

**SUBSTITUTE FOR
SENATE BILL NO. 495**

A bill to implement section 29 of article IX of the state constitution of 1963; to provide a process for state compliance with its obligation to finance the costs incurred by local units of government to provide, administer, and implement certain activities or services required by this state; to prescribe the powers and duties of certain state agencies and public officers; to prescribe certain powers and duties of the legislative branch; to provide for the administration of this act; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "Paul Harvey transparency act".

3 (2) For purposes of this act, the words and phrases defined in
4 sections 2 to 4 shall have the meanings ascribed to them in those

1 sections.

2 Sec. 2. (1) "Activity" means a specific and identifiable
3 administrative action of a local unit of government.

4 (2) "Consultation" means to seek information from a
5 representative sample of local units of government affected by a
6 state requirement in a manner which can reasonably be expected to
7 result in a fair estimate of the statewide cost of compliance with
8 the state requirement.

9 (3) "Court requirement" means a new activity or service or an
10 increase in the level of activity or service beyond that required
11 by existing law which is required of a local unit of government in
12 order to comply with a final state or federal court order arising
13 from the interpretation of the constitution of the United States,
14 the state constitution of 1963, or a federal statute, rule, or
15 regulation. Court requirement includes a state law whose enactment
16 is required by a final state or federal court order.

17 (4) "De minimis cost" means a net cost to a local unit of
18 government resulting from a state requirement that does not exceed
19 \$300.00 per claim.

20 (5) "Department" means the department of technology,
21 management, and budget.

22 Sec. 3. (1) "Existing law" means a public or local act enacted
23 prior to December 23, 1978, a rule promulgated prior to December
24 23, 1978, or a court order concerning a public or local act or rule
25 described in this subsection. A rule initially promulgated after
26 December 22, 1978 implementing for the first time an act or
27 amendatory act in effect prior to December 23, 1978 shall also be

1 considered as existing law except to the extent that the public or
2 local act or administrative rule being implemented for the first
3 time imposes upon a local unit of government a new activity or
4 service or an increase in the level of any activity or service
5 beyond that required by existing law.

6 (2) "Federal requirement" means a federal law, rule,
7 regulation, executive order, guideline, standard, or other federal
8 action which has the force and effect of law and which requires the
9 state to take action affecting local units of government.

10 (3) "Implied federal requirement" means a federal law, rule,
11 regulation, executive order, guideline, standard, or other federal
12 action which has the force and effect of law and which does not
13 directly require the state to take action affecting local units of
14 government, but will, according to federal law, result in a loss of
15 federal funds or federal tax credits if state action is not taken
16 to comply with the federal action.

17 (4) "Legislature" means the house of representatives and the
18 senate of this state.

19 (5) "Local government mandate panel" means the local
20 government mandate panel created in chapter 7c of the legislative
21 council act, 1986 PA 268, MCL 4.1101 to 4.1901.

22 (6) "Local unit of government" means a political subdivision
23 of this state, including local school districts, community college
24 districts, intermediate school districts, cities, villages,
25 townships, counties, and authorities, if the political subdivision
26 has as its primary purpose the providing of local governmental
27 activities and services for residents in a geographically limited

1 area of this state and has the power to act primarily on behalf of
2 that area.

3 (7) "Necessary cost" means the cost of an activity or service
4 provided by a local unit of government. The necessary cost is the
5 actual cost to this state if this state were to provide the
6 activity or service mandated as a state requirement, unless
7 otherwise determined by the legislature when making a state
8 requirement. Necessary cost does not include the cost of a state
9 requirement if it does not exceed a de minimis cost. Necessary cost
10 does not include the cost of a state requirement if the state
11 requirement will result in an offsetting savings to an extent that,
12 if the duties of a local unit of government that existed before the
13 effective date of the state requirement are considered, the
14 requirement will not exceed the cost of the preexisting required
15 duties.

16 (8) "New activity or service or increase in the level of an
17 existing activity or service" does not include a state law, or
18 administrative rule promulgated under existing law, which provides
19 only clarifying nonsubstantive changes in an earlier, existing law
20 or state law; or the recodification of an existing law or state
21 law, or administrative rules promulgated under a recodification,
22 which does not require a new activity or service or does not
23 require an increase in the level of an activity or service above
24 the level required before the existing law or state law was
25 recodified.

26 Sec. 4. (1) "Service" means a specific and identifiable
27 program of a local unit of government that is available to the

1 general public or is provided for the citizens of the local unit of
2 government.

3 (2) "State agency" means a state department, bureau, division,
4 section, board, commission, trustee, authority, or officer that is
5 created by the state constitution of 1963, by statute, or by state
6 agency action, and that has the authority to promulgate rules
7 pursuant to the administrative procedures act of 1969, 1969 PA 306,
8 MCL 24.201 to 24.328. State agency does not include an agency in
9 the judicial branch of state government, an agency having direct
10 control over an institution of higher education, or the state civil
11 service commission.

