

MANDATES INFORMATION ACT OF 1999

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FEBRUARY 2, 1999.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. DREIER, from the Committee on Rules,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 350]

[Including cost estimate of the Congressional Budget Office]

The Committee on Rules, to whom was referred the bill (H.R. 350) to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Mandates Information Act of 1999”.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) Before acting on proposed private sector mandates, the Congress should carefully consider the effects on consumers, workers, and small businesses.

(2) The Congress has often acted without adequate information concerning the costs of private sector mandates, instead focusing only on the benefits.

(3) The implementation of the Unfunded Mandates Reform Act of 1995 has resulted in increased awareness of intergovernmental mandates without impacting existing environmental, public health, or safety laws or regulations.

(4) The implementation of this Act will enhance the awareness of prospective mandates on the private sector without adversely affecting existing environmental, public health, or safety laws or regulations.

(5) The costs of private sector mandates are often borne in part by consumers, in the form of higher prices and reduced availability of goods and services.

(6) The costs of private sector mandates are often borne in part by workers, in the form of lower wages, reduced benefits, and fewer job opportunities.

(7) The costs of private sector mandates are often borne in part by small businesses, in the form of hiring disincentives and stunted growth.

### SEC. 3. PURPOSES.

The purposes of this Act are the following:

(1) To improve the quality of the Congress' deliberation with respect to proposed mandates on the private sector, by—

(A) providing the Congress with more complete information about the effects of such mandates; and

(B) ensuring that the Congress acts on such mandates only after focused deliberation on the effects.

(2) To enhance the ability of the Congress to distinguish between private sector mandates that harm consumers, workers, and small businesses, and mandates that help those groups.

### SEC. 4. FEDERAL PRIVATE SECTOR MANDATES.

(a) IN GENERAL.—

(1) ESTIMATES.—Section 424(b)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 658c(b)(2)) is amended—

(A) in subparagraph (A) by striking “and” after the semicolon; and

(B) by redesignating subparagraph (B) as subparagraph (C), and inserting after subparagraph (A) the following:

“(B) when applicable, the impact (including any disproportionate impact in particular regions or industries) on consumers, workers, and small businesses, of the Federal private sector mandates in the bill or joint resolution, including—

“(i) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on consumer prices and on the actual supply of goods and services in consumer markets;

“(ii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on worker wages, worker benefits, and employment opportunities; and

“(iii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on the hiring practices, expansion, and profitability of businesses with 100 or fewer employees; and”.

(2) POINT OF ORDER.—Section 424(b)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 658c(b)(3)) is amended by adding after the period the following: “If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.”.

(3) THRESHOLD AMOUNTS.—Section 425(a) of the Congressional Budget Act of 1974 (2 U.S.C. 658d(a)) is amended by—

(A) striking “and” after the semicolon at the end of paragraph (1) and redesignating paragraph (2) as paragraph (3); and

(B) inserting after paragraph (1) the following new paragraph:

“(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal private sector mandates (excluding any direct costs that are attributable to revenue resulting from tax or tariff provisions of any such measure if it does not raise net tax and tariff revenues over the 5-fiscal-year period beginning with the first fiscal year such measure affects such revenues) by an amount that causes the thresholds specified in section 424(b)(1) to be exceeded; and”.

(4) APPLICATION RELATING TO APPROPRIATIONS COMMITTEES.—(A) Section 425(c)(1)(A) of the Congressional Budget Act of 1974 (2 U.S.C. 658d(c)(1)(A)) is amended by striking “except”.

(B) Section 425(c)(1)(B) of the Congressional Budget Act of 1974 (2 U.S.C. 658d(c)(1)(B)) is amended—

(i) in clause (i) by striking “intergovernmental”;

(ii) in clause (ii) by striking “intergovernmental”;

(iii) in clause (iii) by striking “intergovernmental”; and

(iv) in clause (iv) by striking “intergovernmental”.

(5) THRESHOLD BURDEN.—(A) Section 426(b)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 658e(b)(2)) is amended by inserting “legislative” before “language”.

(B) Section 426(b)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 658e(b)(2)) is amended by striking “section 425 or subsection (a) of this section” and inserting “part B”.

