

106TH CONGRESS  
1ST SESSION

# H. R. 2245

To ensure the liberties of the people by promoting federalism, to protect the reserved powers of the States, to impose accountability for Federal preemption of State and local laws, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1999

Mr. MCINTOSH (for himself, Mr. MORAN of Virginia, Mr. PORTMAN, Ms. MCCARTHY of Missouri, Mr. CASTLE, Mr. CONDIT, and Mr. DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Rules, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To ensure the liberties of the people by promoting federalism, to protect the reserved powers of the States, to impose accountability for Federal preemption of State and local laws, and for other purposes.

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 “Federalism Act of  
5       1999”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Constitution created a strong Federal  
4 system, reserving to the States all powers not ex-  
5 pressly delegated to the Federal Government.

6 (2) Preemptive statutes and regulations have at  
7 times been an appropriate exercise of Federal pow-  
8 ers, and at other times have been an inappropriate  
9 infringement on State and local government author-  
10 ity.

11 (3) On numerous occasions, the Congress has  
12 enacted statutes and Federal agencies have promul-  
13 gated rules that expressly preempt State and local  
14 government authority and describe the scope of the  
15 preemption.

16 (4) In addition to statutes and rules that ex-  
17 pressly preempt State and local government author-  
18 ity, many other statutes and rules that lack an ex-  
19 press statement by the Congress or Federal agencies  
20 of their intent to preempt and a clear description of  
21 the scope of the preemption have been construed to  
22 preempt State and local government authority.

23 (5) In the past, the lack of clear congressional  
24 intent regarding preemption has resulted in too  
25 much discretion for Federal agencies and uncer-  
26 tainty for State and local governments, leaving the

1 presence or scope of preemption to be litigated and  
2 determined by the Federal judiciary, producing re-  
3 sults sometimes contrary to or beyond the intent of  
4 the Congress.

5 (6) State and local governments are full part-  
6 ners in all Federal programs administered by those  
7 governments.

8 **SEC. 3. PURPOSES.**

9 The purposes of this Act are the following:

10 (1) To promote and preserve the integrity and  
11 effectiveness of our federalist system of government.

12 (2) To set forth principles governing the inter-  
13 pretation of congressional intent regarding preemp-  
14 tion of State and local government authority by Fed-  
15 eral laws and rules.

16 (3) To recognize the partnership between the  
17 Federal Government and State and local govern-  
18 ments in the implementation of certain Federal pro-  
19 grams.

20 (4) To establish a reporting requirement to  
21 monitor the incidence of Federal statutory, regu-  
22 latory, and judicial preemption.

23 **SEC. 4. DEFINITIONS.**

24 In this Act:

1           (1) DEFINITIONS IN 5 U.S.C. 551.—The defini-  
2       tions under section 551 of title 5, United States  
3       Code, shall apply.

4           (2) BILL.—The term “bill” includes a joint res-  
5       olution.

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

8           (4) LOCAL GOVERNMENT.—The term “local  
9       government” means a county, city, town, borough,  
10      township, village, school district, special district, or  
11      other political subdivision of a State.

12          (5) PUBLIC OFFICIALS.—The term “public  
13      officials”—

14                (A) means elected officials of State and  
15      local governments; and

16                (B) includes the following national organi-  
17      zations that represent such officials:

18                   (i) The National Governors’ Associa-  
19      tion.

20                   (ii) The National Conference of State  
21      Legislatures.

22                   (iii) The Council of State Govern-  
23      ments.

24                   (iv) The United States Conference of  
25      Mayors.

1 (v) The National League of Cities.

2 (vi) The National Association of  
3 Counties.

4 (vii) The International City/County  
5 Management Association.

6 (6) STATE.—The term “State”—

7 (A) means a State of the United States  
8 and an agency or instrumentality of a State;

9 (B) includes—

10 (i) the District of Columbia and any  
11 territory of the United States, and an  
12 agency or instrumentality of the District of  
13 Columbia or such territory; and

14 (ii) any tribal government and an  
15 agency or instrumentality of such govern-  
16 ment; and

17 (C) does not include a local government of  
18 a State.

