



**Grand Valley Metro Council
Legislative Committee**

Agenda

**January 13, 2010
8:30 a.m.**

GVMC Offices – 678 Front Ave. NW, Suite 200 - Grand Rapids, MI 49504

- 1. Call to Order**
- 2. Approval of Minutes from November 11, 2009 meeting**
- 3. Final Report: Legislative Commission on Statutory Mandates**
 - a. Strategy for legislative outreach**
- 4. Issues Update**
 - a. State Revenue Estimates for FY 2010 and FY 2011**
 - b. Municipal Partnership Act**
 - c. State Transportation Funding**
 - d. Federal Jobs for Main Street Act**
- 5. Other Issues and comments by members**



Grand Valley Metropolitan Council

MEMORANDUM

To: GVMC Legislative Committee

From: Donald J. Stypula, Executive Director

RE: January 13, 2010 GVMC Legislative Committee

Date: January 10, 2010

Attached are the agenda and support documents for the next meeting of the **GVMC Legislative Committee – scheduled for 8:30 AM, this Wednesday – January 13, 2010 -- at the new GVMC Offices located at Riverview Center, 678 Front Ave. NW, corner of Sixth St., in Grand Rapids.**

This month we will focus on the final report of the Legislative Commission on Statutory Mandates and discuss a strategy for engaging lawmakers on the findings and recommendations from this report. I will also bring you updates on key issues including Monday's state revenue estimating conference, the proposed new Municipal Partnership Act, state transportation funding and the so-called federal Jobs for Main Street Act. Look for updates from me via email on the state revenue estimating conference scheduled for Monday morning. We'll start by reviewing and approving the attached minutes from our November 11, 2009 meeting.

FINAL REPORT OF THE MICHIGAN LEGISLATIVE COMMISSION ON STATUTORY MANDATES

The independent, five-member Legislative Commission on Statutory Mandates, created by 2007 PA 98, has completed its work and issued a final report with detailed recommendations.

The Commission was charged with identifying and investigating the cost of complying with funded and unfunded mandates imposed by the State on local units of government, and to make recommendations relating to those mandates. As noted in the attached summary of the Commission's report, the panel painted 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 the panel estimated to be **in excess of \$2.2 billion** for 2009 just for a selected group of mandates.

As part of its report to the Governor and Legislature, the Commission forwarded a series 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,” the Commission noted in its report. “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.”

Included in the meeting packet are the background and summary sections of the Commission’s report. I also have included, as a separate attachment, the full 87-page report – with detailed recommendations – for your review.

At our meeting on Wednesday I would like to discuss and settle on a region-wide strategy for putting this important topic before our legislators toward the goal of adopting the Commission’s recommended reforms.

ISSUES UPDATES

State Revenue Estimating Conference: On Monday morning, State Treasurer Robert Klein, Senate Fiscal Agency Director Gary Olson and House Fiscal Agency Director Mitch Bean will gather for the annual pre-budget state revenue estimating conference. Following presentations from private sector economists and academics, the three member panel will set the consensus revenue estimate for the state for the remainder of FY 2010 and the anticipated level of revenues the state is likely to take in for FY 2011. The Governor’s budget recommendations – set for delivery the second week of February – will be based on the numbers from the revenue estimating conference.

I will update you throughout the day on Monday regarding the findings at the revenue estimating conference. A short discussion at our Committee meeting on Wednesday morning would be appropriate.

Municipal Partnership Act: Our efforts to move forward the proposed Municipal Partnership Act (MPA) for Kent County communities is making slow but steady progress. The MML is working with staff attorneys from the Senate to draft individual bills that address each of the sections of the proposed MPA legislation. Why? There is concern that amending existing state laws by reference could result in legal obstacles for the MPA. It’s a valid concern that must be addressed before the topic can move forward.

State Transportation Funding: Look for a push this month in both chambers of the Legislature to move forward on a plan to hike the state’s tax on motor fuels by 3 cents-per-gallon / year for three years to properly fund transportation improvements and give the state, county road

commissions and local transportation agencies the revenue needed to match anticipated increases in federal transportation funds. While I am an optimist that is working with our partners to keep this issue before lawmakers in Lansing, I believe a more likely scenario is that the issue will be among the many that will be tackled by lawmakers during the post-election “lame duck” legislative session that takes place in December.

