National Retail Federation; George Allen, Executive Vice President, Arizona Retailers Association; Lynn Birleffi, Executive Director, Wyoming Retail Merchants Association; J. Tim Brennan, President, Idaho Retailers Association; John Burris, President, Delaware Retail Council; Bill Coiner, President, Virginia Retail Merchants Association; Bill Dombrowski, President, California Retailers Association; Spence Dye, President, Retail Association of Mississippi; Janice Gee, Executive Director, Washington Retail Association; Bud Grant, Executive Director, Kansas Retail Council; Brad Griffin, Executive Vice President, Montana Retail Association; Jo Ann Groff, President, Colorado Retail Council; Jim Henter, President, Association of Iowa Merchants; John Hinkle, President, Kentucky Retail Federation; Bill Kundrat, President, Florida Retail Federation; John Mahaney, President, Ohio Council of Retail Merchants; William McBrayer, President, Georgia Retail Association; Charles McDonald, Executive Director, Alabama Retail Association; Larry Meyer, Vice Chairman & CEO, Michigan Retailers Association; Grant Monahan, President, Indiana Retail Council; Mickey Moore, President, Texas Retailers Association; Sam Overfelt, President, Missouri Retailers Association; Nick Perez, President, Louisiana Retailers Association; Ken Quirion, Executive Director, Maine Merchants Association; Dwayne Richard, President, Nebraska Retail Federation; Bill Sakelarios, Executive

Vice President, Retail Merchants Association of N.H.; Mary Santina, Executive Director, Retail Association of Nevada; Paul Smith, Executive Director, Vermont Retail Association; Chris Tackett, President, Wisconsin Merchants Federation; David Vite, President, Illinois Retail Merchants Association; Jerry Wheeler, Executive Director, South Dakota Retailers Association; Melanie Willoughby, President, New Jersey Retail Merchants Association.

NATIONAL ASSOCIATION OF REALTORS,
Washington, DC, January 9, 1995.

DEAR SENATOR: The Senate will soon consider S. 1, the ''Federal Mandate Accountability and Reform Act of 1995.'' On behalf of the over 750,000 members of the NATIONAL ASSOCIATION OF REALTORS®, I would like to urge your support for S. 1 when it comes before the Senate.

Perhaps no other industry in America is more directly affected by the passing along of federal mandates to states, localities and the private sector than real estate. When the federal government imposes environmental, educational and other requirements, state and local governments have basically two options. They can either eliminate or reduce vital government services, such as police, fire, education, or raise fees and taxes to pay for them. When the compliance costs are passed along to the taxpayers in the form of increased property taxes, real estate transfer fees and impact fees this directly affects the affordability of housing and the marketability of the affected communities. And, most importantly, middle class, first-time home buyers are often forced out of the market.

S. 1 will insure that these ''hidden'' federal taxes are not imposed by requiring that proposed legislation include the funding for the federal mandates. If funding is not provided, then a point of order can be raised removing the bill from further consideration by the Senate. The bill also insures that any proposed regulations that impact the private sector by more than $200 million include an analysis of the effect it will have on the nation's economy and productivity.

We support S. 1 and we urge you to oppose any floor amendments that would weaken its impact. There should be no carve-outs for broad categories, such as labor or environmental laws and regulations. Thank you for your consideration.

Sincerely,

STEPHEN D. DRIESLER,
Vice President and Chief Lobbyist.

Mr. LEVIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 3 minutes remaining.

Mr. LEVIN. I yield 1½ minutes to my friend from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Michigan and congratulate him on offering this amendment which is, in essence, S. 993, which was reported out of the Governmental Affairs Committee last year, an extremely balanced approach to the very real and justifiable concerns of State and local governments that we, in Washington, are passing measures which force them to spend money, but we do not give them money to pay those costs.

This measure had the widespread support of Governors and mayors. It forced Congress to confront the fiscal impact of our actions.

Unfortunately, S. 1, which is before us now, simply goes too far. It creates an unintended, but I am convinced, very real and inequitable burden on private sector entities, businesses that are affected by these mandates but will not have the extra protection of a second point of order in this measure.

I am concerned also that S. 1 will put at risk a whole array of Federal laws protecting the environment, people's health, people's safety, people's rights that the public simply does not want us to endanger and, in that sense, the consequences of this bill are not only unintended, they are undesired.

Mr. President, this has not been a filibuster. This has been a reasonable, thoughtful discussion of a measure which, frankly, most people on the Democratic side of the Senate want to support but feel, in its current form as S. 1 simply goes too far and loses the balance, the critical balance that was so much a part of S. 993.

Mr. President, I rise in strong support of the amendment by my colleague, Senator LEVIN.

The amendment that he offers includes the text of the bipartisan legislation, S. 993, reported last year by the Governmental Affairs Committee on which I am privileged to serve, which I thought adopted a balanced approach to addressing the justifiable concerns of State and local governments about unfunded mandates. It had the widespread support of Governors and mayors. This amendment establishes the principle that Congress must be forced to confront the costs that may be incurred by the State and local governments when we pass legislation. Through the point of order provision, it provides an opportunity for the fullest discussion if there is not a CBO cost estimate and if there are not funds authorized in the legislation we adopt to cover the costs on State and local governments. I was cosponsor of S. 993 and I am pleased to support this amendment now.

Last week in connection with the debate on an amendment I offered along with Senators KERRY, LEVIN, BUMPERS, DORGAN, GLENN, and others, I set forth in detail my concerns about the changes made in S. 993 as part of S. 1. In particular, S. 1 creates a new and, I think, threatening presumption.

Under S. 1, if the bill, joint resolution, amendment, motion, or conference report increases the Federal intergovernmental mandate by more than $50 million in a given year, a point of order will lie unless there is a funding mechanism provided. S. 1 as originally introduced also provides that if the funding mechanism is an authorization for the full amount of the mandate, then the bill must designate a responsible Federal agency, and establish procedures for that agency to direct that the mandate will become ineffective or reduced in scope if the full amount of the appropriations is not provided in any fiscal year.

In short, the presumption in S. 1 is that the Federal Government will pay 100 percent of the cost of obligations imposed by the Federal Government on States and localities.

So S. 1 is a much more extensive reach than that adopted in this amendment. It takes a problem and in its response reaches too far; and in doing so creates an unintended, and I am convinced, very real and inequitable burden on private-sector entities, businesses that are affected by these mandates. And I have been concerned that it also puts at risk a whole array of Federal law protecting the environment, people's health, people's safety, people's rights that the public simply does not want to endanger, that the public wants us to continue to protect.

Mr. President, let me now say that I believe the discussions of the last several weeks have made numerous very important improvements in the bill. I cannot overstate the outstanding work of Senators LEVIN and BYRD who spent numerous hours working carefully through every provision of the bill and demonstrating persuasively to the sponsors that many of the provisions were not well thought out and made little sense. They convinced the sponsors to agree to important amendments that make S. 1 a far better bill. In particular, I am pleased about: First, Senator BYRD'S amendment which will ensure that Congress has an important role in the final decision on whether and how mandates will fail or become reduced in scope; second, Senator LEVIN's amendment providing that if CBO cannot do a cost estimate on public sector mandates, the second point of order will not lie.

Let me say there that S. 1 could have been improved at an earlier stage. S. 1 is extremely important piece of legislation. Its provisions potentially affect virtually all of our laws. Yet it was rushed through the Governmental Affairs Committee without any opportunity for careful consideration. The markup took place one full working day after the hearing on the bill. The Republicans opposed consideration of all amendments and voted on a party-line basis to report the bill to the floor without a report. I associate myself fully with the remarks of Senator GLENN earlier this morning. This is not how the Governmental Affairs Committee usually operates and I hope we'll be returning to our usual careful approach to considering legislation.

I know, however, that even with the amendments, the basic presumption in S. 1 that I am concerned about remains: That the Federal Government will pay 100 percent of the cost of obligations imposed by the Federal Government on States and localities still exists. I will not go into all my concerns with this presumption. As I have previously stated, I believe that this presumption is inappropriate where laws apply in the same manner to

State, local or tribal governments and the private sector.

The presumption is inappropriate because it creates an unintended, but I am convinced very real and inequitable burden on private sector entities, businesses that are also affected by these mandates. Second, I am concerned that the process will create an unintended hurdle that may well impede the protection of people's health, safety, and employee's rights. Third, I am concerned that we may create differential standards for protection of our citizens. When we pass a law, we have determined that the national interest requires that the law achieve a goal, that there is a problem out there that requires a national solution to protect public health or the environment. We are adopting legislation establishing a value, a goal, to protect people. A family where the grandparents are suffering from emphysema do not care if the incinerator that is belching dirty air is publicly or privately owned. They believe the Government has an obligation to ensure that they get clean air regardless of who is providing that air. Fourth, I am concerned about the extra burden on businesses, particularly small businesses, if publicly owned facilities do not do their share of cleaning up the air or our estuaries. Fifth, those of us who represent States which are victims of pollution from upwind are particularly vulnerable under this proposal. If municipal sewage plants in New York are exempt from future requirements, Connecticut industries will bear an even greater burden in cleaning up Long Island Sound. I think the Levin and Byrd amendments make some inroads into limiting the impact of this presumption. But I remain convinced that the presumption itself is inappropriate and that this amendment, embodying last year's bipartisan bill endorsed by Governors and mayors is the right approach. I urge adoption of the amendment.

Mr. LEVIN. I yield the Senator from Ohio 30 seconds.

Mr. GLENN. Mr. President, I would like to make some short remarks. I just am beginning to resent the implication that I am filibustering something that I am a cosponsor of, as we keep hearing that from the other side of the aisle.

I addressed this at some length this morning for about 15 or 20 minutes on what happened in committee. We got railroaded in committee and could not bring up amendments. We wanted to bring them up there and could not. We came to the floor with a guarantee that we would be able to bring up anything we wanted to bring up, and then cloture is filed against us here.

It has been one series of disasters after another in which the minority rights were trampled—no report from the committee, nothing at all. And yet I am a cosponsor of this legislation. The idea that we are somehow filibustering on this side is just not borne out by the facts, and I think the RECORD shows that.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have 1 minute left. I yield myself that minute.

First of all, let me say, Senator GLENN was the chief sponsor of last year's bill. He is the cosponsor of this year's bill. He is not filibustering, nor am I, nor anyone else who offered amendments to improve this bill.

The committee process was significantly bypassed. S. 1 was introduced on a Wednesday night, the hearing was on a Thursday, and they wanted to go to markup on a Friday. The lesson to be learned here is it is useful to have a committee consider a bill. A lot of the amendments adopted here should have been offered and adopted in committee if we had the time.

There is no filibuster going on. It seems to me to suggest that people who cosponsor this bill, S. 1, such as Senator GLENN, are filibustering their own bill makes no sense at all.

Finally, I ask unanimous consent to print in the RECORD a letter relative to S. 993 signed by the same people who now support S. 1—which they do—but last October saying they strongly support S. 993 and would oppose any amendments to S. 993, the same president of the National League of Cities, the same Governor of Ohio.

The PRESIDING OFFICER. All the time of the Senator has expired.

Mr. LEVIN. Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL GOVERNORS' ASSOCIATION, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS,

October 6, 1994.

TO ALL SENATORS: The nation's state and local elected officials strongly urge the U.S. Senate to pass the state-local mandate relief bill, S. 993, before adjournment. Passage of this bill is our top legislative priority.

Not only will we oppose any amendments not supported by the bill managers, Senators John Glenn, William Roth, and Dirk Kempthorne, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments.

Please stand with your state and local officials in support of this crucial legislation.

Sincerely,

GEORGE V. VOINOVICH,
Governor of Ohio, Co-Lead Governor on Federalism, National Governor's Association.

RANDALL FRANKE,
Commissioner of Marion County, Oregon, President, National Association of Counties.

VICTOR ASHE,
Mayor of Knoxville, Tennessee, President, U.S. Conference of Mayors.

KAREN MCCARTHY,
Missouri House of Representatives, President, National Conference of State Legislatures.

SHARPE JAMES,
Mayor of Newark, New Jersey, President, National League of Cities.

The PRESIDING OFFICER. The Senator from Utah has 1 minute.

Mr. BENNETT. Mr. President, I wish to quickly acknowledge, I mean no implication of dishonor among the Senators who have been working hard. I still see some indication that some Members of their party have done some things that look and talk and walk to this Senator a bit like a filibuster.

I yield the remainder of the time to the Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I thank the Senator.

Mr. President, S. 993 is the core, it is the base of S. 1. I am proud of what we developed in S. 993 last session. But it was last session. It is the building block upon which we then went forward and continued to develop S. 1.

For those Members who are thinking that they can vote for S. 993, last session's bill, and not vote for S. 1 and think that they can then say to their mayors and to their Governors, their county commissioners, their teachers, ''Oh, yes, I voted to stop unfunded Federal mandates, I voted for S. 993,'' in today's environment, the fact that we have now moved forward with S. 1, I am afraid you will not get the sort of reception that they may have anticipated.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. KEMPTHORNE. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

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

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 60 Leg.]

YEAS—58

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

NAYS—39

Akaka	Exon	Levin
Biden	Feingold	Lieberman
Bingaman	Feinstein	Mikulski
Boxer	Ford	Moseley-Braun
Bradley	Glenn	Moynihan
Bryan	Harkin	Murray
Bumpers	Hollings	Pell
Byrd	Kennedy	Pryor
Campbell	Kerrey	Reid
Conrad	Kerry	Rockefeller
Daschle	Kohl	Sarbanes
Dodd	Lautenberg	Simon
Dorgan	Leahy	Wellstone

NOT VOTING—3

Gramm	Inouye	McCain

So the motion to table the amendment (No. 218) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Idaho is recognized.

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

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

Mr. GREGG. Mr. President, the Senator from Idaho controls 20 minutes.

Mr. KEMPTHORNE. I yield 2 minutes to the Senator from New Hampshire.

Mr. GREGG. I thank the Senator.

CONGRATULATIONS TO THE MANAGERS OF THE BILL

Mr. GREGG. Mr. President, I wish to congratulate the Senator from Idaho and the Senator from Ohio for having brought us to the completion of this rather lengthy process of passing the unfunded mandates bill.

They have done an extraordinary job of managing this bill. They are in what has been a long and fairly tedious few weeks here of extraneous issues to the underlying question, which is passage of the unfunded mandates law.

When I first was elected to this body 2 years ago, I made one of my job priorities passage of this piece of legislation. I was happy to work with the Senator from Idaho to bring it to this point. And I congratulate him for all of his efforts in truly driving this process.

Effective unfunded mandates language is absolutely critical to the States, to the cities, and to the county governments of this country. If we are going to have government which is responsive, we have to have a Federal Government which, when it passes a law, does not end up taking all of the glory and none of the hard decisions, but rather takes the glory and also takes on the hard decisions. That means that this bill will put us all on notice that when an unfunded mandate comes to the floor of the House or the Senate and there is a vote on that unfunded mandate, people be held accountable as to whether or not they are supporting passing of laws on to the States and on to the cities.

It is very appropriate that this bill should be one of the first major pieces of legislation passed by this Congress because it represents a new approach to the way we govern this country. It represents an approach which recognizes federalism should exist. In real terms, federalism means that when the Federal Government takes actions, it creates costs for the local community and it also pays the costs that it incurs and puts on those local communities.

So I strongly support this piece of legislation. I congratulate the managers of the bill for bringing it to this point.

I yield the remainder of my time.

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

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

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the time set aside for different Senators to make their comments occur after final passage.

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

Mr. KEMPTHORNE. Mr. President I ask unanimous consent that amendment No. 222 be withdrawn.

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

So the amendment (No. 222) was withdrawn.

Mr. GLENN. Will the Senator yield?

Mr. KEMPTHORNE. Yes, I am happy to yield.

Mr. GLENN. In setting aside time for comments until after the final vote, I also ask unanimous consent that the time reserved for Senator BYRD be included in that time transferred until after the final vote.

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

AMENDMENT NO. 228 TO AMENDMENT NO. 210

(Purpose: To make technical corrections, and for other purposes.)

Mr. KEMPTHORNE. Mr. President I send to the desk the managers' amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be reported.

The legislative clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes an amendment numbered 228 to amendment No. 210.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

(The text of amendment is located in today's RECORD under ''Amendments Submitted.'')

The PRESIDING OFFICER. Under the agreement, the amendment is agreed to.

So the amendment (No. 228) to amendment No. 210 was agreed to.

Mr. BAUCUS. Mr. President, I rise to support S. 1, the Unfunded Mandate Reform Act of 1995.

This bill will strengthen the partnership between the Federal and State government. That, in turn, will help us all do a better job protecting public safety and public health.

BACKGROUND

When the Framers of the Constitution met in Philadelphia, federalism was not an abstract theory. It was a practical necessity.

During the period of the Articles of Confederation, the Framers had experienced, first hand, the chaos that occurs when there is no strong Federal Government to bind people together and address matters of fundamental national interest.

At the same time, the Framers understood that, in most cases, State government, close to the people, governs best.

So the Framers enhanced the Federal Government's authority in certain areas. But, in the 10th amendment, they provided that ''the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

This system established a partnership.

However, over the last few decades, the partnership has been weakened.

To begin with, Congress enacted a wide range of laws designed to address important national problems. Laws to protect civil rights. To promote social welfare. To improve public health. To fight crime. To protect the environment. And to accomplish other important goals.

In many cases, the Federal Government required States to take stronger action, or provided powerful incentives for them to do so.

As a result, our Nation made great progress.

But the cumulative cost of all of these laws began to mount. At the

same time, Federal funding did not rise. Instead, if fell.

Meanwhile, many State governments became more sophisticated. They wanted to address complex problems themselves, without instructions from Uncle Sam.

As a result of all this, State and local governments began to criticize what they called unfunded mandates. Today, the criticism has swelled into a virtual rebellion.

Now, let's step back for a moment. As with most issues, the unfunded mandates debate has had its share of hyperbole. In some cases, the estimates of unfunded mandates have been wildly exaggerated. And various special interests have used the term ''unfunded mandates'' loosely, to attack any Federal law they don't like.

But, at the core of this debate, there is a real problem. Take the case of Butte, MT. Because of various environmental laws, Butte is required to upgrade the drinking water system, at a cost of $20 million; construct a new sludge treatment system, at a cost of $7 million; and upgrade the landfill, at a cost of $5 million.

Independently, each of these requirements makes sense. But their cumulative impact can be devastating, especially for a small city like Butte struggling to diversify its economy.

To address situations like this the Environment and Public Works Committee has been focusing on the impact that our environmental laws have on State and local governments.

During the last Congress, the committee reported a Safe Drinking Water Act and a Clean Water Act that each reduced burdens on local governments. And the committee considered a Superfund bill and an Endangered Species Act bill that would have given States more control over those programs.

In each case, we gave careful attention to the impact that our legislation would have on State and local governments. In fact, that was one of our primary concerns.

SUPPORT FOR THE BILL

The bill we are considering today will take another important step in the right direction.

The key provision of the bill is pretty straightforward. It requires that, when a bill comes to the floor of the Senate or House, Congress must consider whether the bill imposes a large new mandate on State or local governments. If so, the bill creates a procedural point of order against the bill, which can only be waived by a majority vote.

In other words, before imposing a new mandate on State or local governments, Congress must stop and think. We must consider the impact of the mandate, consider the alternatives, and make an affirmative decision that the mandate is appropriate.

By doing so, the bill reinforces the approach that the Environment and Public Works Committee has been taking over the last several years.

At the same time, the bill does not create any artificial barriers that would prevent Congress from enacting needed legislation.

This is an important point. In some cases, a provision that technically is an unfunded mandate may be the best solution to a problem.

Take the case of a pollution problem that has interstate effects. In other words, the pollution crosses State lines. One State may already have taken steps to address the pollution problem. But that State may be located downwind or downstream from another State that hasn't done a darn thing. The bad actor is pouring pollution into its neighboring State.

In a case like that, we may need a minimum Federal standard. And we may decide that it would be unfair to require the States that already have addressed the problem, and paid for it themselves, to subsidize a handful of bad actors who have lagged behind.

In other cases, a minimum Federal standard may be necessary to prevent the unfortunate race to the bottom that can occur if States weaken their environmental laws as a way of attracting jobs away from other States.

One State lowers its environmental standards. In response, other States are forced to lower their standards.

The result is an overall decline in environmental protection. Everybody is worse off.

In a State like Montana, which has progressive environmental laws, we don't want to be forced to lower our environmental standards in order to create new jobs, or to keep the ones we have.

So, Mr. President, there may be cases in which it is entirely appropriate to enact a provision that is, technically, an unfunded mandate. But, under the bill we are considering today, Congress can only do so if we have carefully considered the impact of the mandate, considered the alternatives, and affirmatively decided that it's the best solution to the problem.

CONCERNS

Of course, no legislation is perfect. During our consideration of this bill, I believe that there have been some significant improvements. And I want to thank the Senator from West Virginia [Mr. BYRD], the Senator from Michigan [Mr. LEVIN], and others for their diligent work.

However, I remain concerned over whether the Congressional Budget Office will be able to carry out its new responsibilities. To date, no one has been able to make reliable estimates of the cost of unfunded mandates. Furthermore, the Director of CBO has testified that his office will be hard-pressed to make the necessary assessments.

That should be a warning flag. We need to be realistic about how well this bill can be implemented. And we should be ready to fix any problems that arise in the future.

Another concern is whether we may be creating an uneven playing field that may favor the public sector over private industry. I hope that will not be the result. But if it is, we may need to revisit that issue at a later date.

CONCLUSION

In any event, Mr. President, this is not the end of the unfunded mandates debate. It's really the beginning.

In the upcoming months, we will have the opportunity to reform the Safe Drinking Water Act, the Superfund law, and other environmental laws. In each case, we will have the opportunity to give States more flexibility and reduce unfunded mandates, while maintaining protection of public health.

If we do so, we will build on the progress we are making in this unfunded mandates bill, and do even more to strengthen the partnership between the Federal and State governments.

Finally, Mr. President, I wish to compliment the leadership of the Governmental Affairs Committee, Senators ROTH and GLENN, for their work on this bill.

Senators ROTH and GLENN have stood on this floor for 2 weeks. Their thoughtfulness, candor, and fairness are noted and appreciated.

Senator LEVIN is also to be strongly commended for his insightful and determined efforts to improve this bill.

I also wish to compliment the majority manager and prime sponsor of the bill, Senator KEMPTHORNE.

For the past 2 years, Senator KEMPTHORNE and I have worked together as members of the Environment and Public Works Committee. We've dealt with some thorny issues. Sometimes we've disagreed. But Senator KEMPTHORNE has always been thoughtful, diligent, and willing to consider other points of view in order to make progress.

He's taken the same approach here, and the result is a solid bill that will improve our consideration of environmental and other laws.

Mr. DODD. Mr. President, I support this bill. I believe that we should consider the effects of legislation we consider in this body on States and localities. I have some serious reservations, however, about the sweep, and the director of this debate.

THE FEDERAL ROLE

When the Articles of Confederation were conceived more than two centuries ago, the States were to be sovereign and independent. Seven years later, the Constitution was ratified as an antidote to the decentralized and weak National Government established by the articles. The Constitution strengthened the responsibility and authority of the National Government, and recognized the Federal Government's unique role in defining and protecting the basic rights and interests of citizens in all States.

Over 200 years, the expansion of commerce, the advent of wars, the growth of a sense of national character, and

the surge of information and technology have considerably altered the responsibilities of government at each level. We have grown and proposed as a Nation because our Constitution created a Government capable of withstanding such dramatic developments and changes.

LEGITIMATE STATE CONCERNS

I believe that a discussion of federalism is long overdue, but I am concerned with the direction of our current debate. I understand well the concerns of my State and local colleagues who are outraged over the proliferation of Federal mandates and regulations. And I understand well their frustration over the Federal Government's shifting of a substantial share of the cost of providing basic services to more local units of government.

SHARED RESPONSIBILITY

I am concerned, however, that we are moving further away from the notion of partnership and shared responsibility in this debate.

When the city of Houston seeks funding for a new sewer system, or the city of Detroit seeks money for improvements to its transit system, who do they come to for help? They come to us.

They come to the Federal Government because they believe that there is a national role in assisting them to serve their citizens. And they come to us because they believe that we have deep—though shrinking—pockets.

And, while we sometimes ask them to pay some of the costs, we do our best to help. We, too, recognize that there is a national interest in providing these services. We are willing to share some of the financial burden.

THE S. 1 APPROACH

Now we come to our present debate. The underlying message of this bill is that the Federal Government should only ask something of our State and local counterparts if it is willing to pay 100 percent of the costs. A point of order can be waived, but it can be raised on almost any bill with intergovernmental costs. The message is the National Government should not ask or expect States and localities to share a portion of these costs.

This is not an approach recommending shared responsibility, it is an approach that could cripple interdependence. The National, State, and local governments are not independent entities with their own unique set of constituents. They are interdependent units of government attempting to address similar problems with overlapping constituencies: the American people. We must not lose sight of this fact.

THE IMPORTANCE OF SOME MANDATES

Nor should we lose sight of the importance of some of the mandates we are discussing today. Let's put this in some perspective.

According to the National Conference of State Legislatures, here's a sampling of legislation it considers mandates: The Civil Rights Act, Clean Air, Clean Water, and Safe Drinking Water, the Drug-Free Schools and Community Act, college work study, student loan reform, child support enforcement, and child nutrition legislation.

Surely we can all agree that the goals of these acts are important and national in scope. We can also agree that they have an important intergovernmental impact and benefit.

The National Conference of State Legislature's definition of a mandate is broader than this bill's. But I am concerned that they and others will seek to expand the definition of an unfunded mandate to include every important social, environmental, and labor law that is not fully funded by the Federal Government. This would grossly undermine the importance of these programs, and jeopardize the protections afford to all Americans.

And it would disable our intergovernmental partnership.

COST SHIFTING—THE SHELL AND PEA GAME

Clearly there are genuine issues of concern in the debate over Federal mandates. If pressed to its logical extremes, an inordinate number of mandates could severely limit the States' flexibility in responding to unique regional needs, and abolish the number of fresh and innovative ideas that originate from local experimentation.

Paying for future programs is not, however, the only issue of concern to States and localities. Of equal concern is the financing of vital services.

I believe that this bill fails to adequately address the issue of Federal cost shifting—one of the most damaging forms of intergovernmental abuse. The bill does not prevent the Federal Government from engaging in a shell and pea game with taxpayer dollars—shifting the Federal share of financing vital services to States and localities.

S.1 does not consider a substantial cut in entitlement programs to be a mandate as long as these cuts are accompanied by a corresponding decrease in State and local governments' obligation to comply with the programs provisions.

So, if the Congress chooses to slash funding for a major entitlement program—let's take Medicaid for example—it can do so—as long as it tells the States they no longer have to comply fully.

But, what is the practical effect on State and local governments of slashing Federal funding for Medicaid? The costs of providing virtual health care services to the poor will not have been reduced—but the Federal contribution to addressing that need will now have diminished.

Who's going to fill the financial void? Some nonprofits, public hospitals, and private charities may pitch in. But, inevitably State and local governments are going to have to pick up much of the additional financial burden—whether or not they are required to by the letter of the law.

States and localities fear a balanced budget amendment so greatly for this very reason. They are all too familiar with this game. They understand—and their recent experience has taught—that substantial reductions in Federal funding for vital services force more local units of governments to pick up much of the tab.

Cutting Federal funding for vital services is effectively an intergovernmental mandate.

It's a mandate on States and localities. And frankly, it's a mandate on the middle-class.

All too frequency, it's middle-class Americans who end up bearing a disproportionate share of the increased costs of providing important services.

Nothing in this bill precludes the Congress from shifting the burden of financing entitlement programs to the States.

Mr. President, if we are really serious about addressing the problem of intergovernmental mandates, we should take steps to assure that the Congress does not shift the obligation of balancing the budget to the States by asking them to control the costs of entitlements—something we have been woefully unable to do.

STRIKING A BALANCE

It is clear that the Federal Government should not and cannot impose costly new requirements on States and localities without considering how they will pay for those costs. It is also clear that we must develop a better balance between competing Federal responsibilities, and carefully review our budget priorities.

But in the long run, the solution to the unfunded mandates problem depends on better communication between all levels of government. We need to work together to set priorities and make sure that taxpayer dollars are being used efficiently.

CONCLUSION

Mr. President, I commend the managers of this bill for their hard work and genuine desire to assist our States and localities. This bill is a reflection of their commitment and a positive step forward.

Soon, my colleagues and I will have another opportunity to test our resolve toward improving intergovernmental relations as we debate a balanced budget amendment and make the tough budgetary decisions that follow.

I look forward to working with my colleagues to strengthen cooperation and partnership between all levels of government.

Ms. MOSELEY-BRAUN. Mr. President, when I came to the Senate 2 years ago, I was very surprised to discover that in Washington there was almost no discussion of an issue of great concern to State and local officials. That issue was the impact of mandates imposed by the Federal Government on State and local governments.

I asked several Federal agencies for information regarding the cost of mandates on State and local governments, and I found, quite simply, that no one

I could find in the entire Federal establishment knew their impact. That was one of the reasons my very first bill filed in the 103d Congress was legislation to require disclosure with regard to unfunded Federal mandates. That is why S. 1 has such bipartisan support, and why I am a strong supporter of S. 1—because it promises to curb the practice of imposing Federal mandates on State and local governments without advance, complete disclosure of the impact of those mandates.

S. 1 will greatly change the relationship between the Federal Government and State and local governments. And that is a good thing. Creating a mechanism that will help ensure that the voice of State and local governments is heard in Washington before legislation is enacted is both sound policy, and something that has long been needed.

S. 1 will also make Federal officials more accountable—and that, too, is a good thing. Asking the Federal Government to make its decisions with good information—with the best information we can get on the State and local governments that will have to live by those decisions—should not be controversial. Rather, it is the way decisions should always have been made, and the way decisions should always be made in the future.

S. 1 requires the congressional committees to report on the costs and benefits anticipated from any Federal mandates contained in the bills they report to the Senate for action, including the effects of the mandate on health and safety, and the protection of the environment. The report will also include information as to whether any mandates in the reported bill are to be partly or entirely offset.

The Congressional Budget Office [CBO] would be required to estimate the cost impact of the mandate on State and local governments, if it is likely to exceed $50 million, before the legislation could be brought up on the Senate floor. CBO would also be required to estimate the cost impact of a proposed Federal mandate on the private sector if it exceeds $200 million.

A point of order could be raised if the legislation would increase the cost of the mandate on State and local governments by $50 million, unless spending to cover the increase is also authorized. Under the terms of S. 1, most mandates would only be effective during a fiscal year if Congress appropriated the funds to meet the costs of those mandates. If appropriations were cut, then the mandates would also be reduced.

S. 1, however, does not put Congress in a straitjacket. It does not prevent a congressional majority from enacting unfunded mandates. The points of order established by the bill can be waived by majority vote. What S. 1 really requires, therefore, is, as I have already said, for Congress to make its decisions with the information on the mandates in front of it, and, if Congress decides not to provide funding to offset the costs of a particular mandate, to make that decision clear and explicit.

This legislation also ensures that the cost of mandates imposed during the regulatory process would be evaluated. Federal agencies would be required to estimate the anticipated costs to State and local governments of the rules they write to implement Federal legislation. Federal agencies will have to consult with elected representatives of State and local governments so that their concerns and suggestions are taken into account in the writing of rules.

The case for the changes made in S. 1 is compelling. The issue of mandates is the No. 1 issue for Governors, for mayors, and for other local elected officials across this country. Over and over, State and local officials from around this Nation, including my own State of Illinois, have told me and every member of Congress that unfunded mandates are taking over their budgets, and undermining their ability to manage their own local problems.

Governor Edgar of Illinois wrote me supporting S. 1, stating that unfunded mandates have consumed an increasing share of State and local budgets, and that they impose severe limitations on what can be achieved with Illinois resources. I have heard from numerous county boards in Illinois on this issue. Winnebago County sent me a resolution that was adopted by the county board on September 30, 1993, opposing State and Federal unfunded mandates. The mayor of Chicago sent me a copy of a report that was prepared called ''Putting Federalism To Work For America,'' from November 1992, that analyzes the impact of Federal mandates on Chicago. I want to discuss a few concrete examples from that report.

In order to comply with carbon monoxide standards, the city of Chicago, recognizing that traffic jams contribute greatly to these emissions, established a plan to increase the efficiency of the traffic flow in the city. This involved designating some streets as one-way, posting no-parking zones, and enforcing these zones by towing. Even though the city achieved compliance with the carbon monoxide standards, as proven repeatedly by heavy monitoring by Federal employees, the U.S. Environmental Protection Agency demanded documentation that every car parked in a tow zone was actually towed.

The city had taken the necessary steps to ensure compliance with the carbon monoxide emissions standard more than 20 years ago, but in 1989 the Federal Government was still questioning the number of tow trucks on the streets of Chicago. This occurred despite the fact that Federal monitoring of carbon monoxide emissions proved that Clean Air Act standards were consistently met. At the same time that Federal workers were monitoring towing in Chicago, the main threat to the Great Lakes was the disposition of airborne toxins from as far away as Mexico, a problem that should fall under the aegis of a Federal agency.

The Calumet Skyway toll bridge provides another example of a high cost, unfunded mandate. The bridge must be painted regularly. The last time the bridge was painted in the late 1970's, the price tag was $10 million. The current cost has escalated to $40 million. The $30 million addition is attributable to the Clean Air Act which requires that no sand blasting be used where lead-based paint is involved. The technique specified to strip the old paint cannot allow lead chips to enter the air. The paint removed must be cocooned and other safeguards applied, including disposal requirements. Public health specialists disagree on the level of risk that would be imposed by less severe safeguards. They do appear to agree that the primary risk is assumed by workers who could be protected at a dramatically lower cost. Similar problems have quadrupled the cost of repainting the Loop elevated train structure in downtown Chicago. The report asks whether that extra $30 million would have been better spent on crime control initiatives. And more importantly, it asks which level of government is in the best position to decide.

Mayor Daley has long been a leader in the effort to educate the Federal Government on the adverse impacts unfunded mandates have on his ability, and the ability of other mayors and local officials, to conduct the people's business and be accountable to the taxpayers. In a letter to me dated January 11, 1995, Mayor Richard Daley of Chicago reiterated that unfunded Federal mandates cost the city of Chicago over $160 million in 1992, a figure that has only increased since then. His letter goes on to say that: ''Fundamentally, this issue is all about giving local governments the flexibility to make the best use of local and federal dollars.'' That is hardly revolutionary, but is critically important to every level of government.

Mandates impact big cities and small communities very differently, yet rarely are regulations written to be sensitive to those differences. The problems faced by Chicago are different than those faced by small Illinois communities, and not all problems can be solved with the same solutions. We have passed a Federal mandate to require testing for lead in water. In 1976, the law was changed to prohibit lead-based soldering of water pipes. Before 1976, lead was used to solder pipes together. When inspectors recently performed the lead testing requirements, the community learned that there were no traces of lead in the municipal distribution facility. The lead was only found when tests were completed in private homes. The local government could not require private homeowners to change their water pipes. In fact, most experts agree that the real threat

to children from lead is from lead-based paint, and not water. But the city was required to spend thousands of dollars to test for lead in water. This was a tremendous expense to the local taxpayer, with very marginal benefits. And it makes it that much harder for that community to meet higher priority needs.

Regulations often do not account for the very real regional differences in this country. For example, part of the Federal clean water reference standard is a clear flowing trout stream. Illinois has no trout streams—and no trout in any of its rivers. Illinois has thick topsoil, and the water is full of rich silt. It is that rich soil that makes Illinois part of this country's breadbasket. In Colorado, water runs down mountains, so the clear flowing trout stream standard may be appropriate. That standard just does not fit the reality in Illinois.

These environmental regulations are important. They save lives. But we must develop regulations that are more sensitive to local variations and flexible enough to address the problems of communities of all sizes. I recognize that the Senate does not debate the implementing rules that are written after we pass laws. But these are very serious problems that go right to the heart of why citizens do not feel that the government is responding to their concerns.

S. 1 is a statement that the Federal Government has heard what our State and local elected officials have been telling us, and that the Federal Government is prepared to change the way it has been doing business. It is a recognition of the fact that the Federal Government has a responsibility to State and local governments in the mandates area, and that the Federal Government is now prepared to meet that responsibility.

While I strongly support S. 1, I also think it is important to keep in mind that an unfunded mandate is not per se a bad thing. Not every Federal mandate is bad; many have achieved a substantial amount of good for the American public. My support for S. 1, as it was reported by the Governmental Affairs Committee, therefore, is not a repudiation of the whole idea of mandates. The mandates the Federal Government used to make real progress in civil rights and our treatment of the disabled, for example, were essential to our progress as a nation, and as a people. I applaud the fact that S. 1 recognizes how essential those mandates were and are, and that under the terms of the bill, future civil rights legislation which builds on this tradition will be exempt from S. 1.

Federal action is sometimes necessary. There are mandates which improve the health and safety of all Americans. We have Federal mandates that prevent a factory from disposing hazardous waste in the regular sewer system. This protects the sewers from contamination, and avoids the burden that local communities would have to shoulder to clean up the problem. Mandates can help prevent environmental degradation at the front end, so that we do not have to pay for clean up, which is always more costly, after the damage has been done. Federal mandates have helped to ensure that the water is safe to drink all across this country, and that disabled children receive a proper public education.

The reason we are here is not because mandates are wrong in principle. The real reason we are here is because of the budgetary shell game that was played in the 1980's. The 1980's were a time when many domestic programs were slashed, with mandates pushing the responsibilities onto hard-pressed State and local governments. I was in the Illinois House when President Reagan introduced the New Federalism. It was supposed to redefine the relationship among Federal, State and local governments. What it really did was to make large cuts in Federal taxes, and push off the responsibilities of providing necessary services to State and local governments—without sending the money. The net result of that exercise in fiscal subterfuge was an explosion of Federal debt from only about $1 trillion in 1980 to closing in on $5 trillion now.

S. 1 is designed to ensure that the kind of budget fraud we saw in the 1980's won't be repeated in the 1990's, or in the next century. Addressing our budget problems requires tough decisions. In the 1980's, there was a real attempt by the President to avoid making those tough decisions, and to try to delude the American people into believing that we could solve our budget problems on the cheap, without affecting the lives of the great majority of Americans. There was an attempt to avoid providing any real leadership on our budget issues, and to avoid telling the truth about our budget problems to the American people. That was wrong then, it is wrong now, and we will be paying the price of those wrong decisions for decades to come. S. 1 cannot undo the mistakes made in the 1980's. What it can do, and what we must do, is ensure that we don't repeat those mistakes, and that is another reason enactment of S. 1 is so important.

I believe that S. 1 will achieve a necessary balance. We need to balance the benefit of mandates with their costs. We need to balance the responsibilities of the Federal Government to ensure the safety of American citizens with the rights of State and local governments to prioritize their budgets.

It is the responsibility of all levels of government—Federal, State, and local—to protect their citizens. Governors, mayors, and village presidents will feel the same pressure of public opinion to protect health and safety, as well as the environment, as we do at the Federal level. When this legislation becomes law, all levels of government will still have to bear the costs to insure the safety and well being of the American people. But we will stop the cost shifting from Federal to State and local governments that occurs because of a lack of information. Federal agencies will write better regulations with the benefit of counsel from State and local officials. And Senators will cast informed votes.

We are all in this together, Mr. President. The Federal Government, State governments, and local governments, are all trying to meet their responsibilities to the American people. What S. 1 does is very simple—it ensures that the Federal Government does not attempt to meet its responsibilities with the tax dollars raised at the State and local levels. S. 1 prohibits budgetary shell games, and by doing so, will help end confrontation between the various levels of government, and promote cooperating instead. And that, based on my experience at all three levels of government, will not make it tougher for us to address the problems the American people elected all of us to solve, it will make it easier.

I want to conclude by congratulating my colleague from Idaho, Senator KEMPTHORNE, and my colleague from Ohio, Senator GLENN, for their leadership in crafting this legislation and bringing it to the floor so promptly in the new Congress. I share their view that this bill is carefully balanced, and that it won't take much to upset that careful balance that has so contributed to the broad, bipartisan support this bill enjoys.

I strongly urge my colleagues, therefore, to support S. 1, and to enact the kind of bill that will preserve the strong, bipartisan coalition that has been the driving force behind the effort to address the mandates problem. That, I believe, is what the American people expect of us.

Mr. President, I ask unanimous consent to insert the letters the Governor Edgar and Mayor Daley, the resolution from the Winnebago County Board, as well as an editorial from the Chicago Tribune in support of this legislation, into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF ILLINOIS,
Springfield, IL, January 10, 1995.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: I am writing to express my sincere thanks to you for your support of S. 1, the ''Unfunded Mandate Reform Act of 1995.''

Unfunded mandates have consumed an increasing share of state and local budgets, and impose severe limitations on what can be achieve with our existing resources. It is essential that Congress act now to reduce the burden of such mandates, particularly in the context of current initiatives to reduce the federal budget. The National Governors' Association and other groups representing state and local officials have made passage of a mandate relief bill their major legislative priority over the past several years.

I am very pleased that you are an original cosponsor of the mandate relief bill now under consideration. If I can be of assistance

to you as this important measure moves forward, please let me know.

Sincerely,

JIM EDGAR,
Governor.

CITY OF CHICAGO,
Chicago, IL, January 11, 1995.

Hon. CAROL MOSELY-BRAUN,
U.S. Senator,
Washington, DC.

DEAR SENATOR BRAUN: I am writing to urge your support for the Mandate Relief legislation about to be debated on the floor of the House and Senate. I am pleased that the new Congress has acted so quickly, with bipartisan support, to move this legislation.

