

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3230  
OFFERED BY MR. COMER OF KENTUCKY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Unfunded Mandates  
3 Accountability and Transparency Act of 2023”.

**4 SEC. 2. REGULATORY IMPACT ANALYSES FOR CERTAIN  
5 RULES.**

6       The Unfunded Mandates Reform Act of 1995 (2  
7 U.S.C. 1501 et seq.) is amended—

8           (1) by striking “tribal” each place that term  
9 appears and inserting “Tribal”;

10          (2) in section 3 (2 U.S.C. 1502)—

11           (A) in paragraph (1), by striking “and” at  
12 the end;

13           (B) in paragraph (2), by striking the pe-  
14 riod at the end and inserting “and”; and

15           (C) by adding at the end the following:

16           “(3) the term ‘major rule’ means a rule, as  
17 defined in section 551 of title 5, United States  
18 Code, that the Administrator of the Office of

1 Information and Regulatory Affairs determines  
2 is likely to cause—

3 “(A) an annual effect on the economy  
4 of \$100,000,000 or more, adjusted once  
5 every 5 years to reflect increases in the  
6 Consumer Price Index for All Urban Con-  
7 sumers, as published by the Bureau of  
8 Labor Statistics of the Department of  
9 Labor;

10 “(B) a major increase in costs or  
11 prices for consumers, individual industries,  
12 Federal, State, local, or Tribal government  
13 agencies, or geographic regions; or

14 “(C) significant adverse effects on  
15 competition, employment, investment, pro-  
16 ductivity, innovation, public health and  
17 safety, or the ability of United States-  
18 based enterprises to compete with foreign-  
19 based enterprises in domestic and export  
20 markets.”; and

21 (3) in section 202 (2 U.S.C. 1532)—

22 (A) by striking the section heading and in-  
23 serting the following:

1 **“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN**  
2 **RULES.”;**

3 (B) by redesignating subsections (b) and  
4 (c) as subsections (d) and (e), respectively;

5 (C) by striking subsection (a) and insert-  
6 ing the following:

7 “(a) DEFINITION OF COST.—In this section, the term  
8 ‘cost’ means the cost of compliance and any reasonably  
9 foreseeable indirect costs, including revenues lost, as a re-  
10 sult of a major rule of an agency that is subject to this  
11 section.

12 “(b) REGULATORY IMPACT ANALYSES.—

13 “(1) REQUIREMENT.—Before promulgating any  
14 proposed or final major rule, the agency promul-  
15 gating the major rule shall prepare and publish in  
16 the Federal Register an initial and final regulatory  
17 impact analysis with respect to the major rule.

18 “(2) INITIAL REGULATORY IMPACT ANALYSIS.—  
19 An initial regulatory impact analysis required under  
20 paragraph (1) shall—

21 “(A) accompany the notice of proposed  
22 rulemaking with respect to the major rule that  
23 is the subject of the analysis; and

24 “(B) be open to public comment.

25 “(3) FINAL REGULATORY IMPACT ANALYSIS.—  
26 A final regulatory impact analysis required under

1 paragraph (1) shall accompany the final major rule  
2 that is the subject of the analysis.

3 “(c) CONTENT.—Each initial and final regulatory im-  
4 pact analysis prepared and published under subsection (b)  
5 shall include, with respect to the major rule that is the  
6 subject of the analysis—

7 “(1)(A) an analysis of the anticipated benefits  
8 and costs of the major rule, which shall be quan-  
9 tified to the extent feasible;

10 “(B) an analysis of the benefits and costs of a  
11 reasonable number of regulatory alternatives within  
12 the range of the discretion of the agency under the  
13 statute authorizing the major rule, including alter-  
14 natives that—

15 “(i) require no action by the Federal Gov-  
16 ernment; and

17 “(ii)(I) use incentives and market-based  
18 means to encourage the desired behavior;

19 “(II) provide information based upon  
20 which the public can make choices; or

21 “(III) employ other flexible regulatory op-  
22 tions that permit the greatest flexibility in  
23 achieving the objectives of the statute author-  
24 izing the major rule; and

1           “(C) an explanation of how the major rule com-  
2           plies with the requirements of section 205;

