

By: Representative Saucier

To: Appropriations

## HOUSE BILL NO. 567

1 AN ACT TO ESTABLISH PROCEDURES FOR STATE IMPLEMENTATION OF  
2 FEDERAL MANDATES; TO AMEND SECTIONS 27-103-117 AND 27-103-129,  
3 MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF  
4 THIS ACT; TO REPEAL SECTIONS 5-3-73 AND 5-3-79, MISSISSIPPI CODE  
5 OF 1972, WHICH REQUIRE THE JOINT LEGISLATIVE COMMITTEE ON  
6 PERFORMANCE EVALUATION AND EXPENDITURE REVIEW TO EVALUATE THE  
7 IMPLEMENTATION AND COST OF FEDERAL MANDATES; AND FOR RELATED  
8 PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. This act shall be known and may be cited as the  
11 "Federal Mandates Act."

12 SECTION 2. (1) The Legislature finds and declares that:

13 (a) The power to implement federal policies in and for  
14 Mississippi is central to the ability of the people of Mississippi  
15 to govern themselves under a federal system of government;

16 (b) Any implementation of federal policies in and for  
17 Mississippi by federal executive branch agencies that is contrary  
18 to fundamental notions of federalism and self-determination shall  
19 be identified and countered, if deemed necessary;

20 (c) There is an urgent need to modify federal mandates  
21 because the implementation of these mandates by the state unduly  
22 burdens the financial resources of local governments, the citizens  
23 of Mississippi and the state, and does not properly respect the  
24 rights of the state, local governments and citizens;

25 (d) The state government has an obligation to the  
26 public to protect the rights of Mississippi citizens under federal  
27 law while minimizing or eliminating additional cost or regulatory  
28 burdens on any citizen of the state;

29 (e) The Tenth Amendment to the United States

30 Constitution directs that powers that are not delegated to the  
31 United States are reserved to the states or to the people.  
32 Mississippi, as one of the sovereign states within the union, has  
33 constitutional authority to enact laws protecting the environment  
34 of the state and safeguarding the public health, safety and  
35 welfare of the citizens of Mississippi. This authority has often  
36 been ignored by the federal government, and the federal government  
37 has intruded more and more into areas that must be left to the  
38 states. It is essential that the dilution of the authority of  
39 state and local governments be halted and that the provisions of  
40 the Tenth Amendment be accorded proper respect;

41 (f) Current federal regulatory mandates, as reflected  
42 in federal administrative regulations, guidelines and policies,  
43 often do not reflect the realities of the State of Mississippi,  
44 and federal regulators frequently do not understand the needs and  
45 priorities of the citizens of Mississippi;

46 (g) The citizens of this state can create and wish to  
47 create innovative solutions to Mississippi's problems, but the  
48 current manner in which legal challenges to state policies and  
49 federal programmatic substitutions of state programs are handled  
50 does not allow the state the flexibility it needs. It is not  
51 possible for the State of Mississippi to effectively and  
52 efficiently implement the provisions of federal statutes unless  
53 the burden to prove the insufficiency of the state's efforts to  
54 implement federal requirements is shifted to the federal agency or  
55 person which asserts the insufficiency;

56 (h) The provisions of this act will better balance the  
57 exercise of the powers of the federal government and the powers  
58 reserved to the states. In addition, the application of this act  
59 will bring about greater protection for the state and the nation,  
60 because it will direct the state to implement federal statutes at  
61 the least possible cost, and free more moneys for other needs; and

62 (i) The purpose of this act is to ensure that federal

63 mandates implemented in Mississippi comply with state policy as  
64 established by the Legislature.

65 (2) In enacting this act:

66 (a) The Legislature employs its legislative authority  
67 to establish that the people of the State of Mississippi, acting  
68 through their elected officials in Mississippi state government,  
69 have the responsibility and authority to establish policy for  
70 Mississippi pertaining to federal programs mandated in federal  
71 statutes.

72 (b) The intent of the Legislature is to assure the  
73 primacy of the State of Mississippi's legal and political  
74 authority to implement in and for Mississippi the policy mandated  
75 by federal statutes and to vigorously challenge and scrutinize the  
76 extent and scope of authority asserted by federal executive branch  
77 agencies when federal agency actions and interpretations are  
78 inconsistent with Mississippi policy and exceed the lawful  
79 authority of the federal government or are not required by federal  
80 law.

