

SENATE BILL NO. 449

May 18, 2021, Introduced by Senator MCBROOM and referred to the Committee on Oversight.

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 "Headlee unfunded mandates prohibition 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
5 sections.

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

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

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

21 (4) "De minimis cost" means a net cost to a local unit of
22 government resulting from a state requirement that does not exceed
23 \$300.00 per claim.

24 (5) "Department" means the department of technology,
25 management, and budget.

26 Sec. 3. (1) "Existing law" means a public or local act enacted
27 prior to December 23, 1978, a rule promulgated or state agency
28 regulation implemented prior to December 23, 1978, or a court order

1 concerning a public or local act or rule described in this
2 subsection. A rule initially promulgated after December 22, 1978
3 implementing for the first time an act or amendatory act in effect
4 prior to December 23, 1978 shall also be considered as existing law
5 except to the extent that the public or local act or administrative
6 rule or state agency regulation being implemented for the first
7 time imposes upon a local unit of government a new activity or
8 service or an increase in the level of any activity or service
9 beyond that required by existing law.

10 (2) "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 requires the
13 state to take action or provide a service affecting a local unit of
14 government.

15 (3) "Fiscal agencies" means the house fiscal agency or the
16 senate fiscal agency as described in the legislative council act,
17 1986 PA 268, MCL 4.1101 to 4.1901.

18 (4) "Implied federal requirement" means a federal law, rule,
19 regulation, executive order, guideline, standard, or other federal
20 action which has the force and effect of law and which does not
21 directly require the state to take action or provide a service
22 affecting a local unit of government, but will, according to
23 federal law, result in a loss of federal funds or federal tax
24 credits if state action or service is not taken to comply with the
25 federal action or service.

26 (5) "Legislature" means the house of representatives and the
27 senate of this state.

28 (6) "Local unit of government" means a political subdivision
29 of this state, including local school districts, community college

1 districts, intermediate school districts, cities, villages,
2 townships, counties, and authorities, if the political subdivision
3 has as its primary purpose the providing of local governmental
4 activities and services for residents in a geographically limited
5 area of this state and has the power to act primarily on behalf of
6 that area.

7 (7) "Necessary cost" means the cost of an activity or service
8 provided by a local unit of government. The necessary cost is the
9 actual cost to this state if this state were to provide the
10 activity or service mandated as a state requirement, unless
11 otherwise determined by the legislature when making a state
12 requirement. Necessary cost may also be the actual cost to a local
13 unit of government to provide the activity or service mandated as a
14 state requirement if the actual cost to this state to provide the
15 activity or service due to a lack of experience by this state in
16 providing the activity and service results in this state being
17 incapable of providing a reliable cost estimate for actual cost
18 determination purposes without resorting to unfounded cost
19 speculation. The responsibility for determining which means of
20 establishing necessary costs should apply and be determinative for
21 this purpose shall be on this state. Necessary cost does not
22 include the cost of a state requirement if it does not exceed a de
23 minimis cost. Necessary cost does not include the cost of a state
24 requirement if the state requirement will result in an offsetting
25 savings to an extent that, if the duties of a local unit of
26 government that existed before the effective date of the state
27 requirement are considered, the requirement will not exceed the
28 cost of the preexisting requirements.

29 (8) "New activity or service or increase in the level of an

1 existing activity or service" does not include a state law, or
2 administrative rule promulgated or state agency regulation under
3 existing law, which provides only clarifying nonsubstantive changes
4 in an earlier, existing law or state law; or the recodification of
5 an existing law or state law, or administrative rules promulgated
6 under a recodification, which does not require a new activity or
7 service or does not require an increase in the level of an activity
8 or service above the level required before the existing law or
9 state law was recodified.

10 Sec. 4. (1) "Service" means a specific and identifiable
11 program of a local unit of government that is available to the
12 general public or is provided for the citizens of the local unit of
13 government.

14 (2) "State agency" means a state department, bureau, division,
15 section, board, commission, trustee, authority, or officer that is
16 created by the state constitution of 1963, by statute, or by state
17 agency action, and that has the authority to promulgate rules
18 pursuant to the administrative procedures act of 1969, 1969 PA 306,
19 MCL 24.201 to 24.328. State agency does not include an agency in
20 the judicial branch of state government, an agency having direct
21 control over an institution of higher education, or the state civil
22 service commission.

23 (3) "State financed proportion of the necessary cost of an
24 existing activity or service required of local units of government
25 by existing law" means the percentage of necessary costs
26 specifically provided for an activity or service required of local
27 units of government by existing law and partially or totally funded
28 by the state on December 23, 1978.

29 (4) "State law" means a state statute, rule, or state agency

1 regulation.

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

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

8 (b) A court requirement.

9 (c) A federal requirement.

10 (d) An implied federal requirement.

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

14 (f) A requirement of a state law that does not require a local
15 unit of government to perform an activity or service but allows a
16 local unit of government to do so as an option, and by opting to
17 perform that activity or service, the local unit of government
18 shall comply with certain minimum standards, requirements, or
19 guidelines determined by state law.

20 (g) A requirement of a state law enacted pursuant to section
21 18 of article VI of the state constitution of 1963.

