Public Law 104–4
104th Congress

An Act

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

Mar. 22, 1995
[S. 1]

Unfunded Mandates Reform Act of 1995.
2 USC 1501 note.

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 "Unfunded Mandates Reform Act of 1995".

2 USC 1501.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

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

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

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(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates;

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments and the private sector before adopting such regulations, and ensuring that small governments are given special consideration in that process; and

(8) to begin consideration of the effect of previously imposed Federal mandates, including the impact on State, local, and tribal governments of Federal court interpretations of Federal statutes and regulations that impose Federal intergovernmental mandates.

SEC. 3. DEFINITIONS. 2 USC 1502.

For purposes of this Act—

(1) except as provided in section 305 of this Act, the terms defined under section 421 of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term "Director" means the Director of the Congressional Budget Office.

SEC. 4. EXCLUSIONS. 2 USC 1503.

This Act shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

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

(6) the President designates as emergency legislation and that the Congress so designates in statute; or

(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).

2 USC 1504.

SEC. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director such information and assistance as the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) inserting before section 401 the following:

"PART A—GENERAL PROVISIONS"; and

(2) adding at the end thereof the following new part:

"PART B—FEDERAL MANDATES

2 USC 658.

"SEC. 421. DEFINITIONS.

"For purposes of this part:

"(1) AGENCY.—The term 'agency' has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.

"(2) AMOUNT.—The term 'amount', with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

"(3) DIRECT COSTS.—The term 'direct costs'—

"(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

"(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

"(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

"(C) shall be determined on the assumption that—

"(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

"(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

"(D) shall not include—

"(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergov-

ernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

"(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

"(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

"(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

"(I) compliance with the Federal mandate; or

"(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

"(4) DIRECT SAVINGS.—The term 'direct savings', when used with respect to the result of compliance with the Federal mandate—

"(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

"(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

"(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term 'Federal intergovernmental mandate' means—

"(A) any provision in legislation, statute, or regulation that—

"(i) would impose an enforceable duty upon State, local, or tribal governments, except—

"(I) a condition of Federal assistance; or

"(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

"(ii) would reduce or eliminate the amount of authorization of appropriations for—

"(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

"(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency

health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

"(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

"(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

"(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to State, local, or tribal governments under the program; and

"(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

"(6) FEDERAL MANDATE.—The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

"(7) FEDERAL PRIVATE SECTOR MANDATE.—The term 'Federal private sector mandate' means any provision in legislation, statute, or regulation that—

"(A) would impose an enforceable duty upon the private sector except—

"(i) a condition of Federal assistance; or

"(ii) a duty arising from participation in a voluntary Federal program; or

"(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

"(8) LOCAL GOVERNMENT.—The term 'local government' has the same meaning as defined in section 6501(6) of title 31, United States Code.

"(9) PRIVATE SECTOR.—The term 'private sector' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

"(10) REGULATION; RULE.—The term 'regulation' or 'rule' (except with respect to a rule of either House of the Congress) has the meaning of 'rule' as defined in section 601(2) of title 5, United States Code.

"(11) SMALL GOVERNMENT.—The term 'small government' means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

"(12) STATE.—The term 'State' has the same meaning as defined in section 6501(9) of title 31, United States Code.

"(13) TRIBAL GOVERNMENT.—The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

"SEC. 422. EXCLUSIONS. 2 USC 658a.

"This part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

"(1) enforces constitutional rights of individuals;

"(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

"(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

"(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

"(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

"(6) the President designates as emergency legislation and that the Congress so designates in statute; or

"(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).

"SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES. 2 USC 658b.

"(a) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by subsections (c) and (d).

"(b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

"(c) REPORTS ON FEDERAL MANDATES.—Each report described under subsection (a) shall contain—

"(1) an identification and description of any Federal mandates in the bill or joint resolution, including the direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

"(2) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

"(3) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under section 425(a)(2) would affect the competitive balance between State, local, or tribal governments and the private sector including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

"(d) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under subsection (a) shall also contain—

"(1)(A) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates;

"(B) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

"(C) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government; and

"(2) any existing sources of Federal assistance in addition to those identified in paragraph (1) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

"(e) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution is intended to preempt any State, local, or tribal law, and, if so, an explanation of the effect of such preemption.

