

# STATE OF NEW YORK

3494

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

Introduced by M. of A. RA -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, BRABENEC, BYRNE, CROUCH, DiPIETRO, FITZPATRICK, GARBARINO, GIGLIO, HAWLEY, KOLB, McDONOUGH, MONTESANO, NORRIS, PALMESANO, RAIA, THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the legislative law and the executive law, in relation to unfunded mandates on local governments and school districts and the restoration of the mandate relief council; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislative law is amended by adding a new section 51-a  
2 to read as follows:

3 § 51-a. Moratorium on unfunded mandates. 1. Definitions. As used in  
4 this section, the following terms shall have the following meanings:

5 (a) "Local government" means a county, city, town, village, school  
6 district, or special district.

7 (b) "Net additional cost" means the cost or costs incurred or antic-  
8 ipated to be incurred within a one year period by a local government in  
9 performing or administering any program, project, or activity after  
10 subtracting therefrom any revenues received or receivable by such local  
11 government in relation to such program, project, or activity, including  
12 but not limited to:

13 (i) fees charged to the recipients of such program, project, or activ-  
14 ity;

15 (ii) state or federal funds received for such program, project, or  
16 activity; and

17 (iii) an offsetting savings resulting from the diminution or elimi-  
18 nation of any other program, project, or activity that state law  
19 requires such local government to provide or undertake.

20 (c) "Unfunded mandate" means:

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

LBD07577-01-9

1 (i) any state law that requires a local government to provide or  
2 undertake any new program, project or activity that results in an annual  
3 net additional cost to any local government in excess of ten thousand  
4 dollars or an aggregate annual net additional cost to all local govern-  
5 ments within the state in excess of one million dollars; or

6 (ii) any state law that requires a local government to provide a high-  
7 er level of service or funding for an existing program, project or  
8 activity that results in an annual net additional cost to any local  
9 government in excess of ten thousand dollars or an aggregate annual net  
10 additional cost to all local governments within the state in excess of  
11 one million dollars; or

12 (iii) any state law that requires a local government to grant any new  
13 property tax exemption or that broadens the eligibility or increases the  
14 dollar amount of any existing property tax exemption, on property that  
15 otherwise would have generated revenue under the current property tax  
16 rate of such local government in excess of ten thousand dollars in any  
17 local government or in excess of one million dollars statewide; or

18 (iv) any state law with a legal requirement that would otherwise like-  
19 ly have the effect of raising property taxes in excess of ten thousand  
20 dollars in any local government or in excess of one million dollars  
21 statewide.

22 2. Moratorium on unfunded mandates. For a three year period beginning  
23 with the enactment of this section, notwithstanding any other provision  
24 of law, no unfunded mandates shall be enacted.

25 3. Exemptions. (a) A state law shall not be considered an unfunded  
26 mandate where such law:

27 (i) is required by a court order or judgment; or

28 (ii) is provided at the option of the local government under a law  
29 that is permissive rather than mandatory; or

30 (iii) results from the passage of a home rule message whereby a local  
31 government requests authority to implement the program or service speci-  
32 fied in the statute, and the statute imposes costs only upon that local  
33 government which requests the authority to impose the program or  
34 service; or

35 (iv) is required by statute or executive order that implements a  
36 federal law or regulation and results from costs mandated by the federal  
37 government to be borne at the local level, unless the statute or execu-  
38 tive order results in costs which exceed the costs mandated by the  
39 federal government; or

40 (v) is imposed on both government and non-government entities in the  
41 same or substantially similar circumstances; or

42 (vi) repeals or revises a state law to ease an existing requirement  
43 that a local government provide or undertake a program, project, or  
44 activity, or reapportions the costs of activities between local govern-  
45 ments; or

46 (vii) is necessary to protect against an immediate threat to public  
47 health or safety.

48 (b) The effective date of any act establishing a mandate shall provide  
49 a reasonable time for the state and any local government to plan imple-  
50 mentation thereof and shall be consistent with the availability of  
51 required funds.

52 § 2. Section 51 of the legislative law, as added by chapter 985 of the  
53 laws of 1983, is amended to read as follows:

54 § 51. Fiscal impact notes on bills affecting political subdivisions.

55 1. For the purpose of this section, the term "political subdivision"

1 means any county, city, town, village, special district or school  
2 district.

