

PROVIDING FOR THE CONSIDERATION OF H.R. 5, THE  
UNFUNDED MANDATE REFORM ACT OF 1995

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JANUARY 18, 1995.—Referred to the House Calendar and ordered to be printed

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Mr. DREIER, from the Committee on Rules,  
submitted the following

REPORT

[To accompany H. Res. 38]

The Committee on Rules, having had under consideration House Resolution 38, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 5, the “Unfunded Mandate Reform Act of 1995,” under an open rule. The rule provides two hours of general debate divided equally between the chairmen and ranking minority members of the Committees on Government Reform and Oversight and Rules.

The rule makes in order an amendment in the nature of a substitute, incorporating the amendments of the two committees, printed in this report to accompany the rule, as original text for amendment purposes. The substitute shall be read by title instead of section for amendment, and sections 1-4 and each title shall be considered as read.

The Chairman of the Committee of the Whole may give priority in recognition to Members who have pre-printed their amendments in the Congressional Record prior to their consideration, and such amendments shall be considered as read. Finally, the rule provides for one motion to recommit, with or without instructions.

COMMITTEE VOTES

Clause 2(l)(2)(B) of House Rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to include the total number of votes cast for and against on each rollcall vote on a motion to report and any amendment offered

to the measure or matter, together with the names of those voting for and against. Below are the results of the rollcall votes taken in the Rules Committee on this resolution:

RULES COMMITTEE ROLL CALL NO. 7

Date: January 18, 1995.

Measure: Rule for H.R. 5.

Motion By: Mr. Moakley.

Summary of Motion: Strike optional pre-printing in Record provision for amendments.

Results: Rejected, 3 to 8.

Vote by Member: Quillen—Not voting; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Not voting; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLL CALL NO. 8

Date: January 18, 1995.

Measure: Rule for H.R. 5.

Motion By: Mr. Dreier.

Summary of Motion: Motion to order rule reported with recommendation it be adopted.

Results: Adopted 8 to 3.

Vote by Member: Quillen—Not voting; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Nay; Frost—Not voting; Hall—Nay; Solomon—Yea.

AMENDMENT IN NATURE OF A SUBSTITUTE MADE IN ORDER

The text of the amendment in the nature of a substitute made in order as original text by the rule is printed in this report beginning on the following page:

Strike all out after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Unfunded Mandate Reform Act of 1995".

**SEC. 2. PURPOSES.**

The purposes of this Act are—

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

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on States, local governments, and tribal governments 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 States, local governments, 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 House of Representatives before the Senate and House of Representatives votes on proposed legislation;
- (4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;
- (5) to establish a point-of-order vote on the consideration in the Senate and House Representatives of legislation containing significant Federal mandates;
- (6) to assist Federal agencies in their consideration of proposed regulations affecting States, local governments, and tribal governments, by—
  - (A) requiring that Federal agencies develop a process to enable the elected and other officials of States, local governments, and tribal governments to provide input when Federal agencies are developing regulations; and
  - (B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon States, local governments, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process;
- (7) to establish the general rule that Congress shall not impose Federal mandates on States, local governments, and tribal governments without providing adequate funding to comply with such mandates; and
- (8) to being consideration of methods to relieve States, local governments, and tribal governments of unfunded mandates imposed by Federal court interpretations of Federal statutes and regulations.

**SEC. 3. DEFINITIONS.**

For purposes of this Act—

- (1) the terms “agency”, “Federal financial assistance”, “Federal private sector mandate”, “Federal mandate” (except as provided by section 108), “local government”, “private sector”, “regulation” or “rule”, and “State” have the meaning given those terms by section 421 of the Congressional Budget Act of 1974; and
- (2) the term “small government” means any small governmental jurisdiction as defined in section 601(5) of title 5, United States Code, and any tribal government.

**SEC. 4. LIMITATION ON APPLICATION.**

This Act shall not apply to any provision in a Federal statute or 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, religion, gender, national origin, or handicapped or disability status;
- (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 government, or tribal government or any official of such a 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) pertains to Social Security.

## **TITLE I—REVIEW OF UNFUNDED FEDERAL MANDATES**

### **SEC. 101. ESTABLISHMENT.**

There is established a commission which shall be known as the “Commission on Unfunded Federal Mandates” (in this title referred to as the “Commission”).

