

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as “equals” in “unison” with politicians to write laws to govern your life. Big Business has “a VOICE and a VOTE,” according to newly exposed documents. **DO YOU?**

State Regulatory Responsibility Act

Summary

Quite often federal agencies under the guise of “policy” or “guidance” and without any specific statutory authority or regulation, attempt to impose on the various states requirements which are inconsistent with state law and beyond the powers vested in the federal government. Federal agencies have also attempted to preempt state law without justification and state consent, and they have attempted to compel state implementation of federal mandates (both statutory and otherwise) without sufficient funding and/or clear state acceptance. The State Regulatory Responsibility Act is needed because these intrusions by federal agencies on the states’ implementation of their powers are disruptive to the federal-state relationship and, oftentimes, are highly questionable in nature.

The Model State Regulatory Responsibility Act’s purpose is to ensure the division of governmental responsibilities between the federal government and the states under the principles of “federalism,” so those state agencies are free to implement their powers without unauthorized federal interference. First, the Act prevents a state agency from complying with a federal requirement that is inconsistent with state law unless the requirement is clearly expressed in a federal statute or rule, and is adopted pursuant to the Federal Administrative Procedures Act. This provision prevents a state agency from being forced to follow a federal requirement that has not been promulgated pursuant to notice and comment procedures.

Second, the Act precludes a state agency from allowing federal law to preempt state law unless the state Attorney General finds that such preemption is required. This provision provides a mechanism for the state to determine if federal preemption is valid and necessary.

Lastly, the Act prohibits state agencies from complying with any federal regulatory mandate or requirement unless adequate funds are provided, the state agency has express state statutory authority to implement the program and the action does not conflict with state law. These provisions ensure that the state does not accept unfunded mandates and has the authority to implement a delegated program consistent with state law.

The Model State Regulatory Responsibility Act clearly establishes the role of the state agency when confronted with attempted intrusive and unauthorized actions by the federal government representatives. The Act provides a necessary and lucid framework for approaching such regulation that is consistent with principles of federalism and the Constitution.

Model Legislation

Section 1. {Short Title} This Act may be cited as the State Regulatory Responsibility Act.

Section 2. {Purpose} The purpose of this act is to provide guidelines for state agencies to follow in determining when to comply with federal guidance, submit to federal preemption and comply with federal regulatory mandates.

Section 3. {Compliance with Federal Guidance} No state agency or other authority of the state shall comply with any guidance or requirement by a federal agency that is not entirely and in all respects consistent with state law, policy, and priorities, unless such federal substantive rule adopted in compliance with Section 553 of the federal Administrative Procedure Act, 5 U.S.C § 553.

Section 4. {Submission to Federal Preemption} Unless such federal guidance or requirement is clearly expressed and contained in a federal statute or a federal substantive rule adopted in compliance with Section 553 of the federal Administrative Procedure Act, 5 U.S. C. § 553; no state agency or other authority of the state shall fail to implement any state statute, regulation, constitutional provision, or any order or other action authorized by any such state law, because of preemption by

any federal law unless the federal law contains preemptive language or preemption is so readily apparent from the text and legislative history of the federal law or it receives an opinion from the state Attorney General that such federal preemption clearly is required, under the totality of all relevant circumstances, by the Constitution of the United States.

Section 5. {Compliance with Federal Regulatory mandates}

(a) No state agency or other authority of the state shall comply with any federal mandate that would require state enactment, enforcement, administration, or implementation of any statute, rule, or other law, or that would require any form of regulation by the state or the performance of any other governmental function protected against federal compulsion by the Tenth Amendment or any other provision in the Constitution of the United States, unless:

(1) the state has agreed to take such action as a clear and express condition of receipt of federal funds; or

(2) the state has agreed to take such action as a clear and express condition of delegation of a federal program.

(b.) Any ambiguity in a condition of receipt of federal funds or in a condition of delegation of a federal program shall be construed so as to avoid federal control of any state governmental function.

(c) No state or other authority of the state shall agree, as a condition of receiving federal funds, to comply with any federal regulatory mandate or other requirement that it perform a governmental function within the scope of subsection (a) of this section, unless:

(1) the federal funds are adequate to cover the costs of implementing the program;

(2) it has express state statutory authority to implement the program; and

(3) no action that it is agreeing to perform conflicts with any state law.

(d) No state agency or other authority of the state shall agree, as a condition of delegation of a federal program, to comply with any federal regulatory mandate or other requirement that it perform a governmental function within the scope of subsection (a) of this section, unless:

(1) it has express state statutory authority to implement the program; and

(2) no action that it is agreeing to perform conflicts with any state law.

Adopted by the Natural Resources Task Force at the States and Nation Policy Summit, December 1999. Approved by the ALEC Board of Directors December 2000.

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

From CMD: This "model" bill would allow states to invalidate any federal law or directive that states (or the corporations funding state politicians) do not like, unless the regulation provides money to the state. It appears primarily directed towards federal environmental laws or standards but would likely be applicable in many parts of the state-federal relationship. This law is based on a narrow reading of Congress' powers under the U.S. Constitution and an expansive understanding of state's rights. This interpretation is largely at odds with U.S. Supreme Court jurisprudence, including interpretations of the "Supremacy Clause," which makes the Constitution and laws enacted pursuant to its powers the supreme law of the land, and therefore this bill would likely be found unconstitutional.

See also "Property Investment Protection Act," "Regulatory Costs Fairness Act"

About Us and ALEC EXPOSED. The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish www.PRWatch.org, www.SourceWatch.org, and now www.ALECExposed.org. For more information contact: editor@prwatch.org or 608-260-9713.

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