(6) QUESTION OF CONSIDERATION.—(A) Section 426(b)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 658e(b)(3)) is amended by striking “section 425 or subsection (a) of this section” and inserting “part B”.

(B) Section 426(b)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 658e(b)(3)) is amended by inserting “, except that not more than one point of order shall be recognized by the Chair under section 425(a)(1) or (a)(2)” before the period.

(7) APPLICATION RELATING TO CONGRESSIONAL BUDGET OFFICE.—Section 427 of the Congressional Budget Act of 1974 (2 U.S.C. 658f) is amended by striking “intergovernmental”.

(b) RULES OF THE HOUSE OF REPRESENTATIVES.—Clause 11(b) of rule XVIII of the Rules of the House of Representatives is amended by striking “intergovernmental” and by striking “section 424(a)(1)” and inserting “section 424 (a)(1) or (b)(1)”.

(c) EXERCISE OF RULEMAKING POWERS.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it shall be considered as part of the rules of such House, respectively, and shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

#### SEC. 5. FEDERAL INTERGOVERNMENTAL MANDATE.

Section 421(5)(B) of the Congressional Budget Act of 1974 (2 U.S.C. 658(5)(B)) is amended—

(1) by striking “the provision” after “if”;

(2) in clause (i)(I) by inserting “the provision” before “would”;

(3) in clause (i)(II) by inserting “the provision” before “would”; and

(4) in clause (ii)—

(A) by inserting “that legislation, statute, or regulation does not provide” before “the State”; and

(B) by striking “lack” and inserting “new or expanded”.

#### PURPOSE OF THE LEGISLATION

The purpose of H.R. 350, the Mandates Information Act of 1999, is to: (1) improve the quality of the Congress’ deliberation with respect to proposed mandates on the private sector by providing the Congress with more complete information about the effects of such mandates, and ensuring that the Congress acts on such mandates only after focused deliberation on the effects; and (2) enhance the ability of the Congress to distinguish between private sector mandates that harm consumers, workers, and small businesses, and mandates that help those groups.

#### SUMMARY OF THE LEGISLATION

H.R. 350 amends the Congressional Budget Act of 1974 to require a congressional committee report on any bill or joint resolution that includes a federal private sector mandate to include a statement from CBO estimating the impact of such mandates on consumers, workers, and small businesses, including any disproportionate impact in particular regions or industries (CBO is currently required to estimate only the direct costs of all federal private sector mandates that exceed \$100 million and the amount of federal financial assistance, if any, provided by the legislation to assist with compliance costs). It subjects the consideration of such legislation to a point of order if it is not feasible for CBO to prepare such an estimate (currently under UMRA, a point of order may apply only if it is not feasible for CBO to prepare an intergovernmental mandates estimate).

H.R. 350 prohibits consideration of any bill, joint resolution, amendment, motion or conference report containing private sector mandates whose direct costs exceed \$100 million (the current unfunded mandate point of order applies only to unfunded intergovernmental mandates, the direct cost of which exceeds \$50 million, unless it is paid for with new federal financial assistance).

H.R. 350 prohibits the Chair from recognizing Members for more than one point of order for a committee's failure to comply with the CBO report requirements with respect to private sector mandates, or for private sector mandates contained in any bill, joint resolution, amendment, motion or conference report.

H.R. 350 amends clause 11(b) of House Rule XVIII to preserve the availability in the Committee of the Whole of a motion to strike an unfunded federal mandate (intergovernmental and private sector), unless the rule is specifically waived by the Rules Committee.

#### COMMITTEE CONSIDERATION

On January 19, 1999, Representatives Gary Condit and Rob Portman introduced H.R. 350, the Mandates Information Act of 1999, which was referred to the Committee on Rules. On February 2, 1999, the Subcommittee on Rules and Organization of the House and the Subcommittee on Legislative and Budget Process held a joint hearing to review H.R. 350 and its implementation under the Unfunded Mandates Reform Act (UMRA). The Committee on Rules received testimony from the Hon. Gary Condit (D-CA); the Hon. Rob Portman (R-OH); the Hon. Sherwood Boehlert (R-NY); Mr. Jim Blum, Acting Director of the Congressional Budget Office; Mr. Ryan Null, Owner of Tristate Electronic Manufacturing; Ms. Angela Antonelli, Heritage Foundation Director for Economic Policy Studies; and Ms. Maura Kealey, Deputy Director, Public Citizen's Congress Watch.

