have paid with their lives; others, most notably in China and Indonesia, have gone to jail simply for trying to inform fellow workers of their rights. We also see inadequate enforcement of labor legislation, especially with regard to health and safety in the workplace.

These, then, Mr. President, are the countries that U.S. businesses are trying to compete with. These are the kind of working conditions that American workers, through their unions, have fought so hard against.

If American workers lose their ability to strike—and I do not condone all strikes or all strikers; I have never condoned lawlessness in the course of a strike—never—but most of the strikes have been lawful strikes. Lawful—that is what we are talking about here today, in connection with this amendment and in connection with the President's order. And I say parenthetically that I am not enthusiastic about Executive Orders. It is my information that there have been over 14,000 Presidential Executive orders going back over the many decades, and I am doing a little research on that. I hope one day I will have a little more information than I now have in that regard.

But I have to oppose this amendment. How can anyone do otherwise coming from my background—my background—with flesh and blood ties with the men who bring out the coal?

If American workers lose their ability to strike and play their trump card against owners and management, many will not accede to reasonable concerns about reductions and working conditions, hours, wages or benefits, and American workers could return to the days of the coal miners before collective bargaining.

The miner's only capital, the miner's only capital are his hands, his back, his feet, and his salty sweat.

Furthermore in Canada, Japan, France, Germany, and other countries of Europe, the rights of employees to strike are protected, and the use of permanent replacement workers is not permitted. These restrictions apply to the use of permanent replacement workers during all legal strikes, not just workers involved with government contracts.

If the Senate upholds the amendment now before us, I think it sends a terrible signal. If this amendment is passed, management is given a green light to simply replace workers who do not accept whatever management decrees. It sends a red light to workers and unions to stop striking, no matter how unreasonable the cuts or conditions, and no matter how obdurate the management negotiators. Not all management is cold and heartless, not all by any means. But we do not want to go backward in time, and the coal miners do not rush to return from whence they came. If you strike, no one will support you, and management will just hire new workers, desperate for any job, no matter if it is unsafe, or for wages and benefits more suitable to a Third World country than to the United States.

The amendment before us, opponents will say, affects only the President's Executive order, which only affects Federal contracts in excess of $100,000. That is true, but the message that the passage of this amendment sends, affects far more than the Executive order. It speaks as a matter of principle to the entire spectrum of labor relations and undermines the basic right of workers to organize, to bargain collectively, and to strike if necessity demands it.

Mr. President, I have seen what life in the United States can be like without that right, as I have recalled today, and I cannot support what this amendment would do. I urge the defeat of the cloture motion and this amendment.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ABRAHAM). The absence of a quorum having been noted, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

Mr. KEMPTHORNE. Mr. President, I submit a report of the committee of conference on the Unfunded Mandate Reform Act of 1995 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of March 13, 1995.)

The PRESIDING OFFICER. There will be 3 hours debate equally divided on the conference report.

Mr. KEMPTHORNE. Mr. President, I ask for the yeas and nays on the vote on the conference report on S. 1.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KEMPTHORNE. It is my understanding that vote will occur tomorrow, immediately following the 10:30 cloture vote.

The PRESIDING OFFICER. The Senator is correct.

Mr. KEMPTHORNE. Mr. President, we have certainly come a long way since May 1993 when we first began this effort. Now, 22 months later—with Governors, mayors, county commissioners, tribal leaders, school board members, and business leaders throughout the country looking on—Congress is about to end the debate on mandate relief, and begin a new partnership with States, cities, counties, tribes, schools, and the private sector by voting on final passage of the conference report on S. 1 the Unfunded Mandates Reform Act of 1995.

This bill has been described as landmark legislation, as far-reaching and visionary. It is all of those. Ever since 1791 when the 10th amendment was first ratified the Federal Government has slowly eroded the power of the States. Today, with passage of S. 1, we begin to reverse that role. S. 1 is founded on the premise of responsibility and accountability. This will change the mind set of Washington, DC, from this point forward.

First, it requires the Federal Government to know and pay for the costs of mandates before imposing them on State, local, and tribal government.

Second, the Federal Government should know the costs and impacts of mandates before imposing them on the private sector.

S. 1 thoroughly reforms the process by which Congress and Federal agencies impose new mandates on the public and private sector. Congress must identify the costs of new mandates imposed on State and local governments and the private sector. Congress must pay the costs of the new mandates on State and local governments by either providing spending, increasing receipts or through appropriations. If a mandate is to be paid for with a future appropriation, the appropriation must be provided for the mandate to take effect. If subsequent appropriations are insufficient to pay for the mandates, the mandates will cease to be effective unless Congress provides otherwise by law within 90 days of the beginning of the fiscal year.

This process is enforced by a point of order. Legislation that does not meet these requirements can be ruled out of order, blocking further consideration in the House and Senate. Debate continues only if a majority of the House and Senate votes to do so. A rollcall

vote will decide whether the Senate and House should consider unfunded mandate legislation. S. 1 applies to all legislation—committee bills, House and Senate floor amendments, motions and conference reports—containing mandates.

Required cost estimates of legislated mandates will be done by the nonpartisan Congressional Budget Office. CBO will consult with State and local officials in preparing estimates.

Existing State and local government mandates will be reviewed by the Advisory Commission on Intergovernmental Relations. This Commission, comprised of State, local and Federal officials, will report to the President and Congress on existing mandates that should be modified or repealed. The Commission's final report is due in 12 months.

In developing legislation and Federal rules affecting State and local governments, Congress and Federal agencies are to consult with State and local government officials in the drafting of legislation.

S. 1 does not apply to certain mandates, including those that enforce constitutional rights of individuals, prohibit discriminations on the basis of race, age, religion, national origin, handicapped or disability status, are necessary to protect national security or provide for emergencies.

S. 1 applies to legislation being considered in Congress that imposes mandates of greater than $50 million on State and local governments and $100 million on the private sector. S. 1 applies to regulations being considered by Federal agencies that are greater than $100 million. S. 1 will apply to legislation considered in Congress either 90 days after additional appropriations are provided to CBO to do required cost estimates or January 1, 1996, whichever comes first.

S. 1 got better and smarter during the legislative process. S. 1 was better than last year's bill; after floor consideration, S. 1 was better than when it was first introduced. The record will show that a number of Senators made important contributions to this bill. My approach to amendments was simple. If they improved the bill, if they clarified the bill, if they made the bill smarter, I wanted to get those amendments in this bill. There were 9 strengthening amendments to S. 1 that were agreed to and we tabled 18 weakening amendments. Two examples of amendments that strengthen S. 1 were Senator BYRD'S amendment that improved and perfected the point of order and Senator MCCAIN'S amendment that applied the point of order to appropriations.

I felt we took a solid bill in S. 1 to the conference committee, and as chairman of the conference, I worked to protect the Senate position. Virtually every amendment adopted by the Senate is in this report.

As Senators know, it took several weeks of negotiations between the House and Senate to write this final conference report. I want to review the major issues that the conferees had to resolve.

First, there is the issue of judicial review. As Senators know S. 1 said that nothing in this bill was judicially reviewable. The House bill provided that virtually everything contained in its unfunded mandates bill would be reviewed by courts.

To understand the significance of these two approaches, remember that in S. 1 we required that federal agencies do cost/benefits analyses of mandates imposed on State, local and tribal Governments. In S. 1 we added a cost benefits analysis for the private sector. This requirement began as a codification of the Reagan Executive order on federalism and was designed to provide general direction to agencies and foster greater sensitivity on the issue of mandates. The Executive order did not provide for review of agency compliance with the Executive order's requirements and it also allowed agencies to seek waivers of the requirements imposed by the Executive order for cause.

I supported the lack of judicial review in S. 1 for good reason. First, my State of Idaho has been devastated by the ability of private individuals and philosophically motivated groups to slow down or stop legitimate and necessary natural resource industries in my State through the use of judicial review of agency decisionmaking. Timber and salvage sales for one have been delayed to the point that the forests of Idaho have been turned into a tinder box for yearly summer forest fires. Second, I supported the concept of no judicial review in the original S. 1 because I did not think that the requirements of title I of this bill, with their emphasis on legislative operation should allow judicial review. I saw a possibility of unconstitutional interference if we were to invite the judicial branch into the workings of Congress.

The House bill, H.R. 5, differed from S. 1 in a most significant way. The House did not include in its bill a prohibition of judicial review. In fact instead of addressing it, the House bill simply avoided the issue entirely. As a result, under H.R. 5, all agency rulemakings would be subject to the Administrative Procedures Act in title 5 of the United States Code. Under the House bill, virtually everything could be reviewed and interpreted by the courts. Courts could have the power to say whether a cost estimate was correctly prepared, whether agencies had consulted enough economists, or had consulted the right experts. Further, courts could have stopped any and all rules from being issued pending the completion of this analysis.

I am no fan of agency rulemakings. I support agency rulemaking moratoriums. We have had enough rules and the people of America want and need a rest from the heavyhanded Federal bureaucrats who make their livelihoods from dictating Federal policy to the people who pick up the tab. But neither am I a proponent of putting lawyers to work challenging rules for the sake of delay or wasting the taxpayers money in time consuming Federal rules that languish in the courts.

Therefore, in conference we were faced with a couple of very difficult problems. We had a Senate bill which passed with a 90-percent majority without judicial review and we had a House bill which had passed with an almost identical percentage of approval which had virtually unfettered judicial review. The main reason that the House wanted judicial review was the belief that Federal agencies were ignoring the requirements of Congress. One of the statutes they cited in support of their assertion was the Regulatory Flexibility Act. That act is not judicially reviewable and there is general belief that the agencies have a poor record of compliance. The House therefore wanted to make sure that the executive branch would observe the requirements of Congress—not an unreasonable request.

As a result of the inherent conflict between the parties on this issue, I suggested that we develop a checklist approach to a limited judicial review. The theory would be that we should provide a method which would ensure that agencies would provide the analysis without allowing courts to impose their judgement on the subjective quality of the agency's compliance. It is important to note that the analyses required by S. 1 act as additional requirements on statutes creating mandates. We call the statute actually creating the mandate the underlying statute. We wanted to ensure that the cost/benefits requirements of S. 1 would not supersede cost/benefit analyses in either an existing law or require a cost benefit analysis where one was specifically prohibited in an underlying statute.

The conference committee reviewed what title II directed agencies to do to make sure that agencies could meet the requirements. We cannot complain of an agency's failure of compliance with the requirements of Congress if we are irresponsible in what we ask them to do and if we are vague in our instructions. Therefore we had to redraft the requirements of title II in S. 1 to make sure that those requirements were tighter, more efficient and addressed the problem we sought to resolve.

Let me take a second to talk about the changes to title II of S. 1 as it comes out of conference. Recognize that most of the changes to title II are as a result of our need to tighten up the requirements if we are going to have judicial review.

S. 1 as passed by the Senate provided that agencies would assess the effect of mandates on State, local government and the private sector and seek to minimize the burdens. However, if you are going to allow judicial review, minimizing the burden is so unspecific and

so subjective that virtually every rulemaking would be challenged on that basis alone.

S. 1, as passed by the Senate, provided that agencies would develop a plan to allow elected State, local and tribal officials to have input into agency rulemakings, but there was some fear that the Federal Advisory Committee Act could be used to prevent local officials from meeting with Federal officials. Judicial review of this issue would be a haven for lawyers. As a result of some of these problems and others, we knew that some redrafting of title II would be in order and would be necessary.

