

104TH CONGRESS
1ST SESSION

H. R. 5

To curb the practice of imposing unfunded Federal mandates on States and local governments, to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and to provide information on the cost of Federal mandates on the private sector, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. CLINGER, Mr. PORTMAN, Mr. CONDIT, and Mr. DAVIS (for themselves, Mr. SHAYS, Mr. MCHUGH, Mr. MICA, Mr. HORN, Mr. ZELIFF, Mr. BURTON of Indiana, Mr. SCHIFF, Mr. BLUTE, Mr. FOX, Mr. WALSH, and Mr. CUNNINGHAM) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on Rules, the Budget, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To curb the practice of imposing unfunded Federal mandates on States and local governments, to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and to provide information on the cost of Federal mandates on the private sector, 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 Mandate
5 Reform Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 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 in
14 a manner that may displace other essential State,
15 local, and tribal 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, tribal governments, and
20 the private sector 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 the Senate

1 and House of Representatives before the Senate
2 and House of Representatives votes on proposed
3 legislation;

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

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

11 (6) to assist Federal agencies in their consider-
12 ation of proposed regulations affecting States, local
13 governments, and tribal governments, by—

14 (A) requiring that Federal agencies de-
15 velop a process to enable the elected and other
16 officials of States, local governments, and tribal
17 governments to provide input when Federal
18 agencies are developing regulations; and

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

1 (7) to establish the general rule that Congress
2 shall not impose Federal mandates on States, local
3 governments, and tribal governments without provid-
4 ing adequate funding to comply with such mandates.

5 **SEC. 3. DEFINITIONS.**

6 For purposes of this Act—

7 (1) the terms “agency”, “Federal financial as-
8 sistance”, “Federal private sector mandate”, “Fed-
9 eral mandate” (except as provided by section 108),
10 “local government”, “private sector”, “regulation”
11 or “rule”, and “State” have the meaning given those
12 terms by section 421 of the Congressional Budget
13 Act of 1974; and

14 (2) the term “small government” means any
15 small governmental jurisdiction as defined in section
16 601(5) of title 5, United States Code, and any tribal
17 government.

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

19 This Act shall not apply to any provision in a Federal
20 statute or a proposed or final Federal regulation, that—

21 (1) enforces constitutional rights of individuals;

22 (2) establishes or enforces any statutory rights
23 that prohibit discrimination on the basis of race, re-
24 ligion, gender, national origin, or handicapped or
25 disability status;

1 (3) requires compliance with accounting and
2 auditing procedures with respect to grants or other
3 money or property provided by the Federal Govern-
4 ment;

5 (4) provides for emergency assistance or relief
6 at the request of any State, local government, or
7 tribal government or any official of such a govern-
8 ment;

9 (5) is necessary for the national security or the
10 ratification or implementation of international treaty
11 obligations; or

12 (6) the President designates as emergency legis-
13 lation and that the Congress so designates in stat-
14 ute.

15 **TITLE I—REVIEW OF UNFUNDED**
16 **FEDERAL MANDATES**

17 **SEC. 101. ESTABLISHMENT.**

18 There is established a commission which shall be
19 known as the “Commission on Unfunded Federal Man-
20 dates” (in this title referred to as the “Commission”).

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

23 (a) **IN GENERAL.**—The Commission shall in accord-
24 ance with this section—

1 (1) investigate and review the role of unfunded
2 Federal mandates in intergovernmental relations and
3 their impact on State, local, tribal, and Federal gov-
4 ernment objectives and responsibilities; and

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

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

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

14 (C) terminating unfunded Federal man-
15 dates which are duplicative, obsolete, or lacking
16 in practical utility;

17 (D) suspending, on a temporary basis, un-
18 funded Federal mandates which are not vital to
19 public health and safety and which compound
20 the fiscal difficulties of State, local, and tribal
21 governments, including recommendations for
22 triggering such suspension;

23 (E) consolidating or simplifying unfunded
24 Federal mandates, or the planning or reporting
25 requirements of such mandates, in order to re-

1 duce duplication and facilitate compliance by
2 State, local, and tribal governments with those
3 mandates; and

4 (F) establishing common Federal defini-
5 tions or standards to be used by State, local,
6 and tribal governments in complying with un-
7 funded Federal mandates that use different
8 definitions or standards for the same terms or
9 principles.

10 (3) IDENTIFICATION OF RELEVANT UNFUNDED
11 FEDERAL MANDATES.—Each recommendation under
12 paragraph (2) shall, to the extent practicable, iden-
13 tify the specific unfunded Federal mandates to
14 which the recommendation applies.

15 (b) CRITERIA.—

16 (1) IN GENERAL.—The Commission shall estab-
17 lish criteria for making recommendations under sub-
18 section (a).

19 (2) ISSUANCE OF PROPOSED CRITERIA.—The
20 Commission shall issue proposed criteria under this
21 subsection not later than 60 days after the date of
22 the enactment of this Act, and thereafter provide a
23 period of 30 days for submission by the public of
24 comments on the proposed criteria.

