

Calendar No. 551

103^D CONGRESS
2^D SESSION

S. 993

[Report No. 103-330]

A BILL

To end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

AUGUST 10 (legislative day, AUGUST 8), 1994

Reported with an amendment and an amendment to the
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IN THE SENATE OF THE UNITED STATES

MAY 20 (legislative day, APRIL 19), 1993

Mr. KEMPTHORNE (for himself, Mr. COVERDELL, Mr. GREGG, Mr. CRAIG, Mr. STEVENS, Mr. BURNS, Mr. PRESSLER, Mr. NICKLES, Mr. McCONNELL, Mr. DURENBERGER, Mr. SIMPSON, Mr. MATHEWS, Ms. MOSELEY-BRAUN, Mr. BENNETT, Mr. BOND, Mr. BROWN, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. DOLE, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. GRAMM, Mrs. HUTCHISON, Mrs. KASSEBAUM, Mr. LUGAR, Mr. MACK, Mr. DECONCINI, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. LOTT, Mr. BREAU, Mr. McCAIN, Mr. WALLOP, Mr. SMITH, Mr. HELMS, Mr. THURMOND, Mr. WARNER, Mr. BOREN, Mr. D'AMATO, Mr. GORTON, Mr. GRASSLEY, Mr. HATCH, Mr. JOHNSTON, Mr. NUNN, Mr. ROTH, Mr. SHELBY, Mr. HEFLIN, Mr. BRYAN, Mr. SPECTER, Mr. DANFORTH, Mr. SIMON, Mr. KERREY, Mr. KOHL, Mr. ROBB, Mr. AKAKA, Mr. GLENN, Mr. DORGAN, Mr. DOMENICI, Mr. LIEBERMAN, Mr. PRYOR, Mr. BUMPERS, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

AUGUST 10 (legislative day, AUGUST 8), 1994

Reported by Mr. GLENN, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Regulatory
 5 Relief Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds and declares
 8 that—

9 (1) unfunded Federal mandates imposed on
 10 State and local governments have become increas-
 11 ingly extensive in recent years;

12 (2) such mandates have, in many instances,
 13 added to the growing deficits in State and local gov-
 14 ernment budgets and have resulted in the need for
 15 State and local governments to increase revenue or
 16 curtail sometimes essential services; and

17 (3) such excessive fiscal burdens on State and
 18 local governments have undermined, in many in-
 19 stances, the ability of State and local governments

1 to achieve their responsibilities under State and local
2 law.

3 (b) PURPOSE.—The purpose of this Act is to require
4 that the Federal Government pays the total amount of di-
5 rect costs incurred by State and local governments in com-
6 plying with certain Federal mandates which take effect on
7 or after the date of the enactment of this Act under a
8 Federal statute or regulation.

9 **SEC. 3. DEFINITIONS.**

10 For the purposes of this Act—

11 (1) the term “direct costs” means the amount
12 of costs incurred by a State or local government
13 dedicated to compliance with a Federal statute or
14 regulation or that is in excess of the amount that
15 the State or local government would incur in carry-
16 ing out that activity in the absence of the regulation,
17 but does not include any amount that a State or
18 local government is required or permitted by law to
19 contribute as a non-Federal share under a Federal
20 assistance program;

21 (2) the term “Director” shall mean the Direc-
22 tor of the Congressional Budget Office or his or her
23 designee;

1 (3) the term “Federal mandates” means a statute or regulation that requires a State or local government to—

2 (A) take certain actions (including a requirement that a government meet national standards in providing a service); or

3 (B) comply with certain specified conditions in order to receive or continue to receive Federal assistance and which requires the termination or reduction of such assistance if such government fails to comply with such conditions;

4 (4) the term “local government” has the same meaning as in section 6501(6) of title 31, United States Code; and

5 (5) the term “State” has the same meaning as in section 6501(8) of title 31, United States Code.

6 **SEC. 4. FEDERAL FUNDING REQUIREMENT.**

7 (a) **IN GENERAL.**—Notwithstanding any other provision of law, any requirement under a Federal statute or regulation that creates a Federal mandate shall apply to the State or local government only if all funds necessary to pay the direct costs incurred by the State or local government in conducting the activity are provided by the

1 Federal Government for the fiscal year in which the direct
2 cost is incurred.

3 (b) APPLICATION.—This section shall apply only to
4 requirements which take effect on or after the date of the
5 enactment of this Act.

6 **SEC. 5. DUTIES OF THE DIRECTOR.**

7 (a) FISCAL NOTE.—The Director shall prepare, to
8 accompany each bill, resolution or conference report re-
9 ported by any committee of the House of Representatives
10 or the Senate or considered on the floor of either House,
11 an economic analysis of the effects of such bill or resolu-
12 tion by each State government and by each local govern-
13 ment within each State in complying with the Federal
14 mandate. The analysis prepared by the Director shall be
15 included in the report accompanying such bill or resolution
16 if timely submitted to such committee before such report
17 is filed.

18 (b) REPORT OF THE DIRECTOR.—For each fiscal
19 year in which a Federal mandate will be in effect, the Di-
20 rector, in consultation with representatives of State and
21 local governments, shall prepare and submit to the Presi-
22 dent and the Congress, with the President's budget in
23 January preceding the beginning of a fiscal year, a report
24 that contains an estimate, for that fiscal year and the fol-
25 lowing fiscal year, of the total amount of direct costs that

1 have been incurred or will be incurred by each State gov-
 2 ernment and by each local government within each State
 3 in complying with the Federal mandate.

