#349

Report To
The Mississippi Legislature

Federal Mandates and Mississippi's State Government: Cost and Implementation

November 12, 1996

State agencies estimate that they spent approximately $90 million in FY 1996 ($28 million in state treasury funds) to implement the eighteen federal mandates that agencies considered most burdensome to state government. Agencies also reported administrative problems in implementing some federal mandates. Despite costs and administrative problems, many agencies reported that they had no objection to the national goals the mandates were designed to achieve.

Regarding Tenth Amendment issues related to federal mandates, few current federal mandates are likely to be overturned by the U. S. Supreme Court. In light of this, the political arena, not the courts, may serve as the preferred venue for those seeking additional mandate reform.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

Federal Mandates and Mississippi's State Government:

Cost and Implementation

November 12, 1996

The PEER Committee

Mississippi Legislature

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

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November 12, 1996

Honorable Kirk Fordice, Governor
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Honorable Tim Ford, Speaker of the House
Members of the Mississippi State Legislature

At its meeting of November 12, 1996, the PEER Committee authorized release of the report entitled **Federal Mandates and Mississippi's State Government: Cost and Implementation.**

Senator Bill Canon, Chairman

This report does not recommend increased funding or additional staff.

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Federal Mandates and Mississippi's State Government: Cost and Implementation

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Executive Summary

Introduction

Unfunded mandates are responsibilities one level of government places on another level without paying the full cost of carrying out such responsibilities or duties.

During its 1995 Regular Session, the Legislature passed the Federal Unfunded Mandates Act (MISS. CODE ANN. Section 5-3-79), which requires the PEER Committee to "complete an assessment of the implementation and cost of current federal mandates" by December 1, 1996. It further requires PEER to:

- consider the relationship between the requirements and implementation of the federal mandates and state policy; and,
- identify federal mandates that are "encroaching on the state's authority under the Tenth Amendment."

Overview

State agencies, universities, and community colleges estimated the total FY 1996 cost of implementing eighteen federal acts or regulations to be $92,033,243. Of this amount, an estimated $27,809,452 (30 percent) was state-funded, $42,194,827 (46 percent) was federally funded, and $22,028,963 (24 percent) was from special funds not provided by the federal government.

Agency representatives commenting on problems in implementing federal mandates most frequently mentioned cost as their primary concern. They reported that these costs occur as a result of direct program requirements, as well as through less direct mandate-related effects, such as excessive paperwork, delays in construction, and loss of revenue by state and local governments. Agencies most frequently mentioned cost as a problem in implementing the Fair Labor Standards Act, the Family and Medical Leave Act, and the Americans With Disabilities Act.

In addition to cost, agencies mentioned other problems, such as federal guidelines that were difficult to understand or unnecessarily detailed, excessive administrative record-keeping burdens, and insufficient state discretion in achieving national goals. Agencies also reported that federal goals and objectives related to some mandates were vague or confusing. Although 75 percent of agencies' comments on implementation described specific problems in complying with a mandate, the remaining 25 percent of agency responses stated that the agency had experienced no major problems in implementing the mandate.

Many agency representatives participating in PEER's focus group and in the survey said they had no objection to the national goals the mandates were designed to achieve. Approximately three-fourths of the responses to PEER's survey indicated that the mandates affecting the agency were consistent with state policy. More than half reported that agency officials would have initiated the administrative procedure or sought funding for the mandated program if it had not been required by Congress.

In reviewing Tenth Amendment issues related to federal mandates, PEER found that few current federal mandates are likely to be overturned by the U. S. Supreme Court. Because the Supreme Court has found only certain classifications of congressional legislation unconstitutional, the political arena, not the courts, may serve as the preferred venue for those seeking additional mandate reform. The Unfunded Mandates Reform Act passed by Congress in 1995 establishes self-imposed limits on congressional authority to initiate mandates costing state and local governments more than $50 million. Another solution that could be realized through the political process would be to require compliance with worthwhile national goals while allowing state and local governments to administer programs as they see fit. This and other political solutions would incorporate congressional dialogue with state and local governments as an essential component of the process of federal policy development.

Recommendations

1. The Mississippi Legislature should memorialize Congress to reconsider the effect on individual states of each burdensome mandate discussed in this report. Among the options available to Congress for decreasing the burden of mandates on the states are:

    - provide additional funding to state and local governments;
    - modify the federal statute to permit state regulatory flexibility; and
    - abandon or relax requirements for states which have not proven to advance federal policy goals.

2. In its message to Congress, the Legislature should recommend that Congress increase its communications with state leaders during its deliberations on federal laws which affect state and local governments.

3. The Legislature should request that Congress enact federal laws with a goal of uniformity of result at the state level in mind (e.g., particular emission levels for environmental mandates), while leaving states free to achieve those outcomes by whatever method they deem most appropriate and reasonable. In setting performance standards, Congress should be encouraged to make these standards reasonable and reachable.

    The Legislature should request that Congress take federal, state, and local costs of policy implementation into consideration before enacting a law containing a federal mandate on state and local governments and assume some share of mandate costs as an incentive to avoid overly burdensome mandates and to aid in seeking the least costly alternatives. (See Appendix G, page 63, for proposed legislation memorializing Congress concerning federal mandates.)

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Federal Mandates and Mississippi's State Government: Cost and Implementation

Introduction

State agencies incur costs associated with federal mandates, but these costs are often unrecognized in the state budgeting process because they usually are not identifiable as mandate-related costs. To arrive at some estimate of the annual cost of federal mandates, the Legislature required PEER to conduct this study of federal mandates in Mississippi.

Authority

In accordance with MISS. CODE ANN. Section 5-3-79 (1972) and Section 5-3-51 et seq., the PEER Committee studied the implementation and cost of federal mandates on the state of Mississippi.

Scope and Purpose

During its 1995 Regular Session, the Legislature passed the Federal Unfunded Mandates Act (MISS. CODE ANN. Section 5-3-79), which requires the PEER Committee to "complete an assessment of the implementation and cost of current federal mandates" by December 1, 1996. It further requires PEER to:

- consider the relationship between the requirements and implementation of the federal mandates and state policy; and,
- identify federal mandates that are "encroaching on the state's authority under the Tenth Amendment."

The statute calling for this report on federal mandates requires PEER to "complete an assessment of the . . . cost of current federal mandates." PEER found through its review of literature that researchers who have attempted to account accurately for the full cost of federal mandates in other jurisdictions have not been successful. (See "Studies of Federal Unfunded Mandates," pages 4-6.) The accounting systems of the agencies in the jurisdictions studied, as well as in Mississippi, are not designed to maintain information on the federal mandate(s) that might have caused an expenditure to occur. Without mandate-based accounting systems, agencies would have difficulty arriving at even limited estimates of the cost they incur in responding to all federal mandates. In fact, even if a mandate-based approach to accounting or an extensive *ad hoc* compilation of all costs were attempted, neither approach could produce uniformly accurate results because agencies cannot always rule out the possibility that an expenditure might have occurred in the absence of the mandate.

Given these inherent limitations, PEER's analysis focused on a set of mandates that state agency officials consider most burdensome, arriving at an estimate, not a full accounting, of the cost of that set of mandates. In addition to estimating the cost of this subset of all federal mandates, PEER also focused its analysis of the implementation of federal mandates and their relation to state policy on the set of mandates that state agency officials consider most burdensome. PEER primarily concentrated its review on FY 1996.

Method

In conducting this review, PEER:

- reviewed state statutes, federal regulations, reports, articles, and publications pertaining to federal mandates;
- identified federal mandates considered "burdensome and problematic" to the state;
- interviewed federal and state officials and staff members;
- surveyed state agencies, universities, and community colleges to develop a cost estimate of federal mandates in Mississippi and to determine the relationship between mandate requirements, implementation, and state policy; and,
- performed a legal analysis of the issue of the relationship of federal mandates to states' authority under the Tenth Amendment.

Overview

State agencies, universities, and community colleges estimated the total FY 1996 cost of implementing eighteen federal acts or regulations to be $92,033,243. Of this amount, an estimated $27,809,452 (30 percent) was state-funded, $42,194,827 (46 percent) was federally funded, and $22,028,963 (24 percent) was from special funds not provided by the federal government.

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In addition to cost, agencies mentioned other problems, such as federal guidelines that were difficult to understand or unnecessarily detailed, excessive administrative record-keeping burdens, and insufficient state discretion in achieving national goals. Agencies also reported that federal goals and objectives related to some mandates were vague or confusing. Although 75 percent of agencies' comments on implementation described specific problems in complying with a mandate, the remaining 25 percent of agency responses stated that the agency had experienced no major problems in implementing the mandate.

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Background

Unfunded mandates are responsibilities or duties one level of government places on another level without paying the full cost of carrying out such responsibilities or duties.

Federal Unfunded Mandates Reform Act

The federal Unfunded Mandates Reform Act of 1995 (P. L. 104-4) went into effect January 1, 1996. It defines federal mandates as "any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon state, local or tribal governments including condition of federal assistance or duty arising from participation in a voluntary federal program."

This law was designed to deter the federal government from imposing expensive new requirements on state governments without providing funding. The act was seen as necessary to restore accountability in Washington and prevent the federal government from shifting billions of dollars in cost to the states. Further, it requires the Congressional Budget Office to estimate each bill reported by an authorized committee that would have an annual aggregate impact of at least $50 million to the public sector or $100 million to the private sector.

Studies of Federal Mandates

Several states and organizations have conducted studies of federal mandates, but none of the reports PEER identified in its literature review provided accurate and complete assessments of the cost of federal mandates. Collectively, these studies illustrate some of the problems encountered in researchers' attempts to assess the cost of federal mandates. The following paragraphs summarize some of these studies.

Tennessee

The Tennessee Advisory Commission on Intergovernmental Relations has tracked federal mandate issues at both the state and local level since the spring of 1991. Three studies examined federal mandates and attempted to quantify the cost involved at the local government level.

The Tennessee Advisory Commission on Intergovernmental Relations stated in its report on federal mandates, dated June 4, 1996, that it found great inconsistencies in data collection and reporting strategies which limited its ability to determine mandate costs. The report highlighted the inherent difficulty in

developing precise measures of the cost mandates imposed on communities. Variables and unknowns can skew estimates.

Other States

The 1993 Virginia Assembly enacted legislation directing the Commission on Local Government to compile and annually update a catalog of state and federal mandates imposed on Virginia's local government. The 1995 catalog provides an inventory of all the state and federal mandates affecting local governments in Virginia as of the end of 1994. The catalog contains information on 415 mandates, both those administered by the executive agencies of the Commonwealth and those administered by nonexecutive agencies or which exist without state oversight.

The state of Ohio prepared a report in August 1993 entitled *New Federalism: Federal Mandates and Their Impact on the State of Ohio.* The report concluded that mandates impose costly burdens on state and local governments; Congress does not understand the financial impact of mandates because no cost estimates have been conducted; and, mandates preempt state initiative and reduce local flexibility.

Governmental Support Organizations

The U. S. Conference of Mayors and the National Association of Counties sponsored the following studies respectively, "Impact of Unfunded Mandates in U. S. Cities" and "The Burden of Unfunded Mandates: A Survey of the Unfunded Mandates on America's Counties." Price Waterhouse compiled both reports. Price Waterhouse surveyed Tennessee cities and counties on twelve federal mandates to determine the fiscal impact federal mandates have on the state of Tennessee. Cost estimates were derived from calculating the per capita costs of cities and counties and extrapolating those estimates state wide for fiscal year 1993.

The U. S. Senate Committee on Environment and Public Works, with assistance from survey experts and government finance analysts at the Library of Congress and the General Accounting Office, reviewed the Price Waterhouse federal mandate studies and concluded:

- The survey results and cost data could not be verified.
- The survey did not assess the cost of mandates; it reported the cost of federal programs, without offsetting federal grants.
- Price Waterhouse's method of extrapolating survey responses to the entire United States is seriously flawed.

- The mandates survey included substantial amounts of cost that would have been incurred even in the absence of federal programs.

- The survey listed mandates for cities and counties that had incurred no expenses for the activity reported.

Advisory Commission on Intergovernmental Relations

The U. S. Advisory Commission on Intergovernmental Relations (ACIR) conducted a study of the role of federal mandates in intergovernmental relations in fulfillment of a requirement of the Unfunded Mandates Reform Act of 1995. In selecting mandates for its study, ACIR chose twelve (of more than two hundred possible) mandates whose cost and implementation most greatly affected state and local governments. (See Appendix A, page 33, for ACIR's mandate criteria and list of studied mandates.) The final draft of the ACIR report *(The Role of Federal Mandates in Intergovernmental Relations)* was presented before the ACIR commission during July 1996, but the commission did not release it.

In discussing costs and implementation matters related to federal mandates, representatives of Mississippi state agencies offered comments and suggestions that were very similar to the concerns discussed in the final draft prepared by ACIR. Although the final draft has not been released as a formal Advisory Commission report, PEER found that the draft provided a fair and concise analysis of intergovernmental concerns related to federal mandates.

Because the ACIR study and comments from Mississippi agency representatives focused on similar issues, PEER drew from the section of the ACIR final draft on "Common Issues: Discussion and Recommendations" to compare the concerns of Mississippi state agency representatives with those of the broad range of state and local government officials and other groups from which ACIR obtained information. (See Appendix A, page 35, for the text of ACIR's "Common Issues: Discussion and Recommendations.") PEER's intention was to place the concerns of Mississippi officials in a national context by identifying areas in which Mississippi's concerns were similar to those described by ACIR.

PEER's Focus Group and Agency Survey

PEER used two procedures to collect information on the cost and implementation of federal mandates: a focus group meeting with state agency representatives and a mail survey.