3 ~~2. [The legislature shall by concurrent resolution of the senate and~~  
4 ~~assembly prescribe rules requiring fiscal notes to accompany, on a sepa-~~  
5 ~~rate form, bills and amendments to bills, except as otherwise prescribed~~  
6 ~~by such rules, which] A bill that~~ would ~~[substantially]~~ affect the  
7 revenues or expenses, or both, of any political subdivision shall  
8 contain a detailed fiscal impact note stating the estimated annual cost  
9 to the political subdivision affected and the source of such estimate.  
10 The fiscal impact note must clearly identify the funding source of such  
11 annual cost to the political subdivision. An omission of such funding  
12 source in the fiscal impact note, shall invalidate such bill.

13 3. Fiscal notes shall not, however, be required for bills: (a) subject  
14 to the provisions of section fifty of this chapter, or (b) accompanied  
15 by special home rule requests submitted by political subdivisions, or  
16 (c) which provide discretionary authority to political subdivisions, or  
17 (d) submitted pursuant to section twenty-four of the state finance law.

18 4. If the estimate or estimates contained in a fiscal impact note are  
19 inaccurate and result in an annual net additional cost to any political  
20 subdivision in excess of ten thousand dollars or an aggregate annual net  
21 additional cost to all political subdivisions within the state in excess  
22 of one million dollars, such inaccuracies shall ~~[not affect, impair or]~~  
23 invalidate such bill.

24 § 3. The executive law is amended by adding a new section 666 to read  
25 as follows:

26 § 666. Mandate relief council. 1. Definitions. a. "Mandate" means any  
27 requirement that a local government perform or administer any program,  
28 project or activity, required or imposed by a state law or state agency  
29 that requires a higher level of service for an existing local government  
30 program, project or activity.

31 b. "Local government" means a county, city, town, village, school  
32 district, or special district.

33 c. "State agency" or "agency" means any state agency, department,  
34 office, board, bureau, division, committee, council or office under the  
35 direction or control of the executive.

36 2. Mandate relief council. There is hereby created within the depart-  
37 ment the mandate relief council, which shall be comprised of eleven  
38 members as follows: the secretary to the governor, who shall chair the  
39 council, the counsel to the governor, the director of the division of  
40 the budget, the secretary of state, and three additional members to be  
41 appointed by the governor from among his or her executive chamber staff,  
42 two members to be appointed by the temporary president of the senate,  
43 and two members to be appointed by the speaker of the assembly.

44 a. Six members of the council, or their designees in the case of the  
45 director of the division of the budget and the secretary of state, shall  
46 constitute a quorum.

47 b. The council shall meet regularly upon the call of its chair and as  
48 frequently as its business may require. The members of the council shall  
49 serve without compensation but shall receive reimbursement for their  
50 reasonable and necessary expenses.

51 c. The council shall, upon request of a local government or one of the  
52 members of the council, identify and review mandates that can be elimi-  
53 nated or reformed, and make such other and further inquiries, reports  
54 and recommendations as the council may deem necessary and prudent to  
55 effectuate its mission of mandate relief. In identifying and determining  
56 whether such mandates are unsound, unduly burdensome or costly, the

1 council shall receive and consider public comment about them and shall  
2 review them in light of cost-benefit principles and such other and  
3 further factors as the council shall deem necessary and prudent. The  
4 council shall not make a referral to the governor that a mandate be  
5 eliminated or reformed regarding any of the following mandates:

6 (i) those which are required to comply with federal laws or rules or  
7 to meet eligibility standards for federal entitlements;

8 (ii) those which reapportion the costs of activities between boards of  
9 education, counties, and municipalities;

10 (iii) those which implement provisions of the state constitution; and

11 (iv) those which the council determines are necessary for the mainte-  
12 nance of the public health or safety of the people of New York state.

13 d. All votes of the council, and all deliberations and reports of its  
14 proceedings shall be open to the public pursuant to article seven of the  
15 public officers law.

