

LD8244428

HOUSE BILL NO. 564

Offered January 25, 1994

A BILL to amend and reenact §§ 2.1-1.5, 9-6.23, as it is currently effective and as it will become effective, and 9-6.25:2 of the Code of Virginia; to amend the Code of Virginia by adding in Title 30 a chapter numbered 10, consisting of sections numbered 30-78 through 30-88; and to repeal § 30-19.03 of the Code of Virginia, establishing a State Payment for State Mandates Act to replace the existing procedure for determining the local fiscal impact of legislation and to require that the state fund mandated costs.

Patrons—Reynolds and Armstrong; Senator: Goode

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.5, 9-6.23, as it is currently effective and as it will become effective, and 9-6.25:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 10, consisting of sections numbered 30-78 through 30-88 as follows:

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or enabling legislation of the entities:

Authorities.

Richmond Eye and Ear Hospital Authority.
 Small Business Financing Authority.
 State Education Assistance Authority.
 Virginia Agriculture Development Authority.
 Virginia College Building Authority.
 Virginia Education Loan Authority.
 Virginia Housing Development Authority.
 Virginia Innovative Technology Authority.
 Virginia Port Authority.
 Virginia Public Building Authority.
 Virginia Public School Authority.
 Virginia Resources Authority.
 Virginia Student Assistance Authorities.

Boards.

Board of Commissioners, Virginia Agriculture Development Authority.
 Board of Commissioners, Virginia Port Authority.
 Board of Directors, Richmond Eye and Ear Hospital Authority.
 Board of Directors, Small Business Financing Authority.
 Board of Directors, Virginia Student Assistance Authorities.
 Board of Directors, Virginia Innovative Technology Authority.
 Board of Directors, Virginia Resources Authority.
 Board of Regents, Gunston Hall Plantation.
 Board of Regents, James Monroe Memorial Law Office and Library.
 Board of Trustees, Family and Children's Trust Fund.
 Board of Trustees, Frontier Culture Museum of Virginia.
 Board of Trustees, Jamestown-Yorktown Foundation.
 Board of Trustees, Miller School of Albemarle.
 Board of Trustees, Rural Virginia Development Foundation.
 Board of Trustees, The Science Museum of Virginia.
 Board of Trustees, Virginia Museum of Fine Arts.
 Board of Trustees, Virginia Museum of Natural History.
 Board of Trustees, Virginia Outdoor Foundation.
 Board of Visitors, Christopher Newport University.
 Board of Visitors, The College of William and Mary in Virginia.
 Board of Visitors, George Mason University.
 Board of Visitors, Gunston Hall Plantation.
 Board of Visitors, James Madison University.

