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Senate Bill 495 (Substitute S-1)  
Senate Bill 496 (Substitute S-2)  
Senate Bill 497 (Substitute S-1)  
Senate Bill 498 (Substitute S-1)  
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

Date Completed: 9-24-14

### **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 Local Government Mandate 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 Local Government Mandate 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 Local Government Mandate 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-2).
- 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 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, as well as five members appointed by legislative leaders, at least two of whom were 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.

### **Senate Bill 495 (S-1)**

#### **Implementation of Article 9, Section 29**

Under the proposed Paul Harvey Transparency Act, the Legislature would have to appropriate and disburse each year an amount sufficient to pay each local unit of government the necessary cost of each State requirement, pursuant to Article 9, Section 29 of the State Constitution. (That section prohibits the State from reducing the State-financed proportion of the necessary costs of any existing activity or service required of units of local 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 of the local units by the Legislature or any State agency, unless a State appropriation is made and disbursed to pay the local unit for any necessary increased costs. Article 9, Section 29 took effect on December 23, 1978.)

The Legislature also 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 by existing law and to appropriate and disburse to local units an amount sufficient to pay for the costs of new activities or services or increases in the level of activities and services required by State law after December 23, 1978. (The bill would define "existing law" as a public or local act enacted before December 23, 1978, a rule promulgated before that date, or a court order concerning such a public or local act or rule.)

No local unit would be obligated to provide a new activity or service or increased level of activity or service required by State law after the effective date of the proposed Act, unless and until either the Local Government Mandate Panel had prepared and published a fiscal note, and the State had appropriated and provided for disbursement to the local unit of the amounts sufficient based on the fiscal note analysis to fund the necessary cost of providing the new activity or service or increase in the level of a required activity or service, or a court had determined that the legislation did not impose a new activity or service or an increase in the level of an existing activity or service. If legislation imposing a requirement on local units were enacted after the effective date of the proposed Act, and the fiscal note process were not followed, local units would not have to comply until that process was

followed or a court determined that the legislation did not impose a new activity or service or an increase in the level of an existing activity or service.

The Act would define "local unit of government" as 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 provision 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. The term would not include the cost of a State requirement if that requirement would result in an offsetting saving to an extent that, if the duties of a local unit that existed before the effective date of the State requirement were considered, the requirement would not exceed the cost of the preexisting required duties.

"Necessary cost" also would not include the cost of a State requirement that did not exceed a "de minimis cost", which would mean a net cost to a local unit of government resulting from a State requirement that did not exceed \$300 per claim.

"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. "State requirement" would not include any of the following:

- A requirement imposed on a local unit by a new amendment to the State Constitution.
- A court requirement.
- An implied Federal requirement.
- A requirement of a State law that applies to a larger class of people or corporations and does not apply principally or exclusively to a local unit or units.
- A requirement of State law that does not require a local unit to perform an activity or service but allows a local unit to do so as an option, and by doing so the local unit must comply with certain minimum standards, requirements, or guidelines.
- A requirement of State law enacted pursuant to Article 6, Section 18 of the State Constitution (which pertains to the salary of judges and Supreme Court justices).

"State requirement" also would not include a requirement of a State law that changes the level of requirements, standards, or guidelines of an activity or service that is not required of a local unit by existing law or State law, but that is provided at the option of the local unit, as long as the State requirement includes any standards, requirements, or guidelines that require increased necessary costs for activities and services directly related to police, fire, or emergency medical transport services.

"Activity" would mean a specific and identifiable administrative action of a local unit of government. "Service" would mean a specific and identifiable program of a local unit that is available to the general public or is provided for the citizens of the local unit. "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 under existing law, that 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, that 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.

## Fiscal Note Process

Before legislation affecting a local unit was scheduled for Third Reading in the legislature chamber in which it was introduced, the proposed Local Government Mandate Panel would have to conduct a review to determine whether any new or increased level of activities or services was likely to be required of local units if that legislation took effect.

