

STATE DISBURSEMENTS TO LOCAL UNITS OF GOVERNMENT

Act 101 of 1979

AN ACT to implement section 29 of article 9 of the state constitution of 1963; to provide a state disbursement to local units of government for costs required to administer or implement certain activities or services required of local units of government by the state; to prescribe the powers and duties of certain state agencies and public officers in relation thereto; and to provide for the administration of this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

The People of the State of Michigan enact:

21.231 Meanings of words and phrases.

Sec. 1. 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.231, which pertained to payment of expenses of certain state officers, was repealed by Act 208 of 1962.

21.232 Definitions; A to D.

Sec. 2. (1) "Activity" means a specific and identifiable administrative action of a local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not an administrative action.

(2) "Board" means the local government claims review board created by this act.

(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, an existing law, 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 minimus cost" means a net cost to a local unit of government resulting from a state requirement which does not exceed \$300.00 per claim.

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

(6) "Director" means the director of the department of management and budget.

(7) "Due process requirement" means a statute or rule which involves the administration of justice, notification and conduct of public hearings, procedures for administrative and judicial review of action taken by a local unit of government or the protection of the public from malfeasance, misfeasance, or nonfeasance by an official of a local unit of government, and which involves the provision of due process as it is defined by state and federal courts when interpreting the federal constitution or the state constitution of 1963.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.242, which pertained to payment of expenses of certain state officers, was repealed by Act 208 of 1962.

21.233 Definitions; E to N.

Sec. 3. (1) "Existing law" means a public or local act enacted prior to December 23, 1978, a rule promulgated prior to December 23, 1978, or a court order concerning such a public or local act or rule. 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 deemed to be 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 affecting local units of government.

(3) "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 affecting local units of government, but will, according to federal law, result in a loss of federal funds or federal tax credits if state action is not taken to comply with the federal action.

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

(5) "Local unit of government" means a political subdivision of this state, including 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 services for residents in a geographically limited area of this state and has the power to act primarily on behalf of that

area.

(6) "Necessary cost" means the net cost of an activity or service provided by a local unit of government. The net cost shall 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. Necessary cost does not include the cost of a state requirement if the state requirement satisfies 1 or more of the following conditions:

(a) The state requirement cost does not exceed a de minimus cost.

(b) The state requirement will result in an offsetting savings to an extent that, if the duties of a local unit which existed before the effective date of the state requirement are considered, the requirement will not exceed a de minimus cost.

(c) The state requirement imposes additional duties on a local unit of government which can be performed by that local unit of government at a cost not to exceed a de minimus cost.

(d) The state requirement imposes a cost on a local unit of government that is recoverable from a federal or state categorical aid program, or other external financial aid. A necessary cost excluded by this subdivision shall be excluded only to the extent that it is recoverable.

(7) "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 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Constitutionality: Categorical aid to school districts for specific, identifiable programs which the districts are required to provide by statute or agency rule may not be reduced below the proportion paid by the state during the 1978-79 fiscal year, such as by requiring districts to offset any deficiency in categorical aid due by use of unrestricted aid. *Durant v State Board of Education*, 424 Mich 364; 381 NW2d 662 (1985).

21.234 Definitions; S.

Sec. 4. (1) "Service" means a specific and identifiable program of a local unit of government which is available to the general public or is provided for the citizens of the local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not a program.

(2) "State agency" means a state department, bureau, division, section, board, commission, trustee, authority, or officer which is created by the state constitution of 1963, by statute, or by state agency action, and which has the authority to promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. State agency does not include an agency in the legislative or 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 financed by the state on December 23, 1978. For purposes of this definition, necessary costs shall not include costs required of local units of government by an existing law which do not exceed a de minimus cost and costs imposed by existing law on a local unit of government which are recoverable from a federal or state categorical aid program, or other financial aid.

(4) "State law" means a state statute or state agency rule which is not existing law.

(5) "State requirement" means a state law which 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 state statute or an amendment to the state constitution of 1963 adopted pursuant to an initiative petition, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(b) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963, enacted or adopted pursuant to a proposal placed on the ballot by the legislature, and approved by the voters, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(c) A court requirement.

(d) A due process requirement.

(e) A federal requirement.

(f) An implied federal requirement.

(g) 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.

(h) A requirement of a state law which 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 such an activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines.

(i) A requirement of a state law which changes the level of requirements, standards, or guidelines of an activity or service that is not required of a local unit of government by existing law or state law, but that is provided at the option of the local unit of government.

(j) A requirement of a state law enacted pursuant to section 18 of article 6 of the state constitution of 1963.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.235 Disbursements to local units of government; appropriation; purpose; schedule of estimated payments; duty of governor; prorating amount appropriated; supplemental appropriation; administration of act; personnel; guidelines; forms.

Sec. 5. (1) The legislature shall annually appropriate an amount sufficient to make disbursements to each local unit of government for the necessary cost of each state requirement pursuant to this act, if not otherwise excluded by this act.

(2) An initial disbursement shall be made in advance in accordance with a schedule of estimated payments established in each state requirement. The schedule of estimated payments shall provide that:

(a) The initial advance disbursement will be made at least 30 days prior to the effective date of the state requirement, and

(b) The first disbursement in each subsequent state fiscal year will be made no later than November 1.

