IRVIN CORLEY, JR.
DIRECTOR
(313) 224-1076

City of Detroit

CITY COUNCIL

FISCAL ANALYSIS DIVISION
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 218
Detroit, Michigan 48226
FAX: (313) 224-2783
E-Mail: irvin@cncl.ci.detroit.mi.us

ANNE MARIE LANGAN
DEPUTY DIRECTOR
(313) 224-1078

TO: Councilmembers

FROM: Irvin Corley Jr., Director ICJ.

DATE: January 15, 2010

RE: Potential Revenues to Fund City Services

At the formal session of January 5, 2010, Council President Pugh expressed that the City should not just focus on making cuts to help address the City's financial crisis and balance the budget; but that new revenue sources be identified as well to supplement what is already collected for the purpose of providing city services.

Council President Pugh then requested that the Fiscal Analysis Division provide monthly reports to your Honorable Body with suggested new revenue sources. Yesterday, President Pugh reiterated that request via memorandum.

To start the dialogue on this important subject, attached is a list of revenue proposals representing new taxes and increases of existing taxes and fees for the purpose of generating additional revenues. Our office is not necessarily advocating these items at this time because as we all know, the subject of increasing taxes and fees is such a delicate topic, as so many stakeholders already feel financially overburdened by the City and the region. And, talking about increases in taxes and fees is even more difficult given the state of the local economy and high unemployment rates.

But we initially want to show that it would primarily take the increase of taxes and fees to generate a sizable amount of revenue enough to significantly impact the budget. And obviously, it would take State legislation, and some cases, the vote of the people, to increase taxes. Of course, any additional Federal assistance would help, and this should be sought after, but any cash infusion from the Federal government would most likely represent one-time revenue.

Meanwhile, our office will continuously seek new revenue ideas, including looking at "blue ribbon" reports prepared for the City of Detroit on behest of the current and past mayors; exploring what other municipalities are doing to raise revenues; and reviewing revenue best practices nationwide. We will also contact

organizations such as the Michigan Municipal League, the National Municipal League, the Government Finance Officers Association, and the like on revenue suggestions. Consequently, we will expand our report monthly as we identify new revenue source ideas. It would be great if this monthly report serves as the basis of ongoing discussions between the Council members and Administration on this issue.

And of course, we in Fiscal solicit revenue-generating ideas from your Honorable Body, Council divisions, Council staff, the Auditor General's Office, Ombudsperson's Office, Board of Zoning Appeals, the Bing Administration and Detroit citizens.

Another revenue that has been presented by prior Administrations is hiring out police officers for secondary assignments. We are not certain if the current Administration will be bringing this back to Council. Businesses would be paying the City for the use of an officer and a police vehicle and this would be new revenue as well as a potential reduction in police costs for special events.

We would also recommend that Councilmembers review the lengthy documents that the Administration provided when they hired the consultant Maximus, who reviewed many of our departmental service fees and recommended sharp increases based on the city's actual costs for providing the services. Perhaps it might be helpful to have the Administration report on exactly how much of those recommendations have been implemented and what sort of impact they have had.

For Council's information, also attached is the final report of the Legislative Commission on Statutory Mandates. This commission was established in 2007 by the Michigan Legislature. Its charge was to review the implementation of the Headlee Amendment, an amendment to the state constitution in 1978. The commission's conclusion was that lawmakers have ignored this amendment and have forced local governments to spend billions for services and policies that the state required municipalities to carry out over these thirty years. The commission also developed a number of recommendations to improve the discourse between State and local officials and reform the process under which mandated services and activities are imposed and funded.

Attachments

cc: Council Divisions
Auditor General
Ombudsperson
Board of Zoning Appeals
Norman White, CFO
Pamela Scales, Budget Director
Kamau Marable, Mayor's Office

Revenue Proposals

Revenue	Current Rate	Proposal	Add'l Revenue (millions)	Current Collection	Comments	Assumptions
Utility Users Tax	5 percent	Increase by 1 %	$ 11.00	$55 Million	State Act Amendment Needed	
Cell phone Tax	n/a	6%	21.60	n/a	State Act Amendment Needed	$60 monthly bill; 500,000 users
Satellite TV Tax	n/a	6%	5.40	n/a	State Act Amendment Needed	$60 monthly bill; 125,000 users
Internet Tax	n/a	6%	2.50	n/a	State Act Amendment Needed	$30 monthly bill; 125,000 users
Wagering Tax	12.9 percent	Increase by 1 %	13.43	$176 Million	State Act Amendment Needed	
Solid Waste Fee	$240	Increase by $160	40.00	$60 Million	Entire Cost of Activity is not covered by current fee;Council Approval for Rate Increase	250,000 Households
Income Tax	2.5/1.25	3.0/1.5	50.00	$250 Million	State Act Amendment Needed - Would be a restoration from 1995	
Total			**$ 143.93**	$ 541 Million		

City of Detroit

CITY COUNCIL

CHARLES PUGH
COUNCIL PRESIDENT

MEMORANDUM

TO: Irvin Corley, Jr., Director
Fiscal Analysis

FROM: Charles Pugh
Council President

DATE: January 14, 2010

RE: **Research on Revenue Generating Best Practices**

Pursuant to our conversation last December, I am requesting of you and your capable staff Monthly Reports on revenue generating ideas and best practices nationwide.

This report should be disseminated through our Committee on Budget, Finance & Audit, chaired by Chairman Kenneth V. Cockrel, Jr. and staffed by your division.

If you have any questions or concerns regarding this missive, do not hesitate to contact me immediately or my Chief of Staff—Victor L. Marsh, Sr. at 224 -1434

Thank you in advance for your cooperation.

cc: Honorable Colleagues
Loren E. Monroe, Auditor General
Bryan C. Barnhill II, Policy Director
Office of President Pugh
David Whitaker, Director of RAD
Marcell Todd, Director of CPC
Norman White, Finance Director
Kamau Marable, Mayor's Office

Coleman A. Young Municipal Center 2 Woodward Ave., Suite 1340 Detroit, Michigan 48226
(313) 224-4510 Fax (313) 224-0230
CouncilPresidentPugh@detroitmi.gov

Final Report

of the

Legislative Commission on

Statutory Mandates

Submitted to the

Michigan Legislature and the Governor

Pursuant to MCL 4.1781 et seq., Public Act 98 of 2007 and Public Act 356 of 2008.

State of Michigan

Robert J. Daddow, Co-Chair
Amanda Van Dusen, Co-Chair
Dennis R. Pollard, Commissioner
Louis H. Schimmel, Commissioner
J. Dallas Winegarden, Jr., Commissioner

LEGISLATIVE COMMISSION ON STATUTORY MANDATES
P.O. Box 30036
LANSING, MICHIGAN 48909-7536
PHONE: (517) 373-0212
FAX: (517) 373-7668

December 31, 2009

The Honorable Michael Bishop
Senate Majority Leader
Michigan Senate
P.O. Box 30036
Lansing, MI 48909

The Honorable Andy Dillon
Speaker of the House
Michigan House of Representatives
P.O. Box 30014
Lansing, MI 48909

The Honorable Jennifer Granholm
Governor
State of Michigan
111 South Capitol Avenue
Lansing, MI 48933

Dear Senator Bishop, Speaker Dillon, and Governor Granholm:

We are pleased to submit to you, with unanimous support, the Final Report of the Legislative Commission on Statutory Mandates. The Commission was charged, in 2007, under Act 98, Michigan Public Acts of 2007, as amended, to identify and investigate, the cost of complying with funded and unfunded mandates imposed by the State on local units of government, and to make determinations and recommendations relating to those mandates. Our findings paint a stark picture of non-compliance with Article 9, § 29 of the Michigan Constitution of 1963, as amended. While the non-compliance stretches back 31 years, the Commission focused its attention on the current state of underfunding by the State which we have determined to be **in excess of $2.2 billion for 2009** just for a selected group of mandates. Given the State's financial condition; the penchant of the State to continue to shift the burdens of government to the local level, while cutting revenue sharing, and the accelerating reductions in local government services and employment associated with the economy, the Commission has developed a number of recommendations to improve the discourse between State and local officials and reform the process under which mandated services and activities are imposed and funded. We believe implementation of these recommendations, for which we have provided draft legislation and court rule amendments, will foster a new era of constructive, thoughtful and collaborative government in Michigan. These recommendations are not necessarily a plea for more funding, and the question is not whether certain mandates are good or bad. We have instead focused on the process under which mandates are imposed.

The Commission could not have completed its work without the volunteer assistance of many individuals and organizations. We would like to thank the Citizens Research Council of Michigan for its report on mandates legislation around the country; the Michigan Association of Counties, the Michigan Municipal League, the Michigan Townships Association, the Michigan School Business Officials, the County Road Association of Michigan, and the Michigan Community College Association for their assistance in identifying and costing compliance with significant mandates; Thrun Law Firm for assistance in evaluating what identified activities and services constituted mandates; and Michigan State University's State and Local Government Program Department of Agricultural, Food and Resource Economics, for circulating and compiling survey results as to the cost of compliance with the final list of mandates. We also want to thank Representative Phil LaJoy for sponsoring the legislation which created the Commission, and representatives of the Legislative Council, particularly Susan Cavanagh, for their insights and support.

Finally, after 24 Commission meetings, and countless additional hours of meetings, analysis, debate and complete consensus, the Commission's greatest fear is that the State will miss the opportunity, in this time of fiscal crisis, to change course from 30 years of disregard for this key provision of the Headlee amendment.

Implementation of our recommendations, will not only encourage compliance with the Headlee amendment prohibition on unfunded mandates, but will also foster more efficient government and greater, and badly needed, collaboration between the State and local units of government.

Now that our assignment is complete, each Commissioner remains committed to work with the State to implement these recommendations in the near future.

Respectfully submitted,

Robert J. Daddow
Co-Chair

Amanda Van Dusen
Co-Chair

Dennis R. Pollard
Commissioner

Louis H. Schimmel
Commissioner

J. Dallas Winegarden, Jr.
Commissioner

cc: All Members of the Michigan Senate
All Members of the Michigan House of Representatives
The Honorable John D. Cherry, Jr., Lieutenant Governor
Michael Cox, Attorney General
The Justices of the Michigan Supreme Court

Legislative Commission on Statutory Mandates
Members

Robert Daddow (Co-Chairperson)
Deputy Oakland County Executive
Executive Office Building – 41 West
2100 Pontiac Lake Road
Waterford, MI 48328-2735
(Appointed by the Senate Majority Leader)

Amanda Van Dusen (Co-Chairperson)
Miller, Canfield, Paddock and Stone PLC
150 West Jefferson, Suite 2500
Detroit, MI 48226
(Appointed by the Speaker of the House)

Dennis Pollard
Thrun Law Firm, PC
38505 Woodward, Suite 2300
Bloomfield Hills, MI 48304-5690
(Joint Appointment by the Speaker & Senate Majority Leader)

Louis H. Schimmel
Municipal Financial Consultants, Inc.
2835 Sylvan Shores Drive
Waterford, MI 48328
(Appointed by the House Minority Leader)

J. Dallas Winegarden, Jr.
J. Dallas Winegarden, Jr., P.C.
Adjunct Professor of Law
Michigan State University College of Law
2347 Stonebridge Drive, Building G
Flint, MI 48532
(Appointed by the Senate Minority Leader)

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FINAL REPORT OF THE COMMISSION ON STATUTORY MANDATES REGARDING RECOMMENDED CHANGES TO ACHIEVE COMPLIANCE WITH § 29 OF THE HEADLEE AMENDMENT

I. PREFACE

In 2007, the Michigan Legislature established the Legislative Commission on Statutory Mandates (Commission) to identify and investigate funded and unfunded mandates imposed by the State on local units of government and the cost of compliance with those mandates through Act 98 of Michigan Public Acts of 2007, as amended. MCL 4.1781 et seq. (the "Act"). The original legislation was amended in 2008 to refine the scope of work and deadlines for completion of the Commission's reports. A copy of the Act is attached as Exhibit A.

As required by the Act, on June 29, 2009, the Commission filed an interim report with the Legislature and the Governor identifying the most significant funded and unfunded mandates and reporting requirements imposed on local units of government in state law as identified by those local units of government. The Act does not define "local units of government." With the agreement of the legislative leadership, the Commission has defined "local units" consistently with Article 9, Section 33 of the Constitution which is part of the amendment widely known as the "Headlee Amendment" approved by voters in 1978. A copy of the Commission's report, which details the 30 year failure of the Legislature and the Executive Branch of the State to comply with Article 9, §§ 25 and 29 of the Michigan Constitution of 1963 is available on the website of the Michigan Legislative Council, http://council.legislature.mi.gov/lcsm.html. A more detailed history of the State's noncompliance with these straight-forward constitutional requirements is attached as Appendix A.

The Act also requires the Commission to prepare and submit a final report, including the range of costs of the identified mandates, as well as the Commission's determinations and recommendations relating to state imposed mandates, to the Legislature no later than December 31, 2009. The Commission's greatest concern is that its report will gather dust on a shelf and the 30 year practice of ignoring the plain words and purpose of Article 9, §§ 29, 30 and 34 of the Constitution will continue. Those words have a common meaning which is not difficult to understand or capable of varying interpretation and has served as the controlling authority for the Commission's recommendations.

Accordingly, this final report of the Commission addresses the range of cost of complying with some of the more significant mandates imposed by the State on local and intermediate school districts, counties, cities, villages, townships, community colleges and county road commissions and makes determinations and recommendations as to these mandates and future implementation of and compliance with these important constitutional provisions. In developing the recommendations contained in this report, the Commission has chosen to focus on preventative measures which could be employed in the future which may promote state and local cooperation on the imposition and funding of mandates while reducing protracted and unproductive litigation.

While much of the Headlee Amendment imposed limits on increases in taxes and the expense of state government, under Article 9 §§ 25 and 30 the State was prohibited from reducing the proportion of total state spending paid to local units, taken as a group, below the proportion paid during the 1978-1979 fiscal year. Under Article 9 §§ 25 and 29 the State was prohibited from imposing new mandates or reporting requirements on local units without appropriating and disbursing funding to pay for the costs imposed by the mandate.

II. DETERMINATIONS

A combined reading of the first two sentences of § 29 requires the State to continue providing to local units the same proportion of state funding that was provided in 1978 for the necessary costs of required activities and services when the Headlee Amendment was adopted, and to provide full funding of the necessary costs incurred in order to provide activities and services newly required after 1978 or that represent an increase in the level of those activities and services required after 1978. Given that our investigation occurred more than 30 years after the Amendment was ratified, the Commission faced several challenges, some without practical solutions due to the passage of time.

The first sentence of § 29 provides:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any *existing* activity or service required of units of Local Government by state law. [Const 1963, art. 9, § 29 (emphasis added).]

The first problem is that it is not practically possible in most cases to construct the base year proportions, *i.e.* the percentage of funding that applied in 1978, required under the first sentence of § 29. As the Commission learned very early in its review, only a beginning attempt was made by the State to identify required activities and services that existed in 1978. Despite whatever good intentions led to enactment of the implementing Legislation, Act 101, Michigan Public Acts of 1979 ("PA 101"), no attempt was made by the State to resolve the question of how much funding was then being provided to local units as a proportion of costs being incurred by those units to perform those mandates. It was certainly possible to have made those fundamental determinations in 1979, but that did not occur.

The only document that was created in that vein was a study commissioned by the Department of Management and Budget in the summer of 1979 that attempted to catalogue State legislative mandates. These mandates are identified by reference to sections of Michigan Compiled Laws, but appear to be nothing more than a mechanical listing based on the use of the term "shall" or some other imperative term appearing in statutes without any accompanying analysis of whether whatever may have been required by the use of that word was meaningful under § 29. The study also made no attempt to identify whether the State was providing funding to local units for those identified statutory provisions making the information meaningless for present purposes. While we have surmised that this report was a beginning step by DMB toward assembling this necessary data for future funding compliance purposes, it was never subsequently acted upon.

The Commission also learned that in most, if not all, cases the information needed from the State's and local units' accounting records to compile the "base year" funding proportions simply doesn't exist any longer, more than 30 years after the fact. Thus, it is not practically possible to provide a costing of the State's funding responsibility under this requirement of the Constitution, except for a select few requirements that were quantified in intervening litigation or where funding was provided in an identified proportionate amount of total costs incurred in 1978.

The most significant example of the latter is the proportion of funding required to be paid for school and community college employees under the State school retirement system, known as the Michigan Public School Employees Retirement System ("MPSERS") where the State has shifted its share ($1,554,144,000 in 2008) of the funding obligation entirely to school districts and colleges. In 1978 school districts and community colleges were required to pay the first 5% of the annual required contribution on behalf of their employees with the State paying the balance of the contribution. As of

the present time, due to intervening statutory changes, school districts and community colleges must contribute the full amount of the contribution to MPSERS from their operating revenues, without any corresponding payment or reimbursement of those costs from the State. Thus, in this case the amount of the underfunding as a proportion of the total costs being incurred is readily determinable from 1978 through the present time.

The same problem exists under the second sentence of § 29 for requirements first imposed after 1978 on local units of government, except for underfunding occurring over the last few years where some cost information remains available. However even in those instances the actual costs being incurred by local units to provide a given activity or service are not, for the most part, segregated or categorized in such a way as to allow an accurate accounting of the necessary costs being incurred by local units as of the present time. Such an accounting system should be devised to measure underfunding over the recent past. By necessity, that would have to be created and directed at the State level.

Given these inherent problems, the Commission attempted to meet the charge to report on the range of costs being incurred by local units of government to provide unfunded activities and services required by State law by use of the services of a specialist in State and Local Government Programs at Michigan State University, Dr. Eric Scorsone. The Commission's request was for Dr. Scorsone to provide a reasonable estimate of the ranges of unfunded costs incurred at present by local units given the inherent problems identified above. As such, the Commission is able to report only that the relative scale of the State's past underfunding for mandated services is very substantial, with an estimate of the range of some of those costs being provided. ***The underfunding only for those mandates for which the Commission could deduce credible estimates is between $2.2 billion and $2.5 billion in 2009 alone.*** The methodology, detailed findings and recommendations are summarized and attached at Exhibit B. The recommendations include suggestions for eliminating, consolidating or reforming a number of mandates which are archaic or might be provided more efficiently.

To have identified and costed every mandate currently imposed on local units of government by the State would have been impossible, given the lack of benchmark data, changes in accounting practices and rules, the number of local units and the lack of resources available to the Commission and the local units. In addition, the Legislature has continued to impose new mandates regularly since it created the Commission, and has been more aggressive in shifting state functions to local units while simultaneously cutting general or unrestricted funding to the same units. In its interim report, the Commission attempted to identify only the most significant unfunded mandates imposed on local units.

