

GAO

Report to the Honorable
Dave Durenberger, U.S. Senate

September 1988

LEGISLATIVE MANDATES

State Experiences Offer Insights for Federal Action





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

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September 27, 1983

The Honorable Dave Durenberger
United States Senate

Dear Senator Durenberger:

In response to your request, this report discusses state and federal attempts to deal with mandates imposed on lower levels of government. The report focuses on state and federal processes for estimating the cost impact of legislation containing mandates as well as state practices concerning reimbursement of such costs.

We are sending copies of this report to the appropriate congressional committees, the Congressional Budget Office, the U.S. Advisory Commission on Intergovernmental Relations, key state and local interest groups, and other interested parties.

Sincerely yours,

A handwritten signature in cursive script that reads "Lawrence H. Thompson".

Lawrence H. Thompson
Assistant Comptroller General

Executive Summary

Purpose

Since the 1960s, many federal statutes have been enacted mandating state and local actions that impose additional costs on those levels of government. Similarly, many states have enacted mandates that impose costs on their local governments. Responding to concerns about these mandate burdens, federal and state governments have sought to increase legislators' awareness of such costs and, in some cases, to defray all or some of the costs.

At the request of Senator Dave Durenberger, formerly Chairman of the Subcommittee on Intergovernmental Relations, Senate Committee on Governmental Affairs, GAO analyzed some techniques used by federal and state governments to address mandate burdens. The objective was to determine what could be learned from state experiences that might be useful at the federal level.

Background

The primary federal and state response to concerns about mandate burden has been to require estimates of the cost impact of proposed legislation on subordinate levels of government. At the federal level, the State and Local Government Cost Estimate Act of 1981 requires the Congressional Budget Office (CBO) to estimate such costs for proposed federal legislation. The principal purpose of these estimates is to increase congressional awareness of the costs state and local governments would incur if proposed legislation were adopted. Similar processes exist in 42 states. (See p. 9.)

Another approach, used by 14 states to reduce the local burden of mandates, is to require reimbursement of local governments for additional costs imposed. At the federal level, Senator Durenberger and Congressman Doug Barnard, Jr., each have introduced legislation that would require federal payment for costs incurred by state and local governments in complying with new federal mandates. (See p. 10.)

GAO examined CBO's activity in estimating state and local costs linked to federal legislation. Also, GAO reviewed mandate-related cost-estimating and/or reimbursement processes of 33 states and queried all 50 states in this regard.

Results in Brief

Requirements that state and/or local costs be estimated or that local costs be reimbursed have had only a limited impact on the burden of mandates. When coupled with strong legislative concern about restraining costs to subordinate levels of government, these processes

appeared to have some success in deterring, modifying, or providing funding for mandates. But in the absence of strong legislative concern, they appeared to have little impact.

At the state level, cost estimation seems to have a greater impact when the estimates are prepared early in the legislative process or for important amendments to proposed legislation. Adopting these changes could enhance the impact of the federal process.

Two key factors that seemed to make mandate reimbursement work at the state level were public initiation of the requirement through a referendum or a constitutional amendment and the existence of a healthy fiscal climate. In the absence of one or both of these factors, the workability of a federal reimbursement policy at this time is questionable.

GAO's Analysis

Cost Estimating: Informative, but Impact Limited

Cost estimates have increased federal and state legislators' awareness of the burden that legislation containing mandates imposes on lower levels of government. However, they have not altered the course of such legislation except when there was also strong legislative concern about imposing costs through mandates.

At the federal level, CBO produces reliable estimates that enhance legislators' understanding of state and local costs, congressional committee staff said. Cost estimates had no apparent effect, however, on legislative deliberations on five of eight bills GAO reviewed. Committee staff identified certain factors that limit the impact of the CBO estimates. First, programmatic and policy issues are usually of greater concern to legislators than are state and local costs. Second, the CBO estimates are not prepared until after the full committee has made its key decisions and prepared its report. (See pp. 17-18.)

Certain techniques used by states could be employed at the federal level to focus greater attention on the impact of federal legislation on state and local costs. These would include preparing:

- estimates for key bills prior to the full committee report so there is greater opportunity for costs to be considered before key legislative decisions are made (see p. 20);
- estimates of the cost impact of major amendments to bills that mandate state and local actions, so that important changes to proposed legislation are not overlooked (see p. 21);
- estimates for legislation currently exempt from the process, such as tax and/or appropriations bills, which may contain mandates (see p. 21); and
- a biennial report of the total costs imposed by federal mandates to increase legislators' awareness of the total impact such mandates have on state and local governments (see pp. 22-23).

The impact of introducing these features into the federal process is uncertain. While they would increase legislators' awareness of mandate costs, they might have little impact on the total state and local mandate burden. Other forces, including policy and programmatic issues, play a major role in influencing legislation.

Reimbursement by States Has Varied Effects

Fourteen states require state reimbursement of local governments for the cost of state mandates. In four of the seven states visited by GAO, mandate reimbursement requirements deterred legislators from passing some unfunded mandates or prompted them to modify mandates to reduce local costs. Only one of these states had appropriated significant funding to defray local costs. In three states, reimbursement requirements had little impact on deterring or modifying the mandates contained in proposed legislation or generating funding for state mandates. (See pp. 32-40.)

A major lesson learned from these seven states is that, when a reimbursement process did result in deterring, modifying, or funding mandates, it was coupled with strong legislative concern about imposing costs on subordinate levels of government.

Matters for Congressional Consideration

GAO encourages congressional committees to ask CBO to prepare state and local cost estimates for proposed legislation that has potentially significant effects on state and local costs and is scheduled for markup or has resulted from floor amendments. Consultation with state and local interest groups could help identify potentially significant mandate legislation. (See p. 25.)

Recommendation

GAO recommends that the Advisory Commission on Intergovernmental Relations prepare a biennial report of the total estimated costs of new mandates contained in legislation passed by the Congress during its 2-year term. (See p. 25.)

Agency Comments

CBO, the Advisory Commission on Intergovernmental Relations, and seven major state and local interest groups commented on a draft of this report. (See apps. XI-XIII.) Their comments substantially supported our conclusions and recommendation.

One principal area of concern among those commenting was the preparation of cost estimates for tax and appropriation bills. The Advisory Commission and the interest groups supported the preparation of cost estimates for such legislation. CBO, however, was less enthusiastic and commented that legislative mandates affecting state and local governments are rarely contained in appropriation bills. Further, CBO stated that it usually has little time to review appropriation bill language before bills are reported. With regard to tax bills, CBO stated that estimating the potential effects on state and local governments would be an enormous undertaking. Also, it commented that tax-writing committees mark up bills in concept only and specific legislative language is not drafted until bills are reported from committee.

After analyzing the comments, GAO agrees that requiring estimates for tax and appropriation bills on a routine basis may not be practical—particularly, if other approaches can serve to highlight the state and local cost impacts in this type of legislation. Therefore, GAO believes that, where tax and appropriation legislative provisions that may have potentially significant impacts on state and local governments are identified, cost estimates should be prepared on a request basis, similar to the suggestion GAO has made for other legislation.

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Abbreviations

A&F	Office of Administration and Finance
ACIR	Advisory Commission on Intergovernmental Relations
CBO	Congressional Budget Office
CSM	Commission on State Mandates
DLM	Division of Local Mandates
FY	fiscal year
GAO	General Accounting Office
NALFO	National Association of Legislative Fiscal Officers

Introduction

Over the past two decades, federal and state governments have enacted numerous laws and regulations imposing requirements and related costs on subordinate levels of government. Such provisions are referred to as mandates. The federal government uses mandates to help assure residents of every state a minimum level of benefits or protection in areas ranging from public assistance to occupational safety and health.

Mandates Are a Major Concern to State and Local Governments

During the 1960s and 1970s, federal regulation of state and local governments expanded dramatically and became increasingly burdensome and costly to them, according to the U.S. Advisory Commission on Intergovernmental Relations (ACIR).¹ Over that period, federal statutes calling for new state and local expenditures and other administrative actions were enacted. The mandates covered such fields as civil rights, environmental protection, education, water quality, and fair labor standards. Because many of these mandates lacked federal funding to facilitate state and local compliance, significant state and local outlays were required to implement them. That costs imposed on local governments by federal requirements can be substantial was affirmed by a 1980 Urban Institute study² of six major federal mandates. The report was cited by ACIR as one of the pioneering studies on this issue.

Federal mandates continue to be a matter of concern. In April 1985, ACIR highlighted continued mandating activity by the federal government in testimony before the Senate Subcommittee on Intergovernmental Relations. Examples cited included: a minimum drinking age, state administration of federal trucking standards, and expanded public welfare costs for states. Further concerns were prompted by the 1985 Supreme Court decision in *Garcia v. San Antonio Transit Authority*, which extended federal fair labor standards to state and local governments. This decision was viewed as a withdrawal by the Court from prior efforts to define the federal/state boundary of authority.³ Finally, federal programs that help state and local governments finance mandated costs were reduced—most notably, general revenue sharing was eliminated in 1986.

¹ Advisory Commission on Intergovernmental Relations, Regulatory Federalism: Policy, Process, Impact, and Reform (Washington, D.C.: Feb. 1984).

² Thomas Mueller and Michael Fix, "The Impact of Selected Federal Actions on Municipal Outlays," Special Study on Economic Change, Vol. 5: Government Regulation (Washington D.C.: U.S. Congress Joint Economic Committee, 1980).

³ Advisory Commission on Intergovernmental Relations, Reflections on Garcia and Its Implications for Federalism (Washington, D. C.: Feb. 1985).

These developments led several national organizations representing state and local governments to identify federal mandates as a major concern. The National Association of Counties and the National League of Cities specifically established this area as one of their priority legislative initiatives for the 100th Congress.

Similarly, state-enacted mandate legislation has imposed costs on local governments. In recent years, state mandates costly to local governments have increased dramatically according to a 1985 ACIR study¹ that cited as examples solid waste disposal standards and special education. In response to a questionnaire we developed for this review, 62 percent of the interest groups representing local governments said the level of mandate activity in their states had increased in the past 5 years. Further, nearly half of the groups responding termed the level of state-imposed mandates significant.

Federal and State Actions Address Mandate Concerns

Both federal and state governments have sought to address the cost burdens created by mandates, principally by estimating the costs of proposed legislation to subordinate levels of government. A second major step taken by several states has been to require that local governments receive funding for such costs.

Cost Estimates

The concept of preparing cost estimates (also called fiscal notes) originated with one state in the late 1950s and spread to others over the next two decades. Now, 42 states (see app. I) prepare such estimates for proposed state legislation affecting local governments.

At the federal level, the Congressional Budget Office (CBO) is required by the State and Local Government Cost Estimate Act of 1981 (Public Law 97-108) to prepare estimates of costs that would be incurred by state and local governments in complying with proposed federal legislation. The Act amended a law that already required CBO to estimate the federal costs of proposed legislation. Too often, according to the Senate Committee on Governmental Affairs' report on this amendment, well-intentioned legislation designed to affect national policy passes on to state and local governments costs that never were contemplated.

¹Advisory Commission on Intergovernmental Relations, The Question of State Government Capability (Washington, D.C., Jan. 1985).

The preparation of such cost estimates (required when bills are reported out of committee) was to serve as a caution light to the Congress before it enacted new and possibly costly legislation. Initially, the Act was authorized through September 30, 1987; in 1987, the Congress reauthorized it on a permanent basis. During the 2-year period of the 99th Congress, CBO reported that it had prepared state and local cost estimates on over 1,100 bills reported out of committee. Of these, it identified 91, or less than 10 percent, as having potential state and local costs.

Mandate Reimbursement

Fourteen states have established mandate reimbursement requirements, beginning with California in 1973 (see table 3.1). Essentially, such requirements provide for payment of costs a government imposes on other levels of government through mandates.

On the federal level, legislation was introduced in 1987 in both the Senate (S. 585) and House (H.R. 1087) that would require the federal government to pay the costs to state and local governments of compliance with new federal mandates. In the absence of reimbursement, these bills provide that a mandate cannot be enforced without a two-thirds vote of the Congress.

Objectives, Scope, and Methodology

On September 11, 1986, Senator Dave Durenberger, then Chairman of the Subcommittee on Intergovernmental Relations, Senate Committee on Governmental Affairs, asked us to analyze techniques used by federal and state governments to address mandates imposed on lower levels of government. Specifically, we were to assess (1) approaches used by CBO for developing cost estimates and (2) processes used by the states for both estimating and reimbursing costs of state mandates imposed on local governments.

