

HOUSE BILL NO. 5353

November 14, 2023, Introduced by Rep. Fitzgerald and referred to the Committee on Local Government and Municipal Finance.

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) As used in this act, the words and phrases defined in
4 sections 2 to 4 have the meanings ascribed to them in those
5 sections.

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

8 (2) "Consultation" means to seek information from a
9 representative sample of local units of government affected by a
10 state requirement in a manner that is reasonably expected to result
11 in a fair estimate of the statewide cost of compliance with the
12 state requirement.

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

21 (4) "De minimis cost" means a net cost to a local unit of
22 government resulting from a state requirement that does not exceed
23 \$300.00 per claim.

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

26 Sec. 3. (1) "Existing law" means a public or local act enacted
27 before December 23, 1978, a rule promulgated or state agency
28 regulation implemented before December 23, 1978, or a court order
29 concerning a public or local act or rule described in this

1 subsection. A rule initially promulgated after December 22, 1978
2 implementing for the first time an act or amendatory act in effect
3 before December 23, 1978 is also considered as existing law except
4 to the extent that the public or local act or administrative rule
5 or state agency regulation being implemented for the first time
6 imposes on a local unit of government a new activity or service or
7 an increase in the level of an existing activity or service beyond
8 that required by existing law.

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

14 (3) "Fiscal agencies" means the house fiscal agency or the
15 senate fiscal agency as described in the legislative council act,
16 1986 PA 268, MCL 4.1101 to 4.1901.

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

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

28 (6) "Local unit of government" means a political subdivision
29 of this state, including local school districts, community college

1 districts, intermediate school districts, cities, villages,
2 townships, counties, and authorities, if the political subdivision
3 has as its primary purpose the providing of local governmental
4 activities and services for residents in a geographically limited
5 area of this state and has the power to act primarily on behalf of
6 that area.

7 (7) "Necessary cost" means the cost of an activity or service
8 provided by a local unit of government. The necessary cost is
9 determined as follows:

10 (a) Unless subdivision (b) applies, necessary cost is the
11 actual cost to this state if this state were to provide the
12 activity or service mandated as a state requirement, unless
13 otherwise determined by the legislature when making a state
14 requirement.

15 (b) If a lack of experience by this state in providing the
16 activity or service results in this state being incapable of
17 providing a reliable cost estimate for actual cost determination
18 purposes without resorting to unfounded cost speculation, necessary
19 cost is the actual cost to a local unit of government to provide
20 the activity or service mandated as a state requirement.

21 (c) This state shall determine whether the means of
22 establishing necessary cost under subdivision (a) or (b) applies,
23 and this state's determination is conclusive.

24 (d) Necessary cost does not include either of the following:

25 (i) The cost of a state requirement if it does not exceed a de
26 minimis cost.

27 (ii) The cost of a state requirement if the state requirement
28 will result in an offsetting savings to an extent that, if the
29 duties of a local unit of government that existed before the

1 effective date of the state requirement are considered, the
2 requirement will not exceed the cost of the preexisting
3 requirements.

4 (8) "New activity or service or increase in the level of an
5 existing activity or service" does not include either of the
6 following:

7 (a) A state law, or administrative rule promulgated or state
8 agency regulation under existing law, that provides only clarifying
9 nonsubstantive changes to an earlier, existing law or state law.

10 (b) The recodification of an existing law or state law, or
11 administrative rules promulgated under a recodification, that does
12 not require a new activity or service or does not require an
13 increase in the level of an activity or service above the level
14 required before the existing law or state law was recodified.

15 Sec. 4. (1) "Service" means a specific and identifiable
16 program of a local unit of government that is available to the
17 general public or is provided for the citizens of the local unit of
18 government.

19 (2) "State agency" means a state department, bureau, division,
20 section, board, commission, trustee, authority, or officer that is
21 created by the state constitution of 1963, by statute, or by state
22 agency action, and that has the authority to promulgate rules
23 pursuant to the administrative procedures act of 1969, 1969 PA 306,
24 MCL 24.201 to 24.328. State agency does not include an agency in
25 the judicial branch of state government, an agency having direct
26 control over an institution of higher education, or the state civil
27 service commission.

28 (3) "State financed proportion of the necessary cost of an
29 existing activity or service required of local units of government

1 by existing law" means the percentage of necessary costs
2 specifically provided for an activity or service required of local
3 units of government by existing law and partially or totally funded
4 by this state on December 23, 1978.

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

7 (5) "State requirement" means a state law that requires a new
8 activity or service or increase in the level of an existing
9 activity or service beyond that required of a local unit of
10 government by an existing law. State requirement does not include
11 any of the following:

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

14 (b) A court requirement.

15 (c) A federal requirement.

16 (d) An implied federal requirement.

17 (e) A requirement of a state law that applies to a larger
18 class of persons or corporations and does not apply principally or
19 exclusively to a local unit or units of government.

20 (f) A requirement of a state law that does not require a local
21 unit of government to perform an activity or service but allows a
22 local unit of government to do so as an option, and by opting to
23 perform that activity or service, the local unit of government must
24 comply with certain minimum standards, requirements, or guidelines
25 determined by state law.

26 (g) A requirement of a state law enacted under section 18 of
27 article VI of the state constitution of 1963.

28 Sec. 5. (1) The legislature shall appropriate and disburse
29 each year an amount sufficient to pay each local unit of government

1 the necessary cost of each state requirement pursuant to section 29
2 of article IX of the state constitution of 1963.

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

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

27 Sec. 6. (1) A fiscal note process is created that consists of
28 all of the following:

29 (a) Before legislation affecting a local unit of government is

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

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

1 proposed legislation, rule, or state agency regulation, modify
2 their written estimate of increased necessary costs.

3 (c) In the case of legislation, the fiscal agencies shall
4 promptly inform the legislature in writing of their determination
5 under subdivision (a) before the legislation is scheduled for third
6 reading.

7 (d) In the case of a rule or state agency regulation, the
8 fiscal agencies shall promptly inform the director of the state
9 agency proposing the rule or state agency regulation in writing of
10 their determination under subdivision (a) before the rule or state
11 agency regulation becomes effective.

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

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

19 (3) Working from the cost data provided by local units of
20 government using a standard accounting format, the department shall
21 adjust the funding necessary to meet this state's funding
22 responsibility under section 29 article IX of the state
23 constitution of 1963 applied in accordance with this act for each
24 subsequent fiscal year and issue a report to the legislature of the
25 required funding for each year in sufficient time to allow for the
26 adjustment of the annual appropriations by the legislature for this
27 purpose. The amounts determined to be payable to local units of
28 government under this act are not intended to be static but rather
29 to be adjusted on an ongoing basis as continuously reported data

1 warrants.

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

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

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

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

24 (ii) The court of appeals or other court having jurisdiction
25 has either failed to issue an order within 6 months after the
26 complaint was filed and served ruling whether the state law imposes
27 a state requirement and whether this state has underfunded the cost
28 of compliance or, alternatively, ruled in favor of the complainant.

29 Sec. 8. Funds received by a local unit of government under

1 this act shall be separately accounted for by the local unit of
2 government to reflect the specific state requirement for which the
3 funds are appropriated.

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

9 (2) This act may not be applied retroactively.

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