My support for effective mandates legislation goes back several years. Along with countless other mayors, governors and county officials, I have long tried to make clear to the Congress and the Administration the adverse impacts unfunded mandates have on our ability to conduct the people's business and be accountable to our taxpayers. Chicago's 1992 study, ''Putting Federalism to Work for America,'' one of the first comprehensive studies of this issue, conservatively estimated that mandates cost the city of Chicago over $160 million per year—a figure that has only increased since then.

The legislation being considered in Congress will begin to address problem by setting up a strong process to discourage the enactment of new mandates, and to require that new mandates be funded if they are to be enforced. I recognize that it does not cover existing mandates, an issue which I believe Congress also needs to address.

Fundamentally, this issue is all about giving local governments the flexibility to make the best use of local and federal dollars. The importance given the mandates issue gives me hope that the new Congress—Democrats and Republicans alike—will be paying close attention to the real issues that face our communities and our citizens. Please vote in favor of HR5/S1.

Sincerely,

RICHARD M. DALEY,
Mayor.

RESOLUTION OF THE COUNTY BOARD OF THE COUNTY OF WINNEBAGO, IL

Whereas, in November 1992, the citizens of the State of Illinois approved an advisory referendum question opposing unfunded state mandates; and

Whereas, units of local government can no longer afford to implement state and federal mandates without adequate state and federal funding mandates: Now, therefore, be it

Resolved by the County Board of Winnebago County to oppose the enactment of all state and federal unfunded mandates.

Be It Further Resolved by the County Board of Winnebago County that Winnebago County encourages the passage of Senate Bill 993 and House Resolution 140 to free local governments from obligations to carry out future federal mandates unless federal funds are provided.

Be It Further Resolved that copies of the foregoing be sent to the Senator Paul Simon, Senator Carol Moseley Braun, Congressman Don Manzullo, Winnebago County Legislators, County Board Chairman of DuPage, Kane, Cook, Lake, McHenry, Will and St. Clair counties and the National Association of Counties.

[From the Chicago Tribune, Jan. 12, 1995]

UNLOCKING THE MANDATE TRAP

Not content to spend the federal government a few trillion dollars into debt, Congress over the years has had a passion for spending the money of state and municipal governments as well. It does this by requiring the local folks to pay for many programs and policies created in Washington.

These ''unfunded mandates'' have provoked a quiet revolution in the past couple of years. About a dozen states, including Illinois, have refused to comply with federal ''motor-voter'' legislation, which requires them to expand voter registration opportunities; California has sued to block the federal government from enforcing it. Some state leaders have threatened that, unless they get relief from mandates, they will oppose a balanced-budget constitutional amendment.

Their anger is understandable. The federal government gets to be the good guy, imposing popular measures such as the Clean Air Act and the Clean Water Act. The locals, in turn, have to raise taxes to pay for enforcement and lose autonomy in their spending decisions. The City of Chicago has estimated that in one recent year it spent $70.8 million on unfunded mandates, including $27 million in paperwork.

The Senate Thursday begins debate on a bill that would require Congress to pay for any new mandate that imposes more than $50 million in costs on local governments. If Congress fails to do so, the mandate could be blocked by any member on a point of order.

The bill provides quite a loophole: Congress could override the point of order by a simple majority vote in each chamber. It also includes exemptions for anti-discrimination statutes and emergency assistance.

The bill faces assaults from the Right and the Left. Some Republicans want a wholesale ban, or at least a requirement of a three-fifths vote to override the point of order. Some Democrats want to exempt labor, public health and public safety laws.

The bill's impact will be limited. Requiring members to go on record as supporting an unfunded mandate—in effect, acknowledging they are passing on a tax hike to local payers—is a worthwhile step. But it won't stop unfunded mandates. Illinois lawmakers have often overridden their own anti-mandates law, but rarely catch flak from voters.

This tack, however, recognizes that there are times when it is appropriate for the federal government to set national policy and expect localities to pay the cost. When that happens, it will at least be clearer to voters who is responsible.

The measure has the support of the National League of Cities, the National Governors Association, and other representatives of state and local governments. They see it as a solid step toward easing their burden, and Congress should see it that way, too.

Mr. CONRAD. Mr. President, I rise today to express my support for S. 1, the unfunded mandates bill. I am a cosponsor of S. 1 because, although I recognize that mandates can serve important purposes, it is time to ensure that we fully understand the consequences of unfunded mandates for States and localities.

Unfunded Federal mandates have caused a tremendous impact in the communities of North Dakota. For example, Safe Drinking Water Act testing requirements cost some small North Dakota communities over $100 per year per household. Water rates in Grand Forks, ND, increased by over 30 percent from 1990 to 1993. Water rates in Langdon, ND, doubled in 1994. While the goal of the Safe Drinking Water Act is desirable, I believe that the legislation has to be flexible and that the Federal Government must be responsible while enacting unfunded duties upon small communities.

Mandates, including some unfunded mandates, have resulted in valuable and legitimate accomplishments. We benefit from a clean environment. We applaud school desegregation. We have made great progress toward addressing health and safety concerns. The Federal Government has also worked in partnership with local governments to achieve important objectives. As the Washington Post reported on January 22, 1995, the Federal Government will provide $230 billion in grants to State and local governments this year. This partnership has worked in the past and it is my hope that it will continue to work in the future.

However, at times, this partnership has lost the notions of balance, common sense, and responsibility. As the Federal Government has tried to reduce spending and cut the deficit, responsibilities have been passed on to State and local governments, who are also struggling to operate their budgets in the black. For example, it is estimated that the Safe Drinking Water Act will cost North Dakota communities almost $50 million per year in construction costs alone. Where will this money come from? The Federal Government has not provided the answer—nor the funds.

So, while we recognize that there are good mandates and difficult mandates, the question remains: Where do we find the balance? In short, how do we restore common sense to the Federal legislative process: First, we must recognize that there are no ''one size fits all'' solutions. The water policy or contaminant requirements that work for New York City, population 10 million, do not make sense for Hazelton, ND, population 240, or Underwood, ND, population 976.

In this regard, I am pleased that S. 1 provides for the analysis of rural communities' special needs in 3 separate areas; the CBO Director's study of intergovernmental mandates; the CBO Director's study of private sector mandates; and an agency's analysis of a regulation. These provisions are found in section 103 and section 202 of S. 1.

Second, we must make sure that the Congress is making fully informed choices when it considers mandates. That is what S. 1 does; it adds an informative step in the consideration of legislation. This step simply provides that the Congress will know the financial impact of the legislation. The point of order mechanism in S. 1 will not prohibit the Federal Government from passing along a mandate, but it will ensure that Congress has an idea of what the legislation may cost State and local governments before the laws are passed. We will exercise our legislative duties with informed responsibility.

While I am proud to be a cosponsor of this bill, I am also pleased that my colleagues are taking the time to offer amendments to ensure that it will

work in practice. S. 1 would affect every piece of legislation considered after January 1, 1996. We should therefore work together in a bipartisan fashion to assure that the new process works smoothly and has no unintended consequences. The new point of order process, as outlined in S. 1, should be open to suggestions for improvement. That is what the legislative process is all about.

Partisan accusations that Democrats are stalling or obstructing passage of S. 1 are without merit. This important piece of legislation went through introduction, hearings, and markup in 4 legislative days, came to the floor without a report, and meaningful amendments are immediately faced with a motion to table. While we must be responsive to States and localities, we must remember that we represent individuals. We owe it to the people of this country to pass the best possible legislation, and, like it or not, quality takes careful deliberation. For example, a sunset provision should be considered not as an effort to weaken the bill; but rather as a responsibility to improve the bill as it proves necessary over time.

In conclusion, Mr. President, this legislation represents a new sense of responsibility in Washington. November 8 was not about giving a mandate to partisan politics; rather it was the manifestation of a hope that the Federal Government will truly represent the people of the country, without regard to partisan politics as usual. Therefore, we must be responsible to other levels of government and work on maintaining a good working relationship among Federal, State, and local governments.

As water rates doubled in some small rural communities, North Dakota local governments faced the new mandates and struggled to budget responsibility. S. 1 will ensure that we at the Federal level legislate which contains an unfunded mandate. I urge my colleagues to support S. 1 and accept this responsibility.

Mr. GRAMS. Mr. President, for 2 long weeks, the Senate has been debating legislation to correct the problem of unfunded mandates—those costly Federal regulations handed down to the State and local levels, without the necessary dollars to carry them out.

Because of these unfunded mandates, State and local governments are often forced to raise taxes, change their priorities, or even reduce services to comply with regulations that may or may not benefit their constituents. Taxpayers, as usual get stuck with the bill. And mayors and State officials who don't obey risk being sued by the Federal Government.

In his State of the Union Address Tuesday night, President Clinton acknowledged this serious problem and called on Congress to legislate some relief. ''It's time for Congress to stop passing on to the States the cost of decisions we make here in Washington,'' he insisted.

Under the legislation we're considering, Senators will be more informed as to the cost of these mandates. Under this legislation, we won't be so quick to pass one-size-fits-all mandates. We'll know the financial burden we're placing on the country, and our State, local, and tribal officials.

This is a great start, and I applaud Mr. KEMPTHORNE and Mr. GLENN for their leadership on this issue.

But as of this morning, the debate over the Unfunded Mandates Relief Act of 1995 has droned on for weeks.

Mr. President, what is the delay? President Clinton supports this bill. Nearly two-thirds of my colleagues in the Senate support this bill. The House passed its own version long ago. Our version will pass, too, and the vote won't even be close. So if there's little opposition to the bill and the principles behind it, what do I tell my constituents when they ask why we're not moving forward. * * * why we're not moving past unfunded mandates and on to the other crucial issues piling up ahead of us?

Mr. President, how can I explain this delay to Mayor Don Chmiel of Chanhassen, MN, who tells me that his city desperately needs relief from costly stormwater mandates triggered last October?

Mr. President, what excuse for the holdup can I give Mike Opat, a member of the board of commissioners in Hennepin County, MN? He tells me that if relief from unfunded mandates doesn't come soon, the most populated county in my State will not be able to provide needed services such as education, jails, health care, and social services for children and the elderly.

Mr. President, what do I tell Jim Kordiak, a commissioner in my home county of Anoka? He wrote to tell me, quote:

> While each of us can think of hundreds of new programs that we feel might be of benefit to the community, I believe it is imperative that we restrain ourselves from the mandatory implementation of such services and, instead, return as much control as possible to local jurisdictions.

Mayor Norm Coleman of St. Paul sent me 10 pages of notes on the mandates his city is compelled to carry out—so many mandates, in fact, that the city can't put a pricetag on the costs to its residents. How do I explain our delay to Mayor Coleman?

Finally, Mr. President, what would you have me tell Martin Kirsch, the mayor of Richfield, MN, who wrote asking for my help in turning the unfunded mandates bill into reality?

My colleagues and I are ready to do just that—we've pledged our unconditional support to this bill and the people back home who want desperately to see it passed. But we've been hogtied by the opposition of a few Senators who are doing everything in their power to delay the inevitable and keep this bill from a swift vote.

The Washington Post says that some of my colleagues are manipulating the rules to slow this legislation down. But let me suggest, Mr. President, that the American people are being manipulated along with the rules. They sent us here to change Government. They sent us here to pass good legislation like the Unfunded Mandates Relief Act. And they'll be furious when they find out we've been passing little else but time.

Senators do have the right to assert their positions on the floor. I'm not opposed to that. Having come from a body that restricted the rights of the minority and individual members for 40 years, I understand the need for free and open debate.

What I oppose is the cynical attitude of those who would use the rules of the Senate to derail good bills.

Congress is a great institution, but in the minds of the American people, it is growing smaller in stature and larger in contempt every day. We have an opportunity and a responsibility to correct this image and provide a Government of which every American can be proud.

Mr. President, I'd like to be able to go back home to Minnesota this weekend and tell Don Chmiel, Mike Opat, Jim Kordiak, Norm Coleman, and Martin Kirsch that the Senate heard their pleas for relief and passed the unfunded mandates bill. Let's stop these needless delays. Let's work together. Let's put this debate behind us, and start moving forward.

Mr. LEAHY. Mr. President, the Senate began debate on unfunded mandates with the premise that the Federal Government should not indiscriminately force State and local governments to implement Federal statutes.

With this premise, S. 1 goes to the heart of the way Government works in the United States. It seeks to change the balance between the Federal and State governments. I happen to agree with the premise and welcome a discussion about the balance of Government.

I agree that the distant reach of Federal Government should not tell States how to take care of the special needs of their communities. I have been working for months to get the Federal Government to condone a dairy compact that several New England States have chosen for themselves.

I also agree that local problems are best solved by local solutions. Again in Vermont, we worked to find flexibility in Federal statutes to deal with a superfund site, inspection and maintenance standards for Clean Air Act provisions, and other Federal laws.

I believe it is not fair for Congress to make the rules and force state legislatures to levy the taxes to pay for them.

For these reasons, I supported the attempt to pass S. 993, the Community Regulatory Relief Act of 1994, by unanimous consent last October. I thought it was a fairly balanced bill that addressed these issues. S. 993 had a sunset provision and established a reasonable process for controlling unfunded mandates.

Unfortunately, in addressing these issues and others, S. 1 leaves out a sunset provision and exposes Vermont to a host of new problems. While the Unfunded Mandate Reform Act returns some control to the State of Vermont, it also forces Vermont to abdicate some control to politicians in distant states that Vermonters do not elect.

It is difficult to speculate how this will affect prospective issues in the coming decades, but consider the implications if S. 1 had been law since the 1970s.

Vermont is downwind of one of the most industrially developed regions in our country. As I mentioned, I recognize that the cities of Chicago, Detroit, and Cleveland or the States of Illinois, Michigan, and Ohio should have the discretion to address air pollution for their residents. I do not believe that the mayors and governors of these governments have the discretion to send unlimited air pollution to Vermont.

If the elected officials of the Great Lake States had decided that controlling air pollution is not a priority, and the Clean Air Act had been scaled back or voided as it could be under S. 1, would that mean that Vermont is forced—automatically and without question—to bear the economic burdens of smog, acid rain and toxic pollutants?

These are not insignificant economic burdens. Acid rain in the Northeast has forced States to airdrop lime in lakes to restore the pH level. Air pollution was the target of years of research to determine the effects of acid deposition on forest health. Airborne pollutants have been demonstrated to stunt fish growth and alter riparian ecosystems. Many of these are direct costs to agencies, and ultimately to taxpayers, in Vermont.

Vermont would be hurt most by indirect costs. Without an enforceable Federal air pollution standard, would 8 million people still visit Vermont each year and contribute to our tourism economy? We cannot afford to subordinate our economic interests to the economic interests of another State.

Without an enforceable Federal air pollution standard, would the forests that cover three-quarters of my State support a healthy, sustainable forest products industry? The New York Times reported this summer that air pollution had tripled forest mortality in the east.

Would the sport fisheries draw anglers from the 70 million people who live within a day's drive of Vermont? Today, most of Vermont's fish can be eaten by humans without posing a health risk. Without a Federal mandate, we may not have this luxury.

How would acid rain affect the crops of Vermont farmers? This is a question that scientists can offer only speculation.

It seems to me that if there had been legislation prohibiting unfunded mandates when Congress addressed the Clean Air Act, Vermont would have had to assume responsibility for unfunded problems. It is a disturbing irony.

Consider another example. Vermont shares more than 200 miles of Lake Champlain shoreline with the State of New York. I recognize that the Governor and State legislature should have the flexibility to decide sewage effluence guidelines for their towns and municipalities in the State of New York. But New York does not have the right to pollute Vermont and the lake that forms our common border.

While I am concerned about Vermont, I should think other States would have concerns themselves. If Vermont filled in all the wetlands in the Connecticut River Basin, is Springfield, Hartford, and New Haven prepared to deal with floods? New York could pollute its backyard on Lake Champlain while Vermont pollutes its front yard in Long Island Sound—more than 70 percent of the fresh water in the sound comes from the Connecticut River. Does New Jersey worry about having New York's municipal hospital waste on their beaches? Do Chesapeake Bay States worry about how Pennsylvania affects their fisheries and recreation resource? Is anyone in Louisiana and Mississippi concerned about putting their States at the end of our Nation's potentially biggest sewer line? These two States could be affected by the whims of 20 upstream States.

We can let States choose their destiny only to the extent that it is their own. A State does not have the right to harm another State. To me this bill implies that States retain their right to pollute their neighbors.

States also have to assume responsibility for their own action. If a State chooses not to abide by toxic waste disposal, I will have a hard time voting to spend millions for an EPA cleanup. If the State refuses to implement a certain standard of environmental health, I will have a hard time watching extra Medicaid and Medicare dollars go to an unhealthy population in some other State.

I raise these few examples only to illustrate my point: This bill has implications that will hurt the State of Vermont, the people of Vermont, and businesses in Vermont. While I support the premise for this legislation, I do not support the proposed answer to the problem. A better bill exists that protects the rights of each of the 50 States.

I want to vote for a bill that restores a balance to the Federal and State governments, but ultimately I need to protect Vermont's interests from the competing interests of other States. This allows one State to harm another State. I cannot support that kind of measure.

Mr. ROTH. Mr. President, in the course of deliberations on this legislation which are now in their third week, some question has arisen regarding the application of title IV to the provisions of title I. As the chairman of the committee that reported S. 1, I wish to make clear to my colleagues how these two titles relate.

Title IV deals with the subject of judicial review. Many have summarized its provisions simply as no judicial review. But I would like to draw attention to the exact language of the provisions, particularly to the reference in section 401 that does limit judicial review over certain issues arising under ''this Act.'' That reference to ''this Act'' means only ''this Act'' and not the subsequent legislation that may be processed under the procedures established in title I.

Yesterday, we adopted the Byrd amendment to title I, which makes reference to mandates becoming ineffective in certain circumstances. Some may be concerned that because of title IV there will never be a final or objective adjudication of the question of whether a mandate is effective or not.

That concern arises out of a misunderstanding of title I and title IV. Under title I we establish a process for Senate consideration of mandates legislation. So all that title I is is a process. Normally, Senate process does not give rise to judicial review. Title IV merely codifies that history in this context. It refers only to S. 1—''this Act''—and not to legislation that will be processed under the procedures in S. 1.

Under S. 1, subsequent mandates legislation will provide for funding levels, how certain contingencies are to be addressed, which agency is designated as the responsible agency for determining whether funding of the direct costs of the mandate is adequate, and so on. Agency action under that subsequent legislation may be subject to judicial review since only S. 1 is, under title IV, not subject to judicial review. If an agency wrongly determines that a mandate is effective or ineffective, title IV of S. 1 does not preclude judicial review.

I hope that this clarifies the application of title IV to this legislation and to subsequent mandates legislation.

Mr. BINGAMAN. Mr. President, I rise today to talk about the issue of unfunded mandates, and S. 1. In doing so, I would like to briefly discuss the origins of this issue, how I believe this issue should be addressed, and how the bill before us addresses this issue.

ORIGIN OF THE ISSUE

I first started to hear about this issue shortly after I arrived in the Senate. Coincidentally, at about the same time the Reagan administration was engaged in promoting the New Federalism, which was intended to empower States and localities to assume more control of domestic issues. In reality, the effect of this move was, in too many cases, to simply shift the problems and responsibilities, without shifting resources that would have really allowed the States and localities to address the issues. This is illustrated by the fact that in 1980, total grants to State and local governments

from the Federal Government were $127.6 billion in constant 1987 dollars, and by 1990 the figure had dropped to $119.6 billion, again in 1987 dollars. We ensured we would not be able to provide those resources with the changes in law recommended by the Reagan administration that led to 12 years of spiraling budget deficits. For over a decade, then, the Federal Government engaged in the practice of passing legislation, often in pursuit of worthy goals, that added to fiscal burden facing State, local and tribal governments.

HOW THIS ISSUE SHOULD BE ADDRESSED

Clearly, States and localities have a legitimate concern about unfunded mandates. I have spoken to too many States and local officials to believe otherwise. In talking to these officials, I have come away with the feeling that these officials are often not opposed to the underlying aim of a Federal mandate, they are instead concerned about how they will pay for it, or comply with regulations to achieve the aim. For example, I have met very few officials who think that the disabled should not have access to public buildings and transportation. I have, however, met many who have said that given all the cutbacks they have faced over the last decade, they honestly wonder how they can comply with requirements to grant that access. I have also spoken to many officials opposed to overly complicated regulations implementing mandates. In short, they do not want us to stop addressing problems, they instead want us to approach problems with a full understanding of how our actions will affect other levels of government, and wherever possible, to provide a means to help pay for those effects. They also want us to cut the redtape that too often subsumes the actual issue we are trying to address.

We should be aware of what we are asking of State and local governments. I am all for getting cost estimates of the effects of legislation on other levels of government. We should also actively solicit the participation of other levels of government in the development of legislation and regulations that may affect them. I firmly believe that we should take all steps possible to ensure that we meet our goals with a minimum of regulatory and bureaucratic redtape, especially at the State, tribal, and local levels. We should seek, wherever possible, to identify funding sources for new mandates. We must, however, also maintain the ability to confront pressing issues with national implications.

HOW S. 1 ADDRESSES THIS ISSUE

I believe that the bill before us does address some of the aspects of the problem of unfunded mandates correctly. It requires that we have information on the costs of unfunded mandates wherever possible on reported bills, for example. I am also encouraged by the provision establishing pilot programs to reduce the burden of mandates on smaller levels of government, and provisions to increase the participation of other levels of government in the development of policy that will affect them.

I am concerned, however, that the provisions prohibiting the consideration of legislation without means of payment for mandates to State and local levels of government will have the effect of reducing our authority and ability to take action on issues of national public concern.

AMENDMENTS

For that reason, I offered two amendments that I thought would improve the bill with respect to this problem. One would have allowed a reporting committee to make a determination that the reported provision met a compelling national interest furthering the public health, safety, or welfare. In this case, while a report on costs would be prepared, lack of a funding mechanism would not have prevented the measure from being debated by the full Senate. I offered a similar amendment that would have required cost reports, but would have ensured that legislation relating to radioactive waste could also always be heard. Likewise, I supported similar amendments from my colleagues that sought to ensure that procedural hurdles would not prevent the Senate from fulfilling its responsibilities to meet pressing national needs.

I offered a third amendment which sought to ensure that the Senate maintained its authority over independent regulatory agencies by stating that no funding point of order would work against a provision that could probably be considered as a rule by the agencies exempt from the regulatory title of S. 1.

Unfortunately, my amendments, and many other amendments which would have improved this bill, were defeated in largely partisan votes. In reviewing these amendments, many of which would have corrected substantial procedural difficulties, such as the costing out of amendments offered on the floor, it has become apparent to me that some of my colleagues seem to be as interested in passing a potentially flawed measure quickly as they are in carefully drafting a proposal that will address the unfunded mandates issue in a way that best promotes the national welfare, and the welfare of the working people who ultimately are affected by the policies passed and implemented by all levels of government.

CONCLUSION

In short, Mr. President, the bill before us in many ways sidesteps the issue of forcing Congress to act responsibly in balancing pressing national needs and costs to other governments. It does so by saying we shall, in too many cases, simply not consider pressing needs, unless we can pay the full costs incurred of all levels of government.

Nevertheless, I feel compelled to support this legislation because, as flawed as it is, it does provide a means for the Senate to better consider the costs imposed on others in legislation, and a means to improve the process through which regulations are made. I know that ultimately, it is these issues with which the State, local, and tribal governments in New Mexico are concerned. On careful review, I believe that the need to address those issues outweighs my concerns about the procedural chaos created by this legislation. I also take some comfort in the knowledge that we can revisit the issue and amend the bill where it proves to be unworkable.

I must say, however, that, when we are presented with a conference report on this legislation, I will also carefully review that report, and any and all changes made from the legislation we are passing today. If I determine that the conference report is even more flawed than the version passed today, I may vote against that conference report.

Mrs. MURRAY. Mr. President, local elected officials in my home State of Washington have discussed the cost of Federal laws with me since I came to the U.S. Senate. I understand their concerns; I served in my State legislature, and know it can be costly to comply with some Federal laws.

For that reason, I cast my vote for this legislation.

But, Mr. President, as you and all our colleagues know, I have some serious concerns about this bill. I think, it some senses, it might go too far. Some Senators might wrongly assume that passage of this bill means that they have free rein to gut environmental and labor laws, or health and safety regulations. That is not what the people of my State want. They just want us to be honest in budgeting. They want us to consider the cost of regulations and mandates we consider. They want us to use common sense in legislating. That means clean water, safe streets and neighborhoods—the benefits of Federal mandates.

Therefore, Mr. President, I will work within the new constraints of this legislation to ensure that America's environment, health, safety, and labor laws enjoy the highest standards in the world. The passage of this bill just makes me more determined than ever to fight for the well-being of future generations.

Mrs. BOXER. Mr. President, today the Senate will vote on the second part of the so-called Contract With America, a bill to require Congress to consider the financial impact on States and localities of new Federal legislation.

Let me be briefly clear: I believe that it is both necessary and appropriate for Congress to enact some type of unfunded mandates constraints. I have served in local government and I understand the problem.

I supported last year's unfunded mandates bill, S. 993, as did almost every other Senator, all of the Nation's Governors, mayors, and other State

and local officials, as well as the President of the United States. That is why I voted for S. 993 today. That bill is a fine bill—a bill that would work.

If the Senate had not been tangled up in partisan squabbling at the end of the 103d Congress, unfunded mandates restraints would have now been the law of the land. I deeply regret that S. 993 was not enacted. And today it was actually voted down.

S. 1 has many problems which I and others have tried to resolve. This bill creates a potential for endless delay, gives enormous power to unelected bureaucrats, contains troubling ambiguities that will mar its implementation, and utterly fails to address the biggest unfunded mandate of them all, illegal immigration.

But because I believe in the need to pass unfunded mandates constraints, I offered several amendments to S. 1 to make it a better bill.

First, I offered an amendment to ensure that the procedures the bill contains would not impede the ability of Congress to respond to the health and safety needs of society's most vulnerable citizens—most particularly, our young children, our pregnant women, and our frail elderly. My amendment was defeated on an almost straight party line vote by 44–55.

Second, I offered an amendment to exempt any legislation intended to prohibit, deter, study, or otherwise mitigate child pornography, child abuse, or child labor laws. The vote, again on an almost straight party line, was 46–53.

If just a few more Republican Senators had supported these limited exceptions, I believe we would have had a bill that met the need to constrain unreasonable Federal mandates without endangering the health and safety of our Nation's youngest and oldest citizens.

In addition, the Senate rejected my amendment to reimburse the states for the costs they incur because of illegal immigration. Thankfully, Senator BOB GRAHAM's amendment to hold the line on existing programs to stop illegal immigration was approved. But frankly, we need to ensure that we'll do much more than just hold the line, and S. 1 fails to do one thing to ease this tremendous burden on my State.

My State of California simply cannot continue to expend huge sums without getting reimbursed by the Federal Government, due to the Federal Government's failure to enforce the border. Ignoring reimbursement to the States is a major failure of S. 1.

The problem of unfunded mandates is too serious to ignore. We should create a process to ensure that we take a careful look at the burdens we place on other levels of government and the private sector, and to make our decisionmaking more deliberate and accountable. S. 993 was that bill.

But S. 1 invites failure. It creates a process that can be used to tie this Senate in knots, to block legislation needed to protect the health of our most vulnerable people, to undermine our ability to respond when our children are being abused and exploited. I cannot support such a bill.

Mr. LAUTENBERG. Mr. President, last year I cosponsored the Kempthorne-Glenn legislation, S. 993, to deal with the unfunded mandates problem. Today, I will vote against the pending legislation, S. 1, but I want to reiterate my support for the sensible, workable proposal offered by Senator LEVIN. Had it been adopted, the Levin substitute would have forced the Congress to review any imposition of new, unfunded costs on the States and localities, but would not have tied us up in a procedural nightmare when we needed to address important national interests.

Last year's bill was built on a bipartisan consensus. It was rooted in the realization that the Federal Government had mistreated States in two fundamental ways. First, the Federal Government had, too causally and too often, imposed mandates without thorough consideration of the financial burdens State and local governments already face. And, second, the Federal Government had too frequently told the States what to do without giving them the resources and the flexibility to do it.

No one denies that problems resulted. No one denies that solutions need to be found.

But if I were to characterize last year's bill, I would say it was designed to sensitize us to the problem. To require us to think carefully and critically about what kind of burdens we were imposing before we imposed them. Under the terms of last year's bill, we would know how much of burden we were creating. We would have to acknowledge the magnitude of the burden before we passed legislation. We would no longer be able to hide behind ignorance. We would have to acknowledge the consequences of our decisions on our own States and our own constituents.

If, on the other hand, I were to characterize this year's bill, I would say it was designed to paralyze us, to prevent us from requiring States to do anything unless we fully paid them to do it.

That, I suspect, is not how the proponents of the legislation would characterize it. They would point out that the bill allows us to impose unfunded mandates if, by a majority vote, we choose to do so. But, Mr. President, I believe that even the proponents would agree that the bill enshrines the principle and the presumption that the Federal Government should not impose requirements on the States unless it pays them to carry out the mandate.

I believe, Mr. President, that the legislative history of this bill demonstrates that point. Several amendments were offered to exempt some class or group of activities from the strictures of this legislation. Time after time those amendments were defeated. And the justification for that was, in essence, that we ought to protect the principle that there would be no unfunded mandates. While the Senate might, on a case-by-case basis, waive that principle, the presumption is that it ought to be protected.

Mr. President, on a philosophic level, I do not agree. And on a practical level, I do not believe the bill we are passing is workable. Let me explain.

While I believe we need to be sensitive to the burdens the Federal Government imposes on States, I also believe the Federal Government can—and in some cases should—impose those burdens. The odds ought not be stacked against a Federal mandate by the legislative roadblocks contained in this bill.

Philosophically, the Federal Government has a fundamental responsibility to set the tone and framework for our national life, to set minimum standards to protect the health and safety of our people, to protect our national security and welfare, and to deal with issues that are interstate in nature and can't be effectively tackled by the States.

Periodically, as a people, we have sought to limit national power. Before the Civil War, John C. Calhoun advanced the notion of nullification, allowing States to ignore Federal laws they didn't agree with. And just a few decades ago, southerners called for increased States rights in the face of Federal civil rights legislation.

We rejected those ideas because ours is a Federal system of government. And in that system, the Federal Government has certain obligations.

When States suffer from a disaster, they turn to the Federal Government for help. When California was plagued by floods and earthquakes and fires, they turned to Washington to help them clean up. And when our shore was ravaged by nor'easters, New Jersey also sought similar assistance.

But the Federal Government's role is not just limited to acts of God. We must also respond to acts of indifference.

The Federal Government should act when local and State governments don't want to spend the money to prevent pollution or to immunize children. We should be there to stop gun-running across State lines or the spread of HIV-contaminated blood. We have a role in fighting the flood of illegal immigrants across our borders or the flow of people across State lines as a result of ''benefit shopping.''

I am proud to say that New Jersey, my home State, is relatively affluent. It is also compassionate and progressive. We have some of the toughest environmental laws in the country. We care for our disabled. We have tough gun control laws and occupational safety regulations. But those strengths could disadvantage us if Federal standards are weakened or eliminated.

Let's take a few examples.

In the late 1980's, we had to close our beaches when raw sewage and medical

waste washed up on our shores. It cost us millions of dollars and was a major setback to our State's economy, image, and quality of life. But it was a problem we could not solve alone. The Federal Government had to step in and require New York to treat its wastes, to regulate disposal of medical wastes, and to cover its garbage barges. Mayor Koch still complains to me about this unfunded mandate. But that mandate helped us manage a crisis. And the standards imposed on New York were necessary.

Federal standards do more than help us correct problems. They help prevent them. Let me give you an example: Many people in New Jersey say that biggest fear is gun violence. But without the Brady bill—an unfunded mandate that requires background checks by local police when purchasing a gun—we really could not stop the gun violence from coming into New Jersey. That happened right before the Brady bill went into effect, when a former New Jersey resident bought a gun in Arizona, bypassing a background check that would have been required in our State, and shot four people at close range, in cold blood, at a motel in Saddle Brook. We need the Brady bill.

Our first try at a constitution, the Articles of Confederation, had to be scrapped after a few years because they put too much power in the States and they encouraged disunity and divisiveness.

States, by their very nature, are insular. Their goal is to take care of their own. But we are one nation, and in the words of Alexander Hamilton, ''a nation without a national government is an awful spectacle.''

We need to approach national problems with national solutions. We need to establish Federal policies to tackle issues with interstate effects. And we need to promote a national government motivated by a concern for decency, equity, and compassion.

That is why the Federal Government has set standards to prevent States from cutting off food stamps to children or eliminating aid to legal immigrants. As a nation, we agree that we need to reform welfare; as a U.S. Senator, I am not prepared to allow States to abolish it.

Philosophically, then, I am troubled by this bill.

Practically, I am appalled by it.

Despite significant improvements made in the mechanics of the bill by Senator LEVIN and others, it still presents us with a legislative maze.

It imposes an unacceptable burden on the Congressional Budget Office, which is tasked with the responsibility of providing us with cost estimates on literally hundreds of bills and amendments—a task which, in some cases, will be impossible.

It creates at least two points of order which can be raised against any bill or amendment and will, in some cases, prevent the Senate from dealing efficiently with what should be routine matters. Despite the fact that the American people have told us that they have had quite enough of delay and procedural ploys and gridlock, this bill will give any individual Senator an opportunity to impede progress on any legislation. The Senate will, I am convinced, rue the day that it created the procedure contained in this bill.

Mr. President, I believe that the bipartisan work we did last year should have been ratified this year. Instead, blown by changing political winds, some Members decided we should go further than they had last year. The net result is a bill which superficially claims to be similar to last year's effort but is, in reality, a mandate for gridlock and an expression of unfounded fear of a federal system of government. It is also, unfortunately, a bill that I cannot support.

Mr. KOHL. Mr. President, I believe that for too long we in this body have taken a paternalistic attitude toward our colleagues in State and local governments, by telling them that we know best how they ought to conduct their business. We have been too willing to require State and local governments to address a problem, without giving them the financial assistance necessary to carry out that mandate. We forget that, if we pass the buck to State and local governments to fix these problems, we should also be willing to pass the bucks to pay for it, or be explicit that we are not doing so.

It is for that reason that I support this bill and intend to vote for final passage.

I appreciate the frustration of State and local officials as they have watched Federal funding to counties decline dramatically in the last decade, just as they have experienced a sharp rise in the demands the Federal Government has placed on them to fund Federal regulations and programs.

Let's face it, the Reagan-Bush policies which shifted more responsibility to State and local governments often did not include the necessary funds to pay for these programs. I have seen one estimate that funding to local governments under the Reagan administration declined by 50 percent. When you combine this shift with the erosion of the local tax revenue base caused by the recession of the early 1990's it is no surprise that State and local leaders are throwing up their hands in despair.

However, having said that, I agree with many of the comments made by my colleagues in the past week and a half regarding the complex nature of this bill, and the potential unintended consequences that might arise under this legislation.

That is why I offered an amendment, which was adopted, to ensure that we have not created a disincentive for States and local governments to take action. We must not stifle innovation at the State and local level by suggesting that those who wait for Congress to act will be rewarded with Federal funds. We must work to ensure that this legislation does not penalize those States and local governments that are working to solve their own problems. This legislation was not intended to create gridlock at the State and local level.

That is also why I supported a sunset amendment. We will need to step back at some point down the road and determine if this process to make Congress explicit about the cost of mandates, and make us pay for them, has tied our own hands too much.

Mandates are not necessarily a dirty word and we should all remember that there are some good things that are in all our interests. The exclusions in the bill reflect some of these priorities: The constitutional rights of individuals, laws and regulations that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped, or disability status, emergency assistance at the request of States and local governments, and legislation necessary for our national security. There are other priorities which I wish had been included in the exemptions in this bill, such as legislation relating to class A human carcinogens, legislation which would impact the well-being of pregnant women, young children and the frail elderly, and legislation relating to child pornography, child labor laws, and child abuse.

Mr. President, I regret that these amendments were not adopted and that many other important clarifying amendments were tabled, often along party lines.

I support this legislation because I believe we have an obligation to be explicit about the mandates we are passing along to our States and local governments. Whether we decide to pay, for the mandate or not, we should be honest about what these mandates will cost.

Because, Mr. President, we all know who really pays in the end, and that's the taxpayer.

Mr. BRADLEY. Mr. President, we are about to finish work on S. 1, the unfunded mandates legislation. This has been a difficult process, and I regret to say that I cannot support the final product. In the final analysis, I feel it will create a real obstacle to the kind of laws that we need to protect my State and my constituents.

Earier, I offered an amendment to the bill that highlights the way all governments—Federal, State, and local—often pass on the costs of supplying needed services and that we need to work together to reduce the total bill paid by the taxpayer. I was pleased that this amendment was adopted nearly unanimously.

In a nutshell, my point was: What difference does it make to a taxpayer if we cut Federal taxes, or refuse to raise them to pay for needed programs, and the taxpayers' State taxes increase? What difference does it make to the taxpayer if State taxes decrease or stay the same, when local taxes or property taxes increase in lock step? to

get control of the problem, we have to work together.

This bill's stated purpose is to slow a process that is becoming all too common. We face a deficit that we all decry. We are loath to raise taxes or truly cut spending. Yet, we all see in our States problems, issues that require a Federal response. The result is: We pass a law, and we pass on the bill.

This cannot go on. It has to change. We have to take into account the full cost—along with the benefits—of the laws we propose. And the legislation before us attempts a response.

On the other hand, I represent my State of New Jersey. We know too well why national programs are often needed. For years, another State dumped sewage off our shore that polluted our shoreline. Without a Federal law, and Federal water quality standards, how could we protect our own? Air currents likewise have no respect for State boundaries. We're downwind of too many States that, frankly, aren't very concerned about our problems with air quality and our status as the second worst region in the country. It doesn't surprise me that the Governor of Ohio is strongly against Federal air quality regulations. But we in New Jersey can not clean up for them, too. This legislation makes it far too easy to block the creation and implementation of Federal laws intended to protect a State like New Jersey.

We need a better accounting of the costs that are sometimes too slyly passed along. We need to give the Governors and mayors more funding and more regulatory flexibility to reduce costs. But, we need national programs, from time to time, and we don't need new ways for naysaying legislators or bureaucrats to keep us from protecting our own.

Mr. President, eliminating or minimizing unfunded mandates is a laudable goal. But it cannot provide a straitjacket for the Congress or be the excuse for legislators to stop needed laws for the protection of the public. This bill should drive a rational decision on public mandates. It does much more.

Last Congress, the Senate Government Affairs Committee reported an unfunded mandates bill that almost all of us would have supported. It wasn't as aggressive a bill as some would argue for. But that bill did require authorizing committees to recognize and acknowledge explicitly the cost to State and local officials of regulatory mandates. It represented real progress, and was strongly endorsed by Governors and mayors around the country.

The Senate, however, has now complicated the issue immensely. Two weeks ago, we began the consideration of legislation that was substantially altered from the bill reported last Congress. Hearings on the bill were simply perfunctory and many of my colleagues have come to the floor with basic questions of how this bill will work in the future.

Let me illustrate some of my own concerns about this legislation by talking about a specific piece of legislation, not a hypothetical, that I've introduced. It's a bill that I'm very proud of, that has strong bipartisan support, and is even implicitly part of the Contract With America. The bill is, frankly, a collection of mandates on States. It is the Interstate Child Support Enforcement Act, which I introduced last Congress as S. 689 and will reintroduce this year.

A single parent has lost her ability to support her children when an absent parent moves out of State to evade court-ordered child support. This bill would repair all the holes in the interstate system of child support, to make those absent parents take responsibility for their children. This is a new bill, and these are new mandates, so there is no question that this legislation would apply to it.

Child support enforcement exemplifies a certain type of Federal mandate on States: The mandate that smooths and improves relationships among States, to make an effective Federal system possible.

Some advocates for improving child support enforcement argue that States don't do a good enough job of collecting, because $6 billion or so of court-ordered child support goes uncollected. They advocate replacing the State-based system with a fully Federal system, a whole new bureaucracy.

I would rather make the State-based system work. If States are required to give full faith and credit to child support orders from another State, if they are required to use comparable support order forms, if they are required to withhold lottery winnings, for example, from deadbeat parents no matter where the children live, then the State-based system can work efficiently and cheaply. The mandate to California improves the program in New Jersey, and vice versa. The only alternative to this kind of mandate, which will be undercut by passage of this bill, is a new Federal bureaucracy.

I do not imagine that a new bureaucracy would ever be the option preferred by the manager of this bill.

Second, my colleagues have raised questions about whether it is practical to ask the Congressional Budget Office to estimate costs to States and localities. In the case of child support enforcement, we have already asked CBO to estimate the costs to States, and they have worked hard at the project. They have surveyed States, asking what they are already doing and asking them to estimate the cost of the new tasks that the legislation would require. Not only do we not yet know the exact cost, but I doubt that we know for sure, after more than a year of research, whether the total cost of the mandates, offset by savings, would even exceed $50 million, and thus fall under the purview of this bill.

CBO doesn't get these figures out of thin air, after all. We are unfortunately overly dependent on States' own estimates, sometimes their overestimates, of the costs, and we are also forced to depend on outside advocacy organizations or State bureaucrats, both of which may have their own ideas about policy. The point has been made several times: Let's not treat this CBO analysis with a reverence that even the CBO would have to admit is undeserved.

Third, S.1 will track and complicate all legislation for years beyond when the authorizing committee acts. I'm sure many of the bill's supporters look at this as a positive feature of the bill. But I join the many Senators who have raised questions about the possibility of shifting legislative authority to regulators and bureaucrats, if authorized funding—needed to offset the mandate costs—is not fully forthcoming from the appropriators.

The response to these concerns has generally followed one line. Under the terms of S.1, the authorizing committee will lay out ''procedures under which such agency shall implement less costly programmatic and financial responsibilities * * * to the extent the an Appropriation Act does not provide for the estimated direct costs of such mandate.'' In other words, we expect the authorizing committee to lay out which mandates become inoperative if the appropriators fail to provide 100 percent of the amount.