12 (3) "State financed proportion of the necessary cost of an
13 existing activity or service required of local units of government
14 by existing law" means the percentage of necessary costs
15 specifically provided for an activity or service required of local
16 units of government by existing law and categorically funded by the
17 state on December 23, 1978.

18 (4) "State law" means a state statute or state agency rule or
19 regulation.

20 (5) "State requirement" means a state law that requires a new
21 activity or service or an increased level of activity or service
22 beyond that required of a local unit of government by an existing
23 law. State requirement does not include any of the following:

24 (a) A requirement imposed on a local unit of government by a
25 new amendment to the state constitution of 1963.

26 (b) A court requirement.

27 (c) A federal requirement.

1 (d) An implied federal requirement.

2 (e) A requirement of a state law which applies to a larger
3 class of persons or corporations and does not apply principally or
4 exclusively to a local unit or units of government.

5 (f) A requirement of a state law that does not require a local
6 unit of government to perform an activity or service but allows a
7 local unit of government to do so as an option, and by opting to
8 perform such an activity or service, the local unit of government
9 shall comply with certain minimum standards, requirements, or
10 guidelines.

11 (g) A requirement of a state law that changes the level of
12 requirements, standards, or guidelines of an activity or service
13 that is not required of a local unit of government by existing law
14 or state law, but that is provided at the option of the local unit
15 of government provided that state requirement shall include any
16 standards, requirements, or guidelines that require increased
17 necessary costs for activities and services directly related to
18 police, fire, or emergency medical transport services.

19 (h) A requirement of a state law enacted pursuant to section
20 18 of article VI of the state constitution of 1963.

21 Sec. 5. (1) The legislature shall appropriate and disburse
22 each year an amount sufficient to pay each local unit of government
23 the necessary cost of each state requirement pursuant to section 29
24 of article IX of the state constitution of 1963.

25 (2) The legislature shall appropriate and disburse each year
26 an amount sufficient to pay each local unit of government the state
27 financed proportion of the necessary cost of an existing activity

1 or service required of local units of government by existing law
2 and to appropriate and disburse to local units of government an
3 amount sufficient to pay for the costs of new activities or
4 services or increases in the level of activities and services
5 required by state law after December 23, 1978.

6 (3) Notwithstanding any provision of law to the contrary, no
7 local unit of government shall be obligated to provide a new
8 activity or service or increased level of activity or service
9 required by state law after the effective date of this act unless
10 and until the local government mandate panel has prepared and
11 published a fiscal note in accordance with section 6, and the state
12 has appropriated and provided for disbursement of the amounts
13 sufficient based on the fiscal note analysis to fund the necessary
14 cost to the local unit of government of providing the new activity
15 or service or increase in the level of a required activity or
16 service or a court has determined that the legislation does not
17 impose a new activity or service or an increase in the level of an
18 existing activity or service. In the event that legislation is
19 enacted after the effective date of this act imposing a requirement
20 on local units of government without following the fiscal note
21 process described in section 6, local units of government are not
22 required to comply until that time that the fiscal note process
23 described in section 6 is followed or a court has determined that
24 the legislation does not impose a new activity or service or an
25 increase in the level of an existing activity or service.

26 Sec. 6. (1) A fiscal note process is hereby created. The
27 fiscal note process shall consist of all of the following:

1 (a) Before legislation affecting a local unit of government is
2 scheduled for third reading in the legislative chamber in which it
3 was introduced, the local government mandate panel shall conduct a
4 review to determine whether any new or increased level of
5 activities or services is likely to be required of local units of
6 government by that legislation if it becomes effective.

7 (b) If it is determined that a new activity or service or an
8 increased level of activity or service is likely to occur, the
9 local government mandate panel shall direct the fiscal agencies to
10 develop a written estimate of the increased necessary costs, if
11 any, that will result to local units of government if that
12 legislation becomes effective. In developing the written estimate
13 of the increased necessary costs, the fiscal agencies shall work in
14 consultation with local units of government and shall report their
15 findings to the local government mandate panel, which will then
16 decide what to present to the legislature before third reading
17 occurs on the bill. If the legislation is modified by either house
18 of the legislature, the fiscal agencies shall, in consultation with
19 local units of government, modify their written estimate of
20 increased necessary costs and report it to the local government
21 mandate panel. The local government mandate panel shall review the
22 modified written estimate of increased necessary costs and decide
23 what to present to the legislature.

24 (c) The chairperson of the local government mandate panel
25 shall promptly inform the legislature in writing of its
26 determination in subdivision (b) before the legislation is
27 scheduled for third reading.

1 (d) The disbursement process shall serve to disburse funds to
2 local units of government on a current basis or as costs to provide
3 the required activity or service are being incurred by the local
4 units of government.

