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FEDERAL MANDATE RELIEF LEGISLATION

by Daniel Chapman

The 104th Congress has begun debate on legislation intended to curb the practice of imposing unfunded federal mandates on states and localities. S.1, *The Unfunded Mandate Act of 1995*, is sponsored by Senator Dirk Kempthorne (R-ID); a companion bill, H.R. 5, has been introduced in the House by Representative William Clinger (R-PA). S.1 passed the Senate on January 27; floor debate in the House may begin as early as February 1.

The major thrust of the proposed legislation is to make it more difficult for Congress to pass legislation that dictates policy to state and local governments, unless funding is also provided. Both bills direct the respective budget committees to prohibit consideration of any legislation which does not contain an assessment of the fiscal impact to state and local governments, and which does not provide funding for costs in excess of \$50 million.

What the Legislation Does

The legislation proposes four major changes in the way Congress considers mandate bills.

1) The bills require cost estimates of all future federal mandates imposed by statute or regulation on all state, local, and tribal governments, or on the private sector. These estimates, as well as estimates of potential costs and benefits to state and local governments, would be provided by the Congressional Budget

Office (CBO). No committee could report legislation until such an analysis had been performed, unless the CBO projects that combined costs for all affected levels of government will be less than \$50 million.

State and local officials are concerned that a constitutional balanced budget amendment that does not contain mandate relief protection may tempt Congress to balance the federal budget on the backs of states and localities in the future.

2) S.1 and H.R. 5 establish a point of order on any bill or resolution that contains mandates costing in excess of \$50 million (or \$200 million to the private sector), unless the bill or resolution contains an entitlement to cover mandated costs or a provision that the mandate will expire if not funded. The mandate may only become effective if direct costs are provided in an appropriations bill each year, or if the mandate is scaled back to a level at which direct costs can be fully provided in an appropriations bill each year. *The point of order may be waived by a majority vote or by unanimous consent, but a recorded vote is required.*

3) The legislation requires that federal agencies provide for "meaningful and timely" input by state, local, and tribal governments in

the development of regulatory proposals containing significant intergovernmental mandates. Before promulgating any final rule, the federal agencies would be required to prepare estimates of costs and benefits of major regulations expected to have an annual combined cost in excess of \$100 million.

4) The bills also establish a Commission on Unfunded Mandates that would make recommendations to the President and Congress regarding ways to give state and local governments more flexibility in complying with existing mandates. The Commission would be empowered to specify which unfunded mandates are no longer necessary.

What the Legislation Doesn't Do

The legislation as introduced has a number of noteworthy shortcomings in providing safeguards to state and local governments from federal mandates. A recent study by the U.S. Advisory Commission on Intergovernmental Relations indicates that the proposed bills:

- Do not apply to existing mandates that create significant burdens for state and local governments, except for possible recommendations of the Commission on Unfunded Mandates;
- Do not apply to approximately 600 federal grant-in-aid programs, many of which contain condition of aid mandates;
- Appear to exempt 31 other federal aid programs above the \$500 million threshold established in S.1, including such "big ticket" items as the federal aid highway system. States have experienced numerous conditional mandates attached to such programs that are costly and which may not be directly related to program purposes;
- Do not address condition of aid mandates that cut across many federal programs. These "cross-cutting" mandates are generally enacted separately from grant

legislation, but their financial impact may play out across multiple state programs. For example, the *National Environmental Policy Act of 1969* requires environmental impact statements that affect numerous state and local government agencies;

- Because of the use of threshold limits in the proposed legislation, do not prevent the proliferation of mini-mandates that could have sizeable cumulative effects, particularly if large mandated programs are replaced by multiple smaller mandates;
- Exclude mandates of independent federal regulatory agencies, such as the Federal Communications Commission, and mandates authorized in appropriations bills, such as recent student loan default requirements; and
- Do not address a wide range of federal activities that have direct impacts for states and localities, including preemptions, tax policy changes, court ordered mandates, and regulatory mandates that expose state and local governments to liability lawsuits.

In addition, the bills exempt disaster assistance which often requires matching funds from states, and civil rights laws such as the recent *Americans With Disabilities Act* which can be expensive to carry out.

Mandates and the Balanced Budget Amendments

An additional concern of states and localities focuses on the proposed federal balanced budget amendments. Presently these measures do not contain unfunded mandate protections for state and local governments. State and local officials are concerned that a constitutional balanced budget amendment that does not contain mandate relief protection may tempt Congress to balance the federal budget on the backs of states and localities in the future. State legislators will have the final say, however, since at least 38 states would have to ratify a constitutional balanced budget amendment.