### **SEC. 102. REPORT ON UNFUNDED FEDERAL MANDATES BY THE COMMISSION.**

(a) **IN GENERAL.**—The Commission shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities; and

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

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

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

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

(D) suspending, on a temporary basis, unfunded 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 unfunded 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; and

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

(3) **IDENTIFICATION OF RELEVANT UNFUNDED FEDERAL MANDATES.**—Each recommendation under paragraph (2) shall, to

the extent practicable, identify the specific unfunded Federal mandates to which the recommendation applies.

(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 not 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.**—Not 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.**—Not 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);

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

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

(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.**—Not 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 and the Committee on Governmental Affairs of the Senate, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

**SEC. 103. MEMBERSHIP.**

(a) **NUMBER AND APPOINTMENT.**—The Commission shall be composed of 9 members appointed from individuals who possess extensive leadership experience in and knowledge of State, local, and tribal governments and intergovernmental relations, including State and local elected officials, as follows:

(1) 3 members appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives.

(2) 3 members appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(3) 3 members appointed by the President.

(b) **WAIVER OF LIMITATION ON EXECUTIVE SCHEDULE POSITIONS.**—Appointments may be made under this section without regard to section 5311(b) of title 5, United States Code.

## (c) TERMS.—

(1) IN GENERAL.—Each member of the Commission shall be appointed for the life of the Commission.

(2) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

## (d) BASIC PAY.—

(1) RATES OF PAY.—Members of the Commission shall serve without pay.

(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Commission who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Commission.

(e) TRAVEL EXPENSES.—Each member of the Commission may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(f) CHAIRPERSON.—The President shall designate a member of the Commission as Chairperson at the time of the appointment of that member.

## (g) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall meet at the call of the Chairperson or a majority of its members.

(2) FIRST MEETING.—The Commission shall convene its first meeting by not later than 45 days after the date of the completion of appointment of the members of the Commission.

(3) QUORUM.—A majority of members of the Commission shall constitute a quorum but a lesser number may hold hearings.

**SEC. 104. DIRECTOR AND STAFF OF COMMISSION EXPERTS AND CONSULTANTS.**

(a) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Commission. The Director shall be paid at a level not to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(b) STAFF.—With the approval of the Commission, and without regard to section 5311(b) of title 5, United States Code, the Director may appoint and fix the pay of such staff as is sufficient to enable the Commission to carry out its duties.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate payable under section 5376 of title 5, United States Code.

(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Director, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agen-

cy to the Commission to assist it in carrying out its duties under this title.

**SEC. 105. POWER OF COMMISSION.**

(a) **HEARINGS AND SESSIONS.**—The Commission may, for the purpose of carrying out this title, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(b) **POWERS OF MEMBERS AND AGENTS.**—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) **OBTAINING OFFICIAL DATA.**—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title, except information—

- (1) which is specifically exempted from disclosure by law; or
- (2) which that department or agency determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States.

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

(d) **MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

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

(f) **CONTRACT AUTHORITY.**—The Commission may, subject to appropriations, contract with and compensate government and private agencies or persons for property and services used to carry out its duties under this title.

**SEC 106. TERMINATION.**

The Commission shall terminate 90 days after submitting its final report pursuant to section 102(d).

**SEC. 107. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Commission \$1,000,000 to carry out this title.

**SEC. 108. DEFINITION.**

As used in this title, the term “Federal mandate” means any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon States, local governments, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

**SEC. 109. EFFECTIVE DATE.**

This title shall take effect 60 days after the date of the enactment of this Act.

## **TITLE II—REGULATORY ACCOUNTABILITY AND REFORM**

**SEC. 201. REGULATORY PROCESS.**

(a) **IN GENERAL.**—Each agency shall, to the extent permitted by subchapter II of chapter 5 of title 5, United States Code—

(1) assess the effects of Federal regulations on States, local governments, tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), including specifically the availability of resources to carry out any Federal mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities or the private sector, consistent with achieving statutory and regulatory objectives.

(b) **STATE, LOCAL GOVERNMENT, AND TRIBAL GOVERNMENT INPUT.**—Each agency shall develop an effective process to permit elected officials (or their designated representatives) of States, local governments, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(c) **AGENCY PLAN.**—

(1) **IN GENERAL.**—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, an agency shall have developed a plan under which the agency shall—

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

(B) enable officials of affected small governments to provide input pursuant to subsection (b); and

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

(2) **EFFECTS ON PRIVATE SECTOR.**—Before establishing any regulatory requirements, agencies shall prepare estimates, based on available data, of the effect of Federal private sector mandates 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.

