

103^D CONGRESS
1ST SESSION

S. 480

To clarify the application of Federal preemption of State and local laws,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, JANUARY 5), 1993

Mr. LEVIN (for himself and Mr. DURENBERGER) introduced the following bill;
which was read twice and referred to the Committee on Governmental Affairs

A BILL

To clarify the application of Federal preemption of State
and local laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preemption Clarifica-
5 tion and Information Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the United States Constitution created a
9 strong Federal system, reserving to the States all

1 powers not expressly delegated to the Federal Gov-
2 ernment;

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

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

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

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

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

24 (C) leave the presence or scope of preemp-
25 tion to be litigated and determined by the Fed-

1 eral judiciary, producing results sometimes con-
2 trary to or beyond the intent of Congress.

3 **SEC. 3. PURPOSE.**

4 The purposes of this Act are to—

5 (1) promote and preserve the integrity and ef-
6 fectiveness of the Federal system;

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

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

14 **SEC. 4. DEFINITIONS.**

15 As used in this Act, the term—

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

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

22 (3) “State and local government powers” means
23 powers reserved under the ninth and tenth amend-
24 ments of the United States Constitution to States or
25 delegated to local governments by States.

1 **SEC. 5. RULE OF CONSTRUCTION.**

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

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

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

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

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

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

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

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

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

6 **SEC. 7. EFFECTIVE DATE.**

7 This Act shall take effect on January 1, 1994. The
8 requirements of section 5 shall apply only to statutes en-
9 acted or final regulations which become effective on or
10 after January 1, 1994.

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