POINT OF ORDER

Mr. LINDER. Mr. Speaker, a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. LINDER. Mr. Speaker, the Chair has ruled on several occasions that talking on other matters and rules not included in this rule are out of order and the gentleman is insisting on doing so. The gentleman is out of order.

The SPEAKER pro tempore. The debate must be relevant to the subject at hand, as the Chair has ruled earlier.

PARLIAMENTARY INQUIRY

Mr. BECERRA. I have a parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BECERRA. If a Member takes the floor to speak on the rules of the House and we are in the process of amending the rules of the House, is it appropriate to discuss the issue of amending rules of the House?

The SPEAKER pro tempore. Only the rules changes being proposed. That is the only item relevant to the debate at this moment.

Mr. BECERRA. Let me then conclude my remarks by saying that I believe this particular rules change is compromise language where we will make sure that there is bipartisanship in the conduct of the committees and in structuring any notice that might be required for a committee, especially if we are going to curtail the amount of time that would be out there in terms of notice for the public, I think that is a wise move. I appreciate the new majority in this House has realized that it is essential. It goes a long way toward satisfying the rules that the majority first passed which required sufficient notice and deliberation by the entire body of the committee, not just the chairman. I think it goes a long way, but I do believe that we should have gone a little farther and dealt with the ban on lobbyists' gifts as well.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Speaker, I rise in support of the Solomon amendment. I think that the amendment is a victory for openness and for full participation by all Members in the legislative process. I think that it is one of the ways in which we try to gain the trust of the American people. I also believe that we cannot go just halfway on that reform. The American people are looking to us in fact to reform this House and to open it up to their views and to their opinions.

While this is a good rules change, I think that the public cares about some other rules changes, including the whole effort to enact a ban on all gifts to Members of the Congress and their staffs. I think we have to enact a ban into law to assure the American people that the days of perks and privileges are really over. We also need to ban Members from using frequent-flier miles for their personal use and that ought to be part of a rules change. Every single perk that we allow to continue serves only to undermine all the other reforms that we enact in this body.

Reform really is an all-or-nothing proposition. If we do not go all the way and ban gifts and other perks, our reform efforts will die the death of a thousand cuts.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the amendment and on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. SOLOMON].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

The resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to extend their remarks on the resolution just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that House Resolution 47, the special rule for House Resolution 43, be laid on the table.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

UNFUNDED MANDATE REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 38 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5.

☐ 1208

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5) to curb the practice of imposing unfunded Federal mandates on States and local governments, to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and to provide information on the cost of Federal mandates on the private sector, and for other purposes, with Mr. EMERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, January 30, 1995, the amendments en bloc offered by the gentleman from Louisiana [Mr. FIELDS] had been disposed of and title I was open for amendment at any point.

Are there any amendments to title I?

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

I do so, Mr. Chairman, to sort of review where we are and where we hope to go, where we hope to be by the end of this day and the next couple of days. The good news is that we have over the last 6 days disposed of about 24 amendments and mercifully we have now completed action on section 4 of the bill.

I would say that I express my appreciation to Members on both sides of the aisle for the spirit in which the debate was conducted yesterday. I think we moved expeditiously through the amendments in a very orderly way and I was very indebted to the gentlewoman from Illinois [Mrs. COLLINS] for her support as we went through the process yesterday.

☐ 1230

The bad news, however, is that we have about 130 or so amendments to go. All of the what I consider to be weakening amendments that were offered in terms of exemptions to the bill were defeated, not because the programs sought to be exempted by those amendments were not worthy and meritorious and had great value, because I think many of them did and do, but frankly because H.R. 5 poses absolutely no threat to the present administration, the present way those programs are being implemented, and really only asks us to be accountable to any additional mandates that may be imposed as a result of those provisions in the future.

So, I think those amendments have been defeated now, we have now moved on. Today we are going to take up title I to the bill, which is an attempt to look at what may be duplicative and redundant in the existing mandates. It is my hope that we can complete expeditiously title I to the bill. I think there are not too many areas in dispute in that, and I have discussed this with the gentlewoman from Illinois [Mrs. COLLINS] and I think she agrees we can move rather expeditiously through title I. And it is my hope we can do that, and it is my intent, Mr. Chairman, to complete title I and II before we rise tonight.

Let me stress it is not my intent to limit consideration of any and all amendments. This is an open rule, and we are respecting that. I think that every Member should have an opportunity to offer their amendment and have it considered.

Nor do I, Mr. Chairman, want to limit debate on the amendments that will be offered, and I will only seek to do so, and I hope I would not have to seek to do so, if it becomes clear that we are frankly beating amendments to death. I do not think that is going to

happen. I really sense we are moving toward an orderly resolution of the remaining titles.

So, Mr. Chairman, I would just say that I look forward to the discussion of today. I think we do have some interesting issues in title II that deserve a full airing today. As I say, I hope we can move fairly rapidly through title I.

But, in closing, I would just say that there is a bipartisan, I think, majority of this House that is here and has been here for the last 7 days trying to do what President Clinton himself has requested. I would repeat what I read into the RECORD yesterday at this time when the President spoke to the National Governors.

We are strongly supporting the move to get unfunded mandates legislation passed in the Congress and are encouraged by the work that was done in the United States Senate where, as I remember, the bill passed 86 to 10 last week. After a really open and honest discussion of all appropriate amendments, the legislation is now moving through the House—I think there are about 100 amendments pending—but I think they will move through it in a fairly expeditious way, just as the Senate did.

Mr. Chairman, I would encourage Members on both sides to comply with what the President has requested as we move into day 7.

AMENDMENT OFFERED BY MR. SCHIFF

Mr. SCHIFF. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SCHIFF:

Amend title I to read as follows:

TITLE I—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 101. REPORT ON UNFUNDED FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.

(a) IN GENERAL.—The Advisory Commission 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, and their impact on the competitive balance between States, local and tribal governments, and the private sector; and

(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;

(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

(G) establishing procedures to ensure that, in cases in which a Federal private sector mandate applies to private sector entities which are competing directly or indirectly with States, local governments, or tribal governments for the purpose of providing substantially similar goods or services to the public, any relief from unfunded Federal mandates is applied in the same manner and to the same extent to the private sector entities as it is to the States, local governments, and tribal governments with which they compete.

Each recommendation under paragraph (2) shall, to the extent practicable, identify the specific unfunded Federal mandates to which the recommendation applies.

(b) CRITERIA.—

(1) IN GENERAL.—The Advisory Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA..—The Advisory 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 Advisory 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 Advisory Commission determines will aid the Advisory Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(c) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Advisory 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 Advisory Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Advisory Commission under this subsection.

(d) FINAL REPORT.—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Advisory 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 Advisory Commission under this section.

SEC. 102. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

(a) EXPERTS AND CONSULTANTS.—The Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department of 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 its duties under this title.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Advisory Commission, the Administrator of General Services shall provide to the Advisory Commission, on a reimbursable basis, the administrative support services necessary for the Advisory Commission to carry out its duties under this title.

(d) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate Government and private agencies or persons for property and services used to carry out its duties under this title.

SEC. 103. DEFINITION.

In this title:

(1) ADVISORY COMMISSION.—The term ''Advisory Commission'' means the Advisory Commission on Intergovernmental Relations.

(2) FEDERAL MANDATE.—The term ''Federal mandate'' means any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon States, local governments, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

MODIFICATION TO AMENDMENT OFFERED BY MR. SCHIFF

Mr. SCHIFF. Mr. Chairman, I have a modification to that amendment at the desk, and I ask that the amendment and modification be considered together.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. SCHIFF:

In the proposed section 101(a), after paragraph (1) insert the following new paragraphs (and redesignate the subsequent paragraphs accordingly):

(2) investigate and review the role of unfunded State mandates imposed on local governments, the private sector, and individuals;

(3) investigate and review the role of unfunded local mandates imposed on the private sector and individuals;

In the last undesignated sentence at the end of the proposed subsection 101(a), strike out ''paragraph (2)'' and insert ''paragraph (4)''.

In the proposed subsection 101(b)(3)(A) strike out ''paragraph (2)'' and insert ''paragraph (4)''.

At the end of the proposed section 101, add the following new subsection:

(e) STATE MANDATE AND LOCAL MANDATE DEFINED.—As used in this title:

(1) STATE MANDATE.—The term ''State mandate'' means any provision in a State statute or regulation that imposes an enforceable duty on local governments, the private sector, or individuals, including a condition of State assistance or a duty arising from participation in a voluntary State program.

(2) LOCAL MANDATE.—The Term ''local mandate'' means any provision in a local ordinance or regulation that imposes an enforceable duty on the private sector or individuals, including a condition of local assistance or a duty arising from participation in a voluntary local program.

Mr. SCHIFF (during the reading). Mr. Chairman, I ask unanimous consent

that the modification be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The CHAIRMAN. Without objection, the modification is agreed to.

There was no objection.

The CHAIRMAN. The gentleman from New Mexico [Mr. SCHIFF] is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, first of all, I am pleased to say that the amendment that I am about to offer was put together on a bipartisan basis. I worked very closely with the gentleman from Ohio [Mr. PORTMAN] on our side, and with the gentleman from Virginia [Mr. MORAN], the gentleman from Connecticut [Mr. GEJDENSON], and the gentlewoman from Florida [Mrs. MEEK] on the Democrat side.

This amendment makes two changes that are related to each other with respect to title I. The main change is that it takes out the brand-new commission that would have been created under title I to study the unfunded mandate issue further, as called for under this bill, and instead substitutes an existing government agency, the Advisory Commission on Intergovernmental Relations, whose members are appointed by the Congress and by the President on a bipartisan and independent basis to do this task.

Related to that change is the second change. My amendment would remove the $1 million authorization that is now contained in the bill as originally written for this purpose, and does not provide any authorization of additional funds.

I want to add, Mr. Chairman, that the other body, in their bill which recently passed that body, made the first of these changes. They substituted the Advisory Commission on International Governmental Relations for the new commission. However, I want to point out to our body that in their bill they added new duties in the bill that are not anywhere part of the bill nor part of my amendment. And because they added new duties, they added an authorization for the purpose of accomplishing the new duties.

It would be my recommendation to the House that assuming our bill passes in conference, we take up their additions and their proposed authorization as a matter of conference between the two Houses.

However, my particular amendment does not contain new duties and does not contain any authorization. So the net effect of my amendment is to make a net reduction in the authorization by $1 million.

Mr. Chairman, I want to say that we have been advised by the Parliamentarian that because my amendment made so many changes it is in the nature of a substitute to title I, and therefore those other Members who may seek to amend title I may do so as amendments in the second degree to the amendment I am now offering. But I would like to explain that the modification which I offered, and which is now a part of my amendment, is the adoption of the language offered by the gentleman from Pennsylvania [Mr. FATTAH], which was a modification to title I which was offered out of order previously in consideration of this bill. If that modification is not accepted into my amendment, then it could essentially get lost if my amendment is adopted by the House in the nature of a substitute to title I. That is the sole purpose of the modification that I have offered: to protect the language offered by the gentleman from Pennsylvania [Mr. FATTAH] and make sure it is continued in the language I am offering, if my language is adopted.

Mrs. MEEK of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of the amendment offered by my colleague, the gentleman from New Mexico [Mr. SCHIFF] as well as the gentleman from Virginia [Mr. MORAN], the gentleman from Connecticut [Mr. GEJDENSON], and the gentleman from Ohio [Mr. PORTMAN]. We originally offered this amendment during our full committee markup in the House Committee on Government Reform and Oversight that is so ably served by our chairman and by our ranking member.

I felt then, as I do now, that it makes no sense to create and fund a new bureaucracy. I think we are on the right track here. A new commission on unfunded Federal mandates we do not need to study that this year. We already have an Advisory Committee on Intergovernmental Relations. It has conducted several studies which seem to have validity on the Federal mandates issue. It has the expertise.

I am very happy my colleague, the gentleman from New Mexico [Mr. SCHIFF], also removed the $1 million fiscal impact of such an endeavor, because wherever we can cut and save money the better it is, and this commission is already serving a similar purpose. They can do the job, and we need to let them do it.

I want my colleagues to support this amendment because it is one that has inculcated a bipartisan support and bipartisan input on that committee.

□ 1220

I have some concerns about H.R. 5, and I have supported and will support the amendments to strengthen and improve this bill, and I think that this amendment does. It saves money. It saves time. And it maximizes the efficiency which we already have, Mr. Chairman.

With that, I want to ask all of my colleagues to support the Schiff amendment.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Let me first of all commend the gentleman from New Mexico [Mr. SCHIFF], who is a member of the ACIR, for this amendment and also the gentlewoman from Florida [Mrs. MEEK], who has been a principal architect and author of this amendment. I think it is a good amendment. I think it recognizes, takes into account, that we have an existing commission which has done a great deal of work in this whole area over many, many years.

Initially my only concern with using ACIR as the commission to undertake this task was that the commission is very, very deliberate in what it does, and my concern was that it might take too long a period of time. We have already put this commission on a fairly short leash and said we really want to have a report back from the commission within a year's time as to what should be done or should not be done.

My only concern initially was ACIR might not be able to do what was required within the time that we gave them. I have since had conversations with Governor Winter, who is the head of the ACIR. He assured me the commission has taken that into account, will comply with our time restraints, will proceed with the work, so having been reassured in my own mind that the commission can in fact do that job we ask them to do in title II, I can now enthusiastically support the amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Schiff amendment to substitute the Advisory Commission on Intergovernmental Relations for the Unfunded Mandate Commission contained in H.R. 5.

This issue was first brought to the attention of the Government Reform Committee by Representative CARRIE MEEK during our committee markup of H.R. 5. Mrs. MEEK offered this very substitute, but withdrew it at the request of Chairman CLINGER.

If we must have another mandate report, at least we should not waste taxpayer money. The Unfunded Mandate Commission in H.R. 5 is pure Government waste. Why should we throw away $1 million in taxpayer money to set up another Government commission?

This amendment would substitute the language in last year's bill, and require the U.S. Advisory Commission on Intergovernmental Relations to do the mandate report.

The U.S. Advisory Commission is nonpartisan, and has done numerous reports on unfunded mandates. These reports serve as the background for much of the work that has already been done in this area.

It is irrational to set a new Commission, with new staff, to do work that can be done by an existing Commission, with the existing staff. The American people are sick and tired of Congress wasting millions of dollars on unnecessary commissions.

Let us stop doing business as usual around here. Let us put an end to Government waste. I urge support for this amendment. I fully support this, and I

am very happy that both the minority and the majority side have been able to agree on this amendment.

This is a darn good amendment.

Mr. SCHIFF. Mr. Chairman, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from New Mexico.

Mr. SCHIFF. I want to thank the gentlewoman. Obviously we have had a number of differences on other parts of this bill. I just want to thank the distinguished ranking member from Illinois for working with our side, working with me and other Members, the gentlewoman from Florida [Mrs. MEEK], the gentleman from Connecticut [Mr. GEJDENSON], the gentleman from Virginia [Mr. MORAN], for working in a common interest where we can agree to make some progress on the bill. I want to express my appreciation.

Mrs. COLLINS of Illinois. I wanted to tell the vice-chair of the committee we certainly have enjoyed the opportunity of working with him and found he was certainly eager to enable us to work with him on this very important issue, and we are glad we had comity in this case.

Mr. PORTMAN. Mr. Chairman, I move to strike the requisite number of words.

I just rise to support the efforts of my colleagues, the gentleman from New Mexico [Mr. SCHIFF], my colleagues on the other side including the gentlewoman from Florida [Mrs. MEEK], to offer the strengthening amendment to the bill. I think it clarifies and strengthens what we are trying to do here. It should be noted there have been five major studies produced by ACIR in the last decade on this very issue of unfunded Federal mandates. I think theirs is certainly the professional organization in a position to do this job. It is made up of 26 members of all levels of government, local, State, and Federal.

I think the gentlewoman from Florida [Mrs. MEEK] is to be commended for raising this issue. I think in the end, as the vice chairman has noted, this will save the taxpayers money. We will end up with a better product.

I also will say I, too, have been in discussions with ACIR. I think they are properly motivated and properly focused on the timeframe that the chairman, the gentleman from Pennsylvania [Mr. CLINGER], has noted. So I have every confidence they are going to come through.

I would also say the Senate has approved a very similar amendment so that the Senate and the House bills will be, if not identical, very similar on this subject. ACIR is going to be given the responsibility and the authority to do this job.

Mr. MORAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I also rise in support of this amendment.

I would like to ask the gentleman from New Mexico the effect of deleting the specific $1 million portion of appropriations. Is that limiting or delimiting the ability of the Commission to function?

I was walking over here as you were explaining it, I suspect, but I know that you made reference to the additional responsibilities that this Commission would have to take on as a result of the Senate action.

Is it your intention to supply sufficient resources or to eliminate the resources that we would make available?

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. MORAN. I yield to the gentleman from New Mexico.

Mr. SCHIFF. I appreciate the gentleman yielding.

The intent of my amendment would remove at this time the authorization for new funds for this Commission which may now be the existing Advisory Commission on Intergovernmental Relations. That agency is already funded at approximately $1 million a year. Now, as the gentleman indicated and as I did refer to earlier, the Senate in their bill gave new duties. They adopted the Advisory Commission in place of a brandnew Commission. They then added new duties in the bill and provided an authorization, because they thought they had reached a point where some additional authorization was necessary even to an existing Commission.

My amendment does not offer extensive new duties and, therefore, I do not offer any additional authorization. I think if the House adopts my amendment and adopts this bill, that would be a matter of conference between our two Houses as to whether we wanted to have sufficient additional duties and some additional authorization.

Mr. MORAN. Reclaiming my time. I thank the gentleman for the explanation.

I am concerned that with such an important bill if we do not give the Commission that is delegated the responsibility of defining mandates and determining their impact, then all of this effort is for nought if we do not have sufficient resources to carry out this responsibility. So I have some concern with not providing sufficient funds.

I do not want underscore the importance of having the Advisory Commission on Intergovernmental Relations take on this responsibility. For those of you who are not familiar with it, it is chaired by the former Governor of Mississippi, Bill Winter; a very active member is the Republican mayor of Knoxville, TN, Victor Ashe, who is also president of the United States Conference of Mayors; a former senior staff person for the National League of Cities is executive director; Gov. Mike Leavitt is a very active member; the Democratic mayor of Philadelphia, Ed Rendell, is a very active member. It is totally bipartisan. In fact, it is fully committed to the principles espoused in the unfunded-mandates legislation we are currently considering. Over the last year, in fact, they have worked on defining a definition of mandates, the principles and processes involved in seeking relief for State and local governments, the guidelines for evaluating existing mandates and implementing mandate-relief legislation.

So they are the ideal body. They were created 30 years ago, and they have a history of being responsive to the issue that has caused us, the Congress, to devote the last 2 weeks to the concerns of State and local governments. So I am strongly in support of this amendment to the legislation.

I have some concern that within the legislation the Commission is required to come up with a criteria upon 60 days of enactment of this legislation. If we do not pass this amendment which designates ACIR, it is impossible to put a new Commission together in time to have the criteria, because the legislation actually designates the Commission to take operation within 60 days as well, so, in other words, the legislation empowers the Commission 2 months after enactment, but within 2 months after enactment, the Commission also has to have the report ready. So if we do not pass this amendment, we are going to have to revise some of the proposed legislation.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. MORAN. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, I just rise in support of the gentleman from New Mexico [Mr. SCHIFF] and the gentleman from Virginia [Mr. MORAN] and the gentlewoman from Florida [Mrs. MEEK] and all the other speakers. This makes a lot of sense, even for those who have some doubts about the general legislation. This is an obvious improvement. It saves money and takes an existing institution with some memory to get the job done.

□ 1230

Mr. MORAN. I thank the gentleman from Connecticut [Mr. GEJDENSON] for his comments.

Mr. FLANAGAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FLANAGAN asked and was given permission to revise and extend his remarks.)

Mr. FLANAGAN. Mr. Chairman, I rise in strong support of Mr. SCHIFF's amendment to H.R. 5, the Unfunded Mandate Reform Act. I too believe H.R. 5 is an important first step in gaining control of big government spending and fulfilling the promises we made to the American people in keeping with the Contract With America. As it stands now, H.R. 5 sends an important message to the American people that the 104th Congress is serious about decreasing the financial burdens on States and localities.

Mr. Chairman, over the last 20 years, there has been a steady increase in the number of unfunded Federal mandates passed down by the Congress to our

State and local governments. While the number of unfunded mandates increase, the compliance with these mandates become more difficult. According to a GAO estimate released last year, from 1992 to 1995, Chicagoans will spend $319 million to comply with unfunded Federal mandates. H.R. 5 puts a stop to this trend, and therefore, relieves the burdens on our State and local governments.

The people of Chicago carry the weight of unfunded Federal mandates such as the National Voter Registration Act, better known as the Motor-Voter Act and the 1991 Intermodal Surface Transportation Efficiency Act at the expense of our city's educational system, infrastructure, business community, and law enforcement. According to my colleague, Mr. DONALD MANZULLO, after an additional $15 million implementation cost, the Motor-Voter Act could cost our home State of Illinois another $2 million annually. The act will cost the Nation more than $100 million over 5 years according to the Americans for Tax Reform. These costs do not include the litigation cost adding up in States like California that have chosen to sue the Federal Government rather than comply with the unfunded mandate. That is why I have signed on as a cosponsor of Mr. MANZULLO's Motor-Voter Relief Act of 1995, which seeks to allow States to voluntarily adopt the motor-voter bill of 1993.

Unfunded Federal mandates place a burden on States, localities, and eventually, the taxpayers. There are many times when Federal mandates preempt State procedures which leads to ineffective policy and wasteful overhauls of systems that already work. Our State elected officials know what works best in their local area and we should trust them to make these decisions. One example that comes to mind is a measure which Congress previously considered that would prohibit the use of lead in piping anywhere in the transportation of public drinking water. Historically, all of the city of Chicago's public water lines contained lead soddar. These public water lines have not been all replaced, consequently, large sections essential to water trasport remain. In addition, many water lines serving private homes are composed of lead soddar. The city treats its water in order to assure FDA approval of our public drinking water. This is a perfect example of how our city reached a solution locally that ultimately satisfied the same FDA requirements that all cities are asked to abide by. If the city was forced to replace these public water lines that transported drinking water, it would be a financial disaster costing Chicagoans millions of dollars.

It is not only taxpayers who are bearing the burden. It is small business owners as well. Earlier this month the Washington Times reported on a regulation to force a Kansas City bank to install a Braille keypad, costing several thousand dollars, on its drive-through automatic teller.

In addition to being financially difficult on taxpayers and small business, unfunded Federal mandate's one-size-fits-all mentality is extremely disturbing.

Unfunded Federal mandates lead to wasteful spending. The Center for Study of American Business reported that in one community, the Endangered Species Act required paying a consultant $5,000 in taxpayers money to search for desert tortoises in dry desert washes. No tortoises were found but the city paid the consultant fees required by the Federal Government.

Mr. SCHIFF's amendment, in my opinion, is a perfecting amendment to an already top rate piece of legislation. It is designed to eliminate the proposed Commission on Unfunded Federal Mandates which, in my opinion, creates more bureaucracy. Why create more Government when an existing commission can be called upon to perform the required duties? Not only does this amendment eliminate the creation of a new arm of the Federal Government, it also eliminates the need to fund the proposed Commission to the tune of $1 million.

I strongly support H.R. 5 which limits future unfunded Federal mandates. Downscaling Government and stopping the irresponsible spending habits of past Congresses is what I, along with many of my colleagues, were sent here to do.

I compliment the gentleman from New Mexico on finding an avenue to do just that and I gladly support Mr. SCHIFF's amendment and H.R. 5 on behalf of the people of the Fifth District of Illinois.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words, and I rise to engage in a brief colloquy with the gentleman from Pennsylvania [Mr. CLINGER].

As the gentleman knows, I was prepared to offer an amendment, amendment No. 89, that would ask the Commission to report back and investigate the extent to which States require local governments, without their consent, to perform duties imposed on State government by the unfunded Federal mandates, including any duty to pay a matching amount as a condition of Federal assistance.

In reviewing this matter, it has been suggested to me that this investigatory and review function is really already included within the scope of what will be reviewed and reported back to this Congress.

Mr. CLINGER. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the chairman of the committee.

Mr. CLINGER. I thank the gentlewoman for yielding to me.

Mr. Chairman, may I confirm to the gentlewoman that that is exactly the intention here, that that would be included in the review, that we want to make sure we are reviewing at all levels the impact, both of Federal on local, of State on local, all up and down the line. So it would be included within the language.

Ms. LOFGREN. So given that we would get a report back on that specific subject, I would like it to be known that I will not be offering amendment No. 89. I thank the gentleman.

Mr. CLINGER. I thank the gentlewoman.

PERFECTING AMENDMENT OFFERED BY MR. BURTON OF INDIANA TO THE AMENDMENT, AS MODIFIED, OFFERED BY MR. SCHIFF

Mr. BURTON of Indiana. Mr. Chairman, I offer a perfecting amendment to the amendment, as modified.

The Clerk read as follows:

Perfecting amendment offered by Mr. BURTON of Indiana to the amendment, as modified, offered by Mr. SCHIFF: In section 101(a)(4)(G), strike the period at the end of the paragraph and add the following '', and to ensure that unfunded Federal mandate relief does not increase private sector burdens.''.

Mr. BURTON of Indiana. Mr. Chairman, I do not think this is a controversial amendment. I have cleared it with the majority and with the ranking minority member, the gentlewoman from Illinois [Mrs. COLLINS].

Exempting the public sector and their private sector competitors from unfunded Federal mandates could also burden private sector entities which are not competing with the public sector. They may bear a larger share of the burden of meeting the mandate if the mandate itself is unchanged.

For example, and this is a hypothetical example: City governments are exempted from a new clean air mandate for their vehicles. But the new clean air bill overall still requires pollutants to be reduced by 100 million tons. That is even though the cities will be exempt from it.

Therefore, since city-owned vehicles are exempt from the mandate, privately owned vehicles collectively must bear a larger share of the burden of accomplishing the 100 million tons of pollution reduction. Even though there is not competition, we would still have the public sector relief, which we support, inadvertently hurting the private sector.

So we just want the Commission to study this in the event that this might occur in the future.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from New Mexico.

Mr. SCHIFF. I thank the gentleman for yielding.

Mr. Chairman, I support the gentleman's amendment to the amendment. It has been raised numerous times during debate on this bill about the possible effect of limiting unfunded mandates on public sector entities while not limiting them or not limiting them as much on private sector entities, the effect it might have when they are in competition with each other, such as in

some cases power generation and other examples.

I want to say that although I think we have addressed that at different places, the gentleman's amendment to the amendment is well taken, to expressly ask the Commission to study that effect and report back to Congress so that Congress could consider it in terms of further legislation.

So I support the amendment of the gentleman from Indiana to the amendment.

Mr. BURTON of Indiana. I thank the gentleman, and I thank the chairman of the committee, the gentleman from Pennsylvania [Mr. CLINGER], and the gentlewoman from Illinois [Mrs. COLLINS] for her help as well.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Indiana [Mr. BURTON] to the amendment, as modified, offered by the gentleman from New Mexico [Mr. SCHIFF].

The perfecting amendment to the amendment, as modified, was agreed to.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to speak in support of the amendment and the efforts of the gentleman on this bill. Although there have been some differences on this side of the aisle on certain areas of exemptions and concerns that we have, I do plan to vote for this bill. I think it is a good bill. Its time is overdue.

Mr. Chairman, I was to have an amendment to this title which dealt with this Commission. This Commission, as we can see, is now a moot point, and naturally I will not have to offer that amendment.

But what my amendment would have done, if you will, in this Commission there would have been nine members appointed from individuals who possess extensive leadership and experience in and knowledge of State and local and tribal governments and intergovernmental relations, including State and local elected officials.

The Traficant amendment would simply say it would include officials representing the interests of working men and working women.

Now, I am not going to offer that. But when in fact the authorization comes up for the Advisory Commission on Intergovernmental Relations, I do want to support, to specify within that authorization those specific advocates for, that are keeping an eye out for, working men and working women.

□ 1240

But in title 2, when we move toward certain activities within the bill that look at the impact that this legislation, the effect it will have on the private sector, and productivity, growth, employment and jobs, I will have an amendment that specifies that it also consider and factor in workers benefits and pensions, and let me say this to the majority:

''Some of you are saying, 'Well, maybe that is covered.' There is a great need in this country to consider all of our legislation as it impacts benefits and health insurance which we are trying now to promulgate and plan to help those that are impacted upon by that and pensions, many of which are underfunded.''

So, I am going to ask the majority to consider that in title 2. It is germane. I will not be offering my amendment in title 1, and I do support the gentleman's amendment.

I think one of the first things we could and should do is, if we are going to have this Federal mandates, maybe who do not need a lot of these commissions, so perhaps it is wise to throw some of these things out.

I commend the gentleman and ask for his support in that defining, delineating language to look at workers benefits and pensions in that title 2 scenario.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I want to say I will be glad to look at the gentleman's working. I have not seen it yet, but I just want to back up the gentleman's point about the composition of the Commission.

Of the 26 members of the Commission, Mr. Chairman, 20 are appointed by the President of the United States, and the existing law requires that three be private citizens without any connection to the Government.

So I think the concern the gentleman is addressing in terms of the composition I believe is already found in the existing Commission in the amendment I have offered, and I thank the gentleman for his support.

Mr. TRAFICANT. Mr. Chairman, I ask the gentleman to give me a hand; to give me a hand there in title 2. It is reasonable. Pensions and benefits of our workers should be considered in the impact of any legislation.

Mr. Chairman, I yield back the balance of my time.

REQUEST BY MR. BARTLETT OF MARYLAND TO OFFER AMENDMENT

Mr. BARTLETT of Maryland. Mr. Chairman, I offer an amendment numbered 27 of the amendment as modified, as amended.

The CHAIRMAN. The Clerk will designate the amendment.

First, let the Chair inquire, does the gentleman have an amendment to the Schiff amendment.

Mr. BARTLETT of Maryland. Mr. Chairman, I was asked to submit the amendment now. It is a perfecting amendment.

Mrs. COLLINS of Illinois. Reserving the right to object, Mr. Chairman, I do not think we have a copy of the amendment. We are looking for it now. We do not have a copy of it here.

What is going on here?

Mr. BARTLETT of Maryland. Mr. Chairman, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Maryland.

Mr. BARTLETT of Maryland. It is No. 27 in the RECORD.

Mrs. COLLINS of Illinois. All right.

Mr. Chairman, I will reserve a point of order.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] reserves the point of order.

The Chairman will advise the gentleman from Maryland [Mr. BARTLETT] that his amendment, as drawn, is not compatible with the amendment offered by the gentleman from New Mexico [Mr. SCHIFF], but it could be easily modified to be compatible, and if the gentleman would withdraw it at the moment and work with the gentleman from New Mexico, perhaps his amendment would be in proper form.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GEKAS. Cannot the gentleman from Maryland, by unanimous consent, request that the amendment be completed now so that he could proceed with his amendment?

By unanimous consent could he ask that the language be conformed to the amendment offered by the gentleman from New Mexico [Mr. SCHIFF]?

The CHAIRMAN. He could ask unanimous consent to have the amendment drawn as a modification of the amendment offered by the gentleman from New Mexico [Mr. SCHIFF] as opposed to the language of the bill.

Mrs. COLLINS of Illinois. Reserving the right to object, Mr. Chairman, I am reserving the right to object because I would like to engage in a colloquy with the gentleman who wishes to offer the amendment.

Could the gentleman please just tell us what he is trying to do here? Maybe we can try to come to some kind of an agreement.

The CHAIRMAN. The Chair will treat as pending a unanimous-consent request to modify offered by the gentleman from Maryland and recognizes the gentlewoman from Illinois [Mrs. COLLINS] on a reservation of objection.

Mrs. COLLINS of Illinois. Mr. Chairman, I ask the gentleman from Maryland, will the gentleman tell me if he is planning just to engage in a colloquy or what he is planning to do at this point?

Mr. BARTLETT of Maryland. Mr. Chairman, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Maryland.

Mr. BARTLETT of Maryland. Yes. If I could move to strike the last word, I think we could dispense with it very easily.

The CHAIRMAN. The committee is proceeding under a reservation of objection by the gentlewoman from Illinois [Mrs. COLLINS]. If the gentleman from Maryland could simply respond to the gentlewoman from Illinois, that would probably take care of it.

Mrs. COLLINS of Illinois. That would take care of it.

Mr. BARTLETT of Maryland. All right.

Mr. Chairman, my amendment was really quite a simple one. It merely instructs the Commission to examine whether unbiased science is used when enforcing the State implementation plans such as other emissions testing under the Clean Air Act.

Mr. SCHIFF. Mr. Chairman, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I want to first clear up the bit of confusion that started.

We were advised by the Parliamentarian that because we felt we had to make so many changes in the bill to add the Advisory Commission in place of the proposed new Commission that my amendment is offered in the nature of a substitute.

Mrs. COLLINS of Illinois. Yes.

Mr. SCHIFF. For that reason other amendments must be technically offered as amendments to my amendment, and I trust that all Members would, if they have not done so, ask unanimous consent just for that technical modification.

I do not speak for the gentleman from Maryland [Mr. BARTLETT], but it is my understanding that he and the chairman of the committee have agreed that following a colloquy, which would be responded with a reference to report language, the gentleman would offer to withdraw his amendment at that time.

May I ask the gentleman from Maryland if that is correct?

Mr. BARTLETT of Maryland. That is correct. The chairman indicated that he supports the intent of our amendment, that what we want to accomplish could be effectively accomplished with report language, and with his assurance that that report language will be developed, we are prepared to withdraw our offer of the amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I withdraw my reservation of objection.

Mr. BARTLETT of Maryland. Mr. Chairman, I withdraw my proffer of the amendment.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. COLLINS] withdraws her reservation of objection, and the gentleman from Maryland [Mr. BARTLETT] has withdrawn his proffer of the amendment.

PERFECTING AMENDMENT OFFERED BY MR. RIGGS TO THE AMENDMENT OFFERED BY MR. SCHIFF, AS MODIFIED, AS AMENDED

Mr. RIGGS. Mr. Chairman, I offer a perfecting amendment to the amendment, as modified, as amended.

The CHAIRMAN. The Clerk will designate the perfecting amendment.

The text of the perfecting amendment to the amendment, as amended, as modified, is as follows:

Perfecting amendment offered by Mr. RIGGS to the amendment offered by Mr. SCHIFF, as modified, as amended: At the end of section 101 (Page 5, after line 14), add the following:

(e) PRIORITY TO MANDATES THAT ARE SUBJECT OF JUDICIAL PROCEEDINGS.—In carrying out this section, the Advisory Commission shall give the highest priority to immediately investigating, reviewing, and making recommendations regarding unfunded Federal mandates that are the subject of judicial proceedings between the United States and a State, local, or tribal government.