PEER's Focus Group Identified Eighteen Costly and Burdensome Mandates

PEER conducted the focus group meeting to develop a list of the federal mandates that are most burdensome to state agencies in Mississippi. Agencies invited to attend the focus group meeting were those PEER considered to be major recipients of federal funds, as well as control agencies whose roles include matters related to compliance with federal regulations. Thirty agency officials represented nineteen state agencies at the August 1996 focus group meeting.

PEER staff informed focus group participants of the mandates selected for study by the Advisory Council on Intergovernmental Relations (ACIR) and described the criteria ACIR had used in selecting those mandates. (See Appendix A, page 33, for a list of mandates and selection criteria used by the Advisory Council on Intergovernmental Relations.) PEER staff asked meeting participants to arrive at a list that reflected the opinions of Mississippi agencies concerning the mandates most costly or otherwise burdensome within this state. Focus group participants selected the twelve mandates identified by ACIR and added six mandates that are considered "burdensome, onerous, and problematic:"

- Fair Labor Standards Act
- The Family and Medical Leave Act
- Occupational Safety and Health Act
- Drug and Alcohol Testing of Commercial Drivers
- Metric Conversion for Plans and Specifications
- Medicaid: Boren Amendment
- The Clean Water Act
- Individuals with Disabilities Education Act
- The Safe Drinking Water Act
- Endangered Species Act

- The Clean Air Act
- Davis-Bacon Related Acts
- IRS Publication 937 Employee Withholding
- Immigration Control Act
- Age Discrimination Act (Title VII of the Civil Rights Act)
- Drug Free Workplace Act
- Resource Conservation and Recovery Act
- Americans with Disabilities Act

Appendix B, page 38, briefly describes each mandate.

After identifying these mandates, PEER surveyed state agencies to determine how the selected mandates affected agency operations during Fiscal Year 1996.

PEER's Survey of State Agencies Yielded Cost Estimates and Comments on Implementation

After focus group participants assisted PEER in identifying federal mandates that are burdensome to state agencies in Mississippi, PEER designed and mailed a survey to all state agencies (130 state budget units, including universities and community colleges). The purpose of this survey was to elicit from state agencies information on the FY 1996 state, federal, and other costs associated with the eighteen selected mandates; to identify other problems the agencies have encountered in implementing these mandates; and to determine what agency representatives considered to be the relationship between these federal mandates and state policy. See Appendix C, page 43, for a copy of the mandate cost instrument (Form A) and the questionnaire on implementation (Form B).

Sixty-one agencies responded with cost data and fifty-nine of these also provided data on implementation. Some agency responses represented more than one budget unit and some agencies did not respond. (See Appendix D, page 47, for limitations associated with results of the survey on federal mandates.) Appendix E, page 49, lists each agency which responded about mandate costs and the mandate(s) affecting that agency. Appendix F, page 59, lists the eighteen mandates covered by PEER's survey and the agency or agencies which are affected by the mandate which responded to the survey regarding mandate costs. Exhibits 1, 2, 3, and 4, pages 9 through 12, summarize PEER's survey results.

Exhibit 1
FY 1996 State Agency Expenditures for Selected Federal Mandates, by Source of Funds

		State General Funds	Rank (State $)	% of Total	Federal Funds	% of Total	Other Funds	% of Total	TOTAL FUNDS	Agencies Providing Cost Data
1	Fair Labor Standards Act	$5,778,113	1	61.5%	$996,609	10.6%	$2,625,179	27.9%	$9,399,902	41
2	Family and Medical Leave Act	742,245	8	63.1%	90,560	7.7%	343,890	29.2%	1,176,695	41
3	Occupational Safety and Health Act	4,054,822	4	62.7%	1,016,277	15.7%	1,390,782	21.5%	6,461,881	13
4	Drug and Alcohol Testing of Commercial Drivers	43,145	15	27.8%	4,086	2.6%	108,134	69.6%	155,365	23
5	Metric Conversion for Plans and Specifications	270	18	0.0%	0	0.0%	878,057	100.0%	878,327	5
6	Medicaid: Boren Amendment	85,759	13	90.9%	2,393	2.5%	6,188	6.6%	94,340	2
7	The Clean Water Act	4,658,790	3	10.5%	32,317,392	72.5%	7,588,003	17.0%	44,564,185	15
8	Individuals with Disabilities Education Act	3,026,809	5	45.7%	3,323,646	50.1%	278,965	4.2%	6,629,420	10
9	The Safe Drinking Water Act	404,564	10	12.8%	1,077,292	34.0%	1,682,285	53.2%	3,164,141	19
10	Endangered Species Act	6,487	17	2.6%	192,816	76.3%	53,413	21.1%	252,716	3
11	The Clean Air Act	1,271,748	7	20.0%	249,541	3.9%	4,835,923	76.1%	6,357,212	14
12	Davis-Bacon Related Acts	655,335	9	99.2%	5,123	0.8%	0	0.0%	660,458	7
13	IRS Publication 937 Employee Withholding	315,245	11	57.0%	26,294	4.8%	211,254	38.2%	552,794	39
14	Immigration Control Act	26,164	16	75.5%	2,154	6.2%	6,343	18.3%	34,661	25
15	Age Discrimination Act, (Title VII of the Civil Rights Act)	49,199	14	90.8%	4,709	8.7%	291	0.5%	54,199	10
16	Drug Free Workplace Act	121,116	12	37.0%	110,643	33.8%	95,940	29.3%	327,699	28
17	Resource Conservation and Recovery Act (RCRA)	1,740,449	6	46.7%	1,375,665	36.9%	609,200	16.4%	3,725,314	16
18	Americans with Disabilities Act (ADA)	4,829,191	2	64.0%	1,399,627	18.6%	1,315,116	17.4%	7,543,934	40
	TOTAL FOR ALL MANDATES	$27,809,452		30.2%	$42,194,827	45.8%	$22,028,963	23.9%	$92,033,243	63

SOURCE: PEER survey of state agencies.

Exhibit 2

Mississippi State Agencies' Comments on Problems in Implementing Selected Federal Mandates

Percent of Agencies' Comments*

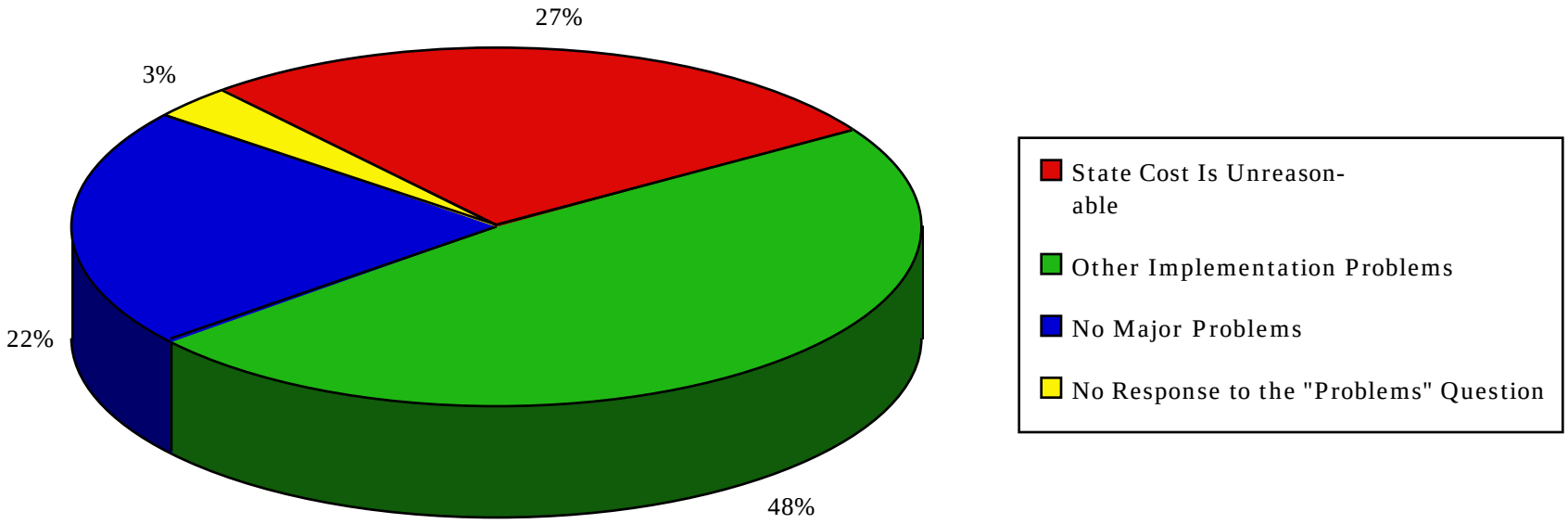
	Federal Mandate	State Cost Is Unreason-able	Other Imple-mentation Problems	No Major Problems	No Response to the "Problems " Question	Total Comments	Agencies Com-menting on Mandate
1	Fair Labor Standards Act	20%	61%	17%	2%	66	45
2	Family and Medical Leave Act	25%	54%	19%	2%	63	44
3	Occupational Safety and Health Act	41%	41%	9%	9%	22	16
4	Drug and Alcohol Testing of Commercial Drivers	24%	52%	24%	0%	25	18
5	Metric Conversion for Plans and Specifications	14%	86%	0%	0%	7	5
6	Medicaid: Boren Amendment	25%	50%	25%	0%	4	4
7	The Clean Water Act	31%	30%	31%	8%	13	12
8	Individuals with Disabilities Education Act	25%	49%	13%	13%	8	6
9	The Safe Drinking Water Act	37%	31%	21%	11%	19	16
10	Endangered Species Act	33%	34%	0%	33%	3	3
11	The Clean Air Act	42%	42%	8%	8%	12	10
12	Davis-Bacon Related Acts	43%	36%	14%	7%	14	11
13	IRS Publication 937 Employee Withholding	21%	60%	14%	5%	42	33
14	Immigration Control Act	9%	48%	40%	3%	35	30
15	Age Discrimination Act, (Title VII of the Civil Rights Act)	13%	29%	55%	3%	31	25
16	Drug Free Workplace Act	9%	41%	50%	0%	32	29
17	Resource Conservation and Recovery Act (RCRA)	53%	40%	0%	7%	15	11
18	Americans with Disabilities Act (ADA)	53%	37%	10%	0%	59	44
	TOTAL	27%	48%	22%	3%	470	59

* PEER developed response categories using agencies' narrative comments.

SOURCE: PEER survey of state agencies.

Exhibit 3

Summary of Mississippi State Agencies' Comments on Problems in Implementing Eighteen Federal Mandates*



* See page 7 for a list of mandates on which agencies commented.

SOURCE: PEER survey of state agencies.

Exhibit 4
Mississippi State Agencies' Comments on Mandates and State Policy
Total Agencies Responding to Questionnaire = 59

		Relationship Between Mandate and State Policy					Agency Initiation of Program In Absence of Mandate				
	Federal Mandate	Contra-dicts State Law or Policy	En-hances State Law or Policy	Relation-ship Is Unclear	Other	Agencies Commenting on Relationship	Defi-nitely	Prob-ably	Would Not Have	Not Sure	Agencies Commenting on Absence
1	Fair Labor Standards Act	3	28	1	8	40	19	4	9	5	37
2	Family and Medical Leave Act	0	34	1	4	39	16	6	17	1	40
3	Occupational Safety and Health Act	0	10	0	4	14	7	2	0	4	13
4	Drug and Alcohol Testing of Commercial Drivers	1	14	0	2	17	8	2	7	1	18
5	Metric Conversion for Plans and Specifications	0	1	0	4	5	0	0	4	1	5
6	Medicaid: Boren Amendment	0	2	0	1	3	0	0	2	1	3
7	The Clean Water Act	0	8	0	4	12	10	2	0	1	13
8	Individuals with Disabilities Education Act	0	5	0	0	5	2	0	2	0	4
9	The Safe Drinking Water Act	0	9	0	4	13	13	1	0	1	15
10	Endangered Species Act	0	1	0	1	2	1	1	0	0	2
11	The Clean Air Act	0	6	0	2	8	3	1	3	2	9
12	Davis-Bacon Related Acts	0	5	0	3	8	0	2	8	0	10
13	IRS Publication 937 Employee Withholding	2	21	1	6	30	2	0	23	3	28
14	Immigration Control Act	0	17	2	8	27	5	2	18	4	29
15	Age Discrimination Act, (Title VII of the Civil Rights Act)	0	21	0	3	24	10	1	6	5	22
16	Drug Free Workplace Act	0	20	0	6	26	16	2	7	3	28
17	Resource Conservation and Recovery Act (RCRA)	0	8	0	1	9	5	1	4	1	11
18	Americans with Disabilities Act (ADA)	0	28	0	10	38	20	6	10	4	40
	TOTAL	**6**	**238**	**5**	**71**		**137**	**33**	**120**	**37**	
	PERCENT OF TOTAL	**1.9%**	**74.4%**	**1.6%**	**22.2%**		**41.9%**	**10.1%**	**36.7%**	**11.3%**	

SOURCE: PEER survey of state agencies.

Cost and Implementation of Federal Mandates

Agencies Estimated that Federal Mandates Cost Over $90 Million in FY 1996

Mississippi state agency managers consistently mentioned problems associated with the cost of implementing federal mandates as their primary concern. From the opening minutes of PEER's focus group meeting through their completion of forms in PEER's survey process to telephone conversations following the survey, agencies continuously expressed concern about the high cost of implementing federal mandates. Although agencies often cited excessive costs, in most cases the same agency recognized a need for attention to the national goals that Congress intended these federal mandates to achieve.

Mississippi state agencies estimated that they spent $92,033,243 in FY 1996 to implement the eighteen mandates included in PEER's survey. (See Appendix D, page 47, for a discussion of limitations in determining costs.) Of this amount, agencies reported that 46 percent was borne by the federal government and 24 percent by other non-state sources. The agencies spent an estimated $28 million in state funds to support 30 percent of the FY 1996 cost of these eighteen mandates. (See Exhibit 1, page 9.) However, when one mandate, the Clean Water Act, is removed from the analysis, the state share for all other mandates in the survey increased to 49 percent of the total estimated cost ($23,150,662 of an estimated total expenditure of $47,469,057).