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

4 (A) consider comments on the proposed
5 criteria received under paragraph (2);

6 (B) adopt and incorporate in final criteria
7 any recommendations submitted in those com-
8 ments that the Commission determines will aid
9 the Commission in carrying out its duties under
10 this section; and

11 (C) issue final criteria under this sub-
12 section.

13 (c) PRELIMINARY REPORT.—

14 (1) IN GENERAL.—Not later than 9 months
15 after the date of the enactment of this Act, the
16 Commission shall—

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

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

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

1 (2) PUBLIC HEARINGS.—The Commission shall
2 hold public hearings on the preliminary rec-
3 ommendations contained in the preliminary report of
4 the Commission under this subsection.

5 (d) FINAL REPORT.—Not later than 3 months after
6 the date of the publication of the preliminary report under
7 subsection (c), the Commission shall submit to the Con-
8 gress, including the Committee on Government Reform
9 and Oversight of the House of Representatives and the
10 Committee on Governmental Affairs of the Senate, and
11 to the President a final report on the findings, conclusions,
12 and recommendations of the Commission under this sec-
13 tion.

14 **SEC. 103. MEMBERSHIP.**

15 (a) NUMBER AND APPOINTMENT.—The Commission
16 shall be composed of 9 members appointed from individ-
17 uals who possess extensive leadership experience in and
18 knowledge of State, local, and tribal governments and
19 intergovernmental relations, including State and local
20 elected officials, as follows:

21 (1) 3 members appointed by the Speaker of the
22 House of Representatives, in consultation with the
23 minority leader of the House of Representatives.

1 (2) 3 members appointed by the majority leader
2 of the Senate, in consultation with the minority lead-
3 er of the Senate.

4 (3) 3 members appointed by the President.

5 (b) WAIVER OF LIMITATION ON EXECUTIVE SCHED-
6 ULE POSITIONS.—Appointments may be made under this
7 section without regard to section 5311(b) of title 5, United
8 States Code.

9 (c) TERMS.—

10 (1) IN GENERAL.—Each member of the Com-
11 mission shall be appointed for the life of the Com-
12 mission.

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

16 (d) BASIC PAY.—

17 (1) RATES OF PAY.—Members of the Commis-
18 sion shall serve without pay.

19 (2) PROHIBITION OF COMPENSATION OF FED-
20 ERAL EMPLOYEES.—Members of the Commission
21 who are full-time officers or employees of the United
22 States may not receive additional pay, allowances, or
23 benefits by reason of their service on the Commis-
24 sion.

1 (e) TRAVEL EXPENSES.—Each member of the Com-
2 mission shall receive travel expenses, including per diem
3 in lieu of subsistence, in accordance with sections 5702
4 and 5703 of title 5, United States Code.

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

8 (g) MEETINGS.—

9 (1) IN GENERAL.—Subject to paragraph (2),
10 the Commission shall meet at the call of the Chair-
11 person or a majority of its members.

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

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

19 **SEC. 104. DIRECTOR AND STAFF OF COMMISSION; EXPERTS**
20 **AND CONSULTANTS.**

21 (a) DIRECTOR.—The Commission shall have a Direc-
22 tor who shall be appointed by the Commission. The Direc-
23 tor shall be paid at the rate of basic pay payable for level
24 IV of the Executive Schedule.

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

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

16 (d) EXPERTS AND CONSULTANTS.—The Commission
17 may procure temporary and intermittent services of ex-
18 perts or consultants under section 3109(b) of title 5,
19 United States Code.

20 (e) STAFF OF FEDERAL AGENCIES.—Upon request
21 of the Director, the head of any Federal department or
22 agency may detail, on a reimbursable basis, any of the
23 personnel of that department or agency to the Commission
24 to assist it in carrying out its duties under this title.

1 **SEC. 105. POWERS OF COMMISSION.**

2 (a) HEARINGS AND SESSIONS.—The Commission
3 may, for the purpose of carrying out this title, hold hear-
4 ings, sit and act at times and places, take testimony, and
5 receive evidence as the Commission considers appropriate.

6 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
7 ber or agent of the Commission may, if authorized by the
8 Commission, take any action which the Commission is
9 authorized to take by this section.

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

14 (1) which is specifically exempted from disclo-
15 sure by law; or

16 (2) which that department or agency deter-
17 mines will disclose—

18 (A) matters necessary to be kept secret in
19 the interests of national defense or the con-
20 fidential conduct of the foreign relations of the
21 United States;

22 (B) information relating to trade secrets or
23 financial or commercial information pertaining
24 specifically to a given person if the information
25 has been obtained by the Government on a con-
26 fidential basis, other than through an applica-

1 tion by such person for a specific financial or
2 other benefit, and is required to be kept secret
3 in order to prevent undue injury to the competi-
4 tive position of such person; or

5 (C) personnel or medical data or similar
6 data the disclosure of which would constitute a
7 clearly unwarranted invasion of personal pri-
8 vacy;

9 unless the portions containing such matters, infor-
10 mation, or data have been excised.

11 Upon request of the Chairperson of the Commission, the
12 head of that department or agency shall furnish that infor-
13 mation to the Commission.

14 (d) **MAILS.**—The Commission may use the United
15 States mails in the same manner and under the same con-
16 ditions as other departments and agencies of the United
17 States.