Mr. President, I'm sorry, but this just doesn't pass the straight face test. Do we really expect the authorizing committees to provide a complete or even partially complete roadmap to account for all of the infinite possibilities open to future appropriators? The appropriators might provide 10 percent of the money, then go to 30 percent, then back to 20 percent—do we really expect that guidance provided by the authorizing committee will answer the issues raised? If this bill wasn't so important, we'd be laughing about this provision and its ludicrous implications.

If we take this idea seriously, every authorizing committee will have to come up with a complex decision tree for every law. If the appropriations are 30 percent, it would say, then implement regulation X, but only partially implement regulation Y. If appropriations are 40 percent, enforce X and Y but not Z. If we cannot map this out, we're leaving it up to bureaucrats to decide which laws to enforce. And this is a simple case. One appropriation directly funds three mandates. What happens in a more complex case, such as a block grant that States can use as they choose to fund mandates or their own priorities?

I hope my colleagues will consider the implications of this question before they begin their parallel drive to convert categorical Federal programs into block grants. Again, I will use child support as an example. Federal funds help States collect child support from the absent parents of children on

AFDC. For some activities, the Federal Government pays 75 percent of the cost of the mandate; in other cases there is an enhanced match to provide an incentive by rewarding success. The formula is complex, but in no case does the Federal Government pay 100 percent which is appropriate because it is the responsibility of the State to enforce child support and minimize welfare costs.

I have seen reports that the latest Republican proposal on welfare reform will involve consolidating hundreds of individual programs into one, open-ended block grant. Presumably this would include the $2.2 billion IV–D program for States to collect child support. What happens if that program is folded in with many other welfare programs into a block grant of $20 or $30 billion, with no more matching rate or incentive payments? States could spend all the money to collect child support, or none of it? Is the mandate now to be considered totally unfunded, since there is no money specifically directed to it? Or is it now fully funded, since States could pay for it by shifting welfare funds away from other needs?

Mr. President, yesterday, we passed an amendment offered by Senator BYRD which tried to address these two issues by creating yet another legislative procedure. While I appreciate the intent of the amendment and endorse it, let no one think that this amendment solves these problems. Even if the authorizing committees act responsibly, even if the appropriators do everything they can, this new process still does not mitigate against real possibilities that have nightmarish implications.

What if there is an across-the-board sequester of funding? Does every agency stop implementing regulations?

The Byrd amendment was agreed to and improved the bill. But amendment after amendment was voted down, often on a party line. We tried to prevent regulations from targeting the private sector. This was rejected. We tried to prevent new roadblocks to legislation protecting children and the elderly. Rejected. We tried to make workable the point of order. Rejected.

Mr. President, I say today that I would have supported a bill to protect the States and local governments against unfunded mandates. I would have supported the legislation from last Congress, which was loudly endorsed on a bipartisan basis and by all the State and local government groups. But I cannot endorse S.1.

In the past, we have passed legislation to clean the air and water. We've passed legislation to protect the public health and safety. We've passed legislation to ensure the preservation of our oceans, our beaches, our public lands. We do not do this because we desire to pass costs on to the States. We do this because this is what the public demands.

Certainly, we have to consider the costs to the States and local governments when we pass important legislation. This bill goes much farther. I believe that this bill will, if passed, be used to undercut fundamental laws that exist or will be created to improve our world and safeguard the public. I cannot support such a step.

Mr. MOYNIHAN. Mr. President, our Nation's Governors, mayors, and county executives have long sought relief from the imposition of unfunded mandates by the Federal Government. For to long, we have thought too little about the consequences of Federal decisions on the budgets of States, cities, counties, and towns. With the passage of S.1, the Unfunded Mandate Reform Act, the Senate has undertaken an important and historic restructuring of the intergovernmental relationship between Washington and State and local governments.

Much of the debate on this bill has been about achieving an appropriate balance between the need to reduce the fiscal burdens on State and local governments and concern over impairment of the ability of Congress to legislate in areas where Federal responsibility is clear. Several amendments were debated on the floor in an attempt to achieve this balance. Among the amendments which I supported, but which was defeated, was one which would have excluded from S.1's procedures mandates intended to apply equally to governmental entities and the private sector. Passage of this amendment would have expressly precluded situations from arising where either health and safety standards would apply differently to State and local governments than to the private sector, or where the private sector could have been placed at a competitive disadvantage. Although a separate amendment was approved requiring authorizing committees to include a description of any action taken by the committee to avoid any adverse impact on the competitive balance between the public and private sectors, this situation will nonetheless bear close watching.

Despite the failure of this amendment and others I supported to be adopted, I have concluded that, on balance, S.1 is worthy of support. It recognizes—for the first time—that the Federal Government must consider the budgetary impact on States and localities of the laws we enact and the regulations we promulgate. This was an important acknowledgement and, I believe, a positive step.

I commend the managers of this legislation, and look forward House passage ad swift approval by the President.

Mr. KEMPTHORNE. Mr. President, I ask that we now go to third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KEMPTHORNE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

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

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii [Mr. AKAKA] would vote ''nay.''

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

The result was announced—yeas 86, nays 10, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—86

Abraham	Feinstein	Mikulski
Ashcroft	Ford	Moseley-Braun
Baucus	Frist	Moynihan
Bennett	Glenn	Murkowski
Biden	Gorton	Murray
Bingaman	Graham	Nickles
Bond	Grams	Nunn
Breaux	Grassley	Packwood
Brown	Gregg	Pell
Bryan	Harkin	Pressler
Burns	Hatch	Pryor
Campbell	Hatfield	Reid
Chafee	Heflin	Robb
Coats	Helms	Rockefeller
Cochran	Hutchison	Roth
Cohen	Inhofe	Santorum
Conrad	Jeffords	Shelby
Coverdell	Johnston	Simon
Craig	Kassebaum	Simpson
D'Amato	Kempthorne	Smith
Daschle	Kennedy	Snowe
DeWine	Kerrey	Specter
Dodd	Kerry	Stevens
Dole	Kohl	Thomas
Domenici	Kyl	Thompson
Dorgan	Lott	Thurmond
Exon	Lugar	Warner
Faircloth	Mack	Wellstone
Feingold	McConnell	

NAYS—10

Boxer	Hollings	Lieberman
Bradley	Lautenberg	Sarbanes
Bumpers	Leahy	
Byrd	Levin	

NOT VOTING—4

Akaka	Inouye
Gramm	McCain

So the bill (S. 1), as amended, was passed, as follows:

S. 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unfunded Mandate Reform Act of 1995''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in

a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal mandates; and

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the terms defined under section 408(h) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term ''Director'' means the Director of the Congressional Budget Office.

SEC. 4. EXCLUSIONS.

This Act shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal 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. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director such information and assistance as the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

''SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

''(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

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

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

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

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

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

''(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under subsection (c)(1)(B) would affect the competitive balance between State, local, or tribal governments and privately owned businesses including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

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

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

''(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

''(iii) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government; and

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

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

''(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

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

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

''(b) DUTIES OF THE DIRECTOR; 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 Senate or the House of Representatives, the Director of the Congressional Budget Office 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 any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

''(B) The estimate required under 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, but no more than 10 years beyond the effective date of the mandate; and

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

''(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. If such determination is made by the Director, a point of order shall lie only under subsection (c)(1)(A) and as if the requirement of subsection (c)(1)(A) had not been met.

''(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 Senate or the House of Representatives, the Director of the Congressional Budget Office 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 $200,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

''(B) Estimates required under this paragraph shall include estimates (and a brief explanation of the basis of the estimates) of—

''(i) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution, but no more than 10 years beyond the effective date of the mandate; 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 thresholds specified in paragraphs (1) and (2), the Director shall so state and shall briefly explain the basis of the estimate.

''(4) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is 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 amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this paragraph or a supplemental statement for the bill or joint resolution in that amended form.

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

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

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

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

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

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

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

''(I) identifies a specific dollar amount of the direct costs of the mandate for each year or other period up to 10 years during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (5) for each fiscal year; and

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

''(III)(aa) provides that if for any fiscal year the responsible Federal agency determines that there are insufficient appropriations to provide for the estimated direct costs of the mandate, the Federal agency shall (not later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

''(1) a statement that the agency has determined, based on a re-estimate of the direct costs of a mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of the mandate; or

''(2) legislative recommendations for either implementing a less costly mandate or making the mandate ineffective for the fiscal year;

''(bb) provides expedited procedures for the consideration of the statement or legislative recommendations referred to in item (aa) by Congress not later than 30 days after the statement or recommendations are submitted to Congress; and

''(cc) provides that the mandate shall—

''(1) in the case of a statement referred to in item (aa)(1), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

''(2) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under item (aa)(2) unless Congress provides otherwise by law; or

''(3) in the case of a mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

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

''(3) COMMITTEE ON APPROPRIATIONS.—(A) Paragraph (1)—

''(i) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; but

''(ii) shall apply to—

''(I) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by such Committee;

''(II) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by such Committee;

''(III) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by such Committee; and

''(IV) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by such Committee.

''(B) Upon a point of order being made by any Senator against any provision listed in subparagraph (A)(ii), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

''(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this section to a pending bill, joint resolution, amendment, motion, or conference report.

''(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

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

''(e) REQUESTS FROM SENATORS.—At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in a bill, joint resolution, amendment, or motion of such Senator.

''(f) CLARIFICATION OF APPLICATION.—(1) This section applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

''(A) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

''(B) would result in a net increase in the aggregate amount of direct costs of Federal

intergovernmental mandates or Federal private sector mandates otherwise than as described in subparagraph (A).

''(2)(A) For purposes of this section, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under subparagraph (B)(i) over the amount described under subparagraph (B)(ii).

''(B) The amounts referred to under subparagraph (A) are—

''(i) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

''(ii) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

''(C) For purposes of this paragraph, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the auhorization level for the last year in which authorization of appropriations is already provided.

''(g) EXCLUSIONS.—This section shall not apply to any provision in a bill, joint resolution, amendment, motion, 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, color, religion, sex, national origin, age, handicap, or disability;

''(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

''(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal 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.

''(h) DEFINITIONS.—For purposes of this section:

''(1) The term 'Federal intergovernmental mandate' means—

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

''(i) would impose an enforceable duty upon State, local, 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—

''(I) Federal financial assistance that would be provided to State, local, 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

''(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

''(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 State, local, and tribal governments under entitlement authority, if the provision—

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

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

''(ii) the State, local, 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.

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

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

''(i) a condition of Federal assistance; or

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

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

''(3) The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (1) and (2).

''(4) The terms 'Federal mandate direct costs' and 'direct costs'—

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

''(ii) in the case of a provision referred to in paragraph (1)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced;

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

''(C) shall not include—

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

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

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

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

''(I) compliance with the Federal mandate; or

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

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

''(5) The term 'amount', with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

''(6) The term 'private sector' means all persons or entitles in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

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

''(8) The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

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

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

''(11) The term 'agency' has the meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code, or the Office of the Comptroller of the Currency or the Office of Thrift Supervision.

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

''(13) The term 'direct savings', when used with respect to the result of compliance with the Federal mandate—

''(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

''(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 407 the following new item:

''Sec. 408. Legislative mandate accountability and reform.''.

SEC. 102. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

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

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

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

(B) by amending subsection (h) to read as follows:

''(h) STUDIES.—

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

''(2) FEDERAL MANDATE STUDIES.—

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

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

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

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

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

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

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

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

''(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time 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.''; and

(2) in section 301(d) by adding at the end thereof the following new sentence: ''Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.''.

SEC. 103. COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the written request of any Senator, the Director shall, to the extent practicable, prepare—

(1) an estimate of the costs of regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act; and

(2) a comparison of the costs of such regulations with the cost estimate provided for such Act by the Congressional Budget Office.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this Act.

SEC. 105. EXERCISE OF RULEMAKING POWERS.

The provisions of section 101 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

Section 403 of the Congressional Budget Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) in paragraph (3) by striking ''paragraphs (1) and (2)'' and inserting ''paragraph (1)''; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking ''(a)''; and

(3) by striking subsections (b) and (c).

SEC. 107. CONSIDERATION FOR FEDERAL FUNDING.

Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from consideration for Federal funding for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the mandate.

SEC. 108. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 109. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 or on the date 90 days after appropriations are made available as authorized under section 104, whichever is earlier and shall apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law—

(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector, including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. Such a process shall be consistent with all applicable laws.

(c) AGENCY PLAN.—

(1) EFFECTS ON STATE, LOCAL, AND TRIBAL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(A) provide notice of the contemplated requirements to potentially affected small governments, if any;

(B) enable officials of affected small governments to provide input under subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section, and for no other purpose, such sums as are necessary.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Before promulgating any final rule that includes any Federal intergovernmental mandate that may result in the expenditure by State, local, or tribal governments, and the private sector, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to State, local, and tribal governments and the private sector of complying with the Federal intergovernmental mandate, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

(2) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future costs of the Federal intergovernmental mandate; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of the Federal private sector mandate 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; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency;

(C) a summary of the agency's evaluation of those comments and concerns; and

(D) the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) AGENCY STATEMENT; PRIVATE SECTOR MANDATES.—Notwithstanding any other provision of this Act, an agency statement prepared pursuant to subsection (a) shall also be prepared for a Federal private sector mandate that may result in the expenditure by State, local, tribal governments, or the private sector, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year.

(c) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(d) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

SEC. 205. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of enactment.

TITLE III—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Advisory Commission on Intergovernmental Relations (hereafter in this title referred to as the ''Advisory Commission''), in consultation with the Director, shall begin a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) CONSIDERATIONS.—The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.

(a) IN GENERAL.—The Advisory Commission on Intergovernmental Relations shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities;

(2) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific unfunded Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more unfunded Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating unfunded Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, unfunded Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying unfunded Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates; and

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with unfunded Federal mandates that use different definitions or standards for the same terms or principles; and

(3) identify in each recommendation made under paragraph (2), to the extent practicable, the specific unfunded Federal mandates to which the recommendation applies.

(b) TREATMENT OF REQUIREMENTS FOR METRIC SYSTEMS OF MEASUREMENT.—

(1) TREATMENT.—For purposes of subsection (a) (1) and (2), the Commission shall consider requirements for metric systems of measurement to be Federal mandates.

(2) DEFINITION.—In this subsection, the term ''requirements for metric systems of measurement'' means requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement.

(c) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection not later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—Not later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(d) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(e) FINAL REPORT.—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the

President a final report on the findings, conclusions, and recommendations of the Commission under this section.

SEC. 303. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

(a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this title, the Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Advisory Commission to assist it in carrying out this title.

(c) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate government and private persons (including agencies) for property and services used to carry out its duties under this title.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Advisory Commission to carry out section 301 and section 302, $1,250,000 for each of fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IN GENERAL.—Any statement or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review.

(b) RULE OF CONSTRUCTION.—No provision of this Act or amendment made by this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. GLENN. Mr. President, I either misstated my vote or my vote was mismarked before on the Levin amendment No. 218. I was recorded as having voted ''no'' on that. I intended to vote ''aye.'' Since it does not change the vote, I ask unanimous consent that my vote be changed to ''aye'' on that.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order.

Mr. DOLE. Mr. President, first I want to commend the managers of this bill, particularly my colleague Senator KEMPTHORNE. This is his third year, and I think he has done an outstanding job working with the distinguished Senator from Ohio, Senator GLENN. He is someone who made this commitment and stuck with it.

Just for historical purposes, we have been on this bill a long, long time. The vote was 86 to 10. I think we could have finished it probably a week ago. We had 44 rollcall votes taken, 8 were unanimous. Of those 44 votes, 9 were taken on committee amendments that had been adopted unanimously in committee.

We started on this bill on Thursday, January 12, at 10:35 a.m. We had 10 full days debate on S. 1. We used about 58 hours 34 minutes: The Democrats, 36 hours 55 minutes; Republicans, 21 hours 39 minutes.

There were 211 amendments submitted to the desk. Of those 211, 68 were actually proposed—50 proposed by my Democratic friends, 18 proposed by Republicans; 30 were agreed to; 20 were tabled; 16 were withdrawn; 2 second-degree amendments fell; 3 have yet to be disposed of.

These are just sort of background facts on how long it has taken and how many amendments and how many hours.

I assume the next bill may take as much time. I hope not. If this was a warmup, we have a lot of work ahead of us.

I will also suggest that this is the first step in forging a new partnership. The 10th amendment to the United States Constitution reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

That is what this legislation is all about. The idea that power should be kept close to people, that is federalism. It is the idea on which our Nation was founded.

But I think we have made it very clear that we, in effect, have dusted off the 10th amendment in this effort. It has been a very successful effort. I know that we came close last year but did not quite get it. We wanted to do it in, I think, the last 2 days of the session. Maybe we could have done it in 2 days then, but it took 10 days now.

The distinguished Senator from Idaho, Senator KEMPTHORNE, Senator GLENN, Chairman ROTH, Chairman DOMENICI, and others, deserve immense credit for working together on a bipartisan basis with representatives from State, local, and tribal governments, Democrats, Republicans, and independents, private sector groups and key Members from the other body. In fact, a few moments ago, I saw the distinguished Governor of Ohio, Governor Voinovich, who has been one of the leaders in working with Governors, mayors, and everybody else across the country, calling Senators of both parties.

On the other side, my particular thanks to Congressman CLINGER and Congressman PORTMAN, because they crafted the bill that is before us today. It seems to me that all this hard work is going to be a departure from business as usual and also, we are making a big, big step in the right direction.

THE FIRST STEP IN FORGING A NEW PARTNERSHIP

The 10th amendment to the U.S. Constitution reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Federalism. The idea that power should be kept close to the people. It's the idea on which our Nation was founded. But there are some in Washington—perhaps fewer this year than last—who believe neither our States nor our people can be trusted with power. Federalism has given way to paternalism—with disastrous results.

In the 104th Congress, we plan to dust off the 10th amendment and restore it to its rightful place in the Constitution. Adoption of this legislation is the first step in that process, the first step in forging a new partnership between Congress and our partners at the State and local level. This partnership is bipartisan, as the vote demonstrated and as the support among officials at all levels of State and local government already demonstrates.

CHANGE FROM BUSINESS-AS-USUAL

The distinguished Senator from Idaho, Senator KEMPTHORNE, Senator GLENN, Chairman ROTH, Chairman DOMENICI, and others deserve immense credit for working together on a bipartisan basis with representatives from State, local, and tribal governments—Democrats, Republicans, and independents—private-sector groups and key Members in the other body—particularly Congressmen CLINGER and PORTMAN—to craft the bill that is before us today. All that hard work has produced a bill that will lead to a dramatic departure from business-as-usual in Washington.

Mr. President, for far too long, Congress has operated under the false assumption that legislation that did not affect the Federal budget had no cost. Nothing could be further from the truth.

According to private estimates, in 1994, the private sector and State and local governments spent between $600 and $800 billion complying with Federal regulations. In last year's budget, President Clinton projected that in 1994 the Federal Government would collect a total of $549.9 billion from Federal income taxes on individuals.

In other words, State and local governments, private businesses, and ultimately taxpayers and consumers paid more to comply with Federal regulations than the Federal Government collected from Federal income taxes on individuals.

This bill will change the way we do business in Washington. It will lead to a more informed debate on the Senate floor, a debate that will require us to consider the potential cost of a new

mandate to State and local government and to the private sector, before the mandate is adopted.

For far too long, Congress has given State and local governments new responsibilities without supplying the money needed to fulfill these new obligations. Those unfunded mandates have forced State and local officials to cut services or increase taxes in order to keep their budgets in balance.

The costs are immense. California Governor, Pete Wilson, estimates that unfunded mandates cost his State $7.7 billion last year.

MORE INFORMED DECISIONS

This new process is a reality check for advocates of new mandates. It forces those who want to expand the reach of the Federal Government to consider the potential cost of their actions to State and local governments and to the private sector—before they take action. It is a reality check for advocates of new mandates.

Those who want to create new mandates or expand existing ones have a choice: Either get an estimate of the potential cost of a new mandate and pay the full cost of imposing that mandate on State and local governments up front or try to get a majority of the Senate to agree that the Federal Government should not finance the new mandate.

This legislation is really about good government and accountability. Here's the bottom line: The potential costs of new legislation should be considered before the legislation is adopted.

WHO BENEFITS MOST FROM MANDATE RELIEF?

There has been a lot of discussion about who this legislation helps. It certainly is a top priority for State and local government officials—Democrats and Republicans—who are sick and tired of dealing with a Congress that passes the buck. I have met personally with representatives from the so-called Big 7—Governors, mayors, State legislators, county officials, school boards, and so forth. They know that mandate relief will make it easier for State and local officials to balance their budgets each year.

But, the real beneficiaries of this legislation are the people who ultimately pay all the bills for unfunded mandates: individual Americans.

People—not government—pay all the taxes, both hidden and direct, generated by unfunded mandates. Federal mandates on businesses lead to higher prices for goods and services people on those businesses.

When faced with an unfunded Federal mandate, State and local government officials make a choice—they cut services or raise taxes in order to comply with the new Federal requirements and balance their budgets.

Stemming the flow of unfunded Federal mandates from Washington will help keep State and local taxes down and help prevent cuts in education, crimefighting and other State and local services.

Mr. President, this is a good Government initiative that is long overdue. I am confident that it will be approved with broad bipartisan support. I hope that those in the other body will be able to act on this legislation without major changes and that we can get this important legislation to the President as quickly as possible.

So I want to again congratulate my colleagues.

UNFUNDED MANDATE REFORM ACT

Mr. DASCHLE. Mr. President, I thank the majority leader for yielding.

I did not have the opportunity to listen to his entire statement, but his comments at the end reflect sentiments that I had intended to express.

This is the end of business as usual, at least as it affects our relationship with the States, local governments, and tribal governments. I commend the managers of the bill on both sides of the aisle for their hard work. They have done an outstanding job in the course of the last 2 weeks to bring us to this point.

Senator KEMPTHORNE and Senator GLENN have shown the demeanor and the comity between themselves, and certainly the patience in working with all of us, to make passage of this bill possible.

Let me also say that because we took the time, because we deliberated thoroughly for the last 2 weeks, because we have had the opportunity to offer amendments and considered them carefully, this is a much better bill than the version that was presented to this body just 2 weeks ago. It has been improved by the process. Those improvements resulted in broad bipartisan support for the legislation in the end.

To all of my colleagues, I say it is important that everyone understand the difference between the House and the Senate. Certainly, it is possible to pass legislation through the House more quickly, but I do not believe that all the legislation that goes through the House is exactly as we would like it in the Senate. The responsibility of the Senate is to deliberate more carefully and to deal more deliberately with the legislative issues at hand.

There are many very complicated and difficult questions we have had to face with this issue, as there will be with other bills that will come before us. The amendment process is our only means to effectively deal with with those questions in a meaningful way.

So it is with great admiration that I come to the floor this afternoon to congratulate the two managers of this legislation. But I must remind my colleagues that the minority feels very strongly that as these amendments and bills come before us, we will take our time, we will do what we must to ensure that all matters related to the legislation get thorough consideration. We will be as supportive as possible when we agree with our Republican colleagues on the merits. But certainly we must object when the process does not allow us or accord us the opportunities the minority deserves as these complicated bills come before us.

Mr. President, I yield the floor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I was pleased to cosponsor S. 1, the Unfunded Mandates Reform Act of 1995, a bill to curb the practice of imposing unfunded Federal mandates on States and local governments.

This is an important piece of legislation, and I am delighted it has passed.

I wish to commend our majority leader, Senator DOLE, and all the others who joined on this bill as cosponsors. I especially wish to commend Senator DIRK KEMPTHORNE, the Republican manager of the bill, and Senator JOHN GLENN, the Democrat manager.

Senator KEMPTHORNE is a new Senator, yet he managed this bill as if he were a veteran of 20 years. He artfully handled it with great skill and much grace. We are very proud of his efforts. I predict this bill is going to bring great results to this Government, and I look forward to those results in the years ahead.

Mr. President, over 1 year ago, in October 1993, thousands of mayors, county commissioners, and Governors met in front of their town halls, court houses, and State houses and gathered here in Washington to speak out against, what is popularly described as, the unfunded mandates issue.

Unfunded Federal mandates arise when the Federal Government, through legislative or executive action, directs State and local governments to establish a particular policy or program, without providing the financial resources to implement that policy or program.

Mr. President, this situation emanates from our unique system of government. By design of our Founding Fathers, governmental power in our Nation is divided between the National Government and State and local governments. The National Government, with delegated and implied powers, coupled with the supremacy clause of article 6 of the U.S. Constitution, has taken upon itself to direct the States in many areas of law and public policy. On the other hand, the 10th amendment to the Constitution specifically reserves to the States or to the people, powers not delegated to the United States by the Constitution. Thus, a natural tension arises between levels of government, particularly when it involves unfunded mandates.

Federal laws and regulations place a heavy burden on State and local governments, as well as businesses and consumers. Cities and counties are hit particularly hard by Federal environmental rules which require expensive capital expenditures and operational

costs to comply with Federal standards.

Numerous surveys and studies have been conducted to determine the extent of the burden of unfunded mandates. These surveys consistently report findings that unfunded mandates consume significant portions of State and local budgets, totaling billions of dollars.

Mr. President, the message of State and local government officials is being heard in Washington, and their concerns are being addressed. Last year, in addition to an Executive order issued by President Clinton, unfunded mandates legislation was considered by Congress, although final action on the measure could not be completed in the closing days of the last Congress.

I am pleased that the Senate has acted on this reform legislation addressing unfunded Federal mandates. No one could have handled this bill with more talent and skill than Senator KEMPTHORNE has done, and I congratulate him on the leadership he has shown on this issue. Also, I commend the majority leader and relevant committees for quickly bringing this bill to the floor. This measure is widely supported, as indicated by the bipartisan majority of Senators who cosponsored the bill, and who ultimately voted for final passage.

Mr. President, S. 1 establishes a legislative framework based on three fundamental concepts—information, consultation, and accountability. First, this bill provides that Congress must consider information on the cost of mandates to State, local, and tribal governments, as well as to the private sector. This information will identify whether or not proposed legislation includes a mandate and, if so, the cost of the mandate.

Second, the bill requires consultation with State, local, and tribal officials when Federal agencies develop regulations that contain significant Federal mandates. This provision is consistent with President Clinton's Executive order which seeks to establish a closer partnership between the Federal Government and the States.

Third, the bill establishes a method of enforcement and accountability. It provides for a point of order against committee-reported bills and resolutions which contain a mandate but fail to provide information on the cost of the mandate. Another point of order lies against legislation which contain unfunded mandates exceeding the $50 million threshold. These provisions put an end to the practice of passing hidden costs to the States. Congress must now openly address these costs and make a deliberate decision to impose a mandate and pass on the costs of that mandate.

Mr. President, the issue of the proper role of the Federal Government is one which the Nation has faced from its beginning. Since our colonial days, Americans have been suspicious of centralized executive power. Recognizing a legitimate role for government, the Founding Fathers nevertheless sought to limit the power of the National Government. This bill is another step toward restoring the Federal-State partnership as it was designed and intended by the Founders of the Constitution. The word ''Federal'' evolves from the Latin word foederatus, meaning covenant or compact. The Constitution establishes that compact or contract between the governed and the government, and between the National and State governments. It gives specified powers to the central Government, and reserves all other powers and rights to the people and to the States. Today, however, the Federal Government continues to expand its influence in commercial regulation, environmental protection, welfare reform, and health care. Any one of these areas contains the potential for continued pressure on both the Federal treasury as well as State and local budgets.

Mr. President, while the issue of Federal mandates will not likely disappear in the foreseeable future, the Unfunded Mandate Reform Act of 1995 will help to diminish the threat to State, local, and tribal governments and will bring timely information, accountability, and consultation to the process. I was proud to support this legislation which prohibits the Federal Government from mandating State or local government action, unless Federal funds are provided.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Chair would like to thank the Senator from South Carolina for his comments.

The Chair recognizes the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Chair.

I would like to add my words of congratulations to the Senator from Idaho. As was mentioned by the Dean of the Senate, Senator KEMPTHORNE is a freshman. He has only been here for 2 years, and it is a very rare thing that someone who has been here only 2 years would be able to take a bill to the floor and to handle that bill really alone as the sponsor of the bill, with able help and participation from Senator GLENN, as well.

Senator KEMPTHORNE really deserves the credit, and I wish to congratulate the people of Idaho for electing a person who is a former mayor of Boise, who came here with a mission, to try to help a situation that he had experienced firsthand as mayor. I relate to that experience because I was State treasurer of my State of Texas. The others that were the first people on this bill were also State or local officials, such as Senator GREGG, who was the Governor of New Hampshire.

People like us, who came from local and State governments, really understand what was happening to the 10th amendment. The 10th amendment is one of the most important amendments to our Constitution. A lot of people forget it was the States that created the Federal Government; it was not the Federal Government that created the States. And the 10th amendment says exactly that, that all the powers not specifically reserved to the Federal Government shall go to the States and the people.

We must return to the 10th amendment, and we took a historic step today on this side of our Congress to do just that, to restore the rights of the States and the local governments to make the decisions closest to the people. That is what our Founding Fathers intended, and that is what I hope every step we take throughout this session will continue to approach.

I want the government closest to the people to make the decisions that relate to the people to whom they are closest. This was a major first step, and I am so proud to see that the House is now debating this very same bill. I look forward to the President having the relief to the States and cities on his desk by the end of next week. That will be a major step.

In fact, this really has been a historic week in Congress. On the other side of the Capitol, the House yesterday passed a balanced budget amendment, a great step forward for our children and grandchildren to know that we are going to act responsibly to start trying to get toward that balanced budget so that we will not pass our debts on to the next generations. And on this side of the Capitol, we passed the first step to giving the States and local governments closest to the people the rights they should have.

So I just want to commend Senator KEMPTHORNE. I commend all who worked so hard on this bill. For the last 10 days, it has really rested on him, and I think it is a great step forward. We are beginning to do for the people what we hoped we could do, what they asked us to do on November 8, and that is to start making the Federal Government less intrusive on our lives.

I thank the Chair.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Ohio.

Mr. GLENN. Mr. President, I want to respond to the very kind remarks made by several people about myself and Senator KEMPTHORNE with relation to this bill. I do believe this is very, very important legislation. I referred to it several times during debate as landmark legislation, and I think it is that important. A lot of times some of these things about processes and procedures and what you have to consider before you do something else, the organization of Government, the intergovernmental relationships between the Federal, State and local governments and how that fits in with the Constitution and so on, are arcane. They are looked at as something boring and not too interesting. But we have referred to them, on the Governmental Affairs Committee, occasionally, as doing sort

of the grunt work of Government, if you will.

They are not as spectacular, not as interesting, maybe, as looking at B–2 bombers, M1A2 tanks, radars, and all the other things that go on. But improvements in these areas have, for the future—5, 10, 15, 20 years down the road—the potential of making our Government work better, work more efficiently, and that is what this is all about. That is why I do believe this is landmark legislation.

What it has done basically is reversed a trend that was started some 60 years ago. I mentioned on the floor several times during this debate over the last 2 weeks, that I go back in my own lifetime to the days of the Great Depression. I remember that very well. Why is that important in considering unfunded mandates? Because prior to that time there were not some of the demands made on States that came to be common in the days during and after the Great Depression. Prior to that time in this country families took care of families, communities took care of communities. It was rare people could not take care of each other within the local community. Once in a while maybe some young person had to be sent to the county orphanage or some old person had to be sent to the county home. That was looked at as a failure of the community at that time.

That was sufficient. That Norman Rockwell view of America was sufficient in the early days of this country. It worked and I wish America still worked that way. But what happened in the days of the Great Depression was there was hunger, there were soup kitchens in the United States of America. If the movies portray it properly, the Okies were heading west with a mattress on top of the car. The United States at that time had enough doubt about itself that it was questionable what would become of this country—it was that serious.

There was hunger in America, if you can imagine that, on a big scale. Unemployment was over 20 percent for 4 straight years; 1 year, unemployment was right at 25 percent. America had lost its ability to cope and to take care of each other in that Norman Rockwell world that had been so great for this country and a hallmark of this country—people taking care of each other.

But that broke down. I remember my dad running an extra 2 acres of land, planting a big garden, and giving food away to the people in the town. We helped. I will not go into all the details of that. But then came along, out of that kind of disaster, the election of Franklin Delano Roosevelt and the New Deal. Whether people today think that was a good idea or not, I can tell you about those days when the mortgage on the home I was living in was saved by the FHA, and where people were put back to work, where I remember my dad, who had a little plumbing shop, going to work on a WPA project in New Concord replacing the water system that was made out of wooden pipes—wooden pipes—with a new and more modern water system—things like that went on all over the country.

A program was started for rural electrification and the lines went out across the country. The farmers, then, had new energy sources to help them do their work. I will not go into all the things that were part and parcel of that whole New Deal. I think too many people these days speak of the New Deal in scathing tones. But the New Deal addressed the problems of America at a time when America had lost its own capability to take care of itself, person to person, community to community and so on. It was that serious.

Did some of those programs over the last 60 years go too far? Why, of course they did, and I would be the first to admit that. We say now that all of the concern for people and for training and job training that has resulted in, I believe it is 128 different Government job training programs, many that overlap—is wasteful. Is this wasteful? Of course it is. Should we correct that? Of course we should. But some of the things that have happened over the last 60 years began in tragedy for this Nation, and the programs that were put in back at that time were lifesaving programs for this Nation.

We have come to the point over the last dozen years or so where Federal demands on the States, pursuant to programs quite laudatory as far as their purposes go—but too many of the programs have been just mandates given to the States. ''Let the States pay for them.'' Maybe we pay 10 percent from the Federal level, but then put big demands on the States.

Where that could be done, perhaps satisfactorily back maybe 15 or 20 years ago, it will no longer work because those Federal demands have become so great, with environmental concerns such as the Clean Air Act and Clean Water Act, building codes, police and law and order, and all the other things that we know about, where demands have been placed from the Federal level on the local communities or on the State government but the adequate money has not flowed along with that to help them implement those programs. Along with that, in the mid-1980's there was what was called the new federalism that cut out a lot of the normal Federal support. Community Development Block Grants and some of the other programs were cut out that the States had been depending on to help them cope with some of these Federal demands.

So we have seen an enormous, exponential increase in the last 10 years or so in demands on the States and local government that has become intolerable. Starting back about 3 or 4 years ago we saw complaints coming from the States, complaints coming from counties, from local governments and increasing in volume and increasing in concerns expressed about where this country was going if we continued this. Were we violating the Constitution? Were we violating propriety? Just ''what is right'' might be even a better question than one about the Constitution, because we cannot just heap requirements on the States and expect them to be able to cope with that.

That is the reason I think this legislation is so important. To those who just decry everything about New Deal and everything about the Democratic support for some of those programs and so on, I point out those programs were born of necessity in a time of crisis for this country. Now, after a period of some 60 years, though, we are saying that what finally happened with these programs, where the funding was put back on the States too much, that this has to be reversed. So that is the reason I see this as landmark legislation.

I think we have reached a height. We are leveling this off. We are saying there absolutely has to be considered up front the costs of programs and there has to be a vote on those programs, if it is demanded, right here. So we have to assume our responsibility, where too often in the past we have just taken these programs and said: I am sure the States can take care of that. Let us vote that in. There has not been too much squealing recently, they must be able to do it. So we just go and vote that out.

That will no longer be the case. When this legislation is finally through the House or whatever compromise version comes out of the House, we will have moved to a different level, a different relationship between the States and the Federal Government and the local governments.

I have been getting an increasing amount of mail about this subject. I would say to the Governors out there across this country, I have been getting an increasing amount of mail from local officials, from city and county officials, saying, ''They do to us what you do to them.'' In other words, the State does to my county, the State does to my town, what they are complaining the Federal Government does to the States. So I think the Governors have to take it upon themselves to make certain that this ''no money, no mandate'' that is sweeping the country includes the relationship among the States and local governments.

There have been some editorials in our home State of Ohio to that effect, where they pointed out some things where the State has given the local government problems in just such an issue as we are trying to address in the relationship between the Federal and State Governments.

So I think there is another area where the Governors and the States have to make certain that they are also taking adequate action. There are still needs of the people out there across this country. There are still needs of the poor. There are still needs to have to be met with regard to Medicaid, medical care, and health care,

some of which are provided for by Federal funds that are allowed to become less available to the States. But the needs of the people have not changed. Can the States adapt to this new situation, particularly if we pass a balanced budget amendment? Can the States adapt to this and assume those services now that they could not or would not do back in the days of the Great Depression, and assume it now some 60 years later as we reverse this relationship between the Federal, State, and local governments?

I think that has yet to be seen, and I think as a result of the legislation that we are here passing and will be passed over in the House one of these days, I hope, I think we have to very carefully watch this to make sure that some States are not less careful to take care of the needs of the people so that we do not see them once again going through a trough, as a Federal necessity to move in, and come about because of the States unwillingness to act.

So with those caveats on this I am very, very glad to see this legislation passed today. We worked on it a long time.

COMMENDATION OF SENATOR KEMPTHORNE

Mr. President, I want to mention briefly some of the people involved. Certainly Senator KEMPTHORNE, who has been a real driving force behind this starting about 2 years ago, introduced the legislation along with about half-dozen other proposals that were put forth that were referred to the Governmental Affairs Committee, must be commended. I had been working on some legislation along this line myself. And so we combined forces on this. He has been an absolutely superb person to put this legislation forward. He has been a real spark plug on it, has kept after it when we were trying to have hearings in the Governmental Affairs Committee, and wanted to have hearings. If the hearings were not scheduled for a week or so, I would get a couple of phone calls from Senator KEMPTHORNE very nicely, politely asking, ''John, couldn't we work this in? Don't you think maybe we could somehow work this in over there?'' And work it in we finally did, and we got the legislation out last August.

I will not go through the litany which I have gone through a couple of times already today about what happened once we got it out of committee in August, and what happened during the fall when we could not get adequate time on the floor to have it considered. Then the election came about. There was a new attitude over in the House, and we thought perhaps S. 993, which was the first bill that was an adequate bill by all estimates, might not be the legislation that the House had wanted to agree to now with the changed political situation. So this new legislation, S. 1, was put forward and was given the preeminence that it deserved by being named S. 1, the No. 1 bill to be considered.

Senator KEMPTHORNE, through all of this, has been a superb person to work with, friendly, congenial. We have not had any harsh words. We have worked things out between us.

I want to congratulate him for his persistence in this regard. It has been great to see him work, and as we mentioned here not too long ago on the floor—an hour or so ago—to have someone come here with a very complex piece of legislation and handle it the way he did is a real testimony to his capability.

COMMENDATION OF STAFF

Mr. President, on Senator KEMPTHORNE's staff, of course, Buster Fawcett, who is here and has worked on this, as the prime person working on it; Brian Waldmann, also, Senator KEMPTHORNE's administrative assistant, and Gary Smith, all have worked on this, have done a superb job, and have done a lot of work. They have had a lot of sleepless nights.

On my own staff, Leonard Weiss is our staff director on the Governmental Affairs Committee, who is here, along with Sebastian O'Kelly and Larry Novey, who is back in the back here. All of them worked and worked and worked on this, and did a superb job in all the negotiating back and forth. I want to give them full credit for that.

COMMENDATION OF SENATOR LEVIN AND HIS STAFF

Mr. President, let me say a word also about Senator LEVIN from Michigan. I have never known a Senator since I have been here who is more persistent, who, once he gets his teeth into something that he believes in, becomes a real pit bull for that purpose, and who by his background and training, having been president of the Detroit Council at one time, has a feel for local issues as well as the Federal issues that we deal with here, but he brings that kind of a background to this consideration of such legislation as this. Where other people may say that phrase is OK, he wants to dig into every phrase to see what its impact is going to be, to see what can be misconstrued under this and whether it can be corrected by a change of wording.

In other words, his emphasis through all of this is one of principle, of how we make legislation work better. How is it going to apply to the States? How will it apply to the city of Detroit? How will it apply to the counties? On and on, he tries to set up scenarios to illustrate the weaknesses in legislation. That is what motivated him through all of this in committee.

He was so unhappy when we were not able to get any amendments considered in committee. They were automatically voted down, and we had to bring them to the floor. But he persisted, and he brought those concerns to the floor and dealt with many of them right here on the floor.

I want to pay credit to him, and particularly to his staff, Linda Gustitus, who is the staff on the Oversight and Government Management Subcommittee of Governmental Affairs. She has done a superb job on this. I want to give credit to them.

COMMENDATION OF SENATOR DASCHLE'S STAFF

Mr. President, on the minority leader's staff, Senator DASCHLE's staff, Mike Cole and Eric Washburn, all worked very hard on this. I know that we stand up and take credit and we get all the laudatory comments about doing some good with a bill like this. But it is the staff who worked the long nights sometimes with us, sometimes in our absence, while the Senators were home in bed quite frankly, and did such great work on this.

I do think they can take great pride in seeing their work on landmark legislation. I think that will be the case as the years go on, and as they continue to work with us to make sure that this is fine tuned, and that this legislation is working as intended.

So I want to give credit to all of those people and the other Senators involved here, and we are proud to have worked on this ourselves. We are glad we got the bill through.

We have the job now of hoping to get it through over in the House, or a compromise version thereof. We look forward to being able to attend the signing ceremony, I hope in the not-too-distant future at the White House when this finally becomes law.

I yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Thank you, Mr. President.

I want to associate myself with the words of my colleague from Ohio on this legislation, that we understand that this is landmark legislation. We may have seen the turning of the corner of a new attitude, maybe a new cooperation between the States and the Federal Government.

