

CBO TESTIMONY

Statement of
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on
S. 563, S. 648, S. 993, S. 1592, and S. 1606

before the
Committee on Governmental Affairs
United States Senate

April 28, 1994

NOTICE

This statement is not available for public release until it is delivered at 9:30 a.m. (EDT), Thursday, April 28, 1994.



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Mr. Chairman and Members of the Committee, I appreciate this opportunity to discuss the Congressional Budget Office's work on state and local cost estimates and the impact on CBO of several bills that would affect these responsibilities. My statement is in two parts. The first part is an overview of CBO's current responsibilities and products related to state and local cost estimates. The second is a discussion of some of the major aspects of five bills that would affect CBO's duties and work load in this area.

CBO'S ANALYSES OF FEDERAL MANDATES

The State and Local Government Cost Estimate Act became law in December 1981. It requires CBO to prepare estimates of the costs that state and local governments would incur in complying with federal legislation that is reported from full committees in the House and Senate. Those estimates are to be included in committee reports along with estimates of costs to the federal government. The requirement took effect on October 1, 1982, and CBO prepared its first state and local cost estimate in November of that year.

The act requires CBO to prepare state and local cost estimates only for legislation that is likely to cost states and localities at least \$200 million annually. Estimates are also required for legislation that is likely to have exceptional fiscal

consequences for a particular region or level of government. Appropriation or tax bills do not require such estimates.

Nonetheless, CBO has adopted a policy of preparing state and local cost estimates for all authorizing bills that committees report. Because much of the work has to be done just to determine whether the \$200 million threshold would be met, we try to provide the Congress with whatever information we gather regarding the cost of the legislation.

In preparing these estimates, CBO defines costs as the direct budgetary costs or savings that state and local governments would incur as a result of the legislation, measured relative to what they would have spent or saved otherwise. These cost estimates generally are for state and local governments in the aggregate, not for specific jurisdictions. CBO also does not try to estimate the potential secondary impacts--such as job losses and tax effects--that may result from legislation, nor do we report on the amount of spending that state and local governments may already be doing on their own initiative.

On average, CBO prepares about 600 state and local cost estimates a year. The majority of these estimates, about 80 percent, are prepared for bills reported from full committee. Occasionally, we prepare estimates for proposals and amendments

at other stages in the legislative process, but there generally seems to be less Congressional interest in having state and local cost estimates at other times.

Over the past 12 years, most of the bills CBO has reviewed--about 87 percent--have had no significant impact on state or local governments. And only about 2 percent of the bills reviewed were estimated to result in state and local costs in excess of the \$200 million threshold.

Our experience in preparing state and local government cost estimates leads us to draw the following conclusions about the process:

- o Preparing the estimates requires the use of many different methodologies.
- o State and local officials are an invaluable source of information.
- o The estimating process does not always yield firm estimates.
- o Legislative language may lack the detail necessary to estimate the costs.

- o Preparing cost estimates is a time-consuming process.

These points are discussed in detail below.

Many Costing Methodologies Are Needed

Because the cost impacts of bills are unique, no single estimating methodology is applicable to all bills. CBO analysts had initially hoped to develop certain data bases of information or networks of contacts that would apply to all state and local cost estimates. This approach quickly proved infeasible, however, primarily because the range of issues and the diversity of the data required were simply too great to allow the creation of one comprehensive data base or network of contacts that could be tapped routinely for all state and local estimates. CBO has had to analyze the potential effects of such a wide range of issues--immigration reform, requirements for safe drinking water, prohibitions against sex discrimination in pension plans, access of handicapped people to public transportation--that we have generally found that each bill or subject area must be approached separately to identify and locate specific relevant information.

Consultation Is Critical

The most useful research tool for developing state and local estimates is consultation with state and local officials. A bill's impact on states and localities often involves activities for which little or no data exist and which depend greatly on future decisions of federal, state, or local governing bodies. In many such situations, the views and judgments of state and local officials are critical elements in determining the impact of legislation.

