

HEADLEE UNFUNDED MANDATES PROHIBITION ACT

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House Bill 5353 as introduced
Sponsor: Rep. John Fitzgerald
Committee: Local Government and Municipal Finance
Complete to 3-6-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5353 would provide a new set of procedures for the state government to follow to comply with its obligations under section 29 of Article IX of the state constitution (“Section 29”), which is a component of what is sometimes referred to as the “Headlee” amendment. Section 29 states the following:

The state is hereby prohibited 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 shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.¹

The bill would repeal 1979 PA 101, which currently implements Section 29, and create a new but similar act, the “Headlee Unfunded Mandates Prohibition Act.” The new act would require the legislature to fund a new or increased *activity* or *service* provided by a *local unit of government* when required by a *state law*, as required by the state constitution, and would implement a fiscal note process to determine the estimated costs to a local unit of government to fulfill a proposed *state requirement*. The act states that it would not be retroactive.

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 of government that is available to the general public or is provided for the citizens of the local unit of government.

Local unit of government would mean a political subdivision of the state, including local school districts, community college districts, intermediate school districts, cities, villages, townships, counties, and authorities, if its primary purpose is to provide local government activities and services for residents in a geographically limited area of the state and it has the power to act primarily on behalf of that area.

¹ This section pertains to judges’ salaries.

State law would mean a state statute, rule, or state agency² regulation.

State requirement would mean a state law that requires a new activity or service or an increase in the level of an existing activity or service beyond that required of a local unit of government by an **existing law**. It would *not* include any of the following:

- A requirement imposed on a local unit of government by a new amendment to the state constitution.
- A **court requirement**, **federal requirement**, or **implied federal requirement**.
- A requirement of a state law that applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.
- 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 the activity or service, the local unit of government must comply with certain minimum standards, requirements, or guidelines determined by state law.
- A requirement of a state law enacted under section 18 of Article VI of the state constitution, which addresses judges' salaries.

Existing law would mean a public or local act enacted, a rule promulgated, or a state agency regulation implemented before December 23, 1978, or a court order concerning such an act or rule.³

Court requirement would mean a new or increased level of activity or service required of a local government to comply with a final state or federal court order arising from the interpretation of the U.S. Constitution; the state constitution; or a federal statute, rule, or regulation. It would include a state law that a final state or federal court order requires to be enacted.

Federal requirement would mean a federal law or other federal action with the force and effect of law that requires the state to take action or provide a service affecting a local unit of government.

Implied federal requirement would mean a federal law or other federal action with the force and effect of law that does not directly require the state to take action or provide a service affecting a local unit of government but will result in a loss of federal funds or tax credits if the action is not taken or service is not provided.

The bill would require the legislature to annually appropriate and disburse an amount sufficient to pay each local unit of government the **necessary cost** of each state requirement, as provided by Section 29. The legislature also would have to appropriate and disburse each year an amount

² State agency would mean a state department, bureau, division, section, board, commission, trustee, authority, or officer that is created by the state constitution, a statute, or a state agency action and that has the authority to promulgate rules. It would not include an agency in the judicial branch, an agency with direct control over an institution of higher education, or the Michigan Civil Service Commission.

³ A rule initially promulgated after December 22, 1978, that implements an act in effect before December 23, 1978, for the first time would be considered an existing law except to the extent that the act, rule, or regulation imposes a new or increased level of activity or service on a local government.

sufficient to cover the state-financed proportion of the necessary cost of an existing activity or service required of local units of governments under existing law⁴ and the full costs of any new or increased activity or service⁵ required by state law after December 23, 1978.

Necessary cost would mean the cost of an activity or service provided by a local unit of government, as determined by the state.⁶ It would generally be the actual cost to the state if the state were to provide the mandated activity or service, unless a lack of experience by the state in providing the activity or service results in the inability to provide a reliable cost estimate without resorting to unfounded cost speculation, in which case the necessary cost would instead be the actual cost to a local unit of government to provide the mandated activity or service. Necessary cost would *not* include the cost of a state requirement if it does not exceed a de minimis cost (a net cost to a local government of up to \$300 per claim) or if the requirement will not exceed the cost of the preexisting duties of a local government.

The disbursement process would have to pay or disburse funds to local units of government on a current basis or as costs to provide the required activity or services are incurred by the local units of government. Funds received by a local unit of government under the new act would have to be separately accounted for by the local unit to reflect the specific requirement for which the funds are appropriated.

Notwithstanding any other provision of law, a local unit of government would not be obligated to provide a new activity, a new service, or an increase in the level of an existing activity or service if required by state law after the bill takes effect unless a fiscal note has been prepared for that law and the state has appropriated and provided for payment of the amounts sufficient to fund the necessary cost to the local government of providing the new or increased activity or service as based on the fiscal note analysis (described below). If legislation is enacted, a rule is promulgated, or a state agency regulation is imposed that establishes a requirement on local units of government without following the fiscal note process, a local unit of government would not be required to comply until the fiscal note process is completed.

Fiscal note process

The bill would create and provide for a fiscal note process that would require the House and Senate Fiscal Agencies to review legislation affecting a local unit of government or a proposed state agency rule or regulation that would become a future requirement on a local unit of government. The fiscal agencies would have to determine whether any new or increased level of activities or services is likely to be required of a local government as a result, and, as applicable, they would have to inform the legislature or the director of the agency proposing the rule or regulation of their determination. The legislature would have to be notified in writing before the legislation is scheduled for third reading, and agency directors would have to be notified in writing before the rule or regulation takes effect.

⁴ This proportion would be the percentage of necessary costs specifically provided for an activity or service required of local governments by existing law and partially or totally funded by the state on December 23, 1978.