18 (e) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon
19 the request of the Commission, the Administrator of Gen-
20 eral Services shall provide to the Commission, on a reim-
21 bursable basis, the administrative support services nec-
22 essary for the Commission to carry out its duties under
23 this title.

24 (f) **CONTRACT AUTHORITY.**—The Commission may,
25 subject to appropriations, contract with and compensate

1 government and private agencies or persons for property
2 and services used to carry out its duties under this title.

3 **SEC. 106. TERMINATION.**

4 The Commission shall terminate 90 days after sub-
5 mitting its final report pursuant to section 102(d).

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

7 There is authorized to be appropriated to the Com-
8 mission \$1,000,000 to carry out this title.

9 **SEC. 108. DEFINITION.**

10 As used in this title, the term “Federal mandate”
11 means any provision in statute or regulation that imposes
12 an enforceable duty upon States, local governments, or
13 tribal governments including a condition of Federal assist-
14 ance or a duty arising from participation in a voluntary
15 Federal program.

16 **SEC. 109. EFFECTIVE DATE.**

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

19 **TITLE II—REGULATORY**
20 **ACCOUNTABILITY AND REFORM**

21 **SEC. 201. REGULATORY PROCESS.**

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

1 (1) assess the effects of Federal regulations on
2 States, local governments, tribal governments, and
3 the private sector (other than to the extent that such
4 regulations incorporate requirements specifically set
5 forth in legislation), including specifically the avail-
6 ability of resources to carry out any Federal man-
7 dates in those regulations; and

8 (2) seek to minimize those burdens that unique-
9 ly or significantly affect such governmental entities
10 or the private sector, consistent with achieving statu-
11 tory and regulatory objectives.

12 (b) STATE, LOCAL GOVERNMENT, AND TRIBAL GOV-
13 ERNMENT INPUT.—Each agency shall develop an effective
14 process to permit elected officials (or their designated rep-
15 resentatives) of States, local governments, and tribal gov-
16 ernments to provide meaningful and timely input in the
17 development of regulatory proposals containing significant
18 Federal intergovernmental mandates.

19 (c) AGENCY PLAN.—

20 (1) IN GENERAL.—Before establishing any reg-
21 ulatory requirements that might significantly or
22 uniquely affect small governments, an agency shall
23 have developed a plan under which the agency
24 shall—

1 (A) provide notice of the contemplated re-
2 quirements to potentially affected small govern-
3 ments, if any;

4 (B) enable officials of affected small gov-
5 ernments to provide input pursuant to sub-
6 section (b); and

7 (C) inform, educate, and advise small gov-
8 ernments on compliance with the requirements.

9 (2) EFFECTS ON PRIVATE SECTOR.—Before es-
10 tablishing any regulatory requirements, agencies
11 shall prepare estimates, based on available data, of
12 the effect of Federal private sector mandates on the
13 national economy, including the effect on productiv-
14 ity, economic growth, full employment, creation of
15 productive jobs, and international competitiveness of
16 United States goods and services.

17 **SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REG-**
18 **ULATORY ACTIONS.**

19 (a) IN GENERAL.—Before promulgating any final
20 rule that includes any Federal mandate that may result
21 in the expenditure by States, local governments, or tribal
22 governments, in the aggregate, or the private sector of at
23 least \$100,000,000 (adjusted annually for inflation) in
24 any 1 year, and before promulgating any general notice
25 of proposed rulemaking that is likely to result in promul-

1 gation of any such rule, the agency shall prepare a written
2 statement containing—

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

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

13 (A) the future costs of the Federal man-
14 date; and

15 (B) any disproportionate budgetary effects
16 of the Federal mandates upon any particular
17 regions of the country or particular States, local
18 governments, tribal governments, urban or
19 rural or other types of communities, or particu-
20 lar segments of the private sector;

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

1 (4) the effect of Federal private sector man-
2 dates on the national economy, including the effect
3 on productivity, economic growth, full employment,
4 creation of productive jobs, and international com-
5 petitiveness of United States goods and services;

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

11 (6) a summary of the comments and concerns
12 that were presented by States, local governments, or
13 tribal governments and the private sector either oral-
14 ly or in writing to the agency;

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

17 (8) the agency's position supporting the need to
18 issue the regulation containing the Federal man-
19 dates (considering, among other things, the extent to
20 which costs may or may not be paid with funds pro-
21 vided by the Federal Government).

22 (b) PROMULGATION.—In promulgating a general no-
23 tice of proposed rulemaking or a final rule for which a
24 statement under subsection (a) is required, the agency

1 shall include in the promulgation a summary of the infor-
2 mation contained in the statement.

3 (c) PREPARATION IN CONJUNCTION WITH OTHER
4 STATEMENT.—Any agency may prepare any statement re-
5 quired by subsection (a) in conjunction with or as part
6 of any other statement or analysis, if the statement or
7 analysis satisfies the provisions of subsection (a).