4 **SEC. 6. EFFECT OF SUBSEQUENT ENACTMENTS.**

5 No statute enacted after the date of enactment of this
 6 Act shall supersede this Act unless the statute does so in
 7 specific terms, referring to this Act, and declares that stat-
 8 ute supersedes this Act.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Federal Mandate Ac-*
 11 *countability and Reform Act of 1994”.*

12 **SEC. 2. PURPOSES.**

13 *The purposes of this Act are—*

14 *(1) to strengthen the partnership between the*
 15 *Federal Government and States, local governments,*
 16 *and tribal governments;*

17 *(2) to end the imposition, in the absence of full*
 18 *consideration by Congress, of Federal mandates on*
 19 *States, local governments, and tribal governments*
 20 *without adequate Federal funding, in a manner that*
 21 *may displace other essential State, local, and tribal*
 22 *governmental priorities;*

23 *(3) to assist Congress in its consideration of pro-*
 24 *posed legislation establishing or revising Federal pro-*
 25 *grams containing Federal mandates affecting States,*

1 *local governments, tribal governments, and the pri-*
2 *vate sector by—*

3 *(A) providing for the development of infor-*
4 *mation about the nature and size of mandates in*
5 *proposed legislation; and*

6 *(B) establishing a mechanism to bring such*
7 *information to the attention of the Senate before*
8 *the Senate votes on proposed legislation;*

9 *(4) to promote informed and deliberate decisions*
10 *by Congress on the appropriateness of Federal man-*
11 *dates in any particular instances;*

12 *(5) to establish a point-of-order vote on the con-*
13 *sideration in the Senate of legislation containing sig-*
14 *nificant Federal mandates; and*

15 *(6) to assist Federal agencies in their consider-*
16 *ation of proposed regulations affecting States, local*
17 *governments, and tribal governments, by—*

18 *(A) requiring that Federal agencies develop*
19 *a process to enable the elected and other officials*
20 *of States, local governments, and tribal govern-*
21 *ments to provide input when Federal agencies*
22 *are developing regulations; and*

23 *(B) requiring that Federal agencies prepare*
24 *and consider better estimates of the budgetary*
25 *impact of regulations containing Federal man-*

1 *dates upon States, local governments, and tribal*
2 *governments before adopting such regulations,*
3 *and ensuring that small governments are given*
4 *special consideration in that process.*

5 **SEC. 3. DEFINITIONS.**

6 *For purposes of this Act—*

7 (1) *FEDERAL INTERGOVERNMENTAL MANDATE.—*

8 *The term “Federal intergovernmental mandate”*
9 *means—*

10 (A) *any provision in a bill or joint resolu-*
11 *tion before Congress or in a proposed or final*
12 *Federal regulation that—*

13 (i) *would impose a duty upon States,*
14 *local governments, or tribal governments*
15 *that is enforceable by administrative, civil,*
16 *or criminal penalty or by injunction (other*
17 *than a condition of Federal assistance or a*
18 *duty arising from participation in a vol-*
19 *untary Federal program, except as provided*
20 *in subparagraph (B)); or*

21 (ii) *would reduce or eliminate the*
22 *amount of authorization of appropriations*
23 *for Federal financial assistance that would*
24 *be provided to States, local governments, or*
25 *tribal governments for the purpose of com-*

1 *plying with any such previously imposed*
2 *duty; or*

3 *(B) any provision in a bill or joint resolu-*
4 *tion before Congress or in a proposed or final*
5 *Federal regulation that relates to a then-existing*
6 *Federal program under which \$500,000,000 or*
7 *more is provided annually to States, local gov-*
8 *ernments, and tribal governments under entitle-*
9 *ment authority (as defined in section 3(9) of the*
10 *Congressional Budget Act of 1974 (2 U.S.C.*
11 *622(9))), if—*

12 *(i)(I) the bill or joint resolution or reg-*
13 *ulation would increase the stringency of*
14 *conditions of assistance to States, local gov-*
15 *ernments, or tribal governments under the*
16 *program; or*

17 *(II) would place caps upon, or other-*
18 *wise decrease, the Federal Government's re-*
19 *sponsibility to provide funding to States,*
20 *local governments, or tribal governments*
21 *under the program; and*

22 *(ii) the States, local governments, or*
23 *tribal governments that participate in the*
24 *Federal program lack authority under that*
25 *program to amend their financial or pro-*

1 *grammatic responsibilities to continue pro-*
2 *viding required services that are affected by*
3 *the bill or joint resolution or regulation.*

4 (2) *FEDERAL PRIVATE SECTOR MANDATE.*—*The*
5 *term “Federal private sector mandate” means any*
6 *provision in a bill or joint resolution before Congress*
7 *that—*

8 (A) *would impose a duty upon the private*
9 *sector that is enforceable by administrative, civil,*
10 *or criminal penalty or by injunction (other than*
11 *a condition of Federal assistance or a duty aris-*
12 *ing from participation in a voluntary Federal*
13 *program); or*

14 (B) *would reduce or eliminate the amount*
15 *of authorization of appropriations for Federal fi-*
16 *nancial assistance that will be provided to the*
17 *private sector for the purpose of complying with*
18 *any such duty.*

19 (3) *FEDERAL MANDATE.*—*The term “Federal*
20 *mandate” means a Federal intergovernmental man-*
21 *date or a Federal private sector mandate, as defined*
22 *in paragraphs (1) and (2).*

23 (4) *DIRECT COSTS.*—

24 (A) *FOR A FEDERAL INTERGOVERNMENTAL*
25 *MANDATE.*—*In the case of a Federal intergovern-*

