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The Honorable John Conyers, Jr.
Chairman, Committee on Government Operations
House of Representatives

The Honorable Edolphus Towns
Chairman, Subcommittee on Human Resources
and Intergovernmental Relations,
Committee on Government Operations
House of Representatives

Over the past two decades, the fiscal distress at all levels of government contributed to a dramatic shift in American intergovernmental relations. Federal aid to state and local governments peaked in 1978, then began to decline as a proportion of total state and local spending. At the same time, federal policymaking began shifting from an incentive-based system of grants-in-aid designed to encourage state and local governments to perform an activity or provide a service to a more command-based system requiring state and local action under federal regulation.

This letter responds to your request for information on the perspectives of state and local government representatives on the impact of unfunded federal mandates. We obtained our information through reviews of mandate studies and discussions with public sector associations; federal, state, and local officials; and researchers who have studied the mandate issue. Since our objective was to identify mandate concerns from the viewpoint of state and local governments, we did not evaluate the extent to which their views differ from federal perspectives. As agreed with your offices, we did not attempt to independently verify the accuracy of the data they provided or to substantiate the validity of examples offered to illustrate the impact of mandates (see app. I for a description of our scope and methodology).

Mandates are generally defined as any constitutional, statutory, or regulatory provision that imposes requirements on local governments for which they must

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absorb the costs. Before the 1970s, financial incentives were often provided with mandates to assist state and local governments in implementing them. However, as the condition of the federal budget worsened, fewer financial incentives accompanied federal mandates. In addition, the ability of state and local governments to absorb mandate costs declined as they faced their own budget problems.

The major concerns of state and local officials we contacted were (1) the cost of implementing some mandates; (2) the lack of flexibility and impact of mandates on local budget decisions and spending priorities; and (3) the absence of conclusive scientific evidence (for example in the environmental protection area) to support the need for some mandate prescriptions (see app. II for the views of state and local representatives).

From 1981 through 1990, 27 new federal laws or statutory amendments were enacted with provisions that regulate state and local governments (see app. III). State and local officials noted that exact estimates of the costs of implementing unfunded mandates are difficult to sort out. However, several jurisdictions have commissioned studies to estimate their costs from federal and/or state mandates (see app. IV for summaries of the findings of three selected mandate cost studies).

Growing concern about the effects of mandates on state and local governments has generated a variety of countermeasures, but no uniform solutions have been found. For example, some states require the development of cost estimates for proposed legislation, to force legislatures to consider the costs of potential mandates before they are voted on. Legislative initiatives to restrict the passage of unfunded mandates have been introduced at the state and federal levels of government. Thirty-nine separate mandate relief bills had been introduced in the 103rd Congress as of December 1993 (see app. V).

Copies of this letter are being sent to interested parties and made available to others on request. If you have any questions, please call me on (202) 512-6805.


Gregory J. McDonald
Director of Operations

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Abbreviations

EPA Environmental Protection Agency

SCOPE AND METHODOLOGY

We have reviewed the issue of unfunded mandates several times in recent years, including studies of state experiences with legislative mandates and trends in intergovernmental relations.¹ At the request of the Chairman, House Committee on Government Operations and the Chairman of its Subcommittee on Human Resources and Intergovernmental Relations, we augmented this work through reviews of the current literature and discussions with affected parties to identify the major concerns of state and local governments about unfunded mandates.

To identify and better understand mandate concerns at the state and local levels of government, we discussed these concerns with a number of public sector associations (see table 1), state and local officials (see table 2), several researchers who have completed studies of the mandate issue, and federal officials at the Environmental Protection Agency. The states and localities we visited were recommended by public associations, committee staff, or others as illustrative of state and local mandate concerns.

Table I.1: Public Sector Associations Interviewed

Advisory Commission on Intergovernmental Relations
Association of State Drinking Water Administrators
National Association of Counties
National Association of Towns and Townships
National Conference of State Legislatures
National League of Cities

¹Legislative Mandates: State Experiences Offer Insights for Federal Action (GAO/HRD-88-75, Sept. 1988).

Federal-State-Local Relations: Trends of the Past Decade and Emerging Issues (GAO/HRD-90-34, Mar. 1990).

Table I.2: State and Local Officials Interviewed

<p>California: City officials of Davis, Lodi, Merced, Orinda and Sacramento; and the California Department of Finance, Department of Health and Welfare, and the California League of Cities</p>
<p>Michigan: Michigan Department of Management and Budget</p>
<p>North Carolina: City officials from Valdese, Hickory, and Winston-Salem; and the North Carolina League of Municipalities</p>
<p>Ohio: Columbus Department of Health</p>
<p>Wisconsin: Wisconsin Department of Natural Resources</p>

In California, North Carolina, and Wisconsin, we also obtained information on efforts by state and local governments to cope with mandate burdens by working in partnership with the governmental unit imposing the mandate.

We also reviewed three major studies prepared by the cities of Anchorage, Alaska; Chicago, Illinois; and Columbus, Ohio, on how unfunded mandates affected them. (See app. IV).

Our purpose in gathering the views of state and local officials was to illustrate their perceptions of how mandates affected them. As a result, we did not attempt to weigh the extent to which their views might differ from those held by affected federal agency officials. In addition, we did not attempt to independently verify the accuracy of data they provided or substantiate their examples of mandate impacts. We completed our work between February 1993 and February 1994.