III. RECOMMENDATIONS

The complexity of the statistical analysis required for a complete assessment of the full extent of unfunded mandates; the practical barriers to accessing the required data; the absence of an appropriation of a size which would have allowed the Commission to tackle that task; and the deep fiscal challenges facing the State, persuaded the Commission to focus its recommendations on solutions which would change the dynamic for the future. The precarious fiscal condition of all types of local units of government across the state, combined with an accelerating pattern of shifting burdens from the State to local government while general or unrestricted appropriations are being reduced has fostered a climate of resentment and revolt that will impede economic recovery and the cooperation this State so badly needs.

Accordingly, the Commission recommends enactment of legislation which uses a combination of preventative and curative measures to foster greater cooperation between the State and local units of government and greatly minimize protracted and unproductive litigation with regard to mandated activities that are not being funded. Our recommended legislative solutions would (a) modify the processes under which legislation and administrative rules and regulations imposing new or increased local mandates are enacted and implemented to avoid violations in the first place, delay compliance by local units until the State funds the activity and avoid costly litigation, (b) incorporate past judicial determinations of the range of activities and services fall within the scope of Article 9, §29 and (c) make the process under which disputes arising under Article 9, § 29 and Article 9, § 32, are adjudicated more efficient.

There are obviously different ways in which implementing legislation could be designed to achieve compliance with the voters' intent. The Citizens Research Council of Michigan Report dated July 2009, (summary attached at Exhibit C; full report available at http://crcmich.org/rss/mandates.html) corroborates the findings of this Commission and details preventative and curative approaches employed in other states with constitutional and statutory mandates provisions similar to Headlee which could be adopted in Michigan to ensure compliance with the Headlee Amendment in the future. The Commission has concluded that a combination of these approaches-- employing a fiscal note process as legislation is developed, making local compliance dependent on State compliance and streamlining judicial review-- are most likely to promote compliance and improve state/local relations in the future.

A. New Implementing Legislation

Since it has proven relatively easy for all three branches of State government to subvert the intent of the Headlee Amendment as implemented by the Act of 1979 (Act 101), we concluded that the only solution is to replace Act 101 with new implementing legislation which may better inspire compliance in the future more akin to the enthusiasm with which the balance of the Headlee Amendment is enforced. The Commissioners believe that the specific and practical recommendations that follow will, if implemented through legislation, encourage State government to comply with the will of the people, expressed in the Headlee Amendment by holding it accountable for non-compliance.

The Commission considered the possibility of amending PA 101, but concluded that there are far too many problems inherent in its design to warrant extensive amendment. Accordingly, the Commission recommends that it be repealed in its entirety and replaced with legislation and court rule changes along the lines of the drafts attached at Exhibit D.

B. Legislative Process

The second sentence of § 29 of the Amendment clearly imposes an obligation on the Legislature to appropriate sufficient funds necessary to pay the necessary costs of activities and services it requires to be provided by local units concurrent with enactment of the mandate Section 29 that provides: "A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, *unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs".* [Const 1963, art. 9, § 29.] (emphasis added) Thus, in addition to determining the wisdom of requiring certain activities and services to be provided by local units, the State must be prepared to concurrently engage in the debate about how to pay for the necessary costs it is compelling local units of government to incur and to act upon that insight by appropriating the monies necessary to pay for them.

Enforcement of this requirement is critical to the Headlee concept that the decision should be in the first instance whether and how State government can afford the objective sought to be accomplished. If not, the mandate should either be tailored to fit within the State's budget or deferred until it can be paid for or eliminated from consideration.

The net effect of shifting the burden of paying for an activity or service to local units is either a reduction in established services already provided by local units or an increase in local taxation or other local revenue to cover the incremental cost. In this instance, the need for more revenue is not the result of local fiat or inefficiencies but the result of a State-imposed service or activity totally out of the local units' control or discretion. The core idea is that the unit of government, state or local, that creates the financial burden should be fully accountable to the public for that cost.

Fiscal Note. As the CRC Report observes, several states with similar restrictions on the imposition of unfunded mandates on local units of government, either as a result of a constitutional or statutory limitations, require the preparation of a "fiscal note" during the process of legislative debate.[1] While the process and agency of state government responsible for development of the fiscal note (or equivalent document) vary from state to state, the basic concept of a fiscal note includes the following elements:

1. All bills are reviewed after introduction in the legislature to identify whether they may require activities and services to be provided by local units that will entail new or additional costs,

2. An estimate of the necessary costs that are likely to be incurred by local units of government is developed,

3. The estimate is made known to the legislature while debate over the bill is occurring,

4. If the bill reaches the point of enactment, an accompanying appropriation bill is developed and tie barred to the underlying bill, and

5. A process is created for disbursing funding to local units, based on the appropriation, during the period the costs will be incurred by the affected local units.

Requiring the preparation of a fiscal note will sometimes present practical challenges. The first challenge is keeping track of multiple bills with similar objectives and amendments to bills that are introduced in the sometimes fast-moving legislative environment. Determining the financial implications of a particular version of a bill for a wide range of local units and determining which of several similar bills to evaluate will require more time and resources than are presently expended. Nonetheless, this is what the voters intended in § 29, and appears to be occurring in other states where similar limitations are in place.

Determination of Costs. The Senate and House fiscal agencies that presently have financial projection responsibilities for the Legislature concededly do not have sufficient resources acting alone to evaluate

[1] The states include Massachusetts, Missouri, Virginia, Maine, Rhode Island, New Jersey, Arkansas, Kentucky, North Dakota, West Virginia and Wisconsin.

the financial impact of all proposed requirements on local units. Nonetheless, developing good faith estimates of the necessary costs that are projected to be incurred by local units as a result of proposed legislation is essential to compliance with Section 29.

Given this challenge, the Commission recommends that a relationship be formalized between established representatives or associations of local units of governments and the legislative fiscal agencies for purposes of consultation during the fiscal note process. Each unit of local government in Michigan has established organizations that assist their constituents in evaluating legislation including the financial implications of that legislation. Formalizing their role as consultants in the fiscal note process would increase the quality and integrity of the financial analysis during legislative debate.

At a practical level, local units' representatives/associations commonly make use of electronic surveys as a quick means of analyzing proposals where fast turn around time is necessary. That process could be very usefully employed to assist in the task of determining whether proposed legislative mandates are substantive and, if so, a dollar estimate for meeting the requirement.

To encourage the implementation of the fiscal note process the Commission further recommends that the new implementing legislation provide that if for any reason the Legislature enacts an unfunded activity or service without following the fiscal note process with respect to the final version of the bill, that act shall have no force or effect and shall not require compliance by the affected local units, until such time as a fiscal note has been developed and an appropriation has been made if the fiscal note analysis concludes one is required.

Administrative Rules and Regulations. Since § 29 of the Headlee Amendment applies not only to requirements imposed by the Legislature but also to rules and regulations adopted by State agencies that impose local mandates, such rules and regulations should not become effective without a process to determine the cost of compliance, an appropriation by the Legislature and disbursement by the State to local units in order to pay for the necessary costs of those mandates. The Commission is not aware of any attempt to comply with this Constitutional requirement. Because rulemaking by State agencies occurs somewhat independent of the legislative process, § 29 requires a process similar to the fiscal note working in concert with the legislative appropriation process.

Accordingly, the Commission recommends that the State Administrative Procedures Act of 1969 ("APA") be amended to provide that if a state agency makes a rule, as defined under that act, or otherwise exercises that agency's authorized powers or responsibilities under the force of state law, that causes local units of government to incur necessary increased costs for new or increased activities and services, that action shall not become applicable or binding on the affected local units unless and until a fiscal note is prepared in consultation with representatives of the affected local units and an appropriation is adopted to pay the local units for those necessary costs and a disbursement system is devised for timely payment. This will effectively impose discipline in the Executive Branch over the costs of administrative rules and regulations.

C. Adjudicatory Recommendations

The Commission recommends that the exclusive enforcement remedy for violations of § 29 should continue to be that provided under § 32 of the Headlee Amendment, utilizing the special master process that has evolved through past litigation, but on a more formalized and expedited basis than is presently occurring. This will require the cooperation of the Michigan Supreme Court.

Section 32 of the Headlee Amendment provides that:

> 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. [Const 1963, art 9, § 32.] (emphasis added).

While the voters intended in § 34 of the Headlee Amendment, that the Legislature should "*implement*" the provisions of the Amendment, they clearly intended that the judiciary would serve "to *enforce*" the provisions of the Amendment. In other words, the voters intended through this language that the courts would police compliance with the Amendment if the Legislature strayed from its implementing responsibility.

Additionally, the voters placed enforcement responsibility in the Michigan Court of Appeals, which is, of course, an appellate body and not structured to serve as a fact finder. Nonetheless, the voters left to the judicial system the responsibility to adapt to its role in enforcing the Amendment.

One reason for giving the Court of Appeals original jurisdiction is to expedite the enforcement process, eliminating the need to process these claims before various circuit courts in the State. Circuit courts are pulled in many different directions with large and diverse caseloads and frequently have substantial dockets that equate to delays in disposing of cases, particularly those involving sophisticated issues of fact and law, as is frequently the case in Headlee claims. Dovetailing with that reality, circuit court decisions must be appealed to the Court of Appeals, and often to the Supreme Court for final disposition. Thus, by allowing Headlee challenges to be initiated in the Court of Appeals, one whole layer of the judicial process was eliminated. In theory, at least, this should serve to substantially expedite resolution of disputes brought under § 32 of the Amendment.

Of course, the experience has been anything but expedited for taxpayers seeking to remedy noncompliance by State government with § 29. The infamous suit of *Durant v Michigan* was filed in the Court of Appeals, as specified in § 32, in May of 1980 but wasn't finally decided in the taxpayers' favor until July of 1997. The voters' manifest intent to have the Headlee Amendment enforced by the judiciary in an expeditious manner has been frustrated in the extreme.

The process of adjudicating these claims needs to be prioritized and promptly brought to a reasoned result. Delays while fine points of law are endlessly debated and years are frittered away[2] most certainly does not speak well of the judicial system's adherence to the voters' expressed intent that the courts "enforce" the Amendment. If one subscribes to the notion that justice delayed is justice denied, Michigan voters and the taxpayers' whose suits have been delayed for years on end are certainly not receiving justice.

The Commission considered options identified in the CRC Report for reforming the system in Michigan. The option of having an administrative adjudicatory system, similar to the forum created in PA 101, known as the Local Governmental Claims Review Board ("LGCRB"), was rejected because it parallels the remedy afforded under § 32 of the Headlee Amendment and creates confusion as to the process and primacy of each option. More importantly, if the remedy available to taxpayers, as limited by the Supreme Court in the final decision in the *Durant* suit, is a declaratory judgment, a non-judicial

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[2] The Michigan Supreme Court referred to the "prolonged recalcitrance" of the State officials in defending the State's position in *Durant.*

body is without authority to render such a remedy. This is to say nothing about the futilities experienced by local units trying to resolve claims with the defunct LGCRB.

Consideration was also given to the Court of Claims as providing a forum, but rejected in the end in favor of making use of the forum specified in § 32 of the Amendment where original jurisdiction exists without question and provides for binding finality once a decision is rendered. The jurisdiction of Court of Claims is also exclusively limited to considering monetary claims against the State. It does not extend to granting declaratory judgments against the State, which is the remedy that normally applies to Headlee claims, based on the Supreme Court's ruling in the Durant case.

Consideration was finally given to a 1980 amendment to the Revised Judicature Act ("RJA"), § 308a, (MCL 600.308a). This legislation placed original jurisdiction for Headlee claims in the circuit courts of the State, concurrent with original jurisdiction in the Court of Appeals that exists by operation of § 32 of the Constitution. While this placement of concurrent jurisdiction in the circuit courts would serve to overcome some limitations inherent with having an administrative board resolve disputes arising under § 29, it retains the problems associated with a competing and elongated process by subjecting the plaintiffs to the inefficiencies and delays associated with dealing with congested dockets of trial courts only to experience further delays during later appeals to the Court of Appeals and, potentially, the Supreme Court.

Special Master. The Court of Appeals is not set up to function as a trial court or fact finder, but must nonetheless do so when it serves in its constitutionally delegated role in Headlee cases. This problem has been addressed on an ad hoc basis during the 30-plus years of Headlee challenges by resort to the services of a special master. The special master's role is not to render a judgment on the disputed issues but rather to hear the facts and consider the contested issues of law and render a report of the master's findings to the appointing court. The court then renders a final decision or judgment after reviewing the report and either accepts the special master's report or takes some other action based on the reviewing court's independent evaluation.

The Commission's recommendation is to institutionalize the role of the special master within the Court of Appeals for future Headlee challenges through an amendment to § 308a of the Revised Judicature Act. The amendment would require the Michigan Supreme Court to appoint an attorney who has attained some level of experience or expertise with state and local governments' operations both financially and operationally as the sitting special master.

While the volume of suits brought under § 32 of the Headlee Amendment has not been high, the Commission concluded that this is not because the State adhered faithfully to its funding responsibilities under § 29 of the Amendment. Rather, the opposite is true. As documented in the foregoing sections of this report, there have been numerous on-going violations of State government's funding responsibilities under § 29. The main reason for the dearth of suits is that it is a daunting, extraordinarily expensive and time consuming process to try to enforce this provision of the Headlee Amendment. In addition, when the local units ultimately prevail, the Michigan Supreme Court is unable to enforce payment of the unfunded costs by the State. Thus there has been no consequence to the State for its non-compliance. Instead, local services and the financial health of local units of government have deteriorated. As a result, the numerous violations of the Constitution that have occurred over the last 30 plus years have been grudgingly tolerated.

The Commission believes that these violations will abate only when State government is held accountable through the good faith use of fiscal note process combined with prompt and active judicial enforcement of funding those activities and services.

Court Rules. In 2007 the Michigan Supreme Court adopted two Court rule amendments establishing rules that uniquely apply to taxpayers' suits under § 32 of the Headlee Amendment; MCR 2.112 (M), which requires the taxpayer plaintiff to set forth the factual basis for the complaint with "particularity," and MCR 7.206(d). MCR 2.112(M) specifies that the complaint must include the "type and extent of the harm," "with particularity the service or activity involved" and identify and attach "any available documentary evidence supportive of the claim or defense." In contrast, the rule which applies to complaints filed for all other lawsuits, MCR 2.111, requires only that the complaint be "clear, concise and direct" or sufficiently explicit to give notice to the defendant of the basis for the suit. In the latter approach the plaintiff may set forth conclusory allegations, and need not spell out the specific evidentiary elements of the claim until later in the suit. This is referred to as a form of "notice pleading."

The Commission urges the Supreme Court to adopt changes to the court rules that will complement the other recommendations of the Commission and facilitate rather than inhibit prompt and efficient resolution of taxpayers' suits asserting noncompliance with the §29 of the Headlee Amendment. To continue with the current approach compounds the cost of enforcing compliance with the Headlee Amendment and imposes a burden on taxpayers which frustrates the purpose of the Amendment. Specifically, the Commission recommends that the Michigan Supreme Court amend MCR 2.112 (M) and MCR 7.206(d). The former would subject taxpayer claims brought under §32 of the Headlee Amendment to the same pleading requirements as other lawsuits.

In addition, the Commission respectfully asks the Supreme Court to amend MCR 2.706(d) to provide the following:

1. The plaintiff should expeditiously serve the complaint on the state body or local unit of government allegedly responsible for the noncompliance and the office of the Attorney General. Correspondingly, the named defendant should be required to serve its answer to the complaint promptly.

2. Upon receipt of the answer, the suit may be promptly referred by the Court of Appeals to the special master described above for purposes of expedited scheduling of discovery and trial to resolve the factual and legal issues raised by the parties and to thereafter prepare a written report of findings of fact and conclusions of law. If the issues framed in the pleadings solely present straightforward questions of law, the Court of Appeals should have discretion not to refer the suit to the special master.

3. Upon receiving the report of the special master, if applicable, or if the Court has elected to decide the legal issues presented in the complaint without the need for a special master, an assigned panel of the Court of Appeals should schedule an expedited briefing schedule and schedule argument before the Court and thereafter promptly render a decision on whether the State has violated § 29 of the Amendment. The objective of the foregoing should be to render a declaratory judgment on whether the State has violated § 29 of the Amendment within six months of service of the complaint.

Burden of Proof. As detailed above, suits brought under § 32 to enforce the State's funding obligation under § 29 have become an exercise in endurance that only the most patient and well funded taxpayers and their local units can tolerate. The two suits that highlight this flaw are the *Durant* suit and the

presently pending *Adair* suit. *Durant* was resolved - in the taxpayers'/local units' favor – after 17 years. *Adair* was filed in November of 2000 and is still pending on appeal before the Supreme Court. Ironically in *Adair*, the taxpayers/local units adhered to the process described by the Supreme Court in July of 1997 in its final decision in the *Durant* suit, ostensibly to expedite future decisions in § 32 suits. There the Court stated as follows:

> As arduous as the proceedings in this case have been, we have succeeded in deciding many points of law that will guide future decisions. Thus, there is every reason to hope that future cases will be much more straightforward. **We anticipate that taxpayer cases filed in the Court of Appeals will proceed to rapid decision on the issue of whether the state has an obligation under art 9, § 29 to fund an activity or service.** The Court of Appeals would give declaratory judgment on the obligation of the state. If there was such an obligation, we anticipate that the state would either comply with that obligation no later than the next ensuing fiscal year, unless it could obtain a stay from this Court, or remove the mandate. In such an instance, we anticipate that the obligation of the Court to enforce § 29 would not include any grant of money damages. This is not such a case. We turn to the proper remedy in this case. [*Durant*, 456 Mich at 205-06.] [emphasis added]

Despite having followed the direction of the Court, *Adair* remains mired in the litigation process for over nine years after being filed.

Dragging out these suits works to the State's financial advantage: Local units must bear the costs of the mandate while the suit remains pending and face penalties for non-compliance. Also, because the Supreme Court has indicated that it will limit the remedy for the State's noncompliance to the issuance of a declaratory judgment, rather than permitting the local units to recover damages for the State's noncompliance, the State gets a second opportunity to design a funding scheme that suits its own fiscal purposes, again at the expense of local units of government, or ignores the judgment altogether. From a purely pecuniary perspective, there is no down side for the State in ignoring the requirements of § 29.

Given these realities, the Commission recommends additional legislative reform to assure enforcement of the Headlee Amendment. First, the legislature should reverse the burden of proof that has applied in past suits under § 32. That is, the State would have the burden of initially proving in a suit brought under § 32 of the Amendment that a statute or administrative rule that will not impose more or additional necessary costs on affected units of local government or, alternatively, that the State has properly funded the activities and services that it has required.