1 *mental mandate, the term “direct costs” means*
2 *the aggregate estimated amounts that all States,*
3 *local governments, and tribal governments would*
4 *be required to spend in order to comply with the*
5 *Federal intergovernmental mandate, or, in the*
6 *case of a bill or joint resolution referred to in*
7 *paragraph (1)(A)(ii), the amount of Federal fi-*
8 *nancial assistance eliminated or reduced.*

9 *(B) FOR A FEDERAL PRIVATE SECTOR MAN-*
10 *DATE.—In the case of a Federal private sector*
11 *mandate, the term “direct costs” means the ag-*
12 *gregate amounts that the private sector will be*
13 *required to spend in order to comply with the*
14 *Federal private sector mandate.*

15 *(C) NOT INCLUDED.—The term “direct*
16 *costs” does not include—*

17 *(i) estimated amounts that the States,*
18 *local governments, and tribal governments*
19 *(in the case of a Federal intergovernmental*
20 *mandate), or the private sector (in the case*
21 *of a Federal private sector mandate), would*
22 *spend—*

23 *(I) to comply with or carry out*
24 *all applicable Federal, State, local, and*
25 *tribal laws and regulations adopted be-*

1 *fore the adoption of the Federal man-*
2 *date; or*

3 *(II) to continue to carry out*
4 *State, local governmental, and tribal*
5 *governmental programs, or private-sec-*
6 *tor business or other activities estab-*
7 *lished at the time of adoption of the*
8 *Federal mandate; or*

9 *(ii) expenditures to the extent that they*
10 *will be offset by any direct savings to be en-*
11 *joyed by the States, local governments, and*
12 *tribal governments, or by the private sector,*
13 *as a result of—*

14 *(I) their compliance with the Fed-*
15 *eral mandate; or*

16 *(II) other changes in Federal law*
17 *or regulation that are enacted or*
18 *adopted in the same bill or joint reso-*
19 *lution or proposed or final Federal reg-*
20 *ulation and that govern the same ac-*
21 *tivity as is affected by the Federal*
22 *mandate.*

23 *(D) ASSUMPTION.—Direct costs shall be de-*
24 *termined on the assumption that States, local*
25 *governments, tribal governments, and the private*

1 *sector will take all reasonable steps necessary to*
2 *mitigate the costs resulting from the Federal*
3 *mandate, and will comply with applicable*
4 *standards of practice and conduct established by*
5 *recognized professional or trade associations.*

6 (5) *AMOUNT OF AUTHORIZATION OF APPROPRIA-*
7 *TIONS FOR FEDERAL FINANCIAL ASSISTANCE.—The*
8 *term “amount” with respect to an authorization of*
9 *appropriations for Federal financial assistance*
10 *means—*

11 (A) *the amount of budget authority (as de-*
12 *finied in section 3(2)(A) of the Congressional*
13 *Budget Act of 1974 (2 U.S.C. 622(2)(A))) of any*
14 *Federal grant assistance; and*

15 (B) *the subsidy amount (as defined as*
16 *“cost” in section 502(5) of the Federal Credit*
17 *Reform Act of 1990 (2 U.S.C. 661a(5)(a))) of*
18 *any Federal program providing loan guarantees*
19 *or direct loans.*

20 (6) *PRIVATE SECTOR.—The term “private sec-*
21 *tor” means individuals, partnerships, associations,*
22 *corporations, business trusts, or legal representatives,*
23 *organized groups of individuals, and educational and*
24 *other nonprofit institutions.*

25 (7) *OTHER DEFINITIONS.—*

1 (A) *AGENCY*.—The term “agency” has the
2 meaning stated in section 551(1) of title 5,
3 United States Code, but does not include inde-
4 pendent regulatory agencies, as defined by sec-
5 tion 3502(10) of title 44, United States Code.

6 (B) *DIRECTOR*.—The term “Director”
7 means the Director of the Congressional Budget
8 Office.

9 (C) *LOCAL GOVERNMENT*.—The term “local
10 government” has the same meaning as in section
11 6501(6) of title 31, United States Code.

12 (D) *REGULATION OR RULE*.—The term
13 “regulation” or “rule” has the meaning of “rule”
14 as defined in section 601(2) of title 5, United
15 States Code.

16 (E) *SMALL GOVERNMENT*.—The term “small
17 government” means any small governmental ju-
18 risdiction as defined in section 601(5) of title 5,
19 United States Code, and any tribal government.

20 (F) *STATE*.—The term “State” has the
21 same meaning as in section 6501(9) of title 31,
22 United States Code.

1 **SEC. 4. EXCLUSIONS.**

2 *This Act shall not apply to any provision in a bill*
3 *or joint resolution before Congress and any provision in a*
4 *proposed or final Federal regulation that—*

5 *(1) enforces constitutional rights of individuals;*

6 *(2) establishes or enforces any statutory rights*
7 *that prohibit discrimination on the basis of race, reli-*
8 *gion, gender, national origin, or handicapped or dis-*
9 *ability status;*

10 *(3) requires compliance with accounting and au-*
11 *ditng procedures with respect to grants or other*
12 *money or property provided by the United States*
13 *Government;*

14 *(4) provides for emergency assistance or relief at*
15 *the request of any State, local government, or tribal*
16 *government or any official of any of them;*

17 *(5) is necessary for the national security or the*
18 *ratification or implementation of international treaty*
19 *obligations; or*