STATE AND LOCAL REPRESENTATIVES'
PERSPECTIVES ON UNFUNDED MANDATES

BACKGROUND

Considerable debate exists over the definition of federal mandates. Mandates are broadly defined as any constitutional, statutory, or regulatory provision imposing requirements on local governments for which they must absorb the cost. Much of the debate centers on whether these added costs result, for example, from conditions of grants-in-aid accepted "voluntarily" by recipients. Those who feel the conditions of grants-in-aid represent a mandate note that the conditions may add a new function for local governments to administer; require that local governments fund a part of this new function themselves; require specific means for achieving the mandate locally; or set higher standards of service than local governments would set themselves.

A recent example in the Medicaid program illustrates the different opinions about what constitutes a federal mandate. In 1991, as a condition of continued receipt of federal funds under the Medicaid program, states were required to broaden program eligibility. Since states share in Medicaid program costs, they generally viewed this broadening of program eligibility as an unfunded mandate because it resulted from a federal order and increased state costs. Others, however, viewed this broadening of program eligibility as a condition of grant-in-aid accepted voluntarily by the states rather than an unfunded mandate.

The character of federal mandates has changed significantly over time. Before the 1970s, federal mandates often were accompanied by financial incentives to assist state and local governments in implementing them. For example, in the early 1970s with the passage of the Clean Air Act and Clean Water Act, the federal government allocated over \$18 billion nationwide for implementation. When the Americans with Disabilities Act was passed in 1990 to establish national standards to prohibit discrimination in public services and accommodations, very little federal funding was provided to state and local governments for implementation.¹

Growing concerns about the effects of intergovernmental mandates helped launch a broad array of efforts by the federal government to reform the regulatory process and to grant relief to state and local governments. By 1981, all three branches of the federal

¹Some local governments were able to obtain categorical grants-in-aid from the Department of Transportation for assistance in implementing the Americans with Disabilities Act.

government had taken actions designed to reduce the problems posed by excessive intergovernmental regulation, ease financial and compliance burdens, and simplify requirements. Although these efforts were most intense during the early years of the Reagan administration, they began during the 1970s and have gained prominence again in the 1990s.

For example, in 1976 the Supreme Court took up the mandate issue and barred the application of federal wage and hour regulations to state and local governments. In the early 1980s the Congress enacted a series of statutes to restrain the growth of federal intergovernmental regulation, including the Paperwork Reduction Act of 1980 to reduce or eliminate specific forms or requirements imposed through federal regulatory efforts; the Regulatory Flexibility Act of 1980 to ease federal regulatory burdens on small governmental jurisdictions (populations under 50,000) and small businesses; and the State and Local Cost Estimate Act of 1981 to increase congressional awareness of the costs proposed legislation would impose on state and local governments. More recently, 39 separate mandate relief bills had been introduced in the 103rd Congress as of December 1993. (See app. V.)

The Reagan administration also took a variety of administrative actions designed to reduce or to eliminate regulatory burdens. These included Executive Order 12291, which established a centralized regulatory review and clearance process within the Office of Management and Budget, and Executive Order 12612, which set forth criteria for federal agencies when proposing new legislation or rules that would significantly affect state and local governments.

Despite some early successes, federal mandate relief efforts did not achieve the intended results. A 1992 Advisory Commission on Intergovernmental Relations mandate study stated that despite the federal government's efforts to constrain the growth of intergovernmental regulation, the 1980s was an era of regulatory expansion. According to the Advisory Commission report, 27 new laws or major amendments to existing statutes were enacted in the 1980s, which imposed significant additional regulatory burdens on state or local governments. (See app. IV.) By comparison, 22 major pieces of intergovernmental regulation were adopted during the 1970s.

VIEWS OF STATE AND LOCAL REPRESENTATIVES

While the state and local officials we contacted concurred with the general objectives that mandates seek to achieve--such as breathable air, drinkable water, and public facility access for the disabled--they were concerned about the actual or perceived

consequences of specific, federal prescriptions on how to achieve those outcomes at the local level. State and local officials and interest groups cited three main concerns with mandates in their discussions with us: (1) the cost to implement mandates can be significant; (2) the lack of mandate flexibility can intrude on local budget decisions and drive spending priorities; and (3) available scientific evidence (for example, in the environmental protection area) is not conclusive on the need for some mandate prescriptions.

Mandate Costs Can Be Significant

State and local officials we contacted most often mentioned concerns about the costs of unfunded mandates. Although some local officials cited specific mandates, the cumulative effect of mandates on local budgets was a constant refrain of officials we contacted. Cities are subject to mandates directly from the federal government, such as the requirements in the Americans with Disabilities Act. States may also impose mandates on, or restrict funds to, local governments as an indirect result of mandates placed on them.

Several local officials also noted that states often add to the mandate burden by narrowly interpreting federal regulations or in some cases passing down requirements that are more restrictive than those passed down by the federal government. For example, a study conducted by Columbus, Ohio, stated that the Ohio Solid and Hazardous Waste law parallels most federal provisions of The Resource Conservation and Recovery Act of 1976, but also establishes more stringent standards for hazardous waste regulations. Also, court-imposed requirements can result in increased costs to state and local governments. For example, local jurisdictions have been required to build more prison facilities to comply with court-ordered minimum-space requirements for prisoners.

