

ASSEMBLY, No. 1399

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman ALLEN and Assemblyman DeSOPO

1 AN ACT concerning State mandates imposed on certain units of local
2 government, creating a Council on Local Mandates and
3 supplementing Title 52 of the Revised Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. Except as provided in section 2 of this act, any provision of a
9 law enacted on or after January 17, 1996, or any part of a rule or
10 regulation originally adopted after July 1, 1996 pursuant to a law
11 regardless of when that law was enacted, which is determined in
12 accordance with the provisions of this act to be an unfunded mandate
13 upon boards of education, counties, or municipalities because it does
14 not authorize resources to offset the additional direct expenditures
15 required for the implementation of the law or the rule or regulation
16 and would necessitate an increase in local property taxes, shall cease
17 to be mandatory in its effect and shall expire. A law or a rule or
18 regulation which is determined to be an unfunded mandate shall not be
19 considered to establish a standard of care for the purpose of civil
20 liability.

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22 2. Notwithstanding the provisions of any other law to the contrary,
23 the following categories of laws and rules or regulations shall not be
24 unfunded mandates:

25 a. those which are required to comply with federal laws or rules or
26 to meet eligibility standards for federal entitlements;

27 b. those which are imposed on both government and
28 non-government entities in the same or substantially similar
29 circumstances;

30 c. those which repeal, revise or ease an existing requirement or
31 mandate or which reapportion the costs of activities between boards
32 of education, counties, and municipalities;

33 d. those which stem from failure to comply with previously enacted
34 laws or rules or regulations issued pursuant to a law;

35 e. those which implement the provisions of the New Jersey
36 Constitution; and

37 f. laws which are enacted after a public hearing, held after public

1 notice that unfunded mandates will be considered, for which a fiscal
2 analysis is available at the time of the public hearing and which, in
3 addition to complying with all other constitutional requirements with
4 regard to the enactment of laws, are passed by 3/4 affirmative vote of
5 the members of each House of the Legislature.

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7 3. Pursuant to Article VIII, Section II, paragraph 5(b) of the New
8 Jersey Constitution, there is created a Council on Local Mandates.
9 The council shall consist of nine members. The Governor shall appoint
10 four members, at least two of whom shall be selected from a list of six
11 willing nominees submitted by the chair of the State committee of the
12 political party the gubernatorial candidate of which received the
13 second largest number of votes cast in the most recent general election
14 for Governor. The President of the Senate, the Minority Leader of the
15 Senate, the Speaker of the General Assembly, the Minority Leader of
16 the General Assembly and the Chief Justice of the New Jersey
17 Supreme Court shall each appoint one member.

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19 4. A member of the council shall be a citizen of the United States
20 and a resident of New Jersey at the time of appointment and while
21 serving on the council. Each appointee shall demonstrate to the
22 satisfaction of the official making the appointment that the appointee
23 possesses knowledge of, and familiarity with, the legislative process,
24 the regulatory functions of the Executive Branch, and the procedures
25 and operations of units of local government; except that in the case of
26 a person appointed by the Governor from a list of six willing nominees
27 submitted by the chair of the State committee of the political party the
28 gubernatorial candidate of which received the second largest number
29 of votes cast in the most recent general election for Governor the
30 appointee shall demonstrate such knowledge and familiarity to the
31 satisfaction of that chair.

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33 5. a. Within 20 days of the effective date of this act, the chair of
34 the State committee of the political party the gubernatorial candidate
35 of which received the second largest number of votes cast in the most
36 recent general election for Governor shall submit to the Governor a
37 list of names of six nominees willing to serve on the council. Within
38 30 days of the effective date, the Governor shall appoint four members
39 of the council, two of whom shall be selected from that list. The terms
40 of the members initially appointed by the Governor shall expire on
41 February 15, 1998. Thereafter, members appointed by the Governor
42 shall serve terms of four years beginning on the expiration date of the
43 prior members' terms and ending on February 15 four years later. At
44 least 20 days prior to the expiration of the term of the gubernatorial
45 appointees, the chair of the State committee of the political party the
46 gubernatorial candidate of which received the second largest number

1 of votes cast in the most recent general election for Governor shall
2 submit a list of names of six nominees willing to serve on the council.
3 Two of the four members appointed by the Governor shall be selected
4 from that list.

