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Mandates Information Act: Implications for Congressional Action on Legislation Containing Private Sector Mandates

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ABSTRACT

This report describes provisions of the pending Mandates Information Act of 1998, focusing on H.R. 3534 as reported from the House Committee on Rules. It summarizes current procedures governing consideration of legislation containing mandates (enforceable duties), especially unfunded intergovernmental mandates. It describes how the Mandates Information Act would apply similar regulations to private sector mandates, including points of order, requirements for cost estimates, application to legislative provisions on appropriation bills, and application under restrictive special rules in the House. The report also describes how the act would codify practices inhibiting dilatory use of these procedures in the House.

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Summary

On May 13, 1998, the House began consideration of H.R. 3534, the Mandates Information Act of 1998. The Senate Committee on the Budget has held hearings on S. 389, a similar Senate bill. The Mandates Information Act would amend the Unfunded Mandates Reform Act (UMRA) to place additional procedural restrictions on congressional consideration of legislation imposing enforceable duties, or mandates, on the private sector. Current UMRA procedures emphasize regulating consideration of mandates on state, local, and tribal governments whose costs Congress does not fund (“unfunded intergovernmental mandates”).

UMRA now requires the Congressional Budget Office (CBO) to estimate the cost to public and private sector entities of carrying out proposed mandates. The Mandates Information Act would require CBO also to estimate the effect of private sector mandates on consumer prices, commodity supply, wages, benefits, job opportunities, and small business growth and profitability.

UMRA establishes a point of order in each house against consideration of a measure proposing intergovernmental mandates costing over \$50 million (in 1996 dollars) unless the measure contains a mechanism to ensure that the federal government will fund mandate costs. The Senate may consider a measure against which this point of order is raised by voting to waive it; the House may do so by voting to consider the measure despite the point of order. The Mandates Information Act would add a similar procedure for any measure proposing private sector mandates costing more than \$100 million, whether federally funded or not. Under a committee amendment to H.R. 3534, the point of order could not be raised against tax mandates to the extent that the measure was revenue-neutral overall.

The Mandates Information Act strengthens UMRA’s present protections against potential dilatory use of the point of order in the House by clarifying that (1) the point of order must cite specific legislative provisions containing mandates; (2) the point of order may be raised only once on private sector mandates in each piece of legislation; and (3) the mechanism for disposing of points of order by vote extends to all points of order under UMRA.

UMRA permits points of order against legislative provisions in appropriation bills, but not against the bills themselves. In the Senate, such provisions may be stricken from the bill, but UMRA does not specify the consequence of such a point of order in the House. The Mandates Information Act would extend this point of order to legislative provisions containing private sector mandates.

The Mandates Information Act would extend two other existing mechanisms to private sector mandates. Under one of these, if CBO cannot determine the costs of mandates in a measure, the measure is subject to the same point of order as if the committee published no CBO estimate. Under the other, if the House considers a measure containing mandates under a special rule restricting amendments, amendments to strike the mandates remain in order unless specifically prohibited.

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Mandates Information Act: Implications for Congressional Action on Legislation Containing Private Sector Mandates

The Proposed Mandates Information Act

On May 13, 1998, the House of Representatives began consideration of H.R. 3534, the Mandates Information Act of 1998 (H.Rept. 105-515). This measure would amend the Unfunded Mandates Reform Act of 1995 (“UMRA”)¹ and a related provision of House rules (clause 5, rule XXIII).² Consideration was expected to continue during the week of May 18.

The provisions the Mandates Information Act would amend are ones that prescribe procedural mechanisms to regulate House and Senate action on legislation establishing federal mandates. Under UMRA, “mandates” are *provisions of law or regulation imposing enforceable duties either on state, local, or tribal governments, or on private sector entities*. In their present form, the procedural mechanisms of UMRA and House rules emphasize chiefly the regulation of proposed mandates on state, local, and tribal governments, called “intergovernmental mandates.” The Mandates Information Act would extend similar mechanisms to mandates on the private sector.

This report first summarizes how UMRA now regulates congressional action, especially on intergovernmental mandates. It then describes the provisions of Mandates Information Act that would apply similar regulations to private sector mandates. Third, it discusses ways in which the Mandates Information Act proposes to enhance the capacity of UMRA to forestall potential dilatory use of its procedures in the House. Finally, it looks at how the Mandates Information Act would affect responsibilities that UMRA assigns to the Congressional Budget Office (CBO).

