Federal Mandates for State Action

Federal mandates are traditionally described as actions by the federal government to force states to do something or preempt state authority. The national 55 mph speed limit is a classic example of an unfunded mandate, while a congressionally legislated moratorium or preventing states from taxing Internet commerce would be an example of preemption. Mandates and preemption can come from any branch of the federal government, and arise in the form of laws, regulations, and court rulings. Suggested State Legislation volumes have highlighted congressional mandates since 1992, beginning with legislation in the 101st Congress.

Defining congressional mandates was supposedly made easier by the “Unfunded Mandates Reform Act of 1995 (UMRA).” Under UMRA, federal legislation that imposes $58 million or more (adjusted annually for inflation) in unfunded annual costs to the states is officially considered a mandate. UMRA also defines a private sector mandate and requires the Congressional Budget Office (CBO) to review virtually all bills reported by congressional committees for the presence of federal mandates and to estimate the costs of both types. Readers can obtain CBO “Cost Estimates” for federal legislation at www.cbo.gov.

107th Congress-Second Session

The second session of the 107th Congress began on January 23rd, 2002 and is expected to conclude before the 2002 Thanksgiving holiday. At the time this Note was written, only 23 bills had been enacted into law. Thus, this Note, and the following table, highlight legislation from this session that has or may result in an unfunded mandate on the states or preempt state authority.

In addition, the Congressional Budget Office expects to complete by January 2003 “A Review of CBO’s Activities in 2002 Under the Unfunded Mandates Reform Act.” Interested readers can contact The Council of State Governments’ Washington, D.C. office at (202) 624-5460 to get a copy of that review.

“Homeland Security Act of 2002” (H.R. 5005)

Just days before its 2002 August recess, the House of Representatives passed H.R. 5005, the “Homeland Security Act,” by a vote of 296-132. This legislation establishes a new Department of Homeland Security that will merge the operations of 22 federal agencies and employ over 170,000 people. The Senate is expected to consider H.R. 5005 and two other pieces of related legislation in September 2002.

H.R. 5005 contains intergovernmental mandates as defined in the UMRA, but the CBO estimates that the costs to comply with the mandates would not exceed the current $58 million UMRA threshold. For example, H.R. 5005 requires owners and operators of U.S. airports to provide notice to the Under Secretary of Homeland Security, by December 31, 2002, if they are unable to accommodate systems that detect explosives. Under current law, explosive detection systems must be installed by December 31, 2002. In addition, the bill could preempt state jurisdiction over certain liability cases. The bill contains no new private-sector mandates as defined in UMRA.


This bill reauthorizes the Temporary Assistance for Needy Families (TANF) program and provides $16 billion in block grants to the states. H.R. 4737 passed the House of Representatives on May 16, 2002 by a vote of 229-197. An amended version of the bill passed the Senate Finance Committee on July 25, 2002. Subsequently, H.R. 4737 was placed on the Senate Legislative Calendar.

The CBO believes that H.R. 4737 probably would impose intergovernmental mandates, as defined in the UMRA, on states because it is likely that not all states could offset the costs of the Act's changes to the child support enforcement program. The costs of the mandates would depend on the degree to which states would be able to alter their responsibilities within the child support enforcement program and to compensate for the loss of receipts as a result of the Act. In total, states would face losses ranging from $73 million in...
2007 to $90 million in 2011. To the extent that states are able to alter their programmatic responsibilities and offset some of these costs, the aggregate amounts may be lower than the threshold established in UMRA ($65 million in 2007, as adjusted for inflation).

Other provisions of the Act would significantly affect the way states administer their TANF and Medicaid programs, but because of the flexibility in those programs, the new requirements would not be intergovernmental mandates as defined in UMRA. In general, state, local, and tribal governments would benefit from the continuation of existing grants in TANF, the creation of new grant programs, and broader flexibility and options in some areas.

The “Federalized” Driver License

Three pieces of federal legislation currently under review by Congress would “federalize” the driver’s license, and thus, at a minimum, preempt what has historically been state jurisdiction:

“Driver’s License Modernization Act of 2002 (DLMA)” (H.R. 4633)

This bill, introduced by Rep. Jim Moran and Rep. Tom Davis of Virginia, requires that within five years states will implement driver’s license programs with the following requirements:

- Driver’s licenses will become “smart cards” with computer chips that store a variety of information;
- Biometric data to match the license with its owner will be collected;
- States’ participation in national databases will be required;
- Tamper-resistant security features will be incorporated into all license documents, and
- States will adopt and implement procedures for accurately documenting the identity and residence of an individual before issuing a driver’s license.