Federal Jobs for Main Street Act: Once the U.S. Congress completes action on the health insurance reform package, the U.S. Senate will jump into the debate over the so-called Jobs for Main Street Act, a bill passed by the House in late December to provide up to \$75 billion in targeted federal “investments” for highways and transit, school renovation, hiring teachers, police, and firefighters, small business, job training and affordable housing. The bill redirects \$48.3 billion from TARP (Wall Street) bailout repayments to create jobs rebuilding crumbling roads and bridges, modernizing public buildings, and cleaning air and water, including:

- Highway Infrastructure: \$27.5 billion to make additional highway infrastructure investments.
- Transit: \$8.4 billion for public transportation investments including \$6.15 billion for urban and rural formula grants; \$500 million for capital investment grants for new or expanded fixed guideway projects; and \$1.75 billion in formula funds to address repair needs of existing subway, light rail and commuter rail systems.
- Amtrak: \$800 million for capital grants to Amtrak for the acquisition and rehabilitation of rolling stock and passenger equipment to improve the speed and capacity of intercity passenger rail service. This investment will increase the fuel efficiency of Amtrak’s locomotives and support domestic production of passenger rail equipment.
- Airport Improvement Grants: \$500 million for airport improvement projects that will support putting people to work to improve safety and reduce congestion at our nation’s airports. An estimated \$49.7 billion is needed between 2009 and 2013 to fully fund eligible airport infrastructure projects.
- Maritime Administration: \$100 million for the Maritime Guaranteed Loan (Title XI) program to allow vessel and shipyard owners to obtain long-term financing for growth and modernization projects.
- Clean Water: \$2 billion to help communities provide clean and safe water for both their citizens and the environment, including \$1 billion for the Clean Water State Revolving Fund and \$1 billion for the Safe Drinking Water State Revolving Fund. Half of the funds will include additional subsidies, such as principal forgiveness and grants, to make it easier for more communities to access the programs.
- Bureau of Reclamation: \$100 million to provide clean, reliable drinking water to rural areas and to ensure adequate water supply to areas impacted by drought.
- Corps of Engineers: \$715 million for environmental restoration, flood protection, hydropower, and navigation infrastructure projects by the Corps of Engineers. The Corps has a construction backlog of \$61 billion.

- Energy Innovation Loans: \$2 billion for the Department of Energy Innovative Technology Loan Guarantee Program, to promote the rapid deployment of renewable energy and electric transmission projects.
- School Renovation Grants: \$4.1 billion to allow State, local, or tribal governments to receive a federal grant equal to the cost of tax credits that would otherwise be payable on bonds issued to finance school construction, rehabilitation or repair.
- Housing Trust Fund: \$1 billion for the National Housing Trust Fund to provide communities with funds to build, preserve, and rehabilitate rental homes that are affordable for extremely and very low-income households; and \$65 million for project-based vouchers to support units built by the Trust Fund.
- Public Housing Capital Fund: \$1 billion for the Public Housing Capital Fund for additional repairs and rehabilitation of public housing.

I am communicating with the offices of our Senators and Representatives in Washington several times a week and will continue to track this legislation as it moves forward.

I'm looking forward to seeing you and having a productive meeting on Wednesday morning. As always, if you have any questions, or if we can be of further assistance, please call me directly at 776-7604, on my cell at 450-4217, at home at 257-3372 or via email at stypulad@gvmc.org.

**GRAND VALLEY METROPOLITAN COUNCIL
LEGISLATIVE COMMITTEE MEETING**

November 11, 2009

8:30 a.m.

GVMC Offices
678 Front Ave., Suite 200
Grand Rapids, MI 49504

MINUTES

1. Call To Order

Chair Rick Root called the meeting to order at 8:35 a.m.

