

# HOUSE BILL No. 5060

October 8, 2013, Introduced by Reps. Kowall, Walsh, Schor, Kivela, Jacobsen, Pettalia, Crawford, McCready, Rogers, Forlini, Pagel, Heise, Daley, Lauwers, Rendon, Lund, Haugh, Nathan, Zemke, Singh, Outman and MacGregor and referred to the Committee on Appropriations.

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 "prevention of unfunded mandates act".

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

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

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

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

18           (4) "Department" means the department of technology,  
19 management, and budget or a successor department or agency.

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

1 time imposes upon a local unit of government a new activity or  
2 service or an increase in the level of any activity or service  
3 beyond that required by existing law.

4 (2) "Federal requirement" means a federal law, rule,  
5 regulation, executive order, guideline, standard, or other federal  
6 action which has the force and effect of law and which requires  
7 local units of government to take action affecting them.

8 (3) "Legislature" means the house of representatives and the  
9 senate of this state.

10 (4) "Local government mandate panel" means the local  
11 government mandate panel created in chapter 7c of the legislative  
12 council act, 1986 PA 268, MCL 4.1101 to 4.1901.

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

21 (6) "Necessary cost" means the net cost of an activity or  
22 service provided by a local unit of government. The net cost shall  
23 be the actual cost to the state if the state were to provide the  
24 activity or service mandated as a state requirement, unless  
25 otherwise determined by the legislature when making a state  
26 requirement. Necessary cost does not include the cost of a state  
27 requirement if the state requirement will result in an offsetting

1 savings to an extent that, if the duties of a local unit of  
2 government that existed before the effective date of the state  
3 requirement are considered, the requirement will not exceed the  
4 cost of the preexisting required duties.

5 (7) "New activity or service or increase in the level of an  
6 existing activity or service" does not include a state law, or  
7 administrative rule promulgated under existing law, which provides  
8 only clarifying nonsubstantive changes in an earlier, existing law  
9 or state law and which do not entail new or additional costs for  
10 affected local units of government; or the recodification of an  
11 existing law or state law, or administrative rules promulgated  
12 under a recodification, which does not require a new activity or  
13 service or does not require an increase in the level of an activity  
14 or service above the level required before the existing law or  
15 state law was recodified and which do not entail new or additional  
16 costs for affected local units of government.

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

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

1 control over an institution of higher education, or the state civil  
2 service commission.

3 (3) "State financed proportion of the necessary cost of an  
4 existing activity or service required of local units of government  
5 by existing law" means the percentage of necessary costs  
6 specifically provided for an activity or service required of local  
7 units of government by existing law and categorically funded by the  
8 state on December 23, 1978.

9 (4) "State law" means a state statute or state agency rule or  
10 regulation.

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

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

17 (b) A federal requirement imposed directly on local units of  
18 government and not indirectly through the state by operation of  
19 federal law.

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

26 (d) A requirement of a state law that changes the level of  
27 requirements, standards, or guidelines of an activity or service

1 that is not required of a local unit of government by existing law  
2 or state law, but that is provided at the option of the local unit  
3 of government provided that if the state requirement pertains to  
4 any standards, requirements, or guidelines that require increased  
5 necessary costs for activities and services directly related to  
6 police, fire, or emergency medical transport services, they shall  
7 be considered to be a state requirement.

8 (e) A requirement of a state law enacted pursuant to section  
9 18 of article VI of the state constitution of 1963.

10 Sec. 5. (1) Notwithstanding any provision of law to the  
11 contrary and subject to subsection (2), a local unit of government  
12 is not obligated to provide a new activity or service or increased  
13 level of activity or service required by state law unless and until  
14 the local government mandate panel has prepared and published a  
15 fiscal note in accordance with section 6.

16 (2) If a local unit of government refuses to provide a new  
17 activity or service or increased level of activity or service under  
18 subsection (1), the local unit of government shall file suit for a  
19 judicial determination under section 32 of article IX of the state  
20 constitution of 1963, within 1 year of the date on which the local  
21 unit of government is required to begin implementation of the  
22 activity or service. If the local unit of government does not file  
23 suit within 1 year of the date on which implementation of the state  
24 law is required to begin, the local unit of government shall comply  
25 with the state law. If this state determines that a local unit of  
26 government is refusing, or may refuse, to provide a new activity or  
27 service or increased level of activity or service under subsection

1 (1), this state may file suit at anytime for a judicial  
2 determination under section 29 of article IX of the state  
3 constitution of 1963, subject to the local unit of government  
4 having the right to assert as a defense in that suit that the state  
5 has or may fail to provide funding for the full cost of the  
6 activity or service as the costs for those activities and services  
7 are incurred. The local unit of government may also in response to  
8 that suit seek to recover the necessary costs of the activity or  
9 service without limitation as to the timing for asserting that  
10 claim.

