Legislative Analysis

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LOCAL GOVERNMENT MANDATES

House Bill 5797 (Proposed H-1 Substitute)
Sponsor: Rep. Eileen Kowall

House Bill 5801 (Proposed H-1 Substitute)
Sponsor: Rep. Jeff Mayes
Committee: Judiciary

Complete to 5-4-10

A SUMMARY OF HOUSE BILL 5797 (H-1) AND HOUSE BILL 5801 (H-1)

Generally speaking, the bills would provide a new set of provisions for the state government to follow in order to comply with its obligations under Section 29, Article IX of the State Constitution, which is a component of what is sometimes referred to as the Headlee Amendment. Section 29 states the following:

The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of local government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18 [judges' salaries].

House Bill 5797 would create a new act that, among other things, establishes a fiscal note process to be conducted by a Local Government Mandate Panel, in order to determine if new legislation would require of local units any new or increased level of activities and services and, if so, the costs that would be imposed on local units as a result. Local units would not have to provide a new activity or service or an increased level of activity or service unless the state had prepared and published a fiscal note and provided for the funding of necessary costs to the local unit.

Further, the bill requires the Mandate Panel, in consultation with local units of government, to adopt a process for monitoring the state's compliance with Section 29, Article IX, and to develop a process to review existing statutes and administrative rules and regulations imposing requirements on local units of government, as well as the state's compliance with funding obligatons.

The bill would also repeal the existing provisions in statute, enacted in 1979, aimed at implementing Section 29, although many definitions and parts of some other provisions are preserved (sometimes with revisions) and transferred into the new act.

House Bill 5801 would amend the Legislative Council Act to create the Local Government Mandate Panel to be chaired, in alternate years, by the directors of the House and Senate Fiscal Agencies. The bill is tie-barred to House Bill 5797.

A more detailed section-by-section summary of the two bills follows.

House Bill 5797

Section 5 (Payment to Local Units of State Required Costs)

The Legislature must appropriate and disburse each year an amount sufficient to pay each local unit of government the necessary cost of each state requirement under Section 29 of Article IX of the State Constitution.

The Legislature must appropriate and disburse each year an amount sufficient to pay each local unit the state-financed portion of the necessary cost of an existing activity or service required of local units by existing law and to appropriate and disburse to local units an amount sufficient to pay for the costs of new activities and services or increases in the level of activities and services required by the Legislature or any state agency after December 23, 1978 (subsequent to the adoption of Section 29).

No local unit would be obligated to provide a new activity or service or increased level of activity or service required by state law unless and until the state had prepared and published a fiscal note and appropriated and provided for disbursement of the amounts sufficient to fund the necessary cost to the local unit of providing the new activity or increase in the level of a required activity or service.

Section 6 (Fiscal Note Process for New Legislation)

The bill would create a new fiscal note process.

Before enrollment of legislation affecting a local unit, the Local Government Mandate Panel must conduct a review to determine whether any new or increased level of activities or services is likely to be required of local units by that legislation. If so, the Mandate Panel would develop a written estimate of the increased necessary costs, if any, that will result to local units of government if the legislation becomes effective.

The chair of the Mandate Panel would promptly inform the Legislature in writing of the panel's determination before enrollment of the legislation. Prior to enrollment of any legislation imposing a requirement on local units to provide any new activity or service or an increase in the level of any activity or service, an appropriation bill must be introduced in one or both houses of the Legislature to provide sufficient funding and to create a process for disbursement of such funding to affected local units. The disbursement process would serve to disburse funds on a current basis or as costs are being incurred.

If legislation is enacted imposing a requirement on local units without following the required process, local units would not be required to comply until the fiscal note process is followed.

Section 7 (Review by Panel of Existing Requirements on Local Government)

The Local Government Mandate Panel would have to develop a process that will accomplish all of the following:

-- A review of statutes and administrative rules and regulations that impose requirements on local units of government.

-- Make recommendations to the Legislature whether the state requirements continue to be necessary in terms of the cost and benefit to the public interest, and if not, whether those requirements should be repealed, rescinded, or modified.

-- If the Mandate Panel determines that the requirements should be continued, then the panel must report on whether the requirements can be provided on a more cost effective basis and recommend legislation to achieve cost savings.

Section 8 (No Sanctions on Local Units)

The state could not impose a penalty on, withhold funds from, or impose any other form of monetary or other sanction on any local unit that fails to comply with a state requirement under the following circumstances:

-- The state has failed to follow the fiscal note process or has failed to make timely disbursement to fund the costs identified in the fiscal note process.

-- The state has prepared a fiscal note and either (1) a taxpayer filed suit in the Court of Appeals asserting that the law imposes a mandate under Section 29 of Article IX of the State Constitution and that the cost of compliance has not been fully funded; or (2) the Court of Appeals has either failed to issue an order within six months after the complaint was filed or has ruled in favor of the complainant.