¹ P.L. 104-4, 109 Stat. 48. The key provisions of UMRA are contained in “Part B—Federal Mandates” of Title IV of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 88 Stat. 298, as amended). Where appropriate, citations are to this new Part of Title IV, which was added to the Congressional Budget Act by UMRA; otherwise to sections of UMRA as enacted. UMRA is codified as provisions of 2 U.S.C. §658.

² As originally enacted, UMRA §107(a). In its present form, in U.S. Congress, House of Representatives, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Fifth Congress*, H. Doc. 104-272, 104th Cong., 1st sess., [compiled by] Charles W. Johnson, parliamentarian (Washington: GPO, 1997), §873c. Hereafter cited as *House Rules Manual*.

Throughout, the report takes note of variations proposed in other versions of this legislation in the 105th Congress. These other versions include chiefly S. 389 and H.R. 1010, measures closely similar to each other that were introduced in March 1997. S. 389 was referred jointly to the Senate Committee on Governmental Affairs and Senate Committee on the Budget, and the latter held a hearing on the measure on February 12, 1998. Hearings of the Committee on Governmental Affairs were anticipated, but no schedule had been announced by the time the House took up its measure.

The House Committee on Rules held a joint subcommittee hearing on H.R. 1010 on October 30, 1997. Considerations raised at that hearing, especially about the possible use of procedural mechanisms provided by the bill for dilatory or obstructive purposes,³ led to the introduction of H.R. 3534,⁴ on which the full committee held a hearing on March 27, 1998. On May 6, 1998, the House Committee on Rules marked up H.R. 3534, and on May 7 the measure was reported.⁵

In marking up the measure for reporting, the Committee on Rules adopted an amendment restricting the application of the procedural restrictions of UMRA to measures with the net effect of reducing taxes.⁶ During floor consideration on May 13, the House adopted an amendment to extend the application of those procedural restrictions to measures expanding intergovernmental mandates in the form of entitlement programs.⁷

³ Statement of the Honorable Rob Portman, testimony of the Honorable Rob Portman and the Honorable Gary A. Condit, and testimony of the Honorable Bob Walker, to U.S. Congress, House Committee on Rules, Subcommittee on Rules and Organization of the House and Subcommittee on Legislative and Budget Processes, joint hearing on implementation of the Unfunded Mandates Reform Act and proposals to expand that act, in particular, H.R. 1010, Mandates Information Act of 1997, Oct. 30, 1997. Text available from the following two web sites on the World Wide Web: [http://www.house.gov/rules_org/port03.htm] and [http://www.house.gov/rules_org/tran03.htm].

⁴ Statement of the Honorable Gary A. Condit to U.S. Congress, House Committee on Rules, hearing on the Mandates Information Act of 1998, March 27, 1998. Text available from [http://www.house.gov/rules_org/cond04.htm].

⁵ U.S. Congress, House Committee on Rules, *Mandates Information Act of 1998*, report together with dissenting views to accompany H.R. 3534, 105th Cong., 2nd sess., H.Rept. 105-515, (Washington: GPO, 1988). Pagination not available.

⁶ Discussion of amendment to Sec. 4(a)(3) in "Analysis of the Legislation," in Committee on Rules, *Mandates Information Act*, report.

⁷ "Mandates Information Act of 1998," proceedings in the House, *Congressional Record*, vol. 144, May 13, 1998, pp. H3229-H3231.

Existing Requirements for Unfunded Mandates

Cost and Funding of Mandates

A central intent of UMRA, as originally enacted, is to discourage Congress from enacting intergovernmental mandates that are “unfunded.” For purposes of UMRA, a mandate is unfunded to the extent that the legislation establishing it does not authorize federal funding to pay the costs that the entities subject to it will incur in carrying it out. A mandate is funded only if, for each fiscal year, the legislation either:

- provides new direct spending authority, such as entitlement authority, sufficient to pay the estimated costs of the mandate; or
- authorizes appropriations for the purpose in amounts sufficient to meet the estimated costs, and abolishes the mandate as of any fiscal year in which sufficient funds are not actually appropriated, unless either:
 - (1) the funding agency determines that the costs of the mandate can be met from the funds actually appropriated for the purpose;
 - (2) Congress enacts new law altering the mandate so that its costs can be met from the funds appropriated; or
 - (3) Congress enacts new law providing that the mandate be unfunded.

For purposes of UMRA, a provision of law or federal regulation establishes a mandate not only if it imposes an enforceable duty on other entities, but also if it would reduce federal funding available to the pertinent entities to pay the costs of carrying out such a duty.⁸ A provision of law requiring state, local, and tribal governments to forego raising certain revenues is also an intergovernmental mandate, the cost of which is the amount of revenue foregone.

