

HOUSE BILL No. 5797

February 9, 2010, Introduced by Reps. Kowall, Rogers, Moss, Green, Marleau, Meekhof, Lund, Opsommer, Walsh, Sheltroun and Haines and referred to the Committee on Judiciary.

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 provide for the administration of this act; and to repeal act and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. For purposes of this act, the words and phrases
2 defined in sections 2 to 4 shall have the meanings ascribed to them
3 in those sections.

4 Sec. 2. (1) "Activity" means a specific and identifiable

1 administrative action of a local unit of government.

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

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

16 (4) "Department" means the department of management and
17 budget.

18 (5) "Director" means the director of the department of
19 management and budget.

20 (6) "Due process requirement" means a statute or rule which
21 involves the administration of justice, notification and conduct of
22 public hearings, procedures for administrative and judicial review
23 of action taken by a local unit of government or the protection of
24 the public from malfeasance, misfeasance, or nonfeasance by an
25 official of a local unit of government, and which involves the
26 provision of due process as it is defined by state and federal
27 courts when interpreting the federal constitution or the state

1 constitution of 1963.

2 Sec. 3. (1) "Existing law" means a public or local act enacted
3 prior to December 23, 1978, a rule promulgated prior to December
4 23, 1978, or a court order concerning a public or local act or rule
5 described in this subsection. A rule initially promulgated after
6 December 22, 1978 implementing for the first time an act or
7 amendatory act in effect prior to December 23, 1978 shall also be
8 considered as existing law.

9 (2) "Legislature" means the house of representatives and the
10 senate of this state.

11 (3) "Local government mandate panel" means 1 of the following:

12 (a) In the case of legislation that imposes a state
13 requirement, representatives of the house and senate fiscal
14 agencies, in consultation with the affected local units of
15 government.

16 (b) In the case of a state agency rule or regulation which
17 imposes a state requirement, the chief administrative officer of
18 the state agency that imposes a state requirement, in consultation
19 with the affected local units of government and the joint committee
20 on administrative rules.

21 (4) "Local unit of government" means a political subdivision
22 of this state, including local school districts, community college
23 districts, intermediate school districts, cities, villages,
24 townships, counties, and authorities, if the political subdivision
25 has as its primary purpose the providing of local governmental
26 services for residents in a geographically limited area of this
27 state and has the power to act primarily on behalf of that area.

1 (5) "Necessary cost" means the net cost of an activity or
2 service provided by a local unit of government. The net cost shall
3 be the actual cost to the local unit to provide the activity or
4 service mandated as a state requirement. Necessary cost does not
5 include the cost of a state requirement if the state requirement
6 will result in an offsetting savings to an extent that, if the
7 duties of a local unit that existed before the effective date of
8 the state requirement are considered, the requirement will not
9 exceed the cost of the newly required duties.

10 (6) "New activity or service or increase in the level of an
11 existing activity or service" does not include a state law, or
12 administrative rule promulgated under existing law, which provides
13 only clarifying nonsubstantive changes in an earlier, existing law
14 or state law; or the recodification of an existing law or state
15 law, or administrative rules promulgated under a recodification,
16 which does not require a new activity or service or does not
17 require an increase in the level of an activity or service above
18 the level required before the existing law or state law was
19 recodified.

20 Sec. 4. (1) "Service" means a specific and identifiable
21 program of a local unit of government that is available to the
22 general public or is provided for the citizens of the local unit of
23 government.

24 (2) "State agency" means a state department, bureau, division,
25 section, board, commission, trustee, authority, or officer that is
26 created by the state constitution of 1963, by statute, or by state
27 agency action, and that has the authority to promulgate rules

1 pursuant to the administrative procedures act of 1969, 1969 PA 306,
2 MCL 24.201 to 24.328. State agency does not include an agency in
3 the judicial branch of state government, an agency having direct
4 control over an institution of higher education, or the state civil
5 service commission.

6 (3) "State financed proportion of the necessary cost of an
7 existing activity or service required of local units of government
8 by existing law" means the percentage of necessary costs
9 specifically provided for an activity or service required of local
10 units of government by existing law and categorically funded by the
11 state on December 23, 1978.

12 (4) "State law" means a state statute or state agency rule or
13 regulation.

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

18 (a) A requirement imposed on a local unit of government by a
19 state statute or an amendment to the state constitution of 1963.

20 (b) A requirement imposed on a local unit of government by an
21 amendment to the state constitution of 1963, enacted or adopted
22 pursuant to a proposal placed on the ballot by the legislature, and
23 approved by the voters.

24 (c) A court requirement.

25 (d) A requirement of a state law that does not require a local
26 unit of government to perform an activity or service but allows a
27 local unit of government to do so as an option, and by opting to

1 perform such an activity or service, the local unit of government
2 shall comply with certain minimum standards, requirements, or
3 guidelines.