Perhaps more than any other reform, this will focus the process in the Court of Appeals on the Constitutional objective. If the State, must prove the elements of the funding requirements under § 29 either do not apply or have been satisfied, the time and expense associated with litigation will be drastically reduced. This would not, of course, relieve the taxpayers/local units from being prepared to establish otherwise where the State can initially meet its burden of proof. But it would serve to focus the direction of the suit upon its Constitutional purpose.

Challenge to Constitutionality. A related recommendation is that when future legislation is adopted that taxpayers/local units believe violates the State's funding responsibility under § 29, the taxpayers may initiate suit under § 32 challenging the constitutionality of the statute. Six months after filing the

suit, the local units may cease compliance with those requirements without being penalized or caused to suffer some offset or deduction from state funding unless the Court of Appeals has ruled:

(1) whether the challenged obligation is a mandate which requires state funding under Article 9, § 29 of the Constitution; and

(2) if the Court of Appeals rules that the obligation is a mandate, whether the State has fully funded its share of the cost of the obligation.

In other words, it will be incumbent on the Court of Appeals, if this recommendation is adopted, to rule on the question of the mandate expeditiously, consistent with the statement of the Michigan Supreme Court in the *Durant* case, *i.e.* that suits "will proceed to rapid decision on the issue of whether the State has an obligation under art 9, § 29 to fund an activity or service." This change will encourage prompt evaluation and judgment on the core elements of a claim and discourage the delay tactics employed in the past. The Legislature can then promptly assess its options and do what is required of it under the Headlee Amendment.

An additional recommendation of the Commission concerns the circumstances that exist after the courts have held that the State is violating its funding responsibilities under § 29. It is by no means clear to local units of government in that circumstance whether they are relieved from complying with the requirements of the mandate going forward. The jeopardy that local units face is that the State may, even if only temporarily, subject them to offsets or penalties while the Legislature contemplates what it intends to do in response to the court's declaratory ruling.

Since the courts cannot issue orders to compel the State to appropriate funds for mandated activities or services, the Commission recommends that the new implementing legislation provide specifically that all local units of government prevailing in a Headlee claim are relieved of their responsibility to comply with a requirement that has been so adjudicated until such time as the Legislature complies with the Court's ruling.[3] This would serve to assure the local units that the Headlee process is functioning in practical terms.

D. Monitoring Recommendation

The CRC Report referred to the need perceived in other states whose laws prohibit unfunded mandates to continuously monitor compliance with the states' funding responsibility in order to maintain the integrity of the underlying process in ever changing circumstances. The necessary costs for activities and services and delivery mechanisms can swing up or down over time for many reasons and thereby change the state's funding responsibility under § 29.

The Commission has considered the various approaches to monitoring employed in other states and recommends the following for implementation in Michigan:

1. The State's Executive Branch, acting through a state agency or department and in consultation with established representatives/associations of local units, reports to the legislature twice a year on the status of compliance with its funding obligation categorized by local governmental units and individual mandated subjects within

[3] One option would be for the Legislature annually to appropriate a "Headlee mandate reserve" which could be applied to fund new mandates imposed on local units by statute or regulation.

each category of local unit. This report should be contemporaneously provided to the Court of Appeals and the sitting special master.

2. The agency or department assists in drafting appropriation bills during the annual appropriations process consistent with the information reported in 1 above.

3. The agency or department assists in creating more efficient or streamlined processes for paying or reimbursing local units for the costs of state required activities and services.

4. The agency or department creates mechanisms to identify administrative rules and regulations that impose unfunded mandates on local units.

These tasks should ideally be assigned to an agency charged with providing objective or non-partisan research and information, such as the Legislative Service Bureau, working in active cooperation with representatives of local units of government, as earlier referenced in these recommendations. Act 101 assigned this function to the Department of Management and Budget which has never fulfilled its responsibility. The Commission submits that conformance with the requirements of § 29 will only occur as a result of good faith involvement by both state government officials and local unit representatives.

While, realistically, reasonable minds may disagree during this process, implementation of the Commission's recommended reforms at the Court of Appeals under § 32 as described above, should foster a readiness to compromise in the interest of avoiding an adverse decision resulting from that process.

Past Violations. To this point our recommendations have only dealt with prospective reforms. However, the cumulative effect of the State's historical noncompliance with § 29 has even greater ongoing financial significance to both the State and local units. The Commission concluded it also needed to address cumulative underfunded mandates prospectively.

Recognizing the State's current funding crisis, the Commission recommends additional reforms which will allow and encourage the State to at least partially meet the requirements of the Headlee Amendment while relieving the financial strains of previously imposed but presently unfunded mandates on local units of government.

The Commission strongly recommends that the Legislature conduct a review of existing statutes and administrative rules/regulations that represent state law mandates imposed on local units in order to determine whether relief can be provided to local units prospectively. The Legislature and Governor have three choices consistent with the Headlee Amendment when state mandates are determined to exist. The mandate can be eliminated by the Legislature, its requirements can be redesigned for the purpose of reducing costs of compliance, or it can be proportionately or fully funded (depending on when the requirement first came into existence and or an expansion of the requirement occurred).

Relative to facilitating payment to local units for the costs of activities and services first required after 1978 or where the level of activities and services have been increased after 1978, that remain after the review process, the Commission recommends that a state department be required to create accounting systems that will capture the costs being incurred by local units for mandated services in order to permit accurate payments to them. Implementing such systems will have the added benefit of forestalling suits challenging nonpayment for those services.

These alternatives should be considered in the interest of reducing the financial burdens on local units during this time of extreme financial crisis at the local as well as State level. It would represent hypocrisy in the extreme to suggest that at long last state government has chosen in 2009 to comply with the will of the people expressed in November of 1978, but then wholly ignore the underfunding that has occurred since 1978 and continues to accumulate. While this palliative will not eliminate the reality of the ongoing noncompliance, it will nonetheless inform the current debate surrounding government efficiency and mandates and set the stage for good faith solutions in the future.

E. Recommendations Regarding Non Headlee Mandates

There are many instances, as noted in our interim report where the State has either statutorily or administratively imposed requirements or "mandates" on local units of government that pre-date the ratification of the Headlee Amendment in 1978 and for which no funding was being provided at that time to support the activity or service or which are judicially imposed, or are technically but not practically voluntary apart from whether the Headlee Amendment compels it. As such, the funding responsibility of the State under the Amendment does not come into operation. Some of these requirements are of questionable value to the people of Michigan and should be reviewed due to their continuing costs to local units of government; others have obvious value, but the "voluntary" nature of the activity must be questioned.

Examples of requirements which have lost relevance are the numerous statutorily requirements to publish notices of matters of public interest in newspapers of general circulation for which no funding was supplied by the State. When these obligations were first imposed – well before 1978 – they made a great deal of sense because newspapers were the main means of communicating information about governmental activities. However, today while notice obviously remains an important element of a functioning democracy, most people interested in the public's business affairs use the local unit's website or resort to a telephone call or other media to learn such information. In many cases, local units publish newsletters for that purpose as well. Yet, local units continue to expend thousands of dollars annually to publish information in newspapers of general circulation that are no longer optimal means of communication. Some water and sewer system improvements are examples of "voluntary mandates" (others are mandated). In many parts of the State, water and sewer systems are necessary as a practical matter, though not "required" by state law. If a local unit has a water or sewer system, the State then mandates quality levels and improvements.

Given the precarious fiscal circumstances of all local units of government, there needs to be a vigorous debate in the Legislature should reconsider whether some of anachronistic statutory requirements contributing to the fiscal stress of local units should be eliminated or, at least, modernized recognizing the advanced forms of communication available. At the same time the Legislature needs to consider the cost to local units and their residents of "voluntary" mandates.

IV. SUMMARY

The checks and balances contemplated by the Headlee Amendment in the relationship between State and local government in Michigan have been rendered inoperative over the last thirty (30) years. This balance must be restored and respected in order to honor the constitutional underpinnings of Michigan government.

The Commission recommends the following legislative actions:

A. PA 101 be repealed, and

B. Legislation be adopted implementing § 29 of the Headlee Amendment consistent with the following:

1. Require that no statute which requires new activities and services or an increase in the level of activities or services beyond that required by existing law to be provided by local units of government may become binding on those local units until funds are appropriated to pay the affected local units for the increased necessary costs of compliance.

2. Establish and require that a fiscal note process in connection with all bills before enactment or the effective date that will serve to:

   (a) Require the House and Senate Fiscal Agencies working in consultation with representative of local units of government affected by the bill,

      (i) to determine whether any new or increased costs are likely to occur as a result of the same being adopted,

      (ii) develop an estimate of the necessary new or increased costs that are likely to be incurred by local units statewide, and

      (iii) inform the Legislature of the estimated costs found in (ii) above while debate is occurring over the subject bill.

   (b) Tie bar mandate legislation to an appropriation bill which appropriates sufficient funding to pay for the new or increased costs for the affected local units.

   (c) Create a disbursement process that provides for payments to local units from the appropriation on a current basis or as the subject expenses are being incurred by the local units.

   (d) Require that in the event legislation is enacted which imposes requirements on local units to provide activities and services without compliance by the legislature with the fiscal note process, such legislation shall be of no force and effect and shall not require compliance by the affected local units until such time as the fiscal note, appropriation and disbursement process has occurred.

3. Amend the APA to provide that if a State administrative agency, department, or bureau acts to create a rule or otherwise exercises its authorized powers or responsibilities that will cause local units of government to provide either new activities or services or that represent an increase in the level of any activity or service beyond that required by existing law shall be of no force or effect in law unless and until a fiscal note is prepared and an appropriation is made to pay local units for any necessary increased costs, including a payment or disbursement mechanism to ensure payment on a current basis or as the subject expenses are being incurred by the local units.

C. Legislation amending the Revised Judicature Act should be adopted to amend section 308a of the Act in order to:

1. Create exclusive jurisdiction for original suits brought under § 32 of the Headlee Amendment in the Court of Appeals.

2. Create as a permanent/sitting position within the Court of Appeals a special master with authority:

   (a) To receive evidence and determine disputed facts based on the evidence received.

   (b) To hear and consider arguments of law.

   (c) To prepare a report for the Court of Appeals that recommends resolution of the disputed questions of fact and law.

   (d) To recommend, if the suit is sustained, an award of the costs incurred by the plaintiffs in maintaining the suit to be paid to the applicable unit of government.

D. Legislation should be adopted which establishes that:

1. The burden of proof in suits brought in the Court of Appeals under § 32 of the Headlee Amendment to enforce the requirements of § 29 shall initially be on the State, in order to establish that any new activities or services or any increases in the level of any activities or services beyond that required by existing law as a result of State law or administrative requirements either does not give rise to any necessary increased costs for the affected local units of government or the necessary increased costs are being appropriated and paid for in accordance with the requirements of § 29 of the Amendment.

2. If suits are brought by a taxpayer under § 32 to enforce the requirements of § 29 of the Headlee Amendment, alleging that recently enacted legislation requires local units to provide either new activities and services or an increase in the level of any activity or service beyond that required by existing law that are not being paid for as required under § 29 of the Amendment, the affected local units of government shall not be required to comply with the legislation beyond six (6) months following the filing of such suit, unless the Court of Appeals issues a declaratory judgment finding that the State has not violated § 29 in that time period. This legislation should prohibit the State from imposing a penalty or offset against revenues otherwise due to the local units by operation of exercising its right to not comply pursuant to the foregoing.

3. If State administrative rules/regulations are implemented that will require activities or services that impose necessary increased costs, those activities or services shall not be required to be provided by local units of government until an appropriation is adopted by the Legislature and a disbursement process is implemented to pay the affected local units for

any increased necessary costs on a current basis or as those costs are incurred. This legislation should further provide that the State may not impose a penalty or offset against revenues otherwise due to the local units by operation of exercising their right to not comply.

4. In the event the Michigan Court of Appeals issues a declaratory judgment in a suit brought under § 32 of the Headlee Amendment declaring that the State has not met its responsibilities to fully fund required activities and services as required under § 29 of the Amendment, enforcement of the requirements shall be suspended for all other similarly situated local units of government until such time that the Legislature takes whatever actions may be required to meet the State's responsibilities under that section of the Amendment.

E. An on-going process for monitoring the State's compliance with § 29 of the Headlee Amendment be created that requires the Legislative Service Bureau or equivalent, non-partisan State department or agency, working in active consultation with established representatives/associations of local units of government, shall be required by legislation to:

1. Prepare and publish a report annually for the Legislature and Governor on the status of the State's compliance with its funding responsibilities for local units of government under § 29 of the Headlee Amendment, broken down by categories of local units and mandated subjects of activities and services within each such category.

2. Assist the Legislature in drafting appropriation bills during the annual appropriation process that meet the State's funding responsibilities as reported in (a) above.

3. Assists the Legislature in creating more efficient or streamlined process for paying or reimbursing local units of government for the necessary costs of required activities and services.

4. Assist the Legislature in identifying administrative rules and regulations that impose unfunded mandates on local units of government.

5. Provide that the report referred to paragraph (1) above is contemporaneously provided to the Court of Appeals and sitting special master annually.

F. Legislation should be adopted that commits the State to identify past underfunding of § 29 to the extent possible by creating a review process to examine all statutes and administrative regulations that require local units of government to incur necessary increased costs as a result of statutes and administrative rules/regulations that require either new activities and services or an increase in the level of any activity or service beyond that required by existing law in order to determine:

1. Whether the requirements continue to be necessary in the public interest given the extreme financial stress that local units are experiencing and, if not, initiate legislation to rescind the requirement.

2. If it is determined that that the requirements need to continue in effect in the public interest, to work in consultation with representatives of local units to determine how the required activities and services can be more cost effectively provided and to initiate any changes or amendments to the law necessary to implement changes for that purpose. If the activity or service was either first required after 1978 or the level of the activity or service was increased beyond that required in 1978 that the remaining costs, after implementing such changes, be funded through adoption of an appropriation and that a system for disbursing such funding be implemented.

3. If it is determined that the required activities and services cannot be changed in the public interest, that the necessary increased costs for providing same be funded through adoption of an appropriation if the activity or service was either first required after 1978 or the level of the activity or service was increased beyond that required in 1978 and that a system for disbursing such funding be implemented.

4. Place responsibility in the DMB to create and implement accounting systems that accurately capture the necessary costs being incurred, going forward, by local units of government for activities and services first required after 1978 or which relate to increased levels of activities and services required after 1978.

5. Relative to any requirements imposed on local units by State law before the Headlee Amendment was ratified and for which no funding was then provided, the Legislature shall conduct a review to determine if it is cost effective for local units to continue to be required to provide the required activities and services and to adopt whatever changes that may serve to reduce or eliminate the costs to local units for same.

6. Consider (i) relief from archaic mandates and (ii) funding for "voluntary" mandates.

G. The Michigan Supreme Court should replace MCR 2.112 (M) and MCR 7.206 (D) and (E) with a new Court Rule consistent with the Commission's legislative recommendations.

The foregoing is respectfully submitted as the final report and recommendations of the Commission on Statutory Mandates submitted as of December 31, 2009.

Robert J. Daddow
Co-Chair

Amanda Van Dusen
Co-Chair

Dennis R. Pollard

Louis H. Schimmel

J. Dallas Winegarden, Jr.

Appendix A

APPENDIX A

SUPPLEMENTARY REPORT OF THE LEGISLATIVE COMMISSION ON STATUTORY MANDATES

DECEMBER 31, 2009

I. BACKGROUND AND HISTORY OF LOCAL GOVERNMENT MANDATES ISSUE.

Late in 2007, the Michigan Legislature passed, and the Governor signed, 2007 PA 98 and 2007 PA 99 establishing the Legislative Commission on Statutory Mandates (Commission) to review and investigate unfunded statutory and State administrative mandates imposed on local units of government. The Commission enabling statutes were amended late in calendar 2009 through 2008 PA 356 which refined the scope of work and deadlines for completion of the Commission reports. The Local units of government are defined both within the State Constitution and within this report covering the Commission's charged responsibilities as political subdivisions of the State including local and intermediate school districts, counties, cities, villages, townships, community colleges and county road commissions.

II. SECTION 29 OF THE HEADLEE AMENDMENT.

In the middle and latter part of the 1970s, there was considerable unrest over increasing taxation both at the State and local level. It is not an overstatement to say that the people of Michigan felt that state taxation was out of control. An initial attempt at reform involved an initiative known as the Tisch Amendment that called for steep tax cuts. The voters rejected that initiative. That was followed by The Headlee Amendment which was a tax limitation initiative, that, generally described, served to limit the increases in taxation by State and local units of government to no more in any one year than the corresponding rise in cost of living as measured by the consumers price index, unless authorized by a vote of the affected electorate. There is an exception in the case of an emergency.

The drafters of the Amendment also took into account that State government would have the ability to escape the control placed on it through the Amendment by legislative and administrative fiat exercised at the expense of local units of government. This took two forms in the Amendment. Under § 30 the State was prohibited from reducing the proportion of total state spending paid to local units, taken as a group, below the proportion paid during the 1978-79 fiscal year. Under § 29, the State was prohibited from imposing mandates or requirements on local units without appropriating and disbursing funding to pay for the costs imposed by the mandate. Michigan voters overwhelmingly passed the Headlee Amendment in November 1978 and it became effective December 23, 1978.

The Headlee Amendment was intended by the Michigan voters to accomplish several objectives, but was born out of a belief that the Legislative and Executive branches of State government could not be relied up to control the ever expanding costs of State and local government. There are no other comparable or analogous limitations set forth in the present or even past versions of the Michigan Constitution dating back to 1835.

Towards these objectives the Constitutional initiative now commonly known as the Headlee Amendment fixed limitations/prohibitions on State and local units of government, as follows:

- Voters general intent sought to be accomplished through the Amendment. (Article 9, § 25).

- Prohibition on increasing taxes without voter approval. (Article 9, § 26).
- Exceeding the limitation in an emergency. (Article 9, § 27).
- Capping the expenses of state government. (Article 9, § 28).
- Prohibition on the imposition by state government of unfunded mandates on local government. (Article 9, § 29).
- Prohibition on reducing the proportion of state revenues flowing through to local governments. (Article 9 § 30).
- Prohibition on increasing taxation by local government without voter approval. (Article 9 § 31).
- Authorizing lawsuits by taxpayers to enforce the Amendment. (Article 9 § 32).

Two sections of the Headlee Amendment describe the intent of Michigan voters in restraining the imposition of new financial burdens on local governments follow:

A. REQUIREMENT THAT THE LEGISLATURE MUST IMPLEMENT THE AMENDMENT (ARTICLE 9, § 34).

Article 9, § 29

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.

