

SENATE BILL No. 388

June 9, 2015, Introduced by Senators CASPERSON, KOWALL, MARLEAU, COLBECK and BRANDENBURG and referred to the Committee on Government Operations.

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 shall be known and may be cited as the
2 "Paul Harvey transparency act".

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

1 sections.

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

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

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

17 (4) "De minimis cost" means a net cost to a local unit of
18 government resulting from a state requirement that does not exceed
19 \$300.00 per claim.

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

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

1 considered as existing law except to the extent that the public or
2 local act or administrative rule 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 affecting local units of government.

10 (3) "Implied federal requirement" means a federal law, rule,
11 regulation, executive order, guideline, standard, or other federal
12 action which has the force and effect of law and which does not
13 directly require the state to take action affecting local units of
14 government, but will, according to federal law, result in a loss of
15 federal funds or federal tax credits if state action is not taken
16 to comply with the federal action.

17 (4) "Legislature" means the house of representatives and the
18 senate of this state.

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

27 (6) "Necessary cost" means the cost of an activity or service

1 provided by a local unit of government. The necessary cost is the
2 actual cost to this state if this state were to provide the
3 activity or service mandated as a state requirement, unless
4 otherwise determined by the legislature when making a state
5 requirement. Necessary cost does not include the cost of a state
6 requirement if it does not exceed a de minimis cost. Necessary cost
7 does not include the cost of a state requirement if the state
8 requirement will result in an offsetting savings to an extent that,
9 if the duties of a local unit of government that existed before the
10 effective date of the state requirement are considered, the
11 requirement will not exceed the cost of the preexisting required
12 duties.

13 (7) "New activity or service or increase in the level of an
14 existing activity or service" does not include a state law, or
15 administrative rule promulgated under existing law, which provides
16 only clarifying nonsubstantive changes in an earlier, existing law
17 or state law; or the recodification of an existing law or state
18 law, or administrative rules promulgated under a recodification,
19 which does not require a new activity or service or does not
20 require an increase in the level of an activity or service above
21 the level required before the existing law or state law was
22 recodified.

23 Sec. 4. (1) "Service" means a specific and identifiable
24 program of a local unit of government that is available to the
25 general public or is provided for the citizens of the local unit of
26 government.

27 (2) "State agency" means a state department, bureau, division,

1 section, board, commission, trustee, authority, or officer that is
2 created by the state constitution of 1963, by statute, or by state
3 agency action, and that has the authority to promulgate rules
4 pursuant to the administrative procedures act of 1969, 1969 PA 306,
5 MCL 24.201 to 24.328. State agency does not include an agency in
6 the judicial branch of state government, an agency having direct
7 control over an institution of higher education, or the state civil
8 service commission.

9 (3) "State financed proportion of the necessary cost of an
10 existing activity or service required of local units of government
11 by existing law" means the percentage of necessary costs
12 specifically provided for an activity or service required of local
13 units of government by existing law and categorically funded by the
14 state on December 23, 1978.

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

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

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

23 (b) A court requirement.

24 (c) A federal requirement.

25 (d) An implied federal requirement.

26 (e) A requirement of a state law which applies to a larger
27 class of persons or corporations and does not apply principally or

1 exclusively to a local unit or units of government.

2 (f) A requirement of a state law that does not require a local
3 unit of government to perform an activity or service but allows a
4 local unit of government to do so as an option, and by opting to
5 perform such an activity or service, the local unit of government
6 shall comply with certain minimum standards, requirements, or
7 guidelines.

8 (g) A requirement of a state law that changes the level of
9 requirements, standards, or guidelines of an activity or service
10 that is not required of a local unit of government by existing law
11 or state law, but that is provided at the option of the local unit
12 of government provided that state requirement shall include any
13 standards, requirements, or guidelines that require increased
14 necessary costs for activities and services directly related to
15 police, fire, or emergency medical transport services.

16 (h) A requirement of a state law enacted pursuant to section
17 18 of article VI of the state constitution of 1963.

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

22 (2) The legislature shall appropriate and disburse each year
23 an amount sufficient to pay each local unit of government the state
24 financed proportion of the necessary cost of an existing activity
25 or service required of local units of government by existing law
26 and to appropriate and disburse to local units of government an
27 amount sufficient to pay for the costs of new activities or

1 services or increases in the level of activities and services
2 required by state law after December 23, 1978.