Mr. RIGGS. Mr. Chairman, title 1 of H.R. 5, the Unfunded Mandates Reform Act, provides for an establishment of a commission to review existing unfunded mandates, as we have been discussing over the last few minutes. The gentleman from New Mexico [Mr. SCHIFF] has offered a substitute, currently under consideration by the House, to title 1 designating the existing Advisory Commission on Intergovernmental Relations as the body to conduct this review.

I rise to offer a bipartisan perfecting amendment to the Schiff substitute for myself, the gentleman from Illinois [Mr. MANZULLO], and the gentleman from California [Mr. CONDIT], and I might add this amendment also has the unanimous support of my colleagues, the California Republican congressional delegation.

The Riggs-Manzullo amendment will direct the Commission to give the highest priority to immediately investigating, reviewing, and making recommendations regarding unfunded Federal mandates that are the subject of judicial proceedings between the United States and a State, local, or tribal government.

The Riggs-Manzullo amendment will not change underlying law, only direct that matters in litigation be given the Commission's first attention.

I urge my colleagues to support this important amendment.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I want to say that I support the Riggs amendment as cosponsored by other Members of the House. I think that to say that the Advisory Commission should give its priority in studying those issues which are in litigation makes a great deal of sense. I have always felt, and long before I had the privilege of serving in this body, that there is a great waste of taxpayers' money when government agencies or levels of government go to court against one another and the taxpayers are essentially paying for both sides of a lawsuit.

Now we all understand that is necessary, that a sovereign State has the right to make certain challenges to the Federal Government, and within the laws of those States, municipalities and counties may be able to challenge the State.

□ 1250

But it seems to me to the extent we can head this off or if they arise to the extent we can address them rapidly, that saves a great deal of money, of time, and of effort of government agencies that are litigating against each other.

Mr. Chairman, I want to conclude by saying that the gentleman's amendment is not any more specific. There is no way of saying whether litigation in the future might involve Democratic administrations at one level versus Republican administrations at another level. It does not matter. It is not relevant to the amendment, and it should not be relevant to the study of the Commission. Once there is litigation between levels of government, that should be sufficient to trigger the gentleman's priority, with which I agree.

So, Mr. Chairman, I support the amendment.

Mr. RIGGS. Mr. Chairman, I thank the gentleman for his comments.

Mr. Chairman, I yield to the chairman of the California Legislative Task Force, the gentleman from California [Mr. DREIER].

Mr. DREIER. Mr. Chairman, I thank my friend for yielding.

Mr. Chairman, I rise simply to reiterate what was stated by my friend, the vice chairman of the California congressional delegation, that being that our delegation is strongly behind this. Clearly, the issue of litigation, as we look at this question of unfunded mandates, should be a priority. It has been demonstrated that there is major concern and controversy over a number of particular items.

It seems to me that as we look at those, ACIR should be in position to in fact place those items at the top of the priority list. The Riggs amendment is, I believe, a very wise and helpful perfection to the Schiff amendment. I strongly support it, and I know my California colleagues join in extending their support.

Mr. RIGGS. Mr. Chairman, I yield now to the gentleman from California [Mr. CONDIT].

Mr. CONDIT. Mr. Chairman, I rise in support of the amendment.

I think this is a good amendment. The fact that California and several other States are involved in lawsuits and the fact that litigation exists is an example of proof that the issue of unfunded mandates is an extreme problem for State and local governments. I think this is one of the ways for us to expedite the problems of litigation and legal problems by getting it before this Commission and hopefully getting it resolved.

Mr. Chairman, I think it is a good amendment, one that we should adopt, and I ask my colleagues to support it.

Mr. MANZULLO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I stand in support of this amendment that the gentleman form California [Mr. RIGGS] and I crafted.

The issue here is very simple. Regardless of the views of Members of

this Chamber on the issue of unfunded mandates, I am sure that they know full well that this bill is going to pass, and that everybody in this body would want to make sure that those matters have the first attention of the Commission during the study of those matters that are presently in the hands of the courts or may be in the hands of the courts later on.

The purpose of this amendment is to state that because litigation is existing, this means that the issue of studying unfunded mandates in those particular situations is paramount.

Therefore, Mr. Chairman, I rise to urge the Members of this body to vote in favor of the Riggs-Manzullo amendment.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from California [Mr. RIGGS] to the amendment offered by the gentleman from New Mexico [Mr. SCHIFF], as modified, as amended.

The perfecting amendment to the amendment, as modified, as amended, was agreed to.

Mr. BENTSEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not use very much time, but I wanted to discuss this with the gentleman from New Mexico.

On the amendment that was withdrawn by the gentleman from Maryland [Mr. BARTLETT], I would just say that I support the gentleman in what he is trying to do. The auto emission testing is a major issue certainly in my State and in my home city of Houston.

While I support the goals of the Clean Air Act, we have found that the implementation of the program has not gone as planned, and it is something that has been a problem. There are not enough stations, and the lines are long. If the car fails the testing, the consumer must pay for repairs, as well as return for another test, and that is quite a bit to ask, particularly when they are asked to get other tests under State laws as well.

So, Mr. Chairman, I support the intent to have the ACIR look at this.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I appreciate the gentleman's yielding.

First of all, I appreciate the gentleman's concern over the auto emissions testing. In the city of Albuquerque which I represent, the city of Albuquerque has attained Federal clean air standards for the last 3 consecutive years. Nevertheless people within our municipal and local governments believe that they have to alter our current testing programs to be in compliance with the desires of the Environmental Protection Agency. I am not clear on why we have to make changes when in fact we are now in compliance with Federal clean air standards.

It was simply felt by the chairman of the committee and the gentleman from Maryland that certain issues laid down listing specifically—because we could list specific issues virtually without end—that that issue instead of being listed as part of the bill would be recommended in report language in conference between the House and the Senate, and that is the commitment the chairman of the committee had with the gentleman from Maryland.

Mr. BENTSEN. Mr. Chairman, I appreciate that, and I appreciate the intent of the committee to include that in report language.

Mr. PAYNE of New Jersey. Mr. Chairman, I move to strike the requisite number of words.

(Mr. PAYNE of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. PAYNE of New Jersey. Mr. Chairman, I rise in support of the amendment offered by my colleagues, Representatives SCHIFF, GEJDENSON, MORAN, and MEEK to delete the provision in H.R. 5 that establishes the Commission on Unfunded Federal Mandates and would instead require a similar review of unfunded mandates by the existing Advisory Commission on Intergovernmental Relations.

This bipartisan body was established to ensure coordination between the different levels of government. As a member of the Advisory Commission, I have been impressed with the ability of the 26-member bipartisan panel which includes Members of Congress, members of the executive branch, Governors, and other State, county, and local officials to develop consensus on issues important at every level of government.

Mr. Chairman, the Advisory Commission is currently in existence and equipped to carry out the mandate prescribed by H.R. 5. The Advisory Commission on Intergovernmental Relations is uniquely qualified to provide us with the expertise to give technical assistance on unfunded mandates. This agency has garnered an impressive body of research on this issue.

The Commission has already completed a comprehensive analysis of the impact of unfunded mandates at every level of government, especially at the localities where the impact of regulatory burden is focused and felt.

It does not make sense to expend limited resources to create a new bureaucracy, while we sit up here talking about dismantling a bloated one, when there is already an existing agency currently functioning in the proposed capacity.

Mr. Chairman, I urge my colleagues to support this very important measure, because in all the rhetoric of cutting unnecessary government machinery, we have lost sight of the fact that creating a duplicate agency works counter to that objective.

PERFECTING AMENDMENT OFFERED BY MR. MANZULLO TO THE AMENDMENT OFFERED BY MR. SCHIFF, AS MODIFIED, AS AMENDED

Mr. MANZULLO. Mr. Chairman, I offer a perfecting amendment to the amendment offered by the gentleman from New Mexico [Mr. SCHIFF]. I wish to enter into a colloquy with the gentleman, and then it will be my intention to withdraw the amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Perfecting amendment offered by Mr. MANZULLO to the amendment offered by Mr. SCHIFF, as modified, as amended: In section 102(a)—

(1) in paragraph (1), before the semicolon insert the following: '', including the role and impact of requirements under section 182(d)(1)(B) of the Clean Air Act (42 U.S.C. 7511a(d)(1)(B))''; and

(2) in paragraph (3), at the end add the following: ''The Commission shall include in recommendations under paragraph (2) recommendations with respect to requirements under section 182(d)(1)(B) of the Clean Air Act (42 U.S.C. 7511a(d)(1)(B)).''.

Mr. MANZULLO. Mr. Chairman, the amendment I offer brings to focus a terrible unfunded mandate that has come as a result of the 1990 amendments to the Clean Air Act. That states as follows: ''In any area that has been nominated to be a severe or extreme ozone nonattainable area, States are required to file a State compliance plan.''

Part of that plan states that any employer that has an excess of 100 employees has to file a plan that certifies that within a year or two employee trips will be reduced by 25 percent. This is known as forced car pooling.

The purpose of my amendment here would be to direct that the Commission give No. 1 priority to this unfunded mandate which is costing the States millions and millions of dollars.

The gentleman from New Mexico [Mr. SCHIFF] has cordially agreed to enter into a colloquy to show that on the employee commute option, which is part of the Clean Air Act, had we had the unfunded mandates law in effect in 1990, this would have been studied. I ask the gentleman, is that correct?

Mr. SCHIFF. Mr. Chairman, if the gentleman will yield, I believe that is correct.

□ 1300

Mr. MANZULLO. Mr. Chairman, it just goes to show the absolute necessity of passing this unfunded mandate law. Back in 1990 there would have been required a study to say what is the impact on forced car pooling on State agencies, local agencies, and on local businesses. The State of Illinois now faces tens of millions of dollars in this new unfunded mandate. It is a new age, it is a new federalism. It is a time to look at America through the eyes of those that are trying to conserve its resources. That is why I simply cannot impress upon this body the absolute necessity of passing this unfunded mandates bill.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. MANZULLO. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I want to say the chairman of the committee, the gentleman from Pennsylvania [Mr. CLINGER], and the gentleman from Illinois [Mr. MANZULLO] have discussed this issue, and once again there are issues which we recommend be placed in the bill and other issues which by way of example are matters that the committee should stay.

I understand the chairman of the committee has made a commitment to the gentleman from Illinois that assuming we do get to conference with the other body, that the chairman commits to try to get into report language the issues the gentleman has raised.

Mr. MANZULLO. Mr. Chairman, I ask unanimous consent to withdraw my amendment numbered 17.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PERFECTING AMENDMENT OFFERED BY MR. TRAFICANT TO THE AMENDMENT OFFERED BY MR. SCHIFF, AS MODIFIED, AS AMENDED

Mr. TRAFICANT. Mr. Chairman, I offer a perfecting amendment to the amendment, as modified, as amended.

The Clerk read as follows:

Perfecting amendment offered by Mr. TRAFICANT to the amendment offered by Mr. SCHIFF, as amended, as modified: Before the semicolon at the end of the proposed section 101(a)(1), insert ''and consider views of and the impact on working men and women on those same matters''.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, the amendment says at the end of section 101(a)(1), before that semicolon, insert, which would be after the following: ''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 and their impact on the competitive balance between State, local, and tribal governments and the private sector.''

The Traficant amendment is very clear. It would clarify an intent of Congress and a concern of Congress by adding the following words: ''And consider views of and the impact on working men and working women on those same matters.''

That is the amendment in a nutshell. It would not have been germane for me to offerit to that Commission, but as a perfecting amendment to the gentleman from New Mexico's amendment, I believe it will clarify the intent of Congress more than anything else in legislative history.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, when this bill was drafted, I believe that it was the committee's intent to include the working people who work for State government, local government, tribal government and the private sector as being considered under the study by the Commission. However, I certainly believe that this clarifies that issue for the future, should this bill be enacted into law. Therefore, I accept the amendment of the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, I appreciate the gentleman's support. I think the legislative history shows the intent of Congress to be concerned with the views of the working men and women to be in our best interests.

The CHAIRMAN. The question is on the perfecting amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment offered by the gentleman from New Mexico [Mr. SCHIFF], as modified, as amended.

The perfecting amendment to the amendment, as modified, as amended, was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Mexico [Mr. SCHIFF], as modified, as amended.

The amendment, as modified, as amended, was agreed to.

The CHAIRMAN. Are there other amendments to title I?

If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted by subchapter II of chapter 5 of title 5, United States Code—

(1) assess the effects of Federal regulations on States, local governments, tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), including specifically the availability of resources to carry out any Federal mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities or the private sector, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL GOVERNMENT, AND TRIBAL GOVERNMENT INPUT.—Each agency shall develop an effective process to permit elected officials (or their designated representatives) of States, local governments, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(c) AGENCY PLAN.—

(1) IN GENERAL.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, an agency 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 pursuant to subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) EFFECTS ON PRIVATE SECTOR.—Before establishing any regulatory requirements, agencies shall prepare estimates, based on available data, of the effect of Federal private sector mandates 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.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Before promulgating any final rule that includes any Federal mandate that may result in the expenditure by States, local governments, or tribal governments, in the aggregate, or the private sector of at least $100,000,000 (adjusted annually for inflation) 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 States, local governments, tribal governments, and the private sector of complying with the Federal mandates, 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 mandate; and

(B) any disproportionate budgetary effects of the Federal mandates upon any particular regions of the country or particular States, local governments, tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal mandates (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of Federal private sector mandates 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;

(5) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected States, local governments, and tribal governments, and designated representatives of the private sector;

(6) a summary of the comments and concerns that were presented by States, local governments, or tribal governments and the private sector either orally or in writing to the agency;

(7) a summary of the agency's evaluation of those comments and concerns; and

(8) the agency's position supporting the need to issue the regulation containing the Federal mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) 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.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required by subsection (a) in conjunction with or as part of any

other statement or analysis, if 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 them 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 proposal rules, or on a combination thereof.

SEC. 205. ANNUAL REPORT TO CONGRESS REGARDING FEDERAL COURT RULINGS.

Not later than 4 months after the date of enactment of this Act, and no later than March 15 of each year thereafter, the Advisory Commission on Intergovernmental Relations shall submit to the Congress, including each of 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 report describing Federal court rulings in the preceding calendar year which imposed an enforceable duty on 1 or more States, local governments, or tribal governments.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment to subsection (c) of section 201.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. WAXMAN: In subsection (c) of section 201, strike paragraph (2), strike the heading for paragraph (1) and run its text to the dash following the heading for the subsection, and redesignate subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively.

Mr. WAXMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Chairman, this amendment has been worked out in consultation with the majority. Section 201(c)(2) requires an evaluation of private sector costs associated with major rules that appear to largely duplicate the evaluation required in section 202. Thus the amendment improves the bill by striking an apparently redundant provision. The amendment is also necessary because the language in section 201(c)(2) used vague terms like regulatory requirement that could have been interpreted to cover more than major rules. This amendment eliminates these potential ambiguities.

Mr. Chairman, I urge support of the amendment.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Ohio.

Mr. PORTMAN. I thank the gentleman from California. This is an important clarifying amendment. We have worked this out, and I want to congratulate the gentleman on clarifying an important aspect of the legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. WAXMAN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer my amendment numbered 140.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WAXMAN: Amend section 201(b) to—

(1) strike ''AND TRIBAL GOVERNMENT'' in the subsection heading and insert ''TRIBAL GOVERNMENT, AND CONCERNED CITIZENS'', and

(2) strike ''and tribal governments'' and insert ''tribal governments, and concerned citizens''.

Mr. WAXMAN. Mr. Chairman, H.R. 5 provides that Federal agencies must consult with State and local governments before proposing Federal regulations. This amendment that I am offering modifies this provision to require that Federal agencies also consult with concerned citizens at the same time. The amendment was adopted without dissent in the full Committee on Government Operations in the last Congress in October.

The amendment recognizes that concerned citizens should have the same rights to participate in the rulemaking process as State and local governments.

For example, if EPA is considering a new drinking water standard, the public that drinks the water should have just as much input into the standard as the public water suppliers who have to comply with that standard. I think this amendment makes a great deal of sense. It brings about a consultation with all those who are involved in the matter, and therefore would help those who are about to propose regulations to make the wisest regulations possible. I urge support for the amendment.

Mr. PORTMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I have to rise in reluctant opposition to this amendment, having accepted the last amendment from the gentleman from California [Mr. WAXMAN], which I thought was a good clarifying amendment.

The chairman of the committee and other Members on this side who have been active in this process have looked carefully at this amendment. We are reluctantly opposing it. We certainly think input from private citizens to develop meaningful regulations makes a lot of sense, and that is exactly why there is a process currently in the legislation to allow citizens to participate, call a notice and comment period for the promulgation of regulations. every citizen has a right to submit comments and participate in this regulatory process.

Reluctantly, because we agree on the intent of the amendment but we think it is not necessary to further amend this title with regard to this second amendment from the genteleman from California [Mr. WAXMAN], we must rise in opposition to it.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I understand the point the gentleman is making, that you think all parties ought to be involved, but I wanted to point out that the comment period is after a proposal is already on the table. And this bill provides that State and local governments can come in in advance. If they are going to come in in advance, then private citizens ought to be able to come in in advance and be able to participate on equal terms.

What we are proposing to do is there ought to be equal terms for comments, whether it be by a local government or by other concerned citizens.

Mr. PORTMAN. Mr. Chairman, reclaiming my time for a moment, I think what we have done in this legislation is entirely consistent with the executive order and the current process. State and local governments are coregulators.

☐ 1310

It is appropriate that they have the input that is provided in the title. Again, although I think the intent of the gentleman's amendment we all agree with, we think there currently is the ability for citizens to have the kind of input that the gentleman desires. Again, we must reluctantly oppose the amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a meritorious amendment.

This bill requires agencies issuing regulations to first develop a plan to solicit input from local governments. However, there is no similar requirement to solicit the input of private citizens who may also be affected by the regulation being contemplated.

Ironically, this bill, in title III, does require CBO to solicit and consider information or comments from designated representatives of the private sector in conducting studies under section 424(b)(3), page 37 at line 19.

So why not require of the agencies the same wide range of views that is required by CBO? During the debate in

the committee last Congress, the gentleman from California [Mr. WAXMAN] raised similar concerns. And the gentleman from New Mexico [Mr. SCHIFF] made some excellent points that deserved to be heard by the new members of the committee, and there are 31 new members of the committee.

He stated that if there is an antipollution regulation that addresses a health hazard affecting anyone, that it makes sense to have input from those who might be affected. And he supported an amendment that is similar to this one.

Let me give my colleagues an example why this is so important. If EPA is contemplating proposing a new regulation, for example, affecting incinerators operated by State and local governments under H.R. 5, EPA must allow officials of those governments to have input before the regulation is even proposed. Yet neither the residents of these local low-income communities who are breathing in the pollution from these incinerators nor the operators of privately run incinerators would have that same opportunity.

This is a commonsense amendment, and I would certainly hope that my colleagues would support this amendment.

Mr. WAXMAN. Mr. Chairman, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding to me.

I just want to reiterate the point that was persuasive on both sides of the aisle in the last Congress. If a local government is running an incinerator and they want to come in in advance and have consultation with the regulators, that is unfair to the citizens who are not also being consulted in advance who are going to have to breathe in the pollution. The same would be true when Government is acting in a businesslike capacity almost like a private sector business, where they run a drinking water system or a sewage system.

I have no objection with the consultation with the regulators, but it seems to me that they should not have an unfair advantage to be consulted without other citizens having that same opportunity.

Mr. CLINGER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Again, I think what the gentleman is attempting to achieve here, we can certainly understand it and sympathize with it. In fact, I think one of the things we are trying to get at with this bill is to prod the Federal Government, which has been reluctant to seek the kind of input from State and local governments. But this bill is really going to the regulator. They are coregulators. These are the people we are attempting to involve in the process.

They have not been adequately involved in the process before. Private citizens should they have the same standing, should they have the same level, be allowed to input the system at the same level? I think not, because we are really asking here for the State and local governments to be a part of the process on regulations that directly affect them.

I think we should note that nothing in this legislation prevents anyone from making comments on proposed regulations. That clearly is not the intent of this legislation. I must also point out that all of the interest groups that have been involved in shaping this legislation, the so-called big 7, National Governors Association, League of Mayors, all of the rest of them oppose this amendment because they do not want to see a special kind of a review process carved out for private citizens.

So I must oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. WAXMAN].

The amendment was rejected.

AMENDMENT OFFERED BY MR. MORAN

Mr. MORAN. Mr. Chairman, I offer an amendment, my amendment No. 2.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: Insert at the end of section 201 the following:

(d) LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.—An agency may not issue a rule that contains a Federal mandate if the rulemaking record for the rule indicates that there are 2 or more methods that could be used to accomplish the objective of the rule, unless—

(1) the Federal mandate is the least costly method, or has the least burdensome effect, for—

(A) States, local governments, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate, and

(B) the private sector, in the case of a rule containing a Federal private sector mandate; or

(2) the agency publishes with the final rule an explanation of why the more costly or burdensome method of the Federal mandate was adopted.

Mr. MORAN. Mr. Chairman, most of my colleagues on the other side and on this side are aware that I introduced an unfunded mandates bill about 4 years ago. Most of the provisions that were in that bill are also included in this bill. But there are some very important provisions that are not. This amendment deals with one of those.

This amendment would require that when Federal agencies issue a notice of proposed rulemaking, receive comments back from the private sector and from State and local governments that would be affected by the new rule, that they choose the least costly alternative method of implementing the intent of the legislation. And if they do not choose that least costly alternative, then they must at least explain why they did not.

I think this is a terribly important provision to include in our unfunded mandates bill, Mr. Chairman. The amendment simply asks that the Federal agencies act rationally. It does not tie their hands. But the fact that they have not, in many cases, acted rationally is the core problem for many of the issues that have come to the floor over the last week and a half during this unfunded mandates debate.

One such issue is that of the emissions inspection requirement under the Clean Air Act. Now, when the Environmental Protection Agency issued its regulations, they got a lot of comments back. But they chose to impose a cookie cutter approach to implementation of the Clean Air Act. That is why so many Members, and it happened again this morning, have risen opposed to that Federal agency's regulations. There are far better ways of implementing the intent of the Clean Air Act, a concept that I agree with, I agree with the intent of the legislation. I very strongly disagree with the way in which the Environmental Protection Agency has chosen to implement that legislation.

For example, they have required in many States to have central testing facilities, facilities that did not exist before, facilities that are not equipped to make the repairs necessitated by the rejection of the emissions test. And so we have a ping pong effect where citizens not only have to wait in long lines but they have to go back to a repair station, get the repair done. They cannot know whether it is going to pass or not until they go back to the central testing facility, and then oftentimes they ping pong back and forth. And it takes up the entire day or several days. No wonder the American people are upset with the Federal Government. It does not make sense.

Why not have new automobiles be able to go to test and repair stations that already exist, but older automobiles could go to central testing? There are any number of other ways that we could choose to implement the intent of the legislation without violating any of the basic provisions and save a whole lot of money and a whole lot of aggravation.

Another example is in Alexandria, and this is one of the reasons why I offered the unfunded mandates legislation, the FAIR Act, 4 years ago.

EPA said that we had to separate our sewage from our storm water runoff. But they said we have to do it in a way that every other jurisdiction does it. For Alexandria, it meant digging up streets that were laid down 200 years ago, that were surveyed by George Washington, that are supporting very expensive historic structures. We would have had to dig under all those homes and streets to lay an additional storm water piping.

□ 1320

We had an alternative to have a retaining tank down in Old Town. Members have probably not noticed it because it is not even obvious. We could do it with very little money, accomplish the same purpose, with no threat to the health of our citizens, at a fraction of the cost, and yet it was unacceptable to EPA because they had one cookie cutter approach they wanted every jurisdiction to implement.

This is the case with many Federal agencies, so what this amendment would do, Mr. Chairman, is to say, ''If you get better ideas from State and local governments on how to implement these regulations, or from the private sector, use that better thinking. Take advantage of it. Work with States and localities and businesses, and let us do the public's business in the most efficient and effective manner possible.''

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am confused because I am going to accept the gentleman's amendment. I am delighted to be able to indicate strong support for the amendment. I think the gentleman has made a very good argument that what we are trying to do here is to find the most effective, the most efficient, the least expensive and least disruptive way to accomplish these things.

What the gentleman had done here is to clearly indicate that where there are two choices, we should clearly opt and encourage that the least expensive, least costly, and least disruptive be adopted, so I am pleased to accept the gentleman's amendment as a major contribution.

Let me just also commend the gentleman for his, as he said, 4- or 5-year effort in this regard as a principal player in this whole unfunded mandates debate. He has done a superb job. We have been grateful to work with him.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I would echo the gentleman's comments. I am very pleased to support the amendment. Let me say briefly, this amendment is consistent with language that is in the FAIR Act, which I believe is the foundation for the legislation, H.R. 5, before us today, and have said that on many occasions, as the gentleman knows.

It is also consistent with the Executive order, and we have had lots of discussions about the Presidential Executive order that is currently in place. All agencies are meant to abide by the requirements in this Executive order. It goes far further than title II of this act, which sets up the requirements for our Federal agencies in this legislation.

Mr. Chairman, let me give a couple of examples. H.R. 5 only applies to rules having an impact of $100 million or more annually. The Executive order currently in place by President Clinton applies not only to rules having an impact of $100 million or more, but in addition all rules affecting in a material way productivity, competition, jobs, environment, State and local governments, even if less than $100 million.

Therefore, I would just make the point clearly here that yes, the gentleman's amendment is a good one. The least burdensome manner in which the agencies can regulate is a good idea. It is a sound idea. It is part of FAIR. It is also part of the Executive order.

I would say, though, in addition, Mr. Chairman, that the Executive order in fact goes even further than the gentleman's amendment, and we will be accepting this amendment happily, but not picking up all of the requirements and additional burdens on the regulators that is in the Executive order, the Clinton Executive order of October 1993. I am happy to accept the amendment.

Mr. CONDIT. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from California.

Mr. CONDIT. Mr. Chairman, I rise to support the amendment, and make mention of the efforts of the gentleman from Virginia [Mr. MORAN] on this issue. He has been a tremendous leader in the unfunded mandates issue. He is partly the reason we are here today. Had he not started this fight and engaged us in this debate some time ago, we would not, probably, be at this point.

To his amendment, the gentleman's amendment is a good amendment. I think it demonstrates good common sense for us to take the best option, and the gentleman from Virginia [Mr. MORAN], I think in his amendment characterizes what he has done in this whole issue, for us to move to a solid, commonsense solution. I commend the gentleman for that. I urge Members to support the amendment, and I congratulate and commend the gentleman for his effort in this entire issue.

Mr. MORAN. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Virginia.

Mr. MORAN. Mr. Chairman, I thank my friends and colleagues for their support.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the amendment offered by my friend and neighbor, the gentleman from Virginia [Mr. MORAN], on this. I just want to take the opportunity to say I think this puts some teeth into title II. As a former board chairman adjacent to the city of Alexandria, of which Mr. MORAN was the mayor, I applaud his leadership in this area.

Long before many people were talking about unfunded mandates, the gentleman from Virginia [Mr. MORAN] has been a leader in this cause. I think this amendment will strengthen this bill. I just want to applaud the gentleman once again for his efforts in this, and rise in support of it. I hope the amendment will be accepted.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. CLINGER], has expired.

(By unanimous consent, Mr. CLINGER was allowed to proceed for 1 additional minute.)

Mr. CLINGER. Mr. Chairman, I yield to the gentleman from Texas, Mr. GENE GREEN.

Mr. GENE GREEN of Texas. Mr. Chairman, I would also like to thank the sponsor of the amendment for bringing this issue up.

Mr. Chairman, let me just relate as quickly as I could the experience of Texas on the unfunded mandates issue with the Clean Air Act. We also support clean air, but there are options we can get to that, I think the Moran amendment points that out, that we have the option, both the State agencies, but also the EPA here in Washington has some options that they would pick the least burdensome, or, as we call it, the most user-friendly, to get to that point on clean air.

Mr. Chairman, I think with the controversy going on not only in Texas but in Illinois and lots of other States, I think this adds to this bill. I am glad that my colleague and also the chairman is accepting the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. MORAN

Mr. MORAN. Mr. Chairman, I offer an amendment, amendment No. 3.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: At the end of title II insert the following:

SEC. 206. JUDICIAL REVIEW.

(A) REVIEW OF AGENCY ACTIONS SUBJECT TO REVIEW UNDER OTHER FEDERAL LAW.—If an agency action that is subject to section 201 or 202 is subject to judicial review under any other Federal law (other than chapter 7 of title 5, United States Code)—

(1) any court of the United States having jurisdiction to review the action under the other law shall have jurisdiction to review the action under sections 201 and 202; and

Mr. MORAN. Mr. Chairman, there is another part of this bill that I think could be strengthened. That deals with the issue of judicial review.

The bill before us is silent on judicial review, but that does not mean that judicial review does not apply. In fact, ironically, it opens up much of this legislation to procedural suits, procedural delays, excessive litigation.

My amendment, Mr. Chairman, would specify what is appropriate judicial review, and limit the ability to conduct unlimited litigation against provisions of law and regulation for which the unfunded mandates legislation might apply. Specifically, Mr. Chairman, it says that where we have agencies that are not currently subject to judicial review, that they would not become subject to judicial review under the Administrative Procedures Act solely for compliance with the procedural aspects of this legislation.

It also says, Mr. Chairman, that where there is a single court of jurisdiction, whether it be the Court of International Trade, the U.S. Circuit Court, whatever court is appropriate for that agency, that any other litigation must go through that court. In other words, lawyers cannot go to several courts, which would be principally for the purpose of delaying action.

Third, where there is an exhaustion of administrative remedies under the Administrative Procedures Act, in substantive legislation that exhaustion of administrative remedies would apply in this case as well, where legislation has been affected by the unfunded mandates legislation.

Fourth, if there are substantive agency actions that cannot be stayed; in other words, you cannot delay implementation of the regulations, get an injunction against issuance of regulations, then you cannot as a result of this legislation, either.

Mr. Chairman, there are four aspects that really do need to be addressed and refined. Mr. Chairman, I think it is terribly important that there be judicial remedies if Federal agencies and the executive branch do not comply with the intent of this legislation. On the other hand, we certainly do not want to open up a Pandora's box of opportunities to litigate for any period of time that a person who feels they are adversely affected by legislation or regulations might choose to.

I think without this clarifying amendment, this limited amendment, Mr. Chairman, we would do just that, because if we do not specify limits to judicial review, the Administrative Procedures Act applies to everything, and in fact would create substantial gridlock throughout the Federal Government.

Therefore, Mr. Chairman, I would ask the chairman of the committee and the sponsors of this bill to positively consider this amendment, and I think that its strengthens the legislation itself, the underlying legislation.

□ 1330

The only people who might not like it are in the legal community, but I do not think their interests are particularly well-served, either, by not addressing the issue of judicial review.

I could give any number of examples where this would apply and where in fact this must apply to implement this legislation in a rational way, but at this point I would respond to any comments by people that might have questions about the intent of this amendment.

Mr. CLINGER. Mr. Chairman, I move to strike the last word, just to very briefly say we have now had a chance to review this amendment on our side. In fact we have been in long discussions with the gentleman from Virginia [Mr. MORAN] over a long period of time on this. I think it represents a very, very good compromise between very divergent views on this question of judicial review. I think it is better than what we started out with, that it is clearly an improvement. I am delighted to accept the measure.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I thank the gentleman for yielding, just briefly to rise in support also of the amendment. It is a very good amendment.

We have had on the floor here an interesting debate the last several days about the issue of judicial review. It came up in the context of the exemptions to the legislation, but it really went at some of the core issues of this act.

I think the gentleman from Virginia would agree that judicial review is very important in order to ensure that there are teeth in the provisions in title II, to ensure that the agencies actually carry out the provisions which again are less burdensome on the agencies than the current executive order requirements that President Clinton issued in October 1993.

I would say that this is an important clarification of the kind of judicial review that we had intended to have in this legislation. It is our view that this is not an issue that necessarily needed to be resolved by amendment, but if there is any misunderstanding or any clarification needed, I think it is important to do so. This specifically addresses concerns raised on the floor by the gentleman from Pennsylvania [Mr. KANJORSKI]. The gentleman from Pennsylvania [Mr. KANJORSKI] raised the issue that you could possibly have a stay on an injunction in the case of a regulation and it would keep the regulation from going forward. This language I think very clearly provides that such a stay would not be permitted, that there would not be that kind of injunctive relief provided under the judicial review that is provided under H.R. 5.

I thank the gentleman for clarifying that point and for addressing a legitimate concern which was raised on the floor.

Mr. MORAN. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Virginia.

Mr. MORAN. I thank the gentleman for yielding.

The chairman of this committee and principal sponsor of this legislation has played a very constructive role in both working out the amendments that strengthen the legislation and in fact in getting this bill to the floor which I think is terribly important. I certainly appreciate the comments that were made by the gentleman from Pennsylvania, the gentleman from Ohio, the gentleman from Virginia, and the gentleman from California.

I would like to say for the RECORD whereas I am getting recognized, I would like to recognize someone who was the original sponsor of the Fair Act and worked very hard on it. This particular judicial review issue was terribly important to the gentleman from Pennsylvania [Mr. GOODLING]. The gentleman from Pennsylvania [Mr. GOODLING] has played an instrumental role in the unfunded mandates legislation. As a former superintendent of schools, he understood the importance of not imposing mandates that in effect abrogated a locality's ability to carry out their own priorities with their own best judgment.

I want to recognize particularly the gentleman from Pennsylvania [Mr. GOODLING] and I thank my friends and colleagues on the other side.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had put in the RECORD an amendment on this very subject of judicial review which I will not offer at this time. I will support the Moran amendment because I think it is an improvement over the text that has been submitted to this Committee of the Whole. But I do not think it goes far enough.

I would hope that when we go into conference with the other body, the managers of this legislation will look with great care at the other body's stand on this very issue. In the other body, in their unfunded mandates legislation, there is an explicit provision saying that there should not be judicial review. I think that is appropriate, for the very simply reason that judicial review can tie up regulations for a very, very long time and leave a great deal of uncertainly about what the regulations will in fact be in the long term.

Section 202 of H.R. 5 provides that before promulgating a final regulation containing a Federal mandate, the agency would have to prepare a detailed statement analyzing a number of different factors, economic and other impacts of the regulation. The matters that must be analyzed include the anticipated costs to State and local governments; the estimates of future costs of Federal mandate; estimates of disproportionate budgetary effects upon particular regions of the country or particular States; estimates of disproportionate budgetary effects upon

urban or rural or other types of communities; estimates of any disproportionate budgetary effects on the private sector; a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal mandate, including enhancement of health and safety and protection of the natural environment; the effect on national economy; the effect on productivity; the effect on economic growth; the effect on full employment; the effect on creation of jobs; and the effect of mandate on international competitiveness.