"(f) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

"(1) IN GENERAL.—Upon receiving a statement from the Director under section 424, a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

Congressional Record, publication.

"(2) OTHER PUBLICATION OF STATEMENT OF DIRECTOR.—If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the

statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

"SEC. 424. DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS. 2 USC 658c.

"(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(1) CONTENTS.—If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of—

"(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

"(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

"(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

"(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

"(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(1) CONTENTS.—If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint

resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

"(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

"(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

"(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

"(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

"(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

2 USC 658d.

"SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

"(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

"(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

"(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

"(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

"(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

"(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

"(ii) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

"(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriations for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

"(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

"(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

"(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

"(III) provides that such mandate shall— Termination date.

"(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

"(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

"(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

"(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

"(c) COMMITTEE ON APPROPRIATIONS.—

"(1) APPLICATION.—The provisions of subsection (a)—

"(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

"(B) shall apply to—

"(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

"(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

"(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

"(iv) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

"(2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in paragraph (1)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

"(d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this section, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this part to a pending bill, joint resolution, amendment, motion, or conference report.

"(e) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this section, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

"SEC. 426. PROVISIONS RELATING TO THE HOUSE OF REPRESENTATIVES. 2 USC 658e.

"(a) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425.

"(b) DISPOSITION OF POINTS OF ORDER.—

"(1) APPLICATION TO THE HOUSE OF REPRESENTATIVES.—This subsection shall apply only to the House of Representatives.

"(2) THRESHOLD BURDEN.—In order to be cognizable by the Chair, a point of order under section 425 or subsection (a) of this section must specify the precise language on which it is premised.

"(3) QUESTION OF CONSIDERATION.—As disposition of points of order under section 425 or subsection (a) of this section, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

"(4) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

"(5) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this subsection with respect to a bill or joint resolution shall be considered also to determine the question of consideration under this subsection with respect to an amendment made in order as original text.

"SEC. 427. REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS. 2 USC 658f.

"At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in an amendment of such Senator.

"SEC. 428. CLARIFICATION OF APPLICATION. 2 USC 658g.

"(a) IN GENERAL.—This part applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

"(1) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

"(2) would result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates other than as described in paragraph (1).

"(b) DIRECT COSTS.—

"(1) IN GENERAL.—For purposes of this part, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under paragraph (2)(A) over the amount described under paragraph (2)(B).

"(2) AMOUNTS.—The amounts referred to under paragraph (1) are—

"(A) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

"(B) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

"(3) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—For purposes of this section, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) by inserting "PART A—GENERAL PROVISIONS" before the item relating to section 401; and

(2) by inserting after the item relating to section 407 the following:

"PART B—FEDERAL MANDATES

"Sec. 421. Definitions.
"Sec. 422. Exclusions.
"Sec. 423. Duties of congressional committees.
"Sec. 424. Duties of the Director; statements on bills and joint resolutions other than appropriations bills and joint resolutions.
"Sec. 425. Legislation subject to point of order.
"Sec. 426. Provisions relating to the House of Representatives.
"Sec. 427. Requests to the Congressional Budget Office from Senators.
"Sec. 428. Clarification of application.".

SEC. 102. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

2 USC 602.

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

"(A) a significant budgetary impact on State, local, or tribal governments;

"(B) a significant financial impact on the private sector; or

"(C) a significant employment impact on the private sector."; and

(B) by amending subsection (h) to read as follows:

"(h) STUDIES.—

"(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

"(2) FEDERAL MANDATE STUDIES.—

"(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

"(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

"(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

"(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

"(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

"(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

"(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

"(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

"(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

"(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

"(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services."; and

2 USC 632. (2) in section 301(d) by adding at the end thereof the following new sentence: "Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.".