3 (3) Notwithstanding any provision of law to the contrary, no
4 local unit of government shall be obligated to provide a new
5 activity or service or increased level of activity or service
6 required by state law after the effective date of this act unless a
7 fiscal note has been prepared in accordance with section 6, and the
8 state has appropriated and provided for disbursement of the amounts
9 sufficient based on the fiscal note analysis to fund the necessary
10 cost to the local unit of government of providing the new activity
11 or service or increase in the level of a required activity or
12 service or a court has determined that the legislation does not
13 impose a new activity or service or an increase in the level of an
14 existing activity or service. In the event that legislation is
15 enacted after the effective date of this act imposing a requirement
16 on local units of government without following the fiscal note
17 process described in section 6, local units of government are not
18 required to comply until that time that the fiscal note process
19 described in section 6 is followed or a court has determined that
20 the legislation does not impose a new activity or service or an
21 increase in the level of an existing activity or service.

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

24 (a) Before legislation affecting a local unit of government is
25 scheduled for third reading in the legislative chamber in which it
26 was introduced, the fiscal agencies shall conduct a review to
27 determine whether any new or increased level of activities or

1 services is likely to be required of local units of government by
2 that legislation if it becomes effective.

3 (b) If it is determined that a new activity or service or an
4 increased level of activity or service is likely to occur, the
5 fiscal agencies shall develop a written estimate of the increased
6 necessary costs, if any, that will result to local units of
7 government if that legislation becomes effective. In developing the
8 written estimate of the increased necessary costs, the fiscal
9 agencies shall work in consultation with local units of government
10 and shall report their findings to the sponsor of the legislation,
11 the chairperson of the committee that reported the legislation, the
12 speaker of the house, the majority leader of the senate, and the
13 chairpersons of the house and senate appropriations committees. If
14 the legislation is modified by either house of the legislature, the
15 fiscal agencies shall, in consultation with local units of
16 government, modify their written estimate of increased necessary
17 costs.

18 (c) The fiscal agencies shall promptly inform the legislature
19 in writing of its determination in subdivision (b) before the
20 legislation is scheduled for third reading.

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

25 (e) After receiving notice from the office of regulatory
26 reinvention that a rule may impose a new activity or service or an
27 increased level of activity or service is likely to occur, the

1 fiscal agencies shall develop a written estimate of the increased
2 necessary costs of the proposed rule, if any, that will result to
3 local units of government if that proposed rule becomes effective.
4 In developing the written estimate of the increased necessary costs
5 of the proposed rule, the fiscal agencies shall work in
6 consultation with local units of government and shall report their
7 findings to the office of regulatory reinvention.

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

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

15 (a) The state has failed to follow the fiscal note process
16 provided in section 6 for that new activity or service or has
17 failed to make timely disbursement to fund the costs identified in
18 the fiscal note process provided in section 6 for that new activity
19 or service or increase in the level of an existing activity or
20 service.

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

25 (i) A taxpayer or local unit of government has filed a suit
26 through the filing of a complaint in the court of appeals pursuant
27 to section 308a of the revised judicature act of 1961, 1961 PA 236,

1 MCL 600.308a, asserting that the state law imposes a mandate under
2 section 29 of article IX of the state constitution of 1963 and that
3 the cost of compliance has not been fully funded by the state.

4 (ii) The court of appeals has either failed to issue an order
5 within 6 months after the complaint was filed ruling whether the
6 state law imposes a state requirement and whether the state has
7 underfunded the cost of compliance or, alternatively, ruled in
8 favor of the complainant.

9 Sec. 8. If requested by the fiscal agencies, the department
10 shall provide the fiscal agencies with baseline data on the net
11 cost of compliance if the state provided the same activity or
12 service and the necessary cost of compliance with the state
13 requirement by each unit of local government, to the extent the
14 department has that data regarding a particular new activity or
15 service or increase in the level of an existing activity or
16 service.

17 Sec. 9. Funds received by a local unit of government under
18 this act shall be separately accounted for by the local unit of
19 government to reflect the specific state requirement for which the
20 funds are appropriated. To facilitate monitoring and compliance
21 with this act, not later than October 1, 2016, the department shall
22 establish standard accounting systems which will allow local units
23 of government and the state to calculate and track all of the
24 following:

25 (a) The costs incurred by local units in complying with state
26 requirements and existing law.

27 (b) The state financed proportion of the necessary cost of an

1 existing activity or service required of local units of government
2 by existing law.

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

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

9 Sec. 11. 1979 PA 101, MCL 21.231 to 21.244, is repealed.