

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5128

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 the Congress, of Federal mandates on State, local, and tribal governments without adequate funding in a manner that may displace other essential governmental priorities, to better assess both costs and benefits of Federal legislation and regulations on State, local, and tribal governments, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1994

Mr. CONYERS (for himself, Mr. CLINGER, Mr. TOWNS, and Mr. SHAYS) introduced the following bill; which was referred jointly to the Committees on Government Operations and Rules

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## A BILL

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 the Congress, of Federal mandates on State, local, and tribal governments without adequate funding in a manner that may displace other essential governmental priorities, to better assess both costs and benefits of Federal legislation and regulations on State, local, and tribal governments, and for other purposes.

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 “Federal Mandates Re-  
5 lief for State and Local Government Act of 1994”.

6 **SEC. 2. PURPOSES.**

7 (a) The purposes of this Act are—

8 (1) to strengthen the partnership between the  
9 Federal Government and States, local governments,  
10 and tribal governments;

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

16 (3) to assist Congress in its consideration of  
17 proposed legislation establishing or revising Federal  
18 programs containing Federal mandates affecting  
19 States, local governments, and tribal governments  
20 by—

21 (A) providing for the development of infor-  
22 mation about the nature and size of mandates  
23 in proposed legislation, and

24 (B) establishing a mechanism to bring  
25 such information to the attention of House of

1           Representatives and the Senate before the  
2           House of Representatives or Senate, respec-  
3           tively, votes on proposed legislation;

4           (4) to promote informed and deliberate deci-  
5           sions by Congress on the appropriateness of Federal  
6           mandates in any particular instances;

7           (5) to require a point-of-order vote on the con-  
8           sideration in the House of Representatives and the  
9           Senate of legislation containing significant Federal  
10          mandates; and

11          (6) to improve the quality of Federal regula-  
12          tions affecting States, local governments, and tribal  
13          governments and the process by which such regula-  
14          tions are developed, by—

15                (A) requiring that Federal agencies consult  
16                with elected and other officials of States, local  
17                governments, and tribal governments when de-  
18                veloping regulations; and

19                (B) requiring that Federal agencies pre-  
20                pare and consider better estimates of the budg-  
21                etary impact of Federal regulatory mandates  
22                upon States, local governments, and tribal gov-  
23                ernments before adopting such regulations, and  
24                ensuring that small governments are given spe-  
25                cial consideration in that process.

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act:

3 (1) FEDERAL MANDATE DEFINED.—The term  
4 “Federal mandate” means—

5 (A) any provision in a bill or joint resolu-  
6 tion before Congress or in a proposed or final  
7 Federal regulation that—

8 (i) would impose a duty that is en-  
9 forceable by administrative, civil, or crimi-  
10 nal penalty or by injunction (other than a  
11 condition of Federal assistance or a duty  
12 arising from participation in a voluntary  
13 Federal program, except as stated in sub-  
14 paragraph (B)), upon States, local govern-  
15 ments, or tribal governments, or

16 (ii) would reduce or eliminate the  
17 amount of authorization of Federal finan-  
18 cial assistance that will be provided to  
19 States, local governments, or tribal govern-  
20 ments for the purpose of complying with  
21 any such duty; or

22 (B) any provision in a bill or joint resolu-  
23 tion before Congress or in a proposed or final  
24 Federal regulation that relates to a then-exist-  
25 ing Federal program under which \$500,000,000  
26 or more is provided annually to States, local

1 governments, and tribal governments under en-  
2 titlement authority (as that term is defined in  
3 section 3(9) of the Congressional Budget Act of  
4 1974 (2 U.S.C. 622(9))), if—

5 (i)(I) the bill or joint resolution or  
6 regulation would increase the stringency of  
7 conditions of assistance to States, local  
8 governments, or tribal governments under  
9 the program, or

10 (II) would place caps upon, or other-  
11 wise decrease, the Federal Government's  
12 responsibility to provide funding to States,  
13 local governments, or tribal governments  
14 under the program; and

15 (ii) the States, local governments, or  
16 tribal governments that participate in the  
17 Federal program lack authority under that  
18 program to amend their financial or pro-  
19 grammatic responsibilities to continue pro-  
20 viding required services that are affected  
21 by the bill or joint resolution or implement-  
22 ing regulation.

23 (2) DIRECT COSTS DEFINED.—

24 (A) The term “direct costs” means the ag-  
25 gregate estimated amounts that all States, local

1 governments, and tribal governments will be re-  
2 quired to spend in order to comply with a Fed-  
3 eral mandate, or, in the case of a bill or joint  
4 resolution referred to in paragraph (1)(A)(ii),  
5 the amount of Federal financial assistance  
6 eliminated or reduced.

7 (B) Direct cost shall not include amounts  
8 that it is estimated that the States, local gov-  
9 ernments, and tribal governments would  
10 spend—

11 (i) to comply with or carry out all ap-  
12 plicable Federal, State, local, and tribal  
13 laws and regulations adopted before the  
14 adoption of the Federal mandate; or

15 (ii) to continue to carry out State,  
16 local governmental, and tribal govern-  
17 mental programs established at the time of  
18 adoption of the Federal mandate.

19 (C) Direct costs shall not include expendi-  
20 tures to the extent that they will be offset by  
21 any direct savings to be enjoyed by the States,  
22 local governments, and tribal governments as a  
23 result of—

24 (i) their compliance with the Federal  
25 mandate; or

1 (ii) other changes in Federal law or  
2 regulation that are enacted or adopted in  
3 the same bill or joint resolution or pro-  
4 posed or final Federal regulation and that  
5 govern the same activity as is affected by  
6 the Federal mandate.