On Tuesday, February 2, 1999, the Committee met to mark-up H.R. 350. The Committee favorably reported H.R. 350, as amended, by voice vote a quorum being present. During the mark-up, one amendment in the nature of a substitute offered by Mr. Linder was agreed to by voice vote. H.R. 350, as amended by this substitute, is essentially the same as legislation (H.R. 3534) that passed the House last year by a vote of 279 to 132.

#### BACKGROUND ON THE LEGISLATION

On March 22, 1995, President Clinton signed into law the Unfunded Mandates Reform Act, which amended title IV of the Congressional Budget Act of 1974. A key component of the Republican "Contract With America," UMRA was one of the first bills enacted by the 104th Congress.

Among other things, the purposes of UMRA are to: strengthen the partnership between the federal government and state and local governments; end the imposition of unfunded federal mandates on state and local governments without full information on the costs and effects of such mandates; promote informed and deliberate decisions by Congress on the appropriateness of all federal mandates affecting state and local governments and the private

sector; and establish new points of order in the House and Senate for failure to comply with certain requirements under the act.

A federal mandate is defined as a provision that imposes an enforceable duty upon state, local or tribal governments, or the private sector. An unfunded federal mandate is defined as a mandate whose direct costs exceed \$50 million for state and local governments, and \$100 million for the private sector. Direct costs are defined as the aggregate amount that all levels of government or the private sector are required to spend in order to comply with the mandate or prohibited from raising in revenue.

There are three major components to UMRA. One addresses agency regulatory responsibilities. A second directs the Advisory Council on Intergovernmental Relations (ACIR) to undertake certain studies with respect to existing mandates (ACIR was de-funded by Congress in fiscal year 1997). The third contains congressional procedures for the consideration of legislation containing federal mandates.

#### *Procedures in the House and Senate*

UMRA's congressional procedures are found in sections 423 through 426 of Part B of title IV of the Congressional Budget and Impoundment Act of 1974. Sections 423 and 424 outline specific reporting and estimating responsibilities for congressional committees and the Congressional Budget Office (CBO). Section 425 prohibits the consideration of bills, joint resolutions, motions, amendments and conference reports in the House and Senate if such legislation contains unfunded intergovernmental federal mandates, or if a committee, when reporting a bill or joint resolution, fails to include in either the committee report or the Congressional Record a statement from CBO estimating the direct costs of any mandates (intergovernmental or private sector) contained in the legislation.

#### *Disposition of points of order in the House of Representatives*

Section 426 prohibits the consideration of any order of business resolution in the House of Representatives that waives points of order against the application of Section 425. It also contains procedures for the disposition of points of order in the House of Representatives. Specifically, the chair will not rule on the point of order. Rather, the chair will put to the House or the Committee of the Whole, whichever the case may be, the "question of consideration with respect to the proposition that is the subject of the point of order." The question of consideration with respect to each point of order is subject to 20 minutes of debate—10 minutes by the Member initiating the point of order and 10 minutes by an opponent. Following debate on the question of consideration, the Members will vote on whether to proceed with consideration of the bill, joint resolution, amendment, motion or conference report.

UMRA also amended clause 11 of House Rule XVIII (which was further modified by H.Res. 5 at the beginning of the 105th Congress). Clause 11 of House Rule XVIII preserves the availability in the Committee of the Whole of a motion to strike an unfunded intergovernmental mandate. Neither a rule restricting amendments nor one waiving all points of order is sufficient to preclude

a motion to strike an unfunded intergovernmental mandate unless the rule specifically waives clause 11 of House Rule XVIII.

In the 105th Congress, the Committee on Rules held original jurisdiction hearings on October 30, 1997, and March 27, 1998, on two similar private sector mandates bills and reported H.R. 3534 as amended under an open rule on May 6, 1998. The House passed H.R. 3534 by a vote of 279–132 on May 19, 1998. The Senate Committee on Government Affairs held hearings and reported similar private mandates legislation, S. 389, but the Senate did not take further action.

