

EC-2251. A communication from the Director of Operations, Department of the Interior, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1995; to the Committee on the Judiciary.

EC-2252. A communication from the Acting Administrator, General Services Administration, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1995; to the Committee on the Judiciary.

EC-2253. A communication from the Assistant Secretary of Education (Civil Rights), transmitting, pursuant to law, the annual report for fiscal year 1995; to the Committee on Labor and Human Resources.

EC-2254. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the Public Housing Primary Care program; to the Committee on Labor and Human Resources.

EC-2255. A communication from the Chairman of the National Endowment for the Arts, transmitting, pursuant to law, the fiscal year 1995 report relative to the Arts and Artifacts Indemnity Program; to the Committee on Labor and Human Resources.

EC-2256. A communication from the President of the U.S. Institute of Peace, transmitting, pursuant to law, the report of financial statements for fiscal year 1995; to the Committee on Labor and Human Resources.

EC-2257. A communication from the Director of the Executive Office of the President, Office of Management and Budget, transmitting, a draft of proposed legislation entitled "The Electronic Depository Library Act of 1996"; to the Committee on Rules and Administration.

EC-2258. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of a proposed form; to the Committee on Rules and Administration.

EC-2259. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of legislative recommendations for calendar year 1996; to the Committee on Rules and Administration.

EC-2260. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, a report relative to an evaluation of health status; to the Committee on Veterans' Affairs.

EC-2261. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, a report relative to equitable relief for calendar year 1995; to the Committee on Veterans' Affairs.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources:

C.E. Abramson, of Montana, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2000.

Robert B. Rogers, of Missouri, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of three years. (New Position)

Elmer B. Staats, of the District of Columbia, to be a Member of the Board of Trustees of the Harry S. Truman Scholarship Foundation for a term expiring December 10, 2001. (Reappointment)

David A. Ucko, of Missouri, to be a Member of the National Museum Services Board for a term expiring December 6, 1999.

Alberta Sebolt George, of Massachusetts, to be a Member of the National Museum Services Board for a term expiring December 6, 1998.

Ronnie Feuerstein Heyman, of New York, to be a Member of the National Council on the Arts for a term expiring September 3, 2000.

Terry Evans, of Kansas, to be a Member of the National Council on the Arts for a term expiring September 3, 2000.

Audrey Tayse Haynes, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term expiring October 13, 1998.

Mary Dodd Greene, of Texas, to be a Member of the National Institute for Literacy Advisory Board for a term expiring October 12, 1998.

Mark Edwin Emblidge, of Virginia, to be a Member of the National Institute for Literacy Advisory Board for a term expiring September 22, 1998.

Toni G. Fay, of New Jersey, to be a Member of the National Institute Literacy Advisory Board for a term expiring October 12, 1998.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated.

By Mr. LEVIN:

S. 1679. A bill to clarify the application of Federal preemption of State and local laws, and for other purposes; to the Committee on Governmental Affairs.

By Mr. COVERDEL:

S. 1680. A bill to amend title 18 of the United States Code to permit the judicial deportation of criminal aliens; to the Committee on the Judiciary.

By Mr. SPECTER (for himself and Mrs. FEINSTEIN):

S. 1681. A bill to establish a commission to improve the policies and programs of the Federal Government for combatting the proliferation of weapons of mass destruction, and for other purposes; to the Select Committee on Intelligence.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE:

S. Res. 246. A resolution to authorize the use of additional funds for salaries and expenses of the Special Committee to Investigate Whitewater Development Corporation and Related Matters, and for other purposes; considered and agreed to.

By Mr. SPECTER (for himself and Ms. MIKULSKI):

S. Res. 247. A resolution expressing the sense of the Senate regarding a resolution of the dispute between Greece and Turkey over sovereignty to the islet in the Aegean Sea called Imia by Greece and Kardak by Turkey; to the Committee on Foreign Relations.

By Ms. MIKULSKI (for herself, Mr. AKAKA, Mr. BINGAMAN, Mr. BOND,

Mrs. BOXER, Mr. BRADLEY, Mr. BUMPERS, Mr. BYRD, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. DODD, Mr. DOLE, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GLENN, Mr. GRAHAM, Mr. HARKIN, Mr. HATFIELD, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INOUE, Mr. JEFFORDS, Mr. JOHNSTON, Mr. KENNEDY, Mr. KERREY, Mr. LEVIN, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. PELL, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SIMPSON, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, and Mr. WELLSTONE):

S. Con. Res. 52. A concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress; to the Committee on Labor and Human Resources.

#### STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. LEVIN:

S. 1679. A bill to clarify the application of Federal preemption of State and local laws, and for other purposes; to the Committee on Governmental Affairs.

#### THE PREEMPTION CLARIFICATION AND INFORMATION ACT OF 1996

● Mr. LEVIN. Mr. President, today I am introducing the Preemption and Clarification Act of 1996. It would require an explicit statement of Federal preemption in Federal legislation in order for such preemption to occur unless there exists a direct conflict between the Federal law and a State or local law which cannot be reconciled. Enactment of this bill would close the back door of implied Federal preemption and put the responsibility for determining whether or not State or local governments should be preempted back in Congress where it belongs.

State and local officials have become increasingly concerned with the number of instances in which State and local laws have been preempted by Federal law—not because Congress has done so explicitly, but because the courts have implied such preemption. Since 1789, Congress has enacted approximately 350 laws specifically preempting State and local authority. Half of these laws have been enacted in the last 20 years. These figures, however, do not touch upon the extensive Federal preemption of State and local authority which has occurred as a result of judicial interpretation of congressional intent, when Congress' intention to preempt has not been explicitly stated in law. When Congress is unclear about its intent to preempt, the courts must then decide whether or not preemption was intended and, if so, to what extent.

Article VI of the Constitution, the supremacy clause, states that Federal laws made pursuant to the Constitution "shall be the supreme law of the land." In its most basic sense, this clause means that a State law is negated or preempted when it is in conflict with a constitutionally enacted Federal law. A significant body of case law has been developed to arrive at

standards by which to judge whether or not Congress intended to preempt State or local authority—standards which are subjective and have not resulted in a consistent and predictable doctrine in resolving preemption questions.

If we in Congress want Federal law to prevail, we should be clear about that. If we want the States to have discretion to go beyond Federal requirements, we should be clear about that. If, for example, we set a floor in a Federal statute, but are silent on actions which meet but then go beyond the Federal requirement, State and local governments should be able to act as they deem appropriate. State and local governments should not have to wait to see what they can and cannot do. Our bill would allow tougher State and local laws given congressional silence.

Our legislation also requires the Congressional Research Service, at the end of each Congress, to compile a report on the number of statutory and judicially interpreted preemptions. This will constitute the first time such a complete report has been done, and the information will be valuable to the debate regarding the appropriate use of preemption to reach Federal goals.

I introduced this bill in the 102d Congress with Senator David Durenburger. A form of the bill was included in the unfunded mandates law we passed in the spring of last year. That provision, now law, requires that when a committee of the Senate or House reports a bill, the report accompanying the bill is required to contain an explicit statement of the extent to which the bill is intended to preempt any State, local or tribal law and if so, an explanation of the effect of such preemption. That provision of the unfunded mandates law is an attempt to get congressional committees to address the issue of preemption before legislation is reported to the floor of the House or Senate. In reviewing several bills that are now on the Senate Calendar awaiting Senate action, I was disappointed to find that none of the ones I reviewed met the requirements of this provision. We can and should do better.

This bill, unlike the provision in the unfunded mandates law where silence in the report leaves the issue unresolved, this bill establishes a principle for the courts to follow in determining a preemption case where the bill is silent on the matter. This bill tells the court that if the statement of intent to preempt is not in the legislation then the court is not authorized to read it into the statute—unless there is a direct conflict between Federal and State law. If legislation is silent, there is no preemption.

Earlier this year the Governmental Affairs Committee held a hearing on a bill entitled the "Tenth Amendment Enforcement Act of 1996." It contains a section on judicial construction which is virtually the same as that contained in this bill and the bill I introduced in the 102d Congress. The tenth amend-

ment bill, however, has other provisions that are troublesome. I am introducing my bill today in the hope that we can enact this provision into law, this year, and leave the more troublesome features of the Tenth Amendment Enforcement Act of 1996 for another day.