2 USC 1511. **SEC. 103. COST OF REGULATIONS.**

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the request of a committee chairman or ranking minority member, the Director shall, to the extent practicable, prepare a comparison between—

(1) an estimate by the relevant agency, prepared under section 202 of this Act, of the costs of regulations implementing an Act containing a Federal mandate; and

(2) the cost estimate prepared by the Congressional Budget Office for such Act when it was enacted by the Congress.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

SEC. 104. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

Section 403 of the Congressional Budget and Impoundment
2 USC 653. Control Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking out paragraph (2);

(B) in paragraph (3) by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraph (1)"; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking out "(a)"; and

(3) by striking out subsections (b) and (c).

2 USC 1512. **SEC. 105. CONSIDERATION FOR FEDERAL FUNDING.**

Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from consideration for

Federal funding under section 425(a)(2) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the mandate.

SEC. 106. IMPACT ON LOCAL GOVERNMENTS. 2 USC 1513.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 107. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES. 2 USC 1514.

(a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Clause 5 of rule XXIII of the Rules of the House of Representatives is amended by adding at the end the following:

"(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 424(a)(1) of the Unfunded Mandate Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.".

(b) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF ORDER.—The Committee on Rules shall include in the report required by clause 1(d) of rule XI (relating to its activities during the Congress) of the Rules of the House of Representatives a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

SEC. 108. EXERCISE OF RULEMAKING POWERS. 2 USC 1515.

The provisions of sections 101 and 107 are enacted by Congress—

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

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

2 USC 1516.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this title.

2 USC 1511 note.

SEC. 110. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 or on the date 90 days after appropriations are made available as authorized under section 109, whichever is earlier and shall apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

2 USC 1531.

SEC. 201. REGULATORY PROCESS.

Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

2 USC 1532.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

(1) an identification of the provision of Federal law under which the rule is being promulgated;

(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. SMALL GOVERNMENT AGENCY PLAN. 2 USC 1533.

(a) EFFECTS ON SMALL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sums as are necessary.

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT. 2 USC 1534.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees

with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

2 USC 1535.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) OMB CERTIFICATION.—No later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

2 USC 1536.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 207. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY. 2 USC 1537.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

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

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

SEC. 208. ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE. Reports.

No later than 1 year after the effective date of this title and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this title. 2 USC 1538.

SEC. 209. EFFECTIVE DATE. 2 USC 1531 note.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—REVIEW OF FEDERAL MANDATES

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS. 2 USC 1551.

(a) IN GENERAL.—No later than 18 months after the date of enactment of this Act, the Advisory Commission on Intergovernmental Relations (hereafter in this title referred to as the "Advisory Commission"), in consultation with the Director, shall complete a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) CONSIDERATIONS.—The study required by this section shall consider—

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

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

SEC. 302. REPORT ON FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS. 2 USC 1552.

(a) IN GENERAL.—The Advisory Commission on Intergovernmental Relations shall in accordance with this section—

(1) investigate and review the role of Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities, and their impact on the competitive balance between State, local, and tribal governments, and the private sector and consider views of and the impact on working men and women on those same matters;

(2) investigate and review the role of unfunded State mandates imposed on local governments;

(3) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates;

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with Federal mandates that use different definitions or standards for the same terms or principles; and

(G)(i) the mitigation of negative impacts on the private sector that may result from relieving State, local, and tribal governments from Federal mandates (if and to the extent that such negative impacts exist on the private sector); and

(ii) the feasibility of applying relief from Federal mandates in the same manner and to the same extent to private sector entities as such relief is applied to State, local, and tribal governments; and

(4) identify and consider in each recommendation made under paragraph (3), to the extent practicable—

(A) the specific Federal mandates to which the recommendation applies, including requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement; and

(B) any negative impact on the private sector that may result from implementation of the recommendation.

(b) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection no later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—No later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(c) PRELIMINARY REPORT.—

(1) IN GENERAL.—No later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a); Publication.

(B) publish in the Federal Register a notice of availability of the preliminary report; and Federal Register, publication.

(C) provide copies of the preliminary report to the public upon request. Public information.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(d) FINAL REPORT.—No later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on the Budget of the Senate, and the Committee on the Budget of the House of Representatives, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

(e) PRIORITY TO MANDATES THAT ARE SUBJECT OF JUDICIAL PROCEEDINGS.—In carrying out this section, the Advisory Commission shall give the highest priority to immediately investigating, reviewing, and making recommendations regarding Federal mandates that are the subject of judicial proceedings between the United States and a State, local, or tribal government.