Although officials appreciate the potential value of mandates--for example, a goal of decreasing public health and environmental risks--several noted that the costs of implementing mandates are considerable for state and local governments. For example, several jurisdictions have prepared, or had prepared for them, studies estimating their costs from federal and/or state mandates. For example, Michigan estimated that its spending would rise from \$39.6 million to \$136.9 million (a 245-percent increase) over the 6-year period 1990 to 1995 due to federal Medicaid mandates. A 1991 Columbus, Ohio, study of federal and state mandates estimated that compliance with existing environmental mandates alone would cost Columbus \$1.1 billion over the next 10 years and consume nearly one-fourth of the city's budget by 1996. A Chicago study estimated that between 1992 and 1995, the city would spend over \$319 million on unfunded federal and state environmental mandates. Anchorage,

Alaska, estimated federal environmental regulations would cost it over \$429 million over the 10-year period 1991 to 2000. (See app. V for additional details on mandate cost studies.)

Although mandate cost studies paint an alarming picture when viewed independently, they often combine the costs of federal and state mandates, cover different time periods and programs, or contain limited information on the assumptions and methods used to estimate the costs associated with specific mandates. As a result, for example, comparing study results or assessing the extent to which the studies measure the direct impact of federal regulation, the impact of state imposed requirements, or the degree of efficiency in local operations is difficult.

Mandates Can Intrude on Local Budget Decisions

Officials we interviewed indicated that state and local spending priorities can be greatly affected by mandates. Officials also commented that they are not afforded sufficient input before regulations are drafted and added that inflexible mandates can result in impractical and wasteful expenditures.

The Anchorage study found that one of the more frustrating aspects of environmental mandates for mayors and other local officials--aside from the fiscal impact--was the loss of control over their budgets and decisionmaking powers. Mayors complained that higher levels of government set priorities and make decisions that have major impacts on municipal budgets and private-sector economic opportunities without consulting local officials.

Echoing this theme, the Chicago study stated that each time a city pays for an unfunded mandate opportunity costs should be considered. The study noted that making such public policy trade-offs are always difficult. For example, should the city pay the \$40 million required to "cocoon" a bridge to comply with federal Environmental Protection Agency (EPA) requirements for removing lead-based paint, or is the money better spent on police protection in high crime zones? Several officials contacted said that they feel constrained in their ability to assess local risks and make risk-based decisions for the use of scarce resources.

Officials we interviewed also expressed concern that they were losing control of their budgets due to the demands of federal mandates. For example, officials in Winston-Salem, North Carolina said that they are just beginning to realize the trade-offs they are having to make due to mandates. In the past, they were able to cover mandate costs from accumulated budget surpluses and federal funding that accompanied many mandates. Now many local governments are under fiscal stress as budget surpluses have declined or

disappeared, local tax burdens have increased, and the number and cumulative cost of federal mandates have grown. One official pointed out that the federal government needs to take the burden placed on local governments into consideration and set national priorities so that cities can tackle as many high-priority issues as their budgets permit. The official said that the federal government cannot expect the cities to solve every problem with limited budgets and little federal assistance.

The "one size fits all" approach used by the federal government to establish some mandate requirements was another concern of state and local governments. This approach prescribes an often inflexible set of minimum standards and processes for achieving mandate objectives that must be carried out by the entire nation. Officials told us that it is not reasonable to expect every city of every size in every geographical location to be able to do exactly the same thing efficiently and effectively.

In commenting on the inflexibility of mandate requirements, the Chicago study reported that federal regulations work best when they clearly specify the required outcome and leave implementation to the local authority in charge. According to the study, however, federal agencies often involve themselves in implementation issues that result in additional administrative burdens at the local level. For example, to meet the Clean Air Act's carbon monoxide standards, Chicago established a plan to minimize traffic jams to alleviate a primary source of carbon monoxide emissions. Although the city met the standards, as validated through federal monitoring, city officials believed that EPA demanded costly documentation to support that certain aspects of the plan were implemented.

The lack of flexibility associated with certain mandates was viewed by some officials we interviewed as causing impractical and wasteful expenditures, in some cases without regard for the diversity in community environmental situations, populations, tax bases, and policy needs. Local officials indicated that when imposing requirements--for example, for a new waste water treatment system or access to buildings or public facilities--differences among cities need to be considered. One example cited by the National Conference of State Legislatures was the transportation program for the disabled in Alexandria, Virginia. Alexandria had a nationally acclaimed program for using local taxicab companies to transport disabled persons door-to-door to any local destination at city expense. However, after implementing a mandated requirement to modify local buses to permit access for the disabled, the city could not afford to provide the taxicab service. As a result, those using wheelchairs now have to get to and from bus stops that can be some distance from their homes and destinations.

Another concern is that regulations are sometimes premised on certain geographic, climatic, or other conditions that do not hold true for all regions. For example, citing inflexible EPA requirements under the Clean Water Act, the International City/County Management Association commented

"Even where rainfall is less than 2 inches annually and groundwater contamination is not an issue, new or expanding landfills must have a composite liner and leachate collection system to avoid groundwater contamination if they accept more than 20 tons of landfill per day. In parts of the Southwest, desert dumping threatens to become a serious environmental threat as residents refuse to pay for expensive new landfill capacity."