7 (D) Direct costs shall be determined on the  
8 assumption that States, local governments, and  
9 tribal governments will take all reasonable steps  
10 necessary to mitigate the costs resulting from  
11 the Federal mandate, and will comply with ap-  
12 plicable standards of practice and conduct es-  
13 tablished by recognized professional or trade as-  
14 sociations.

15 (4) AMOUNT OF FEDERAL FINANCIAL ASSIST-  
16 ANCE DEFINED.—The amount of “Federal financial  
17 assistance” means—

18 (A) the amount of budget authority (as de-  
19 fined in section 3(2)(A) of the Congressional  
20 Budget Act of 1974 (2 U.S.C. 622(2)(A))) of  
21 any Federal grant assistance, and

22 (B) the subsidy amount (as defined as  
23 “cost” in section 502(5) of the Federal Credit  
24 Reform Act of 1990 (2 U.S.C. 661a(5)(a)) of

1 any Federal program providing loan guarantees  
2 or direct loans.

3 (5) OTHER DEFINITIONS.—

4 (A) AGENCY DEFINED.—The term “agen-  
5 cy” has the meaning stated in section 551(1) of  
6 title 5, United States Code, but does not in-  
7 clude independent regulatory agencies, as de-  
8 fined by section 3502(10) of title 44, United  
9 States Code.

10 (B) DIRECTOR DEFINED.—The term “Di-  
11 rector” means the Director of the Congressional  
12 Budget Office.

13 (C) LOCAL GOVERNMENT DEFINED.—The  
14 term “local government” has the same meaning  
15 as in section 6501(6) of title 31, United States  
16 Code.

17 (D) REGULATION OR RULE DEFINED.—  
18 The term “regulation” or “rule” has the mean-  
19 ing of “rule” as defined in section 601(2) of  
20 title 5, United States Code.

21 (E) SMALL GOVERNMENT DEFINED.—The  
22 term “small government” means any small gov-  
23 ernmental jurisdiction as defined in section  
24 601(5) of title 5, United States Code, and any  
25 tribal government.



1 (F) STATE DEFINED.—The term “State”  
2 has the same meaning as in section 6501(9) of  
3 title 31, United States Code.

4 **SEC. 4. EXCLUSIONS.**

5 Anything in this Act to the contrary notwithstanding,  
6 this Act shall not apply to—

7 (1) any provision in a bill or joint resolution be-  
8 fore Congress and any provision in a proposed or  
9 final Federal regulation that—

10 (A) enforces Constitutional rights of indi-  
11 viduals;

12 (B) establishes or enforces any statutory  
13 rights that prohibit discrimination on the basis  
14 of race, religion, gender, national origin, or  
15 handicapped or disability status;

16 (C) requires compliance with accounting  
17 and auditing procedures with respect to grants  
18 or other money or property provided by the  
19 United States Government;

20 (D) provides for emergency assistance or  
21 relief at the request of any State, local govern-  
22 ment, or tribal government or any official of  
23 any of them; or

1 (E) is necessary for the national security  
2 or the ratification or implementation of inter-  
3 national treaty obligations; or

4 (2) any legislation that the President designates  
5 as emergency legislation and that the Congress so  
6 designates in statute.

7 **TITLE I—LEGISLATIVE**  
8 **ACCOUNTABILITY AND REFORM**

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

10 (a) COMMITTEE REPORT.—

11 (1) REGARDING FEDERAL MANDATES.—When a  
12 committee of authorization of the House of Rep-  
13 resentatives or the Senate reports a bill or joint res-  
14 olution of public character that includes any Federal  
15 mandate, the committee shall issue a report to ac-  
16 company the bill or joint resolution containing—

17 (A) an analysis, prepared in consultation  
18 with the Director, including an identification  
19 and description of any Federal mandates in the  
20 bill or joint resolution, including the expected  
21 direct costs to States, local governments, and  
22 tribal governments required to comply with the  
23 Federal mandate;

24 (B)(i) a statement of the amount, if any,  
25 of increase in authorization of appropriations

1 under existing Federal financial assistance pro-  
2 grams, or of authorization of appropriations for  
3 new Federal financial assistance, provided by  
4 the bill or joint resolution and usable for activi-  
5 ties of States, local governments, or tribal gov-  
6 ernments subject to the Federal mandates; and

7 (ii) a statement of whether the committee  
8 intends that the Federal mandates be partly or  
9 entirely unfunded, and, if so, the reasons for  
10 that intention;

11 (C) a qualitative, and if possible, a quan-  
12 titative assessment of costs and benefits antici-  
13 pated from the Federal mandate (such as, but  
14 not limited to, the enhancement of health and  
15 safety and the protection of the natural envi-  
16 ronment);

17 (D) any existing sources of Federal assist-  
18 ance in addition to those identified in subpara-  
19 graph (B)(i) that may assist States, local gov-  
20 ernments, and tribal governments in meeting  
21 the direct costs of the Federal mandates; and

22 (E) an identification of one or more of the  
23 following: reductions in authorization of existing  
24 appropriations, a reduction in direct spending,

1           or an increase in receipts (consistent with the  
2           amount identified in subparagraph (B)(i)).

