Interim Report

of the

Legislative Commission on

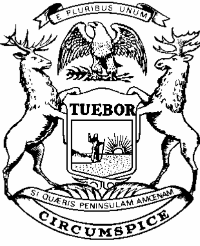
Statutory Mandates

Submitted to the

Michigan Legislature and the Governor

Pursuant to MCL 4.1781 et seq., Public Act 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
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June 29, 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:

Pursuant to MCL 4.1781 et seq., the Legislative Commission on Statutory Mandates is pleased to submit this interim report 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. This report, which was approved unanimously by the Commission, provides the status of the Commission's efforts and findings thus far.

The Commission wishes to acknowledge the cooperation and assistance of numerous organizations including the Michigan Townships Association, Michigan Association of Counties, Michigan Municipal League, County Road Association of Michigan, Michigan School Business Officials, Michigan Association of School Administrators, and the Michigan Community College Association. This report and the work of the Commission would not have been possible without their invaluable and continuing assistance.

We hope you find this interim report to be helpful and informative. The Legislative Commission on Statutory Mandates will submit our specific determinations and recommendations in a final report, as required, by December 31, 2009.

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

INTERIM REPORT OF THE
COMMISSION ON STATUTORY MANDATES

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 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.

The Act requires the Commission to file by June 30, 2009 an interim report 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. Attached to this report is a listing and description of those mandates. An analysis of the range of cost to local units of complying with these mandates is underway. The Commission will prepare and submit a final report, including the range of costs, as well as the Commission's determinations and recommendations to the Legislature no later than December 31, 2009.

The Act does not define "local units of government." After discussion with the legislative leadership and a major sponsor of the Act, the Commission determined to define "local units" consistently with Article 9, Section 33 of the Michigan Constitution of 1963, as amended, which is part of the amendment widely known as the "Headlee Amendment." Accordingly, this report addresses mandates imposed by the State on local and intermediate school districts, counties, cities, villages, townships, community colleges and county road commissions.

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.[1] 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.[2] Michigan voters passed the Headlee Amendment in November 1978 and it became effective December 23, 1978.

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[1] Article 9, § 25 states: 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.

Article 9, § 30 states. The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978 – 1979.

[2] Article 9, § 29 states: 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.

Implementing Legislation

Section 34 of the Headlee Amendment required the Legislature to "implement" its various provisions which it did through Act 101 of 1979 ("Act 101"), known as "State Disbursements to Local Units of Government." Act 101 requires (a) the legislature to appropriate amounts sufficient to cover the necessary cost of state requirements, [3] (b) the legislature to adopt joint rules for the identification of local mandates,[4] (c) the governor to report annually on the disbursements required to pay for the necessary cost of mandates imposed on local units[5] and (d) the Department of Management and Budget to assign sufficient personnel to properly administer the compliance by the executive branch with its obligation under Act 101. [6] In addition, DMB is required to give local units 180 days' notice before a state requirement becomes effective, which is intended to trigger a claim and payment process.[7] DMB was also required to establish a claims review board,[8] and to create a benchmark analysis of then existing mandates by January 31, 1980, which was to be updated annually.[9] Act 101 also required repeal of laws imposing mandates which were not fully funded. [10]

To understand the degree of the State's adherence to its responsibilities under this Act, the Commission asked the Legislative Service Bureau (the "Bureau") to explain what steps the State has taken since 1979 to fulfill the requirements of Act 101. Unfortunately, the Bureau reported that implementation of Act 101 has been virtually nonexistent and no procedures have been put in place to systematically assess the required appropriation of financial resources as legislation is being considered and passed. The Bureau's report to this Commission, in a statement attributed to the Department of Management and Budget ("DMB") assured that "the Legislature has never knowingly passed any legislation with a Headlee mandate." Ignorance may be bliss with the Legislature; the result has been that with insufficient staffing or formal review processes in place mandates regularly "slip" through the legislative process, adding ever-increasing strain to scarce local resources.