Procedural Mechanisms Regulating Mandate Legislation

The provisions by which UMRA attempts to regulate congressional imposition of mandates involve two chief mechanisms. First, the act provides for CBO to estimate the costs of mandates in measures reported from committee in either chamber, and for the reporting committees to provide additional information about those mandates. CBO must provide such an estimate for measures in which the annual costs of intergovernmental mandates exceed \$50 million or those of private

⁸ Excepted from the operation of UMRA are requirements that: enforce constitutional rights; involve rights against discrimination; enforce accounting and auditing procedures for federal funds; provide emergency assistance to state, local, and tribal governments; are necessary for national security or under treaty obligations; are designated as emergency legislation; or involve social security. 2 U.S.C. §1503, §658(a) (Congressional Budget Act §422).

sector mandates exceed \$100 million;⁹ otherwise, it may state only that the respective threshold is not exceeded.

Second, the act establishes points of order that may be raised against House or Senate consideration of those measures. Under present law, such a point of order may be raised either:

- if the reporting committee has not published, either in its report or in the *Congressional Record*, the CBO estimate of mandate costs;
- if the measure would increase the estimated unfunded annual cost of intergovernmental mandates by more than the threshold amount.

The first of these points of order covers cost estimates on both intergovernmental and private sector mandates, but may be raised only against initial consideration of the measure. The second applies only to intergovernmental mandates, but may be raised against both initial and final consideration, including consideration of a conference report or amendment in disagreement between the houses. It may also be raised against an amendment or motion (such as a motion to recommit with instructions) offered during consideration of the measure.

In the Senate, if one of these points of order is raised against a measure, the measure may not be considered unless either the Senate waives the point of order or the chair overrules it. In the House, on the other hand, neither does the chair rule on such a point of order, nor is any motion to waive it available. Instead, if the point of order is raised, the House votes whether to consider the measure even though, as the point of order asserts, the measure may contain an unfunded mandate. This mechanism permits the House to avoid obliging the chair to determine, as if it were a procedural matter, the question of whether a substantive provision of legislation constitutes a mandate.

The House normally waives procedural requirements either by special rule or by considering a measure pursuant to a motion to suspend the rules. The House may in practice use the motion to suspend the rules to waive a prospective point of order under UMRA. If a special rule proposes to waive this point of order, however, UMRA permits a point of order to be raised against consideration of the special rule itself. The House disposes of this point of order, too, by voting on whether or not to consider the special rule despite the point of order.

Broadened CBO Responsibilities

One of the stated purposes of the Mandates Information Act (§3) is making better information available to Congress about the prospective effects of mandates proposed to be imposed on the private sector, thereby permitting it to distinguish proposed mandates that “harm consumers, workers, and small businesses.” The

⁹ In 1996 dollars, adjusted for inflation. UMRA §424(a)(1) and §425(a)(2).

provisions most directly related to this informational purpose expand the required contents of the estimates of private sector mandate costs CBO is to provide.

For measures that contain private sector mandates whose total cost exceeds the statutory threshold, existing law requires CBO only to estimate the total direct cost of those mandates, identify the amount of increased federal financial assistance made available to meet those costs, and briefly explain the basis of each estimate.¹⁰ (For private-sector mandates in the form of taxes, these estimates are prepared by the Joint Committee on Taxation.) UMRA also calls for information about mandate costs and benefits, relative impacts on the public and private sectors, and preemption of state, local, and tribal law by federal law.¹¹ These questions, however, are to be addressed by the reporting committees, not in CBO estimates of mandate costs.

The Mandates Information Act (§4(a)(1)(B)) would require CBO estimates also to state, for measures with private-sector mandate costs exceeding the threshold,

the impact (including any disproportionate impact in particular regions or industries) on consumers, workers, and small businesses, including ... [analyses] of the effect ... on consumer prices ... 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 fewer than 100 employees.

Development of such estimates would appear to require substantially broader and more complex forms of economic analysis than those involved in the preparation of the mandate cost estimates required of CBO under present law. Nevertheless, CBO, in its cost estimate on H.R. 3534, concludes that it (and the Joint Committee on Taxation) could carry out these responsibilities without “incurring significant additional costs.” It bases this conclusion in part on the small number of bills likely to contain private-sector mandates exceeding the threshold¹².

