

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 604

*An Act to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 50, consisting of sections numbered 2.1-795 through 2.1-799, relating to the creation of the Implementation of Federal Mandates Act.*

[H 2523]

Approved March 24, 1995

**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 2.1-799, 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.*

*D. 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 Commonwealth wastes the financial resources of local governments, the citizens of Virginia and the Commonwealth and does not properly respect the rights of the Commonwealth, 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 Commonwealth.*

*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 Commonwealth 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 the Commonwealth 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 Commonwealth the flexibility it needs. It is not possible for the Commonwealth of Virginia to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the Commonwealth's efforts to implement federal requirements is shifted to the person or agency who asserts such insufficiency.*

*6. The provisions of this chapter 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 chapter ultimately will bring about greater protection for the Commonwealth and the nation because it will direct the Commonwealth to implement federal statutes at the least possible cost, thereby freeing more moneys for*

other needs.

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

§ 2.1-797. Definitions.

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

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

1. The Safe Drinking Water Act, 42 U.S.C. § 300 f, et seq., as amended;
2. The Clean Air Act, 42 U.S.C. § 7401, et seq., as amended;
3. The Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended;
4. The Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., as amended;
5. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended;
6. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended;
7. The Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, as amended;
8. The Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended;
9. The Asbestos School Hazard Abatement Statute, 20 U.S.C. § 4011, et seq., as amended;
10. The Brady Handgun Violence Prevention Act of 1993, P.L. 101-336, as amended;
11. The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. § 2501, et seq., as amended;
12. The Family and Medical Leave Act of 1993, P.L. 103-3, as amended;
13. The Emergency Planning and Community Right-to-Know Act, P.L. 99-145 and 99-499, as amended;
14. The Federal, State, and Local Partnership for Education Improvement Program, 20 U.S.C. § 1751, et seq., as amended;
15. The National Voter Registration Act of 1993, P.L. 103-31, as amended;
16. The Federal School Lunch Program and School Breakfast Program, 42 U.S.C. §§ 1751 and 1773, P.L. 101-336, as amended;
17. The Federal Social Services and Medicaid Requirements, 42 U.S.C. § 1396, et seq., as amended;
18. The Federal Highway Safety Programs; and
19. The Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, as amended.

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

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

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

1. State programs shall be developed by the agency to meet the requirements of federal statutes in good faith with a critical view toward any federal regulations, guidelines, or policies.
2. State programs shall be developed with due consideration of the financial restraints of local governments, the citizens of Virginia and the Commonwealth.
3. Any state program that implements the goals of the federal statute shall use the most efficient method possible with careful consideration given to cost of the program and the impact of the program on Virginia citizens and local governments, and the long-range public health, safety, and welfare of citizens of the Commonwealth.

§ 2.1-799. Governor to report to the General Assembly.

A. The Governor shall report to the General Assembly regarding the proposed implementation of this section.

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

1. The state program is necessary to protect the public health, safety, and welfare;
2. The state program is necessary to implement the federal statute;
3. The operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the Commonwealth, local government, and business; or
4. The state program benefits the Commonwealth, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

C. Each agency making a budget request for state appropriations for a state program authorized or 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. The Governor 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 General Assembly.*

*D. The General Assembly, after receiving a recommendation from the Governor, 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, the Governor shall request that the agency provide information to the Department of Planning and Budget 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 the Department of Planning and Budget 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. The Department of Planning and Budget shall review and compile the information received from agencies pursuant to this section and shall include recommendations in the executive budget.*

*F. For purposes of this section, "state program" shall not include any portion of a program that is funded with nontax or nonfee revenue, or both, which state authorities are required to administer in a trusteeship or custodial capacity and which are not subject to appropriation by the General Assembly.*