Scientific Evidence Is Not Conclusive
on the Need for Some Mandate Prescriptions

The State and local officials we contacted were concerned that some mandate requirements are not based on sound scientific assessments. An official representing state drinking water administrators stated that many environmental regulations are implemented without current research to establish with certainty the level of risk and the costs and benefits of trying to reduce the risk. The official said that the lack of conclusive data often leads to regulations that are unreasonable, inefficient, or extremely costly.

For example, a Columbus, Ohio, Health Department official cited regulation of the herbicide atrazine, used widely on cornfields, as an example of the costliness of scientific uncertainty in federal Safe Drinking Water Act regulations. According to this official, because atrazine has been determined to be a potential carcinogen, EPA limits atrazine in drinking water to a maximum yearly average of 3 parts per billion. The Columbus official questioned the scientific basis for this limit and suggested that "at this level an adult would have to ingest about 3,000 gallons of contaminated water per day to be at risk." The Columbus official further noted that although the city's typical levels are far below 3 parts per billion, the city may be required to install costly EPA-specified technology for atrazine removal.

Current Mandate Relief Efforts

Measures to relieve the impact of unfunded mandates have been proposed at all levels of government, although no uniform or widespread solution has been found. Numerous bills designed to restrict the passage of unfunded mandates have been introduced in state and federal legislatures. Some states have adopted legislation that allows cities to opt out of compliance with any state mandates that are not accompanied with sufficient funding to

implement the requirements. Other jurisdictions rely on the fiscal note process, which requires the development of mandate cost estimates for proposed legislation, to force legislatures to review the costs of any potential mandate before it can be voted on.

The National Performance Review (NPR), a major management reform initiative by the Clinton administration, recommended that an Executive Order be issued to address the problems of unfunded federal mandates and regulatory relief. NPR also recommended authorization for cabinet secretaries and agency heads to obtain selective relief from regulations or mandates in programs they oversee. GAO concurred with this NPR recommendation and noted that increased regulatory requirements, preemptions, and mandates could force state and local governments to choose between meeting their service responsibilities and fulfilling national regulatory objectives. Executive Order No. 12866, signed September 30, 1993, on regulatory planning and review contained provisions that address state and local concerns about unfunded mandates. Among other steps to ease the mandate burden, the Order emphasized the need for regulatory agencies to consult with state and local officials before imposing regulations. It also confirms the continuing need to evaluate costs and benefits, recognizes the importance of sound science and risk assessment, and sets up a process for identifying regulatory priorities.

State and local officials we contacted stressed the belief that most of their concerns could be addressed if federal regulators allowed them to provide input before regulations were drafted. They believe that, under the present process, federal regulators view them as hostile parties to implementing national policy objectives rather than common stakeholders in responding to public health, safety, and welfare needs. Where their input is permitted through public hearings, it is seen as too little and too late to have a significant impact. They thought that if they provided earlier input, regulators would have a better understanding of diverse state and local conditions and the difficulty associated with one-size-fits-all prescriptions.

Federal waivers have been used as a means to recognize diverse state and local conditions in the implementation of national policy objectives. For example, in Wisconsin, the Water Supply Division of the Department of Natural Resources (DNR) was successful in obtaining a federal waiver allowing cities and municipalities that had secure wells to test for contaminants on a less frequent basis than those communities whose wells were at greater risk. This saved the communities and the Water Supply Division \$5.8 million that would have been needed for testing and monitoring in the first year of the program. The program is expected to save over \$15 million in the first 3 years (testing is on a 3-year cycle). Without the frequent contacts established between the Wisconsin

DNR, the Regional DNR, and EPA headquarters, Wisconsin DNR officials believe that the federal waiver would not have been approved.

EPA recognizes the need to make its regulatory requirements more flexible for small communities. Under requirements of the Regulatory Flexibility Act, EPA is trying to develop methods for obtaining small community input early in its development of environmental regulations. Although EPA has been successful in forming a number of groups to obtain local input, EPA's efforts have been hampered by fund shortages and personnel cuts in past years.

Efforts to more actively engage state and local government officials have not been limited to the federal level. For example, in 1993 several representatives from public sector associations, states, and local governments formed the Coalition for Environmental Mandate Reform designed to systematically address environmental mandate concerns through joint federal, state, and local partnerships. The coalition plans to

- identify and cost-out existing environmental mandates,
- establish a peer science advisory committee to monitor environmental mandates to determine whether they are based on sound scientific principles,
- identify and prioritize local environmental conditions,
- rank local environmental priorities based on costs required and benefits received,
- submit a prioritization plan to the state or federal EPA office for review and comment,
- solicit approval from the local community for a final environmental improvement plan to be followed by approval from the state and federal EPA office, and
- evaluate and measure compliance with environmental improvement plans.

Although this coalition was formed to address environmental mandates, an official from the group noted that their plan, if successful, could be expanded to apply to all federal and state mandates.

