

# NCSL NEWS

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## Federal Agencies Step on the Toes of State Legislatures

### *Preemptive regulations threaten regional and local self-government*

WASHINGTON, D.C. - Federal preemption of state authority threatens state lawmakers' ability to effectively represent those who elected them, National Conference of State Legislatures President and Delaware Representative Donna Stone told a panel of U.S. senators today.

"State legislators are troubled by the growing trend in Washington to pass or promulgate preemptive measures that have a detrimental impact on states," Stone said. "As a result, a large part of the policy jurisdiction of state legislatures has been lost. States cannot legislate in response to their citizens' needs when the federal government has preempted the policy field."

The U.S. Senate Committee on the Judiciary heard testimony on federal agencies usurping Congressional and state laws through the regulatory process. The hearing was prompted by a series of regulations promulgated by federal agencies such as the National Highway Transportation Safety Administration and the Food and Drug Administration that, without consultation or public comment, would preempt state consumer protection and tort laws.

Representative Stone said Congress should codify provisions of an executive order on federalism which would protect state law from being preempted by unelected bureaucrats. Additionally, Congress should include the following principles in the new law:

1. **Partnership and enhanced consultation.** NCSL would support provisions to provide for consultation with state and local elected officials or their representative national associations prior to the consideration of any legislation or federal regulations that would interfere with or intrude upon historic and traditional state and local rights and responsibilities.
2. **Rule of Construction.** NCSL would support provisions to ensure that, absent any explicit statement of intent to preempt or absent any irreconcilable conflicts with state law, any ambiguities would be construed in favor of state law.
3. **Enforcement.** NCSL supports provisions to ensure congressional and agency accountability and enforcement. The point of order in the Unfunded Mandates Reform Act (UMRA) has made members

of Congress increasingly aware of potential impacts of federal laws and regulations on state and local taxpayers. We believe that a mechanism to ensure this recognition regarding preemption in both the legislative and the regulatory arenas is critical.

4. **Legislative Report.** NCSL supports efforts to include a federalism assessment in every committee and conference report. This will help members appreciate the potential impact on our levels of government, our taxpayers, and our programs.
  
5. **Agency Impact Statement.** Early in the rulemaking process, it is essential to codify the provisions of the Federalism Executive Order to ensure that every federal agency engages in a meaningful consultation process with elected state and local officials or their national associations, as well as with other impacted stakeholders. This will help to determine the potential impact of final administrative rules on our partnership.

"When Congress or a federal agency chooses to preempt state law, they are turning their backs on public policy innovation and creativity," Representative Stone said. "State lawmakers are, without question, more effective at addressing the individual needs of the communities they represent. Washington's one-size-fits-all approach is not always the answer to policy challenges."

NCSL is a bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories. It provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system.

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