3           (2) REGARDING PREEMPTION.—When a com-  
4           mittee of authorization of the House of Representa-  
5           tives or the Senate reports a bill or joint resolution  
6           of public character, the committee report accom-  
7           panying the bill or joint resolution shall contain, if  
8           relevant to the bill or joint resolution, an explicit  
9           statement of whether or not the bill or joint resolu-  
10          tion is intended to preempt any State, local, or tribal  
11          law, and if so, an explanation of the reasons for en-  
12          acting such preemption.

13          (b) SUBMISSION OF BILLS TO THE DIRECTOR.—  
14          When a committee of authorization of the House of Rep-  
15          resentatives or the Senate reports a bill or joint resolution  
16          of a public character, the committee shall promptly pro-  
17          vide the bill or joint resolution to the Director and shall  
18          identify to the Director any Federal mandates contained  
19          in the bill or resolution.

20          (c) PUBLICATION OF STATEMENT FROM THE DIREC-  
21          TOR.—Upon receiving a statement (including any supple-  
22          mental statement) from the Director pursuant to section  
23          102(c), a committee of the House of Representatives or  
24          the Senate shall publish the statement in the committee  
25          report accompanying the bill or joint resolution to which

1 the statement relates if the statement is available soon  
2 enough to be included in the printed report. If the state-  
3 ment is not published in the report, or if the bill or joint  
4 resolution to which the statement relates is expected to  
5 be considered by the House of Representatives or the Sen-  
6 ate before the report is published, the committee shall  
7 cause the statement, or a summary thereof, to be pub-  
8 lished in the Congressional Record in advance of floor con-  
9 sideration of the bill or joint resolution.

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

11 (a) STUDIES.—

12 (1) As early as practicable in each new Con-  
13 gress, any committee of the House of Representa-  
14 tives or the Senate which anticipates that the com-  
15 mittee will consider any proposed legislation estab-  
16 lishing, amending, or reauthorizing any Federal pro-  
17 gram likely to have a significant budgetary impact  
18 on States, local governments, or tribal governments,  
19 including any legislative proposal submitted by the  
20 executive branch likely to have such budgetary im-  
21 pact, shall request that the Director initiate a study  
22 of the proposed legislation in order to develop infor-  
23 mation that may be useful in analyzing the costs of  
24 any Federal mandates and of any unfunded Federal

1 mandates that may be included in the proposed leg-  
2 islation.

3 (2) In conducting the study under paragraph  
4 (1), the Director shall—

5 (A) solicit and consider information or  
6 comments from elected officials (including their  
7 designated representatives) of States, local gov-  
8 ernments, tribal governments, and such other  
9 persons as may provide helpful information or  
10 comments,

11 (B) consider establishing advisory panels  
12 of elected officials (including their designated  
13 representatives) of States, local governments,  
14 tribal governments, and other persons if the Di-  
15 rector determines, in his discretion, that such  
16 advisory panels would be helpful in performing  
17 the Director's responsibilities under this sec-  
18 tion, and

19 (C) consult with the relevant committees of  
20 the House of Representatives and of the Sen-  
21 ate.

22 (b) CONSULTATION.—The Director shall, at the re-  
23 quest of any committee of the House of Representatives  
24 or of the Senate, consult with and assist such committee  
25 in analyzing the budgetary impact of any proposed legisla-

1 tion that may have a significant budgetary impact on  
2 State, local, or tribal governments.

3 (c) STATEMENTS ON NONAPPROPRIATIONS BILLS  
4 AND JOINT RESOLUTIONS.—

5 (1) REPORTED BILLS AND JOINT RESOLU-  
6 TIONS.—For each bill or joint resolution of a public  
7 character reported by any committee of authoriza-  
8 tion of the House of Representatives or of the Sen-  
9 ate, the Director shall prepare and submit to the  
10 committee a statement as follows:

11 (A) DIRECT COSTS BELOW THRESHOLD.—

12 If the Director estimates that the direct costs  
13 of all Federal mandates in the bill or joint reso-  
14 lution will not equal or exceed \$50,000,000 (ad-  
15 justed annually for inflation by the Consumer  
16 Price Index) in the fiscal year in which it (as  
17 well as any necessary implementing regulation)  
18 is to be effective or in any of the 4 fiscal years  
19 following such fiscal year, the Director shall so  
20 state and shall briefly explain the basis of the  
21 estimate.

22 (B) DIRECT COSTS ABOVE THRESHOLD.—

23 If the Director estimates that the direct costs  
24 of all Federal mandates in the bill or joint reso-  
25 lution will equal or exceed \$50,000,000 (ad-

1           justed annually for inflation by the Consumer  
2           Price Index) in the fiscal year in which it (as  
3           well as any necessary implementing regulation)  
4           is to be effective or in any of the 4 fiscal years  
5           following such fiscal year, the Director shall so  
6           state and shall briefly explain the basis of the  
7           estimate, and—

8                     (i) shall include estimates (and shall  
9                     briefly explain the basis of the estimates)  
10                    of—

11                             (I) the total amount of direct  
12                             costs of complying with the Federal  
13                             mandates in the bill or joint resolu-  
14                             tion; and

15                             (II) the amount, if any, of in-  
16                             crease in authorization of appropria-  
17                             tions under existing Federal financial  
18                             assistance programs, or of authoriza-  
19                             tion of appropriations for new Federal  
20                             financial assistance, provided by the  
21                             bill or joint resolution and usable by  
22                             States, local governments, or tribal  
23                             governments for activities subject to  
24                             the Federal mandates;



1 (ii) shall also include estimates, if and  
2 to the extent that the Director determines  
3 that such estimates are reasonably feasible,  
4 of—

5 (I) future costs of Federal man-  
6 dates to the extent that they signifi-  
7 cantly differ from or extend beyond  
8 the time period of the estimate re-  
9 ferred to in the first clause of this  
10 subparagraph (B); and

11 (II) any disproportionate budg-  
12 etary effects of Federal mandates and  
13 of any Federal financial assistance in  
14 the bill or joint resolution upon any  
15 particular regions of the country or  
16 particular States, local governments,  
17 tribal governments, or urban or rural  
18 or other types of communities; and

19 (iii) shall also state any amounts ap-  
20 propriated in the prior fiscal year to fund  
21 the activities subject to the Federal man-  
22 date.