As a result, modeling or statistical analyses are rarely useful in preparing state and local estimates. In some cases, the state and local costs are a direct outgrowth of the federal cost, as in the case of Medicaid legislation. In such situations, CBO's projections of total program spending, which are needed to determine federal costs, also lead readily to estimates of the aggregate state share of the program's costs. But such cases are infrequent.

Costs Cannot Always Be Quantified

The uncertainty surrounding most state and local officials' estimates or educated guesses and the variability of the effects of legislation from locality to locality sometimes make it impossible to quantify total nationwide costs. Even when the costs

to an individual entity can be quantified, we may not be able to generalize from these case-by-case data. As a result, our analyses are sometimes limited to identifying the general qualitative nature of a bill's impact and providing examples of costs to specific localities.

An example of this problem and of our approach to preparing estimates is our work on legislation requiring that voting places be accessible to the handicapped. State and local impacts of the bill varied widely, and it was not possible to gather sufficient data to estimate the aggregate cost nationwide. We found that the costs for each state and locality would depend, among other things, on the definition of accessibility used by each jurisdiction, the extent of present accessibility, and the remedy selected. Some states estimated that they would incur little or no cost because they already mandated accessibility to polling places. Other jurisdictions used relatively few inaccessible polling locations to begin with, so their compliance costs were also expected to be small. Some states and localities planned to meet the bill's standards by allowing the elderly or handicapped to transfer their registration to accessible facilities, thereby minimizing additional costs. Some jurisdictions, however, used the worst-case scenario in providing estimates for CBO and estimated the costs of installing wheelchair ramps at all polling places.

Estimated costs for complying with the bill ranged from \$845 per county in Georgia (to transfer registration of handicapped voters to accessible facilities) to

\$10,000 in the city of Minneapolis alone (to install ramps in all polling places). Given the wide range of expected compliance costs and the few data available, there was no way to calculate one aggregate cost figure. Instead, the CBO cost estimate discussed the potential range of impacts and provided numerous examples.

Legislation May Lack Sufficient Detail to Estimate Costs

Legislation is often broad and consequently lacks the specifics needed to project future impacts at the time the bill is considered. Cost estimates are thus hard to develop. This is particularly true when the Congress gives executive agencies broad discretion to issue technical regulations at a later date, as it routinely does with agencies such as the Environmental Protection Agency (EPA). When cost estimates are prepared for these types of technical legislative proposals, it is often difficult, if not impossible, for federal agencies to interpret the language or to predict what final regulations will look like before they begin the extensive process of developing them. Consequently, it is virtually impossible for state and local governments to predict how they will comply or for CBO to estimate the cost implications.

Even when the issues are not highly technical, executive branch agencies may have substantial discretion in specifying how legislation is to be implemented. For example, the Americans with Disabilities Act of 1990 (H.R. 2273) included a mandate

for transit operators to offer special transportation services to the disabled that would provide a level of service comparable with their fixed-route public transportation. The bill also required key stations in rapid-rail and light-rail transit systems to be readily accessible to individuals with disabilities. The estimated cost of implementing these requirements depended on what special transportation services would be considered adequate, how many stations would be defined as "key," and what steps would be necessary to make existing stations "readily accessible." How future Administrations would make these determinations was unknown, and CBO's cost estimate had to reflect this uncertainty.

Cost Estimates Take Time

CBO has repeatedly found that the process for preparing state and local cost estimates is not well suited to the normal time frame for providing estimates of pending legislation. One objective of the State and Local Government Cost Estimate Act was to include the estimates in the committee reports. Yet the committee report may be filed within hours or a few days after the committee has ordered the bill reported. CBO attempts to provide the estimates at a later date if reports are filed without them, but given the speed with which some bills are passed, amended, or voted down, we cannot always provide the state and local estimate in time for consideration on the House or Senate floor.

MAJOR ASPECTS OF FIVE BILLS

At the request of Chairman Glenn, CBO has analyzed five bills that aim to increase the amount of budgetary and economic information available to the Congress as it considers new federal mandates. The bills are S. 563, S. 648, S. 993, S. 1592, and S. 1606. All of the bills would increase CBO's work load to varying degrees: S. 1606 would have a relatively modest impact on CBO resources, whereas the impact of S. 993 would be substantial. None of the bills recognize the need for additional resources by including an authorization for appropriations. As shown in Figure 1, most of the major elements of the bills that affect CBO appear in more than one of them. Therefore, I will talk about these elements instead of discussing each bill.