Article 9, § 25

> The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of states spending in the form of aid to local governments, or from shifting the tax burden to local government.

The focus of this Commission has been on Article 9, § 29 of the Amendment: the prohibition on the imposition of unfunded mandates on local units of government by the State. Given the present financial condition of both the State and local units of government, it should be noted that Article 9, § 29 of the Amendment was intended to prevent the shifting of financial burdens that was occurring at the time the Headlee Amendment passed – and has continued throughout the intervening thirty (30) years – as a direct result of mandates imposed by the Executive and Legislative branches that activities and services be provided by local units of government without funding to support the activity. In imposing these mandates and not fully funding them, the State burdens scarce local resources without allocating the State's scarce resources.

Unfunded mandates can increase the government's costs to taxpayers because the public officials responsible for imposing the mandates, if not properly checked and controlled, are not responsible for funding their mandates while nonetheless requiring local compliance. New mandates generally mean new costs for local units of government. Article 9, § 29 was intended by the drafters of the Headlee Amendment to prevent this situation from occurring. The mechanism set forth in the Amendment, as noted above, is simply to require the Legislature to adopt (or state agency to seek to secure) an appropriation to finance the costs at the point in time that the mandate for the activity or service is being considered and to subsequently disburse the funding if the mandate is imposed.

If indeed the costs are not within the State's financial means then the necessity for the mandate should be evaluated and either not be adopted or it should be changed so as to reduce the associated costs to fit within the State's financial means. True implementation of this section of the Headlee Amendment funding of a statutory mandate would require the State to provide a control over such imposition on local units of government, complete with the public discussions of the mandate's impact on local units of government in a timely and responsible manner and, most importantly, appropriating the monies necessary to pay local units for the costs of what is being required. Indeed, that is clearly what is intended to occur under the design of the Amendment.

While compliance with the funding obligation, thirty (30) years after the Headlee Amendment prohibition was first imposed would entail substantial costs upon State government that were never intended to occur by the Michigan voters who approved it. If indeed the expressly-required debate had occurred and the funding appropriation been made when it should have the costs of Michigan government, both state and local, would be significantly less than they are today. The real cost impact and extent of not complying with the Headlee Amendment, as discussed subsequently, may never be known. Even if the costs could be quantified today and agreed upon by the State and local units of government, it is unlikely that funding would be forthcoming from the State. It is impractical to expect full calculation and even more impractical to expect the State, in its financial condition to fund the cost of past noncompliance.

This does not mean that nothing can be done to bring State government back in line with what Michigan voters intended through adoption of the Amendment on a going forward basis. Specifically, the missing debate about whether the various unfunded mandates are affordable in their present form could certainly occur in the near term with a view to either eliminating some of the mandates or, alternatively, significantly changing them so as to minimize or reduce the costs that local units are incurring. It is submitted by this Commission that out of respect for the core idea of a constitutional form of government that posits that the people are the unrivaled bosses over the government that they established, nothing less should occur.

As events demonstrated following the adoption of the Headlee Amendment, most State officials did not embrace the reforms of § 29 wrought by the Amendment, particularly the prohibition on unfunded State mandates imposed on local units of government over the past thirty (30) years. This lack of compliance was evidenced by the wholesale disregard of § 29 of the Headlee Amendment and an implementing statute adopted in 1979, ostensibly to create procedures that would facilitate the prohibition on unfunded mandates that has left the State and local units of government at odds with one another over unfunded mandates. Clearly, compliance with this implementing statute could have and well should have been accomplished prior to this time.

The plain meaning § 29 of the Headlee Amendment is that state government (*i.e.* the Legislature, the Governor and all state departments and agencies) cannot require any new or increased activities and services on any local governmental units in Michigan through statutes, rules or regulations without

the Legislature appropriating and disbursing the monies required to pay those costs. Simply put, state government cannot order local units of government to assume more responsibilities and expect the costs for its orders to be paid for at the local level without reimbursement. Governor John Engler commissioned a project to review all aspects of the Headlee Amendment, including Article 9, § 29. The project culminated in a report dated September, 1994 entitled "State of Michigan: Headlee Blue Ribbon Commission." The conclusions of this Commission were succinct: The State was not in compliance with the Headlee Amendment and the enabling procedural statute, Act, 1979 PA 101. Fifteen years later, the public testimony offered to this Commission has indicated no improvement in compliance with the Headlee Amendment.

B. 1979 PA 101 – STATE DISBURSEMENTS TO LOCAL UNITS OF GOVERNMENT ACT.

Section 34 of the Headlee Amendment squarely placed responsibility on the Legislature to "implement" its various provisions. Relative to Article 9, § 29 of the Headlee Amendment, the Legislature enacted comprehensive legislation in 1979 for the stated purpose of implementing that provision. The law is known as the "State Disbursements to Local Units of Government." (1979 PA 101).

One of the first actions undertaken by this Commission to understand and evaluate the State's adherence to its responsibilities under this Act was to request the Legislative Service Bureau (the "Bureau") to explain what steps were taken by state government since 1979 to follow the specific requirements of 1979 PA 101. For example, Section 5 of the Act provides:

> (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.

These provisions require that the Legislature appropriate funding on an on-going basis to cover the cost of the mandates imposed on local government. Compliance with these provisions would represent faithful compliance with the letter and spirit of Article 9, § 29. However, the Commission is advised by the Bureau that this has not occurred over the intervening thirty (30) year period. Unfortunately, the implementation of this statutory provision has been nonexistent and there are no procedures that are systematically followed as legislation is being considered that deals with the costs to local units' attendant to mandates and as legislation is being considered and passed.

This lack of due diligence at the outset of legislation being considered leads to the assertion in the Bureau's report to this Commission, attributed to the Department of Management and Budget ("DMB"), that "the. . . . Legislature has never knowingly passed any legislation with a Headlee

mandate." It is not, of course, claimed that no mandates entailing costs have ever been imposed by the Legislature on local government by state government since 1979 to the present, but rather that the legislators were simply unaware that their actions imposed such a mandate. With no formal review process in place at the State and no discussion occurring, as a result, about the source of necessary financial resources that will need to be committed through an appropriation in connection with impending legislation impacting local units of government – either before or after passage – mandates regularly slip through the legislative process and adversely affect scarce resources of local units of government. Again, this regularly occurs directly contrary to the plain meaning of the words appearing in § 29 of the Headlee Amendment.

One glaring example that demonstrates the lack of awareness/respect for the requirements of the Headlee Amendment occurring in this past legislative session involved House Bill 6112, a bill to require mandatory arbitration for county jail personnel when labor agreements cannot be amicably settled as part of the bargaining process. Mandatory arbitration has made a financial train wreck of municipalities' budgets. Arbitrators, not accountable at the ballot box to local taxpayers, and being solely guided by their own ideas about fair levels of salaries and benefits for public employees, all too frequently reject the employers' financial arguments with nostrums about the primacy of public employers needing to pay fair wages and benefits and their corresponding need to find ways to raise the monies. This legislation would, if it had been adopted, exacerbate the already costly public safety bargaining requirements for counties under 1969 PA 312.

While the bill did not pass the Senate, it should be noted that 78 members of the House voted in favor of this bill without any discussion about the underlying unfunded cost implications for counties that would predictably result if this bill were to be adopted. It should be added that the Commission attributes no bad motives to the legislators who voted to pass this Bill, but rather to simply point out how deeply ingrained this manner of ignoring the Constitutional responsibility to act otherwise is implanted.

Interestingly, the Michigan Municipal League and Michigan Township Association, during the public debate on this Bill, cited 1969 PA 312 as one of the top ten unfunded mandates imposed on local units of government and did so, we are advised, independently of conferring with one another. Finally, it should also not go without notice that the State prison guards would not have participated in this same bargaining right under this Bill, presumably because it would have been far too costly for the State to do so.

Similarly, in Section 5 of the Act it is provided as follows:

> (3) The governor shall include in a report which is to accompany the annual budget recommendation to the legislatures, 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.

The Commission is advised by the Bureau that the requirement has never been followed over the last thirty (30) years. No governor has included in his/her annual budget such a report. The Bureau's response includes the DMB's explanation that the governors' non-compliance over the last thirty (30) years is attributable to the Legislature never having adopted joint rules from which to identify the existence of mandates. The Commission submits that the absence of joint rules does not excuse the omission from the recommended budget compliance with the statutory and Constitutional requirements.

Similarly, Section 5 of the Act requires:

> (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 [of DMB] 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.

The Commission has been informed by the Bureau that this requirement has not been followed by the State's Director of DMB over the last thirty (30) years. This response is accompanied with an explanation that this non-compliance is attributable to the Legislature's failure to adopt a "joint rule mechanism." Even if the "joint rule mechanism" has not been passed there is an obligation, manifestly, to follow the Constitution.

Similarly, Section 6 of the Act requires:

> 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 [of DMB]. 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.

Again, this Commission is informed by the Bureau that these requirements have been ignored. This correspondence is accompanied by an explanation in a memorandum from the Joint Committee on Administrative Rules (JCAR). It is stated by JCAR in this memorandum as follows:

> It is a statutory requirement that a state agency include a Regulatory Impact Statement (RIS) with a rule that is transmitted to the Joint Committee on Administrative Rules (JCAR). . . . The RIS is a corollary to the "fiscal note" referred to in section 6 of 1979 PA 101 as noted above. All final rule transmittals that have been submitted to JCAR since 1981 (unless exempt under the APA) have included an RIS indicating the fiscal implications of the proposed rule. . . . In preparing the RIS, the agencies estimate the cost of the rule; however, the estimate of the cost is general and not specific to the first 3 fiscal years of the rule's operation as described in section 6 of 1979 PA 101. In addition, since 1981 the JCAR has forwarded the rule and the RIS to the Senate and House fiscal agencies pursuant to MCL 24.245(5). [JCAR

Memorandum to Legislative Commission on Statutory Mandates, March 20, 2008, at p. 1.]

Similarly, Section 7 of the Act requires as follows:

> (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.

The Bureau reports that the joint rules required by this section of the Act "were never submitted by the Legislature" or otherwise adopted. Relative to the requirement that the Auditor General may be requested to verify the actual amounts of the necessary costs of state requirements the Bureau reports that the Legislature has not made over the last thirty (30) years "any requests for records or related audits." Indeed, the Bureau reports that no Headlee mandates were listed in any of the Annual Reports of the Auditor General published from 1980 to 2007."

Similarly, Section 8 of the Act imposes a very important element to assure compliance, by having the DMB certify that that sufficient disbursements have been made to local government each year as required by § 29 of the Headlee Amendment. This is done quite elaborately in this section of the Act. The Bureau reports that none of these compliance requirements were met by the DMB.

Similarly, Section 13 of the Act states:

> 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. . . .

The Bureau reports that it was "unable to identify any instance where this alternative form of funding may have taken place."

The list of requirements specified in this Act goes on and, correspondingly, the fact of non-compliance by state government in each case is repeated. It is not an overstatement to say that this Act, which is the Legislature's sole attempt to implement the Article 9, § 29 of the Michigan Constitution has been ignored. This is to say nothing about the fact that in so doing Article 9, has been rendered meaningless over the last thirty (30) years. This situation reflects a profound disrespect

for both the Constitution and the burdens on local governments which are further strained by the active enforcement of the Headlee Amendment limiting local revenues of local units of government by operation of the other sections of the Headlee Amendment.

While the Headlee Amendment and the administrative rules and processes put in 1979 PA 101 provided a potentially adequate framework to inhibit the passage of legislation that would impose the unreimbursed cost burdens on local units of government, the failure to comply with the framework by state elected and administrative officials over the past thirty (30) years has permitted what the voters wanted to prevent – the unrestrained growth of government, the imposition of unfunded mandates and the frustrations between levels of government that unfunded mandates create. Moreover, the frustrations that have arisen among local units of government over unfunded mandates have become a barrier to a trusting relationship needed as a basis of improving government going forward.

Yet, the failure to comply with the Headlee Amendment and to comply with this implementing legislation has no direct, or even indirect, penalty associated with it. In fact, since the imposition of mandates on local government, without funding, can occur with impunity there is no reason or advantage by people at the state level not to do so. However, in imposing unfunded mandates contrary to the requirements of the Constitution, the State and local units of government's relationship and trust are sacrificed. In these fiscally-challenging times where the electorate is expecting stable programs from governance, the ability of State officials to collaborate with local units of government towards achieving these ends will be made ever so more difficult – all causing limitations on what could have resulted if the changes the taxpayers voted for in 1978 had been respected.

C. THIS IS NO WAY TO RUN THE RAILROAD.

The lack of compliance with the Headlee Amendment and 1979 PA 101 has generated, several legal challenges undertaken by Michigan taxpayers acting in conjunction with local units of government. These legal challenges have established the State Legislature's failure to comply with the requirements of the Amendment. Some suits have also failed to establish the State's non-compliance. However, these suits have been piecemeal by their nature in terms of enforcing the Amendment. They do not and cannot be the means to assure comprehensive compliance with the will of the people who passed this Amendment to the Constitution. Unfortunately, that can only occur at such point in time as the Governor and Legislature decide that the prohibition on unfunded mandates needs to be respected and fully implemented in order to give full credence to the will of the people.

In the *Durant* and *Adair* cases, the litigation has been protracted, costly to file and fund by local units of government, and have resulted in incremental gains of cost recovery. The *Durant* cases required over seventeen (17) years of protracted litigation before the final opinion was rendered in July of 1997, finding that the State violated § 29 of the Headlee Amendment by failing to fund educational services that have been required for special education students since 1978 through the time of that decision. The *Adair* case similarly found that the State was violating the Headlee Amendment by its failure to provide any funding for very costly services associated with local schools having to provide extensive data/documentation for the State's Center for Educational Performance and Information ("CEPI"). In the most recent decision of the courts it was ruled that the State is violating § 29 of the Amendment by failing to provide the required funding to local schools for the costs of these services. This case has been in the courts for over nine (9) years and is presently awaiting decision by the Michigan Supreme Court. Because of the cost to pursue litigation, the inability to secure local units of government with stressed budgets willingness to fund the cost and time involved in securing a court resolution, local governmental units, in the main, simply acquiesce in the unfunded mandate. There is little else that they can do.

The obstacles to resolution of Headlee Amendment disputes through the court system contributes to the sense of frustration and helplessness of local units of government burdened by the periodic imposition of unfunded mandates flowing from State government. There is broad agreement that some mandates are good ideas with desirable activities. In those situations the problem is not with the mandate, but with the lack of funding, such that local governments are required to cut back on other important service to meet the costs of the demands imposed by the State.

The Headlee Amendment simply requires that if the State mandates local units of government to provide activities or services at levels above and beyond what is being paid for by the State the State must pay the costs of the program imposed on local units of government. In the case of "new" activities and services, meaning those required by State laws or administrative regulations implemented after 1978, the State must pay for the full costs of those activities or services. In the case of activities and services require before 1978 and either fully or partly funded at that time, § 29 of the Amendment requires that the State continue to pay that same proportion going forward.

The voters of Michigan should not have to rely on piecemeal litigation to achieve comprehensive compliance with this Amendment to the Constitution. Rather, meaningful and comprehensive compliance with § 29 needs to occur even at this late point in time. This Commission will provide recommendations in its final report to the Legislature of the means necessary to achieve compliance with the Headlee Amendment prospectively.

D. THE MISSION OF THIS COMMISSION.

The lack of compliance with 1979 PA 101, the inability to secure meaningful, timely, and cost-effective court decisions in Headlee Amendment disputes and now, the fiscal turmoil in the governmental arena has led to the creation of the Legislative Commission on Statutory Mandates ("Commission"). The non-profit associations, representing the local units of government constituency groups, were requested and have willingly participated in assisting in the Commission's study because they want to have their voices heard through the Commission. The Commission owes this to the local units of government and, more importantly, to the citizens that they – along with this Legislature represent.

In October of 2007, the Legislature created the Commission through 2007 PA 98 and 99. These Public Acts were amended through 2008 PA 356 that served to refine the scope of work and delay the issuance of the Commission's report given the complexity of the tasks. The amended direction to the Commission provides as follows:

> Not later than June 30, 2009 the Commission shall compile all of the following in an interim report:
>
> a) The most significant funded and unfunded mandates imposed on local units of government in state laws as identified by those local units of government.
>
> b) The most significant reporting requirements imposed on local units of government in state law as identified by those local units of government.
>
> c) The range of costs to local units of government with each funded and unfunded mandate identified in subdivision (a).

d) The range of costs to local units of government of complying with each reporting requirement identified in subdivision (b).

The Commission's tasks set forth in the original enabling legislation required that *all* funded and unfunded mandates (including reporting requirements) should be identified, reviewed and costs developed. Early on in the Commission's meetings, it became apparent that the sheer cost of complying with the original scope of work contemplated by the earlier legislation would not be possible. Given the length of time since Headlee was passed, likely condition and accessibility of accounting records over a thirty (30) year period, lack of research resources, and complexity of the Commission's legal tasks (including periodic changes in programs over that same period), the scope of work had to be limited to assembling the ten most egregious unfunded mandates imposed on local units of government as identified by the representing associations.

Whether the Commissioners like it or not, the Commission has become a vehicle to voice the frustrations that had built up within local units of government over this subject over the past several decades. By assembling the 'top ten' mandates (by group – school districts, counties, *etc.*) meaningfully affecting operations of the local units of government and subsequently costing to some imprecise degree these mandates out, the Commission is attempting to assemble some sense of the scale and complexity of its task and the magnitude of the appropriations necessary to deal with the original scope of work involving *all* mandates and costing relating thereto.

The original legislation no longer sets forth the Commission's scope of work (*e.g.* a comprehensive listing of *all* mandates, including reporting requirements and related costing). That legislation was amended to reflect the current scope of work through 2008 PA 356, as reflected above.

E. THE COMMISSION'S LIMITATIONS.

At the outset of the Commission's efforts, it became quickly apparent that barriers to the successful completion of the assigned task as reflected in the original legislation. These barriers, as explained below, may have permanently prevented the local units of government from ever being able to adequately determine the aggregate cost of the unfunded mandates imposed upon them by the State. Clearly, without a substantial appropriation of resources from the State to perform a detailed analysis, if one could even be performed at this late date, no such accurate compilation of the mandates and related costs imposed on local units of government can be developed.

F. THE CRITICAL LACK OF A 1978 BENCHMARK.

A significant barrier to the task of identifying and then quantifying the level of unfunded mandates is the lack of available information concerning the extent of costs incurred and funding provided to local units by the State for mandated requirements that existed in 1978 at the time the Headlee Amendment became effective. The Headlee Amendment prohibits, through its first sentence in Article 9, § 29, the State from reducing the proportion of monies provided for necessary costs of any existing activity or service required of units of local government by state law at the time the Amendment was approved. Unfortunately, a comprehensive analysis, essentially a benchmark, was not created and codified for future use in analyzing potential unfunded mandates that existed at that time in order to determine changes in the funding levels that occurred subsequent to that time. The only exception to that statement was the base year proportion of funding established for the costs incurred by schools for special education services established through the evidence presented in the Durant case.

