

# HOUSE BILL No. 4038

January 13, 2011, Introduced by Reps. Kowall, Johnson, Shaughnessy, Yonker, Callton, Haines, O'Brien, MacGregor, Jacobsen, Potvin and Meadows and referred to the Committee on Government Operations.

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 "prevention of unfunded mandates act".

3           (2) For purposes of this act, the words and phrases defined in

1 sections 2 to 4 shall have the meanings ascribed to them in those  
2 sections.

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

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

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

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

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

1 time imposes upon a local unit of government a new activity or  
2 service or an increase in the level of any activity or service  
3 beyond that required by existing law.

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

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

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

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

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

1           (7) "Necessary cost" means the cost of an activity or service  
2 provided by a local unit of government. Necessary cost does not  
3 include the cost of a state requirement if the state requirement  
4 will result in an offsetting savings to an extent that, if the  
5 duties of a local unit that existed before the effective date of  
6 the state requirement are considered, the requirement will not  
7 exceed the cost of the preexisting required 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 and  
26 subject to subsection (4), no local unit of government shall be  
27 obligated to provide a new activity or service or increased level

1 of activity or service required by state law unless and until the  
2 local government mandate panel has prepared and published a fiscal  
3 note in accordance with section 6, and the state has appropriated  
4 and provided for disbursement of the amounts sufficient based on  
5 the fiscal note analysis to fund the necessary cost to the local  
6 unit of government of providing the new activity or service or  
7 increase in the level of a required activity or service or a court  
8 has determined that the legislation does not impose a new activity  
9 or service or an increase in the level of an existing activity or  
10 service.

11 (4) If a local unit of government refuses to provide a new  
12 activity or service or increased level of activity or service under  
13 subsection (3), the local unit of government shall file suit for a  
14 judicial determination under section 32 of article IX of the state  
15 constitution of 1963, within 9 months of the enactment of the state  
16 law. If the local unit of government does not file suit within 9  
17 months of the enactment of the state law, the local unit of  
18 government shall comply with the state law. If this state  
19 determines that a local unit of government is refusing, or may  
20 refuse, to provide a new activity or service or increased level of  
21 activity or service under subsection (3), this state may file suit  
22 at anytime for a judicial determination under section 32 of article  
23 IX of the state constitution of 1963.

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

26 (a) Not later than 30 days after notice is provided that a  
27 bill will be considered in a legislative committee and before

1 legislation affecting a local unit of government is scheduled for  
2 third reading in the legislature, the local government mandate  
3 panel shall conduct a review to determine whether any new or  
4 increased level of activities or services is likely to be required  
5 of local units of government by that legislation if it becomes  
6 effective.

7 (b) If it is determined that a new activity or service or an  
8 increased level of activity or service is likely to occur, the  
9 local government mandate panel shall develop a written estimate of  
10 the increased necessary costs, if any, that will result to local  
11 units of government if that legislation becomes effective.

12 (c) The chairperson of the local government mandate panel  
13 shall promptly inform the legislature in writing of its  
14 determination in subdivision (b) before the legislation is  
15 scheduled for third reading.

16 (d) Prior to the passage of any legislation that imposes a  
17 requirement on local units of government to provide any new  
18 activity or service or an increase in the level of any activity or  
19 service, an appropriation bill shall be introduced in 1 or both  
20 houses of the legislature to provide sufficient funding described  
21 in this subdivision to pay for any increased necessary costs  
22 resulting from that requirement, as estimated by the local  
23 government mandate panel, and to further create a process for  
24 disbursement of that funding to the affected local units of  
25 government.

26 (e) The disbursement process shall serve to disburse funds to  
27 local units of government on a current basis or as costs to provide



1 the required activity or service are being incurred by the local  
2 units of government.

3 (f) In the event that legislation is enacted imposing a  
4 requirement on local units of government without following the  
5 requirements described in this section, local units of government  
6 subject to section 5(3) and (4) are not required to comply until  
7 that time that the fiscal note process described in this section is  
8 followed or a court has determined that the legislation does not  
9 impose a new activity or service or an increase in the level of an  
10 existing activity or service.

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

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

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

20 (c) If it is determined by the local government mandate panel  
21 that the requirements described in subdivisions (a) and (b) are  
22 recommended to be continued, report as to whether the requirements  
23 can be provided on a more cost-effective basis than presently  
24 provided and to recommend legislation to achieve cost savings.

25 Sec. 8. The state shall not impose a penalty on, withhold  
26 funds, or impose any other form of monetary or other sanction on  
27 any local unit of government for failing to comply with a state

1 requirement under any of the following circumstances:

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

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

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

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

23 Sec. 9. If requested by the local government mandate panel,  
24 the department shall provide the local government mandate panel  
25 with baseline data on the net cost of compliance if the state  
26 provided the same activity or service and the necessary cost of  
27 compliance with the state requirement by each unit of local

1 government, to the extent the department has that data regarding a  
2 particular new activity or service or increase in the level of an  
3 existing activity or service.

4       Sec. 10. Funds received by a local unit of government under  
5 this act shall be separately accounted for by the local unit of  
6 government to reflect the specific state requirement for which the  
7 funds are appropriated. To facilitate monitoring and compliance  
8 with this act, not later than October 1, 2011, the department shall  
9 establish standard accounting systems which will allow local units  
10 of government and the state to calculate and track all of the  
11 following:

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

14       (b) The state financed proportion of the necessary cost of an  
15 existing activity or service required of local units of government  
16 by existing law.

17       Sec. 11. (1) The local government mandate panel, in  
18 consultation with local units of government, shall adopt a process  
19 for monitoring the state's compliance with section 29 of article IX  
20 of the state constitution of 1963, including appropriations and  
21 disbursements to fund the cost of complying with state requirements  
22 and the state's compliance with its obligation to fund the state  
23 financed proportion of the necessary cost of an existing activity  
24 or service required of local units of government by existing law.

25       (2) The local government mandate panel shall prepare and  
26 submit recommendations to the legislature that address court  
27 decisions that determine the state has failed to fully fund the

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

5       Sec. 12. 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       Sec. 13. 1979 PA 101, MCL 21.231 to 21.244, is repealed.