4 (e) A requirement of a state law that changes the level of
5 requirements, standards, or guidelines of an activity or service
6 that is not required of a local unit of government by existing law
7 or state law, but that is provided at the option of the local unit
8 of government provided that state requirement shall include any
9 standards, requirements, or guidelines that require increased
10 necessary costs for activities and services directly related to
11 police, fire, or emergency medical transport services.

12 (f) A requirement of a state law enacted pursuant to section
13 18 of article VI of the state constitution of 1963.

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

18 (2) The legislature shall appropriate and disburse each year
19 an amount sufficient to pay each local unit of government the state
20 financed proportion of the necessary cost of an existing activity
21 or service required of local units of government by existing law
22 and to appropriate and disburse to local units of government an
23 amount sufficient to pay for the costs of new activities and
24 services or increases in the level of activities and services
25 required by the legislature or any state agency after December 23,
26 1978.

27 (3) Notwithstanding any provision of law to the contrary, no

1 local unit of government shall be obligated to provide a new
2 activity or service or increased level of activity or service
3 required by state law unless and until the state has prepared and
4 published a fiscal note in accordance with section 6, and
5 appropriated and provided for disbursement of the amounts
6 sufficient to fund the necessary cost to the local unit of
7 government of providing the new activity or service or increase in
8 the level of a required activity or service.

9 Sec. 6. A fiscal note process is hereby created. The fiscal
10 note process shall consist of all the following:

11 (a) Before enactment of any legislation affecting a local unit
12 of government, the local government mandate panel established
13 pursuant to section 7 shall conduct a review to determine whether
14 any new or increased level of activities or services is likely to
15 be required of local units of government by that legislation if it
16 becomes effective.

17 (b) If it is determined that a new activity or service or an
18 increased level of activity or service is likely to occur, the
19 responsible fiscal agency, working in active consultation with
20 representatives of local units of government, shall develop a
21 written estimate of the necessary increased costs, if any, that
22 will result to local units of government if that legislation
23 becomes effective.

24 (c) The responsible fiscal agency shall promptly inform the
25 legislature in writing of its determination in subdivision (b)
26 before enactment of the legislation.

27 (d) Prior to the enactment of any legislation that imposes a

1 requirement on local units of government to provide any new
2 activity or service or an increase in the level of any activity or
3 service, an appropriation bill shall be created and introduced in
4 the proceedings in the legislature to provide sufficient funding to
5 pay for any necessary increased costs resulting from such
6 requirement, as estimated by the responsible fiscal agency, and to
7 further create a process for disbursement of such funding to the
8 affected local units of government. The appropriation bill shall be
9 tie-barred to the bill creating the requirement.

10 (e) The disbursement process shall serve to disburse funds to
11 local units of government on a current basis or as costs to provide
12 the required activity or service are being incurred by the local
13 units of government.

14 (f) In the event that legislation is enacted imposing a
15 requirement on local units of government without following the
16 above requirements, local units of government are not required to
17 comply until such point in time that the fiscal note process
18 described in this section is followed.

19 Sec. 7. A local government mandate panel is established hereby
20 that shall facilitate and ensure compliance with section 29 of
21 article IX of the state constitution of 1963 by annually developing
22 and publishing all the following:

23 (a) A 3-year estimate of the aggregate necessary cost to local
24 units of government of compliance with the requirements imposed by
25 state law that existed on December 31, 1978 and were funded in
26 whole or in part at that time, and the requirements imposed by
27 state law that are new or first imposed after December 23, 1978, or

1 represent a required increase in the level of any activity or
2 service after that date.

3 (b) A 3-year estimate of the net cost of compliance if the
4 state provided the same service or activity.

5 (c) A 3-year estimate of the necessary cost of compliance with
6 the state requirement by each unit of local government.

7 Sec. 8. (1) The local government mandate panel shall develop a
8 process that will accomplish all the following:

9 (a) Annually review all statutes and administrative rules and
10 regulations that impose requirements on local units of government.

11 (b) Make recommendations to the legislature whether the
12 requirements described in subdivision (a) continue to be necessary
13 in terms of the cost/benefit to the public interest, and if not,
14 whether those requirements should be rescinded.

15 (2) If it is determined by the panel that the requirements
16 described in subsection (1) are recommended to be continued, report
17 as to whether the requirements can be provided on a more cost-
18 effective basis than presently provided and to recommend
19 legislation to achieve cost savings.

20 Sec. 9. The state shall not impose a penalty on, withhold
21 funds, or impose any other form of monetary or other sanction on
22 any local unit of government that fails to comply with a state
23 requirement under any of the following circumstances:

24 (a) The state has failed to follow the fiscal note process
25 provided in section 6 or has failed to make timely disbursement to
26 fund the costs identified in the fiscal note process provided in
27 section 6.

