



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

UNFUNDED FEDERAL MANDATES

House Bill 4061 with committee amendment First Analysis (3-29-95)

Sponsor: Rep. John Jamian
Committee: Appropriations

THE APPARENT PROBLEM:

Various researchers report that the rate at which the federal government imposes new mandates on state and local governments has been increasing for several decades, accelerating in the 1980s. Reports are that the past decade or so also has seen an accompanying decline in federal grants-in-aid. Of particular concern for many is the imposition of new federally mandated costs without associated funding—a trend that appears to have worsened in recent years. Some argue that many of these mandates directly violate the Tenth Amendment to the U. S. Constitution, which defines the total scope of federal power as being that specifically granted by the Constitution and no more. The Tenth Amendment states: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." Today, many think the states are treated by Congress as agents of the federal government. To combat this, many states, including Michigan, have petitioned the federal government to cease and desist imposing mandates that are beyond the scope of its constitutionally delegated powers. Despite action taken thus far in the newly-elected Congress to curb federal mandates and reduce the overall size of the federal government, some believe legislation is needed to send a clear and powerful message that Michigan no longer can afford to implement the many federal mandates imposed on it unless they are fully funded by the federal government.

THE CONTENT OF THE BILL:

The bill would amend the Management and Budget Act (MCL 18.1101 et al.) to prohibit the legislature, beginning October 1, 1995, from appropriating state funds for programs mandated by the federal government that were not fully funded by the federal government, unless the legislature determined that such an appropriation would be in the state's best interests.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have the effect of reducing state and local costs in an undetermined amount. The agency has noted that the bill in its original form might actually have resulted in increased costs, as a refusal to implement federally-mandated requirements would have resulted in federal sanctions, in the form of lost federal funds for other programs. The amendment adopted by the Appropriations Committee, however, appears to mitigate this concern by providing that consideration be given to funding some federal mandates if the legislature determined that such action would be in the best interests of the state. (2-14-95 and 3-16-95)

ARGUMENTS:

For:

According to the Mackinac Center, unfunded mandates from the federal government cost the state about \$400 million in 1993 alone. Unfunded Medicaid mandates are expected to increase by over 245 percent from fiscal year 1990 to 1995, an average annual increase of about 49 percent, while general fund revenue is expected to increase at its historical rate of about five percent. In 1993, the accounting firm Price Waterhouse surveyed 128 counties across the country to determine their costs under twelve sample unfunded federal mandates, including those dealing with underground storage tanks, clean water and wetlands, clean air, solid waste, safe drinking water, and Americans with disabilities. Price Waterhouse estimated that counties nationwide are spending \$4.8 billion annually to comply with these twelve mandates. Five Michigan counties (Berrien, Genesee, Kent, Midland, and Washtenaw) were included in the survey, and their fiscal year 1993 costs ranged from \$30,420 for Berrien County to \$1.05 million for Washtenaw County.

Clearly, unfunded federal mandates are imposing major burdens on the state and its local units of government, draining money from other services such as public safety, and hampering efforts to balance the budget. To many, the increase in federally mandated programs and services represents a usurpation of powers properly reserved to the states under the Tenth Amendment, which says that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Against:

The bill is unnecessary, as the federal government has already gotten the message about unfunded federal mandates. On March 22, 1995, President Clinton signed into law the Unfunded Federal Mandate Reform Act of 1995, which, among other things, provides for a review of unfunded federal mandates, and requires changes in the legislative and regulatory processes which will curb the practice of imposing unfunded mandates on the states and local governments.

Response:

The federal legislation, while a positive step, will not entirely reverse the federal practice of imposing its will on the states. Though federal regulatory practices and new legislation will receive more scrutiny as to its impact on the states, the federal law contains several exceptions. Ultimately, the constitutional questions will likely be settled by the Supreme Court. In the meantime, the state should send a clear message to Washington by the passage of this bill.

Against:

Even if this bill were to be adopted, it might not be in the interests of good national public policy. The funding requirement could act to impede otherwise important programs in which all citizens have a stake and all localities should share in the cost, particularly where those localities have incurred costs through their own laxness or irresponsibility. A good example is that of environmental laws; localities that have chosen the financial benefits of unrestrained industrial development should be asked to shoulder their share of preventative and cleanup costs necessary to protect the public health and the national legacy of natural resources. Other examples are social; for instance, where the federal government steps in and says segregation or institutionalized inequality are unacceptable, and therefore schools must be integrated and people

with physical disabilities must be able to gain access to employment and public places in their communities.

POSITIONS:

There are no positions on the bill.