I do not disagree with all of these factors being analyzed, but if we allowed judicial review of the regulation pursuant to statute, pursuant to laws adopted by the Congress and signed by the President and the judicial review does not go against the regulation as to whether it is a wise one pursuant to the statute, but in case they did not look at the productivity factors as opposed to one economist's view vis-a-vis another economist's view on any of those items I have listed, it seems to me that it will not make a lot of sense to allow that kind of second-guessing by the courts of the regulations.

It seems to me to offer a lot of opportunity for agencies to be stymied in their objectives to carry out laws like the Clean Air Act, the Safe Drinking Water Act, laws that are put in place to protect the public.

Who will benefit from judicial review? One thing I can say with certainty, it will be all the lawyers that will be litigating this matter, because they will have the ability to drag this litigation on for a very long time.

The Moran amendment does go far enough to say that there cannot be an injunction on the implementation of the regulation, but it still permits the adjudication of that regulation based on whether the agency has done a sufficient analysis to the satisfaction of the court, which may then decide to get involved in the procedural matters of this review.

I do not think judicial review is necessary to enforce what we are asking the agencies to do before they adopt regulations. The judicial review is not necessary for enforcement. The review requirements can be enforced by the White House during OMB review. The requirement can also be enforced through congressional oversight.

Before EPA developed its proposal to regulate emissions from municipal incinerators, EPA consulted with the Conference of Mayors, the National League of Cities, and the National Association of Counties.

Before the Department of Education proposed a regulation relating to vocational training for disadvantaged students, the Department held public meetings with State and local education officials.

□ 1340

Before proposing rules affecting housing on tribal lands, HUD met with many tribal authorities. In fact to assure compliance with the Executive order, OMB has sent several regulations back to the agencies for failure to consult with all of the State and local governments that were appropriate.

For instance, EPA regulations controlling emissions from municipal landfills were sent back to EPA for this reason. Likewise regulations to improve water quality in the Great Lakes were sent back to EPA for that same reason.

The CHAIRMAN. The time of the gentleman from California [Mr. WAXMAN] has expired.

(By unanimous consent, Mr. WAXMAN was allowed to proceed for 2 additional minutes.)

Mr. WAXMAN. Mr. Chairman, in other words, we ought not to provide a judicial review as the way to enforce that the analysis be done. OMB has that role as they look at regulations coming from that agency and they have required the agencies to go back and review these things if they felt a satisfactory review did not take place.

In fact, the Director of OIRA, the Office of Information and Regulatory Affairs at OMB, Sally Katzen, has informed us that she is not aware of a single complaint with a State, local or tribal authority since the adoption of the Clinton Executive order, which has the same purpose as this legislation would in this regard.

So the point is the Executive order is working without judicial review. The idea of judicial review can be very troublesome for the regulations to be settled with certainty. There are industries that can be affected by that uncertainty, and the public interest has been certainly adversely affected by that uncertainty and the lengthy litigations to be followed.

It would be far better to see if there is a problem in reality before we have a judicial review provision that could have the consequence I fear.

So I stand in support of this amendment with the statement that I want to make very clear on the RECORD that I do not think it needs to go as far as we need to have us go on this very issue.

Mr. PORTMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first let me say in response to the comments from my colleague from California that I appreciate him bringing this issue to the floor, for bringing it to the attention of the sponsors of the legislation. I think we worked responsibly with the gentleman from Virginia [Mr. MORAN], with the gentleman from California, and others to try to address at least the major concerns that have been raised on the floor, and I think it was a healthy process.

I happen to believe in the end we have ended up with the right mix. We have judicial review, which I think is necessary to put teeth into agency requirements in title II.

Just to remind my colleagues again, these requirements are less burdensome on the agencies than those found in the Executive order which is currently in place.

I would also just very briefly talk to the issue of the standard which the courts will apply that the agency action must be arbitrary and capricious standard, which is very high. I quote from Judge Scalia with regard to the issue the gentleman raises:

> The scope of review under the ''arbitrary and capricious'' standard is narrow and a court is not to substitute its judgment for that of the agency. This is especially true when the agency is called upon to weigh the costs and benefits of alternative policies since such cost-benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency.

I think that is very important, and I think I would agree with the gentleman from California, we do not want to needlessly tie things up in court. We want to defer to the agency expertise. The gentleman has raised a number of important concerns, and I believe given that standard which was just quoted, which is the common practice of the courts, that we would not be in such a position.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I thank the gentleman for yielding on that point. I think it is a helpful one for us to have on the record and I do want to express to the gentleman and the chairman of the committee my appreciation for their willingness to explore this issue with me. I regret that we were not able to reach full agreement on it. I think we have come to a compromise, and perhaps we can continue to look at the issue as this legislation moves forward. But I do express the good spirit in which the gentleman engaged us in this issue to try to come up with what is the best public policy.

Mr. PORTMAN. Reclaiming my time, I thank the gentleman. Again, I think we have done this in a way where we end up with the kind of teeth in the legislation, H.R. 5, many of us on this side feel is necessary to make sure these requirements are carried out.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I thank the gentleman for yielding. I want to say the gentleman from California [Mr. WAXMAN] has clearly stated his position that he does not believe judicial review should apply at all, and I understand the position and I respect the reasons he has given. However, I believe no judicial review ultimately means no enforcement.

However, the concerns that have been raised have been legitimate concerns. And I think the gentleman from Virginia [Mr. MORAN] in his amendment has tried to tighten this bill and

tighten judicial review, so we hope to avoid even the prospect of some of the problems that might have arisen due to judicial review, as remote in my judgment as they may have been. I think the amendment strengthens the bill, and I support the amendment of the gentleman from Virginia.

I yield back to the gentleman from Ohio.

Mr. PORTMAN. I thank the gentleman from New Mexico.

Mrs. COLLINS of Illinois. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I reluctantly support the amendment of the gentleman from Virginia, because I, too, do not think it goes far enough. If this bill is subject to judicial review, we should rename it the Lawyers Relief Act of 1995.

Any new regulations issued pursuant to the bills covered by H.R. 5 could be tied up in court for years. The Senate provision, which is the same as the original contract, would preclude judicial reviews, and I urge my colleagues to look at the Senate provision very carefully. It carries out the language of the contract. It favors review but it does not favor lawyers and litigation.

New cottage industries on mandate law will suddenly spring up all over the country. Courses in mandate will be required to graduate from law school. The Civil Division at the Department of Justice will have to increase the number of lawyers it hires in order to keep up with the rising workload. Anyone remotely familiar with civil litigation knows that that agency regulations could easily be tied up in court for years. Delays, postponements, discovery, motions, and trials would make the swift implementation of agency regulations next to impossible. Meanwhile, the American people would be left out without vital health and safety protection.

How important are these regulations?

Well, I think one example will suffice. Just ask the parents of children who have died of E. coli bacteria about the need for new mandated requirements with State governments for meat inspection. The President and Vice President are continuing a historic effort to reinvent Government. Part of this effort involves streamlining and simplifying the Federal regulatory process.

It also involves making the Federal Government respond more quickly to the needs of the American people. Yet much of the progress that has been made already by the President will be undone if all of the Government actions are subject to judicial review.

The Federal Government will become entangled in an endless array of needless and confusing regulatory requirements in an effort to protect itself from being sued.

Those who support judicial review argue that it is needed to ensure that Federal agencies comply with the requirements of this act. But there are other more effective ways to guarantee compliance. One way is the congressional oversight process, and that is what our committee is: Government Reform and Oversight.

The Constitution confers on the Congress the responsibility to oversee the operations of the Federal Government. Congress has also been given a vast arsenal of weapons to oversee agencies' compliance with Federal law, including subpoena power and the power to command the appearance of witnesses to testify in public hearings, and the power to get access to most agency documents.

Second, we have the appropriations process, the power of the purse. An agency's failure to comply with Federal law can be met with a reduction in funding for that agency. I can think of no more powerful tool to enforce the requirements of this bill.

Many supporters of the no funding, no mandates provisions in this bill should also be concerned if it is undermined by judicial review.

Suppose during a fiscal year the Committee on Appropriations fails to fully fund a mandate, triggering the bill's requirement that the responsible agency reduce the responsibilities of State and local governments. Judicial review will prevent that reduction from going into effect. This will leave State and local governments with less money while performing the same duties for years, while the issue is resolved in court.

Tying up the executive branch with costly litigation is not an appropriate remedy for the problem of compliance. Compromising health and safety regulations because of legal gridlock is extremely dangerous.

And again, I am going to support the amendment by the gentleman from Virginia [Mr. MORAN], but I sure do not think it goes far enough.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLING. Mr. Chairman, I move to strike the requisite number of words.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the distinguished chairman, the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Chairman, just to clarify what may not have been clarified, and that is that as the chairman of the committee I do support the gentleman's amendment wholeheartedly.

Mr. MORAN, Mr. Chairman, if the gentleman will yield, I very much thank the gentleman for that clarification.

□ 1350

Mr. GOODLING. Mr. Chairman, there was a time in the history of this Congress when they believed that people back home would believe whatever we say and whatever we say we did rather than really tell them the way it is. Fortunately for this country that time is gone forever.

I can remember a gentleman that I came with to Congress, and I used to say to him, ''I do not understand the philosophy you espouse here, because it seems to be totally opposite of your constituency.'' He said, ''My constituents believe what I tell them.'' Well, as I said, fortunately that is gone. I mention that simply because I am glad an accommodation was worked out, because as the gentleman from Virginia said, I feel very strongly about judicial review. I feel very strongly because nothing is going to happen if that threat is not there.

When we presented the bill a couple years ago, I and others asked the CRS to comment on what it is we were doing in relationship to judicial review. We asked three specific things: How judicial review would apply to sections 201, 202, and 203; what impact this would have on the regulatory process, whether agencies would have to comply with the stipulations stated in sections 201, 202, 203, if section 201, page 15, lines 22 through 24, were removed.

I am convinced in their response that we are on the right track and we are on the right track when we sent out the Dear Colleague, and I would like to read just a portion of that Dear Colleague:

> As you may recall, President Jimmy Carter signed the Regulatory Flexibility Act into law September 19, 1980. The new law requires agencies to consider the special needs and concerns of small entities whenever they engage in rulemaking subject to the notice and comment requirements of the APA or other laws. Each time an agency was to propose a rule in the Federal Register, it was also supposed to publish a regulatory flexibility analysis. This RFA would describe the impact of a proposed rule on small entities, which includes small business, organizations, and governmental jurisdiction.

Well, to make a long story short, provided in this was also an indication that judicial review would not apply. The end result was, as history will show, that the agencies paid no attention whatsoever to the RFA. They just ignored it completely, and so it meant that the act had no teeth and, therefore, the act was totally worthless.

That was my fear with this legislation, that we would have this wonderful shell out there as if we were really doing something big, but they would not have the opportunity for judicial review. In return, the agencies would pay no attention whatsoever.

Now, you see, the history of judicial review would indicate to us that there is no standing only line out there where everybody is rushing in trying to get into the judicial review process. It is so difficult that very seldom is it ever used.

So, again, I am glad that we have come up with some accommodation. I hope we are strong enough, because I feel very strongly that without it this is a worthless, toothless piece of legislation.

Mr. EWING. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of this amendment and the compromise that has been reached with this piece of legislation.

When I first ran for Congress, I realized in talking to my constituency that there is a real problem with excessive regulation, and there is a real problem, because the Federal Government was not listening to the little guy, to the small business, to the units of government that do not have large legal staffs or big budgets. When I came to this body then, I thought what can we do about it. I looked into it, and I found that we had the Regulatory Flexibility Act, and I read that act. I thought, ''This should work. This should be a big help.''

And then I said, ''Why is it not working?'' Well, I was told very quickly that it was not working because of the boilerplate language in that act that says that any agency can say the act does not apply to this rule and regulation and move right ahead as if no analysis was needed.

What was the response from those being regulated? It was there was no judicial review.

Ladies and gentlemen, judicial review is imperative unless we want to project on the American people another cruel hoax that we are doing something to help them overcome regulation and yet we are not.

So this is an excellent compromise. I think that it is excellent that we are going to do this and send it to conference, and we can discuss that with the Senate side and hopefully we will come up with judicial review that will protect the little guy, the small business, the small unit of government.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman has had prior recognition.

Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. WAXMAN. Mr. Chairman, I rose before to strike the last word, and I rise in support of the amendment now.

I do so to clarify for the RECORD that the General Accounting Office was asked to review what is called the Reg Flex Act to see whether the regulatory flexibility regulations are in fact being enforced by the executive branch, and they came back with a report which I would insert in the RECORD following my remarks that some agencies have in fact complied.

The Environmental Protection Agency, which is a target of much of the debate here today, they said had complied. Where there was noncompliance, the reasons were many, not, they pointed out, because there was a lack of judicial review, but because the Small Business Administration had not issued guidance, or the OMB had not established procedures to enforce the Regulatory Flexibility Act. They did not say that a judicial review was recommended or required in order for the Regulatory Act to work. I want to make that point clear.

Because I do not think judicial review is advisable as a part of enforcement of these proposals.

Mr. Chairman, the GAO report is included at this point in the RECORD, as follows:

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, April 27, 1994.

Hon. JOHN J. LAFALCE,
Chairman, Committee on Small Business, House of Representatives.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate.

This letter is in response to your requests that we evaluate federal agencies' implementation of the Regulatory Flexibility Act of 1980 (RFA), codified in Title 5 of the U.S. Code.[1] Specifically, you asked that we (1) review the Small Business Administration's (SBA) annual reports on agency compliance with the RFA and generalize from the reports about which agencies were and were not implementing the RFA in an effective manner and (2) review SBA annual reports and related documents on the extent to which agencies have complied with the RFA requirement that they periodically examine their rules (section 610 of Title 5).

BACKGROUND

The RFA requires federal agencies to assess the effects on their proposed rules on small entities. According to the RFA, small entities include small businesses, small governmental jurisdictions, and small not-for-profit organizations. As a result of their assessments, agencies must either (1) perform a regulatory flexibility analysis describing the impact of the proposed rules on small entities or (2) certify that their rules will not have a ''significant economic impact on a substantial number of small entities.'' The RFA does not define ''significant economic impact'' or ''substantial number,'' but does require the regulatory flexibility analysis to indicate the objectives of the rule and the projected reporting, recordkeeping, and other compliance requirements. Agencies must also consider alternatives to the proposal that will accomplish the agencies' objectives while minimizing the impact on small entities. The RFA also requires agencies to publish a semiannual regulatory agenda that describes any prospective rule that is likely to have a significant effect on a substantial number of small entities.

Section 612 of Title 5 requires the SBA Chief Counsel for Advocacy to monitor and report at least annually on agency compliance with the RFA.[2] SBA's primary method of monitoring agencies' compliance is to review and comment on proposed regulations when they are published for notice and comment in the Federal Register during the federal rulemaking process. The Chief Counsels have issued 12 annual reports on RFA compliance since 1980.[3] The reports discuss some, but not all, federal agencies' RFA compliance.

RESULTS IN BRIEF

The SBA annual reports indicated agencies' compliance with the RFA has varied widely from one agency to another. Some agencies (e.g., the Environmental Protection Agency) were repeatedly characterized as satisfying the RFA's requirements, while other agencies (e.g., the Internal Revenue Service) were viewed by SBA as recalcitrant in complying with those requirements. Still other agencies' RFA compliance reportedly varied over time (e.g., the Federal Communications Commission) or varied by subagency (e.g., the U.S. Department of Agriculture). The same lack of uniform compliance is reflected in SBA documents regarding the section 610 requirement that agencies periodically examine their rules. Some agencies had developed plans for the review of their regulations and had acted on those plans, while other agencies had neither developed plans nor taken any action.

One reason for this lack of compliance with the RFA's requirements is that the RFA does not expressly authorize SBA to interpret key provisions in the statute. Also, the RFA does not require SBA to develop criteria for agencies to follow in reviewing their rules, and SBA has not issued any guidance to federal agencies defining key statutory provisions. Finally, the RFA does not authorize SBA or any other agency to compel rulemaking agencies to comply with the act's provisions. The Office of Management and Budget (OMB) said that it has helped to ensure RFA compliance during the rulemaking process whenever SBA has notified OMB of SBA's concerns regarding an agency's RFA compliance. However, OMB's ability to ensure RFA compliance has been limited because SBA does not normally notify OMB of SBA's RFA concerns when it comments on agencies' proposed rules. Also, OMB has no established procedures in its review process to determine whether agencies have complied with the RFA. Finally, OMB cannot review rules from independent regulatory agencies or agricultural marketing orders.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to determine which agencies SBA's annual reports and other documents (1) frequently indicated were and were not implementing the RFA in an effective manner and (2) indicated were and were not complying with section 610 of Title 5. To accomplish these objectives, we reviewed the annual reports of the SBA Chief Counsel for Advocacy for 1981 through 1992; correspondence from SBA and various agencies regarding section 610 activities; and related hearing records, reports, and other RFA-related materials. We also obtained information on the RFA and the regulatory process from officials at both SBA and OMB. We did not make an independent determination of agencies' RFA compliance. Any characterizations of particular agencies in this report are directly attributable to SBA. We discussed the results of our work with the SBA Chief Counsel for Advocacy and officials, including the Deputy Administrator, from the Office of Information and Regulatory Affairs at OMB in March 1994 and incorporated their comments where appropriate. We conducted our review from September 1993 to February 1994 at the Washington, D.C., headquarters offices of SBA and OMB. The review was conducted in accordance with generally accepted government auditing standards.

SBA REPORTS INDICATE VARIABLE AGENCY COMPLIANCE WITH THE RFA

The SBA annual reports we reviewed did not evaluate all federal agencies' compliance

[1] 5 U.S.C. 601–612.

[2] There have been several Chief Counsels since the RFA was enacted, some of whom served as Acting Chief Counsels. In this report, the Acting Chief Counsels are referred to as ''Chief Counsels.''

[3] The first report for 1981 was provided on October 7, 1981, in testimony before the Subcommittee on Export Opportunities and Special Small business Problems of the House Committee on Small Business. Reports for 1989 and 1990 were not prepared until 1992. All reports were prepared the year after the subject year. The report for 1993 is scheduled to be published in mid-1994.

with the RFA.[4] Only the Environmental Protection Agency's compliance record was specifically mentioned in all 12 reports. Five other agencies—the U.S. Department of Agriculture (certain subagencies), the U.S. Department of Labor, the Federal Communications Commission, the Internal Revenue Service, and the Securities and Exchange Commission—were mentioned in at least 8 of the 12 reports. At the other extreme, some agencies (e.g., the U.S. Departments of Education, Energy, Housing and Urban Development, Justice, State, and Veterans Affairs) were either not mentioned in any annual reports or were only rarely mentioned. The SBA Chief Counsel said that differences in the degree to which agencies were mentioned in the reports are primarily due to differences between the agencies in their levels of regulatory activity. For example, the State Department issues very few regulations that affect small entities.

The Chief Counsel said SBA normally becomes aware of the specifics of a proposed rule when it is published for notice and comment. If SBA believes the rulemaking agency has not adequately considered the effect of the proposed rule on small entities, the Chief Counsel said SBA will send the agency written comments. However, the Chief Counsel said that SBA does not usually send OMB a copy of their compliance concerns. OMB officials said that SBA officials have occasionally called them on the telephone regarding certain agencies' RFA compliance and, in those instances, OMB has taken SBA's views into consideration during its reviews and helped ensure RFA compliance. For example, they said that if SBA official told them that a rulemaking agency should have conducted an RFA analysis, OMB would ask the agency to show why an analysis was not done before permitting the proposed rule to be published in its final form.

CONCLUSIONS

Our review of SBA's annual reports and other documentation indicated that some agencies have not complied with the RFA as interpreted by the SBA Chief Counsel for Advocacy. We believe that the reasons for this apparent lack of compliance include the following: (1) the RFA does not expressly authorize SBA to interpret the act's key provisions, (2) the RFA does not require SBA to develop criteria for agencies to follow in reviewing their rules, (3) SBA has not issued any guidance to federal agencies defining key statutory provisions in the RFA, and (4) the RFA does not authorize SBA or any other entity to compel rulemaking agencies to comply with the act's provisions.

OMB can help ensure certain rulemaking agencies' compliance with the RFA by reviewing and commenting on those agencies' significant regulatory actions pursuant to its responsibilities under Executive Order 12866. OMB can return most regulatory actions to agencies for further consideration if it believes the actions are inconsistent with the RFA. However, OMB's authority to play an enforcement role is limited in several respects. OMB cannot review rules proposed by independent regulatory agencies and cannot return agricultural marketing orders to AMS. Also, OMB does not have established criteria or procedures to determine whether agencies have complied with the RFA. Finally, while SBA reportedly notifies rulemaking agencies in writing of its RFA concerns during the rulemaking notice and comment period, it does not normally provide OMB with a copy of those concerns and only occasionally telephones OMB about SBA's compliance concerns. Therefore, OMB's ability to ensure agencies' RFA compliance is diminished because it is often unaware of SBA's concerns regarding an agency's compliance.

MATTERS FOR CONSIDERATION OF CONGRESS

If Congress wishes to strengthen the implementation of the RFA, it should consider amending the act to (1) provide SBA with clearer authority and responsibility to interpret the RFA's provisions and (2) require SBA, in consultation with OMB, to develop criteria as to whether and how federal agencies should conduct RFA analyses. Congress could also consider focusing its RFA oversight on the independent regulatory agencies and agricultural marketing orders over which OMB's review and comment authority is limited.

RECOMMENDATIONS

We recommend that the OMB Director, in consultation with SBA, establish procedures OMB can use to determine agencies' compliance with the RFA. These procedures should be incorporated into OMB's processes for reviewing regulations before they are published for notice and comment and before they are published in final. We also recommend that the SBA Administrator direct the SBA Chief Counsel for Advocacy to send OMB a copy of any written notification of RFA noncompliance the Chief Counsel sends to an agency.

AGENCY COMMENTS AND OUR EVALUATION

We provided a draft of this report to the SBA Chief Counsel for Advocacy and discussed the report with her on March 23, 1994. She suggested certain technical changes, which were incorporated into the final report. Overall, she said she agreed with the report's conclusions and recommendations. She said SBA welcomes clarification of its authority to interpret RFA provisions and will work with OMB to develop criteria and procedures for agency compliance with the act. The Chief Counsel also said that she will send OMB a copy of any written notifications of RFA noncompliance she sends to agencies during the rulemaking process.

We also provided a draft of the report to the Administrator of the Office of Information and Regulatory Affairs at OMB and discussed the report with her staff on March 3, 1994. The Deputy Administrator said OMB has no objection to any changes in the statute or in the rulemaking process that would strengthen its position in ensuring RFA compliance. He also said OMB would work with SBA to develop criteria and procedures for determining RFA compliance. Finally, he said that if the SBA Chief Counsel notifies OMB during the rulemaking process that an agency is not complying with the RFA, OMB would discuss the issue with the agency before concluding its review of any final regulations.

We are sending copies of this report to the SBA Administrator, the SBA Chief Counsel for Advocacy, the OMB Director, the Administrator of the Office of Information and Regulatory Affairs at OMB, interested congressional committees, and others who may have an interest in this matter. Copies will also be made available to others upon request.

The major contributors to this report are Charles I. Patton, Jr., Associate Director, Federal Management Issues, General Government Division; Curtis W. Copeland, Assistant Director, Federal Management Issues, General Government Division; and V. Bruce Goddard, Senior Attorney, Office of the General Counsel. If you have any questions or require any additional information, please call me on (202) 512–8676.

WILLIAM M. HUNT,
Director, Federal Management Issues.

[4] All but the first report contained an appendix listing selected comments filed by the Office of Advocacy regarding agencies' proposed rules during the year. These listings did not, however, evaluate agencies' compliance with the RFA.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The amendment was agreed to.

AMENDMENT OFFERED BY MS. PRYCE

Ms. PRYCE. Mr. Chairman, I offer an amendment, No. 106 as printed in the CONGRESSIONAL RECORD.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. PRYCE: At the end of title II insert the following:

SEC. 206. ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE WITH REQUIREMENTS OF TITLE.

Not later than one year after the effective date of title III and annually thereafter, the Director of the Office of Management and Budget shall submit to Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, written statements detailing the compliance with the requirements of sections 201 and 202 by each agency during the period reported on.

Ms. PRYCE. Mr. Chairman, the amendment that I am offering, along with my friend, the gentleman from California [Mr. CONDIT], is designed very simply to strengthen regulatory accountability and improve congressional oversight of executive branch agencies.

To insure that Federal agencies are not skirting the intent of this legislation, our amendment would require the Office of Management and Budget to provide Congress with annual written statements detailing each Federal agency's compliance with the requirements set forth in title II. Our proposal would allow the Committee on Government Reform and Oversight and its sister committee in the Senate to conduct greater oversight of Federal agencies.

The amendment is not meant as a substitute for judicial review, nor is it incompatible therewith.

Our amendment would merely give Congress a reliable status check on how well agencies are complying and whether any modifications are needed.

Without this amendment, I fear agencies may regard these requirements merely as obstacles to overcome, rather than a standard to be diligently applied.

This amendment provides real teeth go into title II of this legislation. Accountability should be part and parcel of the work that every Federal agency performs.

Too often, bureaucracies take on a life of their own, and in the process they lose sight of the original intent of the legislation.

We have all heard the horror stories about regulatory abuses by overzealous bureaucrats. This amendment would help ensure that State and local governments and the private sector are protected from future abuses.

State and local governments are valuable coregulators. They help carry out the purposes of many Federal laws, and their perspectives should be invited and heard.

This legislation and our amendment would force Federal agencies to recognize that mandates impose real costs on taxpayers and consumers alike. If for some reason agencies choose to ignore the requirements in title II and avoid coming to this realization, then they will have to justify their actions before this Congress.

□ 1400

Mr. Chairman, I would like to thank my friend from California for his strong support for this common sense, good government amendment. I urge its adoption.

Mr. DREIER. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I yield to the gentleman from California.

Mr. DREIER. I thank the gentlewoman for yielding to me.

Mr. Chairman, I would like to say that my Rules Committee colleague has done a superb job. The gentlewoman mentioned my friend from the other part of California who is a coauthor of this amendment, but I would like to associate myself with the words of the gentlewoman and state that accountability is key here, and enhancing the ability for reporting back to us from the agencies is I think a very important part of this whole goal of trying to reduce this extraordinary burden which is shifted from Washington onto the shoulders of State and local governments.

I would like to again say how proud I am of the fine work my friend from Columbus is doing on the Rules Committee and this amendment is clear evidence of that.

Mr. CLINGER. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I yield to the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. I thank the gentlewoman for yielding.

Mr. Chairman, the gentlewoman's amendment is going to do much to shed light on how this whole bill is going to work. It is going to provide Congress with the administrative material to comply with H.R. 5. The information is going to be of interest to the President as well, since much of this is what is required by the President through his Executive order, and I believe this affords the Congress strong oversight. I think it is a very valuable addition to what we are trying to accomplish in H.R. 5. It does clarify what is required, and I am glad to support the gentlewoman.

Mr. PORTMAN. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I yield to the gentleman from Ohio.

Mr. PORTMAN. I thank the gentlewoman for yielding.

Mr. Chairman, I would like to comment on my colleague from Ohio's amendment. I would like to thank the Rules Committee for helping us to perfect the legislation. This is a good example of that. It provides a very important feedback loop back to the authorizing committees from the agencies that I think is really critical in order for the structure of H.R. 5 to work properly, and I congratulate the gentlewoman.

Mr. CONDIT. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I am happy to yield to the gentleman from California.

Mr. CONDIT. I thank the gentlewoman for yielding.

Mr. Chairman, I rise in support of the amendment and say this is one of the good amendments that would force Congress to revisit this issue so it does not get away from us. It forces us to reevaluate the program, whether or not it is working, so we can take corrective actions if we need to do so.

I commend the gentlewoman for her thoughtfulness in bringing up this amendment, and I have enjoyed working with her on it.

Mrs. COLLINS of Illinois. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I yield to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. I thank the gentlewoman for yielding.

Mr. Chairman, I have reviewed the amendment and support it.

As I said earlier, congressional oversight of agency compliance with title II is an important mechanism that should be used to make title II effective.

It is a less costly and more effective oversight tool than the courts.

I recognize it is not being offered as a substitute for judicial review, but I still support it as a useful amendment.

Mr. TRAFICANT. Mr. Chairman, will the gentlewoman yield?

Ms. PRYCE. I yield to the gentleman from Ohio.

Mr. TRAFICANT. I thank the gentlewoman for yielding.

Mr. Chairman, I think this is a very good perfecting amendment. It not only is common sense, it is good government. I think the gentlewoman brings that record to the Congress, and I support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Ohio [Ms. PRYCE].

The amendment was agreed to.

AMENDMENT, AS MODIFIED, OFFERED BY MR. ALLARD

Mr. ALLARD. Mr. Chairman, I offer an amendment, and I ask unanimous consent that it be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Colorado?

Mrs. COLLINS of Illinois. Mr. Chairman, reserving the right to object, we would like to know the number of the amendment.

Mr. ALLARD. Mr. Chairman, if the gentlewoman will yield, it is No. 26.

The CHAIRMAN. It is the Chair's understanding that this is a new form of the amendment.

Mr. ALLARD. This is a modification of amendment No. 26. We cleared it with the Clerk, and it was determined that the best way for everybody to understand where we were at this point was just to move the amendment. But it is a modification of amendment No. 26.

The CHAIRMAN. The amendment, as modified, is required to be read.

Is there objection to dispensing with the reading of the amendment?

Mrs. COLLINS of Illinois. Mr. Chairman, I reserve a point of order until we find out what the modification is.

The CHAIRMAN. The point of order is reserved.

Mr. ALLARD. Mr. Chairman, I have no objection to reading the amendment. It is a very short amendment.

The CHAIRMAN. The gentleman from Colorado [Mr. ALLARD] withdraws his request, and the Clerk will report the amendment.

The Clerk read as follows:

Amendment, as modified, offered by Mr. ALLARD: In section 202(a) in the matter preceding paragraph (1), strike ''prepare a written statement containing—'' and insert ''prepare a written statement identifying the provision of Federal law under which the rule is being promulgated and containing—''.

Mr. ALLARD. Mr. Chairman, I rise in support of H.R. 5 and also the amendment, as modified. I want to note that according to my understanding, the amendment, as modified, is now acceptable to the sponsors of H.R. 5.

The Unfunded Mandates Reform Act of 1995 is a piece of legislation whose time has come. However, as currently written, H.R. 5 will not prohibit certain regulations that could impose an unfunded mandate on States and localities. That is why Mr. GRAHAM of South Carolina and I are offering this amendment to tighten H.R. 5.

Our amendment requires regulatory agencies to identify the statutes that give the agencies specific authority to issue a regulation that imposes a mandate on State and local government and the private sector. This helps to ensure that executive agencies cannot escape the scrutiny of H.R. 5 by issuing general regulations that impose an unfunded mandate.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the chairman of the committee.

Mr. CLINGER. I thank the gentleman for yielding.

Mr. Chairman, I would rise in support of the amendment. President Clinton's Executive order contains a very similar kind of requirement that a regulatory plan must include a statement of the statutory basis by which the plan is being carried out, and I think this clarifies that the intent is we are not trying to do anything extralegally. We are trying to ensure that what does

happen here is going to be done according to statute. I think it is a welcome addition to the bill.

I would urge my colleagues to support the Allard-Graham amendment.

Mr. GRAHAM. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from South Carolina.

Mr. GRAHAM. I thank the gentleman for yielding.

Mr. Chairman, this amendment is the kind of amendment that embodies the idea of government, a very simple idea but an important idea. Almost every municipality or county government in my district is affected by an unfunded regulatory mandate. What we are trying to do now is for the regulatory agency to tell us where the authority exists to regulate, to begin with. A big problem in this country is that agencies get off and running with these statutes and we are trying to rein them in.

I come from a town of 2,000 people. Let me tell you what happened to a town of 2,000 in central South Carolina because of a regulatory mandate situation.

The water bill went up 80 percent, we spent $16,000 to test the water through a government mandate that could have been done for about $2,000 from a private firm. We had to pay $5 million to upgrade their water system, to test for contaminants not native to South Carolina.

It is about time we started doing something about it, and this is a good step.

Mr. BURR. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from North Carolina.

Mr. BURR. I thank the gentleman for yielding.

Mr. Chairman, I rise today in strong support of the Allard-Graham amendment. I believe that this amendment will halt overzealous regulators that pass unfunded mandates to our local communities. This amendment strengthens H.R. 5, by forcing Federal regulators to be fiscally responsible as well. Under this amendment, regulators will be required to reference a specific law before passing unfunded mandates onto the State and local officials.

In my district, I had a county commission that was forced to raise taxes on its citizens, not from an unfunded Federal mandate, but from an unfunded regulatory agency mandate. In Caldwell County, the Environmental Protection Agency forced the commission to place a clay liner on its land fill. Protection was not at issue. Instead, the issue was why a clay liner? Why was it necessary to use a material not available in the area? Why not look for and use and equally reliable material to reduce the $6 million cost to this community? And most importantly, what law gave the EPA the right to mandate this community? The fact is, a lack of legislation allowed this to occur. By supporting the Allard-Graham amendment, you can put an end to this ''taxation without representation''.

Mr. Chairman, I urge strong support for this amendment.

Mr. MORAN. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Virginia.

Mr. MORAN. I thank the gentleman for yielding.

Mr. Chairman, I rise at this time only to withdraw the point of order reservation made by the gentlewoman from Illinois [Mrs. COLLINS].

The CHAIRMAN. The reservation of the point of order is withdrawn.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I appreciate the gentleman's amendment. It is a good amendment. It is the kind of clarification that we need. I would also like to thank the gentleman from South Carolina [Mr. GRAHAM] for working closely with the sponsors of the legislation and with the chairman of the committee to come up with a proposal that I think fits with the broader scheme of H.R. 5.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from Colorado [Mr. ALLARD].

The amendment, as modified, was agreed to.

□ 1410

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designated the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OXLEY:

SECTION 205. CLARIFICATION OF MANDATE ISSUE AS TO GREAT LAKES WATER QUALITY GUIDANCE.

Section (c)(2)(C) of the Federal Water Pollution Control Act (33 U.S.C. Section 1268(c)(2) is amended by adding at the end thereof the following new sentence:

''For purposes of this subparagraph, the requirement that the States adopt programs 'consistent with' the Great Lakes guidance shall mean that States are required to take the guidance into account in adopting their programs for waters within the Great Lakes System, but are in no event required to adopt programs that are identical or substantially identical to the provisions in the guidance.''

Mr. CLINGER. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. CLINGER] reserves a point of order against the amendment.

The Chair recognizes the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I would like to bring to the attention of my colleagues another example of an unfunded mandate under the Clean Water Act which will cost my constituents millions of dollars. The issue is the proposed Great Lakes water quality rule from the U.S. EPA which is expected to be finalized in early March.