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- 60 Board of Visitors, Longwood College.
- 61 Board of Visitors, Mary Washington College.
- 62 Board of Visitors to Mount Vernon.
- 63 Board of Visitors, Norfolk State University.
- 64 Board of Visitors, Old Dominion University.
- 65 Board of Visitors, Radford University.
- 66 Board of Visitors, University of Virginia.
- 67 Board of Visitors, Virginia Commonwealth University.
- 68 Board of Visitors, Virginia Military Institute.
- 69 Board of Visitors, Virginia Polytechnic Institute and State University.
- 70 Board of Visitors, Virginia State University.
- 71 Governing Board, Virginia College Building Authority.
- 72 Governing Board, Virginia Public School Authority.
- 73 Library Board, Virginia State Library and Archives.
- 74 *Local Government Mandates Appeals Board.*
- 75 State Board for Community Colleges, Virginia Community College System.
- 76 Commissions.
- 77 Alexandria Historical Restoration and Preservation Commission.
- 78 Chesapeake Bay Bridge and Tunnel Commission.
- 79 Hampton Roads Sanitation District Commission.
- 80 Districts.
- 81 Chesapeake Bay Bridge and Tunnel District.
- 82 Hampton Roads Sanitation District.
- 83 Educational Institutions.
- 84 Christopher Newport University.
- 85 College of William and Mary in Virginia.
- 86 Frontier Culture Museum of Virginia.
- 87 George Mason University.
- 88 James Madison University.
- 89 Jamestown-Yorktown Foundation.
- 90 Longwood College.
- 91 Mary Washington College.
- 92 Miller School of Albemarle.
- 93 Norfolk State University.
- 94 Old Dominion University.
- 95 Radford University.
- 96 The Science Museum of Virginia.
- 97 University of Virginia.
- 98 Virginia Commonwealth University.
- 99 Virginia Community College System.
- 100 Virginia Military Institute.
- 101 Virginia Museum of Fine Arts.
- 102 Virginia Polytechnic Institute and State University.
- 103 Virginia State Library and Archives.
- 104 Virginia State University.
- 105 Foundations.
- 106 Chippokes Plantation Farm Foundation.
- 107 Rural Virginia Development Foundation.
- 108 Virginia Conservation and Recreation Foundation.
- 109 Virginia Historic Preservation Foundation.
- 110 Virginia Outdoor Foundation.
- 111 Museum.
- 112 Virginia Museum of Natural History.
- 113 Plantation.
- 114 Gunston Hall Plantation.
- 115 System.
- 116 Virginia Retirement System.
- 117 § 9-6.23. (Effective until July 1, 1995) Prohibition against service by legislators on boards and
- 118 commissions within the executive branch.
- 119 Members of the General Assembly shall be ineligible to serve on boards and commissions within the
- 120 executive branch which are responsible for administering programs established by the General Assembly.
- 121 Such prohibition shall not extend to boards and commissions engaged solely in policy studies or

commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § 23-231.3; to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided in § 2.1-750; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; ~~or~~ to members of the Workforce 2000 Advocacy Council, who shall be appointed as provided in § 2.1-116.18; *or to members of the Local Government Mandates Appeals Board, who shall be appointed as provided in § 30-85.*

§ 9-6.23. (Effective July 1, 1995) Prohibition against service by legislators on boards and commissions within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards and commissions within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § 23-231.3; to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided in § 2.1-750 ~~or~~; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; *or to the members of the Local Government Mandates Appeals Board, who shall be appointed as provided in § 30-85.*

§ 9-6.25:2. Policy boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following policy boards, commissions and councils:

