

House Bill 5512

Sponsor: Rep. Kirk A. Profit

Committee: Tax Policy

Complete to 2-13-98

A SUMMARY OF HOUSE BILL 5512 AS INTRODUCED 1-28-98

House Bill 5512 would repeal and replace Public Act 101 of 1979, which was enacted to implement parts of the "Headlee" amendment to the state constitution adopted by voters in 1978. To replace the repealed act, the bill would create a new act to require "prompt adjudication" of actions brought by taxpayers to enforce the 1978 constitutional amendment.

Under the Headlee amendment, the state is prohibited from reducing its share of the costs of activities and services mandated by the state and provided by local governments from the level paid as of December 22, 1978, or from increasing the level of required services or activities after that date without paying the costs associated with them. Among other things, Public Act 101 of 1979 required the governor to include in his or her annual budget recommendations a report of amounts necessary to reimburse local governments under the constitutional amendment, required the legislature to make an annual appropriation for the costs of any new or increased activity or service state law requires of local governments, and set in place a process for reimbursing local governments for such costs. Further, the act required the legislature to establish joint rules to provide for a method of identifying whether or not legislation included state-mandated costs to local governments, and required the formation of a local government claims review board to hear disputed claims and appeals by local governments that believe they have not been properly paid. (Reportedly, this act has not been implemented.)

In place of the repealed act, the bill would create a new act to require "prompt adjudication" of actions brought by taxpayers to enforce the 1978 constitutional amendment. Article IX, Section 32 of the State Constitution of 1963 says:

Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

(Article IX, Sections 25 through 31 contains the above-described requirement for state government to reimburse local governments for state-mandated costs, as well as provisions establishing a revenue limit on state government, prohibiting the reduction of state spending paid to local units of government below the level in effect in fiscal year 1978-79, and requiring voter approval of local tax increases.)

Under the bill, a taxpayer who brings an action in the court of appeals to enforce the constitutional provisions would have to be afforded a prompt adjudication of that action by the

court of appeals. The term "prompt adjudication" would be defined to mean a final adjudication within one year after the action was filed (absent delay warranted by a good faith inability of the parties to secure financial or other factual information necessary for the court to render an informed decision). Further, an application for leave to appeal such an action to the supreme court would have to be afforded a prompt decision by the court, meaning a decision on the leave to appeal would have to be made by the supreme court within 90 days following the deadline for opposing briefs or applications for leave to cross-appeal. If a leave to appeal was granted, the supreme court would have to render a decision on the appeal within 180 days after briefs were filed, or within 90 days after oral arguments on the appeal or cross-appeal, whichever was sooner.

The court of appeals and the supreme court would be required to give priority to actions brought by taxpayers under Article IX, Section 32 of the state constitution (or appeals involving those actions) in order to meet the requirements of the bill. The supreme court would be required to "promptly" adopt and implement rules that permit adjudications by the court of appeals and the supreme court within the time frames set by the bill.

The bill would require the clerk of the court of appeals and the clerk of the supreme court to report to the legislature on December 31 and June 30 of each year concerning each court's compliance with the requirements of the bill. The reports would have to list each pending action or appeal and their respective filing and decision dates.

The attorney general and all administrative agencies of the state and of local governments would be required to fully cooperate and otherwise act expeditiously in locating and producing financial and other information necessary for the courts to make decisions according to the time frames set by the bill. If the court of appeals or the supreme court was prevented from making a timely decision because of the failure of state or local officials to produce required information, the court could impose a default judgment against the state or the local unit "consistent with the well-pleaded allegations" of the taxpayer's complaint.

Further, any noncompliance with the bill's provisions by the Department of Management and Budget (or its director), the legislature, the governor, or a state department or agency would result in the presumption that the state had breached its responsibilities under the constitutional provisions. This presumption could only be overcome by clear and compelling evidentiary showing to the contrary. Costs for the proceedings would have to be awarded to the taxpayer who brought suit, in double the amount incurred, without regard to whether the state succeeded in making the evidentiary showing.

The bill would require the attorney general to investigate each case in which a taxpayer filed an action under Article IX, Section 32 of the state constitution, and submit a report to the legislature evaluating the merits of the claim, within 28 days after each claim was filed. The attorney general's evaluation would have to be undertaken "in the interest of enforcing the will of the people" as expressed in the 1978 constitutional amendment, and "not from the perspective of simply promoting the interests of government in continuing its challenged practices or actions". If the attorney general found that a claim had merit, he or she would recommend to the legislature a resolution of the claim; if the claim was found to be without merit, the attorney general would

defend the interests of the state but would have to fully cooperate in achieving an expeditious conclusion of the action, consistent with the time limitations set in the bill.

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.