As clarified in discussions with the Senator's office, the primary objectives of our review were.

- At the federal level, to determine the reasonableness of CBO's approach for preparing cost estimates, and
- At the state level, to determine what could be learned from state experiences that (1) could improve the usefulness of the federal cost estimation process and (2) might indicate how well a federal mandate reimbursement program would work.

We reviewed CBO's cost-estimating procedures for preparing state and local cost estimates. In addition, we examined eight of the bills with the most significant state and local costs for which CBO prepared estimates during the 99th Congress (see app. II). We met with

- CBO analysts to discuss the approach and methodology used for preparing these estimates,
- congressional staff on committees having jurisdiction over the eight bills to gain their views on the usefulness of the estimates and their impact on legislation, and
- officials of several major public interest groups representing state and local governments to learn their views on the impact of CBO's activity.

In July 1987, we testified before the Senate Committee on Governmental Affairs¹ on reauthorizing the State and Local Government Cost Estimate Act, which was to have expired on September 30, 1987. Our testimony provided information concerning CBO's activities in preparing state and local cost estimates.

Also, we visited eight states (California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Michigan, and Tennessee) to review their cost-estimating and reimbursement activities. We selected these states through a literature search of prior studies and a telephone survey of the 50 states. Seven of the states were chosen primarily to include those with differing types of mandate reimbursement processes. One state included had considered but did not adopt a reimbursement requirement. Seven states had a cost-estimating process as well.

In each state, we met with (1) executive and legislative branch officials responsible for or knowledgeable about the state's cost-estimating and reimbursement activities and (2) interest groups representing the counties, cities, and school districts. We obtained information on the background, scope, and processes for each state's activities. This was done primarily through discussions with various state officials and review of pertinent legislation, operating policies, and reports on program activities. Also, we gathered opinions on the impact of cost estimating and mandate reimbursement through discussions with state officials and public interest group representatives. Where possible, we talked with

¹Reauthorization of the State and Local Cost Estimate Act, Statement of J. William Gadsby, Associate Director, Human Resources Division, before the Subcommittee on Government Efficiency, Federalism and the District of Columbia, Senate Committee on Governmental Affairs (GAO/T-HRD-87-20, July 30, 1987)

legislators and local government officials about their perceptions as to the impact of these activities.

We supplemented our audit work in the eight states with questionnaires to all 50 states. Little information existed on the current status of state activities in cost estimation and reimbursement. Through the questionnaires, we were able to profile nationwide the scope and impact of these processes. We developed three questionnaires that we sent to

- state officials responsible for or knowledgeable about their state's cost estimation and reimbursement activities (84 percent responded);
- the legislative leaders in each house of the state legislature (71 percent responded); and
- interest groups representing counties, cities, and school districts (91 percent responded).

A detailed description of our questionnaire methodology is included as appendix III.

We did our work between September 1986 and July 1987 in accordance with generally accepted government auditing standards.

Federal and State Cost Estimation Processes

To make legislators more aware of mandate costs, federal and state governments have established processes for estimating the cost impact of proposed legislation on lower levels of government. Certain constraints, such as legislative deadlines, limited availability of information, and competing priorities, affect the processes used by CBO and the states. Given these constraints, CBO's approach is reasonable.

Cost estimates have increased federal and state legislators' awareness of the costs that legislation containing mandates would impose on lower levels of government. But generally the estimates have not altered the course of legislation, except where legislators were also strongly concerned about the costs that mandates can impose on subordinate levels of government.

Certain features of state processes, if adopted at the federal level, could focus more attention on the impact of federal legislation on state and local costs. Preparing cost estimates (1) before bills are reported out of committee, (2) for significant amendments, and (3) for appropriation and tax bills could be useful. Also, a biennial report identifying the cost of all federal mandates enacted during each Congress would focus greater attention on the total mandate burden on state and local governments.

CBO and States Face Constraints in Cost Estimating

Since 1982, along with estimating the impact of proposed legislation on the federal budget, CBO has also prepared estimates on the state and local costs of bills reported out of full committee. As with the states, tight legislative deadlines, the wide range of legislative subjects, and data limitations cause CBO to use a flexible, bill-specific method of cost estimation. In view of the constraints, CBO's approach seems reasonable and probably cannot be significantly improved.

Time Limits, Range of Subjects Hamper Work

Limited time is the first constraint facing federal and state estimating units. Typically, CBO has 3-5 days to prepare an estimate when bills are reported out of committee for inclusion in committee reports used in floor consideration. The majority of state cost-estimating units faced similar time limits; over one-half typically have 5 days or less to prepare local cost estimates.

Also, the many program areas covered by proposed legislation preclude use of standardized cost estimation approaches. On the federal level,

bills subject to cost estimates cover such matters as education, the environment, and labor standards (see app. II). State cost estimation practices showed similar patterns. Accordingly, CBO and the states must tailor estimation strategies to each issue, using bill-specific data collection and assumptions.

Data Sources Inadequate

A third constraint is the lack of meaningful data sources on which to draw for state and local estimates. Cost estimation "... is clearly a difficult task especially when there is no historical information on which to base the cost estimates ...," the Illinois Cities and Villages Municipal Problems Commission pointed out in a study. Using a network of state and local personnel knowledgeable about mandate areas, the Commission said, was the most reasonable approach to determining the likely cost of mandates contained in legislation.

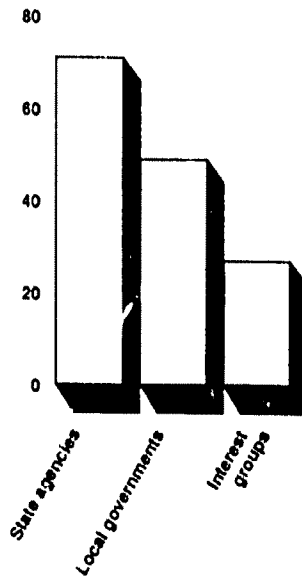
At the federal level, CBO does not maintain any single listing of state and local officials it routinely contacts. Rather, contacts will vary with the issue. Typically, CBO collects data through telephone contacts with several sources, including committee staff having jurisdiction over the bill, the responsible federal agency, and selected state and local governments and public interest groups. Federal agencies are good contacts, CBO analysts commented, because of their program databases and knowledge. CBO also values contacts with state and local governments, which can provide cost data as well as comments on CBO's views of the cost impacts.

For example, for the estimate on the Safe Drinking Water Act Amendments of 1985, CBO analysts told us they contacted: (1) staffs of 3 committees to obtain data sources; (2) Environmental Protection Agency and Office of Technology Assessment officials, because of their experience with safe drinking water standards; (3) 2 interest groups representing local water control agencies; and (4) 12 local public water treatment plants that would be affected, for cost data and overall comments on CBO's estimation approach.

The states face similar data constraints. Nearly half of the respondents to our questionnaire said that they did not maintain databases on local cost impacts and, like CBO, relied heavily on telephone data surveys. State agencies were the primary data sources used by state cost-estimating units, as figure 2.1 shows.

Figure 2.1: Sources of Cost Information Used Frequently by State Estimating Units

100 Percent of state estimating units



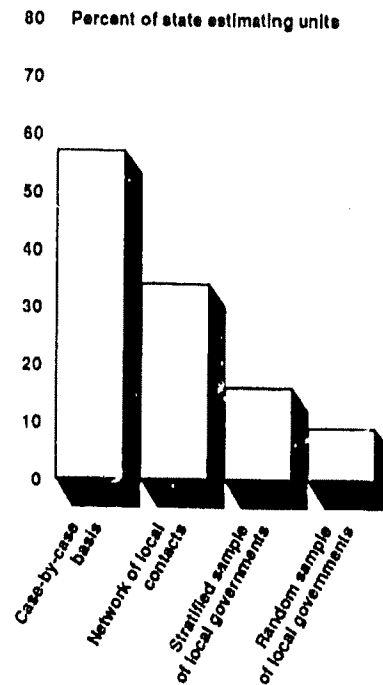
Note "Frequently" was defined as sources of cost information that state estimating units use most or all of the time. See app. IV for complete data.

When estimating units contacted local governments, it was most frequently on a case-by-case basis, although about one-third of the units reported using a network of local contacts (see fig. 2.2). For example, one unit in California routinely contacted a geographically dispersed mix of counties, school districts, and cities.

Competing Tasks Occupy Officials

Finally, competing priorities hamper both federal and state units in preparing estimates. At CBO, estimating the federal budgetary costs of proposed legislation receives higher priority than estimating state and local costs. Typically, bills will not be considered on the floor without a CBO estimate of the federal cost impact, but state and local estimates are not required. For example, during consideration of the Safe Drinking Water Act Amendment of 1985 the federal cost estimate was included in committee reports, but the state and local estimate was not available until after the bill passed. The CBO cost-estimating staff also have other

Figure 2.2: Frequently Used Methods for Obtaining Local Government Data



Note "Frequently used methods" was defined to be methods that state estimating units use to contact local governments for data to a great or very great extent. See app. V for complete data.

duties, such as preparing outlay estimates of appropriations bills, assisting in the preparation of budget resolutions, and analyzing the administration's budget.

Similarly, state legislators use estimates of state costs more than the local estimates, state estimating officials told us. Other duties, such as preparing the state budget, also compete for the time of some state estimating staff. For example, a Florida official said that, besides preparing local cost estimates, analysts prepare state cost estimates, help with the state budget, and monitor agency compliance with the budget.

Cost Estimates Are Useful but Do Not Reduce Mandates

Cost estimates provide important information to legislators, and the benefits of the process outweigh its costs, according to both federal and state officials. Nevertheless, the estimates had little effect in deterring, modifying, or funding mandates unless there was also strong legislative concern about the impact of imposing mandates on subordinate levels of government.

Federal-Level Outcomes

CBO produces reliable and objective estimates that enhance or confirm legislative knowledge about the state and local cost impact of federal legislation, according to congressional committee staff we interviewed. Although they value these estimates, they recognize that state and local cost estimates usually do not influence changes in legislation to either reduce mandate burden or provide mandate funding.

More specifically for five of the eight legislative proposals we reviewed, cost estimates had no effect on reducing the mandate burden. Committee staff cited three reasons for this:

1. Programmatic and policy issues usually are of greater concern to legislators than are state and local costs. For example, the primary reason the Safe Drinking Water Act Amendments (which imposed additional standards on local water systems) passed was the need for clean drinking water. This overshadowed state and local cost considerations, estimated by CBO to include capital costs of \$3.5 billion and another \$200-\$300 million annually.
2. Federal policy debates focus primarily on federal not state and local costs, often leading to mandates requiring state and local cost-sharing. For example, two legislative proposals, the Housing Act of 1985 and the Water Resources Act of 1985, called for federal, state, and local governments to share the costs of emergency shelters for the homeless and water projects, respectively. Cost-sharing recognized the state and local character of these problems and the limited federal funds.
3. Some CBO cost estimates are too late, as they are prepared after bills are reported from committees. For example, CBO's state and local cost estimate for the Ocean Dumping Amendments Act of 1985 was not available in time to be included in the committee report; thus it played no role in the consideration of the bill.

On the other hand, in three of the eight cases we reviewed, CBO's state and local estimates did influence the Congress to reduce or fund mandates. For example, there was strong congressional commitment to amend the Fair Labor Standards Act. The purpose was to lessen the state and local cost impact of the Supreme Court's Garcia decision, which applied federal overtime and minimum wage provisions to state and local governments. CBO was asked to do a special cost impact analysis, state and local interest groups and public employee unions having presented conflicting data as to the burden of the proposed amendment.