MAJOR FEDERAL LAWS AND STATUTORY AMENDMENTS REGULATING STATE
AND LOCAL GOVERNMENTS, 1981-90

	Title	Description
1.	Age Discrimination in Employment Act Amendments of 1986	Outlawed mandatory retirement at age 70, with a 7-year delay in coverage for police, firefighters, and college professors.
2.	Americans with Disabilities Act of 1990	Established comprehensive national standards to prohibit discrimination in public services and accommodations and to promote handicapped access to public buildings and transportation.
3.	Asbestos Hazard Emergency Response Act of 1986	Directed school districts to inspect for asbestos hazards, develop management response plans, and take necessary actions to protect health and the environment; required state review and approval of local management response plans.
4.	Cash Management Improvement Act of 1990	Created new management procedures for the disbursement of federal aid funds to states, resulting in an overall reduction of interest earned on federal funds by states.
5.	Child Abuse Amendments of 1984	Overturned federal court ruling and authorized the promulgation of "baby doe" regulations protecting seriously ill newborns.
6.	Civil Rights Restoration Act of 1987	Reversed Supreme Court ruling in <u>Grove City College v. Bell</u> and expanded institutional coverage of laws prohibiting racial, gender, handicapped, and age discrimination by recipients of federal assistance.
7.	Clean Air Act Amendments of 1990	Imposed strict new deadlines and requirements dealing with urban smog, municipal incinerators, and toxic emissions; enacted new program for controlling acid rain.
8.	Commercial Motor Vehicle Safety Act of 1986	Established minimum national standards for licensing and testing commercial and school bus drivers; directed states to issue and administer licenses by 1992 or risk 5-10 percent of major highway grants.
9.	Consolidated Omnibus Budget Reconciliation Act of 1985	Extended Medicare hospital insurance taxes and coverage to all new state and local government employees.

	Title	Description
10.	Drug Free Workplace Act of 1988	Required certification by all federal grantees and contractors of a drug-free workplace and creation of employee awareness, sanction, and treatment programs.
11.	Education of the Handicapped Act Amendments of 1986	Expanded coverage and services for preschool children, ages 3-5.
12.	Education of the Handicapped Act Amendments of 1990	Prevented states from claiming sovereign immunity under the 11th Amendment from law suits by parents seeking tuition reimbursement under the Handicapped Education Act, thereby reversing the Supreme Court's holding in <u>Dellmuth v. Muth</u> .
13.	Emergency Planning and Community Right-to-Know Act of 1986	Promulgated new national hazardous waste cleanup standards and timetables; established community right-to-know program, requiring state and local notification of potential hazards and dissemination of information to public; expanded local emergency response planning.
14.	Fair Housing Act Amendments of 1988	Extends Civil Rights Act of 1968 to cover the handicapped and families with children.
15.	Hazardous and Solid Waste Amendments of 1984	Reauthorized and strengthened scope and enforcement of the Resource Conservation and Recovery Act of 1976; increased waste management and cleanup requirements for owners and operators of active and closing facilities; required annual EPA inspections of state and locally operated hazardous waste facilities.
16.	Handicapped Children's Protection Act of 1986	Reversed Supreme Court decision in <u>Smith v. Robinson</u> to allow the recovery of attorneys' fees under the Education for all Handicapped Children Act.
17.	Highway Safety Amendments of 1984	Set forth uniform minimum national drinking age of 21.
18.	Lead Contamination Control Act of 1988	Amended Safe Drinking Water Act to require that states establish programs for assisting schools with testing and remedying lead contamination problems in drinking coolers.
19.	Ocean Dumping Ban Act of 1988	Outlaws remaining ocean dumping of municipal sewage sludge.
20.	Older Workers Benefit Protection Act of 1990	Overturns Supreme Court ruling in <u>Public Employees Retirement System of Ohio v. Betts</u> , broadening the Age Discrimination in Employment Act's prohibitions against discrimination in employee benefit plans.

	Title	Description
21.	Safe Drinking Water Act Amendments of 1986	Promulgated new procedures and timetables for setting national drinking water standards; established new monitoring requirements for public drinking water systems; tightened enforcement and penalties for noncomplying water systems.
22.	Social Security Amendments of 1983	Prohibited state and local governments from withdrawing from Social Security coverage; accelerated scheduled increases in payroll taxes and payment of payroll taxes by state and local governments.
23.	Social Security: Fiscal 1991 Budget Reconciliation Act	Extends Social Security coverage to all state and local government employees not otherwise covered by a public employee retirement system.
24.	Surface Transportation Assistance Act of 1982	Enacted uniform national size and weight requirements for trucks on interstate highways.
25.	Voting Accessibility for the Elderly and Handicapped Act of 1984	Required that states and political subdivisions assure that all polling places used in federal elections are accessible, and that a reasonable number of accessible registration sites be provided.
26.	Voting Rights Act Amendments of 1982	Extended provisions of the 1965 Voting Rights Act for an additional 25 years, and expanded its coverage of disabled voters and those needing language assistance; amended Voting Rights Act to prohibit any voting practice that results in discrimination, regardless of intent, thereby overturning Supreme Court decision in <u>Mobile v. Bolden</u> .
27.	Water Quality Act of 1987	Established new grant programs and set forth requirements for states for identifying and controlling nonpoint pollution; promulgated new requirements for testing and permitting municipal storm sewer discharges; directed EPA to develop regulations governing toxic wastes in sewage sludge; reduced and restructured funding programs for municipal waste treatment plants.

Source: Federal Regulation of State and Local Governments: A Mixed Record of the 1980's, Advisory Commission on Intergovernmental Regulations, (Washington, D.C.: 1993).

