

LOCAL FINANCE NOTICE

Mandate Relief Law of 2001 Provisions of Chapter 342 of P.L. 2001

Acting Governor DiFrancesco signed a new Mandate Relief bill (A-3577) into law on January 5, 2002, as P.L. 2001, c. 342. The law, the fourth multi-purpose mandate relief act, is a continuation of the efforts of the Legislature to reduce cost and administrative burdens of a variety of State requirements on local units. The Act took effect immediately upon the Governor signing the bill.

This Local Finance Notice summarizes the changes made in the law by subject and includes an abridged version of the law with the changes. The major theme of the law was to permit local units to adopt resolutions instead of ordinances to take action. While the summary represents the changes in the law, consult with your legal counsel before taking any local action or making changes in practice. The text notes where the law requires the adoption of formal rules before the change goes into effect.

This notice divides the law into various categories. They include:

1. Budget and Financial Administration
2. Traffic Administration
3. Shared Services
4. General and Miscellaneous Laws

Copies of this Notice are being sent to Municipal Clerks, Freeholder Board Clerks, Chief Financial Officers, Authority Executive Directors, Fire District Commissioners, and all local unit auditors. Clerks are asked to share this Notice with their Mayor and Governing Body, Chief Administrative Officers and any other officials that may have interest in its various provisions.

1. Budget and Financial Administration

Dedication of parking revenues by resolution: This section changes the requirement for parking revenues to be dedicated for off-street parking to be done by resolution instead of by ordinance.

Expands Cap Exemption: This provision makes the salaries of police officers hired under the federal "Community Oriented Policing Services" program a budget cap exemption. This covers the full costs of officers as they come off the federal grant program.

Waiving of health coverage: This provision permits any contracting unit (as defined by the Local Public Contract Law) to allow their employees to waive their right to group health care benefits if they are covered under a spouses benefit program as a dependent.

2. Traffic Administration

Designation of stops, stations or stands for omnibus: This provision permits a municipality or county to designate omnibus stops, stations, or stands by resolution on any street under its jurisdiction. Within 30 days of the adoption, a certified copy of the resolution must be sent to the Commissioner of Transportation. The Commissioner has the discretion to invalidate provisions of the resolution within 90 days of the receipt of the resolution. A claim against the State, municipality or county for damage or injury under this provision for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines. This change does not take effect until the adoption of rules by the Commissioner of Transportation. Please note, according to N.J.S.A. 39:1 et seq., “omnibus includes all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements...if the same are not otherwise used in the transportation of passengers for hire.”

Installation of traffic control device: Changes from ordinance to resolution the authority for a municipality, at the request of the board of education, to install a traffic control device or sign to regulate motor vehicle traffic at an intersection located within 300 feet of any public or private school. The law added the requirement that the municipal or county engineer must certify to the municipality or county, as appropriate, that the engineer has approved the traffic control or device after their investigation of the circumstances. The resolution does not take effect until the approval of the Commissioner of Transportation.

3. Shared Services

Formation of joint consolidation study commission: These provisions permits the governing body of any municipality proposing to consolidate with one or more other municipalities may by ordinance or resolution propose the formation of a joint municipal consolidation study commission. Previously, the municipality must have proposed the change by ordinance only.

4. General and Miscellaneous

Construction or erection of monument or memorial: This provision permit a municipal governing body to construction or erect a monument or memorial in honor of the men and women of the armed forces by resolution instead of by ordinance.

Notification of Master Plan Reexamination: This change requires that a notice be sent to the Municipal Clerk of each adjoining municipality that the Master Plan Reexamination report and resolution have been prepared instead of mailing a copy of the report. The adjoining Municipal Clerk may request a copy of the report and resolution.

Definition of small municipality: This provision requires that the Division of Local Government Services define by rule a small municipality. The definition must include a small municipality having a limited population or geographic area. It also requires that when a State agency is developing and proposing a rule for adoption, they must consider the impact on the small municipality. This provision does not take effect until the Division adopts the rule. The Division is currently studying approaches to defining the term.

Repeals the Shipwrecked bodies report: Repeals the requirement that the County Medical Examiner must file a written report with the State Medical Examiner on shipwrecked bodies.