19 (7) TRIBAL GOVERNMENT.—The term “tribal  
20 government” means an Indian tribe as that term is  
21 defined under section 4(e) of the Indian Self-Deter-  
22 mination and Education Assistance Act (25 U.S.C.  
23 450b(e)).

1 **SEC. 5. DEFERENCE TO STATE MANAGEMENT PRACTICES.**

2 (a) EXPENDITURE AND ACCOUNTING OF FEDERAL  
3 FUNDS.—A State shall expend and account for covered  
4 Federal grant funds in accordance with requirements and  
5 procedures under the laws of the State governing State  
6 expenditure of and accounting for State funds, subject to  
7 any requirement that expressly applies under any other  
8 Federal statute.

9 (b) USE, MANAGEMENT, AND DISPOSAL OF PER-  
10 SONAL PROPERTY ACQUIRED WITH FEDERAL FUNDS.—  
11 A State shall use, manage, and dispose of personal prop-  
12 erty acquired with covered Federal grant funds in accord-  
13 ance with requirements and procedures under the laws of  
14 the State governing State use, management, and disposal  
15 of personal property acquired with State funds, subject to  
16 any requirement that expressly applies under any other  
17 Federal statute.

18 (c) PROCUREMENT WITH FEDERAL FUNDS.—In pro-  
19 curing any personal property or service with covered Fed-  
20 eral grant funds, a State shall follow the same require-  
21 ments and procedures that apply under the laws of the  
22 State governing State procurement with State funds, sub-  
23 ject to any requirement that expressly applies under any  
24 other Federal statute.

25 (d) DEFINITIONS.—In this section:

1           (1) COVERED FEDERAL GRANT FUNDS DE-  
2       FINED.—The term “covered Federal grant funds”  
3       means amounts provided as Federal financial assist-  
4       ance, other than assistance under a grant program  
5       to which the Grants Management Common Rule (53  
6       F.R. 8034) does not apply on the date of the enact-  
7       ment of this Act.

8           (2) PERSONAL PROPERTY.—The term “per-  
9       sonal property” means property other than real  
10      property.

11 **SEC. 6. PERFORMANCE MEASURES.**

12      Section 1115 of title 31, United States Code, is  
13      amended by adding at the end the following:

14      “(g) The head of an agency may not include in any  
15      performance plan under this section any agency activity  
16      that is a State-administered Federal grant program, un-  
17      less the performance measures for the activity are deter-  
18      mined in cooperation with public officials.”.

19 **SEC. 7. REQUIREMENTS FOR AGENCY RULEMAKING.**

20      (a) NOTICE AND CONSULTATION WITH POTEN-  
21      Tially AFFECTED STATE AND LOCAL GOVERNMENTS.—  
22      Not later than the date of publication of an advance notice  
23      of proposed rulemaking for a rule promulgated by an  
24      agency, or the equivalent date if such notice is not pub-  
25      lished, the head of the agency shall notify and consult with

1 public officials who may potentially be affected by the rule  
2 for the purpose of identifying any preemption of State or  
3 local government authority that may result from issuance  
4 of the rule.

5 (b) IDENTIFICATION OF PREEMPTION AND FED-  
6 ERALISM IMPACTS.—

7 (1) IN GENERAL.—The head of an agency  
8 shall—

9 (A) publish with each proposed rule issued  
10 by the agency a proposed federalism impact as-  
11 sessment under paragraph (2);

12 (B) publish with each interim final rule  
13 issued by the agency a proposed federalism im-  
14 pact assessment under paragraph (2); and

15 (C) publish with each final rule issued by  
16 the agency a final federalism impact assessment  
17 under paragraph (2).

