

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1436 and 1399

STATE OF NEW JERSEY

ADOPTED MARCH 11, 1996

Sponsored by Assemblymen CONNORS, MORAN,
Assemblywoman ALLEN and Assemblyman DeSOPO

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:

8

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.

29

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

1 upon boards of education, counties, or municipalities because it does
2 not authorize resources to offset the additional direct expenditures
3 required for the implementation of the law or the rule or regulation,
4 shall cease to be mandatory in its effect and shall expire. A law or a
5 rule or regulation which is determined to be an unfunded mandate shall
6 not be considered to establish a standard of care for the purpose of
7 civil liability.

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

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

14 b. those which are imposed on both government and
15 non-government entities in the same or substantially similar
16 circumstances;

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

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

22 e. those which implement the provisions of the New Jersey
23 Constitution; and

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

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

42
43 5. A member of the council shall be a citizen of the United States
44 and a resident of New Jersey at the time of appointment and while
45 serving on the council. Each appointee shall demonstrate to the
46 satisfaction of the official making the appointment that the appointee

1 possesses knowledge of, and familiarity with, the legislative process,
2 the regulatory functions of the Executive Branch, or the procedures
3 and operations of counties, municipalities or school districts; except
4 that in the case of a person appointed by the Governor from a list of
5 six willing nominees submitted by the chair of the State committee of
6 the political party the gubernatorial candidate of which received the
7 second largest number of votes cast in the most recent general election
8 for Governor the appointee shall demonstrate such knowledge and
9 familiarity to the satisfaction of that chair.

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

29 b. Within 45 days of the effective date of this act, the President of
30 the Senate, the Minority Leader of the Senate, the Speaker of the
31 General Assembly and the Minority Leader of the General Assembly
32 shall each appoint one member of the council. The terms of the
33 members initially appointed by these officials shall expire on February
34 1, 1998. Thereafter, such members shall serve terms of two years
35 beginning on the expiration date of the preceding members' terms and
36 ending on February 1st two years later.

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

44 d. A member of the council shall not continue to serve in a
45 hold-over capacity upon the expiration of the member's term. The
46 officials responsible for making appointments to the council pursuant

1 to this section shall do so in a timely manner in order to ensure that
2 vacancies do not occur when terms expire.

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

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

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

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

1 may employ legal counsel, on a temporary basis, to represent it in any
2 proceeding to which it is a party. The council may contract for the
3 services of other professional, technical and operational personnel and
4 consultants as may be necessary for the performance of its
5 responsibilities under this act. Nothing contained in this section shall
6 be construed as authorizing the council to employ an executive
7 director, director, or other permanent employee, other than permanent
8 secretarial or clerical personnel.

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

21
22 12. a. It shall be the duty of the council to review, and issue
23 rulings upon, complaints filed with the council by a county,
24 municipality or school district that any provision of a statute enacted
25 on or after January 17, 1996 and any part of a rule or regulation
26 originally adopted after July 1, 1996 pursuant to a law regardless of
27 when that law was enacted constitutes an unfunded mandate upon the
28 county, municipality or school district because it does not authorize
29 resources to offset the additional direct expenditures required for the
30 implementation of the statute or the rule or regulation. A complaint
31 filed with the council shall be in the form of a resolution passed by the
32 governing body of a county or municipality or by a local board of
33 education. A county executive or a mayor who has been directly
34 elected by the voters of the municipality may also file a written
35 complaint with the council, after the mayor or county executive has
36 provided the governing body with written notice of intention to file a
37 complaint with the council. A complaint may be accompanied by
38 supportive evidence. The council shall review each complaint and,
39 when necessary, interview witnesses and examine documents. The
40 council, by majority vote of its membership, shall issue a written
41 ruling, accompanied by any concurring or dissenting opinions, as to
42 whether or not a statute or a rule or regulation constitutes an unfunded
43 State mandate and an explanation of the reasons for its determination.
44 If the council determines that any provision of a statute or any part of
45 a rule or regulation constitutes an unfunded State mandate which is
46 prohibited by Article VII, Section II, paragraph 5 of the New Jersey

1 Constitution and this act, that provision of the law or that part of the
2 rule or regulation shall cease to be mandatory in its effect and shall
3 expire. A ruling of the council shall be restricted to the specific
4 provision of a law or the specific part of a rule or regulation which
5 constitutes an unfunded mandate and shall, as far as possible, leave
6 intact the remainder of a statute or a rule or regulation. The council
7 shall not have the authority to determine whether the funding of any
8 statute or any rule or regulation is adequate.

9 b. The council shall have the authority to consolidate complaints
10 filed by more than one governing body, mayor, county executive or
11 local board in regard to the same provision of a statute or the same
12 part of a rule or regulation.

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

25
26 13. The council shall not consider complaints concerning pending
27 legislation or proposed rules or regulations and shall not issue advisory
28 rulings or opinions on any matter. The fact that the council may have
29 previously issued a ruling in regard to a particular statute or rule or
30 regulation shall not prevent the council from reconsidering its ruling
31 upon receipt of a valid complaint and in response to changed
32 circumstances such as discontinuance of funding.

33
34 14. The council shall not be subject to the provisions of the "Open
35 Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The council
36 shall conduct proceedings at which it examines witnesses and receives
37 evidence in public. However, the members of the council may meet on
38 all other matters in closed session.

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40 15. A ruling issued by the council shall be in writing and shall set
41 forth the reasons for the council's determination. The council shall
42 cause its rulings, together with any concurring or dissenting opinions
43 of council members, to be published in a suitable form and made
44 available to members of the public. The rulings of the council, as well
45 as any record of its proceedings conducted in public, shall be public
46 records pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

1 16. The council shall have the authority to issue a preliminary
2 ruling enjoining enforcement of a statute or a rule or regulation
3 pending the council's consideration of whether the statute or the rule
4 or regulation constitutes an unfunded mandate whenever a complaint
5 filed with the council by a county, municipality or school district
6 demonstrates, to the satisfaction of the council, that significant
7 financial hardship to the county, municipality or school district would
8 result from compliance and there is a substantial likelihood that the
9 statute or the rule or regulation is, in fact, an impermissible, unfunded
10 State mandate.

11

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

15

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

19

20 19. The council shall submit a report to the Governor and the
21 Legislature prior to December 31 of each year setting forth the names
22 and salaries of: the professional employees of council members,
23 individuals employed by the council on a temporary or permanent
24 basis, and personnel and consultants for whose service the council has
25 contracted.

26

27 20. The Legislature shall annually appropriate to the council from
28 the General Fund of the State such amounts as may be necessary for
29 the council to effectively carry out its responsibilities under this act.

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31 21. There is appropriated to the Council on Local Mandates
32 \$350,000. from the general fund to effectuate the purposes of this act.

33

34 22. This act shall take effect immediately.

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38

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