

52:13H-1 to 52:13H-20

LEGISLATIVE HISTORY CHECKLIST
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(Mandates)

NJSA: 52:13H-1 to 52:13H-20

LAWS OF: 1996 CHAPTER: 24

BILL NO: S2

SPONSOR(S): DiFrancesco and others

DATE INTRODUCED: January 18, 1996

COMMITTEE: ASSEMBLY: State Government; Appropriations
SENATE: Budget; Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: March 28, 1996
SENATE: February 5, 1996

DATE OF APPROVAL: May 8, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes 3-11-96 & 3-21-96
SENATE: Yes 1-29-96 (2)

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes
974.90 New Jersey. Legislature. Senate. Community Affairs Committee.
F491 Public hearing...held 5-25-95. Trenton, 1995.
1995a

See newspaper clippings--attached:
"Whitman signs bill on mandates," 5-9-96, Philadelphia Inquirer.

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[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:

¹ 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 ¹[or more]¹
46 professional ¹[employees, including legal counsel,] employee ¹who

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. ¹A 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.¹ 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 ¹, accompanied by any concurring or dissenting opinions.¹ as to
3 whether or not a statute or a rule or regulation constitutes an unfunded
4 State mandate and ¹**[explaining]** an explanation of¹ 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 body¹, mayor, county executive¹ 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 rulings¹ together with any concurring or dissenting opinions
4 of council members,¹ 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

28 ¹19. 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.¹
34

35 ¹[19.] 20.¹ The Legislature shall annually appropriate to the
36 council from the General Fund of the State such amounts as may be
37 necessary for the council to effectively carry out its responsibilities
38 under this act.
39

40 ¹[20.] 21.¹ There is appropriated to the Council on Local
41 Mandates \$350,000. from the general fund to effectuate the purposes
42 of this act.
43

44 ¹[21.] 22.¹ 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.

1 demonstrates, to the satisfaction of the council, that significant
2 financial hardship to the county, municipality or school district would
3 result from compliance and there is a substantial likelihood that the
4 statute or the rule or regulation is, in fact, an impermissible, unfunded
5 State mandate.

6

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

10

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

14

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

18

19 20. There is appropriated to the Council on Local Mandates
20 \$350,000. from the general fund to effectuate the purposes of this act.

21

22 21. This act shall take effect immediately.

23

24

25 STATEMENT

26

27 This bill implements the constitutional amendment, approved by the
28 voters at the 1995 general election, which provides that, in certain
29 cases, new statutes and new administrative rules and regulations
30 promulgated by State agencies shall not impose unfunded mandates on
31 counties, municipalities or school districts. As the constitutional
32 amendment requires, the bill also creates a nine-member Council on
33 Local Mandates to review, and issue rulings upon, complaints filed
34 with the council by a county, municipality or school district that a
35 statute or a rule or regulation constitutes an impermissible unfunded
36 State mandate. The bill appropriates \$350,000. to the council to
37 effectuate the bill's purposes.

38

39

40

41

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

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:

- those which are required to comply with federal laws or rules, or to meet eligibility standards for federal entitlements;
- those which are imposed on both governmental and non-governmental entities in the same or substantially similar circumstances;
- 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;
- those which stem from failure to comply with laws previously enacted, or with previously adopted rules or regulations issued pursuant to a law;
- those which implement the provisions of the New Jersey Constitution; and

- 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.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2

STATE OF NEW JERSEY

DATED: MARCH 25, 1996

The Assembly Appropriations Committee reports favorably Senate Bill No. 2 (1R).

Senate Bill No.2 (1R) 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:

- those which are required to comply with federal laws or rules, or to meet eligibility standards for federal entitlements;
- those which are imposed on both governmental and non-governmental entities in the same or substantially similar circumstances;
- 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;
- those which stem from failure to comply with laws previously enacted, or with previously adopted rules or regulations issued pursuant to a law;
- those which implement the provisions of the New Jersey Constitution; and
- 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.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2

STATE OF NEW JERSEY

DATED: JANUARY 29, 1996

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2 [1R] of 1996.

Senate Bill No. 2 1R implements the constitutional amendment, recently approved by the voters at the 1995 general election, prohibiting, except in certain cases, the enactment of new laws by the Legislature and promulgation of new administrative rules and regulations promulgated by State agencies that impose unfunded mandates on counties, municipalities or school districts.

As the constitutional amendment requires, the bill also creates a nine-member Council on Local Mandates to review and issue written rulings upon complaints filed with the council by a county, municipality or school district, or by a county executive or directly elected mayor, that a statute or a rule or regulation constitutes an impermissible unfunded State mandate.

FISCAL IMPACT

The bill requires the Legislature to appropriate annually from the General Fund an amount needed by the Council on Local Mandates to carry out its duties. For the remainder of Fiscal Year 1996, the bill appropriates \$350,000 to the council for its needs. It is not known at this time how much funding the council will require annually for its activities.