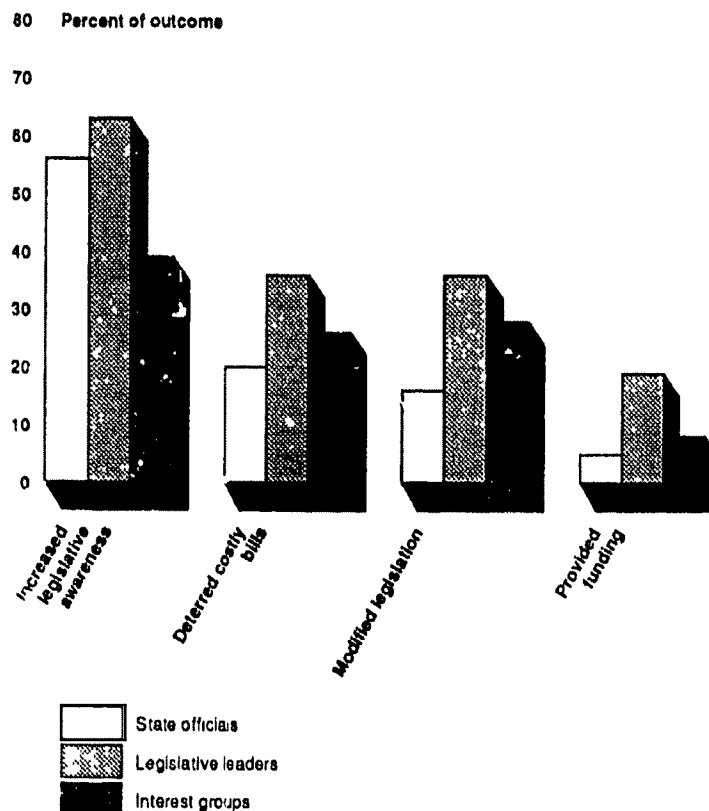
CBO's estimate of \$0.5-\$1.5 billion in costs to lower levels of government promoted support for the wage amendment, committee staff said, and validated interest group claims that the court's decision would have imposed a significant cost burden. The amendment would reduce the cost impact to state and local governments by authorizing them to use compensatory time off rather than paid overtime to reward employees working overtime. CBO's cost estimate was influential, according to committee staff, because of CBO's credible and bipartisan reputation and because the estimate was prepared before the committee approved and reported out the legislation. This was earlier than required under the cost estimate statute.

Outcomes at the State Level

At the state level, the impact of cost estimation processes is similar to that at the federal level, primarily increasing legislative awareness of local costs. Estimates had more effect in that respect than in deterring, modifying, or funding state mandates, all three groups responding to our questionnaire reported (see fig. 2.3).

Interest in policy issues and in the potential benefits of proposed legislation was by far the most important consideration for state legislators, officials in several states said. Notwithstanding, we observed that estimates of local costs helped reduce legislative mandates affecting local governments when coupled with strong legislative concern about local costs. State officials in Florida, Tennessee, California, and Connecticut cited instances where high local cost estimates, in concert with legislative concern for state mandates, defeated legislation containing mandates. For example, in Connecticut it was estimated that passage of the Gifted and Talented Students Bill requiring local and regional school districts to provide special programs would cost local governments \$40 million. This confirmed to the legislature the bill's high local cost impact and directly contributed to its defeat.

Figure 2.3: Highest Cited Outcomes of Cost Estimation



Note: "Highest cited outcomes" was defined as outcomes of local cost estimates occurring to a great or very great extent. See app. VI for complete data.

Certain Features of State Cost Estimation Could Improve the Federal Process

Certain features of state cost estimation processes that seem to facilitate use of the estimates merit consideration at the federal level. Noteworthy are preparing estimates (1) earlier in the legislative process before bills clear cognizant committees, (2) for important amendments to proposed bills, and (3) for all types of bills, including proposed tax and appropriation legislation, for which estimates have not previously been prepared at the federal level. In addition, periodically estimating the total cost of mandates imposed by federal legislation on state and local governments could be useful.

Preparing Estimates Earlier

The timing of cost estimation in the legislative process can affect how legislators will use it. At the state level, estimates may be prepared at any of various stages, usually when bills are introduced, after they clear either the subcommittee or full committee, or when they are considered by fiscal committees. Of the state cost-estimating units responding to our questionnaire, 73 percent said they prepared estimates before the full committee cleared bills; that is, at some point in time earlier than that which normally triggers CBO's preparation of estimates. Cost estimates done early were used to a greater extent than when prepared later, our questionnaire analysis showed. Further, in four states we visited where estimates were considered to be timely and influential, officials said they were reaching legislators before decisions on bills were made.

By the time CBO reviews bills—when they are reported out of full committee—most policy decisions on proposed legislation have been made. For example, one reason CBO's cost estimate did not affect the Rehabilitation Act Amendments of 1986, House committee staff said, was that key policy decisions were made before the full committee reported out the bill. In contrast, when CBO was asked to prepare cost estimates before committee deliberation on a bill, earlier CBO involvement coupled with the committee's interest promoted greater use of the estimates and influenced the final outcome of the legislation.

State and local government interest groups also said that CBO's state and local estimates were prepared too late in the process to be effective. Doing them earlier might increase their effectiveness, we were told.

But preparing cost estimates at an earlier stage, CBO officials said, would increase CBO's workload. There would be more bills, and those bills would more likely be amended, potentially requiring additional cost estimation work. We were unable, however, to determine how many additional bills would have to be reviewed.

Given workload implications, it might be appropriate to have CBO prepare early estimates on only proposed legislation that congressional committees or members, in consultation with state and local interest groups, identified as containing mandates imposing substantial additional costs on state and local governments.

Preparing Estimates for Amendments

Preparing cost estimates for federal legislative amendments containing substantial mandated state and local costs would help assure that important changes are not overlooked. Unlike the states, CBO prepares estimates for amendments, not routinely, but only when requested by a committee or member of Congress.

At the state level, preparing estimates for amendments is common. Of state cost-estimating units responding to our questionnaire, 38 percent reported that cost estimates were prepared for amendments most of the time; only 13 percent said it was seldom done. States that usually prepared cost estimates for amendments reported relatively high use of cost estimates, further questionnaire analysis showed. Similarly, states that seldom prepared estimates for amendments reported lower use of cost estimates.

Updating estimates for all amendments could increase CBO's workload and might not always be feasible, given the short time often allowed for considering them. But congressional committees or members, in consultation with state and local interest groups, could identify amendments containing mandates that would impose substantial additional costs on state and local government.

Preparing Estimates for All Types of Bills

At the federal level, tax legislation and appropriation bills are excluded from coverage under the state and local cost estimate process. Such exclusions ignore substantial costs passed on to state and local governments, state and local interest groups told us. For example, the Tax Reform Act of 1986 contained federal reporting requirements and restrictions on the use of tax exempt bonds to finance public facilities, which National League of Cities officials said resulted in significant additional costs to local governments.

On the state level, few estimating units exclude specific categories of bills from their process. For example, only 9 of 44 state estimating units responding said that they exclude tax and/or appropriation bills from their processes. Preparation at the federal level of cost estimates for tax and appropriation bills affecting state and local governments would provide information on a broader range of mandates. This would give legislators a more complete picture of the potential mandate burden imposed.

Reporting Aggregate State and Local Costs

Preparing a biennial report of federal legislation enacted during each Congress that imposed costs on subordinate levels of government would highlight the overall state and local cost impact of such legislation. Currently, the reporting of cost impacts on subordinate levels of government differs between the federal and state levels.

At the federal level, no periodic report aggregating state and local costs of all federal legislation is prepared. Such a report would be useful, we were told by officials from the National Governors' Association and the Conference of Mayors. It is important, they said, to be aware of the total package of existing mandates when considering new legislation containing mandates. For instance, legislation with the most significant state and local costs passed by the 99th Congress would cost state and local governments over \$2 billion annually, according to CBO's estimates prepared at the time the bills were reported out of committee.

In some states, such a report is prepared to provide information on local mandates. Of state estimating units responding to our questionnaire, 13 reported that they aggregate local estimates in either an internal report or through a published annual report, e.g.:

- Illinois, Connecticut, and Tennessee. Estimating units maintain an internal report that aggregates their local cost estimates and is available for use by legislators or other interested parties.
- California. One of the state's two cost-estimating units publishes an annual report that lists enacted statutes with local cost implications.
- Florida. The state-level Advisory Commission on Intergovernmental Relations publishes an annual report that describes all bills passed having a local cost impact.

An annual report provides an overall picture of the aggregate cost impact of state legislation on local governments and is useful to legislators deliberating new state mandate proposals, officials from California and Florida said.

Preparation of a biennial report for each new Congress would help focus greater attention on total state and local cost burdens already mandated by existing federal legislation. Currently, CBO tracks on a computerized system all the estimates it prepares; this could serve as an initial database for preparing such a report. Follow-up based on enacted legislation would be needed, however, to update the estimates and identify any significant changes in state and local costs.

In addition to CBO, the national-level ACIR would be an appropriate agency to take the lead in preparing such a report. ACIR monitors the federal system and recommends improvements to cooperation among levels of governments and more effective functioning of the federal system. As a permanent national bipartisan body representing the executive and legislative branches of federal, state, and local government and the public, ACIR has the requisite intergovernmental sensitivity to place CBO's database in a broader perspective.

Increasing Interest Group Involvement

Involvement of state and local interest groups¹ in the federal legislative process can influence congressional use of cost estimates. State and local governments and interest groups became highly involved with the three bills (see pp. 17-18) where CBO's estimates had an impact on the course of the legislation because of the projected costs. In these cases, such involvement caused legislators to focus greater attention on the cost estimates prepared for each bill and influenced the legislative outcomes, committee staff said. State and local interest groups need to make themselves more visible on mandate issues, other committee staff told us. They suggested that, if the interest groups would track legislation and make themselves heard, committees would become more responsive.

At the state level, the degree of involvement by local interest groups also affects the legislators' use of cost estimates. For states in which cost estimates were used and influenced the outcomes of legislation containing mandates, state officials noted that interest groups played a meaningful role. Additionally, our questionnaire results showed that cost estimates were used to a greater extent in states where local interest groups were reported by state officials to be more involved.

The federal government could work with interest groups on legislation containing mandates. Interest groups could be more involved at the outset in working with congressional committees or members to select particular mandate bills for more extensive and earlier cost estimation. Congressional committees or members then could ask CBO to prepare estimates for these bills prior to full committee markup as well as for floor amendments.

¹Principally, the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors.

Conclusions

Cost estimation accomplishes the basic objective of giving legislators additional or confirming information about cost impacts. But it is difficult to assess the effect of cost estimates on eliminating or modifying the mandate burden of proposed legislation. While legislators may be better informed as a result of cost estimates, the knowledge of such costs seems to have influenced legislators to eliminate or modify mandates only when coupled with strong legislative concern about mandating costs on state and local governments.

For preparing state and local cost estimates, CBO uses a reasonable approach and methodology that is similar to the process established by many states. At both levels, the processes are greatly affected by such constraints as the time available to prepare cost estimates and the need for data relating specifically to each bill being considered. In addition, there is a high level of uncertainty in preparing estimates of future costs when the specifics of an activity are not yet known.

Some features of state processes, if adopted at the federal level, could focus more attention on state and local cost issues at key points in the legislative process. Cost estimates could be prepared on proposed legislation containing significant mandates (1) before the full committee report stage, (2) for floor amendments, and (3) when included in tax and appropriation bills. Doing so could increase federal legislators' awareness of mandate costs.

CBO's current cost estimate process could be used without change to prepare individual estimates earlier in the process at committee request and to prepare estimates on floor amendments. To avoid overloading CBO, early estimates could be requested only on bills that state and local interest groups identified as containing significant mandate costs, perhaps as they are scheduled for subcommittee or full committee markup. Earlier cost information could help committee members become more fully informed about potential state and local cost impacts before they complete deliberations on proposed legislation. Similarly, committee leaders or members of Congress could ask CBO for estimates on amendments to reported legislation that were proposed during floor debates.

Including appropriation and tax bills in the state and local cost estimation process would enhance the information available on such cost impacts during congressional deliberations. A statutory change would be needed to require that state and local cost estimates be prepared routinely for appropriation and tax bills, as is now done for other bills reported out of committee. A change would not be needed, however, to

provide for such estimates only on a request basis, similar to what we are suggesting for other legislation.

State and local interest groups may need to make a concerted effort to generate interest in requesting earlier estimates. By developing a priority listing of the proposed legislative mandates they are most concerned about, these groups could help (1) guide committees or members in determining which bills need earlier estimates and (2) assure that CBO's effort is directed toward the most significant proposed mandate legislation.

Finally, it would be useful for ACIR to prepare a biennial report identifying the total cost of new mandate legislation passed by each Congress, possibly using CBO's estimates as an initial database. Such a report could help increase congressional awareness of the overall cost impact of proposed legislation on state and local governments.