Title II as it comes out of conference is more objective, more achievable and more effective than in either the House or Senate passed bills.

Title II provides that for every rulemaking each agency should assess the effects of regulatory action on States, local governments and the private sector. For significant rulemakings, which are judicially reviewable, an agency shall provide; a written statement of the authority under which the agency is proceeding; a qualitative and quantitative assessment of the cost and benefits of the rule; estimates, to the extent its feasible to determine it, of the future compliance costs of the mandate and any disproportionate effect on particular regions of the country or sectors of the economy; a macro economic analysis of the effect of the rule on the national economy; and, a description of the agency's contacts with State, local and tribal governments.

New in title II is a provision which clarifies that the Federal Advisory Committee Act does not apply to meetings between Federal officials and elected officers of State, local and tribal governments where those officials want to make their views, and the views of their constituents known. Local officials should not be shut out of the process. We want to know their views and get their advice.

We also added a provision previously in the House bill which requires that agencies identify and consider the least costly, most cost-effective or least burdensome alternative to achieve the objective of the rule containing a federal mandate. We require the OMB director to report specifically on this least burdensome regulation requirement in 1 year and we require an annual statement from the OMB director on agency compliance with title II.

The judicial review provision in the conference report of S. 1, provides limited scope of review under the APA if an agency unlawfully withholds or unreasonably delays compliance with the requirements of S. 1. A court would look to see if the agency had prepared the written statement required by section 202 and 203. If the analyses, statement, description or written plan were not completed the court could compel the agency to complete the requirements of section 202 and 203. However, to ensure that Federal rules were not delayed by endless litigation, S. 1 provides that failure by the agency to provide the analyses, statement, description or written plan could not be used to stay, enjoin, invalidate or otherwise affect the rule.

We also wanted to make sure that the underlying analysis needed to substantiate a rule under the requirements of S. 1 couldn't be used to invalidate the rule under some other rulemaking requirement in the underlying statute which imposed a mandate. But, if the analysis which was used to meet S. 1 requirements was provided pursuant to the underlying statute which imposed a mandate, then a court in review could invalidate the rulemaking based on that underlying statute.

Finally, S. 1 provides a limitation of 180 days on the time under which an action could be filed unless the underlying statute provided a different period. The judicial review provisions apply to proposed regulations issued after October 1, 1995.

No other provision of S. 1 is judicially reviewable. Title I deals with the requirements of Congress, and judicial review is not appropriate for the internal actions of Congress. Title III deals with ACIR's review of existing mandates and judicial review is not at issue. The remainder of title II deals with either general requirements that do not lend themselves to judicial review or with analyses which are essentially subjective—like the least burdensome option requirement added to the conference report on S. 1.

In all, I think we have developed a system which addressed the concerns in the House compelling agencies to comply with the requirements of Congress while being responsible to the agencies we have asked to perform.

Last December I spoke at the annual meeting of the Council of State Governments. On the stage, next to the podium, was the flag of the United States of America. And behind us, as a backdrop, were the flags of each of the 50 States. I told the folks who were gathered there, ''That flag of the United States of America represents the greatest nation in the world! But let us not lose sight of the fact that its greatness is comprised of the 50 sovereign states that make up the United States. We are the United States of America, we are not the Federal Government of America!''

For the past two decades, the Federal Government has dominated our States and cities. Congress and the executive branch have not been partners with States and cities. The Federal Government has been the overseer and the mandate maker, telling States and cities what to do, when, where, and how, but never paying for it.

Congress passed legislation without ever knowing the costs or consequences of their actions on State and local governments. The mandates made Congress feel good, and, for a while, even look good back home.

But this is not the federalism that our Founding Fathers intended. Stanley Aranoff, who is the senate president in Ohio, stated,

> The Constitution, and specifically the 10th Amendment, guarantees that certain functions will be performed by certain levels of government, thus ensuring direct accountability of the elected official to the voters. Our Constitution guarantees a federal, state, and local partnership. Unfunded mandates undermines, blurs, and corrupts that fundamental understanding upon which our governmental framework is based.

One of the big steps forward, I believe, in helping to reaffirm the 10th amendment rights is the effort to stop these unfunded Federal mandates which are simply hidden Federal taxes. We should not be paying for national programs with local property taxes.

This legislation forces Congress and agencies to know the mandate costs it imposes on the public and private sector. It requires Congress to pay for mandates imposed on State and local governments, and go on record with a vote when it does not.

S. 1 reflects a philosophy of limited government, that the best government is the government that governs least and to let local issues be decided by local officials and their citizens.

Those local officials set their priorities based on their finite resources. But for years, Congress has not had to worry about that. We come to the floor, and stand up and argue righteously and with great passion about the problems that are facing the United States, knowing full well that until now, we have not been held accountable. Congress has not had to pay for it. Those mandates have not been part of the Federal budget process, and the local governments end up paying for it, because it is mandated by Congress.

The Federal Government has, in essence, made local and State elected leaders nothing more than Federal tax collectors. Those officials have been very vocal about how they resent that, and they have every right to resent it.

Ben Nelson, the Democratic Governor of Nebraska, pretty well sums up the frustration of the States when he says: ''I was elected Governor, not the Administrator of Federal programs for Nebraska.''

Now, people say, ''How much do these Federal mandates cost?'' Nobody knows. Congress does not know, because we have never, ever asked that question before voting on them.

And so we must be intellectually honest. If it is a Federal program, pay for it with Federal money, if it is State, pay for it with State money, and if it is local, pay for it at the local level.

Mr. President, this moment would not be possible without my partners in State and local government, and the private sector. I close my remarks by reminding Senators that S. 1 is strongly endorsed by the: U.S. Conference of Mayors, National Association of Counties, National Governors Association,

National Conference of State Legislatures, National Association of School Boards, National League of Cities, the U.S. Chamber of Commerce, National Association of Homebuilders, National Association of Realtors, NFIB, and the Small Business Legislative Exchange Council.

I want to thank the citizens of Idaho for the opportunity they have given me in serving in the Senate. I hope they will take a small measure of pride that the effort to reform unfunded mandates was born in Idaho.

There are many people who made significant contributions to this process that I would like to thank. I want to especially thank our majority leader, Senator BOB DOLE. His support and commitment to mandate relief was critical to our success. His designation of our mandate legislation as S. 1 insured that we would have the highest priority for the 104th Congress. I also want to acknowledge the dedication and hard work for my Senate colleagues on the conference committee. First, of course, is my long time partner on mandate relief Senator JOHN GLENN. As we began this crusade we repeatedly stressed that relief from Federal mandates was not a Republican issue or a Democratic issue. We knew that if we were to be successful we had to keep the debate nonpartisan and focused on the merits of the issue. Without JOHN GLENN that would not have been possible and we would not be here today voting on final passage of mandate relief legislation. I believe our friendship and partnership have deepened during this process.

I note that last session, when the Democratic Party was the majority party and Senator GLENN was the chairman of the Governmental Affairs Committee, this was not necessarily a popular issue to take up. But he scheduled the hearings, he held the hearings, and he forged a partnership with me so we could come forward. It has allowed us to be where we are today. Ohio is rightfully proud of Senator GLENN.

Two key members of our conference team were the Republican chairmen of the two committees of jurisdiction, Senator ROTH of Governmental Affairs and Senator DOMENICI of the Budget Committee. These two experienced and knowledgeable leaders gave me valuable advice and constant support throughout the conference process and were instrumental in moving us toward the successful conclusion we have before us today.

Also my friend Senator JIM EXON, the ranking member of the Budget Committee who offered valuable insight during the committee process. Senator EXON has been a long-time supporter of relief from mandates and cosponsored my original bill in the last session of Congress.

Many other Senators—Democrats and Republicans—on both sides of the aisle have made enormous contributions to this legislation. I want to thank Senators CRAIG, BURNS, COVERDELL, and GREGG for being the original cosponsors of the first bill I introduced in Congress, and to Senators HATCH and BROWN for their help.

And I must give a great amount of credit and thanks to our House colleagues.

Speaker GINGRICH also made this a high priority, and he so stated repeatedly. Chairman BILL CLINGER of the Government Reform and Oversight Committee and Congressman ROB PORTMAN were terrific teammates and diligent partners on this legislation. We have had other strong partners in Congressmen GARY CONDIT, DAVID DREIER, and TOM DAVIS.

I have often mentioned that mandate relief legislation was my top priority when I came to Congress. I want to acknowledge those members of my personal staff that worked so long and hard in helping me accomplish this important personal goal. My lead person in conference and the principal author of the final bill, my legislative director W.H. ''Buzz'' Fawcett, who was my city attorney when I was mayor of Boise, Gary L. Smith, my deputy legislative director who also came with me from Boise where he was a city council member and my administrative assistant, and my current administrative assistant in the Senate, Brian Waidmann who brought his invaluable experience and expertise on congressional process to our team.

But most of all I would like to share this victory with my family: my wife Patricia, my daughter Heather, and son Jeff. Perhaps only other Members of Congress can fully appreciate the sacrifices our families make on our behalf. I have a very special family that I appreciate very much.

I want to conclude by reading to you a quote from a Founding Father, James Madison. Here is what he said:

> Ambitious encroachments of the federal government on the authority of the state governments, would not excite the opposition of a single state, or of a few states only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened, plans of resistance would be concerted, one spirit would animate and conduct the whole.

James Madison, the great visionary, predicted that this sort of thing would happen by the Federal Government. But he also said that someone will band together and stop it. And that is what S. 1 is all about.

Mr. President, I yield the floor and reserve the remainder of my time.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, this is a day that has been long in coming. We have worked for the better part of 2 years to get this legislation to the point where it is now, out of conference and here to get its final stamp of approval by the U.S. Senate. And with the same action taking place over in the House, that means this legislation will finally go to the President, who has announced his support for this legislation.

This has been a long process. To those not directly involved in all the committee work and I do not know how many hundreds of meetings and so on involved with all of this, without having been involved directly with some of that, I think it is difficult to appreciate what has happened with regard to this legislation.

It is landmark legislation. I think we have come up with a very excellent product here, one that literally does change the relationship between the Federal, State and local governments for the first time in probably 55 or 60 years.

This is legislation that passed the Senate back in January by a vote of 86 to 10, and my hope is that we will be able to pass this bill through the House and Senate tomorrow morning and get it to the President shortly.

Before I go into a description of the conference report, I would like to provide just a little bit of background to the whole unfunded Federal mandates debate.

On October 27, 1993, State and local elected officials from all over the Nation came to Washington and declared that day to be ''National Unfunded Mandates Day.'' These officials conveyed a very powerful message to Congress and the Clinton administration on the need for Federal mandate reform and relief. They raised four major objections to unfunded Federal mandates.

First, unfunded Federal mandates impose unreasonable fiscal burdens on their budgets.

Second, they limit State and local government flexibility to address more pressing local problems like crime and education.

Third, Federal mandates too often come in a one-size-fits-all box that stifles the development of what might be more innovative local efforts—efforts that ultimately may be more effective in solving the problem the Federal mandate is meant to address.