16 3. Council actions on regulatory mandates. Upon a determination that a  
17 mandate in any regulation, rule or order of any state agency has been  
18 imposed upon any local government in an unsound, unduly burdensome or  
19 costly manner so as to necessitate that it be eliminated or reformed,  
20 the council shall have the power to:

21 a. refer a request by a local government for a review of such regula-  
22 tory mandate, for petition by such local government for a waiver,  
23 modification or repeal of such regulatory mandate pursuant to section  
24 two hundred four-a of the state administrative procedure act. In the  
25 event the council votes to make such referral on behalf of a local  
26 government, the state agency that is charged with reviewing the petition  
27 shall provide the technical assistance and support for such local  
28 government to properly prepare and submit such petition. In the event  
29 that such state agency reviewing the petition of the local government  
30 pursuant to section two hundred four-a of the state administrative  
31 procedure act does not provide the remedy sought by such local govern-  
32 ment, the council may hear and consider an appeal of such decision and  
33 grant such relief as it deems appropriate, including the making of a  
34 referral to the governor for the waiving, modifying or repealing of such  
35 regulatory mandate. The council shall adopt procedures by which it  
36 shall consider, decide and effectuate the remedies of such appeals  
37 consistent with this section.

38 b. upon a two-thirds vote, refer a regulation to the governor for  
39 repeal or modification, where the council has previously determined that  
40 such regulation imposes upon any local government a mandate in an  
41 unsound, unduly burdensome or costly manner, so as to necessitate that  
42 it be eliminated or reformed. Upon receipt of such referral by the  
43 council, the governor shall within sixty days, direct the state agency  
44 responsible for the promulgation, repeal or modification of such regu-  
45 lation to effectuate such repeal or modification of the regulation  
46 pursuant to the procedures that such agency would otherwise be required  
47 to follow under the law, had such agency on its own accord sought to  
48 repeal or modify the regulation.

49 4. Council actions on statutory mandates. The council may, upon a vote  
50 of seven members, refer a statute to the governor for repeal or modifi-  
51 cation, where the council has previously determined that such statute  
52 imposes upon any local government a mandate in an unsound, unduly  
53 burdensome or costly manner, so as to necessitate that it be eliminated  
54 or reformed. Upon receipt of the referral by the council, the governor,  
55 within sixty days, shall have prepared a governor's program bill, for

1 introduction in both houses of the legislature, to effectuate such  
2 repeal or modification of the statute.

3 5. Local government request. A local government may, by resolution of  
4 its governing body, ask the council to review a specific statute, regu-  
5 lation, rule or order of state government to determine whether such  
6 statute, regulation, rule or order of state government is an unfunded  
7 mandate or is otherwise unsound, unduly burdensome or costly so as to  
8 require that it be eliminated or reformed. No local government may make  
9 more than three such requests in each calendar year. Upon such review,  
10 the council shall, by majority vote, determine whether such mandate has  
11 been imposed upon such local government in an unsound, unduly burdensome  
12 or costly manner, so as to necessitate that it be eliminated or  
13 reformed. A determination of the council shall resolve any dispute  
14 regarding whether such a statute, regulation, rule or order constitutes  
15 such an unfunded mandate, but shall not be deemed a judicial determi-  
16 nation under the law.

17 6. Appeals. Upon an appeal of a petition previously decided by a state  
18 agency pursuant to section two hundred four-a of the state administra-  
19 tive procedure act, the council, upon request of the local government,  
20 shall review the state agency's determination and may affirm, modify or  
21 reject such determination. Such appeal shall not preclude or limit a  
22 local government or any other party with standing from pursuing any  
23 right it may have pursuant to a proceeding instituted in accordance with  
24 the provisions of article seventy-eight of the civil practice law and  
25 rules or any other statute.

26 7. Reports. The council shall by December fifteenth of each year  
27 report to the governor and legislature regarding its activities, and  
28 regarding the issues, statutes, regulations, rules and orders which it  
29 reviewed, examined, proposed, referred, and/or considered. Such reports,  
30 which shall be adopted upon a majority vote of the members of the coun-  
31 cil, or their designees in the case of the director of the division of  
32 the budget or the secretary of state. All reports of the council shall  
33 be posted on a publicly accessible website.

34 8. Assistance of other agencies. To effectuate the purposes of this  
35 section, any state agency shall, at the request of the council, provide  
36 to the council such facilities, assistance and data as will enable the  
37 council to properly carry out its responsibilities and duties.

38 § 4. The mandate relief council, pursuant to section 666 of the execu-  
39 tive law, shall review existing mandates on local governments to deter-  
40 mine which shall be eliminated.

41 § 5. This act shall take effect immediately; provided, however, that  
42 section one of this act shall only apply to laws enacted after such  
43 effective date, provided however that section three of this act shall  
44 expire and be deemed repealed January 1, 2023.