

# HOUSE BILL No. 4753

June 18, 2015, Introduced by Reps. Chatfield, Webber, Kivela, Crawford, Schor, McBroom, Cox, Johnson, Iden, Sheppard, LaVoy, Cole and Runestad and referred to the Committee on Financial Liability Reform.

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.