The Clean Water Act, administered by the Department of Environmental Quality, skews the state share for the eighteen mandates downward (to 30 percent of the total cost instead of 49 percent, the state share when the Clean Water Act is excluded from the analysis) because it is an expensive mandate for which the federal government bears a large part of the cost. The Clean Water Act accounts for 55 percent of the estimated total cost of the eighteen mandates studied. Of the $44,564,185 estimated cost of implementing the Clean Water Act in FY 1996, $4,658,790 (about 10 percent) was state funded and $32,317,392 (about 73 percent) was federally funded.

Agency managers said the state incurs mandate-related costs in many forms, including costs associated with excessive paperwork, delays in construction, and loss of revenue by state and local governments. Virtually all problems, they said, are related in some way to cost. Examples of cost-related problems offered by agencies include volumes of payroll data that the Department of Economic and Community Development and other agencies must collect from contractors because of the Davis-Bacon Acts; voluminous paperwork that the Department of Health and other agencies must include in contracts because of the Drug Free Workplace Act; highway construction delays of months or years experienced by the Department of Transportation because of federally mandated environmental tests; and loss of oil and gas severance taxes associated with environmental regulations.

Exhibit 2, page 10, shows that "excessive cost" is the problem most often mentioned by agency representatives returning PEER's survey form. This exhibit also shows that the mandates generating the highest frequency of cost-related concerns were the Fair Labor Standards Act, the Family and Medical Leave Act, and the Americans With Disabilities Act.

Of the three federal laws about which agencies most consistently expressed concern regarding cost, two (the Fair Labor Standards Act and the Americans With Disabilities Act) were among the most costly mandates. Total estimated FY 1996 costs to state agencies surveyed for these mandates were $9,399,902 ($5,778,113 in state cost) for the Fair Labor Standards Act and $7,543,934 ($4,829,191 in state cost) for the Americans With Disabilities Act. Although agencies reported high levels of cost-related concern regarding the Family and Medical Leave Act (see Exhibit 2, page 10), they collectively reported relatively low expenditures ($1,176,695 from all sources; $742,245 in state expenditures) for this mandate (see Exhibit 1, page 9).

Like Mississippi agency managers, respondents participating in the ACIR study mentioned the federal government's lack of federal consideration and funding of mandate costs (Common Issue #2, Appendix A, page 35) as a major concern. The ACIR final draft report implies that the federal Unfunded Mandates Reform Act could discourage imposition of such mandates in the future, but ACIR nevertheless recommends that the federal government take federal, state, and local costs of policy implementation into consideration before enacting a law containing a federal mandate on state and local governments. The ACIR final draft also recommends that "the federal government . . . assume some share of mandate costs as an incentive to restrain the extent of the mandate and to aid in seeking the least costly alternatives."

Nearly Half of Agencies' Comments Related to Implementation Problems Other Than "Excessive Cost"

In addition to cost-related problems, agencies responding to PEER's survey reported implementation problems associated with several mandates. (See Exhibit 2, page 10). Among these problems were federal guidelines that were difficult to understand or unnecessarily detailed, excessive administrative record-keeping requirements, and insufficient flexibility and discretion in achieving national goals. Agencies also reported that federal goals and objectives related to some mandates were vague or confusing. The relative frequency with which agencies mentioned these problems is reported in the "Other Implementation Problems" category in Exhibits 2 and 3, pages 10 and 11. Exhibit 5, page 15, lists examples of implementation problems mentioned by state agencies.

Exhibits 2 and 3 show that 75 percent of the comments submitted by agencies in the "problems" section of the questionnaire described perceived problems, as requested by the questionnaire item. However, the balance of the responses in the "problems" section (25 percent) showed that the agencies had

Exhibit 5

Examples of Mandate Implementation Problems Reported by Agency Representatives

The following comments were made by agencies regarding selected federal unfunded mandates:

Regarding the Fair Labor Standards Act:

A consistent feature of essentially all government regulations is that they are written in a manner that is open to multiple interpretations. . . . The laws are so old that a complete rewrite is required to bring them into the modern era.

• • • • •

Regarding the Family and Medical Leave Act (FMLA):

[Problems include] lack of statewide system to monitor FMLA; lack of shared information on spousal use of FMLA; no uniform policy concerning use of personal leave for FMLA; and lack of consistency between federal/state definition of 'immediate family.'

• • • • •

Regarding Drug and Alcohol Testing of Commercial Drivers:

[The agency] has approximately 31 employees who carry a commercial driver's license to perform job related functions. State has no contract for drug testing to be used by state agencies. Therefore, [the agency], in order to comply with [the] mandate, negotiated [a] contract with MEA and associated clinics--non-budgeted expense. Implementation [is] complex, requiring legal assistance. . . .

• • • • •

Regarding IRS Publication 937--Employment Taxes:

. . . [T]he more recent guidelines regarding contract workers . . . require additional paperwork and additional payroll processing (calculated manually) for any 'contract' workers deemed to be 'employees.' These payroll taxes then are an additional expense to the state.

• • • • •

SOURCE: PEER survey of state agencies.

not encountered any major problems in implementing the mandate (22 percent), or did not respond to the "problems" question (3 percent).

Certain mandates elicited a high number of reports that agencies were experiencing no major implementation problems. For example, a large state agency suggests the need for coordination of Family Medical Leave Act (FMLA) compliance for all state agencies. The respondent said, "[This agency] believes that implementation of the mandate is made more difficult due to the application of undefined administrative procedures. Example: no uniform policy concerning use of personal leave as it pertains to FMLA." Regarding the same federal mandate, the State Personnel Board noted its responsibility for providing information and education to other state agencies regarding compliance with this regulation. The State Personnel Board said, "[The] state has very few discretionary powers since the State of Mississippi is considered one entity for purposes of FMLA. Interpretation of regulations is still being tested in court cases, so this is an evolving act. Questions most asked involve application of the timeliness standards, substitution of accrued leave, interaction of FMLA and the Americans with Disabilities Law, and the differences in the State's definition of immediate family and the FMLA's definition of immediate family."

A representative of another state agency offered a different approach to simplifying compliance with a federal mandate through state action. This approach would entail using an element of discretion afforded by the federal regulations to eliminate paperwork to which state agencies object. The federal mandate in question is Internal Revenue Service Publication 937--Employee Withholding. One regulation within this publication requires the state to withhold benefits on employees' reimbursement for taxable meals (meals that were not associated with an overnight stay). This regulation does not, however, require that meals of this type be reimbursed; it requires only that reimbursements be taxed. The Department of Finance and Administration's representative suggested that state policy be changed "to disallow any payments for taxable meals to reduce the time-consuming paperwork involved in calculating and collecting social security and Medicare taxes on taxable meals." This representative said, "Taxable meals . . . cost the state more to collect than the actual taxes being collected."

Some agencies reported no major problems in implementing certain mandates. For example, although four agencies considered implementation of the Age Discrimination Act to be costly, seventeen of the twenty-five agencies commenting on that mandate reported no major problems in implementing the act. The Fair Labor Standards Act also caused no major implementation problems for some agencies. At PEER's focus group meeting, one person said administrative mandates such as these are not intrusive because they require policies that good managers would establish anyway, even if they were not mandated.

The ACIR final draft report mentioned implementation problems similar to many of the problems cited by Mississippi agency representatives. For example, the ACIR final draft mentioned detailed procedural requirements and lack of

flexibility in meeting national goals, problems mentioned in approximately one-third of the comments made by respondents to PEER's survey. The ACIR final draft recommended that state and local governments be permitted flexibility in choosing the methods used to comply with a federal mandate. It also recommended that the focus of federal statutes, regulations, and policies be on results, not process. (See PEER recommendations, page 32).

The ACIR final draft report also mentioned lack of communication and coordination of federal policies between federal and state governments and among federal agencies. ACIR's final draft recommended that the federal government establish "a coordination mechanism to assist state and local governments through the federal policy maze."

Relation Between Federal Mandates and State Policy

In compliance with MISS. CODE ANN. Section 5-3-79, PEER collected information on the relation between federal mandates and state policy. PEER asked state agencies to comment on this relationship and to indicate whether the agency would have initiated the program or requested funding for such a program in the absence of the mandate. (See Exhibit 4, page 12.)

Approximately three-fourths of the responses to PEER's survey indicated that the mandates affecting the agency enhance state law or policy. Agencies were most likely to consider administrative mandates, such as the Family and Medical Leave Act and the Age Discrimination Act, to be consistent with state law or state policy. Many of the agencies reporting that these administrative acts enhance state law or policy also said their agency probably would have sought legislative approval of such a policy if it were not federally mandated. For example, one agency representative said of the Fair Labor Standards Act, "In the absence of FLSA, some system could reasonably be expected to be put in place for the purpose of paying employees in various situations in a manner that was equitable, manageable and affordable. I would think the state legislature would do this."

Although many agencies reported that federal mandates enhance state law or policy, some programs and regulations would have enjoyed less state agency support in the absence of the federal mandate. For example, 34 (87 percent) of the 39 agencies commenting on the relation between the Family and Medical Leave Act and state policy said the federal act enhances state law. However, 17 (43 percent) of the 40 agencies that commented on whether they would have initiated a family and medical leave program in the absence of a mandate said they would not have done so. However, at least one of the agencies that reported that the agency would not have sought such a law said, "The agency would not have implemented a similar system due to state leave law," implying that the federal law is so similar in purpose to state law that the federal law was not necessary to provide the desired employee benefit.

Some environmental mandates also were considered consistent with state policy. For example, the Department of Wildlife, Fisheries, and Parks reported that the Endangered Species Act enhances the Mississippi Non-Game and Endangered Species Conservation Act (MISS. CODE ANN. Section 49-5-101 through 49-5-119). The department's representative further noted, "If the Endangered Species Act did not exist, the Department of Wildlife, Fisheries, and Parks would still be mandated by state law to protect all non-game species within the state." Also, the Department of Health reported that it considers the Safe Drinking Water Act to be consistent with state policies. The department also noted, "While there probably would have been a program without the [Safe Drinking Water Act], it would probably have been at a reduced level."

Although few agencies mentioned contradictions between federal mandates and state policy, agencies were consistent in responding that they would not have

sought the federal regulations on the mandate requiring Employee Withholding (IRS Publication 937). Of the 28 agencies responding, 23 (82 percent) said they would not have requested these regulations.

The Immigration Control Act also would not have been sought by most agencies, even though respondents generally agreed that the federal law enhances state law. Eighteen (62 percent) of the 29 agencies commenting on this act said they would not have sought these regulations, even though 63 percent of the responding agencies said they consider this federal law to be consistent with state policy.

Although the question of the relation between state policy and federal mandates is a matter that must be considered on a state-by-state basis, the ACIR final draft report mentions a related matter, the federal government's failure to treat state and local governments as entities subject to public accountability and as co-makers of national policy. The federal government's historic failure to treat state and local governments as entities selected by and responsive to an electorate, and therefore as legitimate co-makers of federal policy, may account for any conflict that may exist between federal and state laws. The ACIR final draft recommends that the federal government change its approach in dealing with state and local governments. "Federal laws and regulatory policies should recognize that state, local, and tribal governments are co-makers of national policy who, in contrast to interest groups and private entities, are led by elected officials who must account to the voters within their respective jurisdictions just as do the President and the Members of the US Congress."

Federal Mandates and Tenth Amendment Issues

A provision of the statute (MISS. CODE ANN. Section 5-3-79) calling for this review of federal mandates required that PEER identify federal mandates that violate the Tenth Amendment to the U. S. Constitution. One approach to fulfilling this responsibility would be to determine which mandates the U. S. Supreme Court has found to be in violation of the Tenth Amendment, and to place on PEER's list of violators only those mandates that the courts have found objectionable. Another approach would be to add to the former list any mandates that are likely to fail a court-prescribed test for determining whether a mandate violates the Tenth Amendment.

A shortcoming of limiting PEER's consideration of this matter to identifying mandates that have been or soon will be found in violation of the Tenth Amendment lies in the burdens associated with mandates that remain in effect because the courts have not found them constitutionally objectionable. Examples are the mandates identified as burdensome by Mississippi state agency personnel. (*See* page 7.) Of the listed mandates, as of September 1996 none had been overturned by the Supreme Court, and under the four-part "test" utilized in the Court's most significant recent Tenth Amendment case, *New York v. U.S.*, (*see* page 23), few, if any, of them would probably be overturned.

While these mandates may be permitted by the U. S. Constitution, Mississippi and other states have found them so problematic that PEER extended its review of the Tenth Amendment issue to include the broader issue of federalism. PEER examined historic and emerging roles of state and federal governments in defining and carrying out national purposes, and concluded with recommendations for a position that the Legislature might consider taking in its communication with the U. S. Congress.

Strategies for Limiting Congressional Authority Include Both Judicial and Legislative Approaches

The proper balance of power between federal and state government is the core issue involved in judicial and other challenges to federal mandates. Those who advocate reducing congressional authority to issue mandates to the states have looked to the courts, as well as to the political process, in their attempt to attain or restore what they believe to be the proper balance of state and federal authority.

The Tenth Amendment to the United States Constitution frequently has been cited in attempts to prompt the courts to prescribe the outer limits of the U. S. Congress's authority to impose mandates on states. The Tenth Amendment reads as follows:

> *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.*

Although the states and localities have challenged many federal mandates, a review of Supreme Court decisions shows that challenging congressional authority on the basis of the Tenth Amendment has brought little relief from the courts.

Thus, the political process may be the most promising source of relief for advocates of greater state autonomy. A strategy used recently to limit congressional authority is passage of congressional bills that would impose various limits on the prerogative of Congress to establish federal mandates (e.g., Unfunded Mandates Reform Act of 1995 [P. L. 104.40]).