Point of Order Against Consideration of Private Sector Mandates

The other chief purpose stated by the Mandates Information Act (§3(1)(B)) is to insure that “Congress acts on [proposed mandates on the private sector] only after focused deliberation on the effects.” Toward this end, the central provision of the Mandates Information Act (§4(a)(3)(A)) would extend the point of order against consideration of legislation containing mandates to measures proposing private sector

¹⁰ UMRA §424(b).

¹¹ UMRA §424.

¹² Congressional Budget Office Cost Estimate in House Committee on Rules, *Mandates Information Act*, report. See Statement and testimony of James L. Blum, Deputy Director of the Congressional Budget Office, to House Committee on Rules subcommittees, joint hearing on implementation of UMRA, October 30, 1997. Text available on the Internet at [http://www.house.gov/rules_org/tran03.htm].

mandates with costs in excess of the threshold. It would also extend to those measures the procedural mechanisms by which the House and Senate dispose of this point of order.

Under this provision, however, private sector mandates would still be treated differently from intergovernmental ones. For one thing, the separate dollar thresholds for intergovernmental and private sector mandates would be retained. More significantly, in contrast to the treatment of intergovernmental mandates, the Mandates Information Act would afford private sector mandates no exemption from the point of order, even if their costs are funded (§4(a)(3)(b)).

This provision would have effects well beyond the purely informational, which could alter significantly the way Congress considers legislation containing private-sector mandates. Under these provisions, the key point of order established by UMRA could be raised against any measure proposing private sector mandates with costs of the requisite amount, whether or not it also provided a mechanism to fund those costs. In this respect, H.R. 3534 would regulate the consideration of measures containing private sector mandates much more strictly than UMRA now does measures proposing intergovernmental mandates. For intergovernmental mandates, the point of order applies only when the mandates are not funded. For private sector mandates, by contrast, the point of order would apply whether the mandates are funded or not.

The exemption that UMRA now provides for intergovernmental mandates when they are funded has the effect of encouraging Congress to provide such funding to state, local, and tribal governments to carry out duties it imposes on them. This arrangement presumably reflects a judgment that when the federal government requires other governments to incur costs to carry out federal purposes, providing federal funding to meet those costs may often be appropriate. By contrast, not extending a similar exemption to private sector mandates appears to reflect a judgment that such funding may often be inappropriate. Government carries out a broad range of its functions by directing private entities to do things, for which they typically receive no governmental compensation. Taxes, which constitute one important form of private sector mandates, are especially pertinent in this regard. Exactly to the extent that government paid private entities the amounts those entities must pay the government in taxes, it would vitiate the purpose of imposing the taxes in the first place, namely to raise revenue.

By not providing an exemption from the operation of the point of order against consideration for funded private sector mandates, the Mandates Information Act would have potentially broad effects on congressional consideration of measures. It would permit any Member of each house to prevent that chamber, except by majority vote, from considering any measure that would impose on private entities any duties (of kinds covered by UMRA) that would cost more than approximately 40 cents per capita nationally.

The findings and purposes of the Mandates Information Act (§2 and §3) address primarily the effects of private-sector mandates on consumers, workers, and small businesses. The measure thereby appears to conceive the private sector chiefly in terms of the economic activities of business enterprises. Such a view was implied

more strongly by a provision of H.R. 1010 (§5) that does not appear in H.R. 3534. This provision expressed the sense of Congress that the government should fund the costs to the private sector of complying with mandates through tax reductions, tax abatements, or direct federal compensation. On this interpretation, the procedural mechanism proposed by the Mandates Information Act could be understood to imply a presumption that in general, government ought not to be restrained in making law imposing costs or other duties on business enterprises.

On the other hand, the Mandates Information Act retains the definition of “private sector” established by UMRA, which includes associations, nonprofit institutions, and individuals, as well as profit-making enterprises. Under this concept of the private sector, the Mandates Information Act might be interpreted as implying a view that insofar as possible, government ought to be reluctant to make law imposing costs or duties on citizens in general.