Mr. President, preemption clarification legislation has been endorsed by the National Conference of State Legislators, the Intergovernmental Affairs Committee of the Council of State Governments, the U.S. Conference of Mayors, and the Appellate Judges Conference of the American Bar Association.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1679

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Preemption Clarification and Information Act of 1996".

#### SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States Constitution created a strong Federal system, reserving to the States all powers not expressly delegated to the Federal Government;

(2) on numerous occasions, the Congress has enacted statutes that explicitly preempt State and local government powers and describe the scope of the preemption;

(3) in addition to statutes that explicitly preempt State and local government powers, many other statutes that lack an explicit statement by Congress of its intent to preempt and a clear description of the scope of the preemption have been construed by the courts and Federal agencies to preempt State and local government powers; and

(4) without an explicit statement of Congress' intent to preempt State and local government powers and a clear description of the scope of preemption, preemptive statutes—

(A) provide too little guidance and leave too much discretion to Federal agencies which are required to promulgate and enforce regulations pursuant to statutes;

(B) create too great an uncertainty for State and local governments; and

(C) leave the presence or scope of preemption to be litigated and determined by the Federal judiciary, producing results sometimes contrary to or beyond the intent of Congress.

#### SEC. 3. PURPOSE.

The purposes of this Act are to—

(1) promote and preserve the integrity and effectiveness of the Federal system;

(2) set forth principles governing the interpretation of congressional intent regarding preemption of State and local government powers by Federal laws and regulations; and

(3) establish an information collection system designed to monitor the incidence of Federal statutory and regulatory preemption.

#### SEC. 4. DEFINITIONS.

As used in this Act, the term—

(1) "local government" means a county, city, town, borough, township, village, school district, special district, or other political subdivision of a State;

(2) "State" means a State of the United States and an agency or instrumentality of a

State, but does not include a local government of a State; and

(3) "State and local government powers" means powers reserved under the ninth and tenth amendments of the United States Constitution to States or delegated to local governments by States.

#### SEC. 5. RULE OF CONSTRUCTION.

No statute, or rule promulgated under such statute, shall preempt, in whole or in part, any State or local government law, ordinance, or regulation, unless the statute explicitly states that such preemption is intended or unless there is a direct conflict between such statute and a State or local law, ordinance, or regulation so the two cannot be reconciled or consistently stand together.

#### SEC. 6. ANNUAL REPORT ON STATUTORY PREEMPTION.

(a) REPORT.—Within 90 days after each Congress adjourns sine die, the Congressional Research Service shall prepare and make available to the public a report on the extent of Federal statutory preemption of State and local government powers enacted into law during the preceding Congress or adopted through judicial interpretation of Federal statutes.

(b) CONTENTS.—The report shall contain—

(1) a cumulative list of the Federal statutes preempting, in whole or in part, State and local government powers;

(2) a summary of Federal legislation enacted during the previous Congress preempting, in whole or in part, State and local government powers;

(3) an overview of recent court cases addressing Federal preemption issues; and

(4) other information the Director of the Congressional Research Service determines appropriate.

(c) TRANSMITTAL.—Copies of the report shall be sent to the President and the chairman of the appropriate committees in the Senate and House of Representatives.

#### SEC. 7. EFFECTIVE DATE.

This Act shall take effect on January 1, 1997. The requirements of section 5 shall apply only to statutes enacted or final regulations which become effective on or after January 1, 1997.●

By Mr. SPECTER (for himself and Mrs. FEINSTEIN):

S. 1681. A bill to establish a commission to improve the policies and programs of the Federal Government for combating the proliferation of weapons of mass destruction, and for other purposes; to the Select Committee on Intelligence.

#### COMBATING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT OF 1996

Mr. SPECTER. Mr. President, it is well known that there is an enormous international threat posed by weapons of mass destruction.

Testimony which was recently heard by the Senate Intelligence Committee, which I chair, disclosed that some 25 nations have weapons of mass destruction including nuclear weapons, biological weapons, and chemical weapons.

In testimony offered by John Deutch in 1994, when he was Deputy Secretary of Defense, he pointed out that "If North Koreans build the Taepo Dong II missile, Alaska and parts of Hawaii would be potentially at risk." I think it is not well known that parts of the