1 (b) The state has prepared a fiscal note in connection with
2 the enactment of the state law and 1 of the following applies:

3 (i) A taxpayer has filed a suit through the filing of a
4 complaint in the court of appeals pursuant to section 308a of the
5 revised judicature act of 1961, 1961 PA 236, MCL 600.308a,
6 asserting that the state law imposes a mandate under section 29 of
7 article IX of the state constitution of 1963 and that the cost of
8 compliance has not been fully funded by the state.

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

14 Sec. 10. Funds received by a local unit of government under
15 this act shall be separately accounted for to reflect the specific
16 state requirement for which the funds are appropriated. To
17 facilitate monitoring and compliance with this act, not later than
18 July 1, 2010, the department shall establish standard accounting
19 systems which will allow local units of government and the state to
20 calculate and track all of the following:

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

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

26 Sec. 11. (1) No later than 12 months after the effective date
27 of this act, the house and senate fiscal agencies in consultation

1 with local units of government shall collect documents and tabulate
2 information as to each of the following:

3 (a) The state financed proportion of the necessary cost of an
4 existing activity or service required of local units of government
5 by existing law.

6 (b) The nature and scope of each state requirement that
7 requires disbursement under section 5.

8 (c) The nature and scope of each action imposing a potential
9 cost on a local unit of government which is not a state requirement
10 and does not require a disbursement under this act.

11 (2) The information described in subsection (1) shall include
12 all of the following:

13 (a) The identity or type of local unit and local unit agency
14 or official to whom the state requirement or required existing
15 activity or service is directed.

16 (b) The determination of whether or not an identifiable local
17 direct cost is necessitated by state requirement or the required
18 existing activity or service.

19 (c) The amount of state financial participation meeting the
20 identifiable local direct cost.

21 (d) The state agency charged with supervising the state
22 requirement or the required existing activity or service.

23 (e) A brief description of the purpose of the state
24 requirement or the required existing activity or service, and a
25 citation of its origin in statute, rule, or court order.

26 (f) A recommendation as to whether any state requirement or
27 activity or service required of local units of government by

1 existing law should be 1 of the following:

2 (i) Eliminated.

3 (ii) Redesigned to reduce the cost of compliance.

4 (iii) Fully or proportionately funded by the state, depending on
5 the date the requirement was first imposed.

6 (g) A recommendation as to whether required standards of
7 performance for optional activities and services provided by local
8 units of government or requirements not otherwise subject to
9 section 29 of article IX of the state constitution of 1963 should
10 be reduced, reformed, eliminated, or fully funded by the state. The
11 recommendation shall consider whether requirements continue to be
12 necessary in light of the public interest and the financial
13 condition of the affected local units of government and the state
14 should modify the requirements to reduce the cost or increase the
15 efficiency with which the activities and services can be provided.

16 (3) The tabulated information and recommendations described in
17 this section shall be published in a report submitted to the
18 legislature not later than December 31, 2010. A concurrent
19 resolution shall be adopted each year upon enactment of the state
20 budget by both houses of the legislature certifying that the state
21 has fully met its responsibilities under section 29 of article IX
22 of the state constitution of 1963.

23 Sec. 12. (1) The house and senate fiscal agencies, in
24 consultation with local units of government, shall adopt a process
25 for monitoring the state's compliance with section 29 of article IX
26 of the state constitution of 1963, including appropriations and
27 disbursements to fund the cost of complying with state requirements

1 and the state's compliance with its obligation to fund the state
2 financed proportion of the necessary cost of an existing activity
3 or service required of local units of government by existing law.

4 (2) Annually, the house and senate fiscal agencies shall
5 prepare and publish a report containing an update of the
6 information specified in section 9 for the legislature and the
7 governor. The legislature shall provide a copy of the report to the
8 court of appeals.

9 (3) The house and senate fiscal agencies shall prepare
10 alternative recommendations for addressing decisions by the court
11 of appeals ruling that the state has failed to fully fund the cost
12 of complying with state requirements and the state's compliance
13 with its obligation to fund the state financed proportion of the
14 necessary cost of an existing activity or service required of local
15 units of government by existing law.

16 Sec. 13. A state law shall not be enacted that causes a
17 reduction in the state financed proportion of the
18 necessary costs of an existing activity or service required of
19 local units of government by existing law, unless the existing law
20 requiring an activity or service is repealed.

21 Sec. 14. This act does not prohibit the legislature from
22 enacting state laws to provide for other forms of state aid, cost-
23 sharing agreements, or specific methods of making disbursements to
24 a local unit of government for a cost incurred pursuant to state
25 laws enacted to which this act applies.

26 Sec. 15. The department may promulgate rules pursuant to
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, to regulate the disbursement of funds appropriated to local
2 units of government, to provide guidelines for identification of
3 funds over which the director has disbursement authority, and to
4 implement and administer this act, provided that the implementation
5 and effectiveness of this act shall not be dependent on the
6 promulgation of any such rules.

7 Sec. 16. 1979 PA 101, MCL 21.231 to 21.244, is repealed.