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Senate Bill 495 (Substitute S-1 as reported)  
Senate Bill 496 (Substitute S-2 as reported)  
Senate Bill 497 (Substitute S-1 as reported)  
Senate Bill 498 (Substitute S-1 as reported)  
Sponsor: Senator Tom Casperson (S.B. 495)  
          Senator Mark C. Jansen (S.B. 496)  
          Senator Arlan Meekhof (S.B. 497)  
          Senator Dave Robertson (S.B. 498)  
Committee: Local Government and Elections

### **CONTENT**

Senate Bill 495 (S-1) would create the "Paul Harvey Transparency Act" to do the following:

- Require the Legislature to appropriate and disburse an annual amount sufficient to pay local units for the cost of State requirements, pursuant to Article 9, Section 29 of the State Constitution (part of what is called the "Headlee Amendment").
- Establish a fiscal note process in which the Local Government Mandate Panel (which Senate Bill 497 (S-1) would create) would have to determine whether proposed legislation would likely require any new or increased activity or level of service of local units of government, before the legislation was scheduled for Third Reading in the house in which it was introduced.
- Extend the fiscal note process to proposed rules that could impose a new or increased activity or service on local units of government.
- Require the Panel to develop a process to review statutes and administrative rules and regulations and recommend to the Legislature whether they continued to be necessary to the public interest in terms of cost and benefit.
- Prohibit the State from imposing penalties on local units for failing to comply with State requirements if the State failed to follow the fiscal note process or to disburse funds to cover local costs in a timely manner.
- Require the Department of Technology, Management, and Budget (DTMB) to give the Panel certain data, upon request, if the data were available to the Department.
- Require a local unit to separately account for funds it received to reflect the specific State requirement for which the funds were appropriated, and require the DTMB to establish accounting systems to allow the funds to be calculated and tracked.
- Require the Panel, in consultation with local units, to adopt a process to monitor the State's compliance with Article 9, Section 29 of the State Constitution.

The bill states that the Act could not be applied retroactively.

The bill also would repeal the current implementing legislation for Article 9, Section 29 of the State Constitution.

Senate Bill 496 (S-2) would amend the Administrative Procedures Act to do the following:

- Prohibit a State department or agency from enforcing any rule or guideline that required a local unit of government to provide a new or increased activity or service.

- Provide that a local unit of government would not be required to comply with any rule or guideline that added a new or increased activity or service unless sufficient State funding had been appropriated and was available for disbursement to fund the necessary cost of the new or expanded activity, as determined by the proposed fiscal note process in Senate Bill 495 (S-1).
- Require the Office of Regulatory Reinvention (ORR) to determine, before submitting any rule to the Joint Committee on Administrative Rules (JCAR), if the rule could require provision of a new activity or service or increased activity or service by a local government.
- Require the ORR, if it determined that a rule could require a new or increased activity or service, to notify the Local Government Mandate Panel, receive the fiscal note prepared by the Panel, and then report to JCAR on whether sufficient appropriations had been made for the costs identified.
- Authorize JCAR to reject a proposed rule's notice of transmittal and return it to the ORR if the rule violated Article 9, Section 29 or the proposed Paul Harvey Transparency Act due to a failure to adequately fund the additional activity or service imposed by the proposed rule.

Senate Bill 497 (S-1) would add Chapter 7C to the Legislative Council Act to do the following:

- Create within the Legislative Council the Local Government Mandate Panel, which would consist of the Director of the DTMB and five members appointed by legislative leaders, including at least two selected from a list of at least five names submitted by the Governor.
- Establish requirements for the organization, meetings, and business of the Panel, including the election of a chairperson at the first meeting.
- Require the Local Government Mandate Panel to meet at least monthly.
- Require the Legislative Council to review each bill after its introduction to determine whether the bill would impose a new activity or service on local government or expand existing activity or service requirements for local governments.
- Direct the Legislative Council to notify the Local Government Mandate Panel of any bill that could impose new or expanded activities or services on local government.
- Require the Panel to initiate the fiscal note process described in the proposed Paul Harvey Transparency Act, after the Panel or the Legislative Council determined that a bill could impose on local units a new or increased activity or service.
- Require the House Fiscal Agency, the Senate Fiscal Agency, and the Legislature to comply with the requirements of the Paul Harvey Transparency Act.

