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HOUSE BILL NO. 2523

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 50, consisting of sections numbered 2.1-795 through 2.1-801, relating to the creation of the Implementation of Federal Mandates Act.

Patrons—O'Brien, Albo, Hargrove, McClure, McDonnell, Newman and Wagner; Senator: Barry

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 50, consisting of sections numbered 2.1-795 through 2.1-801 as follows:

CHAPTER 50.**IMPLEMENTATION OF FEDERAL MANDATES ACT.**

§ 2.1-795. Short title.

This chapter shall be known and may be cited as the "Implementation of Federal Mandates Act".

§ 2.1-796. Legislative declaration.

A. In enacting this chapter, the General Assembly employs its legislative authority to establish that the people of Virginia acting through their elected officials in Virginia government, have the responsibility and authority to establish policy in and for Virginia pertaining to federal programs mandated in federal statutes.

B. The intent of the General Assembly is to assure the primacy of the Commonwealth of Virginia's legal and political authority to implement in and for Virginia, the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Virginia policy and exceed the lawful authority of the federal government or are not required by federal law.

C. In this connection the General Assembly finds and declares that:

1. The power to implement federal policies in and for Virginia is central to the ability of the people of Virginia to govern themselves under a federal system of government; and

2. Any implementation of federal policies in and for Virginia by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

C. The General Assembly further finds and declares that:

1. There is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Virginia and the state and does not properly respect the rights of the state, local governments, and citizens.

2. The state government has an obligation to the public to do what is necessary to protect the rights of Virginia citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state.

3. The Tenth Amendment to the United States Constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Virginia, as one of the sovereign states within the Union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Virginia. However, this authority has too often been ignored by the federal government, as the federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the Tenth Amendment be accorded proper respect.

4. Current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies often do not reflect the realities of Virginia and federal regulators frequently do not understand the needs and priorities of the citizens of Virginia.

5. The citizens of this state can create and wish to create innovative solutions to Virginia's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Virginia to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts such insufficiency.

6. The provisions of this article will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this article ultimately

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60 will bring about greater protection for the state and the nation, because it will direct the state to
61 implement federal statutes at the least possible cost, thereby freeing more moneys for other needs.

62 7. The purpose of this chapter is to ensure that federal mandates implemented in Virginia comply
63 with state policy as established by the General Assembly.

64 § 2.1-797. Definitions.

65 As used in this chapter, unless the context requires otherwise:

66 Federal statute means a federal statute that is in accord with the United States Constitution imposing
67 mandates on state or local governments, which may include, but is not limited to, the following:

68 1. The Safe Drinking Water Act, 42 U.S.C. § 300 f, et seq., as amended;

69 2. The Clean Air Act, 42 U.S.C. § 7401, et seq., as amended;

70 3. The Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended;

71 4. The Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., as amended;

72 5. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended;

73 6 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.
74 § 9601, et seq., as amended;

75 7. The Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, as amended;

76 8. The Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended;

77 9. The Asbestos School Hazard Abatement Statute, 20 U.S.C. § 4011, et seq., as amended;

78 10. The Brady Handgun Violence Prevention Act of 1993, P.L. 101-336, as amended;

79 11. The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. § 2501, et seq., as amended;

80 12. The Family and Medical Leave Act of 1993, P.L. 103-3, as amended;

81 13. The Emergency Planning and Community Right-to-Know Act, P.L. 99-145 and 99-499, as
82 amended;

83 14. The Federal, State, and Local Partnership for Education Improvement Program, 20 U.S.C.
84 § 1751, et seq., as amended;

85 15. The National Voter Registration Act of 1993, P.L. 103-31, as amended;

86 16. The Federal School Lunch Program and School Breakfast Program, 42 U.S.C. §§ 1751 and
87 1773, P.L. 101-336, as amended;

88 17. The Federal Social Services and Medicaid Requirements, 42 U.S.C. § 1396, et seq., as amended;

89 18. The Federal Highway Safety Programs;

90 19. The Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, as amended;

91 § 2.1-798. State programs to implement federal statutes.