And, fourth, they allow Congress to get credit for passing some worthy mandate or program, while leaving State and local governments with the difficult task of cutting services or raising taxes in order to pay for it. And that fourth item was probably the most important of all.

In hearings held by the Committee on Governmental Affairs in both this and the last Congress, we heard testimony from elected State and local officials from both parties representing all sizes of government—State, local, county, townships, all levels and all sizes of government. It was clear from the testimony that unfunded mandates hit small counties and townships just as hard as they do big cities and larger States.

I think it is worth stepping back and taking a look at the evolution of the Federal-State-local relationship over the last decade and a half, so we can

put this debate into some historical context. I believe the seeds from which sprang the mandate reform movement can literally be traced clear back to the so-called policy of new federalism, a policy which resulted in a gradual but steady shift in governing responsibilities from the Federal Government to State and local government over the last 10 to 15 years. During that time period, Federal aid to State and local governments was severely cut or even eliminated in a number of key domestic program areas. At the same time, enactment and subsequent implementation of various Federal statutes passed on new costs to State and local governments. In simple terms, State and local governments ended up receiving less of the Federal carrot and more of the Federal stick.

The actual cost of Federal mandates.

Let us examine the cost issue first. While there has been substantial debate on the actual costs of Federal mandates, suffice it to say that almost all participants in the debate agree that there is not complete data on Federal mandates to State and local governments. In fact, one of the major objectives of S. 1 is to develop better information and data on the cost of mandates and to force that to be considered up front. Likewise, there is even less information available on estimates of what potential benefits might be derived from selected Federal mandates—a point made by representatives from the disability, environmental, and labor community in the committee's second hearing in the last Congress.

Nonetheless, there have been efforts made in the past to measure the cost impacts of Federal mandates on State and local governments.

And those efforts do show that costs appear to be rising. Since 1981, CBO, the Congressional Budget Office, has been preparing cost estimates of major legislation reported by committee with an expected annual cost to State and local governments in excess of $200 million. According to CBO, 89 bills, with an estimated annual cost in excess of $200 million each, were reported out of committee between 1983 and 1988.

I would point out one major caveat with CBO's analysis—it does not indicate whether these bills funded the costs or not, nor how many of the bills were eventually enacted. Still, even with a rough calculation, CBO's analysis shows that committees reported out bills with an average estimated new cost of at least $17.8 billion per year to State and local governments. In total, 382 bills were reported from committees over the 6-year period with some new costs to State and local government. So, if anything, the $17.8 billion figure is a conservative estimate for reported bills.

Federal environmental mandates head the list of areas that State and local officials claim to be the most burdensome. A closer look at two of the studies done on the cost of State and local governments of compliance with environmental statutes does indicate that these costs appear to be rising. A 1990 EPA study, titled ''Environmental Investments: The Cost of a Clean Environment,'' estimates that total annual costs of environmental mandates from all levels of Government to State and local governments will rise from $22.2 billion in 1987 to $37.1 billion by the year 2000—an increase in real terms of 67 percent.

EPA estimates that the cost of environmental mandates to State governments will rise from $3 billion in 1987 to $4.5 billion by the year 2000, a 48-percent increase. Over the same timeframe, the annual costs of environmental mandates to local governments is estimated to increase from $19.2 billion to $32.6 billion. That is a 70-percent gain.

According to the Vice President's National Performance Review, the total annual cost of environmental mandates to State and local governments, when adjusted for inflation, will reach close to $44 billion by the end of this century.

The city of Columbus, in my home State of Ohio, also noted a trend in rising costs for city compliance with Federal environmental mandates. The mayor of Columbus, Gregg Lashutka, has taken a personal interest in this and has done a superb job in detailing what the impact is on a medium-sized U.S. city from Federal mandates.

Our Governor, George Voinovich, has represented the National Governors Association in his representation of wanting this legislation through all and has given a lot of information that has come from the Governors across the country on this. Probably the most definitive study of all, as far as the impact on the city, is what Mayor Lashutka has done in Columbus, OH.

In his study, the city concluded that its cost of compliance for environmental statutes would rise from $62.1 million in 1991 to $107.4 million in 1995. That is—in 1991 constant dollars—a 73-percent increase. The city estimates that its share of the total city budget going to pay for the mandates will increase from 10.6 percent to 18.3 percent over that timeframe. This is just one medium-sized American city.

In addition to environmental requirements, State and local officials in our committee hearings cited other Federal requirements as burdensome and costly. They highlighted compliance with the Americans with Disabilities Act and the Motor-Voter Registration Act, complying with the administrative requirements that go with implementing many Federal programs and meeting Federal criminal justice and education requirements.

Now, I note that while each of these individual programs or requirements clearly carries with them costs to State and local governments, costs which we have too often ignored in the past, I believe that on a case-by-case basis, each of these mandates has substantial benefits to our society and our Nation as a whole.

Otherwise I, along with many of my colleagues in the Senate, would not have voted to enact them in the first place. State and local officials readily concede that individual mandates on a case-by-case basis may indeed be worthy, but when looking at all mandates spanning across the entire mammoth of Federal laws and regulations, we begin to understand that it is the aggregate impact of all Federal mandates that has spurred the calls for mandate reform and relief.

The Advisory Commission on Intergovernmental Relations testified in our April hearings that the number of major Federal statutes with explicit mandates on State and local governments went from zero during the period of 1941 to 1964. In other words, we did not pass along the bill during that period from 1941 to 1964.

But then it went to the Federal mandates during the rest of the 1960's, went to 25 in the 1970's, and 27 in the 1980's. However, to truly reach a better understanding of the Federal mandates debate, we must also look at the Federal funding picture, vis-a-vis State and local governments.

Addressing that first under Federal aid and to State and local governments, the record shows that Federal discretionary aid to State and local governments to both implement Federal policies and directives, as well as complying with them, saw a sharp drop in the 1980's.

An examination of Census Bureau data on sources of State and local government revenue shows a decreasing Federal role in the funding of State and local governments. In 1979, the Federal Government's contribution to State and local governments' revenues reached 18.6 percent. By 1989, the Federal contribution of the State and local revenue pie had instead daily shrunk to 13.2 percent before edging up to 14.3 percent in 1991, the latest year data was available.

What contributed to the declining trend in the Federal financing of State and local governments? A closer look at patterns in Federal discretionary aid programs to State and local governments during the 1980's provides the answer. According to the Federal Funds Information Service, between 1981 and 1990, Federal discretionary program funding to State and local government rose slightly from $47.5 to $51.6 billion.

However, this figure, when adjusted for inflation, tells a much different story. Federal aid dropped 28 percent in real terms over the decade. A number of vital Federal aid programs to State and local government experienced sharp cuts, and in some cases outright elimination, during the decade.

In 1986, the administration and Congress agreed to terminate the General Revenue Sharing Program. We all remember that one. That was a program

that provided approximately $4.5 billion annually to local governments and allowed them very broad discretion on how to spend the funds.

Since its inception in 1972, general revenue sharing has provided approximately $83 billion to State and local government. Unfortunately, the Reagan administration succeeded in terminating the program. Congress followed its lead and approved that. There were other important Federal and State and local programs that were substantially cut back between 1981 and 1990. They include the economic development assistance, community development block grants, mass transit, refugee assistance, and low-income home energy assistance.

Luckily, under both the Bush and Clinton administrations, we managed to restore some of the needed funding—I repeat, needed funding—to these programs. And still, in real dollars, funds for discretionary aid programs to State and local governments remain today 18 percent below their 1981 levels. That is despite the fact we have put more of an unfunded mandates load onto the backs of the State and local governments.

Looking at our committee's legislative efforts in the last Congress, eight bills were referred to the Governmental Affairs Committee that touched on this aspect of the unfunded mandates Federal mandates problem.

After two hearings, we marked up a bill. I think it could be called, at least in part, a compromise bill. The basic part of it, though, was the bill that Senator KEMPTHORNE has submitted, and it became the vehicle that borrowed the best of the various provisions and requirements from the bills that had been submitted. It was basically—the basic bill—his work.

We worked closely in a deliberative, bipartisan fashion, and he was the de facto leadership on this issue. Along with other Members, and with the administration, we moved ahead with this legislation. What became known as the Kempthorne-Glenn compromise has the endorsement and strong support of the seven groups representing State and local governments. They are the National Governors Association, the National Conference of State Legislators, the Council on State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the International City Management Association. It had the backing of the Clinton administration, and was endorsed by such editorial boards as the New York Times, the Cleveland Plain Dealer, and other newspapers across the country, both large and small. That largely embodies or includes, also, all that we had last year in Senate bill 993.

Let me just say that on this bill, if there is anyone who can be looked at as the father of this bill and the one who really kept going on this and kept interest going, it is Senator KEMPTHORNE. He did a magnificent job on this bill, not only here in Washington, but he traveled all over the country, meeting repeatedly with different groups representing those seven organizations that I just mentioned in getting their views on this legislation and bringing it back, putting it together. And he did a superb job in keeping contact with all these people. He deserves the full credit for being the sparkplug for this legislation.

(Mr. GORTON assumed the chair.)

Mr. GLENN. Mr. President, let me explain what the bill does.

It requires the Congressional Budget Office to conduct State, local and tribal cost estimates on legislation that imposes new Federal mandates in excess of $50 million annually onto the budgets of State, local, and tribal governments. The current law requires these estimates at a $200 million threshold, and I believe that that high a figure allows a lot of Federal mandates to slip through without being scored. Two hundred million dollars spread equally among all the States may not be much, but if it falls particularly hard on any one State or any one region, which does happen with legislation, it can be a substantial impact.

Let me make clear, however, that what CBO will score here are new Federal mandates—new Federal mandates—not what State, local, and tribal governments are spending now to comply with existing mandates, nor what they are spending to comply with their own laws and mandates.

Second, and I think most importantly, is that the bill holds Congress accountable for imposing additional unfunded Federal mandates. We do this by requiring a majority point-of-order vote on any legislation that imposes new unfunded Federal mandates in excess of a $50 million annual cost to State, local, or tribal governments.

To avoid the point of order, the sponsor of the bill would have to authorize funding to cover the cost to State and local governments of the Federal mandate or otherwise find ways to pay for the mandate. This could come from the expansion of an existing grant or subsidized loan program or the creation of a new one or perhaps a raising of new revenues or user fees.

The authorizing committee must also build into the legislation certain provisions to go into effect if funds for the mandate are not fully appropriated or not appropriated at all. This was the basic thrust of the Byrd amendment which the House receded to in conference and accepted in its entirety. The House bill would have left the fate of an unfunded or underfunded mandate in the hands of the Federal bureaucracy rather than in the hands of Congress where it properly lies.

Under the Byrd amendment, the authorizing committee would have to put expedited procedures into the underlying intergovernmental mandates bill that would direct the relevant Federal agency to submit a statement based on a reestimate done in consultation with State, local, and tribal governments that appropriations are sufficient to pay for the mandate or the agency submits legislative recommendations to implement a less costly mandate or to render the mandate ineffective for the fiscal year.

Under the expedited procedures, the authorizing committee must provide for consideration in both Houses of the agency statement or legislative recommendations within 60 calendar days. After the 60-day time period expires, the mandate ceases to be effective unless Congress provides otherwise by law. And I will discuss the Byrd amendment in greater detail a little later in my statement.