Matters for the Consideration of the Congress

We encourage the committees and members of Congress to ask CBO to prepare state and local cost estimates for selected proposed legislation scheduled for subcommittee or full committee markup. Consultation with state and local government interest groups could help legislators identify significant mandate legislation warranting these estimates. Committees and members should also consider requesting estimates for floor amendments with potentially significant effects on state and local costs. Finally, we encourage committees and members to similarly request estimates on appropriation and tax bills that are identified as potentially affecting state and local costs.

Recommendation to the Chairman of the U.S. Advisory Commission on Intergovernmental Relations

We recommend that ACIR prepare a biennial report on the total estimated state and local costs of new mandates contained in legislation passed by each Congress.

Agency Comments and Our Evaluation

Congressional Budget Office

CBO generally agreed with the report's description of federal and state cost estimation processes and our conclusions about the impact of state and local cost estimates.

CBO expressed concern with the suggestion made in our report that appropriation and tax bills be included in the state and local cost estimation process. CBO noted that, although it is not required to prepare such estimates, they could now be provided under existing authority at any time a request was made by a committee. CBO said it believed that appropriations committees would be concerned about adding a special reporting requirement for appropriation bills. In addition, CBO stated it generally had little time available to review those bills. It also noted that mandates affecting state and local governments are rarely contained in appropriation bills.

We spoke with staff of the Senate and House Appropriations committees regarding the issues raised by CBO. The staff confirmed that requiring CBO to prepare estimates routinely for all appropriation bills would not be feasible. These bills are often subject to numerous floor amendments that must be acted on in a short time frame. However, they did not object to having cost estimates prepared on a request basis, should an appropriation bill contain provisions that could potentially impact on state and local costs.

With regard to tax bills, CBO noted that preparing estimates of state and local costs before committee markup may not be feasible considering the manner in which tax legislation is developed. It further noted that any such estimates should be prepared by the Joint Tax Committee, given its current role in the legislative process.

We spoke with a staff official of the Joint Tax Committee who agreed with the points raised by CBO concerning the feasibility of preparing state and local estimates. He stated that tax legislation usually is considered in concept only, that specific language often is not drafted until a bill has been approved by Senate and House committees responsible for tax legislation. Further, when such legislation is submitted for floor consideration, it is not subject to amendment. Rather, it is simply passed or

defeated. Thus, cost estimates at that time could not be used as a basis for seeking changes in a tax bill through floor amendment. He acknowledged that the Joint Tax Committee now receives requests for revenue estimates on bills and that if requested could at least look into potential implications of tax bills on state and local government. He cautioned, however, that such impacts are often indirect in nature and may be difficult to identify when legislation is being considered.

Our goal is to further the basic intent of the State and Local Government Cost Estimate Act, which is that state and local cost estimates serve as a caution light to the Congress before it enacts legislation that may pass on significant costs to state and local governments. Accomplishing that goal fully would include consideration of tax and appropriation bills. While requiring estimates to be prepared on all such bills routinely may not be feasible, in our opinion, they should be considered on a request basis. Authority to proceed this way currently exists. CBO can be requested to prepare estimates at any time by congressional committees or members. With respect to tax bills, as CBO noted, it may be more appropriate to direct such requests to the Joint Tax Committee.

CBO's complete comments are contained in appendix XI.

Advisory Commission on Intergovernmental Relations

Overall, ACIR was complimentary of our report. ACIR agreed with our recommendation calling for the Commission to prepare a biennial report on the total estimated costs to state and local governments. It noted, however, that additional budgetary resources would be needed for it to undertake such responsibility. It said the amount required would depend on how the reporting task was to be performed.

We have not identified a specific format or approach to be taken to prepare such a report. We believe this decision should be made by organizations with a direct interest in intergovernmental concerns. For example, ACIR may wish to consult with the major associations representing state and local governments that have also commented on our report. With regard to the two options put forth by ACIR (see app. XII), we would concur with its observations. At a minimum, the report should identify total costs resulting from legislative actions taken by each Congress. The report could be used as a basis for further analysis of the impacts that tax and appropriation legislation is having on state and local government. As discussed in our analysis of CBO's comments, requiring estimates to be prepared on a routine basis for tax and appropriation bills may not be feasible. The report we are recommending could provide a

basis for periodic analysis of the impacts that previously enacted tax and appropriation legislation are having on state and local government. Such information would be beneficial to the Congress in assessing the desirability of seeking estimates of state and local impacts as such legislation is considered.

We have not attempted to estimate the resources that would be needed for this reporting effort. First, as discussed above, this would depend on the nature of the approach taken. Second, we believe this reporting effort would have to be considered in context with other ACIR activities in determining the level of additional resources required. We are sending this report to those committees having jurisdiction over ACIR's budget for their consideration in reviewing future budget requests of ACIR.

With respect to preparing estimates earlier, ACIR noted that many mandates are subject to periodic reauthorization or other recurring congressional oversight. Thus, the need for cost estimates could be anticipated in advance of legislative actions. We agree that, to the extent such conditions exist, they would provide a reasonable basis for requesting earlier estimates. ACIR's observation is consistent with our suggestion for earlier preparation of estimates. We have not specified a particular point in the legislative process for preparing these estimates. Although we have suggested requesting estimates at the time of subcommittee or committee markup, the timing of any requests for estimates should be based on the circumstances in each case. ACIR's observations should be considered by state and local interest groups when they consult with congressional committees to seek early estimates, as we have suggested.

ACIR commented that Executive Order 12612, issued in October 1987, should improve the timeliness and quality of cost estimates for executive branch legislative proposals having a federal mandate. This order requires that regulatory and legislative proposals be accompanied by an evaluation of "the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy." In our opinion, the additional availability of the evaluations called for by this order should enhance CBO's capability.

ACIR's complete comments are contained in appendix XII.

State and Local Interest
Groups

We also obtained comments from the seven major state and local interest groups, which provided us with one letter representing their collective comments (see app. XIII). The interest groups essentially agreed with our observations and suggestions.

With regard to our recommendation for a biennial report on the costs of federal legislation to state and local governments, the interest groups suggested that CBO prepare such a report annually. We recommended a biennial report to correspond to the 2-year time frame encompassing each Congress so that the report could cover a complete period of legislative activity. We directed our recommendation to ACIR as an organization with a legislative charter to conduct studies of intergovernmental issues and one that broadly represents the various components of the intergovernmental community (federal, state, and local governments). The study we are recommending can not only serve as an aggregation of costs, but also provide a periodic assessment of the overall impacts of federal legislation on state and local government. In our view, ACIR would be better suited to fulfilling that broader role than would CBO.

State Experiences With Mandate Reimbursement: Legislative Priority Is Key to Results

Nationwide, 14 states have established requirements for reimbursing local governments for the cost of state mandates. In four of the seven states we visited requiring mandate reimbursement, those requirements deterred passage of mandates, prompted modification of proposed mandates to reduce local costs, or—to a more limited extent—induced funding of mandates. In three states, however, reimbursement requirements had little impact in deterring, modifying, or funding mandates.

The critical factor prompting certain states to either restrain mandates or fund them was the legislators' concern about imposing costs on subordinate levels of government. Two other factors were important for the reimbursement process to work at the state level: a healthy fiscal climate and a reimbursement requirement established through either a voter-initiated statute, such as a local tax limitation law, or a constitutional amendment. Absent these, the prospects for a reimbursement process at the federal level are not bright.

State Mandate Reimbursement Intended to Relieve Financial Burdens on Local Governments

The 14 states that have general mandate reimbursement requirements cover most types of legislation and/or regulations that impose additional costs on local governments (see table 3.1).¹

¹In addition to these 14 states, other states provide revenue sources for some specific types of mandates, such as increased expenditures for wages and employee fringe benefits. In this chapter, we discuss results only from states that have adopted or considered general mandate reimbursement requirements.

**Table 3.1: States With General Mandate
Reimbursement Requirements**

State	Year effective	Legal basis	
		Constitutional	Statutory
California ^a	1973 1980	X	^b
Colorado ^a	1981		X
Florida ^a	1978		X
Hawaii	1979	X	
Illinois ^a	1981		X
Massachusetts ^d	1981		X
Michigan ^a	1979	X	
Missouri	1980	X	
Montana	1974		X
New Hampshire	1984	X	
New Mexico	1984	X	
Rhode Island	1979		X
Tennessee ^a	1978	X	
Washington	1980		X

^aIncluded in GAO's fieldwork

^bThe requirement which initially was statutory, became constitutional, effective in 1980, as we discuss on p. 36

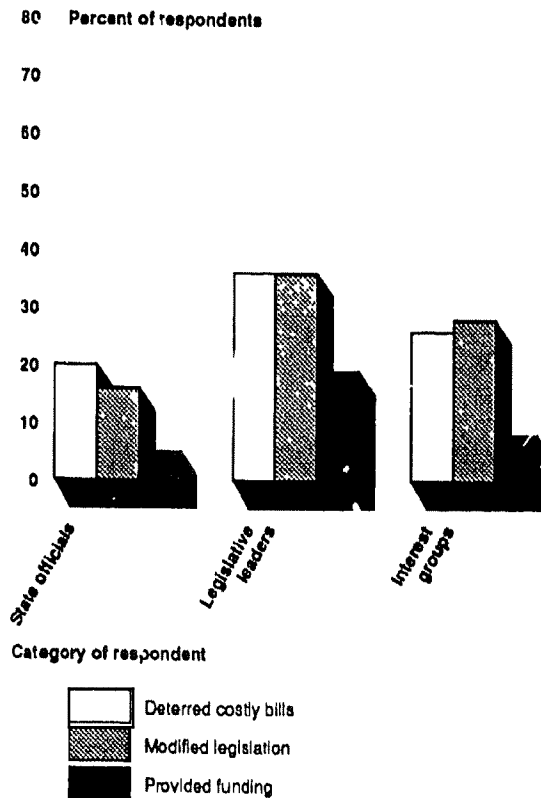
Of the eight states we visited, seven had a mandate reimbursement requirement (for details of the seven state programs, see app. VII). Five of the seven states said they implemented mandate reimbursement to ease the fiscal burden imposed by state mandates on local governments; three did so as part of voter-initiated measures to limit local taxes.

States requiring mandate reimbursement also authorize passage of unfunded mandates in specified circumstances. In six of the seven states, certain types of mandates are not covered by the reimbursement requirements. For example, five states need not provide funding for mandates that are beyond the control of the legislature, such as mandates imposed by the federal government or the courts. Two states do not cover mandates that apply to both the public and private sectors, such as worker compensation laws. (App. VIII shows the types of mandates the states in our review do not cover.) Also, two of the seven states formally allow their state legislatures to vote to exempt a mandate from the reimbursement requirement.

Reimbursement Requirements Have Reduced Mandates but Results Vary Among States

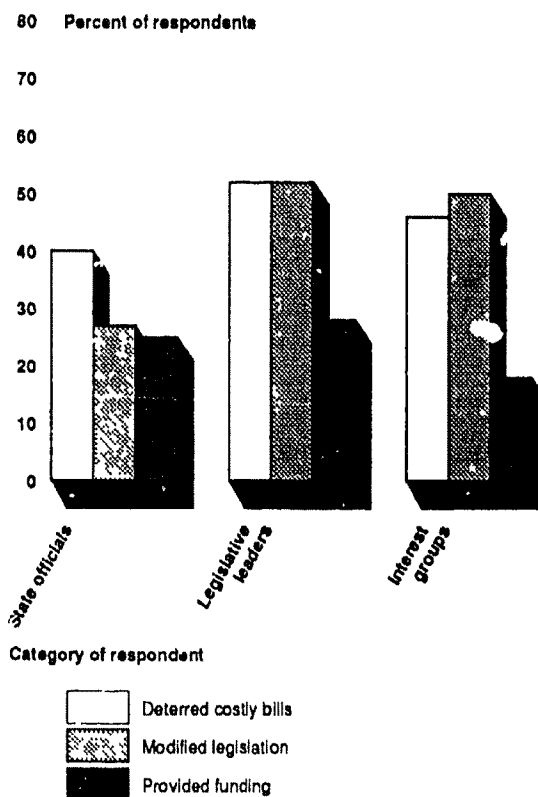
Overall, state reimbursement requirements have had some impact in deterring, modifying, or providing funding for local mandates. Reimbursement more often produced these results to a "great extent" than did cost estimation, according to respondents to our nationwide survey of state officials, legislators, and interest groups (see figs. 3.1 and 3.2). But even with reimbursement, generally fewer than half of those responding cited these outcomes as occurring to a great extent in their states.