Economic Analyses

In addition to the cost estimates that CBO now prepares, S. 1592 would require economic analyses of the burdens that all reported bills might place on the private sector as well as on state and local governments. S. 993 may require such economic analyses for bills affecting only state and local governments. These analyses would include estimating changes to economic variables such as employment, production, income, and prices. CBO has the resources now to conduct several such studies annually for legislation that has significant effects on the economy as a whole or on

FIGURE 1. MAJOR ELEMENTS OF FIVE LEGISLATIVE PROPOSALS AFFECTING CBO'S ANALYSES

Major Elements	Bill Number and Senate Sponsor				
	S. 563 (Senator Moseley- Braun)	S. 648 (Senator Gregg)	S. 993 (Senator Kempthorne)	S. 1592 (Senator Dorgan)	S. 1606 (Senator Sasser)
Economic Analyses					
State and local governments			?	✓	
Private sector				✓	
Analyses of Effects on Individual Governmental Entities		✓	✓		
Annual Report on Cumulative Costs of :					
<u>All</u> mandates			✓		
<u>New</u> mandates	✓				
Adequacy of Federal Funding for Mandates	✓				
State and Local Estimates for Appropriation Bills	✓	✓	✓	✓	✓
New Thresholds for State and Local Estimates	✓	✓	✓	✓	

SOURCE: Congressional Budget Office.

major segments of the economy, but not for all bills that might be reported from committee.

These analyses of a bill's economic impact, when carefully chosen, can measurably enhance the information available to the Congress as it considers legislation. Nonetheless, asking for economic analyses for every bill reported from committee would be an attempt to have too much of a good thing. In theory, many of the hundreds of bills reported each year might have some economic consequences for state and local governments or the private sector. In most cases, however, those effects would be small relative to the whole economy, they would be difficult to measure, and they would require additional specialized skills and information.

I agree that the Congress should consider such impacts, if significant, during the legislative process. Nevertheless, I am concerned that CBO, or any federal agency for that matter, would not be able to handle adequately the economic analyses of all reported bills, even with a significant increase in resources.

Capabilities Under Current Resources. At present, CBO provides the Congress with some of the information about a bill's economic impact that S. 1592 contemplates. CBO has analyzed the economic impact of proposed legislation on businesses and consumers in recent years for such measures as the North American Free Trade Agreement, the Administration's health care reform proposal, and the auctioning of

radio spectrum licenses. With current resources, however, CBO is able to do economic impact studies only for a few major proposals each year.

Moreover, because such analyses often cannot be completed quickly if quality is to be maintained, CBO usually begins analyzing a bill's economic impact long before legislation comes to a vote by the House or Senate, in order to have the results ready at that time. To make the best use of our resources, it would be helpful to have some guidance from the Congress on legislative items for which this type of information would be most useful. The Congress could do this without a change in existing law.

Capabilities with Additional Resources. If S. 1592 became law, CBO would be required to scour each and every bill reported by every Congressional committee to determine whether it met the criteria in the bill for triggering analyses of potential economic impacts. In 1993, this task would have required analyzing more than 700 bills reported from authorizing committees and more than 30 bills reported from the appropriations committees. At present, CBO is not required to devote any resources to identifying, or tagging, bills that have such impacts, so this responsibility would represent a major new task for us.

Next, CBO would have to estimate the economic impact on state and local governments and the private sector for all the bills we tagged, and the number of such bills would probably account for a large proportion of all reported bills. Although

most of the tagged bills are unlikely to have a large impact on the nation, many are likely to appear to have a potential economic impact on one industry or locality. Analyzing several hundred bills annually would require substantial additional resources, on the order of 60 more staff members.

