

# Chapter 56

## Unfunded Mandates

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### Research References

Deschler-Brown Ch 31 § 1.57

*Manual* §§ 790, 843, 910, 991, 1081, 1127

Congressional Budget Act of 1974, §§ 421-428 (2 USC §§ 658-658g, 1502, 1515)

### § 1. In General

Part B was added to title IV of the Congressional Budget and Impoundment Control Act of 1974 by the Unfunded Mandates Reform Act of 1995. These provisions were enacted to require an assessment and full consideration of the impact of legislative and regulatory proposals on public and private sectors. H. Rept. 104-1. The Act explicitly declared that Part B was enacted as an exercise of congressional rulemaking powers. *Manual* § 1127; 2 USC § 1515.

### § 2. Definition of Mandate

The Unfunded Mandates Reform Act defines a “Federal intergovernmental mandate” as (1) an enforceable duty on State, local, or tribal government, or a reduction in the authorization of appropriations for Federal financial assistance provided to those governments for compliance with such duty, or (2) a provision which compels State and local spending for participation in an entitlement program under which at least \$500 million is provided to States and localities annually. *Manual* § 1127; 2 USC § 1502.

A “Federal private sector mandate” is defined as an enforceable duty on the private sector or a reduction in the authorization of appropriations for Federal financial assistance provided to the private sector for compliance with such a duty. *Manual* § 1127; 2 USC § 1502.

### § 3. Committee Responsibilities

Under the Act, the Congressional Budget Office (CBO) must provide an authorizing committee with a detailed cost estimate for each bill reported by such committee containing mandates that have the requisite annual aggregate impact (adjusted for inflation) on the public sector (*i.e.*, State and local government) or on the private sector. A committee must publish this CBO estimate in the committee report or in the *Congressional Record* before consideration of the legislation on the House floor. 2 USC § 658b.

A committee report also must include:

- An assessment of the costs and benefits of the mandate.
- A statement of the degree to which the Federal funding of an intergovernmental mandate would disadvantage the private sector.
- A statement of the amount of assistance authorized to pay for the mandate.
- A statement whether the committee intends that the mandate be unfunded.
- A statement whether the legislation intends to preempt State and local law.

2 USC § 658b.

### § 4. Points of Order

It is not in order to consider a bill or joint resolution reported by a committee containing an intergovernmental mandate unless the committee has published a CBO estimate. 2 USC § 658b. There is no point of order against consideration of a measure containing a private sector mandate, even though CBO must provide, and committees must publish, similar cost estimates for private sector mandates as they do for intergovernmental mandates. See § 3, *supra*.

A point of order also would lie on the floor against consideration of a bill, joint resolution, amendment, motion, or conference report that imposes intergovernmental mandates exceeding the requisite level on State and local governments unless the legislation:

- Funds the mandates through new budget authority or new entitlement authority;
- Includes an authorization for appropriations for the direct costs of the mandate; and
- Provides for an evaluation of and reaction to the direct costs of the mandate by the relevant Federal agency and expedited procedures in the Congress to address such evaluation.

*Manual* § 1127; 2 USC § 658d.

A point of order under the Act may not be raised against an appropriation bill or an amendment thereto, with certain exceptions. *Manual* § 1127; 2 USC § 658c. The Act not only establishes a point of order against consid-

eration of a measure containing an unfunded intergovernmental mandate (2 USC § 658d), but it also establishes a point of order against a resolution providing a special order of business that waives a point of order against a measure, or self-executes the adoption of an amendment, containing an unfunded intergovernmental mandate (2 USC § 658e). A special order of business “hereby” concurring in a Senate amendment that precludes the opportunity to raise a point of order constitutes a waiver of the application of the point of order. 109-2, Feb. 1, 2006, pp 549, 550.

### § 5. Disposition of Points of Order

A point of order against consideration of a bill is properly raised pending the Speaker’s declaration that the House resolve into the Committee of the Whole for such consideration. A point of order against consideration of a resolution providing a special order of business must be made when the special order is called up and comes too late after the resolution has been adopted. *Manual* § 1127; 2 USC § 658e.

In order to be cognizable by the Chair, each point of order must specify the precise language on which it is premised. A point of order may be raised against more than one provision. *Manual* § 1127; 2 USC § 658e. In the case of a special order of business, the precise language subject to the point of order is normally the waiver of points of order against consideration of the underlying measure, including amendments thereto.

Each point of order raised is separately debatable for 20 minutes, equally divided between the Member initiating the point of order and an opponent. Debate on the point of order against a special order of business is on the question whether the House should consider the measure. The Members controlling debate on the point of order may reserve time, and a manager of a measure who controls time for debate against the point of order has the right to close debate. *Manual* § 1127; 2 USC § 658e.

After debate the Chair puts one question of consideration with respect to the proposition that is the subject of the points of order. The Chair puts the question of consideration without intervening motion except one motion that the House adjourn. Disposition of the question of consideration of a bill or resolution shall be considered also to determine a like point of order against an amendment made in order as original text. *Manual* § 1127; 2 USC § 658e.