

114TH CONGRESS
1ST SESSION

S. 189

To provide for additional safeguards with respect to imposing Federal mandates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2015

Mrs. FISCHER (for herself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for additional safeguards with respect to imposing Federal mandates, 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 “Unfunded Mandates
5 Information and Transparency Act of 2015”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is—

8 (1) to improve the quality of the deliberations
9 of Congress with respect to proposed Federal man-
10 dates by—

1 (A) providing Congress and the public with
 2 more complete information about the effects of
 3 such mandates; and

4 (B) ensuring that Congress acts on such
 5 mandates only after focused deliberation on
 6 their effects; and

7 (2) to enhance the ability of Congress and the
 8 public to identify Federal mandates that may impose
 9 undue harm on consumers, workers, employers,
 10 small businesses, and State, local, and tribal govern-
 11 ments.

12 **SEC. 3. PROVIDING FOR CONGRESSIONAL BUDGET OFFICE**
 13 **STUDIES ON POLICIES INVOLVING CHANGES**
 14 **IN CONDITIONS OF GRANT AID.**

15 Section 202(g) of the Congressional Budget Act of
 16 1974 (2 U.S.C. 602(g)) is amended by adding at the end
 17 the following new paragraph:

18 “(3) ADDITIONAL STUDIES.—At the request of
 19 any Chairman or ranking member of the minority of
 20 a Committee of the Senate or the House of Rep-
 21 resentatives, the Director shall conduct an assess-
 22 ment comparing the authorized level of funding in a
 23 bill or resolution to the prospective costs of carrying
 24 out any changes to a condition of Federal assistance
 25 being imposed on State, local, or tribal governments

1 participating in the Federal assistance program con-
 2 cerned or, in the case of a bill or joint resolution
 3 that authorizes such sums as are necessary, an as-
 4 sessment of an estimated level of funding compared
 5 to such costs.”.

6 **SEC. 4. CLARIFYING THE DEFINITION OF DIRECT COSTS TO**
 7 **REFLECT CONGRESSIONAL BUDGET OFFICE**
 8 **PRACTICE.**

9 Section 421(3) of the Congressional Budget Act of
 10 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

11 (1) in subparagraph (A)(i), by inserting “incur
 12 or” before “be required”; and

13 (2) in subparagraph (B), by inserting after “to
 14 spend” the following: “or could forgo in profits, in-
 15 cluding costs passed on to consumers or other enti-
 16 ties taking into account, to the extent practicable,
 17 behavioral changes,”.

18 **SEC. 5. EXPANDING THE SCOPE OF REPORTING REQUIRE-**
 19 **MENTS TO INCLUDE REGULATIONS IMPOSED**
 20 **BY INDEPENDENT REGULATORY AGENCIES.**

21 Paragraph (1) of section 421 of the Congressional
 22 Budget Act of 1974 (2 U.S.C. 658) is amended by striking
 23 “, but does not include independent regulatory agencies”
 24 and inserting “, except it does not include the Board of

1 Governors of the Federal Reserve System or the Federal
 2 Open Market Committee”.

3 **SEC. 6. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**
 4 **MENT AND BUDGET WITH OFFICE OF INFOR-**
 5 **MATION AND REGULATORY AFFAIRS.**

6 The Unfunded Mandates Reform Act of 1995 (Public
 7 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

8 (1) in section 103(c) (2 U.S.C. 1511(c))—

9 (A) in the subsection heading, by striking
 10 “OFFICE OF MANAGEMENT AND BUDGET” and
 11 inserting “OFFICE OF INFORMATION AND REG-
 12 ULATORY AFFAIRS”; and

13 (B) by striking “Director of the Office of
 14 Management and Budget” and inserting “Ad-
 15 ministrator of the Office of Information and
 16 Regulatory Affairs”;

17 (2) in section 205(c) (2 U.S.C. 1535(c))—

18 (A) in the subsection heading, by striking
 19 “OMB”; and

20 (B) by striking “Director of the Office of
 21 Management and Budget” and inserting “Ad-
 22 ministrator of the Office of Information and
 23 Regulatory Affairs”; and

24 (3) in section 206 (2 U.S.C. 1536), by striking
 25 “Director of the Office of Management and Budget”

1 and inserting “Administrator of the Office of Infor-
 2 mation and Regulatory Affairs”.

3 **SEC. 7. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**
 4 **VATE SECTOR MANDATES.**

5 Section 425(a)(2) of the Congressional Budget Act
 6 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

7 (1) by striking “Federal intergovernmental
 8 mandates” and inserting “Federal mandates”; and

9 (2) by inserting “or 424(b)(1)” after “section
 10 424(a)(1)”.