20 *(6) the President designates as emergency legisla-*
21 *tion and that the Congress so designates in statute.*

22 **SEC. 5. AGENCY ASSISTANCE.**

23 *Each agency shall provide to the Director of the Con-*
24 *gressional Budget Office such information and assistance*
25 *as he may reasonably request to assist him in performing*
26 *his responsibilities under this Act.*

1 **TITLE I—LEGISLATIVE**
2 **ACCOUNTABILITY AND REFORM**

3 **SEC. 101. DUTIES OF CONGRESSIONAL COMMITTEES.**

4 (a) *COMMITTEE REPORT.*—

5 (1) *REGARDING FEDERAL MANDATES.*—

6 (A) *IN GENERAL.*—When a committee of au-
7 thorization of the House of Representatives or the
8 Senate reports a bill or joint resolution of public
9 character that includes any Federal mandate, the
10 committee shall issue a report to accompany the
11 bill or joint resolution containing the informa-
12 tion required by subparagraphs (B) and (C).

13 (B) *REPORTS ON FEDERAL MANDATES.*—
14 Each report required by subparagraph (A) shall
15 contain—

16 (i) an identification and description,
17 prepared in consultation with the Director,
18 of any Federal mandates in the bill or joint
19 resolution, including the expected direct
20 costs to States, local governments, and trib-
21 al governments, and to the private sector,
22 required to comply with the Federal man-
23 dates; and

24 (ii) a qualitative, and if possible, a
25 quantitative assessment of costs and benefits

1 *anticipated from the Federal mandates (in-*
2 *cluding the enhancement of health and safe-*
3 *ty and the protection of the natural envi-*
4 *ronment).*

5 (C) *INTERGOVERNMENTAL MANDATES.—If*
6 *any of the Federal mandates in the bill or joint*
7 *resolution are Federal intergovernmental man-*
8 *dates, the report required by subparagraph (A)*
9 *shall also contain—*

10 (i)(I) *a statement of the amount, if*
11 *any, of increase in authorization of appro-*
12 *priations under existing Federal financial*
13 *assistance programs, or of authorization of*
14 *appropriations for new Federal financial*
15 *assistance, provided by the bill or joint reso-*
16 *lution and usable for activities of States,*
17 *local governments, or tribal governments*
18 *subject to the Federal intergovernmental*
19 *mandates; and*

20 (II) *a statement of whether the com-*
21 *mittee intends that the Federal intergovern-*
22 *mental mandates be partly or entirely un-*
23 *funded, and if so, the reasons for that inten-*
24 *tion;*

1 (ii) any existing sources of Federal as-
2 sistance in addition to those identified in
3 clause (i) that may assist States, local gov-
4 ernments, and tribal governments in meet-
5 ing the direct costs of the Federal intergov-
6 ernmental mandates; and

7 (iii) an identification of one or more of
8 the following: reductions in authorization of
9 existing appropriations, a reduction in di-
10 rect spending, or an increase in receipts
11 (consistent with the amount identified
12 clause (i)(I)).

13 (2) *PREEMPTION CLARIFICATION AND INFORMA-*
14 *TION.*—When a committee of authorization of the
15 House of Representatives or the Senate reports a bill
16 or joint resolution of public character, the committee
17 report accompanying the bill or joint resolution shall
18 contain, if relevant to the bill or joint resolution, an
19 explicit statement on the extent to which the bill or
20 joint resolution preempts any State, local, or tribal
21 law, and, if so, an explanation of the reasons for such
22 preemption.

23 (b) *SUBMISSION OF BILLS TO THE DIRECTOR.*—When
24 a committee of authorization of the House of Representa-
25 tives or the Senate reports a bill or joint resolution of a

1 *public character, the committee shall promptly provide the*
2 *bill or joint resolution to the Director and shall identify*
3 *to the Director any Federal mandates contained in the bill*
4 *or resolution.*

5 *(c) PUBLICATION OF STATEMENT FROM THE DIREC-*
6 *TOR.—*

7 *(1) IN GENERAL.—Upon receiving a statement*
8 *(including any supplemental statement) from the Di-*
9 *rector pursuant to section 102(c), a committee of the*
10 *House of Representatives or the Senate shall publish*
11 *the statement in the committee report accompanying*
12 *the bill or joint resolution to which the statement re-*
13 *lates if the statement is available soon enough to be*
14 *included in the printed report.*

15 *(2) IF NOT INCLUDED.—If the statement is not*
16 *published in the report, or if the bill or joint resolu-*
17 *tion to which the statement relates is expected to be*
18 *considered by the House of Representatives or the*
19 *Senate before the report is published, the committee*
20 *shall cause the statement, or a summary thereof, to be*
21 *published in the Congressional Record in advance of*
22 *floor consideration of the bill or joint resolution.*

23 **SEC. 102. DUTIES OF THE DIRECTOR.**

24 *(a) STUDIES.—*

1 (1) *PROPOSED LEGISLATION.*—As early as prac-
2 *ticable in each new Congress, any committee of the*
3 *House of Representatives or the Senate which antici-*
4 *pates that the committee will consider any proposed*
5 *legislation establishing, amending, or reauthorizing*
6 *any Federal program likely to have a significant*
7 *budgetary impact on States, local governments, or*
8 *tribal governments, or likely to have a significant fi-*
9 *nancial impact on the private sector, including any*
10 *legislative proposal submitted by the executive branch*
11 *likely to have such a budgetary or financial impact,*
12 *shall request that the Director initiate a study of the*
13 *proposed legislation in order to develop information*
14 *that may be useful in analyzing the costs of any Fed-*
15 *eral mandates that may be included in the proposed*
16 *legislation.*

