SENATE BILL NO. 449

May 18, 2021, Introduced by Senator MCBROOM and referred to the Committee on Oversight.

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:

Sec. 1. (1) This act shall be known and may be cited as the "Headlee unfunded mandates prohibition act".

(2) For purposes of this act, the words and phrases defined in sections 2 to 4 shall have the meanings ascribed to them in those sections.

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

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

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

(4) "De minimis cost" means a net cost to a local unit of government resulting from a state requirement that does not exceed $300.00 per claim.

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

Sec. 3. (1) "Existing law" means a public or local act enacted prior to December 23, 1978, a rule promulgated or state agency regulation implemented prior to December 23, 1978, or a court order.
concerning a public or local act or rule described in this subsection. A rule initially promulgated after December 22, 1978 implementing for the first time an act or amendatory act in effect prior to December 23, 1978 shall also be considered as existing law except to the extent that the public or local act or administrative rule or state agency regulation being implemented for the first time imposes upon a local unit of government a new activity or service or an increase in the level of any activity or service beyond that required by existing law.

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

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

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

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

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

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

(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.

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

(5) "State requirement" means 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 does not include any of the following:

(a) A requirement imposed on a local unit of government by a new amendment to the state constitution of 1963.
(b) A court requirement.
(c) A federal requirement.
(d) An implied federal requirement.
(e) A requirement of a state law which applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.
(f) A requirement of a state law that does not require a local unit of government to perform an activity or service but allows a local unit of government to do so as an option, and by opting to perform that activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines determined by state law.
(g) A requirement of a state law enacted pursuant to section 18 of article VI of the state constitution of 1963.

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

(2) The legislature shall appropriate and disburse each year an amount sufficient to pay each local unit of government the state financed proportion of the necessary cost of an existing activity or service required of local units of government by state law.
existing on December 23, 1978, and to appropriate and disburse each
year an amount sufficient to pay each local unit of government for
the full costs of new activities or services or increases in the
level of activities and services required by state law after

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

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

(a) Before legislation affecting a local unit of government is
scheduled for third reading in the legislative chamber in which it
was introduced, or a state agency adopts a rule or imposes a state
agency regulation proposed to become a future requirement on a unit
of government, the fiscal agencies shall conduct a review to
determine whether any new or increased level of activities or
services is likely to be required of a local unit of government by
that legislation, rule, or state agency regulation if it becomes
effective.

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

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

(d) In the case of a rule or state agency regulation, the
fiscal agencies shall promptly inform the director of the state
agency proposing the rule or state agency regulation in writing before the rule or state agency regulation becomes effective.

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

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

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

(3) Working from the cost data provided by local units of government using a standard accounting format, the department shall adjust the funding necessary to meet the state's funding responsibility under section 29 article IX of the state constitution of 1963 applied under the provisions of this act for each subsequent fiscal year and issue a report to the legislature of the required funding for each year hereafter in sufficient time to allow for the adjustment of the annual appropriations by the legislature for this purpose. The amount determined to be payable
to local units of government under this act are not intended to be static but rather to be adjusted on an on-going basis as continuously reported data warrants.

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

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

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

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

(ii) The court of appeals or other court having jurisdiction has either failed to issue an order within 6 months after the complaint was filed and served ruling whether the state law imposes a state requirement and whether the state has underfunded the cost of compliance or, alternatively, ruled in favor of the complainant.
Sec. 8. Funds received by a local unit of government under this act shall be separately accounted for by the local unit of government to reflect the specific state requirement for which the funds are appropriated.

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

(2) This act shall not be applied retroactively.

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