

ASSEMBLY, No. 1436

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Assemblymen CONNORS and MORAN

1 AN ACT concerning certain mandates imposed by the State on
2 counties, municipalities and school districts, creating a Council on
3 Local Mandates, supplementing Title 52 of the Revised Statutes
4 and making an appropriation.

5

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

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9 1. The Legislature finds and declares that:

10 a. at the November 1995 general election, the people of this State
11 approved an amendment to the New Jersey Constitution providing
12 that, in certain cases, new statutes and new administrative rules and
13 regulations promulgated by State agencies shall not impose unfunded
14 mandates on counties, municipalities or school districts;

15 b. the purpose of this constitutional provision is to prevent the
16 State government from requiring units of local government to
17 implement additional or expanded activities without providing funding
18 for those activities;

19 c. the long-standing, prior practice of State-imposed, unfunded
20 mandates has contributed to the rise in local property taxes which has
21 increasingly burdened New Jersey's property owners;

22 d. the constitutional amendment also directs the Legislature to
23 create a Council on Local Mandates to resolve disputes regarding
24 whether a law or a rule or regulation, covered by the amendment,
25 constitutes an unfunded State mandate; and

26 e. it is, therefore, the purpose of this act to effectuate the will of
27 the people of this State and to fulfill the Legislature's responsibility to
28 establish the Council on Local Mandates.

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30 2. Except as provided in section 3 of this act, any provision of a
31 law enacted on or after January 17, 1996, or any part of a rule or
32 regulation originally adopted after July 1, 1996 pursuant to a law
33 regardless of when that law was enacted, which is determined in
34 accordance with the provisions of this act to be an unfunded mandate
35 upon boards of education, counties, or municipalities because it does
36 not authorize resources to offset the additional direct expenditures
37 required for the implementation of the law or the rule or regulation,

1 shall cease to be mandatory in its effect and shall expire. A law or a
2 rule or regulation which is determined to be an unfunded mandate shall
3 not be considered to establish a standard of care for the purpose of
4 civil liability.

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6 3. Notwithstanding the provisions of any other law to the contrary,
7 the following categories of laws and rules or regulations shall not be
8 unfunded mandates:

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

11 b. those which are imposed on both government and
12 non-government entities in the same or substantially similar
13 circumstances;

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

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

19 e. those which implement the provisions of the New Jersey
20 Constitution; and

21 f. laws which are enacted after a public hearing, held after public
22 notice that unfunded mandates will be considered, for which a fiscal
23 analysis is available at the time of the public hearing and which, in
24 addition to complying with all other constitutional requirements with
25 regard to the enactment of laws, are passed by 3/4 affirmative vote of
26 the members of each House of the Legislature.

27
28 4. Pursuant to Article VIII, Section II, paragraph 5(b) of the New
29 Jersey Constitution, there is created a Council on Local Mandates.
30 The council shall consist of nine public members. The Governor shall
31 appoint four members, at least two of whom shall be appointed from
32 a list of six willing nominees submitted by the chair of the State
33 committee of the political party the gubernatorial candidate of which
34 received the second largest number of votes cast in the most recent
35 general election for Governor. The President of the Senate, the
36 Minority Leader of the Senate, the Speaker of the General Assembly,
37 the Minority Leader of the General Assembly and the Chief Justice of
38 the New Jersey Supreme Court shall each appoint one member.

39
40 5. A member of the council shall be a citizen of the United States
41 and a resident of New Jersey at the time of appointment and while
42 serving on the council. Each appointee shall demonstrate to the
43 satisfaction of the official making the appointment that the appointee
44 possesses knowledge of, and familiarity with, the legislative process,
45 the regulatory functions of the Executive Branch, or the procedures
46 and operations of counties, municipalities or school districts; except

1 that in the case of a person appointed by the Governor from a list of
2 six willing nominees submitted by the chair of the State committee of
3 the political party the gubernatorial candidate of which received the
4 second largest number of votes cast in the most recent general election
5 for Governor the appointee shall demonstrate such knowledge and
6 familiarity to the satisfaction of that chair.

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8 6. a. Within 30 days of the effective date of this act, the chair of
9 the State committee of the political party the gubernatorial candidate
10 of which received the second largest number of votes cast in the most
11 recent general election for Governor shall submit to the Governor a
12 list of names of six nominees willing to serve on the council. Within
13 45 days of the effective date, the Governor shall appoint four members
14 of the council, two of whom shall be selected from that list. The terms
15 of the members initially appointed by the Governor shall expire on
16 February 1, 1999. Thereafter, members appointed by the Governor
17 shall serve terms of four years beginning on the expiration date of the
18 prior members' terms and ending on February 1st four years later. At
19 least 45 days prior to the expiration of the term of the gubernatorial
20 appointees, the chair of the State committee of the political party the
21 gubernatorial candidate of which received the second largest number
22 of votes cast in the most recent general election for Governor shall
23 submit a list of names of six nominees willing to serve on the council.
24 Two of the four members appointed by the Governor shall be selected
25 from that list.

