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

5126

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

Introduced by Sen. GIPSON -- 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:

S 4. PROHIBITION ON UNFUNDED MANDATES; COUNCIL ON LOCAL MANDATES. 1. A. 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.

B. 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 ANY POLITICAL SUBDIVISION 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.

C. 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.

D. FOR PURPOSES OF THIS SECTION, THE TERM "LAW" SHALL MEAN A STATUTE ENACTED BY THE LEGISLATURE, AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR, AND A RULE OR REGULATION PROMULGATED BY A STATE AGENCY, DEPARTMENT, 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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2. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, THE FOLLOWING TYPES OF LAWS SHALL NOT BE CONSIDERED UNFUNDED MANDATES:

A. THOSE NECESSARY TO COMPLY WITH FEDERAL LAW;

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

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

D. THOSE REAPPORTIONING RESPONSIBILITIES BETWEEN OR AMONG POLITICAL SUBDIVISIONS;

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

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

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

3. THE LEGISLATURE SHALL ESTABLISH BY LAW A COUNCIL ON LOCAL MANDATES. THE COUNCIL SHALL CONSIST OF SEVEN MEMBERS OF WHOM TWO SHALL BE APPOINTED BY THE GOVERNOR, ONE BY THE TEMPORARY PRESIDENT OF THE SENATE, ONE BY THE MINORITY LEADER OF THE SENATE, ONE BY THE SPEAKER OF THE ASSEMBLY, ONE BY THE MINORITY LEADER OF THE ASSEMBLY, AND ONE BY THE COMPTROLLER. 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 ONE OF THE MEMBERS APPOINTED BY THE GOVERNOR 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.

4. A. 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.

B. 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.