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BILL ANALYSIS



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Senate Bill 449 (as introduced 5-18-21)
Sponsor: Senator Ed McBroom
Committee: Oversight

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CONTENT

The bill would enact the "Headlee Unfunded Mandates Prohibition Act" to do the following:

- **Require the Legislature to appropriate and disburse each year an amount sufficient to pay each local government the necessary cost of each State requirement under Article 9, Section 29 of the Michigan Constitution.**
- **Specify that a local unit of government would not be obligated to provide a new activity or service or increased level of activity or service required by State law unless a fiscal note had been prepared and the State had appropriated the necessary funds to local unit of government.**
- **Create a fiscal note process that would require, among other things, the Senate Fiscal Agency and House Fiscal Agency to conduct a review to determine whether any new or increased level of activities or services was likely to be required by a local unit of government by legislation, rule, or State agency regulation.**
- **Require the Department of Treasury to develop a standard account system to assist the fiscal note process.**
- **Require the Department of Technology, Management, and Budget (DTMB) to adjust the necessary funding to meet the State's funding responsibility under Article 9, Section 29 of the Michigan Constitution for each fiscal year.**
- **Prohibit the State from imposing a penalty on, or withholding funds, or imposing any other form of monetary sanction on a local unit of government for failing to comply with a State requirement under certain circumstances.**
- **Require a local government to account for funds it received under the bill separately to reflect the specific State requirement for which the funds were appropriated.**
- **Specify that the bill 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 a local unit of government for a cost incurred pursuant to State laws enacted to which the bill applied.**

The bill also would repeal Public Act 101 of 1979, which governs State disbursements to local units of government for costs required to administer or implement certain activities or services required of local units of government by the State.

Definitions

"Activity" would mean a specific and identifiable administrative action of a local unit of government.

"Consultation" would mean to seek information from a representative sample of local units of government affected by a State requirement in a manner which can reasonably be expected to result in a fair estimate of the statewide cost of compliance with the State requirement.

"Existing law" would mean a public or local act enacted prior to December 23, 1978, a rule promulgated or State agency regulation implemented prior to December 23, 1978, or a court order concerning a public or local act or rule described in this provision. A rule initially promulgated after December 22, 1978, implementing for the first time an act or amendatory act in effect prior to December 23, 1978, also would be considered as existing law except to the extent that the public or local act or administrative rule or State agency regulation being implemented for the first time imposes upon a local unit of government a new activity or service or an increase in the level of any activity or service beyond that required by existing law.

"Fiscal agencies" would mean the House Fiscal Agency or the Senate Fiscal Agency as described in the Legislative Council Act.

"Local unit of government" would mean a political subdivision of the State, including local school districts, community college districts, intermediate school districts, cities, villages, townships, counties, and authorities, if the political subdivision has as its primary purpose the providing of local governmental activities and services for residents in a geographically limited area of the State and has the power to act primarily on behalf of that area.

"Necessary cost" would mean the cost of an activity or service provided by a local unit of government. The necessary cost would be the actual cost to the State if the State were to provide the activity or service mandated as a State requirement, unless otherwise determined by the Legislature when making a State requirement. Necessary cost also could be the actual cost to a local unit of government to provide the activity or service mandated as a State requirement if the actual cost to the State to provide the activity or service due to a lack of experience by the State in providing the activity and service results in the State being incapable of providing a reliable cost estimate for actual cost determination purposes without resorting to unfounded cost speculation. The responsibility for determining which means of establishing necessary costs should apply and be determinative for this purpose would be on the State. Necessary cost would not include the cost of a State requirement if it did not exceed a de minimis cost. Necessary cost would not include the cost of a State requirement if the State requirement would result in an offsetting savings to an extent that, if the duties of a local unit of government that existed before the effective date of the State requirement were considered, the requirement would not exceed the cost of the preexisting requirements.

"New activity or service or increase in the level of an existing activity or service" would not include a State law, or administrative rule promulgated or state agency regulation under existing law, which provides only clarifying nonsubstantive changes in an earlier, existing law or State law; or the recodification of an existing law or state law, or administrative rules promulgated under a recodification, which does not require a new activity or service or does not require an increase in the level of an activity or service above the level required before the existing law or state law was recodified.

"Service" would mean a specific and identifiable program of a local unit of government that is available to the general public or is provided for the citizens of the local unit of government.

"State agency" would mean a State department, bureau, division, section, board, commission, trustee, authority, or officer that is created by the Michigan Constitution, by statute, or by state agency action, and that has the authority to promulgate rules pursuant to the Administrative Procedures Act. State agency would not include an agency in the judicial branch of State government, an agency having direct control over an institution of higher education, or the State Civil Service Commission.