Senate Bill 498 (S-1) would amend the Revised Judicature Act to do the following:

- Revise and add requirements for the filing of an action to enforce provisions of the Constitution commonly referred to as the "Headlee Amendment", including a requirement that the action be filed in the Court of Appeals.
- Allow the Court of Appeals to refer the action to a Special Master to conduct certain proceedings, receive evidence and arguments, and issue a written report to the Court.
- Create the position of Special Master for assisting the Court of Appeals in Headlee Amendment matters, and require the Supreme Court to appoint an individual to serve in that capacity.
- Provide that the State, as defendant, would have the burden of proving compliance with the Headlee Amendment.
- Require the Court of Appeals to give Headlee Amendment actions priority over other pending cases, except those with a higher priority under rules adopted by the Supreme Court.
- Specify that local units would not have to comply with State requirements that were the subject of an action before the Court of Appeals if the Court did not finally adjudicate the matter within six months.

- Require the Supreme Court, upon appeal, to stay a local unit's obligation to comply with a required activity while final adjudication of the matter was pending before the Court, unless it determined that the plaintiff was not likely to prevail on the merits.

Senate Bills 496 (S-2), 497 (S-1), and 498 (S-1) are tie-barred to Senate Bill 495. Senate Bill 496 (S-2) also is tie-barred to Senate Bill 497.

MCL 24.203 et al. (S.B. 496)

Proposed MCL 4.1791 (S.B. 497)

MCL 600.308a et al. (S.B. 498)

## **FISCAL IMPACT**

Senate Bills 495 (S-1) through 498 (S-1) would have a negative fiscal impact on the State, depending upon a variety of factors discussed below. The bills would impose new and additional responsibilities on the Legislature (through the creation of the Local Government Mandate Panel), the Department of Technology, Management, and Budget, the Department of Licensing and Regulatory Affairs, the Department of Treasury, other State departments that propose rules, and the judiciary. In addition to the expense of complying with the proposed requirements, the State could experience increased costs by defending lawsuits.

Depending on the outcome of the proposed fiscal note process, and the review of statutes and rules, the State could see increased expenditures if funds were appropriated to pay local units for the cost of State requirements. At the same time, the process could result in either increased revenue for local units of government or a reduction in their responsibilities imposed by the State (or maintenance of the status quo).

Legislature: Senate Bill 497 (S-1) would have a negligible impact on the budget of the Legislative Council. Although members of the Local Government Mandate Panel would serve without compensation, they could be reimbursed for actual and necessary expenses incurred. According to the Council, a similar panel that operated from 2008 to 2010 and reimbursed members for actual and necessary expenses reimbursed members for a total of \$725 (rounded) in 2008; \$2,000 in 2009; and \$500 in 2010. The actual amounts necessary for reimbursement under the bill are indeterminate and dependent on the actual number of meetings held, the miles traveled by the members of the Panel, and other indeterminate actual and necessary expenses. It is expected that the anticipated costs to the Council for these reimbursements could be absorbed within its annual appropriations.

The provisions of Senate Bill 495 (S-1) would require the Panel to conduct a fiscal note process. The Panel would direct the fiscal agencies to develop a written estimate of the increased necessary costs for local units as a result of legislation or rule changes. This process would be used to determine if any pending legislation would impose a cost on a local unit of government and if so, the Legislature would be required to appropriate the funds to the local units of government to cover those additional costs (or the local units would not be required to comply).

The potential costs for the Local Government Mandate Panel to conduct a fiscal note process are indeterminate. Costs would depend on the number of bills that would be reviewed as well as the requirement that the Panel review statutes and administrative rules and regulations that impose requirements on local units of government. In order to comply with these requirements, it could be necessary for the Panel, the Legislative Council, or the fiscal agencies to hire additional staff. The estimated cost of one full-time classified employee for salary, wages, and benefits is approximately \$83,000 annually.

Additionally, although the Legislature already is responsible for appropriating funds to State departments and agencies and local units of government, the additional appropriations that could be required could place a strain on the legislative budget if it became necessary to

hire additional staff to perform the additional functions. Again, such cost estimates are indeterminate and dependent on currently unknown variables.