In a review of Supreme Court decisions related to the Tenth Amendment, the first section of this chapter demonstrates the narrow scope of mandate relief available from the courts. This section describes the test that can be used to determine whether a federal mandate is likely to violate the Tenth Amendment. The first section also describes failed judicial and political attempts at developing tests for determining whether a mandate abridges historic state government powers. The second major section in this chapter describes recent attempts at using the political process to secure relief from burdensome mandates. The final section suggests an approach that might be useful in obtaining more consistent relief while ensuring that national concerns are addressed.

Relevant Supreme Court Rulings Demonstrate the Judiciary's Limited Potential as a Source of Mandate Relief

Since 1976, the Supreme Court of the United States has traveled an "unsteady path," in the words of Justice Sandra Day O'Connor, in the area of Tenth Amendment jurisprudence. After a review of these cases, the only likely conclusion to draw is that the Court will overturn very few acts of Congress which take the form of mandates to states.

Prior to 1976, the Supreme Court Upheld Congressional Powers

Prior to 1976, the Supreme Court had largely followed a course of upholding exercises of congressional powers in the face of Tenth Amendment challenges, to the point that some commentators had concluded that the Court no longer considered the Tenth Amendment a meaningful limitation of Congress' authority to legislate. G. Gunther, *Constitutional Law* 134 n.3 (12th ed. 1991)

Beginning in 1976, the Supreme Court Temporarily Favored State Autonomy

Beginning in 1976, the courts temporarily established a pattern of reversals of earlier affirmations of congressional authority. In *National League of Cities v. Usery*, 426 U.S. 833 (1976), the Court deviated significantly from its prior decisions in this area. In *National League of Cities*, the Court for the first time in forty years overturned a federal statute on Tenth Amendment grounds. In a pattern that has repeated itself over the past twenty years, the Court, in a 5-4 majority decision, found that certain 1974 amendments to the Fair Labor Standards Act (FLSA), which extended hours and wage requirements to state and local employees, were in violation of the Tenth Amendment.

In *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264 (1981), the Court developed a three-part test for violations of the Tenth Amendment. The Court found that a federal statute may violate the Tenth Amendment if it:

(1) regulates the "States as states;"

(2) addresses matters that are indisputably "attributes of state sovereignty;" and,

(3) directly impairs the states' ability "to structure integral operations in areas of traditional governmental functions."

Comment, *Unfunded Federal Mandates: An Issue of Federalism or a "Brilliant Sound Bite"?*, 45 Emory L. J. 281, 305 (Winter 1996)(*quoting Hodel*, 452 U.S. at 287-88).

The Court soon grew uncomfortable with the enunciated three-part test. In *FERC v. Mississippi*, 456 U.S. 742 (1982) the "test" received only passing attention from the majority, in the form of a footnote, although it was cited extensively by the dissent. (*Compare* 456 U.S. at 763 n. 28 [majority opinion] *with* 456 U.S. 776-77, 780-81, 781-82 [dissent]).

In 1985, the Supreme Court Again Reaffirmed Congressional Authority

In 1985, in another 5-4 majority decision, the Supreme Court formally overruled *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528. In the process, it also rejected the already weakened three-part test announced in *National League of Cities* and *Hodel*. Justice Blackmun, who had provided the crucial swing vote for the majority in *National League of Cities*, noted in *Garcia* that "the attempt to draw the boundaries of state regulatory immunity in terms of 'traditional governmental function' is not only unworkable but is inconsistent with established principles of federalism..." 469 U.S. at 531. He further noted that the Court now formally

rejected "a judicial appraisal of whether a particular governmental function is 'integral' or 'traditional.'" *Id*. at 539. In any event, *Garcia* signaled a return to the Court's pre-*National League of Cities* "broad view of federal power." *See* Laurence Tribe, *American Constitutional Law*, § 5-22 at 394 (1988 ed.)

A 1992 Supreme Court Clarification Favored State Authority

Although the *Garcia* dissenters remained adamant in succeeding cases in their viewpoint that that particular case had been decided wrongly, it was not until seven years had passed that the Court issued a decision which could be construed as favorable to the states. *New York v. United States*, 505 U. S. 144 (1992), is the Court's most recent decision concerning use of the Tenth Amendment as a limitation on the authority of Congress.

The *New York* case represented a modest return to the concept of limiting congressional authority to pass laws, but did so without overturning the *Garcia* decision. At issue in *New York* were three provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985. The amendments were passed to encourage states to make provisions for low-level radioactive waste generated within their borders. The provision of the act struck down by the Court was a "take title" provision requiring states that did not become sited by a certain date to take title to the waste generated within their borders.

The Supreme Court, in a 6-3 majority decision authored by Justice O'Connor, concluded that this provision violated the Tenth Amendment and encroached on state sovereignty "by requiring states to legislate in accordance with federal standards in violation of the Tenth Amendment." Comment, 45 Emory L. J. at 313.

Although the Court's reasoning bore some resemblance to the overturned concepts at the heart of *National League of Cities*, Justice O'Connor took great care to distinguish the regulation at issue in *New York* from the fact pattern at issue in *Garcia*. In *New York*, the challenged law constituted a direct order to the states, rather than a generally applicable regulation, as was the case in *Garcia*. (A more complete discussion of these distinctions between types of mandates follows.) By drawing this distinction, Justice O'Connor held the "take title" provision of the law passed by Congress in this instance unconstitutional without overturning the holding of *Garcia*. Justice O'Connor succinctly summarized this idea as follows: "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *New York*, 505 U.S. at 161 (*quoting Hodel v. Virginia Mining & Reclamation Association* 452 U.S. 264, 288 [1981]).

"Direct Order" Mandates May Not Withstand Legal Challenge

Although the Supreme Court has clearly rejected the three-part test for examining Tenth Amendment issues announced nearly twenty years ago in *Hodel*, Justice O'Connor in *New York* used a different mode of analysis for reviewing mandates. Under the *Hodel* test of mandate analysis, the Supreme Court had attempted to examine the **subject matter** of mandates to assess their constitutionality, which proved to be an impossible undertaking (as discussed below on page 26). This methodology has been implicitly replaced by a method of review based on the **type** of mandate at issue, without regard to subject matter.

In *New York*, Justice O'Connor discussed the four types of mandates Congress typically imposes on states, and noted which of the four types could withstand legal challenge.

Direct orders--("[R]egulations that impose requirements on a state or local government in its capacity as a government. In other words, direct orders are regulations that are applicable to governments, but not to private parties." Comment, 45 Emory L.J. at 289.) This is the type of mandate that was overturned in *New York v. U.S.* The Supreme Court concluded that such mandates were unconstitutional. 505 U.S. at 161.

Generally applicable regulations--("Federal standards that apply to both public and private parties in certain activities." Comment, 45 Emory L.J. at 289.) The *Garcia* case involved generally applicable regulations and the Court found them to be constitutional. Because Justice O'Connor distinguished *New York* from *Garcia*, without overruling the earlier case, it appears that the Court continues to view generally applicable regulations as an acceptable form of mandate. 505 U.S. at 160.

Conditions of assistance--("Requirements that are attached to the receipt of federal funds." Comment, 45 Emory L.J. at 290.) The majority opinion in *New York* specifically described this as an acceptable form of mandate because "the residents of the State retain the ultimate decision as to whether or not the State will comply." 505 U.S. at 168.

State-federal cooperative programs--("Regulatory schemes under which the federal government establishes basic standards for the regulation of certain private activities. The states are then offered a choice: either they regulate that activity in accordance with the federal standards or the federal government will step in and directly regulate the activity, thus preempting state law." Comment, 45 Emory L.J. at 290.) The Court in *New York* utilized the same analysis for these types of mandates as they used for conditions of assistance programs, and reached the same conclusion: such mandates are constitutional. 505 U.S. at 167-68.

Through the maze of Tenth Amendment cases presented over the past twenty years, it becomes clear that the Supreme Court is unlikely to overturn

three of the four types of federal mandates commonly utilized; the exceptions, as presented in *New York v. U.S.*, are mandates which take the form of direct orders to the states.

Despite the Supreme Court's decision in *New York*, the direction that future Tenth Amendment cases will take is difficult to predict. Perhaps this unpredictability can best be summarized by a frustrated U. S. district court judge:

> *Supreme Court decisions [of the last two decades] about the Tenth Amendment do not reflect a pattern of straight line development of a theme. Rather the cases seem to reflect a series of shifting perspectives on the nature and breadth of the powers reserved to the states under the Tenth Amendment leaving lower courts with few concrete principles to decide cases.*

Koog v. United States, 852 F. Supp. 1376, 1381 (W.D. Tex. 1994).

No Federal Mandates in PEER's Study are Likely to Be Overturned

Of the mandates identified by PEER as most burdensome, which would be most likely to be held unconstitutional by the Supreme Court? Under the four-part "test" utilized in the Court's most significant recent Tenth Amendment case, *New York v. U.S.*, (*see* page 24 of this report), few if any, of them would be overturned.

Of the listed mandates, as of September 1996 none had been overturned by the Supreme Court. Some commentators have concluded that the Fair Labor Standards Act may be attacked at some point in the future, particularly because it was the statute at issue in *National League of Cities*, and because the 1974 amendments were invalidated by the Court in that case.

The decision in the *New York* case indicated that only mandates in the form of direct orders to states were serious candidates to be held invalid. Few mandates take this form; however, it is worth noting that although neither is on PEER's list of most burdensome mandates, both the Brady Handgun Violence Protection Act, 18 U.S.C. § 922(s) (1994)(requiring local law enforcement officials to conduct background checks on potential purchasers of handguns), and the National Voter Registration Act of 1993 ("Motor Voter Act"), 42 U.S.C. § 1973gg-1 to -3 (1993)(requiring states to provide various methods of prescribed voter registration) contain such provisions. *See* Comment, 45 Emory L.J. at 289. The Brady Act in particular has already been challenged in lower federal courts, with mixed results. *See* Comment, at 295-96 and accompanying footnote [n.56]. The United States Supreme Court has agreed to consider a case involving the Brady Act during the current term.

It Has Been Difficult to Identify Mandates Which Abridged Historic State Powers

One of the five criteria ACIR's study listed for assessing "mandates of significant concern," is the following: "The mandate abridges historic powers of State, local, or Tribal governments, the exercise of which would not adversely affect other jurisdictions." In the course of evaluating burdensome mandates, PEER sought to develop a listing of these historic government powers as a basis for identifying federal mandates that violate those powers.

In *National League of Cities*, the Supreme Court provided a partial listing of such functions: "[F]ire prevention, police protection, sanitation, public health, and parks and recreation." 426 U.S. at 851. Justice Rehnquist noted at the time that this list was not meant to be exhaustive, only illustrative. To complicate matters further, *National League of Cities* was overruled nine years later in *Garcia*. Finally, some commentators have noted that most of the historic government functions given as examples by Justice Rehnquist are typically local, rather than state government functions. *See* Tribe, *Constitutional Law* § 5-22 at 396 n.65.

Even the Supreme Court, after it began relying on the concept of "traditional government functions" as one of the criteria for evaluating Tenth Amendment cases, found that defining these functions was an elusive task at best. This difficulty extended to lower courts as well. As a partial justification for rejecting the three-part test established in *National League of Cities* and *Hodel*, Justice Blackmun in the *Garcia* case listed numerous instances where lower courts had attempted to specify "traditional government functions" under the *National League of Cities* doctrine, and further noted that there appeared to be no clearly defined methodology for deciding which functions were protected and which were not. This confusion under the law served as a partial justification to the Court for rejecting the *Hodel* test. Thus, by 1985 the Supreme Court no longer effectively relied on the concept of "traditional government functions" to evaluate Tenth Amendment cases.

Despite listing it as a criterion for identifying burdensome mandates, the ACIR also found defining traditional government functions difficult. In interviews with PEER staff, the chairman of ACIR stated that ACIR had attempted to stay out of the "thicket" of identifying such functions as much as possible. He also stated that making such determinations was a largely "subjective" and "philosophical" determination which depended on one's view of government and federalism as much as anything else.

The Legislative Process May Be the Most Effective Source of Mandate Reform

Because it now seems clear that the Supreme Court will only find certain classifications of Congressional legislation unconstitutional, the political arena may serve as the preferred venue for those seeking mandate reform.

In 1995, Congress passed the Unfunded Mandates Reform Act (UMRA). This act required the preparation of the ACIR final draft report on federal mandates. Under UMRA, the Senate and House of Representatives are prohibited from passing "any bill, joint resolution, amendment, motion or conference report" that seeks to impose more than $50 million in compliance costs on state and local governments unless the federal government provides full funding. 2 U.S.C. § 658d(a).

Whether UMRA will have its intended impact is difficult to assess. Although members of Congress are authorized under UMRA to object to legislation containing federal mandates by raising a point of order, such points of order can be waived by a simple majority of each house. One commentator has noted that the effect of UMRA may simply be to force recorded votes on bills containing unfunded mandates. Comment, 45 Emory L.J. at 282 n.8.

Currently pending in Congress, but not passed by either house of Congress as of September 1996, is an act entitled the "Tenth Amendment Enforcement Act of 1996." Under this act, Congress would be prohibited from enacting a statute unless it includes a declaration:

- that Congress's authority to act in the area addressed by the statute is specifically delegated to Congress by the Constitution, including a citation to the specific constitutional authority;

- that Congress specifically finds that it has greater competence than the states to address the specific areas of law covered by the statute; and,

- if the statute interferes with or preempts state or local government law, that Congress specifically intended to do so, and that such preemption is necessary.