The conference report on S. 1 also includes provisions for the analysis of legislation that imposes mandates on the private sector. CBO would have to complete a private sector cost estimate on bills reported by committee with a $100 million or more annual cost threshold. In the Senate bill, we had a threshold of $200 million and the House had $50 million as their threshold, so we split the difference and wound up with $100 million being our threshold.

We do exempt certain Federal laws from this bill. Civil rights and constitutional rights are excluded. National security, emergency legislation, and ratification of international treaties are also exempt.

I want to also point out that the bill does not prohibit Congress from passing unfunded Federal mandates. Let me repeat that. It does not prohibit Congress from passing unfunded Federal mandates. There may be times when it is appropriate, for whatever purpose, to ask State and local governments to pick up the tab for Federal mandates. But the legislation does force us to take into consideration the cost of the unfunded mandates up front, consider it in its entirety with a point of order to lie against it if it is not funded. But the debate over whether it is appropriate to ask State and local governments at times whether it is a constitutional matter or whatever it might be, to pick up the tab across the country—all States—let that debate take place on the Senate floor, as it will under this legislation, and let the majority work its will on the specific mandate in the legislation.

The Kempthorne-Glenn bill also addresses regulatory mandates. We all know how the Federal bureaucracy can impose burdensome and inflexible regulations on State and local governments, as well as on others who end up trapped in the bureaucracy's regulatory net. In the committee's November hearing in 1993, we heard testimony from Susan Ritter. She is county auditor for Renville County, ND. Ms. Ritter noted that she comes from the town of Sherwood in her State with a total population of 286 people, and they will have to spend $2,000, which is one-half of their annual budget on testing the water supply in order to comply with certain EPA regulations.

Clearly, there is no way that that town is going to be able to meet this kind of a requirement. So, consistent with the President's Executive orders, we have required that Federal agencies conduct cost-benefit analysis and assessments on major regulations that impact State, local, and tribal governments, as well as the private sector. We have allowed a limited judicial review of agency preparation of some of those assessments and analysis. The House would have allowed full scale judicial review of practically everything, of both the agency analysis and the CBO cost estimates. This could have been a way of almost shutting down the whole regulatory process, as we saw it.

Enactment of these provisions also would have resulted in what I termed the Lawyers Full Employment Act, and would have had the law firms along K Street breaking out the champagne all over. So we significantly curtailed and narrowed and focused the judicial review requirements, which I will discuss in a little more detail a little later on also.

Further under S. 1, agencies must develop a timely and effective means of allowing State and local input into the regulatory process. Given the State and local governments are responsible for implementing many of our Federal laws, it is not only fair they be considered partners in the Federal regulatory process, but it is also good public policy as well.

The bill also requires Federal agencies to make a special effort in performing outreach to the smallest governments. Then maybe we will be able to minimize the occurrence of situations like the one that took place in the town of Sherwood that I mentioned a moment ago.

Let me put the issue into a larger perspective. As we all know, the Federal, State, and local relationship is a very complicated, a very complex one. It is a blurry line between where one line's level of responsibility ends and another begins. All three levels of government need to work together in a constructive fashion to provide the best possible delivery of services to the American people in the most cost-effective fashion. After all, as Federal, State, and local officials, we all serve the same constituency.

Further, we serve the American people at a time when their confidence in all three levels of government may be at an all-time low. There are numerous explanations for this lack of confidence in government, and we will not go into a long discussion of those here. Vice President GORE's National Performance Review attributes ''an increasingly hidebound and paralyzed intergovernmental process'' as at least a part of the reason why many Americans feel that government is wasteful, inefficient, and ineffective. We need to restore balance to the intergovernmental partnership, as well as strengthen it so that government at all levels can operate in a more cost-effective manner.

Both the administration and a number of my colleagues have made proposals to shift a number of Federal programs and responsibilities to State and local governments. Clearly, as this mandates debate has shown us, I believe we ought to at least experiment to see if State and local governments can carry out some of these programs in a more effective fashion than we have been doing at the Federal level.

I know from my years as chairman of the Governmental Affairs Committee that Americans do want more efficient and less costly government, and I, for one, do not believe that efficiency and government need necessarily be an oxymoron statement. We worked on the Governmental Affairs Committee to bring forth better ways of dealing with efficiency in the Federal Government, such as the Chief Financial Officer Act, the Inspectors General Act, Financial Management Act, and so on, and a number of different things we have done in that area. So it is not that we have ignored the efficiencies of government, but certainly we want to make the Government a more efficient and better and less costly government.

That certainly is a big move. Maybe one way to help accomplish that objective is to grant more flexibility to State and local governments and let them run some of these programs.

Where I think we should proceed with some degree of caution, we need to remember the reason many of these programs became part of the Federal level was back some 50 or 60 years ago when the country was in dire straits and we were not able, either would not or could not, at the State and local level to address problems and concerns of our citizens that had been dealt with in the family and local communities up to that time. We found soup kitchens on the corners, and we had people because of weather changes also—we remember the movies, famous movies of the Okies going West with a mattress on top of the car, and so on. The United States had lost its way at that time.

I grew up in that Great Depression. I learned that State and local governments do not have sometimes the wherewithal and resources to meet all human needs. That is why President Roosevelt came through with the New Deal. That was to address economic and social problems that previously were dealt with by State and local governments or by the local communities and families themselves more likely. And we followed the New Deal up with the Great Society and moved more of these programs up to a national level.

Now, I am the first to say many of these programs may have gone too far and so we need to tailor things back somewhat. But there has been and will continue to be the need for Federal involvement and decisionmaking in many domestic policy areas. But that should not preclude us from maybe loosening the reins on State and local governments in some areas or even dropping them entirely.

But we should be careful and look at it on a case-by-case basis, not with a meat ax approach, not just swinging the ax and taking whole programs out without considering what is going to happen to a lot of people.

Unfortunately, the House, in its race to devolve, as they call it, and seemingly block grant the entire Federal Government, I believe, is moving much too quickly in areas which should require closer scrutiny and greater deliberation.

I believe that the conference report on S. 1 will help to restore the intergovernmental partnership and bring needed perspective and balance to future Federal decisionmaking.

I think S. 1 is landmark legislation, as I said in starting out my remarks. I think it is landmark legislation that will help to redefine for the first time in 60 years the entire Federal, State and local relationship. And so I obviously urge my colleagues to vote for passage of this legislation.

I have some remaining remarks concerning the conference report, and I would like to clarify some of the provisions of the proposed legislation.

I would first refer to section 425(a)(2)(B)(iii)(III) of the conference report. Subsection (III) establishes a timeframe for expedited procedures under which Congress will consider the agency statement or legislative recommendations under subsections (aa) or (bb). The timeframe is 60 calendar days from which the agency submits its statement or legislative recommendations. Under such an expedited process, the mandate would cease to be effective 60 calendar days after the agency submission unless Congress provides otherwise by law.

The Senate Parliamentarian has provided us with his interpretation of the 60-day time period in a letter which has been attached as an appendix to the conference report. The letter states that a sine die adjournment ''will result in the beginning again of the day counting process and that the sine die adjournment of a Congress results in all legislative action being terminated and any process [the counting of the 60 days] ended so that it must begin again in a new Congress.''

Thus, if Congress adjourns sine die prior to the end of the 60-day time period after the agency submission of its statement or legislative recommendations then the the 60-day time clock terminates and would start all over again, beginning with day one, when Congress convenes the next year. In those instances, Congress would then have 60 calendar days to act on the agency submission or the mandate would cease to be effective after the 60-day period expires. Depending on when we convened in January, the time period would likely expire sometime during the month of March.

After a discussion with the Parliamentarian, I understand that his interpretation on the counting of days would also apply after sine die adjournment of the 1st session of a Congress as well.

This clarification by the Parliamentarian over the counting of days under S. 1 is critically important. During election years we usually adjourn sometime in early October. My concern had been that with a continuous 60-day clock we might be forced in those years to reconvene for a lame-duck session in December to vote on an agency statement or legislative recommendation or otherwise the mandate would cease to be effective. I think as a general rule we should avoid having to convene lameduck sessions except in emergencies and times of national crisis.

So I am pleased that the Parliamentarian's ruling would avoid putting us in a situation of having to schedule lameduck sessions to deal with agency statements or legislative recommendations.

I would like to clarify another provision in the act. Section 202(a)(2) requires Federal agencies to prepare qualitative and quantitative assessments of the costs and benefits of Federal mandates as well as its effect on health, safety, and natural environment. I believe that the meaning of the word ''effect'' would include both qualitative and quantitative costs and benefits to health, safety and the environment as well as other impacts in those areas. Further, the statement of conferees states that included in the agency written statement under section 202 ''must be a qualitative, and if possible, quantitative assessment of the costs and benefits of the intergovernmental mandate.'' The word ''intergovernmental'' should be crossed out to make the sentence consistent with the statutory language. However, the sentence properly notes that a quantifiable assessment of the costs and benefits of a particular mandate may not be possible. This difficulty in preparing accurate quantitative assessments and estimates is noted in the statutory language for both section 202(a) (3) and (4). Indirect costs and benefits are particularly difficult to quantify and may be better addressed as part of an agency qualitative assessment of the Federal mandate.

In addition to addressing indirect costs and benefits, such a qualitative assessment would also include an assessment of considerations other than economic costs and benefits but are still necessary and important in guiding an agency in the promulgation of a major rule.

I would also like to discuss section 204, dealing with State, local, and tribal government input into the Federal regulatory process. Both the House and Senate bills required Federal agencies to develop an effective process to permit elected State, local, and tribal officials to provide timely and meaningful input into the development of agency regulatory proposals containing significant intergovernmental mandates. The language in both bills was consistent with the President's Executive order. The House bill, however, implicitly exempted all meetings and communications between Federal and State, local, and tribal officials under this process from the Federal Advisory Committee Act. The House felt that FACA was a bureaucratic encumbrance that impeded closer coordination between Federal, State, and local officials in the administration of programs with shared intergovernmental responsibilities. The Committee on Governmental Affairs has examined problems with FACA in the past and 3 years ago reported out unanimously legislation I wrote to reform FACA. The bill exempted elected State and local officials from some of its requirements. So I was sympathetic with the House position in this case. However, I believed that the House language needed to be tightened and narrowed so as not to give State and local officials an unfair advantage over others in the administrative process. So we developed compromise language in section 204(b) to provide an exemption from FACA for elected State, local, or tribal officials—or their designated employees with authority to act on their behalf—for meetings concerning the implementation or management of Federal programs that ''explicitly or inherently share intergovernmental responsibilities or administration.'' So we have been careful to limit the FACA exemption to instances where Federal officials and State, local, and tribal officials are coimplementers or managers of a program. We did not want to allow a FACA exemption in instances where State and local officials are acting as advocates, which is what the House bill would have likely allowed. Further, we have asked the administration to promulgate regulations to implement section 204 and to ensure that there are proper safeguards in place.

I would note that the effective date of title I is January 1, 1996 or 90 days earlier if CBO receives appropriations as authorized. Thus, title I would apply to any bill, joint resolution, amendment, motion, or conference report considered by the House or Senate on or after January 1, 1996.

Finally, I would like to describe and explain the provisions of section 401, which deals with the subject of judicial review.