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

26 (2) The legislature shall appropriate and disburse each year
27 an amount sufficient to pay each local unit of government the state
28 financed proportion of the necessary cost of an existing activity
29 or service required of local units of government by state law

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

6 (3) Notwithstanding any provision of law to the contrary, a
7 local unit of government is not obligated to provide a new activity
8 or service or increased level of activity or service required by
9 state law after the effective date of this act unless a fiscal note
10 has been prepared in accordance with this act, and the state has
11 appropriated and provided for payment of the amounts sufficient
12 based on the fiscal note analysis to fund the necessary cost to the
13 local unit of government of providing the new activity or service
14 or increase in the level of a required activity or service. In the
15 event that legislation is enacted, a rule is promulgated, or a
16 state agency regulation is imposed after the effective date of this
17 act imposing a requirement on local units of government without
18 following the fiscal note process described in this act, a local
19 unit of government is not required to comply until that time that
20 the fiscal note process described in this act is followed through
21 completion.

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

24 (a) Before legislation affecting a local unit of government is
25 scheduled for third reading in the legislative chamber in which it
26 was introduced, or a state agency adopts a rule or imposes a state
27 agency regulation proposed to become a future requirement on a unit
28 of government, the fiscal agencies shall conduct a review to
29 determine whether any new or increased level of activities or

1 services is likely to be required of a local unit of government by
2 that legislation, rule, or state agency regulation if it becomes
3 effective.

4 (b) If it is determined that a new activity or service or an
5 increased level of activity or service is likely to occur, the
6 fiscal agencies shall develop a written estimate of the increased
7 necessary costs, if any, including both direct and indirect costs,
8 that will result to local units of government if that legislation,
9 rule, or state agency regulation becomes effective. In developing
10 the written estimate of the increased necessary costs, the fiscal
11 agencies shall work in consultation with representatives of local
12 units of government affected by the proposed legislation and shall
13 report their findings to the sponsor of the legislation, the
14 chairperson of the committee that reported the legislation, the
15 speaker of the house, the majority leader of the senate, the
16 chairpersons of the house and senate appropriations committees, and
17 the director of the state agency proposing the rule or state agency
18 regulation. If the bill is later modified by either house of the
19 legislature or the director of the state agency, the fiscal
20 agencies shall, in consultation with representatives of local units
21 of government affected by the proposed legislation, rule, or state
22 agency regulation, modify their written estimate of increased
23 necessary costs.

24 (c) In the case of legislation, the fiscal agencies shall
25 promptly inform the legislature in writing of its determination in
26 subdivision (b) before the legislation is scheduled for third
27 reading.

28 (d) In the case of a rule or state agency regulation, the
29 fiscal agencies shall promptly inform the director of the state

1 agency proposing the rule or state agency regulation in writing
2 before the rule or state agency regulation becomes effective.

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

7 (f) After receiving notice from the fiscal agencies that a
8 rule or state agency regulation may impose a new activity or
9 service or that an increased level of activity or service by a
10 local unit of government is likely to occur, the fiscal agencies
11 shall develop a written estimate of the increased necessary costs
12 of the proposed rule or state agency regulation, if any, that will
13 result to local units of government if that proposed rule or
14 regulation becomes effective. In developing the written estimate of
15 the increased necessary costs of the proposed rule, the fiscal
16 agencies shall work in consultation with representatives of local
17 units of government.

18 (2) Not later than 1 year after the effective date of this
19 act, the department of treasury shall develop a standard accounting
20 system in a searchable format to assist the fiscal note process.

21 (3) Working from the cost data provided by local units of
22 government using a standard accounting format, the department shall
23 adjust the funding necessary to meet the state's funding
24 responsibility under section 29 article IX of the state
25 constitution of 1963 applied under the provisions of this act for
26 each subsequent fiscal year and issue a report to the legislature
27 of the required funding for each year hereafter in sufficient time
28 to allow for the adjustment of the annual appropriations by the
29 legislature for this purpose. The amount determined to be payable

1 to local units of government under this act are not intended to be
2 static but rather to be adjusted on an on-going basis as
3 continuously reported data warrants.

4 Sec. 7. The state shall not impose a penalty on, withhold
5 funds, or impose any other form of monetary or other sanction on
6 any local unit of government for failing to comply with a state
7 requirement under any of the following circumstances:

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

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

18 (i) A taxpayer or local unit of government has filed a suit as
19 authorized under section 32 of article IX of the state constitution
20 of 1963 through the filing of a complaint as provided under section
21 308a of the revised judicature act of 1961, 1961 PA 236, MCL
22 600.308a, asserting that the state law imposes a mandate under
23 section 29 of article IX of the state constitution of 1963 and that
24 the cost of compliance has not been fully funded by the state.

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

1 Sec. 8. Funds received by a local unit of government under
2 this act shall be separately accounted for by the local unit of
3 government to reflect the specific state requirement for which the
4 funds are appropriated.

5 Sec. 9. (1) This act does not prohibit the legislature from
6 enacting state laws to provide for other forms of dedicated state
7 aid, cost-sharing agreements, or specific methods of making
8 disbursements to a local unit of government for a cost incurred
9 pursuant to state laws enacted to which this act applies.

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

11 Sec. 10. 1979 PA 101, MCL 21.231 to 21.244, is repealed.