Apprenticeship Council

Athletic Board

Auctioneers Board

Blue Ridge Regional Education and Training Council

Board for Accountancy

Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects

Board for Barbers

Board for Contractors

Board for Cosmetology

Board for Geology

Board for Hearing Aid Specialists

Board for Opticians

Board for Professional and Occupational Regulation

Board for Professional Soil Scientists

Board for Waterworks and Wastewater Works Operators

(Effective July 1, 1994) Board for the Visually Handicapped

Board of Agriculture and Consumer Services

Board of Audiology and Speech-Language Pathology

Board of Conservation and Recreation

Board of Correctional Education

Board of Dentistry

Board of Directors, Virginia Student Assistance Authorities

Board of Examiners in the Department of Mines, Minerals and Energy

Board of Funeral Directors and Embalmers

183	Board of Health Professions
184	Board of Historic Resources
185	Board of Housing and Community Development
186	Board of Medical Assistance Services
187	Board of Medicine
188	Board of Nursing
189	Board of Nursing Home Administrators
190	Board of Optometry
191	Board of Pharmacy
192	Board of Professional Counselors
193	Board of Psychology
194	Board of Recreation Specialists
195	(Effective July 1, 1994) Board of Rehabilitative Services
196	Board of Social Services
197	Board of Social Work
198	Board of Surface Mining Review
199	Board of Veterinary Medicine
200	Board on Conservation and Development of Public Beaches
201	Chesapeake Bay Local Assistance Board
202	Child Day Care and Early Childhood Programs, Virginia Council on
203	Child Day-Care Council
204	Commission on Local Government
205	Commonwealth Transportation Board
206	Council on Human Rights
207	Council on Information Management
208	Criminal Justice Services Board
209	Department of Environmental Quality
210	Disability Services Council
211	Farmers Market Board, Virginia
212	Interdepartmental Council on Rate-setting for Children's Facilities
213	Library Board, the Virginia State Library and Archives
214	<i>Local Government Mandates Appeals Board</i>
215	Marine Resources Commission
216	Milk Commission
217	Pesticide Control Board
218	Real Estate Appraiser Board
219	Real Estate Board
220	Reciprocity Board, Department of Motor Vehicles
221	Safety and Health Codes Board
222	Seed Potato Board
223	Southside Virginia Marketing Council
224	Specialized Transportation Council
225	State Board of Corrections
226	State Board of Elections
227	State Board of Health
228	State Board of Youth and Family Services
229	State Health Department, Sewage Handling and Disposal Appeal Review Board
230	State Library Board
231	State Mental Health, Mental Retardation and Substance Abuse Services Board
232	State Water Control Board
233	Substance Abuse Certification Board
234	Treasury Board, The, Department of the Treasury
235	Virginia Aviation Board
236	Virginia Board for Asbestos Licensing
237	Virginia Fire Services Board
238	Virginia Gas and Oil Board
239	Virginia Health Planning Board
240	Virginia Health Services Cost Review Council
241	(For effective date - See Editor's note) Virginia Manufactured Housing Board
242	Virginia Parole Board
243	Virginia Public Telecommunications Board
244	Virginia Soil and Water Conservation Board

Virginia Voluntary Formulary Board
 Virginia Waste Management Board
 Virginia World Trade Council
 Waste Management Facility Operators, Board for.

CHAPTER 10.

STATE PAYMENT FOR STATE MANDATES ACT.

§ 30-78. Short title.

This chapter may be cited as the "State Payment for State Mandates Act."

§ 30-79. Definitions.

As used in this chapter:

"Board" means the Local Government Mandates Appeals Board established pursuant to § 30-85.

"County" means the governing body and the officers and employees of a county.

"Expanded program or service" means a program or service the scope or level of which would be increased, extended, or enhanced by a county's or municipality's compliance with the provisions of a state law or regulation.

"Municipality" means the governing body and the officers and employees of a city or town.

"Net additional cost" means the cost or costs incurred or anticipated to be incurred within a one-year period by a county or municipality in performing or administering a new or expanded program or service required by a state law or regulation, less any revenues received or receivable by the county or municipality on account of the program or service, including but not limited to:

1. Fees charged to the recipients of the program or service;

2. State or federal aid paid specifically or categorically in connection with the program or service;

3. Any new or increased source of revenue authorized for the county or municipality the proceeds of which are designated specifically to offset the cost of the program or service; and

4. Any offsetting savings resulting from the diminution or elimination of any other program or service directly attributable to the performance or administration of the required program or service.

"New program or service" means a program or service different in kind or purpose from those in existence at the time of the enactment of a law or adoption of a regulation requiring the performance or administration of the program by one or more counties or municipalities.

"Program or service" means a specific and identifiable activity of a county or municipality which is available to the general public or which is conducted, administered, or provided for or on behalf of the citizens of a county or municipality.

"Regulation" means any statement of general application, having the force of law and affecting the rights or conduct of any person, promulgated by a state agency in accordance with the authority conferred on it by the Constitution and statutes of the Commonwealth of Virginia, whether identified as a regulation, rule, order, standard, or by other title.

"Section" means the Local Mandates Section established pursuant to § 38-81.

§ 30-80. Requirement for funding of state mandates.

A. Any provision of a law or regulation which becomes effective after July 1, 1995, and which has the effect of requiring county or municipality to perform or administer a new or expanded program or service having an annual net additional cost in excess of \$10,000 for any county or municipality or \$500,000 for all affected counties or municipalities shall be inoperative on each affected county or municipality until a state appropriation is made and sufficient funds provided to each such county or municipality as may be necessary to pay in full any net additional cost of compliance with the requirements during all or the remaining portion of the state biennial budget period. Thereafter, the Commonwealth shall provide continued full funding for such programs or services in the appropriations act or in appropriations of bond moneys or other designated sources of funding. Full funding shall include such additional amounts calculated as required by the Local Mandates Section of the Department of Planning and Budget pursuant to § 30-84.

