

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- 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 PROHIBITION ON UNFUNDED MANDATES; COUNCIL ON LOCAL MANDATES.

4 S 4. (A) (1) ANY PROVISION OF LAW DETERMINED IN ACCORDANCE WITH THIS
5 SECTION TO BE AN UNFUNDED MANDATE SHALL CEASE TO BE MANDATORY IN EFFECT
6 AND SHALL BECOME VOLUNTARY IN OPERATION.

7 (2) A PROVISION OF LAW THAT REQUIRES ONE OR MORE POLITICAL SUBDIVI-
8 SIONS TO EXPEND FUNDS OR TO TAKE ACTIONS REQUIRING THE EXPENDITURE OF
9 FUNDS SHALL BE DEEMED AN UNFUNDED MANDATE IF SUCH PROVISION OF LAW
10 RESULTS IN AN AGGREGATE NET INCREASE IN NECESSARY DIRECT EXPENDITURES BY
11 THE POLITICAL SUBDIVISIONS OF THE STATE. ANY SUCH AGGREGATE NET
12 INCREASE IN EXPENDITURES SHALL BE OFFSET BY: (I) MONIES PROVIDED TO
13 POLITICAL SUBDIVISIONS FOR THE SPECIFIC PURPOSE OF FUNDING SUCH
14 PROVISION OF LAW; AND (II) DECREASES IN EXPENDITURES EXPECTED TO RESULT
15 FROM OTHER PROVISIONS OF LAW ENACTED CONCURRENTLY THEREWITH THAT REPEAL,
16 REDUCE OR MODIFY EXISTING MANDATES ON POLITICAL SUBDIVISIONS. FOR
17 PURPOSES OF THIS SECTION, ALL BUDGET BILLS AND LEGISLATION NECESSARY TO
18 IMPLEMENT THE BUDGET ENACTED PURSUANT TO ARTICLE SEVEN OF THIS CONSTITU-
19 TION SHALL BE DEEMED TO HAVE BEEN CONCURRENTLY ENACTED INTO LAW.

20 (3) 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 (4) FOR PURPOSES OF THIS SECTION, THE TERM "LAW" SHALL MEAN A STATUTE
25 ENACTED BY THE LEGISLATURE, AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR,

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

1 AND A RULE OR REGULATION PROMULGATED BY A STATE AGENCY, DEPARTMENT,
2 BOARD, BUREAU, OFFICER, AUTHORITY OR COMMISSION.

3 (B) NO LAW SHALL BE CONSIDERED AN UNFUNDED MANDATE IF THE AGGREGATE
4 NET INCREASE IN REQUIRED DIRECT EXPENDITURES BY ANY ONE POLITICAL SUBDI-
5 VISION IS LESS THAN TWENTY THOUSAND DOLLARS PER YEAR, OR ON TWO OR MORE
6 POLITICAL SUBDIVISIONS COLLECTIVELY OR ON A CITY WITH A POPULATION OF
7 ONE MILLION OR MORE IS LESS THAN ONE HUNDRED THOUSAND DOLLARS PER YEAR.

8 (C) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION TO THE CONTRA-
9 RY, THE FOLLOWING CATEGORIES OF BILLS SHALL NOT BE CONSIDERED UNFUNDED
10 MANDATES:

11 (1) THOSE WHICH ARE REQUIRED TO COMPLY WITH FEDERAL LAWS OR RULES OR
12 TO MEET ELIGIBILITY STANDARDS FOR FEDERAL ENTITLEMENTS;

13 (2) THOSE WHICH ARE IMPOSED ON BOTH GOVERNMENT AND NON-GOVERNMENT
14 ENTITIES IN THE SAME OR SUBSTANTIALLY SIMILAR CIRCUMSTANCES;

15 (3) THOSE WHICH PERMIT, ESTABLISH OR ENABLE ONLY OPTIONAL PROGRAMS OR
16 SERVICES;

17 (4) THOSE WHICH ARE BUDGET BILLS SUBMITTED BY THE GOVERNOR PURSUANT TO
18 ARTICLE SEVEN OF THIS CONSTITUTION, BUT ONLY IF SUCH BILLS IMPLEMENT,
19 REVISE, AMEND OR CONTINUE PROGRAMS OR MANDATES WHICH CURRENTLY EXIST AND
20 SUCH BILLS DO NOT IMPOSE ANY NEW MANDATES WHICH, IF TAKEN BY THEMSELVES,
21 WOULD OTHERWISE BE SUBJECT TO THE RESTRICTIONS OF THIS SECTION;

22 (5) THOSE WHICH REPEAL, REVISE OR EASE AN EXISTING MANDATE OR REQUIRE-
23 MENT, OR WHICH REAPPORTION THE COSTS OF ACTIVITIES BETWEEN BOARDS OF
24 EDUCATION, COUNTIES AND MUNICIPALITIES;