11 **SEC. 8. REGULATORY PROCESS AND PRINCIPLES.**

12 Section 201 of the Unfunded Mandates Reform Act
 13 of 1995 (2 U.S.C. 1531) is amended to read as follows:

14 **“SEC. 201. REGULATORY PROCESS AND PRINCIPLES.**

15 “(a) IN GENERAL.—Each agency shall, unless other-
 16 wise expressly prohibited by law, assess the effects of Fed-
 17 eral regulatory actions on State, local, and tribal govern-
 18 ments and the private sector (other than to the extent that
 19 such regulatory actions incorporate requirements specifi-
 20 cally set forth in law) in accordance with the following
 21 principles:

22 “(1) Each agency shall identify the problem
 23 that it intends to address (including, if applicable,
 24 the failures of private markets or public institutions

1 that warrant new agency action) as well as assess
2 the significance of that problem.

3 “(2) Each agency shall examine whether exist-
4 ing regulations (or other law) have created, or con-
5 tributed to, the problem that a new regulation is in-
6 tended to correct and whether those regulations (or
7 other law) should be modified to achieve the in-
8 tended goal of regulation more effectively.

9 “(3) Each agency shall identify and assess
10 available alternatives to direct regulation, including
11 providing economic incentives to encourage the de-
12 sired behavior, such as user fees or marketable per-
13 mits, or providing information upon which choices
14 can be made by the public.

15 “(4) If an agency determines that a regulation
16 is the best available method of achieving the regu-
17 latory objective, it shall design its regulations in the
18 most cost-effective manner to achieve the regulatory
19 objective. In doing so, each agency shall consider in-
20 centives for innovation, consistency, predictability,
21 the costs of enforcement and compliance (to the gov-
22 ernment, regulated entities, and the public), flexi-
23 bility, distributive impacts, and equity.

24 “(5) Each agency shall assess both the costs
25 and the benefits of the intended regulation and, rec-

1 ognizing that some costs and benefits are difficult to
2 quantify, propose or adopt a regulation, unless ex-
3 pressly prohibited by law, only upon a reasoned de-
4 termination that the benefits of the intended regula-
5 tion justify its costs.

6 “(6) Each agency shall base its decisions on the
7 best reasonably obtainable scientific, technical, eco-
8 nomic, and other information concerning the need
9 for, and consequences of, the intended regulation.

10 “(7) Each agency shall identify and assess al-
11 ternative forms of regulation and shall, to the extent
12 feasible, specify performance objectives, rather than
13 specifying the behavior or manner of compliance
14 that regulated entities must adopt.

15 “(8) Each agency shall avoid regulations that
16 are inconsistent, incompatible, or duplicative with its
17 other regulations or those of other Federal agencies.

18 “(9) Each agency shall tailor its regulations to
19 minimize the costs of the cumulative impact of regu-
20 lations.

21 “(10) Each agency shall draft its regulations to
22 be simple and easy to understand, with the goal of
23 minimizing the potential for uncertainty and litiga-
24 tion arising from such uncertainty.

1 “(b) REGULATORY ACTION DEFINED.—In this sec-
 2 tion, the term ‘regulatory action’ means any substantive
 3 action by an agency (normally published in the Federal
 4 Register) that promulgates or is expected to lead to the
 5 promulgation of a final rule or regulation, including ad-
 6 vance notices of proposed rulemaking and notices of pro-
 7 posed rulemaking.”.

8 **SEC. 9. EXPANDING THE SCOPE OF STATEMENTS TO AC-**
 9 **COMPANY SIGNIFICANT REGULATORY AC-**
 10 **TIONS.**

11 (a) IN GENERAL.—Section 202(a) of the Unfunded
 12 Mandates Reform Act of 1995 (2 U.S.C. 1532(a)) is
 13 amended to read as follows:

14 “(a) IN GENERAL.—Unless otherwise expressly pro-
 15 hibited by law, before promulgating any general notice of
 16 proposed rulemaking or any final rule, or within six
 17 months after promulgating any final rule that was not pre-
 18 ceded by a general notice of proposed rulemaking, if the
 19 proposed rulemaking or final rule includes a Federal man-
 20 date that may result in an annual effect on State, local,
 21 or tribal governments, or to the private sector, in the ag-
 22 gregate of \$100,000,000 or more in any 1 year, the agency
 23 shall prepare a written statement containing the following:

24 “(1) The text of the draft proposed rulemaking
 25 or final rule, together with a reasonably detailed de-

1 scription of the need for the proposed rulemaking or
2 final rule and an explanation of how the proposed
3 rulemaking or final rule will meet that need.