8 **SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET**
9 **OFFICE.**

10 The Director of the Office of Management and Budg-
11 et shall—

12 (1) collect from agencies the statements pre-
13 pared under section 202; and

14 (2) periodically forward copies of them to the
15 Director of the Congressional Budget Office on a
16 reasonably timely basis after promulgation of the
17 general notice of proposed rulemaking or of the final
18 rule for which the statement was prepared.

19 **SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXI-**
20 **BILITY.**

21 (a) IN GENERAL.—The Director of the Office of
22 Management and Budget, in consultation with Federal
23 agencies, shall establish pilot programs in at least 2 agen-
24 cies to test innovative and more flexible regulatory ap-
25 proaches that—

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

3 (2) meet overall statutory goals and objectives.

4 (b) PROGRAM FOCUS.—The pilot programs shall
5 focus on rules in effect or proposed rules, or on a combina-
6 tion thereof.

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

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

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

13 (1) inserting before section 401 the following:

14 “PART A—GENERAL PROVISIONS”; and

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

16 “PART B—FEDERAL MANDATES

17 **“SEC. 421. DEFINITIONS.**

18 “For purposes of this part:

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

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

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

6 “(4) FEDERAL INTERGOVERNMENTAL MAN-
7 DATE.—The term ‘Federal intergovernmental man-
8 date’ means—

9 “(A) any provision in legislation, statute,
10 or regulation that—

11 “(i) would impose an enforceable duty
12 upon States, local governments, or tribal
13 governments, except—

14 “(I) a condition of Federal as-
15 sistance; or

16 “(II) a duty arising from partici-
17 pation in a voluntary Federal pro-
18 gram, except as provided in subpara-
19 graph (B); or

20 “(ii) would reduce or eliminate the
21 amount of authorization of appropriations
22 for Federal financial assistance that would
23 be provided to States, local governments,
24 or tribal governments for the purpose of
25 complying with any such previously im-

1 posed duty unless such duty is reduced or
2 eliminated by a corresponding amount; or

3 “(B) any provision in legislation, statute,
4 or regulation that relates to a then-existing
5 Federal program under which \$500,000,000 or
6 more is provided annually to States, local gov-
7 ernments, and tribal governments under entitle-
8 ment authority, if—

9 “(i)(I) the provision would increase
10 the stringency of conditions of assistance
11 to States, local governments, or tribal gov-
12 ernments under the program; or

13 “(II) would place caps upon, or other-
14 wise decrease, the Federal Government’s
15 responsibility to provide funding to States,
16 local governments, or tribal governments
17 under the program; and

18 “(ii) the States, local governments, or
19 tribal governments that participate in the
20 Federal program lack authority under that
21 program to amend their financial or pro-
22 grammatic responsibilities to continue pro-
23 viding required services that are affected
24 by the legislation, statute, or regulation.

1 “(5) FEDERAL PRIVATE SECTOR MANDATE.—
2 The term ‘Federal private sector mandate’ means
3 any provision in legislation, statute, or regulation
4 that—

5 “(A) would impose an enforceable duty on
6 the private sector except—

7 “(i) a condition of Federal assistance;

8 or

9 “(ii) a duty arising from participation
10 in a voluntary Federal program; or

11 “(B) would reduce or eliminate the amount
12 of authorization of appropriations for Federal
13 financial assistance that will be provided to the
14 private sector for the purpose of ensuring com-
15 pliance with such duty.

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

20 “(7) FEDERAL MANDATE DIRECT COSTS.—

21 “(A) FEDERAL INTERGOVERNMENTAL DI-
22 RECT COSTS.—In the case of a Federal inter-
23 governmental mandate, the term ‘direct costs’
24 means the aggregate estimated amounts that all
25 States, local governments, and tribal govern-

1 ments would be required to spend or would be
2 required to forego in revenues in order to com-
3 ply with the Federal intergovernmental man-
4 date, or, in the case of a provision referred to
5 in paragraph (4)(A)(ii), the amount of Federal
6 financial assistance eliminated or reduced.

7 “(B) PRIVATE SECTOR DIRECT COSTS.—In
8 the case of a Federal private sector mandate,
9 the term ‘direct costs’ means the aggregate esti-
10 mated amounts that the private sector would be
11 required to spend in order to comply with a
12 Federal private sector mandate.

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

15 “(i) estimated amounts that the
16 States, local governments, and tribal gov-
17 ernments (in the case of a Federal inter-
18 governmental mandate), or the private sec-
19 tor (in the case of a Federal private sector
20 mandate), would spend—

21 “(I) to comply with or carry out
22 all applicable Federal, State, local,
23 and tribal laws and regulations in ef-
24 fect at the time of the adoption of a
25 Federal mandate for the same activity

1 as is affected by that Federal man-
2 date; or

3 “(II) to comply with or carry out
4 State, local governmental, and tribal
5 governmental programs, or private-
6 sector business or other activities in
7 effect at the time of the adoption of
8 a Federal mandate for the same activ-
9 ity as is affected by that mandate; or

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

15 “(I) their compliance with the
16 Federal mandate; or

17 “(II) other changes in Federal
18 law or regulation that are enacted or
19 adopted in the same bill or joint reso-
20 lution or proposed or final Federal
21 regulation and that govern the same
22 activity as is affected by the Federal
23 mandate.