S. 1629, 104th Congress, 2d Sess. § 3 (1996).

Both of these pieces of legislation are significant because they reflect the growing interest in federal mandates at the Congressional level. However, the effect they may have on the process of evaluating mandates is unclear. UMRA is less than a year old, its provisions can be ignored by Congress (since Congress can vote to override its provisions), and it is prospective in nature, which means that states cannot expect relief from existing mandates under the act. The Tenth Amendment Enforcement Act has not yet been passed by either the Senate or the House of Representatives, making its future significance even more uncertain.

In any event, the future of federal mandates may continue to reside more in the hands of Congress than the Supreme Court. In the *Garcia* decision, which was not overruled by *New York v. U.S.*, Justice Blackmun wrote: [W]e have no license to employ freestanding conceptions of state sovereignty when measuring congressional authority under the Commerce Clause." In the eyes of at least one

commentator, this view was too deferential to Congress, and violated historic concepts of federalism. *See* Van Alstyne, "*The Second Death of Federalism*," 83 Mich. L. Rev. 1709, 1721 (1985). However, Justices O'Connor and Rehnquist, who are each keenly interested in Tenth Amendment jurisprudence, would probably not agree with Justice Blackmun's analysis; they are also still on the Court, while Blackmun is not.

State and Federal Roles Need New Definition

Federalism is generally defined as a "form of government that divides power between a central government and regional governments, with each having some independent authority." Ralph C. Chandler and Jack C. Plano, *The Public Administration Dictionary,* § 47 at 67 (ABC-CLIO, 2d ed. 1988). State complaints over federal mandates generally focus on a perceived lack of such independent authority on the part of the states. States feel that their "independent authority" in the areas of mandates is often compromised, if not removed altogether. If these views are correct, then the essence of federalism is under attack.

At the same time, the previous discussion reveals the difficulty the United States Supreme Court and others have had in defining proper roles for states and the federal government while still maintaining the integrity of federalism. The unsteady course of Supreme Court jurisprudence has been mirrored by congressional efforts to implement federal mandates.

In examining core concepts of federalism and their relationship to the issue of federal mandates, PEER found several particularly applicable areas of concern. These areas of concern will be addressed in turn, and will be followed by relevant recommendations for the Mississippi Legislature to make in memorializing Congress concerning this issue.

Cooperative Federalism Protects the Integrity of States

It has been suggested that because the states already existed at the time the U.S. Constitution was written, draftsmen were primarily concerned with determining the proper scope of national powers and with identifying individual rights that were to be protected from both federal and state interference. Tribe, *American Constitutional Law*, § 5-20 at 379. Because of these concerns, few states' rights are outlined in the Constitution. Thus, the states are just "there."

At the same time, the Tenth Amendment clearly and expressly provides that states are holders of coexistent powers with the people, if not prohibited to the states or expressly delegated to the federal government. This constitutional prohibition serves as a limitation on Congress' authority to act in certain ways.

> *Congressional action which treats the states in a manner inconsistent with their constitutionally recognized independent*

> *status, therefore, should be void, not because it violates any specific constitutional provision or transgresses the explicit boundaries of any specific grant of authority, but because it would be contrary to the structural assumptions and the tacit postulates of the Constitution as a whole.*

Tribe, *American Constitutional Law*, § 5-20 at 379.

The public policy view of federalism gradually evolved from the 1800s view, in which federal and state governments had "separate spheres of authority and jurisdiction." This perspective has been described as "layer-cake federalism." In the years following the New Deal, federalism came to be viewed as consisting of a greater degree of interdependence between federal and state governments. Continuing the previous cake analogy, this new cooperative federalism was labeled "marble-cake federalism."

A characteristic of this cooperative federalism was federal grant-in-aid programs to individual states. Under these programs, states typically matched federal funds, while agreeing to accept some degree of federal standards and oversight. *See* Chandler and Plano, *The Public Administration Dictionary*, § 48 at 68. In 1978, following some twenty years of increased federal grants-in-aid to state governments, these funds began to decline, while regulatory requirements, which imposed costs on state and local governments, continued to increase. Comment, 45 Emory Law Journal 281, 281 (Winter 1996). Predictably, state and local governments were unhappy about this trend.

Congress became aware of increasing state and local displeasure over federal mandates; during the 103rd Congress alone, members introduced over thirty mandate reform bills. *See* Comment, 45 Emory L.J. at 282 n.6. This displeasure over federal mandates culminated in the passage by Congress in 1995 of the Unfunded Mandates Reform Act (UMRA) and the 1996 introduction of the Tenth Amendment Enforcement Act (both discussed above).

In the ACIR final draft report on federal mandates prepared as a requirement of UMRA, ACIR noted that state and local governments are often treated by Congress as "[special] interest groups, private entities or as administrative arms of the federal government," rather than as important components within the structure of federalism. However, coupled with the passage of UMRA, other signs show that state government leaders in particular are being asked to play an increased role in the development of national policy through congressional legislation.

In an increasingly bipartisan trend, congressional leaders are giving both Republican and Democratic governors the opportunity to express their views on pending legislation and issues of state concern. This trend is in marked contrast to congressional views of years past, when "governors of both parties were most often viewed by Congress as just another pack of special pleaders." Eileen Shanahan, "The Sudden Rise In Statehouse Status," *Governing* 15, 15 (September

1996). It is no longer unusual for governors to be involved in the drafting of legislation at the congressional level.

Governments Should Balance the Need for Achieving National Goals with Acceptable Levels of Regulation

Balanced against the need for state and local governments to have a voice in national policymaking is the equally obvious fact that in some areas, such as environmental regulation, federal oversight was originally a necessity simply because states often refused to act when they should have. Even here, however, states have valid concerns over methods of federal policy implementation.

In some areas, such as environmental regulation, state and local governments demonstrated little inclination to establish minimum regulatory standards for air quality and drinking water. Commentators have correctly pointed out that economic incentives for individual states work *against* meaningful regulation. Prior to 1970, states with stringent environmental standards often found themselves at a competitive disadvantage in attempting to lure industries to their state because other states were "willing to trade environmental amenity values for the economic benefits of increased economic development." Zygmunt J. B. Plater, et. al. *Environmental Law and Policy: Nature, Law, and Society* 776 (1992). The resultant "race of laxity" helped signal the need for federal regulation.

In many instances, however, federal efforts to adopt minimum standards have led to "one size fits all" solutions, which are often accompanied by an excessively high degree of regulation by the responsible federal agency. During PEER's focus group discussion with state agency personnel, they frequently criticized the amount of regulatory oversight exercised at the federal level, although there was widespread support for the goals behind the federal mandates.

The regulatory strategy employed by federal officials has been described as "command and control." Agencies such as the Environmental Protection Agency (EPA) primarily set standards and "drag" violators to court for violating them. David Osborne and Ted Gaebler, *Reinventing Government* 299 (1992). This method of regulation draws consistent criticism because it is often overly detailed, even specifying what type of technology must be used to control pollution, and because these national standards often force "one size fits all" solutions on differing target groups. As an example of these inflexible compliance requirements, during PEER's focus group meeting with agency personnel, agency personnel described the routine use of contracts several inches thick, with ninety percent of the space devoted to compliance with regulatory requirements for certain federal programs. Agency personnel consistently criticized these burdensome compliance requirements.

The often-cited solution to this problem is to require compliance with worthwhile national goals and standards while allowing state and local

governments to administer these programs as they see fit. Osborne and Gaebler cite with approval a rule of thumb advocated by the National Conference of State Legislatures (NCSL): "Unless there is an important reason to do otherwise, responsibility for addressing problems should lie with the lowest level of government possible," Osborne and Gaebler, *Reinventing Government* at 277. The same authors note that "programs can be designed to allow for significant flexibility at the state or local level. The federal government can define the mission and the outcomes it wants, but free lower governments to achieve those outcomes as they see fit." *Id*. at 278. *See also,* Comment, 45 Emory L.J. at 328 n.225 ("The proper solution, therefore, is the establishment of federal regulatory strategies that would be flexible enough to adapt to the local needs and still serve the overarching national interest in an integrated national economy.")

Mandate Reform Would Probably Not Affect Existing Mandates

Although increasing recognition of state governments and proposed regulatory compliance requirements are important, they represent only a partial solution to the federal mandate problem. PEER's earlier research showed that the Supreme Court will likely offer only limited relief from burdensome mandates, while the full effect of recently passed congressional legislation has yet to be determined and is generally prospective only in its scope. However, there may yet be some relief from existing federal mandates.

Some commentators have proposed that when federal statutes are brought before Congress for reauthorization, this represents an ideal opportunity for federal mandate concerns to be raised. Under such case-by-case consideration, Congress has several positive options at its disposal:

- offer additional funding to state and local governments;
- modify the statute to allow for regulatory flexibility; or,
- abandon or relax certain requirements.

Comment, 45 Emory L.J. at 322 n. 207.

This mechanism has been used several times in recent history by Congress, in connection with the proposed reauthorization of the Safe Drinking Water Act, the Occupational Safety and Health Act, and the Solid Waste Disposal Act, respectively. *Id*. at 322 n.206.

Finally, there have been calls for a constitutional amendment banning unfunded federal mandates to the states. *See*, S.J. Res. 9, 104th Cong. 1st Sess. (1995). Although such an amendment could conceivably be enacted, it is far from clear whether its application would be both retroactive, as well as prospective, in nature. Such retroactivity would be crucial to provide relief from existing federal mandates.

Recommendations

1. The Mississippi Legislature should memorialize Congress to reconsider the effect on individual states of each burdensome mandate discussed in this report. Among the options available to Congress for decreasing the burden of mandates on the states are:

    - provide additional funding to state and local governments;
    - modify the federal statute to permit state regulatory flexibility; and
    - abandon or relax requirements for states which have not proven to advance federal policy goals.

2. In its message to Congress, the Legislature should recommend that Congress increase its communications with state leaders during its deliberations on federal laws which affect state and local governments.

3. The Legislature should request that Congress enact federal laws with a goal of uniformity of result at the state level in mind (e.g., particular emission levels for environmental mandates), while leaving states free to achieve those outcomes by whatever method they deem most appropriate and reasonable. In setting performance standards, Congress should be encouraged to make these standards reasonable and reachable.

    The Legislature should request that Congress take federal, state, and local costs of policy implementation into consideration before enacting a law containing a federal mandate to state and local governments, and assume a substantial share of mandate costs as an incentive to avoid overly burdensome mandates and to aid in seeking the least costly alternatives. In encouraging Congress to consistently take all public sector costs into consideration, as required in the federal Unfunded Mandate Reform Act of 1995, the Legislature should request that Congress refrain from exercising its prerogative to disregard its own reform measure. (See Appendix G, page 63, for proposed legislation memorializing Congress concerning federal mandates.)

Appendix A

Excerpts from ACIR Study on the Role of Federal Unfunded Mandates in Intergovernmental Relations

As noted in PEER's report, the Advisory Commission on Intergovernmental Relations (ACIR) conducted a study of the role of federal mandates in intergovernmental relations in fulfillment of a requirement of the Unfunded Mandates Reform Act of 1995. ACIR's final draft report *(The Role of Federal Mandates in Intergovernmental Relations)* was presented before the ACIR commission during July 1996, but the commission did not release it.

Mandate Criteria

The following are the criteria ACIR used in selecting mandates for its study. When requesting agencies participating in the focus group to compile a list of costly or burdensome mandates, PEER staff suggested that they consider these criteria (but not rely on them exclusively) in making their choices.

The mandate requires states to expend substantial amounts of their own resources in a manner that significantly distorts their spending priorities. This addresses mandates that require more than incidental amounts of spending. It will not include all federal mandates that require governments to spend money.

The mandate abridges historic powers of state government, the exercise of which would adversely affect other jurisdictions. This will include mandates that have an impact on internal state, local and tribal government affairs related to issues not widely acknowledged as being of national concern and for which the absence of the mandate would not create adverse spillover effects. This also will include mandates that abridge the power of state, local or tribal governments to impose taxes within the limits of the U. S. Constitution and that provide particular tax treatment to particular classes of taxpayers.

The mandate imposes compliance requirements that make it difficult or impossible for the state to implement. Implementation delays, issuance of court orders, or assessment of fines may be indicative of mandate requirements that go beyond state, local, or tribal fiscal resources, or administrative or technological capacity, after reasonable efforts at compliance have been made.

The mandate has been the subject of widespread objections and complaints by state governments and their representatives. This will include mandates that are based on problems of national scope, but are not federally funded.

Mandates Included in ACIR Study

Following is a list of the mandates included in the ACIR study:

- Fair Labor Standards Act
- The Family and Medical Leave Act
- Occupational Safety and Health Act
- Drug and Alcohol Testing of Commercial Drivers
- Metric Conversion for Plans and Specifications
- Medicaid: Boren Amendment
- The Clean Water Act
- Individuals with Disabilities Education Act
- The Safe Drinking Water Act
- Endangered Species Act
- The Clean Air Act
- Davis-Bacon Related Acts

[Required Use of Recycled Crumb Rubber (Repealed)]

"Common Issues: Discussion and Recommendations"

ACIR's review of existing mandates found six common issues in federal mandates that complicate intergovernmental relations. These issues and ACIR's proposed recommendations to address them are listed below:

1. **Detailedproceduralrequirements.**State and local governments often are not given flexibility to meet national goals in ways that fit their resources and needs. The imposition of detailed procedural requirements for implementing federal statutes, in many instances, merely increases costs and delays achievement of the national goals. Some federal agencies are initiating reforms to address the issue of inflexible federal requirements. For example, under EPA's Project XL pilot program, communities will get the opportunity to set aside EPA rules if they can design an alternate system that will be both cheaper for the local government and cleaner for the environment. *In general, state and local governments should be permitted, through statutory language, flexibility in choosing the methods used to comply with a federal mandate. Federal agencies should assist state and local governments by providing research and technical advice on implementation approaches and methods to save the state and local governments design and*

adaptation costs, whenever possible. The focus of federal statutes, regulations, and policies should be on results, not process.