Figure 3.1: Highest Cited Outcomes of Cost Estimation in Reducing Unfunded Mandates



Note: "Highest cited outcomes" was defined as outcomes occurring to a great or very great extent. See app. VI for complete data.

Figure 3.2: Highest Cited Outcomes of Reimbursement Requirements in Reducing Unfunded Mandates



Note: "Highest cited outcomes" was defined as outcomes occurring to a great or very great extent. See app. VI for complete data.

Also, the results from reimbursement requirements varied among the states. In four of the states we visited, officials believed reimbursement reduced unfunded mandates, primarily by deterring their passage or influencing legislatures to make local government compliance optional. In three states, however, the reimbursement provision had little effect on legislative deliberations of state mandates. Only in California was substantial funding provided for mandates, as shown in table 3.2.

Table 3.2: Direct Funding From Seven States for Cost of Mandates

Dollars in millions

State	No. of mandates funded, FY 1987	Total ^a appropriated/paid, FY 1987	Funding as a percent of total state aid to local governments	Total ^a funding through FY 1987
California	66	\$144	1.0	\$2,000
Colorado	0	0	^c	0
Florida	0	0	^c	0
Illinois	0	0	^c	0.2
Massachusetts	6	4.8(est.)	2	14.4
Michigan	1	1.2	^d	2.4
Tennessee	^b	^b	^c	^b

^aThe amounts listed are those appropriated directly due to the mandate reimbursement requirement. States do provide other aid, such as shared taxes, revenue sharing, and categorical aid, that local governments can use to help pay for the cost of state mandates. These amounts are not included in the table because there is no direct relationship between these other forms of assistance and the cost of state mandates.

^bUnknown. Tennessee could not provide specific data but in some instances has provided appropriations in legislation containing mandates because of the state's reimbursement requirement.

^cNot applicable.

^dLess than 1 percent.

Unfunded Mandates Reduced in Four States

In four states—Massachusetts, Michigan, California, and Tennessee—officials believe reimbursement requirements have reduced unfunded state mandates, although some still are being imposed on local governments.

Mandating Slowed in Massachusetts and Michigan

Massachusetts' statutory reimbursement requirement was enacted in 1980 as part of a voter-initiated, tax-limitation statute known as Proposition 2 and 1/2 (see app. IX). The Division of Local Mandates in the State Auditor's Office is the key administering agency for the reimbursement requirement. In the absence of reimbursement, local governments can petition the courts to permit noncompliance with unfunded mandates (see app. X for details on state program administration).

Although about \$14.4 million has been provided for six mandates through December 1986, the major result of the requirement has been the deterrence of mandates and modification of legislation containing mandates. Because they, not local governments, must pay the costs,

Massachusetts legislators now are more reluctant to mandate new programs on local governments, according to the director of the Division of Local Mandates. Local government interest group officials agreed that fewer mandates were being passed. For example, the state had delayed updating landfill regulations to avoid dealing with the mandate issue, an official noted.

On at least 15 occasions, Massachusetts legislators have modified state mandates by making local compliance optional, several officials told us. This relieves the state of the responsibility to pay and reduces local financial burdens. For example, the legislature allowed optional compliance with the state's Omnibus Education Reform Act, which would have mandated increased teachers' salaries and other educational program costs. As a result, costs ranging from \$400 million to \$1.3 billion for the state and local governments were avoided.

Although Massachusetts is funding some mandates, the legislature has not yet appropriated funds to pay for four covered mandates with an estimated cost of \$8.4 million, the director of the Division of Local Mandates noted. In addition, \$11.7 million of the \$14.4 million it has provided came from local aid monies that local governments would have received anyway.

Michigan adopted a mandate reimbursement requirement in 1978 as part of a constitutional amendment initiated by the voters to limit local tax increases (see app. IX). Under the legislature's and court's interpretation, according to state and local officials, local governments faced with an unfunded state mandate have two avenues of recourse. They can submit reimbursement claims for mandate-related costs to the responsible executive agency or choose not to comply with the mandate until state funding is provided.

The main result of Michigan's reimbursement requirement has been to deter and modify mandates. It has reduced the number of mandates proposed and passed by the legislature, according to most officials of the state legislature and local government interest groups we interviewed. The state has passed only two covered mandates since the requirement passed, they observed. One was funded by the state with an appropriation of about \$2.4 million covering 2 years; the other was not funded. For the latter, after a county government filed suit against the state, the courts ruled that the county did not have to comply until the state funded the mandate.

To avoid providing state funds for reimbursement, several state officials noted, the Michigan legislature made compliance with many mandates optional. For example, the state mandated changes in compensation for full-time county prosecuting attorneys, which resulted in increased salaries. It allowed the counties, however, to determine whether their prosecuting attorneys would be full- or part-time, thus giving them a way to avoid the mandate.

Michigan still imposes some costs on local governments through mandates not subject to reimbursement, such as those applying equally to the public and private sectors. Furthermore, in some cases the legislature has avoided the reimbursement requirement by making the provision of the service, not the mandate itself, optional, state officials said. In reality, local governments often cannot avoid providing these services and thus must accept the mandate as well.

California Funds Some Mandates

Originally, California's mandate reimbursement requirement was enacted in 1972 as part of a statute limiting local government property tax assessments and school district revenues. In 1979, the mandate requirement was included as part of a constitutional amendment imposing appropriation limits on both state and local governments (see app. IX).

Although some California mandates have been deterred or modified as a result of the reimbursement requirement, the major result has been mandate funding. As discussed previously, California has provided substantially more direct financial assistance for state mandates—\$144 million in fiscal year 1987—than any other state (see table 3.1). State funding is provided either (1) at the time the mandate is passed or (2) subsequent to a complex appeals process.

In only a small number of cases does the legislation containing the mandate also provide funding. While we cannot determine how much funding is provided in this manner, only 124 of 4,100 mandates enacted over a 10-year period (1975-85) also had funds provided in the legislation, according to a state official.

Should the legislature not appropriate funding up front, local governments do not have the right of optional compliance as in Michigan and Massachusetts. Rather, the burden of proof in California is on local governments to show that the mandate should be reimbursed. The appeal process is long and complex, starting with a petition to the Commission

on State Mandates. Should the Commission certify that the mandate is eligible for reimbursement, it would submit an appropriation request to the legislature.

Although additional mandates are funded through this process, many mandates are never funded, state and local officials told us. For example, in 1978 the legislature extended unemployment benefits to public sector employees without state funding. The state Supreme Court ruled in 1984 that the legislation was a reimbursable state mandate retroactive to 1980. Although the state legislature agreed to pay local governments for unemployment benefits starting with fiscal year 1984, no funds had been paid as of September 1987.

If the legislature appropriates money through either means, local governments receive their funds by submitting reimbursement claims to the State Controller's office in conformance with detailed cost standards and guidelines. It can take up to a year before claims are certified for payment—long after the original mandated expense has been incurred, according to an official of the State Controller's office.² (For more details on California's administrative process, see app. X.)

Opinions Mixed on Impact in Tennessee

In 1978, Tennessee voters approved a mandate reimbursement requirement as part of a constitutional amendment imposing state spending limits (see app. IX). Unlike Massachusetts, Michigan, and California, Tennessee does not require specific funding for individual mandates. Rather, funds are earmarked from general purpose funds and provided through a formula. Specifically, the state is required to pay its fair share of mandated costs through return of a portion of state taxes (taxes collected on retailers and alcoholic beverages, and income tax on dividends and interest) to local governments. Each year, the state earmarks the first \$1 million increase in these state taxes above the previous year's level to be used specifically by local governments to cover state mandate costs. Also, in some instances the legislature will appropriate money to pay for a state mandate. (For details on program administration, see app. X).

Opinion in Tennessee on the effect of the reimbursement requirement was mixed. Several respondents to our questionnaire said it had

²To expedite the process, the state has implemented a mandate claims fund to pay for mandates with statewide costs of less than \$500,000 without having to seek a separate appropriation from the legislature. Also, to expedite the reimbursement process the state plans to pay for another group of mandates through a block grant to local governments.

deterred the passage of mandates or modified mandate legislation to a great extent. Two officials we interviewed confirmed these opinions, saying the requirement had deterred the passage of legislation. They could not cite, however, specific examples of mandates deterred or modified. But other officials noted that the requirement had not had much effect; they included the Deputy Commissioner for the Department of Finance and Administration and two officials of local government interest groups. The state was not operating any differently than before the requirement, they said.

Monies earmarked for mandates were largely funds that local governments would receive even if there were no reimbursement requirement. Although in some instances, the legislature provided special appropriations for state mandates, there appeared to be no connection between the cost of state mandates and the amount of state-shared taxes provided. Also, to what extent the cost of mandates was paid for by the state, either through appropriations or state-shared taxes, is not known.

Impact of Reimbursement Insignificant in Three States

In three of the seven states we visited—Florida, Illinois, and Colorado—mandate reimbursement requirements have had little impact on the passage or funding of state mandates.

No Major Impact in Florida

The Florida legislature passed the state's mandate reimbursement statute in 1978 (see app. IX). It applies to most legislation, but not regulations or laws affecting schools. (See app. VIII for information on state exclusions to mandate statute.) No state agency is in charge of enforcing the statute, no reimbursement policies or procedures have been established, and no provisions are made for a local appeals process.

Florida's reimbursement requirement has had no major impact on the passage of mandate legislation. Because it is largely ignored in legislative debate, as two state officials noted, unfunded mandates are being passed. The cost estimate requirement has greater influence in deterring or modifying mandates, several state officials noted. From 27 in 1983, the number of unfunded mandates increased to 31 in 1984 and 35 in 1985, according to Florida's Advisory Commission on Intergovernmental Relations. The number of mandates with a high dollar impact has increased, a Commission official said, and mandates are becoming a significant burden on local governments. The reimbursement requirement is not enforceable because it is a statutory provision, Florida officials

told us, and the legislature enacting it in 1978 could not bind succeeding legislatures.

Illinois Mandate Reimbursement Little Used

The Illinois General Assembly enacted a mandate reimbursement requirement known as the State Mandates Act on November 15, 1979. Its general intent (see app. IX) was to relieve financial pressures on local governments caused by state mandates. In addition to specified areas excluded from the process, the General Assembly can exempt the state from the reimbursement requirement by a three-fifths majority vote.

Although the state has established processes for claims reimbursement and appeals, they are little used. During the year (1981) following its adoption, the State Mandates Act resulted in a reduction of state mandates passed, Illinois state and local government officials agreed. But this deterrent effect significantly diminished subsequently. Since that time, the General Assembly has passed 57 unfunded mandates with a total estimated annual cost to local governments of \$148 million. Of this total, the General Assembly has voted to exempt itself from the funding requirement on 25 occasions, resulting in estimated annual costs to local governments of over \$107 million. Of the remaining 32 mandates, estimated to cost \$41 million, the General Assembly appropriated only \$200,000 for one mandate, even though all are technically covered. In one instance, school districts sued the state, and the Illinois Appellate Court ruled that the local governments did not have to carry out the mandate in the absence of state money. The General Assembly then approved by a three-fifths vote an amendment to exempt this mandate from the reimbursement law, thereby relieving local governments to implement it.

Colorado Law Untested

In Colorado, the reimbursement requirement appears to have had no impact to date. The Colorado mandate provision was part of a larger tax limitation initiative passed by the legislature in 1981 (see app. IX). There is no state agency in charge of the requirement, no written procedures for enforcing the provision, and no established appeals process available to local governments.

Unlike Illinois and Florida, however, Colorado's law has not been tested. Costly mandates have not been passed in the past 5 years, according to state officials and interest groups representing local governments in the state. This, they said, was because of the depressed state fiscal condition

and a cooperative working relationship between the state and local governments. There was general agreement among these parties that the mandate reimbursement provision had no impact on state legislation. Generally, the requirement did not influence legislators and its existence was not widely known, a former chairman of the state's House Appropriation Committee noted. In fact, the executive director of the state's association of cities responded on our questionnaire that the state did not have a mandate reimbursement requirement.