The Great Lakes Critical Programs Act requires EPA to issue guidance concerning certain water quality regulatory procedures, and then requires the Great Lakes States to adopt requirements that are consistent with that guidance. However, when EPA issued its proposed guidance, that document was actually a binding regulatory mandate instead of the guidance that the act requires. If fact, EPA clearly indicated that it wants all of the State programs, to be identical to the Federal rule.

EPA's intention to issue a binding regulation rather than guidance with respect to the Great Lakes is inconsistent with congressional intent. Also, by taking away any flexibility for a State to develop a program that is appropriate for its own situation, EPA would violate the basic federalism principles that are at the heart of the Clean Water Act. Again, the Federal Government would be imposing an unfunded mandate on the States.

This mandate will result in unfunded compliance costs in excess of $2 billion per year and potential loss of 33,000 jobs without producing meaningful toxic reductions.

Several cities in my district surveyed their own municipal water treatment operations and looked at the additional regulatory controls needed to control mercury under the proposed Great Lakes water quality rule. The survey, based upon mercury only, shows that it would cost Bucyrus, OH, population 14,000, $13.6 million to comply with the proposed rule. Mansfield, OH, population 50,000, would pay $29.1 million and Lima, OH, population 43,000, would pay $89 million.

In terms of household taxes, the town of Lima has estimated an increase of $207 in taxes to pay for the costs of the water treatment program. In later years, as the rule is fully implemented, the town of Lima estimates that the household tax will increase to $1,147 per home per year.

This is an incredible increase in local taxes for a federally mandated program from EPA. These costs are in addition to what Lima taxpayers already pay for safe drinking water controls and Clean Water Act controls on mercury. The Federal Government and EPA cannot expect towns like Lima to spend millions of additional dollars when the results will demonstrate little environmental improvement.

EPA has simply gone too far. The 1986 reauthorization of the Clean Water Act did not ask EPA to propose a rule on these pollutants to improve the Great Lakes Basin. In fact, the act simply called for the EPA to issue guidance to the States surrounding the Great Lakes.

The Great Lakes States want to fix the toxics problem, not just throw

money at it. My amendment would require that the EPA issued guidance which could be used in a flexible manner as the States choose.

If we are to keep our promise we made with the people, we must not force the costs of the Great Lakes initiative on the cities and States. Including this initiative in the unfunded mandates reform would prevent if from being issued as a regulation. It is my hope that if we cannot resolve this matter today, Congress will move quickly to fix the Great Lakes water quality initiative. While well-intended, this proposal is an unproductive and expensive detour around the real environmental solutions.

Mr. CLINGER. Mr. Chairman, I am going to have to insist on my point of order because I think the amendment is not germane. I do appreciate the gentleman from Ohio [Mr. OXLEY] taking the time to raise this very important issue. I would like to assure the gentleman that I am aware of and sensitive to the impact that the Great Lakes water quality initiative is going to have on municipalities and industries all across the Great Lakes region.

My district does not border on the Great Lakes. My hometown of Warren is only an hour's drive from Erie, PA, and, according to a study conducted by the Great Lakes Quality Coalition, the EPA's new binding regulatory mandates could cost Erie, PA $119 million. Also the General Electric plant in Erie expects GLI's regulation to cost $50 million.

National Forge, a major employer in my district, manufactures crankshafts for approximately 900 engines built annually in G.E.'s Erie plant, and the G.E. plant accounts for nearly 20 percent of National Forge's business, and the ripple effect of these costly mandates could force layoffs, or worse, relocation of National Forge.

Another company affected by these new regulations that has significant presence in my district is International Paper. The cost of compliance to I.P.'s mill at Erie could reach $30 million.

Although the Pennsylvania Department of Environmental Resources states it would not impose the new regulations statewide, the Lock Haven mill in my district could be indirectly affected since the Erie mill supplies wood pulp to Lock Haven.

So, as the gentleman could see, I, too, have some concerns about EPA's new regulations and very much appreciate his bringing this to our attention and would like to work with the gentleman to address this very important issue, but must insist, I think, on my point of order in this regard.

Mr. GILMAN. Mr. Chairman, I commend the gentleman from Ohio [Mr. OXLEY], the author of the amendment to H.R. 5, for his efforts in bringing this issue to the floor.

I support this proposal which seeks to clarify the original legislative intent in the Federal Water Pollution Prevention and Control Act of 1990. The language in this act requires the States to institute water quality programs consistent with the Environmental Protection Agency's Great Lakes guidance, but in no way requires the States to adopt regulations which identically comply with the specific elements of the Great Lakes guidance.

Accordingly, Mr. Chairman, it will be helpful to clarify the intent of this section of the Federal Water Pollution Prevention and Control Act.

Mr. OXLEY. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

Mr. BONIOR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment that was just withdrawn by the gentleman from Ohio [Mr. OXLEY], and I take the time of the House to speak on this because it is such an important issue to those of us who reside on the Great Lakes.

The Great Lakes are the largest single body of fresh water in the world. They are an important environmental and economic resource for this Nation and for those of us who live on their borders.

In 1990, we passed the Great Lakes Critical Programs Act which included a measure to level the playing field of all States that border the Great Lakes. The Great Lakes Water Quality Initiative, or the GLI as it is known, requires Great Lakes State governments to develop and adopt uniform water quality standards, and it is imperative that the overall mission of the GLI not be undermined by the amendment that we were about to consider. This is a classic case where the Federal Government is needed to ensure that each State is playing by the same rules, that we have a level playing field, that one State does not disadvantage another State.

The GLI eliminates the competitive advantage a State might derive by setting relaxed pollution standards. Now different States share resources, and one has a different approach to managing the resources than another. Who mediates the dispute? Logic would suggest the Federal Government.

I do not always agree with my Governor, Gov. John Engler of Michigan, but in this case he understands the need to replace conflicting water pollution control rules that widely vary from State to State with a uniform comprehensive and enforceable set of standards, and in this instance I hope that others of his party will follow his lead in the future.

While I do not believe this amendment is germane, and it obviously is not because it was withdrawn by the gentleman from Ohio [Mr. OXLEY] at the suggestion of the gentleman from Pennsylvania [Mr. CLINGER], I would have opposed it anyway. Good responsible governing does not try to gut every Federal rule that has ever been made. It is about resolving issues that States cannot resolve on their own. This is one instance where the Federal Government should and must intervene, and I hope, when this debate unfolds in the future, that we will remember this issue and we will not give up on a program that works, is needed and will help mediate the problems between the various Great Lakes States.

Mr. Chairman, I submit for the RECORD an editorial from the Detroit Free Press: ''Ban on Federal Mandates May Even Hurt Great Lakes.''

[From the Detroit Free Press, Jan. 30, 1995]

BAN ON FEDERAL MANDATES MAY EVEN HURT GREAT LAKES

If you want an example of the mischief that can be done in the name of heedlessly doing away with unfunded mandates, consider an Ohio congressman's move to throw out the proposed Great Lakes water quality standards.

The Great Lakes Initiative [GLI] has been painfully hammered out by business, regulators, governors and the environmental community. The result didn't satisfy everybody, but its stunning virtue is that it would apply the same rules to all players: Steel mills in Illinois, auto plants in Ohio and sewage plants in Wisconsin would have the same water quality rules as their counterparts in Michigan.

That protects the Great Lakes, and also eliminates the competitive advantage a state might derive from winking at pollution. The principle is critical for Michigan, which has had tougher water quality standards than many of its neighbors. The GLI has the firm support of Gov. John Engler.

That protects the Great Lakes, and also eliminates the competitive advantage a stage might derive from winking at pollution. The principle is critical for Michigan, which has had tougher water quality standards than many of its neighbors. The GLI has the firm support of Gov. John Engler.

Enter Rep. Michael Oxley, R-Ohio, with an amendment to the unfunded mandates bill that would turn the GLI into advisory guidelines, rather than rules. That would get Ohio off the hook and gut Great Lakes protection. And bad as the Oxley proposal is, it is only one of scores of similar amendments the trash-the-rules gang is lining up to tack onto the measure.

Clean lakes? Safe drinking water? Worker safety? Consumer protection? Not if the mandate-bashers have anything to say about it. Rep. Oxley's amendment emasculating the GLI is bad enough. A rigid, unthinking prohibition of any form of federal mandate would be far worse.

□ 1420

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. TRAFICANT: In section 202(a), after ''productive jobs,'' insert ''worker benefits and pensions,''.

Mr. TRAFICANT. Mr. Chairman, this amendment has been banged around a

little bit. It has had quite a bit of scrutiny and review, but I think it is imperative that the amendment be understood and that we understand the importance of the amendment as it relates to unfunded mandates, working people, and the health of our economy.

This bill requires Federal agencies to examine a number of factors before promulgating regulations, but under this section where my amendment is in fact targeted, agencies are required to examine the effect of a proposed rule on the economy, the effect on productivity, economic growth, full employment, creation of productive jobs, and the impact on international competitiveness.

The Traficant amendment adds the impact on workers' benefits and their pensions. Let me say this: Many pensions in this country are underfunded. When a pension plan is underfunded, the Congress of the United States bails those pension plans out through the Pension Benefit Guaranty Corporation.

As we know, workers are worried sick around the country about many of these underfunded pension plans.

The Traficant amendment is not designed to impose any regulatory process on the insurance industry nor pension plans, but what the Traficant amendment says is that when we consider and when that group considers the impact of these unfunded Federal mandates on these respective elements under section 202(a)(4), they also look at its impact on the long-term effect on those health insurance plans and those pension plans.

The Pension Plan Fund of America is the major source of investment money that impacts our stock markets, our bond markets, and the viability of our economic community, and I believe that in fact to leave that out, to be silent on that, or to not address it specifically would be a failing of this bill.

I am a strong supporter of the bill, and I believe that we cannot separate these important areas from the other elements that are addressed specifically in the bill.

So I would ask the Members to support the amendment and to keep that amendment in that part of the bill which addresses the fact that it must be reviewed and considered in any other capacity as those other areas so delineated. I think if we are going to ask the agencies to examine those other areas, we would be remiss if we did not focus on those two main areas that so affect our economy.

With that, Mr. Chairman, I yield to the gentleman from California [Mr. CONDIT].

Mr. CONDIT. Mr. Chairman, I thank the gentleman for yielding, and I rise in support of the amendment offered by my colleague, the gentleman from Ohio [Mr. TRAFICANT].

The gentleman from Ohio has been very active on this issue of making the bill a better bill. I think this amendment is a good amendment. I think he has tried to work it out with the majority and tried to do everything he can to make sure it fits in where it is supposed to fit. I commend the gentleman for his effort and his support on this issue. It has been greatly appreciated, and I ask the Members to support the amendment.

Mr. TRAFICANT. Mr. Chairman, I thank the gentleman from California for his leadership on the bill.

Mr. Chairman, I now yield to the distinguished chairman of the subcommittee.

Mr. SCHIFF. Mr. Chairman, I want to say that as I understand the debate over the type of unfunded mandates we are talking about, I see them distant in the areas I can think of from the areas the gentleman is talking about.

However, the area of pension guarantees is so important that if there is any possibility that this legislation affects the areas the gentleman from Ohio is identifying, then I think it is important that we add his amendment to the bill as offered, and I accept the amendment and support it.

Mr. TRAFICANT. Mr. Chairman, I appreciate the support of the gentleman from New Mexico [Mr. SCHIFF].

Mr. Chairman, I yield to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, I thank the gentleman for yielding.

I certainly support the gentleman's amendment. It makes a lot of sense. It would add the words, ''work benefits and pensions'' after the words, ''creation of productive jobs'' as one aspect of private sector regulatory analysis.

Certainly regulations can affect productivity and jobs. They can create jobs or cost jobs. What is equally important is the impact upon the benefits and pensions of workers across the country. I find that the average worker is not just concerned about the security of his job or her job, but they are equally concerned about the security of benefits and the security of pensions which are increasingly being eroded.

The gentleman's amendment makes a lot of good sense. It focuses our attention and the agency's attention on this very important matter.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. TRAFICANT] has expired.

(By unanimous consent, Mr. TRAFICANT was allowed to proceed for 2 additional minutes.)

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I thank my colleague, the gentleman from Ohio, for yielding, and I just want to thank the gentleman for educating us over the last several hours here on this very important issue. I thank the gentleman for his contribution to the debate.

Mr. TRAFICANT. Mr. Chairman, I appreciate the gentleman's comments.

Before I complete my presentation, let me say this: It is not just the retirees and their pension plans I am concerned about. When those pension plans are impacted and that money dries up for investment in our economy, it impacts the active workers in our country as well.

Mr. Chairman, I appreciate the openness of the Members of the majority party in looking at this issue as broadly as they have. I appreciate their support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

Mr. FATTAH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to protect my right to offer an amendment, amendment No. 14.

I understand a similar amendment has already been considered today, and I was not on the floor at that time. But I do, nonetheless, want to raise the issue.

Mr. Chairman, on page 17 of this bill it provides that each agency shall develop an effective process to permit elected officials or their designated representatives of State, local, or tribal governments to provide meaningful and timely input in the development of regulatory proposals.

The amendment that I had considered offering today and, therefore, had printed in the RECORD, was an amendment that would also provide for private sector input and not just the input of elected officials. I thought the thrust of what I had been hearing here on the Hill was that we wanted to give the government back to the people, and that perhaps we wanted to have input from individuals, private individuals, not just elected officials.

Having understood a previous amendment which was very similar to mine was not passed, I would be willing to not belabor the point if I could get a point of view as to why this type of amendment would not be found acceptable by the majority.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. FATTAH. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I appreciate the gentleman's yielding.

Very briefly, we did have a good discussion on this issue previously in response to the amendment offered by the gentleman from California [Mr. WAXMAN] which was not accepted.

I think there are two issues here. No. 1, there is a process by which through the existing Administrative Procedures Act, in a notice and comment period in the private sector, individuals would have an opportunity to be heard.

The second point is that we do in fact provide for a special place in a sense for State and local governments at the table, but that is because they are the coregulators of the very Federal regulations that are subject to this rulemaking.

So I think the response is, frankly, that there is already in the process the

opportunity for people to be heard, and that is appropriate. We endorse that. But we did not need to carve out a special requirement for the agencies with respect to this. We did so for State and local governments, again in the sense that they are the coregulators and are directly affected by these regulations.

Mr. FATTAH. Mr. Chairman, I thank the gentleman for his explanation.

Mr. Chairman, in consideration of what has been offered as an explanation, I would reiterate that it would seem to me that it would be appropriate for us to provide in this section absolute guarantees of private sector input and private citizen input. However, so that we would not delay the process and in consideration of the vote on the previous amendment which was similar to mine, I at this point would withdraw my amendment.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield further?

Mr. FATTAH. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, let me say that I again thank the gentleman from Pennsylvania. We worked closely on some other amendments in the process, including amendments to title I, and I appreciate the gentleman's withdrawing his amendment at this time.

The CHAIRMAN. The Chair will state that the gentleman from Pennsylvania [Mr. FATTAH] simply declines to offer his amendment.

□ 1430

Mr. ROTH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this is an extremely important piece of legislation, and I must just take 1 minute to draw the body's attention to what this legislation is doing in the area, for example, of the Great Lakes.

Mr. Chairman, we've heard many examples of the burdens placed on the States by unfunded Federal mandates during this debate. The Great Lakes States, are facing a very serious problem that will affect cities, townships, and villages all around the lakes.

The EPA's proposed Great Lakes Water Quality Initiative [GLI] will impose substantial costs on local government and industry with little proven environmental benefit.

The EPA Science Advisory Board and the American Council on Science and Health, as well as a study commissioned by the Great lakes Governors, have all expressed doubts about the proposal's potential environmental effectiveness.

There is little doubt, however, that the proposal will do significant damage to the Great Lakes economy. The Governors' study estimates that it will cost more than $2 billion a year and destroy more than 33,000 jobs.

These large costs are not being imposed solely on industry. The most recent study estimates the costs will be even higher. For just 50 municipalities, this study estimates $1.7 billion in capital costs and $695 million in operating and maintenance costs. That means costs to the entire region could be well in excess of $5 billion.

The EPA currently intends to issue the proposal as a binding regulatory mandate that must be implemented the same way in every State and every community. There would be no flexibility, and consequently, no opportunity to reduce costs.

This is yet another example of an outrageous unfunded mandate imposed by an out-of-control bureaucracy. A mandate that may bankrupt an entire region with little or no proven environmental benefit.

We must return to some common sense in our governmental conduct. The proposal was originally intended as a guidance, not a mandate. We must give the States back the flexibility to adopt the GLI to local conditions and needs.

This amendment says clearly that the States should take the EPA guidance into account in adopting water quality programs. At the same time, however, State programs do not have to be identical to the EPA guidance.

Mr. Chairman, this amendment would provide a sensible remedy to an expensive and unfair situation.

Mr. SKAGGS. Mr. Chairman, I ask unanimous consent that we proceed out of order at this point. I think this amendment is the last one that was going to be offered in title II. We are working with the majority side to try to reach agreement on this language. Rather than try to proceed prematurely, I ask unanimous consent that we go into title III and reserve the right to come back.

Mr. SCHIFF. Mr. Chairman, reserving the right to object, we have no objection. The gentleman from Colorado and the chairman of the committee have been discussing this issue. In the possibility that they might reach agreement, it would be well warranted.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Without objection, the rights of the gentleman from Colorado [Mr. SKAGGS] to offer an amendment to title II will be protected.

There was no objection.

The CHAIRMAN. Are there further amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 301. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

Title IV of the Congressional Budget Act of 1974 is amended by—

(1) inserting before section 401 the following:

''Part A—General Provisions''; and

(2) adding at the end the following new part:

''Part B—Federal Mandates

''SEC. 421. DEFINITIONS.

''For purposes of this part:

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

''(2) DIRECTOR.—The term 'Director' means the Director of the Congressional Budget Office.

''(3) FEDERAL FINANCIAL ASSISTANCE.—The term 'Federal financial assistance' means the amount of budget authority for any Federal grant assistance or any Federal program providing loan guarantees or direct loans.

''(4) FEDERAL INTERGOVERNMENTAL MANDATE.—The term 'Federal intergovernmental mandate' means—

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

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

''(I) a condition of Federal assistance; or

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

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

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

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

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

''(ii) the States, local governments, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

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

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

''(i) a condition of Federal assistance; or

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

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

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

''(7) FEDERAL MANDATE DIRECT COSTS.—

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

''(B) PRIVATE SECTOR DIRECT COSTS.—In the case of a Federal private sector mandate, the

term 'direct costs' means the aggregate estimated amounts that the private sector would be required to spend in order to comply with a Federal private sector mandate.

''(C) EXECLUSION FROM DIRECT COSTS.—The term 'direct costs' does not include—

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

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

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

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

''(I) their compliance with the Federal mandate; or

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

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

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

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

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

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

''SEC. 422. LIMITATION ON APPLICATION.

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

''(1) enforces constitutional rights of individuals;

''(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status;

''(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

''(4) provides for emergency assistance or relief at the request of any State, local government, or tribal government or any official of such a government;

''(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

''(6) the President designates as emergency legislation and that the Congress so designates in statute; or

''(7) pertains to Social Security.

''SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.

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

''(b) COMMITTEE REPORT.—

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

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

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

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

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

''(3) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report referred to in paragraph (1) shall also contain—

''(A)(i) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs or for new Federal financial assistance, provided by the bill or joint resolution and unable for activities of States, local governments, or tribal governments subject to Federal intergovernmental mandates; and

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

''(B) a statement of any existing sources of Federal financial assistance in addition to those identified in subparagraph (A) that may assist States, local governments, and tribal governments in paying the direct costs of the Federal intergovernmental mandates.

''(4) INFORMATION REGARDING PREEMPTION.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on whether the bill or joint resolution, in whole or in part, is intended to preempt any State, local, or tribal law, and if so, an explanation of the reasons for such intention.

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

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

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

''SEC. 424. DUTIES OF THE DIRECTOR.

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

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

(A) If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which such a Federal intergovernmental mandate (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(B) The estimate required by subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

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

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

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

''(A) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

''(B) The estimate required by subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

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

''(ii) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of

authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

''(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

''(3) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the threshold specified in paragraph (1)(A) or (2)(A), the Director shall so state and shall briefly explain the basis of the estimate.

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

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

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

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

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

''(2) CONTINUING STUDIES.—The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

''(3) FEDERAL MANDATE STUDIES.—

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

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

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

''(ii) consider establishing advisory panels of elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and other persons if the Director determines, in the Director's discretion, that such advisory panels would be helpful in performing the Director's responsibilities under this section; and

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

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

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

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

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

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

''(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.

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

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

''SEC. 425. POINT OF ORDER.

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

''(1) any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, except that this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4); or

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

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

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

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

''(i) provides that—

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

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

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

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

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

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

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

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

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

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

''SEC. 426. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

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

SEC. 302. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

(a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Cause 5 of rule XXIII of the Rules of the House of Representatives is amended by adding at the end of the following:

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

(b) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF ORDER.—The Committee on Rules shall include in the report required by clause 1(d) of Rule XI (relating to its activities during the Congress) of the Rules of the House of Representatives a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

SEC. 303. EXERCISE OF RULEMAKING POWERS.

The provisions of this title (except section 305) are enacted by Congress—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such they shall be considered as part of the rules of the House of Representatives and the Senate, 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 the House of Representatives and the Senate to change such rules at anytime, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives or the Senate, respectively.

SEC. 304. CONFORMING AMENDMENT TO TABLE OF CONTENTS.

Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting ''PART A—GENERAL PROVISIONS'' before the items relating to section 401 and by inserting after the items relating to section 407 the following:

''PART B—FEDERAL MANDATES

''Sec. 421. Definitions.
''Sec. 422. Limitation on application.
''Sec. 423. Duties of congressional committees.
''Sec. 424. Duties of the Director.
''Sec. 425. Point of order.
''Sec. 426. Enforcement in the House of Representatives.''.

SEC. 305. TECHNICAL AMENDMENT.

(a) TECHNICAL AMENDMENT.—The State and Local Government Cost Estimate Act of 1981 (Public Law 97–108) is repealed.

(b) TECHNICAL AMENDMENT.—Section 403 of the Congressional Budget Act of 1974 is amended to read as follows:

''ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

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

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

''(2) a comparison of the estimate of costs described in paragraph (1) with any available estimate of costs made by such committee or by any Federal agency.

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

SEC. 306. EFFECTIVE DATE.

This title shall take effect on October 1, 1995.

AMENDMENT OFFERED BY MRS. COLLINS OF ILLINOIS

Mrs. COLLINS of Illinois. Mr. Chairman, I offer my amendment numbered 51.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. COLLINS of Illinois: In section 306, strike ''October 1, 1995'' and insert ''at the end of the 10-day period beginning on the date of the enactment of this Act''.

Mrs. COLLINS of Illinois. Mr. Chairman, many Democrats will vote for this bill because they believe the open and full debate on the costs to the public and private sector is the essence of good public policy.

That is why it is imperative that if this bill is passed, the requirements of the bill be applied to legislation as soon as possible. We need to ensure a full and open debate on the true costs of the legislation that the Republican leadership will be bringing to this floor.

Unfortunately, H.R. 5 in its present form will not allow us to do that. The effective date in section 306 is not when we pass this bill, or even a week or a month after passage. No, for some unexplained reasons, this bill does not go into effect until October 1, 1995. That is more than 8 months away. My amendment would simply move up the effective date to 10 days after enactment.

We have heard how important this legislation is, how essential it is to pass it as soon as possible. How urgent is this bill?

So urgent that the primary committee of jurisdiction, the Committee on Government Reform and Oversight, was told that it did not have time for a hearing on the bill.

So urgent that it was marked up just 2 days after the bill was printed.

So urgent that the markup took place at the same time that the committee held its first organizational meeting.

So urgent that the majority requested permission to file the committee report early to get us to the floor today.

Why, if it is so urgent, does it not take effect for another 9 months? The chairman of the committee has stated that he wanted to give the Congressional Budget Office time to gear up for its new responsibilities. I would answer that CBO has had plenty of opportunity to gear up. It has known for 2 years that unfunded mandate legislation was coming.

In fact, in staff discussions with CBO, its staff does not believe it will take much additional resources to carry out its duties under this legislation.

Let me suggest a different reason for delaying enactment until October 1: By then, most of the Republican contract, including rescission bills, welfare reform, and other cost-cutting measures, will have come to the floor and been acted on.

Some of these bills, in cutting the Federal responsibility for certain programs, may very well have the effect of shifting those burdens to State and local governments.

For example, the welfare reform bills that we have heard about would provide less money to States while perhaps still requiring them to provide certain levels of assistance. That is an unfunded mandate under this bill. And we have no idea what impact the rescission bills may have on State and local governments.

We have heard that none of the legislation to be taken up between now and October will impose any costs on State and local governments. Therefore, there should be no opposition to this amendment. If there is hesitation to applying this bill over the coming months, then either this bill has great problems, or there are in fact unfunded mandates in the Republican agenda.

Let us not delay the effect of this bill. Regardless of your views on this bill, there is no reason to exempt our actions over the coming months on the Republican contract.

Mr. DREIER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I know that the amendment is very well intentioned, but it seems to me that there is a sense that this October 1 effective date was somehow just drawn out of thin air, when in fact that clearly is not the case. The enactment date of October 1 was not determined by the Contract With America. In fact, it was determined based on consultations with the Congressional Budget Office to arrive at a reasonable time frame that would allow the Congressional Budget Office to obtain the staffing and expertise to conduct accurate cost estimates, which clearly is the major thrust of what we are trying to do with this legislation.

It seems to me that is a very responsible route for us to take. Nothing is trying to be put off at all.

□ 1440

I think that the attempt to proceed with this is less than responsible.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Cincinnati, OH.

Mr. PORTMAN. Mr. Chairman, I thank the gentleman for yielding to me.

A couple of points in response to the gentlewoman's comments regarding the effective date. It should be made clear, Mr. Chairman, that in last year's legislation, which passed the Government Operations Committee by a vote of 35 to 4, the effective date was October 1, 1995. This was, of course, prior to the Contract With America, prior to the new Congress. And this was a piece of legislation which was very similar to the H.R. 5 now before us. Again, it was a strong bipartisan vote of 35 to 4. The reason October 1 was chosen is precisely what my friend from California has said, which is, it would take that long for the Congressional Budget Office to be prepared to do the extensive analysis which is required under this legislation.

I would say, in addition, that I have had direct personal conversations with CBO as recently as in the last 2 weeks with regard to this very issue. And they, in fact, would probably prefer the Senate version of the bill, which provides for an effective date of January 1, 1996. The House version, again, is October 1, 1995.

I would say finally that this is also very important so that our committees, authorizing committees here in the House and so that the Federal agencies can be prepared to actually respond to the new requirements in this legislation, which are so important to the accountability that is central to this act.

Mrs. COLLINS of Illinois. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentlewoman from Illinois.

Mrs. COLLINS of Illinois. Mr. Chairman, the gentleman from Ohio [Mr. PORTMAN] mentioned that the bill that we had last year had an enactment date of October 1995. I just want to point out, this is not the bill we had last year. This is a totally different bill than the bill we had last year. This is a new bill, as the gentleman very well knows. It just seems to me we cannot compare those two at this point in time.

Mr. PORTMAN. Mr. Chairman, if the gentleman will continue to yield, just one small comment, it is a different piece of legislation with regard to the CBO requirements. If anything, this bill has even more requirements for CBO, although the bill last year also had a CBO cost requirement, as the gentlewoman knows, and if anything, one would think the logic would be that we would push back the effective date beyond October 1, given the change in the legislation.

Mrs. COLLINS of Illinois. Mr. Chairman, they also had a year's head up since we are in another year, and another Congress.

Mr. DREIER. Mr. Chairman, I think a very important point that needs to be made here is that the dollars that would be necessary for the Congressional Budget Office to successfully implement this will not be appropriated until the next fiscal year. We can authorize it, but those funds would not be available until following October 1, and that is the reason for this date. That is why I think that it is important for us to maintain that.

A great deal of thought went into it. It is for that reason that I am going to have to oppose the gentlewoman's amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, would the gentleman have any idea when he would expect CBO to be doing these estimates and getting information back to the Congress?

Mr. DREIER. This is obviously going to be taking place over the next several weeks and months following implementation of this legislation. And they are well aware of the fact that this October 1 date is obviously key for them and that sets an actual deadline.

Mrs. COLLINS of Illinois. Does the gentleman expect an unfunded mandate to come down the pike before then, before October 1?

Mr. DREIER. Surely. Before the first of October, surely, we are going to be looking at those. It is obvious that as we begin addressing this issue, it is going to be on the horizon, but this October 1 date was very important and, as I said, was not grasped out of thin air. It was something that clearly we did with careful negotiations with the Congressional Budget Office.

It is for that reason, Mr. Chairman, that I am going to have to oppose the gentlewoman's amendment.

Mrs. COLLINS of Illinois. Could the gentleman tell me when is the effective date of title II?

Mr. DREIER. The effective date on title II.

Mr. PORTMAN. Mr. Chairman, if the gentleman will continue to yield, I would say in response to the gentlewoman's question with regard to title II, which is the regulatory requirements, that it is my understanding that they become effective upon enactment.

The CHAIRMAN. The time of the gentleman from California [Mr. DREIER] has expired.

(By unanimous consent, Mr. DREIER was allowed to proceed for 30 additional seconds.)

Mr. DREIER. Mr. Chairman, was the answer adequate?

Mrs. COLLINS of Illinois. Mr. Chairman, if the gentleman will continue to yield, the gentleman said title II was effective upon enactment. So will we have to wait for that title until October 1, 1995, even though it is effective upon enactment?

Mr. PORTMAN. Mr. Chairman, if the gentleman will continue to yield, it is my understanding that the regulatory section, which is title II, becomes effective upon enactment. In other words, the Federal agencies will be required to continue to do as they do now.

The CHAIRMAN. The time of the gentleman from California [Mr. DREIER] has again expired.

(On request of Mr. PORTMAN, and by unanimous consent, Mr. DREIER was allowed to proceed for 1 additional minute.)

Mr. PORTMAN. Mr. Chairman, if the gentleman will continue to yield, the Federal agencies will be required to do as they are required now under the Executive order to carry out the cost-benefit analysis contained in title II.

Mrs. COLLINS of Illinois. Mr. Chairman, does the gentleman suppose they might be willing to delay any additional enactment until October 1, 1995, under title II, the Federal agencies?

Mr. PORTMAN. Mr. Chairman, the Federal agencies are currently required, under the Executive order, to go even beyond the cost-benefit analysis provided in title II. We now have it in statute, not just in the Executive order. But it is my understanding the agencies would continue to provide the cost-benefit analysis that was subject to the debate earlier today.

Mrs. COLLINS of Illinois. Mr. Chairman, the problem is, it is a new requirement because it is a new bill. I just wondered how it was going to all play out between now and October 1, 1995.

Mr. PORTMAN. It is my understanding that the Congressional Budget Office, because, they have no requirements within title II, will begin their analysis on October 1. By that time they will have adequate funding and adequate personnel to do the very major tasks which we are asking them to do in this legislation. Again, this is all consistent with the legislation we passed last year, H.R. 5128. The Senate bill has January 1, 1996, as a deadline.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Illinois [Mrs. COLLINS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. COLLINS of Illinois. Mr. Chairman, I demand a recorded vote.

The recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 181, noes 250, not voting 3, as follows:

[Roll No. 73]

AYES—181

Abercrombie	Berman	Clay
Ackerman	Bishop	Clayton
Andrews	Bonior	Clyburn
Baesler	Borski	Coleman
Baldacci	Boucher	Collins (IL)
Barcia	Browder	Collins (MI)
Barrett (WI)	Brown (CA)	Condit
Becerra	Brown (FL)	Conyers
Beilenson	Brown (OH)	Costello
Bentsen	Bryant (TX)	Coyne

Cramer
Danner
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Moran
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Rangel
Reed
Reynolds
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tauzin
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—250

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Paxon
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Upton
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—3

Bilbray
Gekas
Mfume

□ 1505

Mr. RICHARDSON changed his vote from ''aye'' to ''no.''

Messrs. BARRETT of Wisconsin, DOLLEY, DEAL of Georgia, BAESLER, TAUZIN, PARKER, and LAUGHLIN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. PORTMAN

Mr. PORTMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PORTMAN: In section 301, in the proposed section 423(b)(2) of the Congressional Budget Act of 1974, amend subparagraph (C) to read as follows:

''(C) a statement of—

''(i) the degree to which the Federal mandate affects each of the public and private sectors, including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or on the competitive balance between the public sector and the private sector; and

''(ii) in the case of a Federal mandate that is a Federal intergovernmental mandate, the extent to which limiting or eliminating the Federal intergovernmental mandate or Federal payment of direct costs of the Federal intergovernmental mandate (if applicable) would affect the competitive balance between States, local governments, or tribal governments and the private sector.

Mr. PORTMAN. Mr. Chairman, my colleague and friend the gentleman from California [Mr. CONDIT] and I are offering this amendment in response to concerns we have heard from Members about the potential adverse impacts this legislation, H.R. 5, could have on the private sector and the competitive balance between the public and private sectors.

I should say at the outset it is not my view that H.R. 5 would have such a negative impact. In fact, it strikes me as rather odd that while certain Members of the other party are expressing concerns about the devastation that might befall the private sector, it is representatives of this very sector, the private sector, that have strongly supported H.R. 5 and have worked with us in drafting this bill and are strongly supportive of this clarifying amendment.

The list of business groups endorsing H.R. 5 is too lengthy to go through in its entirety, Mr. Chairman, but I will say for the record that we have support from the chamber of commerce, the NFIB, the Small Business Legislative Council and, yes, one of the largest private sector entities involved in this situation which would be BFI, Browning-Ferris. That is quite persuasive to me that the concerns being expressed by the opponents to H.R. 5 are being overdone.

These are groups that the opponents of H.R. 5 claim would be negatively affected by its enactment. Yet these groups want this legislation. They want it passed now.

As someone who is very proud of my record of support of the private sector, particularly small business, I can assure my colleagues that I would not be standing here today arguing for the passage of H.R. 5 if I believed it would harm this critically important sector of our economy. In fact, I believe just the opposite. Passage of H.R. 5 does not mean that Congress is denied the right to impose mandates on the public sector that are imposed on the private sector. Nor does it mean that we will fund mandates for the public sector that are not funded on the private sector, thereby setting up a competitive disadvantage. Instead it simply means we are going to have the cost information we need to make an informed decision.

Specifically on this point, H.R. 5 gives us for the first time, Mr. Chairman, a requirement that Congress must address the impact on the private sector. It must address this very issue of the competitive balance between the public and private sectors. The Portman-Condit amendment strengthens this requirement so that before legislation is brought to the House floor, we will be apprised of the degree to which Federal mandates in this bill could affect the competitive balance between the public and private sectors.