In the 106th Congress, on January 19, 1999, Representatives Gary Condit and Rob Portman introduced H.R. 350, the Mandates Information Act of 1999. This legislation attempts to improve congressional deliberation and public awareness of private sector mandates similar to the procedures that were enacted in the UMRA in 1995 with regard to intergovernmental mandates.

#### ANALYSIS OF THE LEGISLATION (AS REPORTED)

The Rules Committee approved an amendment in the nature of a substitute which makes a number of technical and conforming changes to H.R. 350 as introduced.

Sec. 1 of the committee substitute establishes the short title as the “Mandates Information Act of 1999”.

Sec. 2 of the committee substitute establishes a number of congressional findings with respect to the need for additional information on the costs of Federal private sector mandates contained in proposed legislation.

Sec. 3 of the committee substitute outlines the purposes of the bill which are to: (1) improve the quality of the congressional deliberation with respect to proposed mandates on the private sector, by providing the Congress with more complete information about the effects of such mandates, and ensuring that the Congress acts on such mandates only after focused deliberation on the effects; and (2) enhance the ability of the Congress to distinguish between private sector mandates that harm consumers, workers, and small businesses, and mandates that help those groups.

Sec. 4(a)(1) of the committee substitute amends Sec. 424(b)(2) of the Congressional Budget Act of 1974 to further require CBO to estimate, when applicable, the aggregate impact of proposed Federal private sector mandates on consumers, workers and small businesses, including any disproportionate impact in particular regions or industries. The estimate shall also include an analysis of the effect of proposed Federal private sector mandates on: consumer prices and the actual supply of goods and services in consumer markets; worker wages, worker benefits, and employment opportunities; and the hiring practices, expansion, and profitability of businesses with 100 or fewer employees.

The phrase “when applicable” in Sec. 4(a)(1) qualifies the requirement that CBO provide estimates under Sec. 424(b)(2)(B) of the Congressional Budget Act of 1974 in two ways. The phrase is not intended to grant CBO broad discretion to forgo preparing an estimate with respect to consumers, workers and small businesses. It is, however, intended to permit CBO to forgo an estimate of the impact of a Federal private sector mandate on consumers, workers

and small businesses if CBO determines that the private sector mandate has no impact on that group or whose impact on that group could not be identified. Therefore, if CBO determined there was no impact on workers, CBO would not be required to estimate the impact on workers, or the specific areas related to workers. The qualification is also intended to permit CBO to forgo an analysis of any of the specific information noted for consumers, workers and small businesses when CBO determines that the impacts on that group do not include that specific area. Therefore, if CBO determined that there was an impact on consumers, but the impact would not affect the supply of goods and services in consumer markets, CBO would not be required to provide an analysis of such affects.

Sec. 4(a)(2) of the committee substitute amends Sec. 424(b)(3) of the Congressional Budget Act of 1974 to permit a point of order against consideration of any bill or joint resolution that is reported by a committee if it is not feasible for CBO to prepare a Federal private sector mandates estimate for publication before consideration of the bill or joint resolution.

Sec. 4(a)(3) of the committee substitute amends Sec. 425(a)(2) of the Congressional Budget Act of 1974 to prohibit the consideration of any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal private sector mandates by \$100 million or more (adjusted annually for inflation) in the fiscal year in which any of the Federal private sector mandate would be effective or in any of the 4 fiscal years following such fiscal year. In the case of a bill, joint resolution, amendment, motion or conference report that provides a net reduction in tax or tariff revenue, the measure's tax and tariff provisions would not be considered in determining the direct costs of Federal private sector mandates only for purposes of a point of order under Sec. 425(a)(2) of the Congressional Budget Act of 1974.

For purposes of illustration, consideration of a bill reported by the Committee on Ways and Means that contains tax or tariff provisions which cause the \$100 million threshold for private sector mandates to be exceeded, but result in an overall net reduction of tax or tariff revenue over a five-year period, would not be subject to a Sec. 425(a)(2) point of order, provided that the bill does not include other non-revenue related Federal private sector mandates that exceed the \$100 million threshold. In contrast, if a bill contains tax or tariff provisions which result in a net increase in revenues, a Sec. 425(a)(2) point of order may apply.