24 “(D) DETERMINATION OF COSTS.—Direct
25 costs shall be determined based on the assump-

1 tion that States, local governments, tribal gov-
2 ernments, and the private sector will take all
3 reasonable steps necessary to mitigate the costs
4 resulting from the Federal mandate, and will
5 comply with applicable standards of practice
6 and conduct established by recognized profes-
7 sional or trade associations. Reasonable steps to
8 mitigate the costs shall not include increases in
9 State, local, or tribal taxes or fees.

10 “(8) LOCAL GOVERNMENT.—The term ‘local
11 government’ has the same meaning as in section
12 6501(6) of title 31, United States Code.

13 “(9) PRIVATE SECTOR.—The term ‘private sec-
14 tor’ means individuals, partnerships, associations,
15 corporations, business trusts, or legal representa-
16 tives, organized groups of individuals, and edu-
17 cational and other nonprofit institutions.

18 “(10) REGULATION.—The term ‘regulation’ or
19 ‘rule’ has the meaning of ‘rule’ as defined in section
20 601(2) of title 5, United States Code.

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

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

2 “This part shall not apply to any provision in a bill,
3 joint resolution, motion, amendment, or conference report
4 before Congress that—

5 “(1) enforces constitutional rights of individ-
6 uals;

7 “(2) establishes or enforces any statutory rights
8 that prohibit discrimination on the basis of race, re-
9 ligion, gender, national origin, or handicapped or
10 disability status;

11 “(3) requires compliance with accounting and
12 auditing procedures with respect to grants or other
13 money or property provided by the Federal Govern-
14 ment;

15 “(4) provides for emergency assistance or relief
16 at the request of any State, local government, or
17 tribal government or any official of such a govern-
18 ment;

19 “(5) is necessary for the national security or
20 the ratification or implementation of international
21 treaty obligations; or

22 “(6) the President designates as emergency leg-
23 islation and that the Congress so designates in stat-
24 ute.

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

2 “(a) SUBMISSION OF BILLS TO THE DIRECTOR.—

3 When a committee of authorization of the House of Rep-
4 resentatives or the Senate orders a bill or joint resolution
5 of a public character reported, the committee shall
6 promptly provide the text of the bill or joint resolution
7 to the Director and shall identify to the Director any Fed-
8 eral mandate contained in the bill or resolution.

9 “(b) COMMITTEE REPORT.—

10 “(1) INFORMATION REGARDING FEDERAL MAN-
11 DATES.—When a committee of authorization of the
12 House of Representatives or the Senate reports a
13 bill or joint resolution of a public character that in-
14 cludes any Federal mandate, the report of the com-
15 mittee accompanying the bill or joint resolution shall
16 contain the information required by paragraph (2)
17 and, in the case of a Federal intergovernmental
18 mandate, paragraph (3).

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

21 “(A) an identification and description of
22 each Federal mandate in the bill or joint resolu-
23 tion, including the statement, if available, from
24 the Director pursuant to section 424(a);

25 “(B) a qualitative assessment, and if prac-
26 ticable, a quantitative assessment of costs and

1 benefits anticipated from the Federal mandate
2 (including the effects on health and safety and
3 protection of the natural environment); and

4 “(C) a statement of the degree to which
5 the Federal mandate affects each of the public
6 and private sectors and the extent to which
7 Federal payment of public sector costs would
8 affect the competitive balance between States,
9 local governments, or tribal governments and
10 privately owned businesses.

11 “(3) INTERGOVERNMENTAL MANDATES.—If any
12 of the Federal mandates in the bill or joint resolu-
13 tion are Federal intergovernmental mandates, the
14 report referred to in paragraph (1) shall also con-
15 tain—

16 “(A)(i) a statement of the amount, if any,
17 of increase or decrease in authorization of ap-
18 propriations under existing Federal financial
19 assistance programs or for new Federal finan-
20 cial assistance, provided by the bill or joint res-
21 olution and usable for activities of States, local
22 governments, or tribal governments subject to
23 Federal intergovernmental mandates; and

24 “(ii) a statement of whether the committee
25 intends that the Federal intergovernmental

1 mandates be partly or entirely unfunded, and,
2 if so, the reasons for that intention; and

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

9 “(4) INFORMATION REGARDING PREEMPTION.—
10 When a committee of authorization of the House of
11 Representatives or the Senate reports a bill or joint
12 resolution of a public character, the committee re-
13 port accompanying the bill or joint resolution shall
14 contain, if relevant to the bill or joint resolution, an
15 explicit statement on whether the bill or joint resolu-
16 tion, in whole or in part, is intended to preempt any
17 State, local, or tribal law, and if so, an explanation
18 of the reasons for such intention.

19 “(c) PUBLICATION OF STATEMENT FROM THE DI-
20 RECTOR.—

21 “(1) IN GENERAL.—Upon receiving a statement
22 (including any supplemental statement) from the Di-
23 rector pursuant to section 424(a), a committee of
24 the House of Representatives or the Senate shall
25 publish the statement in the committee report ac-

1 accompanying the bill or joint resolution to which the
2 statement relates if the statement is available to be
3 included in the printed report.