**SEC. 202 STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.**

(a) **IN GENERAL.**—Before promulgating any final rule that includes any Federal mandate that may result in the expenditure by States, local governments, or tribal governments, in the aggregate, or the private sector of at least \$100,000,000 (adjusted annually for inflation) in any 1 year, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to States, local governments, tribal governments, and the private sector of complying with the Federal mandates, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

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

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

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

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal mandates (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of Federal private sector mandates 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;

(5) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected States, local governments, and tribal governments, and designated representatives of the private sector;

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

(7) a summary of the agency's evaluation of those comments and concerns; and

(8) the agency's position supporting the need to issue the regulation containing the Federal mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(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 by subsection (a) in conjunction with or as part of any other statement or analysis,

if the statement or analysis satisfies the provisions of subsection (a).

**SEC. 203. 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 them 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. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.**

(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 on a combination thereof.

**SEC. 205. ANNUAL REPORT TO CONGRESS REGARDING FEDERAL COURT RULINGS.**

Not 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 each of 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 Federal court rulings in the preceding calendar year which imposed an enforceable duty on 1 or more States, local governments, or tribal governments.

## **TITLE III—LEGISLATIVE ACCOUNTABILITY AND REFORM**

**SEC. 301. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.**

Title IV of the Congressional Budget Act of 1974 is amended by—

- (1) inserting before section 401 the following:

“PART A—GENERAL PROVISIONS”; and

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

“PART B—FEDERAL MANDATES

**“SEC. 421. DEFINITIONS.**

“For purposes of this part:

- “(1) **AGENCY.**—The term ‘agency’ has the meaning stated in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined by section 3502(10) of title 44, United States Code.

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Congressional Budget Office.

“(3) FEDERAL FINANCIAL ASSISTANCE.—The term ‘Federal financial assistance’ means the amount of budget authority for any Federal grant assistance or any Federal program providing loan guarantees or direct loans.

“(4) 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 States, local governments, 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 Federal financial assistance that would be provided to States, local governments, 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

“(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 States, local governments, and tribal governments under entitlement authority, if—

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

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

“(ii) the States, local governments, 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.

“(5) 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 on 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 purpose of ensuring compliance with such duty.

“(6) FEDERAL MANDATE.—The term ‘Federal mandate’ means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (4) and (5).

“(7) FEDERAL MANDATE DIRECT COSTS.—

“(A) FEDERAL INTERGOVERNMENTAL DIRECT COSTS.—In the case of a Federal intergovernmental mandate, the term ‘direct costs’ means the aggregate estimated amounts that all States, local governments, and tribal governments would be required to spend or would be required to forego in revenues in order to comply with the Federal intergovernmental mandate, or, in the case of a provision referred to in paragraph (4)(A)(ii), the amount of Federal financial assistance eliminated or reduced.

“(B) PRIVATE SECTOR DIRECT COSTS.—In the case of a Federal private sector mandate, the term ‘direct costs’ means the aggregate estimated amounts that the private sector would be required to spend in order to comply with a Federal private sector mandate.

“(C) EXCLUSION FROM DIRECT COSTS.—The term ‘direct costs’ does not include—

“(i) estimated amounts that the States, local governments, and tribal governments (in the case of a Federal intergovernmental 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 a Federal mandate for the same activity as is affected by that Federal mandate; or

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

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

“(I) their 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.

“(D) DETERMINATION OF COSTS.—Direct costs shall be determined based on the assumption that States, local governments, 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. Reasonable

steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees.

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

“(9) PRIVATE SECTOR.—The term ‘private sector’ means individuals, partnerships, associations, corporations, business trusts, or legal representatives, organized groups of individuals, and educational and other nonprofit institutions.

“(10) REGULATION.—The term ‘regulation’ or ‘rule’ has the meaning of ‘rule’ as defined in section 601(2) of title 5, United States Code.

“(11) STATE.—The term ‘State’ has the same meaning as in section 6501(9) of title 31, United States Code.

**“SEC. 422. LIMITATION ON APPLICATION.**

“This part shall not apply to any provision in a bill, joint resolution, motion, amendment, 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, religion, gender, national origin, or handicapped or disability status;

“(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 government, or tribal government or any official of such a 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) pertains to Social Security.

**“SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.**

“(a) SUBMISSION OF RULES TO THE DIRECTOR.—When a committee of authorization of the House of Representatives or the Senate orders a bill or joint resolution of a public character reported, the committee shall promptly provide the text of the bill or joint resolution to the Director and shall identify to the Director any Federal mandate contained in the bill or resolution.