25 (6) THOSE WHICH STEM FROM FAILURE TO COMPLY WITH PREVIOUSLY ENACTED
26 LAWS, OR RULES OR REGULATIONS ISSUED PURSUANT TO A LAW;

27 (7) THOSE WHICH ARISE FROM A RULING BY A COURT OF COMPETENT JURISDIC-
28 TION;

29 (8) THOSE WHICH ARISE FROM AN EXECUTIVE ORDER OF THE GOVERNOR EXERCIS-
30 ING HIS EMERGENCY POWERS;

31 (9) THOSE WHICH IMPLEMENT PROVISIONS OF THIS CONSTITUTION;

32 (10) THOSE WHICH ARE ENACTED AFTER A PUBLIC HEARING, HELD AFTER PUBLIC
33 NOTICE THAT UNFUNDED MANDATES WILL BE CONSIDERED, FOR WHICH A FISCAL
34 ANALYSIS IS AVAILABLE AT THE TIME OF THE PUBLIC HEARING AND WHICH, IN
35 ADDITION TO COMPLYING WITH ALL OTHER REQUIREMENTS WITH REGARD TO THE
36 ENACTMENT OF A LAW, ARE PASSED BY A TWO-THIRDS VOTE OF BOTH THE SENATE
37 AND ASSEMBLY; AND

38 (11) THOSE WHICH ARE THE RESULT OF THE PASSAGE OF A HOME RULE MESSAGE
39 WHEREBY A LOCAL GOVERNMENT REQUESTS AUTHORITY TO IMPLEMENT THE PROGRAM
40 OR SERVICE SPECIFIED IN THE STATUTE, AND THE STATUTE IMPOSES COSTS ONLY
41 UPON THAT LOCAL GOVERNMENT WHICH REQUESTS THE AUTHORITY TO IMPOSE THE
42 PROGRAM OR SERVICE.

43 (D) THE LEGISLATURE SHALL ESTABLISH BY LAW A COUNCIL ON LOCAL
44 MANDATES. THE COUNCIL SHALL CONSIST OF ELEVEN MEMBERS OF WHOM SIX SHALL
45 BE APPOINTED BY THE GOVERNOR, ONE BY THE TEMPORARY PRESIDENT OF THE
46 SENATE, ONE BY THE SPEAKER OF THE ASSEMBLY, ONE BY THE COMPTROLLER, ONE
47 BY THE ATTORNEY GENERAL, AND ONE BY THE CHIEF JUDGE OF THE COURT OF
48 APPEALS. THE GOVERNOR SHALL DESIGNATE A CHAIR FROM AMONG THE MEMBERS.
49 THE LEGISLATURE SHALL ESTABLISH BY LAW QUALIFICATIONS FOR SUCH APPOINT-
50 MENTS, WHICH SHALL INCLUDE THE REQUIREMENT THAT THREE OF THE MEMBERS
51 APPOINTED BY THE GOVERNOR, THE MEMBER APPOINTED BY THE COMPTROLLER AND
52 THE MEMBER APPOINTED BY THE ATTORNEY GENERAL SHALL BE MADE ON THE RECOM-
53 MENDATION OF POLITICAL SUBDIVISIONS OR DULY APPOINTED REPRESENTATIVES
54 THEREOF. ALL LEGISLATION REQUIRED BY THIS SUBDIVISION SHALL BE ENACTED
55 INTO LAW WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND

1 INITIAL APPOINTMENTS TO THE COUNCIL SHALL BE MADE WITHIN SIXTY DAYS
2 THEREAFTER.

3 (E) (1) THE COUNCIL SHALL TIMELY RESOLVE ANY COMPLAINT BY AN AGGRIEVED
4 POLITICAL SUBDIVISION THAT A PROVISION OF LAW CONSTITUTES AN UNFUNDED
5 MANDATE. A RULING OF THE COUNCIL SHALL BE RESTRICTED TO THE SPECIFIC
6 PROVISION OF LAW THAT CONSTITUTES AN UNFUNDED MANDATE AND SHALL, TO THE
7 EXTENT PRACTICABLE, LEAVE INTACT THE REMAINDER OF THE LAW.

8 (2) DETERMINATIONS OF THE COUNCIL SHALL BE SUBJECT TO REVIEW BY THE
9 SUPREME COURT IN THE SAME MANNER AND UNDER THE SAME STANDARDS OF REVIEW
10 AS ADMINISTRATIVE DETERMINATIONS OF STATE AGENCIES AND DEPARTMENTS;
11 PROVIDED, HOWEVER, THAT THE STATE MAY SEEK JUDICIAL REVIEW OF A DETERMI-
12 NATION BY THE COUNCIL THAT A PROVISION OF LAW CONSTITUTES AN UNFUNDED
13 MANDATE. PROCEEDINGS TO REVIEW COUNCIL DETERMINATIONS SHALL BE GIVEN
14 PRECEDENCE OVER ALL OTHER CAUSES AND PROCEEDINGS BEFORE THE COURT.

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