Occasionally there has been some recognition, direct or indirect, in fiscal agency reports that a cost is being imposed, such as in the State Fiscal Agency discussion of appropriation for Native American tuition waivers for community colleges or the decision not to extend mandatory arbitration to state prison guards.

The Bureau reports that the joint rules required by the Act "were never submitted by the Legislature" or otherwise adopted. In addition §8(2)(e) of the Act permitted the DMB to request

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[3] MCL 21.235 (1), (2) and (3)

[4] MCL 21.237

[5] MCL 21.235(4)

[6] MCL 21.235 (5)

[7] MCL 21.238

[8] MCL 21.240

[9] MCL 21.241

[10] MCL 21.242

the Auditor General to verify the actual amounts of the necessary costs of state requirements. The Bureau reported that neither Legislature nor DMB has made over the last thirty (30) years "any requests for records or related audits" and that no Headlee mandates were listed in any of the annual reports of the Auditor General published from 1980 to 2007.

The Bureau also advised that no part of §5 of Act 101 had been followed over the last thirty (30) years. No governor has included the required report in his or her annual budget. 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 pursuant to which the mandates would be identified or evaluated. The Commission submits that the absence of joint rules does not excuse non-compliance with the statutory and Constitutional requirements, including the omission from the budget report.

Since 1979 nearly all of Sections 29 and 30 of the Headlee Amendment and the provisions of Act 101 have been continuously ignored by both the legislature and the executive branch. This wholesale disregard of the prohibition on the imposition of unfunded mandates was noted by the Headlee Blue Ribbon Commission in its September 1994 report. Fifteen years later, testimony before this Commission indicated there has been no improvement.

The benchmark analysis in 1980 was never completed, and of course, not updated. Neither the fiscal agencies nor DMB was ever staffed or otherwise funded sufficiently to carry out the required analysis of proposed legislation. The required joint rules were never developed, and the governor has never reported the amounts necessary to fund mandates on local government. The claims review board was established, but was disbanded in 2006, and its functions transferred to the State Administrative Board, which we are told has never met to rule on a claim under Act 101.

The result of this chronic non-compliance is that for over 30 years the State has systematically transferred to local governments the responsibility for various functions, some of which are worthy activities or services, but which the State has not wanted to pay for, in direct contravention of the Headlee Amendment. While the administrative rules and processes contemplated by Act 101 might have provided an adequate mechanism to inhibit the passage of legislation imposing unreimbursed cost burdens on local units of government, the State never gave those processes a chance, ignoring its protections for local government and rendering Article 9, §§25, 29 and 30 meaningless. This situation reflects a profound disrespect for both the Constitution and the expanding burdens on local governments which are further strained by the vigorous enforcement of the portion of the Headlee Amendment limiting local revenues. The failure to adhere to these constitutional requirements also represents a missed opportunity for constructive dialogue on efficiency in government.

<u>Courts Have Avoided Meaningful Enforcement</u>

The lack of compliance with the Headlee Amendment and Act 101 has generated several legal challenges by Michigan taxpayers acting in conjunction with local units of government. Many of the legal challenges have confirmed the failure of the State to comply with the

requirements of the Amendment.[11] However, litigation is not a practical means to assure comprehensive compliance with this Amendment to the Constitution particularly in the context of the lack of implementation of Act 101. Litigation is expensive and time consuming and further strains local resources. The inability or unwillingness of the courts to enforce payment by the State for unfunded mandates emboldens the State to continue to flout the Constitution and causes further degradation of the relationships between the State and the local units to which the State has continuously shifted the burden. Litigation should be the absolute last resort when all else fails.

There is broad agreement that some mandates present good ideas with desirable objectives or programs. 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 services in order to comply with the mandate.