17 (2) *CONSIDERATIONS.*—In conducting the study
18 under paragraph (1), the Director shall—

19 (A) *solicit and consider information or*
20 *comments from elected officials (including their*
21 *designated representatives) of States, local gov-*
22 *ernments, tribal governments, designated rep-*
23 *resentatives of the private sector, and such other*
24 *persons as may provide helpful information or*
25 *comments;*

1 (B) consider establishing advisory panels of
2 elected officials (including their designated rep-
3 resentatives) of States, local governments, tribal
4 governments, designated representatives of the
5 private sector, and other persons if the Director
6 determines, in the Director's discretion, that such
7 advisory panels would be helpful in performing
8 the Director's responsibilities under this section;
9 and

10 (C) consult with the relevant committees of
11 the House of Representatives and of the Senate.

12 (b) CONSULTATION.—The Director shall, at the request
13 of any committee of the House of Representatives or of the
14 Senate, consult with and assist such committee in analyz-
15 ing the budgetary or financial impact of any proposed legis-
16 lation that may have—

17 (1) a significant budgetary impact on State,
18 local, or tribal governments; or

19 (2) a significant financial impact on the private
20 sector.

21 (c) STATEMENTS ON NONAPPROPRIATIONS BILLS AND
22 JOINT RESOLUTIONS.—

23 (1) FEDERAL INTERGOVERNMENTAL MANDATES
24 IN REPORTED BILLS AND JOINT RESOLUTIONS.—For
25 each bill or joint resolution of a public character re-

1 *ported by any committee of authorization of the*
2 *House of Representatives or of the Senate, the Direc-*
3 *tor shall prepare and submit to the committee a state-*
4 *ment as follows:*

5 (A) *DIRECT COSTS AT OR BELOW THRESH-*
6 *OLD.—If the Director estimates that the direct*
7 *costs of all Federal intergovernmental mandates*
8 *in the bill or joint resolution will not equal or*
9 *exceed \$50,000,000 (adjusted annually for infla-*
10 *tion by the Consumer Price Index) in the fiscal*
11 *year in which any Federal intergovernmental*
12 *mandate in the bill or joint resolution (or in any*
13 *necessary implementing regulation) would first*
14 *be effective or in any of the 4 fiscal years follow-*
15 *ing such fiscal year, the Director shall so state*
16 *and shall briefly explain the basis of the esti-*
17 *mate.*

18 (B) *DIRECT COSTS ABOVE THRESHOLD.—*

19 (i) *IN GENERAL.—If the Director esti-*
20 *mates that the direct costs of all Federal*
21 *intergovernmental mandates in the bill or*
22 *joint resolution will equal or exceed*
23 *\$50,000,000 (adjusted annually for infla-*
24 *tion by the Consumer Price Index) in the*
25 *fiscal year in which any Federal intergov-*

1 *ernmental mandate in the bill or joint reso-*
2 *lution (or in any necessary implementing*
3 *regulation) would first be effective or in any*
4 *of the 4 fiscal years following such fiscal*
5 *year, the Director shall so state, specify the*
6 *estimate, and briefly explain the basis of the*
7 *estimate.*

8 *(ii) ESTIMATES.—The estimate re-*
9 *quired by clause (i) shall include—*

10 *(I) estimates (and brief expla-*
11 *nations of the basis of the estimates)*
12 *of—*

13 *(aa) the total amount of di-*
14 *rect costs of complying with the*
15 *Federal intergovernmental man-*
16 *dates in the bill or joint resolu-*
17 *tion; and*

18 *(bb) the amount, if any, of*
19 *increase in authorization of ap-*
20 *propriations under existing Fed-*
21 *eral financial assistance pro-*
22 *grams, or of authorization of ap-*
23 *propriations for new Federal fi-*
24 *nancial assistance, provided by*
25 *the bill or joint resolution and us-*

1 able by States, local governments,
2 or tribal governments for activi-
3 ties subject to the Federal inter-
4 governmental mandates;

5 (II) estimates, if and to the extent
6 that the Director determines that accu-
7 rate estimates are reasonably feasible,
8 of—

9 (aa) future direct costs of
10 Federal intergovernmental man-
11 dates to the extent that they sig-
12 nificantly differ from or extend
13 beyond the 5-year time period re-
14 ferred to in clause (i); and

15 (bb) any disproportionate
16 budgetary effects of Federal inter-
17 governmental mandates and of
18 any Federal financial assistance
19 in the bill or joint resolution upon
20 any particular regions of the
21 country or particular States, local
22 governments, tribal governments,
23 or urban or rural or other types of
24 communities; and

1 (III) any amounts appropriated
2 in the prior fiscal year to fund the ac-
3 tivities subject to the Federal intergov-
4 ernmental mandate.

5 (2) FEDERAL PRIVATE SECTOR MANDATES IN RE-
6 PORTED BILLS AND JOINT RESOLUTIONS.—For each
7 bill or joint resolution of a public character reported
8 by any committee of authorization of the House of
9 Representatives or of the Senate, the Director shall
10 prepare and submit to the committee a statement as
11 follows:

12 (A) DIRECT COSTS AT OR BELOW THRESH-
13 OLD.—If the Director estimates that the direct
14 costs of all Federal private sector mandates in
15 the bill or joint resolution will not equal or ex-
16 ceed \$200,000,000 (adjusted annually for infla-
17 tion by the Consumer Price Index) in the fiscal
18 year in which any Federal private sector man-
19 date in the bill or joint resolution (or in any
20 necessary implementing regulation) would first
21 be effective or in any of the 4 fiscal years follow-
22 ing such fiscal year, the Director shall so state
23 and shall briefly explain the basis of the esti-
24 mate.