4 “(2) OTHER PUBLICATION OF STATEMENT OF
5 DIRECTOR.—If the statement is not published in the
6 report, or if the bill or joint resolution to which the
7 statement relates is expected to be considered by the
8 House of Representatives or the Senate before the
9 report is published, the committee shall cause the
10 statement, or a summary thereof, to be published in
11 the Congressional Record in advance of floor consid-
12 eration of the bill or joint resolution.

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

14 “(a) STATEMENTS ON BILLS AND JOINT RESOLU-
15 TIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT
16 RESOLUTIONS.—

17 “(1) FEDERAL INTERGOVERNMENTAL MAN-
18 DATES IN REPORTED BILLS AND RESOLUTIONS.—
19 For each bill or joint resolution of a public character
20 reported by any committee of authorization of the
21 House of Representatives or the Senate, the Director
22 shall prepare and submit to the committee a state-
23 ment as follows:

24 “(A) If the Director estimates that the di-
25 rect cost of all Federal intergovernmental man-

1 dates in the bill or joint resolution will equal or
2 exceed \$50,000,000 (adjusted annually for in-
3 flation) in the fiscal year in which such a Fed-
4 eral intergovernmental mandate (or in any nec-
5 essary implementing regulation) would first be
6 effective or in any of the 4 fiscal years following
7 such year, the Director shall so state, specify
8 the estimate, and briefly explain the basis of
9 the estimate.

10 “(B) The estimate required by subpara-
11 graph (A) shall include estimates (and brief ex-
12 planations of the basis of the estimates) of—

13 “(i) the total amount of direct cost of
14 complying with the Federal intergovern-
15 mental mandates in the bill or joint resolu-
16 tion; and

17 “(ii) the amount, if any, of increase in
18 authorization of appropriations or budget
19 authority or entitlement authority under
20 existing Federal financial assistance pro-
21 grams, or of authorization of appropria-
22 tions for new Federal financial assistance,
23 provided by the bill or joint resolution and
24 usable by States, local governments, or

1 tribal governments for activities subject to
2 the Federal intergovernmental mandates.

3 “(2) FEDERAL PRIVATE SECTOR MANDATES IN
4 REPORTED BILLS AND JOINT RESOLUTIONS.—For
5 each bill or joint resolution of a public character re-
6 ported by any committee of authorization of the
7 House of Representatives or the Senate, the Director
8 shall prepare and submit to the committee a state-
9 ment as follows:

10 “(A) If the Director estimates that the di-
11 rect cost of all Federal private sector mandates
12 in the bill or joint resolution will equal or ex-
13 ceed \$100,000,000 (adjusted annually for infla-
14 tion) in the fiscal year in which any Federal
15 private sector mandate in the bill or joint reso-
16 lution (or in any necessary implementing regu-
17 lation) would first be effective or in any of the
18 4 fiscal years following such fiscal year, the Di-
19 rector shall so state, specify the estimate, and
20 briefly explain the basis of the estimate.

21 “(B) The estimate required by subpara-
22 graph (A) shall include estimates (and brief ex-
23 planations of the basis of the estimates) of—

24 “(i) the total amount of direct costs of
25 complying with the Federal private sector

1 mandates in the bill or joint resolution;
2 and

3 “(ii) the amount, if any, of increase in
4 authorization of appropriations under ex-
5 isting Federal financial assistance pro-
6 grams, or of authorization of appropria-
7 tions for new Federal financial assistance,
8 provided by the bill or joint resolution usa-
9 ble by the private sector for the activities
10 subject to the Federal private sector man-
11 dates.

12 “(C) If the Director determines that it is
13 not feasible to make a reasonable estimate that
14 would be required under subparagraphs (A) and
15 (B), the Director shall not make the estimate,
16 but shall report in the statement that the rea-
17 sonable estimate cannot be made and shall in-
18 clude the reasons for that determination in the
19 statement.

20 “(3) LEGISLATION FALLING BELOW THE DI-
21 RECT COSTS THRESHOLDS.—If the Director esti-
22 mates that the direct costs of a Federal mandate
23 will not equal or exceed the threshold specified in
24 paragraph (1)(A) or (2)(A), the Director shall so

1 state and shall briefly explain the basis of the esti-
2 mate.

3 “(4) AMENDED BILLS AND JOINT RESOLU-
4 TIONS; CONFERENCE REPORTS.—If the Director has
5 prepared the statement pursuant to subsection (a)
6 for a bill or joint resolution, and if that bill or joint
7 resolution is reported or passed in an amended form
8 (including if passed by one House as an amendment
9 in the nature of a substitute for the text of a bill
10 or joint resolution from the other House) or is re-
11 ported by a committee of conference in an amended
12 form, the committee of conference shall ensure, to
13 the greatest extent practicable, that the Director
14 shall prepare a supplemental statement for the bill
15 or joint resolution in that amended form.

