

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2

STATE OF NEW JERSEY

DATED: MARCH 11, 1996

The Assembly State Government Committee reports favorably Senate, No. 2 (1R).

This bill would implement the constitutional amendment, approved by the voters at the 1995 general election, that prohibits imposition by the Legislature and State agencies of unfunded mandates on counties, municipalities, and school districts. The legislation would create, as required by the constitutional amendment, a nine-member Council on Local Mandates that would resolve disputes as to whether a statute, rule, or regulation constitutes an unfunded State mandate.

Section 2 of the legislation provides that any provision of law enacted on or after January 17, 1996, or any part of any rule or regulation originally adopted after July 1, 1996, which is determined to be an unfunded mandate upon boards of education, counties, or municipalities shall cease in its effect and shall expire. A law, rule, or regulation will be found to be an unfunded mandate if it does not authorize resources to offset the additional direct expenditures required by the law, rule, or regulation. Any such unfunded mandate shall not be considered to establish a standard of care for the purpose of civil liability.

Section 3 of the legislation sets forth the six categories of laws, rules, and regulations which the constitutional amendment specifies are not to be considered unfunded mandates, specifically:

- 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.

Section 4 of the legislation creates the Council on Local Mandates and designates the State officers who are to appoint the members thereof.

Section 5 of the legislation sets forth qualifications for membership on the council.

Section 6 of the legislation details the process by which members of the council are to be appointed. 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 legislation prohibits service by any member of the council in a hold-over capacity after expiration of the member's term.

Sections 7 and 8 of the legislation prescribe the means of filling vacancies on the council and establish the members' compensation.

Sections 9 through 11 of the legislation provide for the organization of the council, the selection of its chair, and the appointment of staff and professional employees, and direct that the members and employees be subject to the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). In addition, council members would be prohibited from holding State or local office or employment during time of service on the council and for two years thereafter.

Section 12 of the legislation provides that the council shall review and issue rulings upon complaints filed with the council 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 shall 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 to have no authority to determine whether funding of any statute, rule, or regulation is inadequate.

Sections 13 through 16 of the legislation provide that the council may not issue advisory rulings or opinions, or rule on pending legislation or regulations; that the council would not be subject to the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.); that the council would be required to examine witnesses and receive evidence in public; that it would be required to issue rulings and opinions in writing, publish them in a suitable form, and make them available to the public; and that the council's rulings, as well as any record of its proceedings conducted in public, would be 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.

Section 17 of the legislation permits the council to request assistance in the performance of its duties from any State agency, county, municipality, or school district.

Section 18 of the legislation provides that the council's rulings shall be political determinations and shall not be subject to judicial review.

Section 19 of the legislation requires the council to submit annual reports to the Governor and the Legislature setting forth the names and salaries of its employees and contractors.

Sections 20 and 21 of the legislation provide 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, and appropriate \$350,000 from the general fund for the remainder of FY1996.