This amendment, Mr. Chairman, would require that the committee report accompanying the Federal mandate legislation spell out precisely what the effect on the public-private competitive balance would be if there were mandates on both the public and private sector that were scaled back, eliminated, or funded for the public sector.

By doing so, Mr. Chairman, we achieve the goal of accountability that is central to H.R. 5. These are the very ends that H.R. 5 seeks, accountability and informed debate. We owe nothing less to the American people than to have that. I believe this amendment clarifies and strengthens the accountability in this act. I urge my colleagues to support the amendment.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding.

Mr. Chairman, I would simply like to associate myself with his remarks and say that I believe that this amendment strikes the very important balance which we are seeking between the private and public sectors, so that in fact an analysis can be done that would determine if there were any negative effects that this measure were imposing on those on the private side.

I think it is a very good amendment, it clarifies the situation which was in question, and I hope my colleagues will support it.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Chairman, I want to join in support of this amendment. I think it is a very constructive one. This analysis about the competitive situation between the public and the private side will be a very useful one. I think this is a helpful amendment and I urge support for it.

Mr. PORTMAN. I thank the gentleman for his support and appreciate it very much.

Mr. CONDIT. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. CONDIT. Mr. Chairman, I rise in support of the amendment and thank the gentleman from Ohio [Mr. PORTMAN] for his involvement and effort in this amendment and the bill.

□ 1510

I think that this amendment is a good amendment in dealing with the private sector problem that we have, and we acknowledge that we have a private sector problem. We are doing everything that we can to try to deal with it in a fair fashion. We think this does it. We think this reporting requirement would allow us the opportunity to collect the information, and to then do something about it at a later time.

Let me also just remind my colleagues that in a few weeks we will also be discussing other issues that I believe deal with the private sector, that will help them in dealing with unfunded mandates, and that is risk assessment and cost analysis.

For those who get overly exercised about this not being totally what they want it to be or totally fair, I think we are going to have another bite at the apple down the road with risk assessment and cost benefit, which I think will be a great benefit to the private sector and to putting some balance in regulatory law in this place.

So, this is a good amendment. It may not be what everybody wants, but I think it is a good amendment, it makes the bill work, and I would encourage Members to support the amendment.

Mr. MORAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I agree with the gentleman from California [Mr. CONDIT] that this does not do everything we want and it is not totally fair. And I am glad he made that point.

I support this amendment. I think it is appropriate that each authorizing committee consider the impact of their legislation on both the public sector and the private sector and where it creates a disparity, a lack of competitiveness, that committee ought to address it.

But where this amendment does clarify the problem, it does not rectify the problem. I will have an amendment that I will offer shortly that would rectify the problem. But I appreciate my friends, the gentleman from Ohio [Mr. PORTMAN] and the gentleman from California [Mr. CONDIT], bringing up this issue, exposing it to public consideration and particularly within this body, because it is a very basic issue, and I think a significant flaw within this legislation.

But it is a flaw that we can easily, as I say, rectify with a subsequent amendment that I will offer to treat the public sector equally with the private sector.

The basic problem with this bill is that it enables State and local governments to avoid Federal mandates if they are not completely funded. But it does not give that same option to the private sector.

So all of these privatization efforts that we have made and that I think the other side is particularly supportive of, but they are getting a lot of support on the Democratic side as well, to let the public sector carry out in the most efficient way all of the privatization efforts, which are going to be compromised or in fact eliminated if we do not rectify this basic flaw in the legislation which says that it becomes optional for State and local governments to carry out Federal legislation, but it is not optional for the private sector. Even though we will know what the cost to the private sector is, we do not give them the option to avoid the impact of this legislation, and as a result, in most areas where the private sector attempts to compete with the public sector it will become uncompetitive because it will not have to comply with environmental or labor laws or any other piece of legislation that we will subsequently enact. It is basically unfair and I think it is totally inconsistent with the concept of this legislation.

So, while I support this amendment and I certainly support what the gentleman from Ohio [Mr. PORTMAN] and the gentleman from California [Mr. CONDIT] would like to accomplish with this amendment, it does not do the job.

I appreciate the fact that they have pointed out the problem, but I would hope that they would support my effort to rectify the problem.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. MORAN. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I am looking forward to the debate on the upcoming amendment to which the gentleman referred.

I would say this amendment does in fact address the problem, it does in fact force Congress to deal with the issue of public-private competition. If Congress, under its point of order requirement, which would be the discretion of Congress by majority vote, chooses not to impose a mandate because of the private-public concern, then Congress has the ability to do that under H.R. 5. And by this amendment we are insuring that Congress has the information to carry out that very informed debate and to make this very important decision.

So I would say that this amendment in fact does solve the gentleman's concern, and I look forward to the debate on his amendment.

Mr. MORAN. I thank the gentleman. If I could reclaim my time just shortly to respond, yes, it will give us that information, and that information should be used for our decisionmaking.

The problem is the gentleman wants us to make a decision now which will preclude our ability to rectify the unfairness that committees are going to discover as a result of the gentleman's amendment. That is the basic problem. He wants to make the decision now before we have the information that is available.

But, we will continue this discussion when we entertain my amendment. I do support this particular amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. PORTMAN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HALL OF OHIO

Mr. HALL of Ohio. Mr. Chairman, I offer amendment number 15.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment number 15 offered by Mr. HALL of Ohio:

In section 301(2), in the matter proposed to be added as a new section 421(4)(B)(ii) to the Congressional Budget Act of 1974, insert ''except with respect to any low-income program referred to in section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985,''.

□ 1520

Mr. HALL of Ohio. Mr. Chairman, my amendment is very simple and straightforward. It protects very low-income programs, those that we exempted from sequestration under the Gramm-Rudman Act of 1985 as unfunded mandates. This is important, because there could be major changes coming down the road on low-income programs including food and poverty programs.

My amendment clarifies the definition of Federal intergovernmental mandates in section 421. What I am trying to do is clarify the intergovernmental mandates in section 421 to ensure that the poor will get an up-or-down vote on their programs just like everyone else. Programs that would be protected under this amendment are child nutrition, which would be school lunch, school breakfast, summer food service, child- and adult-care food programs, food stamps, Aid to Families with Dependent Children, Medicaid, and SSI.

Mr. Chairman, H.R. 5 is essentially a piece of legislation that changes the procedures for bills coming down the road, and we have not yet seen the bills and amendments it is intended to affect.

While I am sympathetic to the idea the Federal Government should provide adequate funds for mandates, I want to be sure that the poor are not left out. Whenever tough issues come up, it seems like we always look to the weakest constituency first, the poor, and these people really have no one fighting for them.

What I am saying is our Government does have a responsibility to provide basic things like food and shelter and health care for our own poverty-stricken. I am afraid if this amendment is not included, the poor will be left holding the bag.

There are many proposals in Congress to change poverty programs. The Contract With America proposes to eliminate Federal nutrition programs and substitute a single block-grant payment to the States. We will be confronted with a proposal very soon that would eliminate the entitlement status of food programs including food stamps, and it will reduce appropriations in the first year alone, I am told, to about $5 billion below the levels required to maintain current services.

Under the best-case scenario, the Contract With America will result in a reduction of funding in food assistance for the poor and hungry by over $30 billion by fiscal year 2000. While I oppose these kinds of changes, particularly when the Conference of Mayors tells us that the requests for emergency food and shelter are on the rise, we all know who will be the victims of these changes, millions of low-income families, children, and the elderly. My own State of Ohio is slated to lose about 20 percent of funding for food assistance in fiscal year 1996.

If the Federal Government places responsibility on the States to take care of low-income people with fewer resources, then that is an unfunded mandate, and while section 421 does have language to this effect, it also has language which would allow States the flexibility to lower services.

To many, the third paragraph of that section is very unclear, and that is the section that I am trying to get at. The amendment makes it clear, my amendment, that these entitlement programs would be unfunded mandates and subject to the point of order if they are reduced.

Many of my friends on both sides of the aisle have already voted to protect these very important programs. We have done this already, and we have done it time and time again. We did it under the Gramm-Rudman Act. Congress has spoken on this. We should do it again.

My amendment will make sure that the poor programs will get the same vote as other unfunded programs. Do not leave poverty and nutrition programs in doubt. Please, join me in supporting this amendment.

Mr. DREIER. Mr. Chairman, I reluctantly rise in opposition to the amendment.

I would say to my very good friend, colleague on the Committee on Rules, I am very sympathetic with the need to address the concerns of those who are less fortunate, those who are hungry, those who are desperately in need. In fact, we on this side of the aisle clearly feel that one of the pressing needs out there is for us to expand individual initiative and responsibility and self-reliance.

But having said that, we are well aware of the fact that there are people who do have to have some kind of assistance provided by government, but the concern that we have with this amendment here is that we are not providing the States with the kind of flexibility which is needed.

I happen to be one who believes strongly that States do feel a responsibility to address these issues, and there is a sense, I have inferred from this amendment, that if we choose to accept this amendment that we are somehow saying that the States do not have any kind of responsibility to effectively address the issues of hunger and homelessness and a wide range of other social needs that are out there. I happen to believe that they are positioned to, and feel a responsibility to, address those needs, and it is for that reason that I am compelled to oppose the very well-intentioned amendment by my friend.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Pennsylvania [Mr. CLINGER], chairman of the Committee on Government Reform and Oversight.

Mr. CLINGER. If the gentleman will yield, I would just also have to rise in reluctant opposition to the gentleman's amendment. I think he is right to be concerned about what some of the impacts could be. But I think he is also wrong in the assumption that giving flexibility to the States to implement these programs, carry out these programs, that they are not going to be concerned about the health, safety, and well-being of their children. So I think that we at the Federal Government, I think, too often take the assumption or have the assumption that the States and local governments cannot be trusted to do these things.

Hopefully they will be challenged to do them and to provide the kind of necessary measure of care. But they need the flexibility in order to do that.

Mr. DREIER. I thank the gentleman for his contribution.

We are in the position where some would like to say we are somehow abrogating our responsibility if we do not in fact micromanage these particular programs, and we happen to have a great deal of confidence in individuals and State and local governments to address these needs, and it is for that reason that we are opposing the amendment.

Mr. WAXMAN. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, what this amendment seeks to do is to have the Congress understand that if we are going to cut back on these programs for low-income people, the most vulnerable people in our society, that we are creating an unfunded mandate on local governments either to have to make up the difference in dollars or to cut some of these people adrift from food stamps or from supplemental security income or WIC. These are programs for very, very low-income people.

When we had the Gramm-Rudman bill before us, we specifically said that those programs would not be required to undergo the sequestrations that would be required to be placed on other Government programs, because we wanted to treat these with a special concern.

I think the amendment offered by the gentleman from Ohio is a good one. If we are going to cut these programs that affect the low income in our society, let us know about it, let us have a point of order, and let a specific vote be cast in order to accomplish that goal with the full information before us that we are hurting those who are most vulnerable in our society.

I urge support for the Hall amendment.

Mr. RUSH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise today in strong support of the amendment which our colleague from Ohio [Mr. HALL] has offered to H.R. 5, the Unfunded Mandate Reform Act.

Mr. HALL's amendment is designed to make certain that Congress specifically studies and deliberates any reductions in programs which make up our Nation's weakening social safety net.

Without attachment of this provision to H.R. 5, there is a distinct possibility that reductions in the basic Federal poverty programs—AFDC, child nutrition, food stamps, medicaid, and SSI—could be reduced without a specific vote on that reduction.

At a time when the majority has called for increased accountability and responsibility on the part of Congress, this should be an absolute no-brainer for this body.

Even during the Reagan budget-cutting frenzy of the mid-1980's, there was a specific exception to the Gramm-Rudman-Hollings budget deficit act for all of these programs.

They are the lifeblood of our Nation's poorest citizens, and therefore deserve the deliberate and conscious protection which this amendment would ensure.

This amendment would by no means assure that reductions will not occur in the funding allocations for these budget items.

However, it would guarantee that a separate floor vote and committee analysis be accomplished before such reductions could be enacted.

In a commonsense manner, this amendment would provide that reductions of this type be treated as unfunded mandates.

This is particularly appropriate, since States and local governments would undoubtedly have to make up for such reductions with their own funds.

Mr. Chairman, I implore my fellow Members on both sides of the aisle to support this extremely worthwhile amendment.

□ 1530

Mr. GOSS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise very reluctantly, as the distinguished gentleman from Ohio [Mr. HALL] knows, in opposition to his amendment. I want to go through a scenario that gives me some serious concern. It is difficult to precisely read Mr. HALL's amendment because there is no specific line number in the amendment.

It appears the amendment would foreclose the Federal Government's ability to ever cut or impose a cap on a number of low-income programs which are listed in section 255(h) of the Budget Act. In essence, any cut or cap would be by definition a Federal intergovernmental mandate even if the States have the authority to change their financial or programmatic responsibilities. This would trigger the point of order.

Now, to get specific and go to one of the programs listed in 255(h), Medicaid, the Hall amendment would define any cut or cap in the Medicaid Program as an unfunded mandate regardless of the fact that the States have the flexibility to change their programs.

To demonstrate that this is not good policy in the Medicaid Program, I would like to remind my colleagues about a sad chapter in the Medicaid Program involving provider-specific taxes and disproportionate share payments to hospitals. Because of a change in Medicaid law in 1990, provider-specific taxes help cause an annual growth in Federal Medicaid payments to the tune of $10 billion per year, that is annually, $10 billion per year, every year.

Now, to help close this loophole, legislation was passed in 1991; the provider-specific tax amendments of 1991 and in OBRA 1993 to place a cap on disproportionate share payments.

Now, my friend, the gentleman from Ohio [Mr. HALL] voted for both of these caps on the Medicaid Program. In both instances these caps were placing limits on an element of the Medicaid Program that was being abused; I think we agree.

In both instances the States had the flexibility to change their programs. If Mr. HALL's amendment was in effect, his votes would be defined as an unfunded intergovernmental mandate subject to points of order.

So it is for that very technical reason, even though I understand what the gentleman is trying to accomplish, that I have to again underscore that while this is well meaning it is not going to have a benign effect on what we are trying to do, in my view, and is going to remove flexibility.

The States have asked for that flexibility. To take that away from them, especially after what we just heard from the Governors, just does not make a lot of sense to me at this time.

Mr. FARR. Mr. Chairman, I rise in support of the Hall amendment.

There isn't a more vulnerable population out there than children, especially poor children. The food programs the country has instituted over the years have been put in place to protect this most at-risk group. It is unconscionable for this body to consider legislation that would deny food to the very mouths of babes.

Upward of 2.2 million children could be affected in the Food Stamp Program alone by this bill.

Another 1 million children could be affected by cuts to the WIC Program.

Even more would feel the impact of cuts to child nutrition, school lunch and breakfast and other hot meal programs that provide essential services to our youngest and most tenuous of constituents.

I urge my colleagues to support the Hall amendment and give American kids a fighting chance.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HALL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HALL of Ohio. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 144, noes 289, not voting 1, as follows:

[Roll No. 74]

AYES—144

Abercrombie	Furse	Nadler
Ackerman	Gejdenson	Neal
Barcia	Gephardt	Oberstar
Becerra	Gibbons	Olver
Beilenson	Gonzalez	Owens
Bentsen	Gordon	Pallone
Berman	Green	Pastor
Bishop	Gutierrez	Payne (NJ)
Bonior	Hall (OH)	Pelosi
Borski	Hastings (FL)	Rangel
Boucher	Hefner	Reed
Brown (CA)	Hilliard	Reynolds
Brown (FL)	Hinchey	Richardson
Brown (OH)	Hoyer	Rivers
Bryant (TX)	Jackson-Lee	Roybal-Allard
Cardin	Jacobs	Rush
Clay	Jefferson	Sabo
Clayton	Johnson, E. B.	Sanders
Clement	Johnston	Sawyer
Clyburn	Kaptur	Schroeder
Coleman	Kennedy (MA)	Scott
Collins (IL)	Kennedy (RI)	Serrano
Collins (MI)	Kennelly	Skaggs
Conyers	Kildee	Slaughter
Coyne	Klink	Stark
Danner	LaFalce	Stokes
de la Garza	Lantos	Studds
DeLauro	Levin	Thompson
Dellums	Lewis (GA)	Thurman
Deutsch	Lofgren	Torres
Dicks	Lowey	Torricelli
Dingell	Maloney	Towns
Dixon	Manton	Traficant
Durbin	Markey	Tucker
Emerson	Martinez	Velazquez
Engel	Mascara	Vento
Eshoo	Matsui	Volkmer
Evans	McCarthy	Ward
Farr	McDermott	Waters
Fattah	McKinney	Watt (NC)
Fazio	McNulty	Waxman
Fields (LA)	Meehan	Whitfield
Filner	Meek	Williams
Flake	Menendez	Wolf
Foglietta	Miller (CA)	Woolsey
Ford	Mineta	Wyden
Frank (MA)	Mink	Wynn
Frost	Moakley	Yates

NOES—289

Allard	Chrysler	Frelinghuysen
Andrews	Clinger	Frisa
Archer	Coble	Funderburk
Armey	Coburn	Gallegly
Bachus	Collins (GA)	Ganske
Baesler	Combest	Gekas
Baker (CA)	Condit	Geren
Baker (LA)	Cooley	Gilchrest
Baldacci	Costello	Gillmor
Ballenger	Cox	Gilman
Barr	Cramer	Goodlatte
Barrett (NE)	Crane	Goodling
Barrett (WI)	Crapo	Goss
Bartlett	Cremeans	Graham
Barton	Cubin	Greenwood
Bass	Cunningham	Gunderson
Bateman	Davis	Gutknecht
Bereuter	Deal	Hall (TX)
Bevill	DeFazio	Hamilton
Bilbray	DeLay	Hancock
Bilirakis	Diaz-Balart	Hansen
Bliley	Dickey	Harman
Blute	Doggett	Hastert
Boehlert	Dooley	Hastings (WA)
Boehner	Doolittle	Hayes
Bonilla	Dornan	Hayworth
Bono	Doyle	Hefley
Brewster	Dreier	Heineman
Browder	Duncan	Herger
Brownback	Dunn	Hilleary
Bryant (TN)	Edwards	Hobson
Bunn	Ehlers	Hoekstra
Bunning	Ehrlich	Hoke
Burr	English	Holden
Burton	Ensign	Horn
Buyer	Everett	Hostettler
Callahan	Ewing	Houghton
Calvert	Fawell	Hunter
Camp	Fields (TX)	Hutchinson
Canady	Flanagan	Hyde
Castle	Foley	Inglis
Chabot	Forbes	Istook
Chambliss	Fowler	Johnson (CT)
Chapman	Fox	Johnson (SD)
Chenoweth	Franks (CT)	Johnson, Sam
Christensen	Franks (NJ)	Jones

Kanjorski	Myrick	Shays
Kasich	Nethercutt	Shuster
Kelly	Neumann	Sisisky
Kim	Ney	Skeen
King	Norwood	Skelton
Kingston	Nussle	Smith (MI)
Kleczka	Obey	Smith (NJ)
Klug	Ortiz	Smith (TX)
Knollenberg	Orton	Smith (WA)
Kolbe	Oxley	Solomon
LaHood	Packard	Souder
Largent	Parker	Spence
Latham	Paxon	Spratt
LaTourette	Payne (VA)	Stearns
Laughlin	Peterson (FL)	Stenholm
Lazio	Peterson (MN)	Stockman
Leach	Petri	Stump
Lewis (CA)	Pickett	Stupak
Lewis (KY)	Pombo	Talent
Lightfoot	Pomeroy	Tanner
Lincoln	Porter	Tate
Linder	Portman	Tauzin
Lipinski	Poshard	Taylor (MS)
Livingston	Pryce	Taylor (NC)
LoBiondo	Quillen	Tejeda
Longley	Quinn	Thomas
Lucas	Radanovich	Thornberry
Luther	Rahall	Thornton
Manzullo	Ramstad	Tiahrt
Martini	Regula	Torkildsen
McCollum	Riggs	Upton
McCrery	Roberts	Visclosky
McDade	Roemer	Vucanovich
McHale	Rogers	Waldholtz
McHugh	Rohrabacher	Walker
McInnis	Ros-Lehtinen	Walsh
McIntosh	Rose	Wamp
McKeon	Roth	Watts (OK)
Metcalf	Roukema	Weldon (FL)
Meyers	Royce	Weldon (PA)
Mica	Salmon	Weller
Miller (FL)	Sanford	White
Minge	Saxton	Wicker
Molinari	Scarborough	Wilson
Mollohan	Schaefer	Wise
Montgomery	Schiff	Young (AK)
Moorhead	Schumer	Young (FL)
Moran	Seastrand	Zeliff
Morella	Sensenbrenner	Zimmer
Murtha	Shadegg	
Myers	Shaw	

NOT VOTING—1

Mfume

☐ 1553

Mr. STUPAK and Mr. SCHUMER changed their vote from ''aye'' to ''no''.

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. PETERSON OF MINNESOTA

Mr. PETERSON of Minnesota. Mr. Chairman, I offer an amendment, the amendment numbered 165.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PETERSON of Minnesota: In section 301, in the proposed section 424(a)(2)(A) of the Congressional Budget Act of 1974, strike ''$100,000,000'' and insert ''$50,000,000''.

Mr. PETERSON of Minnesota. Mr. Chairman, this is a straightforward amendment offered by myself, the gentleman from Kansas [Mr. ROBERTS], the gentleman from Indiana [Mr. BURTON], the gentleman from Texas [Mr. PETE GEREN], the gentleman from Oregon [Mr. COOLEY], and others who worked on this and who had similar ideas.

It is a straightforward amendment that lowers the threshold on private sector mandates in which CBO is required to file a report from $100 million to $50 million.

Mr. Chairman, this will equalize the threshold at $50 million for both the public and the private sector. There were a number of amendments offered in this area. Some of them went lower, but we thought this made sense, to equalize the two.

One of the issues was whether the lowering of this threshold would possibly cost CBO additional money. But we have checked, and CBO said the money authorized in this bill is sufficient to comply with these provisions.

Mr. Chairman, in the 103d Congress, 226 of us, including myself, cosponsored the bill of the gentleman from California [Mr. CONDIT], which would impose a tougher standard, basically a ''no money, no mandate'' standard, which a lot of us would still like to see. But this is a good first start.

What we are doing here by lowering this threshold is making sure that we have the same standards in both the public and private sector, and also that we will include more mandates in this process.

Mr. MCINTOSH. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Indiana, the chairman of the Subcommittee on Government Operations, on which I serve.

Mr. MCINTOSH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman for his efforts in fashioning a bipartisan approach to this and for his efforts in my Subcommittee on Regulatory Relief to do the same.

I think this is an important amendment because it would lower the threshold at which we would study the problem of regulations in the private sector. As I have said many times before, regulations are a hidden tax on the middle class in this country, and we have to do something to attack that problem. It is important that we do that well informed and with the studies that would be resulting from this legislation.

I strongly support this amendment, and want to thank my colleague from Minnesota for introducing it here today.

Mr. PETERSON of Minnesota. Mr. Chairman, I yield back the balance of my time.

Mr. ROBERTS. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I would like to thank the gentleman from Minnesota [Mr. PETERSON], in coauthoring this amendment with myself, the gentleman from Texas [Mr. PETE GEREN], the gentleman from Oregon [Mr. COOLEY], and many other members of the unfunded mandates caucus. This has the support of the unfunded mandates caucus.

It is bipartisan in nature. The gentleman has simply explained the amendment very well. What it does is to equalize the threshold and brings it down to $50 million in regards to the private sector.

It is my considered opinion that all mandates should fall under the careful scrutiny of the Congressional Budget Office. A mandate is a mandate. In fact, I think there are some of us that would support lowering the threshold to zero. This is really an effort by the gentleman from Minnesota, myself, and others, to make the threshold apply to rural and small-town America.

Obviously, if you exclude the smaller mandates, that is going to impose a greater burden on small communities. So the gentleman's amendment is certainly appropriate to that effort.

☐ 1600

There has been some concern about the fact whether or not the CBO can do this job. They can. We have been in contact with the CBO, and I think I should point out to Members that the CBO cost estimates have not always been in agreement with the cost estimates that are prepared by State and by local governments. So if you had a $100 million threshold, as opposed to $50, look what happened in regards to the Motor Voter Act. The cost of implementation as estimated by CBO was $28 million. It costs $26 million alone in regards to California.

It is a good amendment. I rise in support of it. I thank the gentleman from Minnesota.

Mr. BURTON of Indiana. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Chairman, just briefly let me just say that this has bipartisan support. I obviously want to congratulate the gentleman from Minnesota for his hard work as well as my distinguished colleague who was gracious enough to yield to me.

We are moving in the right direction as far as these mandates are concerned. I think the people of this country, both public and private, are going to congratulate us for this effort.

I would just like to say, once again, to my colleague, congratulations on the amendment.

As has been stated, our amendment equalizes the threshold for requiring a CBO cost estimate of mandates on the public and private sector.

Under H.R. 5, if a mandate will have an annual impact of $50 million or more on State and local governments, then CBO must do a cost analysis of the mandate and find out how much it will actually cost. A point of order can be raised if the bill does not contain this information.

The threshold for the same cost estimate for the private sector is $100 million, and a point of order can also be raised here as well if this information is not included.

My amendment lowers the threshold for the CBO cost estimate for the private sector to $50 million. This helps to level the playing field.

In many cases, the mandate should then be reduced or killed, and if it is really necessary it should be paid for.

Mr. ROBERTS. Mr. Chairman, I thank the gentleman for his contribution. Let the record show the gentleman from Indiana [Mr. BURTON] was

a coauthor of this amendment and worked very hard with us to bring it to the attention of the House at this moment.

Mr. DAVIS. Mr. Chairman, I move to strike the requisite number of words.

I just want to be very brief and compliment the authors of this amendment and say on behalf of the committee that we support this amendment.

Mr. MORAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this will expand the scope of this legislation. It will bring in many more Federal activities. But since the private sector will only require that a cost estimate be done, it will not trigger the optional aspect of this legislation, as would be triggered for States and localities. I do not see that it is a problem. The reality is that for CBO to determine whether or not a piece of legislation is going to impose a mandate of $100 million or more, they have to do the analysis anyway. So in the process of doing the analysis, that will suffice for the $50 million threshold.

I do not think it is going to cause much more work on the part of the Congressional Budget Office. It is consistent with the intent of the legislation, and it would be welcomed by the private sector. So I support the amendment as well.

Mr. FATTAH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I thought that the intent of the majority was that we would have no strengthening or weakening amendments to this bill. The other Chamber has acted on this matter, and this amendment would seemingly fly in the face of reaching some appropriate compromise on this matter, because it actually moves in the opposite direction.

So I would hope that even though it has been indicated that there is support, that there would be some consistency as we move through this process.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. PETERSON].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. ROEMER

Mr. ROEMER. Mr. Chairman, I offer an amendment, the amendment designated number 173.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. ROEMER: In section 301, in the proposed section 422 of the Congressional Budget Act of 1974, strike ''or'' after the semicolon at the end of paragraph (6), strike the period at the end of paragraph (7) and insert ''; or'', and after paragraph (7) add the following new paragraph:

''(8) pertains to the immunization of children against vaccine-preventable diseases.

Mr. ROEMER. Mr. Chairman, first of all, I would just like to say that the intention of this amendment, which would exempt children's immunizations from the legislation that we are considering here, given the special circumstances that we have a Federal program running right now for children's immunizations which we need to improve but we might need to eventually have go back to the States and localities, I am not sure that I will offer this. I may withdraw it, but I do want to talk about the importance of immunizations for children.

Let me say, I want to congratulate the Members that have been working so hard on this bill, the gentleman from Pennsylvania [Mr. CLINGER], the gentleman from Ohio [Mr. PORTMAN], the gentleman from California [Mr. CONDIT], the gentleman from Virginia [Mr. MORAN], and many others.

My amendment is in no way to be dilatory or to take away from the serious debate and the bipartisan nature by which we are working together to prohibit unfunded mandates where many of my constituents and Democratic and Republican mayors want us to act in this body in a bipartisan way.

I intend to vote for passage of this legislation. But I also want to make sure that there are not unintended consequences of this legislation. And with immunization rates in this country trailing badly other developed and industrialized countries, we need to make sure that we continue to put the very highest priority on immunizing our children. We are 20 and 25 percent behind the immunization rates of countries such as Japan and Germany.

We invest $1 in immunizing a child and we save $10 later on in our health care costs. There is absolutely no question that to put the very highest priority on these programs is in the very best interest of our children, our taxpayers, and our health care system. So I want to offer this amendment with the intention of working with the Republican majority and other interested parties here in Congress on seeing that we improve our immunization rate, seeing that we improve the Federal program that was started by President Clinton, seeing that we improve the State rate of participation, and seeing that at some point in the future we may need to critically analyze and critique this program that is currently running and possibly move it back to the States and the localities, which might run it in a better and more efficient fashion.

We have seen some of the regulations with this program throw some hurdles into the delivery of immunizations and inoculations for children, in that a regulation requires a doctor to keep a free vaccination in a separate quarter from a paid-for vaccination or inoculation. So I think that there are many improvements that we can do, and I want to just guarantee and have guarantees from the majority that we can improve this program, there will be priorities put on this program to immunize our children and that there are no hurdles put up under this bill.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. ROEMER. I yield to the gentleman from Ohio, who has worked so hard on this legislation.

Mr. PORTMAN. Mr. Chairman, I thank the gentleman for yielding to me.

I would just say, as the gentleman is aware, there is nothing in H.R. 5 which would preclude the Congress from continuing to have an active role to play in immunization programs and to perfect, in fact, the local-State-Federal partnership on immunization. I think on the majority side we share the concern about the programs. We share the gentleman's view that these are salutary preventive programs that make a lot of sense, that they are very cost effective.

I would say, again, as we said many times over the last several days in response to the exemption argument, that this legislation will in no way preclude Congress carefully considering future mandates in this area.

However, reluctantly, we would have to oppose such an amendment simply because it again creates an exemption which is not necessary for this legislation.

I would ask the gentleman if he would be willing, given that understanding, that in fact these immunization programs would be coming to the floor, would be receiving debate on a more informed basis, I might add, that he might consider withdrawing his amendment.

Mr. ROEMER. Mr. Chairman, I will ask unanimous consent in the next minute, to withdraw the amendment and just make two further points, ancillary points to what the gentleman has just brought up.

I thank the gentleman for his willingness to work together on this.

The reason that I brought the amendment to the floor was, again, not to be dilatory but that immunizations have two distinct differences from some of the more generic amendments that have been offered by my colleagues on children's health.

One is that we have a Federal program in place.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. ROEMER] has expired.

(On request of Mr. PORTMAN, and by unanimous consent, Mr. ROEMER was allowed to proceed for 2 additional minutes.)

Mr. ROEMER. We have a program in place that we do not want to see hurt by this legislation. I think we may want to see improvements in it. And if we cannot implement those improvements, we may want to work more with the State and local governments to see this implemented.

Second, with the outbreak of a virus or something that could affect our children, the emergency provisions in this

bill would allow us to act pretty expeditiously if we want to guarantee that quick action, not only for the impact on children but for our senior citizens, who might be more susceptible to infection.

Mr. PORTMAN. Mr. Chairman, if the gentleman will continue to yield, in section 4, there is a specific exemption for emergency situations such as the one which the gentleman stated. I would think that that would be covered by that exemption.

Mr. ROEMER. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

□ 1610

AMENDMENT OFFERED BY MR. SKAGGS

Mr. SKAGGS. Mr. Chairman, I offer amendment No. 158.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SKAGGS: In paragraph (4) of section 202(a), insert before ''the effect'' the following: ''estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of''.

Mr. SKAGGS. Mr. Chairman, this amendment deals with what I suspect was really a drafting error, back in title II of the bill, having to do with the estimates that are required to be prepared by agencies pursuant to the new authorities in this legislation.

Interestingly, Mr. Chairman, in subsection A(2) of section 202, estimates made by agencies concerning future costs or disproportional budgetary effects are to be made ''if and to the extent that the agency determines that accurate estimates are reasonably feasible.''

However, over in paragraph 4 of that subsection, estimates concerning the effect on the national economy, including productivity, economic growth, full employment, creation of jobs, and international competitiveness have no such qualifying language about reasonable feasibility.

It seems to me those estimates are equally problematic for the agency to be able to conduct, Mr. Chairman. In discussing this with the floor manager of the bill, the gentleman from Pennsylvania [Mr. CLINGER], I think it is clear that we all recognize that in this proposed statute, as in any others, there is an implied qualification of reasonableness.

I just wanted to inquire of the floor manager currently on the floor, the gentleman from Virginia [Mr. DAVIS], if indeed that is his interpretation, that we are looking for reasonable estimates to be made by the agency under paragraph 4, just as under paragraph 2.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. SKAGGS. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, I thank the gentleman from Colorado for yielding to me.

Mr. Chairman, I would concur with the gentleman's statement. There is a standard of reasonableness built into this bill in terms of the agencies being able to gather and make the reports.

Mr. SKAGGS. Therefore, we are not asking them to do anything that is impossible or impracticable, is that correct?

Mr. DAVIS. If the gentleman will yield further, that is correct.

Mr. SKAGGS. With that understanding, Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Without objection, the amendment of the gentleman from Colorado [Mr. SKAGGS] is withdrawn.

There was no objection.

The CHAIRMAN. Are there other amendments to title III?

AMENDMENT OFFERED BY MR. COOLEY

Mr. COOLEY. Mr. Chairman, I offer amendment No. 9.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COOLEY:

Strike out subsection (e) of the proposed section 425 of the Congressional Budget Act of 1974.

Mr. COOLEY. Mr. Chairman, I rise today to offer an amendment that would strike the mandate grandfather provision of the Unfunded Mandate Reform Act.

Added during the Committee on Rules' consideration of this bill, this provision, found in section 425(E), protects all past mandates as long as they do not increase the mandate or decrease the resources allocated to fund it.

In other words, the Clean Water Act, Clean Air Act, Immigration Act, Safe Drinking Water Act, Endangered Species Act, Resource Conservation Recovery Act, and Superfund amendments are all protected from the bill as written.

As I have listened to this debate, Mr. Chairman, these past few days it has occurred to me that it has been a degradation of the debate on the value of this particular law. Someone wants to keep the bill from applying to seniors, another to children and yet women, yet another to laws affecting public health and safety.

Mr. Chairman, these are debates for another time. The question at hand today is ''Will we make States pick up the tab for Congress' ideas?''

Mr. Chairman, I submit that there is not a single Member of this body who wants to jeopardize the health and safety of Americans, nor do we believe that there is a single Member who would want to lessen the standard of living for the children, mothers, or senior citizens. Disabled persons are not on anyone's hit list, either. We are here in Congress because we are concerned about these very problems.