SELECTED COST STUDIES OF UNFUNDED MANDATES

The cities of Anchorage, Alaska, Columbus, Ohio, and Chicago, Illinois, have each prepared, or had prepared for them, studies estimating their costs from unfunded federal and state mandates. These studies each employed different methodologies and assumptions and covered different time periods. Consequently, the results are not comparable. Moreover, GAO did not independently verify the data presented. The following information summarizes the findings of the three studies.

STUDY NO. 1

Putting Federalism to Work for America: Tackling the Problems of Unfunded Mandates and Burdensome Regulations. This study was prepared by the City of Chicago and Roosevelt University Institute for Metropolitan Affairs (Nov. 19, 1992).

Description

This study sought to identify the causes and magnitude of the problems faced by cities and states weighed down by unfunded mandates and burdensome regulations, and to propose practical, principled solutions. The study estimated the cost of 11 federal and state environmental mandates on the City of Chicago for the period 1992 through 1995.

Results

Estimated costs for complying with the federal and state environmental regulations over the 4-year period 1992 to 1995 were over \$319 million. The study states that, adjusted for inflation, in 1993 Chicago received less than half of what it received in federal aid in 1980--accounting for 14 percent of the city's budget in 1993 versus 29 percent in 1980.

Table IV.1: Estimated Costs of Federal and State Environmental Mandates to Chicago, Illinois

Mandate	Estimated cost (1992-95)
Resource Conservation & Recovery Act	\$159,788,344
Underground Storage Tanks	4,480,020
Clean Water Act/Water Quality Act	8,493
Clean Air Act	138,241,223
Safe Drinking Water Act	10,580,038
Infectious Waste	4,246
Asbestos Hazard Emergency Response Act	21,232
Federal Insecticide, Fungicide and Rodenticide Act	95,545
Toxic Substances Control Act	21,232
National Emissions Standards for Hazardous Air Pollution	6,000,000
Emergency Planning and Community Right-to-Know Act	0
Total	\$319,240,373

STUDY NO. 2

Paying for Federal Environmental Mandates: A Looming Crisis for Cities and Counties. This study was prepared by the Municipality of Anchorage, Alaska (Jan. 1993).

Description

This study covered 10 major federal environmental mandates administered by the Municipality of Anchorage to determine their long-range impacts on the municipal budget. The budget categories included were personnel, supplies, other services, equipment and capital expense for each utility and municipal department. State and federally funded projects and personnel were not included, although municipal matching funds for those projects were.

Results

Estimated costs of federal environmental regulations to Anchorage totaled \$429,936,737 for the period 1991 to 2000, inflation-adjusted at the prevailing 7 percent rate for environmental projects. Ninety-one percent of the costs involved three environmental acts. The most expensive program, Clean Water Act, accounted for 36 percent of the costs. The Clean Air Act and Resource Conservation and Recovery Act accounted for 34 percent and 21 percent of costs, respectively.

Table IV.2: Estimated Costs of Federal Environmental Mandates to Anchorage, Alaska

Mandate	Estimated cost (1991-2000)
Clean Water Act/Water Quality Act	\$139,621,400
Clean Air Act	133,136,887
Resource Conservation and Recovery Act	82,326,842
Coastal Zone Management Act	1,119,328
Endangered Species Act	581,042
Safe Drinking Water Act	7,238,136
Toxic Substances Control Act	12,690,329
Comprehensive Environmental Response, Compensation and Liability Act	12,501,585
National Environmental Policy Act	2,433,120
Municipal Administrative Department Costs	38,288,068
Total	\$429,936,737

STUDY NO. 3

Environmental Legislation: The Increasing Costs of Regulatory Compliance to the City of Columbus. This study was prepared by Environmental Law Review Committee (May 13, 1991).

Description

This study covered the estimated cost impact of 14 federal and state environmental mandates to the City of Columbus, Ohio. Of the

14 mandates 7 were federal/state mandates; 3 were federal only; and 4 were state only.

Results

Estimated costs for complying with environmental regulations over the 10-year period 1991 to 2000, were over \$1 billion (in 1991 dollars). With an average annual inflation rate of 4 percent, the estimated costs were over \$1.3 billion.

Table IV.3: Estimated Costs of Federal and State Environmental Mandates to Columbus, Ohio

Mandate	Estimated Cost (1991-2000)
Asbestos Hazard Emergency Response Act	\$10,804,150
Clean Air Act	5,420,694
Clean Water Act/Water Quality Act	775,046,972
Explosive Gas Monitoring	444,000
Federal Insecticide, Fungicide and Rodenticide Act	65,500
Infectious Waste	50,000
Occupational Health and Safety Administration Act	9,790,480
Resource Conservation and Recovery Act	19,276,792
Safe Drinking Water Act	104,332,917
Superfund Amendments and Reauthorization Act Title III	97,000
Solid Waste Disposal	159,209,007
Toxic Substances Control Act	910,000
Underground Storage Tanks	3,037,368
Federal Rivers and Harbors Act	0
Total	\$1,088,484,880