25 (B) DIRECT COSTS ABOVE THRESHOLD.—

1 (i) *IN GENERAL.*—If the Director esti-
2 mates that the direct costs of all Federal
3 private sector mandates in the bill or joint
4 resolution will equal or exceed \$200,000,000
5 (adjusted annually for inflation by the
6 Consumer Price Index) any Federal private
7 sector mandate in the bill or joint resolution
8 (or in any necessary implementing regula-
9 tion) would first be effective or in any of the
10 4 fiscal years following such fiscal year, the
11 Director shall so state and shall briefly ex-
12 plain the basis of the estimate.

13 (ii) *ESTIMATES.*—Estimates required
14 by this subparagraph shall include—

15 (I) estimates (and a brief expla-
16 nation of the basis of the estimates)
17 of—

18 (aa) the total amount of di-
19 rect costs of complying with the
20 Federal private sector mandates
21 in the bill or joint resolution; and

22 (bb) the amount, if any, of
23 increase in authorization of ap-
24 propriations under existing Fed-
25 eral financial assistance pro-

1 *grams, or of authorization of ap-*
2 *propriations for new Federal fi-*
3 *nancial assistance, provided by*
4 *the bill or joint resolution and us-*
5 *able by the private sector for ac-*
6 *tivities subject to the Federal pri-*
7 *vate sector mandates;*

8 *(II) estimates, if and to the extent*
9 *that the Director determines that such*
10 *estimates are reasonably feasible, of—*

11 *(aa) future costs of Federal*
12 *private sector mandates to the ex-*
13 *tent that they differ significantly*
14 *from or extend beyond the 5-year*
15 *time period referred to in clause*
16 *(i);*

17 *(bb) any disproportionate fi-*
18 *nancial effects of Federal private*
19 *sector mandates and of any Fed-*
20 *eral financial assistance in the*
21 *bill or joint resolution upon par-*
22 *ticular industries or sectors of the*
23 *economy, States, regions, and*
24 *urban or rural or other types of*
25 *communities; and*

1 (cc) the effect of Federal pri-
2 vate sector mandates in the bill or
3 joint resolution on the national
4 economy, including on productiv-
5 ity, economic growth, full employ-
6 ment, creation of productive jobs,
7 and international competitiveness
8 of American goods and services;
9 and

10 (III) any amounts appropriated
11 in the prior fiscal year to fund activi-
12 ties subject to the Federal private sec-
13 tor mandate.

14 (C) FAILURE TO MAKE ESTIMATE.—If the
15 Director determines that it is not reasonably fea-
16 sible for him to make a reasonable estimate that
17 would be required by subparagraphs (A) and (B)
18 with respect to Federal private sector mandates,
19 the Director shall not make the estimate, but
20 shall report in his statement that the reasonable
21 estimate cannot be reasonably made and shall
22 include the reasons for that determination in the
23 statement.

24 (3) AMENDED BILLS AND JOINT RESOLUTIONS;
25 CONFERENCE REPORTS.—If the Director has prepared

1 *a statement that includes the determination described*
2 *in paragraph (1)(B)(i) for a bill or joint resolution,*
3 *and if that bill or joint resolution is passed in an*
4 *amended form (including if passed by one House as*
5 *an amendment in the nature of a substitute for the*
6 *language of a bill or joint resolution from the other*
7 *House) or is reported by a committee of conference in*
8 *an amended form, the committee of conference shall*
9 *ensure, to the greatest extent practicable, that the Di-*
10 *rector prepare a supplemental statement for the bill*
11 *or joint resolution. The requirements of section 103*
12 *shall not apply to the publication of any supple-*
13 *mental statement prepared under this subsection.*

14 (d) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
15 *authorized to be appropriated to the Congressional Budget*
16 *Office to carry out the provisions of this Act \$6,000,000,*
17 *for each of the fiscal years 1995, 1996, 1997, and 1998.*

18 (e) *TECHNICAL AMENDMENT.*—*Section 403 of the Con-*
19 *gressional Budget Act of 1974 is amended—*

20 (1) *in subsection (a)—*

21 (A) *by striking paragraph (2);*

22 (B) *in paragraph (3) by striking “para-*
23 *graphs (1) and (2)” and inserting “paragraph*
24 *(1)”;*

1 (C) by redesignating paragraphs (3) and
2 (4) as paragraphs (2) and (3), respectively;
3 (2) by striking “(a)”; and
4 (3) by striking subsections (b) and (c).