3           “(2) an assessment of the extent to which—

4                 “(A) the costs to State, local, and Tribal  
5                 governments may be paid with Federal financial  
6                 assistance (or otherwise paid for by the Federal  
7                 Government); and

8                 “(B) Federal resources are available to  
9                 carry out the major rule;

10          “(3) estimates of—

11                 “(A) any disproportionate budgetary ef-  
12                 fects of the major rule upon any particular—

13                         “(i) regions of the United States;

14                         “(ii) State, local, or Tribal govern-  
15                         ments;

16                         “(iii) types of communities, including  
17                         urban or rural communities; or

18                         “(iv) segments of the private sector;

19                         and

20                 “(B) the effect of the major rule on job  
21                 creation or job loss, which shall be quantified to  
22                 the extent feasible; and

23          “(4)(A) a description of the extent of the prior  
24          consultation of the agency under section 204 with

1       elected representatives of each affected State, local,  
2       or Tribal government;

3               “(B) a summary of the comments and concerns  
4       that were presented to the agency orally or in writ-  
5       ing by State, local, or Tribal governments; and

6               “(C) a summary of the evaluation by the agen-  
7       cy of the comments and concerns described in sub-  
8       paragraph (B).”;

9               (D) in subsection (d), as so redesignated,  
10       by striking “a statement under subsection (a) is  
11       required, the agency shall include in the pro-  
12       mulgation a summary of the information con-  
13       tained in the statement” and inserting “an  
14       analysis under subsection (b) is required, the  
15       agency promulgating the major rule shall in-  
16       clude in the promulgation a summary of the in-  
17       formation contained in the analysis”; and

18               (E) in subsection (e), as so redesignated,  
19       by striking “any statement required under sub-  
20       section (a) in conjunction with or as a part of  
21       any other statement or analysis, provided that  
22       the statement or analysis satisfies the provi-  
23       sions of subsection (a)” and inserting “any  
24       analysis required under subsection (b) in con-  
25       junction with, or as a part of, any other state-

1           ment or analysis if the other statement or anal-  
2           ysis satisfies the requirements of subsections  
3           (b) and (c)”.

4 **SEC. 3. ENHANCED STAKEHOLDER CONSULTATION.**

5           Section 204 of the Unfunded Mandates Reform Act  
6 of 1995 (2 U.S.C. 1534) is amended—

7           (1) in the section heading, by inserting “**AND**  
8           **PRIVATE SECTOR**” before “**INPUT**”;

9           (2) in subsection (a)—

10           (A) by inserting “, and impacted parties  
11           within the private sector (including small busi-  
12           nesses),” after “on their behalf”;

13           (B) by striking “Federal intergovernmental  
14           mandates” and inserting “Federal mandates”;  
15           and

16           (3) by amending subsection (c) to read as fol-  
17           lows:

18           “(c) **GUIDELINES.**—For appropriate implementation  
19 of subsections (a) and (b) consistent with applicable laws  
20 and regulations, the following guidelines shall be followed:

21           “(1) Consultations shall take place as early as  
22           possible, before issuance of a notice of proposed rule-  
23           making, continue through the final rule stage, and  
24           be integrated explicitly into the rulemaking process.

1           “(2) Agencies shall consult with a wide variety  
2 of State, local, and Tribal officials and impacted  
3 parties within the private sector (including small  
4 businesses). Geographic, political, and other factors  
5 that may differentiate varying points of view should  
6 be considered.

7           “(3) Agencies should estimate benefits and  
8 costs to assist with these consultations. The scope of  
9 the consultation should reflect the cost and signifi-  
10 cance of the Federal mandate being considered.

11           “(4) Agencies shall, to the extent practicable—

12           “(A) seek out the views of State, local, and  
13 Tribal governments, and impacted parties with-  
14 in the private sector (including small busi-  
15 nesses), on costs, benefits, and risks; and

16           “(B) solicit ideas about alternative meth-  
17 ods of compliance and potential flexibilities, and  
18 input on whether the Federal regulation will  
19 harmonize with and not duplicate similar laws  
20 in other levels of government.

21           “(5) Consultations shall address the cumulative  
22 impact of regulations on the affected entities.

23           “(6) Agencies may accept electronic submis-  
24 sions of comments by relevant parties but may not



1 use those comments as the sole method of satisfying  
2 the guidelines in this subsection.”.