18 (2) FEDERALISM IMPACT ASSESSMENT.—A pro-  
19 posed or final federalism impact assessment under  
20 this subsection shall include with respect to the pro-  
21 posed, interim final, or final rule concerned an iden-  
22 tification of—

23 (A) any provision of the rule that is a pre-  
24 emptation of State or local government authority;



1 (B) the constitutional basis for each such  
2 preemption;

3 (C) any provision of statute under which  
4 the rule is issued that is an express preemption  
5 of State or local government authority, and any  
6 provision of any other statute that expressly  
7 states that the Congress intended such preemp-  
8 tion;

9 (D) any provision of the rule that estab-  
10 lishes a condition for receipt of grant funds  
11 that is not related to the purpose of the grant  
12 program under which the funds are provided;

13 (E) any other provision of the rule that  
14 impacts State or local governments, including  
15 any provision that constitutes a Federal inter-  
16 governmental mandate (as that term is defined  
17 in section 421 of the Congressional Budget and  
18 Impoundment Control Act of 1974);

19 (F) any regulatory alternatives considered  
20 by the agency;

21 (G) the estimated costs that will be in-  
22 curred by state and local governments as a re-  
23 sult of issuance of the rule; and

1           (H) the extent of the agency’s consulta-  
2           tions with public officials who may potentially  
3           be affected by the rule.

4           (c) PUBLICATION.—The head of an agency shall in-  
5           clude, in a separately identified part of the preamble to  
6           each proposed rule, interim final rule, and final rule pub-  
7           lished by the agency in the Federal Register, a summary  
8           of the proposed or final (as applicable) federalism impact  
9           assessment prepared under this section.

10   **SEC. 8. LEGISLATIVE REQUIREMENTS.**

11           (a) IN GENERAL.—The report accompanying any bill  
12           of a public character reported from a committee of the  
13           Senate or House of Representatives, or the joint explana-  
14           tory statement accompanying a conference report on any  
15           such bill, shall include a statement that—

16                (1) identifies each section of the bill or con-  
17                ference report that constitutes an express preemp-  
18                tion of State or local government authority, or as-  
19                serts that the bill does not contain any such section;  
20                and

21                (2) describes the constitutional basis for any  
22                such preemption;

23                (3) sets forth the reasons for each such preemp-  
24                tion; and

1 (4) includes the federalism impact assessment  
2 by the Director under subsection (b).

3 (b) FEDERALISM IMPACT ASSESSMENT BY CONGRES-  
4 SIONAL BUDGET OFFICE.—

5 (1) PROVISION OF BILL OR CONFERENCE RE-  
6 PORT TO DIRECTOR.—When a committee of the Sen-  
7 ate or the House of Representatives orders reported  
8 a bill of a public character, and before a conference  
9 committee files a conference report thereon, the  
10 committee or conference committee shall promptly  
11 provide the bill to the Director and shall identify to  
12 the Director each section of the bill that constitutes  
13 a preemption of State or local government authority.

14 (2) FEDERALISM IMPACT ASSESSMENT.—(A)  
15 For each bill of a public character reported by any  
16 committee of the Senate or the House of Represent-  
17 atives, and for each conference report thereon, the  
18 Director shall prepare and submit to the committee  
19 or conference committee a federalism impact assess-  
20 ment that describes the preemptive impact of the bill  
21 or conference report thereon on State and local gov-  
22 ernments, including the estimated costs that would  
23 be incurred by State and local governments as a re-  
24 sult of its enactment.

1           (B) In the case of a bill or conference report  
2           that authorizes a Federal grant program, the fed-  
3           eralism impact assessment shall also identify any  
4           provision that establishes a condition for receipt of  
5           funds under the program that is not related to the  
6           purposes of the program.

7           (c) ABSENCE OF COMMITTEE REPORT OR STATE-  
8           MENT OF MANAGERS.—In the absence of a committee re-  
9           port or joint explanatory statement in accordance with  
10          subsection (a) accompanying a bill or conference report  
11          thereon, respectively, the committee or conference com-  
12          mittee shall report to the Senate and the House of Rep-  
13          resentatives a statement described in subsection (a) before  
14          consideration of the bill or conference report.