Senator GLENN was commenting on times gone by back in the Great Depression, of course, in that great era of drought and what drove the ''Okies'' to California. I would have to say I do not know what it is doing now but the Californians are coming to Montana now. I do not know what is driving them. But also as a fellow marine, we did not even know it at the time, but that goes back further than either one of us want to visit about, I congratulate him on his tenacity, and Senator KEMPTHORNE from Idaho, because unfunded mandates just did not start 1 year ago or 2 years ago. It has been going on here quite awhile as the debate got going, and finally we see today it has come to fruition in the passage of this bill.

WESTERN FOREST HEALTH INITIATIVE

Mr. BURNS. Mr. President, I want to bring up a situation that caught my eye.

Day before yesterday I received a copy of an Associated Press article that exposed a previously unreleased

Forest Service document, now being referred to as ''Phase I of The Western Forest Health Initiative.''

This report was internally submitted September 30, 1994, about the time the agency said it would release its final report to the public. The final report, however, was not released until December, and it was watered down considerably. It is called phase 2.

The difference between the two documents is remarkable and it appears to demonstrate the difference between how Forest Service scientists—in other words, the professional land managers, especially in the Forest Service—view forest health and how this administration sees it.

The phase I report in every way was more aggressive and emphasizes a much greater sense of urgency than the report that was finally released to the public. Phase I contains about 70 different recommendations on overcoming impediments and barriers to achieving good forest health goals and lists scores of specific actions needed to address those concerns. It identified work to be done on almost 5 million acres of U.S. Forest Service lands. The new document, phase II, is more of a discussion document than a policy document. It recommended projects covering only half a million acres of land—projects that were already planned for and would have been done regardless of this initiative. So phase II proposes to remove barriers without clearly stating what they are and it disregards some very significant problems that the forests have completely.

So, Mr. President, I think this action is flagrant. It undermines the honest and serious attempts of the land managers to deal with forest health problems by the Forest Service. It is of extreme concern to the people of my State and others in the West, who fought the 67,000 wildfires last summer—that burned 4 million acres, and it cost 26 lives. If we trail those back as to what caused the fires and how we could have controlled them, it goes back almost entirely to dealing with forest health issues.

I ask unanimous consent that a summary of the original Western Forest Health Initiative, dated September 30, 1994, along with an Associated Press article, dated January 25, 1995, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE SUMMARY

Healthy resilient forests are important for sustaining ecosystems, including the needs and values of humans.

Currently, many of our national forested ecosystems are under stress and are unhealthy, meaning they cannot sustain their inherent complexity while providing for human needs. The problem with forest health is not confined to any single region of the country. Some eastern and southern forested ecosystems are challenged with considerable and complex forest health problems. However, the nation's attention is focused on western forested ecosystems, where the scale and magnitude of the problems are greatest, and where the loss of life, property, and resources from catastrophic wildfires have heightened the public's awareness.

To address the western forest health problem, the Chief of the Forest Service chartered an interdisciplinary team of 14 members from all organizational levels to identify Forest Service priority activities that can move towards restoring western forested ecosystem health across National Forest System and contiguous other land ownerships. The Team was asked to identify and recommend solutions to barriers and impediments that block or impede the accomplishment of restoration activities. The focus was on assessing the problems in our western forests, and then charting an ecosystem approach, emphasizing projects that restore, protect, or enhance ecosystem health. The Team's task did not include addressing burned area recovery and restoration. Rather it looked at actions that would work towards restoring forested systems, to reduce the risks of future catastrophic losses.

As part of this process, the Team did extensive outreach and shareholder sensing, personally contacting over 40 members of Congress, 30 non-governmental organizations, other federal agencies, tribes, the Western Council of State Foresters, Washington, Regional, and Northeast Area staffs, Forest Service Research Stations, and 92 western Forest Supervisors.

The data gathered in this intensive effort was compiled into two automated electronic data bases: one for projects and program level data from the National Forests and State Foresters; the other containing over 1,100 comments on barriers, impediments and proposed changes in management direction, policy, or law. Content analysis and synthesis was conducted by the Team. It resulted in an identification of the magnitude of planned and needed work. Over 70 recommendations were developed for changes that are needed to overcome impediments.

Key findings estimate that over the next two years, there are approximately 5 million acres of treatment opportunities that restore forested ecosystem health. In addition, there is a significant amount of ecosystem analysis needed in support of future forest health projects.

Not all forests are unhealthy, nor can we treat or restore all forests that are unhealthy. To facilitate management decisions and move towards implementation, the team developed a framework for prioritizing projects and budget needs that contains biological, physical and human components. In using it, managers will both be able to identify high priorities for management, as well as get a sense for the level of public acceptance and likelihood for successful implementation.

Recommendations for changes that are needed centered into the following key areas: changes to improve the effectiveness and efficiency of the National Environmental Protection Act; appeals, and consultation processes; increased budget and funding flexibility, with a focus on increasing carryover and multi-funding approaches to support multiple resource projects; comprehensive review of legislation, regulations, and policies to remove inconsistencies and conflicting direction, new ways to get the job done on the ground, such as land management services contracts and competitive inter-agency grants; a greater commitment to truly working in partnerships with other federal agencies, States, tribes, and neighboring landowners in addressing forest health problems that cross our boundaries; and better frameworks, protocols and education and training for tying integrated inventories, assessments and planning into more holistic and integrated systems.

Forest health problems are national in scope. Lasting solutions that can only be achieved by shared conservation leadership toward common goals and land conditions. This will require cooperative efforts and shared vision by the Executive, Legislative and Judicial branches of the federal government, as well as by our varied and many cooperators from the private and public sectors. There are no easy or short-term cures for forest health problems that have developed over a span of the past century.

[From the Associated Press, Jan. 25, 1995]

DOCUMENT SHOWS CLINTON FOREST-HEALTH PLAN ADDRESSES ONLY PART OF PROBLEM

(By Scott Sonner)

WASHINGTON.—Agriculture Undersecretary Jim Lyons says the administration's Western forest health plan tackles only a portion of the acres needing treatment and will be fortified with additional projects in coming years.

''This was not a one-shot deal,'' Lyons said in a telephone interview Tuesday night.

''There is a lot of work to be done on the forests, a lot of opportunities to improve on their health,'' he said.

Lyons responded to criticism from the timber industry after a Forest Service document disclosed Tuesday indicated the Clinton administration's plan to reduce wildfire threats addresses only about one-fifth of the 5 million acres a Forest Service team identified as needing treatment.

The Forest Service's Western Forest Health Initiative Team advocated a broader, speedier effort to remove dead timber and otherwise reduce the amount of fuel in national forests, according to a copy of the team's report obtained by The Associated Press.

''Based on field responses, work was identified for completion over the two years covering approximately 5 million acres on national forests in the West,'' the team wrote in its Sept. 30 report to Forest Service Chief Jack Ward Thomas.

''In addition there is a significant amount of ecosystem analysis needed in support of future forest health projects . . . . Time is critical,'' the team said.

Critics in the timber industry said the team's report indicates the administration watered down the scientists' recommendations before launching the new strategy last month.

''The difference between them is what the Forest Service wanted and what the administration wanted,'' said Doug Crandall, vice president for public forestry at the American Forest & Paper Association.

The team's report ''in every sense was more aggressive, substantial, specific and urgent than the final report,'' he said.

The Agriculture Department's plan calls for 330 health-restoration projects on approximately 1 million acres of national forests over the next two years.

The projects include plans to obliterate some old logging roads and restore fish habitat as well as remove dead, burned wood and thin bug-infested forests where fuel loads pose a threat.

The salvage logging and thinning is controversial because environmentalists and some forest scientists say the cutting does more harm than good to a forest ecosystem.

Conservationists also point to past cases where the Forest Service used salvage logging as a guise to cut large, live trees without jumping through the hoops of as many environmental regulations.

''The team gave us a wide range of projects,'' Lyons said Tuesday.

''They instructed us in the first phase to do those the team thought would have a high likelihood of being implemented and that were less controversial and would demonstrate we can get some of these projects done on the ground,'' he said.

''There's nothing to hide. There was no scrubbing. It was important to gain the confidence of both the industry and the environmental community that our forest health initiative was intended to improve the health of forest ecosystems and not simply to generate timber,'' Lyons said.

Some lawmakers have proposed exempting some salvage logging operations from the normal environmental requirements in an effort to expedite the cutting before the dead wood loses its market value.

Senator Larry Craig, R-Idaho, chairman of the Senate Agriculture subcommittee on forestry, is preparing a forest health bill that may adopt some of the team's recommendations, his spokesman David Fish said Tuesday.

The 5 million acres identified by the Forest Service team includes 1.3 million acres in need of fuel reduction and 1 million acres in need of ''vegetation treatments,'' including ''commercial harvest, salvage . . . commercial thinning, commercial thinning . . . firewood.''

The team also identified 1 million acres for soil and watershed work, 400,000 acres of ''combination treatments,'' which could include some prescribed burning, and another 1.1 million acres of other projects ranging from educational projects to seeding and fertilization.

In addition, the team addressed two other controversial areas that did not show up in the final initiative—reform of U.S. environmental laws and below-cost timber sales.

In addition to coming up with ways to reform the National Environmental Policy Act, the team recommended the Forest Service return the agency's administrative appeals process to exempt some salvage logging from the appeals that environmentalists have used to block such harvests.

The team warned that efforts to do away with so-called ''below-cost timber sales''—logging operations that cost more to offer than the revenue they return—could harm forest health programs.

Ann Bartuska, the Forest Service's director of forest pest management who led the forest health team, said the USDA plan ''was not intended to be a comprehensive look at forest health; it was a snapshot.

''It was a subset of the total package,'' she said. ''We thought it was important to get started on some of these.''

Bartuska said the 5 million-acre estimate was based on 1,900 project sites that regional and forest supervisors ''rapidly identified on the first go-round.'' The 330 projects in the USDA plan represent the supervisors' top priorities and will cover an estimated 1 million acres, she said.

Mr. BURNS. Mr. President, for the benefit of any interested Senators, I have a copy of the entire Phase I initiative in my office. I would be happy to let them read it.

I also thank the Senators and the managers of the unfunded mandates bill. It is a terrific day. I think it is a victory for not only the States but the people of America.

I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. KERREY] is recognized.

BIPARTISAN COMMISSION ON ENTITLEMENTS AND TAX REFORM

Mr. KERREY. Mr. President, I rise to talk at length about the Bipartisan Commission on Entitlements and Tax Reform, a subject that I believe eventually this body will be compelled to address. When it does, it will be, of necessity, a bipartisan effort. We will not get it done if Democrats take advantage of Republicans, or vice versa. With that in mind, I note with considerable pleasure, before talking at length, that at a critical point during the debate on the unfunded mandate bill, an effort was made to place an amendment on the constitutional amendment to balance budget that would have required us to, in the Constitution, separate Social Security from the rest of the budget. That may make good policy sense at one level, but I was happy to join many Republicans in opposing that effort, as I was happy to join in an effort to oppose but not defeat the sense-of-the-Senate resolution that followed.

It will take that kind of bipartisan effort if we are going to be able to address this issue. I note, for the record, that when the Republican leader earlier commented that perhaps this 10 days was a waste of time in debating this bill, I note for Americans that we are debating the health and safety and security of their lives. This is not a small issue. There is no economic imperative driving this legislation. The Government is not about to go broke if we do not pass this bill. I was proud to vote for this bill. I think it is a good piece of legislation. But the imperative to get it done right away is a political imperative, not economic.

I note as well, with great interest and concern, that out of 44 amendments with rollcall votes on this particular piece of legislation, there was only one time when a single Republican crossed the line and voted for a Democratic amendment. That was on Senator BOXER's amendment to exempt child pornography. Even in that case, only the Senator from Pennsylvania, Senator SPECTER, could cross the line and vote for a Democratic amendment.

I must say, Mr. President, if we continue in that kind of forum with the Republicans, joined by some people's measurement of admirable unity, while Democrats on almost every single amendment had to be persuaded to vote for the Democratic sponsor of an amendment, we are not likely to continue making successful efforts in this body. The reason the unfunded mandate bill passed was that there was bipartisan support for the underlying effort. It was a good effort.

I hope that the actions, at least as I witnessed them, of unprecedented unity, as I might point out, unprecedented willingness to basically say whatever you say, I will vote for it, do not continue as we take up other matters.

Mr. President, the American people have heard a lot of speeches this week about the future. I am here to add my voice to this clatter. I want to talk about the year 2013. It is a long way off. It is in a completely different decade, a separate century, and new millennium. I suspect most of us would rather think about matters that are more current. But unless we take action to the contrary, Mr. President, something very important will happen that year.

Somewhere in America, a senior citizen will find in his or her mailbox the first check the Treasury of the United States ever financed out of the Social Security trust fund, a pot of money that we will, until that day, have saved for a rainy day. By the year 2029, 16 years later, the drizzle of that first rainy day will have deteriorated into a downpour—that is, if adjustments are not continued to be made in that due date. It was just 7 years ago that that year 2029 was forecasted to be another 35 years later. In 17 years after the first check was cut with funds from the Social Security trust fund, another retiree will find in his or her mailbox the last check financed from the Social Security trust fund.

Then the Social Security system and its much flaunted trust fund will be bankrupt. Today a document will be delivered to the President of the United States and the leadership of Congress that describes that future—a future in which the Federal budget consumes nearly 40 percent of the economy, and every dollar we collect in taxes will go directly to fund entitlements and interest on the national debt. And our Government will be paralyzed and unable to do little but operate as an oversized ATM machine whose only function is to collect money and hand it back out.

One of the arguments that was made, Mr. President, during the debate about attaching a requirement that Social Security be funded as a separate budget was that if a private sector trust fund was operated in this fashion, the individual operating in the private sector would go to jail. Well, Mr. President, any private sector insurance company that operates the way we are operating two of the largest social insurance programs in the world—Social Security and Medicare—any private sector company that operated insurance companies in the fashion that we operate, essentially ignore what the trustees are saying, which is what we are doing.

In February of 1994, the trustees of the Social Security and Medicare fund delivered to the Congress and the President a report that said we should take action sooner and not later, because we have promises on the table that we simply cannot expect to be able to reasonably fund. That is the way insurance companies operate, Mr. President. That is the way they operate.

Well, if a private sector company operated in that fashion, we would also likely close them, shut them down.

That is the bad news. The good news is that in the same document, the final

report, the Bipartisan Commission on Entitlement and Tax Reform describes a brighter and bolder future for our country, a future in which our economy is stronger, our senior citizens more secure, and our treasury more solvent. The difference, Mr. President, is up to us. I am here today because I find the challenge of building a stronger future an invigorating one, and because I see the road ahead as one paved not with problems but with opportunities—opportunities to modernize our retirement programs to meet the needs of a changed and changing population, and to address some fundamental defects in our economy.

Before getting to these changes, let me describe what necessitates them. The American population is aging in a way that requires us to rethink the structure of our entitlement programs, the two largest of which, retirement and health care, were designed as systems in which each generation of workers would pay taxes to support the generations of retirees that preceded it. In return, each generation expects its successor in the work force to support their benefits.

The system succeeds, provided that each generation has enough children to grow up and pay the taxes that support its benefits. Mine, Mr. President, did not. Today, there are nearly five workers paying taxes to support each retiree; when my generation retires, there will be fewer than three. And, as life expectancies continue to expand, Americans will collect more in lifetime benefits.

This is an unprecedented event, Mr. President. Those who caution that I am overstating the case, who say, ''Well, we have always waited until we reached a crisis and then we fixed the problem,'' are urging us to ignore the unprecedented nature of the baby boom population moving into retirement and the unprecedented nature, as well, of the changes that are going on in the underlying economy of the United States of America.

Quite plainly, Mr. President, the arithmetic, which not only our Commission has examined but the trustees of the Social Security and Medicare trust funds have said themselves, the arithmetic does not compute. We will be able to support the aging population without immediate consequences for three decades because we have built a massive surplus in the Social Security trust fund.

Because in 1983, for the first time, we ended a pay-as-you-go system, imposing larger taxes than were necessary to pay-as-you-go on people that are in the work force.

Now, one of the prevailing myths that always goes on—and we heard it again in the debate about whether or not to keep Social Security separate—is that Social Security is generating a surplus. I hear it all the time from people saying, ''Just keep your hands off of my Social Security.''

Mr. President, that money comes from people who are in the work force. And we, in 1983, imposed and, as a consequence of using that money, agreed to ask Americans in the work force, particularly those who are paid by the hour, to shoulder a disproportionate share of deficit reduction.

Our retirement entitlements, Mr. President, are in much better shape than our health care system.

I have already described a crucial historical moment in the year 2013 and another in the year 2029. Again, it is not only likely but almost assured that those times will be closer than 2013 and 2029. Let me describe a few that will occur before that.

The first is in the year 2001. Mr. President, you can reach out and touch that. That is not a long ways away, 2001. That is when the Medicare hospital insurance trust fund, the part A trust fund, soaked up by an aging population and escalating health care costs, goes bankrupt.

The second is in the year 2008, when the baby boomer generation begins to retire. In a single decade, beginning at that moment, in my State, the overall population will go up by less than 2 percent, while the retired population goes up by over 28 percent. That states the problem right there. That refutes the common argument that is made, ''Well, we faced this thing in the past. We will face it in the future. We will just do as we have done previously.''

We cannot do as we have done previously, Mr. President, because we are facing something the likes of which we have not seen before.

In 2012, spending on entitlements and interest on the national debt will consume every dollar we collect in taxes, leaving literally nothing for defense, infrastructure, law enforcement, or any other function of Government.

If those dates seem too distant to merit attention, consider a figure that is right here and now. In Nebraska, as is true with most of the Nation, the population for those who are retired over the age of 65 and the population for those who are in our primary and secondary schools, the K through 12 environment, is almost identical. There are 275,000 retirees in Nebraska, Mr. President, and another 275,000 children in kindergarten through the 12th grade. We spend $1.3 billion of revenue, of tax revenue—property and State sales and income taxes—about 8 percent of that comes from the Federal Government —on those kids. We spend $4.5 billion on retirees.

Mr. President, much more ominous than that, we are going to spend $50 million more incrementally on the kids and we are going to spend $400 million more on retirees.

I pause to say, I do not intend, nor do I urge on others, to engage in any intergenerational warfare. It is not necessary for us to exaggerate this problem, but it is unquestionably a problem. It is a problem that gets worse as you examine the demographics. We do not need to look for a demon, for an enemy, for something that is causing this. It is demographic. It is, in many ways, our own success.

The technology of health care gets more and more expensive, but the disparity in investment is stark. In my opinion, Mr. President, we will have dire implications for our future.

Fixing these problems and building a better future is a challenge because it requires those of us whose occupation teaches us to think in 2-, 4- and 6-year cycles to think, instead, in decades and generations. Many of the benefits of entitlement reform will take hold in our economy years after most of us leave this institution—if not this planet—as will the consequences if we fail to act.

If our political cycle teaches us to think in terms of 6 years at the most, the myopia of our budget cycle is worse. As families across America evaluate their finances over decades, planning for education, for retirement, for health care, their Government looks only 5 years into the future and then turns its eyes away after that. The most important recommendation of the Commission on Entitlement and Tax Reform may be the need to expand our budget cycle to include the consequences of our action 25 and 30 years out.

We just passed a piece of legislation that requires us to think about the costs that we impose upon States, Mr. President. It would be incumbent upon us, as well, to think about the costs that we impose upon future generations, not only with our current action but with our current neglect.

We hear time and again that entitlement reform must be done, but we always struggle to get the job done. And one of the reasons that that occurs, in my short and happy experience with dealing with this issue, is entitlements are typically not only misunderstood, but are highly charged politically. People are vested in this program and they get very upset and concerned and in an angry mood or hardly in the mood to listen to reason. In addition, politicians very often turn a cloudy situation downright muddy by intentionally describing entitlement programs inaccurately.

We hear on Social Security time and time again this quote: ''Social Security isn't a problem. It's self-funded.'' Well, yes, it is self-funded, but it is not self-funded by Saudi Arabia, it is not self-funded by current beneficiaries. It is self-funded with a 12 percent tax on every American worker. Tomorrow is a different story, Mr. President. Tomorrow 12 percent will not get the job done.

Now what the Entitlement Commission is saying is that by the year 2013, the entitlements and interest will consume every single dollar of available tax revenue and will nearly double, by the year 2029, payroll taxes if action is not taken soon to change these trends.

Further, Mr. President, we distort our health care entitlements. I do not exaggerate, nor do I consider it particularly funny, that I could have scored points in my recent reelection effort if I had asked my campaign consultant who did my television ads:

I would like you to produce a 30-second ad in which I will go face on the camera and say, ''If reelected, I promise to keep the Government out of your Medicare. I promise there will be no big Government takeover of your Medicare program.''

Time and time again, I have heard Members come to this floor and say, ''I'm against national health insurance. I oppose the Clinton plan, because the Clinton plan represents national health insurance.''

Then come back to the floor within an hour sometimes opposing any change in the Medicare Program, causing people to believe it is something other than what it is. Medicare is national health insurance but only those who are 65 years of age and older are eligible. That is what it is. It is not a program like Social Security; it is not anywhere nearly as self-funded.

As I indicated earlier, not only is the program going to be insolvent, part A, but over time we have required a larger and larger amount of general fund subsidies to pay for physician services, and increasingly, to pay for hospitalization as well.

Yet we continue to go out and pander to the audience. We do not want to antagonize the audience. They vote in large numbers, this audience, so we misrepresent the program. And it should not come as a surprise, therefore, that Americans are confused about their health-care entitlements.

While I do not accept the rhetoric of those who describe entitlement reform as a process of pain rather than an opening of opportunities, the fact remains it is also difficult because it requires the Senate on occasion to utter one of the most uncomfortable words to utter in this city—that is the word ''no.'' Particularly to those who are apt to vote against us because we use that dreaded word.

We have, Mr. President, all the excuses we need to postpone action. Let me give a few reasons for acting today. The first and most important is that it is relatively easy to fix the problem today. Tomorrow the fixes will be draconian. The Secretary of Health and Human Services, as the Secretary is required, every 4 years, has put together last year a 13-person Commission that is examining Social Security, examining Medicare, examining the disability insurance trust fund, examining on behalf of the Secretary, as required by the Social Security law, and will make recommendations as to what action is required.

The people who staff and work for that Commission say that unless we put action in place in 1997, unless we change the law at the latest by 1997, to take effect in 1998, we will begin—as our Commission says as well—we are going to begin to see the size of this thing grow so quickly that we will look back and people will wonder, Americans will wonder, ''Well, for gosh sakes, why did you not take action when it was relatively easy to fix?'' The answer will be, again, well, we budget for 5 years, Mr. and Mrs. Citizen, and we get reelected for 2, 4, and 6 years.

The second, taking action today means that we can fix the problems with little or no impact on current retirees.

The third reason for acting today, Mr. President, is that planning for our national future also means we can give American citizens, particularly workers who are not currently retired, time to plan for the changes.

Understanding the problem, what do we need to do to fix it? There are several options outlined in the report of our Commission. I would be remiss if I did not salute those who had the courage to submit their own ideas along with the distinguished Senator from Wyoming, Senator SIMPSON, who submitted a plan. I hope to be able to work to develop a piece of legislation that will give Americans an opportunity to say we support this specific piece of legislation. Most of the people who are on this Commission had much to lose, particularly those who were elected and holding office had very little to gain, given the political climate, by doing so.

I want to describe today some of the ideas that were laid out in this document by former Senator Jack Danforth and myself. Now I want to alert people, this is a proposal in motion. We hope to be able to make some changes in it. I will go through this thing so that citizens understand that when we talk about entitlement reform, at some point it gets tough. And it gets tough in a hurry. It stops getting tough after we deal with congressional retirement, which is one of the first things on my list. After that it goes downhill in a hurry. There are no easy choices. There are no choices that we can make where somebody is not finding themselves, saying ''Oh, my gosh, this will require a change in my life.''

Mr. President, we try to say we should lead by example. We tried to say we need to have it fair and balanced and everyone participating. I believe, in fact, that generalized efforts to reduce discretionary spending will be good news, as well. It should lay the groundwork to make entitlement reform easier, but it will not make entitlement reform in the end an easy piece of business.

We began with the premise that Congress must lead before asking the American people to accept entitlement reform. For that reason, the Kerry-Danforth proposal would cut in half the rate at which Members of Congress accrue pension benefits beginning in the year 1996. Also in this spirit, we would bring retirement programs for Federal workers more in line with private pensions. Other proposals offered in the spirit of putting the Government's house in order include raising the Federal retirement age to 62.

This proposal would gradually phase out eligibility for unreduced benefits for Federal workers before age 60. Beginning in 2000, for workers with at least 5 or fewer than 20 years of service, the retirement age for unreduced benefits for CSRS and FERS is increased by 4 months each year until age 62 in the year 2020. We have additional details with this proposal, Mr. President.

The second thing we do is adjust the CSRS to high-5 pay.

Third, reduce the rate which military retirement benefits accrue.

The next thing we do, Mr. President, is to adjust the Consumer Price Index calculation to better reflect inflation. I will spend a bit of time with this, Mr. President, because it is a very key provision that has gotten a great deal of attention in the news lately.

A number of Federal programs are adjusted annually, based on annual increases in inflation as measured by the CPI. The CPI is based on a marketbasket of goods and services purchased by a representative urban worker. Adjusted every 10 years, the current marketbasket was last revised in 1987 using data for the period 1982 to 1984. As a result, the CPI does not capture dynamic annual changes in the pattern of consumer preferences.

In addition, the CPI may not adequately measure the consumer benefit derived from improvement and quality of existing goods or the introduction of new goods. A number of economists have supported this change. Most individuals who have looked at it say it is a reasonable, fair change. It is also one of the easier changes that we have to deal with.

The next large category is an effort not just to preserve and strengthen Social Security, Mr. President, but to begin to consider the other sources of retirement income that very often are neglected. There are three major sources of income that Americans look to for their retirement years. The first is Social Security. Twelve percent of payroll tax, 12 percent of payroll is collected. We all know how it works. Comes into the Social Security trust. The trust is required to invest only in Treasury bonds. The average rate of return is somewhere between 1 and 2 percent in real terms inflation adjusted. That is source No. 1. Unfortunately, for many years, it is their only source of retirement, creating a real serious problem for individuals who are on fixed income, and that is their only source of retirement.

But the second large source of retirement, Mr. President, is private pensions. Unfortunately, it appears that in the 1980's we took action in tax and in regulation that may have had a counterproductive effect, because we see a decline in private pensions being offered to employees, particularly in small businesses, Mr. President. And

though the Kerry-Danforth proposal did not make a recommendation in that regard, I, myself, am particularly interested in the context of reforming our retirement programs to better suit the changed and changing needs of our work force, to consider changing our tax and regulatory laws as they relate to private pensions.

The third source of retirement is individual savings. It has been noted, and I will note it later, there has been a decline of savings in the United States of America. There is a disproportionate amount of savings in certain sectors of the economy. Obviously, it is true that if you make some $130,000 a year, as 535 Members of Congress do, that you are apt to be able to save a lot more money than if you make $12,000 to $15,000 a year, as an awful lot of Americans do, or $8,000 a year as an American living on the generous $4.25 minimum wage we provide as a minimum standard for wages.

Those are the three sources of income that people have to consider.

I mention this lower income American, Mr. President, for a very specific reason. We tried to make our proposals as progressive as possible. I am open to suggestions as to how we can make them more progressive. They need to be. One of the blessings of living in the great State of Nebraska is that I have had the opportunity to acquire a friendship with a man by the name of Warren Buffett, a local businessman that has done pretty well in life. And Warren Buffett once said to me one of the problems you have in dealing with these kind of issues and others like it where you are concerned about what is going on in the work force is that at any point in time if you have 120 million people in the work force, which is approximately what we have today, 60 million will be above average, and 60 million will be below.

When you have a market, as we do today, that is international, and when you have technology ripping through the workplace increasing productivity but reducing the number of people who need to work, what happens is the market is bidding down large numbers of people and the services that they deliver into that market.

It is a reality. There are very few workplace environments, Mr. President—Congress may be the exception—where workers are protected from the forces of the market. What happens, therefore, is that we have a lot of people in this country who are in the work force who cannot afford health care, who are in the work force and even if we change our tax and regulatory policies simply are not going to have the resources to be able to save. It does not mean that tax change and regulatory change is not needed. It just means that those of us who get $135,000 a year in an environment where we are protected from the economic marketplace need to be sensitive to the dilemma faced by lower-income individuals.

The chief goal of the Kerrey-Danforth proposal is fulfilling our promises to today's retirees while ensuring the long-term health of Social Security. I have already described the challenges that face the system. Our proposal for redressing these problems is among the most exciting in our entire plan.

We propose to make changes in the Social Security Program that enable us to reduce the employee payroll tax by 1.5 percent in exchange for a revised long-term contract. It shifts more responsibility and control to the individual, provides opportunity for higher returns on investment, and allows us to return Social Security to its intended purpose, as a supplement to personal retirement savings.

Let me be clear, Mr. President—although there will be allegations to the contrary—no reductions in Social Security benefits affect anyone over the age of 50, and no Social Security reductions are used to reduce the deficit. The savings we propose to Social Security would go back into the trust funds and strengthen the program. We would require these younger workers to invest in the savings payroll tax cut in a mandatory IRA-type personal savings account.

Mr. President, I believe this simple and single change would alter the culture of savings in America. Every young worker, when their first job is taken, whether they are 16, 17, 18, would have to come home to Mom or to Dad and say, ''I have a 1½ percent decision to make.''

We were attacked by many when we put this proposal out. One of the things you will hear later is we proposed to move the normal retirement age to 70 while keeping the reduced benefit age at 62. We were attacked by the Washington, DC, Chapter of the NAACP as almost being racist because black Americans have a shorter lifespan than white Americans do.

We were attacked by many people in organized labor who said this is going to be bad for American workers. But I urge Senators and Members of Congress and Americans, in particular, before you buy that rhetoric, to examine what 1½ percent over the course of a working life in a safe individual retirement account would do. It not only provides a higher rate, but it provides the kind of flexibility that I think Americans want in their retirement program.

Mr. President, this proposal has a number of important economic benefits. Companies can save and invest more, grow faster, and have more rapid improvements in the standards of living of their citizens.

Private savings in the United States of America have fallen from more than 8 percent of the economy in the sixties to 5 percent today, and the trend line is down; it is not at a plateau, it continues to decline, perhaps because of tax and regulatory changes. But for whatever the reason, the savings rate continues to decline. The Kerrey-Danforth proposal takes an important first step towards reversing this trend.

More exciting, though, is the fact that this proposal gives workers more control over planning for their own retirements by transferring authority for these investments from the Government to the individual. The return on these savings provides workers the potential for far more lifetime benefits than they can expect from the Social Security system if it continues on its current course. Thus, those who attacked our proposals need to compare the current system as most reasonable people would expect is going to happen to it—and that is significant adjustments made out in the future—they need to compare the current system with the one that Senator Danforth and I are proposing.

Mr. President, this is a middle-class tax cut with both a purpose and a payoff. We also propose over a period of 30 years to raise the eligibility for full benefits from age 67 to 70, while still allowing partial benefits at age 62. This option accelerates the phasein to age 67 that is already in current law. The age for full eligibility will reach 70 for those under age 28 today.

So for one who is thinking of going out this evening and interviewing somebody and finding out, what do you think about this adjustment that Senators Kerrey and Danforth are proposing, please do not go out and interview somebody over the age of 50; it does not affect them. Go interview somebody under the age of 28. That is who this thing affects, and they are going to be affected mostly if no action is taken at all.

Mr. President, let me address a great misunderstanding about the previous two proposals. The term we use to describe the age at which Americans are eligible for full benefits, the term ''retirement age'' is very misleading. Americans do not want to retire at age 70. If anything, they want to retire early. They cannot do so, Mr. President. They cannot mathematically do so without a substantial pool of private savings.

The previous two proposals, therefore, are designed to increase an individual's control over when they retire. Make no mistake, the age at which Americans retire is set by genetics, economics, and personal preference, not by statute. A low statutory retirement age means nothing for those who lack the savings to enjoy, and that is true for the individual and it is also true for this Nation.

Our other proposal to restore solvency to the Social Security System is including State and local workers in the Social Security Program; indexing the Social security bend points for CPI instead of average wage growth; reducing growth of benefits to mid- and upper-wage workers using a third bend point; and adjusting the CPI formula to better reflect inflation.

Mr. President, I have run through four or five things here to change our

Social Security system. None of these are easy. All of them require us to think, first of all, in the context of an entire retirement program: of Social Security, of private pension, and of individual savings.

We need to make adjustments in all three, and it requires us, most importantly, to be able to look out 25 or 30 years to connect our action with our words. Rarely is there one of us who does not get up and give a speech and talk about our kids and grandchildren. If we do not take the trustees' advice and take action to restore the strength of this program, in particular, then those who hear our words will wonder why it is not accurate to describe us as hypocrites.

In the area of health care and other entitlements, there are many critics who oppose reform of Medicare and they point out correctly the fact that much of the increases in this program are due to escalating health care costs.

This concern is true enough, but it also ignores, at great peril, in my judgment, the fact that in addition to higher health care costs, our health care entitlements are growing because more Americans are retiring and taking advantage of them.

Again, there is no enemy. I am not pointing at seniors and saying: You are the problem. We have a big demographic change that is occurring, and the simple way of saying it is our generation did not have as many children as our parents thought we were going to have.

(Mr. FRIST assumed the chair.)

Mr. KERREY. Mr. President, the fact is that Medicare spending will continue to skyrocket due to an aging population, even in the miraculous event that Federal health care costs were held to the rate of inflation—highly unlikely. Any time anybody gets close to looking at that, I note with some disappointment, some considerable disappointment the President saying no Medicare reductions can be used for deficit reduction. But any time you get close to making changes that would keep Medicare, the Federal costs going at the rate of inflation, we get providers coming in—the distinguished occupant of the chair, I am sure, has heard his cohorts talk about what happens when we reduce reimbursements under Medicare. We get hospitals coming in here. We get all sorts of people coming in here telling us about the terrible things that happen. Even if it miraculously occurred that the growth of the Federal program stayed at the rate of inflation, it would still be a substantial increase in the program merely because, as I said, of the tremendous demographic change.

The Kerrey-Danforth proposal tries to fairly and evenly control the growth of entitlement programs. We allow Medicare beneficiaries to buy into risk-adjusted pools. We try to apportion the increase, the wedge that we see coming, between adjustments in what is paid to providers, adjustments in what the beneficiaries themselves pay in, and we say the general fund can pick up approximately a third of it, as well. We try to apportion the changes that are required between all three of those sources.

In the area of other entitlements, Mr. President, we use, as I indicated earlier, an adjustment in the CPI, a different CPI to better reflect inflation. This proposal would apply to all other entitlements including veteran's compensation. We take a rather difficult but I think correct action of means testing Medicare, veterans compensation, and unemployment insurance. It is phased in. It is difficult, I know, but I believe if Americans examine the details of this proposal, they will see that we are not taking away a benefit that is offered. A person like myself that was service-connected disabled, that was wounded and injured in the war in Vietnam, you do not take away my benefit. You merely say that if my income comes up, the size of the benefit, I think most appropriately, would be reduced.

In the third area, Mr. President, the area of tax expenditures, we make some recommended changes, as well. I note with some amusement and concern, every time we talk about entitlements, tax expenditures are a real favorite target. But when the rubber meets the road and it comes time to put them on the list, it is awfully difficult to find much enthusiasm for doing it because they do unquestionably have a historic impact upon people.

The Kerrey-Danforth plan suggested that we limit itemized deductions to 27 percent. The adjusted CPI that I described earlier would apply to income taxes, standard deductions and personal exemptions. We cap the employer-paid health insurance deduction, a proposal that is consistent with our belief that we ought to move in a direction where individuals are taking more responsibility for making price and quality decisions in the health care market as opposed to having the Government make those decisions for them.

Mr. President, these are the long and the short—a bit long—of the proposals that the Kerrey-Danforth solution has. They were extremely controversial at the time. They were greeted with almost unanimous opposition from most of the interest groups that were affected. We were described in not altogether complimentary terms by most of these organizations, many of which I think are doing an awfully good job and are trying to protect their programs. I say to them with great sincerity that I want to protect these programs as well. Inaction does not protect them. Our proposal is not a proposal that destroys Social Security. It strengthens Social Security. We are responding to the challenge of the trustees.

Now, there may be Members who want to come down here and raise taxes. Maybe that is the solution you want to propose. Well, propose the solution. You can come at this problem and solve it whether you are a liberal or a moderate or a conservative. Any ideology can solve this problem. You cannot solve the problem, though, if you are afraid of the consequences of proposing a solution.

So I say let the debate begin. But let us not stop the debate merely because there was strong and vocal opposition at the first proposal out of the box to solve it, Mr. President. I say again with great sincerity that if we delay on this and wait, we are going to be alarmed by the consequences.

Mr. President, I would also like to show—I will use one of the rare charts that I put up in the Chamber—the future as described by current law, which is what this chart over here is. And I do this for the purpose of saying to Americans who wonder what is in this for me, what is going to happen, we are proposing to make changes in retirement and health care, what happens in the future.

Mr. President, this is the future of current law. This the future of Kerrey-Danforth were it enacted just as it is. I do not hold any illusions it is going to be enacted just as it is. I have already had some suggestions made to me that I think are altogether good and reasonable, and I have indicated you can solve this with a liberal, moderate, or conservative ideology. And I suspect that those ideologies will be expressed when and if—and I hope it is soon—this floor and the House as well begin to engage in what ought to be done.

What it shows is that this future of current law becomes this future. This is very important, Mr. President. These bar charts are not just bar charts. They are our economy. This green line here represents the historical rate of taxation in America.

One of the few things that has remained constant in Washington, DC, is the approximate rate of taxation. Measured as a percent of our entire economy, it has stayed at about 19 percent. It has gone up to over 20 percent during World War II, spikes up a little bit during the war in Vietnam, but all the rest of the time it has stayed at about 19 percent.

Now, again, maybe someone comes down here and says, gee, I think the rate of taxation ought to be 25 percent. Let them argue that. That is fine. Let them argue. But let the majority decide what we think is the rate of taxation. And it appears that the majority, going from liberal to conservative Congresses—and we have been all over the place on this—it appears that the majority of Americans have kind of settled in, perhaps without intent, but they have settled in at about a 19 percent rate of taxation.

Here is where we are today, Mr. President, 1995, with a deficit of about 3 percent. The red line is entitlements; the blue line is net interest. And what

you can see is the red and the blue line together begin to move up.

This is where I was saying earlier that in the year 2013, entitlements and net interest consume everything that is available.

Again, maybe in 2013 we are going to have a Congress saying we were elected on a promise to raise taxes. Maybe it will happen. I doubt it, but maybe it will happen. Maybe in 15 years Americans will say: They kept our taxes down 18 years; now we are really ready to raise them up again. Let's jack them up 5 percent of GDP and suck up these new entitlements out here and add a bunch of discretionary programs on top.

I think it is unlikely, Mr. President. What that means is you could eliminate all the discretionary spending, which we may end up doing. The discretionary spending went down last year. It is going to go down again, while entitlements are going to go up $50 billion and health care and retirement is almost the entire piece of that. We are going to whack the discretionary spending one more time, and that is going to continue until and unless we face it.

Under our proposal, this levels out, as I point out to Members and to citizens, if we do not even balance the budget. You still have to do more if that is what you want, to balance the budget. But we get within striking distance. You can do it with discretionary spending after that. It is not a discretionary spending commission. We did not address the problem of discretionary spending. The purpose of this commission was not to make recommendations to balance the budget but to get the two large insurance programs, the retirement and the health care programs, in balance so that we could say to the trustees that we in the Congress have taken action to bring these accounts into long-term balance.

This rather confusing chart shows what happens just with the Social Security trust funds. Again, this is the most controversial one of all. This is one the Speaker says we are going to leave off the table; the President says we will leave it off the table; everyone says we will leave it off the table. We will deal with it sometime out there in the future. Maybe in 2000, when the third millennium arrives, that is when we are going to deal with it.

There was a lot of wailing and gnashing of teeth earlier when we had that amendment on the balanced budget, but fortunately it was defeated. Here is the fact. This is what is going on out there in the future. So when you are out there talking about your kids, my kids are 20 and 18. My kids are 20 years old and 18 years old. And this is the kind of future they face. This is what they are looking at. It is fine for me. I am in good shape. It is fine for me until the year 2029. And mark my words, the trustees, in my judgment, are going to come back and say sometime later this year it is now not 2029; it is 2024. They have been moving this due date closer and closer since we recently fixed it.

That is the future under the Kerrey-Danforth proposal. You may have a more liberal proposal that says no, no, no, Senator; we want to raise taxes.

Bring it down here. Let us vote on it. Let us vote to consider some alternative to this. I do not mind that at all. But ignore this problem at not just your peril but our peril, and I predict that in 1997 or 1998, we are going to begin to hear some very, very serious statements made about what is going to happen by more and more people if we do not take action.

I hope that this entitlement commission report that we are delivering to the President and to the leadership will be given consideration because this kind of a future will change America as we know it today.

We will be able to say to our kids and our grandkids: Yes, Social Security will be there for you. Yes, Medicare will be there for you.

But just as important, ask an economist, ask Alan Greenspan, if you are on the Banking Committee or on the Joint Economic Committee, the next time he comes before you. Ask him directly what happens if this kind of future is enacted. What happens if the Kerrey-Danforth plan or some modification that achieves the same effect, what happens if that takes place? I will predict to you he is going to say that long-term interest rates go down at least 200 basis points, or 2 percent, and maybe as much as 4 percent.

It is this inflationary expectation that is causing the bond market still to bid up the long-term price of money. If we could get that kind of action taken quickly, we would continue the economic recovery. It would enable us to keep interest rates low, employ more people, allow us to build up our skills and our wages, and get the standard of living rising, as most Americans want, and probably, although we have not put a pencil to this and calculated it, probably produce the opposite of what we have right now, which is compounding interest working against us. We could probably get compounding interest working in our favor and find ourselves with good news, possibly able to adjust taxes down or make some other extension out there so that Americans would say: Gee, this is a payoff, a good payoff, for having made the tough decisions.