If it were determined that a new activity or service or an increased level of activity or service were likely to occur, the Panel would have to direct the fiscal agencies to develop a written estimate of the increased necessary costs, if any, that would result to local units if the legislation took effect. In developing the written estimate, the fiscal agencies would have to work in consultation with local units of government and report their findings to the Panel, which then would have to decide what to present to the Legislature before Third Reading on the bill occurred. If the legislation were modified by either house of the Legislature, the fiscal agencies, in consultation with local units, would have to modify their written estimate of increased necessary costs and report it to the Panel. The Panel would have to review the modified written estimate and decide what to present to the Legislature.

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

The chairperson of the Local Government Mandate Panel would have to promptly inform the Legislature in writing of its determination before the legislation was scheduled for Third Reading.

The disbursement process would have to serve to disburse funds to local units of government on a current basis or as they incurred costs to provide the required activity or service.

After receiving notice from the Office of Regulatory Reinvention that a rule could impose a new activity or service or an increased level of activity or service was likely to occur, the Panel would have to direct the fiscal agencies to develop a written estimate of the increased necessary costs of the proposed rule, if any, that would result to local units of government if the rule became effective. The fiscal agencies would have to work in consultation with local units and report their findings to the Panel, which would have to decide what to present to the Office of Regulatory Reinvention.

Within one year after the proposed Act's effective date, the Department of Treasury would have 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.

## Review Process

The Local Government Mandate Panel would have to develop a process that would review statutes and administrative rules and regulations that impose requirements on local units of government. The Panel would have to make recommendations to the Legislature as to whether those requirements continued to be necessary in terms of the cost/benefit to the public interest. If not, the Panel would have to recommend whether those requirements should be repealed, rescinded, or modified. If the Panel determined that the requirements were recommended to be continued, it would have to report whether they could be provided on a more cost-effective basis than presently provided and to recommend legislation to achieve cost savings.

### Prohibited State Actions

The State would be prohibited 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 failed to follow the fiscal note process for that new activity or service or to make timely disbursements 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 or withhold funds or impose a sanction on a local unit if the State had prepared a fiscal note in connection with the enactment of the State law and one of the following applied for the new activity or service or increase in the level of an existing activity or service:

- A taxpayer or local unit filed a suit in the Court of Appeals, pursuant to Section 308a of the Revised Judicature Act (as it would be amended by Senate Bill 498) asserting that the State law imposed an unfunded or underfunded mandate under Article 9, Section 29 of the State Constitution.
- The Court of Appeals had either failed to issue an order within six months after the complaint was filed, or ruled in favor of the complainant.

### DTMB Responsibility

If requested by the Local Government Mandate Panel, the DTMB would have to give the Panel 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, the extent the DTMB had the data regarding a particular new activity or service or increase in the level of an existing activity or service.

### Local Accounting

A local unit would have to separately account for funds it received under the proposed Act to reflect the specific State requirement for which the funds were appropriated. To facilitate monitoring and compliance with the Act, by October 1, 2015, the DTMB would have to establish standard accounting systems that would allow local units and the State to calculate and track the costs incurred by local units in complying with State requirements and existing law, and the State-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

### Monitoring Process

In consultation with local units, the Local Government Mandate Panel would have to adopt a process for monitoring the State's compliance with Article 9, Section 29 of the State Constitution, including appropriations and disbursements to fund the cost of complying with State requirements and the State's compliance with its obligation to fund the State-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

The Panel would have to prepare and submit to the Legislature recommendations that addressed court decisions that determined the State had failed to fully fund the cost of complying with State requirements and the State's compliance with its obligation to fund the State-financed proportion of the necessary cost of an existing activity or service required of local units by existing law.

## Other Forms of State Aid

The proposed Act 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 to which the proposed Act applied.

