

CHAPTER 24

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

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

C.52:13H-1 Findings, declarations relative to State-imposed mandates.

1. The Legislature finds and declares that:
 - a. at the November 1995 general election, the people of this State approved an amendment to the New Jersey Constitution providing that, in certain cases, new statutes and new administrative rules and regulations promulgated by State agencies shall not impose unfunded mandates on counties, municipalities or school districts;
 - b. the purpose of this constitutional provision is to prevent the State government from requiring units of local government to implement additional or expanded activities without providing funding for those activities;
 - c. the long-standing, prior practice of State-imposed, unfunded mandates has contributed to the rise in local property taxes which has increasingly burdened New Jersey's property owners;
 - d. the constitutional amendment also directs the Legislature to create a Council on Local Mandates to resolve disputes regarding whether a law or a rule or regulation, covered by the amendment, constitutes an unfunded State mandate; and
 - e. it is, therefore, the purpose of this act to effectuate the will of the people of this State and to fulfill the Legislature's responsibility to establish the Council on Local Mandates.

C.52:13H-2 Unfunded mandate; mandatory status ceased, expiration.

2. Except as provided in section 3 of this act, any provision of a law enacted on or after January 17, 1996, or any part of a rule or regulation originally adopted after July 1, 1996 pursuant to a law regardless of when that law was enacted, which is determined in accordance with the provisions of this act to be an unfunded mandate upon boards of education, counties, or municipalities because it does not authorize resources to offset the additional direct expenditures required for the implementation of the law or the rule or regulation, shall cease to be mandatory in its effect and shall expire. A law or a rule or regulation which is determined to be an unfunded mandate shall not be considered to establish a standard of care for the purpose of civil liability.

C.52:13H-3 Laws, rules, regulations, not unfunded mandates.

3. Notwithstanding the provisions of any other law to the contrary, the following categories of laws and rules or regulations shall not be unfunded mandates:
 - a. those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;
 - b. those which are imposed on both government and non-government 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;
 - d. those which stem from failure to comply with previously enacted laws or rules or regulations issued pursuant to a law;
 - e. those which implement the provisions of the New Jersey Constitution; and
 - f. 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.

C.52:13H-4 Council on Local Mandates created.

4. Pursuant to Article VIII, Section II, paragraph 5(b) of the New Jersey Constitution, there is created a Council on Local Mandates. The council shall consist of nine public members. The Governor shall appoint four members, at least two of whom shall be appointed from a list of six willing nominees submitted by the chair of the State committee of the political party the gubernatorial candidate of which received the second largest number of votes cast in the most

recent general election for Governor. The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, the Minority Leader of the General Assembly and the Chief Justice of the New Jersey Supreme Court shall each appoint one member.

C.52:13H-5 Member qualifications.

5. A member of the council shall be a citizen of the United States and a resident of New Jersey at the time of appointment and while serving on the council. Each appointee shall demonstrate to the satisfaction of the official making the appointment that the appointee possesses knowledge of, and familiarity with, the legislative process, the regulatory functions of the Executive Branch, or the procedures and operations of counties, municipalities or school districts; except that in the case of a person appointed by the Governor from a list of six willing nominees submitted by the chair of the State committee of the political party the gubernatorial candidate of which received the second largest number of votes cast in the most recent general election for Governor the appointee shall demonstrate such knowledge and familiarity to the satisfaction of that chair.

C.52:13H-6 Members' selection; terms.

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

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

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

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

C.52:13H-7 Vacancies.

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

C.52:13H-8 Monetary compensation.

8. A member of the council shall receive compensation in the amount of \$150 per day for

each day that the member attends a meeting of the council and shall be reimbursed for necessary expenses incurred in the performance of the member's duties.

C.52:13H-9 Organization of council.

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

C.52:13H-10 Council plan, rules, staffing.

10. The council shall establish, and revise from time to time, a plan for its organization and may incur expenses within the limits of funds available to it. The council may adopt rules governing its procedures. The council shall employ, pursuant to Title 11A of the New Jersey Statutes, such clerical and secretarial staff as it deems necessary. In addition, each member of the council may employ one professional employee who shall directly serve the member for a period not to exceed one year. Upon completion of one year of service a professional employee shall not again be employed in that capacity by any member of the council. Professional employees of the council shall be deemed confidential employees for purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). Employees and members of the council shall be enrolled in the Public Employees' Retirement System. The council may employ legal counsel, on a temporary basis, to represent it in any proceeding to which it is a party. The council may contract for the services of other professional, technical and operational personnel and consultants as may be necessary for the performance of its responsibilities under this act. Nothing contained in this section shall be construed as authorizing the council to employ an executive director, director, or other permanent employee, other than permanent secretarial or clerical personnel.

C.52:13H-11 Conflicts law, code of ethics; public employment restricted.

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

C.52:13H-12 Duties of council.

12. a. It shall be the duty of the council to review, and issue rulings upon, complaints filed with the council by a county, municipality or school district that any provision of a statute enacted on or after January 17, 1996 and any part of a rule or regulation originally adopted after July 1, 1996 pursuant to a law regardless of when that law was enacted constitutes an unfunded mandate upon the county, municipality or school district because it does not authorize resources to offset the additional direct expenditures required for the implementation of the statute or the rule or regulation. A complaint filed with the council shall be in the form of a resolution passed by the governing body of a county or municipality or by a local board of education. A county executive or a mayor who has been directly elected by the voters of the municipality may also file a written complaint with the council, after the mayor or county executive has provided the governing body with written notice of intention to file a complaint with the council. A complaint may be accompanied by supportive evidence. The council shall review each complaint and, when necessary, interview witnesses and examine documents. The council, by majority vote of its membership, shall issue a written ruling, accompanied by any concurring or dissenting opinions,

as to whether or not a statute or a rule or regulation constitutes an unfunded State mandate and an explanation of the reasons for its determination. If the council determines that any provision of a statute or any part of a rule or regulation constitutes an unfunded State mandate which is prohibited by Article VIII, Section II, paragraph 5 of the New Jersey Constitution and this act, that provision of the law or that part of the rule or regulation shall cease to be mandatory in its effect and shall expire. A ruling of the council shall be restricted to the specific provision of a law or the specific part of a rule or regulation which constitutes an unfunded mandate and shall, as far as possible, leave intact the remainder of a statute or a rule or regulation. The council shall not have the authority to determine whether the funding of any statute or any rule or regulation is adequate.

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

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

C.52:13H-13 Complaints considered.

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

C.52:13H-14 Public meetings.

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

C.52:13H-15 Rules rendered, published.

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

C.52:13H-16 Preliminary rulings.

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

C.52:13H-17 Request for assistance.

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

C.52:13H-18 Rulings as political determinations.

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

C.52:13H-19 Annual report.

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

C.52:13H-20 Appropriations.

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

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

22. This act shall take effect immediately.

Approved May 8, 1996.