S T A T E O F N E W Y O R K

263

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

Section 1. Resolved (if the Assembly concur), That article 9 of the constitution be amended by adding a new section 4 to read as follows:

PROHIBITION ON UNFUNDED MANDATES; COUNCIL ON LOCAL MANDATES.

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

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

(3) FOR PURPOSES OF THIS SECTION, THE TERM "POLITICAL SUBDIVISION" SHALL MEAN A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT OR SPECIAL DISTRICT, AND SHALL INCLUDE ANY AGENCY, AUTHORITY, COMMISSION, DEPARTMENT OR INSTRUMENTALITY THEREOF.

(4) FOR PURPOSES OF THIS SECTION, THE TERM "LAW" SHALL MEAN A STATUTE 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.

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

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

(C) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION TO THE CONTRARY, THE FOLLOWING CATEGORIES OF BILLS SHALL NOT BE CONSIDERED UNFUNDED MANDATES:

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

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

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

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

(5) THOSE WHICH REPEAL, REVISE OR EASE AN EXISTING MANDATE OR REQUIREMENT, OR WHICH REAPPORTION THE COSTS OF ACTIVITIES BETWEEN BOARDS OF EDUCATION, COUNTIES AND MUNICIPALITIES;

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

(7) THOSE WHICH ARISE FROM A RULING BY A COURT OF COMPETENT JURISDICTION;

(8) THOSE WHICH ARISE FROM AN EXECUTIVE ORDER OF THE GOVERNOR EXERCISING HIS EMERGENCY POWERS;

(9) THOSE WHICH IMPLEMENT PROVISIONS OF THIS CONSTITUTION;

(10) THOSE 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 REQUIREMENTS WITH REGARD TO THE ENACTMENT OF A LAW, ARE PASSED BY A TWO-THIRDS VOTE OF BOTH THE SENATE AND ASSEMBLY; AND

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

(D) THE LEGISLATURE SHALL ESTABLISH BY LAW A COUNCIL ON LOCAL MANDATES. THE COUNCIL SHALL CONSIST OF ELEVEN MEMBERS OF WHOM SIX SHALL BE APPOINTED BY THE GOVERNOR, ONE BY THE TEMPORARY PRESIDENT OF THE SENATE, ONE BY THE SPEAKER OF THE ASSEMBLY, ONE BY THE COMPTROLLER, ONE BY THE ATTORNEY GENERAL, AND ONE BY THE CHIEF JUDGE OF THE COURT OF APPEALS. THE GOVERNOR SHALL DESIGNATE A CHAIR FROM AMONG THE MEMBERS. THE LEGISLATURE SHALL ESTABLISH BY LAW QUALIFICATIONS FOR SUCH APPOINTMENTS, WHICH SHALL INCLUDE THE REQUIREMENT THAT THREE OF THE MEMBERS APPOINTED BY THE GOVERNOR, THE MEMBER APPOINTED BY THE COMPTROLLER AND THE MEMBER APPOINTED BY THE ATTORNEY GENERAL SHALL BE MADE ON THE RECOMMENDATION OF POLITICAL SUBDIVISIONS OR DULY APPOINTED REPRESENTATIVES THEREOF. ALL LEGISLATION REQUIRED BY THIS SUBDIVISION SHALL BE ENACTED INTO LAW WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND

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

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

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

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