MANDATE RELIEF BILLS INTRODUCED IN THE 103RD CONGRESS

Bill number	Sponsor	Co-sponsors	Brief title	Explanation
HR140	Condit	119	Federal Mandate Relief Act of 1993	No state or local government shall be required to comply with federal requirements unless all funds necessary to pay the direct costs are provided by the federal government. This shall apply only to requirements which take effect on or after the date of the enactment of this legislation.
HR369	Saowc	19		No state or local government shall be obligated to take any action required by federal law unless such expenses are funded by the federal government. This shall apply only to requirements which take effect on or after the date of the enactment of this legislation.
HR410	Stump	21	Intergovernmental Mandate Relief Act of 1993	States and local governments shall be reimbursed for any additional direct costs of complying with mandates likely to cost all state and local governments more than \$25 million in any fiscal year. The provisions for reimbursement can be waived with 2/3 vote in both houses.
HR799	Snowe	115		To amend Title 23, U.S. Code, to repeal a penalty for noncompliance by states with a program requiring the use of safety belts and motorcycle helmets.
HR830	Ewing	239		Repeals ban on judicial review for agency compliance with the Regulatory Flexibility Act.
HR886	Clinger	54	The Mandate and Community Assistance Reform Act	Addresses the resorting of federal-state responsibilities; strengthens cost estimation requirements for legislation and regulations.
HR894	Hefley	27		To require the Congressional Budget Office to prepare estimates of the cost incurred by state and local governments in carrying out or complying with new legislation; to amend the Rules of the House of Representatives to require the inclusion of such estimates in committee reports on bills and joint resolutions; to amend the Rules of the House of Representatives to ensure that federal laws requiring activities by such governments shall not apply unless all amounts necessary to pay the direct costs of the activities are provided by the federal government.
HR1006	Shays	21		Amends the Congressional Budget Act of 1974 to expand the requirement that legislation be accompanied by cost estimates of its impact on state and local governments.
HR1088	Baker	14		To require analysis and estimates of the likely impact of federal legislation and regulations upon the private sector and state and local governments. (Same as S 81)
HR1295	Moran	221	Fiscal Accountability and Impact Reform Act	Requires the Congressional Budget Office to conduct an impact assessment on legislation that is reported out of committee for action on the House floor. This legislation would also require agencies prior to the implementation of any rule or any other major federal action affecting the economy to perform an assessment of the economic impact of the proposed rule or action and seek public comment on the assessment. Requires that whenever there is more than one option, an agency must adopt the option with the least adverse economic impact or provide a statement of reasons why the agency's failure to do so is consistent with the purposes of the legislation.
HR1309	Andrews	25	Workplace Leave Fairness Act	Amends FLSA to provide that the length of an employee's leave of absence (including partial days) shall not disqualify that employee from the exemption from minimum wage and maximum hours requirement.
HR1512	Sarpaluis	0		To amend Title 23, U.S. Code, to repeal provisions establishing a national maximum speed limit.

Bill number	Sponsor	Cosponsors	Brief title	Explanation
HR1599	Roberts	0	The Fair Speed Limit Act of 1993	To provide a fair and reasonable national standard for the setting of speed limits.
HR2327	Thomas	15		To clarify the application of federal pre-emption of state and local laws and to preserve state and local legislative prerogatives.
HCReas51	Dreier	24		Expresses the sense of Congress that unfunded mandates should be rescinded unless they are accompanied by sufficient funds to pay for them.
HJRa254	Franks (NJ)	6		A constitutional amendment to provide that no state shall be obligated by new federal law to perform any new or expanded program or service, unless the expenses of doing so are paid for by the federal government.
S13	Hatch	5	Regulatory Accountability Act of 1993	Places a 3 year cap on the overall costs of regulation. Under this cap, in order for a new regulation to go into effect, the agency would be required to offset any new costs by equal regulatory savings achieved through revoking or revising existing regulation, streamlining the paperwork burden, or by any other regulatory offsets. After a regulation has undergone this offsetting process, it may then be promulgated. During this time, agencies promulgating new rules would be required to study the entire cost of compliance and outline effective alternative approaches. This act would sunset in 3 years. After 3 years, the effects of this process on different areas of the economy, including state and local governments, will be evaluated.
S81	Nickles	15	Economic and Employment Act of 1993	Requires federal legislation and regulations to be accompanied by economic and employment impact statements assessing their impact on the private sector and state and local gov'ts. (Same as HR 1088)
S295	Durenberger	26		To amend Title 23, U.S. Code, to remove the penalties for states that do not have in effect safety belt and motorcycle helmet traffic safety programs.
S401	Campbell	15	Motorcycle Safety Program Act of 1993	To amend Title 23, U.S. Code, to DELAY the effective date for penalties for state that do not have in effect motorcycle helmet safety programs.
S480	Levin	1	Pre-emption Clarification and Information Act of 1993	Provides that no federal statute shall pre-empt any state and local law unless such pre-emption is specifically stated or there is a conflict which cannot be reconciled. Requires Congressional Research Service (CRS), at the end of each Congress, to compile a report on laws passed in which statutory pre-emption is explicit and on all federal cases in which pre-emption of state or local authority has been an issue.
S490	Hatch	0	Regulatory Flexibility Amendments	To amend the Regulatory Flexibility Act to force agencies to fully and accurately consider the impact of their rules on smaller businesses, local governments and small entities.
S563	Moseley-Bratt	5		A bill to require CBO analysis of each bill or joint resolution reported in the Senate or the House to determine the impact of any federal mandates in the bill or resolution.
S648	Grigg	20	Federal Mandates Relief Act of 1993	To provide federal payments for federal mandates imposed upon state and local governments. Also contains cost estimation requirements and a pay-or-excuse mechanism.
S993	Kempthorne	49	Community Regulatory Relief Act	Requires that any federal law that creates a federal mandate shall apply to a state or local government if the federal government pays all of the compliance costs of the mandate.