Section 9 (Baseline Data Provided by DTMB)

The Department of Technology, Management and Budget would provide the Mandate Panel at its request with baseline data on the net cost of compliance if the state provided the same activity or service and the necessary cost of compliance with the state requirement by each local unit of government, to the extent the DTMB has that data regarding a particular new activity or service or increase in the level of an existing activity or service.

Section 10 (Local Accounting of State Funds)

Funds received by a local unit of government under the new act must be separately accounted for to reflect the specific state requirement for which the funds are appropriated. To facilitate monitoring and compliance with the act, the DTMB must, by October 1, 2010, establish standard accounting systems that allow local units and the state to calculate and track (1) the costs incurred by local units in complying with state requirements and existing law; and (2) the state-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

Section 11 (Process for Monitoring Compliance with Constitution)

The Local Government Mandate Panel, in consultation with local units of government, must adopt a process for monitoring the state's compliance with Section 29 of Article IX, including appropriations and disbursements to fund the cost of complying with state requirements and the state's compliance with its obligation to fund the state-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

The Mandate Panel would have to prepare and submit recommendations to the Legislature that address court decisions that determine that the state government has failed to fully fund the cost to local units of complying with state requirements and the state's compliance with its obligation to fund the state-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

Section 12 (No Reduction in State-Financed Proportion of Costs)

A state law could not be enrolled that causes a reduction in the state-financed proportion of the necessary costs of an existing activity or service required of local units by existing law, unless the existing law is modified accordingly.

Section 13 (Other Forms of State Funding Permissable)

The new act would not prohibit the legislature from enacting state laws to provide for other forms of dedicated state aid, cost-sharing agreements, or specific methods of making disbursements to local units for a cost incurred under state laws to which this new act applies.

Section 14 (Repealer)

This section repeals the existing provisions implementing the Headlee Amendment at MCL 21.231 to 21.244 (Public Act 101 of 197, entitled, State Disbursements to Local Units of Government).

House Bill 5801

The bill would amend the Legislative Council Act to create the Local Government Mandate Panel. The Mandate Panel's role is to facilitate and ensure compliance with Section 29, Article IX of the State Constitution.

The Mandate Panel would consist of: the Directors of the House and Senate Fiscal Agencies (or their designees); the Director of the Department of Technology, Management and Budget, or a designee, as a nonvoting member; and five members appointed jointly by the Speaker of the House of Representatives and Senate Majority Leader to represent the interests of counties, cities and villages, townships, school districts and intermediate school districts, and community colleges.

Terms are four years, although the first members would have staggered terms. The Speaker and Senate Majority Leader, acting jointly, could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The first chair of the committee would be the Director of the House Fiscal Agency; after that the chair would alternate between the two fiscal agency directors. The first meeting would be called by the Speaker of the House. After the first meeting, the panel would meet at least quarterly and more frequently at the call of the chair or at the request of four or more members. (If the House Fiscal Agency and the Senate Fiscal Agency are combined, the director of the combined agency would serve as chair of the Mandate Panel.)

A majority of the members would constitute a quorum; a majority of members present and serving would be required for official action. The Panel would be subject to the Open Meetings Act and the Freedom of Information Act. The Panel would develop its own rules of operation, policies, and procedures, and could authorize and operate subcommittees.

After introduction of a bill that may impose a new activity or service or increase the level of an existing activity or service, as determined by the chair of the Mandate Panel, the chair would initiate the fiscal note process.

FISCAL IMPACT:

<u>HB 5797</u>
There would be an indeterminate, but potentially sizeable, amount of increased costs to the state for the following requirements of the bill:

The bill would require the Legislature to appropriate sufficient revenue to cover the state financed proportion of costs of existing activities and services, increases in levels of activities and services, and new activities and services required of local units of government. Additional costs to the state would occur to the extent that these costs are not currently fully-funded.

The bill would require a fiscal note process to be developed and followed by the Local Government Mandate Panel before enrollment of any legislation affecting a local unit of government, would require the Mandate Panel to review statutes and administrative rules and regulations imposed on local units of government, and would require the Mandate Panel to monitor the state's compliance with its obligation to fund the state-financed proportion of costs required of local units of government. As a result of the increased workload, additional staff would be necessary, which would result in increased costs to the state.

The bill would require the Department of Technology, Management and Budget to provide requested data to the local government mandate panel and to establish standard accounting systems which would allow local units of government and the state to calculate and track costs incurred by local units of government in complying with state requirements. There would be an indeterminate amount of costs incurred by the state for development of the standard accounting system. Increased workloads and additional staff for the Department would be necessary.

<u>HB 5801</u>
There would be an indeterminate increase in costs to the state for reimbursement to members of the Local Government Mandate Panel for their actual and necessary expenses incurred in the performance of their official duties.

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