



Am. H.B. 303

123rd General Assembly

(As Reported by H. Local Government & Townships)

Reps. Buchy, Cates, Trakas, Hoops, Peterson, Evans, Schuler, O'Brien, Allen, Roman

BILL SUMMARY

- Creates the Local Government Mandates Commission until December 31, 2004.
- Requires the Commission to conduct hearings and determine whether an unfunded mandate has been imposed on a political subdivision, court, or state institution of higher education and exempts those entities from implementing unfunded mandates under certain conditions.

CONTENT AND OPERATION

Determining the existence of an unfunded mandate

The bill provides that, beginning 90 days after its effective date, the governing board of any political subdivision or institution of higher education, any court, or an elected mayor or county executive after notification from the legislative authority of the municipal corporation or county, may request the Local Government Mandates Commission created by the bill (see below) to conduct a public hearing to determine if a duty or obligation imposed on the political subdivision, court, or institution of higher education is an unfunded mandate (sec. 105.50(B)).¹ An "unfunded mandate" generally is defined as a *duty or obligation*

¹ *The bill defines "political subdivision" to mean a county, municipal corporation, township, school district, or other body corporate and politic responsible for governmental activities in a geographical area smaller than that of the state; "state entity" to include the General Assembly or any department, board, commission, office, agency, or other state instrumentality, excluding political subdivisions; "court" to mean any court in the state inferior to the Supreme Court; and an "institution of higher education" to mean the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State*

that *is imposed* upon a political subdivision, court, or institution of higher education by a *statute* or by a *rule* adopted by a state entity pursuant to a statute and that, when implemented, would *require* the political subdivision, court, or institution of higher education to incur *an additional direct expenditure of funds* that is *not reimbursed* or paid with state funds or local nontax revenue sources (sec. 105.50(A)(5)(a)). A statute or a rule adopted pursuant to a statute does not impose an "unfunded mandate" if any of the following applies to the statute or rule (sec. 105.50(A)(5)(b)):

(1) It was adopted prior to the bill's effective date.

(2) It is required to be maintained to comply with federal law or rules or to meet eligibility standards for federal entitlements.

(3) It imposes duties or obligations on governmental and nongovernmental entities in the same or substantially similar circumstances.

(4) It repeals or eases a requirement in existence on the bill's effective date or revises that type of requirement in a specified manner.

(5) It will result in penalties for failure to comply with laws or rules or regulations issued pursuant to law.

(6) It implements a requirement imposed by the Ohio Constitution.

(7) It was a statute enacted by the General Assembly that passed each house with the concurrence of three-fifths of the members elected to that house.

The Commission, within ten days after receiving such a request, must schedule a hearing at the earliest possible time. Within five days after scheduling a date for the hearing, the Commission (1) must notify the entity that requested the hearing regarding the time, date, and place of the hearing and the documentation the entity must submit to prove the existence of an unfunded mandate and (2) must give public notice of the time, date, and place of the hearing by notifying not less than five newspapers circulating in the state. The public notice must state that any

University, University of Toledo, Wright State University, Youngstown State University, Medical College of Ohio at Toledo, and Northeastern Ohio Universities College of Medicine, other state universities or colleges, community college districts, university branch districts, technical college districts, and other institutions for education, including technical education, beyond the high school, receiving state support or assistance for their expenses of operation (sec. 105.50(A)(1), (2), (3), and (4)).

interested party may intervene in the hearing and present testimony upon submitting a request to the Commission. (Sec. 105.50(B).)

The entity that requested the hearing must file any required documentation with the Commission not less than 20 days before the date of the hearing. Any interested party, not less than 20 days before the date of the hearing, may request to intervene in the hearing and present testimony to the Commission. (Sec. 105.50(C).)

The Commission must conduct the hearing at the earliest possible time after its receipt of the hearing request from the political subdivision, court, or institution of higher education. The Commission, if necessary, may interview witnesses and examine documents. The entity that requested the hearing or any interested party who requested to intervene, not later than 15 days after the date of the hearing, may submit supplemental documentation to the Commission. (Sec. 105.50(D).)

The Commission, by a majority vote of its membership and not later than 60 days after the close of the hearing, must issue a written determination, accompanied by any concurring or dissenting opinions, that states whether the duty or obligation imposed on the political subdivision, court, or institution of higher education is an unfunded mandate. The Commission, within ten days after making its determination, must send a copy of the determination to the entity that requested the hearing and to any interested parties who intervened in the hearing. If the Commission determines that a statute or rule *imposes an unfunded mandate* on the entity that requested the hearing, the Commission must file a copy of the determination, within ten days after issuing it, with the Governor, the Clerk of the House of Representatives, and the Clerk of the Senate. (Sec. 105.50(D).)