2. Roll Call

Present:

Rick Root	City of Kentwood
Curtis Holt	City of Wyoming
Alex Arends	Alpine Township
Sam Bolt	City of Wyoming
Jim Buck	City of Grandville
Chris Burns	City of Cedar Springs
Mike DeVries	Grand Rapids Township
Bill Cousins	Cascade Township
Andy Johnston	Grand Rapids Area Chamber of Commerce
Don Hilton	Gaines Township
Denny Hoemke	Algoma Township
Jim LaPeer	Cannon Township
Elias Lumpkins	City of Grand Rapids
Daryl Delabbio	Kent County
Robert Homan	Plainfield Township
James Miedema	Jamestown Township
Don Stypula	Grand Valley Metro Council
Keith Van Beek	Ottawa County

3. Minutes

**MOTION – To Approve the October 2009 Legislative Committee Minutes.
MOVE – Van Beek. SUPPORT – Bolt. MOTION CARRIED.**

4. Proposed draft – Municipal Partnership Act

Curtis Holt provided a synopsis of and reasoning for a new draft bill of a proposed Municipal Partnership Act that was drafted on his behalf by attorneys at Clark Hill, PLC and shared with Senator Mark Jansen.

Holt explained that under the draft legislation, two or more local units of government located in Kent County, or in collaboration with Kent County, could enter into a contract to provide a public services currently provided by the individual local governments under draft legislation known as the Municipal Partnership Act. Written by attorneys at Clark Hill, PLC, at the request of Wyoming City Manager Curtis Holt, the legislation as drafted would supersede existing state statutes, local ordinances and existing municipal charter provisions to enable partnering local governments to quickly establish a contract for the joint provision of services or to form an authority to coordinate the provision of those services.

The proposed Act also would allow each local unit or the county that enters into a contract for the joint provision of services to ask local voters to approve up to five mills to pay for the provision of that service. Contracts for the joint provision of services entered into under the terms of this Act would not be subject to referendum and the contract could not be the basis for recalling elected officials from office. In addition, neither the existence of the contract, nor its specific provisions, could be subject to collective bargaining. The provisions of 1969 Public Act 312 (compulsory binding arbitration for public safety employees) would be set aside for up to four years under contracts entered into under the new Municipal Partnership Act.

Mr. Holt said this draft bill emerged from months long discussions among the managers of the six “urban” cities in Kent County (Grand Rapids and the five surrounding cities), each of which is wrestling with varying degrees of fiscal stress. As noted in a recently-released study of collaborative municipal service sharing partnerships in the Grand Rapids area – conducted by the non-partisan Citizens Research Council of Michigan – West Michigan, more than any other region of the state, possesses the trust and collaborative spirit to ramp up the shared provision of public services.

Rick Root reported the challenges Michigan and its legislators are facing are unlike anyone else has ever faced. They have his sympathy and we need to use balance

when lobbying them. We need to be part of the debate, but our work is at home.

Don Stypula reported on a TV13 news report which indicated the West Michigan area was implementing a plan to consolidate services throughout the area. He apologized for his over zealous comments.

Rick Root indicated he also spoke in the interview, but said the issue hasn't been vetted yet and it is not the golden goose that is going to result in huge savings. Collaboration is what we have been focusing on. Consolidation is another issue. The story has gathered a lot of momentum which was not intended.

Much discussion ensued regarding the interview.

It was determined at this point to give no further response and let the news story die.

5. GVMC Legislative Priorities on Government Reform

Don Stypula reported it has been complex getting the legislature to understand what needs to be done to enact the reform requested by GVMC in our priorities. We have been pushing for the elimination of barriers to multi-jurisdictional service sharing for 2 ½ years and have not been able to move forward. There is broad support for these issues, but we cannot move forward as legislators are unable to see beyond the budget crisis. Don suggested a series of small group meetings with legislators and members of the GVMC Legislative Committee along with the Chamber of Commerce and others to show mutual support. The Chamber and Right Place could partner and schedule the meetings.

Keith Van Beek stated there is merit in discussing the issue, but do our partners understand what this means. It is not a panacea which would make all financial issues disappear. Do we have a good understanding of why the legislature is not taking this up? Are they just too busy or is there something else we need to address?

Don Stypula pointed to an article in MizBiz which indicates the Chamber of Commerce is in strong support of repealing barriers. Don said he would recommend scheduling a series of small group meetings between us and the Grand Rapids Chamber and/or Chamber Coalition so they can have a clear vision of what could be done. Regarding why the issue hasn't moved, the legislature has been consumed with current economic issues. They can't make the disconnect from getting elected to governing. Don asked to start with a meeting with the Grand Rapids Chamber so we can familiarize them with our struggle.