Enclosure

Distribution: Municipal Clerks, Clerks to the County Board of Freeholders, Authority Executive Directors, Fire District Boards of Commissioners, and all local unit auditors

Mandate Relief Bill of 2001

P.L. 2001, c 342, Approved January 5, 2002

An Act revising certain mandates, requirements and procedures for local governments and amending, supplementing and repealing various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

The Legislature finds and declares:

Over the past four decades, prior to adoption of the constitutional amendment prohibiting unfunded State mandates on local government, the State routinely and systematically imposed greater and greater numbers of mandates, orders, directives and burdens on local government. This web of mandates and burdens came about as the result of the enactment and adoption of a plethora of unrelated laws and regulations addressing many and diverse issues. While these actions by State government occurred in order to address a variety of public concerns, they all shared a common philosophical underpinning: the mandatory implementation of State policy directives by local government officials.

While the overwhelming majority of these statutes and regulations was established by sincere-minded and well-intentioned public officials in order to address legitimate public concerns, the collective regulatory weight of these mandates on local officials continues to be a matter of deep concern and a subject that cries for legislative relief.

In response to this decades long pattern of seemingly inexorable increases in burdensome mandates from Trenton, local officials repeatedly petition the Legislature for relief. In response to entreaties of local officials, various committees of several Legislatures have determined to continue to address the problem of burdensome mandates on an expedited basis through the enactment of omnibus acts that repeal or modify many of those mandates, resolve administrative ambiguities and encourage more businesslike practices. This is the fourth such omnibus mandate relief act.

R.S.39:4-8 is amended to read as follows:

d. A municipality or county may, by resolution, in any street under its jurisdiction, designate stops, stations or stands for omnibuses. The designation shall be subject to guidelines that shall be issued by the Commissioner of Transportation. The guidelines

shall be aimed at ensuring safety to both pedestrians and motorists including, but not limited to, the proper method of sign installation, dimensions, composition of material, proper placement points and maintenance. A certified copy of the adopted resolution shall be transmitted to the commissioner within 30 days of adoption. The commissioner, at his discretion, may invalidate the provisions of the ordinance or resolution within 90 days of receipt of the certified copy if he reviews it and finds that the provisions of the ordinance or resolution are inconsistent with the guidelines issued pursuant to this subsection. A claim against the State or a municipality or county for damage or injury under this subsection for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines required hereunder.

(cf: P.L. 1999, c.191, s.1)

Section 1 of P.L. 1984, c.219 (C.39:4-183.1a) is amended to read as follows:

1. Notwithstanding any law to the contrary, a municipality may, upon the request of the appropriate board of education or, in the case of a private school, by the school's governing body, provide by [~~ordinance~~] resolution for the installation of a traffic control device or sign consistent with the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways as adopted by the Commissioner of Transportation, to regulate motor vehicle traffic at an intersection located within 300 feet of any public or private school; provided that the municipal or county engineer shall, under the engineer's seal as a licensed professional engineer, certify to the municipal or county governing body, as appropriate, that the traffic control or device has been approved by the engineer after the engineer's investigation of the circumstances. Before [an ~~ordinance~~] a resolution shall take effect, however, the governing body shall submit a copy of the [~~ordinance~~] resolution to the Commissioner of Transportation for his review and approval together with detailed information as to the location of streets, intersections and signs affected by any installation, traffic court, accident and speed sampling data when appropriate, the municipal or county engineer's certification, under the engineer's seal as a licensed professional engineer, to the municipal or county governing body, and any other information as the commissioner may require. If the

commissioner disapproves the [~~ordinance~~ resolution], he shall file his disapproval, in writing, with a statement of the reasons for his disapproval, with the governing body within 90 days following the receipt of the [~~ordinance~~ resolution]. If the commissioner approves the [~~ordinance~~ resolution] or fails to file his disapproval within the 90-day review period, the [~~ordinance~~ resolution] shall take effect immediately.

For the purposes of this section, the term "public or private school" has the meaning that term is given in N.J.S.18A:1-1.

(cf: P.L.1984, c.219, s.1)

Section 1 of P.L.1952, c.195 (C.40:5-2.11) is amended to read as follows:

1. The board of chosen freeholders of any county ~~and the governing body of any municipality~~ may by resolution [~~and the governing body of any municipality may by ordinance~~] appropriate and dedicate all or any portion of the revenues which it derives from parking meters in excess of the cost of purchase, installation, maintenance and operation of said parking meters, to the purposes of creation, purchase, construction and maintenance of off-street parking facilities.