92 A. Any state officer, official, or employee charged with the duty of implementing any federal statute
93 shall implement the law as required by the federal statute in good faith and exercising a critical view
94 toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions
95 of any federal regulation, guideline, or policy that are inconsistent with Virginia policy or do not
96 advance Virginia policy in a cost-effective manner.

97 B. Any agency of the executive branch that is authorized to develop a state program to respond to
98 any mandates contained in a federal statute shall develop the state program and promulgate any
99 necessary regulations using the following criteria:

100 1. State programs shall be developed by the agency to meet the requirements of federal statutes in
101 good faith with a critical view toward any federal regulations, guidelines, or policies.

102 2. State programs shall be developed with due consideration of the financial restraints of local
103 governments, the citizens of Virginia and the state.

104 3. Any state program that implements the goals of the federal statute shall use the most efficient
105 method possible, with careful consideration given to cost of the program and the impact of the program
106 on Virginia citizens and local governments, and the long-range public health, safety, and welfare of
107 citizens of the state.

108 § 2.1-799. Joint Legislative Audit and Review Commission to report to Joint Rules Committee of the
109 General Assembly.

110 A. The Joint Legislative Audit and Review Commission (JLARC) shall report to the Joint Rules
111 Committee of the General Assembly regarding the proposed implementation of this section.

112 B. If any state program is authorized or mandated by a federal statute, no state funds for the
113 program shall be appropriated unless:

114 1. The state program is necessary to protect the public health, safety, and welfare;

115 2. The state program is necessary to implement the federal statute;

116 3. The operation of the state program benefits the state by providing a cost-effective implementation
117 of the federal statute by the state, by local government, and by business; or

118 4. The state program benefits the state, local government, and business by providing a cost-effective
119 means to meet a higher public health, safety, and welfare standard established under state law.

120 C. Each agency making a budget request for state appropriations for a state program authorized or
121 mandated by federal statute shall include in its budget request citations to the federal constitutional

provisions and the state constitutional or statutory provisions that authorize the state program. JLARC shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the Joint Rules Committee of the General Assembly.

D. The General Assembly, after receiving a recommendation from JLARC and the Joint Rules Committee, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The General Assembly shall exercise a critical review toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of state appropriations for a state program shall constitute the General Assembly's determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

E. Prior to recommending to the General Assembly any budget for an agency that is charged with implementing federal mandates, JLARC shall request that the agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on the public and on local governments that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The agency shall also provide advice to JLARC regarding any changes in law that are necessary to provide the agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. JLARC shall review and compile the information received from agencies pursuant to this section and shall include recommendations in its report.

F. For purposes of this section, "state program" shall not include any portion of a program which state authorities are required to administer a trusteeship or custodial capacity and which are not subject to appropriation by the General Assembly.

§ 2.1-800. Requests for information regarding federal mandates.

A. JLARC shall prepare one or more requests for information regarding federal mandates on or before August 30 of each year. The requests for information shall be directed to persons involved with or affected by federal mandates, including but not limited to the following:

1. Public and private institutions of higher education both within and outside of Virginia and individuals in such institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;

2. Attorneys in private practice who have dealt with federal mandate litigation or research; or

3. Organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on state and local governments.

B. The issues addressed in the requests for information issued pursuant to this section shall include the following:

1. Identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;

2. Legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;

3. Practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;

4. Recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and is suited to the needs of each state; and

5. Possible funding sources for federal mandate efforts and opportunities for the state of Virginia to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.

C. The requests for information prepared pursuant to this section shall require that the initial responses be received by JLARC by October 30 of each year. JLARC may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

§ 2.1-801. Report by JLARC regarding federal mandates; recommendations.

A. JLARC shall examine the information received through the requests for information prepared pursuant to § 2.1-800 and, based upon such information, shall present a report to the Joint Rules Committee on or before December 1 of each year, that includes estimates of the cost of the federal mandate efforts recommended under the provisions of this section and recommendations regarding any possible public and private sources of moneys to fund such efforts, including any appropriations by the

183 *General Assembly that may be required.*