“(b) COMMITTEE REPORT.—

“(1) INFORMATION REGARDING FEDERAL MANDATES.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraph (2) and, in the case of a Federal intergovernmental mandate, paragraph (3).

“(2) REPORTS ON FEDERAL MANDATES.—Each report referred to in paragraph (1) shall contain—

“(A) an identification and description of each Federal mandate in the bill or joint resolution, including the state-

ment, if available, from the Director pursuant to section 424(a):

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

“(C) a statement of the degree to which the Federal mandate affects each of the public and private sectors and the extent to which Federal payment of public sector costs would affect the competitive balance between States, local governments, or tribal governments and the private sector.

“(3) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report referred to in paragraph (1) shall also contain—

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

“(ii) 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

“(B) a statement of any existing sources of Federal financial assistance in addition to those identified in subparagraph (A) that may assist States, local governments, and tribal governments in paying the direct costs of the Federal intergovernmental mandates.

“(4) INFORMATION REGARDING PREEMPTION.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a 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 whether the bill or joint resolution, in whole or in part, is intended to preempt any State, local, or tribal law, and if so, an explanation of the reasons for such intention.

“(c) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

“(1) IN GENERAL.—Upon receiving a statement (including any supplemental statement) from the Director pursuant to section 424(a), a committee of the House of Representatives or the Senate shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available to be included in the printed report.

“(2) OTHER PUBLICATION OR 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 House of Representatives or the Senate before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congress-

sional Record in advance of floor consideration of the bill or joint resolution.

**“SEC. 424. DUTIES OF THE DIRECTOR.**

**“(a) STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—**

**“(1) 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 House of Representatives or the Senate, the Director shall prepare and submit to the committee a statement as follows:

**“(A)** 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 such a Federal intergovernmental mandate (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

**“(B)** The estimate required by subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

**“(i)** the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution; and

**“(ii)** the amount, if any, of increase in authorization of appropriations or budget authority or entitlement authority 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 States, local governments, or tribal governments for activities subject to the Federal intergovernmental mandates.

**“(2) 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 House of Representatives or the Senate, the Director shall prepare and submit to the committee a statement as follows:

**“(A)** 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.

**“(B)** The estimate required by subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

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

“(ii) 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.

“(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), 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.

“(3) 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 threshold specified in paragraph (1)(A) or (2)(A), the Director shall so state and shall briefly explain the basis of the estimate.

“(4) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If the Director has prepared the statement pursuant to subsection (a) for a bill or joint resolution, and if that bill or joint resolution is reported or 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 an amended form, the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a supplemental statement for the bill or joint resolution in that amended form.

“(b) ASSISTANCE TO COMMITTEES AND STUDIES.—

“(1) IN GENERAL.—At the request of any committee of the House of Representatives or of the Senate, the Director 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; or

“(B) a significant financial impact on the private sector.

“(2) CONTINUING STUDIES.—The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

“(3) FEDERAL MANDATE STUDIES.—

“(A) At the request of any committee of the House of Representatives or the Senate, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

“(B) In conducting a study under subparagraph (A), the Director shall—

“(i) solicit and consider information or comments from elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and such other persons as may provide helpful information or comments;

“(ii) consider establishing advisory panels of elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and other persons if the Director determines, in the Director’s discretion, that such advisory panels would be helpful in performing the Director’s responsibilities under this section; and

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

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

“(II) any disproportionate budgetary effects of the Federal mandates concerned 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 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.

“(c) VIEWS OF COMMITTEES.—Any committee of the House of Representatives or the Senate which anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on the States, local governments, or tribal governments, 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 provide its views and estimates on such proposal to the Committee on the Budget of its House.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Congressional Budget Office to carry out this part \$4,500,000 for each of fiscal years 1996 through 2002.

**“SEC. 425. POINT OF ORDER.**

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

“(1) any bill or joint resolution that is reported by a committee unless the committee has published the statement of the Director pursuant to section 424(a) prior to such consideration, except that this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(a)(4); or

“(2) any bill, joint resolution, amendment, motion, or conference report that contains a Federal intergovernmental mandate having direct costs that exceed the threshold specified in section 424(a)(1)(A), or that would cause the direct costs of any other Federal intergovernmental mandate to exceed the threshold specified in section 424(a)(1)(A), 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 the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that equals or exceeds the estimated direct costs of such mandate; or

“(B) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts or a decrease in new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate and an increase in new budget authority or new entitlement authority in the House of Representatives or an increase direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that equals or exceeds the estimated direct costs of such mandate; or