The number of additional staff members required to evaluate these economic impacts could be even greater than that because the process of estimating economic impacts is inherently difficult. Any analysis of the effects of proposed regulatory changes, for example, can be extremely uncertain and controversial and may depend critically on how regulations are administered. Often, the latter consideration is unpredictable. For example, the Cable Television Consumer Protection Act of 1992 (P.L. 102-385) was expected to lower the average consumer's bill for cable TV. Although many consumers have seen their rates go down, some have experienced rate hikes. Predicting the average change in rates would have been difficult enough, but predicting which localities would experience lower rates and which ones higher rates would have been impossible. Also impossible would have been predicting the effect of the act on other industries. Many people allege that the act was responsible for the demise of several proposed mergers in the telecommunications industry. Few experts predicted those prospective mergers, let alone the relationship between the prospective mergers and the cable bill.

In general, economic analyses are less precise than estimates of a bill's impact on the federal budget, or even on state and local budgets. Moreover, in order to maintain the credibility of our estimates, we would not simply do our own analyses but would also examine and evaluate any existing analyses by private consulting firms and industry groups. That task would require a huge amount of additional work.

If S. 1592 was enacted and CBO was given additional resources, we would also seek to employ specialists needed to carry out the required impact analysis. Of course, it would not be practical to hire specialists on every industry that could potentially be affected by federal legislation, and we would not be able to have at the ready all of the data needed for such work. Therefore, much of the expertise and data, if available at all, would have to be obtained from private sources. Data could be costly to obtain and verify. As a result, many estimates could be expensive and time-consuming undertakings that frequently might produce flawed information. Even if CBO had an army of analysts to work on economic impact analyses, there is a large risk that the work they produce could be of marginal value for many of the bills analyzed.

Furthermore, the requirement for so many economic impact analyses could significantly slow the legislative process. Combining the requirements of this proposal with the tight, unpredictable schedules that committees often must follow would set

up conflicting priorities. Based on CBO's cost-estimating experience, it is hard to imagine that committees would have the flexibility or the patience to tolerate consistently the length of time required for economic studies of good quality.

As written, S. 1592 could decree a great deal of CBO work that might turn out to be unsatisfactory to the Congress. It could also be expensive during a time in which funding for the legislative branch may shrink significantly. One alternative approach the Committee may wish to consider would be for CBO to work with the Congress on an agenda for the economic impact analyses that CBO would conduct each year, with periodic updates as necessary. In this way, CBO could concentrate its resources on a few critical bills for which economic analyses might produce acceptable and useful information for the Congress.

Analyses of Effects on Individual State and Local Governments

S. 648 and S. 993 would require state and local cost estimates to address the effects on individual states and local governments. This task would be impossible to fulfill in any practical sense. Just to attempt to comply with this mandate would significantly increase CBO's work load and would extend the time needed to complete the cost estimates. Even though there are only 50 states, CBO rarely has the

resources or the information with which to identify state-by-state effects in its current cost estimates. Limitations would be even more severe if CBO had to display its estimates for each local government. There are about 87,000 such entities in the United States, and any one bill could affect hundreds or thousands of them, although each entity might be affected in a relatively small way.

To provide competent, useful estimates of the effect of any federal bill on a specific area of the country, such as a township, requires knowledge of the area's specific characteristics. Number, size, and condition of local facilities such as school buildings, prisons, roads, and maintenance operations would be needed to gauge the precise effects of federal laws relating to those activities. Similarly, measuring the precise local aftermath of laws that would affect human resource programs would require detailed knowledge of the characteristics of local populations. This information is not always available, however, and could cost thousands of dollars to collect for each locality.

The Committee might wish to consider other ways to obtain some of this information for the Congress. One possibility would be to change the rules of the House and Senate to require Congressional committees to gather information from potentially affected parties. For example, committees could be required to hold hearings for any bill that contained unfunded federal mandates. Another tack would

be to require committees to print proposed bills with unfunded mandates in the *Federal Register*. Potentially affected parties would be allowed a significant amount of time to make comments and gather supporting data. In either case, committees could be required to analyze and tabulate the information in their reports on bills. The amount of data to be sifted through could be enormous and, because it would come from the potentially affected parties, might be biased and self-serving. But if Members truly want such input, it cannot be obtained and used without cost.