(cf: P.L.1952, c.195, s.1)

Section 5 of P.L.1977, c.435 (C.40:43-66.39) is amended to read as follows:

5. The governing body of any municipality proposing to consolidate with one or more other municipalities may, by ordinance or resolution, propose the formation of a joint municipal consolidation study commission as provided for in section 7 of this act. The ordinance or resolution shall state that the governing body is seeking the formation of a joint municipal consolidation study commission pursuant to the provisions of this act, and shall name the municipalities for which a consolidation study is proposed. Upon adoption of such ordinance or resolution, the clerk of the municipality adopting the ordinance or resolution shall forthwith transmit a certified copy thereof to the municipal clerk of each of the other municipalities named in the ordinance or resolution and to the clerk of the county in which such municipalities are located.

(cf: P.L.1977, c.435, s.5)

Section 7 of P.L.1977, c.435 (C.40:43-66.41) is amended to read as follows:

7. a. If, within one year after the date on which the first ordinance or resolution, pursuant to section 5 of P.L. 1977, c.435 (C.40:43-66.39), or the first petition, pursuant to section 6 of P.L. 1977, c.435 (C.40:43-66.40), is filed with the clerk of the county, either an ordinance or a resolution or a certified petition is transmitted to the county clerk by each of the other municipalities named in the first such ordinance or a resolution or petition, then one of the following shall occur:

(1) The question of forming a consolidation commission shall be submitted to the voters of each of the municipalities named in such ordinances or resolutions or petitions in the following form:

"Shall a joint municipal consolidation study commission be formed to study the feasibility of consolidating (insert the names of each of the municipalities named in such ordinances or resolutions or petitions) into a single new municipality, to study the question of the form of government under which such new municipality should be governed, to study the feasibility of consolidating the local school districts of the aforesaid municipalities, and to make recommendations thereon; or, in the alternative, to make recommendations on the consolidation of certain municipal services?"

The question shall be submitted to the voters of each municipality so named in the ordinances or resolutions or petitions on the date for the next general election or on the date for the next regular municipal election, whichever shall first occur at least 60 days after the date of the filing with the county clerk of the final ordinance or resolution or petition necessary to require the submission of the question to the voters.

The public question submitted to the voters shall be deemed adopted, and a consolidation commission formed, if a majority of the votes cast on the question in each of the municipalities in which the question is submitted shall be in the affirmative; or

(2) An ordinance or resolution expressly creating a consolidation commission shall be adopted by each of the municipalities named in such ordinances or resolutions or petitions. The ordinance or resolution shall state that the governing body will not be

submitting the question of forming a consolidation commission to the voters of that municipality by referendum. The ordinance or resolution shall state that the governing body is seeking the formation of a consolidation commission pursuant to P.L. 1977, c.435 (C.40:43-66.35 et seq.), and shall name the participating municipalities for which a consolidation commission is proposed. Upon adoption of the ordinance or resolution, the clerk of each participating municipality adopting the ordinance or resolution shall forthwith transmit a certified copy thereof to the municipal clerk of each of the other participating municipalities named in the ordinance or resolution, to the clerk of the county in which each participating municipality is located, and to the Commissioner of Community Affairs.

The ordinance or resolution forming a consolidation commission shall be deemed adopted, and a consolidation commission formed, if each participating municipality adopts an ordinance or resolution agreeing to participate in a consolidation commission pursuant to this subsection; or

(3) One or more of the municipalities named in such ordinances or resolutions or petitions shall submit the question of forming a consolidation commission to the voters pursuant to paragraph (1) of this subsection, and one or more of those municipalities shall adopt an ordinance or resolution expressly creating a consolidation commission pursuant to paragraph (2) of this subsection, in any combination, provided that each of the participating municipalities adopts the formation of a consolidation commission.

b. Nothing herein contained shall be construed to prevent the submission of the question of forming a consolidation commission to the voters of the municipalities pursuant to paragraph (1) of subsection a. of this section, or the forming of a consolidation commission by ordinance or resolution pursuant to paragraph (2) of subsection a. of this section, named in any combination of such ordinances or resolutions pursuant to section 5 of P.L. 1977, c. 435 (C.40:43-66.39) and petitions pursuant to section 6 of P.L. 1977, c.435 (C.40:43-66.40), provided that such ordinances or resolutions and petitions are substantively similar.