The amendment adopted by the House Committee on Rules in marking up H.R. 3534 mitigates the extent to which the legislation reflects either of these concepts. This amendment alters §4(a)(3) to provide that no point of order against consideration may be raised with respect to individual revenue provisions in a measure. Instead, such a point of order may be raised on the basis of revenue provisions only to the extent that the net increase in revenue resulting from all such provisions in the measure exceeds the applicable threshold.¹³ Dissenting views in the committee report object to this amendment, on the grounds that a measure increasing tax revenues on one economic sector might be subject to a point of order under UMRA if it dedicated the new revenues to any other social purpose than the relief of tax burdens on another sector.¹⁴

Strengthening Provisions Against Dilatory Use

In the House, points of order raised under UMRA are disposed of not by a ruling of the chair, but by a vote of the House on whether to consider the measure. The House has recognized that this mechanism could potentially be subject to dilatory use. Because the question of whether a mandate is present will receive no authoritative settlement, Members might attempt to raise a point of order under UMRA irrespective of whether the measure in question actually contains any mandates. To preclude such practices, UMRA provides that the chair will not take cognizance of a point of order under the act, and will not put to the House the question of consideration, unless the Member raising it meets a “threshold burden” of specifying “precise language” on which the point of order is “premised.”¹⁵

H.R. 3534 introduces several provisions (§4(a)(5) and §4(a)(6)), not included in earlier versions of the Mandates Information Act, to clarify and strengthen these defenses against dilatory use of UMRA points of order. First, these provisions make

¹³ Committee on Rules, *Mandates Information Act*, report.

¹⁴ *Ibid.*

¹⁵ §426(b)(2).

explicit that the “language” specified must be “legislative language”; that is, language in the measure itself.¹⁶

Second, these provisions also make explicit that the points of order subject to this requirement include all those established by UMRA. This language presumably ensures that the “threshold burden” will extend to the new point of order against private sector mandates, as well as to the existing one against unfunded intergovernmental mandates. The mechanism for disposing of the point of order by the vote on consideration will presumably also extend to the new point of order.

It is less clear how this extension will affect the point of order that a reporting committee has published no CBO estimate of mandate costs. The language may be intended to preclude this point of order from being raised in cases when the only reason the committee published no mandate cost estimate is that the bill contained no mandates to begin with.

Third, these provisions also establish that only one point of order under UMRA may be raised in relation to private sector mandates in a given measure. In principle, this provision opens the possibility that the point of order raised might fail to specify the most substantial mandates contained in a bill, or might even specify provisions that did not in fact constitute mandates. This possibility, however, offers no prospect of damaging the operation of the procedural mechanism, exactly because the effect of the point of order does not depend on any ruling of whether it is substantively correct. Even if the point of order fails to specify its premise adequately, the 20 minutes of debate provided on the question of consideration would enable the House to become aware of all mandate provisions in the bill that were of concern to Members. The House would then vote on whether it wished to consider the bill containing those provisions, whether or not they were comprehended in the initial point of order.

The only evident dilatory possibility not explicitly addressed by these provisions appears to be that of raising an unfunded mandate point of order against legislation that contained none. This action could be attempted by specifying, as the premise of the point of order, legislative language that did not in fact establish any mandate. It is not clear that the chair would accept such a specification as meeting the threshold burden established by UMRA §426(b)(2). It does appear that the House has not experienced any attempted resort to a practice of this sort.

Application to Legislative Provisions in Appropriation Bills

The procedures established by UMRA are designed to apply to the consideration of authorizing legislation, in which mandates would normally be established and their funding authorized. UMRA addresses the actual provision of funds to entities that incur the costs of mandates only by subjecting authorizing legislation to a point of order if it affords no mechanism to ensure the funding of mandates it establishes.

¹⁶ House Committee on Rules, *Mandates Information Act*, report.

UMRA does not directly regulate the consideration of the appropriation bills in which funds to meet the costs of mandates might be provided. Instead, UMRA explicitly exempts appropriation bills from the operation of the points of order through which its requirements are chiefly enforced.

Provisions establishing new or expanded mandates, however, might appear in appropriation bills as legislative provisions, in spite of the general restrictions that rules of both chambers place on such provisions. In its present form, therefore, UMRA extends the point of order against consideration to individual legislative provisions in (1) appropriation bills as reported, and (2) floor amendments, conference reports, and amendments in disagreement between the houses, on appropriation bills, if they increase the costs of intergovernmental mandates by amounts in excess of the threshold.¹⁷

In the case of amendments, UMRA specifies that in the Senate, if the pertinent point of order is sustained and not waived, the provision may not be considered. For the House, if the point of order is raised against an amendment, the House may vote against considering the amendment.¹⁸ In the case of a provision in a bill, for the Senate, if the point of order is sustained and not waived, the provision is deemed stricken. For the House, however, UMRA provides no similar mechanism. Instead, enforcement would presumably have to proceed in accordance with the mechanism generally provided for action on the point of order; that is, by a vote of the House on whether to consider the provision despite the point of order.