## Repeal

The bill would repeal Public Act 101 of 1979, which is the current implementing legislation for Article 9, Section 29 of the State Constitution. It does the following:

- Prohibits the enactment of a State law that causes a reduction in the State-financed proportion of the necessary costs of an existing activity or service required of local units of government by existing law, unless the existing law is repealed.
- Requires the Legislature annually to appropriate an amount sufficient to make disbursements to each local unit of government for the necessary cost of each State requirement pursuant to the Act, if not excluded.
- Provides for the amount appropriated to be prorated among eligible local units if the appropriation is not sufficient to fully fund the required disbursements; requires the DTMB to request a supplemental appropriation; and requires the Legislature to appropriate the amount required.
- Requires a State agency promulgating rules that require a disbursement under the Act, to prepare and submit a fiscal note to JCAR; requires the DTMB Director to submit a request for an appropriation, if necessary, for approved rules; and requires the Legislature to appropriate the amount required.
- Requires the Legislature to establish joint rules to provide a method for identifying whether legislation proposes a State requirement, and a method to estimate the amount of a necessary cost required to provide disbursements to a local unit of government for legislation identified to propose a State requirement.
- Requires local units to account for funds separately to reflect the specific State requirement for which the funds are appropriated.
- Creates the Local Government Claims Review Board in the DTMB and requires it to hear and decide on disputed claims or upon an appeal by a local unit alleging that the local unit has not received the proper disbursement from funds appropriated for that purpose.

The Act's definitions of "existing law", "local unit of government", and "state requirement" are virtually the same as those proposed by Senate Bill 495.

## **Senate Bill 496 (S-2)**

### Administrative Rule Compliance

The bill provides that, if a new rule or guideline required a new activity or service or an increase in the level of an activity or service beyond that required by existing law, then both of the following would apply: 1) a State agency would be prohibited from attempting to enforce the rule or guideline against a local unit of government or one of a local government's officers or employees; and 2) compliance could not be required of a local unit by a State agency rule or guideline unless the State made an appropriation and a disbursement system had been established to pay the affected local units for any necessary increased costs of the State requirement.

### ORR Compliance Report

The bill would require the Office of Regulatory Reinvention to determine whether a proposed rule required local units of government to provide either new activities or services or an

increase in the level of an activity or service beyond that required by existing law. If the ORR determined that the proposed rule did so, the ORR would be required to notify the Local Government Mandate Panel. The ORR would then receive the fiscal note prepared by the Local Government Mandate Panel and report to JCAR on whether the State had appropriated and provided for the disbursement of funds sufficient to cover the necessary costs of the activity or service expansion.

### JCAR Rejection

Under the Administrative Procedures Act, after JCAR has received a notice of transmittal for a proposed rule, the Committee has 15 session days in which to consider the rule and to object to it by filing a notice of objection approved by a concurrent majority of the Committee members, or JCAR may waive the remaining session days, by concurrent majority.

The bill would authorize JCAR to object to a proposed rule if the rule violated Article 9, Section 29 of the State Constitution and the Paul Harvey Transparency Act. As under current law, filing a notice of objection would require a JCAR member to cause bills to be introduced in both houses that would rescind the proposed rule on its effective date, repeal the statute that authorized the proposed rule, or stay the effective date of the rule for up to one year.

## **Senate Bill 497 (S-1)**

### Local Government Mandate Panel

The bill would create the Local Government Mandate Panel within the Legislative Council. The Panel would have to facilitate and ensure compliance with Article 9, Section 29 of the State Constitution.

The Local Government Mandate Panel would consist of the Director of the DTMB, or his or her designee, as a nonvoting member; and five members appointed jointly by the Senate Majority Leader and the Speaker of the House. At least two of the five members would be selected from a list of at least five individuals nominated by the Governor. The appointed members of the Panel would represent the interests of the following:

- Counties.
- Cities and villages.
- Townships.
- School districts and intermediate school districts.
- Community colleges.

Appointed members would have to be appointed within 30 days after the bill's effective date. Panel members would serve staggered, four-year terms and would continue to serve until a successor was appointed. A vacancy would have to be filled in the same manner as original appointment.

The Senate Majority Leader and the Speaker of the House, acting jointly, could remove a member of the Panel for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

### Meetings & Business of the Panel

The Speaker of the House would have to call the first meeting of the Local Government Mandate Panel within 60 days after all of the members were appointed. At the first meeting, the Panel would select a chairperson. After the first meeting, the Panel would have to meet



at least monthly, or more frequently at the call of the chair or if requested by four or more members.