5 (e) After receiving notice from the office of regulatory
6 reinvention that a rule may impose a new activity or service or an
7 increased level of activity or service is likely to occur, the
8 local government mandate panel shall direct the fiscal agencies to
9 develop a written estimate of the increased necessary costs of the
10 proposed rule, if any, that will result to local units of
11 government if that proposed rule becomes effective. In developing
12 the written estimate of the increased necessary costs of the
13 proposed rule, the fiscal agencies shall work in consultation with
14 local units of government and shall report their findings to the
15 local government mandate panel, which will then decide what to
16 present to the office of regulatory reinvention.

17 (2) Not later than 1 year after the date of enactment of this
18 act, the department of treasury shall develop a standard accounting
19 system in a searchable format for use by the local government
20 mandate panel to access the fiscal note process.

21 Sec. 7. The local government mandate panel shall develop a
22 process that will accomplish all of the following:

23 (a) A review of statutes and administrative rules and
24 regulations that impose requirements on local units of government.

25 (b) Make recommendations to the legislature whether the
26 requirements described in subdivision (a) continue to be necessary
27 in terms of the cost/benefit to the public interest, and if not,

1 whether those requirements should be repealed, rescinded, or
2 modified.

3 (c) If it is determined by the local government mandate panel
4 that the requirements described in subdivisions (a) and (b) are
5 recommended to be continued, report as to whether the requirements
6 can be provided on a more cost-effective basis than presently
7 provided and to recommend legislation to achieve cost savings.

8 Sec. 8. The state shall not impose a penalty on, withhold
9 funds, or impose any other form of monetary or other sanction on
10 any local unit of government for failing to comply with a state
11 requirement under any of the following circumstances:

12 (a) The state has failed to follow the fiscal note process
13 provided in section 6 for that new activity or service or has
14 failed to make timely disbursement to fund the costs identified in
15 the fiscal note process provided in section 6 for that new activity
16 or service or increase in the level of an existing activity or
17 service.

18 (b) The state has prepared a fiscal note in connection with
19 the enactment of the state law and 1 of the following applies for
20 that new activity or service or increase in the level of an
21 existing activity or service:

22 (i) A taxpayer or local unit of government has filed a suit
23 through the filing of a complaint in the court of appeals pursuant
24 to section 308a of the revised judicature act of 1961, 1961 PA 236,
25 MCL 600.308a, asserting that the state law imposes a mandate under
26 section 29 of article IX of the state constitution of 1963 and that
27 the cost of compliance has not been fully funded by the state.

1 (ii) The court of appeals has either failed to issue an order
2 within 6 months after the complaint was filed ruling whether the
3 state law imposes a state requirement and whether the state has
4 underfunded the cost of compliance or, alternatively, ruled in
5 favor of the complainant.

6 Sec. 9. If requested by the local government mandate panel,
7 the department shall provide the local government mandate panel
8 with baseline data on the net cost of compliance if the state
9 provided the same activity or service and the necessary cost of
10 compliance with the state requirement by each unit of local
11 government, to the extent the department has that data regarding a
12 particular new activity or service or increase in the level of an
13 existing activity or service.

14 Sec. 10. Funds received by a local unit of government under
15 this act shall be separately accounted for by the local unit of
16 government to reflect the specific state requirement for which the
17 funds are appropriated. To facilitate monitoring and compliance
18 with this act, not later than October 1, 2015, the department shall
19 establish standard accounting systems which will allow local units
20 of government and the state to calculate and track all of the
21 following:

22 (a) The costs incurred by local units in complying with state
23 requirements and existing law.

24 (b) The state financed proportion of the necessary cost of an
25 existing activity or service required of local units of government
26 by existing law.

27 Sec. 11. (1) The local government mandate panel, in

1 consultation with local units of government, shall adopt a process
2 for monitoring the state's compliance with section 29 of article IX
3 of the state constitution of 1963, including appropriations and
4 disbursements to fund the cost of complying with state requirements
5 and the state's compliance with its obligation to fund the state
6 financed proportion of the necessary cost of an existing activity
7 or service required of local units of government by existing law.

8 (2) The local government mandate panel shall prepare and
9 submit recommendations to the legislature that address court
10 decisions that determine the state has failed to fully fund the
11 cost of complying with state requirements and the state's
12 compliance with its obligation to fund the state financed
13 proportion of the necessary cost of an existing activity or service
14 required of local units of government by existing law.

15 Sec. 12. (1) This act does not prohibit the legislature from
16 enacting state laws to provide for other forms of dedicated state
17 aid, cost-sharing agreements, or specific methods of making
18 disbursements to a local unit of government for a cost incurred
19 pursuant to state laws enacted to which this act applies.

20 (2) This act shall not be applied retroactively.

21 Sec. 13. 1979 PA 101, MCL 21.231 to 21.244, is repealed.