Sec. 4(a)(4) of the committee substitute amends Sec. 425(c) of the Congressional Budget Act of 1974 to permit a point of order against legislative provisions in appropriations bills that increase the direct costs of a Federal private sector mandate by an amount that causes the \$100 million threshold to be exceeded.

Sec. 4(a)(5) of the committee substitute makes two technical changes to Sec. 426(b)(2) of the Congressional Budget Act of 1974 to conform with established practices by: (1) striking the term "section 425 or subsection (a) of this section" and inserting "part B"; and (2) inserting the word "legislative" before the word "language".

Sec. 4(a)(6) of the committee substitute makes a technical change to Sec. 426(b)(3) of the Congressional Budget Act to conform with

established practice by striking the term “section 425 or subsection (a) of this section”. Sec. 4(a)(6) further prohibits the Chair from recognizing Members for more than one point of order with respect to the consideration of: (1) any reported bill or joint resolution in which the reporting committee fails to publish a statement for the Director of the CBO on the direct costs of Federal private sector mandates; or (2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of a Federal private sector mandate by an amount that causes the \$100 million threshold to be exceeded.

Sec. 4(a)(7) of the committee substitute amends Sec. 427 of the Congressional Budget Act of 1974 to require the Director of the CBO, at the written request of a Senator and to the extent practical, to prepare an estimate of the direct costs of a Federal private Sector mandate contained in an amendment of such Senator.

Sec. 4(b) of the committee substitute amends clause 11(b) of House Rule XVIII to preserve the availability in the Committee of the Whole of a motion to strike private sector mandates unless such mandates are expressly prohibited by the terms of a special order.

Sec. 4(c) of the committee substitute expresses the constitutional authority of Congress to make the rules changes in Sec. 4 and exercise its rulemaking power in both the Senate and the House to change such rules at any time.

Sec. 5 of the committee substitute amends Sec. 421(5)(B) of the Congressional Budget Act of 1974 to ensure that Federal entitlement programs such as Medicaid, child nutrition, and foster care are considered unfunded intergovernmental mandates if Congress imposes new conditions, places caps on funding, or cuts funding without giving the States authority to adjust those changes.

#### MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

##### *Committee vote*

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report. No record votes were requested during the consideration of H.R. 350.

##### *Committee cost estimate*

Clause 3(c)(2) of rule XIII requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended and, when practicable with respect to estimates of new budget authority, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

Clause 3(d) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, when practicable, a comparison of the total estimated funding level for



the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

*Congressional Budget Office estimates*

Clause 3(c)(3) of rule XIII requires the report of any committee on a measure which has been approved by the committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the CBO cost estimate as required:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 2, 1999.*

Hon. DAVID DREIER,  
*Chairman, Committee on Rules,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 350, the Mandates Information Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss.

Sincerely,

JAMES L. BLUM,  
*Acting Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 350—Mandates Information Act of 1999*

The Congressional Budget Office (CBO) estimates that enacting this legislation would result in no significant costs to the federal government. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 350 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

H.R. 350 would amend the Congressional Budget Act to expand the duties of CBO under UMRA. In particular, the bill would require CBO to provide additional information when it determines that a bill or joint resolution contains a private-sector mandate with costs exceeding the threshold established in UMRA (\$100 million, in 1996 dollars, in any one year). That information would include the impact of private-sector mandates on consumers, workers, and small businesses (including any disproportionate impact on particular regions or industries).

H.R. 350 also would make legislation subject to a point of order if it includes private-sector mandates with costs exceeding the threshold. Such costs would exclude amounts attributable to tax or tariff provisions, if such provisions, in aggregate, do not raise net revenues over the first five fiscal years they were in effect.

Finally, the legislation would amend UMRA's definition of inter-governmental mandate as it relates to certain large entitlement grant programs (such as Medicare). Under this amendment, changes to those programs would be considered mandates unless the same bill that makes the change also gives state and local governments new flexibility within the program to offset any additional costs.

