

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 1436 and 1399**

STATE OF NEW JERSEY

DATED: MARCH 25, 1996

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1436 and 1399 (Acs).

Assembly Bill Nos. 1436 and 1399 (Acs), implements the constitutional amendment, approved by the voters at the 1995 general election, prohibiting laws enacted on or after January 17, 1996 and regulations adopted after July 1, 1996 that impose unfunded mandates on counties, municipalities, and school districts. The bill creates a Council on Local Mandates, as required by the constitutional amendment, to resolve disputes as to whether a statute, rule, or regulation constitutes an unfunded State mandate.

The bill provides that any such law or rule that is determined to be an unfunded mandate upon boards of education, counties, or municipalities shall cease in its effect and shall expire. An unfunded mandate is one that does not authorize resources to offset the additional direct expenditures it requires. An unfunded mandate does not establish a standard of care for the purpose of civil liability.

The bill itemizes the six constitutionally exempted categories of laws, rules, and regulations which the constitutional amendment specifies are not to be considered unfunded mandates:

- C those which are required to comply with federal laws or rules, or to meet eligibility standards for federal entitlements;
- C those which are imposed on both governmental and non-governmental entities in the same or substantially similar circumstances;
- C those which repeal, revise, or ease an existing requirement or mandate, or which reapportion the costs of activities between boards of education, counties, and municipalities;
- C those which stem from failure to comply with laws previously enacted, or with previously adopted rules or regulations issued pursuant to a law;
- C those which implement the provisions of the New Jersey Constitution; and
- C laws which are enacted after a public hearing, held after public notice that unfunded mandates will be considered, for which a fiscal analysis is available at the time of the public hearing and

which, in addition to complying with all other Constitutional requirements with regard to the enactment of laws, are passed by 3/4 affirmative vote of the members of each House of the Legislature.

The bill creates the Council on Local Mandates, designates the State officers who are to appoint its members, qualifications for members and their appointment process, the means of filling vacancies, the members' compensation, the organization of the council, the selection of its chair, and the appointment of staff and professional employees.

Of the nine members, the Governor is to appoint four, two of whom are to be chosen from a list of six nominees submitted by the chair of the State committee of the political party whose gubernatorial candidate received the second largest number of votes at the preceding gubernatorial election. In addition, the President and the Minority Leader of the Senate, the Speaker and the Minority Leader of the General Assembly, and the Chief Justice of the State Supreme Court are each to appoint one member of the council. Gubernatorial appointees are to serve for terms of four years, legislative appointees are to serve for terms of two years, and the judicial appointee is to serve for a term of five years.

The bill directs that the members and employees are subject to the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). Council members are prohibited from holding State or local office or employment during time of service on the council and for two years thereafter, and the bill prohibits service by any member of the council in a hold-over capacity after expiration of the member's term.

The bill provides that the council review and issue rulings upon complaints filed by a county, municipality, or school district alleging that a statute, rule, or regulation constitutes an unfunded mandate. A complaint may be instituted by resolution of a county or municipal governing body, by resolution of a local board of education, or by written complaint of a county executive or of a mayor who has been directly elected by the voters of the municipality. The council is to review each complaint and, when necessary, interview witnesses and examine documents.

The council by majority vote of its membership will issue a written ruling as to whether a statute, rule, or regulation constitutes an unfunded State mandate, and an explanation of the reasons for its determination. Members may file concurring or dissenting opinions. If the council determines that a statute, rule, or regulation constitutes an unfunded mandate, the impermissible provision of the law or part of the rule or regulation would cease to be mandatory in its effect and would expire.

The council is not subject to the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The council's rulings and opinions must be issued in writing, published in a suitable form, and

made them available to the public. The council's rulings and any record of its proceedings conducted in public are public records pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). The bill permits the council to issue a preliminary ruling enjoining the enforcement of a statute, rule, or regulation. The council may not issue advisory rulings or opinions, or rule on pending legislation or regulations.

The council's rulings are political determinations and shall not be subject to judicial review.

The council has no authority to determine whether funding of any statute, rule, or regulation is inadequate.

The bill requires the council to submit annual reports to the Governor and the Legislature setting forth the names and salaries of its employees and contractors, and that the Legislature must annually appropriate funds necessary to the council for it to carry out its responsibilities under the constitutional amendment and this bill.

FISCAL IMPACT:

The bill appropriates \$350,000 from the general fund for the remainder of FY1996.

The council must establish plans for its organization and may incur expenses within the limit of the funds made available to it. Each of the nine council members will receive \$150 for each day the member attends a meeting and be reimbursed for necessary expenses. The council may employ clerical and secretarial staff as it deems necessary, legal counsel in proceedings in which the council is a party, and professional, technical and operational personnel and consultants as are necessary to perform its duties. Each member may employ one professional employee. The council is required to annually report its staff and consulting expenditures.

It is not possible to determine at this time the amount the council will require to carry out its duties.