Some States Considering Reimbursement; Others Decided Against It

Another 18 states have considered or are considering instituting a reimbursement requirement (see app. I). For example, mandate reimbursement legislation has been proposed in New York and New Jersey, while Minnesota is actively researching the concept. Some of these states have decided against implementing mandate reimbursement, primarily due to limited funds in the state budget.

In Connecticut—a state we visited that has considered and rejected the reimbursement approach—the legislature established a commission to formally study instituting mandate reimbursement. The commission recommended against the concept, primarily on policy rather than fiscal grounds. Such a requirement could unduly constrain the legislature from passing needed legislation applying to all communities throughout the state, two state officials noted. Also, they said, the state wanted to retain the authority to require needed programs.

But the commission did seek to reduce the burden of unfunded state mandates through other means, according to state officials. Specifically, it analyzed existing state mandates and successfully promoted elimination of some of those most burdensome on local governments. Its study also increased legislative sensitivity. Mandates that increase local costs often are funded by increasing state aid to local governments under existing programs or authorizing local governments to increase property taxes. Connecticut's good fiscal condition has permitted it to provide local governments with additional funding for mandates.

Legislative Priority, Other Factors Influence State Outcomes

The existence of a reimbursement process alone is insufficient to reduce unfunded mandates, as illustrated by the variable outcomes in the seven states with mandate reimbursement we visited. Where the process successfully deterred, modified, or provided funding for mandates, state legislators' degree of concern about imposing mandates on local governments was the key factor. The legislative response to mandated costs

can be affected by several variables, including the legal basis of the requirement, the fiscal condition of the state, and certain characteristics of the process itself. But for the reimbursement process to be workable, significant support for it must exist within the legislature.

Legal Basis a Key Factor

Where they have been made part of the state constitution or initiated by the voters, reimbursement requirements have had an impact on stopping unfunded state mandates (see app. VII for the legal bases of state programs). In all three states where reimbursement requirements were added by amendment to the constitution (California, Michigan, and Tennessee), unfunded mandates were reduced. A constitutional amendment can prompt the legislature to pay more attention to the requirement and make it more difficult to circumvent, state legislative officials told us. Incorporating a reimbursement requirement into California's constitution has slowed down the number of unfunded high cost mandates enacted by the legislature, according to both state and local officials. In Massachusetts, where reimbursement requirements also have restrained mandating, the requirement was statutory but was based on an initiative instituted by the voters. There, the legislature felt compelled to honor a direct expression of the electorate, state officials said.

In the three remaining states in which the mandate reimbursement requirement had little impact, the provision was statutory and originated with the legislature. In these states, the legislature can formally override the requirement at any time with another statute or simply not adhere to the requirement. In both Florida and Illinois, the statutory basis of the mandate requirement was cited as a major reason for the lack of impact. In Illinois, several state legislators, concerned with the lack of priority given by the General Assembly to the mandate statute, are attempting to change the requirement to a constitutional provision.

Fiscal Condition Can Affect Legislative Priority

A state's fiscal condition also can affect the state legislature's willingness to fund mandates. Generally, states with more funds are more willing to provide funding to local governments. In Massachusetts, its strong fiscal condition was an important factor in the legislature's willingness to fund most mandates, state and local interest groups said. In recent years, the state has been running a significant budget surplus, as much as \$348 million in fiscal year 1986. California's fiscal condition directly affects the legislature's willingness to provide financial assistance to local governments, according to all four state legislators we interviewed.

Two said that state assistance for mandates had risen and declined in relation to the state's overall fiscal position.

From a different perspective, the amount of general purpose state assistance provided to local governments (such as state revenue-sharing) also helps defray the cost of mandates. For example, in Florida and Tennessee general assistance helps local governments pay for the cost of state mandates. This was the case in Florida, both state officials and local government interest groups agreed. Tennessee (as stated earlier) funds mandates by earmarking a portion of shared tax revenues.

**In Some States, Local
Compliance With
Unfunded Mandates
Optional**

In three of the seven states, reimbursement requirements give local governments the right to not comply with state mandates unless the state provides funds for the cost of those mandates. This feature places added pressure on state legislatures to fund mandates if they wish all local governments to comply. In effect, optional compliance gives local governments new leverage in dealing with the legislature on mandate legislation.

In both Massachusetts and Michigan, the right of optional compliance affected the reduction in unfunded state mandates. When Massachusetts does not provide full funding for a state mandate, local governments can petition the courts for relief from the mandate. They need not carry it out until the courts have made a final determination. In Michigan, the courts ruled that local governments need not carry out state mandates unless the state funds their cost. Officials in both states cite optional compliance as a contributing factor to the lessening of the mandate burden.

Illinois is another state that has authorized local noncompliance when funding is not provided for mandates subject to reimbursement. On many occasions, however, the legislature has overridden this right by specifically exempting mandates from the reimbursement requirement. This essentially eliminates the local government's right of noncompliance.

**Court Decisions Affect
Results of Requirements**

The courts can play a significant role in determining legislative authority over mandate reimbursement. State courts can expand or limit states' rights to impose unfunded mandates on local governments. In

four of the seven states we visited—California, Massachusetts, Michigan, and Illinois—court rulings have directly affected the outcomes of the mandate reimbursement processes.

At times, the courts have expanded the rights of local governments under mandate reimbursement requirements. For example, courts in Massachusetts and Michigan have ruled that local governments need not comply with state mandates unless the state appropriates funds for reimbursement.

However, the courts also have limited the rights of local governments to obtain reimbursement for state mandates. For example, in 1987 the California Supreme Court ruled that increases in workers' compensation benefits are not reimbursable state mandates because they apply to the private sector as well as to local governments. The intent of California's constitutional provision, the court ruled, was to require reimbursement to local governments only for activities that are unique to government. This decision reversed 15 years of prior state practice, as the state had not differentiated between mandates affecting the private and public sectors. In a Massachusetts case, the courts upheld the state's right to use a conditional grant as an incentive or disincentive to carry out state mandates. If local governments did not implement the mandate, the state was permitted to hold back the grant funds, even if full state reimbursement for the mandate was not provided. Although legally free to ignore the mandate, local governments doing so would not get the state grant funds.

In some states, issues still are to be decided by the courts. As of January 1986 in California, for example, there were pending 29 court cases filed by local governments seeking reimbursement for state mandates. In one case concerning special education, schools are seeking to have a mandate declared unenforceable until the legislature appropriates an estimated \$2 billion to carry it out. Although the courts cannot force the legislature to appropriate funds, they can declare that local governments need not enforce the mandate.

Conclusions

State requirements to provide reimbursement for mandates have reduced unfunded local mandates to some extent. But it seems unlikely, at least for now, that a similar reimbursement requirement would be workable at the federal level. Factors mitigating against this include

- the continued existence of large federal budget deficits,

- the absence of strong voter pressure to reduce the impact of federally mandated actions on state and local governments, and
- the perception that the federal government needs to mandate certain actions to ensure uniform application by the states, regardless of reimbursement.

Fiscal condition is a key factor affecting mandate funding. During times of large federal budget deficits, the Congress is less likely to authorize reimbursement for expenses incurred by state and local governments to comply with federally mandated actions. In this environment, pressures also increase to enact mandates prescribing national policy without federal funding.

By making local compliance optional for certain mandated actions, as opposed to providing funding for those mandates, some states have sought to ease burdens on local governments. Faced with continuing budget deficits, federal officials could give state governments the same option. But, if such action, while advantageous to state governments, caused mandates to be ignored, it could be deemed unacceptable by the Congress. The federal government uses mandates to help assure residents of every state at least a minimum level of benefits or protection in areas ranging from public assistance to occupational safety and health. Making compliance with federal mandates optional could erode the capability of the federal government to accomplish these and other important purposes.

Agency Comments and Our Evaluation

Only one comment was made by those responding to this report concerning our discussion of mandate reimbursement.

ACIR raised questions about our position that reimbursement requirements initiated through constitutional amendment or by voters had more impact. Our comments were not intended to imply that a requirement initiated otherwise, such as by legislation, could not have an impact. For the states we visited, however, a distinction was apparent. In the four states where unfunded mandates were reduced, the requirement was either a constitutional provision or a statute resulting from a voter initiative. In the three states where reimbursement requirements had little impact in deterring, modifying, or funding mandates, the requirement was a statute that was not the result of a voter initiative.

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States Requiring Local Cost Estimates and Mandate Reimbursement

State	Requires		Legislature considered a reimbursement requirement
	Estimate of local cost burden	Mandate reimbursement	
Alabama	X		
Alaska			X
Arizona	X		X
Arkansas	X		
California	X	X	
Colorado	X	X	
Connecticut	X		X
Delaware	X		
Florida	X	X	
Georgia	X		X
Hawaii		X	
Idaho	X		X
Illinois	X	X	
Indiana	X		X
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		X
Maine			X
Maryland	X		
Massachusetts		X	
Michigan	X	X	
Minnesota			X
Mississippi			
Missouri	X	X	
Montana	X	X	
Nebraska	X		X
Nevada	X		
New Hampshire	X	X	
New Jersey	X		X
New Mexico	X	X	
New York	X		X
North Carolina	X		
North Dakota	X		
Ohio	X		
Oklahoma			X
Oregon	X		
Pennsylvania	X		X

(continued)

Appendix I
States Requiring Local Cost Estimates and
Mandate Reimbursement

State	Requires		Legislature considered a reimbursement requirement
	Estimate of local cost burden	Mandate reimbursement	
Rhode Island	X	X	
South Carolina	X		
South Dakota	X		
Tennessee	X	X	
Texas	X		X
Utah	X		X
Vermont	X		X
Virginia	X		
Washington	X	X	
West Virginia	X		
Wisconsin	X		X
Wyoming			
Totals	42	14	18

CBO Case Examples From the 99th Congress

Bill subject	Bill no.	CBO estimate of state and local costs (millions) ^a	Bill status
Safe Drinking Water	H R 1650 S 124	\$3,500 (capital) and 200-300 (annual)	Passed
Education of the Handicapped	H R 5520 S 2294	575 (annual) 530-2,700 (annual)	Passed
Water Resources Development	H R 6 S 1567	524 (annual)	Passed
Rehabilitation Act Amendments	H R 4021 S 2515	500 (annual)	Passed
Immigration Reform	H R 3810 S 1200	225-250 (annual)	Passed
Housing Act of 1985	H R 1	274 (total)	Not passed
Ocean Dumping	H R 1957	30 (annual)	Not passed
Fair Labor Standards Act Amendments	H R 3530 S 1570	500-1,500 (annual savings)	Passed

^aCBO's estimates were identical for both Senate and House bills, except for Education of the Handicapped

Technical Description of GAO's Survey Questionnaire Methodology

During March and May 1987, we sent three questionnaires to all 50 states to obtain information on state programs for estimating and reimbursing the cost of state mandates imposed on local governments. One questionnaire went to state officials responsible for cost estimation and reimbursement activities, another to state legislative leaders, and a third to interest groups representing cities, counties, and schools. This appendix contains the technical description of our survey designs, pretest procedures, sample selections, and overall response rates.

Survey Design

The questionnaire for state cost estimation and reimbursement officials was designed to elicit the respondents' experiences and views concerning state programs and procedures for estimating and reimbursing the cost of state mandates imposed on local governments. Specifically, we asked state officials about:

- Requirements and intent of local cost estimates,
- Preparation and reporting of local cost estimates,
- The impact of the local cost estimate process on the level of mandate burden imposed on local governments,
- Factors affecting the use of local cost estimates,
- The existence and operation of a mandate reimbursement provision,
- The impact of the mandate reimbursement provision on the level of mandate burden imposed on local governments, and
- Factors affecting outcomes of the mandate reimbursement provision.

The questionnaire for state legislative leadership was sent to the majority leaders in each house of each state legislature. It was designed to obtain information about their views concerning the impact of estimation and reimbursement programs on mandate legislation.

The questionnaire sent to interest groups representing cities, counties, and schools was designed to elicit the respondents' views concerning the impact of state estimation and mandate reimbursement programs on legislation affecting their respective constituencies.

Pretesting of Questionnaire

We pretested the questionnaires through in-person visits with the respective state, legislative, and interest group officials in the states of Rhode Island and Maryland. With the information obtained, we refined the questions and terminology we used in the final questionnaires.

Survey Plan

To identify questionnaire respondents, we contacted several national organizations representing state and local governments.