B. The provisions of subsection A shall not apply to any new or expanded program or service that:

1. Is required or arises from a court order or judgment;

2. Is provided at the option of the county or municipality under a law or regulation that is permissive rather than mandatory;

3. Is required by local, special, or private law; or

4. Is required or arises from an executive order of the governor exercising his emergency powers.

C. The provisions of subsection A shall not apply when a law requiring a county or municipality to perform or administer a new or expanded program or service is enacted by an affirmative vote of two-thirds of the members elected to each house.

§ 30-81. Local Mandates Section.

A. There is established within the Department of Planning and Budget a Local Mandates Section. The Local Mandates Section shall have as its primary function the review of proposed and adopted laws

306 and regulations for the purpose of completing local impact statements required by this chapter. Local
307 impact statements shall contain a fiscal analysis of the net additional costs to a county or municipality
308 that will result from any new or expanded program or services that the county or municipality would be
309 required to perform or administer as a result of the proposed or adopted law or regulation.

310 B. The Director of the Department of Planning and Budget shall, within the limits of available
311 appropriations, appoint and employ all persons, including accountants, attorneys, auditors, financial
312 analysts, management, purchasing and personnel analysts, clerical and technical assistants, and any
313 other individuals with experience in local government operations whom the Section may require to
314 perform its duties under this chapter.

315 § 30-82. Mandate review requirements applicable to bills introduced in the General Assembly.

316 A. The Director of the Division of Legislative Services, or his designee, shall review all bills
317 immediately upon introduction. If the Director determines that a bill will not result in net additional
318 costs if enacted, he shall certify that determination to the Clerk of the house in which the bill has been
319 introduced.

320 If the Director determines that a bill may result in net additional costs if enacted and a local impact
321 statement is required, he shall immediately so notify the chief patron of the bill, the presiding officer of
322 each house, the Chairman of the Committee on Appropriations of the House of Delegates, the Chairman
323 of the Committee on Finance of the Senate, the Chairman of the standing committee to which the bill
324 has been referred, and the Local Mandates Section of the Department of Planning and Budget.

325 B. The Local Mandates Section, as soon as possible but not later than fourteen days after receiving
326 notice, shall complete a local impact statement containing the most accurate estimate possible of the
327 annual net additional costs, if any, that will be required of a county or municipality to perform or
328 administer a new or expanded program or service. Local impact statements shall be delivered forthwith
329 to those officials who received notice pursuant to subsection A.

330 C. A bill for which a local impact statement is required shall not proceed from second to third
331 reading in the house of origin until the completed local impact statement is received by the presiding
332 officer of that house. Any such bill shall not be subject to any procedural resolution requiring the house
333 of origin to complete action on bills before it by a certain date. The presiding officer shall cause notice
334 of the receipt of each local impact statement to be entered upon the Journal of that House.

335 § 30-83. Mandate review requirements applicable to administrative regulations.

336 A. Whenever any administrative regulation is proposed or adopted, the state agency promulgating the
337 regulation shall forward a copy of the regulation to the Local Mandates Section with a notice to
338 complete a local impact statement within thirty days. Such notice shall be made at the same time the
339 regulation is published in the Virginia Register of Regulations to commence the final adoption period
340 pursuant to subsection D of § 9-6.14:9.1.

341 B. The Section shall complete as soon as possible, but within thirty days of notification, a local
342 impact statement containing the most accurate estimate possible of the net additional costs, of any, that
343 will be required of a county or municipality to perform or administer a new or expanded program or
344 service required by the subject regulation. Local impact statements completed pursuant to this
345 subsection shall be delivered forthwith to the Governor, the presiding officer of each house of the
346 General Assembly, the Chairman of the Committee on Appropriations of the House of Delegates, the
347 Chairman of the Committee on Finance of the Senate, and the chairman of the standing committee of
348 each house of the General Assembly to which matters relating to the content of the regulation most
349 properly are referable.