The voters of Michigan should not have to rely on piecemeal litigation to achieve comprehensive compliance with their Amendment to the Constitution. To avoid a total collapse of services at the local level there needs to be a meaningful and comprehensive effort to comply with Sections 29 and 30 prospectively. This Commission will provide recommendations in its final report to the Legislature of the means necessary to achieve compliance with the Headlee Amendment.

<u>The Commission's Limitations</u>

At the outset of the Commission's efforts, it became quickly apparent that the charge detailed in the original legislation faced significant barriers to successful completion. After 30 years, the real cost of these mandates may never be known: The absence of a baseline analysis and annual updates, changes in auditing and accounting standards and practices and variations in implementation and documentation among units of different types, sizes and demography makes the analysis very difficult, and the cavalier imposition of the mandates may permanently prevent the local units of government from ever being able to accurately determine fully 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 precise compilation of the mandates and related costs imposed on local units of government can be developed.

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[11] In the *Durant* and *Adair* cases, the litigation was protracted, costly to file and fund by local units of government, and have resulted in limited cost recovery. The *Durant* cases required over seventeen (17) years or 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 after eight years, that the State was violating the Headlee Amendment by its failure to provide funding for costly services associated with local school districts having to provide extensive data/documentation for the State's Center for Educational Performance and Information ("CEPI"). In the most recent decision in Adair the court 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. Because of the cost to pursue litigation, the challenge to local governments with stressed budgets of investing the resources necessary to secure a court resolution, many governments simply acquiesce in the unfunded mandate. There is little else that they can do.

The Legislature appropriated only $10,000 to support the Commission's work. That amount was clearly inadequate to identify thirty (30) years of accumulated mandates and related costs, involving nearly 2,000 local units of government.

The Commission would like to acknowledge and commend the efforts of the following groups and their members whose efforts have made this report possible:

- Michigan Association of Counties
- Michigan Municipal League
- Michigan Township Association
- Michigan School Business Officials and Michigan Association of School Administrators
- County Road Association of Michigan
- Michigan Community Colleges Association
- Citizens Research Council of Michigan
- Michigan State University

Among others, Thrun Law Firm, P.C. has provided a substantial contribution in its legal research in the absence of which the Commission's assigned tasks would have been considerably more difficult.

The above groups have contributed and continue to contribute substantial time and labor cataloging and evaluating the mandates and the cost of compliance.

Significant Mandates

The mandates identified by the associations have been segregated into the following categories for analysis:

1. Mandates imposed on local units of government after the effective date of the Headlee Amendment which require full funding by the State under § 29.
2. Mandates in existence as of December 23, 1978 that were being funded, in whole or in part, when the Headlee Amendment was passed and for which the State has ongoing requirements to maintain the same proportion of funding to local units.
3. Mandates that existed as of the effective date of the Headlee Amendment but for which no funding was ever provided and therefore, no funding requirement was imposed on the State after December 23, 1978.
4. Activities which do not constitute mandates under the Headlee Amendment.

In addition, the associations identified activities and reporting requirements that the Commission believes are, as a practical matter, mandates, even though a technical argument could be made against that conclusion.

Conclusion

The Commission's work to date has confirmed what others have reported since 1980, that the State has systematically failed to comply with the constitutional requirements for funding of mandates on local government for the more than 30 years since the Headlee Amendment became effective. With the help of local units, and minimal resources and their associations, the Commission has identified a non-exhaustive list of the most significant unfunded mandated activities and reporting requirements imposed on local units.

In our final report we will provide a range of cost of complying with these identified mandates, together with recommendations and determinations. In particular, with the assistance of the Citizens Research Council of Michigan, we will make recommendations regarding constructive steps which could be taken to assure compliance with the letter and the spirit of the Headlee Amendment going forward.

The materials referenced in this report are attached as exhibits:

- Exhibit A – Legislative Service Bureau memorandum dated March 24, 2008 from the Director of the Bureau.
- Exhibit B – Joint Committee on Administrative Rules memorandum dated March 20, 2008 from Ms. Colleen S. Curtis.
- Exhibit C – Act 101.
- Exhibit D – Schedule of significant mandates identified by local units.