“(C) the bill, joint resolution, amendment, motion, or conference report—

“(i) provides that—

“(I) such mandate shall be effective for any fiscal year only if all direct costs of such mandate in the fiscal year are provided in appropriations Acts, and

“(II) in the case of such a mandate contained in the bill, joint resolution, amendment, motion, or conference report, the mandate is repealed effective on the first day of any fiscal year for which all direct costs of such mandate are not provided in appropriations Acts; or

“(ii) requires a Federal agency to reduce programmatic and financial responsibilities of State, local, and tribal governments for meeting the objectives of the mandate such that the estimated direct costs of the mandate to such governments do not exceed the amount of Federal funding provided to those governments to carry out the mandate in the form of appropriations or new budget authority or new entitle-

ment authority in the House of Representatives or direct spending authority in the Senate, and establishes criteria and procedures for that reduction.

“(b) LIMITATION ON APPLICATION TO APPROPRIATIONS BILLS.—Subsection (a) shall not apply to a bill that is reported by the Committee on Appropriations or an amendment thereto.

“(c) DETERMINATION OF DIRECT COSTS BASED ON ESTIMATES BY BUDGET COMMITTEES.—For the purposes of this section, the amount of direct costs of a Federal mandate for a fiscal year shall be determined based on estimates made by the Committee on the Budget, in consultation with the Director, of the House of Representatives or the Senate, as the case may be.

“(d) DETERMINATION OF EXISTENCE OF FEDERAL MANDATE BY GOVERNMENT REFORM AND OVERSIGHT AND GOVERNMENTAL AFFAIRS COMMITTEES.—For the purposes of this section, the question of whether a bill, joint resolution, amendment, motion, or conference report contains a Federal intergovernmental mandate shall be determined after consideration of the recommendation, if available, of the Chairman of the Committee on Government Reform and Oversight of the House of Representatives or the Chairman of the Committee on Governmental Affairs of the Senate, as applicable.

“(e) LIMITATION ON APPLICATION OF SUBSECTION (a)(2).—Subsection (a)(2) shall not apply to any bill, joint resolution, amendment, or conference report that reauthorizes appropriations for carrying out, or that amends, any statute if enactment of the bill, joint resolution, amendment, or conference report—

“(1) would not result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and

“(2)(A) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate; or

“(B) in the case of any net reduction or elimination of authorizations of appropriations for such Federal financial assistance that would result from such enactment, would reduce the duties imposed by the Federal intergovernmental mandate by a corresponding amount.

**“SEC. 426. 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(a): *Provided, however,* That pending a point of order under section 425(a) or under this section a Member may move to waive the point of order. Such a motion shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent but, if offered in the House, shall otherwise be decided without intervening motion except a motion that the House adjourn. The adoption of a motion to waive such a point of order against consideration of a bill or joint resolution shall be considered also to waive a like point of order against an amendment made in order as original text.”.

**SEC. 302. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.**

(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)(A) 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. 303. EXERCISE OF RULEMAKING POWERS.**

The provisions of this title (except section 305) are enacted by Congress—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such they shall be considered as part of the rules of the House of Representatives and the Senate, 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 the House of Representatives and the Senate to change such rules at anytime, in the same manner, and to the same extent as in the case of any other rule of the House of Representatives or the Senate, respectively.

**SEC. 304. CONFORMING AMENDMENT TO TABLE OF CONTENTS.**

Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting “PART A—GENERAL PROVISIONS” before the item relating to section 401 and by inserting after the item relating to section 407 the following:

“PART B—FEDERAL MANDATES

“Sec. 421. Definitions.

“Sec. 422. Limitation on application.

“Sec. 423. Duties of congressional committees.

“Sec. 424. Duties of the Director.

“Sec. 425. Point of order.

“Sec. 426. Enforcement in the House of Representatives.”.

**SEC. 305. TECHNICAL AMENDMENT.**

(a) TECHNICAL AMENDMENT.—The State and Local Government Cost Estimate Act of 1981 (Public Law 97–108) is repealed.

(b) TECHNICAL AMENDMENT.—Section 403 of the Congressional Budget Act of 1974 is amended to read as follows:

“ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

“SEC. 403. The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a

public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

“(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the fiscal years following such fiscal year, together with the basis for each such estimate; and

“(2) a comparison of the estimate of costs described in paragraph (1) with any available estimate of costs made by such committee or by any Federal agency.

The estimate and comparison so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.”.

**SEC. 306. EFFECTIVE DATE.**

This title shall take effect on October 1, 1995.