Based on the experiences of CBO and the Joint Committee on Taxation (which provides CBO with revenue estimates) in carrying out the provisions of UMRA, CBO estimates that neither agency would incur significant additional costs to implement the changes that would be made by H.R. 350. The number of bills containing private-sector mandates with costs exceeding the threshold is small—less than 20 instances in each of the last two years—and the additional workload would not be substantial. Furthermore, the proposed change in UMRA's definition of intergovernmental mandates would not affect many of the bills that CBO reviews each year. Any increase in costs would be subject to the availability of appropriated funds for CBO and the Joint Committee on Taxation. In addition, CBO estimates that changes to Congressional procedures would not result in additional costs to the Congress.

The CBO staff contacts are Mary Maginniss (for federal) costs, Theresa Gullo (for intergovernmental mandates), and Roger Hitchner (for private-sector mandates). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### *Constitutional authority*

Clause 3(d)(1) of rule XIII requires each committee report on a bill or joint resolution of a public character to include a statement citing the specific powers granted to the Congress in the Constitution to enact the law proposed by the bill or joint resolution. The Committee cites Article 1, Section 5 of the United States Constitution, which grants each House of Congress the authority to determine the rules of its proceedings, as its authority for reporting this bill.

#### *Federal mandates*

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution that includes any Federal mandate to include specific information about such mandates. The Committee states that H.R. 350 does not include any Federal mandate.

#### *Preemption clarification*

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 350 is not intended to preempt any state or local law.

*Oversight findings*

Clause 3(c)(1) of rule XIII requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has oversight responsibility for Part B of the Congressional Budget Act of 1974 and finds that, although the Unfunded Mandates Reform Act is working as intended, Congress can benefit from having more complete information about the effects of proposed Federal private sector mandates. The Committee recommends the passage of H.R. 350 as a means to improve the effectiveness of UMRA.

*Oversight findings and recommendations of the Committee on Government Reform and Oversight*

Clause 3(c)(4) of rule XIII requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Rules has received no such findings or recommendations from the Committee on Government Reform.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**CONGRESSIONAL BUDGET ACT OF 1974**

\* \* \* \* \*

**TITLE IV—ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES**

\* \* \* \* \*

**PART B—FEDERAL MANDATES**

**SEC. 421. DEFINITIONS.**

For purposes of this part:

(1) \* \* \*

\* \* \* \* \*

(5) **FEDERAL INTERGOVERNMENTAL MANDATE.**—The term “Federal intergovernmental mandate” means—

(A) \* \* \*

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

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

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

(ii) *that legislation, statute, or regulation does not provide* the State, local, or tribal governments that participate in the Federal program **l**ack *new or expanded* authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

\* \* \* \* \*

**SEC. 424. DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.**

(a) \* \* \*

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

(1) \* \* \*

(2) **ESTIMATES.**—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

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

(B) *when applicable, the impact (including any disproportionate impact in particular regions or industries) on consumers, workers, and small businesses, of the Federal private sector mandates in the bill or joint resolution, including—*

*(i) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on consumer prices and on the actual supply of goods and services in consumer markets;*

*(ii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on worker wages, worker benefits, and employment opportunities; and*

*(iii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on the hiring practices, expansion, and profitability of businesses with 100 or fewer employees; and*

**[(B)] (C)** the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(3) **ESTIMATE NOT FEASIBLE.**—If the Director determines that it is not feasible to make a reasonable estimate that would be

required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. *If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.*

\* \* \* \* \*

**SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.**

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); **[and]**

(2) *any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal private sector mandates (excluding any direct costs that are attributable to revenue resulting from tax or tariff provisions of any such measure if it does not raise net tax and tariff revenues over the 5-fiscal-year period beginning with the first fiscal year such measure affects such revenues) by an amount that causes the thresholds specified in section 424(b)(1) to be exceeded; and*

**[(2)]** (3) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

(i) \* \* \*

\* \* \* \* \*

(c) COMMITTEE ON APPROPRIATIONS.—

(1) APPLICATION.—The provisions of subsection (a)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; **[except]**

(B) shall apply to—

(i) any legislative provision increasing direct costs of a Federal **[intergovernmental]** mandate contained in any bill or resolution reported by the Committee on

Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal [intergovernmental] mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal [intergovernmental] mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

(iv) any legislative provision increasing direct costs of a Federal [intergovernmental] mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

\* \* \* \* \*

**SEC. 426. PROVISIONS RELATING TO THE HOUSE OF REPRESENTATIVES.**

(a) \* \* \*

(b) DISPOSITION OF POINTS OF ORDER.—

(1) APPLICATION TO THE HOUSE OF REPRESENTATIVES.—This subsection shall apply only to the House of Representatives.