16 “(b) ASSISTANCE TO COMMITTEES AND STUDIES.—

17 “(1) IN GENERAL.—At the request of any com-
18 mittee of the House of Representatives or of the
19 Senate, the Director shall, to the extent practicable,
20 consult with and assist such committee in analyzing
21 the budgetary or financial impact of any proposed
22 legislation that may have—

23 “(A) a significant budgetary impact on
24 State, local, or tribal governments; or

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

3 “(2) CONTINUING STUDIES.—The Director
4 shall conduct continuing studies to enhance compari-
5 sons of budget outlays, credit authority, and tax ex-
6 penditures.

7 “(3) FEDERAL MANDATE STUDIES.—

8 “(A) At the request of any committee of
9 the House of Representatives or the Senate, the
10 Director shall, to the extent practicable, con-
11 duct a study of a legislative proposal containing
12 a Federal mandate.

13 “(B) In conducting a study under subpara-
14 graph (A), the Director shall—

15 “(i) solicit and consider information
16 or comments from elected officials (includ-
17 ing their designated representatives) of
18 States, local governments, tribal govern-
19 ments, designated representatives of the
20 private sector, and such other persons as
21 may provide helpful information or com-
22 ments;

23 “(ii) consider establishing advisory
24 panels of elected officials (including their
25 designated representatives) of States, local

1 governments, tribal governments, des-
2 ignated representatives of the private sec-
3 tor, and other persons if the Director de-
4 termines, in the Director's discretion, that
5 such advisory panels would be helpful in
6 performing the Director's responsibilities
7 under this section; and

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

12 “(I) the future direct cost of the
13 Federal mandates concerned to the
14 extent that they significantly differ
15 from or extend beyond the 5-year pe-
16 riod after the mandate is first effec-
17 tive; and

18 “(II) any disproportionate budg-
19 etary effects of the Federal mandates
20 concerned upon particular industries
21 or sectors of the economy, States, re-
22 gions, and urban, or rural or other
23 types of communities, as appropriate.

24 “(C) In conducting a study on private sec-
25 tor mandates under subparagraph (A), the Di-

1 rector shall provide estimates, if and to the ex-
2 tent that the Director determines that such es-
3 timates are reasonably feasible, of—

4 “(i) future costs of Federal private
5 sector mandates to the extent that such
6 mandates differ significantly from or ex-
7 tend beyond the 5-year period referred to
8 in subparagraph (B)(iii)(I);

9 “(ii) any disproportionate financial ef-
10 fects of Federal private sector mandates
11 and of any Federal financial assistance in
12 the bill or joint resolution upon any par-
13 ticular industries or sectors of the econ-
14 omy, States, regions, and urban or rural or
15 other types of communities; and

16 “(iii) the effect of Federal private sec-
17 tor mandates in the bill or joint resolution
18 on the national economy, including the ef-
19 fect on productivity, economic growth, full
20 employment, creation of productive jobs,
21 and international competitiveness of
22 United States goods and services.

23 “(c) VIEWS AND ESTIMATES OF COMMITTEES.—Any
24 committee of the House of Representatives or the Senate
25 that anticipates that it will consider any proposed legisla-

1 tion establishing, amending, or reauthorizing any Federal
2 program likely to have a significant budgetary impact on
3 any State, local, or tribal government, or likely to have
4 a significant financial impact on the private sector, includ-
5 ing any legislative proposal submitted by the executive
6 branch likely to have such a budgetary or financial impact,
7 shall include that information in its views and estimates
8 on that proposal to the Committee on the Budget of the
9 applicable House pursuant to section 301(d).

10 “(d) VIEWS OF COMMITTEES.—Any committee of the
11 House of Representatives or the Senate which anticipates
12 that the committee will consider any proposed legislation
13 establishing, amending, or reauthorizing any Federal pro-
14 gram likely to have a significant budgetary impact on the
15 States, local governments, or tribal governments, or likely
16 to have a significant financial impact on the private sector,
17 including any legislative proposal submitted by the execu-
18 tive branch likely to have such a budgetary or financial
19 impact, shall provide its views and estimates on such pro-
20 posal to the Committee on the Budget of its House.

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

1 **“SEC. 425. POINT OF ORDER.**

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

4 “(1) any bill or joint resolution that is reported
5 by a committee unless the committee has published
6 the statement of the Director pursuant to section
7 424(a) prior to such consideration, except that this
8 paragraph shall not apply to any supplemental state-
9 ment prepared by the Director under section
10 424(a)(4); or

11 “(2) any bill, joint resolution, amendment, mo-
12 tion, or conference report that contains a Federal
13 intergovernmental mandate having direct costs that
14 exceed the threshold specified in section
15 424(a)(1)(A), or that would cause the direct costs of
16 any other Federal intergovernmental mandate to ex-
17 ceed the threshold specified in section 424(a)(1)(A),
18 unless—

19 “(A) the bill, joint resolution, amendment,
20 motion, or conference report provides new budg-
21 et authority or new entitlement authority in the
22 House of Representatives or direct spending au-
23 thority in the Senate for each fiscal year for the
24 Federal intergovernmental mandates included
25 in the bill, joint resolution, amendment, motion,
26 or conference report in an amount that equals

