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Senate

(Legislative day of Tuesday, January 10, 1995)

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

PRAYER

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

Let us pray:

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

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

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

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

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

RESERVATION OF LEADER TIME

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

UNFUNDED MANDATE REFORM ACT

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

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

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

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

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

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

Kempthorne amendment No. 210, to make technical corrections.

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

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

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

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

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

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

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

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

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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

SCHEDULE

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

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 175

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

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

Mr. LEVIN. I thank the Chair.

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

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

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

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

what the Federal Government was doing to our budget as well as what its programs were doing to our neighborhood. I came here with that instinct and it has grown.

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

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

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

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

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

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

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

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