26 b. Within 45 days of the effective date of this act, the President of
27 the Senate, the Minority Leader of the Senate, the Speaker of the
28 General Assembly and the Minority Leader of the General Assembly
29 shall each appoint one member of the council. The terms of the
30 members initially appointed by these officials shall expire on February
31 1, 1998. Thereafter, such members shall serve terms of two years
32 beginning on the expiration date of the preceding members' terms and
33 ending on February 1st two years later.

34 c. Within 45 days of the effective date of this act, the Chief Justice
35 of the New Jersey Supreme Court shall appoint one member of the
36 council. The term of the member initially appointed by the Chief
37 Justice shall expire on February 1, 2001. Thereafter, the member
38 appointed by the Chief Justice shall serve a term of five years
39 beginning on the expiration of the preceding member's term and ending
40 on February 1st five years later.

41 d. A member of the council shall not continue to serve in a
42 hold-over capacity upon the expiration of the member's term. The
43 officials responsible for making appointments to the council pursuant
44 to this section shall do so in a timely manner in order to ensure that
45 vacancies do not occur when terms expire.

1 7. A vacancy in the membership of the council shall be filled in the
2 same manner in which the original appointment was made, but for the
3 unexpired term only. When a vacancy occurs among one of the
4 gubernatorial appointees who is a member of the same political party
5 as the Governor then in office, the Governor shall appoint a
6 replacement of the Governor's choice. When a vacancy occurs among
7 one of the gubernatorial appointees who is a member of a political
8 party which is different from that of the Governor, the Governor shall
9 appoint a replacement from a list of three nominees submitted by the
10 chair of the State committee of that political party.

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12 8. A member of the council shall receive compensation in the
13 amount of \$150. per day for each day that the member attends a
14 meeting of the council and shall be reimbursed for necessary expenses
15 incurred in the performance of the member's duties.

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17 9. The council shall organize as soon as possible after the
18 appointment of its members. The first chair of the council shall be
19 appointed by the Governor from among the members thereof. At the
20 first meeting of the council held after February 1st in each subsequent
21 year, the members shall choose one of their number to serve as chair
22 of the council. While any one of the council's nine members may be
23 chosen by the Governor as the council's first chair, subsequent chairs
24 shall be chosen by the members in a manner which ensures that the
25 chair rotates annually among the legislative, gubernatorial and judicial
26 appointees. At least five members of the council shall be present in
27 order for the council to conduct its business. A ruling of the council
28 shall require at least five votes.

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30 10. The council shall establish, and revise from time to time, a plan
31 for its organization and may incur expenses within the limits of funds
32 available to it. The council may adopt rules governing its procedures.
33 The council shall employ, pursuant to Title 11A of the New Jersey
34 Statutes, such clerical and secretarial staff as it deems necessary. In
35 addition, each member of the council may employ one or more
36 professional employees, including legal counsel, who shall directly
37 serve the member for a period not to exceed one year. Upon
38 completion of one year of service a professional employee shall not
39 again be employed in that capacity by any member of the council.
40 Professional employees of the council shall be deemed confidential
41 employees for purposes of the "New Jersey Employer-Employee
42 Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). Employees and
43 members of the council shall be enrolled in the Public Employees'
44 Retirement System. The council may employ legal counsel, on a
45 temporary basis, to represent it in any proceeding to which it is a
46 party. The council may contract for the services of other professional,

1 technical and operational personnel and consultants as may be
2 necessary for the performance of its responsibilities under this act.
3 Nothing contained in this section shall be construed as authorizing the
4 council to employ an executive director, director, or other permanent
5 employee, other than permanent secretarial or clerical personnel.

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7 11. The members and employees of the council shall be subject to
8 the provisions of the "New Jersey Conflicts of Interest Law,"
9 P.L.1971, c.182 (C.52:13D-12 et seq.), except that in addition to the
10 requirements of that act, a member of the council, while serving on the
11 council and for a period of two years thereafter, shall not hold any
12 other State or local office or employment. The council shall adopt a
13 code of ethics to govern the conduct of its members and employees.
14 The Executive Commission on Ethical Standards shall have jurisdiction
15 to consider complaints regarding violations of P.L.1971, c.182
16 (C.52:13A-12 et seq.) or of the code of ethics by any member or
17 employee of the council.

