

# STATE OF NEW YORK

2915

2023-2024 Regular Sessions

## IN ASSEMBLY

February 1, 2023

Introduced by M. of A. RA, BRABENEC, LEMONDES, TAGUE -- 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 of the executive law 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:

21 (i) any state law that requires a local government to provide or  
22 undertake any new program, project or activity that results in an annual

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

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1 net additional cost to any local government in excess of ten thousand  
2 dollars or an aggregate annual net additional cost to all local govern-  
3 ments within the state in excess of one million dollars; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 1. For the purpose of this section, the term "political subdivision"  
54 means any county, city, town, village, special district or school  
55 district.



1 and recommendations as the council may deem necessary and prudent to  
2 effectuate its mission of mandate relief. In identifying and determining  
3 whether such mandates are unsound, unduly burdensome or costly, the  
4 council shall receive and consider public comment about them and shall  
5 review them in light of cost-benefit principles and such other and  
6 further factors as the council shall deem necessary and prudent. The  
7 council shall not make a referral to the governor that a mandate be  
8 eliminated or reformed regarding any of the following mandates:

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

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

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

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

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

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

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

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

52 4. Council actions on statutory mandates. The council may, upon a vote  
53 of seven members, refer a statute to the governor for repeal or modifi-  
54 cation, where the council has previously determined that such statute  
55 imposes upon any local government a mandate in an unsound, unduly  
56 burdensome or costly manner, so as to necessitate that it be eliminated

1 or reformed. Upon receipt of the referral by the council, the governor,  
2 within sixty days, shall have prepared a governor's program bill, for  
3 introduction in both houses of the legislature, to effectuate such  
4 repeal or modification of the statute.

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

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

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

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

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

43 § 5. This act shall take effect immediately; provided, however, that  
44 section one of this act shall only apply to laws enacted after such  
45 effective date; and provided, however, that section three of this act  
46 shall expire and be deemed repealed January 1, 2027.