In light of that, I cannot fathom why the opponents of this bill are so certain that the bill will be the undoing of all laws governing public health, safety, and the environment. Would striking the exemption for existing unfunded mandates mean that we instantly disregard the progress we have made? Absolutely not.

My amendment would simple ensure that unfunded mandates be on equal footing. There should be nothing sacred about these massive costs inflicted upon the States, nor should future mandates, if deemed critically important, be considered less necessary to public health and safety by virtue of their following this act. All mandates, whether funded or unfunded, should be considered on their merit.

We can signal our resolve to carefully consider all unfunded mandates that come up for reauthorization by cancelling the provision that protects them from a point of order.

Mr. Chairman, if we subject future unfunded mandates to a point of order, then we should do the same for those being reauthorized.

Before I close, I must unequivocally state that my amendment does not end all present unfunded mandates immediately. That is, my amendment does not make this legislation retroactive. The only thing that will change is a law requiring reauthorization for related appropriations to be subject to the point of order.

Clearly, if Congress supports the underlying legislation that faces reauthorization, it will dispose of the point of order. Everyone here knows that if the sentiment is here for the substance of the legislation, the point of order, which requires a simple majority, will be waived by a similar count.

My amendment simply makes us stop and consider the wisdom or folly of our predecessors. If we waive the point of order, then we will have deemed the content of the reauthorization necessary.

We have considered this bill for the purpose of casting light upon the burden that unfunded mandates have created for the States. If my amendment is adopted, these past mandates will be evaluated on the basis of the burden they impose and the benefits they bring to our States and communities. If past mandates do not pass the muster, then why have them and why protect them, as they are unfairly shielded in this bill as presently written?

My amendment merely signals our intention to consider all unfunded mandates equally. I would ask my colleagues to support this amendment.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in strong opposition to this amendment. It will unabashedly seek to undo all Federal laws that protect the health, safety, and welfare of Americans by subjecting the laws to a

point of order when they are reauthorized. We have repeatedly sought to exempt laws already on the books from the provisions of this bill, as long as reauthorizations did not impose additional unfunded mandates.

The chairman of the Committee on Government Reform and Oversight, as far as I know, has agreed. The chairman of the Committee on Rules has agreed, as far as I know, and in fact, inserted language specifically to clarify this point.

Now the gentleman throws out all statutes as they come up for reauthorization. The result would be a wholesale dismantling of dozens of laws. All of our environmental statutes would be repealed, because there is no way we could fully fund the costs. So would worker safety laws. Consumer protection standards would be gutted.

Are the American people really willing to risk their drinking water? I do not think so. Are they willing to trust States upstream to not dump their sewage in their rivers and our beaches? I do not think so. Do they want airport safety to be decided by some local accountant? I do not think so. Will they forego the safety of their children? I know they will not.

Mr. Chairman, we all know the answer to these questions. Vote ''no'' on this amendment. This is a crippling amendment, one we do not need. I would urge all my colleagues to strike it down and not vote for it.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in reluctant opposition to the amendment of the gentleman from Oregon [Mr. COOLEY]. I know what many on this side of the aisle and Members on the other side of the aisle feel is that this bill does not go far enough, that we really should be looking back and taking a look at all of the myriad mandates that we have imposed on State and local governments over the years.

Title I of this bill is a first effort to do that, to say yes, we need to review where we stand. We need to look at what is on the books. We need to assess what has been the impact, what is the cumulative impact.

I think there is no question that we can say 1 mandate is not too much, 2 is not too much, but 176 unfunded mandates clearly is too much, so I think the gentleman is certainly on the right track. He is looking at this thing and saying we have gone overboard and we should really be reviewing and eliminating those at this point.

However, Mr. Chairman, I would say that this language that is in the bill does represent a compromise that was effected, and which was actually fashioned in the Committee on Rules to address this very issue. Mr. Chairman, I think it is fair to say that this would be a killer amendment. It is a strengthening amendment, there is no question about that, but I think it strengthens the bill too much to survive. For that reason, I would have to oppose the amendment.

□ 1620

Mr. GOSS. Mr. Chairman, I would like to further state that the Committee on Rules did respond in a very cooperative way to what we think was a very legitimate concern by the Committee on Government Reform and Oversight on how to work out a compromise that would work on this, and we did come up with an amendment which we called the Goss amendment which we thought resolved the issue pretty well.

I would like to point out that this is a subject that went through a briefing, a hearing, a markup, and not a little bit of debate, to say nothing at all of the fact that we had a rule discussion on it. So we have really given this a lot of analysis.

My concern about a killer amendment is very real. We have tried to weigh and balance, and we have got a protection built in. I say this sincerely, because I speak as a local government official who has come out of being a mayor and a county chairman. I have very strong, deep personal feelings about dealing with unfunded mandates whether they come from the Federal Government or the State capital, and that is, that we have got our Advisory Commission on Intergovernmental Relations, and we have been given, I think, very strong promises of commitment from the leadership that we are going to pay attention to what they say.

We are going to have a report, a study, monitoring, and I think we have hit middle ground here. Until we know a little better whether there is a problem or there is not, I think we ought to go as the committee has presented it.

I thank the distinguished gentleman for yielding. I regrettably say that I will be in opposition to the Cooley amendment.

Mr. CLINGER. Mr. Chairman, reclaiming my time, I would just say to the gentleman that I am sympathetic to the concerns that he has raised here. I think that what we have in this bill, however, is a first cut. As the gentleman has indicated, there are many on this side that would like to see us go much further. There are many on the other side who think we have gone way too far as it is, and this seems to strike a fairly reasonable balance. Again, I would have to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. COOLEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COOLEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 146, noes 287, not voting 1, as follows:

[Roll No 75]

AYES—146

Allard	Gibbons	Ney
Bachus	Gillmor	Norwood
Baker (CA)	Goodlatte	Orton
Barr	Gordon	Owens
Barrett (NE)	Graham	Oxley
Bartlett	Green	Packard
Bereuter	Gunderson	Parker
Bevill	Gutierrez	Paxon
Bilbray	Gutknecht	Payne (VA)
Blute	Hall (TX)	Peterson (MN)
Bonilla	Hancock	Pombo
Bono	Hansen	Pryce
Browder	Hastert	Riggs
Brownback	Hastings (WA)	Roberts
Bryant (TN)	Hayworth	Rogers
Bunn	Hefley	Rohrabacher
Burr	Heineman	Roth
Camp	Herger	Royce
Chambliss	Hilleary	Salmon
Chenoweth	Hoke	Scarborough
Coble	Hostettler	Schaefer
Coburn	Hunter	Seastrand
Collins (GA)	Istook	Sensenbrenner
Combest	Johnson (SD)	Shadegg
Condit	Johnson, Sam	Skeen
Cooley	Jones	Smith (MI)
Cox	Kasich	Smith (TX)
Cramer	Kim	Smith (WA)
Crapo	LaHood	Solomon
Cremeans	Largent	Souder
Cubin	Latham	Stearns
Cunningham	Laughlin	Stenholm
Deal	Lewis (KY)	Stockman
DeLay	Lightfoot	Stump
Doolittle	Lincoln	Talent
Duncan	Linder	Tanner
Dunn	Longley	Tauzin
Edwards	Lucas	Thornberry
Emerson	Manzullo	Tiahrt
Ensign	Martinez	Torkildsen
Everett	McCollum	Vucanovich
Ewing	McHugh	Waldholtz
Flanagan	McInnis	Wamp
Forbes	McKeon	Watts (OK)
Frank (MA)	Metcalf	Weldon (FL)
Funderburk	Minge	Weller
Gallegly	Montgomery	Whitfield
Ganske	Nethercutt	Wicker
Geren	Neumann	

NOES—287

Abercrombie	Clement	Fowler
Ackerman	Clinger	Fox
Andrews	Clyburn	Franks (CT)
Archer	Coleman	Franks (NJ)
Armey	Collins (IL)	Frelinghuysen
Baesler	Collins (MI)	Frisa
Baker (LA)	Conyers	Frost
Baldacci	Costello	Furse
Ballenger	Coyne	Gejdenson
Barcia	Crane	Gekas
Barrett (WI)	Danner	Gephardt
Barton	Davis	Gilchrest
Bass	de la Garza	Gilman
Bateman	DeFazio	Gonzalez
Becerra	DeLauro	Goodling
Beilenson	Dellums	Goss
Bentsen	Deutsch	Greenwood
Berman	Diaz-Balart	Hall (OH)
Bilirakis	Dickey	Hamilton
Bishop	Dicks	Harman
Bliley	Dingell	Hastings (FL)
Boehlert	Dixon	Hayes
Boehner	Doggett	Hefner
Bonior	Dooley	Hilliard
Borski	Dornan	Hinchey
Boucher	Doyle	Hobson
Brewster	Dreier	Hoekstra
Brown (CA)	Durbin	Holden
Brown (FL)	Ehlers	Horn
Brown (OH)	Ehrlich	Houghton
Bryant (TX)	Engel	Hoyer
Bunning	English	Hutchinson
Burton	Eshoo	Hyde
Buyer	Evans	Inglis
Callahan	Farr	Jackson-Lee
Calvert	Fattah	Jacobs
Canady	Fawell	Jefferson
Cardin	Fazio	Johnson (CT)
Castle	Fields (LA)	Johnson, E. B.
Chabot	Fields (TX)	Johnston
Chapman	Filner	Kanjorski
Christensen	Flake	Kaptur
Chrysler	Foglietta	Kelly
Clay	Foley	Kennedy (MA)
Clayton	Ford	Kennedy (RI)

Kennelly	Morella	Shuster
Kildee	Murtha	Sisisky
King	Myers	Skaggs
Kingston	Myrick	Skelton
Kleczka	Nadler	Slaughter
Klink	Neal	Smith (NJ)
Klug	Nussle	Spence
Knollenberg	Oberstar	Spratt
Kolbe	Obey	Stark
LaFalce	Olver	Stokes
Lantos	Ortiz	Studds
LaTourette	Pallone	Stupak
Lazio	Pastor	Tate
Leach	Payne (NJ)	Taylor (MS)
Levin	Pelosi	Taylor (NC)
Lewis (CA)	Peterson (FL)	Tejeda
Lewis (GA)	Petri	Thomas
Lipinski	Pickett	Thompson
Livingston	Pomeroy	Thornton
LoBiondo	Porter	Thurman
Lofgren	Portman	Torres
Lowey	Poshard	Torricelli
Luther	Quillen	Towns
Maloney	Quinn	Traficant
Manton	Radanovich	Tucker
Markey	Rahall	Upton
Martini	Ramstad	Velazquez
Mascara	Rangel	Vento
Matsui	Reed	Visclosky
McCarthy	Regula	Volkmer
McCrery	Reynolds	Walker
McDade	Richardson	Walsh
McDermott	Rivers	Ward
McHale	Roemer	Waters
McIntosh	Ros-Lehtinen	Watt (NC)
McKinney	Rose	Waxman
McNulty	Roukema	Weldon (PA)
Meehan	Roybal-Allard	White
Meek	Rush	Williams
Menendez	Sabo	Wilson
Meyers	Sanders	Wise
Mica	Sanford	Wolf
Miller (CA)	Sawyer	Woolsey
Miller (FL)	Saxton	Wyden
Mineta	Schiff	Wynn
Mink	Schroeder	Yates
Moakley	Schumer	Young (AK)
Molinari	Scott	Young (FL)
Mollohan	Serrano	Zeliff
Moorhead	Shaw	Zimmer
Moran	Shays	

NOT VOTING—1

Mfume

☐ 1648

Messrs. RUSH, OLVER, BONIOR, COYNE, ACKERMAN, RICHARDSON, DINGELL, and MARKEY, and Ms. BROWN of Florida changed their vote from ''aye'' to ''no.''

Messrs. HERGER, HASTINGS of Washington, HILLEARY, HANCOCK, JOHNSON of South Dakota, GALLEGLY, KIM, SMITH of Texas, ALLARD, EWING, and WAMP, Mrs. VUCANOVICH, Messrs. PACKARD, PAXON, and CAMP, Ms. PRYCE, Mr. BEVILL, Mr. McCOLLUM, Mrs. SEASTRAND, and Messrs. LAHOOD, LIGHTFOOT, NORWOOD, BARRETT of Nebraska, SAM JOHNSON of Texas, ISTOOK, TORKILDSEN, BLUTE, and BEREUTER changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WAXMAN: In the proposed section 424 of the Congressional Budget Act of 1974, redesignate subsection (d) as subsection (e) and insert after subsection (c) the following:

''(d) ESTIMATES.—If the Director determines that it is not feasible to make a reasonable estimate that would be required for a statement under subsection (a)(1) for a bill or joint resolution, the Director shall not make such a statement and shall inform the committees involved that such an estimate cannot be made and the reasons for that determination. The bill or joint resolution for which such statement was to be made shall be subject to a point of order under section 425(a)(1).

Mr. WAXMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

☐ 1650

Mr. WAXMAN. Mr. Chairman, this amendment has been worked out with the majority. It is noncontroversial, a perfecting amendment to clarify what CBO is supposed to do if it is not able to estimate the impact on State or local governments. It provides in this situation that CBO may give the committee a statement that it is not feasible to estimate the cost. We have worked this out. I would urge support for the legislation.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. I thank the gentleman for yielding.

Mr. Chairman, I support the amendment offered by the gentleman from California. I think it is a good addition to the bill. What it is really saying is we do not want CBO to have to invent figures, make them up, to be forced into coming up with squishy numbers in this area, though yet the point of order would still lie. We have preserved the point of order.

We also say ''Be straight up with us, tell us if you cannot do it. If you cannot to it, just tell us that.''

Mr. Chairman, I support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. WAXMAN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment, No. 144.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WAXMAN:

In the proposed section 421(4) of the Congressional Budget Act of 1974, add the following new sentence at the end of the section: ''Clause (i)(I) of subparagraph (B) shall not apply to provisions that are designed to prevent fraud or abuse or to increase fiscal accountability of the program administered by the States, local governments, or tribal governments receiving assistance.''

Mr. WAXMAN. Mr. Chairman, the bill before us provides that it would be considered an unfunded mandate if we increase the stringency in an entitlement program as a condition of assistance. Now, the way this is defined, I think it applies perhaps exclusively, but certainly to the Medicaid program.

What my amendment would provide is that if there is an increase in the stringency of conditions of assistance in Medicaid, this would not apply if the change in the requirements is to assure the fiscal integrity of the program to assure that expenditures are for the purposes that are legitimate under the program or to prevent fraud and abuse by people or providers receiving payment under the program.

This is a good Government amendment. If we are, let's say under the Medicaid Program, going to pay for health care services for poor people and we ask the States to be sure to police the program to be sure that there is no fraud or abuse being committed, if in that increased stringency requirement in order to protect the integrity of the program the States are required to do more than would otherwise be the case, we should consider that an unfunded mandate that would be prevented.

We have, as most of you know, a reverse suggestion of what we ordinarily think about in this unfunded mandate. We have a provision for extra payments by the Federal Government when the States provide assistance to disproportionate share institutions. These are usually hospitals that serve a disproportionate share of low-income people and we want to provide extra reimbursement to them.

But some of the States took advantage of this provision and they concocted schemes to rip off Federal dollars to which they were not entitled. They came in and requested that the Federal Government match money that they put up and then used the Federal dollars under Medicaid for things that had nothing to do with Medicaid. Medicaid was being used as a revenue-sharing program.

Let me just illustrate this by the fact that under this loophole States collected billions of dollars of Federal Medicaid spending. We went in the space of Federal Medicaid spending. We went in the space of about 3 years from spending $300 million on disproportionate share payments to $11 billion. When we came back in 1993 in a bipartisan way and we said this is a loophole that cannot be tolerated, we plugged up that loophole. But if this mandates bill were in effect, that would be considered increased stringency of the program and the States could come back and say you cannot increase the stringency of the program as it relates to them, even though it plugged up a loophole by which they got Federal dollars from the Federal Government to which they were not entitled.

Those of us who want to protect the integrity of a program like Medicaid to make sure States police for fraud and abuse, make sure the States are protecting the integrity of the dollars being spent by the Federal Government, those things should not be considered unfunded mandates. We should not subject such a requirement and

Federal changes in Federal law to a point of order. This amendment would accomplish that result. So I would urge an aye vote for this amendment.

It is not dissimilar, by the way, to the exceptions in this legislation that say that when we require compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government, that should not be considered an unfunded mandate under section 4 limitations on the limits of the legislation.

But I do not believe that that limitation on the application of what is considered unfunded mandate means where we say if it is to comply with accounting and auditing procedures, it would apply to something more to protect the fiscal integrity of the Medicaid Program.

Mr. Chairman, I ask support for this amendment.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment very briefly.

Mr. Chairman, I think this amendment is too broad for what the gentleman is seeking to accomplish. As he has already indicated, we do exempt auditing and accounting from the provisions of this bill to prevent waste, fraud, and abuse. The concern I have with it is that it really does broaden the scope of what we are trying to do. I think the purpose we should be focusing on, at least, is to try to enforce what exists. We do have controls existing that are not being enforced. I think we do a better job of getting the inspector generals to enforce what exists now without adding new restrictions and broadening language to the bill.

So I must oppose the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. WAXMAN].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 153, noes 275, not voting 6, as follows:

[Roll No. 76]

AYES—153

Abercrombie	Clayton	Evans
Ackerman	Clement	Farr
Baldacci	Clyburn	Fattah
Barcia	Coleman	Fazio
Barrett (WI)	Collins (IL)	Fields (LA)
Becerra	Collins (MI)	Filner
Beilenson	Conyers	Flake
Bentsen	Costello	Foglietta
Berman	Coyne	Ford
Bishop	DeLauro	Frank (MA)
Bonior	Dellums	Frost
Borski	Deutsch	Furse
Boucher	Dicks	Gejdenson
Brown (CA)	Dingell	Gephardt
Brown (FL)	Dixon	Gibbons
Brown (OH)	Doggett	Gonzalez
Bryant (TX)	Durbin	Green
Cardin	Engel	Gutierrez
Clay	Eshoo	Hall (OH)
Hastings (FL)	McCarthy	Roemer
Hayes	McDermott	Roybal-Allard
Hilliard	McHale	Rush
Hinchey	McKinney	Sabo
Holden	McNulty	Sanders
Hoyer	Meehan	Sawyer
Jackson-Lee	Meek	Schroeder
Jacobs	Miller (CA)	Schumer
Jefferson	Mineta	Scott
Johnson, E. B.	Minge	Serrano
Johnston	Mink	Skaggs
Kanjorski	Moakley	Slaughter
Kaptur	Mollohan	Stark
Kennedy (MA)	Moran	Stokes
Kennedy (RI)	Nadler	Studds
Kennelly	Neal	Stupak
Kildee	Oberstar	Thompson
Kleczka	Obey	Torricelli
Klink	Olver	Towns
LaFalce	Owens	Tucker
Lantos	Pallone	Velazquez
Levin	Pastor	Vento
Lewis (GA)	Payne (NJ)	Ward
Lofgren	Payne (VA)	Waters
Lowey	Pelosi	Watt (NC)
Luther	Pomeroy	Waxman
Maloney	Rahall	Williams
Manton	Rangel	Wise
Markey	Reed	Woolsey
Martinez	Reynolds	Wyden
Mascara	Richardson	Wynn
Matsui	Rivers	Yates

NOES—275

Allard	Dickey	Johnson (CT)
Andrews	Dooley	Johnson (SD)
Archer	Doolittle	Johnson, Sam
Armey	Dornan	Jones
Bachus	Doyle	Kasich
Baesler	Dreier	Kelly
Baker (CA)	Duncan	Kim
Baker (LA)	Dunn	King
Ballenger	Edwards	Kingston
Barr	Ehlers	Klug
Barrett (NE)	Ehrlich	Knollenberg
Bartlett	Emerson	Kolbe
Barton	English	LaHood
Bass	Ensign	Largent
Bateman	Ewing	Latham
Bereuter	Fawell	LaTourette
Bevill	Fields (TX)	Laughlin
Bilbray	Flanagan	Lazio
Bilirakis	Foley	Leach
Bliley	Forbes	Lewis (CA)
Blute	Fowler	Lewis (KY)
Boehlert	Fox	Lightfoot
Boehner	Franks (CT)	Lincoln
Bonilla	Franks (NJ)	Linder
Bono	Frelinghuysen	Lipinski
Brewster	Frisa	Livingston
Browder	Funderburk	LoBiondo
Brownback	Gallegly	Longley
Bryant (TN)	Ganske	Lucas
Bunn	Gekas	Manzullo
Bunning	Geren	Martini
Burr	Gilchrest	McCollum
Burton	Gillmor	McCrery
Buyer	Gilman	McDade
Callahan	Goodlatte	McHugh
Calvert	Goodling	McInnis
Camp	Gordon	McIntosh
Canady	Goss	McKeon
Castle	Graham	Menendez
Chabot	Greenwood	Metcalf
Chambliss	Gunderson	Meyers
Chenoweth	Gutknecht	Mica
Christensen	Hall (TX)	Miller (FL)
Chrysler	Hamilton	Molinari
Clinger	Hancock	Montgomery
Coble	Hansen	Moorhead
Coburn	Harman	Morella
Collins (GA)	Hastert	Murtha
Combest	Hastings (WA)	Myers
Condit	Hayworth	Myrick
Cooley	Hefley	Nethercutt
Cox	Heineman	Neumann
Cramer	Herger	Ney
Crane	Hilleary	Norwood
Crapo	Hobson	Nussle
Cremeans	Hoekstra	Ortiz
Cubin	Hoke	Orton
Cunningham	Horn	Oxley
Danner	Hostettler	Packard
Davis	Houghton	Parker
de la Garza	Hunter	Paxon
Deal	Hutchinson	Peterson (FL)
DeFazio	Hyde	Peterson (MN)
DeLay	Inglis	Pickett
Diaz-Balart	Istook	Pombo
Porter	Shaw	Thornton
Portman	Shays	Thurman
Poshard	Shuster	Tiahrt
Pryce	Sisisky	Torkildsen
Quillen	Skeen	Traficant
Quinn	Skelton	Upton
Radanovich	Smith (MI)	Visclosky
Ramstad	Smith (NJ)	Volkmer
Regula	Smith (TX)	Vucanovich
Riggs	Smith (WA)	Waldholtz
Roberts	Solomon	Walker
Rogers	Souder	Walsh
Rohrabacher	Spence	Wamp
Ros-Lehtinen	Spratt	Watts (OK)
Rose	Stearns	Weldon (FL)
Roth	Stenholm	Weldon (PA)
Roukema	Stockman	Weller
Royce	Stump	White
Salmon	Talent	Whitfield
Sanford	Tanner	Wicker
Saxton	Tate	Wilson
Scarborough	Tauzin	Wolf
Schaefer	Taylor (MS)	Young (AK)
Schiff	Taylor (NC)	Young (FL)
Seastrand	Tejeda	Zeliff
Sensenbrenner	Thomas	Zimmer
Shadegg	Thornberry	

NOT VOTING—6

Chapman	Hefner	Petri
Everett	Mfume	Torres

☐ 1715

Messrs. HOLDEN, MCHALE, and HILLIARD changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENTS OFFERED BY MR. HAYES

Mr. HAYES. Mr. Chairman, I offer two amendments and ask unanimous consent that they be considered en bloc and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The text of the amendments is as follows:

Amendments offered by Mr. HAYES:

In Section 301, in the proposed section 421 of the Congressional Budget Act of 1974, on page 29, line 11, after the period, insert the following: ''(12) SIGNIFICANT EMPLOYMENT IMPACT.—The term 'significant employment impact' means an estimated net aggregate loss of 10,000 or more jobs.''

In section 301, in the proposed section 424(b)(1)(B) of the Congressional Budget Act of 1974: on page 38, line 11, strike ''or''; and on page 38, line 13, after ''private sector'', insert: ''; or (C) significant employment impact on the private sector''.

☐ 1720

Mr. HAYES. Mr. Chairman, realizing the length to which this bill has proceeded, I will be as brief as I can.

The impact of these two amendments considered en bloc as they appear have impact on sections 421 and 421(b)(1)(b) of the Budget Act of 1974 as follows:

We talk so much about unfunded mandates in terms of money. The word ''funding'' itself would make us believe that we have got to look at each and every dollar sign.

The fact of the matter is that there are many instances in which the cost to human beings cannot be easily predilected in terms of money accounts.

In my home State of Louisiana, we lost more oilfield workers in the crash

of the early 1980's than the entire automobile industry of America lost. So what the gentleman from Louisiana [Mr. BAKER], my colleague, and I have done, in a bill filed in the last Congress, the impact of which is to effect the amendments to this bill in this Congress, is simply add language saying that the significant employment impact on the private sector, under a definitional statement, a net aggregate loss of 10,000 or more jobs is as significant as any amount of money could possibly be.

For that reason, we are simply extending the application to the consideration of the impact of loss of jobs to the American worker.

Mr. BAKER of Louisiana. Mr. Chairman, will the gentleman yield?

Mr. HAYES. I yield to the gentleman from Louisiana.

Mr. BAKER of Louisiana. Mr. Chairman, I would like first to commend the gentleman from Louisiana for his efforts in this matter and point out that there is one other aspect of this amendment I think most important.

The debate to date has been centered about the effect of unfunded mandates on local and State governments. The effect of this amendment with regard to employment stretches the effect of analysis to go now to the private sector, which I think is very important in all this rush to make sure we are not doing things that are unreasonable.

If we are going to cost American jobs, we should be mindful of the effect, and balance that against the supposed benefit of some new federally mandated rule or regulation.

So the scope and effect of this amendment, I think, is very important in that it assigns a dollar value to the regulations for local governments. But it also assigns a job employment effect for those in private enterprise.

I commend the gentleman for his hard work and cooperation on this matter and hope the House will look favorably on its adoption.

Mr. HAYES. Mr. Chairman, the gentleman from Louisiana [Mr. BAKER], and I, for the last 8 years, have been able to work under what is now called bipartisanship and what we considered a natural kinship for the betterment of the State of Louisiana. I am glad the rest of the Congress is on occasion catching up to the gentleman from Louisiana and I.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. HAYES. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Chairman, I thank the gentleman for yielding to me. I am pleased to rise in support of the amendment. I think it makes a valuable addition to what we are trying to do here and merely authorizes the committees of Congress to seek information as to what it is going to mean to employment, what kind of impact it is going to have on employment.

It does not affect the point of order, but it does provide valuable information to the committees. I am pleased to support the gentleman's amendment.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. HAYES. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank the gentleman for yielding to me.

I would simply like to join in and praise the bipartisan spirit of this amendment and say that I believe that it is right on target and to say to my friend from Louisiana that those of us in the 52-Member delegation from California are in fact learning from the marvelous example that the two gentlemen are setting.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Louisiana [Mr. HAYES].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. DREIER

Mr. DREIER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DREIER: In section 301, in the proposed section 425 of the Congressional Budget Act of 1974, strike subsection (d) and redesignate subsection (e) as subsection (d).

In section 301, in the proposed section 426 of the Congressional Budget Act of 1974, strike: ''*: Provided, however,*'' and all that follows through the close quotation marks.

In section 301, after such proposed section 426, add the following:

''SEC. 427. DISPOSITION OF POINTS OF ORDER.

''(a) IN GENERAL.—As disposition of points of order under section 425(a) or 426, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

''(b) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

''(c) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this section with respect to a bill or joint resolution shall be considered also to determine the question of consideration under this section with respect to an amendment made in order as original text.''.

Mr. DREIER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DREIER. Mr. Chairman, during consideration of H.R. 5 in the Committee on Rules, an amendment to section 426 was adopted that creates a mechanism to allow any Member to make a motion to waive points of order against a mandate in any bill, joint resolution, amendment or conference report that does not include a CBO cost estimate or a means for paying for the mandate.

The language currently in section 426 is preferable to the language in H.R. 5 as introduced for several reasons.

First, it more directly achieves the goal of the authors of H.R. 5 to guarantee votes in the House specifically on unfunded mandates. Second, it does not place undue constraints on the legislative schedule by requiring our Committee on Rules to report two rules every time a decision is made to waive the application of section 425.

Third, it relieves some of the burden on the presiding officer when making a determination with respect to a point of order.

Since H.R. 5 was reported to the House, I have been working with the parliamentarian and a lot of other Members have been working with the parliamentarian on language to address two additional concerns raised by section 426. The language is contained in the amendment that I am now offering, Mr. Chairman.

First, the amendment further reduces the burden on the presiding officer to rule on points of order with respect to not only the existence of a mandate but whether the cost of the mandate exceeds the threshold of $50 million. This will be particularly troublesome in situations where a motion to waive such a point of order is not made.

Second, the amendment addresses a concern raised by a number of my colleagues on the other side of the aisle with respect to the role of the chairman of the Committee on Government Reform and Oversight in advising the Chair about the question of unfunded mandates. Under my amendment, that advice would no longer be necessary.

Essentially, Mr. Chairman, the amendment provides that whenever points of order are raised pursuant to section 425(a) or 426, the points of order shall be disposed of by a vote of the Committee of the Whole.

The question would be debatable for 20 minutes, 10 minutes by the Member initiating the point of order and 10 minutes by an opponent of the point of order.

This also addresses the concern that was raised by our distinguished ranking minority member, my friend, the gentleman from South Boston, MA [Mr. MOAKLEY], who argued that the 10 minutes of debate time contained in the existing section 426 was insufficient.

Mr. Chairman, this amendment is an honest attempt to address a number of the concerns raised by my colleagues on the other side of the aisle. It further clarifies the procedure under which points of order against unfunded mandates are to be enforced in the House.

The amendment should not be controversial, and I urge my colleagues to support it.

AMENDMENT OFFERED BY MR. MOAKLEY TO THE AMENDMENT OFFERED BY MR. DREIER

Mr. MOAKLEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. MOAKLEY to the amendment offered by Mr. DREIER:

In the proposed new section 427, insert the following new subsection (a) (and redesignate the existing subsections accordingly):

''(a) In order to be cognizable by the Chair, a point of order under section 425(a) or 426 must specify the precise language on which it is premised.''

Mr. DREIER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MOAKLEY. Mr. Chairman, the Dreier amendment is a major improvement over the text of the bill. I would, however, make one suggestion.

As the gentleman from California [Mr. DREIER] explained to us, his amendment will change the point of order into a question of consideration. But I am worried that there will be no way to ensure that this process is not abused.

So as the amendment now stands, if a Member wanted to avoid a vote, the Member just could raise the unfunded mandates point of order. Once that point of order has been raised, the Chair will have no choice but to put the question of consideration.

There is no way to prevent a Member from making an unfunded mandates point of order, even when there is none.

My amendment makes the Member who is raising the point of order show exactly where the unfunded mandate exists and explain how that language constitutes a violation.

I believe that this amendment to the Dreier amendment will make a very big difference in preventing abuse of the unfunded mandate point of order.

If my amendment is accepted, a Member will not be able to raise a point of order against a measure unless he or she can show that one may exist.

Mr. Chairman, I have had a lot of constructive conversations with the gentleman from California. [Mr. DREIER]. I appreciate his willingness to work with us on this matter.

□ 1730

Mr. Chairman, I hope the gentleman from California [Mr. DREIER] will accept this amendment. Later if we find we have to make further modifications, perhaps we can take those up in conference.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I am glad to yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank the gentleman for yielding.

I have to say, Mr. Chairman, well wonders never cease. The Louisiana delegation has come together. The Committee on rules is coming together. We are working in a bipartisan way in the 104th Congress to deal with many of the challenges that lie ahead of us.

It seems to me that on this issue the burden of proof should in fact lie with the Member raising the point of order. This is a very effective way to address that concern. I strongly support the amendment offered by the gentleman from Massachusetts. [Mr. MOAKLEY] to the amendment I have offered. The gentleman from Pennsylvania [Mr. CLINGER] will be let off the hook with this amendment.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. Moakley. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Chairman, that is precisely what I wanted to say. In the legislation presently drafted, the task of determining what was or was not an unfunded mandate would have fallen on the shoulders of the chairman of the Committee on Government Reform and Oversight, and/or perhaps the ranking member of that committee, so I certainly appreciate the fact that this is now going to ensure that this matter will be decided by the House itself. That is the appropriate place for this decision to be made. I am pleased to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MOAKLEY] to the amendment offered by the gentleman from California [Mr. DREIER].

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. DREIER] as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MRS. MINK OF HAWAII

Mrs. MINK of Hawaii. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. MINK of Hawaii: In section 301, in the matter proposed as section 421(4)(A)(i)(II) of the Congressional Budget Act of 1974, strike ''except as provided in subparagraph (B)''.

In section 301, in the matter proposed as section 421(4) of the Congressional Budget Act of 1974, strike subparagraph (B).

In Section 301, in the matter proposed as section 422 of the Congressional Budget Act of 1974, strike ''or'' after the semicolon at the end of paragraph (6), strike the period at the end of paragraph (7) and insert ''; or'', and insert at the end the following:

''(8) requires compliance with certain conditions necessary to receive grants or other money provided by the Federal Government in programs for which the States, local governments, or tribal governments voluntarily apply.

Mrs. MINK of Hawaii. Mr. Chairman, I rise to offer this amendment to express my opposition to this legislation because of the many questions caused by the ambiguous, overly broad language contained in this legislation which have not been resolved to my satisfaction.

Mr. Chairman, the debate on this bill has raised many areas of national concern which will be seriously jeopardized by the mandate that all standards and requirements be fully funded or risk the hazard of not being implemented or even repealed.

This debate is a lesson on the critical issues that we have tried to face as a Nation where the Congress has set forth the goals, and sought to make the case for national compliance in a shared responsibility with States and local communities.

This bill provides that unless the Federal Government pays for the cost of implementing these standards and goals on a local level, that these goals are of no force and effect.

The obvious effect of this bill is to reduce the reach of the Federal Government to help fight disease, curb pollution, prevent contamination of our environment, improve educational opportunities, raise the minimum wage, maintain safe places of work, prohibit child abuse, child exploitation, and provide for the poor, the elderly, and the infirm.

We in the minority believe very strongly that the Federal Government has the constitutional responsibility to provide for the general welfare of all citizens of these country and that, accordingly, it has the duty to establish by Federal law, Federal rules of conduct and safety, Federal standards, and Federal regulation that cut across State boundaries because they are safeguards and protections we are sworn to provide to all citizens of this country.

But the sweep of this legislation we are debating is to cut off the establishment of any new Federal responsibility or to expand an existing responsibility unless we are prepared to pay for it totally. the majority explicitly state that their goal is to transform the Federal Government and to reduce its function and authority in all programs, regardless of merit.

When the public realizes what this bill will do in reducing their protections in the areas of health, safety, and educational benefits, I feel confident that they will seek the abrogation of this contract which the majority seeks to impose on an unwilling Nation.

Mr. Chairman, I agree that certain mandates are unreasonable and ought to be revisited, but because you have a problem with your toe is no reason to cut off your foot and cripple yourself for the rest of your life.