"State financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law" would mean the percentage of necessary costs specifically provided for an activity or service required of local units of government by existing law and partially or totally funded by the state on December 23, 1978.

"State law" would mean a State statute, rule, or State agency regulation.

"State requirement" would mean a State law that requires a new activity or service or an increased level of activity or service beyond that required of a local unit of government by an existing law. The term would not include any of the following:

- A requirement imposed on a local unit of government by a new amendment to the Michigan Constitution.
- A court requirement.
- A Federal requirement.
- An implied Federal requirement.
- A requirement of a State law which applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.
- A requirement of a State law that does not require a local unit of government to perform an activity or service but allows a local unit of government to do so as an option, and by opting to perform that activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines determined by state law.
- A requirement of a State law enacted pursuant to Article 6, Section 18 of the Michigan Constitution (which governs the salaries of judges).

"Court requirement" would mean a new activity or service or an increase in the level of activity or service beyond that required by existing law which is required of a local unit of government in order to comply with a final State or Federal court order arising from the interpretation of the United States Constitution, the Michigan Constitution, or a Federal statute, rule, or regulation. The term would include a State law whose enactment is required by a final State or Federal court order. "Federal requirement" would mean a Federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which requires the state to take action or provide a service affecting a local unit of government. "Implied Federal requirement" would mean a Federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which does not directly require the State to take action or provide a service affecting a local unit of government, but will, according to Federal law, result in a loss of Federal funds or Federal tax credits if state action or service is not taken to comply with the Federal action or service.

Disbursements to Local Government

The bill would require the Legislature to appropriate and disburse each year an amount sufficient to pay each local unit of government the necessary cost of each State requirement under Article 9, Section 29 of the Michigan Constitution. (Article 9, Section 29 of the Michigan Constitution prohibits the State from reducing the State financed proportion of the necessary costs of any existing activity or service required of local units of 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 may not be required by the Legislature or any State agency of local units of government, unless a State appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.)

The Legislature would have to appropriate and disburse each year an amount sufficient to pay each local unit of government the State financed proportion of the necessary cost of an

existing activity or service required of local units of government by State law existing on December 23, 1978, and to appropriate and disburse each year an amount sufficient to pay each local unit of government for the full costs of new activities or services or increases in the level of activities and services required by State law after December 23, 1978.

Notwithstanding any provision of law to the contrary, a local unit of government would not have to provide a new activity or service or increased level of activity or service required by State law after the bill's effective date unless a fiscal note had been prepared in accordance with the bill, and the State had appropriated and provided for payment of the amounts sufficient based on the fiscal note analysis to fund the necessary cost to the local unit of government of providing the new activity or service or increase in the level of a required activity or service. If legislation were enacted, a rule were promulgated, or a State agency regulation were imposed after the bill's effective date that imposed a requirement on local units of government without following the fiscal note process described in the bill, a local unit of government would not be required to comply until the fiscal note process was completed.

Fiscal Note Process

The bill would create a fiscal note process. The fiscal note process would have to consist of all of the following:

- Before legislation affecting a local unit of government was scheduled for third reading in the legislative chamber in which it was introduced, or a State agency adopted a rule or imposed a State agency regulation proposed to become a future requirement on a unit of government, the fiscal agencies would have to conduct a review to determine whether any new or increased level of activities or services likely would be required of a local unit of government by that legislation, rule, or State agency regulation if it became effective.
- If it were determined that a new activity or service or an increased level of activity or service likely would occur, the fiscal agencies would have to develop a written estimate of the increased necessary costs, if any, including both direct and indirect costs, that would result to local units of government if that legislation, rule, or State agency regulation became effective.
- In the case of legislation, the fiscal agencies would have to inform the Legislature promptly in writing of its determination before the legislation was scheduled for third reading.
- In the case of a rule or State agency regulation, the fiscal agencies would have to inform the director of the State agency proposing the rule or State agency regulation promptly in writing before the rule or regulation became effective.
- The disbursement process would have to serve to pay or disburse funds to local units of government on a current basis or as costs to provide the required activity or service were incurred by the local units of government.
- After receiving notice from the fiscal agencies that a rule or State agency regulation could impose a new activity or service or that an increased level of activity or service by a local unit of government likely was to occur, the fiscal agencies would have to develop a written estimate of the increased necessary costs of the proposed rule or State agency regulation, if any, that would result to local units of government if that proposed rule or regulation became effective; in developing the written estimate of the increased necessary costs of the proposed rule, the fiscal agencies would have to work in consultation with representatives of local units of government.