A more rigid approach would be a two-phase process--gathering comments on unfunded mandates in the first session of a Congress and voting on the mandates in the second session. Congressional rules could be crafted to put a moratorium on enactment of new mandates in the first session except for emergencies.

Reports on Cumulative Costs of Mandates

S. 563 and S. 993 propose that CBO issue an annual report containing actual and projected costs of enacted mandates. That task would severely strain CBO's resources. S. 993, in particular, would force CBO to establish a reporting system and possibly an auditing system to determine the actual costs of mandates. Determining actual costs would be necessary to enable CBO to make credible projections for

mandates that have been fully implemented, because CBO would have to estimate costs for the federal mandate each year until the mandate expired or was repealed. Such a system could be enormously expensive and would require a large increase in CBO's annual budget; it would also entail some costs to state and local governments. We would need to conduct a feasibility study to determine whether we could carry out this provision and how our resources would be affected.

CONCLUSION

The issue of who pays for federal mandates is a serious one and goes to the heart of our system of government. When the federal government identifies problems and mandates solutions that affect different localities in different ways, which taxpayers should bear the burden of the costs? Or which level of government should cut funding for other programs in order to pay such costs? And in deciding on such mandates, does the federal government adequately take into account their impact on other levels of government or on the private sector?

In resolving these important questions, the Congress will have to address some broad, philosophical questions and deal with some very pragmatic constraints. On a philosophical level, a key question is whether the federal government ought to

automatically be responsible for the costs of remedial actions it mandates, regardless of who caused the problem and who is responsible for the affected activities. For example, states and localities build and operate public school systems. If some of their buildings contain substances that are hazardous to children's health, should the federal government--that is, taxpayers throughout the country--be responsible for the costs of local remedial actions, even if they are mandated by federal law, or should the localities that built and operate the schools bear those costs? Should the allocation of financial responsibility between governments be the same for all types of mandates--removal of asbestos or radon from schools, safe drinking water, accessibility for the handicapped, voter registration procedures, and so on--or should it vary from case to case? Are there situations in which federal mandates are necessary and appropriate, even without federal funding, or are all of these problems none of the federal government's business?

Another major question is how to define a mandate. A wide variety of federal actions could be considered mandates, yet many of the bills that this Committee is considering do not clearly define the term. Clear definitions are important, however, particularly when considering proposals to reimburse state and local governments for the costs of complying with mandates. These actions range from general conditions attached to federal grants, to direct legal requirements by the federal government that states and localities must comply with under threat of civil or criminal penalties.

Should all of these actions be treated equally for the purposes of devising reimbursement schemes or establishing points of order?

On a more pragmatic level is the question of how much information is or can be available to the Congress in dealing with specific issues. In this regard, I would make the following points:

- o **In the situations in which it matters the most, the aggregate cost to states and localities of a particular federal mandate--whether existing or prospective--is frequently very hard to determine with great specificity.** Costs may vary greatly from locality to locality. They often depend on future decisions of federal, state, or local government agencies, which are difficult to predict. The estimates also depend largely on information from state and local officials, who usually have a strong interest in having the costs appear as high as possible. And even for existing costs, there is often no clear and consistent basis for identifying how much of a locality's spending is the result of a specific federal mandate rather than a cost that it would have incurred in any event.

- o **More detail is not necessarily better.** Analysis of the effects of legislation by state, locality, or other categories often adds significantly to the preparation time, making it more difficult to meet the normal timetable for Congressional action. Without consuming enormous resources, such detail is unlikely to be very accurate, and it may result in so much data that users would find it overwhelming and undigestible.

- o **Focusing more attention on a few bills might be more valuable than spreading scarce resources over many.** With tight constraints on its resources likely to persist for the foreseeable future, the Congress might best address the legitimate concerns about the impact of federal mandates by targeting its analytical efforts toward legislation most likely to have significant effects. The best way to assure that the Congress has the necessary information about important bills is to identify the relevant legislation early in the process and devote the time and effort required to produce a useful analysis. The affected interest groups can assist by helping to identify bills that they are concerned about, by providing information to CBO for its cost estimates, and by focusing the attention of committees and Members on the results of those analyses.

CBO looks forward to working with the Committee and the Congress in addressing these important issues.