23 (2) AMENDED BILLS AND JOINT RESOLUTIONS;  
24 CONFERENCE REPORTS.—If the Director has pre-  
25 pared a statement that includes the determination

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

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to the Congressional  
16 Budget Office to carry out the provisions of this Act, and  
17 for no other purpose, \$2,300,000 for each of the fiscal  
18 years 1995, 1996, 1997, and 1998.

19 (e) TECHNICAL AMENDMENT.—The State and Local  
20 Cost Estimate Act of 1981, Public Law 97–108, is hereby  
21 repealed.

22 **SEC. 103. POINT OF ORDER.**

23 (a) IN GENERAL IN THE HOUSE OF REPRESENTA-  
24 TIVES OR SENATE.—It shall not be in order in the House  
25 of Representatives or Senate to consider any bill or joint

1 resolution that is reported by any committee of authoriza-  
2 tion unless (based upon a ruling of the presiding Officer  
3 in the case of the Senate)—

4 (1) a committee has published a statement of  
5 the Director in accordance with section 101(c) prior  
6 to such consideration; and

7 (2) either—

8 (A) the direct costs of all Federal man-  
9 dates in the bill or joint resolution are esti-  
10 mated not to equal or exceed \$50,000,000 (ad-  
11 justed annually for inflation by the Consumer  
12 Price Index) in the fiscal year in which it (as  
13 well as any necessary implementing regulation)  
14 is to be effective or in any of the 4 fiscal years  
15 following such fiscal year, or

16 (B)(i) the increase in authorization of ap-  
17 propriations under existing Federal financial  
18 assistance programs, or of authorization of ap-  
19 propriations for new Federal financial assist-  
20 ance, provided by the bill or joint resolution and  
21 usable by States, local governments, or tribal  
22 governments for activities subject to the Fed-  
23 eral mandates is at least equal to the estimated  
24 amount of direct costs of the Federal mandates;  
25 and

1           (ii) the committee of jurisdiction has iden-  
2           tified in the bill or joint resolution one or more  
3           of the following: a reduction in authorization of  
4           existing appropriations, a reduction in direct  
5           spending, or an increase in receipts (consistent  
6           with the amount identified in clause (i).

7           (b) WAIVER.—

8           (1) IN GENERAL.—Subsection (a) may be  
9           waived or suspended in the House of Representatives  
10          or Senate only by the affirmative vote of a majority  
11          of its Members voting.

12          (2) SPECIAL RULE IN THE HOUSE OF REP-  
13          RESENTATIVES.—It shall not be in order in the  
14          House of Representatives to consider a rule or order  
15          that waives the application of subsection (a) to a bill  
16          or joint resolution reported by a committee of au-  
17          thorization.

18          (c) AMENDMENT TO RAISE AUTHORIZATION  
19          LEVEL.—Notwithstanding the terms of subsection (a), it  
20          shall not be out of order pursuant to this section to con-  
21          sider a bill or joint to which an amendment is proposed  
22          and agreed to that would raise the amount of authoriza-  
23          tion of appropriations to a level sufficient to satisfy the  
24          requirements of subsections (a)(2)(B) and (a)(2)(C), nor  
25          shall it be out of order to consider such an amendment.

1 **SEC. 104. ENFORCEMENT IN THE HOUSE OF REPRESENTA-**  
2 **TIVES.**

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

7 “(c) In the consideration of any measure for amend-  
8 ment in the Committee of the Whole containing any Fed-  
9 eral mandate (as defined in section 3(1) of the Federal  
10 Mandate Accountability and Reform Act of 1994) that  
11 does not meet the requirements of sections 103(a)(1) and  
12 (2) of that Act, it shall always be in order, unless specifi-  
13 cally waived by terms of a rule governing consideration  
14 of that measure, to move to strike such Federal man-  
15 date.”.

16 (b) COMMITTEE REPORTS REGARDING ROLL CALL  
17 VOTES ON FEDERAL MANDATES.—Clause 2(l)(2) of rule  
18 XI of the Rules of the House of Representatives is amend-  
19 ed by adding at the end the following:

20 “(C) With respect to each rollcall vote on an amend-  
21 ment regarding any Federal mandate (as defined in sec-  
22 tion 3(1) of the Federal Mandate and Accountability Act  
23 of 1994), the total number of votes cast for, and the total  
24 number of votes cast against, that amendment and the  
25 name of each Member voting for and each Member voting  
26 against such amendment, and whether by proxy or in per-

1 son, and the names of those members present but not vot-  
2 ing, shall be included in the committee report.”.