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19 12. a. It shall be the duty of the council to review, and issue
20 rulings upon, complaints filed with the council by a county,
21 municipality or school district that any provision of a statute enacted
22 on or after January 17, 1996 and any part of a rule or regulation
23 originally adopted after July 1, 1996 pursuant to a law regardless of
24 when that law was enacted constitutes an unfunded mandate upon the
25 county, municipality or school district because it does not authorize
26 resources to offset the additional direct expenditures required for the
27 implementation of the statute or the rule or regulation. A complaint
28 filed with the council shall be in the form of a resolution passed by the
29 governing body of a county or municipality or by a local board of
30 education. A complaint may be accompanied by supportive evidence.
31 The council shall review each complaint and, when necessary,
32 interview witnesses and examine documents. The council, by majority
33 vote of its membership, shall issue a written ruling as to whether or
34 not a statute or a rule or regulation constitutes an unfunded State
35 mandate and explaining the reasons for its determination. If the
36 council determines that any provision of a statute or any part of a rule
37 or regulation constitutes an unfunded State mandate which is
38 prohibited by Article VII, Section II, paragraph 5 of the New Jersey
39 Constitution and this act, that provision of the law or that part of the
40 rule or regulation shall cease to be mandatory in its effect and shall
41 expire. A ruling of the council shall be restricted to the specific
42 provision of a law or the specific part of a rule or regulation which
43 constitutes an unfunded mandate and shall, as far as possible, leave
44 intact the remainder of a statute or a rule or regulation. The council
45 shall not have the authority to determine whether the funding of any
46 statute or any rule or regulation is adequate.

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

4 c. Any group or individual may file a written request with the
5 council to appear in the capacity of an amicus curiae in regard to a
6 complaint. The request shall state the identity of the group or
7 individual, the issue it wishes to address, the nature of the public
8 interest therein and the nature of the requestor's interest, involvement
9 or expertise with respect thereto. The council shall grant the request
10 if it is determined by a majority vote of the council's members that the
11 request is timely, that participation by the group or individual will
12 assist in the resolution of the matter and that no interested party will
13 be prejudiced thereby. In granting permission, the council shall
14 specifically define the extent of the requestor's participation in the
15 matter.

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17 13. The council shall not consider complaints concerning pending
18 legislation or proposed rules or regulations and shall not issue advisory
19 rulings or opinions on any matter. The fact that the council may have
20 previously issued a ruling in regard to a particular statute or rule or
21 regulation shall not prevent the council from reconsidering its ruling
22 upon receipt of a valid complaint and in response to changed
23 circumstances such as discontinuance of funding.

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25 14. The council shall not be subject to the provisions of the "Open
26 Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The council
27 shall conduct proceedings at which it examines witnesses and receives
28 evidence in public. However, the members of the council may meet on
29 all other matters in closed session.

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

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38 16. The council shall have the authority to issue a preliminary
39 ruling enjoining enforcement of a statute or a rule or regulation
40 pending the council's consideration of whether the statute or the rule
41 or regulation constitutes an unfunded mandate whenever a complaint
42 filed with the council by a county, municipality or school district
43 demonstrates, to the satisfaction of the council, that significant
44 financial hardship to the county, municipality or school district would
45 result from compliance and there is a substantial likelihood that the
46 statute or the rule or regulation is, in fact, an impermissible, unfunded

1 State mandate.

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3 17. The council may request from any State agency or any county,
4 municipality or school district cooperation and assistance in the
5 performance of its duties.

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7 18. Pursuant to Article VIII, Section II, paragraph 5(b) of the New
8 Jersey Constitution, rulings of the council shall be political
9 determinations and shall not be subject to judicial review.

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11 19. The Legislature shall annually appropriate to the council from
12 the General Fund of the State such amounts as may be necessary for
13 the council to effectively carry out its responsibilities under this act.

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15 20. There is appropriated to the Council on Local Mandates
16 \$350,000. from the general fund to effectuate the purposes of this act.

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18 21. This act shall take effect immediately.

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STATEMENT

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23 This bill implements the constitutional amendment, approved by the
24 voters at the 1995 general election, which provides that, in certain
25 cases, new statutes and new administrative rules and regulations
26 promulgated by State agencies shall not impose unfunded mandates on
27 counties, municipalities or school districts. As the constitutional
28 amendment requires, the bill also creates a nine-member Council on
29 Local Mandates to review, and issue rulings upon, complaints filed
30 with the council by a county, municipality or school district that a
31 statute or a rule or regulation constitutes an impermissible unfunded
32 State mandate. The bill appropriates \$350,000. to the council to
33 effectuate the bill's purposes.

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38 Implements constitutional amendment regarding State mandates
39 imposed on counties, municipalities and school districts; creates
40 Council on Local Mandates; appropriates \$350,000.