

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2327

To clarify the application of Federal preemption of State and local laws, to preserve State and local legislative rights and prerogatives, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1993

Mr. THOMAS of Wyoming (for himself, Mr. KIM, Mr. GORDON, Mr. HYDE, Mr. BOEHNER, Mr. EWING, Mr. WALSH, Mr. HANCOCK, Mr. LEVY, Mr. SCHIFF, Mr. TAYLOR of North Carolina, and Mr. EVERETT) introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To clarify the application of Federal preemption of State and local laws, to preserve State and local legislative rights and prerogatives, 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 “States and Local Leg-  
5 islative Prerogatives Preservation Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1           (1) the United States Constitution created a  
2 strong Federal system, reserving to the States all  
3 powers not expressly delegated to the Federal Gov-  
4 ernment;

5           (2) on numerous occasions, the Congress has  
6 enacted statutes that explicitly preempt State and  
7 local government powers and describe the scope of  
8 the preemption;

9           (3) in addition to statutes that explicitly pre-  
10 empt State and local government powers, many  
11 other statutes that lack an explicit statement by  
12 Congress of its intent to preempt and a clear de-  
13 scription of the scope of the preemption have been  
14 construed by the courts and Federal agencies to pre-  
15 empt State and local government powers; and

16           (4) without an explicit statement of Congress'  
17 intent to preempt State and local government pow-  
18 ers and a clear description of the scope of preemp-  
19 tion, preemptive statutes—

20           (A) provide too little guidance and leave  
21 too much discretion to Federal agencies which  
22 are required to promulgate and enforce regula-  
23 tions pursuant to statutes;

24           (B) create too great an uncertainty for  
25 State and local governments; and

1 (C) leave the presence or scope of preemp-  
2 tion to be litigated and determined by the Fed-  
3 eral judiciary, producing results sometimes  
4 contrary to or beyond the intent of Congress.

5 **SEC. 3. PURPOSE.**

6 The purposes of this Act are to—

7 (1) promote and preserve the integrity and ef-  
8 fectiveness of the Federal system;

9 (2) set forth principles governing the interpre-  
10 tation of congressional intent regarding preemption  
11 of State and local government powers by Federal  
12 laws and regulations; and

13 (3) establish an information collection system  
14 designed to monitor the incidence of Federal statu-  
15 tory and regulatory preemption.

16 **SEC. 4. DEFINITIONS.**

17 As used in this Act, the term—

18 (1) “local government” means a county, city,  
19 town, borough, township, village, school district, spe-  
20 cial district, or other political subdivision of a State;

21 (2) “State” means a State of the United States  
22 and an agency or instrumentality of a State, but  
23 does not include a local government of a State; and

24 (3) “State and local government powers” means  
25 powers reserved under the ninth and tenth amend-

1       ments of the United States Constitution to States or  
2       delegated to local governments by States.

3       **SEC. 5. RULE OF CONSTRUCTION.**

4       No statute, or rule promulgated under such statute,  
5       shall preempt, in whole or in part, any State or local gov-  
6       ernment law, ordinance, or regulation, unless the statute  
7       explicitly states that such preemption is intended or unless  
8       there is a direct conflict between such statute and a State  
9       or local law, ordinance, or regulation so the two cannot  
10      be reconciled or consistently stand together.

11      **SEC. 6. ANNUAL REPORT ON STATUTORY PREEMPTION.**

12      (a) REPORT.—Within 90 days after each Congress  
13      adjourns sine die, the Congressional Research Service  
14      shall prepare and make available to the public a report  
15      on the extent of Federal statutory preemption of State and  
16      local government powers enacted into law during the pre-  
17      ceding Congress or adopted through judicial interpretation  
18      of Federal statutes.

19      (b) CONTENTS.—The report shall contain—

20              (1) a cumulative list of the Federal statutes  
21              preempting, in whole or in part, State and local gov-  
22              ernment powers;

23              (2) a summary of Federal legislation enacted  
24              during the previous Congress preempting, in whole  
25              or in part, State and local government powers;

1           (3) an overview of recent court cases addressing  
2       Federal preemption issues; and

3           (4) other information the Director of the Con-  
4       gressional Research Service determines appropriate.

5       (c) TRANSMITTAL.—Copies of the report shall be sent  
6       to the President and the chairman of the appropriate com-  
7       mittees in the Senate and House of Representatives.

8       **SEC. 7. EFFECTIVE DATE.**

9       This Act shall take effect on January 1, 1995. The  
10      requirements of section 5 shall apply only to statutes en-  
11      acted or final regulations which become effective on or  
12      after January 1, 1993.

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