4 “(2) An assessment of the potential costs and
5 benefits of the proposed rulemaking or final rule, in-
6 cluding an explanation of the manner in which the
7 proposed rulemaking or final rule is consistent with
8 a statutory requirement and avoids undue inter-
9 ference with State, local, and tribal governments in
10 the exercise of their governmental functions.

11 “(3) A qualitative and quantitative assessment,
12 including the underlying analysis, of benefits antici-
13 pated from the proposed rulemaking or final rule
14 (such as the promotion of the efficient functioning of
15 the economy and private markets, the enhancement
16 of health and safety, the protection of the natural
17 environment, and the elimination or reduction of dis-
18 crimination or bias).

19 “(4) A qualitative and quantitative assessment,
20 including the underlying analysis, of costs antici-
21 pated from the proposed rulemaking or final rule
22 (such as the direct costs both to the Government in
23 administering the final rule and to businesses and
24 others in complying with the final rule, and any ad-
25 verse effects on the efficient functioning of the econ-

1 omy, private markets (including productivity, em-
2 ployment, and international competitiveness), health,
3 safety, and the natural environment).

4 “(5) Estimates by the agency, if and to the ex-
5 tent that the agency determines that accurate esti-
6 mates are reasonably feasible, of—

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

9 “(B) any disproportionate budgetary ef-
10 fects of the Federal mandate upon any par-
11 ticular regions of the Nation or particular
12 State, local, or tribal governments, urban or
13 rural or other types of communities, or par-
14 ticular segments of the private sector.

15 “(6)(A) A detailed description of the extent of
16 the agency’s prior consultation with the private sec-
17 tor and elected representatives (under section 204)
18 of the affected State, local, and tribal governments.

19 “(B) A detailed summary of the comments and
20 concerns that were presented by the private sector
21 and State, local, or tribal governments either orally
22 or in writing to the agency.

23 “(C) A detailed summary of the agency’s eval-
24 uation of those comments and concerns.

1 “(7) A detailed summary of how the agency
 2 complied with each of the regulatory principles de-
 3 scribed in section 201.”.

4 (b) REQUIREMENT FOR DETAILED SUMMARY.—Sec-
 5 tion 202(b) of the Unfunded Mandates Reform Act of
 6 1995 (2 U.S.C. 1532(b)) is amended by inserting “de-
 7 tailed” before “summary”.

8 **SEC. 10. ENHANCED STAKEHOLDER CONSULTATION.**

9 Section 204 of the Unfunded Mandates Reform Act
 10 of 1995 (2 U.S.C. 1534) is amended—

11 (1) in the section heading, by inserting “**AND**
 12 **PRIVATE SECTOR**” before “**INPUT**”;

13 (2) in subsection (a)—

14 (A) by inserting “, and impacted parties
 15 within the private sector (including small busi-
 16 ness),” after “on their behalf”; and

17 (B) by striking “Federal intergovernmental
 18 mandates” and inserting “Federal mandates”;
 19 and

20 (3) by amending subsection (c) to read as fol-
 21 lows:

22 “(c) GUIDELINES.—For appropriate implementation
 23 of subsections (a) and (b) consistent with applicable laws
 24 and regulations, the following guidelines shall be followed:

1 “(1) Consultations shall take place as early as
2 possible, before issuance of a notice of proposed rule-
3 making, continue through the final rule stage, and
4 be integrated explicitly into the rulemaking process.

5 “(2) Agencies shall consult with a wide variety
6 of State, local, and tribal officials and impacted par-
7 ties within the private sector (including small busi-
8 nesses). Geographic, political, and other factors that
9 may differentiate varying points of view should be
10 considered.

11 “(3) Agencies should estimate benefits and
12 costs to assist with these consultations. The scope of
13 the consultation should reflect the cost and signifi-
14 cance of the Federal mandate being considered.

15 “(4) Agencies shall, to the extent practicable—

16 “(A) seek out the views of State, local, and
17 tribal governments, and impacted parties within
18 the private sector (including small business), on
19 costs, benefits, and risks; and

20 “(B) solicit ideas about alternative meth-
21 ods of compliance and potential flexibilities, and
22 input on whether the Federal regulation will
23 harmonize with and not duplicate similar laws
24 in other levels of government.

1 “(5) Consultations shall address the cumulative
2 impact of regulations on the affected entities.

3 “(6) Agencies may accept electronic submis-
4 sions of comments by relevant parties but may not
5 use those comments as the sole method of satisfying
6 the guidelines in this subsection.”.