3 (c) SEVEN-DAY LAYOVER.—Clause 2(l)(6) of rule XI  
4 of the Rules of the House of Representatives is amended—

5 (1) by striking “(6) A” and by inserting insert-  
6 ing “(6)(A) Except as provided by subdivision (B),”

7 (2) in its third sentence, by striking “(A)” and  
8 inserting “(i)” and by striking “(B)” and inserting  
9 “(ii)”; and

10 (3) by adding at the end the following:

11 “(B) A measure or matter reported by any committee  
12 that contains any Federal mandate (as defined in section  
13 3(1) of the Federal Mandate and Accountability Act of  
14 1994) that does not meet the requirements of sections  
15 103(a)(1) and (2) of that Act shall not be considered in  
16 the House until the seventh calendar day, excluding Satur-  
17 days, Sundays, and legal holidays, on which the report of  
18 that committee upon the measure or matter has been  
19 available to the Members of the House.”.

20 (d) COMMITTEE ON RULES REPORTS ON WAIVED  
21 POINTS OF ORDER.—Clause 1 of rule XI of the Rules of  
22 the House of Representatives is amended by adding at the  
23 end the following:

24 “(e) By January 2 of each odd-numbered year, the  
25 Committee on Rules shall submit to the House a report

1 identifying all waivers of points of order relating to Fed-  
2 eral mandates (as defined in section 3(1) of the Federal  
3 Mandate Accountability and Reform Act of 1994), includ-  
4 ing an explanation setting forth the following information  
5 respecting each such waiver:

6           “(1) The bill or joint resolution for which the  
7 waiver was granted.

8           “(2) The justification made by the committee  
9 requesting the waiver of the need for the waiver.

10           “(3) An explanation of why the Committee on  
11 Rules granted the waiver.

12           “(4) The economic impact of that bill or joint  
13 resolution on State, local, and tribal governments.”.

14 **SEC. 105. EXERCISE OF RULEMAKING POWERS.**

15       The provisions of sections 101, 102, 103, and 104  
16 are enacted by Congress—

17           (1) as an exercise of the rulemaking powers of  
18 the House of Representatives and the Senate, and as  
19 such they shall be considered as part of the rules of  
20 the House of Representatives and the Senate, re-  
21 spectively, and such rules shall supersede other rules  
22 only to the extent that they are inconsistent there-  
23 with; and

24           (2) with full recognition of the constitutional  
25 right of the House of Representatives and the Sen-

1       ate to change such rules at any time, in the same  
2       manner, and to the same extent as in the case of  
3       any other rule of the House of Representatives or  
4       the Senate, respectively.

5 **SEC. 106. EFFECTIVE DATE.**

6       This title shall apply to bills and joint resolutions re-  
7       ported by a committee on or after October 1, 1995.

8                   **TITLE II—REGULATORY**  
9       **ACCOUNTABILITY AND REFORM**

10 **SEC. 201. REGULATORY PROCESS.**

11       (a) Each agency shall assess the effects of Federal  
12       regulations on States, local governments, and tribal gov-  
13       ernments, including specifically the availability of re-  
14       sources to carry out any mandates in those regulations,  
15       and seek to minimize those burdens that uniquely or sig-  
16       nificantly affect such governmental entities, consistent  
17       with achieving statutory and regulatory objectives.

18       (b) Each agency shall develop an effective process to  
19       permit elected officials (including their designated rep-  
20       resentatives) and other representatives of States, local  
21       governments, and tribal governments to provide meaning-  
22       ful and timely input in the development of regulatory pro-  
23       posals containing significant Federal mandates. Such a  
24       process shall be consistent with all applicable laws.



1 (c)(1) Before establishing any regulatory require-  
2 ments that might significantly or uniquely affect small  
3 governments, agencies shall have developed a plan under  
4 which the agency shall—

5 (A) provide notice of the contemplated require-  
6 ments to any potentially affected small governments,

7 (B) seek the views of, and consult with, officials  
8 of affected small governments pursuant to sub-  
9 section (b), and

10 (C) inform, educate, and advise small govern-  
11 ments on compliance with the requirements.

12 (2) There are hereby authorized to be appropriated  
13 to each agency to carry out the provisions of this section,  
14 and for no other purpose, such sums as are necessary.

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

17 (a) IN GENERAL.—Before promulgating any final  
18 rule that includes any Federal mandates upon States, local  
19 governments, or tribal governments that may result in the  
20 expenditures by States, local governments, or tribal gov-  
21 ernments, in the aggregate, of \$100,000,000 or more (an-  
22 nually adjusted by the Consumer Price Index) in any one  
23 year, and before promulgating any general notice of pro-  
24 posed rulemaking that is likely to result in promulgation

1 of any such rule, the agency shall prepare a written state-  
2 ment containing—

3 (1) estimates by the agency, including the un-  
4 derlying analysis, of the anticipated costs to States,  
5 local governments, and tribal governments of com-  
6 plying with the mandate, and of the extent to which  
7 such costs may be paid with funds provided by the  
8 Federal Government or otherwise paid through Fed-  
9 eral financial assistance;

10 (2) estimates by the agency, if and to the ex-  
11 tent that the agency determines that such estimates  
12 are reasonably feasible, of—

13 (A) the costs of mandates in the regulation  
14 that will be borne in various future time peri-  
15 ods; and

16 (B) any disproportionate budgetary effects  
17 of the mandates upon any particular regions of  
18 the country or particular States, local govern-  
19 ments, tribal governments, or rural or other  
20 types of communities;

21 (3) a qualitative, and if possible, a quantative  
22 assessment of costs and benefits anticipated from  
23 the Federal mandate (such as, but not limited to,  
24 the enhancement of health and safety and the pro-  
25 tection of the natural environment); and

1           (4)(A) a description of the extent of the agen-  
2           cy's prior consultation with elected representatives  
3           (including their designated representatives) of the  
4           affected States, local governments, and tribal gov-  
5           ernments and of other affected parties, (B) a sum-  
6           mary of the comments and concerns that were pre-  
7           sented by States, local governments, or tribal gov-  
8           ernments either orally or in writing to the agency,  
9           (C) a summary of the agency's evaluation of those  
10          comments and concerns, and (D) the agency's posi-  
11          tion supporting the need to issue the regulation con-  
12          taining the mandate (considering, among other  
13          things, the extent to which costs may or may not be  
14          paid with funds provided by the Federal Govern-  
15          ment).