2. **Lack of federal consideration and funding of mandate costs.** Prior to passage of the *Unfunded Mandates Reform Act,* the federal government often imposed mandates without considering the full magnitude of the mandate cost, including the cost to state and local governments, and with little or no federal funding commitment. As a consequence, the federal government had little incentive to weigh costs against benefits or to allow state and local governments to determine the least costly alternatives for reaching national goals. *As required by the Unfunded Mandates Reform Act, the federal government should take federal, state, and local costs of policy implementation into consideration before enacting a law containing a federal mandate on state and local governments. In addition, the federal government should assume some share of mandate costs as an incentive to restrain the extent of the mandate and to aid in seeking the least costly alternatives.*

3. Federal failure to recognize state and local governments as governments. State and local governments often are treated as interest groups, as private entities, or as administrative arms of the federal government. Federal policies tend not to recognize state and local governments as government entities subject to public accountability through elections and through the policy processes of a state legislature, county commission, or city council. Views of private entities and non-governmental advocacy groups sometimes have been given more attention than those of state and local governments. *Federal laws and regulatory policies should recognize that state, local, and tribal governments are co-makers of national policy who, in contrast to interest groups and private entities, are led by elected officials who must account to the voters within their respective jurisdictions just as do the President and the Members of the US Congress.*

4. Authorization of lawsuits against state and local governments to enforce federal law. Several federal laws authorize individuals or groups to sue state or local governments. Such private rights of action augment the resources of federal agencies and provide an alternative mechanism to enforce compliance for persons dissatisfied with federal agency efforts. These policies, however, create intergovernmental tensions and may weaken federal agency efforts to enforce federal laws. Such provisions allow federal agencies to rely on individual suits rather than their own monitoring and oversight efforts to achieve compliance with federal laws. Moreover, when the federal government is not directly involved in litigation concerning a federal law, it has little incentive to propose amendments to clarify the law or to otherwise reduce the number of costly lawsuits. In effect, provisions authorizing private rights of action shift costs related to federal law enforcement to private individuals or state and local governments.

Also, as indicated by the Supreme Court opinion, *Seminole Tribe of Florida v. Florida et al.,* No. 94-12, issued on March 27, 1996, the issue of federal statutes permitting private rights-of-action against state governments raises potential constitutional questions. The court's decision is based, among other things, on issues related to Congress' power to abrogate the states' Eleventh Amendment immunity. According to one point made in the court opinion:

> The Eleventh Amendment presupposes that each State is a sovereign entity in our federal system and that " ' [i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without [a State's] consent.'" *Hans v. Louisiana,* 134 US 1, 13.

The federal government should commission a study to examine the constitutional and intergovernmental issues raised by laws authorizing private rights-of-action against state and local governments. Such a study should be concluded prior to enactment of any more statutory language authorizing private rights-of-action against state or local governments and prior to any reauthorization of existing statutes with such language.

5. Inability of very small local governments to meet mandate standards and timetables. The requirements for many federal mandates are based on the assumption that all local governments have the financial, administrative, and technical resources that exist in large governments. In reality, many very small local governments have part-time staffs with little technical capability and very limited resource bases. Some federal laws and regulatory policies have provisions that allow deadline extensions or requirement modifications for very small governments. Such provisions are especially useful in situations where minimal adverse effects on the achievement of overall national goals would result from a deadline extension or requirement modification. *The federal government should increase the number of laws and regulations that allow for deadline extensions or requirement modifications for very small governments that cannot meet existing time limitations or cannot afford full compliance with national standards.*

6. Insufficient communication and ineffective coordination of federal policies. Confusion, uncertainty, and frustration is often created among state and local officials by the lack of good communication on or by ineffective coordination of federal policies between federal and state or local agencies or among federal agencies. There are large information gaps about the details of some federal mandates and, even where technical assistance and information resources may be available from federal agencies or private entities, state and local governments are often unaware of how to obtain such assistance or information. Difficulties also arise when the same federal agency is charged with implementation and enforcement responsibilities and it is unclear which role the agency is in when it responds to questions raised by state and local governments. The situation is aggravated further when multiple federal agencies are responsible for implementing or enforcing a mandate and no single federal agency is empowered to make binding decisions about the mandate's requirements. Finally, when state

laws are intertwined with federal requirements, the situation becomes even more complex. *The federal government should establish a coordination mechanism to assist state and local governments through the federal policy maze. The coordination mechanism should be designed to avoid the conflicts of interest that arise in a lead agency process because a lead agency usually has program as well as coordination responsibilities. Desk officers could be assigned for each state as a single point of contact or ombudsperson for questions on federal policies and common rules could be drafted to implement mandates under the jurisdiction of multiple federal agencies. In addition, an arbitration process could be developed to make binding decisions on issues related to federal mandates that arise among federal agencies or between the federal government and state or local governments.*

Appendix B

Federal Mandates Identified as those Most Strongly Impacting Mississippi State Government

At a focus group meeting to discuss federal unfunded mandates, managers representing nineteen major state agencies identified the following as the mandates most costly or burdensome to Mississippi state government. These eighteen mandates were the mandates state agencies were asked to provide costs for and comment on in PEER's subsequent mail survey of state agencies.

1. Fair Labor Standards Act--The Fair Labor Standards Act (FLSA) established minimum standards for wages, overtime compensation, equal pay, recordkeeping, and child labor for nearly every workplace in the United States. In 1974, amendments to the FLSA extended the applicability of the law to the public sector and treated state and local governments as if they were private entities. So, unlike the federal government, a state or local government cannot amend its personnel policies to accommodate situations unique to government employment or to reduce budget.

2. The Family and Medical Leave Act--The Family and Medical Leave Act of 1993 (FMLA) requires employers to provide employees up to 12 weeks of unpaid leave each year to care for a newborn, adopted, or foster child. Leave also must be granted for care of a seriously ill child, parent, or spouse. In addition, employees may use unpaid family and medical leave and employees must be reinstated into the same or an equivalent position after leave.

FMLA was enacted to promote family stability and economic security among working men and women.

3. Occupational Safety and Health Act–The Occupational Safety and Health Act of 1970 establishes standards for safe, healthy, and productive work environments. State governments and their political subdivisions, as well as the United States government, are specifically excluded from the definition of "an employer" under the act. In the case of state government and its political subdivisions, OSHA has no requirements unless a state volunteers to participate in the program under the provisions of Section 18 of the law. In the case of the federal government, the law requires the head of each agency to establish and maintain an effective and comprehensive occupational safety and health program "consistent with" the standards promulgated by the Department of Labor (DOL) for non-government workplaces.

If a state does not participate in the federal OSHA program, DOL is responsible for all aspects of the program as it applies to businesses within the state. At the same time, since state and local governments are not considered employers under the law, DOL neither develops nor enforces

occupational safety and health standards for employees in state or local government workplaces.

If a state assumes responsibility for development and endorsement of the federal OSHA standards, the law mandates state standards that "are or will be at least as effective" as the DOL standards. Also to the extent permitted by state constitutions, the federal law requires these states to establish and maintain an effective and comprehensive occupational safety and health program for state and local government employees.

4. Drug and Alcohol Testing Requirements of Commercial Drivers--The Omnibus Transportation Employee Testing Act requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, and mass transit industries. This law directs the Department of Transportation (DOT) to issue regulations establishing a program which "requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use . . . of alcohol or a controlled substance." The motor carrier requirements cover a substantial number of state and local government employees, and require them to undergo random drug and alcohol testing, effective January 1, 1996, for state and local governments with fewer than 50 drivers and January 1, 1995, for governments with more than 50 drivers.

5. Metric Conversion--The Omnibus Trade and Competitiveness Act of 1988 amended the Metric Conversion Act of 1975 to, among other things, require that each federal agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical. The act permits the continued use of traditional weights and measures in non-business activities. Based on this law, the Department of Transportation (DOT) will require metric measurement in plans and specifications for construction work done by state and local governments after October 1, 1996.

6. Medicaid: Boren Amendment--The Boren Amendment requires states to establish reimbursement rates to pay hospitals, nursing facilities, and intermediate care facilities for services provided to persons eligible for assistance through the Medicaid program. The mandated federal criteria provide that state-determined reimbursement rates be "reasonable and adequate to meet the cost which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards. . . ."

The intent of the Boren Amendment was to give states a means of controlling costs related to reimbursement claims from providers of Medicaid services.

7. The Clean Water Act--States are required by the Clean Water Act to designate the uses of water, develop water quality criteria to protect those

uses, monitor the condition of waters, and report on water quality every two years. Local governments are required, either directly by the federal government or indirectly through state implementation of federal laws, to treat sewage to national standards and control discharges from combined sewers and stormwater drains.

8. Individuals with Disabilities Education Act--Individuals with Disabilities Education Act (IDEA) requires local school systems to provide a free appropriate education for children with disabilities. The law provides that federal aid to states for elementary and high school education will be available only after the state has a federally approved plan for educating children with disabilities.

9. The Safe Drinking Water Act--The Safe Drinking Water Act (SDWA) regulates drinking water standards for all waterworks serving 25 or more persons on a regular basis. It establishes maximum levels for contaminants known to occur in public water systems, establishes wellhead protection programs, certifies and specifies appropriate analytical and treatment techniques, and establishes public notification procedures. It requires drinking water suppliers to assume a wide range of responsibilities, including monitoring of the water supply.

10. Endangered Species Act--The Endangered Species Act requires every federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed threatened and endangered species or the destruction or adverse modification of critical habitat.

11. Clean Air Act--The Clean Air Act requires states to submit for federal approval a plan for meeting air quality standards established by the federal government. These plans must include emissions limitations and schedules of compliance.

12. Davis-Bacon Related Acts--The Davis-Bacon Act applies to federal government contracts over $2,000 for construction, alteration, and/or repair work. The law requires such contracts to specify the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. The minimum wages must be based on the wages determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on similar contracts in the city, town, village, or other civil subdivision of the state in which the work is to be performed.

The primary purpose of the act was to bring stability to the construction industry. It prevented non-local contractors from underbidding local contracts for work on federal public works projects by hiring workers from other areas willing to accept lower wages than those prevailing in the local area.

13. Internal Revenue Service Publication 937 Employment Taxes (Rev. Nov 94)--Internal Revenue Service publication 937 establishes guidelines for employers to withhold federal income tax from employees' wages. An employer may also have to withhold and pay Social Security and Medicare taxes, and pay unemployment taxes on wages paid to an employee. If an employer fails to withhold these taxes, or withholds the taxes but does not deposit them, they may be subject to a penalty equal to the amount of the tax. An employer does not generally have to withhold or pay any taxes on payments to independent contractors. Due to the changes in determining whether an individual is an employee under the common-law rule, the IRS has identified twenty factors that are used as guidelines to determine whether sufficient control is present. Because of additional contract rule changes the state reevaluated its contract employees to reflect the IRS common-law rules regarding employee or independent contractors.

14. Immigration Reform and Control Act--The Immigration Reform and Control Act of 1986 (IRCA) was signed into law on November 6, 1986. It is now against the law for an employer to knowingly hire an alien who is not authorized to work in the United States. Consequently, all employees hired after that date, including United States citizens, must show their employers documents that prove their identity and their eligibility to work in this country. A principal element of IRCA provides for the legalization of certain aliens then in illegal status in the United States.

15. Age Discrimination Act, Title VII of the Civil Rights Act--The Age Discrimination Act of 1967 prohibits discrimination against employees over the age of 39. The act prohibits employers from paying older workers less than younger ones for equal work. In addition it prohibits employers from using pension plan provisions to force older employees to take early retirement.

16. Drug Free Workplace Act--The Drug Free Workplace Act (DFWA) requires grantees of federal agencies to certify that they will provide a drug-free workplace. Making the required certification is a precondition of receiving a federal grant beginning March 18, 1989. The DFWA provides that sanctions maybe imposed against grantees for non-compliance with the law.

17. Resource Conservation and Recovery Act (RCRA)--The U. S. Environmental Protection Agency's Subtitle D rules require minimum standards for municipal solid waste (MSW) landfill siting, design, operation, closure, post-closure care of the landfill, ground water monitoring, corrective action for ground water contamination and financial assurance (i.e., provision for closure, post-closure care, and if necessary clean-up of the site). Industrial waste was essentially unregulated until the passage of RCRA in 1976 which established some guidelines to follow regarding solid waste.

18. Americans with Disabilities Act--The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in employment, public service and public accommodations, and requires state and local governments to ensure that individuals with disabilities are able to participate in the programs and services that they provide.

Appendix C

PEER's Survey of State Agencies

Agency Name: _____

Person Completing Form (for followup):

Name _____ Phone: _____

Form A

MISS. CODE ANN. Section 5-3-73 Questionnaire

Agency Expenditures for the Fiscal Year Ended June 30, 1996, by Source

Please return to PEER by September 26, 1996

Instructions to the Questionnaire:

- Provide actual costs or estimates of the cost of implementing and executing programs. These costs will be described in PEER's published report as the agencies' best estimates of costs associated with mandates. (PEER recognizes that the state's accounting system may not readily yield this cost information. Please provide information that is as accurate as possible.)
- The chart is provided as a guide for categorizing your agency's costs. If costs of your agency must be categorized in a different way, please provide that information on the back of the form.
- If the state General Fund costs for a particular mandate affecting your agency exceed $1,000,000, but the mandate is not listed below, add the mandate title and costs on the second page of Form A.
- State expenditures reimbursed by the federal government should be included under federal expenditures and excluded from state expenditures.