81 SECTION 3. Whenever used in this act, the term "federal  
82 statute" means a federal statute that is in accord with the United  
83 States Constitution imposing mandates on state or local  
84 governments, which may include the following:

85 (a) The federal "Safe Drinking Water Act," 42 USCS Sec.  
86 300f et seq., as amended;

87 (b) The federal "Clean Air Act," 42 USCS Sec. 7401  
88 et seq., as amended;

89 (c) The federal "Water Pollution Control Act," 33 USCS  
90 Sec. 1251 et seq., as amended;

91 (d) The federal "Solid Waste Disposal Act," 42 USCS  
92 Sec. 3251 et seq., as amended;

93 (e) The federal "Resource Conservation and Recovery Act  
94 of 1976," 42 USCS Sec. 6901 et seq., as amended;

95 (f) The federal "Comprehensive Environmental Response,

96 Compensation and Liability Act of 1980," 42 USCS Sec. 9601 et  
97 seq., as amended;

98 (g) The federal "Superfund Amendments and  
99 Reauthorization Act of 1986," P.L. 99-499, as amended;

100 (h) The federal "Endangered Species Act of 1973," 16  
101 USCS Sec. 1531 et seq., as amended;

102 (i) The federal "Asbestos School Hazard Abatement  
103 Statute," 20 USCS Sec. 4011 et seq., as amended;

104 (j) The federal "Brady Handgun Violence Prevention Act  
105 of 1993," P.L. 101-336, as amended;

106 (k) The federal "Commercial Motor Vehicle Safety Act of  
107 1986," 49 USCS Sec. 2501, as amended;

108 (l) The federal "Family and Medical Leave Act of 1993,"  
109 P.L. 103-3, as amended;

110 (m) The federal "Emergency Planning and Community  
111 Right-to-Know Act," P.L. 99-145 and 99-499, as amended;

112 (n) The Federal, State and Local Partnership for  
113 Education Improvement Program, 20 USCS Sec. 1751 et seq., as  
114 amended;

115 (o) The federal "National Voter Registration Act of  
116 1993," P.L. 103-31, as amended;

117 (p) The Federal School Lunch Program and School  
118 Breakfast Program, 42 USCS Secs. 1751 and 1773, as amended;

119 (q) The federal social services and Medicaid  
120 requirements, 42 USCS Sec. 1396, as amended;

121 (r) Federal highway safety programs; and

122 (s) The federal "Intermodal Surface Transportation  
123 Efficiency Act of 1991," P.L. 102-240, as amended.

124 SECTION 4. (1) Any state officer, official or employee  
125 charged with the duty of implementing any federal statute shall  
126 implement the law as required by the federal statute in good faith  
127 and exercising a critical view toward the provisions of any  
128 federal regulation, guideline or policy in order to identify those

129 provisions of any federal regulation, guideline or policy that are  
130 inconsistent with Mississippi policy or do not advance Mississippi  
131 policy in a cost-effective manner.

132 (2) Any agency of the executive department of state  
133 government that is authorized to develop a state program to  
134 implement any mandates contained in a federal statute shall  
135 develop the state program and promulgate any necessary regulations  
136 using the following criteria:

137 (a) State programs should be developed by the state  
138 agency to meet the requirements of federal statutes in good faith  
139 with a critical view toward any federal regulations, guidelines or  
140 policies;

141 (b) State programs should be developed with due  
142 consideration of the financial restraints of local governments,  
143 the citizens of Mississippi and the state; and

144 (c) Any state program that implements the goals of the  
145 federal statute should use the most efficient method possible,  
146 with careful consideration given to cost of the program and the  
147 impact of the program on Mississippi citizens and local  
148 governments, and the long-range public health, safety and welfare  
149 of citizens of the state.

150 SECTION 5. (1) The Joint Legislative Budget Committee shall  
151 report to the Legislature regarding the proposed implementation of  
152 this section.

153 (2) (a) If any state program is authorized or mandated by a  
154 federal statute, no state appropriations for the program shall be  
155 enacted unless:

156 (i) The state program is necessary to protect the  
157 public health, safety and welfare;

158 (ii) The state program is necessary to implement  
159 the federal statute;

160 (iii) The operation of the state program benefits  
161 the state by providing a cost-effective implementation of the

162 federal statute by the state, local government and business; or

163 (iv) The state program benefits the state, local  
164 government and business by providing a cost-effective means to  
165 meet a higher public health, safety and welfare standard  
166 established under state law.