Bill number	Sponsor	Cosponsors	Brief title	Explanation
S1188	Coverdill	3	Federal Mandate Relief Act	An intergovernmental regulation may not be enforced against a state or local government with respect to a fiscal year unless 1) there has been made an appropriation of federal funds, and such funds have been made available, to all state and local governments for the fiscal year in an amount that is sufficient to reimburse all state or local governments for the total amount of additional costs that will be incurred by those governments in complying with the regulations during the fiscal year, or; 2) Congress approves by the 2/3 vote of the members of prior subsection. Requires OMB to prepare a report detailing intergovernmental regulation.
S1354	Kaschbaum	3	Workplace Leave Fairness Act	Eliminates the Department of Labor's pay docking rule. This rule states that providing flexible leave to salaried employees eliminates their exemption from the overtime requirements of FLSA. Legislation is retroactive, so that the private sector and state and local governments would not be subject to past liability.
HR3421	Smith (TX)	26	Federal Mandate Reduction, Reform, and Budget Act of 1993	Institutes a federal mandate budget process to reduce the level of federal mandate expenses by 6.6% in each of 7 years and then cap it (as a percent of GDP, not to exceed 3%). Under the legislation, the Budget committees will biannually allocate the cost of federal mandates to the appropriate authorizing committees.
HR3429	Heger	0		Makes unfunded federal mandates - current and future - optional.
HR3446	DeLay	2	Economic and Employment Impact Act	Modeled after S61. Requires that all legislation considered by Congress, as well as all final and proposed regulations promulgated by executive branch agencies be accompanied by an economic and employment impact statement. These statements will include the positive and negative effects of any piece of legislation or any federal regulation on employment, the GDP, international competitiveness cost to consumers, to businesses and to state and local governments.
HR3504	Torkildsen	12		See S648. Requires federal government to sufficiently fund any new mandates passed down by Congress or federal agencies. Allow state and local governments to be excused from complying with the orders if the federal government does not adequately fund new programs. Requires a report estimating the costs to state and local governments to accompany all bills in Congress that will improve federal mandates.
HJR282	Gillmor	0		Proposing an amendment to the Constitution to prohibit Congress from enacting any law that has the effect of requiring any state or local government to expend non-federal funds to comply with any federal law unless the Congress reimburses the state or local government for the non-federal funds expended to comply with that federal law.
HRcs277	Condit	7		Resolved, that it is the sense of the House of Representatives that steps must be taken to alleviate the financial impact of unfunded federal mandates on state, county and municipal governments.
SRRes148	Brown	9		This amendment would; prohibit Congress from requiring state or local governments to take any action unless Congress pays for it, and, provide a safety valve for fiscal emergencies as declared by a supermajority of Congress and the President, which does not last more than 180 days.
SRcs157	Gregg	5		Amend rules of the Senate so that bills containing unfunded mandates must receive supermajority (2/3) vote to be reported out of committee, and, if so reported, be accompanied by an explanation of why the unfunded federal mandate is important enough to be imposed on state and local governments without attendant federal funding. The resolution would create a point of order against the floor consideration of any bill that has not satisfied the above requirements. A 2/3 vote in the Senate would be required to waive the point of order.

APPENDIX V

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Bill number	Sponsor	Co-sponsors	Brief title	Explanation
SRen153	Grege	5		Amend rules of the Senate to govern the consideration of legislation or amendments that contain unfunded federal mandates. The Senate could not consider a bill that contains one or more unfunded federal mandates, unless the provisions containing unfunded federal mandates are considered individually or on bloc (at the discretion of the Majority Leader or his designee). Such provisions must receive a supermajority (2/3 vote) to remain in the bill. An amendment containing unfunded federal mandates could become part of a bill only after receiving supermajority (2/3) approval. Points of order made against a bill or amendments pursuant to these provisions could be waived only by a 2/3 vote.
SI592	Dorgan	1	Fiscal Accountability and Intergovernmental Reform Act	Requires the Congressional Budget Office to conduct an impact assessment on legislation that is reported out of committee for action on the floor. This estimate would include impact on state and local governments, private business, and economic growth. Legislation would be subject to a point of order if it is reported for consideration without the estimate. This legislation would also require agencies prior to the implementation of any rule or any other major federal action affecting the economy to perform an assessment of the economic impact of the proposed rule or action.
SI604	Glenn	4	Small Governments Regulatory Improvement and Innovation Act	Requires agencies to conduct more thorough outreach program for small entities (governments having a population of less than 50,000) during the regulatory process. Requires agencies to conduct an initial regulatory flexibility analysis before making a determination on the economic impact of a regulation.
SI606	SABRST	1	Federal Mandate Funding Act of 1993	<ol style="list-style-type: none"> Requires Congress, before it passes significant legislation, to state specifically how much federal reimbursement or cost-sharing is authorized, and in no case will such reimbursement be less than 20%. Imposes moratorium on new mandates to state and local governments for 2 years to assess the impact of current mandates already enacted, but not yet in effect. Creates a fund to furnish additional mandate relief to hard-pressed states and local governments by supplementing any federal cost-sharing already in place.

Source: Mandate Watch List, Hall of the States Monitor, National Conference of State Legislatures (Nov.-Dec. 1993).

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