3 **SEC. 4. MAXIMIZE NET BENEFITS OR PROVIDE EXPLA-**  
4 **NATION.**

5 Title II of the Unfunded Mandates Reform Act of  
6 1995 (2 U.S.C. 1531 et seq.) is amended by striking sec-  
7 tion 205 (2 U.S.C. 1535) and inserting the following:

8 **“SEC. 205. MAXIMIZE NET BENEFITS.**

9 “(a) **DEFINITION OF COST.**—In this section, the term  
10 ‘cost’ has the meaning given the term in section 202(a).

11 “(b) **REQUIREMENT.**—Before promulgating any pro-  
12 posed or final major rule for which a regulatory impact  
13 analysis is required under section 202, an agency shall  
14 from the alternatives identified and considered under sec-  
15 tion 202(c)(1)(B), select the alternative that maximizes  
16 net benefits, taking into consideration only the costs and  
17 benefits that arise within the scope of the statutory provi-  
18 sion that authorizes the rulemaking.

19 “(c) **EXCEPTIONS.**—An agency may adopt an alter-  
20 native other than as required under subsection (b) only  
21 if—

22 “(1) the Administrator of the Office of Infor-  
23 mation and Regulatory Affairs approves the adop-  
24 tion by the agency of the alternative; and

25 “(2) the alternative is adopted to—

1           “(A) account for costs or benefits that can-  
2           not be quantified, including costs or benefits re-  
3           lated to constitutional or civil rights, provided  
4           that the agency identifies all such costs and  
5           benefits and explains why those costs and bene-  
6           fits justify the adoption of the alternative; or

7           “(B) achieve additional benefits or cost re-  
8           ductions, provided that the agency—

9           “(i) identifies—

10                   “(I) all such additional benefits  
11                   and the associated costs of those ben-  
12                   efits; and

13                   “(II) all such cost reductions and  
14                   the associated benefits of those cost  
15                   reductions; and

16           “(ii) explains why—

17                   “(I) the additional benefits jus-  
18                   tify the additional costs; or

19                   “(II) the additional cost reduc-  
20                   tions justify any benefits foregone.”.

21 **SEC. 5. NEW AUTHORITIES AND RESPONSIBILITIES FOR OF-**  
22 **FICE OF INFORMATION AND REGULATORY**  
23 **AFFAIRS.**

24           Section 208 of the Unfunded Mandates Reform Act  
25 of 1995 (2 U.S.C. 1538) is amended to read as follows:

1 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**  
2 **FAIRS RESPONSIBILITIES.**

3 “(a) IN GENERAL.—The Administrator of the Office  
4 of Information and Regulatory Affairs (in this section re-  
5 ferred to as the ‘Administrator’) shall provide meaningful  
6 guidance and oversight so that the major rules of an agen-  
7 cy for which a regulatory impact analysis is required under  
8 section 202—

9 “(1) are consistent with the principles and re-  
10 quirements of this title, as well as other applicable  
11 laws; and

12 “(2) and do not conflict with the policies or ac-  
13 tions of another agency.

14 “(b) NOTIFICATION.—If the Administrator deter-  
15 mines that the major rules of an agency for which a regu-  
16 latory impact analysis is required under section 202 do  
17 not comply with the principles and requirements of this  
18 title, are not consistent with other applicable laws, or con-  
19 flict with the policies or actions of another agency, the  
20 Administrator shall—

21 “(1) identify areas of noncompliance;

22 “(2) notify the agency; and

23 “(3) request that the agency comply before the  
24 agency finalizes the major rule concerned.

25 “(c) ANNUAL STATEMENTS TO CONGRESS ON AGEN-  
26 CY COMPLIANCE.—The Administrator shall submit to

1 Congress, including the Committee on Homeland Security  
2 and Governmental Affairs of the Senate and the Com-  
3 mittee on Oversight and Accountability of the House of  
4 Representatives, an annual written report that, for the 1-  
5 year period preceding the report—

6 “(1) details compliance by each agency with the  
7 requirements of this title that relate to major rules  
8 for which a regulatory impact analysis is required by  
9 section 202, including activities undertaken at the  
10 request of the Administrator to improve compliance;  
11 and

12 “(2) contains an appendix detailing compliance  
13 by each agency with section 204.”.