5 b. Within 30 days of the effective date of this act, the President of
6 the Senate, the Minority Leader of the Senate, the Speaker of the
7 General Assembly and the Minority Leader of the General Assembly
8 shall each appoint one member of the council. The terms of the
9 members initially appointed by these officials shall expire on February
10 15, 1998. Thereafter, such members shall serve terms of two years
11 beginning on the expiration date of the preceding members' terms and
12 ending on February 15 two years later.

13 c. Within 30 days of the effective date of this act, the Chief Justice
14 of the New Jersey Supreme Court shall appoint one member of the
15 council. The term of the member initially appointed by the Chief
16 Justice shall expire on February 15, 2001. Thereafter, the member
17 appointed by the Chief Justice shall serve a term of five years
18 beginning on the expiration of the preceding member's term and ending
19 on February 15 five years later.

20 d. A member of the council may continue to serve in a hold-over
21 capacity upon the expiration of the member's term until a successor is
22 appointed.

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24 6. A vacancy in the membership of the council shall be filled in the
25 same manner in which the original appointment was made, but for the
26 unexpired term only. When a vacancy occurs among one of the
27 gubernatorial appointees who is a member of the same political party
28 as the Governor then in office, the Governor shall appoint a
29 replacement of the Governor's choice. When a vacancy occurs among
30 one of the gubernatorial appointees who is a member of a political
31 party which is different from that of the Governor, the Governor shall
32 appoint a replacement from a list of three nominees submitted by the
33 chair of the State committee of that political party.

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35 7. A member of the council shall receive compensation in the
36 amount of \$25,000 per annum and shall be reimbursed for necessary
37 expenses incurred in the performance of the member's duties.

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39 8. The council shall organize as soon as possible after the
40 appointment of its members. The first chair of the council shall be
41 appointed by the Governor from among the members thereof. At the
42 first meeting of the council held after February 15 in each subsequent
43 year, the members shall choose one of their number to serve as chair
44 of the council. At least five members of the council shall be present
45 in order for the council to conduct its business. A ruling of the council
46 shall require a majority vote of the membership.

1 9. The council shall establish, and revise from time to time, a plan
2 for its organization and may incur expenses within the limits of funds
3 available to it. The council shall appoint an executive director who
4 shall serve at its pleasure and shall be responsible for the conduct of
5 its administrative affairs. The council may employ such professional
6 staff, including legal counsel, and such clerical and secretarial
7 personnel as it deems necessary. The executive director and
8 professional staff shall be in the State unclassified service. All other
9 employees of the council shall be in the career service of the State.
10 Professional employees of the council shall be deemed confidential
11 employees for purposes of the "New Jersey Employer-Employee
12 Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). Members and
13 employees of the council shall be enrolled in the Public Employees'
14 Retirement System. The council may employ outside legal counsel to
15 render legal advice or to represent the council in any proceeding to
16 which it is a party. The council may contract for the services of other
17 professional, technical and operational personnel and consultants as
18 may be necessary for the performance of its responsibilities under this
19 act.

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21 10. The members and employees of the council shall be subject to
22 the provisions of the "New Jersey Conflicts of Interest Law,"
23 P.L.1971, c.182 (C.52:13D-12 et seq.). The council shall adopt a
24 code of ethics to govern the conduct of its members and employees.
25 A member of the council may hold other gainful employment which is
26 not in conflict with the member's duties on the council or the code of
27 ethics, except that a member of the council shall not hold any other
28 State or local office or employment while serving on the council. The
29 Executive Commission on Ethical Standards shall have jurisdiction to
30 consider complaints regarding violations of P.L.1971, c.182
31 (C.52:13A-12 et seq.) or of the code of ethics by any member or
32 employee of the council.