Not later than 30 days after the General Assembly has enacted the main operating appropriations act, the Commission must meet to determine whether any of the following have occurred in relation to each unfunded mandate that the Commission identified in a written determination during the two-year period that ended on December 31 immediately preceding the enactment of that act: (1) whether funds have been appropriated by the General Assembly to fully fund the unfunded mandate, (2) whether the statute or rule imposing the unfunded mandate has been repealed, (3) whether the statute or rule resulting in the unfunded mandate has been amended to eliminate all costs incurred by the political subdivision, court, or institution of higher education involved, or (4) whether a statute has been enacted that authorizes the political subdivision, court, or institution of higher education involved to enact or otherwise acquire a nontax revenue source that will enable it to fully fund the unfunded mandate. (Sec. 105.50(E).)

After that meeting and review of the main operating appropriations act, the Commission must issue a written determination of its findings and, within ten days thereafter, send a copy of the determination to the entity that requested the hearing on the unfunded mandate, any interested parties who requested to intervene in that hearing, the Governor, the Clerk of the Senate, and the Clerk of the House of Representatives (sec. 105.50(F)).

If the Commission issues a written determination that none of the four actions listed above have occurred regarding an unfunded mandate, any political subdivision, court, or institution of higher education affected by the unfunded mandate *that chooses not to observe the unfunded mandate generally* is no longer required to fulfill that unfunded mandate beginning on the later of (1) January 1 immediately following the date of that written determination or (2) the 91st day after the written determination is issued. If any of those entities chooses not to observe an unfunded mandate, that entity must adopt an ordinance or resolution or make a journal entry specifying the specific parts of the statute or rule that resulted in the unfunded mandate that have become optional and must file a certified copy of the ordinance, resolution, or journal entry with the Commission. The bill specifies that an entity that requests a hearing before the Commission is required to implement an alleged unfunded mandate during the entire period after the entity has requested the hearing until (1) the Commission issues the latter type of written determination and (2) the entity adopts the latter type of ordinance, resolution, or journal entry. (Sec. 105.50(G) and (H).)

There is, however, an *exception to the general rule* that an entity need not observe an unfunded mandate by following the procedure described above: the General Assembly can enact a resolution, not later than 90 days after the Commission issues its written determination, that requires the political subdivision, court, or institution of higher education involved to continue to observe the unfunded mandate. In that case, the political subdivision, court, or institution of higher learning must comply with the unfunded mandate. (Sec. 105.50(G).)

Local Government Mandates Commission

The bill creates the Local Government Mandates Commission, consisting of 11 members, until December 31, 2004. The Governor, with the advice and consent of the Senate, must appoint to the Commission one person with a knowledge of finance to represent business, one college professor of business or public administration, and one other person. The Lieutenant Governor, the Director of the State and Local Government Commission of Ohio, the Director of Budget and Management or the Director's designee, the Auditor of State or the Auditor of State's designee, and the four members of the General Assembly who are members of the State and Local Government Commission of Ohio also must be members of

the Local Government Mandates Commission. The Governor must appoint the initial "appointed members" of the Commission within 45 days after the bill's effective date, and their terms will expire on December 31, 2000. Thereafter, the Commission's appointed members will serve four-year terms expiring on December 31. (Sec. 105.51(A); Section 2 of the bill.)

Members may be reappointed by the Governor to the Commission, and vacancies in appointed members' offices must be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed must hold office as a member of the Commission for the remainder of that term. A member continues in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (Sec. 105.51(A).)

Within 90 days after the bill's effective date, the Lieutenant Governor must call the Commission's initial meeting. At its initial meeting, the Commission must adopt rules governing its procedure and guidelines that describe the information a political subdivision, court, or institution of higher education must submit to the Commission for its consideration when an entity requests a hearing and a determination regarding an alleged unfunded mandate. At its initial meeting the Commission also must elect a chairperson, vice-chairperson, and other officers it considers necessary, to serve until December 31, 2000. Thereafter, the Commission must elect officers to serve two-year terms. (Sec. 105.51(B).)

The Commission must meet at the call of its chairperson or at the written request of six or more Commission members. Commission members will receive no compensation, but are required to be reimbursed for reasonable expenses incurred in the performance of their official duties. (Sec. 105.51(C) and (D).)

The Commission may use the staff of the State and Local Government Commission of Ohio or any other state agency for research and support services as the Local Government Mandates Commission considers necessary to assist it in carrying out its powers and duties (sec. 105.51(E)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-20-99	p. 441
Reported, H. Local Gov't & Townships	06-17-99	pp. 891-892

H0303-RH.123/JC