7 **SEC. 11. NEW AUTHORITIES AND RESPONSIBILITIES FOR**
8 **OFFICE OF INFORMATION AND REGULATORY**
9 **AFFAIRS.**

10 Section 208 of the Unfunded Mandates Reform Act
11 of 1995 (2 U.S.C. 1538) is amended to read as follows:

12 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
13 **FAIRS RESPONSIBILITIES.**

14 “(a) IN GENERAL.—The Administrator of the Office
15 of Information and Regulatory Affairs shall provide mean-
16 ingful guidance and oversight so that each agency’s regu-
17 lations for which a written statement is required under
18 section 202 are consistent with the principles and require-
19 ments of this title, as well as other applicable laws, and
20 do not conflict with the policies or actions of another agen-
21 cy. If the Administrator determines that an agency’s regu-
22 lations for which a written statement is required under
23 section 202 do not comply with such principles and re-
24 quirements, are not consistent with other applicable laws,
25 or conflict with the policies or actions of another agency,

1 the Administrator shall identify areas of non-compliance,
 2 notify the agency, and request that the agency comply be-
 3 fore the agency finalizes the regulation concerned.

4 “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-
 5 CY COMPLIANCE.—The Director of the Office of Informa-
 6 tion and Regulatory Affairs annually shall submit to Con-
 7 gress, including the Committee on Homeland Security and
 8 Governmental Affairs of the Senate and the Committee
 9 on Oversight and Government Reform of the House of
 10 Representatives, a written report detailing compliance by
 11 each agency with the requirements of this title that relate
 12 to regulations for which a written statement is required
 13 by section 202, including activities undertaken at the re-
 14 quest of the Director to improve compliance, during the
 15 preceding reporting period. The report shall also contain
 16 an appendix detailing compliance by each agency with sec-
 17 tion 204.”.

18 **SEC. 12. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL**
 19 **REGULATIONS.**

20 The Unfunded Mandates Reform Act of 1995 (2
 21 U.S.C. 1511 et seq.) is amended—

- 22 (1) by redesignating section 209 as section 210;
 23 and
 24 (2) by inserting after section 208 the following
 25 new section 209:

1 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
2 **ERAL REGULATIONS.**

3 “(a) REQUIREMENT.—At the request of the chairman
4 or ranking minority member of a standing or select com-
5 mittee of the House of Representatives or the Senate, an
6 agency shall conduct a retrospective analysis of an existing
7 Federal regulation promulgated by an agency.

8 “(b) REPORT.—Each agency conducting a retrospec-
9 tive analysis of existing Federal regulations pursuant to
10 subsection (a) shall submit to the chairman of the relevant
11 committee, Congress, and the Comptroller General a re-
12 port containing, with respect to each Federal regulation
13 covered by the analysis—

14 “(1) a copy of the Federal regulation;

15 “(2) the continued need for the Federal regula-
16 tion;

17 “(3) the nature of comments or complaints re-
18 ceived concerning the Federal regulation from the
19 public since the Federal regulation was promulgated;

20 “(4) the extent to which the Federal regulation
21 overlaps, duplicates, or conflicts with other Federal
22 regulations, and, to the extent feasible, with State
23 and local governmental rules;

24 “(5) the degree to which technology, economic
25 conditions, or other factors have changed in the area
26 affected by the Federal regulation;

1 “(6) a complete analysis of the retrospective di-
 2 rect costs and benefits of the Federal regulation that
 3 considers studies done outside the Federal Govern-
 4 ment (if any) estimating such costs or benefits; and
 5 “(7) any litigation history challenging the Fed-
 6 eral regulation.”.

7 **SEC. 13. EXPANSION OF JUDICIAL REVIEW.**

8 Section 401(a) of the Unfunded Mandates Reform
 9 Act of 1995 (2 U.S.C. 1571(a)) is amended—

10 (1) in paragraphs (1) and (2)(A)—

11 (A) by striking “sections 202 and
 12 203(a)(1) and (2)” each place it appears and
 13 inserting “sections 201, 202, 203(a)(1) and (2),
 14 and 205(a) and (b)”;

15 (B) by striking “only” each place it ap-
 16 pears;

17 (2) in paragraph (2)(B), by striking “section
 18 202” and all that follows through the period at the
 19 end and inserting the following: “section 202, pre-
 20 pare the written plan under section 203(a)(1) and
 21 (2), or comply with section 205(a) and (b), a court
 22 may compel the agency to prepare such written
 23 statement, prepare such written plan, or comply with
 24 such section.”;

1 (3) in paragraph (3), by striking “written state-
2 ment or plan is required” and all that follows
3 through “shall not” and inserting the following:
4 “written statement under section 202, a written plan
5 under section 203(a)(1) and (2), or compliance with
6 sections 201 and 205(a) and (b) is required, the in-
7 adequacy or failure to prepare such statement (in-
8 cluding the inadequacy or failure to prepare any es-
9 timate, analysis, statement, or description), to pre-
10 pare such written plan, or to comply with such sec-
11 tion may”.

○