In developing the written estimate of the increased necessary costs, the fiscal agencies would have to work in consultation with representatives of local units of government affected by the proposed legislation and would have to report their findings to the sponsor of the legislation, the chairperson of the committee that reported the legislation, the Speaker of the House of Representatives, the Senate Majority Leader, the chairpersons of the Senate and House

Appropriations Committees, and the director of the State agency proposing the rule or State agency regulation. If the bill were later modified by either house of the Legislature or the director of the State agency, the fiscal agencies, in consultation with representatives of local units of government affected by the proposed legislation, rule, or State agency regulation, would have to modify their written estimate of increased necessary costs.

Standard Accounting System

Within one year of the bill's effective date, the Department of Treasury would have to develop a standard accounting system in a searchable format to assist the fiscal note process.

Working from the cost data provided by local units of government using a standard accounting format, the DTMB would have to adjust the funding necessary to meet the State's funding responsibility under Article 9, Section 29 of the Michigan Constitution applied under the bill's provisions for each subsequent fiscal year and issue a report to the Legislature of the required funding for each year thereafter in sufficient time to allow for the adjustment of the annual appropriations by the Legislature for this purpose. The amount payable to local units of government would be adjusted on an on-going basis as continuously reported data warranted.

Imposition of Penalties; Prohibit

The bill would prohibit the State from imposing a penalty on, withholding funds, or imposing any other form of monetary or other sanction on any local unit of government for failing to comply with a State requirement if the State had failed to fully follow the fiscal note process provided in the bill for that new activity or service or had failed to make timely payments or disbursement to local units of government to fund the costs identified in the fiscal note process for that new activity or service or increase in the level of an existing activity or service.

The State also could not impose a penalty on, withhold funds, or impose any other form of monetary or other sanction on any local unit of government for failing to comply with a State requirement if the State had prepared a fiscal note in connection with the enactment of the State law and one of the following applied for that new activity or service or increase in the level of an existing activity or service:

- A taxpayer or local unit of government had filed a suit as authorized under Article 9, Section 32 of the Michigan Constitution through the filing of a complaint as provided under Section 308a of the Revised Judicature Act asserting that the State law imposed a mandate under Article 9, Section 29 of the Michigan Constitution and that the cost of compliance had not been fully funded by the State.
- The Court of Appeals or other court having jurisdiction had either failed to issue an order within six months after the complaint was filed and served ruling whether the State law imposes a state requirement and whether the State had underfunded the cost of compliance or, alternatively, ruled in favor of the complainant.

(Section 308a of the Revised Judicature Act allows an action under Article 9, Section 32 of Michigan Constitution to be filed in the Court of Appeals or the circuit court of the county in which venue is proper. A taxpayer may not bring this action unless it is commenced within one year after the cause of action arises.)

Other Provisions

A local government would have to account for funds it received under the bill separately to reflect the specific State requirement for which the funds were appropriated.

The bill 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 a local unit of government for a cost incurred pursuant to State laws enacted to which the bill applied.

The proposed Act could not be applied retroactively.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a negative fiscal impact on State government and an indeterminate fiscal impact on local units of government.

The bill could have a negative fiscal impact on the Legislature budget for the fiscal agencies. Depending on the increase in the workload to analyze legislation and regulations in the manner prescribed under the bill, additional staff could need to be hired. Based on fiscal year 2019-20 data, the current estimated average annual cost for 1.0 FTE for a classified State employee is \$123,000 gross, \$62,600 General Fund/General Purpose for salary and benefits. Legislative employees, however, are at-will employees so salaries vary and are not based on civil service pay classifications. Any additional costs for staffing likely would require additional appropriations with the amount depending on the amount of additional staffing required and the pay level of those staff.

The Department of Treasury would experience additional costs to develop a standard accounting system to assist in the fiscal note process, which would include significant one-time information technology costs to create the system and minor ongoing costs to maintain the system. The Department of Technology, Management, and Budget could experience administrative cost savings due to the abolition of the Local Government Claims Review Board.

The State is constitutionally required to reimburse local units of government for any "new activity or service or an increase in the level of any activity or service beyond that required by existing law," so these provisions would have no fiscal impact regarding the amount of appropriations to local units of government.

The bill would add a requirement for local governments to report cost data of covered rules and statutes. It is unknown what the total cost of such reporting would be. If appropriations to local government were increased to offset the cost of reporting, there would be no fiscal impact on local governments for the requirement, but there would be a negative fiscal impact on the State.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.