(3) The governor shall include in a report which is to accompany the annual budget recommendation to the legislature, those amounts which the governor determines are required to make disbursements to each local unit of government for the necessary cost of each state requirement for that fiscal year and the total amount of state disbursements required for all local units of government.

(4) If the amount appropriated by the legislature for a state requirement is insufficient to fully fund disbursements for the necessary cost of a state requirement as required by this act, the director shall prorate the amount appropriated proportionately among those local units of government eligible for a disbursement for each state requirement in which the appropriation is insufficient. The director shall recommend a supplemental appropriation to the legislature sufficient to fully fund the disbursements for the necessary costs of each state requirement in which the initial appropriation was insufficient or which was imposed by court interpretation of a state law by requiring a new activity or service or an increase in the level of activity or service beyond that required by existing law. The legislature shall then appropriate the amount required in an appropriation bill introduced as a result of the request.

(5) The department shall administer this act and shall assign sufficient personnel to assure proper and adequate administration. The department shall publish guidelines and furnish forms which shall be available to a local unit of government for submitting a claim for the disbursements required by this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.236 Fiscal note for rules requiring disbursement; request for appropriation.

Sec. 6. For rules promulgated under a state law which require a disbursement under this act, the state agency promulgating the rules shall prepare and submit a fiscal note to the joint committee on administrative rules and to the director. The fiscal note shall include an estimate of the cost of the rule during the first 3 fiscal years of the rule's operation. The department shall submit a request for an appropriation, if necessary, for all rules approved pursuant to Act No. 306 of the Public Acts of 1969, as amended. The legislature shall then appropriate the amount required in an appropriation bill introduced as a result of the request.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.237 Joint rules; establishment; purpose; review of records; requesting audit.

Sec. 7. (1) The legislature shall establish joint rules to provide for a method of identifying whether or not legislation proposes a state requirement as described in this act.

(2) The legislature shall establish joint rules to provide for a method of estimating the amount of a necessary cost required to provide disbursements to a local unit of government for legislation identified to propose a state requirement as described in this act.

(3) The estimate required by this section shall include the total amount estimated to make disbursements to

all local units of government for the necessary costs required to administer or implement a state requirement during the first 3 fiscal years of the legislation's operation.

(4) The legislature may review any records pertaining to a claim or request an audit to be performed by the auditor general to verify the actual amount of the necessary cost of a state requirement.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.238 Certification of disbursements; procedure; report on prorated claims; adjustment of prorated claims; payment of disbursements.

Sec. 8. (1) The department shall certify disbursements to each local unit of government for the necessary costs of state requirements from funds appropriated for that purpose.

(2) The department shall certify disbursements to a local unit of government as follows:

(a) Before a state requirement initially takes effect, the department shall notify each local unit to which the state requirement applies not less than 180 days before the effective date of the state requirement. The notice shall include a preliminary claim form for estimating the necessary cost of the state requirement for the initial state fiscal year in which the state requirement takes effect. The notice shall clearly indicate a date by which a claim must be postmarked to qualify for full advance disbursement as provided in subdivision (2)(b) of this section.

(b) To qualify for a full advance disbursement for a state requirement during the initial fiscal year in which a state requirement takes effect, each local unit of government desiring an advance disbursement shall submit the preliminary claim form provided by the department postmarked no later than 90 days before the effective date of the state requirement. If the claim is postmarked between 1 and 89 days before the effective date of the state requirement, the advance disbursement shall be equal to 90% of the estimated amount the unit would otherwise be entitled to.

(c) Each local unit of government shall submit a final claim for full reimbursement or final adjustment on a form provided by the department and postmarked not later than 90 days after the close of the local unit of government's fiscal year. If the final claim is postmarked between 91 days and 24 months after the close of the local unit of government's fiscal year, the director shall make a reimbursement or final adjustment payment equal to 90% of the amount the unit is otherwise entitled to.

(d) In any case, a preliminary or final claim for a de minimus cost shall not be allowed. A final claim postmarked more than 24 months after the close of the fiscal year shall not be allowed.

(e) The department may review the records or request an audit to be performed by the auditor general to verify the actual amount of the necessary cost of a state requirement. The director shall cause to be paid a disbursement for only the necessary cost and shall adjust the payment to correct for any underpayment or overpayment which occurred in the previous state fiscal year.

(f) The provisions of subdivisions (a) and (b) of this section may be waived by a 2/3 majority vote of the members elected and serving in both houses of the legislature, if the legislature determines that an emergency exists necessitating that a state requirement become effective before the provisions of subdivisions (a) and (b) allow. The declaration of an emergency shall be established in each state requirement.

(g) The department shall pay all claims within 45 days after receiving the claim from a local unit of government. The department shall pay all claims pursuant to section 10(4) within 30 days.

(3) If the director prorates claims pursuant to section 5(4), the director immediately shall report this action in writing to the governor and the legislature.

(4) The director shall adjust prorated claims if supplementary funds are appropriated for that purpose.