As close to that objective that occurred was a catalogue of state mandates, categorized by local units of government, which was developed by for the Department of Management and Budget, dated

January 1980. This can be found in the State Law Library. However that catalogue is essentially useless because there is nothing contained in it about the proportion of costs being funded by the State at that time, to say nothing of its many inaccuracies in terms of identifying the state mandates that existed at that time. It is simply an attempt to catalogue statutes in place which potentially represents activities and services to be provided by local units of government that were mandated by State statutes, with no underlying analysis.

Without the ability of this report to accurately assess the changes in legislation and levels of funding involving programs that existed as of the effective date of the Headlee Amendment is effectively impossible to analyze and then quantify. The ability to hold the State's Executive and Legislative branches accountable for compliance with this Constitutional reform has been permanently lost to history. No doubt that this reality, which limits the comprehensive nature of this report, contributes to the frustration of local units of government who believe that funding levels that existed as of the effective date of the Headlee Amendment have been significantly reduced. The local units of government frustration may never be resolved, even if substantial funding were to be provided to conduct a more comprehensive study.

G. THIRTY YEARS OF UNRESOLVED HISTORY.

The general lack of compliance by the Executive and Legislative branches of government over the past thirty (30) years contributes to the inability to analyze the current mandates that must be funded under § 29 of the Headlee Amendment, at least to the extent of mandates that existed in 1978 that were partially funded at that time. Moreover, the cost implications of changes in legislation since 1978 may be subtle, but nonetheless could have significant financial impacts on local units of government. The difficulty of identifying these subtle legal changes in program requirements imposed on local units of government when they came into existence and then translating them into a dollar impact likely will never be known. Even if the State had acknowledged and listed those statutes that could have been mandates upon local units of government, it would have provided a starting point for legal research as well. Unfortunately, no such listing has ever developed, apart from the 1980 listing of state statutes that is analytically valueless, and the subtle changes in statutes, which may burden local units of government, could be far too numerous to ever identify.

H. ACCOUNTING RECORDS.

The State prescribes a chart of accounts for use in the accounting and financial reporting of local units of government financial condition and operations. The accounting information captured in the local units of governments' records almost universally does not reflect costs attributable to changes in legislation that represent State mandates. Further, the accounting records would not distinguish between inflationary increases, rate changes, and program expansions/contractions from those that would be applicable to the imposed mandate.

Over thirty (30) years has passed since the Headlee Amendment became effective. Underlying documentation may not have been retained, personnel with institutional memories almost certainly have left the organization and other similar limitations exist simply because concurrent records of the incremental changes in the Headlee Amendment have not been tracked within the 2,000 local units of government accounting records. Formats of data capture have changed arising from governmental accounting standard pronouncements being passed. Finally, because not all of the accounting records have been maintained properly for all local units of governments, their accuracy must be questioned over a thirty (30) year period of time.

Exhibits

EXHIBIT A
PUBLIC ACT 98 OF 2007

Act No. 98
Public Acts of 2007
Approved by the Governor
October 1, 2007
Filed with the Secretary of State
October 1, 2007
EFFECTIVE DATE: October 1, 2007

STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007

Introduced by Senators Patterson, Richardville, Kahn, Pappageorge, Gilbert, Birkholz, Kuipers, Jelinek and Brown

ENROLLED SENATE BILL No. 398

AN ACT to amend 1986 PA 268, entitled "An act to create the legislative council; to prescribe its membership, powers, and duties; to create a legislative service bureau to provide staff services to the legislature and the council; to provide for operation of legislative parking facilities; to create funds; to provide for the expenditure of appropriated funds by legislative council agencies; to authorize the sale of access to certain computerized data bases; to establish fees; to create the Michigan commission on uniform state laws; to create a law revision commission; to create a senate fiscal agency and a house fiscal agency; to create a Michigan capitol committee; to create a commission on intergovernmental relations; to prescribe the powers and duties of certain state agencies and departments; to repeal certain acts and parts of acts; and to repeal certain parts of this act on specific dates," (MCL 4.1101 to 4.1901) by adding chapter 7B; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

CHAPTER 7B

Sec. 781. As used in this chapter, "commission" means the legislative commission on statutory mandates established in this chapter.

Sec. 782. (1) The legislative commission on statutory mandates is created within the legislative council.

(2) The commission shall consist of the following 5 members:

(a) One member appointed by the speaker of the house of representatives.

(b) One member appointed by the minority leader of the house of representatives.

(c) One member appointed by the majority leader of the senate.

(d) One member appointed by the minority leader of the senate.

(e) One member of the public jointly selected by the speaker of the house of representatives and the majority leader of the senate, who is an attorney licensed to practice in this state.

(3) The members first appointed to the commission shall be appointed within 60 days after the effective date of the amendatory act that added this chapter.

(4) Members of the commission shall serve for a term of 3 years. A member of the commission shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

(5) Legislators and other state employees are not eligible to be a member of the commission. Members of the commission shall be individuals who have knowledge of, education in, or experience with the best practices of 1 or more of the following fields:

(a) Organizational efficiency.

(b) Government operations.

(c) Public finance.

(d) Administrative law.

(6) If a vacancy occurs on the commission, the member shall be replaced in the same manner as the original appointment.

(7) The first meeting of the commission shall be called by the majority leader of the senate not later than 60 days after the effective date of the amendatory act that added this chapter. The member appointed by the majority leader of the senate and the member appointed by the speaker of the house of representatives shall be co-chairpersons of the commission. The chairperson position shall rotate each month between the co-chairpersons. The member appointed by the majority leader of the senate shall be the chairperson of the commission for the first month. At the first meeting, the commission shall elect from among its members other officers as it considers necessary or appropriate. After the first meeting, the commission shall meet at least monthly, or more frequently at the call of the chairperson for that month or if requested by 3 or more members.

(8) A majority of the members of the commission constitute a quorum for the transaction of business at a meeting of the commission. A majority of the members are required for official action of the commission.

(9) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties as members of the commission subject to available appropriations.

(12) Not later than December 31, 2008, the commission shall do all of the following:

(a) Review and investigate all funded and unfunded mandates imposed on local units of government in state law.

(b) Review and investigate all reporting requirements imposed on local units of government in state law.

(c) Determine the complete cost of each funded and unfunded mandate imposed on a local unit of government in state law.

(d) Determine the complete cost of each reporting requirement imposed on a local unit of government in state law.

(13) Not later than October 1, 2009, the commission shall make specific determinations of the items described in subsection (12) and report those determinations to each house of the legislature and the governor. The commission shall also make an interim report to each house of the legislature and the governor on the status of its determinations of the items described in subsection (12) not later than June 1, 2009.

(14) The governor may direct that state agencies subject to the supervision of the governor under section 8 of article V of the state constitution of 1963 provide information to the commission to assist the commission in fulfilling its duties under this section. Upon request of the commission, the commission shall be given access to all information, records, and documents in the possession of a state agency that the commission considers necessary to fulfill its duties under this section. The commission may hold hearings and may request that any person appear before the commission, or at a hearing, and give testimony or produce documentary or other evidence that the commission considers relevant to its duties under this section.

(15) In connection with its duties under this section, the commission may request the legislative council to issue a subpoena to compel the attendance and testimony of witnesses before the commission or to compel the production of a book, account, paper, document, or record related to the duties of the commission under this section. The legislative council may issue the subpoena only upon the concurrence of a majority of the house members and a majority of the senate members of the legislative council. A person who refuses to comply with a subpoena issued by the legislative council under this subsection may be punished as for contempt of the legislature.

Enacting section 1. Chapter 7B of the legislative council act, 1986 PA 268, MCL 4.1781 to 4.1783, is repealed effective September 30, 2010.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 5194.

(b) House Bill No. 5198.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved .....

.....

Governor

EXHIBIT A
PUBLIC ACT 356 OF 2008

Act No. 356
Public Acts of 2008
Approved by the Governor
December 23, 2008
Filed with the Secretary of State
December 23, 2008
EFFECTIVE DATE: December 23, 2008

STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008

Introduced by Rep. Hammel

ENROLLED HOUSE BILL No. 6741

AN ACT to amend 1986 PA 268, entitled "An act to create the legislative council; to prescribe its membership, powers, and duties; to create a legislative service bureau to provide staff services to the legislature and the council; to provide for operation of legislative parking facilities; to create funds; to provide for the expenditure of appropriated funds by legislative council agencies; to authorize the sale of access to certain computerized data bases; to establish fees; to create the Michigan commission on uniform state laws; to create a law revision commission; to create a senate fiscal agency and a house fiscal agency; to create a Michigan capitol committee; to create a commission on intergovernmental relations; to prescribe the powers and duties of certain state agencies and departments; to repeal certain acts and parts of acts; and to repeal certain parts of this act on specific dates," by amending sections 782 and 783 (MCL 4.1782 and 4.1783), section 782 as added by 2007 PA 98 and section 783 as added by 2007 PA 99.

The People of the State of Michigan enact:

Sec. 782. (1) The legislative commission on statutory mandates is created within the legislative council.

(2) The commission shall consist of the following 5 members:

(a) One member appointed by the speaker of the house of representatives.

(b) One member appointed by the minority leader of the house of representatives.

(c) One member appointed by the majority leader of the senate.

(d) One member appointed by the minority leader of the senate.

(e) One member of the public jointly selected by the speaker of the house of representatives and the majority leader of the senate, who is an attorney licensed to practice in this state.

(3) The members first appointed to the commission shall be appointed within 60 days after October 1, 2007.

(4) Members of the commission shall serve for a term of 3 years. A member of the commission shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

(5) Legislators and other state employees are not eligible to be a member of the commission. Members of the commission shall be individuals who have knowledge of, education in, or experience with the best practices of 1 or more of the following fields:

(a) Organizational efficiency.

(b) Government operations.

(c) Public finance.

(d) Administrative law.

(6) If a vacancy occurs on the commission, the member shall be replaced in the same manner as the original appointment.

(7) The first meeting of the commission shall be called by the majority leader of the senate not later than 60 days after October 1, 2007. The member appointed by the majority leader of the senate and the member appointed by the speaker of the house of representatives shall be co-chairpersons of the commission. The chairperson position shall rotate each month between the co-chairpersons. The member appointed by the majority leader of the senate shall be the chairperson of the commission for the first month. At the first meeting, the commission shall elect from among its members other officers as it considers necessary or appropriate. After the first meeting, the commission shall meet at least monthly, or more frequently at the call of the chairperson for that month or if requested by 3 or more members.

(8) A majority of the members of the commission constitute a quorum for the transaction of business at a meeting of the commission. A majority of the members are required for official action of the commission.

(9) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties as members of the commission subject to available appropriations.

(12) Not later than June 30, 2009, the commission shall compile all of the following in an interim report to each house of the legislature and the governor:

(a) The most significant funded and unfunded mandates imposed on local units of government in state law as identified by those local units of government.

(b) The most significant reporting requirements imposed on local units of government in state law as identified by those local units of government.

(c) The range of cost to local units of government of complying with each funded and unfunded mandate identified in subdivision (a).

(d) The range of cost to local units of government of complying with each reporting requirement identified in subdivision (b).

(13) Not later than December 31, 2009, the commission shall make specific determinations of the items described in subsection (12) and report those determinations to each house of the legislature and the governor.

(14) The governor may direct that state agencies subject to the supervision of the governor under section 8 of article V of the state constitution of 1963 provide information to the commission to assist the commission in fulfilling its duties under this section. Upon request of the commission, the commission shall be given access to all information, records, and documents in the possession of a state agency that the commission considers necessary to fulfill its duties under this section. The commission may hold hearings and may request that any person appear before the commission, or at a hearing, and give testimony or produce documentary or other evidence that the commission considers relevant to its duties under this section.

(15) In connection with its duties under this section, the commission may request the legislative council to issue a subpoena to compel the attendance and testimony of witnesses before the commission or to compel the production of a book, account, paper, document, or record related to the duties of the commission under this section. The legislative council may issue the subpoena only upon the concurrence of a majority of the house members and a majority of the senate members of the legislative council. A person who refuses to comply with a subpoena issued by the legislative council under this subsection may be punished as for contempt of the legislature.

(16) As used in this section, "local unit of government" includes cities, townships, villages, counties, school districts, intermediate school districts, community colleges, and county road commissions.

Sec. 783. The commission shall include in the report required under section 782(13) recommendations on how to consolidate, streamline, or eliminate funded and unfunded mandates and reporting requirements imposed on local units of government in state law.

This act is ordered to take immediate effect.

Richard J. Brown

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved .....

.....

Governor

EXHIBIT B

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

Mandate Submitted by Association				Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	High
Michigan Association of Counties (MAC)							
	4		Youth Rehabilitation, Foster Care and Juvenile Justice				
		A	Youth Rehabilitation, Foster Care and Juvenile Justice - The State funds 50% of the cost of public ward care. To the extent that the State's funding is below the 50% funding of eligible expenditures, an unfunded mandate exists.		X	$3,076,000	$4,613,000
		B	County Juvenile Agency Liability For Cost Of A Ward While Committed To That Agency - MCL §803.305(3) requires that a county that is a county juvenile agency pay the entire cost of a public ward's care while committed to the county juvenile agency. The statute was enacted after the passage of the Headlee Amendment.	X		Note C	Note C
		C	DHS Lawsuit Settlement - The Department of Human Services entered into a lawsuit settlement regarding the operation of foster care related to unlicensed settings. MAC has estimated the cost to the counties that require funding by the State.	X		$32,000,000	$32,000,000
	5		Friend of the Court (FOC) - MAC believes that the State statutes resulted in increased program levels over those in existence at the time of the Headlee Amendment passage. A detailed report has been prepared by the FOC Association on the various statutory changes.		X	Note C	Note C
	6		Local Public Health Departments - While the statutes for local public health departments were in existence at the time the Headlee Amendment was passed, MAC believes that there have been numerous instances of new mandates being imposed on counties as well as service expansion requirements over those in existence at December 23, 1978.	X	X	Note C	Note C

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	High
7	Community Mental Health (CMH)-Financial Liability of County - The general funding structure for the net cost of State funding has remained unchanged since the Headlee Amendment was passed. However, some services have been expanded through state mandates. The State funds 90% of the costs of CMH programs other than those in an authority form of organization. The projected costs represent an estimated 10% of the gross costs funded by counties.		X	$2,661,000	$3,991,000
8	Auditing Requirements - The State mandated compliance with the Governmental Accounting Standards Board pronouncements and expanded the annual audit requirements after the Headlee Amendment was passed.		X	$2,135,000	$3,202,000
	TOTAL MAC			**$39,872,000**	**$43,806,000**
	Michigan Community Colleges Association (MCCA)				
1	Activities Classification Structure (ACS) Reporting - Community colleges are required to assemble, collate and annually report certain data to the State relating to the gross financial needs of the individual colleges and the total college system. Originally, the data was used by the State in a funding formula. The data is no longer used by the legislature in determining appropriations. **RECOMMENDATION: Since the State no longer uses the data for the purpose of allocating funding to the community colleges, the mandate should be rescinded. In doing so, the unfunded costs burdened on community colleges would be eliminated.**	X		$299,000	$448,000
2	Native American Tuition Waivers - Public community colleges must waive tuition for North American Indians who qualify for admission as full-time, part-time or summer school students and are legal residents of Michigan for at least 12 consecutive months. There are currently 2,173 waivers. The State is required to reimburse 100% of the program costs.		X	$1,874,000	$2,810,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	Range of Estimated Annual Unfunded Costs By Type of Local Unit: High
3	Contributions to Michigan Public School Employee Retirement System (MPSERS) - In 1980, the State updated a 1945 public act and imposed a new funding mandate upon community colleges. The 1980 public act creates a formula based upon the actuarial report. Originally, community colleges paid 5% of payroll. By the 1990s, the full cost of MPSERS pension funding was burdened on the community colleges. **RECOMMENDATION: The MPSERS pension contributions for accrued benefits are protected constitutionally. No such protections exist for retirees' healthcare programs. While pensions are protected for accrued benefits, the State could consider restructuring the vesting of future benefits and/or shifting its pension obligation from a defined benefit program to a defined contribution program which might reduce costs over the long term. Similarly, a mix of benefit adjustments and funding alternatives could significantly reduce the retirees' healthcare costs as well.**		X	$93,144,000	$93,144,000
4	Financial Aid Programs - Community colleges must disburse, record, report and monitor financial aid programs procured by the State, many of which are recently developed (e.g. Michigan Merit Award, Michigan Promise Scholarship, etc.).	X		$2,212,000	$3,317,000
5	Auditing Requirements - The State mandated compliance with the Governmental Accounting Standards Board pronouncements and expanded the annual audit requirements after the Headlee Amendment was passed.		X	$567,000	$851,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	High
6	Various Reporting Requirements - The MCCA has identified several reporting requirements imposed on community colleges that should be funded by the State (e.g. Extended Financial Reporting; At-Risk Student Success Report; Tech. Prep. Enrollment Report, etc.). **RECOMMENDATION: The extensive number of reports prepared for the State by community colleges should be analyzed for their current need and eliminated if found to have marginal State benefits.**	X		Note B	Note B
	TOTAL MCCA			**$98,096,000**	**$100,570,000**
	Michigan Municipal League (MML)				
2	Storm Water Phase II (Environmental) Mandates - The federal government has passed numerous clean water requirements over the past several decades. In many instances, the State has not only accepted the federal mandates but made them more restrictive. In doing so, these added burdens are mandates requiring State funding. **RECOMMENDATION: The substantial costs incurred by local units of government in the compliance of these environmental standards are onerous and costly. The regulations can be barriers to economic development and job creation. The legislature should review each component of the statutes to assess whether they can be revised or eliminated in order to mitigate the costly impact on local units of government and economic development and jobs creation.**	X		Note A	Note A
4	Election Consolidation/School Elections - Recently, the State revised its election laws requiring municipalities to hold school elections on four specific dates. School districts are to reimburse municipalities for "actual" costs, but MML believes that these costs do not cover all costs incurred; such reimbursement would be a shift between two local units of government and wouldn't alleviate the State's financial obligation under the Headlee Amendment.	X		$4,311,000	$6,467,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	High
5	Voting Equipment Maintenance and Ultimate Replacement - The State established mandates in the use of optical scan machines. These machines are costly to maintain and will eventually require replacement.	X		$2,842,000	$4,263,000
6	Publication of Notices in Newspapers - Various municipal actions require notice to the public in local newspapers of general circulation. While the notices are important, the means of transmission to the public is outdated in an electronic age. **RECOMMENDATION: With the internet and local units of government web sites (and related low-cost electronic notification services), alternative notification approaches are viable at a much lower cost than the current approaches required under the State statutes.**	X		$3,000,000 Note E	$6,000,000 Note E
8	Electronic Fingerprinting - Recently, the State required criminals to be fingerprinted using an electronic fingerprint capture unit. The units are expensive to purchase and maintain. Should the police department be unable to acquire the unit, transporting of criminals to the fingerprint units is required, removing police officers from the streets and incurring other transport costs. Only maintenance and transportation costs have been included. No future capital costs have been included.	X		$4,468,000	$6,702,000
9	Quarterly Investment Reports by Treasurer to Local Boards/Councils - Investment officers are required to periodically report performance to the governing board/council.		X	$673,000	$1,009,000
	TOTAL MML			**$15,294,000**	**$24,441,000**
	Michigan Township Association (MTA)				
1	Summer Tax Collection - The State shifted the tax calendar for counties in 2005 from December 1 levies to July 1 resulting in numerous townships having to issue summer tax bills previously not sent. A fee can be charged for administrative services. The projected cost is net of the fees collected.	X		$1,589,000	$2,384,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit	
				Low	High
2	Election Consolidation/School Elections - Recently, the State revised its election laws requiring municipalities to hold school elections on four specific dates. School districts are to reimburse municipalities for "actual" costs, but MTA believes these costs do not cover all costs incurred. The amounts represent "gross" costs as a reimbursement from another local unit of government and does not resolve the unfunded Headlee Amendment mandate -- it would only shift costs.	X		$2,266,000	$3,398,000
4	New Assessing Requirements - Proposal A was passed in 1994 that required substantial added services for local assessors and county equalization departments.	X		Note F	Note F
6	Municipal Publication of Notices in Newspapers - Various municipal actions require notice to the public in local newspapers of general circulation. While the notices are important, the means of transmission to the public is outdated in an electronic age. **RECOMMENDATION: With the internet and local units of government web sites (and related low-cost electronic notification services), alternative notification approaches are viable at a much lower cost than the current approaches required under the State statutes.**	X		$2,237,000	$3,356,000
7	Storm Water Phase II (Environmental) Mandates - The federal government has passed numerous clean water requirements over the past several decades. In many instances, the State has not only accepted the federal mandates but made them more restrictive. In doing so, these added burdens create additional costs that should be funded by the State. **RECOMMENDATION: The substantial costs incurred by local units of government in the compliance of these environmental standards are onerous and costly. The regulations can be barriers to economic development and job creation. The legislature should review each component of the statutes to assess whether they can be revised or eliminated in order to mitigate the costly impact on local units of government and economic development and jobs creation.**	X		Note A	Note A

