

**SUBSTITUTE FOR  
SENATE BILL NO. 449**

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 may be cited as the "Headlee unfunded  
2 mandates prohibition act".

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



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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 of government affected by a  
7 state requirement in a manner which can reasonably be expected to  
8 result in a fair estimate of the statewide cost of compliance with  
9 the 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) "De minimis cost" means a net cost to a local unit of  
19 government resulting from a state requirement that does not exceed  
20 \$300.00 per claim.

21 (5) "Department" means the department of technology,  
22 management, and budget.

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



1 except to the extent that the public or local act or administrative  
2 rule or state agency regulation being implemented for the first  
3 time imposes upon a local unit of government a new activity or  
4 service or an increase in the level of any activity or service  
5 beyond that required by existing law.

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

11 (3) "Fiscal agencies" means the house fiscal agency or the  
12 senate fiscal agency as described in the legislative council act,  
13 1986 PA 268, MCL 4.1101 to 4.1901.

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

22 (5) "Legislature" means the house of representatives and the  
23 senate of this state.

24 (6) "Local unit of government" means a political subdivision  
25 of this state, including local school districts, community college  
26 districts, intermediate school districts, cities, villages,  
27 townships, counties, and authorities, if the political subdivision  
28 has as its primary purpose the providing of local governmental  
29 activities and services for residents in a geographically limited



1 area of this state and has the power to act primarily on behalf of  
2 that area.

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



(8) "New activity or service or increase in the level of an existing activity or service" does 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.

Sec. 4. (1) "Service" means 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.

(2) "State agency" means a state department, bureau, division, section, board, commission, trustee, authority, or officer that is created by the state constitution of 1963, by statute, or by state agency action, and that has the authority to promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. State agency does 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.

(3) "State financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law" means 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.



1 (4) "State law" means a state statute, rule, or state agency  
2 regulation.

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

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

9 (b) A court requirement.

10 (c) A federal requirement.

11 (d) An implied federal requirement.

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

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

21 (g) A requirement of a state law enacted pursuant to section  
22 18 of article VI of the state constitution of 1963.

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

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



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

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

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

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



1 determine whether any new or increased level of activities or  
2 services is likely to be required of a local unit of government by  
3 that legislation, rule, or state agency regulation if it becomes  
4 effective.

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

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

29 (d) In the case of a rule or state agency regulation, the





1 fiscal agencies shall promptly inform the director of the state  
2 agency proposing the rule or state agency regulation in writing  
3 before the rule or state agency regulation becomes effective.

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

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

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

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



1 legislature for this purpose. The amount determined to be payable  
2 to local units of government under this act are not intended to be  
3 static but rather to be adjusted on an on-going basis as  
4 continuously reported data warrants.

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

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

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

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

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



1 of compliance or, alternatively, ruled in favor of the complainant.

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

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

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

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