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34 11. a. It shall be the duty of the council to review, and issue rulings
35 upon, complaints filed with the council by a county, municipality or
36 school district that any provision of a statute enacted on or after
37 January 17, 1996 and any part of a rule or regulation originally
38 adopted after July 1, 1996 pursuant to a law regardless of when that
39 law was enacted constitutes an unfunded mandate upon the county,
40 municipality or school district because it does not authorize resources
41 to offset the additional direct expenditures required for the
42 implementation of the statute or the rule or regulation and would
43 necessitate an increase in local property taxes. A complaint filed with
44 the council shall be in the form of a resolution passed by the governing
45 body of a county or municipality or by a local board of education
46 which may be accompanied by supportive evidence. The council shall

1 review each complaint and, when necessary, examine documents and
2 hear testimony. The council, by majority vote of its membership, shall
3 issue a written ruling as to whether or not a statute or a rule or
4 regulation constitutes an unfunded State mandate and explaining the
5 reasons for its determination. If the council determines that any
6 provision of a statute or any part of a rule or regulation constitutes an
7 unfunded State mandate which is prohibited by Article VII, Section II,
8 paragraph 5 of the New Jersey Constitution and this act, that provision
9 of the law or that part of the rule or regulation shall cease to be
10 mandatory in its effect and shall expire. A ruling of the council shall
11 be restricted to the specific provision of a law or the specific part of
12 a rule or regulation which constitutes an unfunded mandate and shall,
13 as far as possible, leave intact the remainder of a statute or a rule or
14 regulation.

15 b. The council shall have the authority to consolidate complaints
16 filed by more than one governing body or local board in regard to the
17 same provision of a statute or the same part of a rule or regulation.

18 c. Any group or individual may file a written request with the
19 council to appear before the council and offer testimony in regard to
20 a complaint.

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22 12. The council shall not consider complaints concerning pending
23 legislation or proposed rules or regulations and shall not issue advisory
24 rulings or opinions on any matter.

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26 13. A ruling issued by the council shall be in writing and shall set
27 forth the reasons for the council's determination. The council shall
28 cause its rulings to be published in a suitable form and made available
29 to members of the public. The rulings of the council, as well as any
30 record of its proceedings, shall be public records pursuant to
31 P.L.1963, c.73 (C.47:1A-1 et seq.).

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33 14. The council may request and shall receive from any State
34 agency or any county, municipality or school district cooperation and
35 assistance in the performance of its duties.

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37 15. Pursuant to Article VIII, Section II, paragraph 5(b) of the New
38 Jersey Constitution, rulings of the council shall be political
39 determinations and shall not be subject to judicial review.

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41 16. The Legislature shall annually appropriate to the council from
42 the General Fund of the State such amounts as may be necessary for
43 the council to effectively carry out its responsibilities under this act.

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45 17. This act shall take effect immediately.

1 STATEMENT

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3 The purpose of this bill is to implement the constitutional
4 amendment, approved by the voters at the 1995 general election,
5 which provides that certain new statutes and new administrative rules
6 and regulations promulgated by State agencies shall not impose
7 unfunded mandates on counties, municipalities or school districts. The
8 constitutional amendment is intended to prevent the State government
9 from requiring units of local government to implement additional or
10 expanded activities without providing funding for those activities. The
11 prior practice of State-imposed, unfunded mandates has contributed
12 to the rise in local property taxes which has increasingly burdened
13 New Jersey's property owners. As required by the constitutional
14 amendment, the bill also creates a nine-member Council on Local
15 Mandates to review, and issue rulings upon, complaints filed with the
16 council by a county, municipality or school district that a statute or a
17 rule or regulation constitutes an impermissible unfunded State
18 mandate.

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23 Implements constitutional amendment regarding State mandates
24 imposed on units of local government; creates Council on Local
25 Mandates.