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BILL ANALYSIS

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Senate Bills 388, 389, and 390 (as introduced 6-9-15)
Sponsor: Senator Tom Casperson (S.B. 388)
Senator Mike Kowall (S.B. 389)
Senator Dave Robertson (S.B. 390)
Committee: Government Operations

Date Completed: 11-3-15

CONTENT

Senate Bill 388 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 Senate and House Fiscal Agencies 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.**
- **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 Fiscal Agencies 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.**

The bill also would repeal the current implementing legislation for Article 9, Section 29 of the State Constitution.

The bill states that the Act could not be applied retroactively.

Senate Bill 389 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.

- **-- 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 Senate and House Fiscal Agencies, receive the results, and 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 390 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 389 and 390 are tie-barred to Senate Bill 388 and would take effect 90 days after being enacted.

Senate Bill 388

Implementation of Article 9, Section 29

The proposed Paul Harvey Transparency Act would require the Legislature 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 be required 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.)

Notwithstanding any provision of law to the contrary, 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 either 1) the Fiscal Agencies 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 2) 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 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.

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 does 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 legislative chamber in which it was introduced, the Fiscal Agencies 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 Fiscal Agencies would have 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 sponsor of the legislation, the chairperson of the committee that reported it, the Speaker of the House, the Majority Leader of the Senate, and the chairpersons of the House and Senate Appropriations Committees. 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.

("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 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 Fiscal Agencies would have 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 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 to assist in the fiscal note process.

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 390) asserting that the State law imposed a mandate under Article 9, Section 29 of the State Constitution and that the cost of compliance had not been fully funded by the State.
-- 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 Fiscal Agencies, the DTMB would have to give them 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, 2016, 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.

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 388.

Senate Bill 389

Administrative Rule Compliance

The bill provides that, if a rule or guideline required a local unit of government to provide a new activity or service or an increase in the level of an existing activity or service, 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 an officer, employee, or agent of a local unit; and 2) a local unit would not be required to comply with the rule or take any action with respect to the guideline unless the State had appropriated and provided for disbursement of the amounts sufficient, based on the fiscal note process under the Paul Harvey Transparency Act, to fund the necessary costs to local units of providing the new activity or service or increase in the level of an existing activity or service.

ORR Compliance Report

The bill would require the Office of Regulatory Reinvention to determine whether a proposed rule could require a local unit of government to provide a new activity or service or an increase in the level of an existing activity or service. If it determined that the proposed rule did so, the ORR would be required to notify the Senate and House Fiscal Agencies. After the Fiscal Agencies had followed the fiscal note process and presented the results to the ORR, it would have to prepare a report notifying JCAR whether the State had appropriated and provided for disbursement of amounts sufficient to fund the cost to local units of providing the new activity or service or increased level of an existing activity or service.

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 Committee may approve a notice of objection if it determines that at least one of the

conditions specified in the Act exist (e.g., the agency lacks statutory authority for the rule, the rule conflicts with State law, or the rule is arbitrary or capricious).

The bill also would authorize JCAR to object to a proposed rule if the rule violated Article 9, Section 29 of the State Constitution or the Paul Harvey Transparency Act because of a failure to adequately fund a new activity or service or increase in the level of an existing activity or service required to be provided by local units of government.

As under current law, if JCAR filed a notice of objection, a JCAR member would have to cause bills to be introduced in both houses to rescind the proposed rule on its effective date, repeal the statutory that authorized the proposed rule, or stay the effective date of the rule for up to one year.

Senate Bill 390

Headlee Amendment Suits

Section 308a of the Revised Judicature 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

Section 308a requires the unit of government to be named as defendant. Under the bill, this would apply if a taxpayer brought an action under Section 308a. As currently provided, an officer of a governmental unit 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.

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 Department of Attorney General.

-- 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.

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, of if the panel elected not to refer the action to a Special Master, the COA panel would have to 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, who would continue in office at the pleasure of the Court. The Supreme Court would have to establish the qualifications required to serve as Special Master, including, at a minimum, that the individual be 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. The COA would have to give the action priority over other cases pending before it, except those 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. There would be no presumption of compliance. Compliance would have to be established through evidence introduced by the State or the responsible department or agency.

However, if the plaintiff were a local unit of government that had twice brought and lost actions under Section 308a, there would be a presumption that the State or the responsible department or agency had complied with Article 9, Sections 25 to 31. The local unit would have the burden of proving noncompliance.

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 either the Senate and House Fiscal Agencies 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 an 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 affected 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 by the COA 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, pending final adjudication by the Court. If the Supreme Court determined that the plaintiff was not likely to prevail on the merits, however, a stay would not be mandatory but could be issued in the Court's discretion.

MCL 24.203 et al. (S.B. 389)
600.308a et al. (S.B. 390)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bills 388, 389, and 390 would have a negative fiscal impact on the State, depending upon a variety of factors discussed below. The bills would impose additional requirements on the Department of Technology, Management, and Budget, the Department of Licensing and Regulatory Affairs, the Department of Treasury, other State departments that propose rules, the judiciary, and the Legislature. In addition to the expense of complying with the proposed requirements, the State could experience increased costs by defending lawsuits.

Legislature: The provisions of Senate Bill 388 would require the Senate and House Fiscal Agencies to conduct a fiscal note process. The Fiscal Agencies would 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 Fiscal Agencies to conduct a fiscal note process are indeterminate. Costs would depend on the number of bills that would be reviewed and the cost of consulting with a representative sample of local governments affected by a bill. In order to comply with these requirements, it could be necessary for the Fiscal Agencies to hire additional staff. The estimated cost of one full-time classified employee for salary, wages, and benefits is approximately $85,000 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 Fiscal Agencies, Senate Bill 388 would require the Department of Technology, Management, and Budget to provide them 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 would depend 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 for a full-time classified employee in this State is $85,000 per year for salary, wages, and benefits.

The Department of Treasury would be required to develop a standard accounting system in a searchable format to assist in the fiscal note process. If the Department of Treasury does not already have a system that could accomplish this, then the Department would have to create such a system. The cost of complying 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 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 389 would require the Office of Regulatory Reinvention in LARA to review proposed rules and determine whether a rule could require a local unit of government to provide a new service or increased services. If it did, the ORR would have to notify the Fiscal Agencies and then report to the Joint Committee on Administrative Rules whether an appropriation had been made that would cover the costs of those services based on the fiscal note process. 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 390 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 388 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. In the event that the proposed fiscal note and appropriations process was not followed, a local government would not be obligated to implement a new or expanded service or activity. A stay in implementation of a new requirement also could be granted by a court. This would tend to reduce local 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.

If a "claim" (which is undefined in the bill) were considered to be the cost to any local unit of government, the de minimis standard of $300 could frequently be exceeded, especially for larger local governments, which would tend to increase State costs and local revenue under the bill, assuming the required State funds were appropriated.

In actions filed under Section 308a of the Revised Judicature Act, Senate Bill 390 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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