167 (b) Each state agency making a budget request for state  
168 appropriations for a state program authorized or mandated by  
169 federal statute shall include in its budget request citations to  
170 the federal constitutional provisions and the state constitutional  
171 or statutory provisions that authorize the state program. The  
172 Joint Legislative Budget Committee shall review the budget request  
173 and determine whether additional state statutory authority is  
174 required in order to implement the state program and shall make  
175 recommendations to the Legislature thereon.

176 (c) The Legislature, after receiving a recommendation  
177 from the Joint Legislative Budget Committee, shall determine  
178 whether a state program is necessary and whether federal  
179 constitutional authority and state constitutional or statutory  
180 authority exist. The Legislature shall exercise a critical view  
181 toward the interpretation of the federal statute found in federal  
182 regulations, guidelines or policies. Enactment of state  
183 appropriations for a state program shall constitute the  
184 Legislature's determination that the state program is necessary  
185 and that federal constitutional authority and state constitutional  
186 or statutory authority exist. State appropriations may not be  
187 based solely on requirements found in regulations, guidelines or  
188 policies of a federal agency.

189 (d) Before recommending to the Legislature any budget  
190 for a state agency that is charged with implementing federal  
191 mandates, the Legislative Budget Office and the Joint Legislative  
192 Budget Committee shall require that the state agency provide  
193 information regarding any monetary savings for the state and any  
194 reduction in regulatory burdens on the public and on local

195 governments that could be or have been achieved through the  
196 development of state policies that meet the intent of the federal  
197 statute but do not necessarily follow all applicable federal  
198 regulations, guidelines or policies. The state agency shall also  
199 provide advice to the Legislative Budget Office and the Joint  
200 Legislative Budget Committee regarding any changes in state  
201 statutes that are necessary to provide the state agency with the  
202 authority to implement state policies in such a way as to create  
203 additional savings or greater reductions in regulatory burdens.  
204 The Legislative Budget Office shall review and compile the  
205 information received from state agencies pursuant to this section  
206 and shall include recommendations in its proposed budget to the  
207 Legislature based upon such information.

208 (3) For purposes of this section, "state program" does not  
209 include any portion of a program that is funded with nontax or  
210 nonfee revenues, or both, which state authorities are required to  
211 administer in a trusteeship or custodial capacity and which are  
212 not subject to appropriation by the Legislature.

213 SECTION 6. (1) The Joint Legislative Committee on  
214 Performance Evaluation and Expenditure Review ("PEER Committee")  
215 shall prepare one or more requests for information regarding  
216 federal mandates on or before August 30, 1999. The requests for  
217 information shall be directed to persons involved with or affected  
218 by federal mandates, including but not limited to the following:

219 (a) Public and private institutions of higher education  
220 both within and outside the State of Mississippi and individuals  
221 in such institutions who have developed a high degree of expertise  
222 in the subjects of federalism and federal mandates;

223 (b) Attorneys in private practice who have dealt with  
224 federal mandate litigation or research; and

225 (c) Organizations and foundations that have an interest  
226 in the issues of federalism and the imposition of federal mandates  
227 on state and local governments.

228           (2) The issues addressed in the requests for information  
229 issued pursuant to this section shall include the following:

230           (a) Identification of federal mandates expressing broad  
231 federal policies that would best be implemented on a  
232 state-by-state basis or that could be resisted because of the  
233 unique circumstances that are present in each state and because of  
234 the unnecessary burdens that are created by federal regulations  
235 and policies;

236           (b) Legal theories that support the right of each state  
237 to implement or oppose federal mandates pursuant to the state's  
238 own policies;

239           (c) Practical methods, including the enactment of any  
240 state legislation, by which the state may fully exercise its  
241 authority in the implementation of federal mandates;

242           (d) Recommendations regarding federal legislation that  
243 would ensure that the states have the necessary authority to  
244 implement federal directives in a manner that is consistent with  
245 state policy and is suited to the needs of each state; and

246           (e) Possible funding sources for federal mandate  
247 efforts and opportunities for the State of Mississippi to match  
248 other funding sources or to cooperate with other entities in  
249 working towards federal mandate solutions.

250           (3) The requests for information prepared pursuant to this  
251 section shall require that the initial responses be received by  
252 the PEER Committee by October 15, 1999. The PEER Committee may  
253 prepare additional requests for information to follow up on and  
254 obtain further details regarding the initial responses that were  
255 received.