We identified state officials responsible for cost estimation and reimbursement activities through a telephone survey of state members of the National Association of Legislative Fiscal Officers (NALFO). Where NALFO representatives could not identify the specific organization conducting such activities in their state, they gave us the name of an official knowledgeable about the state's activities. In 14 states, we identified two organizations with legislative responsibility for preparing local cost estimates. We sent separate questionnaires to each of the two organizations in those states.

Through a listing obtained from the National Conference of State Legislatures, we identified 99¹ state legislative leaders representing both chambers of each state legislature.

We identified 145 public interest groups representing cities, counties, and schools nationwide. Specifically, we surveyed the 46² state associations of counties identified by the National Association of Counties, the 49³ state municipal leagues identified by the National League of Cities, and 50 state interest groups representing schools identified by the NALFO state members through our telephone survey or by the National Association of School Administrators.

Response Rates

The number of respondents surveyed, the number of questionnaires returned, and the response rates for each of the three sets of questionnaires are shown in table III.1.

¹Nebraska has a unicameral legislature

²Alaska, Connecticut, Rhode Island, and Vermont have no state county associations

³Hawaii has no state municipal league

Table III.1: GAO Survey Universe and Response Rates

Respondent category	No. surveyed (universe)	No. of respondents	Response rate (percent)
State officials	64	54 (49 states)	84
Legislative leaders	96	70 (44 states)	72
County interest groups	46	41	89
City interest groups	49	47	96
School interest groups	50	44	88

We mailed questionnaires to state officials in March 1987 and to state legislative leaders and interest groups in May 1987. From June to September 1987, we sent three follow-up mailings to nonrespondents.

As we received the completed questionnaires, we reviewed the data provided for consistency and completeness before coding the responses for keying into our database. Where data appeared inconsistent or incomplete, we contacted the respondent by telephone and attempted to obtain the missing data or resolve the inconsistencies. Some respondents, however, could not provide all of the data requested. We did not verify the accuracy of the data provided.

Sources of Cost Information Used by State Estimating Officials (As Reported in GAO Survey)

Source of cost information	Percent of state estimating officials who used source		
	Always/most of the time	Half the time	Sometimes/never
State agencies	71	13	16
Local governments	49	7	44
Interest groups	27	11	62

Methods of Obtaining Local Government Data (As Reported in GAO Survey)

Method of obtaining data	Percent of state estimating officials who used method		
	Very great/ great extent	Moderate extent	Some/little extent
Case by case basis	57	16	27
Network of local contacts	34	18	48
Stratified sample of local governments	16	16	68
Random sample of local governments	9	5	86

Outcomes of Cost Estimation and Mandate Reimbursement (As Reported in GAO Survey)

Outcome	Percent* of respondents reporting outcome					
	State officials		Legislative leaders		Interest groups	
	C/E	M/R	C/E	M/R	C/E	M/R
Inform:						
Great/very great	56	31	63	60	39	56
Moderate	31	38	29	36	35	29
Some/little	13	31	8	4	26	15
Deter:						
Great/very great	20	40	36	52	26	46
Moderate	29	13	36	28	35	27
Some/little	51	47	28	20	39	27
Modify:						
Great/very great	16	27	36	52	28	50
Moderate	38	20	38	28	36	22
Some/little	47	53	26	20	36	28
Fund:						
Great/very great	5	25	19	28	8	18
Moderate	17	13	33	24	25	18
Some/little	78	63	48	48	68	64

*Percentages for each outcome may not total 100 percent due to rounding

C/E = cost estimation

M/R = mandate reimbursement

Characteristics of States Visited by GAO That Require Mandate Reimbursement

Characteristics	State and year requirement was effective						
	Calif., 1980 ^a	Colo., 1981	Fla., 1978	Ill., 1981	Mass., 1981	Mich., 1979	Tenn., 1978
Legal basis							
Statute		X	X	X	X		
Constitution	X ^a					X	X
Initiated by							
Legislature		X	X	X			X
Voters	X ^a				X	X	
Local government				X			
Covers							
Legislation	X	X	X	X	X	X	X
Regulations	X			X	X	X	X
Specific legislation exemption allowed	No ^b	No ^b	No ^b	Yes	Yes	No	No
Up-front appropriations required	No	No	No	Yes	Yes	Yes	Yes
Noncompliance allowed in absence of funding	No	No	No	Yes	Yes	Yes	Yes
Formal appeals mechanism available	Yes	No	No	Yes	No	Yes	No

^aAs noted in ch. 3, prior to 1980, mandate reimbursement was required by statute, effective 1973, initiated by the legislature

^bThese states do not allow specific legislative exemption, but can achieve the same result by not appropriating funds for mandates. Because these states do not allow the option of noncompliance, local governments must carry out mandates even in the absence of funding

Types of Mandates Excluded From State Reimbursement in Six States

In six of the seven states reviewed, we found certain types of mandates that are formally excluded from state reimbursement. This appendix details the general and specific types of mandates excluded from reimbursement by each state.

General Exclusions

The following types of mandates generally are excluded from reimbursement by most states we reviewed:

- Federal,
- Court,
- Voter-approved, and
- Local government-requested.

Specific Exclusions

In addition to the general exclusions allowed by most states, each state has specified that certain types of mandates are not state-reimbursable. The principal exclusions are as follows:

California

- Cost-savings mandates,
- Self-financing mandates,
- Mandates enacted prior to January 1, 1975, and executive orders or regulations initially implementing legislation enacted prior to January 1, 1975,
- Mandates defining a new crime or changing an existing definition of crime, and
- Mandates applicable to both public and private sectors (based on recent California Supreme Court decision).

Florida

- Mandates affecting schools or other special districts, and
- Mandates applicable to specific local governments.

Illinois

- Mandates with no net cost increases,
- Cost-savings mandates,
- Mandates with costs recoverable through federal, state, or external aid,
- Mandates costing less than \$1,000 per local government or less than \$50,000 for all local governments,
- Local government organization and structure mandates and
- Due process mandates.

Massachusetts

- Retirement and group insurance mandates,
- Mandates affecting county and regional jurisdictions,
- Criminal laws or civil violations, and
- Penalties imposed by a state agency on a municipality due to violation of a law that resulted in hazard to the public.

Michigan

- Mandates applicable to a larger class of persons or corporations, such as the private sector, and not exclusively to local governments (public sector),
- Mandates increasing salaries of circuit and probate court judges,
- Mandates benefiting or protecting public employees of local governments, and
- Due process mandates.

Tennessee

- Mandates applicable to specific local governments.

Colorado

- No specific exclusions listed.

Specific Definitions of Mandate Reimbursement Requirements in Seven States

The definitions of mandate reimbursement requirements vary by state. This appendix contains the specific definitions of mandate reimbursement requirements in the seven states we reviewed.

California

Article XIII B, section 6, California Constitution: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Colorado

Section 29-1-304, Session Laws of Colorado 1981: "(1) Every action by the general assembly which mandates a new program or the expansion of an existing program subsequent to July 1, 1981, upon a unit of local government shall either: (a) Provide sufficient state general fund appropriations to meet the cost thereof; (b) Provide for a local source of revenue to meet the cost thereof"

Florida

Florida statute 11.076 of 1978: "(1) Any general law, enacted by the Legislature after July 1, 1978, which requires a municipality or county to perform an activity or to provide a service or facility, . . . which will require the expenditure of additional funds, . . . must provide a means to finance such activity, service, or facility . . . (2) This act shall not apply to any general law under which the required expenditure of additional local funds is incidental to the main purpose of the law."

Illinois

Chapter 85, sections 2201-2210, Illinois Revised Statutes: ". . . any State-initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a court other than any order enforcing such statutory or executive action. State mandates may be reimbursable or nonreimbursable as provided in this Act. However, where the General Assembly enacts legislation to comply with a federal mandate, the State shall be

exempt from the requirement of reimbursing for the cost of the mandated program"

Massachusetts

Chapter 29, section 27C, Massachusetts General Laws: ". . . . (a) Any law, rule or regulation taking effect on or after January first, nineteen hundred and eighty-one imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote or by the appropriation of money for such purposes, unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption"

Michigan

Article IX, section 29, Michigan Constitution: "The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs"

Tennessee

Article 2, section 24, Tennessee Constitution: ". . . . No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost"

Administration of Mandate Reimbursement Programs

The administration of mandate reimbursement programs varies by state. This appendix details program administration in California, Massachusetts, and Tennessee.

California

With a few exceptions, the state constitution requires the state to reimburse local government for all mandated costs arising from legislation or regulations that provide for a new program or an increased level of service in an existing program. Local agencies may obtain reimbursement for mandated costs in one of two ways:

1. The legislation initially imposing the mandated activity may contain an appropriation for reimbursement, and local agencies may file reimbursement claims with the State Controller to obtain a share of these funds.
2. If the legislation does not contain an appropriation, the local agency may file a "test claim" with the state's quasijudicial Commission on State Mandates (CSM). The test claim is the first claim that alleges the existence of mandated costs eligible for reimbursement. This claim initiates a fact-finding process that culminates in a decision by CSM. CSM holds several hearings to determine (1) the merits of the test claim, (2) the costs and types of localities eligible for reimbursement, and (3) the estimated amount of reimbursement. If CSM determines that a particular statute or regulation contains a reimbursable mandate, it requests an appropriation from the legislature to reimburse localities for costs incurred since the mandate became operative. If the legislature appropriates funding, the Controller notifies localities of the available funds and gives them guidelines for preparing reimbursement claims. Localities actually do not receive reimbursement until approximately 2 years after the initial test claim is filed.

Whether a mandate is funded through the appropriation or test claim processes, local agencies must annually file detailed reimbursement claims with the Controller for each approved mandate. Reimbursements to local agencies cover the prior year's actual costs and the estimated costs for the current year. These payments may be for total or incremental costs depending on the guidelines certified by CSM.

In 1985, two laws were enacted to reduce reimbursement delays for mandates funded through the appropriation and test claim processes. Under one law, reimbursement for certain ongoing mandates is provided on a block grant basis, with the amount of the grant equal to the average

amount of reimbursement received during a 3-year base period. This amount is automatically disbursed to local agencies, who will no longer have to file reimbursement claims with the Controller. Under the second law, mandates approved for funding by CSM can be reimbursed from a newly created mandate claims fund, if the mandate's first-year state-wide costs are less than \$500,000. The amount of this new revolving claims fund is \$10 million. Reimbursements from this fund can be made only after local agencies have gone through the test claim process. However, CSM will no longer have to seek funding approval from the legislature.

Massachusetts

The mandate reimbursement requirement was enacted by statute in 1980 through a voter tax relief initiative. Any law, rule, or regulation taking effect on or after January 1, 1981, is subject to the reimbursement requirement. The Division of Local Mandates (DLM), created within the State Auditor's Office in 1983, is the key administering agency of the reimbursement requirement. It has the authority to determine which statutes qualify for reimbursement by meeting the mandate criteria detailed in the reimbursement provision. DLM reviews a state program at the request of a city, town, or state legislator to determine within 60 days whether part or all of it originated after January 1981, when the reimbursement requirement became effective. If so, the requirement stipulates that the state must appropriate money for the mandate at the same session in which the law was enacted and in each successive year. The requirement also directs the state to pay cities and towns up-front and in full for the costs associated with mandates. The local governments need not comply with a mandate unless and until there is a state appropriation for the mandated provisions. They must, however, petition the courts to permit noncompliance.

DLM makes the final determination as to what qualifies as a mandate; however, the power of appropriation lies with the legislature. Thus, all legislative appropriations concerning mandates are based on DLM determinations. DLM determines reimbursable amounts through either an estimation or a claims process and alerts the state to its obligation through mandate determination reports. The reports are sent to affected local governments, appropriate state agencies, and state legislators. DLM's mandate determinations may be admitted as cost evidence in court should a city or town resort to legal action to recover its costs. In addition to DLM, the state's office of Administration and Finance (A&F) has been directed on three occasions to distribute reimbursable funds to

affected cities and towns. A&F's role was written into legislative appropriation language for three separate mandates. Both DLM and A&F have required affected communities to itemize estimated and/or certify actual costs incurred in carrying out each mandated program prior to checks being drawn from the mandate appropriation.

