

1640

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when
printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to article 9 of the constitution, in relation to
prohibiting unfunded mandates

1 Section 1. Resolved (if the Assembly concur), That article 9 of the
2 constitution be amended by adding a new section 4 to read as follows:
3 S 4. PROHIBITION ON UNFUNDED MANDATES; COUNCIL ON LOCAL MANDATES. 1.
4 A. ANY PROVISION OF LAW DETERMINED IN ACCORDANCE WITH THIS SECTION TO BE
5 AN UNFUNDED MANDATE SHALL CEASE TO BE MANDATORY IN EFFECT AND SHALL
6 BECOME VOLUNTARY IN OPERATION.
7 B. A PROVISION OF LAW THAT REQUIRES ONE OR MORE POLITICAL SUBDIVISIONS
8 TO EXPEND FUNDS OR TO TAKE ACTIONS REQUIRING THE EXPENDITURE OF FUNDS
9 SHALL BE DEEMED AN UNFUNDED MANDATE IF SUCH PROVISION OF LAW RESULTS IN
10 AN AGGREGATE NET INCREASE IN NECESSARY DIRECT EXPENDITURES BY ANY POLI-
11 TICAL SUBDIVISION OF THE STATE. ANY SUCH AGGREGATE NET INCREASE IN
12 EXPENDITURES SHALL BE OFFSET BY: (I) MONIES PROVIDED TO POLITICAL SUBDI-
13 VISIONS FOR THE SPECIFIC PURPOSE OF FUNDING SUCH PROVISION OF LAW; AND
14 (II) DECREASES IN EXPENDITURES EXPECTED TO RESULT FROM OTHER PROVISIONS
15 OF LAW ENACTED CONCURRENTLY THEREWITH THAT REPEAL, REDUCE OR MODIFY
16 EXISTING MANDATES ON POLITICAL SUBDIVISIONS. FOR PURPOSES OF THIS
17 SECTION, ALL BUDGET BILLS AND LEGISLATION NECESSARY TO IMPLEMENT THE
18 BUDGET ENACTED PURSUANT TO ARTICLE SEVEN OF THE CONSTITUTION SHALL BE
19 DEEMED TO HAVE BEEN CONCURRENTLY ENACTED INTO LAW.
20 C. FOR PURPOSES OF THIS SECTION, THE TERM "POLITICAL SUBDIVISION"
21 SHALL MEAN A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT OR SPECIAL
22 DISTRICT, AND SHALL INCLUDE ANY AGENCY, AUTHORITY, COMMISSION, DEPART-
23 MENT OR INSTRUMENTALITY THEREOF.
24 D. FOR PURPOSES OF THIS SECTION, THE TERM "LAW" SHALL MEAN A STATUTE
25 ENACTED BY THE LEGISLATURE, AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR,
26 AND A RULE OR REGULATION PROMULGATED BY A STATE AGENCY, DEPARTMENT,
27 BOARD, BUREAU, OFFICER, AUTHORITY OR COMMISSION.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 2. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, THE
2 FOLLOWING TYPES OF LAWS SHALL NOT BE CONSIDERED UNFUNDED MANDATES:

3 A. THOSE NECESSARY TO COMPLY WITH FEDERAL LAW;

4 B. THOSE FOR WHICH THE AGGREGATE NET INCREASE IN REQUIRED DIRECT
5 EXPENDITURES BY POLITICAL SUBDIVISIONS IS LESS THAN TEN THOUSAND
6 DOLLARS;

7 C. THOSE THAT HAVE BEEN REQUESTED THROUGH A HOME RULE MESSAGE OR OTHER
8 RESOLUTION OF THE AFFECTED POLITICAL SUBDIVISION, OR WHICH HAVE BEEN
9 ACCEPTED BY THE AFFECTED POLITICAL SUBDIVISION;