The council itself must establish plans for its organization and may incur expenses within the limit of funds made available. Although the council cannot employ a permanent executive director, the council may employ permanent clerical and secretarial staff. The council may retain legal counsel on a temporary basis to represent it in certain matters and may contract for the services of professional, technical and operational staff as deemed necessary.

Each council member will receive \$125 reimbursement for each meeting attended, plus reimbursement for expenses incurred in the performance of the member's duties. Each council member also may retain one professional employee for limited terms of one year for each employee.

The council will be required to report annually to the Legislature

and the Governor on the staff the council and the council members have employed, the salaries paid to those staff and other associated costs of operating the council.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 29, 1996

The Senate Community Affairs Committee reports favorably Senate Bill No. 2 with committee amendments.

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

Section 2 of the amended bill would provide 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. Section 3 of the bill, as amended, sets forth the six categories of laws, rules, and regulations which the constitutional amendment specifies are not to be considered unfunded mandates, specifically:

- those which are required to comply with federal laws or rules, or to meet eligibility standards for federal entitlements;
- those which are imposed on both governmental and non-governmental entities in the same or substantially similar circumstances;
- 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;
- those which stem from failure to comply with laws previously enacted, or with previously adopted rules or regulations issued pursuant to a law;
- those which implement the provisions of the New Jersey Constitution; and

- 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.

Sections 4, 5, 6, 7, and 8 of the amended bill would create the Council on Local Mandates, detail the process by which its nine members are chosen, set forth qualifications for membership, establish means of filling vacancies, and set forth members' compensation.

Sections 9, 10, and 11 of the amended bill would provide for the organization of the council, the selection of its chair, and the appointment of staff and professional employees, and would direct that the members and employees be subject to the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13A-12 et seq.), except that in addition thereto, council members would be prohibited from holding state or local office or employment during time of service to the council and for two years thereafter.

Section 12 of the amended bill would provide that the council must 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 must review each complaint and, when necessary, interview witnesses and examine documents.

The council by majority vote of its membership must 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 would have no authority to determine whether funding of any statute, rule, or regulation is inadequate.

Sections 13 through 16 of the amended bill would provide that the council may not issue advisory rulings or opinions, or rule on pending legislation or regulations. The council would not be subject to the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The council would be required to examine witnesses and receive evidence in public. It would be required to issue rulings and opinions in writing, publish them in a suitable form, and make them available to the public. 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.). As amended, the bill would also permit the council to issue a preliminary ruling enjoining the enforcement of a

statute, rule, or regulation.

Section 17 of the amended bill would permit the council to request assistance in the performance of its duties from any state agency, county, municipality, or school district.

Section 18 of the amended bill would provide that the council's rulings shall be political determinations and shall not be subject to judicial review.

Section 19 of the amended bill would require 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 amended bill would 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 would appropriate \$350,000 from the general fund for the remainder of FY1996.

The committee amended the bill to:

(1) provide that each member of the council may employ one professional employee;

(2) authorize county executives and directly elected mayors to file complaints with the council;

(3) authorize council members to issue concurring or dissenting opinions; and

(4) require the council to submit an annual report to the Governor and the Legislature setting forth the names and salaries of its employees and contractors.

The committee also considered, but did not adopt, an amendment to delete the provision prohibiting the council from determining whether funding of a statute, rule, or regulation is adequate and an amendment to require that the bill expire on July 1, 2000.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001 **BECKY TAYLOR**
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TRENTON, NJ 08625
RELEASE: Wednesday
May 8, 1996

Gov. Christie Whitman today signed legislation implementing the state mandate/state pay constitutional amendment, providing local government and taxpayers with relief from unfunded state mandates.

S-2/A-1436 implements the constitutional amendment which provides that new laws, administrative rules, and regulations proposed by state agencies shall not impose unfunded mandates on counties, municipalities and school districts.

“Not only will this legislation help counties, municipalities, and school districts deliver services more effectively and less expensively, it will also go a long way toward establishing a healthier relationship between state and local government,” said Gov. Whitman.

The legislation creates a nine-member Council on Local Mandates that will resolve complaints filed by counties, municipalities or school districts over whether a new law, rule or regulation constitutes an unfunded mandate. If the council determines that a law, rule, or regulation is an unfunded mandate, the impermissible terms of the law or part of the rule or regulation will no longer be mandatory and will become ineffective. The bill appropriates \$350,000 for the operation of the council.

“The council ensures that none of the constitutional responsibilities of elected state office holders are abridged,” said Gov. Whitman. “It will be the responsibility of those elected directly by the people to enact laws, determine budgets, and be accountable to our citizens.”

The legislation states that any unfunded mandate placed on local government and school districts on or after January 17, 1996, or any rule or regulation accepted after July 1, 1996, will no longer be effective.

The bill takes effect immediately.

Sponsors of the legislation were Senate President Donald T. DiFrancesco (R-Middlesex/Morris/Somerset/Union) and Senator Leonard Connors, Jr. (R-Atlantic/Burlington/Ocean) and Assemblyman Christopher J. Connors (R-Atlantic/Burlington/Ocean).