A majority of the members of the Panel would constitute a quorum for the transaction of business at a Panel meeting. A majority of the members present and serving would be required for official action of the Panel. The Panel would have to comply with the Open Meetings Act and the Freedom of Information Act.

Panel members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

After the introduction of a bill, the Legislative Council would be required to determine if the bill would impose a new activity or service or increase the level of an existing activity or service. The Legislative Council would be required to notify the Local Government Mandate Panel of any bill that imposed or expanded local government activities or services. If the Legislative Council or the Panel determined that a bill increased or expanded local government required activities or services, the Panel would have to initiate the fiscal note process described in the proposed Paul Harvey Transparency Act. The Panel, the House Fiscal Agency, the Senate Fiscal Agency, and the Legislature would otherwise have to comply with the requirements set forth in that Act.

The Panel would have to develop its own rules of operation, policies, and procedures, and could authorize and operate subcommittees to assist in its duties.

### **Senate Bill 498 (S-1)**

#### **Headlee Amendment Suits**

Section 308a of the Revised Judiciary Act specifies that an action under Article 9, Section 32 of the State Constitution may be commenced in the Court of Appeals (COA), or in the circuit court in the county in which venue is proper, at the option of the party commencing the action. (That section of the State Constitution provides that any taxpayer of the State has standing to bring suit in the COA to enforce the provisions of Article 9, Sections 25 to 31.)

Under the bill, an action under Article 9, Section 32 could be commenced only in the COA. In addition, the bill would allow a local unit of government to bring an action in the Court of Appeals to enforce the provisions of Article 9, Sections 25 to 31.

Currently, a taxpayer may not bring or maintain an action under Section 308a unless it is commenced within one year after the cause of action accrued. Under the bill, this time frame would apply to an action under Section 308a seeking money damages for the State's failure to adequately fund a State-required activity or service. An action seeking a declaratory judgment could be commenced at any time that Article 9, Sections 25 to 31 of the State Constitution was being violated as alleged in the complaint.

The bill would delete a provision allowing the COA to refer an action under Section 308a to the circuit court or to the Tax Tribunal to determine and report its findings of fact if substantial fact-finding is necessary to decide the action.

#### **Complaint & Answer**

The bill would prohibit the Court of Appeals from requiring the plaintiff in an action under Section 308a to state allegations with any greater specificity or particularity than is required of a plaintiff generally in a civil action, or to attach to the complaint any document or thing that would not generally have to be attached in a civil action.

The plaintiff in an action under Section 308a would have to file all of the following with the clerk of the Court of Appeals:

- Five copies of the complaint, one of which would have to be signed.
- Proof that a copy of the complaint and any other documents filed with the Court were served on every named defendant and the Attorney General's office.
- The filing fee.

The complaint would have to include a statement as to whether the plaintiff believed that the action raised factual questions that would require resolution by the Court.

As under current law, the bill would require the applicable unit of government to be named as a defendant in an action under Section 308a, and an officer of any unit of government could be sued only in his or her official capacity and would have to be described as a party by his or her official title and not by name. A defendant named in an action would have to file the following with the clerk of the Court of Appeals within 21 days after the complaint was served on the defendant:

- Five copies of an answer to the complaint, one of which would have to be signed.
- Proof that a copy of the answer and any other documents filed with the Court were served on every named party.

The answer to the complaint would have to include a statement as to whether the defendant believed that the action raised factual questions that would require resolution by the Court.

After an answer was filed, the chief judge of the Court of Appeals would have to promptly assign a panel of the Court to begin proceedings in the action. The panel could refer the action to a Special Master (as described below) to conduct pretrial proceedings and a trial to receive evidence and arguments of law and to issue a written report for the Court that contained findings of fact and conclusions of law. The Special Master would have to conduct the proceedings as expeditiously as required by due consideration of the facts and issues of law. If the COA panel determined that the issues framed in the pleadings presented only questions of law, the panel could elect not to refer the action to a Special Master.

