

[First Reprint]  
SENATE, No. 2

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators DiFRANCESCO, CONNORS, Lynch, Gormley,  
Martin, LaRossa, Bennett, Ciesla, Palaia, Haines, Kosco,  
Scott, Littell, Adler, Matheussen, Sinagra, Lesniak,  
Cardinale, Zane, McNamara, Cafiero, Casey, Rice, Singer,  
Bubba and Inverso

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.  
Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate SCO committee amendments adopted January 29, 1996.

1 establish the Council on Local Mandates.

2

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

15

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

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

21 b. those which are imposed on both government and  
22 non-government entities in the same or substantially similar  
23 circumstances;

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

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

29 e. those which implement the provisions of the New Jersey  
30 Constitution; and

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

37

38 4. Pursuant to Article VIII, Section II, paragraph 5(b) of the New  
39 Jersey Constitution, there is created a Council on Local Mandates.  
40 The council shall consist of nine public members. The Governor shall  
41 appoint four members, at least two of whom shall be appointed from  
42 a list of six willing nominees submitted by the chair of the State  
43 committee of the political party the gubernatorial candidate of which  
44 received the second largest number of votes cast in the most recent  
45 general election for Governor. The President of the Senate, the  
46 Minority Leader of the Senate, the Speaker of the General Assembly,

1 the Minority Leader of the General Assembly and the Chief Justice of  
2 the New Jersey Supreme Court shall each appoint one member.

3  
4 5. A member of the council shall be a citizen of the United States  
5 and a resident of New Jersey at the time of appointment and while  
6 serving on the council. Each appointee shall demonstrate to the  
7 satisfaction of the official making the appointment that the appointee  
8 possesses knowledge of, and familiarity with, the legislative process,  
9 the regulatory functions of the Executive Branch, or the procedures  
10 and operations of counties, municipalities or school districts; except  
11 that in the case of a person appointed by the Governor from a list of  
12 six willing nominees submitted by the chair of the State committee of  
13 the political party the gubernatorial candidate of which received the  
14 second largest number of votes cast in the most recent general election  
15 for Governor the appointee shall demonstrate such knowledge and  
16 familiarity to the satisfaction of that chair.

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

36 b. Within 45 days of the effective date of this act, the President of  
37 the Senate, the Minority Leader of the Senate, the Speaker of the  
38 General Assembly and the Minority Leader of the General Assembly  
39 shall each appoint one member of the council. The terms of the  
40 members initially appointed by these officials shall expire on February  
41 1, 1998. Thereafter, such members shall serve terms of two years  
42 beginning on the expiration date of the preceding members' terms and  
43 ending on February 1st two years later.

44 c. Within 45 days of the effective date of this act, the Chief Justice  
45 of the New Jersey Supreme Court shall appoint one member of the  
46 council. The term of the member initially appointed by the Chief

1 Justice shall expire on February 1, 2001. Thereafter, the member  
2 appointed by the Chief Justice shall serve a term of five years  
3 beginning on the expiration of the preceding member's term and ending  
4 on February 1st five years later.

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

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

21  
22 8. A member of the council shall receive compensation in the  
23 amount of \$150. per day for each day that the member attends a  
24 meeting of the council and shall be reimbursed for necessary expenses  
25 incurred in the performance of the member's duties.

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

39  
40 10. The council shall establish, and revise from time to time, a plan  
41 for its organization and may incur expenses within the limits of funds  
42 available to it. The council may adopt rules governing its procedures.  
43 The council shall employ, pursuant to Title 11A of the New Jersey  
44 Statutes, such clerical and secretarial staff as it deems necessary. In  
45 addition, each member of the council may employ one <sup>1</sup>[or more]<sup>1</sup>  
46 professional <sup>1</sup>[employees, including legal counsel,] employee<sup>1</sup> who

1 shall directly serve the member for a period not to exceed one year.  
2 Upon completion of one year of service a professional employee shall  
3 not again be employed in that capacity by any member of the council.  
4 Professional employees of the council shall be deemed confidential  
5 employees for purposes of the "New Jersey Employer-Employee  
6 Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.). Employees and  
7 members of the council shall be enrolled in the Public Employees'  
8 Retirement System. The council may employ legal counsel, on a  
9 temporary basis, to represent it in any proceeding to which it is a  
10 party. The council may contract for the services of other professional,  
11 technical and operational personnel and consultants as may be  
12 necessary for the performance of its responsibilities under this act.  
13 Nothing contained in this section shall be construed as authorizing the  
14 council to employ an executive director, director, or other permanent  
15 employee, other than permanent secretarial or clerical personnel.