Exhibit A

MEMORANDUM

Date: March 24, 2008

To: Legislative Commission on Statutory Mandates

Attn: Robert Daddow, Co-Chairperson
Amanda Van Dusen, Co-Chairperson

From: Elliott Smith, Director Legislative Service Bureau

Re: **Request for Information from the Legislative Commission on Statutory Mandates**

On February 13, 2008, the Legislative Commission on Statutory Mandates formally asked the Legislative Service Bureau to "advise" you as to whether the "actions, reporting obligations or other duties" specified in specific sections of the State Disbursements to Local Government Units Act, 1979 PA 101 (MCL 21.231 through 21.244) have been complied with at any time since 1979 to the present and, if so, when such compliance occurred and document the record identifying compliance. The Bureau's Research Services Division undertook a comprehensive review of governmental documents and records, special reports, and newspapers to address your request to document implementation of Section 29. While we are confidant we uncovered the vast majority of important documents, we do not profess to have seen every document written on Headlee Amendment implementation. For example, we came across a reference to a Task Force established by Governor Milliken to assess the impact of Proposal E prior to its passage, whose membership included representatives of the Michigan Municipal League and Chamber of Conference. However, we did not find any documents produced by this Commission. This memo sets forth the comprehensive process followed to address your request and documents prepared to answer your questions and capture the effort.

Four documents are attached to this memorandum:

- *Michigan Tax Limitation Amendment: Section 29 "Headlee Amendment" Mandates, Research Brief Volume 5, Issue 4, (March 2008)* provides background information on the Headlee amendment and statutes enacted to implement the constitutional amendment*;*
- *Implementing Section 29 of the "Headlee Amendment," Research Brief Volume 5, Issue 5, (March 2008)* reports on the status of compliance with 1979 PA 101 as requested in the memorandum noted above;

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- *Local Government Claims Review Board, At-A-Glance, Volume 5, Issue 3 (March 2008)* summarizes claims for funding submitted to the Board and the Board's response to those claims; and,
- *Section 29 Headlee Amendment Resources, At-A-Glance, Volume 5, Issue 4 (March 2008)* lists the variety of sources reviewed to develop the 3-part series on the Headlee Amendment.

The search to document Section 29 compliance activity relied on a variety of original source materials including:

- public acts and bill analyses;
- administrative rules;
- records of the Local Government Claims Board housed with the State Administrative Board;
- records of the House Taxation Committee from the State Archives; and
- personal communications with among others, Gary L. Buckberry with the Michigan Department of Management and Budget who was the chief staff person for the Board and Douglas C. Drake, who was staff to the House Taxation Committee during the Headlee implementation period.

Some of the personal communications have been conducted over the years as the Legislative Service Bureau has been asked similar research questions. A wide variety of other background materials were also reviewed including:

- California's pioneering mandate law;
- works of the U.S. Advisory Commission on Intergovernmental Relations;
- newspaper vertical files on Headlee and Headlee implementation from the Library of Michigan and the collection of the Legislative Service Bureau;
- House Fiscal Agency, Senate Fiscal Agency, the Department of Management and Budget, and Citizens Research Council of Michigan reports on Headlee implementation before and shortly after passage of the amendment.

These and any numbers of post-Headlee reports were reviewed for Section 29 compliance information. These documents are outlined in the *At-A-Glance Section 29 Headlee Amendment Resources* document listed above.

Your question concerning the implementation of Section 6 of 1979 PA 101 (MCL 21.236) during the Administrative Rules process is being addressed under separate cover in a memorandum prepared by Colleen Curtis, Rules Analyst/Committee Clerk for the Joint Committee on Administrative Rules.