It appears ambiguous how this mechanism would be applied to individual provisions in appropriation bills. There is no normal procedure by which the House votes on whether to consider a single provision of a bill. Yet the apparent intent of the act is that raising the point of order against a provision in an appropriation bill (or conference report) will lead to a House vote on whether to consider the provision. The act does not specify what happens if the House then votes against consideration. Presumably the text of the provision would be stricken from the bill; but if so, it is unclear why the act does not so specify, when it explicitly makes just this specification for the Senate. In the case of a conference report, also, striking a provision would be tantamount to defeating the conference report.

The provision is presumably intended to work by preventing these situations from arising. If the Committee on Appropriations knew that a provision of an appropriation bill might be subject to the point of order, it might omit the provision from the bill in advance, or seek a waiver from the Committee on Rules. In providing such a waiver, however, the Committee on Rules would subject the special rule itself to a point of order against consideration pursuant to UMRA, and therefore to a House vote on whether to consider the rule. Similarly, if the Committee on Appropriations knew that a provision of a conference report might be subject to the point of order, it might omit the provision, or else report it in technical disagreement,

¹⁷ §425(c)(1).

¹⁸ Because the House Committee on Appropriations typically reports appropriation bills as original bills, there are usually no committee amendments. For this reason, the provisions of UMRA referring to committee amendments to appropriation bills apply chiefly in the Senate.

so that it would be subject to a separate vote in the House without working the defeat of the conference report.

Consistently with its other provisions, the Mandates Information Act (§4(a)(4)) would extend the application of the point of order against consideration to provisions in appropriation bills that contain private sector mandates. The proposed legislation does not resolve the existing potential difficulty with such a proceeding. Instead, it extends that potential difficulty to legislative provisions involving private sector mandates in appropriation bills and conference reports. As noted earlier, the Mandates Information Act would apply to all private sector mandates, not just those for which no funding mechanism is provided. The act might therefore result in a substantial expansion of the number of special rules on appropriation bills that would have to waive this provision. If so, the act could similarly expand the number of special rules on which the House might have to vote whether to consider them.

Other Provisions Governing Consideration of Private Sector Mandates

In addition to the central point of order discussed at the outset, UMRA establishes several additional procedural mechanisms to regulate congressional consideration of legislation containing mandates. The Mandates Information Act extends the application also of some of these to private sector mandates.

Requirement for Estimate of Private Sector Mandate Costs

UMRA now provides that if CBO finds it not feasible to estimate costs of intergovernmental mandates in a measure, it may report that determination, with reasons, in lieu of an estimate. When this occurs, the measure may not be subjected to the point of order that it contains unfunded intergovernmental mandates with costs in excess of the threshold. The measure does, however, remain subject to the point of order on the grounds that the committee has published no estimate of mandate costs.¹⁹ Section 4(a)(2) of the Mandates Information Act would extend the application of this point of order for lack of an estimate applicable to cases in which CBO reports that an estimate of private sector mandate costs was not feasible.

Backup Mechanism for Striking Mandates from Bill in the House

Under UMRA, either chamber may consider a measure containing mandates in spite of the restrictions UMRA places on doing so, if the point of order against doing so either is not raised, is waived (in the Senate), or is superseded by a vote to consider the measure despite the point of order (in the House). If the House did proceed to consider a measure under these conditions, it might likely do so in Committee of the Whole, and the special rule regulating its consideration might be one that restricted amendments. UMRA amended House rules to provide that in such circumstances, amendments to strike mandates whose unfunded costs exceed the applicable

¹⁹ §424(a)(3).

threshold, if otherwise in order, remain in order unless the special rule specifically waives this provision.²⁰ The intent of this provision was to preserve the ability of the House to eliminate unfunded intergovernmental mandates, even when it agreed to consider a bill containing them.

This rule, as originally enacted, was drafted to cover amendments to strike all unfunded mandates, including private sector mandates, which would not otherwise be subject to procedural restrictions. The House therefore subsequently amended the rule to apply only to the unfunded intergovernmental mandates covered by the point of order discussed previously. Section 4(b) of the Mandates Information Act would once again extend this protection to cover amendments that would strike private sector mandates. The effect of this provision parallels that of the language extending to private sector mandates the point of order against consideration.

Inasmuch as this provision affects only House proceedings, it does not appear in S. 389, the Senate introduced version of the Mandates Information Act. This difference is consistent with the usual practices of comity between the chambers, by which they refrain from initiating legislation affecting each other's own procedural rules.

²⁰ Rule XXIII, clause 5(c). In House of Representatives, *House Rules Manual*, §873c.