DTMB & Treasury: If requested by the Local Government Mandate Panel, Senate Bill 495 (S-1) would require the Department of Technology, Management, and Budget to provide the Panel with baseline data on the net cost of compliance if the State provided the same activity or service and the necessary cost of compliance with the State requirement by each local unit, to the extent that the Department had the data available. The cost to the Department to provide the data is indeterminate and dependent on the availability of the data being requested. In addition, and depending on the volume of the work that could be required for the Department to comply with the proposed Act, it could be necessary for the Department to hire additional staff. The current estimated cost per FTE for a classified employee in this State is \$83,000 per year for salary, wages, and benefits.

The Department of Treasury would be required to develop a standard accounting system in a searchable format for use by the Local Government Mandate Panel to gain access to the fiscal note process. If the Department of Treasury does not already have a system in place that could accomplish this, then the Department would have to create such a system. The cost of creating a system to comply with this requirement is indeterminate at this time and would depend on what the Department already has in place to meet the requirement. The Department of Treasury is currently in the process of evaluating its existing systems.

Department of Licensing & Regulatory Affairs: The bills would have a likely minor, but negative fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). Senate Bill 496 (S-2) would require the Office of Regulatory Reinvention in LARA to review proposed rules and determine whether a rule would require a local unit of government to provide a new service or increased services. If it did, the ORR would have to notify the Local Government Mandate Panel and then determine if an appropriation had been made that would cover the costs of those services. The ORR already reviews rules before they are submitted to the Joint Committee on Administrative Rules; the addition of new requirements for these reviews would increase the amount of staff time, and therefore the cost, of these reviews.

Judiciary: Senate Bill 498 (S-1) would have a fiscal impact on the judiciary in several areas. The first would be in the process of local units of government bringing a civil action related to the funding of State-required activities or services. If a local unit of government prevailed against the State, the State would have to compensate the plaintiff for the cost in maintaining that action. If the State prevailed, the local unit of government would be responsible for the cost of maintaining that action. Second, since the bill would designate the Court of Appeals as the court in which an action against the State for these types of constitutional funding issues would be brought, there could be a decrease in costs to local circuit courts as caseloads decreased. The cost to the State would increase proportionally as the caseload of the Court of Appeals increased. The third area of fiscal impact relates to the proposed position of Special Master within the Court of Appeals to perform the responsibilities outlined in the bill. There would be an indeterminate cost to create this position and provide the proper staffing to carry out the responsibilities under the bill.

Local Government: The constitutional requirement for the State to pay for a new activity or service that it requires of local government, or an increase in the level of any activity or service beyond the level required in 1978, is already in effect. To the extent that the fiscal note process proposed in Senate Bill 495 (S-1) identified bills that created or expanded local service requirements prior to the consideration of a bill on Third Reading, and appropriations were provided for those costs, beyond the extent to which this already occurs, the bills would increase local revenue commensurate with increased State requirements; however, the constitutional obligation for the State to provide funding in these cases already exists and local governments can file suit under current law to enforce the constitutional

requirements if there is an allegation that the State's constitutional obligation has not been met.

The Local Government Mandate Panel's review of statutes and rules imposing requirements on local government and evaluation of those policies in terms of cost/benefit analysis required by Senate Bill 495 (S-1) have the potential to result in proposals that if adopted, could reduce State and local requirements and costs.

The proposed fiscal note process would require the fiscal agencies to consult with a representative sample of local governments affected by a proposed State requirement. Participating local governments could incur increased costs to provide data for the fiscal note process. If local governments had the needed information readily available, there would be no significant increase in local costs; however, depending on the subject of the legislation under consideration and the staffing and information systems available to different local units of government, participating in the consultation process could increase the cost of local government.

In actions filed under Section 308a of the Revised Judiciary Act, Senate Bill 498 (S-1) would limit the payment of monetary damages to those claims filed within 12 months after the cause of action accrued. This would limit the ability of local governments to obtain funds from the State based on a possible constitutional violation in prior years. The bill also would provide for a local unit of government that was a plaintiff in a case regarding an alleged violation of Sections 25 to 31 of the Article 9 of the State Constitution to receive court costs if the local unit prevailed in the case. This potentially would increase local revenue.

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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.