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

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

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

3 (a) The Director of the Office of Management and  
4 Budget shall collect from agencies the statements pre-  
5 pared under section 202 and provide copies of them to  
6 the Director of the Congressional Budget Office promptly  
7 after promulgation of the general notice of proposed rule-  
8 making or of the final rule for which the statement was  
9 prepared.

10 (b) Each agency shall provide to the Director of the  
11 Congressional Budget Office such information and assist-  
12 ance as he may reasonably request to assist him in per-  
13 forming his responsibilities under this Act.

14 **SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXI-**  
15 **BILITY.**

16 (a) The Director of the Office of Management and  
17 Budget, in consultation with Federal agencies, shall estab-  
18 lish pilot programs in at least 2 agencies to test innova-  
19 tive, and more flexible regulatory approaches that—

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

22 (2) meet overall statutory goals and objectives.

23 (b) The pilot program shall focus on rules in effect  
24 or proposed rules, or a combination thereof.

## 1       **TITLE III—JUDICIAL REVIEW**

### 2       **SEC. 301. JUDICIAL REVIEW.**

3           Any statement or report prepared under this Act, any  
4 compliance or noncompliance with the provisions of this  
5 Act, and any determination concerning the applicability of  
6 the provisions of this act shall not be subject to judicial  
7 review. The provisions of this Act shall not create any  
8 right or benefit, substantive or procedural, enforceable by  
9 any person in any administrative or judicial action. No  
10 ruling or determination under this act shall be considered  
11 by any court in determining the intent of Congress or for  
12 any other purpose.

## 13       **TITLE IV—BASELINE STUDY**

### 14       **SEC. 401. BASELINE STUDY OF COSTS AND BENEFITS.**

15           (a) No later than 6 months after the date of enact-  
16 ment of this Act, the Director of the Bureau of the Cen-  
17 sus, in consultation with the Director, shall begin a study  
18 to examine the measurement and definition issues involved  
19 in calculating the total costs and benefits to States, local  
20 governments, and tribal governments of compliance with  
21 Federal law. The study shall consider the feasibility of  
22 measuring indirect costs and benefits as well as direct  
23 costs and benefits of the Federal, State, local, and tribal  
24 relationship. The study shall consider how to measure both  
25 the direct and indirect benefits of Federal financial assist-

1 ance and tax benefits to States, local governments, and  
2 tribal governments.

3 (b) There are authorized to be appropriated to the  
4 Bureau of the Census to carry out the purposes of this  
5 title, \$1,000,000 for fiscal year 1995 and \$1,000,000 for  
6 fiscal year 1996.

7 **TITLE V—LIMITATION ON IM-**  
8 **PLEMENTATION OF FEDERAL**  
9 **MANDATES; REVIEW AND**  
10 **MONITORING OF UNFUNDED**  
11 **FEDERAL MANDATES AND IM-**  
12 **PLEMENTATION OF ACT**

13 **SEC. 501. SHORT TITLE.**

14 This title may be cited as the “Federal Mandate and  
15 Community Assistance Reform Act”.

16 **SEC. 502. REPORT ON UNFUNDED FEDERAL MANDATES BY**  
17 **ADVISORY COMMISSION ON INTERGOVERN-**  
18 **MENTAL RELATIONS.**

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

22 (1) investigate and review on a regular basis  
23 the role of unfunded Federal mandates in intergov-  
24 ernmental relations and their impact on local, State,

1 and Federal government objectives and responsibil-  
2 ities; and

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

5 (A) a process by which State and local gov-  
6 ernments can participate in meeting national  
7 domestic objectives without the burden created  
8 by unfunded Federal mandates, including rec-  
9 ommendations for funding the Federal man-  
10 dates imposed after the date of the enactment  
11 of this Act on State and local governments;

12 (B) allowing flexibility for State and local  
13 governments in complying with specific un-  
14 funded Federal mandates for which terms of  
15 compliance are unnecessarily rigid or complex;

16 (C) reconciling any 2 or more unfunded  
17 Federal mandates which impose contradictory  
18 or inconsistent requirements;

19 (D) terminating unfunded Federal man-  
20 dates which are duplicative, obsolete, or lacking  
21 in practical utility;

22 (E) suspending, on a temporary basis, un-  
23 funded Federal mandates which are not vital to  
24 public health and safety and which compound  
25 the fiscal difficulties of State and local govern-

1           ments, including recommendations for trigger-  
2           ing such suspension;

3           (F) consolidating or simplifying unfunded  
4           Federal mandates, or the planning or reporting  
5           requirements of such mandates, in order to re-  
6           duce duplication and facilitate compliance by  
7           State and local governments with those man-  
8           dates; and

9           (G) establishing common Federal defini-  
10          tions or standards to be used by State and local  
11          governments in complying with unfunded Fed-  
12          eral mandates that use different definitions or  
13          standards for the same terms or principles.