My amendment makes clear that this bill does not affect any program which is voluntary. If the Federal Government sets out its goals, and invites the States and local entities to participate with the lure of funding, it is clearly voluntary and should not be covered by any bill which deals with mandates.

Yet this bill is unclear exactly where it draws the line as to what is voluntary and what is not.

My amendment seeks to make explicitly clear that no voluntary program entered into by the States and local communities can be converted into a mandate because it costs more than

$500 million. If a program was voluntarily entered into by the States and local communities, the fact that it now costs the Federal Government to implement it does not convert it into a mandate.

Section 301 of H.R. 5 includes voluntary entitlements. Why? Strictly because it costs the Federal Government more than $500 million. Why should costs convert what is voluntary into a mandate? An entitlement is a mandate on the Federal Government.

It does not mandate participation on the part of the States. No State is required to participate in a voluntary entitlement program. It chooses to do so on its own, voluntarily, and when it chooses to participate, it agrees to the basic guidelines set forth in the law.

Mr. Chairman, AFDC is a classic example. The range of voluntary participation can be easily demonstrated by just looking at the range of benefit payments: $120 a month to a family of three in Mississippi, $624 a month to a family of three in California. There is no uniform benefit payment. AFDC is clearly and unequivocally a voluntary program, yet it is covered by this legislation as an unfunded mandate because it costs the Federal Government more than $500 million.

Mr. Chairman, this same argument applies to all the other voluntary entitlement programs. I urge this House to support my amendment and make clear that this bill does not cover voluntary programs whatsoever.

Mr. CLINGER. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Hawaii [Mrs. MINK].

Mr. Chairman, we have, as we know, eliminated or exempted voluntary programs and those that would have conditions as part of a grant, but when we are talking about exempting out an entire Medicaid Program, which is one of the largest programs we have, I think it would be very remiss of us not to at least consider what the cost of that would be, and to at least have some accounting of what the cost would be. This, again, would be a massive exemption from the provisions of this bill. Again, it would not affect the bill, but it would clearly call into account what we are doing here and make it very difficult for us to go forward.

Mr. Chairman, I would oppose the gentlewoman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Hawaii [Mrs. MINK].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. MINK of Hawaii. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 15-minute vote.

The vote was taken by electronic device, and there were—ayes 121, noes 310, not voting 3, as follows:

[Roll No. 77]

AYES—121

Abercrombie	Gibbons	Nadler
Ackerman	Green	Oberstar
Barcia	Gutierrez	Obey
Beilenson	Hall (OH)	Olver
Bentsen	Hastings (FL)	Owens
Berman	Hilliard	Pastor
Bishop	Hinchey	Payne (NJ)
Bonior	Holden	Pelosi
Brown (CA)	Hoyer	Rangel
Brown (FL)	Jackson-Lee	Reynolds
Brown (OH)	Jacobs	Rose
Bryant (TX)	Jefferson	Roybal-Allard
Cardin	Johnson, E. B.	Rush
Clay	Johnston	Sabo
Clayton	Kanjorski	Sanders
Clement	Kaptur	Sawyer
Clyburn	Kennedy (MA)	Scott
Coleman	Kennedy (RI)	Serrano
Collins (IL)	Kildee	Stark
Collins (MI)	Klink	Stokes
Conyers	LaFalce	Studds
Coyne	Lantos	Stupak
Dellums	Levin	Thompson
Dicks	Lewis (GA)	Torres
Dingell	Lofgren	Torricelli
Dixon	Maloney	Towns
Doggett	Manton	Traficant
Doyle	Martinez	Tucker
Engel	Mascara	Velazquez
Eshoo	McCarthy	Vento
Evans	McDermott	Ward
Farr	McKinney	Waters
Fattah	McNulty	Watt (NC)
Fazio	Meek	Waxman
Fields (LA)	Menendez	Williams
Filner	Mfume	Wise
Flake	Miller (CA)	Woolsey
Foglietta	Mineta	Wynn
Ford	Mink	Yates
Furse	Moakley	
Gephardt	Mollohan	

NOES—310

Allard	Condit	Gilchrest
Andrews	Cooley	Gillmor
Archer	Costello	Gilman
Armey	Cox	Gonzalez
Bachus	Cramer	Goodlatte
Baesler	Crapo	Goodling
Baker (CA)	Cremeans	Gordon
Baker (LA)	Cubin	Goss
Baldacci	Cunningham	Graham
Ballenger	Danner	Greenwood
Barr	Davis	Gunderson
Barrett (NE)	de la Garza	Gutknecht
Barrett (WI)	Deal	Hall (TX)
Bartlett	DeFazio	Hamilton
Barton	DeLauro	Hancock
Bass	DeLay	Hansen
Bateman	Deutsch	Harman
Bereuter	Diaz-Balart	Hastert
Bevill	Dickey	Hastings (WA)
Bilbray	Dooley	Hayes
Bilirakis	Doolittle	Hayworth
Bliley	Dornan	Hefley
Blute	Dreier	Hefner
Boehlert	Duncan	Heineman
Boehner	Dunn	Herger
Bonilla	Durbin	Hilleary
Bono	Edwards	Hobson
Borski	Ehlers	Hoekstra
Boucher	Ehrlich	Hoke
Brewster	Emerson	Horn
Browder	English	Hostettler
Brownback	Ensign	Houghton
Bryant (TN)	Everett	Hunter
Bunn	Ewing	Hutchinson
Bunning	Fawell	Hyde
Burr	Fields (TX)	Inglis
Burton	Flanagan	Istook
Buyer	Foley	Johnson (CT)
Callahan	Forbes	Johnson (SD)
Calvert	Fowler	Johnson, Sam
Camp	Fox	Jones
Canady	Frank (MA)	Kasich
Castle	Franks (CT)	Kelly
Chabot	Franks (NJ)	Kennelly
Chambliss	Frelinghuysen	Kim
Chapman	Frisa	King
Chenoweth	Frost	Kingston
Christensen	Funderburk	Kleczka
Chrysler	Gallegly	Klug
Clinger	Ganske	Knollenberg
Coble	Gejdenson	Kolbe
Collins (GA)	Gekas	LaHood
Combest	Geren	Largent
Latham	Oxley	Skelton
LaTourette	Packard	Slaughter
Laughlin	Pallone	Smith (MI)
Lazio	Parker	Smith (NJ)
Leach	Paxon	Smith (TX)
Lewis (CA)	Payne (VA)	Smith (WA)
Lewis (KY)	Peterson (FL)	Solomon
Lightfoot	Peterson (MN)	Souder
Lincoln	Petri	Spence
Linder	Pickett	Spratt
Lipinski	Pombo	Stearns
Livingston	Pomeroy	Stenholm
LoBiondo	Porter	Stockman
Longley	Portman	Stump
Lowey	Poshard	Talent
Lucas	Pryce	Tanner
Luther	Quillen	Tate
Manzullo	Quinn	Tauzin
Markey	Radanovich	Taylor (MS)
Martini	Rahall	Taylor (NC)
Matsui	Ramstad	Tejeda
McCollum	Reed	Thomas
McCrery	Regula	Thornberry
McDade	Richardson	Thornton
McHale	Riggs	Thurman
McHugh	Rivers	Tiahrt
McInnis	Roberts	Torkildsen
McIntosh	Roemer	Upton
McKeon	Rogers	Visclosky
Meehan	Rohrabacher	Volkmer
Metcalf	Ros-Lehtinen	Vucanovich
Meyers	Roth	Waldholtz
Mica	Roukema	Walker
Miller (FL)	Royce	Walsh
Minge	Salmon	Wamp
Molinari	Sanford	Watts (OK)
Montgomery	Saxton	Weldon (FL)
Moorhead	Scarborough	Weldon (PA)
Moran	Schaefer	Weller
Morella	Schiff	White
Murtha	Schroeder	Whitfield
Myers	Schumer	Wicker
Myrick	Seastrand	Wilson
Neal	Sensenbrenner	Wolf
Nethercutt	Shadegg	Wyden
Neumann	Shaw	Young (AK)
Ney	Shays	Young (FL)
Norwood	Shuster	Zeliff
Nussle	Sisisky	Zimmer
Ortiz	Skaggs	
Orton	Skeen	

NOT VOTING—3

Becerra	Coburn	Crane

□ 1756

Mr. GEJDENSON, Ms. SLAUGHTER, and Mrs. LOWEY changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BEILENSON

Mr. BEILENSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BEILENSON: In the proposed section 421(a)(4)(ii) of the Congressional Budget Act of 1974 insert ''or the amount of appropriations'' after ''appropriations''.

In the heading for the proposed section 424(a) of the Congressional Budget Act of 1974, strike ''OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS''.

In paragraphs (1) and (2) of the proposed section 424(a) of the Congressional Budget Act of 1974, strike ''of authorization''.

In the proposed section 425(b) of the Congressional Budget Act of 1974, insert ''(2)'' after ''(a)''.

Mr. BEILENSON. Mr. Chairman, the amendment I am offering would impose the same information requirements with respect to unfunded mandates on appropriations bills as H.R. 5 requires for authorizing legislation.

Even if we are not going to prohibit consideration of appropriations bills which contain unfunded mandates we should at least, Mr. Chairman, require that they be submitted to CBO for an estimate of the cost of any unfunded mandates they may contain. Otherwise we will be making appropriation bills a magnet for authorizers attempting to circumvent the requirements imposed on their own bills.

I personally have some reservations about the practicality of CBO-produced estimates of Federal mandates in legislation. It is a good idea in concept, but we are likely to see problems in its implementation, at least for a while. But if we are going to require such cost estimates for authorizing bills we ought to require them for appropriations bills as well.

It is easy to imagine a situation where members of authorizing committees, frustrated that they are unable to get a cost estimate from CBO on a timely basis, or are unwilling to do so because they know how the figures will turn out, go to the Committee on Appropriations and persuade a majority of members there to add the legislation to the appropriations bill.

□ 1800

It is also easy to imagine members of the Committee on Appropriations inserting legislation into their bills that the authorizing committees will not act on. It is easy to imagine these scenarios, because they have happened frequently in the past for other reasons. When an authorizing committee is unable to move a piece of legislation under its jurisdiction for whatever reason but wants to enact a programmatic change, the authorizing members often persuade the appropriators to include the legislative language in one of their bills.

Likewise, appropriations members who cannot get a legislative provision they want through an authorizing committee have been known to put it in an appropriations bill.

Subjecting authorizing bills but not appropriations bills to cost estimates for mandates would give Members an additional reason, potentially a very powerful one, to try to use the appropriations process to enact legislation.

The chairman of the Committee on Rules, the gentleman from New York [Mr. SOLOMON], has argued that using the appropriations process to circumvent the unfunded-mandate requirement will be difficult because the Committee on Rules will not waive clause 2 of rule XXI, the prohibition on legislation in an appropriations bill. However, there will be times that the Committee on Rules will be under enormous pressure to waive that rule, and if the Committee on Appropriations does not have a determination from the CBO as to whether there are unfunded mandates in the bill, the Committee on Rules will have no way of knowing whether waiving rule XXI will also result in sending an unfunded mandate to the floor.

Subsequently, if the House votes to waive rule XXI, the House could find itself voting on an unfunded mandate without knowing it is doing any such thing.

Furthermore, no matter how well we adhere to our prohibition in an appropriations bill here in the House, we have no control over what the Senate will do in this regard. We may well find that in conference on appropriations bills House Members will be under enormous pressure to accept legislative provisions containing unfunded mandates inserted by Members of the other body.

In sum, Mr. Chairman, if we fail to ask of appropriations bills what we are asking of authorizing bills under this proposed legislation in the way of information requirements, we will be tilting the balance of power among our committees away from authorizers and toward the appropriators, and we will have created a significant loophole in this legislation. We can avoid doing both to a great extent by adopting this amendment.

I urge support for it. I think it is an eminently reasonable amendment. I think it makes all the sense in the world, and I urge Members to support it and vote for it.

Mr. DREIER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment essentially repeals the exemption in the bill for the appropriations bills, as my friend has said. Contrary to the argument that has just been provided, there really is no loophole. There clearly is no loophole.

Any unfunded mandate in an appropriations bill would constitute legislating in an appropriations bill and would, therefore, alone be subjected to a point of order. So it is open to a point of order that conceivably could be raised.

Even if the Committee on Rules reported a rule that waived this point of order, an amendment to strike the unfunded mandate would always be in order unless it were a completely closed rule. Those of us on this side who are in the majority now do not plan to continue this pattern we have seen in the past of closing down rules.

So it seems to me that this amendment really does not do anything to effectively address the issue we are trying to get at here. There is really no need to proceed with this, and I hope very much that we will be able to reject this duplicative amendment which is already addressed in the standard operating rules of the House of Representatives.

Mrs. COLLINS of Illinois. Mr. Chairman, I move to strike the last word.

Mr. Chairman, why is this change so important? Well, the House is about to embark on some drastic cost-cutting measures including rescissions and elimination of programs through the regular appropriations process. Already the Committee on Appropriations is working on two rescissions bills that will soon be considered on this floor. We must make sure that we know whether these cuts will shift the cost burdens to State and local governments, and if they do, we must apply the procedures of H.R. 5 to those bills.

No proponents of this legislation have given a reason why appropriations bills are not covered by H.R. 5. Just as important are conference reports on appropriations bills that come back from the other body with all sorts of authorizing legislation attached.

If a conference on an appropriations bill contains an unfunded mandate, why should not H.R. 5 apply?

Now, Mr. Chairman, we all know that provisions can be attached to continuing resolutions and reconciliation bills. They should all be included in the scope of this legislation. But in order to accomplish this, we must first amend the definition of Federal intergovernmental mandate in section 421(4). That definition currently includes only bills that decrease authorization of appropriations and not appropriations bills themselves.

Therefore, CBO is not required to perform any cost analysis on appropriations bills even though those bills may drastically cut funds for State and local governments used to pay for Federal mandates.

The goal of full and open debate on the cost of legislation cannot be met if appropriations bills, including rescissions, are not included.

Now, the Republican leadership has been talking of consolidating many costly Federal assistance programs and, instead, providing block grants to States. This, they promise, will save money, because fewer dollars will be needed. I want to tell you that I am skeptical. I fear that, instead, these unfunded mandates will be passed on to the States. That is why we need to closely scrutinize each appropriations and rescission bill that comes to the floor and to apply the proceeds of H.R. 5 to stop any unfunded mandates.

I urge the adoption of this amendment.

Mr. MOAKLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Beilenson amendment.

As we have heard over the past few days, the unfunded-mandate legislation is a far-reaching effort to alter the way the Federal and State governments relate to each other on a wide range of regulatory matters. There is certainly room for improvement in this relationship.

The fact is, we used to do a better job of listening to each other and sharing responsibility for the standards we set. I think we should bring back a better balance to the system. But it seems to me that the legislation which we are considering here today contains a very large loophole. It does not extend the CBO information requirements to appropriations bills.

I am at a loss to understand why. This is a very significant part of our legislative process, and this was omitted from the legislation. When we raised the issue in the Committee on Rules, the only response from the authors of the bill is that they did not want to offend the members of the Committee on Appropriations.

Mr. Chairman, I believe that extending the reporting provisions to appropriations bills so that we have information on any unfunded mandates they may contain would close a glaring loophole and provide a very valuable addition to this bill.

Mr. Chairman, to be fair and to be comprehensive in our desire to address the legitimate financial concerns of the States and localities, we need to extend the provisions of H.R. 5 to appropriations legislation, and I urge my colleagues to support the Beilenson amendment.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I am happy to yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank my friend for yielding.

Mr. Chairman, I would simply like to say that as we look at the Committee on Rules' relationship to the appropriations process, for the past several years we have seen restrictions imposed on the appropriations bills and waivers granted and all, but before that, that really did not happen, and I believe very sincerely that in this 104th Congress we are going to be able to get back to the point where we are not imposing those kinds of constraints on consideration of appropriations bills.

Also, I have to add that when I had the privilege of serving with the gentleman from Indiana [Mr. HAMILTON], cochairing our Joint Committee on the Organization of Congress, I was just reminded, throughout that hearing process I said the greatest reform that we could possibly implement in this institution would be to simply comply with the standing rules of the House. That is all we are saying right now.

The amendment offered by the gentleman from California [Mr. BEILENSON] tragically is based on the assumption that we are going to be waiving the rules of the House again. We would like to think, it is not ironclad, but we would like to think in most cases we will, in fact, be able to look at that as a thing of the past.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I have several problems with the logic there. First of all, arguing that something should not be included because it is not necessary, if there is any ambiguity, it seems to me a weak argument. None of those arguing in opposition said it would do any harm. They said it is not necessary.

In other words, we are getting the argument from literary elegance, not from logic.

Let us not be redundant. Fortunately the rule against redundancy does not apply to our speeches, or we would be in better shape.

On the other hand, there is a reason to apply this here. Among other things, we are not the only institution in this capital that treats appropriations legislation. Yonder lies the Senate. They have no such rule.

We have sometimes been confronted, as the gentleman understands, with situations in which, in conference, we have had to agree to that. So to argue that we should not put something into a statute which is intended to last indefinitely, because we have a House rule provision that does the same thing, is no argument at all.

□ 1810

If you are serious about the principle, then the fact it is in the House rule is a good idea, but hardly a sufficient protection. Putting it in the statute does no harm and arms us against a Senate where there is no such rule whatsoever.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. I thank the gentleman for yielding.

Mr. Chairman, as my colleague knows, over in the other body they regularly have opportunities with motions to strike. So clearly this issue can be addressed there.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding.

Now, I am surprised because the gentleman has not said that all the time we spent on the unfunded mandates was a waste, because he is saying in effect we do not need an unfunded mandate bill, all we need is not to vote on unfunded mandates.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MOAKLEY] has expired.

(On request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. MOAKLEY was allowed to proceed for 1 additional minute.)

Mr. MOAKLEY. I yield further to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding further.

Mr. Chairman, this is astonishing. What the gentleman is saying is we do not need any of this because if a motion comes up in a bill that has an unfunded mandate we defeat it. Has this been a charade? No, it has not been a charade. I mean, is the contract unnecessary? Is this superfluity? How can you argue that we do not need this whole bill and argue that we do not need this amendment because, after all, if it comes up we will vote it down. That stands the whole process on its head.

I am surprised that the gentleman thinks that the whole thing we are talking about is illogical. Given the logic of a need for an unfunded mandates bill, applying it to appropriations bills makes the most obvious sense. The gentleman from California [Mr. BEILENSON] is correct.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. I thank the gentleman.

Mr. Chairman, beyond the standing rules of the House, on which we have had a pattern of waivers over the past several years, and this measure, what else would be necessary to ensure that we do not proceed with imposition of an unfunded mandate? I am just saying at what point? We have concluded that the rules of the House are not enough. I happen to think they are.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MOAKLEY] has again expired.

(On request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. MOAKLEY was allowed to proceed for an additional 30 seconds.)

Mr. MOAKLEY. I yield further to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I thank the gentleman.

Mr. Chairman, the rules of the House are not enough, I would say to the gentleman very simply, when we are dealing with a matter which includes the U.S. Senate. That is not hard. The rules of the House do not bind the Senate, they do not impress the Senate, and if you are serious about this you do it by statute.

Mr. DREIER. The rules of the House are not enough, and people who were formerly in the majority have had a pattern of constantly waiving them.

Mr. PORTMAN. Mr. Chairman, I move to strike the requisite number of words.

Just briefly, Mr. Chairman, in response to the point of the gentleman from Massachusetts [Mr. FRANK], No. 1: In the Senate debate on this the Senate did agree to a Senate procedure which handles the appropriations issue. So Mr. FRANK will take comfort from that, I am sure.

It is in a sense a line item in the appropriations bill on the Senate side. So that point is not necessary.

Second, this legislation is in fact not only necessary, but as we have seen over the last week in debating it, there is a crisis out there in terms of us sending unfunded mandates to States and localities.

If we do not get at it at the authorizing committee level, we will be in a situation where in a balanced budget environment we are increasingly pushing our costs down to the local level. So the legislation is absolutely necessary.

Mr. DREIER's concerns are well-stated. Why have another point of order? We already have a point of order. Why

have a duplication of a second point of order on appropriations bills? If you are legislating on an appropriations bill, there can be a point of order raised. That is all we are saying. We just do not need it. The language in the bill makes it very clear that at the authorizing committee level you have to consider the costs. Then on the floor of the House there is a point of order raised if the mandate is not funded. At the appropriations level there is always a point of order if you go beyond what the authorizing committee has done.

So in point of fact, by definition there is a point of order for both situations, and I think this legislation should not be duplicative. We should not go out of our way to go back and make rules that are not necessary.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BEILENSON].

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title III?

AMENDMENT OFFERED BY MR. BEILENSON

Mr. BEILENSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BEILENSON: Amend section 425 of the Congressional Budget Act of 1974 to read as follows:

SEC. 425. POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, except that this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4).

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

Strike the proposed section 426 of the Congressional Budget Act of 1974 and strike the reference to such section in the amendment made by section 304.

Mr. BEILENSON. Mr. Chairman, the amendment I am offering would eliminate the bill's prohibition on consideration of legislation containing an unfunded mandate on State and local governments.

This amendment goes to the heart of what makes this bill so troublesome and problematic: The prohibition it establishes against considering legislation that contains an unfunded mandate on State and local governments of more than $50 million annually. It is clear from the debate we have had thus far that we do not know enough about the likely impact of such a rule to institute it at this time.

We do not know how an unfunded mandate will be determined, how different types of Federal activities will be affected, and whether the Congressional Budget Office will be capable of assessing the costs of a proposal to State and local governments accurately and in a timely fashion. It seems unwise, to say the least, to prohibit consideration of a certain type of legislation when we really do not know what legislation we will be prohibiting.

Supporters of H.R. 5 have portrayed the proposed rule as a rather benign procedure that will not prevent Congress from enacting any legislation we want to enact. They have said that it is not a ''no money, no mandates'' rule; they have said that all it will do is help us make more informed decisions about legislation which would impose an unfunded mandate, and be more accountable for those decisions.

But that, in fact, is not the case. If this rule were as benign as some of its proponents claim, the sponsors would not have exempted legislation dealing with civil rights, or national security, or emergencies. They would not have exempted appropriations bills. They would not have agreed to amendments offered by Democratic Members to exempt Social Security and antidiscrimination measures for older Americans. Their support for exemptions for certain types of legislation is a tacit admission that this new prohibition does in fact have the potential to be a serious obstacle—if not a complete barrier—to enactment of certain types of legislation.

If you consider what this new rule means, and how it will work, you cannot help but reach the conclusion that it will make it enormously difficult, if not impossible, to enact legislation imposing a requirement that could be determined to be an unfunded mandate. And that would effectively stop us from enacting legislation promoting clean air, clean water, public health, child safety, labor standards, and a whole host of other activities which the vast majority of Americans support.

Let us look at how the process will work:

If a bill containing an unfunded mandate, as determined by CBO, is reported from a committee, or if a Member wants to offer a floor amendment that contains an unfunded mandate, the legislation in question cannot be protected by a waiver included in the rule providing for the bill's consideration. This, by the way, is the only case where the Rules Committee will not be allowed to include a waiver of a point of order in a rule. No other rule of the House is treated this way.

Instead, any Member will be able to make a point of order against any legislation which he or she knows, or suspects, may contain an unfunded mandate. Following that, the Chair would put the question of consideration.

If this rule does not make it impossible to pass legislation containing an unfunded mandate, it certainly will make it almost impossible. Certainly committees will avoid reporting legislation which has been judged by CBO to contain an unfunded mandate—no matter how worthy the purpose may be—to avoid subjecting the bill to a vote which is almost certain to fail.

Thus, contrary to what many of this bill's supporters say, the practical effect is that it is a ''no money, no mandate,'' bill.

In cases of amendments, we may not know if the legislation contains an unfunded mandate and, if so, how serious the violation is. Yet we will be required to vote on the question of consideration. That does not make any sense, and it puts Members in the very difficult situation of having to make a decision and cast a vote on the waiver without the information we would need to make that decision.

Proponents of the legislation say that this procedure will encourage Members to get cost estimates for their amendments ahead of time. But the fact is, it is going to be very difficult for CBO, even with the extra resources they will get under this bill, to assess the costs of mandates on the more than 87,000 State and local governments for committee bills. It will be next to impossible to assess those costs for individual Members' amendments. It will be completely impossible to assess them in the middle of floor debate. So, by adopting this new point of order, we will be setting ourselves up for some very difficult situations on the House floor, to put it mildly.

There are cases where it makes sense for us to prohibit consideration of certain types of legislation. One good example is our point of order against tax or entitlement legislation which would increase the deficit. That makes sense because it is an enforceable rule and because it is relatively easy for CBO to determine whether legislation will have that effect. But establishing a rule against consideration of legislation containing unfunded mandates is far more problematic.

For all of these reasons, it would be wise for us to drop the prohibition on consideration of legislation containing unfunded mandates at this time. We ought to give CBO some time to get some experience in defining unfunded mandates, and determining their costs before we use those determinations as a basis for banning the consideration of legislation, and setting up a process that could create some real procedural problems for the House.

□ 1820

If what we really want from this legislation, as has been stated repeatedly during this debate, is information and accountability with respect to our actions regarding legislation containing unfunded mandates, we can achieve that by requiring CBO to determine whether reported bills contain an unfunded mandate and requiring the committees to include that information in reports accompanying the reported bills. This amendment would maintain the prohibition on consideration of committee reported legislation if the committee fails to include a CBO analysis of the cost of the mandate.

So, Mr. Chairman, so long as we have that information available to us, it will become part of the debate. We will know that by voting for the measure we are acting to impose an unfunded mandate. We will be accountable for that vote, but we will not have stacked the deck against enactment of such legislation to the extent that the bill currently does. We will not have tied our hands with respect to responding to as yet unknown problems that may emerge in the future.

This amendment will enable us to achieve the fundamental purpose of this bill, knowing the cost of mandates we are imposing and thus making us accountable for our vote, as we shall be, without making it all but impossible to enact important environmental, health and safety legislation, and I urge our colleagues to support the amendment.

Mr. DREIER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, unfortunately this amendment really does not allow us to address the issue of payment, and, first, it only establishes a point of order for failure to include a CBO analysis in the committee report. Under H.R. 5 a point of order also exists if the bill does not provide for a way to pay for the mandate. Actually getting the cost information is needed not only to provide information, but to determine how much is necessary to pay for the mandate.

It seems to me that this is completely unnecessary, and I am going to urge my colleagues to oppose the amendment.

Mr. MOAKLEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment offered by my good friend the gentleman from California [Mr. BEILENSON] I believe that his amendment establishes a point of order which is far more appropriate than what is currently contained in this bill. Under this procedure, CBO would be required to provide detailed information on the potential cost that any unfunded mandate in proposed legislation would have on State and local governments as well as on private businesses. The point of order would not apply, however, to the consideration of legislation containing an unfunded mandate.

By including a point of order against consideration of mandate legislation we would effectively create a ''no money, no mandate'' bill. It would be next to impossible to get Members to cast an explicit vote to impose an unfunded mandate. I believe that it is valuable for Members to have the ability to make informed decisions on whether the particular Federal mandate's benefit outweighs the financial burden that might be incurred due to the legislation. However, it seems to me that we do not want to jeopardize the opportunity of the House to decide whether to consider a legislation proposal without an appropriate amount of deliberation and debate.

Under this procedure proposed by Mr. BEILENSON, legislation containing mandates important to our Nation would still be able to move forward for consideration by the Congress. The CBO information would provide members with an upfront assessment of the costs of the legislation being considered. Members could then decide by comparing the merits of the bill with the impact of the burden on non-Federal entities. I urge my colleagues to join me in support of this constructive amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BEILENSON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BEILENSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 138, noes 291, not voting 5, as follows:

[Roll No. 78]

AYES—138

Abercrombie	Gephardt	Oberstar
Ackerman	Gibbons	Obey
Baldacci	Gonzalez	Olver
Barrett (WI)	Green	Owens
Beilenson	Gutierrez	Pastor
Bentsen	Hall (OH)	Payne (NJ)
Berman	Hamilton	Pelosi
Bevill	Hastings (FL)	Pomeroy
Bishop	Hilliard	Rangel
Bonior	Hinchey	Reed
Borski	Hoyer	Reynolds
Boucher	Jackson-Lee	Richardson
Brown (CA)	Jefferson	Rivers
Brown (FL)	Johnson, E. B.	Roybal-Allard
Brown (OH)	Johnston	Rush
Bryant (TX)	Kanjorski	Sabo
Cardin	Kaptur	Sanders
Clay	Kennedy (RI)	Sawyer
Clayton	Kennelly	Schroeder
Clyburn	Kildee	Schumer
Coleman	Kleczka	Scott
Collins (IL)	LaFalce	Serrano
Collins (MI)	Lantos	Skaggs
Conyers	Levin	Slaughter
Coyne	Lewis (GA)	Spratt
DeLauro	Lofgren	Stark
Dellums	Lowey	Stokes
Dicks	Luther	Studds
Dingell	Maloney	Stupak
Dixon	Manton	Thompson
Doggett	Markey	Thornton
Durbin	Martinez	Torres
Engel	Mascara	Torricelli
Eshoo	McKinney	Towns
Evans	McNulty	Traficant
Farr	Meek	Tucker
Fattah	Mfume	Velazquez
Fazio	Miller (CA)	Vento
Fields (LA)	Mineta	Ward
Filner	Minge	Waters
Flake	Mink	Watt (NC)
Foglietta	Moakley	Waxman
Ford	Mollohan	Williams
Frost	Moran	Woolsey
Furse	Nadler	Wynn
Gejdenson	Neal	Yates

NOES—291

Allard	Barrett (NE)	Boehner
Andrews	Bartlett	Bonilla
Archer	Barton	Bono
Armey	Bass	Brewster
Bachus	Bateman	Browder
Baesler	Bereuter	Brownback
Baker (CA)	Bilbray	Bryant (TN)
Baker (LA)	Bilirakis	Bunn
Ballenger	Bliley	Bunning
Barcia	Blute	Burr
Barr	Boehlert	Burton
Buyer	Hefley	Payne (VA)
Callahan	Hefner	Peterson (FL)
Calvert	Heineman	Peterson (MN)
Camp	Herger	Petri
Canady	Hilleary	Pickett
Castle	Hobson	Pombo
Chabot	Hoekstra	Porter
Chambliss	Hoke	Portman
Chapman	Holden	Poshard
Chenoweth	Horn	Pryce
Christensen	Hostettler	Quillen
Chrysler	Houghton	Quinn
Clement	Hunter	Radanovich
Clinger	Hutchinson	Rahall
Coble	Hyde	Ramstad
Coburn	Inglis	Regula
Collins (GA)	Istook	Riggs
Combest	Jacobs	Roberts
Condit	Johnson (CT)	Roemer
Cooley	Johnson (SD)	Rogers
Costello	Johnson, Sam	Rohrabacher
Cox	Jones	Ros-Lehtinen
Cramer	Kasich	Roth
Crapo	Kelly	Roukema
Cremeans	Kennedy (MA)	Royce
Cubin	Kim	Salmon
Cunningham	King	Sanford
Danner	Kingston	Saxton
Davis	Klink	Scarborough
de la Garza	Klug	Schaefer
Deal	Knollenberg	Schiff
DeFazio	Kolbe	Seastrand
DeLay	LaHood	Sensenbrenner
Deutsch	Largent	Shadegg
Diaz-Balart	Latham	Shaw
Dickey	LaTourette	Shays
Dooley	Laughlin	Shuster
Doolittle	Lazio	Sisisky
Dornan	Leach	Skeen
Doyle	Lewis (CA)	Skelton
Dreier	Lewis (KY)	Smith (MI)
Duncan	Lightfoot	Smith (NJ)
Dunn	Lincoln	Smith (TX)
Edwards	Linder	Smith (WA)
Ehlers	Lipinski	Solomon
Ehrlich	Livingston	Souder
Emerson	LoBiondo	Spence
English	Longley	Stearns
Ensign	Lucas	Stenholm
Everett	Manzullo	Stockman
Ewing	Martini	Stump
Fawell	Matsui	Talent
Fields (TX)	McCarthy	Tanner
Flanagan	McCollum	Tate
Foley	McCrery	Tauzin
Forbes	McDade	Taylor (MS)
Fowler	McHale	Taylor (NC)
Fox	McHugh	Tejeda
Franks (CT)	McInnis	Thomas
Franks (NJ)	McIntosh	Thornberry
Frelinghuysen	McKeon	Thurman
Frisa	Meehan	Tiahrt
Funderburk	Menendez	Torkildsen
Gallegly	Metcalf	Upton
Ganske	Meyers	Visclosky
Gekas	Mica	Volkmer
Geren	Miller (FL)	Vucanovich
Gilchrest	Molinari	Waldholtz
Gillmor	Montgomery	Walker
Gilman	Moorhead	Walsh
Goodlatte	Morella	Wamp
Goodling	Murtha	Watts (OK)
Gordon	Myers	Weldon (FL)
Goss	Myrick	Weldon (PA)
Graham	Nethercutt	Weller
Greenwood	Neumann	White
Gunderson	Ney	Whitfield
Gutknecht	Norwood	Wicker
Hall (TX)	Nussle	Wilson
Hancock	Ortiz	Wise
Hansen	Orton	Wolf
Harman	Oxley	Wyden
Hastert	Packard	Young (AK)
Hastings (WA)	Pallone	Young (FL)
Hayes	Parker	Zeliff
Hayworth	Paxon	Zimmer

NOT VOTING—5

Becerra	Frank (MA)	Rose
Crane	McDermott	

☐ 1842

Mr. LIVINGSTON changed his vote from ''aye'' to ''no.''

Mr. BEVILL changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title III?

AMENDMENT OFFERED BY MR. MORAN

Mr. MORAN. Mr. Chairman, I offer an amendment, amendment No. 99.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: In the proposed section 421(4) of the Congressional Budget Act of 1974, add after and below subparagraph (B) the following:

A mandate which would apply an enforceable mandate equally on State, local, or tribal governments and the private sector shall not, for purposes of section 425(a)(2), be considered a Federal intergovernmental mandate.

Mr. MORAN. Mr. Chairman, the purpose of this amendment is to treat the private sector in the same way that we treat the public sector. It is as simple as that. It only takes up one paragraph.

The basic problem it gets at is that this piece of legislation has a fundamental flaw. On the very first day of this session, we passed legislation that said that every law that applies to private citizens ought to apply to the Federal Government as well, particularly to the U.S. Congress. But now this piece of legislation would say that every law that applies to private citizens and private businesses will not necessarily apply to State and local governments and that, in fact, it intends to exempt State and local governments from complying with many of the safeguards and the standards that will continue to be imposed upon private citizens and private businesses.

The purpose of this amendment is to say that is not fair. We ought to treat the private sector in the same way that we treat the public sector.