I will close by saying I am very grateful for the leadership that Senator DANFORTH put in on this and all the other members of this Bipartisan Commission on Entitlements and Tax Reform. I am very much appreciative and sensitive to the political problems surrounding this issue.

One of the things I have learned in this is it does not do any good, I believe, when you are discussing this, to hyperventilate and exaggerate the impact. We have attempted to present the facts. I have not said in any of this discussion: America is going to go bankrupt. We will not go bankrupt. We may devalue our currency, but we are not going to go bankrupt. We are just not going to be able to fulfill a generational promise we made.

We are not sitting here saying Social Security is broke. It is not a short-term crisis. We are saying we are operating a very large insurance fund and we ought, on behalf of future beneficiaries, to make adjustments today so they get the promises that are currently on the table and that we ought to make long-term planning a part of our thinking. As difficult as it might be, we ought to make that long-term planning a part of our thinking.

We have also suggested that we make incremental reform, incremental steps towards changing both our retirement and our health care programs. I have been more explicit on the retirement programs than I have on the health care programs. But as I see it, there are four large entitlement programs in America. By ''large''—I define large to be $200 billion plus. Three of them are Federal: That is Federal retirement, Federal health care, and Federal tax entitlements. There is a debate about whether or not taxes are entitlements. The fourth is K through 12 education. You are entitled to that as well, but that is a State and mostly local issue.

I am saying we should use this opportunity. As we solve this long-term structural problem—as we solve the long-term actuarial problem, as the insurance folks call it—we ought to consider making changes in our regulation in our taxes, particularly as it relates to retirement, so we will provide Americans with the opportunity to acquire more private pensions and a larger pool of private savings as well.

I intend to repetitively come and try to make the point. I hope Americans understand that there will be concerted effort in the U.S. Senate and in the House of Representatives to try to give Americans a legislative vehicle they can rally behind, a specific set of recommendations that are open to amendment, open to changes, open to any suggestions that might improve it, and change the future as we are currently heading upon it.

Mr. President, I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

COMMENDATION OF SENATORS AND STAFF

Mr. KEMPTHORNE. Mr. President, after 11 days of debate we finally had passage of S. 1, a Senate bill which will curb unfunded Federal mandates. I think, as you can well appreciate, after 11 days and oftentimes 12 hours a day, we really have said quite a bit about S. 1, so in my closing comments, I would like to say what has not been said which are just some thank-you's for a lot of folks who worked very, very hard for this fundamental change in how this institution of Congress will operate under S. 1.

I want to thank Senator DOLE, the majority leader, who designated it S. 1, demonstrating with his leadership and with his conviction that this is the sort of new partnership that he wants to see ordered in a federalist system where local, State, and National Government works in partnership, not one dictating to the other from the Federal level down.

I thank Senator ROTH and Senator DOMENICI—Senator ROTH, of course, is the chairman of the Governmental Affairs Committee; Senator DOMENICI is the chairman of the Budget Committee—for all their efforts during the winter recess and their help in crafting this legislation.

During that period of time, also, Senator EXON, who is the ranking member on the Budget Committee, and his staff were very helpful. I think, with Senator EXON being a former Governor, he knows how important this is.

Senator LEVIN, during the course of 11 days, certainly provided a great deal of input, a number of amendments that really we found quite acceptable that I think will enhance the bill. So I appreciate Senator LEVIN's efforts on that.

Senator BYRD was certainly conscientious as we proceeded through this entire process. He offered an amendment which I think is a key amendment, which really strengthens this bill.

Then the Senator who I will now reference, the Senator from Ohio, Senator GLENN, who has been a great partner in this whole effort. I think what is significant is that in the last session, the 103d session of Congress, when the Democrats were in the majority and when he was the chairman of the Governmental Affairs Committee and before unfunded mandates was a household term, Senator GLENN realized that we needed to do something about that and so we crafted legislation. But it was his partnership, as we worked through this, that I think really helped us in a major way get to today, the fact we are going to provide to the American public, to the taxpayers, relief from these unfunded Federal mandates on the State and local governments. The mayors can now be the mayors they were elected to be. Governors can now be the Governors they were elected to be.

I think often of that quote from Ben Nelson, the Governor of Nebraska, who said he was elected Governor of Nebraska, not the administrator of Federal programs in Nebraska.

But I just have always been a great admirer of JOHN GLENN's. Working closely with him, when you work that many hours together, you really, I think, determine the essence of an individual.

It has been a honor, literally, standing at your side and I appreciate all of your help on S. 1.

I also would like to acknowledge some folks that I think too often we do not say enough about, and that is the staff that helped us. On my staff, Buster Fawcett, who is my legislative director and really was the architect of the language of this, and Gary Smith, who worked with the State and local officials throughout the country in coordinating their desires and wishes in the legislation and their support for this.

Both Buzz and Gary served with me when I was the mayor of Boise, ID. Buzz was the city attorney and Gary was the administrative assistant. We brought the team with us to Washington, DC.

We have added to that team Brian Waidmann, who is now my administrative assistant. But his understanding of the process and his methodical approach was instrumental in getting us here and Wendy Guisto, also of my staff, who helped us with the research.

On Senator DOLE's staff, we cannot say enough about Elizabeth Greene, who was just tremendous in helping us as we needed to understand the different aspects of this process; and David Taylor, a young man who just has a grasp of where the end line is and what it takes to get there in a fashion that others respect, and, yet, you get there in a fashion that no one feels that they have been upset, upset in getting the job done.

Senator DOMENICI's staff, Bill Hoagland, Austin Smythe, Jennifer Smith, and Anne Miller just played a key role with the intelligence that they have about this whole process; and Senator ROTH's staff, Frank Polk and John Mercer, with their working relationship and understanding of how Government should work; Senator GLENN's staff, Sebastian O'Kelly, Larry Novey, and Leonard Weiss.

We have come to know these people and to respect them, and I think it is demonstrated that there is a bipartisan spirit here that can and should work.

Senator BYRD's office, Jim English, and Senator EXON's office, Bill Dauster.

Senator HATCH's staff: Ed Whelan provided superb advice on the constitutional aspects of this legislation.

Senator BROWN's staff: Bennett Railey also provided expert legal advice and often on very short notice.

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Legislative clerks: Scott Bates, Dave Tinsley, and Kathie Alvarez.

Journal clerks: Bill Lackey, Mark Lacovara, and Patrick Keating.

Parliamentarians: Bob Dove, Alan Frumin, Kevin Kayes, and Beth Ann Smerko.

Elizabeth MacDonough of the Official Reporter's Office.

Pages: Bethany S. Atkins, Daniel E. Case, Michael J. Chapman, Kelvin D. Chen, Jeffrey M. Colvin, April D. Cunningham, Daniel E. Heffernan, Cristin M. Hodgens, Karen E. Hodys, Hilary S. Johnson, Fulmer Jones, Michael B. Kaplan, Katherine M. Lord, Matthew S. McMillian, Marc M. Mezvinsky, David M. Miller, Taina V. Mirach, Melody A. Montgomery, Anthony V. Oliver, Noah D. Oppenheim, Rupa R. Patel, Elizabeth S. Rosenberg, Benjamin T. Shoun, Megan D. Smith, Abraham E. Tucker, and Meredith H. Villines.

I want to extend a special thank you to Tony Coe, of the Senate Legislative Counsel's office. He worked closely with Buzz Fawcett of my staff in drafting every word of this bill. I am grateful, and I was well served.

Finally, I want to thank the citizens of Idaho for the opportunity they have given me in serving in the Senate. I hope they will take a small measure of pride that the effort to reform unfunded mandates was born in Idaho.

Mr. President, again, I thank all who participated with us.

I also want to acknowledge and thank my wife, Patricia, and my kids, Heather and Jeff, because for many nights the closest they got to dad was watching C–SPAN. Anyway, I will be home tonight.

I thank the people from Idaho, because I appreciate the honor of serving them. They are people who are straightforward. That are honest and sincere. They just said, ''Why don't you go back there and do a job for us, and not on us.'' And I think that is what we accomplished here with Senate bill 1.

I yield the floor.

Mr. GLENN. Mr. President, I am particularly appreciative of the remarks of my distinguished colleague from Idaho. He was not on the floor when I made my remarks about him a little while ago. But I talked about our excellent working relationship, and I appreciate the remarks very much.

REGARDING THE DEATH OF BOB BADGLEY

Mr. GLENN. Mr. President, Wednesday, January 25 was a sad and somber day in southern Ohio. On that day, America lost a patriot, Ross County lost a legend, and I lost a friend. Bob Badgley was one of my earliest and strongest political supporters—and he came to be a good and dear personal friend as well. Over the years, I called on ''Badge'' often for advice and counsel. He was 76 years young when he passed away on Wednesday, and I know his hundreds of friends—indeed thousands—around the State are going to miss him as much as I already do.

Although Badge never aspired to hold high public or elective office himself, he devoted countless hours to myriad volunteer activities that benefited his State, his community, and the Democratic Party that he loved so much for so long. On Tuesday, President Clinton delivered his State of the Union address. I don't know whether Bob was

watching that speech on what proved to be the last night of Bob's life, but I hope he was. Because when the President recognized and lauded citizen involvement, he was saluting Bob Badgley and the kind of life he lived—and I know that would have made Badge smile.

These days, I know it has become fashionable to be cynical about politics and all things political; to be suspicious about the motives of anyone who would willingly involve themselves in the political process of our Nation. But Bob believed that if we want good government, we have to be willing to help bring it about. And he believed that we all have a responsibility to try. So Bob served as Chairman of the Ross County Democratic Party; he served on that county party's executive committee continuously since 1957, and at the time of his death, he had served 29 years on the Ross County Board of Elections.

Somehow, he also found time to run his own electronics and vending businesses, and to be active in the Ross County Senior Citizens Center and related community services. In fact, Badge devoted so much time to community service that he received the Humanitarian Award from the Chillocothe Businessmen's Association in 1973, and the Community Service Award from the Ohio Department of Aging in 1992—the only Ross countian ever to receive the latter award.

Mr. President, there is a little story I want to tell about Bob that happened recently. I had my family out at Vail, CO, for a skiing vacation over the holidays. We came back to Washington a couple of days before we were to go back in session in early January. I think we came back on New Year's day. On our telephone answering machine at home there was a recorded message left. It was from Bob Badgley to Annie and to me. He said that he and Jeanne, his wife, had just been sitting around talking about particular friends and what they meant, and he thought it was a good time to call and just tell us what it meant. And he did so on that recording, and it meant much to me and I made a little note and had a note on my desk to call him back. Because of duties here in the Senate, being so busy in the next few weeks or so, I had not called. The note is still over there on my desk for me to call Bob Badgley. So it was particularly poignant for me when I heard of his demise the other evening.

For all these reasons and more, Annie and I will miss Bob deeply. But we are grateful to have known him, and that the good Lord allowed Badge to touch our lives. And we hope that for his wife Jeanne—and for the entire Badgley family—it will be at least some consolation to know that Bob will live forever in our hearts and in our memories. In that most important sense, we will truly never lose, our Badge.

I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

FREE TRADE WITH AN UNFREE SOCIETY

MEXICO AS A LENINIST STATE

Mr. MOYNIHAN. Mr. President, of the many novel ideas which we associate with the advent to office of Representative NEWT GINGRICH as Speaker of the House, none is more singular than his suggestion that we would all do well to read, or perhaps reread, ''The Federalist.'' As a New Yorker, I much applaud the proposal, and would presume on the Senate's time to invoke that venerable tradition in the context of the current debate over the proposed United States guarantee of Mexican debt.

The most striking, at least to my mind, of those 85 essays by James Madison, Alexander Hamilton, and John Jay is the assertion that the proposed new Constitution was based on a ''new science of politics.'' If I may cite a commentary of my own, written some years ago, the establishment of the American Government in the latter part of the 18th century took its foremost distinction from the belief of those involved that they were acting upon scientific principles. Hamilton noted, in the ninth ''Federalist,'' that previous republics had had such stormy histories that republicanism had admittedly fallen somewhat into disrepute. This tendency could be overcome thanks to progress in political science:

> The science of politics * * * like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancient.

He went on to cite, as examples of new discoveries, the various constitutional provisions with which we are now familiar, separation of powers, the system of checks and balances, popular representation in the legislature, the independent judiciary, and so on.

How exactly had the ''efficacy of various principles'' come to be so ''well understood''? By scientific method, of course. Which is to say, the deductive analysis of available data. Which, in turn, is to say the study of different systems of government which had prevailed at different times and places in the past.

No. 18:

> Among the confederacies of antiquity, the most considerable was that of the Grecian Republics associated under the Amphyctionic Council.

No. 17 (by Hamilton, naturally):

> When the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence. * * * Among other illustrations of [this] * * * truth which might be cited Scotland will furnish a cogent example. The spirit of clanship which was at an early day introduced into that kingdom, uniting the nobles and their dependents by ties equivalent to those of kindred, rendered the aristocracy a constant overmatch for the power of the monarch; till the incorporation with England subdued its fierce and ungovernable spirit, and reduced it within those rules of subordination, which a more rational and a more energetic system of civil polity had previously established in the latter kingdom.

No. 19:

> The examples of ancient confederacies * * * have not exhausted the source of experimental instruction on this subject. There are existing institutions, founded on a similar principle, which merit particular consideration. The first which presents itself is the Germanic Body.

This is but a sampler. ''The Federalist'' abounds in analysis of the principles on which different states are founded, and the successes or failures, the strengths and weaknesses associated with each.

It is an unequaled analytic tradition. The more troublesome, then, is its disappearance in our time. Notably in the matter of our relations with the State of Mexico.

From the time it was first proposed that we enter a free-trade agreement with Mexico, I have objected for a single reason.

Mexico is a Leninist State.

The Leninist State is the most noteworthy, if calamitous, political invention of the 20th century. Having just come through a 70-year struggle with the original such State, formed as the Union of Soviet Socialist Republics, you would suppose we would be able to recognize one on our southern border. But then you might suppose many things about the analytic reach of the Department of State and of Treasury, only to be disappointed. Note that the American Labor movement had no such difficulty.

Let me hasten to state that Leninist principles were never fully deployed in Mexico. There was no Great Terror. Even so, ''Americas Watch'' records in a 1992 assessment that ''torture is endemic'' in Mexico. Which is to say, State torture. Political opponents are murdered. Elections are propaganda exercises, and so forth.

The central principle of the Leninist State is that a single political party holds sway over the whole of society, and in particular, governs the government. We know from the Soviet experience, and for that matter from the Mexican experience, that this is never wholly successful. Yet it is the principle. Hence, the Partido Revolucionario Institucional. Literally translated, the Party of the Institutional Revolution.

The simple fact is that the Russian Revolution made a great impression in Mexico—as it did in the United States and most countries in the world. But unlike most, Mexico set out to reproduce the Soviet model. So much that when Trotsky fled the Soviet Union, now controlled by Stalin, he did not settle in Paris, as failed revolutionaries were expected to do; he went instead to Mexico City. Upon his arrival in 1937, Trotsky saw that Mexico was a

place where he could continue his work. Here was an important battleground in the struggle to win international support for Marxism. He wrote:

Of all the Spanish-speaking countries, Mexico is virtually the only one where the necessary freedom exists for the dissemination of the Marxist word. This international situation assigns a leading role to Mexican Marxists not just with respect to Latin America, but with respect to Spain itself, as well the growing Spanish emigration to all countries of the Old and New World. * * * History has assigned serious responsibilities to Mexican Marxists.

Stalin, of course, pursued him. But Trotsky's myth persists in Mexico. This from the August 27, 1990, issue of Newsweek:

Leon Trotsky? The man who applauded the arrest of dissident factions of the dawn of the Russian Revolution? The military commissar who argued for the coercion of workers into industry and preached that the Soviet Union should be a springboard for world revolution? This week, on the 50th anniversary of his assassination at the order of Joseph Stalin, Leon Trotsky is being hailed in Mexico as a prophet of perestroika, an avatar of socialism with a human face. The Mexico City government has spent more than $100,000 to restore the house where Trotsky died; the elaborate ceremony to make its reopening this week was to be presided over by the mayor. ''This anniversary * * * is our chance to show that socialism still has validity,'' Aguilar insists, ''that it can still be identified with human rights.'' Exclaims political scientist Paulina Fernandez: ''Trotsky represents a badge of honor for communism today.''

This may seem sentimental and harmless; and to a degree it was. But in foreign affairs, for example, the Government of Mexico made itself a firm ally of Marxist causes throughout the cold war. At the United Nations it would occasionally vote with the United States, mostly by accident. But in General Assembly votes 1975–90, it voted with the Warsaw Pact 90.3 percent of the time. I was present as U.S. Representative in 1975 when Mexico joined the Soviet Union and 70 of the most obnoxious dictatorships in the world in the infamous Resolution 3370, declaring Zionism to be a form of racism. Mexico had no part in the quarrels of the Middle East, but that was the party line and the Partido Revolucionario Institucional toed it.

Mind, by 1990 the Leninist regime in Mexico was coming apart, much as it was in Russia. The regime had long since become corrupt; rather, the corruption had long since become evident. A kind of division of the spoils took place. Intellectuals were given foreign policy. Viva Fidel and all that. Entrepreneurs were given industry—such that in 1993, President Salinas could hold a fundraising dinner at $25 million a plate. Party bosses were given various fiefdoms—to use a feudal term—probably including portions of the drug traffic. And so it went. Workers got little; peasants got nothing.

Then reform appeared.

The central organizing principle of the P.R.I., one which had indeed brought stability to the Mexican State after decades of bloody chaos, was the single term, 6-year Presidency. In 1988, the P.R.I. chose Carlos Salinas de Gortari, who had earned a Ph.D. in government at Harvard. Others like him appeared in Mexican Government circles. It is not clear to me how much they rejected the Leninist model of the Mexican State. Surely they accommodated it; almost certainly, however, they recognized that it didn't work well. In the Leninist tradition, if you will, this brought about vicious intraparty conflict. To succeed Salinas, the P.R.I. chose Luis Donaldo Colosio, who attended the University of Pennsylvania, to be the next President of Mexico—this choice was probably dictated by Salinas, one of the inducements to giving up office in the Mexican manner is the power to choose one's successor—Colosio was assassinated in Tijuana in March, 1994. Among those subsequently arrested were local P.R.I. opponents of Colosio. Probably in the same pattern, in September, 1994, Jose Francisco Ruiz Massieu, the reform minded Secretary-General of the P.R.I., was assassinated in Mexico City. The main suspect has evidently implicated other P.R.I. officials in the killing. In the meantime, in Chiapas, followers, or descendants, or what you will, of Emiliano Zapata brought about an internal rebellion. Zapata, who had written in 1918:

Much would we gain, much would human justice gain, if all the people of our America and all the nations of old Europe should understand that the cause of revolutionary Mexico and the cause of Russia, the unredeemed, are and represent the cause of humanity, the supreme interest of all oppressed people. * * * It is not strange, for this reason that the proletariat of the world applauds and admires the Russian Revolution in the same manner as it will lend its complete adhesion, sympathy and support to the Mexican Revolution once it fully comprehends its objectives.

That was then. It is now 1994. Mexico has entered into a free-trade agreement with the United States and Canada. There will be a Presidential election in August. The regime is in peril. A fixed exchange rate is maintained to ensure a large inflow of U.S. consumer goods to produce a sufficiently satisfied electorate. A huge foreign debt ensues. Followed in turn by devaluation and the present crisis of 1995.

Surely, this could have been anticipated as a possible if not probable sequence. It was not. Two successive administrations went forward with NAFTA with the same confidence that had attended our earlier free-trade agreement with Canada.

I have no explanation for this. None has been proffered—note that A.M. Rosenthal argues in this morning's Times that there is a need for testimony under oath. A plausible explanation would be that our policy makers looked upon Mexico as a typical Third World economy which had adopted a policy of import substitution as a means towards industrial development. This was common enough economic strategy in the postcolonial period. Charles P. Kindleberger notes that it was indeed the much respected prescription of eminent economists such as Raul Prebisch of Argentina and Gunnar Myrdal of Sweden. India would be a good example of a democratic developing nation that opted for this strategy. By the beginning of the 1990's, however, the Indian Government was changing its view—even as at the beginning of the 1980's it had faced a foreign exchange crisis.

Surely, Mexican Government officials, under the influence in part at least of American economists, had also begun to change. The collapse of the Soviet Union hastened this appreciation in the value of American degrees. Just this Monday a poor fellow was ousted from President Zedillo's cabinet for having falsely claimed to have a doctorate from Harvard. But old habits die hard in a still theoretically one-party State. A free-trade agreement necessitates a flexible exchange rate to correct imbalances in the flow of imports and exports. Even so, the Salinas government maintained a fixed exchange rate until after the election. Then came the crash.

At this point I would like to make a seemingly contradictory argument. I opposed NAFTA. First, I voted against President Bush's request for ''fast track'' authority. Then, in 1993, I voted against the resulting agreement. I was then chairman of the Finance Committee. I did nothing whatever to hold up the agreement, and I might have done. To the contrary, I saw to it that it was reported out of the committee promptly. When it came to the floor, I asked my colleague MAX BAUCUS, then chairman of the Subcommittee on International Trade, to manage time in support of the bill. Which thereupon passed.

My objections, which I believe I stated clearly enough, were political more than economic. I did not believe that the United States appreciated the troubles that would almost surely come of entering into so close a relationship with a polity so very different from our own; different in ways that could bring about a crisis such as that of the present.

Nonetheless, I fully support Federal Reserve Chairman Alan Greenspan, Secretary of State Warren Christopher, and Secretary of the Treasury Robert Rubin in their advocacy of a $40 billion loan guarantee fund for Mexico. My reasons are twofold. First, I have the uttermost respect for Dr. Greenspan and his associates in this matter. He asserts that he came to his present position ''with great reluctance.'' This week he told the Finance Committee that he all but detested the ''too big to fail'' argument, be it applied to banks or nations. And, yet, there was something to it. Just yesterday, he told the Foreign Relations Committee, ''If this were strictly confined to Mexico, there would be no purpose whatsoever in a

government loan guarantee.'' But the issue is not confined to Mexico. It is Dr. Greenspan's judgment that the economies of the whole of the developing world are potentially at risk. The Senator from New York is not about to hear such testimony from Alan Greenspan and pay no heed.

Similarly, I was struck by the comment yesterday by my distinguished colleague, PAUL COVERDELL, not just incidentally former head of the Peace Corps, warning against demands for strict conditions on the loan guarantee which may ''inflame'' relations with Mexico. May, indeed. They most assuredly will. Then we shall have chaos on our hands; or rather, on our border.

In my view, it comes to this. We probably ought never to have entered a free-trade agreement with a polity so very different from our own. But we did. And we now face the consequences. They are nothing we cannot manage. As the headline from an editorial in the Buffalo News of January 26, 1995 explains:

It's risky, but U.S. has to try to rescue Mexico's economy

LOCATION AND TRADE LINKS LEAVE US LITTLE CHOICE

The true disaster would be to insist on conditions that would arouse all the hostility and hysteria of a nation of 93 million souls on our southern border who for almost the whole of the 20th century have defined themselves by what they loathed in us. Cuidado, amigos.

Thank you, Mr. President, for your patience. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. COCHRAN). The Senator from West Virginia.

THOUGHTS ON UNFUNDED MANDATES LEGISLATION

Mr. BYRD. Mr. President, I thank the Chair.

The Senate has just passed S. 1, the unfunded mandates legislation. Each of us has come to his own conclusion after weighing the pros and cons of the bill and deciding whether or not this bill is in the best interests of the Nation.

My point in speaking on this bill now, after the vote on final passage, is, No. 1 to explain my vote against the bill; and second, to offer a word of caution.

This bill has not produced a panacea, as I will address shortly. One of the reasons why I voted against the bill is that the Senate rarely imposes restraints upon itself by statute.

When the Senate addresses its procedures in statute it is usually to provide expedited procedures for the consideration of specified measures such as War Powers, Budget Act, Trade Act, or various provisions authorizing Congressional approval or disapproval of Executive proposals. In other words, Defense Base Closure Commission recommendations).

The Senate addressed its rules in the Legislative Reorganization Acts of 1946 and 1970, and imposed certain requirements and safeguards which may not have explicitly authorized points of order, but whose provisions could arguably be enforced by points of order on the Senate floor.

The Senate has imposed numerous restrictions on itself and provided for their enforcement by points of order in the Congressional Budget Act of 1974, which I had a great deal to do with writing, and the related laws such as the Balanced Budget and Emergency Deficit Reduction Act of 1985 and 1987 (Gramm-Rudman-Hollings) and the Budget Enforcement Act of 1990.

But the Senate usually establishes internal discipline by amending its rules or entering into unanimous consent agreements, agreements which can be objected to by any Senator. One objection and the proposed amendment does not go into effect.

Amendments to the rules almost invariably occur by the adoption in the Senate of a simple Senate resolution.

Establishing points of order in statutes is unnecessary, and should be avoided as much as possible.

To establish points of order in statutes is unnecessary, and allows the Senate to change its procedures (if not its rules per se) without one day's notice in writing, and also avoids the more stringent cloture requirement of two-thirds vote on proposals to amend the Standing Rules of the Senate.

This is one way of getting around the cloture requirement of two-thirds vote on proposals to amend the Standing Rules of the Senate.

Establishing points of order in statutes unnecessarily lengthens the process by involving consideration in the House of rules governing the Senate, involving consideration in committee, on the floor, in conference on the House and Senate floors during the consideration of a conference report, and also involves the President of the United States.

If the President should obtain a line-item veto at some point, God forbid, it is conceivable that a President could become involved in internal Senate discipline by vetoing some but not all of the provisions that deal exclusively with Senate procedure.

A point of order against unfunded mandates is a departure from previous changes to Senate procedure in that it can have the effect of precluding the consideration of a particular subject matter by the Senate. What other types of subject matters will be added to this list?

If one specific subject matter may be thus avoided in the future, then what other subject matters may be avoided, because they are made subject to statutorily imposed points of order?

So I view this with concern, Mr. President. We are going down a slippery slope from which there is no return when we impose points of order as a means of internal discipline in the course of Senate deliberation on a bill. We impose those points of order by a law, by statute, as I say, bringing not only the Senate, as should be the case, but also the House and the President into the act.

S. 1 is not a cure-all for the problem of federally imposed mandates. And most importantly, it is not the safety net for the States that it has been characterized to be.

This legislation will not provide any State, local or tribal government a foolproof sanctuary against future mandates. Nor will it protect those governmental units against increased costs should the requirements of any current mandate be increased. All that S. 1 does in this regard is to establish a majority point of order against any bill or joint resolution reported by a committee without a CBO cost estimate. And obviously, as with any majority point of order, that is an additional hurdle to be overcome by those who may wish to enact a piece of legislation. But I would stress, in the strongest possible terms, that the point of order is merely a majority point of order. And as such, it takes the votes of no more than 51 Senators to waive, if all Senators are present and voting.

And if all Senators are not present and voting, it takes a majority of those who are present and voting. If only 60 Senators are present and voting, then only 31 Senators would be needed to waive.

Fifty-one Senators, or a majority of those who are present and voting, can say that the mandate contained in the bill or joint resolution is important enough to the health, safety, and welfare of the American public that they are willing to enact the mandate without an estimate. If only 51 Senators are present and voting, then only 26 are needed to constitute a majority.

Apparently forgotten by those who would make S. 1 out to be a protective shield against the whims of the Congress is that the number of Senators needed to waive the point of order is precisely the number of Senators needed to pass any bill containing a mandate.

The point must be emphasized, particularly to the Governors of this Nation—and to the mayors of cities who are meeting in this Capital City—that S. 1 will not with certainty protect them from the costs and responsibilities of future mandates.

Further, there is nothing in S. 1 which will provide any relief whatsoever to State and local governments for the costs of existing Federal mandates. No relief whatsoever, Governors. None. No relief whatsoever.

According to the report of the Budget Committee on S. 1, one study prepared for the GSA Regulatory Information Service Center in 1992 found the cost of Federal mandates to State and local governments and the private sector

was estimated to amount to $581 billion, or roughly 10 percent of the gross domestic product.

Witnesses before the Budget and Governmental Affairs Committee at a joint hearing on January 5, 1995, from State and local governments testified about the damaging impact of existing Federal mandates on State and local governments.

The National League of Cities testified over the past 2 decades that the Congress has enacted 185 new laws imposing mandates on State and local governments.

The U.S. Conference of Mayors testified that 314 cities will spend an estimated $54 billion over the next 5 years to comply with only 10 of those Federal mandates.

Mr. President, Governors and mayors should keep in mind that nothing in S. 1 will relieve them of compliance with a single one of these existing Federal mandates or provide them with one thin dime of reimbursement of their costs.

In addition, this bill will do nothing to protect the States against the harsh pain that they will be forced to endure if the biggest unfunded mandate of all—a constitutional amendment to balance the budget—is ever riveted into the Constitution.

So those Governors and mayors who have been supporting a constitutional amendment to balance the budget under the belief that the passage of the unfunded mandates bill today, if enacted into law, will relieve them of the burdens that are imposed upon them, they are going to be sadly and badly mistaken.

This bill will not safeguard one single State from that pain. Where are the States going to find the money to replace the hundreds of billions of dollars that currently flow from Washington to those State capitols when we start slashing the Federal budget promiscuously? Where are those Governors going to find the quarter trillion dollars that will cease to flow to their States in fiscal year 2002? A quarter trillion dollars, Mr. President, is the amount of money that will be lost to the States according to projections from the Treasury Department. Those are dollars that go for highways, additional police on our streets, housing, education, environmental cleanup, cleanup of toxic wastes, and myriad other programs.

Moreover, that amendment does not even count additional moneys that would need to be cut if the tax cuts called for in the Republican ''Contract With America'' are enacted. Under that scenario, the loss of Federal dollars to the States is even worse.

So to those Governors and those mayors who are in town—hopefully they are watching C-SPAN—who think that S. 1 will protect them, I say to you, Mr. Governor, Mr. Mayor, think again. This bill, with or without its points of order, will not screen them from the overwhelming hurt that they are going to feel under that constitutionally sanctioned ''unfunded mandate,'' the largest mandate of all, a colossal mandate—a constitutional amendment to balance the budget.

Much has been said about the fact that this bill, S. 1, is different from the bill which the Senate considered last year—and I voted today for the amendment by Mr. LEVIN to substitute the bill that was considered last year, which I believe was a better bill—the big difference being the creation of a point of order.

With respect to these points of order, left unsaid is the perverse political reality that Senators who do in fact vote to waive a point of order will undoubtedly find their procedural vote used against them in the next election. A point of order then, in a sense, that is nothing more than a brilliant political ploy directed at portraying any Senator who has the audacity to stand up for the health and well-being of the American people as some sort of ''budget buster.''

I can see the television ads already. I can see the demagoguery and depraved mischaracterization of a Senator's vote. Any of us who may be willing to waive the point of order, willing to do what is right and best for our constituents, will find the big guns of the 30-second ad men aimed at our heads. Those political hucksters will have a field day, and we all had better know it, if we do not know it already. It will happen, Mr. President, because that is what elections have become, I am sorry to say. As a result of our incessant desire to avoid thoughtful reflection and meaningful debate aimed at educating the public, we have sunk to the level of 30-second public policy—30-second public policy. If the answer to a problem does not fit on a bumper sticker, well, then the answer must not be correct.

Sadly, that truth will undoubtedly dissuade some from otherwise casting a vote they feel is all right on future legislation. I hope it will not dissuade many.

Mr. President, let me just try to emphasize to Governors of the States and the mayors of our cities again that, if they think that, with passage of this bill, with its eventual enactment into law, the way will then be paved for a constitutional amendment to balance the budget because, and by virtue of this unfunded mandates bill, the States will be protected, they are mistaken. It is my understanding that many of the Governors and mayors wanted, before the Congress debates the constitutional amendment to balance the budget, wanted the Congress first to pass an unfunded mandates bill. They wanted that first. But if they are counting on these points of order to protect them, they are in for a rude awakening.

We already have majority points of order, Mr. President, in the Senate Rules concerning appropriations bills. Let us turn in the Senate Rules to rule XVI. Rule XVI, paragraph 4—I will read this paragraph, as follows:

> 4. On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

Now, Mr. President, that point of order is honored mostly in the breach. We all know that when an appropriation bill comes to the floor, if a Senator makes a point of order against an amendment as constituting legislation on an appropriation bill, another Senator will immediately raise the point of germaneness, and without debate, the Chair will submit that question of germaneness to the Senate for its decision. And we all know what happens. We all know what happens. Senators pay no attention to that point of order. They look at the substance of the amendment and disregard the rule and the point of order and vote that the amendment is germane to the bill.

That point of order is a majority point of order and it is little heeded and it poses no obstacle. Senators simply wave it aside by voting on the question of germaneness.

The same thing will happen here. In the case of unfunded mandates, Senators will get to the point where they pay no more attention to a point of order than a hog does to Sunday.

Section 101 of S. 1, the Unfunded Mandate Reform Act of 1995, amends title 4 of the Congressional Budget and Impoundment Control Act of 1974, and adds a new section 408 to that title to create a point of order that precludes consideration of legislation in the Senate regarding unfunded mandates. Section 904(b) of the Congressional Budget Act currently authorizes a motion to waive points of order under titles 3 and 4 of the Congressional Budget Act by a majority vote, and would thus provide a waiver for this new point of order.

I have already mentioned Rule XVI of the Standing Rules of the Senate, which prohibits proposing amendments that are legislative in character to general appropriations bills.

I say it once again to you mayors and Governors who may be listening. Under Senate precedents, the Chair seldom gets to rule on this point of order because the proponent of the amendment may raise the defense of germaneness which is then submitted to the Senate for decision and decided by a majority vote. This procedural vote by the Senate should be based on whether the proposed Senate amendment is germane to some legislative language in the House

passed bill. However, it has now simply become a substantive vote on the Senate amendment. In many instances, those Senators who support the amendment vote that it is germane and those who oppose the amendment vote that it is not germane, despite the fact that they are being asked to resolve a procedural issue. In this way valid procedural constraints are frequently sacrificed for transient substantive ends.

Mr. President, since the beginning of the Republic, the Federal Government has imposed important and necessary requirements on the States. The Constitution requires the States to have elections, even though the Federal Government does not pay one penny for them. It requires States to allow defendants a fair trail. Those Federal requirements on the States transcend mere financial considerations. They fall into a higher category. They represent bedrock beliefs and sacred values held by all Americans to be of paramount importance. Fair elections, fair trails—each of these, Mr. President, lies at the very heart of what makes up the American tradition, and no point of order should deter us from continuing to uphold those values because we fear a 30-second spot or a misrepresentation of a procedural vote.

But the point of order in the bill will simply add to an already cumbersome process. It will be nearly impossible, as the Director of the Congressional Budget Office has said, to issue cost estimates in a time fashion. How can we expect CBO to canvas the 87,000 State, local, and tribal governments throughout the Nation with anything resembling efficiency? The answer, Mr. President, is that we cannot.

We will simply see a trampling over, a mad rush to put aside, to waive the points of order. That is one thing I think we can expect to see. We could very well see a situation whereby the agenda of this institution is set, not by the majority and minority leaders, but by a small group of budget analysts in the basement of the CBO. But here again I think that will be avoided by simply waiving points of order.

Senators need only think back to the closing days of the last Congress, when various health-care bills were waiting for CBO scoring data, to see how that situation could develop. Is that what Senators want? Do we really want the agenda of Congress set on the basis of how fast a budget analyst can do his job? Do we really want to be told that, despite our wishes, we cannot go to a particular bill because the cost estimate is not ready? That, Mr. President, is absurd.

Because of these problems, I was pleased to join my colleague, Senator LEVIN, in support of his substitute amendment. The Levin amendment was, in effect, a complete substitute based on the version of the bill that we considered last Congress. That version, as I have noted, did not contain the point of order. It was a good substitute, and one that should have been adopted.

Mr. President, as I have previously stated, and as my vote in favor of the Levin substitute showed, I am a supporter of an unfunded mandates bill. I believe that, under certain circumstances, if we in Congress require the States to carry out our laws, then we should pay.

We should not offload÷ that financial burden on the States.

Notwithstanding the fact that I did not vote for this bill, I would like to compliment the efforts of those Senators on both sides of the aisle who worked hard to improve S. 1. Senator GLENN, of course, deserves more than a fair share of credit for the time and the energy he put into the bill in committee and here on the floor. Senator LEVIN, too, deserves an enormous amount of credit for the number of hours he has been here, lending us his expertise, and asking of the managers probing questions designed to get at the heart of the matter.

Finally, I offer my congratulations to the distinguished Senator from Idaho [Mr. KEMPTHORNE], who, while we are not in agreement on most of the amendments offered, demonstrated throughout a high sense of purpose and immaculate fairness to all of us. He is a man of extraordinary good sense, a man of civility, a gentleman, and I have no doubt that he will go far in this institution.

Then I extend my congratulations to Senator BOXER, Senator MURRAY, Senator BINGAMAN, and others for the job they performed in coming forward with good, meaningful amendments.

I compliment the minority. This is a big minority. This is not a fledgling or small minority. There are 47 Senators on this side of the aisle. There were only 44 Senators in the minority on the other side of the aisle in the last Congress; 44. But in this Congress, the minority has 47 Members.

I think the minority played an important and meaningful role in slowing down this legislation—saying, ''Let us hold on a bit; not so fast.''—in amending it, in improving it, debating it, and exposing its weaknesses. The minority has refused to be run over by the majority steamroller, and that is as it should be. As a result, this legislation which has just passed has been improved, and it is better understood.

LORNA KOOI SIMPSON

Mr. BYRD. Mr. President, somebody once asked Ralph Waldo Emerson the secret to success. And after a brief pause, Emerson replied, ''Make yourself necessary to somebody.''

I know that I speak for all of our colleagues in expressing to our friend and colleague, Senator ALAN SIMPSON, from Wyoming, our most sincere sympathies on the death, on January 24, of his mother, Lorna Kooi Simpson. As we all know, Mr. President, God only gives us one mother.

Plutarch tells us that Alexander the Great made his mother many magnificent presents, and Antipater once wrote a letter to Alexander, a long letter full of heavy complaints against her. And when he had read it, Alexander said, ''Antipater knows not that one tear of a mother can blot out 1,000 such complaints.''

A little less than two years ago, Senator SIMPSON lost his father, former United States Senator Milward L. Simpson. The loss of loved ones is always a blow to us, but to lose one's parents over such a brief span of time is doubly hard, and I want Senator SIMPSON and his family to know that we understand something of their grief in these days.

But a degree of the sense of loss at the death of Mrs. Simpson is assuaged upon contemplating the life and accomplishments of this great lady.

Throughout her life, Lorna Simpson was dedicated to ''making herself necessary'' to others, in the words of Ralph Waldo Emerson—to hundreds and hundreds of other people—in practically everything that she did.

An accomplished musician at both the piano and the Hammond organ, and a masterful vocalist, through her music, Lorna Simpson enriched the lives of those around her. She played the organ and directed the choir at her church in Cody, Wyoming. Indeed, early in her marriage, her sister prevailed on Mrs. Simpson to enter a contest to compose an original ''pep song'' for the University of Wyoming. Reluctantly, Mrs. Simpson went to work, and succeeded in winning the contest with her original ''Come on, Wyoming!''

Additionally, however, Mrs. Simpson was also a talented amateur sculptor and artist, and played an active role in promoting the arts throughout her entire life.

But that was not the limit of her contributions.

In 1940, Mrs. Simpson was appointed by the Mayor of Cody, Wyoming, to the Cody Planning and Zoning Commission. With other citizens, Mrs. Simpson engaged in a long and successful campaign, complete with a bond issue that passed in 1950, that rendered Cody ''one of the most beautiful cities in Wyoming.''

Moreover, Mrs. Simpson and her husband were co-owners of the local radio station KODI in Cody, at which Mrs. Simpson often did both programming and on-the-air work. During World War II, Mrs. Simpson was the acting editor of the Cody Enterprise newspaper.

And in her ''spare time,'' as a co-owner with her husband of the Cody Inn, Mrs. Simpson oversaw the restoration of this hostelry to its original grandeur.

In fact, time here does not permit a full recounting of the full record of Mrs. Simpson contributions to the career of her husband and to her family, as well as to the people of Wyoming and the United States. Suffice it to add that she served as the First Lady of Wyoming during her husband's tenure

as Governor from 1954 through 1958, and accompanied him to Washington during his service as a United States Senator from 1962 through 1966 after he won an election to complete the unexpired term of the late Senator Keith Thomson, during which the elder Senator Simpson was diagnosed with Parkinson's disease, forcing his retirement from the Senate.

On once being nominated ''Wyoming Woman of the Year,'' Mrs. Simpson said, ''The Bible does say, 'Let your light so shine before men that may see your good works, and glorify your Father which is in Heaven.'''

Certainly, Lorna Kooi Simpson carried with her throughout her life a brilliant, far-reaching light. She was a genuine ''Renaissance Lady.'' To reflect on her life is to marvel at the capacity of some men and women to live selflessly and abundantly beyond the imaginations of most of us, and we are all diminished by the death of this great Wyoming lady, as we are diminished by the death of any great person.

I trust that Senator SIMPSON, whom we admire, and for whom we have great affection, will find a rich and undiminishing solace in the memories of Mrs. Simpson, and in the assurance of the love of God that so infused and defined her life. To be sure, Lorna Kooi Simpson was, and is, a genuine reflection of the workmanship of a Loving Heavenly Father, and she is now at rest in an Eternal Home, not made with hands, in our Father's house, near at hand to the Lord whom she so dearly served throughout her life with every talent with which He had entrusted her.

My wife, Erma, and I extend our sympathy and our condolences to ALAN SIMPSON and all of his family in this hour of trial.

Mr. President, I yield the floor.