11 Sec. 6. A fiscal note process is created. The fiscal note  
12 process shall consist of all of the following:

13 (a) Not later than 30 days after notice is provided that a  
14 bill will be considered in a legislative committee and before  
15 legislation affecting a local unit of government is scheduled for  
16 third reading in the legislature, the local government mandate  
17 panel shall conduct a review to determine whether any new or  
18 increased level of activities or services is likely to be required  
19 of local units of government by that legislation if it becomes  
20 effective.

21 (b) If it is determined that a new activity or service or an  
22 increased level of activity or service is likely to occur, the  
23 local government mandate panel shall develop a written estimate of  
24 the increased necessary costs, if any, that will result to local  
25 units of government if that legislation becomes effective.

26 (c) The chairperson of the local government mandate panel  
27 shall promptly inform the legislature in writing of its

1 determination in subdivision (b) before the legislation is  
2 scheduled for third reading.

3 (d) In the event that legislation is enacted imposing a  
4 requirement on local units of government without following the  
5 requirements described in this section, local units of government  
6 subject to section 5(1) and (2) are not required to comply until  
7 that time that the fiscal note process described in this section is  
8 followed or a court has determined that the legislation does not  
9 impose a new activity or service or an increase in the level of an  
10 existing activity or service.

11 Sec. 7. The local government mandate panel shall develop a  
12 process that will accomplish all of the following:

13 (a) A review of statutes and administrative rules and  
14 regulations that impose requirements on local units of government.

15 (b) Make recommendations to the legislature whether the  
16 requirements described in subdivision (a) continue to be necessary  
17 in terms of the cost/benefit to the public interest, and if not,  
18 whether those requirements should be repealed, rescinded, or  
19 modified.

20 (c) If it is determined by the local government mandate panel  
21 that the requirements described in subdivisions (a) and (b) are  
22 recommended to be continued, report as to whether the requirements  
23 can be provided on a more cost-effective basis than presently  
24 provided and to recommend legislation to achieve cost savings.

25 Sec. 8. The state shall not impose a penalty on, withhold  
26 funds, or impose any other form of monetary or other sanction on  
27 any local unit of government for failing to comply with a state

1 requirement under any of the following circumstances:

2 (a) The state has failed to follow the fiscal note process  
3 provided in section 6 for that new activity.

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

8 (i) A taxpayer has filed a suit through the filing of a  
9 complaint in the court of appeals pursuant to section 308a of the  
10 revised judicature act of 1961, 1961 PA 236, MCL 600.308a,  
11 asserting that the state law imposes a mandate under section 29 of  
12 article IX of the state constitution of 1963 and that the cost of  
13 compliance has not been fully funded by the state.

14 (ii) The court of appeals has issued an order that the state  
15 has underfunded the full cost of compliance and ruled in favor of  
16 the complainant.

17 Sec. 9. If requested by the local government mandate panel,  
18 the department shall provide the local government mandate panel  
19 with estimated data on the net cost of compliance if the state  
20 provided the same activity or service rather than the local units  
21 of government affected by the state requirement.

22 Sec. 10. (1) The local government mandate panel, in  
23 consultation with local units of government, shall adopt a process  
24 for monitoring the state's compliance with section 29 of article IX  
25 of the state constitution of 1963, including appropriations and  
26 disbursements to fund the cost of complying with state requirements  
27 and the state's compliance with its obligation to fund the state

1 financed proportion of the necessary cost of an existing activity  
2 or service required of local units of government by existing law.

3 (2) The local government mandate panel shall prepare and  
4 submit recommendations to the legislature that address court  
5 decisions that determine the state has failed to fully fund the  
6 cost of complying with state requirements and the state's  
7 compliance with its obligation to fund the state financed  
8 proportion of the necessary cost of an existing activity or service  
9 required of local units of government by existing law.

10 Sec. 11. This act does not prohibit the legislature from  
11 enacting state laws to provide for other forms of dedicated state  
12 aid, cost-sharing agreements, or specific methods of making  
13 disbursements to a local unit of government for a cost incurred  
14 pursuant to state laws enacted to which this act applies.

15 Sec. 12. 1979 PA 101, MCL 21.231 to 21.244, is repealed.