This legislation directs the Secretary of Transportation to establish necessary standards within six months of its adoption in consultation with the American Association of Motor Vehicle Administrators, the General Services Administration, and the National Institute of Standards and Technology. The bill also authorizes the federal government to appropriate $315 million for grants to states to help offset initial costs of this new system. The bill directs the Secretary of Transportation to set standards but doesn’t require federal funding to pay for new federally imposed requirements.

“Driver's License Integrity Act of 2002”

Similar to the DLMA, this legislation drafted by Sen. Richard Durbin of Illinois would require:

- Minimum uniform standards for issuance and administration of state-issued driver’s licenses;
- Interstate sharing of driving information for verification with enhanced privacy protection within five years of enactment;
- Enhanced ability for verification and authentication of the driver’s license;
- Prevention of abuse and enhanced penalties for internal fraud;
- Similar state funding allocation, and
- The Secretary of Transportation to develop the minimum set of verification and identification requirements and supervise state implementation.

HR 4043

This legislation, introduced by Rep. Jeff Flake of Arizona, would bar Federal agencies from accepting a state-issued driver’s license for any identification-related purpose unless the state requires licenses issued to nonimmigrant aliens to expire upon the expiration of the aliens’ nonimmigrant visa.
<table>
<thead>
<tr>
<th>Bill</th>
<th>Title</th>
<th>Status</th>
<th>Description</th>
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<tbody>
<tr>
<td>H.R. 3215</td>
<td>Combating Illegal Gambling Reform and Modernization Act</td>
<td>7/19/2002 Placed on the Union Calendar</td>
<td>Restricts gambling businesses involving interstate or foreign commerce by prohibiting the use of communications facilities to transmit bets or wagers. It imposes both intergovernmental and private-sector mandates. “CBO estimates that the total cost of complying with those intergovernmental mandates, which would be borne primarily by tribal governments, would exceed the established threshold in UMRA ($58 million in 2002, as adjusted for inflation).”</td>
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<tr>
<td>H.R. 3951</td>
<td>Financial Services Regulatory Relief Act</td>
<td>7/22/2002 Placed on the Union Calendar</td>
<td>Affects the operations of financial institutions and the agencies that regulate them. Contains intergovernmental mandates, but does not exceed the threshold. Also contains costs from private-sector mandates that exceed the threshold ($115 million in 2002).</td>
</tr>
<tr>
<td>H.R. 4090</td>
<td>Personal Responsibility, Work, and Family Promotion Act of 2002</td>
<td>5/14/2002 Placed on the Union Calendar</td>
<td>Reauthorizes Temporary Assistance for Needy Families (TANF) funding at current levels and alters several child support and Social Security Administration programs. It provides states with new authority to run demonstration projects. It contains no intergovernmental nor private-sector mandates but could affect how states administer programs, possibly affecting cost.</td>
</tr>
<tr>
<td>H.R. 4092</td>
<td>Working Toward Independence Act of 2002</td>
<td>5/10/2002 Placed on the Union Calendar</td>
<td>Makes changes to the Temporary Assistance for Needy Families (TANF) program and reauthorize the Child Care and Development Block Grant (CCDBG) Act. It provides states with new authority to run demonstration projects. It contains no intergovernmental nor private-sector mandates but could affect how states administer programs, possibly affecting cost.</td>
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<tr>
<td>S. 848</td>
<td>Social Security Number Misuse Prevention Act</td>
<td>7/11/2002 Committee on Finance hearings held</td>
<td>Limits the use, display, and sale of Social Security numbers by state, local, or tribal governments. Costs would likely exceed the intergovernmental threshold and possibly exceed the $115 million UMRA private-sector threshold.</td>
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<tr>
<td>S. 2201</td>
<td>Online Personal Privacy Act</td>
<td>5/17/2002 Ordered to be reported with amendment in the nature of a substitute favorably</td>
<td>Imposes restrictions on the collection of personal information on the Internet. Imposes intergovernmental and private-sector mandates but it is unclear whether or not they would exceed the threshold for either.</td>
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