14       Each recommendation under paragraph (2) shall, to the  
15       extent practicable, identify the specific unfunded Federal  
16       mandate to which the recommendation applies.

17       (b) CRITERIA.—

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

21           (2) ISSUANCE OF PROPOSED CRITERIA.—The  
22           Advisory Commission shall issue proposed criteria  
23           under this subsection not later than 45 days after  
24           the date of the enactment of this Act, and thereafter



1 provide a period of 30 days for submission by the  
2 public of comments on the proposed criteria.

3 (3) FINAL CRITERIA.—Not later than 45 days  
4 after the date of issuance of proposed criteria, the  
5 Advisory Commission shall—

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

8 (B) adopt and incorporate in final criteria  
9 any recommendations submitted in those com-  
10 ments that the Advisory Commission deter-  
11 mines will aid the Advisory Commission in car-  
12 rying out its duties under this section; and

13 (C) issue final criteria under this sub-  
14 section.

15 (c) PRELIMINARY REPORT.—

16 (1) IN GENERAL.—Not later than 9 months  
17 after the date of the enactment of this Act, the Ad-  
18 visory Commission shall—

19 (A) prepare and publish a preliminary re-  
20 port on its activities under this title, including  
21 preliminary recommendations pursuant to sub-  
22 section (a);

23 (B) publish in the Federal Register a no-  
24 tice of availability of the preliminary report;  
25 and

1 (C) provide copies of the preliminary re-  
2 port to the public upon request.

3 (2) PUBLIC HEARINGS.—The Advisory Commis-  
4 sion shall hold public hearings on the preliminary  
5 recommendations contained in the preliminary re-  
6 port of the Advisory Commission under this sub-  
7 section.

8 (d) FINAL REPORT.—Not later than 3 months after  
9 the date of the publication of the preliminary report under  
10 subsection (c), the Advisory Commission shall submit to  
11 the Congress, including the ranking minority party mem-  
12 ber of each of the Committee on Government Operations  
13 of the House of Representatives and the Committee on  
14 Governmental Affairs of the Senate, and the President a  
15 final report on the findings, conclusions, and recommenda-  
16 tions of the Advisory Commission under this section.

17 **SEC. 503. MONITORING IMPLEMENTATION OF ACT.**

18 (a) IN GENERAL.—The Advisory Commission shall  
19 monitor and evaluate the implementation of this Act, in-  
20 cluding by conducting such hearings, and consulting with  
21 such Federal, State, local, and tribal governments, as the  
22 Advisory Commission considers appropriate for obtaining  
23 information and views about the purpose, implementation,  
24 and results of this Act.

1 (b) BIENNIAL REPORT.—The Advisory Commission  
2 shall submit a report to the President and the Congress  
3 every 2 years which—

4 (1) presents the findings of the Advisory Com-  
5 mission under subsection (a); and

6 (2) presents recommendations for improving the  
7 implementation of this Act, including regarding any  
8 need for amending this Act.

9 **SEC. 504. SPECIAL AUTHORITIES OF ADVISORY COMMIS-**  
10 **SION.**

11 (a) EXPERTS AND CONSULTANTS.—For purposes of  
12 carrying out this title, the Advisory Commission may pro-  
13 cure temporary and intermittent services of experts or  
14 consultants under section 3109(b) of title 5, United States  
15 Code.

16 (b) DETAIL OF STAFF OF FEDERAL AGENCIES.—  
17 Upon request of the Executive Director of the Advisory  
18 Commission, the head of any Federal department or agen-  
19 cy may detail, on a reimbursable basis, any of the person-  
20 nel of that department or agency to the Advisory Commis-  
21 sion to assist it in carrying out this title.

22 (c) CONTRACT AUTHORITY.—The Advisory Commis-  
23 sion may, subject to appropriations, contract with and  
24 compensate government and private agencies or persons

1 for property and services used to carry out its duties under  
2 this title.

3 **SEC. 505. DEFINITIONS.**

4 In this title:

5 (1) **ADVISORY COMMISSION.**—The term “Advi-  
6 sory Commission” means the Advisory Commission  
7 on Intergovernmental Relations.

8 (2) **FEDERAL MANDATE.**—The term “Federal  
9 mandate”—

10 (A) subject to subparagraph (B), means a  
11 requirement under Federal statute or regulation  
12 that a State or local government, or both, un-  
13 dertake an activity or provide a service; and

14 (B) does not include any Federal statute  
15 or regulation that—

16 (i) enforces the constitutional rights  
17 of individuals, or

18 (ii) establishes or enforces any statu-  
19 tory prohibition against discrimination on  
20 the basis of race, religion, gender, national  
21 origin, age, or handicapped or disability  
22 status.