Tennessee

The state constitution specifies that no laws of general application shall impose increased expenditure requirements on local governments unless the state shares in the costs. The state does not have a specific unit that administers the mandate reimbursement program. Local governments are reimbursed for state-mandated costs through either appropriations or state-shared taxes. For reimbursements provided through appropriations, the state agency that oversees the mandated activity is responsible for reimbursing local governments. Reimbursements are allocated to local governments on a formula basis. For reimbursements provided through state-shared taxes, the first \$1,000,000 increase over the previous year in state-shared taxes must be made available to municipalities and counties to cover the state's share of mandated costs. However, localities would receive these state-shared taxes regardless of any new mandates imposed by the state. Thus, the state does not provide new funding for mandates when they require local governments to use state-shared taxes as reimbursement for mandated costs. Since state-shared taxes also are allocated on a formula basis, there is no relationship between the cost of mandates and the amount received from shared taxes. Local governments are not required to file reimbursement claims, as allocations are based on formulas.

Comments From the Congressional Budget Office



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

July 12, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
Human Resources Division
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Thompson:

We have reviewed your proposed report to Senator Durenberger on legislative mandates, which you sent to us on June 9, 1988. In general, we believe the report provides a good description of federal and state cost estimation processes and of the state experience with legislative mandate reimbursements.

We agree with the report's conclusion that state-local cost estimates have had only a limited impact during the last five years. In part, this is because there have been relatively few legislative initiatives that would impose new mandates on state and local governments. As the report notes, for example, during the 99th Congress, CBO estimated that less than 10 percent of over 1,100 bills reported from committees would have a state-local cost impact. Incidentally, we prepare state-local cost estimates for almost all bills reported from committee, including those that would impose no costs. The statement on page 16 of the draft report implies that cost estimates are prepared only for bills which would impose costs.

The lack of impact of state-local cost estimates also results in part from the generally low-key presentation of state and local government concerns during the legislative process. In our experience, when the state and local governments and their representative organizations have been active, our state-local cost estimates have made an impact. As the proposed report notes, increased interest in cost impacts will come only when there is a strong legislative concern about mandating costs on state and local governments. We believe that this concern must be generated by the state and local governments and their representative organizations.

With regard to the suggestion that cost estimates be prepared for key bills before committee markup and for floor amendments, we believe the report draws the right conclusion. The effort involved in reviewing all bills at an earlier stage would be substantial, and such an increase in CBO cost estimation efforts would not be cost-effective unless there is a demand for the information. At this point, the demand for state-local cost impacts is fairly limited, but when there are committee or subcommittee requests, CBO

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does respond with cost estimates before bills are reported or at other stages of the legislative process. Therefore, we agree with the report's conclusion that Congressional committees should be encouraged to request earlier state-local estimates from CBO for selected bills where there are concerns about cost impacts.

We are less enthusiastic about the suggestion that the State and Local Cost Estimate Act be amended to include appropriation and tax bills. While the Act has not been interpreted as applying to tax measures and specifically excludes appropriation bills, we could provide information on state-local cost impacts under the authority of section 202(b) of the Congressional Budget Act if requested by a committee. A statutory change to extend section 403 coverage to appropriation and tax bills, therefore, is not needed to authorize CBO to prepare state and local cost estimates for these bills, but it would be needed to require us to do so.

We are also dubious about the value of preparing state-local cost estimates for appropriation bills. Legislative mandates affecting state and local governments are rarely contained in appropriation bills. This is because most mandates would be substantive legislation that would be subject to points of order if included in appropriation bills. For your information, we routinely provide estimates of the level of new budget authority for assistance to state and local governments provided in appropriation bills, as required by section 308(a) of the Congressional Budget Act, although this generates no interest as far as we know. Furthermore, we believe the Appropriation Committees would be concerned about adding another special reporting requirement for appropriation bills. There could be problems with the timeliness of CBO estimates because we frequently have little time in which to review appropriation bill language before bills are reported. This, in turn, could cause procedural problems for the Appropriation Committees if Budget Act waivers were required to begin floor debate.

With regard to tax bills, most significant changes in federal tax law--rate increases or decreases, the addition or elimination of preferences--affect state and local revenues. Estimating these effects would be an enormous undertaking. Moreover, providing state-local estimates for selected measures before committee markup is probably not feasible. The tax-writing committees mark up bills in concept only; the legislative language is drafted subsequently. CBO staff are usually unaware of the specific provisions of tax bills until they are drafted and reported from the committees.

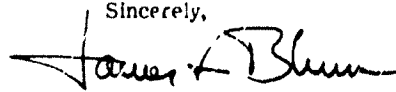
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The Joint Tax Committee staff provides the tax-writing committees with revenue estimates during and following the markup of tax bills. Because of its official role in the legislative and revenue estimating process, only the Joint Committee staff could prepare state-local fiscal notes for tax legislation in a timely manner. Since this would impose a burden on the Joint Committee staff, we suggest that it be given an opportunity to review the proposed report.

We also note that in preparing cost estimates for tax legislation only revenue effects are estimated. Administrative costs and the costs of regulations are not included. The draft report defines "mandates" as "laws and regulations imposing requirements and related costs on subordinate levels of government." This definition may not be applicable to tax legislation under our current estimating practices.

We have a number of minor editorial comments on the report which we will give directly to Mr. Gadsby. Thank you for giving us an opportunity to review the proposed report.

Sincerely,



James I. Blum
Acting Director

cc: Mr. J. William Gadsby

Comments From the U.S. Advisory Commission on Intergovernmental Relations



ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, DC 20575

July 7, 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Human Resources Division
Washington, DC 20546

Dear Mr. Thompson:

Thank you for giving the Advisory Commission on Intergovernmental Relations (ACIR) an opportunity to review the draft of your report entitled "Legislative Mandates: State Experiences Can Offer Insights for Federal Response" (HRD-88-75). Several staff members and I have reviewed the report. Specific editorial comments and suggestions are included on the enclosed copy of the report. ACIR staff narrative comments follow herewith.

General Evaluation

Overall, we believe that the GAO report is carefully researched, thorough, and enlightening. For the most part, the report is well written and easy to read.

Recommendation Regarding ACIR

We are pleased that the GAO has recognized ACIR in its recommendation calling for a biennial report on the total estimated costs to state and local governments of new mandates contained in legislation enacted by each session of the Congress. ACIR is well suited to perform this task and has a strong interest in undertaking the reporting responsibility. Our reservation, however, is that because ACIR's appropriations have thus far declined by 36 percent since 1985 and staff has been reduced by 30 percent, ACIR would need additional budgetary resources to undertake this new responsibility. The amount of resources required would depend on how the reporting task was to be performed by ACIR.

Basically, there are two ways to prepare such a report.

1. ACIR could perform the task by compiling the CBO figures routinely every two years, with little or no analysis. The utility of this approach could be questioned easily, however, and the activity would run the risk of being cancelled after the first several reports. This would be similar to what happened when ACIR administered OMB Circular A-85 in the 1970s.

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2. ACIR could perform independent analyses, examine different estimating methods, and analyze the implementation of legislation over time to compare actual costs with estimated costs. ACIR could also put the estimates into some context every two years in terms of what both the states and the federal government are going to institute and implement mandate reimbursements. This approach would allow us to evaluate the process, show cumulative trends, and assess the actual costs of mandates over the long term. This would be the best way to proceed, but this approach is well beyond ACIR's current resource capabilities.

Comments on Text of the Report

The finding that reimbursement requirements which have been made a part of the state constitution or initiated by the voters have had an impact on stopping unfunded mandates is very interesting in terms of ACIR's work on state and federal constitutional law. The underlying data support for that conclusion does not appear to be especially strong, however. More needs to be said about how GAO arrived at that conclusion. The wording of the Executive Summary also makes it unclear as to whether constitutional amendments regarding reimbursement have to be initiated by voters in order to be effective. In other words, does "public initiation" modify both referendum and amendment?

Another good point made in the report is the recommendation that the cost-estimating process be extended to tax and appropriations bills. Perhaps this should be highlighted more in the report.

The discussion of the sample states and their experience is otherwise thorough and interesting, and the backup material in the appendices is very helpful. The description of methodology is a model of clarity and precision. It would be useful, though, to include the survey instrument.

With regard to the timing of cost estimates, we believe that waiting until the last minute to prepare cost estimates disables the process. The GAO recommendation to initiate the cost-estimate process earlier--when the committees and the public interest groups identify a bill that is likely to be seriously considered and have significant impact--is good as far as it goes. However, it still leaves the process in the realm of case work.

It would be preferable to evaluate mandates in a longer range way. For example, many of the mandates now on the books must be reauthorized every four or five years, or are slated for Congressional oversight on a relatively regular basis. This is somewhat like a sunset review process. Although there is not a formal process of that type at present, mandate

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reviews could be scheduled far ahead in many cases; adequate data bases could be built and maintained by ACIR in anticipation of recurring reviews; and major alternatives could be set up in anticipation of legislative action. This type of preparedness would produce information for policymakers based on actual experience, and would be vastly superior in many ways to any information that an ad hoc, case-by-case approach could produce.

Finally, because of requirements set forth in Executive Order 12612, the timeliness and quality of cost estimates can be expected to be considerably improved for any legislative proposals having a federal mandate that originate from an Administration. That Order calls for the use of federalism criteria in developing Executive Branch policies, and requires that regulatory and legislative proposals be accompanied by an evaluation of "the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy" (Sec. 6(c)(3)). Some mention of this related provision should be made in the GAO report.

We hope these comments will be useful to you in finalizing this excellent report.

Sincerely,



John Kincaid
Executive Director

Comments From State, County, and City Government

State, County, and City Government

444 N. Capitol Street, N.W./Suite 349
Washington, D.C. 20001
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July 27, 1988

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Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

We appreciate the opportunity to review the draft of GAO's study Legislative Mandates: State Experiences Can Offer Insights for Federal Response.

We are in agreement with your comment to Senator Durenberger that "the best approach for reducing unfunded mandates at this time would be to focus more attention at key points in the congressional process on estimated costs of such mandates on state and local governments." We would go even further to set up procedures that require Congressional committees to both receive and consider cost estimates throughout the legislative process.

We are in complete agreement with the finding that cost estimates have a greater impact when they are prepared early in the legislative process and when they are also prepared for important amendments to proposed legislation.

We note your recommendation for a biennial review of the total costs imposed by federal mandates and feel that such a review should be done annually and should cover the baseline, as well as the incremental costs, of mandates. We believe that CBO would be the best organization to accomplish this task.

In addition, we strongly urge that the cost estimate requirement be extended to tax and appropriation bills in order to truly ascertain costs that are being passed on to state and local governments.

We appreciate the work of CBO in cost estimation. We believe that the process should be strengthened and that CBO be given additional resources to insure the successful implementation of the recommendations of this report. The

public interest groups are willing to work with CBO more closely than we have in the past to determine the most important and costly pieces of legislation expected that session. This would make it possible to obtain estimates earlier in the process.

While the current models for state reimbursement may not be workable at the federal level we believe that further study could develop workable federal legislation for cost reimbursement. Regardless of the reimbursement question, we are totally supportive of the need for keeping and improving the cost estimation process.

We are enclosing a list of specific suggestions that were made last September at the time that CBO's cost estimate legislation was reviewed.

We found your study of state and local experience provided helpful suggestions at the federal level.

Sincerely,



Alan Beals
Chairman

cc: Big 7 Executive Directors

- o The intergovernmental cost estimate should be performed earlier in the legislative process; currently a fiscal note is only done for bills reported out of committee. At that point its role can only be negative. If available earlier in the process, the cost information could contribute constructively to the development of legislation.

While many state legislatures require fiscal notes on every bill introduced, this might prove burdensome for CBO. We therefore recommend that a fiscal note be made available prior to subcommittee markup.

- o The fiscal note should be updated for subsequent amendments. This is usually done at the state level, and is really necessary if the estimate is to provide useful information through out the legislative process.
- o The threshold should be lowered. The present \$200 million is too high; \$100 million might be reasonable.
- o The fiscal note requirement should be extended to include appropriations and revenue bills. Frequently tax and spending bills have very important intergovernmental impacts.
- o The estimate should include the baseline plus the incremental cost. This would provide a clearer picture of the total impact on states and localities.
- o The cost estimate requirement should be extended to OMB.
- o CBO and OMB should each prepare an annual report detailing the intergovernmental impact of legislation enacted during the year
- o An Office of State and Local Finance should be established within CBO.

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