Ironically, the point of order provision in this legislation will end virtually all of our privatization efforts. It has that potential, Mr. Chairman.

There is nothing wrong with the point of order that says that if we do not know the cost of legislation that is being imposed on State and local governments and private businesses, then that legislation ought to be subject to a point or order, because no longer ought we to pass the bill and then pass the buck to others to pay for it. But that point of order that requires a fiscal impact analysis makes sense, because it relies upon this Congress to exercise its judgment to determine whether or not the intent of the legislation is worth the imposition that it will impose on state and local governments and businesses.

That is necessary. The vast majority of the Members of this Congress last year cosponsored legislation that would do that.

This bill goes one step further. I think one step further that flaws the intent of the bill and will create unintended consequences that will haunt us for years to come, because it says that if there is not 100 percent funding for legislation, then there is no mandate.

In effect, if the appropriations committees pass an across-the-board cut, that will trigger the option for States and localities to determine whether or not they want to implement legislation.

Now, let me give Members some examples of the specific problem areas this will create. There are 16 million public employees. If, for example, we were to increase part B hospital insurance premium under Medicare, which may well have to be done to make that program solvent, we would not be able to fund it. We should not have to fund it. But it will make it optional for all 16 million public employees, all of the thousands of public entities that employ those employees, whether or not they want to come up with the premium.

I cannot imagine any of them voluntarily paying that premium, which means that the 100 million private employees will not only have to pay their share of that Medicare increase, they will also have to make up for the fact that 16 million public employees do not have to pay for it. That is the problem we are trying to get at.

We have 1,800 municipal power plants, almost 1,000 rural electric cooperatives who will be exempt from meeting new Clean Air Act requirements.

□ 1850

The CHAIRMAN. The time of the gentleman from Virginia [Mr. MORAN] has expired.

(By unanimous consent, Mr. MORAN was allowed to proceed for 2 additional minutes.)

Mr. MORAN. Mr. Chairman, there are 226 investor-owned power companies. They will have to abide by every single new air quality standard, even though they generate 75 percent of the power in this country, whereas those municipal power plants will not have to. That is the unfair treatment we are creating.

Mr. Chairman, if we enact this legislation in its present form, we are going to take a step backward, backward to a situation that is really analogous with the Articles of Confederation. From about 1781 to 1787 we gave almost complete discretion to all the States. It did not work. There had to be national standards. This says there no longer have to be national standards.

Mr. Chairman, I appreciate the efforts that have been made by my friends on the other side to study this legislation, but the problem is that studying it, exposing it, even understanding it, does not rectify it. This amendment rectifies it.

Mr. Chairman, this amendment says that where we have Federal activities that are carried out by both the public and the private sector, we have to treat them equally; that in fact we cannot give an option to States and localities whether or not they want to comply with standards. It still requires that we know exactly what the cost of implementation is, but it leaves it to our judgment whether or not we want to pass that legislation.

Mr. Chairman, obviously it does not apply to any programs that are completely Federal programs, like Medicaid. SSI is a public program, the Women, Infants, and Children Program, any number of these entitlements. Those are all public programs. We are only talking about programs that apply to both the public and private sector.

Mr. Chairman, I think this is a terribly important amendment that this body needs to support and pass.

Mr. CLINGER. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, this might be deemed the mother of all exemptions, because there is a very real possibility here that many amendments can be deemed to have application to both public and private entities. This would in effect say that anyone that had equal application, both private and public, would be exempt from the provisions of this bill. That sweeps in many, many of the exemptions that have already been dealt with here tonight.

Mr. Chairman, this is, as I say, the mother of all exemptions. I think exempting this class of mandates would preclude Congress from having the Congressional Budget Office cost estimates for these requirements. Further, it would deny the ability of Congress to have a separate vote on whether or not to consider these amendments.

The gentleman talked about some of the things, horrendous things that could occur with this. We are just saying we need to consider these on a case-by-case basis; that we should take a look at it, and in fact there are serious competitive disadvantages built into it. I think that would determine the response we might well make.

However, to say that we are going to exempt them flat out, across the board, without that kind of case-by-case analysis, I think would be wrong.

Mr. Chairman, I would point out that H.R. 5 already requires committee reports to include a statement analyzing the degree to which the Federal mandate affects each of the public and private sectors, and the extent to which Federal payment of public sector cost would affect the competitive balance between States, local governments, or tribal governments, and the private sector. This is something that we have never had before. We have never had the ability or never had the requirement that this kind of analysis be done, as to how it affects the competitive balance between the governmental entities and the private sector.

Mr. Chairman, language was crafted in very careful consultation with the U.S. Chamber of Commerce, the National Federation of Independent Business, Browning-Ferris Industries, and other groups who may well be in a

competitive situation with public sector entities. but they have all endorsed H.R. 5 as presently structured.

The point is that Congress, as a result of this legislation, is going to have more information as to the costs of private sector mandates, and I believe this is just the first in what are going to be a series of efforts in Congress we are going to make over the next few months to address the very pressing need for regulatory reform.

We cannot solve all of those issues in one fell swoop, but I do consider this amendment to be a weakening one. In fact, I consider this to be one that would be so sweeping in its potential application as to render the bill really useless.

Miss COLLINS of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, I thank my friend, the gentlewoman from Michigan, for yielding to me.

Mr. Chairman, in response to the gentleman from Pennsylvania [Mr. CLINGER], let me say and emphasize this does not exempt every program that is carried out by both the public and the private sector whatsoever. All it says is that the opt-out provision would no longer be included in the legislation. There are any number of other provisions that apply.

We still have a bill that addresses unfunded mandates, a bill that every single State and local organization in the country that I am aware of supported, a bill that the Chamber of Commerce supported, that the Federation of Independent Businesses supported, the National Association of Manufacturers.

Mr. Chairman, we have written support from all of those organizations. In fact, I have a letter from Browning-Ferris objecting to this provision.

Mr. Chairman, my point was not that we should exempt any of this legislation. My point is that we are going too far in including the opt-out provision. The gentleman is aware of so many privatization efforts that are working so well.

In fact, we got a letter from the National School Transportation Association. They pointed out that in Connecticut 90 percent of the buses are operated by private companies. Any Federal law or regulation that applies to the operation of those bus companies would continue to be imposed on that private company, but would not on municipalities, and there is no question that all of these school districts are going to take back the operation of those buses, because it will eventually become uncompetitive.

Mr. Chairman, all we are trying to do is to say the private sector ought to be able to compete with the public sector in areas that are appropriate. If we do not pass this amendment, they cannot, because the public sector can opt out. The private sector does not have that option. Mr. Chairman, these standards would continue to be imposed upon them.

Mr. PORTMAN. Mr. Chairman, will the gentlewoman yield?

Miss COLLINS of Michigan. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, just to clarify, the gentleman keeps talking about the opt-out provision. What is the opt-out provision in H.R. 5?

Mr. MORAN. Mr. Chairman, if the gentlewoman will continue to yield, the opt-out provision is that if there is not complete funding for a program, a Federal activity that would be considered on the floor of the House, then States and localities have the option of not implementing.

Mr. PORTMAN. Mr. Chairman, if the gentlewoman will continue to yield, that is an incorrect representation of the bill. What the bill says is that there is a point of order to be raised if the mandate is not funded. Congress can always act by a majority vote to waive that point of order. It is not an opt-out provision for State and local government.

Mr. MORAN. Mr. Chairman, if the gentlewoman will yield further, the point is the gentleman is assuming that we will overturn the point of order. Every time we raise these issues, if the gentleman's answer is, we are going to overturn the point of order, what we are saying, let us not create that situation in the first place. It is a fundamental flaw.

Mr. PORTMAN. Mr. Chairman, if the gentlewoman will yield further, I would hope we would not override the point of order in every case. I would hope Congress would in an informed way be able to look at the issue of public-private. That was the purpose of an amendment offered earlier today by the gentleman from California [Mr. CONDIT] and myself.

The committees have the responsibility, the requirement under this bill to look at the very issue the gentleman is discussing. As the gentleman knows, they have three things they can do. They can either not fund the public mandate, they can either have the mandate apply equally to both parties, or they can not apply the mandate to the private sector, so there is an explicit provision in this legislation to get at the very issue that is addressed.

Miss COLLINS of Michigan. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Virginia.

Mr. MORAN. Mr. Chairman, I appreciate the point the gentleman from Ohio [Mr. PORTMAN] makes. The problem is that all he does is to require that we look at the situation after we have passed this legislation. That is the problem. We do not want to create a situation that we subsequently have to undo.

In the National League of Cities publication this week, it tells States and localities, it is obviously very pleased with this legislation, but it tells States and localities, and I want to make sure that the ranking Democratic member of the Committee on Appropriations is listening, it tells States and localities that in the future, any Federal program that is not an individual entitlement for full funding will become optional to States and localities. They will not have the requirement to carry it out.

Mr. PORTMAN. Mr. Chairman, will the gentlewoman yield?

Miss COLLINS of Michigan. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, does the gentleman believe that is an accurate representation of the legislation?

The CHAIRMAN. The time of the gentlewoman from Michigan [Miss COLLINS] has expired.

(At the request of Mr. PORTMAN and by unanimous consent, Miss COLLINS of Michigan was allowed to proceed for 1 additional minute.)

Mr. PORTMAN. Mr. Chairman, will the gentlewoman yield?

Miss COLLINS of Michigan. I yield to the gentleman from Ohio.

□ 1900

Mr. PORTMAN. Does the gentleman believe that is an accurate representation of the legislation?

Mr. MORAN. I would tell the gentleman from Ohio that the National League of Cities represents more than 16,000 local jurisdictions. This is their understanding of legislation that affects them more than any other group.

Mr. PORTMAN. Is the gentleman's understanding correct?

Mr. MORAN. That is what they are being told and they are citing conversations that they have had with the proponents of the bill. So that is their understanding.

Mr. PORTMAN. That representation is not accurate. As you know, the legislation is very clear, we have now talked about it for a week. It does provide a point of order if the new mandate is not funded. This bill is only prospective, as we know. The bill would not apply to any existing mandate, and it provides a point of order on the floor of the House absolutely. That is the whole idea. But the representation from the League of Cities or even your earlier characterization of the bill just are not what we have here before us today on H.R. 5.

Mr. MORAN. You are correct if you can assume that we will overturn points of order consistently when they are raised.

The CHAIRMAN. The time of the gentlewoman from Michigan [Miss COLLINS] has again expired.

(At the request of Mr. OBEY and by unanimous consent, Miss COLLINS of Michigan was allowed to proceed for 1 additional minute.)

Mr. OBEY. Mr. Chairman, will the gentlewoman yield?

Miss COLLINS of Michigan. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I would like to vote fro this bill if the Moran substitute is adopted tomorrow, but frankly I am still concerned about the

point the gentleman is trying to make, because I do not want to create the possibility of creating additional entitlements when we are supposedly telling the country we are in the business of shaving them back.

Would the gentleman walk through for the House again how in your view without your amendment and without the amendment you are going to be offering tomorrow as well, how this, in fact, does create an unintentional entitlement, if the Committee on Appropriations, for instance, were to cut back by passing an across-the-board cut?

Mr. MORAN. Mr. Chairman, if the gentlewoman will yield, I will be happy to do that. I thank the gentleman from Wisconsin for raising that issue.

The legislation says that if there is any reduction from the amount that is authorized to be appropriated for any Federal activity we pass on the floor, if there is any reduction, that triggers the option for States and localities whether or not they want to implement it.

There is another alternative. If in that legislation the authorizing committee specifies that the Federal agency, the executive branch, has the option of paring back the program, choosing what activities they want to conduct and which they do not, it gives that kind of prerogative to the executive branch to decide what part of an authorization they choose to implement and how they want to cut it back if there was such an across-the-board cut in the appropriations bill.

Mr. OBEY. Does the gentleman believe that under this procedure there would in fact be built into the process an incentive against cutting spending under those circumstances?

Mr. MORAN. I think it will preclude the Committee on Appropriations from exercising its discretion on domestic discretionary programs in the same way that it lacks discretion on entitlement programs today.

Mr. OBEY. I thank the gentleman.

Mr. MCINTOSH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this issue came up in our committee meeting and at the time I indicated that I have a great deal of sympathy with the problem that was created here or the potential problem that the private sector enterprises would be put at a disadvantage if they were not put on the same playing field as the public sector. But I do think that this remedy to that problem is much too extreme and goes too far in gutting the basic provisions of this bill.

What I would propose and would like to do is work with my colleague, the gentleman from Virginia, on addressing this issue in H.R. 9 or other appropriate legislation to grant many of the same protections to the private sector that would be available to their public sector competitors, so we can move forward with unfunded mandate legislation that is real legislation and real reform and yet at the same time make sure that we do not put the private sector at a disadvantage.

Mr. MORAN. Mr. Chairman, will the gentleman yield?

Mr. MCINTOSH. I yield to the gentleman from Virginia.

Mr. MORAN. I thank the gentleman, my colleague on the Committee on Government Reform and Oversight, for yielding.

Mr. Chairman, I noticed that the gentleman from Indiana [Mr. MCINTOSH] had a amendment that would have required that the private sector be fully funded just as the public sector would be fully funded. I notice that that was withdrawn because I suspect the leadership requested it and, of course, it would have exposed the box that the opponents of this bill have put themselves into.

There is no way that we can fully fund private sector mandates, but nevertheless we are treating them unequally from public sector. The public sector we control. The private sector we do not.

Mr. MCINTOSH. Mr. Chairman, reclaiming my time, let me address the question. I think that there are ways of doing this that does not require the Federal Government to lay funds forward but simply to extend the provision that says where there are no funds appropriated, there is no mandate to extend that provision to the private sector.

I am willing to discuss the other if the gentleman from Virginia would like to see it, but I think the context is not in this bill. It should be done in the context of regulatory reform for the private sector which I understand will be coming forward to this House in the coming month.

Mr. MORAN. If the gentleman will continue to yield, that is the other obvious alternative. No money, no mandates for all the private sector. Forget air traffic control, forget all of the regulations that apply, but that is an honest provision.

Mr. MCINTOSH. Mr. Chairman, I do not think we are going to get into any of that type of situation. What we will do is create a level of playing field for the private sector competitors of public sector providers of services and goods that are regulated. I would favor addressing that issue in a later bill.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, unfortunately, the issue of public and private sector competition under Government mandates has gotten awfully confused here. Let us look at the facts as they exist today. Today government at the local level and the Federal level does compete against private industry and vice versa in many areas.

When the Federal Government issues a mandate to local government to do something, the local government today is in competition in many cases with private sector companies who are under the same mandate to do the same thing. The local government funds that operation today. It funds it out of tax dollars raised locally.

The only change this unfunded mandate bill makes in that equation is it changes as to who raised the money to pay for the public sector operation. That is the only change. It does not change the equation of private sector or public sector competition at all. It simply says that in that equation when it comes time to raise the money to carry out the mandate, instead of raising the money locally with taxes raised at the local level, the money has to be raised on the Federal level, or else a point of order is raised against the mandate to being with.

Now, if you really do not believe in the unfunded mandates concept of this bill, the gentleman from Virginia [Mr. MORAN] has offered you the perfect amendment to defeat it. This amendment would simply say that where you have a Federal mandate that does apply to both local government and to private sector businesses, which most of these mandates do, that the point of order does not lie against it. But you cannot in fact enforce the unfunded mandate provision of this bill against such a mandate.

If you ever wanted an exemption that exempted most Federal mandates out of this bill, we have just been offered it today.

Let me say again, the equation of competition private to public is not affected by this bill. If you believe that, you need to think just a second what is happening in the world today. The private sector competing against local government, local government having to carry out Federal mandates, raising the money locally because we force them to, and the change this bill will make, the only change is that instead of telling local government you have to do it this way and you have to raise the money locally to do it, under this bill a point of order would lie against such a rule.

Unless we exempted ourselves from that point of order or waived it, a point of order would lie against it so that we would have to come up with the money here in Washington to fund that public mandate on the public institution locally at home. That is the only difference.

I understand if you do not believe in that proposition. If you believe that Government ought to be able to mandate things on local governments and we ought not to have to come up with the money to fund them, if you believe that we ought to be able to tell a State and county and parish and city governments across America that you have got to do it our way and you have to raise the taxes to pay for it, if you really believe that, this is the perfect out amendment.

□ 1910

This amendment says a point of order will not lie against those kind of

mandates in the future, and it also says, in effect, this unfunded mandate provision will not be enforceable against any mandate that affects both the local government and a private business in your district.

So if my colleagues really do not like this bill, if they do not believe in it, if they want to believe in mandates from Washington without the necessity of funding them, then vote for this amendment. If my colleagues believe in a strong unfunded mandates bill, they have got to defeat this amendment. It is the amendment that exempts most mandates from the bill. It is the one that destroys the whole idea of an unfunded mandates bill.

So, I urge Members, defeat this amendment and let us go on to pass a strong unfunded mandates bill.

When we get through, every time we have a mandate that affects public and private businesses from now on we will now consider do we in fact fund it from Washington or do we tell our comrades in arms, the local city councilmen, the Members who represent a district back home, a county or a parrish or a State government it is up to you to come up with the money, you just have got to do it our way? If Members want to keep doing business that way, vote for this amendment.

If they want to change business and make sure from now on when we mandate things on local governments back home we either provide the money or we do not mandate it, vote against this amendment. It is that simple.

Mr. MORAN. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Virginia.

Mr. MORAN. Mr. Chairman, I thank the gentleman from Louisiana for yielding. I know my friend does not mean to be deliberately misleading, but I would ask my friend if he is aware that there is a provision in the bill that says that it is always in order to strike an unfunded mandate? And this amendment does not affect that.

Mr. TAUZIN. Reclaiming my time, let me assure the gentleman the League of Cities campaigned that the opt-out provision applied to the former bill introduced in the last Congress by my good friend, the gentleman from California [Mr. CONDIT], who led this effort. It does not apply to H.R. 5; that provision is not in the bill.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me say I rise to cosponsor this amendment because I firmly believe that what the gentleman is seeking to do is very important. And I do not believe that the cavalier attitude of casually disposing of all of these important amendments is in the best interests of what we are trying to do for this country.

Mr. Chairman, I believe that public employers should be model employers. As such, I believe they have a duty to provide their workers with the same protections that we otherwise require of private employers. They have a responsibility to ensure that the manner in which they operate shows the same respect for the health and safety of the general public that we require of private sector businesses.

I note from my colleagues on the other side that the adoption of this amendment will ensure that H.R. 5 does not confer undue and improper competitive advantages to public employers over private employers. That is the point that the gentleman from Virginia has made and very effectively made.

A public hospital should not be treated any differently with regard to Federal standards regulating the disposal of hazardous wastes than a private hospital. The city of St. Louis should be under the same requirement to pay at least minimum wages to its employees that we impose on private sector employees.

Mr. Chairman, the gentleman from Virginia is absolutely right. If we do not fully fund some of these programs that apply to both public and private, then a point of order can be raised to knock out the public sector involvement. And it probably will stand.

Mr. Chairman, an employee has the same responsibilities to provide a decent living for his or her family, regardless of whether the employee is employed in the public sector or the private sector. The fact that hazardous fumes emanate from a public incinerator instead of a private incinerator in no way diminishes the health hazards to the general public. There are basic protections that must and should be extended to all.

Where the Congress determines such a circumstance to exist, public employers and private employers should be treated equally.

Mr. Chairman, I urge support of the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, I thank my friend from Massachusetts for yielding.

Mr. Chairman, it is important to respond to what the gentleman from Louisiana said. When I brought up the fact that it would always be in order to strike any unfunded Federal mandate, the last thing the gentleman said was that that provision was in the bill of the gentleman from California [Mr. CONDIT]. It is not in this bill.

Mr. TAUZIN. Mr. Chairman, would the gentleman yield for a second?

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I want to correct the RECORD. I did not say that the provision to have a point of order against the mandate is not in this bill; it is. What is not in this bill is the opt-out for local governments, which was contained in the Condit bill last year, which the League of Cities wrote to the gentleman and all of us about, and which the gentleman from Virginia quoted on the floor tonight. That provision is not in H.R. 5. It was in the Condit bill last year.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield again to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, I think the gentleman from Louisiana missed the point. I was not referring to last year. I was referring to the point that the gentleman from Louisiana tried to make, that if we pass this amendment it will essentially gut the intent of this legislation.

That could not be further from the truth. And I would draw the attention of my colleagues to page 48, that says that

> With regard to the Unfunded Mandate Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of a measure, to move to strike such unfunded Federal mandate from the portion of the bill that is open to amendment.

And this is not affected by our amendment.

The point is that with passage of this bill it will be in order for any Member of this House to strike an unfunded Federal mandate. That is what we want. All I am trying to get at is the disparity in the treatment of the public sector versus the private sector. I am not trying to eliminate any responsibility to address unfunded Federal mandates. And this bill would continue to do that.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I thank the gentleman from Massachusetts for yielding.

Very briefly, there is a big difference between the motion to strike and the point of order. The point of order is precisely what gives us information on the public-private competition issue that we want to have to address this issue responsibly. So I would say in response to the gentleman's concern about what the gentleman from Louisiana said, that the motion to strike does not solve the problem. We need the point of order, we have to have the point of order.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield to the gentlemen from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, I think we are ready to vote here. The point is if we do not pass this amendment, we are going to hear from our private sector businesses who will be treated unfairly, who will lost their opportunity to compete with the public sector in a constructive way, and we are going to wind up having to change this bill down the road when we realize the unintended consequences of this legislation.

So, I would urge my colleagues to treat the public and private sector alike, to approve this amendment, and

then to pass a responsible version of the unfunded mandates legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MORAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 143, noes 285, not voting 6, as follows:

[Roll No. 79]

AYES—143

Abercrombie	Gutierrez	Olver
Ackerman	Hall (OH)	Owens
Barcia	Hastings (FL)	Pastor
Beilenson	Hefner	Payne (NJ)
Bentsen	Hilliard	Payne (VA)
Berman	Hinchey	Peterson (FL)
Bishop	Hoyer	Pomeroy
Bonior	Jackson-Lee	Rahall
Borski	Jefferson	Rangel
Boucher	Johnson, E. B.	Reed
Brown (CA)	Johnston	Reynolds
Brown (FL)	Kanjorski	Richardson
Brown (OH)	Kaptur	Rivers
Bryant (TX)	Kennedy (MA)	Roybal-Allard
Cardin	Kennedy (RI)	Rush
Clay	Kennelly	Sabo
Clayton	Kildee	Sanders
Clyburn	Klink	Sawyer
Coleman	LaFalce	Schroeder
Collins (IL)	Lantos	Scott
Collins (MI)	Levin	Serrano
Conyers	Lewis (GA)	Skaggs
Coyne	Lincoln	Spratt
de la Garza	Lofgren	Stark
DeFazio	Lowey	Stokes
DeLauro	Luther	Studds
Dellums	Maloney	Stupak
Dingell	Manton	Tanner
Dixon	Markey	Thompson
Doyle	Mascara	Thornton
Durbin	Matsui	Torres
Engel	McCarthy	Towns
Eshoo	McDermott	Traficant
Evans	McKinney	Tucker
Farr	Meehan	Velazquez
Fattah	Meek	Visclosky
Fazio	Mfume	Ward
Fields (LA)	Miller (CA)	Waters
Filner	Mineta	Watt (NC)
Flake	Mink	Waxman
Foglietta	Moakley	Whitfield
Ford	Mollohan	Williams
Frank (MA)	Moran	Wise
Furse	Murtha	Woolsey
Gejdenson	Nadler	Wyden
Gephardt	Neal	Wynn
Gonzalez	Oberstar	Yates
Green	Obey	

NOES—285

Allard	Boehlert	Chrysler
Andrews	Boehner	Clement
Archer	Bonilla	Clinger
Armey	Bono	Coble
Bachus	Brewster	Coburn
Baesler	Browder	Collins (GA)
Baker (CA)	Brownback	Combest
Baker (LA)	Bryant (TN)	Condit
Baldacci	Bunn	Cooley
Ballenger	Bunning	Costello
Barr	Burr	Cox
Barrett (NE)	Burton	Cramer
Barrett (WI)	Buyer	Crapo
Bartlett	Callahan	Cremeans
Barton	Calvert	Cubin
Bass	Camp	Cunningham
Bateman	Canady	Danner
Bereuter	Castle	Davis
Bevill	Chabot	Deal
Bilbray	Chambliss	DeLay
Bilirakis	Chapman	Deutsch
Bliley	Chenoweth	Diaz-Balart
Blute	Christensen	Dickey
Dicks	Johnson, Sam	Radanovich
Doggett	Jones	Ramstad
Dooley	Kasich	Regula
Doolittle	Kelly	Riggs
Dornan	Kim	Roberts
Dreier	King	Roemer
Duncan	Kingston	Rogers
Dunn	Kleczka	Rohrabacher
Edwards	Klug	Ros-Lehtinen
Ehlers	Knollenberg	Rose
Ehrlich	Kolbe	Roth
Emerson	LaHood	Roukema
English	Largent	Royce
Ensign	Latham	Salmon
Everett	LaTourette	Sanford
Ewing	Laughlin	Saxton
Fawell	Lazio	Scarborough
Fields (TX)	Leach	Schaefer
Flanagan	Lewis (CA)	Schiff
Foley	Lewis (KY)	Schumer
Forbes	Lightfoot	Seastrand
Fowler	Linder	Sensenbrenner
Fox	Lipinski	Shadegg
Franks (CT)	Livingston	Shaw
Franks (NJ)	LoBiondo	Shays
Frelinghuysen	Longley	Shuster
Frisa	Lucas	Sisisky
Frost	Manzullo	Skeen
Funderburk	Martini	Skelton
Gallegly	McCollum	Slaughter
Ganske	McCrery	Smith (MI)
Gekas	McDade	Smith (TX)
Geren	McHale	Smith (WA)
Gilchrest	McHugh	Solomon
Gillmor	McInnis	Souder
Gilman	McIntosh	Spence
Goodlatte	McKeon	Stearns
Goodling	McNulty	Stenholm
Gordon	Menendez	Stockman
Goss	Metcalf	Stump
Graham	Meyers	Talent
Greenwood	Mica	Tate
Gunderson	Miller (FL)	Tauzin
Gutknecht	Minge	Taylor (MS)
Hall (TX)	Molinari	Taylor (NC)
Hamilton	Montgomery	Tejeda
Hancock	Moorhead	Thomas
Hansen	Morella	Thornberry
Harman	Myers	Thurman
Hastert	Myrick	Tiahrt
Hastings (WA)	Nethercutt	Torkildsen
Hayes	Neumann	Torricelli
Hayworth	Ney	Upton
Hefley	Norwood	Vento
Heineman	Nussle	Volkmer
Herger	Ortiz	Vucanovich
Hilleary	Orton	Waldholtz
Hobson	Oxley	Walker
Hoekstra	Packard	Walsh
Hoke	Pallone	Wamp
Holden	Parker	Watts (OK)
Horn	Paxon	Weldon (FL)
Hostettler	Peterson (MN)	Weldon (PA)
Houghton	Petri	Weller
Hunter	Pickett	White
Hutchinson	Pombo	Wicker
Hyde	Porter	Wilson
Inglis	Portman	Wolf
Istook	Poshard	Young (AK)
Jacobs	Pryce	Young (FL)
Johnson (CT)	Quillen	Zeliff
Johnson (SD)	Quinn	Zimmer

NOT VOTING—6

Becerra	Gibbons	Pelosi
Crane	Martinez	Smith (NJ)

□ 1934

Ms. JACKSON-LEE changed her vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. FAZIO of California. Mr. Chairman, I have always been sensitive to the local impact of Federal laws that are underfunded—that are not supported by adequate resources. They place State and local governments in an awkward, and often impossible, position—trying to ensure that the required protections are in place, without sufficient financial support.

For that reason, during the last Congress, I supported the efforts of my Democratic colleagues—Mr. CONDIT of California and Mr. MORAN of Virginia—to provide local governments with some relief from this financial hardship. And, at this time, I want to acknowledge both Mr. CONDIT and Mr. MORAN for meeting this challenge head-on during the 103d Congress, each by introducing legislation that would have provided some relief in response to the pleas for help that we received from local communities.

As Governor of Arkansas, President Clinton experienced, first hand, the difficulty and frustration of dealing with Federal laws that were insufficiently funded. That is why he has expressed support for unfunded mandate reform, just as many local officials in my district have. The cities of Winters, Red Bluff, and West Sacramento, along with Tehama, Colusa, and Solano Counties, are just some of the local jurisdictions that advised me of their support for Federal mandate relief. Some passed resolutions, and others incorporated mandate reform in their legislative platforms. Regardless of the vehicle, however, the message was consistent—local government is overly burdened by Federal programs that are not accompanied by the necessary resources to implement them. Although giving local communities more flexibility in managing these programs helps, we also need to weigh and control their cost.

I therefore support enactment of legislation that will help us make all-around better decisions—decisions that are solid, sound, informed, and responsible, and that do not overly burden the local communities charged with implementing them. But, the Federal Government also has a responsibility to ensure that both the public and private sectors follow basic policies and practices if the health, safety, environment, and human and civil rights of American citizens are to be protected. Without these standards—whether they are for education, or nursing homes, or clean air and water, or proper waste disposal within States and across State lines—American families are placed at great risk. And, although implementation can be costly, the social costs of not implementing them—of failing to protect the public—are immeasurable.

That is why I have several serious concerns about the bill that is now before us and why I support amendments that clarify its intent and enhance its effectiveness. As it is written, H.R. 5, the Unfunded Mandates Reform Act, could force us to abandon many of the most important Federal safety and environmental standards in existence today—standards that protect the American public and that the American people really want and support. To rush this legislation through without hearings and without improving it is a grave mistake.

Unamended, H.R. 5 is much too broad and much too vague. If it is enacted, will we continue to be able to protect our children? What about school safety regulations designed to safeguard against asbestos, radon, and lead paint? What about child support enforcement laws? Will the Federal Government be able to enact national standards that prevent child abuse and exploitation?

What about the American worker? Are minimum labor standards, such as minimum wage, child labor prohibitions, and occupational safety standards at risk?

What about Medicare and the social service programs that serve as a safety net for our senior citizens? What about Federal protections that extend to investors, financial markets, federally insured banks and credit unions

and deposit insurance funds? What about regulating the generation, transportation, storage and disposal of toxic, hazardous, and radioactive substances? Without a Federal standard, can each State set its own guidelines for waste disposal, and be free to unload its waste on another? Will this bill threaten water safety regulations? Are those protections that we have worked so long and hard to put in place at risk of being erased? I support the concept of mandate reform, but I have serious problems with this process—the way in which we are forcing this bill through. Its long-term impact is too great and too far reaching to be sacrificed for a short-lived success.

I am voting in favor of final passage of H.R. 5 in support of the communities in my district that have consistently expressed their frustration and concern with underfunded mandates. However, I also want to go on record noting my concerns with mandates reform that moves too quickly and does not take into consideration its far-reaching impact. H.R. 5 must ensure that State and local governments get the help that they need in meeting the financial costs of complying with Federal regulations. But it must also reflect the fact that we must have Federal standards. There are certain protections that cannot be waived or eroded. We must therefore work together to develop legislation that balances our support of these critical protections with consideration for the State and local governments that bear the burden of their implementation.

Mr. CLINGER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BEREUTER) having assumed the chair, Mr. EMERSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5) to curb the practice of imposing unfunded Federal mandates on States and local governments, to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and to provide information on the costs of Federal mandates on the private sector, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 101, TAOS PUEBLO INDIANS OF NEW MEXICO LAND TRANSFER

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–12) on the resolution (H. Res. 51) providing for the consideration of the bill (H.R. 101) to transfer a parcel of land to the Taos Pueblo Indians of New Mexico, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 400, THE ANAKTUVUK PASS LAND EXCHANGE AND WILDERNESS REDESIGNATION ACT OF 1995

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–13) on the resolution (H. Res. 52) providing for the consideration of the bill (H.R. 400) to provide for the exchange of lands within Gates of the Arctic National Park and Preserve, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 440, LAND CONVEYANCE IN BUTTE COUNTY, CA

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–14) on the resolution (H. Res. 53) providing for the consideration of the bill (H.R. 440) to provide for the conveyance of lands to contain individuals in Butte County, CA, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR COMMITTEES TO SIT ON TOMORROW, WEDNESDAY, FEBRUARY 1, 1995, DURING 5-MINUTE RULE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule: Agriculture; Economic and Educational Opportunities; Transportation and Infrastructure; Judiciary; Science; Resources; Commerce; and International Relations.

It is my understanding that the minority has been consulted and that there is no object to these requests.

The SPEAKER pro tempore (Mr. BEREUTER). Is there objection to the request of the gentleman from Texas?

Mr. WISE. Mr. Speaker, reserving the right to object and I will not object, the minority is not going to object but simply say to the Members of the majority, the distinguished majority leader, that this is certainly the appropriate way to go about this. I think we have had a very fruitful day today, we moved quickly through the bill. In each of the cases, the eight committees that the distinguished majority leader mentioned, there was full consultation with the minority. Everyone signed off on it. We think this is the way to operate. We look forward to operating in this way in the future.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

GRIDLOCK

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute.)

Mrs. SEASTRAND. Mr. Speaker, when I was elected to this great body just 3 short months ago, I made a commitment to my constituents to fight diligently for the ideas that I believe in and to be just as unrelenting in my fight against those ideas that are not good for my district, my State, and our country.

But I must say that I find the behavior by some Members on the other side of the aisle a bit bizarre. They fight to stall legislation that they eventually vote to pass.

I have maintained that gridlock is not necessarily a bad situation. If you oppose something, try to defeat it with every weapon at your disposal. But when a group purposely stalls a bill simply for partisan gain, that is pretense without principle. Some of the antics on the other side of the aisle make you wonder who is devising their strategy.

We are working for real change. We kept our promises by passing the balanced budget amendment last week and are working this week to pass the unfunded mandates bill that will stop the Federal Government from not only passing the buck, but passing the bill to our States and localities.

Mr. Speaker, we should stop the delaying tactics. The American people want us to end the bickering and go on about the people's business.

□ 1940

COMMUNICATION FROM THE HONORABLE RODNEY P. FRELINGHUYSEN, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. BREWSTER) laid before the House the following communication from the Honorable RODNEY P. FRELINGHUYSEN, Member of Congress:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 30, 1995.

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

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that my office has received a subpoena for testimony and documents concerning constituent casework. The subpoena was issued by the Superior Court of New Jersey in Morris County.

After consultation with General Counsel, I will determine if compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

RODNEY P. FRELINGHUYSEN,
Member of Congress.

SERIOUS QUESTIONS ABOUT AUTHORITY UNDER WHICH ACTION WAS TAKEN TO BAIL OUT THE MEXICAN PESO

(Mr. BARR asked and was given permission to address the House for 1 minute.)