16

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

28

29 12. a. It shall be the duty of the council to review, and issue  
30 rulings upon, complaints filed with the council by a county,  
31 municipality or school district that any provision of a statute enacted  
32 on or after January 17, 1996 and any part of a rule or regulation  
33 originally adopted after July 1, 1996 pursuant to a law regardless of  
34 when that law was enacted constitutes an unfunded mandate upon the  
35 county, municipality or school district because it does not authorize  
36 resources to offset the additional direct expenditures required for the  
37 implementation of the statute or the rule or regulation. A complaint  
38 filed with the council shall be in the form of a resolution passed by the  
39 governing body of a county or municipality or by a local board of  
40 education. <sup>1</sup>A county executive or a mayor who has been directly  
41 elected by the voters of the municipality may also file a written  
42 complaint with the council, after the mayor or county executive has  
43 provided the governing body with written notice of intention to file a  
44 complaint with the council.<sup>1</sup> A complaint may be accompanied by  
45 supportive evidence. The council shall review each complaint and,  
46 when necessary, interview witnesses and examine documents. The

1 council, by majority vote of its membership, shall issue a written ruling  
2 <sup>1</sup>, accompanied by any concurring or dissenting opinions.<sup>1</sup> as to  
3 whether or not a statute or a rule or regulation constitutes an unfunded  
4 State mandate and <sup>1</sup>[explaining] an explanation of<sup>1</sup> the reasons for its  
5 determination. If the council determines that any provision of a statute  
6 or any part of a rule or regulation constitutes an unfunded State  
7 mandate which is prohibited by Article VII, Section II, paragraph 5 of  
8 the New Jersey Constitution and this act, that provision of the law or  
9 that part of the rule or regulation shall cease to be mandatory in its  
10 effect and shall expire. A ruling of the council shall be restricted to  
11 the specific provision of a law or the specific part of a rule or  
12 regulation which constitutes an unfunded mandate and shall, as far as  
13 possible, leave intact the remainder of a statute or a rule or regulation.  
14 The council shall not have the authority to determine whether the  
15 funding of any statute or any rule or regulation is adequate.

16 b. The council shall have the authority to consolidate complaints  
17 filed by more than one governing body<sup>1</sup>, mayor, county executive<sup>1</sup> or  
18 local board in regard to the same provision of a statute or the same  
19 part of a rule or regulation.

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

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

40  
41 14. The council shall not be subject to the provisions of the "Open  
42 Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The council  
43 shall conduct proceedings at which it examines witnesses and receives  
44 evidence in public. However, the members of the council may meet on  
45 all other matters in closed session.

1 15. A ruling issued by the council shall be in writing and shall set  
2 forth the reasons for the council's determination. The council shall  
3 cause its rulings<sup>1</sup> together with any concurring or dissenting opinions  
4 of council members.<sup>1</sup> to be published in a suitable form and made  
5 available to members of the public. The rulings of the council, as well  
6 as any record of its proceedings conducted in public, shall be public  
7 records pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).  
8

9 16. The council shall have the authority to issue a preliminary  
10 ruling enjoining enforcement of a statute or a rule or regulation  
11 pending the council's consideration of whether the statute or the rule  
12 or regulation constitutes an unfunded mandate whenever a complaint  
13 filed with the council by a county, municipality or school district  
14 demonstrates, to the satisfaction of the council, that significant  
15 financial hardship to the county, municipality or school district would  
16 result from compliance and there is a substantial likelihood that the  
17 statute or the rule or regulation is, in fact, an impermissible, unfunded  
18 State mandate.  
19

20 17. The council may request from any State agency or any county,  
21 municipality or school district cooperation and assistance in the  
22 performance of its duties.  
23

24 18. Pursuant to Article VIII, Section II, paragraph 5(b) of the New  
25 Jersey Constitution, rulings of the council shall be political  
26 determinations and shall not be subject to judicial review.  
27

28 <sup>1</sup>19. The council shall submit a report to the Governor and the  
29 Legislature prior to December 31 of each year setting forth the names  
30 and salaries of: the professional employees of council members,  
31 individuals employed by the council on a temporary or permanent  
32 basis, and personnel and consultants for whose service the council has  
33 contracted.<sup>1</sup>  
34

35 <sup>1</sup>[19.] 20.<sup>1</sup> The Legislature shall annually appropriate to the council  
36 from the General Fund of the State such amounts as may be necessary  
37 for the council to effectively carry out its responsibilities under this  
38 act.  
39

40 <sup>1</sup>[20.] 21.<sup>1</sup> There is appropriated to the Council on Local Mandates  
41 \$350,000. from the general fund to effectuate the purposes of this act.  
42

43 <sup>1</sup>[21.] 22.<sup>1</sup> This act shall take effect immediately.

1 \_\_\_\_\_  
2  
3 Implements constitutional amendment regarding State mandates  
4 imposed on counties, municipalities and school districts; creates  
5 Council on Local Mandates; appropriates \$350,000.