

103^D CONGRESS
1ST SESSION

H. R. 2327

To clarify the application of Federal preemption of State and local laws, to preserve State and local legislative rights and prerogatives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1993

Mr. THOMAS of Wyoming (for himself, Mr. KIM, Mr. GORDON, Mr. HYDE, Mr. BOEHNER, Mr. EWING, Mr. WALSH, Mr. HANCOCK, Mr. LEVY, Mr. SCHIFF, Mr. TAYLOR of North Carolina, and Mr. EVERETT) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To clarify the application of Federal preemption of State and local laws, to preserve State and local legislative rights and prerogatives, 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 “States and Local Leg-
5 islative Prerogatives Preservation Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) the United States Constitution created a
2 strong Federal system, reserving to the States all
3 powers not expressly delegated to the Federal Gov-
4 ernment;

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

9 (3) in addition to statutes that explicitly pre-
10 empt State and local government powers, many
11 other statutes that lack an explicit statement by
12 Congress of its intent to preempt and a clear de-
13 scription of the scope of the preemption have been
14 construed by the courts and Federal agencies to pre-
15 empt State and local government powers; and

16 (4) without an explicit statement of Congress'
17 intent to preempt State and local government pow-
18 ers and a clear description of the scope of preemp-
19 tion, preemptive statutes—

20 (A) provide too little guidance and leave
21 too much discretion to Federal agencies which
22 are required to promulgate and enforce regula-
23 tions pursuant to statutes;

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

1 (C) leave the presence or scope of preemp-
2 tion to be litigated and determined by the Fed-
3 eral judiciary, producing results sometimes
4 contrary to or beyond the intent of Congress.

5 **SEC. 3. PURPOSE.**

6 The purposes of this Act are to—

7 (1) promote and preserve the integrity and ef-
8 fectiveness of the Federal system;

9 (2) set forth principles governing the interpre-
10 tation of congressional intent regarding preemption
11 of State and local government powers by Federal
12 laws and regulations; and

13 (3) establish an information collection system
14 designed to monitor the incidence of Federal statu-
15 tory and regulatory preemption.

16 **SEC. 4. DEFINITIONS.**

17 As used in this Act, the term—

18 (1) “local government” means a county, city,
19 town, borough, township, village, school district, spe-
20 cial district, or other political subdivision of a State;

21 (2) “State” means a State of the United States
22 and an agency or instrumentality of a State, but
23 does not include a local government of a State; and

24 (3) “State and local government powers” means
25 powers reserved under the ninth and tenth amend-

1 ments of the United States Constitution to States or
2 delegated to local governments by States.

3 **SEC. 5. RULE OF CONSTRUCTION.**

4 No statute, or rule promulgated under such statute,
5 shall preempt, in whole or in part, any State or local gov-
6 ernment law, ordinance, or regulation, unless the statute
7 explicitly states that such preemption is intended or unless
8 there is a direct conflict between such statute and a State
9 or local law, ordinance, or regulation so the two cannot
10 be reconciled or consistently stand together.

11 **SEC. 6. ANNUAL REPORT ON STATUTORY PREEMPTION.**

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

19 (b) CONTENTS.—The report shall contain—

20 (1) a cumulative list of the Federal statutes
21 preempting, in whole or in part, State and local gov-
22 ernment powers;

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

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

3 (4) other information the Director of the Con-
4 gressional Research Service determines appropriate.

5 (c) TRANSMITTAL.—Copies of the report shall be sent
6 to the President and the chairman of the appropriate com-
7 mittees in the Senate and House of Representatives.

8 **SEC. 7. EFFECTIVE DATE.**

9 This Act shall take effect on January 1, 1995. The
10 requirements of section 5 shall apply only to statutes en-
11 acted or final regulations which become effective on or
12 after January 1, 1993.

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