

HOUSE BILL No. 5503

April 30, 2014, Introduced by Reps. Kowall and Walsh and referred to the Committee on Financial Liability Reform.

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) "Department" means the department of technology,
18 management, and budget.

19 Sec. 3. (1) "Existing law" means a public or local act enacted
20 prior to December 23, 1978, a rule promulgated prior to December
21 23, 1978, or a court order concerning a public or local act or rule
22 described in this subsection. A rule initially promulgated after
23 December 22, 1978 implementing for the first time an act or
24 amendatory act in effect prior to December 23, 1978 shall also be
25 considered as existing law except to the extent that the public or
26 local act or administrative rule being implemented for the first
27 time imposes upon a local unit of government a new activity or

1 service or an increase in the level of any activity or service
2 beyond that required by existing law.

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

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

14 (4) "Legislature" means the house of representatives and the
15 senate of this state.

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

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

27 (7) "Necessary cost" means the cost of an activity or service

1 provided by a local unit of government. Necessary cost does not
2 include the cost of a state requirement if the state requirement
3 will result in an offsetting savings to an extent that, if the
4 duties of a local unit of government that existed before the
5 effective date of the state requirement are considered, the
6 requirement will not exceed the cost of the preexisting required
7 duties.

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

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

22 (2) "State agency" means a state department, bureau, division,
23 section, board, commission, trustee, authority, or officer that is
24 created by the state constitution of 1963, by statute, or by state
25 agency action, and that has the authority to promulgate rules
26 pursuant to the administrative procedures act of 1969, 1969 PA 306,
27 MCL 24.201 to 24.328. State agency does not include an agency in

1 the judicial branch of state government, an agency having direct
2 control over an institution of higher education, or the state civil
3 service commission.

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

10 (4) "State law" means a state statute or state agency rule or
11 regulation.

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

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

18 (b) A court requirement.

19 (c) A federal requirement.

20 (d) An implied federal requirement.

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

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

1 shall comply with certain minimum standards, requirements, or
2 guidelines.

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

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

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

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

25 (3) Notwithstanding any provision of law to the contrary, no
26 local unit of government shall be obligated to provide a new
27 activity or service or increased level of activity or service

1 required by state law unless and until the local government mandate
2 panel has prepared and published a fiscal note in accordance with
3 section 6, and the state has appropriated and provided for
4 disbursement of the amounts sufficient based on the fiscal note
5 analysis to fund the necessary cost to the local unit of government
6 of providing the new activity or service or increase in the level
7 of a required activity or service or a court has determined that
8 the legislation does not impose a new activity or service or an
9 increase in the level of an existing activity or service. In the
10 event that legislation is enacted imposing a requirement on local
11 units of government without following the fiscal note process
12 described in section 6, local units of government are not required
13 to comply until that time that the fiscal note process described in
14 section 6 is followed or a court has determined that the
15 legislation does not impose a new activity or service or an
16 increase in the level of an existing activity or service.

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

19 (a) Before legislation affecting a local unit of government is
20 scheduled for third reading in the legislature, the local
21 government mandate panel shall conduct a review to determine
22 whether any new or increased level of activities or services is
23 likely to be required of local units of government by that
24 legislation if it becomes effective.

25 (b) If it is determined that a new activity or service or an
26 increased level of activity or service is likely to occur, the
27 local government mandate panel shall develop a written estimate of

1 the increased necessary costs, if any, that will result to local
2 units of government if that legislation becomes effective.

3 (c) The chairperson of the local government mandate panel
4 shall promptly inform the legislature in writing of its
5 determination in subdivision (b) before the legislation is
6 scheduled for third reading.

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

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

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

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

19 (b) Make recommendations to the legislature whether the
20 requirements described in subdivision (a) continue to be necessary
21 in terms of the cost/benefit to the public interest, and if not,
22 whether those requirements should be repealed, rescinded, or
23 modified.

24 (c) If it is determined by the local government mandate panel
25 that the requirements described in subdivisions (a) and (b) are
26 recommended to be continued, report as to whether the requirements
27 can be provided on a more cost-effective basis than presently

1 provided and to recommend legislation to achieve cost savings.

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

6 (a) The state has failed to follow the fiscal note process
7 provided in section 6 for that new activity or service or has
8 failed to make timely disbursement to fund the costs identified in
9 the fiscal note process provided in section 6 for that new activity
10 or service or increase in the level of an existing activity or
11 service.

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

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

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

27 Sec. 9. If requested by the local government mandate panel,

1 the department shall provide the local government mandate panel
2 with baseline data on the net cost of compliance if the state
3 provided the same activity or service and the necessary cost of
4 compliance with the state requirement by each unit of local
5 government, to the extent the department has that data regarding a
6 particular new activity or service or increase in the level of an
7 existing activity or service.

8 Sec. 10. Funds received by a local unit of government under
9 this act shall be separately accounted for by the local unit of
10 government to reflect the specific state requirement for which the
11 funds are appropriated. To facilitate monitoring and compliance
12 with this act, not later than October 1, 2013, the department shall
13 establish standard accounting systems which will allow local units
14 of government and the state to calculate and track all of the
15 following:

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

18 (b) The state financed proportion of the necessary cost of an
19 existing activity or service required of local units of government
20 by existing law.

21 Sec. 11. (1) The local government mandate panel, in
22 consultation with local units of government, shall adopt a process
23 for monitoring the state's compliance with section 29 of article IX
24 of the state constitution of 1963, including appropriations and
25 disbursements to fund the cost of complying with state requirements
26 and the state's compliance with its obligation to fund 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 (2) The local government mandate panel shall prepare and
3 submit recommendations to the legislature that address court
4 decisions that determine the state has failed to fully fund the
5 cost of complying with state requirements and the state's
6 compliance with its obligation to fund the state financed
7 proportion of the necessary cost of an existing activity or service
8 required of local units of government by existing law.

9 Sec. 12. This act does not prohibit the legislature from
10 enacting state laws to provide for other forms of dedicated state
11 aid, cost-sharing agreements, or specific methods of making
12 disbursements to a local unit of government for a cost incurred
13 pursuant to state laws enacted to which this act applies.

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