23 (3) **UNFUNDED FEDERAL MANDATE.**—The  
24 term “unfunded Federal mandate” means—

1 (A) a Federal mandate other than one that  
2 relates to a program described in subparagraph  
3 (B)(i), and—

4 (i) which requires that a State or local  
5 government, or both, undertake an activity  
6 or provide a service; and

7 (ii) for which the Federal Government  
8 does not provide sufficient funds to under-  
9 take such activity or provide such service;  
10 or

11 (B) a Federal mandate—

12 (i) that relates to a Federal program  
13 under which \$500,000,000 or more is pro-  
14 vided annually to State and local govern-  
15 ments under entitlement authority (as de-  
16 fined in section 622(9) of title 2, United  
17 States Code),

18 (ii) which requires that a State or  
19 local government, or both, undertake an  
20 activity or provide a service; and

21 (iii)(I) with respect to which the fail-  
22 ure to undertake such activity or provide  
23 such service would result in a reduction of  
24 Federal financial or technical assistance to  
25 the State or local government; or

1 (II) would impose costs on a State or  
2 local government that exceed the amount  
3 of Federal financial assistance provided to  
4 the State or local government under the  
5 program.

6 **SEC. 506. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to the Advi-  
8 sory Commission—

9 (1) to carry out section 502, \$500,000; and

10 (2) to carry out section 503, \$200,000 for each  
11 of fiscal years 1995, 1996, 1997, 1998, and 1999.

12 **TITLE VI—PRIVATE SECTOR**  
13 **COSTS**

14 **SEC. 601. SHORT TITLE.**

15 This title may be cited as the “Private Sector Legis-  
16 lative Analysis Act of 1994”.

17 **SEC. 602. DEFINITIONS.**

18 In this title—

19 (1) the term “private sector” means individuals,  
20 business, labor and employment, agriculture, and  
21 nonprofit organizations; and

22 (2) the term “economic impact” means the eco-  
23 nomic cost or benefit to the private sector and to the  
24 general public.

1 **SEC. 603. ACTION BY THE MAJORITY AND MINORITY LEAD-**  
2 **ERS.**

3 (a) At the beginning of each Congress, the majority  
4 leader of the Senate, in cooperation of the minority leader  
5 of the Senate, and the Speaker of the House of Represent-  
6 atives, in cooperation with the minority leader of the  
7 House of Representatives, shall each prepare a list of  
8 major legislative proposals (including those that could be  
9 submitted by an agency or official in the executive branch)  
10 that the majority leader or Speaker, respectively, be-  
11 lieves—

12 (1) are likely to have a significant economic im-  
13 pact; and

14 (2) are likely to be considered in that House in  
15 that Congress.

16 (b) In preparing the list required by subsection (a),  
17 the majority leader of the Senate, the Speaker of the  
18 House of Representatives, and the minority leader of each  
19 of the Senate and House shall consult with the chairmen  
20 and ranking minority party Members of the committees  
21 of that House that are expected to have jurisdiction over  
22 legislative proposals included in the list, and with the Di-  
23 rector. The majority leader of the Senate, the Speaker,  
24 and the minority leaders shall also consider the availability  
25 of resources for the Congressional Budget Office in deter-

1 mining how many legislative proposals should be included  
2 in the list.

3 (c) The majority leader of the Senate, the Speaker  
4 of the House of Representatives, and the minority leaders  
5 of the Senate and House may also include in the list re-  
6 quired by subsection (a) any legislative topics or areas of  
7 interest that meet the criteria set forth in subsection  
8 (a)(1) and (2), but for which no specific legislative propos-  
9 als have been drafted.

10 (d) No later than the end of the 30-day period begin-  
11 ning on the first day of each Congress, the majority leader  
12 of the Senate and the Speaker of the House of Represent-  
13 atives shall each submit to the Director a list prepared  
14 in accordance with subsection (a). Before the adjournment  
15 sine die of the 1st session of each Congress, the majority  
16 leader and minority leader of the Senate and the Speaker  
17 and minority leader of the House of Representatives shall  
18 review the list prepared under subsection (a) for that Con-  
19 gress and decide whether to add proposals to, or delete  
20 proposals from, that list, or modify proposals in that list.

21 **SEC. 604. DUTIES OF THE DIRECTOR.**

22 (a) Upon receiving a list submitted under section  
23 603(d), the Director shall initiate a study of each of the  
24 major legislative proposals, legislative topics, and areas of  
25 interest in the list for the purposes of studying and esti-



1 mating its economic impact. The objectives of each study  
2 shall be to determine an estimate, or range of estimates,  
3 of the economic impact of the proposal, topic, or area, in-  
4 cluding—

5 (1) labor market and employment impacts;

6 (2) costs and benefits to the private sector and  
7 the general public; and

8 (3) in consultation with relevant Federal agen-  
9 cies, a qualitative, and if possible, a quantitative as-  
10 sessment of costs and benefits to human health,  
11 safety, and the natural environment.

12 (b) As part of each study under subsection (a), the  
13 Director shall also evaluate and compare congressional  
14 committee and Federal agency estimates of the impact of  
15 a legislative proposal, topic, or area.

16 (c) If the Director determines that he or she cannot  
17 determine a reliable estimate, or range of estimates, under  
18 subsection (a), the Director shall so state, with expla-  
19 nation, and shall include in the study the preliminary anal-  
20 ysis upon which the Director based that determination.

21 (d) The Director shall seek to coordinate completion  
22 of studies under this section with expected congressional  
23 committee action on related legislation.

**1 SEC. 605. POINT OF ORDER.**

2 It shall not be in order in the House of Representa-  
3 tives or the Senate to consider any bill or joint resolution  
4 that is included on the list required by section 603 of this  
5 Act for that Congress if that bill or joint resolution is re-  
6 ported by any committee of authorization unless that com-  
7 mittee or the Director has published a study by the Direc-  
8 tor required by section 604, or if such study has not been  
9 completed, an explanatory statement setting forth reasons  
10 why such study has not yet been completed.

○

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