1 or exceeds the estimated direct costs of such
2 mandate; or

3 “(B) the bill, joint resolution, amendment,
4 motion, or conference report provides an in-
5 crease in receipts or a decrease in new budget
6 authority or new entitlement authority in the
7 House of Representatives or direct spending au-
8 thority in the Senate and an increase in new
9 budget authority or new entitlement authority
10 in the House of Representatives or an increase
11 direct spending authority for each fiscal year
12 for the Federal intergovernmental mandates in-
13 cluded in the bill, joint resolution, amendment,
14 motion, or conference report in an amount that
15 equals or exceeds the estimated direct costs of
16 such mandate; or

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

19 “(i) provides that—

20 “(I) such mandate shall be effec-
21 tive for any fiscal year only if all di-
22 rect costs of such mandate in the fis-
23 cal year are provided in appropria-
24 tions Acts, and

1 “(II) in the case of such a man-
2 date contained in the bill, joint resolu-
3 tion, amendment, motion, or con-
4 ference report, the mandate is re-
5 pealed effective on the first day of any
6 fiscal year for which all direct costs of
7 such mandate are not provided in ap-
8 propriations Acts; or

9 “(ii) requires a Federal agency to re-
10 duce programmatic and financial respon-
11 sibilities of State, local, and tribal govern-
12 ments for meeting the objectives of the
13 mandate such that the estimated direct
14 costs of the mandate to such governments
15 do not exceed the amount of Federal fund-
16 ing provided to those governments to carry
17 out the mandate in the form of appropria-
18 tions or new budget authority or new enti-
19 tlement authority in the House of Rep-
20 resentatives or direct spending authority in
21 the Senate, and establishes criteria and
22 procedures for that reduction.

23 “(b) LIMITATION ON APPLICATION TO APPROPRIA-
24 TIONS BILLS.—Subsection (a) shall not apply to a bill that

1 is reported by the Committee on Appropriations or an
2 amendment thereto.

3 “(c) DETERMINATION OF DIRECT COSTS BASED ON
4 ESTIMATES BY BUDGET COMMITTEES.—For the purposes
5 of this section, the amount of direct costs of a Federal
6 mandate for a fiscal year shall be determined based on
7 estimates made by the Committee on the Budget, in con-
8 sultation with the Director, of the House of Representa-
9 tives or the Senate, as the case may be.

10 “(d) DETERMINATION OF EXISTENCE OF FEDERAL
11 MANDATE BY GOVERNMENT REFORM AND OVERSIGHT
12 AND GOVERNMENTAL AFFAIRS COMMITTEES.—For the
13 purposes of this section, the Committee on Government
14 Reform and Oversight of the House of Representatives or
15 the Committee on Governmental Affairs of the Senate, as
16 applicable, shall have the authority to make final deter-
17 minations of whether a bill, joint resolution, amendment,
18 motion, or conference report contains a Federal intergov-
19 ernmental mandate.

20 **“SEC. 426. ENFORCEMENT IN THE HOUSE OF REPRESENTA-**
21 **TIVES.**

22 “It shall not be in order in the House of Representa-
23 tives to consider a rule or order that waives the application
24 of section 425(a) to a bill or joint resolution reported by
25 a committee of authorization.”.

1 **SEC. 302. 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 the direct costs of which exceed the threshold
10 in section 424(a)(1)(A) of the Unfunded Mandate Reform
11 Act of 1995, it shall always be in order, unless specifically
12 waived by terms of a rule governing consideration of that
13 measure, to move to strike such Federal mandate from
14 the portion of the bill then open to amendment.”.

15 (b) COMMITTEE ON RULES REPORTS ON WAIVED
16 POINTS OF ORDER.—The Committee on Rules shall in-
17 clude in the report required by clause 1(d) of Rule XI (re-
18 lating to its activities during the Congress) of the Rules
19 of the House of Representatives a separate item identify-
20 ing all waivers of points of order relating to Federal man-
21 dates, listed by bill or joint resolution number and the sub-
22 ject matter of that measure.

23 **SEC. 303. EXERCISE OF RULEMAKING POWERS.**

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

1 (1) as an exercise of the rulemaking powers of
2 the House of Representatives and the Senate, and as
3 such they shall be considered as part of the rules of
4 the House of Representatives and the Senate, re-
5 spectively, and such rules shall supersede other rules
6 only to the extent that they are inconsistent there-
7 with; and

8 (2) with full recognition of the constitutional
9 right of the House of Representatives and the Sen-
10 ate to change such rules at anytime, in the same
11 manner, and to the same extent as in the case of
12 any other rule of the House of Representatives or
13 the Senate, respectively.

14 **SEC. 304. CONFORMING AMEMDMENT TO TABLE OF CON-**
15 **TENTS.**

16 Section 1(b) of the Congressional Budget and Im-
17 poundment Control Act of 1974 is amended by inserting
18 “PART A—GENERAL PROVISIONS” before the item relat-
19 ing to section 401 and by inserting after the item relating
20 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.”.

1 **SEC. 305. TECHNICAL AMENDMENT.**

2 The State and Local Government Cost Estimate Act
3 of 1981 (Public Law 97-108) is repealed.

4 **SEC. 306. EFFECTIVE DATE.**

5 This title shall take effect on October 1, 1995.



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