MORATORIUM ON NEW WETLAND DELINEATIONS

Mr. GRASSLEY. Mr. President, I introduced this week, with 10 cosponsors, a bill to safeguard the property rights of our Nation's farmers. The bill will establish a moratorium on new wetland delineations, until Congress has time to enact a new farm bill and to consider the wetlands issue on agricultural land in conjunction with that bill. This corresponds with the policy set here by this body in 1985 when we passed the antisodbusting and antiswampbusting provisions that are on the books and are generally good pieces of legislation—now being abused, though, by faceless bureaucrats, who are trying to redetermine additional wetlands. Even though the prior determinations have fit into the farming patterns of individual farmers around the United States.

As you know, Mr. President, no less than four Federal agencies claim jurisdiction over the regulation of wetlands. Just think of how impossible it is for the family farmer of America to try to understand what four different Federal agencies want him to do in regard to wetlands on his personal property and how that confounds him in making business decisions on the operation of his farm.

Those four agencies last year entered into a memorandum of agreement concerning wetlands delineation on agricultural land. Although the memorandum of agreement was intended to streamline the regulatory process, and it was meant to clarify the role of each agency, it has, however, increased the level of confusion and the level of frustration among the farmers affected by it. It has not made their life any easier. It may have well been the intention of the faceless bureaucrat, through that agreement, to make life easier, but it has not.

The delineation of wetlands on agricultural land has been, for a long period of time, a confusing proposition. On the other hand, the consequences of the delineations are very clear. The farmer, for instance, might alter a wetland without authorization from the Federal Government, and could potentially face civil penalties, criminal action, and loss of farm program benefits. Because the stakes are so very high, I think we have a responsibility in this Congress, as representatives of the people, representing a major industry in America, because the food and fiber chain, from producer to consumer, is 20 percent of our gross national product, and considering the importance of this industry and the millions of family farmers, independent entrepreneurs that make their living this way, because of all these reasons, we must ensure that the delineation process is accurate and that it is reasonable.

As I speak, Mr. President, new wetlands delineation are being conducted in the State of Iowa pursuant to the memorandum of agreement. It is just starting in the State of Iowa, but is going to cover every other State affected by agricultural wetlands. So even though it is of immediate impact in my State, in just a few months, this process will be going on throughout the country.

This is a process whereby these people, unknown to the individual farmers, take the individual soil survey maps and aerial photos of vegetation topography. From these they attempt to find, in areas where they have not already said there are wetlands, some other little bit of evidence of wetlands, in order to get more farmers under the regulatory umbrella and get more land within each farm under that umbrella of wetlands? Because the more wetlands determinations and the more of an opportunity for the bureaucrats to have some jurisdiction over private property they would not otherwise have jurisdiction over.

This is being done not with on-site farm inspections, not with the individual farmer right alongside the soil conservation personnel—remember, historically, for 60 or 70 years, there has been a very close relationship and friendly relationship between the soil conservation people who are educating farmers to be better caretakers of our natural resources and the farmer wanting to do that and learning from that process.

That sort of consultation has promoted more benefit to the environment than any other one process I know from the U.S. Department of Agriculture. In this current process, it has not been the usual close relationship, but it is in the back rooms, or in the laboratories around the individual States, where bureaucrats are going over these soil maps with this aerial photography to find other wetlands. And then send out a new map to the individual farmers with additional delineation of wetlands on it. At that point, you have wetlands whether you think they are wetlands or not and it is your job, as an individual farmer, then, at the appeals process to show that these really are not wetlands. And the burden of proof is on the back of the farmer.

This is kind of a way of saying, ''You are guilty of having something that you did not even know you had,'' particularly if you have been farming this very land for a long period of time.

Well, we ought to inform the farmer of this process. The bureaucracy has not informed the farmer of the process. In fact, in my State, in Story County, IA, there was a meeting to discuss this whole process, but it was by invitation only.

Although it may be legitimate to have some further determination, it ought to involve the farmer and it ought to require that the bureaucrat making that determination at least visit the area and see with their own eyes what the situation might be. This would reinforce the close relationship we have had for six or seven decades between the soil conservation consultant, engineer, and the individual family farmer. I am talking about the family farm, not the big corporate farmer with the absentee landownership and some foreign manager taking care of the land.

This process is currently going on, so that farmers will soon be deprived of the right to farm their land or improve their property because a Federal bureaucrat decides that such activity interferes with a protected wetland.

Remember, we went through this process after we passed the antiswampbusting and antisodbusting legislation in the 1985 farm bill. I do not, for the most part—not completely, but for the most part—I do not hear any individual farmers complain about that determination or the regulations that have followed that determination. That is because there was an open effort on the part of the bureaucracy to work with the farmers, to understand what the process is, to have input. But not now. The meetings in my State are by invitation only.

Now, I suppose it sounds like we are opposed to protecting valuable wetlands. Well, I think the litmus test of that is our vote for the antiswampbusting, antisodbusting provisions in the 1985 farm bill. There were no efforts to repeal those provisions. In fact, even in the 1990 farm bill, there was some expansion in this area.

But I think we ought to be cognizant of the fact that it is not good for agriculture, it is not good for our general economy, and it surely is not conducive to the family farmer. He should not be expected to confront a faceless bureaucrat every so often, with changes in the rules every few years, so that farmers can never be certain if their conduct is allowed under the current regulatory scheme.

I am also opposed to the promulgation of a memorandum of agreement by four Federal agencies that will significantly affect the ability of private property owners to improve their land without the benefit of input from the people affected by the agreement.

My bill basically accomplishes two things. First, it will allow those property owners affected by the memorandum of agreement to have some input through congressional hearings on the wetlands policy. At the very least, Congress should ensure that the concerns of the private owners are heard before they are deprived of the use of their land.

The second purpose of the bill is to stop the bureaucracy from acting based upon the flawed memorandum of agreement. It is my sincere hope that this Congress will reform Federal wetlands policy. This policy should be based upon sound science, recognize the constitutionally protected right of private property, and, above all, institute a large dose of common sense into the program.

And where a real opportunity to instill common sense into this program was missed by the bureaucracy, is when the agreement was not promulgated under the Administrative Procedures Act. That process allows the publishing of whatever the bureaucrat wants to regulate, but it institutes upon them a discipline and a hearing process to make sure that there is input from all segments of the regulated community.

Now, in my State, we do not try to sneak things over on the people. This process of ignoring public input is foreign to the thinking of the commonsense approach of mid-Americans who are law-abiding citizens, who want to work with their Government, who want to keep the economy or the environment sound.

And so I beg for 6 months to slow the process down, to alert the family farmers of America to what is going on. That it is affecting their right to farm, and to do it in a businesslike fashion, and to allow the Agriculture Committee, under the extremely capable leadership of Senator LUGAR, to review this whole process and to work it into the farm bill. That is just 6 months. Surely there is nothing wrong with that. Nothing is going to happen in the next 6 months that is going to be catastrophic to this whole process. I think that it is a commonsense approach.

So this bill stops the Government from finding new wetlands on farms until this reform can be put in place.

Mr. President, I yield the floor.

MORNING BUSINESS

DEMOCRATS, GET REAL

Mrs. MURRAY. Mr. President, I am pleased today to bring to the attention of my colleagues a thoughtful opinion piece by our colleague, the Senator from Maryland, which appeared in the Washington Post on Sunday, January 22. She presents a road map that I believe can help all Senators, on both sides of the aisle, as we develop our priorities in this new Congress. I ask unanimous consent that Senator MIKULSKI's column be printed in the RECORD at this point.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 22, 1995

DEMOCRATS, GET REAL

(By Barbara A. Mikulski)

Democrats need a new attitude and action plan to focus on solving real problems. This attitude and plan must promote a shared national vision to create good jobs and give help to those who work hard, play by the rules and practice self-help. We need to create a new state of mind that—as Americans—we can solve our nation's problems together.

Democrats must stop being angst-addicted. We have too often substituted agonizing for action, and it has paralyzed us. To connect with middle-class Americans, we must think clearly and act decisively. Democrats must focus on the day-to-day needs of everyday Americans—their jobs, families and opportunities. We also need to look at our country's long-term needs. We need to generate jobs with pay worth the effort and education. We need to create a national readiness that is based on competence and character.

Democrats must focus on being politically effective, not necessarily politically correct. We cannot use words from a dated vocabulary. Political labels such as ''right,'' ''left,'' ''liberal'' and ''conservative'' have become cliches. Labels and stereotypes that go with them have little meaning.

Being politically effective means helping those who are middle class stay there or do better. Being politically effective means helping those who are not middle class get there through hard work and practicing self-help. Worn-out sound bites about the economy and crime weaken our credibility and play into the hands of those who demonize our ideas by blaming the victim, the government or both.

Democrats must figure out what works. We must be advocates for people and not automatically defend every government program. Let's look at the mission of these programs. When they serve their mission and help people, great. When they don't, let's get rid of them. We cannot be a rescue squad for every line item. Often, the good intentions of good people have gone astray. Tinker Toy reforms ultimately created other problems.

One example is federal housing policy. We thought that if we gave people housing, we would give them opportunity. Begun during the New Deal, most federal housing programs were meant to provide short-term shelter for people temporarily out of work. But a series of complicated rules and boutique programs has rewarded the wrong kind of behavior and made housing projects Zip codes of pathology. Few residents can find work. Crime and substance abuse are high.

Some blame the victim. Some identify with the victim. But Democrat's addition to other people's misery does not solve their problems or substitute for national policy. While we must acknowledge the pain of the impoverished, we must also require them to take charge of their own lives. We must find ways to reward those who work or get into a program for self-sufficiency.

We must ensure that welfare rules do not destroy the family. Democrats should stand up for the family—and that includes men. We need to end the ''get the man out of the house'' rule, which has pushed men out of the house so a family can qualify for public benefits. Shortsighted intentions have created rules that dismantle families, emasculate men and deny their children a full-time father. Being a dad is more than writing a child-support check.

We've heard a lot about angry voters. Actually, I think voters' anger stems from bewilderment and disillusionment. This bewilderment and disillusionment is based on the fact that their personal experience does not reflect what statistics tell them. People are told that they are fortunate to live in an economy of low unemployment, low inflation and rapid growth. Yet, people are one downsizing away from unemployment, their friends have been laid off, and their standard of living continues to decline. At the same time, people feel less secure in their homes, neighborhoods and workplaces Children are killing children with guns carried around in school backpacks.

America's future deserves more thought and effort than partisan bidding wars over tax cuts. It deserves more than the pursuit of ''faddish'' ideas floated by think tanks. Americans deserve real solutions to the complex problems of an increasingly complex world.

Democrats must join together to create this new attitude, both within the Democratic Party and within the country—to reward hard work, family stability and playing by the rules. Together, we can begin to address the very valid concerns Americans have about their futures, the futures of their families and the future of their country.

AUSCHWITZ IS SYNONYMOUS WITH EVIL

Ms. MIKULSKI. Mr. President, perhaps more than any other word, Auschwitz is synonymous with evil.

Fifty years ago today, Russian soldiers liberated Auschwitz.

The horrors of Auschwitz are incomprehensible and undescribable.

Over 1 million people lost their lives at Auschwitz—the largest of the Nazi death camps. Ninety percent were Jews. Hundreds of thousands were children.

Auschwitz represented the German's campaign to exterminate a people—the Jews. They almost succeeded—killing two out of three Jews in Europe.

As a Polish-American, I carry the images of Auschwitz in my heart.

The Germans considered all Poles to be an inferior race. After Poland was conquered, German authorities expelled much of the native Polish population from regions of the newly annexed territories. Polish cities were given German names and German settlers were colonized on Polish land. In occupied Poland, the Nazi governor, Hans Frank, proclaimed: ''Poles will become slaves in the German Reich.''

The Nazis set out to destroy Polish culture. Thousands of Polish teachers, politicians, university professors, and artists were executed or sent to Nazi concentration camps. Catholic priests were among the main targets of Nazi mass murder in Poland.

In fact, Auschwitz was created as an internment camp for Polish dissidents. And thousands of Poles were murdered alongside the Jews in Auschwitz.

Many Poles risked their lives to save Jews:

Irena Sendler was a young social worker in Warsaw. She used her position to smuggle 200 Jewish children out of the ghetto to safe houses. In 1943, Sendler was arrested by the gestapo, brutally tortured and condemned to death. On the day of her execution, she was freed with the help of the Jewish underground.

Irena Adamowicz, a Polish Catholic, aided in establishing contacts between the Jewish Underground and the main Polish resistance organization.

Jan Karksi, who, while working for the Polish Government in exile, was one of the few outsiders to visit the Warsaw Ghetto. He appealed to the allies to do something.

These are just a few examples. But as a Polish-American, it pains me to know that these brave patriots were a minority. The majority of Poles, like the majority of Europeans, were neither killers nor victims. Most merely stood by, neither collaborating, nor coming to the aid of the victims. This passivity amounted to acquiescence.

Elie Weisel, a survivor of Auschwitz, visited Auschwitz 25 years after the liberation. He wrote:

> I hadn't realized how near the village was. I had thought of it as worlds distant from the camp. But the villagers could see what was happening behind the barbed wire, could hear the music as the labor details trudged to work and back again. How did they manage to sleep at night? How could they go to mass on Sunday, attend weddings, laugh with their children, while a few paces away human beings despaired of the human race.

Many years later, Eli Weisel was awarded the Nobel Prize. This week he led the American delegation to Auschwitz.

As a Polish-American, I traveled to Poland in the late 1970's. I was a Congresswoman. And I wanted to see my heritage. I went to the small village where my family came from. It was a very moving and historic experience.

But I also wanted to see the dark side of my history, and I went to Auschwitz.

In touring Auschwitz, it was an incredibly moving experience to go through the gate, to see the sign, to go to see the chambers. I went to a cell that had been occupied by Father Kolbe, a Catholic priest, who gave his life for a Jewish man there.

And then, for those of you who don't know, I'm a social worker, I've been a child abuse worker and I don't flinch.

But then I got half way through that tour and I came to a point in that tour where I saw the bins with glasses and the children's shoes, and this 40-something year old Congresswoman could not go on.

I became unglued. I had to remove myself from the small tour, go off into a private place in Auschwitz, cry in a way that shook my very soul. And when I left there, I thought, now I really know why we need an Israel.

And that is why I will fight so hard to ensure the survival of Israel. I know its importance. I know why it exists.

I also know why it is so important for us educate our young people—about the effects of hatred, about the importance of history.

Several years ago. I helped my friend Mark Talisman to create a living memorial to the Jews of Poland—called Project Judaica. Through its cultural center, its international education programs, and its rescue of Jewish artifacts, Project Judaica seeks to educate people about the rich history of the Polish Jews. Project Judaica's Center for Jewish History and Culture is in Krakow, near the village my family is from.

In closing, I would like to read the words of Eli Weisel:

> Never shall I forget that night, the first night in camp, which has turned my life into one long night, seven times cursed and seven times sealed. Never shall I forget that smoke. Never shall I forget the faces of the children, whose bodies I saw turned into wreathes of smoke beneath a silent blue sky. Never shall I forget those flames which consumed my faith forever.
>
> Never shall I forget that nocturnal silence which deprived me, for all eternity, of the desire to live. Never shall I forget those moments which murdered my God and my soul and turned my dreams to dust. Never shall I forget these things, even if I am condemned to live as long as God himself.

Mr. President, 50 years after the liberation of Auschwitz, let us pledge never to forget. And let us honor those who died in the holocaust by fighting against bigotry, hate crimes, and intolerance.

U.S. ARMY STAFF SGT. CARL A. CLEMENT A NEW HAMPSHIRE HERO

Mr. SMITH. Mr. President, I rise today to salute U.S. Army Staff Sgt. Carl A. Clement, from Sunapee, NH, who died January 10, 1995, from injuries suffered in an automobile accident while serving his country in South Korea.

The accident that took the life of this fine young man was a terrible tragedy for his family and for the State of New Hampshire. Carl was born in Newport, NH. He is the son of Charles and Mary Clement and graduated from Sunapee High School in 1983, where he received the outstanding athlete award. Carl was married to Sandra Clement, of Lawton, OK. They have two daughters, Jacqueline Amalia and Pamela Megan Clement.

Carl joined the Army on July 5, 1983, and he was stationed at Fort Sill in OK, prior to his tour of duty in Korea. He left for Korea in March 1994 where he served as a generator mechanic. The Clement family can be proud of Carl and his service to the United States. Carl was an outstanding soldier, devoted family man, and trusted friend.

As a member of the Senate Armed Services Committee, I am honored to have represented Staff Sgt. Clement and his family in the U.S. Senate. Sergeant Carl Clement joins a distinguished list of New Hampshire patriots who have given their lives in the service of their country.

WAS CONGRESS IRRESPONSIBLE?—THE VOTERS SAID YES

Mr. HELMS. Mr. President, as of the close of business on Thursday, January 26, the Federal debt stood at $4,801,405,175,294.28 meaning that on a per capita basis, every man, woman, and child in America owes $18,226.22 as his or her share of that debt.

THE PRESIDENT'S PROPOSAL TO RAISE THE MINIMUM WAGE

Mr. REID. Mr. President, I ask unanimous consent that the attached Las Vegas Sun article by Nevada's former Governor Mike O'Callaghan on President Clinton's proposal to raise the minimum wage be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STOP WHINING; PAY WORKERS

Whine, whine, whine.

The sky is going to fall in if the minimum wage is raised. If you listen to the Republican-led whine choir, it assures us that small businesses will collapse and thousands of teenage hamburger flippers will be fired if the minimum wage rises from $4.25 to $5 an hour.

Let's be honest, any business today that doesn't have the ability to pay its workers $5 an hour probably should collapse if it hasn't already. You can't convince a thinking American that the newly suggested minimum wage will do anything but help the working poor and, in the long run, improve the economy. A quick glance at past minimum wage increases will show that they have been a plus, not a negative, for the working poor and the economy.

I was proud of President Bill Clinton when he said in his State of the Union address:

''Members of Congress have been here less than a month; 28 days into the new year, every member of Congress will have earned as much in congressional salary as a minimum-wage worker makes all year long.''

Earlier, he had pointed out that there are ''2½ million Americans, often women with children,'' who now work for $4.25 an hour.

Figure it out: These people, when employed full time, make $170 a week and less than $9,000 a year.

Try raising a family on these wages, when the poverty level for a family of four is $13,000 a year. In case the family breadwinner gets sick working for minimum wages, he or she most likely hasn't any medical coverage. The situation becomes a double tragedy.

Furthermore, the idea that only teenage fast-food workers are paid the minimum wage is wrong. Actually only about 30 percent of these workers are under 20. A much larger percentage is 25 years old and up. Yes, and 60 percent of the people struggling to get by on minimum wage are women. Many of them are single parents.

As a governor, I heard all of the silly arguments against raising the minimum wage during the 1970s. Sometimes, it was like pulling teeth for Assemblywoman Eileen Brookman and state executives Stan Jones and Blackie Evans to convince legislators to move ahead with minimum-wage legislation.

Who are these hard-working Americans who labor for $4.25 an hour? According to writer Michael Gartner, the households with less than $10,000-a-year income give a greater percentage of their money to charity than do those who make $75,000–$100,000 annually. They aren't a bunch of bums or freeloaders. They are men and women we should be proud of as fellow Americans who toil at jobs day after day to feed themselves and their families.

I remember my father working for a dollar a day during the Great Depression. Cutting and skinning trees for pulp from dawn to dark wasn't an easy task. Following that bit of exercise in the snowy and cold climate of Wisconsin, he came home to milk the cows and then go to bed, knowing that hours before the sun rose the next day, he had to milk them again before leaving for the woods.

Let the editors of USA Today give us a brief history of the minimum wage and bring us up to date:

''The first minimum wage law set a 25-cents-an-hour wage in 1938 in order to provide 'a minimum standard of living necessary for health, efficiency and general well-being for workers.'

''And for most of the next four decades, the minimum wage provided that floor to earnings, as Congress raised it a dozen times—once every three or four years—to keep up with inflation.

''But then came the Reagan revolution. From 1979 to 1989, the wage was stuck at $3.35 an hour, losing nearly half of its purchasing power.

''The result: A wider gulf between rich and poor and an increasing reliance of working families on food stamps, tax credits and other welfare to make ends meet.

''The 90-cent increase implemented from 1989 to 1991 helped lift nearly 200,000 families from that situation, the Labor Department found. But it still left 18 percent of full-time workers earning less than poverty wages for a family of four—a whopping 50 percent increase from 1979.''

So stop the predictions of economic catastrophes and the whining that accompanies the voices against the minimum wage going to $5. It's long overdue, and anything less will only allow the continuation of one of our country's greatest injustices against the working poor.

THE WAR IN CHECHNYA

Mr. PELL. Mr. President, last week, Russian President Boris Yeltsin declared victory in Chechnya, stating that the military stage of the conflict had concluded. It is clear, however, that neither the conflict nor its political and international ramifications are behind us. The fighting, although less intense, continues with horrifying reports of attacks against civilians. Russia's foray into Chechnya, moreover, continues to take a toll on Russia's domestic reform agenda as well as its relationships with the West.

Secretary Christopher put it well last week after his meetings in Geneva with Russian Foreign Minister Kozyrev. He said: ''I told the Foreign Minister that the United States fully supports the principle of Russia's territorial integrity, but that we are extremely concerned about the price that the war is exacting in terms of human life, in terms of support of reform, and in terms of Russia's standing in the world.'' To my mind, Secretary Christopher delivered the right message. Let us hope that Russia responds appropriately.

Mr. President, I believe that few of us would deny that territorial integrity is an important principle that must be preserved. There are 32 ethnic federal units in Russia—consisting of 21 sovereign republics and 11 autonomous regions. These areas make up about one-third of Russia's land mass. Much of that territory is resource-rich and politically important. If Russia had taken a laissez-faire attitude toward Chechnya, it is conceivable that other republics and regions would have followed suit by attempting violent breakaways—breeding instability and bloodshed throughout the region. An unstable Russia is clearly not in the United States interest.

I do believe that Russia has a right to preserve its borders consistent with the principles laid out by the Organization on Security and Cooperation in Europe. The OSCE—formerly the CSCE—makes clear that Europe's borders are not to be changed by force. That being said, Russia can't have it both ways. if we are going to look to OSCE to argue that Russia's territorial integrity should be preserved, we also have to take seriously OSCE commitments and principles regarding human rights. As a member of OSCE, Russia has committed to observing certain standards of behavior. Most recently, at the OSCE summit in Budapest, OSCE members adopted a code of conduct that spells out principles guiding the role of armed forces in democratic societies. The Russian military's behavior in Chechnya raises serious questions about Russia's commitment to OSCE principles.

It is not too late for Russia to seek a peaceful end to the Chechnya conflict. In fact, an OSCE team is scheduled to visit Chechnya to focus on human rights, treatment of prisoners, humanitarian aid, and election preparation. Moscow should welcome this as an opening to show good faith and follow through on President Yeltsin's pledge of ''rehabilitating the life-support system and of protecting human rights to the full extent.''

While I want to see the United States continue to engage Russia and to support the reform effort, there are many voices here in the Congress calling for a reevaluation of our relationship, including our assistance program. In my view, United States bilateral assistance—the vast majority of which is in the form of technical assistance to farmers, teachers, business representatives, and other ordinary Russians—is crucial to bolstering the reformers.

By far the most important type of assistance, however, is the aid we provide under the Nunn-Lugar program to help Russia and the other nuclear powers of the former Soviet Union with dismantlement and conversion. It is a wise investment in our own security, and to create linkages between Chechnya and the Nunn-Lugar program would be the height of irresponsibility. As I said, however, not everyone shares this view, and I am afraid that if Russia does not opt for a peaceful solution to the Chechnya conflict, the march to end assistance will be unstoppable.

ANNIVERSARY OF AUSCHWITZ LIBERATION

Mr. DOLE. Mr. President, 50 years ago tomorrow troops of the soviet red army marched into almost unimaginable horror in Auschwitz, Poland. In the 50 years since its liberation, Auschwitz has become a synonym for man's inhumanity to man. Roughly 1 million Jews were murdered at Auschwitz, part of Hitler's twisted final solution. Some 75,000 Poles and some 23,000 gypsies were killed. It is hard to envision the scope of this holocaust—the barbaric efficiency of the Nazi killing machine is typified by the Auschwitz camp.

The importance of remembering Auschwitz should be clear to this and future generations—even today there are those who deny reality and distort history by claiming to doubt the reality of the Nazi Holocaust. Their lies only highlight the need to reflect on the meaning of the Holocaust on this important anniversary.

In the last few days leading up to tomorrow's anniversary, newspapers and television have had powerful and moving accounts of life and death at Auschwitz. One has only to see the pictures and hear the anguished voices of the survivors to understand the phrase: ''never again.'' The horror of the death camps should lead each and every one of us to say ''never again.'' Never again will the world tolerate mass murder as a tool of state policy. Never again will the world tolerate the organized government effort to eradicate one group of people based on their religion or ethnic origin.

TRIBUTE TO SENATE PAGES

Mr. DOLE. Mr. President, I want to take a moment to salute the Senate

pages for their hard work and dedication over the past few months. Since last September, they have put in long hours helping in the day-to-day operations of the Senate floor—from opening its doors in the morning to turning out its lights at night. And all that comes after early morning classes at the U.S. Senate Page School.

No doubt about it, by watching democracy in action, these fine students from across America have learned more than the textbook view of Congress.

I know I speak for all my Senate colleagues when I say we are grateful for their commitment to making the Senate work, and I wish each of these young men and women all the best in the future.

I ask unanimous consent that their names be printed in the RECORD.

There being no objection, the names were order to be printed in the RECORD, as follows:

Ben Shoun, Tennessee; Bethany Atkins, North Carolina; Megan Smith, Minnesota; Karen Hodys, Rhode Island; and Hilary Johnson, Oregon.

David Miller, Pennsylvania; Kelvin Chen, Mississippi; April Cunningham, California; Leslie Pridgen, South Carolina; and Brad Parrish, Utah.

Dan Case, Yarmouth, ME; Mike Chapman, Flint, MI; Jeffrey Colvin, Canajohaire, NY; Danny Heffernan, Atlanta, GA; Cristin Hodgens, Westborough, MA; and Fulmer Jones, Booneville, AR.

Michael Kaplan, Alexandria, LA; Katherine Lord, Shorewood, WI; Mathew McMillan, Los Angeles, CA; Mark Mezvinsky, Philadelphia, PA; Tai Mirach, Hallowell, ME; and Melody Montgomery, Grass Range, MT.

Tony Oliver, Yarmouth, ME; Noah Oppenheim, Tucson, AZ; Rupa Patel, Plymouth, MI; Liz Rosenberg, Middlebury, VT; Abe Tucker, Brunswick, ME; and Meredith Villines, Little Rock, AR.

CONTACT WITH AMERICA—SUPER BOWL XXIX

Mrs. FEINSTEIN. Mr. President, the House may be debating the Contract With America, but I ask the Senate today to consider the Contact with America. On Sunday, the people of America will be in contact with one another, eagerly debating, disputing, and disagreeing.

However, I regret to inform this body that they will not be in touch with us. They are of the mind that the issue is far too big for the Senate to tackle or the President to block. Government involvement would be called unsportsman-like conduct. The Supreme Court would be ruled off-sides, and even radio talk show hosts would be flagged for interference.

Of course I mean Super Bowl XXIX—29. This ultimate contact sport presents a real problem for me and my colleague, Senator BOXER, because this year's Super Bowl pits two California teams against one another—the four-time Super Bowl champs, the San Francisco 49'ers and the talented and challenging San Diego Chargers. Normally, if a California team would play a team from some other State, I would willingly wager with the rival Senators. But it would be unseemly for two Senators from the same State to wager against one another. Does my colleague, Senator BOXER, agree?

Mrs. BOXER. I do. The only thing I will bet is that a California team will win. I share my friend's excitement for the game. This is only the second time in the history of the modern era of the NFL that two teams from the same State have captured their division titles to earn a spot in the Super Bowl.

To quote Henry David Thoreau, ''Mankind's progress moves from East to West,'' a phrase that continues to ring true for the NFL in 1995. California teams, fueled by the high-powered, high-scoring west coast offenses and supported by quick, powerful defenses, have taken the game to a new level. The Chargers and 49'ers proudly sit atop the ranks of the NFL and will bring the coveted Vince Lombardi Trophy back home to the Golden State for the eighth time in 29 years—twice as many times as any other State. I am sure that my friend from California would agree that this is a remarkable accomplishment.

Mrs. FEINSTEIN. Of course. Bruising contests are not unfamiliar in California as I well know from last year. If you add up all of the championships in World Series, Super Bowls, NBA, and NCAA Championships, California has won more than any other State. I ask my colleague to give her views on this Super Bowl.

Mrs. BOXER. I say to my friend, this Sunday's Super Bowl will add a final chapter to what has turned out to be a magnificent story—the tale of two teams taking a strikingly different course to arrive at the same destination. The young, upstart San Diego Chargers are the quintessential underdogs. After battling to finish with an eight and eight record last year, most NFL pundits rated them way down in the polls. some of us can relate to that. However, the Chargers stormed out of the gates and finished first in their division. San Diego marched through the playoffs by beating Miami and going back to the snow and ice of Pittsburgh to defeat the Steelers and earn their first Super Bowl berth. Then, as my colleague knows, there are the 49'ers.

Mrs. FEINSTEIN. I certainly know the 49'ers. From day one of this season, the 49'ers were picked by many as the team to beat. Assembled from a corps of seasoned veterans and prime talent developed within, the 49'ers had but one goal: beat Dallas and win the Super Bowl. After overcoming a number of early season injuries, the team finished with the best record in the league. they moved past the Chicago Bears in the first round of the playoffs, and realized part one of their goal with a hard-earned victory over the Dallas Cowboys. Now, they go into Miami as a heavy favorite, hoping to win an unprecedented fifth Super Bowl. I would like to know if my colleague also feels that this is a wonderful matchup?

Mrs. BOXER. It could not be better. In fact, the drama will not be confined to the final score. Will Cal graduate Gail Gilbert, who was with the Buffalo Bills in the last four Super Bowls and now plays for the Chargers, finally be able to celebrate a victory? And how many more Super Bowl records will Jerry Rice break? There are a number of intriguing subplots to this story that I look forward to watching unravel. I would like to know who the senior Senator favors in this game?

Mrs. FEINSTEIN. While I realize that I represent the entire State of California, I must admit that I will be cheering for the 49'ers. I would like to point out to my colleagues that there is no public outcry for term limits in football. Otherwise, the 49'ers, with the shy smile and accurate arm of Joe Montana, would not have won super bowls in the 1981 season, in 1984, or in 1989 and finally in the following year, a crushing 55 to 10 win. Now, as a native San Franciscan, I do take pride in such an exemplary record. And, frankly, while wishing San Diego well, I expect Steve Young to demonstrate his mastery of the game with an unprecedented fifth Super Bowl victory for the 49'ers.

Both teams, however, are to be congratulated for their success in reaching the Super Bowl, and for many other accomplishments, is that not right?

Mrs. BOXER. Absolutely. Let me discuss one area of professional sports that deserves more attention: the work that many athletes do to help others in their communities. I'd like to cite two examples of players who give their all.

Junior Seau, the all-pro linebacker of the Chargers works hard for his charity, the Junior Seau Foundation, which helps youth in the San Diego area by funding child abuse prevention, drug and alcohol awareness, and anti-juvenile delinquency programs. He is also his team's spokesman for the United Way.

Forty Niner quarterback Steve Young heads the Forever Young Foundation which funds a number of San Francisco Bay area charities. These are but two examples of players who feel an obligation to give back to the communities that so enthusiastically support them.

Mrs. FEINSTEIN. Well, no matter which team wins, Senator BOXER and I can take pride. There are obvious similarities between Government and football. In both, blows to the face are disallowed. And there is much that Government can learn from football—hopefully, beyond trick plays and sneaks. For one thing, we can learn that sportsmanship and mutual respect that go with handshakes between players after the battle is over, the score is settled and life moves on to other challenges. Here is to a great game.

IN OPPOSITION TO THE PROPOSED $40 BILLION IN LOAN GUARANTEES TO MEXICO

Mr. CRAIG. Mr. President, President Clinton outlined the many challenges facing this Nation in his State of the Union Address. Paramount amongst those challenges was the need to bring fiscal responsibility back to the Congress and the Federal Government.

I appreciate the President's acknowledgement of the need to balance our budget. In this same speech, coupled with the challenges that we face as a nation, the President outlined his proposed action to assist our neighbors in Mexico.

The Congress will soon be faced with a vote on whether to support this proposal, which will provide Mexico with $40 billion in loan guarantees. The purpose of the loan guarantees is to reschedule overextended short-term maturities, assisting Mexico through what is now a difficult financial situation.

With our current budgetary problems, I cannot support the exposure of my fellow American taxpayers to the tune of $40 billion in loan guarantees as initially proposed by President Clinton.

Mr. President, as the administration and Congress struggle with this fiscal crisis, I am concerned that we are overlooking many important factors. Mexico's financial situation seems to be the result of past policy decisions, not external factors outside of Mexican control.

The Mexican Central Bank, in an attempt to hold interest rates down, printed a huge excess of pesos. By creating excess pesos, Mexico undermined the exchange rate and drove many investors away. The devaluation was forced by bad monetary policy.

The mistakes made by Mexico do not give me confidence that this loan package is a good idea. If we are asking taxpayers to risk their hard-earned money, we must guarantee that this loan is not throwing good money after bad. I suggest that we ask for four specific conditions:

(1) Sound money policy. This could be guaranteed by the institution of a currency board.

(2) Guarantees that tax policy will be pro-growth and wage and price controls will be eliminated.

(3) Reasonable and adequate collateral.

(4) Full disclosure of how the moneys raised under the guarantee are disbursed.

Mr. President, the problems in Mexico are not new, and they are certainly not simple. Therefore, in an effort to further review this problem, members of the Senate Steering Committee invited several speakers to provide more-in-depth information. Those speakers included Walker Todd, Lawrence Kudlow, Steve Hanke, and Riordan Roett.

My purpose in pointing this out is to emphasize that my position on this issue has not been formed hastily. My support of pursuing a currency board for Mexico is not an effort to ignore the needs or problem that Mexico now faces.

Quite the opposite. A currency board, from the information I have reviewed, seems the most viable option to provide a solution to this problem rather than a Band-Aid response that will provide only temporary relief.

Mr. President, Steve Hanke, who is a professor of applied economics at Johns Hopkins University and has researched and written extensively on monetary policy and the use of currency boards, made a number of cogent points which I would like to share my with my colleagues. The simplicity of a currency board is one of its greatest assets:

A currency board is a monetary institution that only issues notes and coins. It maintains full convertibility of that money at a permanently fixed exchange rate with a foreign anchor currency, such as the dollar. As reserves, it holds assets in the anchor currency equal to 100 percent of all notes and coins in circulation.

This requirement provides credibility for the fixed rate because a board cannot expand the monetary base faster than it obtains foreign reserves. Consequently, a board cannot cause a balance of payments crisis because of a lack of foreign reserves. Indeed, no currency board system has ever succumbed to a balance of payments crisis.

In addition to their simplicity, currency boards have a proven record. Professor Hanke discussed the success of currency boards in Hong Kong, Estonia, Lithuania, and Argentina. I was especially interested in the success of the currency board in Argentina.

That country was experiencing annual inflation rates of 2,315 percent in 1990. In April of 1991, President Menem of Argentina Installed a currency board.

Since the adoption of a currency board, the rate of inflation in that country has dropped to around 3.9 percent—the lowest in Latin America—and, the budget is virtually balanced with economic growth up to about 7 percent. The successes in Argentina need to be very carefully reviewed and considered as a model for resolving the problems experienced in Mexico.

Rather than writing a blank check, I hope that this administration will consider opening discussions with the Mexicans to review this option.

Professor Hanke also pointed out that a currency board could be established easily and inexpensively. In fact, language on currency boards, included in the 1993 Foreign Operations Appropriations bill provides that:

There is appropriated for an increase in the United States quota in the international monetary fund, the dollar equivalent of 8,608.5 million special drawing rights, to remain available until expended and, among other uses,

Such funds may be used to support monetary stability in member countries through the instrumentality of currency boards. (Public Law 102–391, 106 U.S. Statutes at Large 1636).

In short, Mr. President, I cannot support the extension of $40 billion in loan guarantees to Mexico.

With respect to the issues of adequate collateral and full disclosure of receipts, in my estimation these issues should be addressed fully in this debate. The need for adequate collateral for a loan guarantee is fairly straightforward.

I have grave concerns about accepting Mexican oil receipts as collateral when they are previously obligated and limited—Pemex, the National Petroleum Co.'s gross export receipts per year are about $8.5 billion.

There is an excellent discussion of this issue and the need for full disclosure in a recently published article from The Nation magazine by Walker Todd.

Let me add, I do not often agree with the positions raised in this publication, but hope that my colleagues will take a moment to review it.

Mr. President I ask unanimous consent to enter a copy of the article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Nation, Feb. 13, 1995]

MEXICAN HANDOUT—BAILING OUT THE CREDITOR CLASS

(By Walker F. Todd]

One of the most preposterous financial crimes of the century, the official management of the 1980s developing-countries debt crisis, is being repeated before our very eyes, and by many of the original perpetrators to boot. As this is written, the Clinton Administration is pushing, and Congress seems poised to approve, a loan guarantee package for Mexico of up to $40 billion. This is on top of hastily arranged international credit lines worth $18 billion, most of them guaranteed directly or indirectly by the United States and cobbled together since Christmas.

Mexico owes the world about $120 billion (more than $160 million by some estimates), and about $58 billion of that amount falls due this year. Hence the need for a total aid package of about $58 billion, although it is not yet certain that most or all of that aid will be drawn upon. One must be exacting and clear about who the principal beneficiaries of a U.S. guarantee of Mexico's foreign debts would be: Mexico owes foreign—primarily U.S.—investors in stock shares and bonds about $60 billion. Also, about $18.3 billion of the $120 billion total is owned to U.S. banks, led by Citibank with about $2.9 billion. With the peso down in value by one-third and Mexico's dollar reserves dwindling, it is clear that only a mammoth infusion of funds or forgiveness of its debts can prevent the country from defaulting.

The original crime, now being repeated, was the profligate lending of billions of dollars from the U.S. banking system between 1974 and 1982 to as gaudy a band of tinpot military dictators, kleptocratic presidents and bon vivant finance ministers as ever graced a Connecticut Avenue diplomatic reception, followed in August 1982 by the discovery that the borrowers either could not or would not repay the money. But it was not practical politics to recognize the stupidity of the situation and call the lenders into account. No, orthodoxy and good form required the ongoing pretense that the loans were still good, with a host of jerry-built solutions from the Treasury, Federal Reserve,

International Monetary Fund and World Bank. So, as an African economist once told me, 'One class of people borrowed the money, and a different class of people had to pay it back.''

The I.M.F.-policed austerity regimes that were used to keep the loan money flowing (usually only enough to pay the interest; the principal was rarely reduced) became legendary in developing countries during the 1980s. What did the governing cities or international financial diplomats care if the vanishing middle class and teeming poor of the Third World paid the price of ''adjustment'' while the lifestyles of the rich changed not at all?

In 1982 Mexico owned U.S. banks about $25 billion. The dirty secret of Debt Crisis I was that foreign banks had deposits of flight capital from rich residents of the debtor nations that would have covered much (and in some cases all) of the banks' claims on the debtor countries. But despite the price paid for ''adjustment'' by the middle classes and the poor of the developing countries, not to mention the price paid in lost export sales to those countries by U.S. manufacturers and farmers in the heartland, the names of the thieves and the amounts they stole were never disclosed.

Now, by devaluing the peso, Mexico has again committed moral (if not technical) default on its dollar-denominated obligations. This is the principal legacy of the administration of former President Carlos Salinas de Gortari and his supporters in the U.S. establishment. It is doubtful that Mexico can meet its external obligations during 1995 without either debt relief (always the right answer in international lending problems involving developing countries) or new loans from First World governments and banks (the establishment's preferred solution). After the lost decade of the 1980s, relieved only briefly in the early 1990s by the North American Free Trade Agreement financial bubble, the Mexican people find themselves once more confronting official demands for renewed austerity, quiet acceptance of further reduced wages (now approximately 60 percent below 1980 levels in inflation-adjusted peso terms), reduced possibilities for immigration to the United States to escape poverty, and diminished prospects for renewed growth of the Mexican economy for the foreseeable future.

But here is where the truly intolerable part begins again: The governing elites in both countries who caused, exacerbated or covered up this mess expect to be held harmless, just as happened in 1982.

Secret credit lines for Mexico from the United States, Japan and European governments amounting to as much as $12 billion were negotiated twice in the past fifteen months or so, ostensibly to defend the peso, but it is now clear that the only possible use of those lines would have been to finance the flight from the peso of Mexico's governing elites and their compatriots in the international financial system. Amusingly, through a tripartite credit line involving Canada as well as Mexico, which was announced publicly in April 1994, the United States essentially has agreed to lend Canada dollars that Canada can then lend to Mexico, which further weakens the U.S. dollar: Our own creditor now understand that we have underwritten the foreign debts of our two neighbors. Federal Reserve Chairman Alan Greenspan was an active promoter of those credit lines, as well as the current bailout effort.

The principal purpose to be served by the new Mexican bailout package is to prevent a loss of confidence of foreign investors in a host of other developing nations, like Argentina. But this is a silly exercise, a true confidence game, because now no rational investor could have faith in Mexico's governing Institutional Revolutionary Party (PRI), which has enjoyed so much official U.S. support in recent decades. The Banco de Mexico, the country's central bank, was still intervening in the Mexico City stock exchange and rigging tesobono (treasury bill) auctions in the same week that the bailout package was presented to Congress, a clear indication that stability has not returned to the country's shaky financial markets. Also, if other countries have mismanaged their financial affairs and are courting disaster for their currencies, there is not much that a bailout of Mexico can do to restore investor confidence. Besides, the prospects for repayment from future Mexican oil receipts, for example, are somewhat limited: At current oil production and price levels, the gross export receipts for Pemex, the national petroleum company, are only about $8.5 billion per year, and most of that has already been pledged to other purposes. The time is long since past in Washington for a repetition of the Paul Volcker-directed ''lend new money to meet the interest payments and pretend that it is all still good debt'' strategy of the 1980s.