Rick Root reported it is one of the biggest struggles, but asked who will be the flag

bearer of the issue as everyone wants to own it. We will have to get beyond our own prejudices. How do we do that and who carries the flag?

Mike DeVries stated the reality is there is no money now, so we are spinning our wheels on any issue which costs money. We basically are on our own. We need to spend time on things we can accomplish.

Alex Arends said before you can make headway, you need to have public support. With the legislature it is a matter of ideology and philosophy vs. practicality.

Haris Alibasic reported revenue sharing has been taking away and we should use it as leverage to get movement in enabling intergovernmental cooperation. There currently is a bill proposed on PA 312 which could be use as a vehicle.

After continued discussion, Rick Root directed Don Stypula to continue to kick around some of these ideas. Regionally, the Chamber of Commerce, West Michigan Strategic Alliance and Right Place may have a place at the table, but would any be willing to forgo the copyright on the issue?

Don Stypula said he would like to talk with the Chamber on what we discussed today to see if we can get a group of us to talk with a group of them so as to have a consistent message for legislators.

Rick Root added he didn't want to get into a discussion on the business tax or any other issue. We need to keep it focused.

6. Other

7. Adjourn – 10:00



Final Report of the Legislative Commission on Statutory Mandates

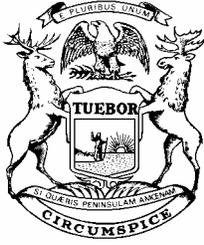
Submitted to the

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
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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.

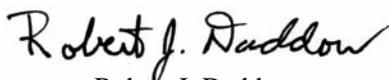
The Commission could not have completed its work without the volunteer assistance of many individuals and organizations. We would like to thank the Citizens Research Council of Michigan for its report on mandates legislation around the country; the Michigan Association of Counties, the Michigan Municipal 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,



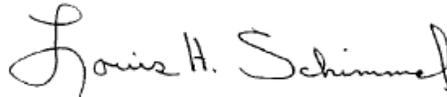
Robert J. Daddow
Co-Chair



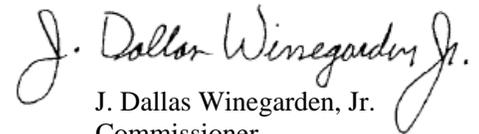
Amanda Van Dusen
Co-Chair



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

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Table of Contents

Final Report of the Commission	1
Appendix A: Supplementary Report of the Commission	19

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EXHIBITS:

Exhibit A:

Act 98 of the Public Acts of 2007.....	i
Act 356 of the Public Acts of 2008.....	v

Exhibit B: Costing of Mandates Submitted by Associations.....	ix
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Exhibit C: Summary of Citizens Research Council Report to the Commission.....	xxiii
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Exhibit D:

1. Proposed Legislation to Replace Act 101, Implementing Article 9, Section 29 of the Michigan Constitution of 1963, as Amended	xxxix
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.....	xxxviii
3. Proposed Amendments to the Administrative Procedures Act, Relating to the Promulgation of Regulations Which Constitute State Mandates.....	xli
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	xlii

**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 MPERS 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 away² 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

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 facilities 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:

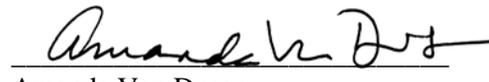
1. Whether the requirements continue to be necessary in the public interest given the extreme financial stress that local units are experiencing and, if not, initiate legislation to rescind the requirement.

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.

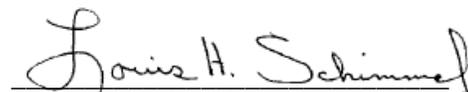
G. The Michigan Supreme Court should replace MCR 2.112 (M) and MCR 7.206 (D) and (E) with a new Court Rule consistent with the Commission's legislative recommendations.

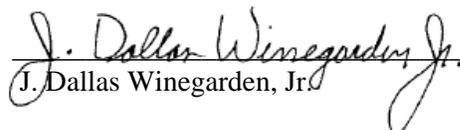
The foregoing is respectfully submitted as the final report and recommendations of the Commission on Statutory Mandates submitted as of December 31, 2009.


Robert Daddow
Co-Chair


Amanda Van Dusen
Co-Chair


Dennis R. Pollard


Louis H. Schimmel


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