The version of S. 1 that passed the Senate contained an absolute bar on all judicial review. However, the bill that passed the House authorized judicial review of regulatory agency compliance with many requirements in the bill.

The conferees agreed to a compromise between the Senate and the House positions. Our goal was to provide for meaningful judicial review, so as to reassure the regulated community that agencies will prepare certain key statements and plans that are called for under S. 1. However, we also wanted to assure that agency rules and enforcement would not be stayed or invalidated by the judicial review, and that the regulatory process would not get bogged down in excessive litigation. I believe that section 401 achieves these goals.

Sections 401(a) (1) and (2) provide for limited judicial review of agency compliance with section 202 and sections 203(a) (1) and (2). As I discussed a moment ago, section 202 requires preparation of statements to accompany significant regulatory actions, and sections 203(a) (1) and (2) require agencies to develop small agency plans before establishing certain regulatory requirements.

Subparagraph (A) of section 401(a)(2) provides that judicial review is available only under section 706(1) of the Administrative Procedure Act. Section 706(1) of the APA authorizes a court to compel agency action unlawfully withheld or unreasonably delayed. Subparagraph (A) also states that such review will only be as provided under subparagraph (B). Subparagraph (B) states that, if an agency fails to prepare the written statement under section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such a written statement.

Sections 401(a) (1) and (2) specify that the only remedy that a court may provide is to compel the agency to prepare the statement. So, for example, the court may not stay, enjoin, invalidate, or otherwise affect a rule. Nor may the court postpone the effective date of the rule, stay enforcement of the rule, or take any other action to preserve status or rights pending conclusion of the review proceeding or pending compliance by the agency with any court order to prepare a statement.

Furthermore, in this review under sections 401(a) (1) and (2), the court may not review the adequacy of a written statement under section 202 or of a written plan under sections 203(a) (1) and (2). This is because paragraph (2)(B) provides that a court may compel preparation of a written statement only if the agency actually fails to prepare the written statement under section 202 or actually fails to prepare the written plan under sections 203(a) (1) and (2).

Sections 401(a) (1) and (2) deal with the situation where rules that are subject to sections 202 and 203(a) and (b) undergo judicial review under Federal law other than section 401(a) (1) and (2).

Paragraph (3) states that, in any such judicial review, the failure of an agency to prepare a required statement or plan shall not be used as a basis for staying, enjoining, invalidating, or otherwise affecting the agency rule. Subparagraph (3) further provides that, if the agency does prepare a statement or plan, any inadequacy of the statement or plan shall not be used as a basis for staying, enjoining, invalidating, or otherwise affecting the agency rule. Subsection (3) not only forbids a

court to use the inadequacy or failure to prepare a statement or plan as the sole basis for invalidating or otherwise affecting a rule; the subsection also prohibits the court from using such inadequacy or failure as any basis, even if considered together with other deficiencies in the rulemaking, for invalidating or otherwise affecting a rule.

Subparagraph (4) states the circumstances when the information generated under section 202 or section 203(a) (1) and (2) may be considered by a court in the course of reviewing the rule under law other than sections 401(a) (1) and (2). Subparagraph (4) has two elements. First, the information may be considered by the court only if it is made part of the rulemaking record for judicial review. Second, if the information is made part of the record for review, then the information may be considered by the court as part of the entire record for the judicial review under the other law.

The question of whether the information is made part of the record for judicial review is not determined by any provision of S. 1; the contents of the record is governed by the law and court procedures under which the judicial review takes place. In judicial review of agency rules, the agency makes the initial decision of what documents to include in the rulemaking record for judicial review. Thus, the agency would make the initial decision of whether to include any information generated under sections 202 and 203(a) (1) and (2) in the record for judicial review. If the agency makes such information part of the record for judicial review, the court may then proceed to consider such information as part of the record for judicial review pursuant to the other law.

In no event may a court review whether the information generated under sections 202 or 203(a) (1) or (2) is adequate to satisfy requirements of S. 1. Such review is clearly prohibited by subparagraph (3). However, in reviewing a rule under law other than sections 401(a) (1) and (2), if information generated under section 202 or 203(a) (1) or (2) is included in the record for review, the court may consider whether such information is adequate or inadequate to satisfy the requirements of such other law.

Any information that is made part of the record subject to judicial review, including information generated under sections 202 and 203(a) (1) and (2) that is made part of the record, may be considered by the court, to the extent relevant under the law governing the judicial review, as part of the entire record in determining whether the record before it supports the rule under the arbitrary capricious or substantial evidence or other applicable standard. Pursuant to the appropriate Federal law, a court looks at the totality of the record in assessing whether a particular rulemaking proceeding lacks sufficient support in the record.

Section 401(a)(5) states that a petition under paragraph (2) to compel the agency to prepare a written statement shall be controlled by provisions of law that govern review of the rule under other law. This applies to such matters as exhaustion of administrative remedies, the time for and manner of seeking review, and venue. Consequently, the petition under paragraph (2) may be filed only after the final rule has been promulgated, at which time review of the rule may be available under other law. The petition under subparagraph (2) may be filed only in a court where a petition for review of the rule itself could also be filed under other law. And the same requirements for exhaustion of administrative remedies that would apply in review of the rule shall also apply to the petition under paragraph (2). However, if the other law does not have a statute of limitations that is less than 180 days, then paragraph (5) limits the time for filing a petition under paragraph (2) to 180 days.

Section 401(a)(6) states the effective date for the judicial review provided under subsection (a). The effective date is October 1, 1995, and subsection (a) will apply to any agency rule for which a general notice of proposed rulemaking is promulgated on or after such date. Consequently, in the case of rules for which a general notice of proposed rulemaking is promulgated before October 1, 1995, subsection (a) does not apply. For these rules that are not subject to subsection (a), a petition under subsection (a)(2) may not be filed, and information generated under section 202 and 203(a) may not be considered as part of the record for judicial review pursuant to subsection (4).

Section 401(b)(1) broadly prohibits all judicial review except as provided in subsection (a). Thus, all of title I, those portions of title II not expressly referenced in subsection (a), and all of title III are completely exempt from judicial review. This section also prohibits judicial review of any estimate, analysis, statement, description or report prepared under S. 1. This list is intended to cover all forms of documentation or analysis generated under S. 1, so that no such documentation or analysis is subject to any form of judicial review except as provided in subsection (a). For example, not only is an agency's compliance with section 205 not subject to judicial review; but also the regulatory alternatives and the explanations prepared under section 205, and other records of the agency's activities under section 205, may not be reviewed in any judicial proceeding.

Subsection (b)(2) further states that, except as provided in subsection (a), no provision of S. 1 shall be construed to create any right or benefit enforceable by any person.

Finally, the provisions of S. 1 do not affect the standards of underlying law, under which courts will review agency rules. In other words, insofar as they provide the basis for judicial review of a rule, neither the standards of the statute that authorizes promulgation of the rule, nor the procedural standards for rulemaking under the authorizing statute or the APA, nor the standards for judicial review of the rule, nor agency or court interpretations, are affected by the provisions of S. 1.

Likewise, to the extent that applicable law vests discretion in an agency to determine what information and analysis to consider in developing a rule, nothing in S. 1 changes the standards under which a court will review and determine whether the agency properly exercised such discretion. Thus, even where the authorizing statute is vague or silent about what factors the agency must or may consider in promulgating a rule, a court reviewing the rule may not consider the requirements of section 202 or of any other provisions of S. 1 in interpreting the requirements of the statute. This is because, except as provided by a petition under section 401(a)(2), section 401 prohibits all judicial review of compliance or noncompliance with S. 1. If courts were allowed to interpret S. 1 as implicitly amending or superseding the provisions of another statute or to constrain the agency's discretion under another statute, and if the conference report had been written to allow a court to consider an agency's compliance or noncompliance with these amended or superseded provisions of the other statute, this would be the same thing as judicial review of the agency's compliance or noncompliance with the provisions of S. 1. But section 401 of the conference report clearly prohibits courts from doing this.

Furthermore, even when an agency prepares any statement under section 202, nothing in section 202 authorizes or requires consideration of the statement in development of the rule. Where the conference report intends to require that agencies consider certain factors, the language of the bill is drafted to say so explicitly, as in the provision of section 205 requiring that agencies consider a reasonable number of regulatory alternatives under certain circumstances. Furthermore, an agency may choose to prepare a statement even if consideration is clearly prohibited under other statute, and an agency may prepare a statement even if the applicable statute affords discretion to the agency to consider or not to consider the statement. Therefore, neither the provisions of S. 1 nor the fact that an agency prepares any statement under S. 1 affects the standards and interpretations under which courts will review the rule and the agency's exercise of discretion in developing the rule.

Mr. President, I would like to close by acknowledging some people who deserve a great deal of credit for this legislation. This has been tough legislation to bring through, and we had a long debate in the Chamber about it

after it came out of committee. We remember some of the difficulties of getting it out of the committee, and I will not go into all the details of that.

I indicated earlier in my remarks, of all the people who have brought this through, Senator DIRK KEMPTHORNE certainly deserves credit as the spark plug for this legislation. I have been glad and honored to join him in it. W.H. ''Buzz'' Fawcett, who is sitting here with him today, deserves credit for his work on this, and Gary Smith, who is on the floor also today.

On our side of the aisle, those people who deserve a tremendous amount of credit are Sebastion O'Kelly, who is with me here today, who has worked on very little but this for the last couple of months, I guess, or ever since we came back into session; Larry Novey, who is not on the floor with us today—yes, he is back in the back. Larry worked on this legislation also, as did our minority staff director on the Governmental Affairs Committee, Len Weiss, who is here with us today.

Congressman ROB PORTMAN over in the House, who was the real sponsor of this and the prime mover of it, deserves a lot of credit, along with his principal staff person who worked on this, John Bridgeland; Congressman WILLIAM CLINGER over there, and the person on his staff, Christine Simmons, who worked so hard on this; Congresswoman CARDISS COLLINS and her staff person, Tom Goldberg, who met repeatedly with the group; GARY CONDIT over there, and his staffer, Steve Jones, played a vital role in this.

And back on our side again, Senator JIM EXON and Meg Duncan on his staff, and on our Governmental Affairs staff again Senator CARL LEVIN and Linda Gustitis, who has done such yeoman work on a number of pieces of legislation on our Governmental Affairs Committee staff.

I know to people out there maybe who watch this on television, the names are not associated directly with the people involved. You may or may not have seen them in the Chamber from time to time when we were debating the bill, sitting here beside us, keeping some of the legislative matters straight as we were debating some different parts of this bill. But they are people who should be known because they are the ones who have to write things up overnight, spend two-thirds of the night writing things up for our approval in the morning to go to another meeting and try to work things out, work differences out and different views on legislation. And this legislation did have a lot of things we had to work out together. It was together that we worked these things out. There was a lot of togetherness, legislative togetherness that let us get to the point where we are today.

So I urge my colleagues to vote for passage of this bill. I think it is landmark legislation, and we have so many people who have been part of this I probably have left some people out. I regret that. But I am glad we have come to this day, and I look forward to tomorrow when we will have a record rollcall vote. I hope it will be unanimous.

I yield the floor. I reserve the remainder of my time.

Mr. KEMPTHORNE. Mr. President, I certainly appreciate the remarks of the Senator from Ohio and the great role that he has played in bringing us to this point where we can have successful passage of this conference report.