10 D. THOSE REAPPORTIONING RESPONSIBILITIES BETWEEN OR AMONG POLITICAL
11 SUBDIVISIONS;

12 E. THOSE ARISING FROM AN EXECUTIVE ORDER OF THE GOVERNOR EXERCISING
13 HIS OR HER EMERGENCY POWERS;

14 F. THOSE APPLICABLE TO BOTH GOVERNMENT AND NON-GOVERNMENT ENTITIES IN
15 THE SAME OR A SUBSTANTIALLY SIMILAR MANNER;

16 G. THOSE IN FULL FORCE AND EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS
17 SECTION, INCLUDING ANY PROVISION OF LAW THAT EXTENDS OR REAUTHORIZES
18 SUCH A LAW.

19 3. THE LEGISLATURE SHALL ESTABLISH BY LAW A COUNCIL ON LOCAL MANDATES.
20 THE COUNCIL SHALL CONSIST OF SEVEN MEMBERS OF WHOM TWO SHALL BE
21 APPOINTED BY THE GOVERNOR, ONE BY THE TEMPORARY PRESIDENT OF THE SENATE,
22 ONE BY THE MINORITY LEADER OF THE SENATE, ONE BY THE SPEAKER OF THE
23 ASSEMBLY, ONE BY THE MINORITY LEADER OF THE ASSEMBLY, AND ONE BY THE
24 COMPTROLLER. THE GOVERNOR SHALL DESIGNATE A CHAIR FROM AMONG THE
25 MEMBERS.

26 THE LEGISLATURE SHALL ESTABLISH BY LAW QUALIFICATIONS FOR SUCH
27 APPOINTMENTS, WHICH SHALL INCLUDE THE REQUIREMENT THAT ONE OF THE
28 MEMBERS APPOINTED BY THE GOVERNOR SHALL BE MADE ON THE RECOMMENDATION OF
29 POLITICAL SUBDIVISIONS OR DULY APPOINTED REPRESENTATIVES THEREOF. ALL
30 LEGISLATION REQUIRED BY THIS SUBDIVISION SHALL BE ENACTED INTO LAW WITH-
31 IN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND INITIAL
32 APPOINTMENTS TO THE COUNCIL SHALL BE MADE WITHIN SIXTY DAYS THEREAFTER.

33 4. A. THE COUNCIL SHALL TIMELY RESOLVE ANY COMPLAINT BY AN AGGRIEVED
34 POLITICAL SUBDIVISION THAT A PROVISION OF LAW CONSTITUTES AN UNFUNDED
35 MANDATE. A RULING OF THE COUNCIL SHALL BE RESTRICTED TO THE SPECIFIC
36 PROVISION OF LAW THAT CONSTITUTES AN UNFUNDED MANDATE AND SHALL, TO THE
37 EXTENT PRACTICABLE, LEAVE INTACT THE REMAINDER OF THE LAW.

38 B. DETERMINATIONS OF THE COUNCIL SHALL BE SUBJECT TO REVIEW BY THE
39 SUPREME COURT IN THE SAME MANNER AND UNDER THE SAME STANDARDS OF REVIEW
40 AS ADMINISTRATIVE DETERMINATIONS OF STATE AGENCIES AND DEPARTMENTS;
41 PROVIDED, HOWEVER, THAT THE STATE MAY SEEK JUDICIAL REVIEW OF A DETERMI-
42 NATION BY THE COUNCIL THAT A PROVISION OF LAW CONSTITUTES AN UNFUNDED
43 MANDATE. PROCEEDINGS TO REVIEW COUNCIL DETERMINATIONS SHALL BE GIVEN
44 PRECEDENCE OVER ALL OTHER CAUSES AND PROCEEDINGS BEFORE THE COURT.

45 S 2. Resolved (if the Assembly concur), That the foregoing amendment
46 be referred to the first regular legislative session convening after the
47 next succeeding general election of members of the assembly, and, in
48 conformity with section 1 of article 19 of the constitution, be
49 published for 3 months previous to the time of such election.