(2) THRESHOLD BURDEN.—In order to be cognizable by the Chair, a point of order under [section 425 or subsection (a) of this section] *part B* must specify the precise *legislative* language on which it is premised.

(3) QUESTION OF CONSIDERATION.—As disposition of points of order under [section 425 or subsection (a) of this section] *part B*, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order, *except that not more than one point of order shall be recognized by the Chair under section 425(a)(1) or (a)(2).*

\* \* \* \* \*

**SEC. 427. REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS.**

At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal [intergovernmental] mandate contained in an amendment of such Senator.

\* \* \* \* \*

COMPARATIVE PRINT

Clause 3(g) of rule XIII requires that, whenever the Committee on Rules reports a resolution amending or repealing the Rules of the House of Representatives, the accompanying report must contain a comparative print showing the changes in existing rules proposed to be made by the resolution.

Changes in existing Rules of the House of Representatives made by the bill, as reported, are shown as follows (existing rules proposed to be omitted are enclosed in black brackets, new matter is printed in italic, existing rules in which no change is proposed are shown in roman):

**CLAUSE 11(b) OF RULE XVIII OF THE HOUSE OF REPRESENTATIVES**

RULE XVIII.

\* \* \* \* \*

***Unfunded mandates***

11. (a) \* \* \*

(b) In this clause the term “unfunded mandate” means a Federal **【intergovernmental】** mandate the direct costs of which exceed the threshold otherwise specified for a reported bill or joint resolution in section **【424(a)(1)】** *424(a)(1) or (b)(1)* of the Congressional Budget Act of 1974.

\* \* \* \* \*

***Views of committee members***

Clause 2(c) of rule XIII requires each committee to afford a three day opportunity for members of the committee to file supplemental, minority, or additional views and to include the views in its report. Although neither requirement applies to the Committee, the Committee always makes the maximum effort to provide its members with such an opportunity. The following views were submitted:

## DISSENTING VIEWS

The Democratic Members of the Rules Committee have three major concerns about this bill.

First, we are concerned about the “point of order” scheme developed in the original bill and continued in this one. It can be too easily abused to close off debate for partisan, political purposes. The “point of order” is not a “point of order” in the true sense. Rather it is automatically transformed into a question of consideration. That is, if any Member asserts the existence of an unfunded mandate in a measure, the House must, without any judgment by the Chair, debate for 20 minutes and, by a simple majority vote, determine whether to proceed to consider the measure. In fact, the very first time the unfunded mandate point of order was raised, in 1996, the majority party used it to block consideration of a motion to recommit that, according to the Congressional Budget Office, did not contain an unfunded mandate. It was an offensive breach of fair play because the motion to recommit is the only procedural tool guaranteed to the minority in a House which is run and ruled by the majority.

The first experience was, fortunately, not the norm. On the whole, we are encouraged that the unfunded mandate point of order has not been misused. Important information has been available about the impact of legislation on the public sector, and Members generally have used restraint against exploiting the parliamentary procedure for political purposes. We urge Members to continue to act in a responsible way but the potential for abuse remains and the majority has done nothing to fix this defect.

Our second objection is about the effect of the measure on efforts to promote social justice. Some of the finest legislative efforts of this nation—providing food to the hungry, protecting public health and safety, cleaning up pollution, enforcing the civil rights of persecuted individuals or compelling parents to fulfill their financial obligations to their children—have, by necessity, imposed burdens on businesses and individuals. We fear that, without amendment, the bill tilts the playing field against such legislation. One witness at the hearing, Maura Kealey of Public Citizen’s Congress Watch, said: “[H.R. 350] will allow Members of Congress to hide behind a procedural vote to torpedo vital legislation with strong public support—food safety, clean air and water, minimum wage increase, patients’ bill of rights—rather than vote it up or down on its merits.” Amendments such as the one offered by Representative Waxman during last year’s debate would vastly improve the legislation.