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	Range of Estimated Annual Unfunded Costs By Type of Local Unit: High
8	Voting Equipment Maintenance and Ultimate Replacement - The State established mandates in the use of optical scan machines. These machines are costly to maintain and will eventually require replacement. Only the present maintenance costs have been quantified.	X		$11,081,000	$16,623,000
9	Auditing Requirements - The State mandates compliance with the Governmental Accounting Standards Board pronouncements and expanded the annual audit requirements after the Headlee Amendment was passed.		X	$2,000,000 Note D	$4,000,000 Note D
	TOTAL MTA			**$19,173,000**	**$29,761,000**
	County Road Association of Michigan (CRAM)				
1	Municipal Finance Qualifying Statement - The State requires road commissions to file an annual "Qualifying Statement" with its annual audit report. Unless the road commission is intending on borrowing, there is no consequence to the failure in filing -- meaning the usefulness of this information should be questioned.		X	$41,000	$62,000
2	Auditing Requirements - The State mandates compliance with the Governmental Accounting Standards Board pronouncements and expanded the annual audit requirements after the Headlee Amendment was passed.		X	$980,000	$1,470,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit	
				Low	High
3	Storm Water Phase II (Environmental) Mandates and Permits - The federal government has passed numerous clean water requirements over the past several years. In many instances the State has not only accepted the federal mandates but made them more restrictive adding burdens on local units of government. **RECOMMENDATION: The substantial costs incurred by local units of government in the compliance of these environmental standards are onerous and costly. The regulations can be barriers to economic development and job creation. The legislature should review each component of the statutes to assess whether they can be revised or eliminated in order to mitigate the costly impact on local units of government and economic development and jobs creation.**	X		Note A	Note A
4	Asset Management - The State requires road commissions to evaluate and report on infrastructure status.		X	$458,000	$688,000
5	Annual Audit - The State has mandated compliance with the Governmental Accounting Standards Board pronouncements and expanded the annual audit requirements after the Headlee Amendment was passed.		X	$274,000	$411,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit	
				Low	High
7	Limit on Negotiated Construction Work - Construction work in excess of $100,000 in cost requires the project to be competitively bid and vendors used rather than use of road commission personnel. CRAM contends this requirement unnecessarily increases costs as certain projects can be performed internally at a lesser cost. **RECOMMENDATION: The present mandate prohibits the road commissions from considering any other alternative but outside contracting when the project is over $100,000. The mandate should provide that internal labor would be permissible if the costs are less and quality is comparable than outside vendors <u>and</u> properly documented in a formal decision by the Road Commission Board or the Board of Commissioners, as appropriate.**	X		$6,573,000	$9,860,000
8	Schedule C Equipment Data - Clinton County Road Commission has indicated MDOT's requirement to complete the Schedule C Equipment Report for trunk line Maintenance. The overall cost of compliance was assessed as minimal and no general survey request was provided -- amount estimated.		X	$25,000	$75,000
9	Annual Report of Certified Mileage (Annual Act 51 Report) - The annual report for road commissions was a requirement as of December 31, 1978, but it has increased in complexity over time. Some State funding is provided.		X	$278,000	$417,000
10	Township Reporting Requirements - Road commissions are required to report on township financial support in the annual Act 51 reports.	X		$119,000	$179,000
11	Nonmotorized Transportation Expenditures - Under P.A. 82 of 2006, the State now requires that 1% of the Michigan Transportation Fund distributions be used for qualified nonmotorized transportation causing a displacement of funds that would have been utilized for more traditional uses of road repair.	X		$274,000	$411,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	Range of Estimated Annual Unfunded Costs By Type of Local Unit: High
12	Andy's Law - The State now requires the posting of signage in construction zones (P.A. 103 and P.A. 315 of 2003).	X		$1,187,000	$1,780,000
	TOTAL CRAM			**$10,209,000**	**$15,353,000**
	Michigan School Business Officials (MSBO)				
1	Retirement Plan for Employees of Public School Districts - The funding for the Michigan Public School Employees Retirement System (MPSERS) is a mandate imposed on school districts after December 23, 1978. In 1978 schools paid 5% of the payroll on behalf of their employees and the State paid the balance. Due to intervening changes in legislation, schools now pay 100% of that funding contribution out of their general fund accounts (16.94% of payrolls in 2009/10). **RECOMMENDATION: The MPSERS pension contributions for accrued benefits are protected constitutionally. No such protections exist for retirees' healthcare programs. While pensions are protected for accrued benefits, the State could consider restructuring the vesting of future benefits and/or shifting its pension obligation from a defined benefit program to a defined contribution program which might reduce costs over the long term. Similarly, a mix of benefit adjustments and funding alternatives could significantly reduce the retirees' healthcare costs as well.**	X		$1,461,000,000	$1,461,000,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

Mandate Submitted by Association				Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit	
						Low	High
	2	Special Education Services - Funding Scheme					
		A	Schools have been required to provide very costly services for special education students by State law since 1974. The proportions of the State's required funding obligations for those services were established in the 1997 Durant decision of the Supreme Court based on the proportions that existed in 1978. Following that decision, the Legislature devised a funding scheme which serves to divert local schools' general fund resources to meet the State's proportional funding obligation for the costs of those services. This is directly contrary to what the Headlee Amendment requires.		X	Note G	Note G
		B	Numerous changes in State law adopted after 1978 have increased services required to be provided by schools for special education students without any funding being provided by the State for those services, contrary to the express requirements of the Headlee Amendment.	X		Note G	Note G
	3	Curriculum and Diploma Requirements					
		A	Graduation/Diploma Requirements (P.A. 123 and 124 of 2006) - Subsequent to the passage of the Headlee Amendment and subsequent to the 1997 Durant decision, the State mandated requirements for high school graduation. No funding has been provided by the State for the costs associated with these services.	X		$78,559,000	$117,838,000
		B	Core Academic Curriculum - P.A. 25 of 1990 has added numerous requirements for the creation, maintenance, and implementation of a core academic curriculum for each Michigan school district. No funding has been provided by the State for the costs associated with these services.	X		$69,035,000	$103,553,000

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
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Mandate Submitted by Association				Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	Range of Estimated Annual Unfunded Costs By Type of Local Unit: High
	4	Data Reporting Requirements					
		A	Center for Educational Performance and Information (CEPI) - CEPI was created by Executive Order in 2000 (E.O. 2000-9) and later codified in statute. CEPI has imposed extensive data reporting requirements on schools since 2001 without any corresponding State funding. The Michigan Court of Appeals has ruled that these unfunded reporting requirements violate the Headlee Amendment in the Adair case. The estimate has been assembled as part of the Adair litigation but not completely vetted at this stage of the lawsuit. **RECOMMENDATION: The Adair litigation has been ongoing between the State and local school districts for nine years. This costly mandate of providing data to the State should be evaluated as to the data's relevance, usefulness, and duplication of other reporting in developing actions. If the data is found to be marginally useful, the requirement for its creation should be eliminated. That data which is then required for local school district operation should be properly funded by the State in accordance with the Headlee Amendment.**	X		$50,000,000	$100,000,000
		B	Intermediate School District (ISD) Reporting - P.A. 413 of 2004 mandates that the ISDs collect, consolidate, and report a multitude of information for the State. No funding is provided by the State for the costs of these requirements. **RECOMMENDATION: The extensive number of reports prepared for the State by community colleges should be analyzed for their current need and eliminated if found to have marginal State benefits.**	X		Note F	Note F

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

	Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit: Low	Range of Estimated Annual Unfunded Costs By Type of Local Unit: High
5	Student Testing Mandates - The State has mandated since 1969-70 that schools conduct testing on a limited basis to students enrolled at 2 grade levels. In 2005 that mandate was expanded to require annual standardized testing at 4 grade levels. The content of the tests were also greatly expanded. Also, the State required at that time, through the present, that standardized tests, known as the Michigan Merit Exam, be offered annually to all 11 and 12 grade students. No State funding was provided for the increased costs of these tests.		X	$61,900,000	$92,851,000
6	Extending the Length of the School Year - The school year was specified in the school code that existed when the Headlee Amendment was adopted as consisting of 180 days and 900 hours of instruction annually. Presently, no number of school days are specified in the school code, but the number of hours of instruction has been increased to 1,098 hours, an increase of 198 hours. No funding is provided by the State for the increased costs associated with this change.		X	$289,982,000	$434,973,000
	TOTAL MSBO			**$2,010,476,000**	**$2,310,215,000**
	GRAND TOTAL			**$2,204,120,000**	**$2,535,146,000**

Costing of Mandates Submitted by Associations
Legislative Commission on Statutory Mandates
November 2009

Mandate Submitted by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Range of Estimated Annual Unfunded Costs By Type of Local Unit	
			Low	High
NOTE A - The Storm Water Phase II environmental mandates and permits could not be quantified given the complex nature of the mandates, substantial and costly legal research that would be required, and the difficulty of extracting the data from the accounting records. The "raw data" obtained in the survey, however, clearly demonstrates that the local units of government believe compliance with the State's mandates is very costly.				
NOTE B - The Michigan Community College Association has identified at least two dozen State-mandated reports that burden its members. Costs for compliance with these State mandates were not assembled given the number of reports involved.				
NOTE C - The results of the survey have indicated inconsistencies that prevent an accurate projection. While the business issue is a mandate worthy of a cost projection, further analysis would be required to make a credible projection.				
NOTE D - The question was inadvertently omitted from the survey tool. However, based on questions in the other association areas, an estimate of $2 million to $4 million has been projected.				
NOTE E - The question was inadvertently omitted from the MML survey. However, based on a similar question posed through other associations, an estimate of $3 million to $6 million has been projected.				
NOTE F - The question was inadvertently omitted from the survey tool with no ability to assess a projected cost.				
Note G - The question was inadvertently omitted from the survey tool with no ability to assess a projected cost. However, this mandate was the basis for the three Durant lawsuits (see Letter of Transmittal).				

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CITIZENS RESEARCH COUNCIL OF MICHIGAN

EXHIBIT C

REFORMING THE PROCESS FOR IDENTIFYING AND FUNDING SECTION 29 MANDATES ON LOCAL GOVERNMENTS

JULY 2009

REPORT 355

This CRC Report was prepared for the Legislative Commission on Statutory Mandates

CITIZENS RESEARCH COUNCIL OF MICHIGAN

MAIN OFFICE 38777 West Six Mile Road, Suite 208 Livonia, MI 48152-3974 734-542-8001 Fax 734-542-8004

LANSING OFFICE 124 West Allegan, Suite 1502 Lansing, MI 48933 517-485-9444 Fax 517-485-0423

CRCMICH.ORG

Reforming the Process for Identifying and Funding Section 29 Mandates on Local Governments

Summary

Public Act 98 of 2007 created the Legislative Commission on Statutory Mandates and directed that body to review and investigate the extent of unfunded mandates imposed on local units of government by State government through state laws. The Commission engaged the Citizens Research Council of Michigan to investigate practices in other states with similar constitutional and statutory requirements to fund state mandates on local governments. The following highlight options for the Commission to consider in recommending a process for implementing Article IX, Section 29 of the 1963 Michigan Constitution.

Access the report at www.crcmich.org/PUBLICAT/2000s/2009/rpt355.html

At the November 1978 general election, Michigan voters approved a tax limitation amendment to the 1963 State Constitution. The amendment, generally referred to as the Headlee Amendment, amended Article IX, Section 6 and added ten new sections (25 through 34) to Article IX of the 1963 Michigan Constitution. One of those sections, Section 29, prohibits the State from

- mandating local governments to provide new services or activities (after 1978) without proper funding;
- increasing the level of mandated activities and services required beyond what was required in 1978 without proper funding; or
- decreasing the level of funding provided in 1978 for existing mandates.

Section 29 was thought to be necessary because a companion section of the Headlee Amendment, Section 26, limits State government revenues in any given year to a fixed percentage of total personal income. Drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the State in order to save the money the State would have needed to spend if it continued to provide such services. Section 29 was intended to forestall such attempts unless they were accompanied by State appropriations to fund the services transferred.

Section 29 has been largely disregarded. Public Act 101 of 1979, the law enacted to implement Section 29, was never fully implemented and state requirements subsequently have been enacted without regard to this provision in the Constitution. The courts have resisted enforcing this provision. Rather than enforcing this provision of the State Constitution, executive branch officers have actively opposed enforcement of this section.

Other States' Requirements to Fund Mandates

A literature review and examination of the constitutions and laws of other states reveals that 28 states have constitutional or statutory requirements that state mandates be identified and, in many states, that funding must accompany any state laws that mandate local government services and activities. The programs implemented in other states fall into two camps.

- Some states, such as Maine, Minnesota, Missouri, Tennessee and Virginia, focus their efforts on the fiscal note process, prospectively identifying the cost that legislation would create for local governments before the laws are enacted.
- A few states, including Massachusetts, California and Rhode Island, have processes in place to prospectively identify the costs legislation would cause for local governments and retrospectively identify mandates and their costs in existing laws.

Michigan could be well served by emulating Massachusetts and California, whose processes identify existing laws that impose mandates and determine their costs for reimbursement by the State in addition to identifying the cost of legislation that would impose mandates on local governments.

Reforming the Process for Identifying and Funding Section 29 Mandates on Local Governments

Summary

Public Act 98 of 2007 created the Legislative Commission on Statutory Mandates and directed that body to review and investigate the extent of unfunded mandates imposed on local units of government by State government through state laws. The Commission engaged the Citizens Research Council of Michigan to investigate practices in other states with similar constitutional and statutory requirements to fund state mandates on local governments. The following highlight options for the Commission to consider in recommending a process for implementing Article IX, Section 29 of the 1963 Michigan Constitution.

Access the report at www.crcmich.org/PUBLICAT/2000s/2009/rpt355.html

At the November 1978 general election, Michigan voters approved a tax limitation amendment to the 1963 State Constitution. The amendment, generally referred to as the Headlee Amendment, amended Article IX, Section 6 and added ten new sections (25 through 34) to Article IX of the 1963 Michigan Constitution. One of those sections, Section 29, prohibits the State from

- mandating local governments to provide new services or activities (after 1978) without proper funding;
- increasing the level of mandated activities and services required beyond what was required in 1978 without proper funding; or
- decreasing the level of funding provided in 1978 for existing mandates.

Section 29 was thought to be necessary because a companion section of the Headlee Amendment, Section 26, limits State government revenues in any given year to a fixed percentage of total personal income. Drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the State in order to save the money the State would have needed to spend if it continued to provide such services. Section 29 was intended to forestall such attempts unless they were accompanied by State appropriations to fund the services transferred.

Section 29 has been largely disregarded. Public Act 101 of 1979, the law enacted to implement Section 29, was never fully implemented and state requirements subsequently have been enacted without regard to this provision in the Constitution. The courts have resisted enforcing this provision. Rather than enforcing this provision of the State Constitution, executive branch officers have actively opposed enforcement of this section.

Other States' Requirements to Fund Mandates

A literature review and examination of the constitutions and laws of other states reveals that 28 states have constitutional or statutory requirements that state mandates be identified and, in many states, that funding must accompany any state laws that mandate local government services and activities. The programs implemented in other states fall into two camps.

- Some states, such as Maine, Minnesota, Missouri, Tennessee and Virginia, focus their efforts on the fiscal note process, prospectively identifying the cost that legislation would create for local governments before the laws are enacted.
- A few states, including Massachusetts, California and Rhode Island, have processes in place to prospectively identify the costs legislation would cause for local governments and retrospectively identify mandates and their costs in existing laws.

Michigan could be well served by emulating Massachusetts and California, whose processes identify existing laws that impose mandates and determine their costs for reimbursement by the State in addition to identifying the cost of legislation that would impose mandates on local governments.

Reforming the Implementation of Section 29

Article IX, Section 29 of the 1963 Michigan Constitution provides for state financing of activities and services required of local governments by state law:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

Reforming the implementation of Section 29 would require bringing statutory definitions and exceptions to the funding requirements in line with established case law. Furthermore, reform would have to legislatively recognize the differences between the first and second sentences of Section 29.