Dissent has broken out in both the Republican and Democratic parties over various aspects of the bailout. A variety of extraneous conditions are being proposed to sweeten the deal: demands that Mexico loosen its ties to Cuba and crack down on illegal immigrants to the United States (red meat for the right), and calls for stronger enforcement of labor and environmental protection (for the liberal left). But what a bottom is needed is a prompt and full disclosure of what the $40 billion bill will be used for. The names and amounts paid for each disbursement under the credit line should be published. If there are Charles Keatings, Ferdinand Marcoses and M. Danny Walls lurking in this Mexican credit mess, then the public is entitled to know who they are and what they intend to do with the money they receive at our expense. And if the names disclosed prove to be those of prominent Mexicans and U.S. banks, securities firms, mutual funds and pension fund managers, then we should know that, too. Who knows, with enough disclosure, maybe no one would step forward to claim the money. But don't count on it.

Unfortunately the loan guarantees as currently proposed cannot foster real stability in Mexico. And support for the side agreements to NAFTA misses the point entirely. Dissenters in Congress should insist on complete institutional and financial reform of the Mexican government, which might then do more to address labor and environmental concerns. The PRI has forfeited all moral authority to govern. President Ernesto Zedillo Ponce de Leon should invite the two main opposition parties to join his Cabinet on a full power-sharing basis, with all the important Cabinet ministries going to the opposition. The PRI itself should be dissolved.

To combat the PRI's almost unnatural hold on the affections of many of Mexico's uneducated poor, truth commissions independent of the PRI, like those used in Chile after Pinochet, should be established to investigate matters like the use of the foreign credit lines by the Banco de Mexico, the assassinations of the student demonstrators in Mexico City in 1968, the manipulation of the 1988 election results, the responsibility for the assassinations of Luis Donaldo Colosio (first presidential candidate of the PRI) and José Francisco, Ruiz Massies (second-ranking official of the PRI) in 1994, and the assassinations of journalists and opposition activists during the Salinas regime. Also, a separate inquiry should be mounted into the influence of drug runners and money launderers in Mexican public life, as well as their connections to foreign intelligence services.

As for Washington's pending actions: It once was a federal felony under the Johnson Act for any person subject to U.S. jurisdiction to lend money to a foreign government in default on its loans from the United States. After 1945, however, the act was amended to accommodate the formation of the Bretton Woods institutions. Only international financial ''outlaws'' like the former Soviet Union China were excluded. There in 1992, during the euphoria over market openings in Russia, the Johnson Act was quietly amended further to exempt from its prohibitions the former Soviet-bloc countries that were not yet of the I.M.F. and World Bank, establishing the principle that even ''outlaws'' may now borrow money in international financial markets. This is too bad, for as the crimes of 1982 are repeated, this time we lack a good felony statute with which to punish the miscreants.

Mr. GRAIG. Before closing, I would like to discuss the effect of the proposed $40 billion loan-guarantee package in my own home State of Idaho. Mr. President, in a report released by the Department of the Treasury titled, ''America's Stake in the Mexican Loan Guarantee Program: A State-by-State Analysis of American Jobs Dependent on Exports to Mexico,'' Idaho was listed with approximately 700 jobs relating to products intended for export to Mexico.

While this number may seem negligible to some, it is not insignificant in relation to the overall workforce of Idaho.

Therefore, one of the points that I want to emphasize is that I have taken into consideration the impact the Mexican financial crisis and proposed resolution of loan guarantees may have on the workers in my State. However, jobs are not the only thing that this situation could affect.

Mr. President, we are discussing a substantial amount of money, $40 billion from the pockets of American Taxpayers—from the pockets of Idahoans.

The phones in my State offices and in my D.C. office have been busy with frustrated constituents calling to tell me that they are opposed to the blank-check approach to alleviating this problem.

Mr. President, those 700 jobs in Idaho will not be secured if Mexico's fiscal and monetary policies do not change.

And, I am concerned that we could find ourselves 6 to 12 months down the road with those 700 jobs in Idaho still at risk, and taxpayers being asked to dig even deeper into their pockets. That is not a situation that I will help to create.

In closing, let me add that our elections in November carried a clear message from American voters that they want to see less Government.

If the United States provides Mexico with the $40 billion in loan guarantees and allows the current policies there to continue, we will be financing bigger

Government and Government-controlled responses to the monetary problems there.

Raising taxes and implementing wage and price controls were not part of our electorate's message last year, and I am not supportive of financing those problems in other countries.

There are options to resolving the monetary crisis in Mexico and they need to be fully considered. I hope that we will have a full review of this issue, and take a path that will lead toward a solution, not a Band-Aid for Mexico.

DYNAMIC REVENUE ANALYSIS

Mr. ABRAHAM. Mr. President, a few weeks ago I sat through a hearing of the House and Senate Budget Committees on the issue of dynamic and static revenue estimating. At this hearing, the staff of the Joint Committee on Taxation presented a statement that seemed particularly concerned about an article that Bruce Bartlett of the Alexis de Tocqueville Institution had published in the Wall Street Journal a few weeks ago. Since I know Mr. Bartlett personally, I was especially interested in what he had to say.

Apparently what the Joint Committee staff is most concerned about was Mr. Bartlett's discussion of an exchange Senator PACKWOOD, the chairman of the Finance Committee, had had with the Joint Tax Committee regarding the revenue effect of raising the top tax rate to 100 percent on those earning more than $200,000. According to Senator PACKWOOD, the Joint Committee had predicted some $200 billion per year in additional revenues from this tax change. Senator PACKWOOD rightly characterized this estimate as questionable.

Now, according to the Joint Committee staff, there was nothing wrong with this estimate because it included a caveat that it did not take into account any behavioral response. They then included in an appendix to the statement a complete set of correspondence between Senator PACKWOOD and the Joint Tax Committee on this matter. Apparently, the Senator from Oregon has had a long time interest in this issue and has periodically asked the Joint Committee to update its estimates.

I do not believe that simply appending a caveat is at all adequate. The fact is that a 100-percent tax rate would raise zero revenue and everyone knows it.

If this were merely an academic discussion, it would not concern me. But under the budget laws and established practice, we are required to treat these estimates from the Joint Committee as if they are scientific truth. And we all know that these estimates carry enormous weight when it comes to legislating changes in the Tax Code. If the Joint Committee says a tax cut will lose $101 million and there is only room in the budget for a $100 million tax cut, then you are out of luck. A point of order will prevail and your tax proposal is out the window.

Now, I had always assumed that the whole point of having revenue estimates on tax bills was so that we could project the actual effect of tax changes on the Government's aggregate revenues as accurately as possible. Yet here we have clear evidence that the Joint Committee has produced estimates for the chairman of the Finance Committee that do not fully account for behavioral changes.

I am very concerned about this because the Joint Committee on Taxation probably produces hundreds of estimates during the course of a year that effectively have the force of law. Even the Treasury Department's estimates do not have the same weight as those produced by the Joint Committee, because the Congress will always defer to its own staff in a dispute with the administration. It makes me wonder what other caveats are buried in these estimates that have not gotten any attention in the past.

In any case, the sensible thing would seem to be for the Joint Committee to produce estimates that it actually believes are as correct as possible, in terms of the actual effect on the Government's revenues of any changes in tax policy.

Apparently, this matter of improving the quality of revenue estimates has become a political issue, with those opposed to certain tax proposals standing firm against any dynamic scoring. This is apparent from the article I read in the Wall Street Journal, in which the chairman of the President's Council of Economic Advisers, Laura D'Andrea Tyson, also attacks my friend Bruce Bartlett for noting several instances in which the Joint Committee's estimates for tax increases were far too high.

Ms. Tyson states that Mr. Bartlett ignored the many times their estimates were too low, as though this constitutes a defense of the Joint Committee's methodology. However, it seems to me that being too low is just as bad as being too high.

Ms. Tyson further notes that the Joint Committee's estimates were somethings wrong because of unforeseen events. She implies that the collapse of oil prices in the early 1980's was such an unforeseen event that made the Joint Committee's estimate of the windfall profits tax be far too high. In fact, as I recall, there were a number of economists at that time who were arguing that decontrol of the price of oil was very likely to reduce the price of oil by encouraging additional drilling and exploration. In fact, I believe that this is exactly what did happen.

Lastly, Ms. Tyson indicates that the reason why corporate tax revenues fell after the Tax Reform Act of 1986, rather than rise in accordance with Joint Committee estimates, is because corporations ceased doing business as corporations and began operating as partnerships or subchapter S corporations. Thus the revenue that was lost on the corporate side was made back on the individual side.

The point here is that the 1986 act lowered the top individual income tax rate below the top corporate rate. I think most tax lawyers could have easily predicted that this would lead people to take advantage of this differential by reorganizing their businesses so as to be taxed at the individual rate rather than the corporate rate.

While it may be true, as Ms. Tyson says, that the Treasury did not actually suffer that much of a net revenue loss, it still does not explain the Joint Committee's apparent estimating errors.

Personally, as a legislator, I want the best possible information before I make a decision. I think the Joint Committee and the Congressional Budget Office should at least explore the possibility of preparing dynamic revenue estimates. Their revenue estimating models should be improved and updated to account more fully for changes in behavior and economic growth. Perhaps a commission comprised of public and private sector experts could be established to recommend reforms in the revenue estimating process.

I would suggest we keep the current static revenue scoring, but require the Joint Committee to provide a range of possible dynamic revenue estimates for major tax bills for illustrative purposes only. After a period of time, we could compare the static and dynamic estimates to see which ones came closer to reality.

As a member of the Senate Budget Committee this is a matter I intend to follow closely as time goes by. My only interest, as I said, is to get the best, most accurate, information possible. I yield the floor.

KENNEWICK SCHOOL DISTRICT

Mrs. MURRAY. Mr. President, I rise today to congratulate the Kennewick schools and their community for being recognized by the Center for Workplace Preparation as 1 of 21 most effective national programs working to involve parents in education. We all recognize the vital role parents have in the social, physical, and psychological growth of our children. Unfortunately, whether by choice, due to other commitments or a lack of communication between parents, children, and the school, parents are all too often excluded from school activities. Our schools recognize that if we are going to effectively deal with the problems in our classrooms, we need a higher level of parental involvement. Fortunately, many of our parents realize they have to become more involved in the education of their children and have collaborated with their schools to develop programs which meet the needs of the families, the schools and the community.

Today, one of the greatest problems facing our schools is drug abuse. We all recognize the toll the drug abuse takes on our families, our communities, and ultimately our economy. Studies reveal that 70 percent of public school students aged 12 through 19 reported in 1989 that drugs are available at their school. Nearly 13 percent of 8th graders, 23 percent of 10th graders, and 30 percent of 12th graders had five or more drinks in a row in a 2-week period during the 1990–91 school year. And, 44 percent of all our teachers reported in 1992 that student misbehavior interfered substantially with their teaching.

There is no question that safety and order are necessary in our classrooms if we want learning to take place. Yet, the use of alcohol and other drugs is unacceptably high among our school-age children and the results of this use are increased violence, misbehavior, and little desire to engage in learning. Recognizing the toll drug abuse takes on our schools and communities, the Kennewick School District and community parents came together to develop the Parent Network which aims to curb student substance abuse and increase parent knowledge of their children's activities. To join the Network, parents must sign an agreement that their children will remain substance free for the school year and will set curfews for their children. Family and student activities are arranged by the Network which are guaranteed to be substance free. I also want to stress that while the purpose of the program is to include parents in this process, the Network ensures that students have a voice in all activities. Their involvement is critical to the success of such programs and I am pleased the school and community have sought their inclusion.

One of our national goals is to encourage parental involvement in education and I want to commend the Kennewick School District and their community not only for recognizing the importance of parental involvement but for implementing a program that works for our schools and our families. The American College Testing recently released a publication entitled: ''On Target: Effective Parent Involvement Programs'' which discusses the need for parental involvement and describes how the 21 selected programs are supporting this aim. I am very encouraged by the efforts being made by communities throughout our Nation and I hope other will follow the example set by these outstanding programs.

THE ''ENOLA GAY''

Mr. THOMPSON. Mr. President, I have followed with increasing distress the events surrounding the Smithsonian Institution's exhibit on the Enola Gay and the end of World War II. With each passing day we are made privy to revelations of an offensive and unrecognizable telling of the great struggle to protect the United States and free the world from the tyranny of Nazi Germany and Imperial Japan.

Many of our citizens who have proudly worn the uniform of our military and offered their lives in the service of our Nation, have expressed justified outrage that the Nation's repository of collective memory should be so callously dismissive of the salient issues involved.

Adolf Hitler and his Nazi regime were responsible for the unspeakable horror upon tens of millions of people in Europe. Indeed, today marks the 15th anniversary of the liberation of Auschwitz, a striking event which reminds us of the tyranny of fascism. Imperial Japan launched a calculated attack on our Nation in the predawn light of December 7, 1941, and precipitated a war which saw excruciating suffering visited upon the people of Korea, Manchuria, and the military forces of the United States. And now, the institution which for over a century has served as the premier repository of our cultural, intellectual, and technological history has decided to portray the noble, titanic struggle against evil as nothing more that a power struggle against moral equivalents.

I am appalled that our national history is being rewritten. I spoke against the original *Enola Gay* display at the Smithsonian which wrongly depicted our Nation's history during World War II. The second display resulted in more revisionism and more public concern and required congressional consternation to get it changed.

The Smithsonian Institution has a magnificent track record of telling the history of our country with accuracy, compassion, and style.

I call upon the Smithsonian Institution to work with veteran organizations to create an accurate, fair, and compelling display of which we all can be proud.

MESSAGES FROM THE HOUSE

At 12:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 273. An Act to amend section 61h–6 of title 2, United States Code.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.J. Res. 1. Joint resolution proposing a balanced budget amendment to the Constitution of the United States.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 17. Concurrent resolution relating to the treatment of Social Security under any constitutional amendment requiring a balanced budget.

The message also announced that pursuant to the provisions of sections 5580 and 5581 of the Revised Statutes (20 U.S.C. 42–43), the Speaker appoints as members of the Board of Regents of the Smithsonian Institution the following Members on the part of the House: Mr. LIVINGSTON, Mr. SAM JOHNSON of Texas, and Mr. MINETA.

MEASURES PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar:

H.J. Res. 1 Joint resolution proposing a balanced budget amendment to the Constitution of the United States.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–293. A communication from the Deputy Under Secretary of Defense (Environmental Security), transmitting, pursuant to law, the report on the Environmental Education Opportunities Program; to the Committee on Armed Services.

EC–294. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report on the feasibility of using segregated ballast tanks for emergency transfer of cargo and storage of recovered oil; to the Committee on Commerce, Science, and Transportation.

EC–295. A communication from the Director of the U.S. Bureau of Mines, Department of the Interior, transmitting, pursuant to law, the report on the Mineral Institute Program for calendar year 1995; to the Committee on Energy and Natural Resources.

EC–296. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, a report relative to a pilot telecommuting center in Manassas, Virginia; to the Committee on Environment and Public Works.

EC–297. A communication from the Chairman of the U.S. International Trade Commission, transmitting, a draft of proposed legislation to provide authorization of appropriations for the U.S. International Trade Commission for fiscal year 1996; to the Committee on Finance.

EC–298. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the administration of the Maternal and Child Health Program; to the Committee on Finance.

EC–299. A communication from the Senior Deputy Assistant Administrator (Bureau for Legislative and Public Affairs), U.S. Agency for International Development, transmitting, pursuant to law, the Egypt Economic Report; to the Committee on Foreign Relations.

EC–300. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of an agreement between the United States and the Republic of Palau; to the Committee on Foreign Relations.

EC–301. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice relative to the Nonproliferation and Disarmament Fund; to the Committee on Foreign Relations.

EC–302. A communication from the Chairman of the National Transportation Safety

Board, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–303. A communication from the Administrator of the U.S. Small Business Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–304. A communication from the Office of the District of Columbia Auditor, transmitting, pursuant to law, the report entitled ''Review of the Department of Human Services Foster Care Program Vendor Payments for Fiscal Years 1992, 1993, and 1994''; to the Committee on Governmental Affairs.

EC–305. A communication from the Inspector General of the General Services Administration, transmitting, pursuant to law, the semiannual report for the period April 1 through September 30, 1994; to the Committee on Governmental Affairs.

EC–306. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the study of the effectiveness of the State Long-Term Care Ombudsman Program; to the Committee on Labor and Human Services.

EC–307. A communication from the Architect of the Capitol, transmitting, pursuant to law, notice of a request to plant a tree on the Capitol Grounds; to the Committee on Rules and Administration.

EC–308. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the annual report on contract care and services furnished by the Department to eligible veterans; to the Committee on Veterans' Affairs.

EC–309. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report on rescissions and deferrals dated December 1, 1994; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Finance, and to the Committee on Foreign Relations.

EC–310. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report on rescissions and deferrals dated January 1, 1995; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Finance, and to the Committee on Foreign Relations.

EC–311. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of the summary of proposed and enacted rescissions for fiscal years 1974 through 1995; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations and to the Committee on the Budget.

EC–312. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the compliance report for calendar year 1994; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations and to the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROTH:

S. 291. A bill to reform the regulatory process, to make government more efficient and effective, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SHELBY:

S. 292. A bill to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama; to the Committee on Indian Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH:

S. 291. A bill to reform the regulatory process, to make government more efficient and effective, and for other purposes; to the Committee on Governmental Affairs.

REGULATORY REFORM LEGISLATION

● Mr. ROTH. Mr. President, I rise to emphasize the critical need for a smarter, more cost-effective approach to Government regulation. Today, I introduce legislation intended to generate constructive debate on this important issue.

As chairman of the Committee on Governmental Affairs, I want to build consensus on how to regulate smarter among all engaged in the growing debate on regulatory reform—including the general public, businesses of all sizes, environmental and public interest groups, academia, State and local governments, the White House, and my colleagues on both sides of the aisle. Throughout my career, I have been committed to protecting the environment, health, and safety. I reaffirm that commitment today. We should not forget that many regulations provide important protections and benefits to the public. Let there be no mistake—we need a clean environment, safe workplaces, and safe medications.

Mr. President, it is clear that the regulatory process is broken. Too many regulations impose undue costs, and the regulatory process itself has become too cumbersome, unresponsive, and inefficient. The cumulative cost of regulation is enormous and is rising at an alarming rate. The annual cost of Federal regulation was conservatively estimated at about $560 billion for 1992; it could exceed $660 billion by the year 2000. About three-fourths of the cost increase is expected from upcoming risk regulations, such as environmental, health, and safety standards.

The rising cost of regulation affects us all—businesses large and small, governments at all levels, and the American worker and consumer. Regulations drive up prices and stifle wages, innovation, and economic growth. Although the direct costs of regulation generally are imposed on businesses and governments, these costs ultimately are passed on to the American consumer through higher prices, diminished wages, increased taxes, or reduced government services. The cost of regulation has been estimated at about $6,000 per year for the average American household.

The recent elections brought to this Congress historic change, an with it, and unprecedented opportunity to reform the regulatory process. However, it is important that we take a balanced approach to reform. In our zeal to implement substantial changes, we should act carefully so that we truly perfect needed Government programs—not cripple or stymie them. Building a smarter regulatory process will require the expertise and consensus of those on all sides of the regulatory reform debate. Together, we should strive to achieve desirable social goals in the most cost-effective manner practical.

My goal is to forge a consensus on effective legislation to make the regulatory process more efficient and effective. The bill I am introducing today is a first step in this direction, but it requires further debate and deliberation. It may be necessary to add further provisions, delete some, or revise others. I will chair a series of hearings, beginning on February 8, to provide a forum to discuss the broad principles of regulatory reform—those reflected in this bill as well as others we have not yet addressed.

My bill will require Federal agencies to seriously consider whether the benefits of regulating justify its costs. When regulating risks, regulators will be required to make realistic estimates of risk based on the available data, and disclose to the public any assumptions necessary to measure those risks. The bill also will encourage agencies to base their priorities on the relative risks posed by various substances, activities, and products to achieve the greatest overall reduction in risk at the least cost. More generally, my bill will require agencies to review existing regulations, to be sensitive to the cumulative regulatory burden, and to select the most cost-effective, market-driven method practical. These are but some of the principles to be discussed at the hearings on regulatory reform.

We can reinvent the regulatory process to ensure that when agencies choose to regulate, they will do so in a more effective and less costly manner. We can reduce the burden on governments, businesses, and the public, and still ensure that important benefits and protections are provided. We cannot afford to ignore the need to regulate smarter.

I ask unanimous consent that the legislation I introduce today be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 291

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulatory Reform Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I: REGULATORY ANALYSIS AND REVIEW

SEC. 101. COST/BENEFIT ANALYSIS OF AGENCY PROPOSALS; RISK ASSESSMENT; REGULATORY REVIEW.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end thereof the following:

''Subchapter II—Analysis of Agency Proposals

''§ 621. Definitions

''For purposes of this subchapter and subchapter III of this chapter:

''(1) The term 'agency' has the same meaning as in section 551(1) of this title.

''(2) The term 'person' has the same meaning as in section 551(2) of this title.

''(3) The term 'rule' has the same meaning as in section 551(4) of this title, except that such term does not include—

''(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers or acquisitions, or accounting practices or disclosures bearing on any of the foregoing.

''(B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System; or

''(C) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to sections 315 and 312(a)(7) of the Communications Act of 1934.

''(4) The term 'major rule' means—

''(A) a rule or a group of closely related rules that the agency, the President, or the officer selected under section 624 of this title reasonably determines is likely to have an annual effect on the economy of $100,000,000 or more in reasonably quantifiable direct and indirect costs, or has a significant impact on a subsection of the economy; and

''(B) a rule or a group of closely related rules that is otherwise designated a major rule by the agency proposing the rule, or is so designated by the President, or by the officer selected under section 624 of this title, on the ground that the rule is likely to result in—

''(i) a substantial increase in costs or prices for wage earners, consumers, individual industries, nonprofit organizations, Federal, State, or local government agencies, or geographic regions; or

''(ii) significant adverse effects on wages, economic growth, investment, productivity, innovation, the environment, public health or safety, or the ability of enterprises whose principal places of business are in the United States to compete in domestic or export markets.

For purposes of subparagraph (A) of this paragraph, the term 'rule' does not mean—

''(I) a rule that involves the internal revenue laws of the United States;

''(II) a rule that authorizes the introduction into commerce or recognizes the marketable status of a product, pursuant to sections 408, 409(c), and 706 of the Federal Food, Drug, and Cosmetic Act;

''(III) a rule exempt from notice and public procedure pursuant to section 553(a) of this title; or

''(IV) a rule relating to the viability, stability, asset powers, or categories of accounts of, or permissible interest rate ceilings applicable to, depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the Share Insurance Fund of the National Credit Union Administration Board.

''(5) The term 'benefit' means the reasonably identifiable significant benefits and beneficial effects, including social and economic benefits and effects, that are expected to result directly or indirectly from implementation of a rule or an alternative to a rule.

''(6) The term 'cost' means the reasonably identifiable significant costs and adverse effects, including economic and social costs and effects, that are expected to result directly or indirectly from implementation of a rule or an alternative to a rule.

''§ 622. Regulatory cost/benefit analysis

''(a) Prior to publishing notice of proposed rule making for any rule, each agency shall determine whether the rule is or is not a major rule within the meaning of section 621(4)(A) of this title and, if it is not, whether it should be designated a major rule under section 621(4)(B) of this title. For the purpose of any such determination or designation, a group of closely related rules shall be considered as one rule. Every notice of proposed rule making shall include a succinct statement and explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(4)(A) of this title and, if applicable, of its designation as a major rule under section 621(4)(B) of this title.

''(b) The President or the officer selected by the President under section 624 of this title may determine that a rule is a major rule within the meaning of section 621(4)(A) of this title or may designate a rule as a major rule under section 621(4)(B) of this title not later than thirty days after the publication of the notice of proposed rule making for that rule. Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation. The President or the officer selected by the President under section 624 of this title may designate not more than seventy-five rules as major rules under section 621(4)(B) of this title in any fiscal year.

''(c)(1) When the agency publishes a notice of proposed rule making for a major rule, the agency shall issue and place in the rule making file maintained under section 553(f) of this title a preliminary regulatory analysis and shall include in such notice of proposed rule making a summary of the analysis. When the President or the officer elected by the President under section 624 of this title has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rule making for that rule, the agency shall promptly issue and place in the rule making file maintained under section 553(f) of this title a preliminary regulatory analysis for the rule and shall publish in the Federal Register a summary of such analysis. Following the issuance of a preliminary regulatory analysis under the preceding sentence, the agency shall give interested persons an opportunity to comment thereon pursuant to section 553 of this title in the same manner as if the preliminary regulatory analysis had been issued with the notice of proposed rule making.

''(2) Each preliminary regulatory analysis shall contain—

''(A) a succinct description of the benefit of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates each benefit will be achieved by the proposed rule, including a description of the persons, classes of persons, or particular levels of Government likely to receive such benefits;

''(B) a succinct description of the costs of the proposed rule, including any costs that cannot be quantified as well as the cost-reduction effects of complying with the requirements of title IV, and an explanation of how the agency anticipates each such cost will result from the proposed rule, including a description of the persons, classes of persons, or particular levels of Government likely to incur such costs;

''(C) a succinct description of reasonable alternatives for achieving the identified benefits of the proposed rule, including alternatives that—

''(i) require no Government action;

''(ii) will accommodate differences between geographic regions; and

''(iii) employ performance or other market based standards which permit the greatest flexibility in achieving the identified benefits of the proposed rule and which comply with the requirements of title IV;

''(D) in any case in which the proposed rule is based on scientific evaluations or information, a description of action undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluations or scientific information in accordance with the requirements of title IV; and

''(E) where it is not expressly or by necessary implication inconsistent with the provisions of the enabling statute pursuant to which the agency is proposing the rule, an explanation of how the identified benefits of the proposed rule are likely to justify the identified costs of the proposed rule, and an explanation of how the proposed rule is likely to substantially achieve the rule making objectives in a more cost-effective manner than the alternatives to the proposed rule, including alternatives identified in accordance with title IV.

''(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rule making file maintained under section 553(f) of this title a final regulatory analysis, and shall include a summary of the analysis in the statement of basis and purpose required by section 553(c)(6) of this title. Notwithstanding the preceding sentence, in any case in which an agency, under section 553(b)(2) of this title, is not required to comply with subsections (b) through (f) of section 553 of this title prior to the adoption of a final rule, any agency is not required to comply with the preceding sentence prior to the adoption of the final rule but shall comply with such sentence when complying with section 553(b)(2)(C) of this title.

''(2) Each final regulatory analysis shall contain—

''(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rule making, including the market-based mechanisms identified pursuant to title IV; and

''(B) where it is not expressly or by necessary implication inconsistent with the provisions of the enabling statute pursuant to which the agency is acting, a reasonable determination, based upon the rule making file considered as a whole, that the benefits of the rule justify the costs of the rule, and that the rule will substantially achieve the rule making objectives in a more cost-effective manner than the alternatives described in the rule making, including the market-based incentives identified pursuant to title IV.

''(e)(1) An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a proposed and a final rule pursuant to this section in as precise and succinct a manner as possible. The description of the benefits and costs of a proposed and a final rule required under this section shall include a quantification or numerical estimate of the quantifiable benefits and costs. Such quantification or numerical estimate shall be made in the most appropriate unit of measurement and shall specify the ranges of predictions and explain the margins of error involved in the quantification methods and in the estimates used.

''(2) In evaluating and comparing costs and benefits, the agency shall not rely on cost or benefit information submitted by any person that is not accompanied by data, analysis, or other supporting materials that would enable the agency and other persons interested in the rule making to assess the accuracy and reliability of such information. The agency evaluations of the relationships of the benefits of a proposed and final rule to its costs required by this section shall be clearly articulated in accordance with the provisions of this section. An agency is not required to make such evaluation primarily on a mathematical or numerical basis.

''(f) The preparation of the preliminary or final regulatory analysis required by this section shall only be performed by an officer or employee of the agency. The provisions of the preceding sentence do not preclude a person outside the agency from gathering data or information to be used by the agency in preparing any such regulatory analysis or from providing an explanation sufficient to permit the agency to analyze such data or information. If any such data or information is gathered or explained by a person outside the agency, the agency shall specifically identify in the preliminary or final regulatory analysis the data or information gathered or explained and the person who gathered or explained it, and shall describe the arrangement by which the information was procured by the agency, including the total amount of funds expended for such procurement.

''(g) The requirements of this section do not alter the criteria for rule making otherwise applicable under other statutes.

''§ 623. Judicial review

''(a) Compliance or noncompliance by an agency with the provisions of this subchapter shall not be subject to judicial review except according to the provisions of this section.

''(b) Any determination by the President or by the officer selected under section 624 of this title that a rule is a major rule within the meaning of section 621(4)(A) of this title, and any designation by the President or the officer selected under section 624 of this title that a rule is a major rule under section 621(4)(B) of this title, or any failure to make such a designation, shall not be subject to judicial review in any manner.

''(c) The determination of an agency of whether a rule is or is not a major rule within the meaning of section 621(4)(A) of this title shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time it made the determination. Any designation by an agency that a rule is a major rule under section 621(4)(B) of this title, or any failure to make such a designation, shall not be subject to judicial review.

''(d) Any regulatory analysis prepared under section 622 of this title shall not be subject to judicial consideration separate or apart from review of the rule to which it relates. When an action for judicial review of a rule is instituted, any regulatory analysis for such rule shall constitute part of the whole rule making record of agency action for the purpose of judicial review of the rule and shall, to the extent relevant, be considered by a court in determining the legality of the rule.

''§ 624. Executive oversight

''(a) The President shall have the authority to establish procedures for agency compliance with this title and titles II, III, and IV of this Act. The President shall have the authority to monitor, review, and ensure agency implementation of such procedures. The President shall report annually to the Congress on agency compliance or noncompliance with the requirements of this chapter.

''(b) Any procedures established pursuant to the authority granted under subsection (a) of this section shall be adopted after the public has been afforded an opportunity to comment thereon, and shall be consistent with the prompt completion of rule making proceedings. If such procedures include review of preliminary or final regulatory analyses to ensure that they comply with the procedures established pursuant to subsection (a), the time for any such review of a preliminary regulatory analysis shall not exceed thirty days following the receipt of that analysis by the President or by an officer to whom the authority granted under subsection (a) of this section has been delegated pursuant to subsection (c) of this section, and the time for such review of a final regulatory analysis shall not exceed thirty days following the receipt of that analysis by the President or such officer. The times for each such review may be extended for good cause by the President or such officer for an additional thirty days. Notice of any such extension, together with a succinct statement of the reasons therefore, shall be inserted in the rule making file.

''(c) The President may delegate the authority granted by this Act to the Vice President or to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate. Any such notice with respect to a delegation to the Vice President shall contain a statement by the Vice President that the Vice President will make every reasonable effort to respond to Congressional inquiries concerning the exercise of the authority delegated under this subsection. Notice of any such delegation, or any revocation or modification thereof, shall be published in the Federal Register.

''(d) The authority granted under subsection (a) of this section and title II shall not apply to rules issued by the Nuclear Regulatory Commission.

''(e) Any exercise of the authority granted under this section, or any failure to exercise such authority, by the President or by an officer to whom such authority has been delegated under subsection (c) of this section, shall not be subject to judicial review in any manner under this Act.

Subchapter III—Risk Assessments

''§ 631. Findings, purposes, and definitions

''(a) FINDINGS.—

''The Congress finds that:

''(1) Environmental, health, and safety regulations have lead to dramatic improvements in the environment and have significantly reduced risks to human health; however, many regulations have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

''(2) The public and private resources available to address health, safety, and environmental risks are not unlimited; those resources should be allocated to address the greatest needs in the most cost-effective manner and to ensure that the incremental costs of regulatory options are reasonably related to the incremental benefits.

''(3) To provide more cost-effective protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority-setting process must include scientifically sound, objective, and unbiased risk assessments and risk management choices that are grounded in cost/benefit principles.

''(4) Risk assessment has proved to be a useful decision-making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

''(5) The public stakeholders must be fully involved in the decision-making process for regulating risks. The public has the right to know about the risks addressed by regulation, the amount of risk reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and will promote the quality, integrity, and responsiveness of agency decisions.

''(b) PURPOSES.—

''The purposes of this subchapter are—

''(1) to present the public and executive branch with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks to promote sound regulatory decisions and public education;

''(2) to provide for full consideration and discussion of relevant data and potential methodologies;

''(3) to require explanation of significant choices in the risk assessment process that will allow for better public understanding; and

''(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

''(c) DEFINITIONS.—

''For purposes of this subchapter:

''(1) BEST ESTIMATE.—The term 'best estimate' means an estimate that, to the extent feasible and scientifically appropriate, is based on one of the following:

''(A) Central estimates of risk using the most plausible assumptions.

''(B) An approach that combines multiple estimates based on different scenarios and weighs the probability of each scenario.

''(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk, given the current scientific information available to the Federal agency concerned.

''(2) COVERED AGENCY.—The term 'covered agency' means each of the following:

''(A) The Environmental Protection Agency.

''(B) The Department of Labor.

''(C) The Food and Drug Administration.

''(D) The Consumer Product Safety Commission.

''(E) The Department of Transportation.

''(F) The Department of Energy.

''(G) The Department of Agriculture.

''(H) The Department of Interior.

''(I) The Nuclear Regulatory Commission.

''(3) EMERGENCY.—The term 'emergency' means an imminent and substantial endangerment to public health, safety, or the environment.

''(4) HAZARD IDENTIFICATION.—The term 'hazard identification' means identification of a substance, activity, or condition as potentially posing a risk to human health or safety or the environment based on empirical data, measurements, or testing showing that it has caused significant adverse effects at some levels of dose or exposure not necessarily relevant to level of dose or exposure that are normally expected to occur.

''(5) RISK ASSESSMENT.—The term 'risk assessment' means—

''(A) the process of identifying hazards and quantifying or describing the degree of toxicity, exposure, or other risk they pose for exposed individuals, populations, or resources; and

''(B) the document containing the explanation of how the assessment process has been applied to an individual substance, activity, or condition.

''(6) RISK CHARACTERIZATION.—The term 'risk characterization'—

''(A) means the element of a risk assessment that involves presentation of the degree of risk in any regulatory proposal or decision, report to Congress, or other document that is made available to the public; and

''(B) includes discussions of uncertainties, conflicting data, estimates, extrapolations, inferences, and opinions.

''(7) SUBSTITUTION RISK.—The term 'substitution risk' means a potential increased risk to human health, safety, or the environment from a regulatory option designed to decrease other risks.

''§ 632. Applicability

''(a) IN GENERAL.—Except as otherwise provided in subsection (b), this title shall apply to all risk assessments and risk characterizations prepared by, or on behalf of, or prepared by others and adopted by any covered agency in connection with health, safety, and environmental risks.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—This title shall not apply to risk assessments or risk characterizations performed with respect to—

''(A) a situation that the head of the agency considers to be an emergency; or

''(B) a screening analysis, including a screening analysis for the purposes of product registration, product reregistrations, or premanufacturing notices.

''(2) TREATMENT OF ANALYSIS AS SCREENING ANALYSIS.—An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(B) if the result of the analysis is used—

''(A) as the basis for imposing a restriction on a substance or activity; or

''(B) to characterize a positive finding of risks from a substance, product, or activity in any agency document or other communication made available to the general public, the media, or Congress.

''(3) LABELS.—This title shall not apply to any food, drug, or other product label or to any risk characterization appearing on any such label.

''§ 633. Savings provisions

''Nothing in this title shall be construed to—

''(1) modify any statutory standard or requirement designed to protect human health, safety, or the environment; or

''(2) preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability; or

''(3) require the disclosure of any trade secrets or other confidential information.

''§ 634. Requirement to prepare risk assessments

''Except as provided in subsection 632(b), the President shall require that the head of each covered agency prepare for each major rule relating to human health, safety, or the environment that is proposed by the agency after the date of enactment of this title—

''(1) a risk assessment in accordance with this title; and

''(2) for each such proposed or final rule, an assessment of incremental risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

''§ 635. Principles for risk assessment

''(a) IN GENERAL.—The head of each covered agency shall ensure that risk assessments and all of their components—

''(1) distinguish scientific findings and best estimates of risk from other considerations;

''(2) are, to the maximum extent practicable, unbiased and inclusive of all reliable information and employ default assumptions only if situation-specific information is not reasonably available;

''(3) rely on scientific findings of risk;

''(4) result in the most plausible and realistic estimates feasible for the population, or, if only bounds can be estimated reliably, describe the range encompassed; and

''(5) are tailored so that the degree of specificity and rigor employed is commensurate with the consequences of the decision to be made.

''(b) HAZARD IDENTIFICATION AND RISK CHARACTERIZATION.—A risk assessment shall clearly separate hazard identification from risk characterization and make clear the relationship between the level of risk and the level of exposure to a hazard.

''§ 636. Principles for risk characterization and risk communication

''In characterizing risk in any risk assessment document, regulatory proposal or decision each covered agency shall include in the risk characterization each of the following:

''(1) ESTIMATES OF RISK.—

''(A) SUBJECT.—A description of the populations or natural resources that are the subject of the risk characterization.

''(B) ASSUMPTIONS, INFERENCES, AND MODELS.—When a risk assessment involves a choice of any significant assumption, inference, or model, the covered agency or instrumentality preparing the risk assessment shall—

''(i) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

''(ii) explain the basis for any choices;

''(iii) identify any subjective policy decisions or value judgments; and

''(iv) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

''(C) UNCERTAINTY.—The major uncertainties in the risk assessment.

''(D) EXPOSURE SCENARIOS.—Information about exposure scenarios used, including the likelihood of those scenarios.

''(E) RISK RANGE.—To the extent feasible, a range of risk estimates, including central estimates, for each exposure scenario.

''(F) SCIENTIFIC FINDINGS AND POLICY DECISIONS.—To the extent feasible, each risk characterization should distinguish between scientific findings and policy decisions.

''(2) SUBSTITUTION RISKS.—When a covered agency provides a risk assessment or risk characterization for a proposed or final regulatory action, such assessment or characterization shall include a statement of any significant substitution risks, when information on such risks has been provided to the agency.

''(3) SUMMARIES OF OTHER RISK ESTIMATES.—If—

''(A) a covered agency provides a public comment period with respect to a risk assessment or regulation;

''(B) a commenter provides a risk assessment, and a summary of results of such risk assessment; and

''(C) such risk assessment is consistent with the principles and the guidance provided under this subtitle, the covered agency shall present such summary in connection with its presentation of the risk assessment or regulation.

''§ 637. Guidelines, plan for assessing new information, and report

''(a) GUIDELINES.—

''(1) IN GENERAL.—Within 15 months after the date of enactment of this title, each covered agency shall issue, after notice and public comment, guidelines to implement the risk assessment and risk characterization principles set forth in sections 635 and 636 and shall provide a format for summarizing risk assessment results.

''(2) MATTERS TO BE ADDRESSED.—The guidelines under paragraph (1) shall—

''(A) include guidance on utilization of specific technical methodologies and standards for acceptable quality of specific kinds of data; and

''(B) address important decisional factors for the risk assessment or risk characterization at issue, such as criteria for scaling animal studies to assess risk to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighing of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors; and evaluation of differences in human health endpoints, where relevant.

''(b) PLAN.—

''(1) IN GENERAL.—Within 18 months after the date of enactment of this title, the head of each covered agency shall publish a plan to review and revise any risk assessment published prior to the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

''(2) CONTENTS.—A plan under paragraph (1) shall—

''(A) provide procedures for receiving and considering new information and risk assessments from the public; and

''(B) set priorities for review and revision of risk assessments based on such factors as the agency head considers appropriate.

''(c) REPORT.—Within 3 years after the enactment of this title, each covered agency

shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (B)(iii) of section 636(1).

''(d) PUBLIC COMMENT AND CONSULTATION.—The guidelines, plan and report under this section shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, organizations, or persons as may be advisable.

''(e) REVIEW.—The President shall review the guidelines published under this section at least every 4 years.

''(f) LIMITATION ON JUDICIAL REVIEW.—The development, issuance, and publication of risk assessment and risk characterization guidelines under this section shall not be subject to judicial review.

''§ 638. Risk management criteria

''For each major rule subject to this title, the head of the agency or the President shall make a determination that—

''(1) the risk assessment under section 634(1) and the analysis under section 634(2) are based on a scientific evaluation of the risk addressed by the major rule and are supported by the best available scientific data; and

''(2) there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated that would achieve an equivalent reduction in risk in a more cost-effective and flexible manner.

''§ 639. Interagency coordination

''To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than one Federal agency, the Director of the Office of Science and Technology Policy shall—

''(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal government;

''(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

''(3) establish appropriate interagency mechanisms to promote coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment and to promote the use of state-of-the-art risk assessment practices throughout the Federal government;

''(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

''(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal-State cooperation in the development and application of risk assessment.

''Subchapter IV—Regulatory Priorities and Review

''§ 641. Review of agency rules

''(a) (1) (A) Not later then nine months after the effective date of this section, each agency shall prepare and publish in the Federal Register a proposed schedule for the review, in accordance with this section, of—

''(i) each rule of the agency which is in effect of such effective date and which, if adopted on such effective date, would be a major rule under section 621(4)(A) of this title, and

''(ii) each rule of the agency in effect on such effective date (in addition to the rules described in clause (i)) which the agency has selected for review.