Our third objection to the bill is aimed at a provision which was added by the majority leadership at the last minute last year and is included again in the bill reported by the Committee. The language, as proposed by Mr. Dreier, excludes from the point of order those measures containing revenue increases that net out with tax



cuts over a five year period. This provision is flawed in two ways: it moves us away from the goal of reviewing all private sector mandates and it injects the unfunded mandate process into the fundamentally political battleground of decisions on taxes and spending.

We want to be perfectly clear. Tax cuts are not unfunded mandates under the definition of the law, nor do we believe they should be. Members who supported Mr. Dreier's exemption argued last year that the budget rules require tax cuts to be paid for by either spending cuts or tax increases. They contend that, without the Dreier language, the new unfunded mandates provisions will unfairly penalize efforts to pay for those cuts with tax increases. We would point out, in all fairness, that decisions to pay for tax cuts by decreasing spending would also be caught up in the point of order if it imposes direct costs on businesses or causes a loss of revenue to states, localities or tribal governments. If certain spending cuts can be subject to unfunded mandate points of order, there is no reason certain tax increases should not be. We should not favor one form of paying for a tax cut over another, or to limit the various ways of paying for tax cuts.

We believe that the point of order should apply in all cases without bias as we debate policy options. One of the main objectives of the unfunded mandate laws is to encourage bill authors and committees to consider burdens as well as benefits at an early stage of development. Mr. Portman made the point in last year's floor debate that the point of order acts as a deterrent in committee as well as a final enforcement tool on the floor. He noted that public sector mandates were more often not stopped on the Floor but curtailed at the committee level because the committees were forced to come up with ways of getting things through Congress.

Certainly, the unfunded mandate law should stimulate debate and new ways of thinking, but we believe the procedural tool should be neutral. It should not be weighted to influence or direct a particular type of policy solution. The exemption proposed in this legislation forces us to look at the way revenues are used before applying the unfunded mandate point of order, and presents a parliamentary bias toward tax hikes over spending reductions. For example, a tax increase on coal that is spent on black lung benefits or environmental clean-up would be subject to a point of order, but the same tax increase on coal that is spent for a tax break for ethanol would not be subject to a point of order.

We also believe a tax is a mandate regardless of where it appears. The Dreier proposal to exempt certain tax hikes creates a loophole in the mandates bill, and erodes the basic intent to focus attention on the potential burden of any policy on individuals and businesses. In other words, the new language tells the small businesses in our districts that a tax hike facing them is not worth the consideration of the House as long as it is used to give a tax break to someone else.

Finally, we would point out a certain inconsistency in the arguments of some Members against our concern about social justice and for the exemption of tax hikes which are used to offset tax cuts. These Members assure those of us who are concerned about losing important environmental protections or worker rights that

the point of order scheme is intended to provide information and the time to make an informed decision; a majority vote will allow Members to take up the measure. In other words, the point of order is a speed bump not a red light. By that reasoning, Members who support the Dreier exemption should have nothing to fear from an informed debate about tax increases, no matter where they fall.

We remain concerned over this bill for these reasons. While our experience with public sector mandates has been reasonably encouraging, we continue to be deeply concerned about the point of order scheme and will remain vigilant that it not be abused for any purpose.

We also believe we need a procedure that is fair, even handed, and not tilted toward one policy outcome over another. The special exemption for certain tax increases should be dropped; we should not have to tell our constituents that a gas tax spent to repair bridges would be subject to debate, but the same tax used to give a tax break to a competing part of the transportation industry would not need separate debate. And H.R. 350 should not be used to erect procedural hurdles against legislation designed to promote social justice. Amendments should be adopted so that the bill does not so concentrate on the burdens to businesses that it ignores the benefits of feeding the hungry, cleaning the environment, protecting public health and safety, and enforcing civil rights.

JOE MOAKLEY.  
MARTIN FROST.  
TONY P. HALL.  
LOUISE MCINTOSH SLAUGHTER.