350 § 30-84. Annual review by Local Mandates Section.

351 The Section shall conduct an annual review of all laws and regulations for which the Section has
352 previously completed a local impact statement. The local impact statement shall be updated to reflect
353 any change in the dollar estimate of the net additional costs from that provided in the original local
354 impact statement, and the updated local impact statement shall be delivered to the recipients of the
355 original local impact statement.

356 § 30-85. Local Government Mandates Appeals Board.

357 A. There is established the Local Government Mandates Appeals Board. The Board shall consist of
358 eleven voting members as follows: two members of the House of Delegates to be appointed by the
359 Speaker of the House; two members of the Senate to be appointed by the Senate Committee on
360 Privileges and Elections; two elected county officials to be appointed by the Governor; two elected
361 municipal officials to be appointed by the Governor; two members at large to be appointed by the
362 Governor; and the State Treasurer, or his designee. Within each category of appointed members, the
363 appointees shall be of different political parties. All elected officials shall serve terms coinciding with
364 the terms to which they have been elected to their legislative, county, or municipal office. The at-large
365 members shall serve terms concurrent with that of the Governor who appointed them. Vacancies in the
366 membership of the Board shall be filled in the same manner as the original appointment.

367 B. The Board shall organize as soon as practicable following the appointment of its members and

shall elect from its members a chairman and vice chairman and shall appoint a secretary who need not be a member of the Board. The Board shall employ such assistants as it may deem necessary to carry out its duties and shall determine their qualifications and compensation. All expenditures deemed necessary to implement and effectuate the duties of the Board shall be made within the limits of appropriations according to law.

C. Members of the Board shall receive compensation and expenses pursuant to § 2.1-20.3 of the Code of Virginia.

§ 30-86. Powers; quorum.

The powers of the Board are vested in its members. A majority of the members shall constitute a quorum. Actions may be taken and orders adopted by the Board by a vote of a majority of its membership unless the rules of the Board shall require a larger number. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all of the duties of the Board. The Board shall adopt such rules as may be required to carry out its functions and responsibilities under this chapter.

§ 30-87. Subpoena power.

The Board may issue subpoenas to compel the attendance of witnesses and the production of relevant documents, books, or other records, and may administer oaths in taking testimony in any matter pertaining to its duties. The Board may apply to the Circuit Court of the City of Richmond to compel obedience to its subpoenas.

§ 30-88. Board duties.

It shall be the duty of the Board to hear and rule upon appeals brought by one or more counties or municipalities alleging that a state law or regulation having the effect of requiring the performance or administration of a new or expanded program or service:

1. Has been enacted or adopted, as the case may be, in a manner contrary to the provisions of this chapter; or

2. Has been lawfully enacted or adopted but has been based on a demonstrably inaccurate cost estimate contained in a local impact statement prepared by the Local Mandates Section pursuant either to § 30-83 or § 30-84, resulting in the failure by the Commonwealth to provide sufficient funding to pay the net additional costs of compliance with the law or regulation.

A party appearing before the Board or otherwise joined in an action before the Board shall submit such evidence and documentation as the Board may require in order to make a determination under this section.

The Board shall transmit its findings and rulings to the Governor and to the presiding officer of each house of the General Assembly, the Chairman of the Committee on Appropriations of the House of Delegates, and the Chairman of the Committee on Finance of the Senate. If the Board rules in favor of the appellant county or municipality, it shall also transmit its determination of the appropriation of moneys which would be required to pay for any net additional cost it has determined to be remaining unfunded. Pending the appropriation of such moneys, the Board shall declare the contested law or regulation inoperative upon all counties or municipalities determined by the Board to be similarly affected by the application of the law or regulation.

2. That § 30-19.03 of the Code of Virginia is repealed.