I should like to associate myself with his remarks about the different staff members who have all played a key role. I would now like to yield 7 minutes to the Senator from Minnesota, who again has been one of those Senators on this issue who every time we needed to have assistance was there.

Mr. GRAMS. I thank the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise today in support of the unfunded mandates conference report.

By forcing Congress to know the costs of any legislation it passes down to our States, counties, cities, and townships, by forcing Congress to vote—openly in the light of day—to specifically impose those costs if it does not come up with the dollars itself, this legislation is a good first step toward loosening the noose of costly Federal requirements.

And it is also a good first step toward a return to States rights, and an end to what has too often amounted to taxation without representation by the Federal Government.

In Redwood Falls, MN, former Mayor Gary Revier echoes what I have heard time and time again since debate began in Washington on unfunded mandates.

He said to me recently:

> How can cities like Redwood Falls meet their own needs when our scarce dollars are continually going to meet Washington's needs?
>
> How do we tell our residents that we may need to reduce services or raise local taxes because a bureaucrat 2,000 miles away thinks he knows best how to spend our dollars?

I agree with Mr. Revier. In fact, I have asked him to chair my unfunded mandates task force, where he will play a key role in formulating a strategy to reduce the Federal Government's reach into Minnesota pockets.

Even with the Unfunded Mandates Relief Act in place, we must be vigilant of the unintended costs our actions here in Congress may represent on the local level.

Future legislation needs to be carefully scrutinized so that we avoid new and unwelcome financial pressures on the local level.

Other regulatory relief measures we consider this year will further enable local governments to get back to doing local business, and away from having to do the Federal Government's bidding.

We could learn a lot from Florida Gov. Lawton Chiles, who wants to repeal at least half of his State's nearly 29,000 regulations and replace them with loose guidelines, guidelines that promote accountability.

While trading archaic rules for common sense may not make sense to the Washington bureaucrats, it makes a lot of sense back home, and it is an approach we ought to encourage on the Federal level.

For all the good accomplished by the Unfunded Mandates Relief Act, it leaves untouched most of the 200 previously enacted unfunded mandates passed by this institution—and passed on to local governments—over the last two decades.

Implementing the requirements of the 10 costliest mandates—contained in bills like OSHA, the Clean Water and Clean Air Acts, and the Endangered Species Act—cost cities an estimated $6.5 billion in 1993.

By the year 2000, the price tag for those mandates will rise to nearly $54 billion.

It may be too late to change things with this bill, but it is not too late to change things with the next.

In the House, Speaker GINGRICH will begin monthly Corrections Days, and I urge my colleagues in the Senate to follow suit.

We will pull out the most inefficient Federal laws and regulations and bring them up for a vote.

We will begin stripping away the layers of Federal bureaucracy that, like bad varnish over good wood, have obscured for too long the role of the Government envisioned by our Founding Fathers.

Maybe, with the help of the Unfunded Mandates Relief Act and 2 years of Corrections Days, we will be able to say by the end of the 104th Congress that we have truly made a difference to the people back home who sent us here to change Washington.

I reiterate, this change begins with passage of the Unfunded Mandates Relief Act.

With that, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I note Senator HUTCHISON was here a short time ago. She had hoped to speak on this issue but unfortunately a previous commitment had caused her to leave the floor. I wish she could have been able to remain because during the 11 days of the debate that we had on S. 1, there were different occasions when it was necessary to seek someone with her background in State government to come be an advocate and spokesperson for this bill. Whenever we called, she was there. I want to acknowledge her role in this as well.

With that, Mr. President, I know there are additional speakers who are on their way to the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator suggest the time be divided equally on both sides, under the quorum call?

Mr. KEMPTHORNE. Mr. President, that will be fine.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Who yields time?

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

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the distinguished Senator from Idaho for yielding.

Mr. President, I have been most interested in what I think is our first major success in both Chambers. And certainly it is due to the perseverance of the Senator from Idaho that we are where we are today. I watched with interest what is happening in the House and, of course, what is happening over here. I think it is so significant because this symbolizes what I think is one of the products of the revolution that took place on November 8.

I have often joked around with many Members of both bodies in Washington. I said, ''If you want to know what a real tough job it is to become a mayor in a major city, there is no hiding place there. If they do not like you, they trash you and they throw it in your front yard.''

Of all the problems—and even though there are people serving in this body, distinguished Senators, who have had distinguished careers, including being mayor of major cities such as the Senator from California, Mrs. FEINSTEIN, and many of us may disagree philosophically on certain subjects, but if you were to ask any city official, any mayor, any city commissioner, city council member in America what the most serious problem is, they will not say, as you might expect, the crime problem or the welfare problem or other problems like that. They would say it is unfunded mandates. I had the honor of serving as mayor for three terms in the city of Tulsa, OK, with a half-million people.

There are so many aspects of unfunded mandates that people do not talk about because sometimes it is politically sensitive to talk about it, such as the Davis-Bacon Act and how that affects what we do with capital improvements in many of our large cities.

I can remember when I became mayor of the city of Tulsa, even though I was conservative it was very uncomfortable to do this. I had to pass a 1-cent sales tax increase for capital improvement because our city had been neglected in its infrastructure. Unfortunately, it is a political reality. Until you can visibly see the problems, you do not really do anything about it. So we passed it.

We calculated afterward that, if we had not had to comply with the Davis-Bacon Act, the taxpayers would have benefited so much more than they did. Without the Davis-Bacon Act, we could have produced 17 percent more in capital improvements for the citizens of Tulsa. Keep in mind this is all totally funded within the city with a 1-cent sales tax increase—6 more miles of roads and streets within one city, Tulsa, OK; 34 more miles of water and sewer lines. And we could have hired—this is simply the labor issue that you hear so much about—we could have hired 500 more people during that timeframe. At that time our unemployment was high. It was something that we needed. So it was one of those deals where no one would have been punished by our successfully not having to serve under the mandates of the Davis-Bacon Act.

A lot of us in Oklahoma put the pencil to these things so that we would know how many dollars it saved. The motor-voter law that came in is going to cost about $1 million a year. We are still working with that right now. That was something that came in that sounded very good when it surfaced. A lot of the authorities were certainly well meaning. But it was a very expensive thing for the people of Oklahoma. We went and looked at some of the things that happened in the city. Certainly we all know or are sensitive today to the League of Cities which is having their annual meeting here in Washington.

In one city, Oklahoma City, the compliance with storm water management and the Clean Water Act, in Oklahoma City alone it is estimated to be $2.7 million. The transportation regulations, which is the metric conversion, some of their anticipated fees are in excess of $2 million over the next 5 years. Land use regulations—that is the recycling and landfill requirements that have come—$2.5 million; the Clean Water Act, Safe Drinking Water Act is somewhere in the millions. We cannot even put the pencil to that.

In my city of Tulsa, OK, the other large city in Oklahoma, the Clean Water Act compliance was $10 million. The Safe Drinking Water Act was $16 million. The solid waste regulations, $700,000. And the lead-based paint, because it is a unique industry which we have there, it will cost in excess of $1 million. But when you look at the smaller communities like Broken Arrow, OK, the Clean Water Act, the storm water regulations were $100,000; the safe drinking water regulations were $40,000. This is a small community that has a very difficult time making ends meet. Yet, they look at these and they wonder why is it that we in Washington somehow have this infinite wisdom that we know what is better for them and we are willing to mandate things for them to do. Yet, we are not going to fund it.

I think if we face the reality and the truth, Mr. President, I suggest that it is because people in Washington, after being here for a while, cannot resist the insatiable appetite to spend money we do not have. One tricky way of doing that is to take credit for something politically at home in terms of the environment or something that we are needing to do that generally the people want and turn around and cause the people at home to pay for it.

I think we should look at this in another way, also. That is, what is going to happen with the frustration around the country if we do not do this? I was heartened the other day to see what is happening in Catron County, NM. In the frustration of dealing with the U.S. Forest Service, they enacted the U.S. Constitution as a county ordinance and put the Federal officials on notice to show up at the county supervisors meeting to get permission to impose future mandates.

I think we are looking at something here that either we do, or it is going to be done for us. I have never been prouder of an organization that is able to come in on both the House and Senate side and recognize that this is not a Republican program, this is not a Democratic program, this is not a conservative or liberal program; this is something that everyone is for if they are really for getting the maximum out of the tax dollars that are paid.

So, again, let me throw all the accolades I can on the distinguished Senator from Idaho, who has been so effective in getting this through. Thank you on behalf of all America.

I yield the floor.

Mr. KEMPTHORNE. Mr. President, I want to thank the Senator from Oklahoma. Not only is he a tremendous addition to the U.S. Senate, but his experience as a former mayor—I really think there are few training grounds that can better equip you for the issues we deal with than to be a mayor who deals with the pragmatic issues of government. He is a welcome addition here.

I yield 7 minutes to the chairman of the Budget Committee, the Senator from New Mexico, Senator DOMENICI.

Mr. DOMENICI. Mr. President, I know that the occupant of the chair would like the Senate to finish its business at the earliest possible moment. While he has not told me that, it seems to me that is the attitude he exhibited when I told him I was going to speak. I promise you that it will be reasonably interesting and very, very short.

First, let me say that this bill could not be passed by the U.S. Senate, this conference, at a better time, because in the confines of this city over the last 72 hours, councilmen and mayors and councilwomen from all across America were here as part of the National League of Cities' conference. I used to belong to that organization many years ago when I was an ex officio

mayor of my home city. And our distinguished Senator, to whom we extend accolades here today, Senator KEMPTHORNE, also served as mayor, but much later than I. I knew about the government way back then, and he knew about it even more vividly.

But I might say to the Senate that there is no question that the exhilaration in the language and words of thanks and profuse gratitude from those who came from far and wide across America as mayors and council people, saying this was the first step in some kind of revitalization of federalism in a prudent and realistic manner, seem to me to be right on the mark. We were on the mark when we passed it.

So this bill begins a redefinition of the relationship between the Federal Government, States, and local governments and even our Indian tribes. In addition, due to the provisions of title II of this bill, it also begins a little bit to move the relationship of the Federal Government's regulatory processes, vis-a-vis the private sector, in a direction of somewhat more accountability for the bureaucracy's actions that bind our American people and business people. We are not there yet on private sector mandates. This is the very first step.

In the past, we have piled mandates on the States and the American people with very little idea of their economic impact. It seems to me these mandates were imposed with too much confidence that we could leave very openended, generalized kinds of authority to the regulators, expecting them to establish commonsense regulations. Instead, we have found the exact opposite. In many instances, you have to stretch your mind in terms of trying to figure out how they could arrive at certain regulations from the laws we have passed.

So, at the very best, we did not fully understand the cost of our laws, the cost and implications of our regulations on State and local governments and tribal governments, or the private sector. At the worst, we had no idea how much these laws and regulations cost the American people. One estimate places the aggregate cost of existing mandates from hundreds of laws and thousands of regulations at $580 billion annually.

Somebody pays that and somewhere it finds itself in either the cost of living of our people, or the cost of buying goods and services from our companies, because this huge cost does not just disappear into the ether. It is there every day, in our front rooms, kitchens, on our grocery shelves, the furniture and gasoline we buy, and all of the other things that we have seen fit to regulate without any real evidence of the risk and the cost and how it affects people.