15   **SEC. 9. RULES OF CONSTRUCTION RELATING TO PREEMP-**  
16                           **TION.**

17          (a) STATUTES.—No Federal statute enacted after the  
18          effective date of this Act shall preempt, in whole or in  
19          part, any State or local government law, ordinance, or reg-  
20          ulation, unless the statute expressly states that such pre-  
21          emption is intended or unless there is a direct conflict be-  
22          tween such statute and a State or local law, ordinance,  
23          or regulation so the two cannot be reconciled or consist-  
24          ently stand together.

1 (b) RULES.—No Federal rule issued after the effective date of this Act under any provision of law enacted after that effective date shall preempt, in whole or in part, any State or local government law, ordinance, or regulation, unless the statute under which the rule is issued, or another statute, expressly states that such preemption is intended.

2 (c) FAVORABLE CONSTRUCTION.—Any ambiguity in this Act, or in any other Federal rule issued or Federal statute enacted after the date of the enactment of this Act, shall be construed in favor of preserving the authority of State and local governments.

3 **SEC. 10. REPORTS ON PREEMPTION.**

4 (a) OFFICE OF MANAGEMENT AND BUDGET INFORMATION.—Promptly after the expiration of the second calendar year beginning after the effective date of this Act, and every 2 years thereafter, the Director of the Office of Management and Budget shall submit to the Director of the Congressional Budget Office information describing each provision of interim final rules and final rules issued during the preceding 2 calendar years that preempts State or local government authority.

5 (b) CONGRESSIONAL RESEARCH SERVICE INFORMATION.—Promptly after the expiration of the second calendar year beginning after the effective date of this Act,

1 and every 2 years thereafter, the Director of the Congres-  
2 sional Research Service shall submit to the Director of the  
3 Congressional Budget Office information describing Fed-  
4 eral and State court decisions issued during the preceding  
5 2 calendar years that preempt State or local government  
6 authority.

7 (c) CONGRESSIONAL BUDGET OFFICE REPORT.—

8 (1) IN GENERAL.—Not later than the adjourn-  
9 ment sine die of each Congress, the Director of the  
10 Congressional Budget Office shall submit to the  
11 Congress a report on the extent of preemption of  
12 State and local government authority—

13 (A) by Federal laws enacted during the  
14 previous session of Congress; and

15 (B) by judicial or agency interpretations of  
16 Federal statutes issued during such session,  
17 using—

18 (i) information regarding agency rules  
19 submitted by the Office of Management  
20 and Budget under subsection (a); and

21 (ii) information regarding Federal and  
22 State court decisions submitted by the Di-  
23 rector of the Congressional Research Serv-  
24 ice under subsection (b).

1           (2) CONTENT.—The report under paragraph  
2       (1) shall contain—

3           (A) a cumulative list of Federal statutes  
4       preempting, in whole or in part, State or local  
5       powers;

6           (B) a summary of legislation enacted dur-  
7       ing the previous session preempting, in whole or  
8       in part, State or local government authority;

9           (C) a summary of rules of agencies pro-  
10      mulgated during the previous session of Con-  
11      gress preempting, in whole or in part, State or  
12      local government authority; and

13          (D) a summary of Federal and State court  
14      decisions issued during the previous session of  
15      Congress preempting, in whole or in part, State  
16      or local government authority.

17          (3) AVAILABILITY.—The Director shall make  
18      the report under this subsection available to—

19           (A) each committee of the Congress;

20           (B) each Governor of a State;

21           (C) the presiding officer of each chamber  
22      of the legislature of each State; and

23           (D) other public officials and the public  
24      through publication in the Congressional  
25      Record and on the Internet.

1 **SEC. 11. LIMITATION ON APPLICATION WITH RESPECT TO**  
2 **PROHIBITIONS AGAINST DISCRIMINATION.**

3 This Act shall not apply with respect to any section  
4 of a bill, or any provision of a Federal regulation or stat-  
5 ute, that establishes or enforces any statutory prohibition  
6 against discrimination on the basis of race, color, religion,  
7 sex, national origin, age, handicap, or disability.

8 **SEC. 12. EFFECTIVE DATE.**

9 This Act shall take effect 90 days after the date of  
10 the enactment of this Act.