256           SECTION 7. (1) The PEER Committee shall examine the  
257 information received through the requests for information prepared  
258 pursuant to Section 6 of this act and, based upon the information,  
259 shall present a report to the Legislature on or before December 1,  
260 1999, that includes the following:



261 (a) Recommendation to the Legislature regarding:

262 (i) Contracts that the state may enter into with  
263 specified persons or entities to conduct research, to analyze  
264 certain subjects or to provide other services regarding federal  
265 mandates; or

266 (ii) A request for proposals process to obtain  
267 bids for contracts to provide services regarding federal mandates  
268 with the intent that the contracts be entered into on or before  
269 February 1, 2000, and that the results of any research or analysis  
270 performed under such contracts be received by the Legislature on  
271 or before July 1, 2000; and

272 (b) Estimates of the cost of the federal mandate  
273 efforts recommended by the PEER Committee under the provisions of  
274 this section and recommendations regarding any possible public and  
275 private sources of moneys to fund such efforts, including any  
276 appropriations by the Legislature that may be required.

277 SECTION 8. Section 27-103-117, Mississippi Code of 1972, is  
278 amended as follows:

279 27-103-117. It shall be the duty of the Director of the  
280 Legislative Budget Office to familiarize himself with the  
281 operations, needs, requirements and anticipated expenses and  
282 income of all state agencies and, for such purpose, he shall have  
283 the authority to require any state agency to furnish him with any  
284 and all necessary information. Each state agency shall furnish  
285 the Legislative Budget Office with the information required by  
286 Section 5 of this act.

287 SECTION 9. Section 27-103-129, Mississippi Code of 1972, is  
288 amended as follows:

289 27-103-129. To enable the Legislative Budget Office to  
290 prepare such budget, it shall have full and plenary power and  
291 authority to require all general-fund and special-fund agencies  
292 and the Mississippi Department of Transportation and the Office of  
293 State Aid Road Construction of the Mississippi Department of

294 Transportation to file a budget request with such information and  
295 in such form and in such detail as it may deem necessary and  
296 advisable, and it shall have the further power and authority to  
297 reduce or eliminate any item or items of requested appropriation  
298 by any state agency in the Legislative Budget Office's recommended  
299 budget to the Legislature. However, where any item of requested  
300 appropriation shall be so reduced or eliminated, the head of the  
301 agency involved shall have the right to appear before the  
302 appropriate legislative committee to urge a revision of the budget  
303 to restore the item reduced or eliminated. Beginning with the  
304 1996 fiscal year, the budget requests shall include a definition  
305 of the mission of the agency, a description of the duties and  
306 responsibilities of the agency, financial data relative to the  
307 various programs operated by the agency and performance measures  
308 associated with each program of the agency. The performance  
309 measures to be contained within the agency budget request shall be  
310 developed by cooperative efforts of the Legislative Budget Office,  
311 the Department of Finance and Administration and the agency itself  
312 and shall be approved jointly by the Legislative Budget Office and  
313 the Department of Finance and Administration prior to inclusion  
314 within the agency budget request. Beginning with the 1996 fiscal  
315 year, the budget requests shall also include in an addendum format  
316 a five-year strategic plan for the agency which shall include, but  
317 not be limited to, the following items of information: (a) a  
318 comprehensive mission statement, (b) performance effectiveness  
319 objectives for each program of the agency for each of the five (5)  
320 years covered by the plan, (c) a description of significant  
321 external factors which may affect the projected levels of  
322 performance, (d) a description of the agency's internal management  
323 system utilized to evaluate its performance achievements in  
324 relationship to the targeted performance levels, (e) an evaluation  
325 by the agency of the agency's performance achievements in  
326 relationship to the targeted performance levels for the two (2)

327 preceding fiscal years for which accounting records have been  
328 finalized. Beginning with the 2001 fiscal year, the budget  
329 requests shall also include the information required by Section 5  
330 of this act.

331 SECTION 10. If any provision of this act or the application  
332 thereof to any person or circumstance is held invalid, such  
333 invalidity does not affect other provisions or applications of  
334 this act that can be given effect without the invalid provision or  
335 application, and to this end the provisions of this act are  
336 declared to be severable.

337 SECTION 11. Sections 5-3-73 and 5-3-79, Mississippi Code of  
338 1972, which require the Joint Legislative Committee on Performance  
339 Evaluation and Expenditure Review to evaluate the implementation  
340 and cost of federal mandates, are repealed.

341 SECTION 12. This act shall take effect and be in force from  
342 and after July 1, 1999.