In my own State—I repeat to the Senate—local officials, whether it be the secretary of state or labor implementing motor vehicle registrations, or the mayor of the little town of Las Vegas, NM, attempting to meet the needs of his small city, I have heard their appeals and they clearly are tired of the Federal Government telling them precisely how to do things by regulation when they believe they could do just as well in different ways at less cost to their people.

Small business in New Mexico first points to Federal regulations when asked what is slowing down employment and economic growth and causing them to expand less than they think they could. Their answer, I repeat, is most frequently: Regulations that burden us unduly, that cost more than they are worth. They are even raising this today more frequently than they are talking about higher taxes and how taxes burden them.

That is not to say that taxes are not a burden to small business and that they would not like to see some relief. But I am giving you my best version of what I have heard for the last 14 months, because I did call small business together in New Mexico. We had an advocacy group and we hold it together, and we have had about 800 small businesses go to five cities and just lay before me what is wrong with the Federal Government. It comes up over and over again that they are being regulated beyond belief, at costs that are significant, with achievements and goals that are irrelevant or very misleading in terms of their worth.

So I am hopeful that this bill will change the culture of the Federal Government by modifying the process by which we impose mandates on our people. This bill requires Congress and Federal regulatory agencies to consider the impact of mandates before they are legislated and implemented.

I congratulate Senator KEMPTHORNE on this bill. I congratulate his staff and my staff, some of them from the Budget Committee. He is just a freshman Senator, but actually we have all found that he is a powerful one and a good one. He introduced the bill, and our leader, Senator DOLE, said, ''Manage it, since you feel so strongly about it.''

I remember him asking me, ''Do you think I can do it? What is managing a bill all about?''

And I said, ''Nobody can tell you until you have done it.''

I asked him the other day, and he had a mixed reaction to it all. He is not so leery about managing another one, but he was not totally sanguine about what he had to go through either.

We do have to go through some contortions here on the floor to accommodate fellow Senators. He, obviously, had to do that. And for some who wanted to delay this process, he had to do that.

But over the past 2 years I helped where I could and I believe we strengthened the bill in many respects. First, through Senator EXON's and my efforts, the point of order in this bill has been broadened to apply to all legislation and the bill's new legislative mandate control procedures have been folded into the Budget Act, where we have established precedents to show us how a point of order will work and how it will not work.

Second, Senators NICKLES, DORGAN and myself have worked to make sure that the new procedures in this bill apply to the private sector.

This bill may be just a start in that direction, but let me suggest for those who are overburdened in the private sector, this bill will send a signal that we have not forgotten about them as we talk about mandates. Because many small businesses in America, because of the type of regulations being imposed and the attitude of those who impose it, believe the Federal Government is their adversary, their enemy, not their friend, not working in partnership and cooperation to see that regulations and the mandates of our laws get carried out. This bill is going to make one first step. Agencies are going to have to assess the impact on small business, and it holds agencies accountable for their actions. There is one judicial review process that will be available to them.

I am very hopeful that, as we move through regulatory reform, we will find some more precise and better ways to address the huge, huge almost malaise that is out there from the regulations and that we will start to make sense of it. And if, in a couple of years, the small business community is saying, ''Our Government cares about us, they work with us, the regulators work with us instead of starting as enemies and wanting to penalize us, to fine us,'' we will have made a very giant step in the right direction.

I thank Senator KEMPTHORNE for yielding me time and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I wish to thank Senator DOMENICI for his comments. Again, we have a former mayor who has just spoken, and who, from experience, knows what these unfunded mandates are all about, but more importantly helped do something about it. During what was the Christmas recess, when, traditionally, there is some time off, we did not take the time off. We worked diligently so that we could be ready with S. 1, so that it could be ready the first day.

So I appreciate Senator DOMENICI's help on that. And to acknowledge his staff, Bill Hoagland, Austin Smythe, and Kay Davies, who worked diligently with us through this process.

Mr. President, I also think it is worth noting—and this is important—that of the conferees that were appointed—5 in the Senate, 8 in the House; a total of 13—we stated going into this, Senator GLENN has affirmed this point repeatedly, that this was a bipartisan effort.

I think it is significant that three Democrat Members of the House were

appointed to the conference and not all three had voted for this, which, at that time, was H.R. 5 in the Senate. Not all voted for it but, significantly, all Members, all 13 conferees, signed this conference report. CARDISS COLLINS, EDOLPHUS TOWNS, and JOE MOAKLEY, we want to thank them for their efforts throughout this process. Again, you have a conference report now that has been unanimously signed by all conferees.

Mr. ROTH. Mr. President, as Chairman of the Governmental Affairs Committee, I am pleased to join with the Senator from Idaho in bringing to the floor this conference agreement on the unfunded mandates legislation. In chairing the conference on S. 1, Senator KEMPTHORNE did an excellent job of preserving the strong bipartisan support for this important reform that was the hallmark of its passage in both Houses.

This bill, as it now appears before us, is a careful balance of the demands for strong, effective reform, with the necessity for reasonable procedures and practical requirements. For example, we have provided for judicial review of agency compliance with requirements for certain types of analysis of regulatory impacts but without allowing such review to become a device that grinds the regulatory process to a halt. We require agencies to seek the least costly or least burdensome option when developing regulations but we only require that they do so for a reasonable number of alternatives.

We have also struck fair compromises where the two versions of the legislation imposed differing requirements. For example, we now require a Congressional Budget Office analysis of any mandate on the private sector that exceeds $100, million per year in costs while the original Senate bill had set the threshold at $200, million and the House threshold had been $50, million. We have also tailored the point of order provisions to the unique procedural needs of each of the two Houses.

And while the legislation aims primarily at future Federal mandates in its point of order and regulatory procedures provisions, it also acknowledges that existing mandates may need to be rethought. It does this by charging the Advisory Commission on Intergovernmental Relations with studying and reporting to us on effects of the current burdens imposed by such mandates. It asks ACIR to recommend how best to end mandates that are obsolete or duplicative. It also asks for recommendations on how we might grant State and local governments more flexibility in complying with those mandates that ought to be retained.

In doing all of this, the conferees have developed a final version of this much-needed reform that I can strongly commend to my colleagues. This is due in large measure, as I have already mentioned, to the diligent work of Senator KEMPTHORNE, who has long championed this reform. He and his staff are to be commended for bringing us this far.

I also want to acknowledge the active role of Senator GLENN in shaping this final product. Senator GLENN and his staff have worked very hard over the past year and a half, to ensure that this legislation was able to have solid bipartisan support.

I am pleased to have worked with my two colleagues, and with the other conferees, to get us to this point. I know that my own staff has spent many long hours over the past several months to help in this effort, working closely with the staffs of the other conferees.

The bill now before us represents a landmark reform in the relationship between the Federal Government, and State and local governments. I urge all Senators to give it their strong support.

Mr. KEMPTHORNE. Mr. President, I thank Senator ROTH again, as I mentioned earlier, for his leadership and for the assistance of his staff, Frank Polk and John Mercer.

TREATMENT OF DISABILITY LAWS UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995

Mr. HARKIN. Mr. President, I would like to enter into a colloquy with Senators EXON and GLENN, floor managers of the Unfunded Mandates Reform Act of 1995, regarding the impact of this legislation on the Americans With Disabilities Act [ADA], title V of the Rehabilitation Act of 1973, and the Individuals With Disabilities Education Act [IDEA].

Mr. EXON. I would be pleased to enter into a colloquy with my colleague, Mr. HARKIN, who served as the chairman of the Subcommittee on Disability Policy of the Committee on Labor and Human Resources from 1987–95 and is currently ranking member of the subcommittee.

Mr. GLENN. I too would be pleased to enter into a colloquy with Mr. HARKIN, who was also the chief sponsor of the ADA and the most recent bills reauthorizing the Rehabilitation Act of 1973 and the IDEA.

Mr. HARKIN. The ADA and sections 503 and 504 of the Rehabilitation Act of 1973 are civil rights statutes protecting individuals from discrimination on the basis of disability. It is my understanding that these statutes are explicitly excluded from coverage under the Unfunded Mandates Reform Act of 1995. Is my understanding correct?

Mr. GLENN. The Senator is correct. The ADA and sections 503 and 504 of the Rehabilitation Act of 1973 are explicitly excluded from coverage under the Unfunded Mandates Reform Act of 1995. Specifically, the bill provides that the provisions of this Act shall not apply to any provision in a bill or joint resolution before Congress and any provision in any proposed or final Federal regulation that establishes or enforces any statutory rights that prohibit discrimination on the basis of * * * handicapped or disability status.

Mr. HARKIN. I thank the Senator. It is also my understanding that the Unfunded Mandates Reform Act of 1995 includes a definition of the term Federal intergovernmental mandate and this definition explicitly excludes discretionary grant programs—except certain entitlement programs—that is, any provision in a bill or joint resolution that includes a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

IDEA is a voluntary discretionary Federal program. Therefore, it is my understanding that IDEA is not subject to the provisions of the Unfunded Mandates Reform Act of 1995 because it is not considered a Federal intergovernmental mandate. Is my understanding correct?

Mr. EXON. The Senator is correct. Because IDEA is a voluntary discretionary Federal program, it is not considered a Federal intergovernmental mandate. Therefore, none of the provisions applicable to Federal intergovernmental mandates included in the legislation apply to IDEA.

Mr. HARKIN. As the Senator knows, part B of IDEA—also known as Public Law 94–142—was enacted in 1975. Both the House and Senate reports that accompany the original legislation clearly attribute the impetus for the act to two Federal court decisions rendered in 1971 and 1972. As the Senate report states, passage of the act followed a series of landmark court cases establishing in law the right to education of all handicapped children. The U.S. Supreme Court in *Smith* v. *Robinson,* 468 U.S. 992, recognized that part B of IDEA is a comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children. The Court cited another portion of the Senate report, which stated, ''It is the intent of the Committee to establish and protect the right to education for all handicapped children and to provide assistance to the states in carrying out their responsibilities under State law and the Constitution of the United States to provide equal protection under the law.'' The Supreme Court then explained that ''The [IDEA] was an attempt to relieve the fiscal burden placed on States and localities by their responsibility to provide education of all handicapped children.''

It is my understanding that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to any provision in a bill or joint resolution before Congress that enforces constitutional rights of individuals. In light of the statements of congressional intent and the conclusions reached by the U.S. Supreme Court, would you agree with me that IDEA enforces constitutional rights of individuals and as such is excluded from coverage under the Unfunded Mandates Reform Act of 1995?

Mr. EXON. I agree with the Senator's conclusion in light of the statements of congressional intent he cited to and

the conclusions reached by the U.S. Supreme Court.

Mr. HARKIN. It is also my understanding that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to IDEA because, like the ADA and section 504 of the Rehabilitation Act of 1973, IDEA is a civil rights statute that establishes or enforces statutory rights that prohibit discrimination on the basis of handicapped or disability status.

Mr. EXON. I agree with that conclusion.

Mr. HARKIN. I thank the Senator for entering into this colloquy with me. I ask unanimous consent that a memorandum prepared by the American Law Division of the Congressional Research Service regarding the applicability of the Unfunded Mandates Reform Act of 1995 to the ADA, IDEA, and the Rehabilitation Act of 1973 be printed in the RECORD.

