CSG Testifies at Senate Hearing on Unfunded Mandates

By Jeffrey Stockdale

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On June 7, Tennessee Senate Majority Leader Mark Norris, who served as the 2014 CSG national chair, testified before the U.S. Senate Environment and Public Works Subcommittee on Superfund, Waste Management and Regulatory Affairs at a hearing regarding “Oversight of EPA Unfunded Mandates on State, Local, and Tribal Governments.” The hearing was a continuation of the subcommittee’s oversight of the Environmental Protection Agency’s rulemaking process and examined the agency’s compliance with the Unfunded Mandates Reform Act, or UMRA, and the impact of unfunded mandates on state, local and tribal governments.

The UMRA, enacted in 1995, was designed to limit the number of unfunded federal mandates on state, local and tribal governments and to ensure federal agencies took costs into account when imposing new regulations.

“UMRA was created to make certain federal agencies took the time to consider how federal regulations would impact those required to comply with them,” said Subcommittee Chairman Sen. Mike Rounds of South Dakota in his opening statement. “Unfortunately, the EPA has issued regulations in a way counter to the core intent of UMRA and continues to impose burdensome, costly regulations without undertaking the proper consultation process or analyzing more cost-effective alternatives.”

Congress is considering a bill to amend UMRA by requiring a cost analysis for all final rules and mandating federal agencies to conduct retrospective analyses for existing regulations if requested by the chairman or ranking member of a House or Senate Committee. The bill, H.R. 50, was sponsored by Rep. Virginia Foxx of North Carolina and has passed the House on four separate occasions, but the legislation has never received consideration by the full Senate. CSG submitted a letter in support of the bill to Congress and urged the Senate to move forward with passage.

During his testimony, Norris told the subcommittee, “We need to take a closer look at what we call ‘consultation’ with states. Many of our state legislators, like me, are truly citizen legislators—we hold full time jobs in addition to our public service. It is difficult, if not impossible, to keep up with and meaningfully respond to the proliferation of regulations and paperwork required.”

UMRA requires agencies to prepare a written statement and cost-benefit analysis for rules that may result in expenditures to state, local and tribal governments of $100 million or more in any one year. A 2015 report by the White House’s Office of Management and Budget, or OMB, estimated that federal regulations and unfunded mandates cost states, cities and the general public between $57 billion and $85 billion each year. OMB also has reported that rules triggering UMRA overwhelmingly have been issued by the EPA. From 2005 to 2008, EPA finalized seven regulations that triggered UMRA. From 2009 to 2014, the EPA issued 19 rules that contained unfunded mandates.
Also present at the hearing was the full committee chairman, Sen. James Inhofe of Oklahoma, who stated, “EPA has used UMRA’s definitions and exemptions to their advantage to push the administration’s priorities through the rulemaking process while minimizing the far-reaching effects of its rules. For instance, EPA claimed its Waters of the U.S. rule and so-called Clean Power Plan does not trigger UMRA because the rules are not expensive enough.”

In the past year, CSG has had the opportunity to chair the coalition of state and local government organizations—also known as the Big 7—and has made this issue a priority. Along with CSG, the organizations include the National Governors Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors and the International City/County Management Association.

The coalition has worked to identify recommendations on how to improve the state-federal regulatory process, including: updating the Unfunded Mandates Reform Act, establishing consistent state-federal advisory committees within federal agencies and ensuring state legislators know who to contact in each federal agency. In addition, under the leadership of Norris and another former CSG national chair, Alaska state Sen. Gary Stevens, CSG adopted a “Statement of Principles on Federalism,” [2] which outlines the organization’s vision to limit unnecessary federal intrusions into areas of state responsibility and to foster effective cooperation with the federal government in areas of shared jurisdiction.

Norris told the subcommittee, “All too often, we, meaning states, are treated as incidental, rather than integral, to our republic and the process of governing.” CSG will continue to identify practical ways to improve the consultation process and ensure that states are true partners in our federal system.

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