(5) The state treasurer, upon certification by the director, immediately shall pay all required disbursements directly to the treasurer of the appropriate local unit of government.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: In subsection (2)(d), "de minimus" evidently should read "de minimis."

21.239 Separate accounting for funds; purpose.

Sec. 9. Funds received by a local unit of government under this act shall be separately accounted for to reflect the specific state requirement for which the funds are appropriated.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.240 Local government claims review board; creation; duties; appointment, qualifications, and terms of members; majority vote required to approve claim; concurrent resolution approving payment; adoption of procedures; limitations on appeal; powers of board; report.

Sec. 10. (1) The local government claims review board is created in the department and shall advise the

director on the administration of this act and perform other duties as required by this section.

(2) The board shall consist of 9 members appointed by the governor with the advice and consent of the senate. Each member shall be appointed to serve for a 3-year term, except that of the members first appointed, 3 shall be appointed for a term of 3 years, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 1 year.

(3) Not less than 4 members shall be representatives of a local unit of government.

(4) Subject to subsection (6), the board shall hear and decide upon disputed claims or upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose. The board shall not consider or approve a claim for a de minimus cost. A vote of a majority of the board members appointed to and serving on the board shall be required to approve a claim submitted to the board. If a claim is approved by the board, a concurrent resolution approving payment shall be adopted by both houses of the legislature before the claim is paid.

(5) The board shall adopt procedures for receiving claims under this section and for providing a hearing on a claim if a hearing is requested by an affected local unit of government. The procedures shall provide for the presentation of evidence by the claimant, the department, and any other affected state agency.

(6) An appeal submitted under this section for a disbursement for a state-required cost shall be limited to the following:

(a) An appeal alleging that the director has incorrectly reduced payments to a local unit of government pursuant to section 5(4).

(b) An appeal alleging that the director has incorrectly or improperly reduced the amount of a disbursement when a claim was submitted pursuant to section 8(2).

(c) An appeal alleging that the local unit of government has not received a proper disbursement of funds appropriated to satisfy the state financed proportion of the necessary costs of an existing activity or service required of a local unit of government by existing law, pursuant to section 12.

(7) In determining the merits of an appeal made pursuant to subsection 6(a), (b), or (c), the board, after reviewing the evidence presented, may increase or reduce the amount requested by the claimant or may allow or disallow the claim.

(8) Before January 31 of each year, the board shall report to the legislature and the governor on the number and amount of the claims the board has approved or rejected on appeal pursuant to this section.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Constitutionality: Taxpayers have standing to bring actions in the Court of Appeals under article 9 of the Michigan Constitution to enforce the provisions of §§ 25-31, including cases in which there are disputed facts; the local government claims review board has jurisdiction only over appeals under article 9 by local units of government. *Durant v State Board of Education*, 424 Mich 364; 381 NW2d 662 (1985).

Compiler's note: In subsection (4), "de minimus" evidently should read "de minimis."

21.241 Information; collection and tabulation; scope; report to legislature; concurrent resolution; updating report.

Sec. 11. (1) Within 6 months after the effective date of this act the department shall collect and tabulate relative information as to the following:

(a) The state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.

(b) The nature and scope of each state requirement which shall require a disbursement under section 5.

(c) The nature and scope of each action imposing a potential cost on a local unit of government which is not a state requirement and does not require a disbursement under this act.

(2) The information shall include:

(a) The identity or type of local unit and local unit agency or official to whom the state requirement or required existing activity or service is directed.

(b) The determination of whether or not an identifiable local direct cost is necessitated by state requirement or the required existing activity or service.

(c) The amount of state financial participation, meeting the identifiable local direct cost.

(d) The state agency charged with supervising the state requirement or the required existing activity or service.

(e) A brief description of the purpose of the state requirement or the required existing activity or service, and a citation of its origin in statute, rule, or court order.

(3) The resulting information shall be published in a report submitted to the legislature not later than January 31, 1980. A concurrent resolution shall be adopted by both houses of the legislature certifying the state financed proportion of the necessary cost of an existing activity or service required of local units of

government by existing law. This report shall be annually updated by adding new state requirements which require disbursements under section 5 and each action imposing a cost on a local unit of government which does not require a disbursement under this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.241, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.242 State law causing reduction in state financed proportion of necessary costs.

Sec. 12. A state law shall not be enacted, which 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 requiring an activity or service is repealed.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.242, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.243 State laws providing for other forms of state aid, cost-sharing agreements, or methods of making disbursements; MCL 21.234(5)(i) inapplicable to police, fire, or emergency medical transport services.

Sec. 13. This act does not prohibit the legislature from enacting state laws to provide for other forms of 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.

Although not required by article IX, section 29 of the state constitution of 1963, the provisions of section 4(5)(i) shall not apply to any standards, requirements or guidelines which require increased necessary costs for activities and services directly related to police, fire, or emergency medical transport services.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.243, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.244 Rules; purpose.

Sec. 14. The department may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to regulate the disbursement of funds appropriated to local units of government, to provide guidelines for identification of funds over which the director has disbursement authority, and to implement and administer this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Administrative rules: R 21.101 et seq. of the Michigan Administrative Code.