

Legislative Analysis



APA: LOCAL MANDATES

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House Bill 5799 (Proposed H-1 Substitute)

Sponsor: Rep. Gary McDowell

Committee: Judiciary

Complete to 5-4-10

A SUMMARY OF HOUSE BILL 5799 (PROPOSED H-1)

The bill would amend the Administrative Procedures Act to address the issue of state compliance by state agencies with Section 29 of Article IX of the State Constitution when issuing rules, regulations, bulletins, and directives under the APA.

The bill specifies that:

- A rule, regulation, bulletin, or directive by any state agency could not require of a local unit of government any new activity or service or an increase in the level of any activity or service beyond that required by existing law unless an appropriation had been made by the Legislature and a disbursement system has been established to pay the affected local units of government for any necessary increased costs.
- An enforcement process or proceeding could not be initiated against a local unit and no sanction or penalty could be imposed by a state agency on a local unit for noncompliance with any requirements of an agency rule, regulation, bulletin, or directive unless an appropriation had been made by the Legislature and a disbursement system has been established to pay the affected local units of government for any necessary increased costs of such a requirement.

In evaluating a proposed rule, the State Office of Administrative Hearings and Rules would have to issue a report describing whether provisions of the proposed rule are in compliance with Section 29 of Article IX of the State Constitution and implementing legislation. The report must also specifically certify whether the proposed rule requires local units to provide either new activities or services or an increase in the level of any activity or service beyond that required by existing law. If it does, then the report must describe whether a fiscal note has been prepared about the new activity or service or increase in the level of any activity or service, and whether an appropriation compensating local units has been enacted.

If the certification indicates noncompliance with Section 29, then the SOAHR could not transmit the proposed rule to the Joint Committee on Administrative Rules.

JCAR would have to reject the notice of transmittal, refuse the receipt of a proposed rule, and return a proposed rule to SOAHR if the proposed rule is not certified to be in compliance with Section 29 and implementing legislation. The rejection of the notice of

transmittal stays the ability of SOAHR to proceed with the processing of the rule until compliance is demonstrated.

[Article 29, Section IX of the State Constitution says:

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].

This bill is one of a series of such bills; see also in particular House Bill 5797.

MCL 24.240 et al.

FISCAL IMPACT:

Additional staff time would be required to meet reporting requirements of the bill.

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