Mr. GLENN. I thank the Senator for raising these important issues.

Mr. EXON. I also wish to thank him for raising these issues.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, January 23, 1995.

To: Senator Harkin, Attention: Bob Silverstein.

From: American Law Division.

Subject: Unfunded Federal Mandates Bill and the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

This memorandum is furnished in response to your request for an analysis of the language of S. 1 and H.R. 5, 104th Cong., 1st Sess., to determine if the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 et seq., and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., would be covered under these bills. It should be emphasized that these bills are currently undergoing extensive debate and amendment. This memorandum is based on the language contained in the Senate bill as reported out of the Senate Governmental Affairs Committee on January 11, 1995 and the Senate Budget Committee on January 12, 1995, and on the language contained in the House bill as reported out of the House Committee on Rules on January 13, 1995.

These bills are both referred to as the ''Unfunded Mandate Reform Act of 1995.'' Basically, both bills, with some variance in details, would establish new congressional procedures for identifying and controlling certain existing as well as new unfunded federal mandates. The bills set forth new congressional procedures that would prohibit the House and Senate from considering legislation that creates new mandates or changes existing mandates from direct costs over a statutory threshold unless it also includes a source of financing or a guarantee that any such mandates will be repealed if the financing is not provided. Other provisions in the bills relate to the establishment of a Commission on Unfunded Federal Mandates that is required to review existing federal mandates to state, local, and tribal governments and to the private sector, and to make recommendations regarding possible changes in these mandates. There are also provisions requiring federal agencies to assess the effect of federal regulations on state, local and tribal governments and on the private sector and to make public such assessments for federal mandates costing more than $100 million to implement.

Both bills contain a section entitled ''Limitation on Application.''[1] Section 4 of S. 1 provides that ''this part shall not apply to any provision in a Federal statute or a proposed or final Federal regulation that—(1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, 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; or (6) the President designates as emergency legislative and that the Congress so designates in statute.'' It would appear that both the ADA and IDEA would be exempted from the requirements of the Unfunded Mandate Act based upon these exceptions, and IDEA would also come under the exception to the definition of Federal Intergovernmental Mandate for conditions of financial assistance.

The ADA would apparently be covered by the second exception, and possibly the first. The ADA provides, in part, that its purpose is ''to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'' [2] The legislative history of the statute is replete with discussions of discriminatory actions and comparisons with civil rights protections given to individuals on the basis of race.[3] An examination of statutes that are commonly referred to as civil rights statutes, for example, title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, indicates that the broadest common denominator is that these statutes prohibit discrimination against a particular class or particular classes of individuals. Using this criteria, it would appear that the ADA would be considered to be a civil rights statute as the term is used in the second exception to the unfunded mandates legislation. It is also possible that the first exception, regarding statutes that enforce constitutional rights, might also be applicable to the ADA. The ADA states, in part, that its purpose is ''to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.''[4] It could be argued that this language, coupled with findings concerning the constitutional rights of individuals with disabilities such as were made in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), would suffice to bring the ADA under the first exception in the unfunded mandates legislation.

IDEA would apparently be covered by the exception to the definition of federal intergovernmental mandate contained in Section 3 of S. 1 and Section 301 of H.R. 5 as well as by the first two exceptions regarding the enforcement of constitutional rights and the exception for civil rights statutes contained in the ''Limitation on Application'' provisions discussed above. The term ''Federal Intergovernmental Mandate'' is defined in both the Senate and House bills as meaning ''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. . .''[5] IDEA provides funds to the states so that they may provide a free appropriate public education to all children with disabilities. As a condition for the receipt of these funds, the act contains detailed requirements for the provision of an education. Clearly, IDEA is a grants statute which imposes certain conditions upon the receipt of federal funds. As such it would be covered by the exception quoted above.

IDEA may also be exempted from coverage by virtue of the two exceptions regarding constitutional rights and civil rights statutes.[6] IDEA was originally enacted in 1975 in response to two judicial decisions[7] which found certain constitutional requirements for an education for children with disabilities. In addition, the Supreme Court in *Smith v. Robinson*, 468 U.S. 992 (1984), stated that ''The EHA (now called IDEA) is a comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children.'' At 1009. It could be argued that IDEA is, then, a statute enacted to help enforce constitutional rights. Similarly, IDEA specifically states that part of its purpose is to assure that the rights of children with disabilities and their parents or guardians are protected.[8] These rights are further defined in the statute. An examination of the legislative history of the act indicates that it was in response to the exclusion of children with disabilities from a public school education.[9] Since exclusion would appear to fall within the parameters of the term discrimination, it would appear that IDEA could also be classified as a civil rights statute.

We hope this information is useful to you. If we can be of further assistance, please call us.

KATHY SWENDIMAN,
NANCY LEE JONES,
Legislative Attorneys.

FOOTNOTES

[1] Section 4 of H.R. 5 sets forth a ''Limitation on Application'' section which is identical to that contained in S. 1 except for the addition, in committee, of a new (7) which reads ''pertains to Social Security''.

[2] 42 U.S.C. §12101(b)(1).

[3] See generally, S. Rep. No. 116, 101st Cong., 1st Sess. (1989).

[4] 42 U.S.C. §12101(b)(4).

[5] Section 3 of S. 1 and Section 301 of H.R. 5.

[6] Section 4 (1) and (2) of S. 1 and H.R. 5 read as follows: ''This Act shall not apply to any provision in a Federal statute or a proposed or final Federal regulation, that—(1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status. . .''

[7] *PARC v. State of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972), and *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

[8] 20 U.S.C. §1400(c).

[9] H. Rep. No. 332, 94th Cong., 1st Sess. 11 (1975); S. Rep. No. 168, 94th Cong., 1st Sess., *reprinted in 1975 U.S. Code Cong. & Ad. News 1425, 1432.*

Footnotes at the end of the memorandum.

Mr. KEMPTHORNE. Mr. President, I know that the majority leader wishes to make comments on this issue. Until his arrival, I suggest the absence of a quorum.

The PRESIDING OFFICER. Equally divided?

Mr. KEMPTHORNE. Equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

ANTIDERIVATIVE LEGISLATION

Mr. DORGAN. Mr. President, I will soon introduce a piece of legislation dealing with derivatives. The term ''derivative'' is not readily understood by most.

We read in the newspapers and hear on television reports these days about derivatives. The most recent news story, of course, was about a 28-year-old young fellow, an employee of the Barings Bank of England, a 230-year-old bank.

This young employee of the Barings Bank of England was stationed in Singapore. In Singapore as an employee of an English bank he was betting on the Nikkei index on the Japanese stock exchange. Turns out that he lost $1 billion, and a 230-year-old British bank went under.

This is not the first time we have heard about derivatives. We heard about derivatives with respect to Orange County, CA. We heard about derivative failures across this country in recent years and it has alarmed some people, and justifiably so. Some who thought their retirement earnings were safe found out that the mutual fund they thought they invested in was, in fact, leveraged with derivatives.

Schoolteachers, school districts, cities, elderly people who had saved for their retirement, all have discovered in recent years the risk and potential danger of derivative trading when they do not know what they are doing. There are worldwide some $30 to $35 trillion in derivative contracts.

Derivatives in another manner and another name can be simple hedging, and hedging is a very customary thing to have happened. Banks hedge, farmers hedge. Hedging is a customary transaction. I have no trouble with that. Derivatives have become an international financial game and, in fact, some countries call it wagering or betting.

In this country, we have some very large banks that have begun trading in derivatives on their own account. They are involved in proprietary trading and derivatives in their own account. Not for customers.

The difficulty I have with that is when a financial institution whose deposits are insured by the American taxpayers with Federal deposit insurance, starts putting up a keno pit in their lobby and gambling effectively on derivatives, believing if they lose their shirt, the American taxpayers will pay. That is wrong. I do not believe financial institutions whose deposits are insured by the Federal Government should be involved in any case or under any conditions in trading for their own proprietary accounts in derivatives. It is far too risky and far too fraught with potential failure.

In this case, the failure will be underwritten by the American taxpayers. We have seen a chapter of this in the past. It was called junk bonds in savings and loans. Let us not see that repeat itself in this country with banks and derivatives.

Now, most American banks are not involved in derivative trading. Ninety-nine percent of them are not. But we have several very large banks in the country, some of the largest, that are involved in derivatives, with risks up to 500 percent of their entire capital structure.

I will introduce legislation that I introduced in the previous Congress. It is very simple. It does not prohibit traditional hedging by financial institutions for the purposes of hedging risk. It does prevent and prohibit institutions whose deposits are insured by the Federal Government from trading on a proprietary basis in derivatives. That makes no sense, and we ought to stop it.

The fact is we have Federal regulators involved in looking over their shoulders on derivatives trading, but is like having traffic cops involved in looking at computer crime. It simply does not work.

We have a $30 to $35 trillion dollar worldwide derivative business, and we see what can happen. We see what happens when a 28-year-old, working for a British bank, living in Singapore, bets on Japanese stocks and loses $1 billion, and everyone stands around looking surprised.

We saw everyone scratching their heads looking surprised that Orange County went bankrupt. It is fine to stand up and decide that the regulators have to do their jobs, and we as legislators ought to do ours, and ours ought to be to say to all financial institutions in this country, if you have Federal deposit insurance, you have no business trading in derivatives.

The American taxpayers do not deserve to be stuck with your losses if you want to gamble with their money. I hope some of my colleagues would see merit in this legislation and help me pass it.

I recall the legislation that I offered that finally passed the Congress prohibiting savings and loans from buying junk bonds. There was a struggle to get that passed, but I finally did. The reason I got it passed was, unfortunately, we had already lost a bundle by having S&L's buy junk bonds. They are up to their neck in debt with junk bonds.

It should never have happened. The ultimate absurdity was the Federal Government ended up owning junk bonds in the Taj Mahal Casino because an S&L that went bankrupt owned Taj Mahal junk bonds that were nonperformers and the Federal Government ended up owning bank junk bonds in a casino.

That is the absurdity where we got with junk bonds, and we will head the same way with derivatives, mark my words, unless we decide that institutions whose deposits are insured ought not to bet on derivatives.

That is the purpose of my legislation. My hope is that several colleagues will see fit to pass this legislation in the near future. I thank may colleague from Ohio for indulging me with his statement.

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

I ask that the time be charged to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. GLENN. Mr. President, in thanking people who were instrumental in putting together this kind of legislation, I think we probably were remiss in not thanking Tony Coe, who did so much in the legislative counsel's office in putting together draft after draft after draft of this.

I saw him walking through the Chamber a moment ago, and I want him to step outside just for a moment. I say to Tony, we thank him for all his efforts. I know he does long hours over in the legislative counsel's office putting together some of these legislative proposals which have to be written and rewritten, as this one was.

We were spelling out a while ago people instrumental in getting this legislation through, and Tony certainly deserves to be commended for his efforts on behalf of this legislation, too, and we are glad to recognize him for it.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I want to add my thanks also to Mr. Tony Coe and all that he has done. I think so often people do not realize the intricacies of this and the hours that are put in, and yet, time after time, we require staff to answer the call. Tony has done that in an exemplary fashion. We thank him for that. He has helped significantly, I think, in changing the mindset of how Congress will operate and he can be proud of it.

Mr. President, I suggest the absence of a quorum and ask that the time be equally divided.