⁵ This would not include a law, rule, or regulation that provides only clarifying and non-substantive changes to an existing law, or the recodification of an existing law (or rules repromulgated thereafter) that does not require a new or increased activity or service above the level required before the recodification.

⁶ Determinations would be conclusive.

If the House and Senate Fiscal Agencies determine that a new or increased activity or service is likely to occur if the legislation, rule, or regulation becomes effective, they would be required to develop a written estimate of the increased necessary costs, including any indirect costs, that will result to local units of government. In developing the estimate, the fiscal agencies would have to seek information from a representative sample of local units of government that would be affected by a state requirement in a manner that is reasonably expected to result in a fair estimate of the statewide cost of compliance. The agencies would then have to report their findings to the speaker of the House, the Senate majority leader, the chairs of the House and Senate appropriations committees, the sponsor of the legislation and the chair of the committee that reported the legislation (if applicable), and the director of the state agency proposing the rule or regulation (if applicable). If the legislation, rule, or regulation is later modified, the fiscal agencies would have to consult with the local representatives to modify the estimate.

Within one year after the bill takes effect, the Department of Treasury would have to develop a searchable standard accounting system to assist with the fiscal note process.

For each subsequent fiscal year, the Department of Technology, Management, and Budget (DTMB) would have to use cost data provided by local units of government and a standard accounting format to adjust the funding necessary to meet the state's responsibility under Section 29. DTMB would then have to issue an annual report to the legislature of the required funding in sufficient time to allow for the legislature to adjust its annual appropriations for this purpose. (The act states that the amounts determined to be payable to local units of government are intended to be adjusted on an ongoing basis as the data warrants.)

Additional provisions

The state could not penalize, withhold funds from, or impose any monetary or other sanction on a local unit of government for failing to comply with a state requirement under either of the following circumstances:

- The state failed to fully follow the fiscal note process for a new or increased activity or service or failed to make timely disbursements for the costs identified in the fiscal note.
- The state has prepared a fiscal note and either of the following applies for the new or increased activity or service:
 - A taxpayer or local unit of government has filed a suit asserting that the state law imposes a mandate on a local unit of government and the cost of compliance has not been fully funded by the state.⁷
 - The Court of Appeals or another court has ruled in favor of the complainant or has failed to issue an order within six months after the complaint was filed.

The new act would not prohibit the legislature from enacting laws to provide for other forms of dedicated state aid, cost-sharing agreements, or specific disbursement methods to a local unit of government for a cost incurred pursuant to state laws to which the act would apply.

1979 PA 101 repeal

Finally, the bill would repeal 1979 PA 101, the current implementing legislation for Section 29 of Article IX. That act 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 that is required

⁷ Section 32 of Article IX of the state constitution allows any Michigan taxpayer to file a lawsuit with the Court of Appeals to enforce Section 29.

of local units of government by an existing law, unless the existing law is repealed, and requires state disbursements to be made to local units of government for the costs of administering or implementing activities and services above their existing level when required by state law. The act includes provisions pertaining to a fiscal note process and disbursement timeline.

BACKGROUND:

Bills similar to House Bill 5353 have been introduced in several previous legislative sessions, the most recent being Senate Bill 449 of the 2021-22 session, which was reported from the Senate Oversight committee.

FISCAL IMPACT:

The bill would result in new costs to the state for various reasons described below. Any fiscal impact related to appropriations for local unit state mandates cannot be immediately determined, as it is unknown how the process proposed by the bill would be put into practice.

Disbursements to Local Governments for State Mandates

Section 29 of Article IX of the state constitution and 1979 PA 101 currently require the state to appropriate and disburse payments to local units of government for any necessary increased costs following a new state mandated activity or service or an increase in the level of any state mandated activity or service.

The bill's requirement to establish a new process for appropriating and disbursing payments to local units for necessary costs of new activities and services would therefore not be/represent a change in law in this regard, nor result in a corresponding change in fiscal impact, because the constitutional and statutory obligation to provide adequate funding for necessary costs imposed under Section 29 would not change. However, the bill would establish a new requirement for the fiscal agencies to make a determination as to whether a new or increased activity or service or an increase in the level of an existing activity or service would be likely to occur and develop an estimate of necessary costs, if any. A local unit would not be obligated to perform the new or increased service or activity unless a fiscal note was prepared and the state appropriated amounts sufficient to meet the necessary cost. How this proposed process would change appropriations related to local unit state mandates cannot be immediately determined, as it is unknown how the process would be put into practice.

The bill could also result in additional costs to the state related to litigation in defending against lawsuits over determinations of what are "necessary costs," estimates by the fiscal agencies of those cost amounts, and how disbursements are distributed. The state could be liable to lawsuits from local units or any private taxpayer as provided in section 32 of Article IX of the state constitution.

As a point of reference, Michigan has 83 counties, 1,240 townships, 275 cities, 258 villages, 552 school districts, 57 intermediate school districts, and over 300 special districts and authorities.

Local Units of Government

As noted above, how the process proposed under the bill would change appropriations related to local unit state mandates cannot be immediately determined, as it is unknown how the process would be put into practice.

Local units could incur costs related to collecting and providing cost data to the Department of Treasury and the fiscal agencies. However, these costs may qualify as a necessary cost under the bill and require support through state disbursements.

Treasury

The bill could result in additional costs to the Department of Treasury to develop a standard accounting system in a searchable format to assist the fiscal note process if such a system is not already available. The average cost of a state information technology project is approximately \$250,000. The Department of Treasury could also incur ongoing administrative costs of additional FTE positions if any additional staff were needed to administer the accounting system.

House and Senate Fiscal Agencies

The House and Senate Fiscal Agencies could incur administrative costs for additional FTE positions if additional staff were needed to comply with the expanded fiscal note process.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.