5 **SEC. 103. POINT OF ORDER IN THE SENATE.**

6 (a) *IN GENERAL.*—It shall not be in order in the Sen-
7 ate to consider any bill or joint resolution that is reported
8 by any committee of authorization of the Senate unless,
9 based upon a ruling of the presiding Officer—

10 (1) the committee has published a statement of
11 the Director in accordance with section 101(c) prior
12 to such consideration; and

13 (2) in the case of a bill or joint resolution con-
14 taining Federal intergovernmental mandates, either—

15 (A) the direct costs of all Federal intergov-
16 ernmental mandates in the bill or joint resolu-
17 tion are estimated not to equal or exceed
18 \$50,000,000 (adjusted annually for inflation by
19 the Consumer Price Index) in the fiscal year in
20 which any Federal intergovernmental mandate
21 in the bill or joint resolution (or in any nec-
22 essary implementing regulation) would first be
23 effective or in any of the 4 fiscal years following
24 such fiscal year, or

1 (B)(i) *the amount of the increase in author-*
2 *ization of appropriations under existing Federal*
3 *financial assistance programs, or of authoriza-*
4 *tion of appropriations for new Federal financial*
5 *assistance, provided by the bill or joint resolu-*
6 *tion and usable by States, local governments, or*
7 *tribal governments for activities subject to the*
8 *Federal intergovernmental mandates is at least*
9 *equal to the estimated amount of direct costs of*
10 *the Federal intergovernmental mandates; and*

11 (ii) *the committee of jurisdiction has identi-*
12 *fied in the bill or joint resolution one or more of*
13 *the following: a reduction in authorization of ex-*
14 *isting appropriations, a reduction in direct*
15 *spending, or an increase in receipts (consistent*
16 *with the amount identified in clause (i)).*

17 (b) *WAIVER.—The point of order under subsection (a)*
18 *may be waived in the Senate by a majority vote of the Mem-*
19 *bers voting (provided that a quorum is present) or by the*
20 *unanimous consent of the Senate.*

21 (c) *AMENDMENT TO RAISE AUTHORIZATION LEVEL.—*
22 *Notwithstanding the terms of subsection (a), it shall not be*
23 *out of order pursuant to this section to consider a bill or*
24 *joint resolution to which an amendment is proposed and*
25 *agreed to that would raise the amount of authorization of*

1 *appropriations to a level sufficient to satisfy the require-*
2 *ments of subsection (a)(2)(B)(i) and that would amend an*
3 *identification referred to in subsection (a)(2)(B)(ii) to sat-*
4 *isfy the requirements of that subsection, nor shall it be out*
5 *of order to consider such an amendment.*

6 **SEC. 104. EXERCISE OF RULEMAKING POWERS.**

7 *The provisions of sections 101, 102, 103, and 105 are*
8 *enacted by Congress—*

9 *(1) as an exercise of the rulemaking power of the*
10 *House of Representatives and the Senate, respectively,*
11 *and as such they shall be considered as part of the*
12 *rules of such House, respectively, and such rules shall*
13 *supersede other rules only to the extent that they are*
14 *inconsistent therewith; and*

15 *(2) with full recognition of the constitutional*
16 *right of either House to change such rules (so far as*
17 *relating to such House) at any time, in the same*
18 *manner, and to the same extent as in the case of any*
19 *other rule of each House.*

20 **SEC. 105. EFFECTIVE DATE.**

21 *This title shall apply to bills and joint resolutions re-*
22 *ported by committee on or after October 1, 1995.*

1 **TITLE II—REGULATORY**
2 **ACCOUNTABILITY AND REFORM**

3 **SEC. 201. REGULATORY PROCESS.**

4 (a) *IN GENERAL.*—Each agency shall, to the extent
5 *permitted in law, assess the effects of Federal regulations*
6 *on States, local governments, and tribal governments (other*
7 *than to the extent that such regulations incorporate require-*
8 *ments specifically set forth in legislation), including specifi-*
9 *cally the availability of resources to carry out any Federal*
10 *intergovernmental mandates in those regulations, and seek*
11 *to minimize those burdens that uniquely or significantly*
12 *affect such governmental entities, consistent with achieving*
13 *statutory and regulatory objectives.*

14 (b) *STATE, LOCAL GOVERNMENT, AND TRIBAL GOV-*
15 *ERNMENT INPUT.*—Each agency shall, to the extent per-
16 *mitted in law, develop an effective process to permit elected*
17 *officials (including their designated representatives) and*
18 *other representatives of States, local governments, and trib-*
19 *al governments to provide meaningful and timely input in*
20 *the development of regulatory proposals containing signifi-*
21 *cant Federal intergovernmental mandates. Such a process*
22 *shall be consistent with all applicable laws.*

23 (c) *AGENCY PLAN.*—

24 (1) *IN GENERAL.*—Before establishing any regu-
25 *latory requirements that might significantly or*

1 *uniquely affect small governments, agencies shall have*
2 *developed a plan under which the agency shall—*

3 *(A) provide notice of the contemplated re-*
4 *quirements to potentially affected small govern-*
5 *ments, if any;*

6 *(B) enable officials of affected small govern-*
7 *ments to provide input pursuant to subsection*
8 *(b); and*

9 *(C) inform, educate, and advise small gov-*
10 *ernments on compliance with the requirements.*

11 *(2) AUTHORIZATION.—There are hereby author-*
12 *ized to be appropriated to each agency to carry out*
13 *the provisions of this section, and for no other pur-*
14 *pose, such sums as are necessary.*

15 **SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REG-**
16 **ULATORY ACTIONS.**

17 *(a) IN GENERAL.—Before promulgating any final rule*
18 *that includes any Federal intergovernmental mandates that*
19 *may result in the expenditure by States, local governments,*
20 *or tribal governments, in the aggregate, of \$100,000,000 or*
21 *more (adjusted annually for inflation by the Consumer*
22 *Price Index) in any 1 year, and before promulgating any*
23 *general notice of proposed rulemaking that is likely to result*
24 *in promulgation of any such rule, the agency shall prepare*
25 *a written statement containing—*

1 (1) estimates by the agency, including the under-
2 lying analysis, of the anticipated costs to States, local
3 governments, and tribal governments of complying
4 with the Federal intergovernmental mandates, and of
5 the extent to which such costs may be paid with funds
6 provided by the Federal Government or otherwise
7 paid through Federal financial assistance;