- The first sentence of Section 29 creates a maintenance-of-support provision. To show that the State has failed to maintain the level of support that was in place at the time of adoption of the Headlee Amendment, a plaintiff must show 1) that there is a continuing state mandate, 2) that the State actually funded the mandated activity at a certain proportion of necessary costs in the base fiscal year of 1978-1979, and 3) that the state funding of necessary costs has dipped below that proportion in a succeeding year.
- The second sentence creates a prohibition-of-unfunded-mandates provision. To show that the State has violated that prohibition, a plaintiff must show that the state-mandated local activity or service was originated without sufficient state funding after the Headlee Amendment was adopted in 1978 or, if properly funded initially, that the mandated local role was increased by the state without state funding for the necessary increased costs.

A Process for Identifying Laws that Constitute State Requirements

In 1980, a lawsuit was filed in the Michigan Court of Appeals on behalf of seven taxpayers, including one Donald Durant, who resided in the Fitzgerald School District.[1] The essence of the lawsuit was that State officials had reduced the proportion of educational costs paid by the State to a level below that required by the Headlee Amendment. Over the next 17 years, the Durant case would beat a well-worn path between the Court of Appeals and the Supreme Court, culminating with a final decision by the high court on July 31, 1997.

The *Durant* case was, when filed, one of first impression, meaning that the issues involved were being raised for the first time. However, there was nothing inherently difficult about those issues, and certainly nothing to foreshadow the fact that it would take the courts nearly two decades to resolve them. What made *Durant* unique was an initial unwillingness of the Court of Appeals to hear the lawsuit and what the State Supreme Court referred to as the "prolonged recalcitrance" on the part of State officials in defending it.

After 17 years of wrangling with the *Durant* case, the Supreme Court felt obliged to address its vision of how future Section 29 cases should proceed through the courts. As a case of first impression, it might be expected that this case would determine a procedural pattern for cases that follow. The Court stated,

> ... there is every reason to hope that future cases will be much more straightforward. We anticipate that taxpayer cases filed in the Court of Appeals will proceed to rapid decision on the issue whether the state has an obligation under art 9, § 29 to fund an activity or service. The Court of Appeals would give declaratory judgment on the obligation of the state. If there was such an obligation, we anticipate that the state would either comply with that obligation no later than the next ensuing fiscal year, unless it could obtain a stay from this Court, or remove the mandate.

[3] *Durant v. State of Michigan*, 456 Michigan 175, 566 NW2d 272 (1997).

If Michigan blended the California and Rhode Island models, it would achieve a process such as that envisioned in the *Durant* decision of identifying laws that constitute state obligations subject to funding under Section 29 and then determining the amount of funding needed to meet this obligation. Local governments would be reimbursed for their actual costs related to those state requirements.

Local governments could be allowed to seek immediate declaratory judgments that specific existing state laws or regulations require them to perform activities or services. Single units of local government – that is a single city, school district, county, etc. – could be authorized to bring test cases to determine whether a law or regulation is in fact a state requirement. Because mandates qualify for state funding under Section 29 only if all local governments of that type are required to provide the activity or service, all other local governments of that type essentially become claimants in a class action suit in this arrangement, supporting the single government seeking the declaratory judgment. The declaratory judgment process should be structured to provide a decision within twelve months of the claim being made.

Article IX, Section 32, provides that "*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..." [emphasis added] Because the Court of Appeals hears appeals of cases that originated in lower district, circuit, or probate courts on matters of law, it is not well suited to having cases originate at this level. The authority to rule on whether laws or regulations constitute unfunded state requirements be delegated either to:

- A newly created independent body (reconstituted Local Government Claims Review Board) with representatives of state and local government; or
- A special master within the court of appeals.

Since 2007, Michigan court rules have required claimants to develop the cases alleging unfunded state requirements before even knowing that the cases would be accepted by the court.[2] Ordinary practice in Michigan allows a plaintiff to plead an application of a law has caused harm without stating the full substance of the complaint. If the court agrees to hear their case, time and energy is exerted into building the case and documenting damages. As long this court rule requires legal actions alleging violations of the Headlee Amendment should be stated with "particularity", an independent body (recreating the Local Government Claims Review Board whether in the same name or not) with representatives of state and local government serving as members should be created to hear claims of unfunded state requirements pursuant to Article IX, Section 29. Proceedings of the Board could be used as prima facie evidence in courts to document the existence and cost of state requirements. Alternatively, if court rules are amended to revert to pre-2007 standards, then reform should build off of the court processes developed over the past 30 years by institutionalizing the position of special master and legislatively clarifying that role.

Post Declaratory Judgment

Notwithstanding an appeal by the State challenging a declaratory judgment that the State requires local governments to provide activities or services under Section 29, the State and local governments would have three options following a declaratory judgment:

Preferably before, but perhaps concurrent with any ensuing judicial proceedings, the legislature should be engaged to

(1) provide sufficient funding to comply with Section 29 or

(2) amend the law (or the promulgating agency could amend the regulation) to eliminate the mandatory nature of the law (or regulation).

If the legislature does not choose to take either of those actions,

(3) Local governments should be allowed to seek a ruling that they need not comply with the law or regulation until such time as state funding accompanies the mandate.

If local governments successfully gain a declaratory judgment that state laws or regulations impose state

[5] Michigan Supreme Court, ADM File No. 2003-59, Amendment of Rules 2.112 and 7.206 of the Michigan Court Rules.

requirements, and the State continues to not provide the necessary funding, then local governments could be enabled to petition the courts so that compliance with statutory requirements is not mandated without the proper funding.

A Process for Appropriating and Disbursing State Funds

If new or existing laws are identified that impose state mandates subject to state funding under Section 29, a process needs to be put in place that results in a state appropriation that provides funding additional to the state funding sent to that type of local government prior to imposition of the mandate.

For the actual disbursement of funds to local governments, Michigan could establish a process of reimbursement for local governments that incur costs related to mandates similar to those used in California and Rhode Island. Identification of a mandate and definition of reimbursable costs should result in an opportunity for local governments to apply for reimbursement.

If a single local government can get a declaratory judgment establishing that a state obligation to fund an activity or service exists under Section 29, this process would include a cost determination to establish the types of costs local governments must incur to comply with the mandate. This process would establish guidelines – identification of the mandated program, eligible claimants, the period for which local governments should provide accounts of costs incurred, reimbursable activities, and other necessary claiming information – for all other local governments subject to that mandate to use in calculating their costs.

Based on those guidelines, all local governments subject to the state requirement would have to submit statements of actual costs incurred in the preceding fiscal year for the activities or services mandated. The statements would be subject to audit to ensure compliance with the guidelines. Eventually the statements would be compiled and aggregated to create a total cost for local governments to comply with the state requirement.

That total cost would be submitted to the State Budget Office in the Department of Management and Budget and should ultimately result in a recommendation for an appropriation. Consistent with Section 29, the legislature would appropriate funds sufficient to reimburse local governments for the cost of complying with mandates. Those reimbursements would come two to three fiscal years after the costs were incurred because local governments have fiscal years starting at various times throughout the year.

Act 101 of 1979 defined de minimus costs as requirements that impose a net cost to a local government that do not exceed $300 per claim. Taking a different approach, Oregon defines de minimus costs any requirements that impose costs that are less than 1/100 of one percent of a local government's annual budget. This makes sense for a state with as diverse a range of local governments as is found in Michigan. In the cities of Detroit, Grand Rapids, and Warren, the counties of Wayne and Oakland, the school districts of Detroit, Grand Rapids, and Livonia, a de minimus cost can be as large as the entire budgets of the smallest townships, counties, and school districts found in Michigan. By determining de minimus amounts on individual bases, the amounts will better reflect the potential impact a state requirement will have on the ability of the individual local governments to continue providing the services they had been providing before the requirement was enacted.

The Process of Estimating the Cost of Proposed Laws

A fiscal note process should be established to estimate the cost of <u>all</u> proposed legislation that would affect local governments.

Michigan should join the many other states with mandate funding requirements and establish a network of local governments to participate in voluntary information sharing for the purposes of preparing fiscal notes.

Surveying of local governments and preparation of fiscal notes should be a joint effort of the House and Senate Fiscal Agencies.

EXHIBIT D

PROPOSED LEGISLATION AND COURT RULE AMENDMENTS

1. Proposed legislation to replace Act 101, implementing Article 9, Section 29 of the Michigan Constitution of 1963, as amended.

2. Proposed amendments to the Revised Judicature Act, relating to the protocol and management of complaints filed to enforce the State's obligations under Article 9, Section 29, of the Michigan Constitution of 1963, as amended.

3. Proposed amendments to the Administrative Procedures Act, relating to the promulgation of regulations which constitute State mandates.

4. Proposed amendments to Court Rules relating to the filing and management of complaints filed to enforce the State's obligations under Article 9, Section 29, of the Michigan Constitution of 1963, as amended.

PROPOSED REPLACEMENT LEGISLATION IMPLEMENTING ARTICLE 9, SECTION 29 OF THE MICHIGAN CONSTITUTION OF 1963, AS AMENDED

STATE FINANCING OF ACTIVITIES OR SERVICES REQUIRED OF LOCAL UNITS OF GOVERNMENT

ACT ___ OF ____

AN ACT to implement section 29 of article 9 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 or implement certain activities or services required 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 and to repeal Act No. 101 of the Public Acts of 1979.

The People of the State of Michigan enact:

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.

Sec. 2.

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

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

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

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

(6) "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.

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) "Legislature" means the House of Representatives and the Senate of this state.

(3) "Local government mandate panel" means (i) in the case of legislation which imposes a state requirement, representatives of the house and senate fiscal agencies, in consultation with the affected local units of government, (ii) in the case of a state agency rule and/or regulation which imposes a state requirement, the chief administrative officer of the state agency which imposes a state requirement, in consultation with the affected local units of government and the joint committee on administrative rules.

(4) "Local unit of government" means a political subdivision of this state, including local 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.

(5) "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 local unit to provide the activity or service mandated as a state requirement. Necessary cost does not include the cost of a state requirement if 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 the cost of the newly required duties.

(6) "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.

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.

(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 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 categorically funded by the state on December 23, 1978.

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

(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\.

(b) A requirement imposed on a local unit of government by 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..

(c) A court requirement.

(d) 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.

(e) 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 provided that state requirement shall include any standards, requirements or guidelines which require increased necessary costs for activities and services directly related to police, fire, or emergency medical transport services.

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

Sec. 5.

(1) The legislature shall appropriate and disburse each year an amount sufficient to pay each local unit of government the necessary cost of each state requirement pursuant to article 9, section 29 of the state constitution of 1963.

(2) The legislature shall appropriate and disburse each year an amount sufficient to pay each local unit of government the state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law and to appropriate and disburse to local units of government an amount sufficient to pay for the costs of new activities and services or increases in the level of activities and services required by the legislature or any state agency after December 23, 1978.

(3) Notwithstanding any provision of law to the contrary, no local unit of government shall be obligated to provide new activity or service or increased level of activity or service required by state law unless and until the state has prepared and published a fiscal note in accordance with section 6, and appropriated and provided for disbursement of the amounts sufficient to fund the necessary cost to the local unit of government of providing the new activity or service or increase in the level of a required activity or service.

Sec. 6.

A fiscal note process is hereby created consisting of the following:

(1) Before enactment of any legislation affecting a local unit of government, , the local government mandate panel established pursuant to section 7shall conduct a review to determine whether any new or increased level of activities or services are likely to be required of local units of government by such legislation if it becomes effective.

(2) If it is determined that a new activity or service or an increased level of activity or service are likely to occur, the responsible fiscal agency, working in active consultation with representatives of local units of government, shall develop a written estimate of the necessary increased costs, if any, that will result to local units of government if such legislation becomes effective.

(3) The responsible fiscal agency shall promptly inform the legislature in writing of its determination in (2) above before enactment of the legislation.

(4) Prior to the enactment of any legislation that imposes a requirement on local units of government to provide any new activity or service or an increase in the level of any activity or service, an appropriation bill shall be created and introduced in the proceedings in the legislature to provide sufficient funding to pay for any necessary increased costs resulting from such requirement, as estimated by the responsible fiscal agency, and to further create a process for disbursement of such funding to the affected local units of government. The appropriation bill shall be tie barred to the bill creating the requirement.

(5) The disbursement process shall serve to disburse funds to local units of government on a current basis or as costs to provide the required activity or service are being incurred by the local units of government. [state cash flow and fiscal year differences may prevent exact match up]

(6) In the event that legislation is enacted imposing a requirement on local units of government without following the above requirements, local units of government shall not be required to comply until such point in time that the above described fiscal note process is followed.

Sec. 7.

A local government mandate panel is established hereby which shall facilitate and ensure compliance with article 9, section 29 of the state constitution of 1963 by annually developing and publishing the following:

(1) A three year estimate of the aggregate necessary cost to local units of government of compliance with both (a) requirements imposed by state law that existed on December 31, 1978 and were funded in whole or in part at that time, and (b) requirements imposed by state law that are new or first imposed after December 23, 1978, or represent a required increase in the level of any activity or service after that date.

(2) A three year estimate of the net cost of compliance if the state provided the same service or activity; and

(3) A three year estimate of the necessary cost of compliance with the state requirement by each unit of local government.

Sec. 8.

The local government mandate panel shall develop a process that will accomplish the following:

Annually review all statutes and administrative rules and regulations that impose requirements on local units of government and make recommendations to the legislature whether those requirements continue to be necessary in terms of the cost/benefit to the public interest, and if not, whether those requirements should be rescinded.

(1) If it is determined by the panel that the requirements are recommended to be continued, report as to whether the requirements can be provided on a more cost effective basis than presently provided and to recommend legislation to achieve cost savings

Sec. 9.

The state shall not impose a penalty on, withhold funds, or impose any other form of monetary or other sanction on any local unit of government which fails to comply with a state requirement under any of the following circumstances:

(1) The state has failed to follow the fiscal note process provided in section 6 above or has failed to make timely disbursement to fund the costs identified in the fiscal note process provided in section 6 above; or

(2) The state has prepared a fiscal note in connection with the enactment of the state law but (a) a taxpayer has filed a suit through the filing of a complaint in the Court of Appeals pursuant to section 308a of Act No. 236 of the Public Acts of 1961, as amended, being section 600.308a of the Michigan Compiled Laws, asserting that the state law imposes a mandate under article 9, section 29 of the constitution of 1963 and that the cost of compliance has not been fully funded by the state and (b) the court of appeals has either failed to issue an order within six months after the complaint was filed ruling whether the state law imposes a state requirement and whether the state has underfunded the cost of compliance or, alternatively, ruled in favor of the complainant.

Sec. 10.

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.

To facilitate monitoring and compliance with this act, not later than July 1, 2010, the department shall establish standard accounting systems which will allow local units of government and the state to calculate and track (a) the costs incurred by local units in complying with state requirements and existing law and (b) the state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.

Sec. 11.

No later than twelve months after the effective date of this act the house and senate fiscal agencies in consultation with local units of government, shall collect documents and tabulate information as to each of the following:

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

(2) The nature and scope of each state requirement that require disbursement under section 5.

(3) 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.

The information shall include:

(1) 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.

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

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

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

(5) 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.

(6) A recommendation as to whether any state requirement or activity or service required of local units of government by existing law should be: (i) eliminated, (ii) redesigned to reduce the cost of compliance or (iii) fully or proportionately funded by the state, depending on the date the requirement was first imposed.

(7) A recommendation as to whether (i) required standards of performance for optional activities and services provided by local units of government or (ii) requirements not otherwise subject to article 9, section 29 of the constitution of 1963 should be reduced, reformed, eliminated or fully funded by the state. The recommendation shall consider whether requirements continue to be necessary in light of the public interest and the financial condition of the affected local units of government and the state should modify the requirements to reduce the cost or increase the efficiency with which the activities and services can be provided.

The tabulated information and recommendations shall be published in a report submitted to the legislature not later than December 31, 2010. A concurrent resolution shall be adopted each year upon enactment of the state budget by both houses of the legislature certifying that the state has fully met its responsibilities under the first 2 sentences of article 9, section 29 of the state constitution of 1963.

Sec. 12.

(1) The house and senate fiscal agencies, in consultation with local units of government, shall adopt a process for monitoring the state's compliance with article 9, section 29 of the constitution of 1963, including appropriations and disbursements to fund the cost of complying with state requirements and the state's compliance with its obligation to fund the state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.

(2) Annually the house and senate fiscal agencies shall prepare and publish a report containing an update of the information specified in section 9 for the legislature and the governor. The legislature shall provide a copy of the report to the court of appeals.

(3) The house and senate fiscal agencies shall prepare alternative recommendations for addressing decisions by the Court of Appeals ruling that the State has failed to fully fund the cost of complying with state requirements and the state's compliance with its obligation to fund the state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.

Sec. 13.

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.

Sec. 14.

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.

Sec. 15.

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, provided that the implementation and effectiveness of this act shall not be dependent on the promulgation of any such rules.

Sec. 16

Act No. 101 of the Public Acts of 1979, being sections 21.231 to 21.244 of the Michigan Compiled Laws, is hereby repealed.

PROPOSED AMENDMENTS TO THE REVISED JUDICATURE ACT, RELATING TO THE PROTOCOL AND MANAGEMENT OF COMPLAINTS FILED TO ENFORCE THE STATE'S OBLIGATIONS UNDER ARTICLE 9, SECTION 29, OF THE MICHIGAN CONSTITUTION OF 1963, AS AMENDED.

MCL 600.308a Action under Const. 1963, Art. 9, § 32; commencement; jurisdiction; limitations; governmental unit as defendant; officer as party; continuation of action against governmental unit and officer's successor; referral of action; findings of fact; costs.

Sec. 308a.

(1) ~~An action~~**A SUIT** under section 32 of article 9 of the state constitution of 1963~~may be~~**SHALL EXCLUSIVELY BE** commenced in the court of appeals~~, or in the circuit court in the county in which venue is proper, at the option of the party commencing the action~~.

(2) The jurisdiction of the court of appeals shall be invoked by **A TAXPAYER** filing~~an action by a taxpayer~~ **SUIT** as plaintiff according to the court rules governing procedure **FOR SUCH SUITS** in the court of appeals.