(f) DEFINITION.—For purposes of this section the term "State mandate" means any provision in a State statute or regulation that imposes an enforceable duty on local governments, the private sector, or individuals, including a condition of State assistance or a duty arising from participation in a voluntary State program.

SEC. 303. SPECIAL AUTHORITIES OF ADVISORY COMMISSION. 2 USC 1553.

(a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this title, the Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Advisory Commission to assist it in carrying out this title.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Advisory Commission, the Administrator of General Services shall provide to the Advisory Commission, on a reimbursable basis, the administrative support services necessary for the Advisory Commission to carry out its duties under this title.

(d) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate government

and private persons (including agencies) for property and services used to carry out its duties under this title.

2 USC 1554.

SEC. 304. ANNUAL REPORT TO CONGRESS REGARDING FEDERAL COURT RULINGS.

No later than 4 months after the date of enactment of this Act, and no later than March 15 of each year thereafter, the Advisory Commission on Intergovernmental Relations shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the President a report describing any Federal court case to which a State, local, or tribal government was a party in the preceding calendar year that required such State, local, or tribal government to undertake responsibilities or activities, beyond those such government would otherwise have undertaken, to comply with Federal statutes and regulations.

2 USC 1555.

SEC. 305. DEFINITION.

Notwithstanding section 3 of this Act, for purposes of this title the term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon State, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

2 USC 1556.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Advisory Commission to carry out section 301 and section 302, $500,000 for each of fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW

2 USC 1571.

SEC. 401. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of sections 202 and 203(a) (1) and (2) shall be subject to judicial review only in accordance with this section.

(2) LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—(A) Agency compliance or noncompliance with the provisions of sections 202 and 203(a) (1) and (2) shall be subject to judicial review only under section 706(1) of title 5, United States Code, and only as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such written statement.

(3) REVIEW OF AGENCY RULES.—In any judicial review under any other Federal law of an agency rule for which a written statement or plan is required under sections 202 and 203(a) (1) and (2), the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement or description) or written plan shall not

be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

(4) CERTAIN INFORMATION AS PART OF RECORD.—Any information generated under sections 202 and 203(a) (1) and (2) that is part of the rulemaking record for judicial review under the provisions of any other Federal law may be considered as part of the record for judicial review conducted under such other provisions of Federal law.

(5) APPLICATION OF OTHER FEDERAL LAW.—For any petition under paragraph (2) the provisions of such other Federal law shall control all other matters, such as exhaustion of administrative remedies, the time for and manner of seeking review and venue, except that if such other Federal law does not provide a limitation on the time for filing a petition for judicial review that is less than 180 days, such limitation shall be 180 days after a final rule is promulgated by the appropriate agency.

(6) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1995, and shall apply only to any agency rule for which a general notice of proposed rulemaking is promulgated on or after such date.

(b) JUDICIAL REVIEW AND RULE OF CONSTRUCTION.—Except as provided in subsection (a)—

(1) any estimate, analysis, statement, description or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review; and

(2) no provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action.

Approved March 22, 1995.

LEGISLATIVE HISTORY—S. 1 (H.R. 5) (S. 169):

HOUSE REPORTS: Nos. 104–1, Pt. 1 (Comm. on Rules) and Pt. 2 (Comm. on Government Reform and Oversight), both accompanying H.R. 5, and 104–76 (Comm. of Conference).

SENATE REPORTS: Nos. 104–1 (Comm. on Governmental Affairs) and 104–2 (Comm. on the Budget).

CONGRESSIONAL RECORD, Vol. 141 (1995):

Jan. 12, 13, 17–19, 23–27, considered and passed Senate.

Jan. 19, 20, 23, 24, 27, 30, 31, Feb. 1, considered and passed House, amended, in lieu of H.R. 5.

Mar. 14, 15, Senate considered and agreed to conference report.

Mar. 16, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 31 (1995):

Mar. 22, Presidential remarks.