8 (2) estimates by the agency, if and to the extent
9 that the agency determines that accurate estimates
10 are reasonably feasible, of—

11 (A) the future costs of Federal intergovern-
12 mental mandates; and

13 (B) any disproportionate budgetary effects
14 of the Federal intergovernmental mandates upon
15 any particular regions of the country or particu-
16 lar States, local governments, tribal governments,
17 urban or rural or other types of communities;

18 (3) a qualitative, and if possible, a quantitative
19 assessment of costs and benefits anticipated from the
20 Federal intergovernmental mandates (such as the en-
21 hancement of health and safety and the protection of
22 the natural environment); and

23 (4)(A) a description of the extent of any input
24 to the agency from elected representatives (including
25 their designated representatives) of the affected States,

1 *local governments, and tribal governments and of*
2 *other affected parties;*

3 *(B) a summary of the comments and concerns*
4 *that were presented by States, local governments, or*
5 *tribal governments either orally or in writing to the*
6 *agency;*

7 *(C) a summary of the agency's evaluation of*
8 *those comments and concerns; and*

9 *(D) the agency's position supporting the need to*
10 *issue the regulation containing the Federal intergov-*
11 *ernmental mandates (considering, among other*
12 *things, the extent to which costs may or may not be*
13 *paid with funds provided by the Federal Govern-*
14 *ment).*

15 *(b) PROMULGATION.—In promulgating a general no-*
16 *tice of proposed rulemaking or a final rule for which a*
17 *statement under subsection (a) is required, the agency shall*
18 *include in the promulgation a summary of the information*
19 *contained in the statement.*

20 *(c) PREPARATION IN CONJUNCTION WITH OTHER*
21 *STATEMENT.—Any agency may prepare any statement re-*
22 *quired by subsection (a) in conjunction with or as a part*
23 *of any other statement or analysis, provided that the state-*
24 *ment or analysis satisfies the provisions of subsection (a).*

1 **SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET**
 2 **OFFICE.**

3 *The Director of the Office of Management and Budget*
 4 *shall collect from agencies the statements prepared under*
 5 *section 202 and periodically forward copies of them to the*
 6 *Director of the Congressional Budget Office on a reasonably*
 7 *timely basis after promulgation of the general notice of pro-*
 8 *posed rulemaking or of the final rule for which the state-*
 9 *ment was prepared.*

10 **SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXI-**
 11 **BILITY.**

12 *(a) IN GENERAL.—The Director of the Office of Man-*
 13 *agement and Budget, in consultation with Federal agencies,*
 14 *shall establish pilot programs in at least 2 agencies to test*
 15 *innovative, and more flexible regulatory approaches that—*

16 *(1) reduce reporting and compliance burdens on*
 17 *small governments; and*

18 *(2) meet overall statutory goals and objectives.*

19 *(b) PROGRAM FOCUS.—The pilot programs shall focus*
 20 *on rules in effect or proposed rules, or a combination there-*
 21 *of.*

22 **TITLE III—BASELINE STUDY**

23 **SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.**

24 *(a) IN GENERAL.—Not later than 180 days after the*
 25 *date of enactment of this Act, the Director of the Bureau*
 26 *of the Census, in consultation with the Director, shall begin*

1 *a study to examine the measurement and definition issues*
 2 *involved in calculating the total costs and benefits to States,*
 3 *local governments, and tribal governments of compliance*
 4 *with Federal law.*

5 (b) *CONSIDERATIONS.*—*The study required by this sec-*
 6 *tion shall consider—*

7 (1) *the feasibility of measuring indirect costs*
 8 *and benefits as well as direct costs and benefits of the*
 9 *Federal, State, local, and tribal relationship; and*

10 (2) *how to measure both the direct and indirect*
 11 *benefits of Federal financial assistance and tax bene-*
 12 *fits to States, local governments and tribal govern-*
 13 *ments.*

14 (c) *AUTHORIZATION.*—*There are authorized to be ap-*
 15 *propriated to the Bureau of the Census to carry out the*
 16 *purposes of this title, and for no other purpose, \$1,000,000*
 17 *for each of the fiscal years 1995 and 1996.*

18 **TITLE IV—JUDICIAL REVIEW;**

19 **SUNSET**

20 **SEC. 401. JUDICIAL REVIEW.**

21 *Any statement or report prepared under this Act, and*
 22 *any compliance or noncompliance with the provisions of*
 23 *this Act, and any determination concerning the applicabil-*
 24 *ity of the provisions of this Act shall not be subject to judi-*
 25 *cial review. The provisions of this Act shall not create any*

1 *right or benefit, substantive or procedural, enforceable by*
 2 *any person in any administrative or judicial action. No*
 3 *ruling or determination under this Act shall be considered*
 4 *by any court in determining the intent of Congress or for*
 5 *any other purpose.*

6 **SEC. 402. SUNSET.**

7 *Title II shall expire September 30, 1998. Title I shall*
 8 *expire on October 1 of the fiscal year for which the fiscal*
 9 *year appropriation to the Congressional Budget Office is*
 10 *not adequate to carry out the requirements of title I, or*
 11 *September 30, 1998, whichever occurs earlier. The require-*
 12 *ments of section 101(a)(2) are exempt from the terms of this*
 13 *section.*

Amend the title so as to read: “To strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; to better assess both costs and benefits of Federal legislation and regulations on State, local, and tribal governments; and for other purposes.”.

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S 993 RS—3