After receiving a report from the Special Master, or if the panel elected not to refer the action to a Special Master, the COA panel could establish and notify the parties of a schedule for filing briefs in response to the Special Master's report or based on the issues framed in the pleadings, and for oral argument.

### Special Master

The bill would create in the Court of Appeals the position of Special Master for assisting the Court in carrying out its responsibilities under Article 9, Section 32 of the State Constitution or under Section 308a.

Upon assignment by a COA panel, the Special Master would have to take evidence and receive arguments on issues of law and issue a written report to the Court recommending the disposition of the case. The Supreme Court would have to establish the rules for proceedings before the Special Master.

The Supreme Court would have to appoint an individual to serve as the Special Master. The Special Master would continue in office at the pleasure of the Supreme Court. The Supreme Court would have to establish the qualifications required to serve as Special Master, including, at a minimum, that the individual was an attorney who had experience in the operations of local units of government that would enable him or her to assist the COA in expeditiously and meaningfully processing claims in actions under Section 308a.

## COA Process & Priority

The bill would require the Court of Appeals to process an action under Section 308a to a decision as rapidly as possible, consistent with achieving justice and assuring the enforcement of the intent of Michigan's electors expressed in the section of the State Constitution that was the subject of the action. The COA would have to give the action priority over other cases pending before it, except those cases that had a higher priority under rules adopted by the Supreme Court.

## Burden of Proof

Under the bill, in an action under Section 308a, the State or the responsible department or agency of the State would have the burden of proving compliance with Article 9, Sections 25 to 31 of the State Constitution. Compliance would not be presumed but would have to be established through evidence introduced by the State or the responsible department or agency.

## No Obligation of Local Unit

The bill specifies that Section 5(3) of the proposed Paul Harvey Transparency Act would apply if the activity or service required were the subject of an action under Section 308a and, within six months after the action was filed, the COA had not finally adjudicated both of the following questions:

- Whether, based on the claims asserted in the complaint, the subject activity or service was required by State law within the meaning of Article 9, Section 29 of the State Constitution.
- If the adjudication were that the activity or service was required by State law, whether the Legislature had appropriated and disbursed sufficient funding necessary to pay the affected local units for any necessary increased costs.

(Under Section 5(3) of the Paul Harvey Transparency Act, no local unit would be obligated to provide a new activity or service or increased level of activity or service required by State law unless and until either the Local Government Mandate Panel had prepared and published a fiscal note, and the State had appropriated and provided for disbursement to the local unit of the amounts sufficient to fund the necessary cost of providing the activity or service, or a court had determined that the legislation did not impose a new activity or service or an increase in the level of an existing activity or service.)

If the COA or, following appeal, the Supreme Court adjudicated in an action under Section 308a that the State had not met its funding obligation under Article 9, Section 29 of the State Constitution, Section 5(3) of the Paul Harvey Transparency Act would apply until the Legislature did one of the following:

- Appropriated and disbursed sufficient funding to meet its responsibilities to the affected local units of government.
- Eliminated or rescinded the subject requirement.
- Changed or modified the subject requirement to reduce the cost of providing the activity or service and appropriated and provided for the disbursement of sufficient funds to pay the local units for the cost of providing the activity or service under the changed or modified requirements.

## Appeals

If the plaintiff filed an application for leave to appeal to the Supreme Court, following a final adjudication that was adverse to the plaintiff, the Supreme Court would have to make a

rapid decision on the application. The Supreme Court would have to give the application priority over nonemergency matters pending before the Court. If the application were granted, the Court's review of the merits of the appeal would have to be given priority over other nonemergency matters pending before the Court.

While an application or appeal was pending before the Supreme Court, it would have to stay the obligation of local units to comply with the required activity or service that was the subject of the appeal, pending final adjudication by the Court. If the Supreme Court determined that the plaintiff was not likely to prevail on the merits, a stay would not be mandatory but could be issued in the Court's discretion.

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.