14 **SEC. 6. INITIATION OF RULEMAKING.**

15 The Unfunded Mandates Reform Act of 1995 (2  
16 U.S.C. 1501 et seq.) is amended—

17 (1) by redesignating section 209 (2 U.S.C.  
18 1531 note) as section 210; and

19 (2) by inserting after section 208 (2 U.S.C.  
20 1548) the following:

21 **“SEC. 209. INITIATION OF RULEMAKING FOR MAJOR RULES.**

22 “When an agency determines to initiate a rulemaking  
23 that may result in a major rule, the agency shall—

24 “(1) establish an electronic docket for that rule-  
25 making, which may have a physical counterpart; and

1           “(2) publish a notice of initiation of rulemaking  
2           in the Federal Register, which shall—

3                   “(A) briefly describe the subject and objec-  
4                   tives of, and the problem to be solved by, the  
5                   major rule;

6                   “(B) refer to the legal authority under  
7                   which the major rule would be proposed, includ-  
8                   ing the specific statutory provision that author-  
9                   izes the rulemaking;

10                   “(C) invite interested persons to propose  
11                   alternatives and other ideas regarding how best  
12                   to accomplish the objectives of the agency in  
13                   the most effective manner;

14                   “(D) indicate how interested persons may  
15                   submit written material for the docket; and

16                   “(E) appear in the Federal Register not  
17                   later than 90 days before the date on which the  
18                   agency publishes a notice of proposed rule-  
19                   making for the major rule.”.

20 **SEC. 7. INCLUSION OF APPLICATION TO INDEPENDENT**  
21 **REGULATORY AGENCIES.**

22           (a) IN GENERAL.—Section 421(1) of the Congres-  
23 sional Budget Act of 1974 (2 U.S.C. 658(1)) is amended  
24 by striking “, but does not include independent regulatory  
25 agencies”.

1 (b) EXEMPTION FOR MONETARY POLICY.—The Un-  
2 funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et  
3 seq.) is amended by inserting after section 5 the following:

4 **“SEC. 6. EXEMPTION FOR MONETARY POLICY.**

5 “Nothing in title II, III, or IV shall apply to rules  
6 that concern monetary policy proposed or implemented by  
7 the Board of Governors of the Federal Reserve System  
8 or the Federal Open Market Committee.”

9 **SEC. 8. JUDICIAL REVIEW.**

10 Title IV of the Unfunded Mandates Reform Act of  
11 1995 is amended by striking section 401 (2 U.S.C. 1571)  
12 and inserting the following:

13 **“SEC. 401. JUDICIAL REVIEW.**

14 “(a) IN GENERAL.—A person that is aggrieved by  
15 final agency action in adopting a major rule that is subject  
16 to section 202 is entitled to judicial review of whether the  
17 agency complied with section 202(b), 202(c)(1), or 205  
18 with respect to the rule.

19 “(b) SCOPE OF REVIEW.—Chapter 7 of title 5,  
20 United States Code, shall govern the scope of judicial re-  
21 view under subsection (a).

22 “(c) JURISDICTION.—Each court that has jurisdic-  
23 tion to review a rule for compliance with section 553 of  
24 title 5, United States Code, or under any other provision

1 of law, shall have jurisdiction to review a claim brought  
2 under subsection (a).

3 “(d) RELIEF AVAILABLE.—In granting relief in an  
4 action under this section, a court shall order the agency  
5 that promulgated the major rule that is under review to  
6 take remedial action consistent with chapter 7 of title 5,  
7 United States Code.”.

8 **SEC. 9. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**  
9 **VATE SECTOR MANDATES.**

10 Section 425(a)(2) of the Congressional Budget Act  
11 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

12 (1) by striking “Federal intergovernmental  
13 mandates” and inserting “Federal mandates”; and

14 (2) by striking “section 424(a)(1)” and insert-  
15 ing “subsection (a)(1) or (b)(1) of section 424”.

16 **SEC. 10. EFFECTIVE DATE.**

17 Sections 3, 4, 5, and 7 of this Act and the amend-  
18 ments made by those sections shall take effect on the date  
19 that is 120 days after the date of enactment of this Act.