	Federal Mandates	State General Fund Expenditures			Federal Expenditures			Other Special Fund Expenditures		
		Salaries & Benefits	Subsidies, Loans & Grants	Other *	Salaries & Benefits	Subsidies, Loans & Grants	Other *	Salaries & Benefits	Subsidies, Loans & Grants	Other *
1	Fair Labor Standards Act									
2	Family and Medical Leave Act									
3	Occupational Safety and Health Act									
4	Drug and Alcohol Testing of Commercial Drivers									
5	Metric Conversion for Plans and Specifications									
6	Medicaid: Boren Amendment									
7	The Clean Water Act									
8	Individuals with Disabilities Education Act									
9	The Safe Drinking Water Act									
10	Endangered Species Act									

Notes:

***** "Other" expenditures may include travel, contractual services, capital outlay, commodities and indirect costs (administrative or allocated support costs). Allocated costs may include portions of central service costs which relate to the federally mandated programs and should be included on the questionnaire if they are incurred by the agency as a result of the mandate.

PEER Committee Que

	Federal Mandates	State General Fund Expenditures			Federal Expenditures			Other Special Fund Expenditures		
		Salaries & Benefits	Subsidies, Loans & Grants	Other *	Salaries & Benefits	Subsidies, Loans & Grants	Other *	Salaries & Benefits	Subsidies, Loans & Grants	Other *
11	The Clean Air Act									
12	Davis-Bacon Related Acts									
13	IRS Publication 937 Employee Withholding									
14	Immigration Control Act									
15	Age Discrimination Act, (Title VII of the Civil Rights Act)									
16	Drug Free Workplace Act									
17	Resource Conservation and Recovery Act (RCRA)									
18	Americans with Disabilities Act (ADA)									
19										
20										

Comments and explanations regarding actual or estimated costs included above:

Appendix C

PEER's Survey of State Agencies

Form B

MISS. CODE ANN. Section 5-3-73 Questionnaire

Please return to PEER by September 26, 1996

Agency Name: _____
Mandate Name: _____

Person Completing Form (for followup):

Name:_____Phone:_____

Instructions:

- Please answer the following questions for each mandate that your agency implemented or for which it has some responsibility. *If your agency is affected by more than one mandate, please duplicate this form before you begin answering questions.* Provide supporting documentation as needed.

• What is your perception of the purpose of the mandate? What is it intended to accomplish?

•What are the major problems in implementing the mandate? For example, does the state have adequate discretion in deciding how to accomplish the purposes of the mandate? Is the cost reasonable? Do compliance requirements provide for sufficient flexibility? Are guidelines straightforward and easy to follow?

- **What is the relationship between the implementation of the mandate and statepolicy?**(Identify whether the mandate contradicts state law or policies or whether it enhances existing guidelines.)

- **If the mandate had not existed, would your agency have initiated a similar program or requested legislative authority to address the same concern? Please explain**.

Appendix D

Limitations of PEER's Survey on Federal Unfunded Mandates

After identifying a set of federal mandates considered by the agencies to be especially costly or otherwise burdensome, PEER asked all state agencies for information on the cost and problems associated with implementation of these federal mandates. The agencies cooperated in providing the information PEER requested and PEER was able to use this agency information to arrive at a summary of cost and implementation problems. However, a series of unavoidable limitations associated with any effort to determine the cost of federal mandates and a few limitations associated with assessing implementation of mandates should be considered in reviewing the results of PEER's survey. A summary of state agency costs and concerns follows this discussion of limitations.

Surveyed Mandates are a Subset of All Mandates. Because the scope of PEER's survey was restricted to the eighteen mandates selected by the agencies, the results of the survey apply only to those mandates. That is, the agencies responding to PEER's survey provided estimates of the FY 1996 cost of implementing eighteen major mandates, but not the cost of implementing all federal mandates (estimated by ACIR to exceed two hundred mandates). Also, the problems agencies described in implementing mandates relate to the eighteen mandates upon which PEER's survey focused, not to all federal mandates.

Although PEER's survey results reflect only the cost and problems associated with a small number of mandates, the costs associated with these mandates may represent a major portion of the total cost of federal mandates to Mississippi state government because these mandates were identified as most burdensome to state agencies in Mississippi. Similarly, the problems associated with these mandates may be typical of the problems agencies confront in implementing many other federal mandates.

Responding Agencies are a Subset of All State Agencies. Another limitation may be inferred from the fact that only sixty-one of the state's 130 budget units provided cost data to PEER; fifty-nine of these agencies provided implementation data. However, all of the major state agencies and many medium-sized agencies responded to the survey, resulting in cost data from agencies spending the largest share of the state's budget in FY 1996.

Recordkeeping Systems Preclude Compilation of Precise Cost Data. Another limitation may be the most serious problem that PEER encountered in fulfilling its statutory responsibility to determine the cost of federal mandates. Although the statute requires PEER to determine the costs associated with federal mandates, neither the statute itself, nor PEER's survey design, nor the accounting methods of the agencies from which PEER obtained cost data could

ensure that a full and accurate accounting of the cost of federal mandates could be achieved. Although a few mandates can be directly tied to identifiable budgetary units within state government, for the most part agencies' budgeting and accounting structures are not designed to track the costs of federal mandates. For example, agencies must comply with the Age Discrimination Act, but they would not be expected to maintain separate records of all expenditures associated with this act. These expenditures might include revising forms, policies, and procedures; training employees; and other cost elements that would not be maintained separately or tagged in a way that would identify them as costs associated with the Age Discrimination Act.

In addition to lacking records associating agency costs with specific federal mandates, agencies do not (and could not be expected to) maintain records identifying the source (state, federal, or other) of funds used for all mandate-related expenditures.

Estimates Are Based on Unverifiable Assumptions. A final problem in accurately determining the cost of a specific federal mandate lies in the need to restrict cost information to include only those expenditures associated specifically with the mandate and to exclude costs that would have occurred anyway, in the absence of the mandate. If one includes costs that would have occurred even if the mandate had not been imposed, the cost figure is not a true estimate of the cost of the mandate. However, neither PEER nor the agencies providing information could say with certainty what an agency would have done in the absence of a federal mandate. For example, the Individuals with Disabilities Education Act requires that school districts provide educational services for children with disabilities. Although the State Department of Education can estimate the cost of services for children with disabilities, neither that agency nor the school districts can be certain of the level of spending for services to disabled students that would have occurred if Congress had not passed that act.

Therefore, the cost data that agencies provided in response to PEER's request for expenditures by source are **estimates only**. These estimates represent the agencies' best efforts at identifying the costs of the mandates that impose upon them the greatest burdens and the sources of funds used in these expenditures.

Appendix E
State Agencies and the Mandates for Which They Reported Expenditures

Alcorn State University	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers The Clean Water Act Individuals with Disabilities Education Act The Safe Drinking Water Act Davis-Bacon Related Acts IRS Publication 937 Employee Withholding Immigration Control Act Age Discrimination Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Bd. of Animal Health & Veterinary Diagnostic Lab.	IRS Publication 937 Employee Withholding
Board of Cosmetology	Family and Medical Leave Act IRS Publication 937 Employee Withholding Americans with Disabilities Act (ADA)
Board of Public Accountancy	IRS Publication 937 Employee Withholding
Bureau of Narcotics	Fair Labor Standards Act IRS Publication 937 Employee Withholding
Coahoma Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers IRS Publication 937 Employee Withholding
Copiah-Lincoln Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers The Clean Water Act The Safe Drinking Water Act The Clean Air Act IRS Publication 937 Employee Withholding Immigration Control Act Age Discrimination Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Delta State University	Fair Labor Standards Act Family and Medical Leave Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers The Clean Water Act The Safe Drinking Water Act The Clean Air Act Davis-Bacon Related Acts Immigration Control Act Age Discrimination Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Department of Archives & History	IRS Publication 937 Employee Withholding Americans with Disabilities Act (ADA)
Department of Education	Drug and Alcohol Testing of Commercial Drivers Individuals with Disabilities Education Act IRS Publication 937 Employee Withholding
Department of Environmental Quality	Family and Medical Leave Act The Clean Water Act The Safe Drinking Water Act The Clean Air Act Resource Conservation and Recovery Act (RCRA)
Department of Finance & Administration	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding
Department of Human Services	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Individuals with Disabilities Education Act The Safe Drinking Water Act IRS Publication 937 Employee Withholding Immigration Control Act Age Discrimination Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Department of Insurance	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Americans with Disabilities Act (ADA)

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

Department of Marine Resources	Family and Medical Leave Act
Department of Mental Health	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers IRS Publication 937 Employee Withholding Drug Free Workplace Act Americans with Disabilities Act (ADA)
Department of Rehabilitation Services	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Department of Transportation	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers Metric Conversion for Plans and Specifications Americans with Disabilities Act (ADA)
Department of Wildlife, Fisheries & Parks	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers Endangered Species Act Immigration Control Act
Dept of Economic & Community Development	Fair Labor Standards Act Family and Medical Leave Act Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
East Central Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers Metric Conversion for Plans and Specifications The Clean Water Act The Clean Air Act Davis-Bacon Related Acts IRS Publication 937 Employee Withholding Immigration Control Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	Drug Free Workplace Act
	Americans with Disabilities Act (ADA)
East Mississippi Community College	Immigration Control Act
	Drug Free Workplace Act
	Americans with Disabilities Act (ADA)
Emergency Management Agency	Fair Labor Standards Act
Employment Security Commission	Family and Medical Leave Act
	Davis-Bacon Related Acts
	IRS Publication 937 Employee Withholding
	Immigration Control Act
	Drug Free Workplace Act
	Americans with Disabilities Act (ADA)
Hinds Community College	Fair Labor Standards Act
	Family and Medical Leave Act
	Drug and Alcohol Testing of Commercial Drivers
	Metric Conversion for Plans and Specifications
	The Clean Water Act
	Individuals with Disabilities Education Act
	The Safe Drinking Water Act
	The Clean Air Act
	IRS Publication 937 Employee Withholding
	Immigration Control Act
	Drug Free Workplace Act
	Resource Conservation and Recovery Act (RCRA)
	Americans with Disabilities Act (ADA)
Holmes Community College	Fair Labor Standards Act
	Drug and Alcohol Testing of Commercial Drivers
	The Clean Water Act
	The Safe Drinking Water Act
	IRS Publication 937 Employee Withholding
	Drug Free Workplace Act
Industries for the Blind	Davis-Bacon Related Acts
	Immigration Control Act
	Americans with Disabilities Act (ADA)
Information Technology Services	Fair Labor Standards Act
	Family and Medical Leave Act
	IRS Publication 937 Employee Withholding
	Immigration Control Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	Americans with Disabilities Act (ADA)
Itawamba Community College	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers Individuals with Disabilities Education Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Jones County Junior College	Fair Labor Standards Act Family and Medical Leave Act The Clean Air Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Meridian Community College	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Miss. Military Department	Fair Labor Standards Act Family and Medical Leave Act The Clean Water Act The Safe Drinking Water Act Endangered Species Act The Clean Air Act Resource Conservation and Recovery Act (RCRA)
Mississippi Authority for Educational Television	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding Age Discrimination Act Drug Free Workplace Act Americans with Disabilities Act (ADA)

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

Mississippi Delta Community College	Fair Labor Standards Act Medicaid: Boren Amendment The Clean Air Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Mississippi Forestry Commission	Americans with Disabilities Act (ADA)
Mississippi Gulf Coast Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers Metric Conversion for Plans and Specifications The Clean Water Act Individuals with Disabilities Education Act The Safe Drinking Water Act The Clean Air Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Mississippi State University	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers The Clean Water Act The Safe Drinking Water Act The Clean Air Act IRS Publication 937 Employee Withholding Immigration Control Act Age Discrimination Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Mississippi University for Women	Fair Labor Standards Act Family and Medical Leave Act Davis-Bacon Related Acts Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

Mississippi Valley State University	Drug and Alcohol Testing of Commercial Drivers Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Northeast Mississippi Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Northwest Mississippi Community College	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act Drug and Alcohol Testing of Commercial Drivers The Clean Water Act The Safe Drinking Water Act The Clean Air Act IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Office of the Attorney General	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding Immigration Control Act Age Discrimination Act Drug Free Workplace Act Resource Conservation and Recovery Act (RCRA)
Oil and Gas Board	The Safe Drinking Water Act
Pat Harrison Waterway District	Fair Labor Standards Act Occupational Safety and Health Act The Clean Water Act Individuals with Disabilities Education Act The Safe Drinking Water Act Endangered Species Act IRS Publication 937 Employee Withholding Drug Free Workplace Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	Resource Conservation and Recovery Act (RCRA) Americans with Disabilities Act (ADA)
Pearl River Basin Development District	IRS Publication 937 Employee Withholding Americans with Disabilities Act (ADA)
Pearl River Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers IRS Publication 937 Employee Withholding Immigration Control Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
Pearl River Valley Water Supply District	Metric Conversion for Plans and Specifications The Clean Water Act The Safe Drinking Water Act Americans with Disabilities Act (ADA)
Soil & Water Conservation Commission	Fair Labor Standards Act
Southwest Mississippi Community College	Fair Labor Standards Act Family and Medical Leave Act Drug and Alcohol Testing of Commercial Drivers The Safe Drinking Water Act Drug Free Workplace Act Americans with Disabilities Act (ADA)
State Board for Community & Junior Colleges	Fair Labor Standards Act Family and Medical Leave Act IRS Publication 937 Employee Withholding Age Discrimination Act Americans with Disabilities Act (ADA)
State Dept. of Health	Individuals with Disabilities Education Act The Safe Drinking Water Act IRS Publication 937 Employee Withholding
State Fire Academy	Fair Labor Standards Act Family and Medical Leave Act Occupational Safety and Health Act The Clean Water Act The Safe Drinking Water Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	IRS Publication 937 Employee Withholding
	Resource Conservation and Recovery Act (RCRA)
State Personnel Board	Fair Labor Standards Act
	Family and Medical Leave Act
	IRS Publication 937 Employee Withholding
	Americans with Disabilities Act (ADA)
Supreme Court	Family and Medical Leave Act
Tax Commission	Fair Labor Standards Act
	Family and Medical Leave Act
	Immigration Control Act
Treasury Department	IRS Publication 937 Employee Withholding
University Medical Center	Occupational Safety and Health Act
	Drug and Alcohol Testing of Commercial Drivers
	The Clean Water Act
	Individuals with Disabilities Education Act
	The Safe Drinking Water Act
	The Clean Air Act
	Davis-Bacon Related Acts
	Resource Conservation and Recovery Act (RCRA)
	Americans with Disabilities Act (ADA)
University of Mississippi	Fair Labor Standards Act
	Family and Medical Leave Act
	Drug and Alcohol Testing of Commercial Drivers
	Individuals with Disabilities Education Act
	The Clean Air Act
	Immigration Control Act
	Age Discrimination Act
	Drug Free Workplace Act
	Americans with Disabilities Act (ADA)
University of Southern Mississippi	Occupational Safety and Health Act
	The Clean Water Act
	The Safe Drinking Water Act
	The Clean Air Act
	IRS Publication 937 Employee Withholding
	Drug Free Workplace Act
	Resource Conservation and Recovery Act (RCRA)
Veterans' Home Purchase Board	Family and Medical Leave Act

Appendix E (continued)
State Agencies and the Mandates for Which They Reported Expenditures

	IRS Publication 937 Employee Withholding
Workers' Compensation Commission	Fair Labor Standards Act Family and Medical Leave Act Americans with Disabilities Act (ADA)

SOURCE: PEER survey of state agencies.