(cf. P.L.1999, c.58, s.1)

Section 27 of P.L. 1977, c.435 (C.40:43-66.61) is amended to read as follows:

27. No ordinance or resolution may be adopted and no petition may be filed for the creation of a joint municipal consolidation study commission pursuant to sections 5 and 6 of this act while proceedings are pending under any other petition filed or ordinance adopted pursuant to the provisions of the "Optional Municipal Charter Law" or any other general law relating to a change in the form of government in any of the participating municipalities. No ordinance or resolution may be adopted and no petition may be filed for the creation of such a commission pursuant to the provisions of this act within 4 years after the date on which the question of consolidation has been submitted to the voters pursuant to section 25 of this act; provided, however, that the adoption of an ordinance or resolution or the filing of a petition and the holding of any referendum thereafter under the provisions of the "Optional Municipal Charter Law" or other general law relating to a change in the form of government in any of the participating municipalities, if such proceedings have been completed, shall not preclude the participating municipalities from proceeding under the provisions of this act notwithstanding the fact that 4 years may not have expired since the completion of said proceedings.

(cf. P.L.1977, c.435, s.27)

Section 1 of P.L.1947, c.335, (C.40:48-2.16) is amended to read as follows:

1. The governing body of any municipality may, by [~~ordinance~~] resolution, provide for the construction and erection of a monument or memorial of a permanent character commemorative of the services [~~of soldiers and sailors~~] provided by the men and women in the armed forces of the United States [in World War II], or to provide for a contribution to part of the cost of any similar monument or memorial; provided, that any such [~~ordinance~~] resolution shall set forth the price in respect to the monument or memorial, including the type of the monument or memorial and the amount of money proposed to be expended or contributed.

(cf. P.L.1949, c.78, s.1)

Section 76 of P.L. 1975, c.291 (C.40:55D-89) is amended to read as follows:

76. Periodic examination. The governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board, which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the county planning board ~~[and]~~. A notice that the report and resolution have been prepared shall be sent to the municipal clerk of each adjoining municipality, who may, on behalf of the governing body of the municipality, request a copy of the report and resolution. ~~[The first such reexamination shall have been completed by August 1, 1982. The next reexamination shall be completed by August 1, 1988. Thereafter, a]~~ A reexamination shall be completed at least once every six years from the previous reexamination.

(cf: P.L.1992, c.79, s.50)

Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

nn. Amounts expended to pay the salaries of police officers hired under the federal "Community Oriented Policing Services" program, which was enacted as part of the "Violent Crime Control and Law Enforcement Act of 1994," Pub.L.No. 103, 108 Stat. 1796 (1994).

(cf: P.L.2001, c.25, s.5)

Section 37 of P.L.1995, c.259 (C.40A:10-17.1) is amended to read as follows:

37. Notwithstanding the provisions of any other law to the contrary, a county [ø], municipality or any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2) which enters into a contract providing group health care benefits to its employees pursuant to N.J.S.40A:10-16 et seq., may allow any employee who is eligible for coverage as a dependent of the employee's spouse under that plan or another plan, including the State Health Benefits Program established pursuant to

P.L.1961, c.49 (C.52:14-17.25 et seq.), offered by the spouse's employer, whether a public or private employer, to waive coverage under the county's [ø], municipality's or contracting unit's plan to which the employee is entitled by virtue of employment with the county [ø], municipality or contracting unit. The waiver shall be in such form as the county [ø], municipality or contracting unit shall prescribe and shall be filed with the county [ø],municipality or contracting unit. In consideration of filing such a waiver, a county [ø], municipality or contracting unit may pay to the employee annually an amount, to be established in the sole discretion of the county [ø], municipality or contracting unit, which shall not exceed 50% of the amount saved by the county [ø], municipality or contracting unit because of the employee's waiver of coverage. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall file a declaration with the county [ø], municipality or contracting unit, in such form as the county [ø], municipality or contracting unit shall prescribe, that the waiver is revoked. The decision of a county [ø], municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process.

(cf: P.L.2000, c.126, s.25)

Definition of Small Municipality

a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or

judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to Article IV, Section VII, paragraphs 8 and 10 of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

- (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;
- (2) The use of performance rather than design standards; and
- (3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each State mandate flexibility analysis shall contain:

- (1) An estimate of the number of small municipalities to which the proposed rule will apply;
- (2) A description of the reporting, record-keeping and other compliance requirements being proposed

for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;

(3) An estimate of the annual cost to a small municipality of complying with the rule; and

(4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

N.J.S.40A:9-59 is repealed.

This act shall take effect immediately.