(3) A taxpayer shall not bring or maintain ~~an action under this section~~**A SUIT SEEKING MONETARY DAMAGES FOR UNDERFUNDING BY THE STATE UNDER THE REQUIREMENTS OF SECTION 29 OF ARTICLE**-unless the action is commenced within 1 year after the cause of action accrue~~d~~**S. A SUIT SEEKING A DECLARATORY JUDGMENT FROM THE COURT OF APPEALS IN ORDER TO ENFORCE SECTIONS 25-34 OF ARTICLE 9 MAY BE BROUGHT AT ANY TIME THAT IT IS ALLEGED THAT ANY OF THOSE PROVISIONS OF THE CONSTITUTION ARE BEING VIOLATED WHEN THE SUIT IS FILED.**

(4) The unit of government shall be named as defendant. An officer of ~~any governmental unit~~**GOVERNMENT** shall be sued in his or her official capacity only and shall be described as a party by his or her official title and not by name. If an officer dies, resigns, or otherwise ceases to hold office during the pendency of the action, the action shall continue against the governmental unit and the officer's successor in office.

(5) The court of appeals may refer ~~an action to the circuit court or to the tax tribunal to determine and report its findings of fact if substantial fact finding is necessary to decide the action~~**THE ISSUES RAISED IN THE SUIT TO A SPECIAL MASTER, AS HEREINAFTER PROVIDED, TO DETERMINE AND REPORT IN WRITING THAT PERSON'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AS ARE NECESSARY TO DECIDE THE ISSUES RAISED IN THE TAXPAYERS' SUIT. FOLLOWING RECEIPT AND CONSIDERATION OF THE SPECIAL MASTER'S REPORT, THE COURT OF APPEALS SHALL EXPEDITIOUSLY RENDER ITS DECISION ON THE MERITS OF THE TAXPAYER'S ALLEGATIONS IN THE SUIT.**

(6) A ~~plaintiff~~**TAXPAYER** who prevails in an action commenced under this section shall receive from the defendant the costs incurred by the ~~plaintiff~~**TAXPAYER** in maintaining the ~~action~~**SUIT, AS REQUIRED BY SECTION 32 OF ARTICLE 9.**

SEC. 308B.

(1) THE COURT OF APPEALS SHALL PROCESS SUITS BROUGHT BY TAXPAYERS UNDER SECTION 32 OF ARTICLE 9 SEEKING ENFORCEMENT OF SECTIONS 25-34 OF ARTICLE 9 TO DECISION AS RAPIDLY AS POSSIBLE, CONSISTENT WITH ACHIEVING JUSTICE AND ASSURING ENFORCEMENT OF MICHIGAN VOTERS' INTENT, AS EXPRESSED IN THE PROVISIONS OF THE SECTION OF THE CONSTITUTION THAT IS THE SUBJECT OF THE TAXPAYER'S SUIT. SUCH SUITS SHALL BE PROVIDED PRIORITY OVER OTHER NON-EMERGENCY MATTERS PENDING BEFORE THE COURT.

(2) THE BURDEN OF PROOF TO ESTABLISH COMPLIANCE WITH THE PROVISIONS OF SECTION 29 OF ARTICLE 9 SHALL BE UPON THE STATE OR ITS RESPONSIBLE DEPARTMENT OR AGENCY. COMPLIANCE SHALL NOT BE PRESUMED BUT SHALL BE ESTABLISHED THROUGH CREDIBLE EVIDENCE INTRODUCED BY THE STATE OR ITS RESPONSIBLE DEPARTMENT OR AGENCY.

(3) LOCAL UNITS OF GOVERNMENT SHALL BE RELIEVED OF RESPONSIBILITY TO PROVIDE ACTIVITIES AND SERVICES REQUIRED BY STATE LAW, INCLUDING REQUIREMENTS IMPOSED BY STATUTE OR ANY STATE DEPARTMENT OR AGENCY RULES OR REGULATIONS, WITHOUT THE IMPOSITION OF ANY PENALTY, SANCTION, OFFSET OR DEDUCTION IN FUNDING, IF SIX (6) MONTHS FOLLOWING THE FILING OF SUIT THE SUBJECT OF THE SUIT IS NOT FINALLY ADJUDICATED BY THE COURT OF APPEALS ON THE QUESTIONS OF:

(A) WHETHER, BASED ON THE CLAIMS ASSERTED IN THE COMPLAINT, THE SUBJECT ACTIVITIES AND SERVICES ARE REQUIRED BY STATE LAW WITHIN THE MEANING OF SECTION 29 OF ARTICLE 9, AND

(B) WHETHER, ASSUMING THE ANSWER TO THE FOREGOING QUESTION IS YES, THE LEGISLATURE HAS APPROPRIATED AND DISBURSED SUFFICIENT FUNDING NECESSARY TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR ANY NECESSARY INCREASED COSTS OF THE REQUIRED ACTIVITIES AND SERVICES, AS REQUIRED BY SECTION 29 OF ARTICLE 9.

(4) IF, FOLLOWING A FINAL ADJUDICATION BY THE COURT OF APPEALS ON THE QUESTIONS IN B(3)(A) AND (B), ABOVE, THAT IS ADVERSE TO THE TAXPAYER'S CLAIM, AN APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT IS FILED BY THE TAXPAYER. THE SUPREME COURT SHALL PROVIDE A RAPID DECISION ON SUCH APPLICATION. SUCH APPLICATIONS SHALL BE PROVIDED PRIORITY OVER NON-EMERGENCY MATTERS PENDING BEFORE THE COURT. SIMILARLY, IF THE APPLICATION IS GRANTED, THE COURT'S REVIEW OF THE MERITS OF THE APPEAL SHALL BE PROVIDED PRIORITY OVER OTHER NON-EMERGENCY MATTERS PENDING BEFORE THE COURT.

(5) WHILE THE APPLICATION OR APPEAL IS PENDING THE SUPREME COURT MAY STAY THE OBLIGATION OF LOCAL UNITS TO COMPLY WITH THE REQUIRED ACTIVITIES AND SERVICES PENDING FINAL ADJUDICATION BY THE COURT.

(6) IF IT IS ADJUDICATED BY THE COURT OF APPEALS OR, FOLLOWING APPEAL, BY THE SUPREME COURT THAT THE STATE HAS NOT MET ITS FUNDING

OBLIGATION TO THE AFFECTED LOCAL UNITS OF GOVERNMENT UNDER SECTION 29 OF ARTICLE 9, THE LOCAL UNITS OF GOVERNMENT SHALL BE RELIEVED OF RESPONSIBILITY TO PROVIDE THE SUBJECT ACTIVITIES AND SERVICES UNTIL THE LEGISLATURE SHALL EITHER:

(A) APPROPRIATE AND DISBURSE SUFFICIENT FUNDING TO MEET ITS RESPONSIBILITIES TO THE AFFECTED LOCAL UNITS OF GOVERNMENT UNDER SECTION 29 OF ARTICLE 9;

(B) ELIMINATE OR RESCIND THE SUBJECT REQUIREMENTS; OR

(C) CHANGE OR MODIFY THE SUBJECT REQUIREMENTS TO REDUCE THE COSTS ASSOCIATED WITH PROVIDING THE ACTIVITIES AND SERVICES AND APPROPRIATE AND PROVIDE FOR THE DISBURSEMENT OF SUFFICIENT FUNDING NECESSARY TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR THE COSTS TO PROVIDE THE CHANGED OR MODIFIED ACTIVITIES AND SERVICES, AS REQUIRED BY SECTION 29 OF ARTICLE 9.

(7) THE POSITION OF SPECIAL MASTER FOR PURPOSES OF ASSISTING THE COURT OF APPEALS IN CARRYING OUT ITS ADJUDICATORY RESPONSIBILITIES UNDER SECTION 32 OF ARTICLE 9 IS HEREBY ESTABLISHED WITHIN THE COURT OF APPEALS.

(A) THE SPECIAL MASTER SHALL BE AVAILABLE UPON DESIGNATION BY THE COURT OF APPEALS TO TAKE EVIDENCE AND RECEIVE ARGUMENTS ON ISSUES OF LAW AND THEREAFTER ISSUE A WRITTEN REPORT TO THE COURT RECOMMENDING THE DISPOSITION OF SAME FOR PURPOSES OF THE COURT'S ADJUDICATION.

(B) THE RULES FOR PROCEEDINGS BEFORE THE SPECIAL MASTER SHALL BE AS ESTABLISHED BY THE SUPREME COURT.

(C) THE PERSON SERVING IN THE POSITION OF SPECIAL MASTER SHALL BE APPOINTED BY THE SUPREME COURT AND SHALL CONTINUE IN OFFICE AT THE PLEASURE OF THE SUPREME COURT.

(D) THE SUPREME COURT SHALL ESTABLISH THE QUALIFICATIONS TO SERVE AS SPECIAL MASTER FOR THIS PURPOSE BUT SHALL BE, MINIMALLY, AN ATTORNEY WHO HAS EXPERIENCE IN THE OPERATIONS OF LOCAL UNITS OF GOVERNMENT IN THE INTERESTS OF BEING ABLE TO ASSIST THE COURT OF APPEALS IN EXPEDITIOUSLY AND MEANINGFULLY PROCESSING TAXPAYER'S CLAIMS UNDER SECTIONS 29, 32 OF ARTICLE 9.

PROPOSED AMENDMENTS TO THE ADMINISTRATIVE PROCEDURES ACT, RELATING TO THE PROMULGATION OF REGULATIONS WHICH CONSTITUTE STATE MANDATES.

MCL 24.209 – COMPLIANCE WITH THE HEADLEE AMENDMENT PROHIBITION ON UNFUNDED MANDATES

SEC. 9

IN ORDER TO BE IN COMPLIANCE WITH § 29 ARTICLE 9 OF THE CONSTITUTION OF 1963 AND NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY THE FOLLOWING SHALL APPLY:

(1) A NEW ACTIVITY OR SERVICE OR AN INCREASE IN THE LEVEL OF ANY ACTIVITY OR SERVICE SHALL NOT BE REQUIRED OF A LOCAL UNIT OF GOVERNMENT BY ANY STATE AGENCY RULE, REGULATION, OR DIRECTIVE UNLESS AN APPROPRIATION HAS BEEN MADE BY THE LEGISLATURE AND A DISBURSEMENT SYSTEM ESTABLISHED TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR ANY NECESSARY INCREASED COSTS OF SUCH REQUIREMENT.

(2) NO ENFORCEMENT PROCESS OR PROCEEDING SHALL BE INITIATED AGAINST A LOCAL UNIT OF GOVERNMENT AND NO PENALTY OR SANCTION OF ANY SORT, CIVIL OR CRIMINAL, SHALL BE IMPOSED BY A STATE AGENCY ON A LOCAL UNIT OF GOVERNMENT OR ITS ADMINISTRATORS OR OTHER STAFF FOR NON-COMPLIANCE WITH THE REQUIREMENTS OF ANY STATE AGENCY RULE, REGULATION OR DIRECTIVE UNLESS AN APPROPRIATION HAS BEEN MADE BY THE LEGISLATURE AND A DISBURSEMENT SYSTEM ESTABLISHED TO PAY THE AFFECTED LOCAL UNITS OF GOVERNMENT FOR ANY NECESSARY INCREASED COSTS OF SUCH REQUIREMENT.

PROPOSED AMENDMENTS TO COURT RULES RELATING TO THE FILING AND MANAGEMENT OF COMPLAINTS FILED TO ENFORCE THE STATE'S OBLIGATIONS UNDER ARTICLE 9, SECTION 29, OF THE MICHIGAN CONSTITUTION OF 1963, AS AMENDED.

MCR 2.112(M)

(M) Headlee Amendment Actions. In an action **BROUGHT PURSUANT TO CONST 1963, ART 9, § 32,** alleging a violation of Const 1963, art 9, §§ 25-34, the **PLEADINGS SHALL CONFORM TO THE REQUIREMENTS OF MCR 2.111**~~factual basis for the alleged violation or a defense must be stated with particularity. In an action involving Const 1963, art 9, § 29, the plaintiff must state with particularity the type and extent of the harm and whether there has been a violation of either the first or second sentence of that section. In an action involving the second sentence of Const 1963, art 9, §29, the plaintiff must state with particularity the activity or service involved. All statutes involved in the case must be identified, and copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense, must be attached to the pleading. The parties may supplement their pleadings with additional documentary evidence as it becomes available to them~~.

MCR 7.206(D) and (E)

(D) Actions for Extraordinary Writs and Original Actions.

(1) Filing of Complaint. To commence an original action, the plaintiff shall file with the clerk:

(a) for original actions ~~filed under Const 1963, art 9, §§ 25-34~~, 5 copies of a complaint (one signed~~) that conforms to the special requirements of MCR 2.112(M), and~~ which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of a complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;

(b) 5 copies of a supporting brief (one signed) conforming to MCR 7.212(C) to the extent possible;

(c) proof that a copy of each of the filed documents was served on every named defendant and, in a superintending control action, on any other party involved in the case which gave rise to the complaint for superintending control; and

(d) the entry fee.

(2) Answer. The defendant or any other interested party must file with the clerk within 21 days of service of the complaint and any supporting documents or affidavits:

(a) for original actions ~~filed under Const 1963, art 9, §§ 25-34~~, 5 copies of an answer to the complaint (one signed) ~~that conforms to the special requirements of MCR 2.112(M), and~~ which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of an answer to the complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;

(b) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D) to the extent possible; and

(c) proof that a copy of each of the filed documents was served on the plaintiff and any other interested party.

(3) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right either with or without referral to a judicial circuit or tribunal or agency for the taking of proofs and report of factual findings. If the case is ordered to proceed to full hearing, the time for filing a brief by the plaintiff begins to run from the date the order allowing the case to proceed is certified or the date the transcript or report of factual findings on referral is filed, whichever is later. The plaintiff's brief must conform to MCR 7.212(C). An opposing brief must conform to MCR 7.212(D). In a habeas corpus proceeding, the prisoner need not be brought before the Court of Appeals.

(E) ACTIONS TO ENFORCE THE HEADLEE AMENDMENT, PURSUANT TO CONST. 1963, ART. 9, § 32.

(1) FILING OF COMPLAINT. TO COMMENCE AN ACTION PURSUANT TO CONST. 1963, ART. 9, § 32, THE PLAINTIFF SHALL FILE WITH THE CLERK:

(A) 5 COPIES OF THE COMPLAINT (1 SIGNED) WHICH INDICATES, INTER ALIA, WHETHER THERE ARE ANY FACTUAL QUESTIONS THAT ARE ANTICIPATED TO REQUIRE RESOLUTION BY THE COURT;

(B) PROOF THAT A COPY OF EACH OF THE FILED DOCUMENTS WAS SERVED ON EVERY NAMED DEFENDANT AND THE OFFICE OF THE ATTORNEY GENERAL; AND

(C) THE ENTRY FEE.

(2) ANSWER. THE NAMED DEFENDANT(S) SHALL FILE WITH THE CLERK WITHIN 21 DAYS OF SERVICE OF THE COMPLAINT:

(A) 5 COPIES OF AN ANSWER TO THE COMPLAINT (1 SIGNED) WHICH INDICATES, INTER ALIA, WHETHER THERE ARE ANY FACTUAL QUESTIONS THAT MUST BE RESOLVED BY THE COURT FROM THE DEFENDANT'S PERSPECTIVE.

(B) PROOF THAT A COPY OF EACH OF THE FILED DOCUMENTS WAS SERVED ON EVERY NAME PLAINTIFF.

(3) SUBSEQUENT PROCEEDINGS. FOLLOWING RECEIPT OF THE ANSWER:

(A) THE CHIEF JUDGE SHALL PROMPTLY ASSIGN A PANEL OF THE COURT TO COMMENCE PROCEEDINGS IN THE SUIT;

(B) THE SUIT MAY BE REFERRED BY THE PANEL OF THE COURT TO A SPECIAL MASTER FOR PURPOSES OF PRE-TRIAL PROCEEDINGS, CONDUCTING A TRIAL TO RECEIVE EVIDENCE AND ARGUMENTS OF LAW, AND ISSUE A WRITTEN REPORT FOR THE COURT SETTING FORTH FINDINGS OF FACT AND CONCLUSION OF LAW. THE PROCEEDINGS BEFORE THE SPECIAL MASTER SHALL PROCEED AS EXPEDITIOUSLY AS DUE CONSIDERATION OF THE FACTS AND ISSUES OF LAW REQUIRES;

(C) IF THE PANEL OF THE COURT DETERMINES THAT THE ISSUES FRAMED IN THE PARTIES' PLEADINGS SOLELY PRESENT QUESTIONS OF LAW, THE COURT MAY ELECT NOT TO REFER THE SUIT TO A SPECIAL MASTER; AND

(D) FOLLOWING RECEIPT OF THE REPORT FROM THE SPECIAL MASTER OR UPON THE PANEL ELECTING NOT TO REFER THE SUIT TO A SPECIAL MASTER, THE COURT SHALL NOTIFY COUNSEL FOR THE PARTIES OF THE SCHEDULE FOR FILING BRIEFS IN RESPONSE TO THE SPECIAL MASTER'S REPORT OR BASED ON THE ISSUES FRAMED IN THE PLEADINGS AND SETTING THE DATE FOR ORAL ARGUMENT, WHICH SHALL BE ON AN EXPEDITED BASIS. THE PROCEEDINGS SHALL TAKE PRECEDENCE OVER OTHER NON-EMERGENCY MATTERS PENDING BEFORE THE COURT.

(~~E~~**F**) Enforcement of Administrative Tribunal or Agency Orders.

(1) Complaint. To obtain enforcement of a final order of an administrative tribunal or agency, the plaintiff shall file with the clerk within the time limit provided by law:

(a) 5 copies of a complaint (one signed) concisely stating the basis for relief and the relief sought;

(b) 5 copies of the order sought to be enforced;

(c) 5 copies of a supporting brief (one signed) which conforms to MCR 7.212(C) to the extent possible;

(d) a notice of preliminary hearing on the complaint on the first Tuesday at least 21 days after the complaint and supporting documents are served on the defendant, the agency (unless the agency is the plaintiff), and any other interested party;

(e) proof that a copy of each of the filed documents was served on the defendant, the agency (unless the agency is the plaintiff), and any other interested party;

(f) the certified tribunal or agency record or evidence the plaintiff has requested that the certified record be sent to the Court of Appeals; and

(g) the entry fee.

(2) Answer. The defendant must file, and any other interested party may file, with the clerk before the date of the preliminary hearing:

(a) 5 copies of an answer to the complaint (one signed);

(b) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D) to the extent possible; and

(c) proof that a copy of each of the filed documents was served on the plaintiff, the agency, and any other interested party.

(3) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right. If the case is ordered to proceed to full hearing, the time for filing of a brief by the plaintiff begins to run from the date the clerk certifies the order allowing the case to proceed. The plaintiff's brief must conform to MCR 7.212(C). An opposing brief must conform to MCR 7.212(D). The case is heard on the certified record transmitted by the tribunal or agency. MCR 7.210(A)(2), regarding the content of the record, applies.