''(B) Each proposed scheduled required by subparagraph (A) shall include—

''(i) a brief explanation of the reasons the agency considers each rule on the schedule to be such a major rule under section 621(a)(4)(A) of this title or of the reasons why the agency selected the rule for review;

''(ii) a date set by the agency, in accordance with the provisions of subsection (b)(1) of this section, for the completion of the review of each such rule; and

'(iii) a statement that the agency requests comments from the public on the proposed schedule.

''(C) The agency shall set a date to initiate review of each rule on the schedule in a manner which will ensure the simultaneous review of related items and which will achieve a reasonable distribution of reviews over the period of time covered by the schedule.

''(2) At least ninety days before publishing in the Federal Register the proposed schedule required under paragraph (1), each agency shall make the proposed schedule available to the President, or to the Vice President or other officer to whom oversight authority has been delegated under section 624(b) of this title. The President or that officer may select for review in accordance with this section any additional rule that the President or such officer determines to be a major rule under section 621(4)(A) of this title.

''(3) Not later than one year after the effective date of this section, each agency shall publish in the Federal Register a final schedule for the review of the rules referred to in paragraphs (1) and (2) of this subsection.

Each agency shall publish with the final schedule the response of the agency to comments received concerning the proposed schedule.

''(b)(1) Except where explicitly provided otherwise by statute, the agency shall, pursuant to subsections (c) through (e) of this section, review:

''(A) each rule on the schedule promulgated pursuant to subsection (a) of this section;

''(B) each major rule under section 621(4) of this title promulgated, amended, or otherwise renewed by an agency after the date of the enactment of this section; and

''(C) each rule promulgated after the date of enactment of this section which the President or the officer designated by the President pursuant to subsection (a)(2) of this section determines to be a major rule under section 621(4)(A) of this title.

Except where an extension has been granted pursuant to subsection (f) of this section, the review of a rule required by this section shall be completed within ten years after the effective date of this section or within ten years after the date on which the rule is promulgated, amended, or renewed, whichever is later.

''(2) A rule required to be reviewed under the preceding subsection on grounds that it is major need not be reviewed if the agency determines that such rule, if adopted at the time of the planned review, would not be major under the definition previously applied to it. When the agency makes such a determination, it shall publish a notice and explanation of the determination in the Federal Register.

''(c) An agency shall publish in the Federal Register a notice of its proposed action under this section with respect to a rule being reviewed. The notice shall include—

''(1) an identification of the specific statutory authority under which the rule was promulgated and a statement specifying the agency's determination of whether the rule continues to fulfill the intent of Congress in enacting that authority:

''(2) an assessment of the benefits and costs of the rule during the period in which it has been in effect;

''(3) an explanation of the proposed agency action with respect to the rule; and

''(4) a statement that the agency seeks proposals from the public for modifications or alternatives to the rule which may accomplish the objectives of the rule in a more effective or less burdensome manner, including alternatives developed in accordance with the provisions of title IV of this bill.

''(d) If an agency proposes to repeal or amend a rule under review pursuant to this section, the agency shall, after issuing the notice required by subsection (c) of this section, comply with the provisions of this chapter and chapter 5 of this title or other applicable law. The requirements of such provisions and related requirements of law shall apply to the same extent and in the same manner as in the case of a proposed agency action to repeal or amend a rule which is not taken pursuant to the review required by this section.

''(e) If an agency proposed to renew without amendment a rule under review pursuant to this section, the agency shall—

''(1) give interested persons not less than sixty days after the publication of the notice required by subsection (c) of this section to comment on the proposed renewal; and

''(2) publish in the Federal Register notice of the renewal of such rule and an explanation of the continued need for the rule, and, if the renewed rule is a major rule under section 621(4) of this title, include with such notice an explanation of the reasonable determination of the agency that the rule complies with the provisions of section 622(d)(2)(B) of this title.

''(f)(1) Any agency, which for good cause finds compliance with this section with respect to a particular rule to be impracticable during the period provided in subsection (b) of this section, may request the President, or the officer designated by the President pursuant to subsection (a)(2) of this section, to establish a period longer than ten years for the completion of the review of such rule. The President or that officer may extend the period for review of a rule to a total period of not more than fifteen years. Such extension shall be published in the Federal Register with an explanation of the reasons therefor.

''(2) An agency may, with the concurrence of the President or the officer designated by the President pursuant to subsection (a)(2) of this section, or shall, at the direction of the President or that officer, alter the timing of review of rules under any schedule required by this section for the review of rules if an explanation of such alteration is published in the Federal Register at the time such alteration is made.

''(g) In any case in which an agency has not completed the review of a rule within the period prescribed by subsection (b) or (f) of this section, the agency shall immediately publish in the Federal Register a notice proposing to amend, repeal, or renew the rule under subsection (c) of this section, and shall complete proceedings pursuant to subsection (d) or (e) of this section within one hundred and eighty days of the date on which the review was required to be completed under subsection (b) or (f) of this section.

''(h)(1) Agency compliance or noncompliance with the provisions of subsection (a) of this section shall not be subject to judicial review in any manner.

''(2) Agency compliance or noncompliance with the provisions of subsection (b), (c), (e), (f) and (g) of this section shall be subject to

judicial review only pursuant to section 706(a)(1) of this title.

''(i) Nothing in this section shall relieve any agency from its obligation to respond to a petition to issue, amend, or repeal a rule, for an interpretation regarding the meaning of a rule, or for a variance or exemption from the terms of a rule, submitted pursuant to section 553(e) of this title.

§ 642. Regulatory agenda and calendar

''(a) Each agency shall publish in the Federal Register in April and October of each year an agenda of the rules that the agency expects to propose, promulgate, renew, or repeal in the succeeding twelve months. For each such rule, the agenda shall contain, at a minimum, and in addition to any other information required by law—

''(1) a general description of the rule, including a citation to the authority under which the action with respect to the rule is to be taken, or a specific explanation of the congressional intent to which the objectives of rule respond;

''(2) a statement of whether or not the rule is or is expected to be a major rule;

''(3) an approximate schedule of the significant dates on which the agency will take action relating to the rule, including the dates for any notice of proposed rulemaking, hearing, and final action on the rule;

''(4) the name, address, and telephone number of an agency official responsible for answering questions from the public concerning the rule;

''(5) a statement specifying whether each rule listed on the previous agenda has been published as a proposed rule, has been published as a final rule, has become effective, has been repealed, or is pending in some other status; and

''(6) a cumulative summary of the status of the rules listed on the previous agenda in accordance with clause (5) of this subsection.

''(b) The President or an officer in the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate shall publish in the Federal Register in May and November of each year a Calendar of Federal Regulations listing each of the major rules identified in the regulatory agendas published by agencies in the preceding month. Each rule listed in the calendar shall be accompanied by a summary of the information relating to the rule that appeared in the most recent regulatory agenda in which the rule was identified.

''(c) An agency may propose or promulgate a major rule that was not listed in the regulatory agenda required by subsection (a) of this section only if the agency published with the rule an explanation of the omission of the rule from such agenda and otherwise complies with this section with resect to that rule.

''(d) Any compliance or noncompliance by the agency with the provisions of this section shall not be subject to judicial review.

''§ 643. Establishment of deadlines

''(a)(1) Whenever any agency published a notice of proposed rule making pursuant to section 553 of this title, the agency shall include in such notice an announcement of the date by which it intends to complete final agency action on the rule.

''(2) If any agency announcement under this section indicates that the proceeding relating to such rule will require more than one year to complete, the agency shall also indicate in the announcement the date by which the agency intends to complete each major portion of that proceeding. In carrying out the requirements of this subsection, the agency shall select dates for completing agency action which will assure that most expeditious consideration of the rule which is possible, consistent with the interests of fairness and other agency priorities.

''(3) The requirements of this subsection shall not apply to any rule on which the agency intends to complete action within one hundred and twenty days after providing notice of the proposed action.

''(b) If an agency fails to complete action in a proceeding, or a major portion of the proceeding, by the date announced pursuant to subsection (a) of this section, or, in the case of a proceeding described in paragraph (3) of such subsection, if an agency fails to complete action within one hundred and twenty days after providing notice of such proposed action, and the expected delay in completing action will exceed thirty days, the agency shall promptly announce the new date by which the agency intends to complete action in such proceeding and new dates by which the agency intends to complete action on each major portion of the proceeding.

''(c) Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review except in accordance with subsection (d).

''(d) In determining whether to compel agency action unreasonably delayed pursuant to section 706(a)(1) of this title, the reviewing court shall consider, in addition to any other relevant factors, the extent to which the agency has failed to comply with this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Part I of title 5, United States Code, is amended by striking out the chapter heading and table of sections for chapter 6 and inserting in lieu thereof the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''Sec.
''601. Definitions.
''602. Regulatory agenda.
''603. Initial regulatory flexibility analysis.
''604. Final regulatory flexibility analysis.
''605. Avoidance of duplicative or unnecessary analyses.
''606. Effect on other law.
''607. Preparation of analyses.
''608. Procedure for waiver or delay of completion.
''609. Procedures for gathering comments
''610. Periodic review of rules.
''611. Judicial review.
''612. Reports and intervention rights.

''SUBCHAPTER II—ANALYSIS OF AGENCY PROPOSALS

''621. Definitions.
''622. Regulatory cost/benefit analysis.
''623. Judicial review.
''624. Executive oversight.

''SUBCHAPTER III—RISK ASSESSMENTS

''631. Findings, purposes, and definitions.
''632. Applicability.
''633. Savings provisions.
''634. Requirement to prepare risk assessments.
''635. Principles for risk assessment.
''636. Principles for risk characterization and risk communication.
''637. Guidelines, plan for assessing new information, and report.
''638. Risk management criteria.
''639. Interagency coordination.

''SUBCHAPTER IV—REGULATORY PRIORITIES AND REVIEW

''641. Review of agency rules.
''642. Regulatory agenda and calendar.
''643. Establishment of deadlines.''.

SEC. 102. USE OF STATE OR LOCAL REQUIREMENTS.

(a) IN GENERAL.—Subchapter II of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new section:

''§ 560. Use of duplicative State or local requirements

''(a) Except as otherwise provided by law, the head of each Federal agency is authorized, in the administration of a Federal statute with respect to any State or locality, to adopt as a Federal rule a regulation of that State or local government or use as a Federal recordkeeping or reporting requirement or implementation procedure a recordkeeping or reporting requirement or implementation procedure of that State or locality if the head of the agency determines—

''(1) that such State or local government regulation, implementation procedure, recordkeeping requirement, or reporting requirement duplicates a Federal regulation, procedure, recordkeeping requirement, or reporting requirement; and

''(2) that such State or local government regulation, implementation procedure, recordkeeping requirement, or reporting requirement is substantively equivalent to or more stringent than the Federal regulation, procedure, recordkeeping requirement, or reporting requirement,

''(b) When the head of an agency determines to use a State or local recordkeeping or reporting requirement, or implementation procedure, as a Federal recordkeeping or reporting requirement or implementation procedure in that State or locality, the head of the agency shall prepare at a minimum, a written statement of the reasons for any determination made under subsection (a), and shall make such statement available to the public.

''(c) This section does not limit the authority or responsibility of the head of any agency to enforce Federal law.''

(b) RULE MAKING.—Section 551 of title 5, United States Code, is amended by inserting the following between ''rule'' and the semicolon: '', or the adoption of a rule pursuant to section 561 of this title''.

(c) TABLE OF SECTIONS.—The table of sections for chapter 5 of such title is amended by inserting after the item relating to section 559 the following new item:

''§ 560. Use of duplicative State or local requirements.''.

SEC. 103. PRESIDENTIAL AUTHORITY.

Nothing in this Act (i) limits the exercise by the President of the authority and responsibility that he otherwise possesses under the Constitution and other laws of the United States with respect to regulatory policies, procedures, and programs of departments, agencies, and offices, or (ii) alters in any manner rulemaking authority vested by law in an agency to initiate or complete a rulemaking proceeding, or to issue, modify, or rescind a rule.

TITLE II—RISK-BASED PRIORITIES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Risk Reduction Priorities Act of 1995''.

SEC. 202. PURPOSES.

It is the purposes of this title to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

SEC. 203. DEFINITIONS.

For the purposes of this title:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and

rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Food and Drug Administration.

(D) The Consumer Product Safety Commission.

(E) The Department of Transportation.

(F) The Department of Energy.

(G) The Department of Agriculture.

(H) The Department of Interior.

(I) The Nuclear Regulatory Commission.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(4) EFFECT.—The term ''effect'' means a deleterious change in the condition—

(A) of a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) of an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(5) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions prior to the occurrence of an effect are either very slow or will never occur.

(6) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(7) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(8) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

SEC. 204. DEPARTMENT AND AGENCY PROGRAM GOALS.

(a) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should strive to set priorities and to use the resources available under those laws to address those risks to human health, safety, and the environment that—

(1) the covered agency determines to be the most serious; and

(2) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(b) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under subsection (a) of this section, each covered agency shall consider, at a minimum:

(1) the likelihood, irreversibility, and severity of the effect; and

(2) the number and groups of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under section 205 of this Act.

(c) OMB REVIEW.—The covered agency's determinations of the sources of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget prior to submission of the covered agency's annual budget requests to Congress.

(d) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified in subsection (a) of this section into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities by—

(1) in the covered agency's annual budget request to Congress—

(A) identifying which risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under subsection (a) and the basis for that determination;

(B) explicitly identifying how the covered agency's requested funds will be used to reduce those risks, including the amount of funds requested to address each of those risks; and

(C) identifying any statutory, regulatory, or administrative obstacles to allocating agency resources in accordance with the mandates of subsection (a);

(2) explicitly considering the requirements of subsection (a) and the results of the comparative risk analysis prepared under section 205 of this title when preparing the covered agency's regulatory agenda or other covered agency strategic plan and explaining how the agenda or plan reflects those requirements and the competitive risk analysis when publishing any such agenda or strategic plan;

(3) developing an annual enforcement strategic plan that targets the priority risks identified under subsection (a); and

(4) expressly considering the priority risks determined under subsection (a) in selecting research activities.

(e) EFFECTIVE DATE.—This section shall take effect 12 months from the date of enactment of his title.

SEC. 205. COMPARATIVE RISK ANALYSIS.

(a) REQUIREMENT.—Within 6 months of the enactment of this title, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(1) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(2) to conduct a comparative risk analysis. The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(b) CRITERIA.—In arranging for the comparative risk analysis referred to in subsection (a), the Director shall ensure that—

(1) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(2) the analysis is conducted through an open process, which may include using panels of appropriate independent experts and public stakeholders;

(3) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review and that the conclusions of the peer review are made publicly available as part of the final report required by subsection (c);

(4) there is an opportunity for public comment on the results prior to making them final; and

(5) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(c) REPORT.—The comparative risk analysis required by subsection (a) shall be completed and a report submitted to Congress and the President no later than 3 years following the enactment of this Act. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first Analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided in subsections (a) and (b) above.

(d) STUDY.—The study of methodologies provided in subsection (a) shall be conducted as part of the first comparative risk analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction. As part of its analysis, the study shall review and evaluate the experiences of the states that have conducted comparative risk analyses.

(3) REPORT.—Within 180 days after the completion of the study, the Director shall issue a report of the study to the Congress, along with results of a scientific peer review of the study.

(f) TECHNICAL GUIDANCE.—Not later than 180 days after the enactment of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with section 204 of this title.

SEC. 206. REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.

(a) IN GENERAL.—In addition to the statement submitted to Congress with each covered agency's annual budget request required under section 204(d)(1) of this title, each covered agency shall submit a report to Congress and the President 24 months following the enactment of this legislation, and every 24 months therafter—

(1) detailing how the agency has complied with section 204;

(2) describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk; and

(3) estimating the total public and private costs of regulatory and voluntary risk reduction activities under programs administered by the agency that year, a comparison of that estimate with the previous year, and a projection for the following year.

(b) RECOMMENDATION.—In March of each year, the head of each covered agency shall submit to Congress specific recommendations for—

(1) modifying, repealing, or enacting laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, and the environment; and

(2) modifying or eliminating statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in its activities to address the risks to human health, safety, and the environment that are the most serious and can be addressed in a cost-effective manner consistent with the requirements of section 204(a).

SEC. 207. SAVINGS PROVISION AND JUDICIAL REVIEW.

(1) IN GENERAL.—Nothing in this title shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this title shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this title shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

TITLE III—REGULATORY ACCOUNTING

SEC. 301. SHORT TITLE

This title may be cited as the ''Regulatory Accounting Act of 1995''.

SEC. 302. ACCOUNTING STATEMENT

(a) IN GENERAL.—

(1) RESPONSIBILITY FOR IMPLEMENTATION.—The President shall be responsible for implementing and administering the requirements of this title.

(2) ACCOUNTING STATEMENT.—Every two years, not later than June of the second year, the President shall prepare and submit to Congress an accounting statement that estimates the costs of Federal regulatory programs and corresponding benefits in accordance with this section.

(b) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(c) TIMING AND PROCEDURES.—

(1) NOTICE AND COMMENT.—The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(2) DEADLINES FOR FIRST STATEMENT.—The President shall propose the first accounting statement under this section not later than 2 years after the date of the enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after the date of the enactment of this Act. Such statement shall cover, at a minimum, each of the 8 fiscal years beginning after the date of the enactment of this Act.

(d) CONTENT OF ACCOUNTING STATEMENT.—

(1) IN GENERAL.—Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this subsection. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(2) STATEMENT OF COSTS.—

(A) IN GENERAL.—An accounting statement shall estimate the costs of Federal regulatory programs by setting forth, for each year covered by the statement—

(i) the annual expenditure of national economic resources for the regulatory program; and

(ii) such other quantitative and qualitative measures of costs as the President considers appropriate.

(B) NATIONAL ECONOMIC RESOURCES.—For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(i) Private sector costs.

(ii) Federal sector administrative costs.

(iii) Federal sector compliance costs.

(iv) State and local government administrative costs.

(v) State and local government compliance costs.

(3) STATEMENT OF CORRESPONDING BENEFITS.—An accounting statement shall estimate the benefits of Federal regulatory programs by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in human health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

SEC. 303. ASSOCIATED REPORT TO CONGRESS.

(a) IN GENERAL.—At the same time as the President submits an accounting statement under section 302, the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this section—

(1) analyses of impacts; and

(2) recommendations for reform.

(b) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(1) Analyses prepared by the President of the cumulative impact of Federal regulatory programs covered in the accounting statement on the following:

(A) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(B) Small business.

(C) Productivity.

(D) Wages.

(E) Economic growth.

(F) Technological innovation.

(G) Consumer prices for goods and services.

(H) Such other factors considered appropriate by the President.

(2) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(c) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(1) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(2) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

SEC. 304. GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.

The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to titles I and III, including:

(A) detailed guidance on estimating the costs and benefits of major rules;

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

SEC. 305. RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.

After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this title, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this title, including recommendations on the quality of analysis.

SEC. 306. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) The term ''Federal regulatory program'' means a program carried out pursuant to a related group of Federal statutes and regulations, as determined by the President.

(2) The term ''regulation'' means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency. The term does not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military of foreign affairs function of the United States; or

(C) regulations related to agency organization, management, or personnel.

(3) The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

(A) the General Accounting Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

TITLE IV—MARKET INCENTIVES AND ECONOMICALLY EFFICIENT REGULATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Market Incentives Act of 1995''.

SEC. 402. PROGRAM DESIGN REQUIREMENTS.

(a) IN GENERAL.—To the maximum extent practicable, agencies shall ensure that major rules, especially, but not limited to, those that limit the emission of environmental pollutants or otherwise govern the use of natural resources, operate through the application of market-based mechanisms.

(b) FLEXIBLE ALTERNATIVES.—Where it is not practicable to rely on market-based mechanisms in designing regulatory programs, rules, or requirements, agencies shall ensure that major rules, to the maximum extent practicable, are comparable to market-based mechanisms with respect to (i) assuring the achievement of the regulatory objective, and (ii) affording flexibility to regulated persons.

(c) APPLICABILITY.—Section 402 shall apply, to the extent feasible, to rules in effect on the date of enactment of this Act and rules that take effect after the date of enactment of this Act.

SEC. 403. AGENCY ASSESSMENT AND OMB REVIEW.

(a) IN GENERAL.—Each agency shall include an assessment of market-based mechanisms in each proposed major rule. Each assessment shall demonstrate the extent to which the major rule complies with the requirements of section 402, or why section 402 is not applicable or appropriate.

(b) OMB REVIEW.—The Office of Management and Budget shall review, as part of its

regulatory review and oversight function, the agency assessments and statements prepared in section 403(a). OMB shall determine whether such assessments are detailed, thorough, and otherwise in compliance with section 402.

(c) EFFECTIVE DATE.—Section 403 shall take affect 3 months after the date of enactment of this Act:

SEC. 404. DEFINITIONS.

For the purposes of this title:

(1) The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

(A) the General Accounting Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) The term ''major rule'' means—

(A) a rule or a group of closely related rules that the agency or the President reasonably determines is likely to have an annual effect on the economy of $100,000,000 or more in reasonably quantifiable direct and indirect costs, or has a significant impact on a subsector of the economy; and

(B) a rule or a group of closely related rules that is otherwise designated a major rule by the agency proposing the rule, or is so designated by the President, on the ground that the rule is likely to result in—

(i) a substantial increase in costs or prices for wage earners, consumers, individual industries, nonprofit organizations, Federal, State, or local government agencies, or geographic regions; or

(ii) significant adverse effects on wages, economic growth, investment, productivity, innovation, the environment, public health or safety, or the ability of enterprises whose principal places of business are in the United States to compete in domestic and export markets.

For purposes of subparagraph (A) of this paragraph, the term ''rule'' does not mean—

(I) a rule that involves the internal revenue laws of the United States;

(II) a rule that authorizes the introduction into commerce or recognizes the marketable status of a product, pursuant to sections 408, 409(c), and 706 of the Federal Food, Drug, and Cosmetic Act;

(III) a rule exempt from notice and public procedure pursuant to section 553(a) of title 5, United States Code; or

(IV) a rule relating to the viability, stability, asset powers, or categories of accounts of, or permissible interest rate ceilings applicable to, depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the Share Insurance Fund of the National Credit Union Administration Board.

(3) The term ''market-based mechanism'' means a regulatory requirement that:

(a) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

(b) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

(c) permits regulated persons to respond automatically to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates.

(4) The term ''rule'' has the same meaning as in section 551(4) of title 5, United States Code, except that such term does not include—

(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers or acquisitions, or accounting practices or disclosures bearing on any of the foregoing.

(B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System; or

(C) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to sections 315 and 312(a)(7) of the Communications act of 1934.●

By Mr. SHELBY:

S. 292. A bill to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama; to the Committee on Indian Affairs.

THE MOWA BAND OF CHOCTAW INDIANS RECOGNITION ACT

● Mr. SHELBY. Mr. President, today I am reintroducing the Mowa Band of Choctaw Indians Recognition Act. This particular piece of legislation has passed the Senate three times in the past two Congresses. While I would prefer not to have to pursue congressionally granted recognition for the Mowa Choctaws, this course of action has been dictated by the institutional resistance of the Bureau of Indian Affairs to Federal recognition of the Mowa.

The Mowa Choctaws originally applied for Federal recognition in 1983. A State-recognized tribe with 3,500 members, the Mowa live within the boundaries of the original Choctaw Nation in Mobile and Washington Counties of Alabama. Mowa ancestors were signatories of the treaty of Dancing Rabbit Creek which provided for the nonremoval of Indian families. Under the treaty, the signatories and their descendants were entitled to retain their rights to Choctaw citizenship.

The Mowa Choctaws have maintained an intense Indian identity over the past 160 years and have petitioned Congress for Federal recognition or to redress treaty grievances several times, beginning as early as 1836. Because of the failure of the BIA to act upon their petition in a timely manner, the Senate Committee on Indian Affairs reported the bill in both the 102d and 103d Congress with the recommendation that the Mowa be granted full Federal recognition.

Only recently has the BIA acted upon the petition. In December, the BIA, after 12 years of delay, issued a preliminary finding denying the Mowa petition. However, the BIA only acted upon the petition when it became likely that the bill would pass the Congress and be sent to the President for his signature. I find this conduct at best suspicious, and most likely reflective of the BIA's longstanding bureaucratic disposition against the proposal.

Mr. President, I have no intention of dropping this issue, regardless of the position of the BIA. Indeed, Congress granted Federal recognition to one-half dozen Indian tribes last year without the approval of the BIA. Congress writes the laws of this land. Career and appointed bureaucrats do not. The Mowa case is stronger than scores of past petitions for recognition that were approved, and I will continue to work to see that Congress rectifies this bureaucratic injustice and grants the Mowa Choctaws the Federal recognition that they deserve.●

ADDITIONAL COSPONSORS

S. 230

At the request of Mr. DOLE, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Idaho [Mr. CRAIG], and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 230, a bill to prohibit United States assistance to countries that prohibit or restrict the transport or delivery of United States humanitarian assistance.

S. 250

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 250, a bill to amend chapter 41 of title 28, United States Code, to provide for an analysis of certain bills and resolutions pending before the Congress by the Director of the Administrative Office of the United States Courts, and for other purposes.

S. 262

At the request of Mr. GRASSLEY, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 270

At the request of Mr. SMITH, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 270, a bill to provide special procedures for the removal of alien terrorists.

SENATE RESOLUTION 37

At the request of Mr. PACKWOOD, the names of the Senator from California [Mrs. FEINSTEIN] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Resolution 37, a resolution designating February 2, 1995, and February 1, 1996, as ''National Women and Girls in Sports Day.''

AMENDMENTS SUBMITTED

KEMPTHORNE (AND GLENN) AMENDMENT NO. 228

Mr. KEMPTHORNE (for himself and Mr. GLENN) proposed an amendment to amendment No. 210 the bill (S. 1). A bill to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes; as follows:

Strike out all after ''**1. SHORT TITLE.**'' and insert the following:

This Act may be cited as the ''Unfunded Mandate Reform Act of 1995''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal mandates; and

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the terms defined under section 408(h) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term ''Director'' means the Director of the Congressional Budget Office.

SEC. 4. EXCLUSIONS.

This Act shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal 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. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director such information and assistance as the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

''SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

''(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

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

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

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

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

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

''(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under subsection (c)(1)(B) would affect the competitive balance between State, local, or tribal governments and privately owned businesses including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

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

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

''(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

''(iii) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government; and

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

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

''(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

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

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

''(b) DUTIES OF THE DIRECTOR; 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 Senate or the House of Representatives, the Director of the Congressional Budget Office 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 any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

''(B) The estimate required under 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, but no more than 10 years beyond the effective date of the mandate; and

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

''(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. If such determination is made by the Director, a point of order shall lie only under subsection (c)(1)(A) and as if the requirement of subsection (c)(1)(A) had not been met.

''(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 Senate or the House of Representatives, the Director of the Congressional Budget Office 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 $200,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

''(B) Estimates required under this paragraph shall include estimates (and a brief explanation of the basis of the estimates) of—

''(i) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution, but no more than 10 years beyond the effective date of the mandate; 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 thresholds specified in paragraphs (1) and (2), the Director shall so state and shall briefly explain the basis of the estimate.

''(4) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is 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 amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this paragraph or a supplemental statement for the bill or joint resolution in that amended form.

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

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

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

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

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

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

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

''(I) identifies a specific dollar amount of the direct costs of the mandate for each year or other period up to 10 years during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (5) for each fiscal year; and

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

''(III)(aa) provides that if for any fiscal year the responsible Federal agency determines that there are insufficient appropriations to provide for the estimated direct costs of the mandate, the Federal agency shall (not later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

''(1) a statement that the agency has determined, based on a re-estimate of the direct costs of a mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of the mandate; or

''(2) legislative recommendations for either implementing a less costly mandate or making the mandate ineffective for the fiscal year;

''(bb) provides expedited procedures for the consideration of the statement or legislative recommendations referred to in item (aa) by Congress not later than 30 days after the statement or recommendations are submitted to Congress; and

''(cc) provides that the mandate shall—

''(1) in the case of a statement referred to in item (aa)(1), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

''(2) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under item (aa)(2) unless Congress provides otherwise by law; or

''(3) in the case of a mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

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

''(3) COMMITTEE ON APPROPRIATIONS.—(A) Paragraph (1)—

''(i) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; but

''(ii) shall apply to—

''(I) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by such Committee;

''(II) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by such Committee;

''(III) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by such Committee; and

''(IV) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by such Committee.

''(B) Upon a point of order being made by any Senator against any provision listed in subparagraph (A)(ii), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

''(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this section to a pending bill, joint resolution, amendment, motion, or conference report.

''(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

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

''(e) REQUESTS FROM SENATORS.—At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in a bill, joint resolution, amendment, or motion of such Senator.

''(f) CLARIFICATION OF APPLICATION.—(1) This section applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

''(A) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

''(B) would result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates otherwise than as described in subparagraph (A).

''(2)(A) For purposes of this section, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under subparagraph (B)(i) over the amount described under subparagraph (B)(ii).

''(B) The amounts referred to under subparagraph (A) are—

''(i) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

''(ii) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

''(C) For purposes of this paragraph, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.

''(g) EXCLUSIONS.—This section shall not apply to any provision in a bill, joint resolution, amendment, motion 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, color, religion, sex, national origin, age, handicap, or disability;

''(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

''(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal 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.

''(h) DEFINITIONS.—For purposes of this section:

''(1) The term 'Federal intergovernmental mandate' means—

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

''(i) would impose an enforceable duty upon State, local, 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—

''(I) Federal financial assistance that would be provided to State, local, 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

''(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

''(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 State, local, and tribal governments under entitlement authority, if the provision—

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

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

''(ii) the State, local, 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.

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

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

''(i) a condition of Federal assistance; or

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

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

''(3) The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (1) and (2).

''(4) The terms 'Federal mandate direct costs' and 'direct costs'—

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

''(ii) in the case of a provision referred to in paragraph (1)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced;

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

''(C) shall not include—

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

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

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

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

''(I) compliance with the Federal mandate; or

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

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

''(5) The term 'amount', with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

''(6) The term 'private sector' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local or tribal governments.

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

''(8) The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

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

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

''(11) The term 'agency' has the meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code, or the Office of the Comptroller of the Currency or the Office of Thrift Supervision.

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

''(13) The term 'direct savings', when used with respect to the result of compliance with the Federal mandate.

''(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

''(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 407 the following new item:

''Sec. 408. Legislative mandate accountability and reform.''.

SEC. 102. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

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

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

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

(B) by amending subsection (h) to read as follows:

''(h) STUDIES.—

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

''(2) FEDERAL MANDATE STUDIES.—

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

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

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

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

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

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

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

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

''(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time 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.''; and

(2) in section 301(d) by adding at the end thereof the following new sentence: ''Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.''.

SEC. 103. COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the written request of any Senator, the Director shall, to the extent practicable, prepare—

(1) an estimate of the costs of regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act; and

(2) a comparison of the costs of such regulations with the cost estimate provided for such Act by the Congressional Budget Office.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this Act.

SEC. 105. EXERCISE OF RULEMAKING POWERS.

The provisions of section 101 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

Section 403 of the Congressional Budget Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) in paragraph (3) by striking ''paragraphs (1) and (2)'' and inserting ''paragraph (1)''; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking ''(a)''; and

(3) by striking subsections (b) and (c).

SEC. 107. CONSIDERATION FOR FEDERAL FUNDING.

Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from consideration for Federal funding for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the mandate.

SEC. 108. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 109. EFFECTIVE DATE.

This title shall take effect on January 1, 199? or on the date 90 days after appropriations are made available as authorized under section 104, whichever is earlier, and shall

apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law—

(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. Such a process shall be consistent with all applicable laws.

(c) AGENCY PLAN.—

(1) EFFECTS ON STATE, LOCAL, AND TRIBAL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(A) provide notice of the contemplated requirements to potentially affected small governments, if any;

(B) enable officials of affected small governments to provide input under subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section, and for no other purpose, such sums as are necessary.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Before promulgating any final rule that includes any Federal intergovernmental mandate that may result in the expenditure by State, local, or tribal governments, and the private sector, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to State, local, and tribal governments and the private sector of complying with the Federal intergovernmental mandate, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

(2) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future costs of the Federal intergovernmental mandate; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of the Federal private sector mandate 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; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency;

(C) a summary of the agency's evaluation of those comments and concerns; and

(D) the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) AGENCY STATEMENT; PRIVATE SECTOR MANDATES.—Notwithstanding any other provision of this Act, an agency statement prepared pursuant to subsection (a) shall also be prepared for a Federal private sector mandate that may result in the expenditure by State, local, tribal governments, or the private sector, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year.

(c) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(d) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

SEC. 205. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of enactment.

TITLE III—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Advisory Commission on Intergovernmental Relations (hereafter in this title referred to as the ''Advisory Commission''), in consultation with the Director, shall begin a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) CONSIDERATIONS.—The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.

(a) IN GENERAL.—The Advisory Commission on Intergovernmental Relations shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities;

(2) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific unfunded Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more unfunded Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating unfunded Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, unfunded Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying unfunded Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates; and

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with unfunded Federal mandates that use different definitions or standards for the same terms or principles; and

(3) identify in each recommendation made under paragraph (2), to the extent practicable, the specific unfunded Federal mandates to which the recommendation applies.

(b) TREATMENT OF REQUIREMENTS FOR METRIC SYSTEMS OF MEASUREMENT.—

(1) TREATMENT.—For purposes of subsection (a) (1) and (2), the Commission shall consider requirements for metric systems of measurement to be Federal mandates.

(2) DEFINITION.—In this subsection, the term ''requirements for metric systems of measurement'' means requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement.

(c) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection not later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—Not later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(d) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(e) FINAL REPORT.—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

SEC. 303. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

(a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this title, the Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Advisory Commission to assist it in carrying out this title.

(c) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate government and private persons (including agencies) for property and services used to carry out its duties under this title.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Advisory Commission to carry out section 301 and section 302, $1,250,000 for each of fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IN GENERAL.—Any statement or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review.

(b) RULE OF CONSTRUCTION.—No provision of this Act or amendment made by this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, as has been indicated earlier there will be no more votes today, and on Monday, we will begin work on House Joint Resolution 1, but there will be no votes on Monday. It will be debate only. I think that is satisfactory to the Senator from South Dakota.

We will come in at 1 o'clock on Monday, and there will be a period for morning business from 1 to 2 o'clock, and at 2 o'clock, will take up House Joint Resolution 1, which is identical to Senate Joint Resolution 1, which has come from the House.

ORDERS FOR MONDAY, JANUARY 30, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 1 p.m. on Monday, January 30, 1995.

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

Mr. DOLE. I further ask unanimous consent that following the time for the two leaders on Monday, the Journal of proceedings be approved to date, there be a period for the transaction of morning business not to extend beyond the hour of 2 p.m. with Senators permitted to speak therein for up to 10 minutes each, and that at 2 p.m., Monday, January 30, the Senate begin consideration of House Joint Resolution 1, the balanced budget constitutional amendment.

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

Mr. DOLE. I further ask that during Monday's debate, no amendments be in order. Therefore, no votes will occur during Monday's session of the Senate.

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

APPOINTMENT BY THE REPUBLICAN LEADER

The PRESIDING OFFICER. The Chair, on behalf of the Republican leader, pursuant to Public Law 103–27, appoints the Senator from New Hampshire, [Mr. GREGG] as a member of the National Education Goals Panel, vice the Senator from Mississippi [Mr. COCHRAN].

ORDERS FOR MONDAY, JANUARY 30, 1995

Mr. GRASSLEY. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 1 p.m. on Monday, January 30; and that on Monday, following the prayer, the Journal of proceedings be approved to date, the call of the calendar be dispensed with, no resolutions come over under the rule, and the morning hour be deemed to have expired and the time for the two leaders be reserved; further, that there then be a period for the transaction of morning business and not to extend beyond the hour of 2 p.m., with Senators permitted to speak under the following time restraints: Senator CONRAD for up to 15 minutes; Senator SIMON for up to 15 minutes; Senator THOMAS for up to 5 minutes; Senator MURKOWSKI for up to 10 minutes; and Senator COHEN to be recognized for the last 15 minutes of morning business.

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

PROGRAM

Mr. GRASSLEY. Mr. President, for the information, then, of all Senators, at 2 p.m. on Monday, the Senate will begin consideration of House Joint Resolution 1, and that is the balanced budget amendment. That is an amendment to the Constitution. For that day it will be debate only.

For the information of all of my colleagues, there will be no rollcall votes during Monday's session of the Senate.

I now ask, Mr. President, unanimous consent that at the completion of the remarks of the distinguished minority leader, the Senate stand in adjournment under the previous order.

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

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

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

MORNING BUSINESS

Mr. NUNN. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein.

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

ATLANTA PARALYMPIC GAMES

Mr. NUNN. Mr. President, I rise today to call attention to the 1996 Atlanta Paralympic games which are to be held following the 1996 Olympic games in Atlanta. Most people who follow sports realize that the Olympic games will begin in Atlanta on July 19 and conclude on August 4, next year, 1996.

During those 16 days, over 10,000 athletes will compete in 26 sports and 37 disciplines. Many people are unaware, however, that just 12 days after the conclusion of the 1996 Summer Olympics, a sporting event of similar magnitude will begin. The Paralympic opening ceremony will be held August 16 and over the next 12 days of competition more than 4,000 athletes from 102 nations will compete in 19 different sports.

The origin of the Paralympic movement dates back to 1946 when Sir Ludwig Guttman organized the International Wheelchair Games to coincide with the 1948 London Olympics. Since that time, the official Paralympic organization was established and Paralympic games have been held nine times in nine countries across the globe. The 1996 Atlanta Paralympics will mark the 10th and largest gathering with an expected 1.5 million spectators. Very large number of people coming to Atlanta from all over the world. Over the years those competing in the Paralympics have expanded from wheelchair athletes to include amputees, the blind, those with cerebral palsy, dwarfs, and those with a variety of other physical limitations. While the disabilities of the athletes range across a wide spectrum, they are united in their dedication to perfection and their quest for excellence.

Many of us, myself included, were not aware of the levels at which these athletes compete. It is truly marvelous. Their times and scores in sports ranging from cycling to powerlifting, judo to swimming, are world class by any standards. The Paralympic world records for various events are, in some cases, just shy of the Olympic world records which is truly amazing. Tony Volpentest, born without hands and feet, ran the 100 meter event in 11.63 seconds—within 2 seconds of the Olympic record held by Carl Lewis. Kim Brownfield, a paraplegic, bench pressed 602 pounds—at that rate he will soon be moving mountains. Without a doubt, the men and women who will be competing in the Atlantic Paralympics are elite athletes, training and performing at the highest levels of their sports.

While their scores and records are awe inspiring, perhaps the greatest accomplishment of the athletes who qualify for the Paralympics is their seemingly impossible achievement of conquering their physical impairments. The Paralympic motto is ''The triumph of the human spirit.'' Indeed it is this spirit, above all else, that invites us to share in their victories and revel in their accomplishments. Gathered amongst us in Atlanta in 1996 will be men and women more physically challenged than most of us, yet they will attain levels of excellence far higher than most of us will ever dream of. Through incredible dedication and perseverance and despite every pressure to the contrary, these men and women have accomplished extraordinary feats.

As you can well imagine, each of these athletes has a tremendous success story behind their achievements, a success story behind their achievements. One that particularly struck me is that of Al Mead, an above-the-knee amputee, who captured the silver medal in the long jump in the 1992 Paralympic Games in Barcelona with a jump of 4.62 meters.

Like many of these athletes, Al was not born with his disability. He was an active 9-year-old, when one day at school he took a hard fall. Afterwards, his left leg was numb and circulation eventually stopped. He faced three operations as doctors tried to correct the problem. First, his foot was amputated; then, his leg just below the knee; and finally, just above the knee. He still remembers when he was having that ordeal wondering why everyone was so upset. The way Al figured it, his leg would grow back as soon as he got out of the hospital.

Al, relying heavily on his family's religious faith, remained optimistic during this hospitalization and recovery. Once he returned home from the hospital, he decided to continue doing all the things he had done prior to the operation—despite his doctor's advise to ''take it easy.'' Anyone who knows 9-year-old boys ought to know better than to expect them to sit sill for any length of time. Indeed, while waiting for his prothesis to arrive, Al taught himself how to ride his bike with only one leg. Then, once his leg arrived, Al became more active, playing baseball, hockey, and basketball with community and school teams. Al recalls playing alley football one day when he caught a pass and was running towards the goal line only to have his leg fall off in midstride. While his opponents and teammates were rubbing their eyes in disbelief, Al was laughing at the happenings.

Al attended Morehouse College in Atlanta where he now lives with his wife and two children. He is the vice-president of an executive search firm and the music director at his local church. Al has competed in numerous National Handicapped Sports' competitions where he has broken national and world records in the 100- 200- and 400-meter events and the high jump and long jump. He is currently training for the Paralympic Games, and I particularly look forward to watching Al perform in 1996 in his home State and his home town. I also look forward to watching thousands of his fellow athletes who may not have 100-percent bodies but who have 100-percent hearts and give 100 percent of their efforts to their stunning athletic achievements.

Mr. President, I will be speaking on this subject several times in the next several months, all the way to the Olympic Games in 1996 because I think it is very important for those of us in this body, those of us who watch this body on television and those people who follow this body throughout the country to understand what a remarkable event is going to take place after the regular Olympic Games in the Paralympic Games in 1996.

I believe that all of us will be very interested and fascinated to watch remarkable athletes such as Al Mead who will be competing in 1996. I believe that my colleagues and the American people will be both awed and inspired by what we discover.

I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Missouri, directs the order for the quorum call be rescinded.

ADJOURNMENT UNTIL MONDAY, JANUARY 30, 1995, AT 1 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned.

Thereupon, the Senate, at 6:27 p.m., adjourned until Monday, January 30, 1995, at 1 p.m.