Appendix F
Mandates in PEER's Survey and Agencies Reporting Expenditures for Those Mandates

1

Fair Labor Standards Act

Alcorn State University
Bureau of Narcotics
Coahoma Community College
Copiah-Lincoln Community College
Delta State University
Department of Finance & Administration
Department of Human Services
Department of Insurance
Department of Mental Health
Department of Rehabilitation Services
Department of Transportation
Department of Wildlife, Fisheries & Parks
Dept of Economic & Community Development
East Central Community College
Emergency Management Agency
Hinds Community College
Holmes Community College
Information Technology Services
Itawamba Community College
Jones County Junior College
Meridian Community College
Miss. Military Department
Mississippi Authority for Educational Television
Mississippi Delta Community College
Mississippi Gulf Coast Community College
Mississippi State University
Mississippi University for Women
Northeast Mississippi Community College
Northwest Mississippi Community College
Office of the Attorney General
Pat Harrison Waterway District
Pearl River Community College
Soil & Water Conservation Commission
Southwest Mississippi Community College
State Board for Community & Junior Colleges
State Fire Academy
State Personnel Board
Tax Commission
University of Mississippi
Workers' Compensation Commission

2

Family and Medical Leave Act

Alcorn State University
Board of Cosmetology
Coahoma Community College
Copiah-Lincoln Community College
Delta State University
Department of Environmental Quality
Department of Finance & Administration
Department of Human Services
Department of Mental Health
Department of Insurance
Department of Marine Resources
Department of Rehabilitation Services
Department of Transportation
Department of Wildlife, Fisheries & Parks
Dept of Economic & Community Development
East Central Community College
Employment Security Commission
Hinds Community College
Information Technology Services
Itawamba Community College
Jones County Junior College
Meridian Community College
Miss. Military Department
Mississippi Authority for Educational Television
Mississippi Gulf Coast Community College
Mississippi State University
Mississippi University for Women
Northeast Mississippi Community College
Northwest Mississippi Community College
Office of the Attorney General
Pearl River Community College
Southwest Mississippi Community College
State Board for Community & Junior Colleges
State Fire Academy
State Personnel Board
Supreme Court
Tax Commission
University of Mississippi
Veterans' Home Purchase Board
Workers' Compensation Commission

3

Occupational Safety and Health Act

Alcorn State University
Delta State University
Department of Human Services
Department of Insurance
Department of Mental Health
Itawamba Community College
Mississippi State University
Northwest Mississippi Community College
Pat Harrison Waterway District
State Fire Academy
University Medical Center
University of Southern Mississippi

4

Drug and Alcohol Testing of Commercial Drivers

Alcorn State University
Coahoma Community College
Copiah-Lincoln Community College
Delta State University
Department of Education
Department of Mental Health
Department of Transportation
Department of Wildlife, Fisheries & Parks
East Central Community College
Hinds Community College
Holmes Community College
Itawamba Community College
Mississippi Gulf Coast Community College
Mississippi State University
Mississippi Valley State University
Northeast Mississippi Community College
Northwest Mississippi Community College
Pearl River Community College
Southwest Mississippi Community College
University Medical Center
University of Mississippi

Appendix F (continued)
Mandates in PEER's Survey and Agencies Reporting Expenditures for Those Mandates

5

Metric Conversion for Plans and Specifications

Department of Transportation
East Central Community College
Hinds Community College
Mississippi Gulf Coast Community College
Pearl River Valley Water Supply District

6

Medicaid: Boren Amendment

Mississippi Delta Community College

7

The Clean Water Act

Alcorn State University
Copiah-Lincoln Community College
Delta State University
Department of Environmental Quality
East Central Community College
Hinds Community College
Holmes Community College
Miss. Military Department
Mississippi Gulf Coast Community College
Mississippi State University
Northwest Mississippi Community College
Pat Harrison Waterway District
Pearl River Valley Water Supply District
State Fire Academy
University Medical Center
University of Southern Mississippi

8

Individuals with Disabilities Education Act

Alcorn State University
Department of Education
Department of Human Services
Hinds Community College
Itawamba Community College
Mississippi Gulf Coast Community College
Pat Harrison Waterway District
State Dept. of Health
University Medical Center
University of Mississippi

9

The Safe Drinking Water Act

Alcorn State University
Copiah-Lincoln Community College
Delta State University
Department of Environmental Quality
Department of Human Services
Hinds Community College
Holmes Community College
Miss. Military Department
Mississippi Gulf Coast Community College
Mississippi State University
Northwest Mississippi Community College
Oil and Gas Board
Pat Harrison Waterway District
Pearl River Valley Water Supply District
Southwest Mississippi Community College
State Dept. of Health
State Fire Academy
University Medical Center
University of Southern Mississippi

10

Endangered Species Act

Department of Wildlife, Fisheries & Parks
Miss. Military Department
Pat Harrison Waterway District

11

The Clean Air Act

Copiah-Lincoln Community College
Delta State University
Department of Environmental Quality
East Central Community College
Hinds Community College
Jones County Junior College
Miss. Military Department
Mississippi Delta Community College
Mississippi Gulf Coast Community College
Mississippi State University
Northwest Mississippi Community College
University Medical Center
University of Mississippi
University of Southern Mississippi

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Davis-Bacon Related Acts

Alcorn State University
Delta State University
East Central Community College
Employment Security Commission
Industries for the Blind
Mississippi University for Women
University Medical Center

Appendix F (continued)
Mandates in PEER's Survey and Agencies Reporting Expenditures for Those Mandates

13

IRS Publication 937 Employee Withholding

Alcorn State University
Bd. of Animal Health & Veterinary Diagnostic Lab.
Board of Cosmetology
Board of Public Accountancy
Bureau of Narcotics
Coahoma Community College
Copiah-Lincoln Community College
Department of Mental Health
Department of Archives & History
Department of Education
Department of Finance & Administration
Department of Human Services
Department of Rehabilitation Services
East Central Community College
Employment Security Commission
Hinds Community College
Holmes Community College
Information Technology Services
Itawamba Community College
Jones County Junior College
Meridian Community College
Mississippi Authority for Educational Television
Mississippi Gulf Coast Community College
Mississippi State University
Northeast Mississippi Community College
Northwest Mississippi Community College
Office of the Attorney General
Pat Harrison Waterway District
Pearl River Basin Development District
Pearl River Community College
State Board for Community & Junior Colleges
State Dept. of Health
State Fire Academy
State Personnel Board
Treasury Department
University of Southern Mississippi
Veterans' Home Purchase Board

14

Immigration Control Act

Alcorn State University
Copiah-Lincoln Community College
Delta State University
Department of Human Services
Department of Rehabilitation Services
Department of Wildlife, Fisheries & Parks
Dept of Economic & Community Development
East Central Community College
East Mississippi Community College
Employment Security Commission
Hinds Community College
Industries for the Blind
Information Technology Services
Itawamba Community College
Jones County Junior College
Meridian Community College
Mississippi Gulf Coast Community College
Mississippi State University
Northeast Mississippi Community College
Northwest Mississippi Community College
Office of the Attorney General
Pearl River Community College
Tax Commission
University of Mississippi

15

Age Discrimination Act

Alcorn State University
Copiah-Lincoln Community College
Delta State University
Department of Human Services
Mississippi Authority for Educational Television
Mississippi State University
Office of the Attorney General
State Board for Community & Junior Colleges
University of Mississippi

16

Drug Free Workplace Act

Alcorn State University
Copiah-Lincoln Community College
Delta State University
Department of Human Services
Department of Rehabilitation Services
Dept of Economic & Community Development
East Central Community College
East Mississippi Community College
Department of Mental Health
Employment Security Commission
Hinds Community College
Holmes Community College
Itawamba Community College
Jones County Junior College
Meridian Community College
Mississippi Authority for Educational Television
Mississippi Gulf Coast Community College
Mississippi State University
Mississippi Valley State University
Northeast Mississippi Community College
Northwest Mississippi Community College
Office of the Attorney General
Pat Harrison Waterway District
Pearl River Community College
Southwest Mississippi Community College
University of Mississippi
University of Southern Mississippi

Appendix F (continued)
Mandates in PEER's Survey and Agencies Reporting Expenditures for Those Mandates

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Resource Conservation and Recovery Act (RCRA)	**Americans with Disabilities Act (ADA)**
Copiah-Lincoln Community College	Alcorn State University
Delta State University	Board of Cosmetology
Department of Environmental Quality	Copiah-Lincoln Community College
Hinds Community College	Delta State University
Miss. Military Department	Department of Archives & History
Mississippi Delta Community College	Department of Human Services
Mississippi Gulf Coast Community College	Department of Insurance
Mississippi State University	Department of Mental Health
Mississippi University for Women	Department of Transportation
Mississippi Valley State University	Department of Rehabilitation Services
Northwest Mississippi Community College	Dept of Economic & Community Development
Office of the Attorney General	East Central Community College
Pat Harrison Waterway District	East Mississippi Community College
State Fire Academy	Employment Security Commission
University Medical Center	Hinds Community College
University of Southern Mississippi	Industries for the Blind
	Information Technology Services
	Itawamba Community College
	Jones County Junior College
	Meridian Community College
	Mississippi Authority for Educational Television
	Mississippi Delta Community College
	Mississippi Forestry Commission
	Mississippi Gulf Coast Community College
	Mississippi State University
	Mississippi University for Women
	Mississippi Valley State University
	Northeast Mississippi Community College
	Northwest Mississippi Community College
	Pat Harrison Waterway District
	Pearl River Basin Development District
	Pearl River Community College
	Pearl River Valley Water Supply District
	Southwest Mississippi Community College
	State Board for Community & Junior Colleges
	State Personnel Board
	University Medical Center
	University of Mississippi
	Workers' Compensation Commission

SOURCE: PEER survey of state agencies.

Appendix G

Proposed Legislation For the Mississippi Legislature to Memorialize the United States Congress Concerning Federal Mandates

____ CONCURRENT RESOLUTION NO. ___

A CONCURRENT RESOLUTION MEMORIALIZING CONGRESS TO CONSIDER VARIOUS POSITIVE REFORMS CONCERNING THE USE OF FEDERAL MANDATES AND THEIR EFFECT ON INDIVIDUAL STATES, INCLUDING MISSISSIPPI.

WHEREAS, federal aid to state and local government has been declining since the late 1970s; and

WHEREAS, regulatory requirements imposed by Congress have continued unabated or have actually increased during this period; and

WHEREAS, many state leaders perceive that they have often been viewed by Congress as special interest groups rather than as important components within the structure of federalism; and

WHEREAS, many state leaders are concerned that the federal government is relying increasingly on inflexible regulatory requirements for programs with little or no allowance for state and local oversight; and

WHEREAS, state officials responsible for these programs increasingly cite negative factors such as increased cost; difficult, vague, confusing or overly detailed federal record-keeping requirements; insufficient state discretion in seeking national goals in attempting to carry out federal mandates; and

WHEREAS, state officials generally support the overall goals of federal mandates; and

WHEREAS, legal research has shown that few federal mandates are likely to be overturned by the United State Supreme Court; and

NOW, THEREFORE, BE IT RESOLVED BY THE ____ OF THE STATE OF MISSISSIPPI, THE ____ CONCURRING THEREIN, that we do hereby memorialize the U.S. Congress to consider reducing the burden of federal mandates by: providing additional funding to state and local governments, modifying applicable federal statutes to permit greater regulatory flexibility, and abandoning or relaxing requirements for statutes which have not proven to advance federal policy goals; and

That the U.S. Congress increase its communications with state leaders during its deliberations on federal laws which affect state and local governments; and

That the U.S. Congress enact federal laws with the goal of uniformity of result in mind, while leaving states free to achieve those outcomes by whatever method they deem most appropriate and reasonable; and

That the U.S. Congress take federal, state and local costs of policy implementation into consideration before enacting laws containing federal mandates to state and local governments, and further assume a substantial share of mandate costs as an incentive to avoid overly burdensome mandates and to aid in seeking the least costly alternative; and

That in taking all public sector costs into consideration, as required in the federal Unfunded Mandates Reform Act of 1995, the U.S. Congress should refrain from exercising its prerogative to disregard its own reform measure.

BE IT FURTHER RESOLVED, That the Legislatures of every state of the nation are hereby urged to join in this recommendation to the U.S. Congress.

BE IT FURTHER RESOLVED, That a copy of this Resolution shall be officially transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, to each member of the Mississippi congressional delegation, and to each of the Legislatures of the several states of the Union.

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