Attachments

Michigan Tax Limitation Amendment: Section 29 "Headlee Amendment" Mandates

Michigan voters approved the General Election Ballot Proposal E, an initiatory petition to amend Article IX of the Michigan Constitution dealing with finance and taxation, by a 52 to 48 percent margin on November 7, 1978. The primary purpose of the "Michigan Tax Limitation Amendment" was to limit the growth of state and local government budgets. The Amendment is also known as the "Headlee Amendment," named for one of its chief proponents, insurance executive Richard Headlee. By amending one existing section (6) of Article IX and adding ten new sections (25-34) Proposal E inserted three sets of limits to the growth and relationship of state and local government finances into the Constitution:

- Overall limit on state revenues and spending.
- Limit on future increases to local property taxes and voter approval for establishing any new local taxes.
- Requirement that the state maintain aid to local units of government at a constant proportion of total state spending and reimburse local units of government for state-mandated programs and services (Section 29).

This Brief presents background on the origins of the Headlee Amendment and the measures enacted by the legislature to implement Section 29 of the Amendment.

Highlights

- Michigan Voters approved the Headlee Amendment on November 7, 1978.
- Headlee Amendment largely addressed limits on state-local finance. It did not promise tax cuts.
- Article 9, Section 29 prohibits state mandates of local government without state funding

Titles in the Headlee Collection:

Michigan Tax Limitation Amendment: Section 29 "Headlee Amendment" Mandates, Research Brief Vol. 5 Iss. 4, March 2008

Implementing Section 29 of the Headlee Amendment, Research Brief Vol. 5 Iss. 5, March 2008

Local Government Claims Review Board, At-A-Glance Vol. 5 Iss. 3, March 2008.

Headlee Resources, At-A-Glance Vol. 5 Iss. 4 March 2008.

Mandates

The issue of the imposition of state mandates on local units of government was a hot topic in the 1970s. It was an issue long championed by the United States Advisory Commission on Intergovernmental Relations, and addressed legislatively in the state of California with the adoption of 1972 S.B. 90 as 1972 Chapter 1406, and which required the reimbursement of state-mandated local costs.

In Michigan, the mandate issue initially surfaced with the introduction of 1976 H.J.R. SS introduced by Representative Ed Fredricks. This joint resolution called for the addition of section 35 to Article 7, prohibiting the enactment of a law requiring a local unit of government to provide a service or establish a program unless the funds needed for that purpose or program were appropriated by the Legislature. H.J.R. SS died in the House Committee on Constitutional Revision and Women's Rights.

House Bill No. 4006 of the Seventy-ninth Legislature (1977-1978), would have provided a process for the identification and reimbursement of state-mandated costs. This bill, which was introduced by

Representative Joe Forbes, contained many of the features later adopted in 1979 PA 101, including the establishment of a Local Government Claims Review Board. This bill was referred to the House Appropriations Committee, where it died.

Article IX, Section 29

As added by the Headlee Amendment, Article IX, Section 29 of the Constitution prohibits the state from reducing the state-financed share of funding for existing programs required by state law. This section also requires that a new activity or increase in the level of any activity required by state law shall not be required unless a state appropriation is made and disbursed to pay the local unit for any increased costs. This section is implemented by 1979 PA 101.

1979 PA 101

The Michigan Legislature has enacted a number of laws to implement the requirements mandated by Proposal E. As to the implementation of section 29, 1979 PA 101, being MCL §§ 21.231-21.244, was enacted to provide that the state shall pay for state-required increases in activities or services by local units of government. Under this law, neither the Michigan Legislature nor any state agency can require local governments to undertake a new activity or service or to increase the level of an activity or service beyond that required by existing law unless a state appropriation is made and disbursed to pay for any necessary increased costs.

Introduced as Senate Bill No. 460 of the Eightieth Legislature (1979-1980) by Senator Gary Corbin, this legislation was the product of the Legislative Joint Ad Hoc Task Force on Proposal E Implementation. According to a Michigan Department of Management and Budget (DMB) analysis prepared by Gary L. Buckberry, the bill reportedly relied heavily on the prior work of the United States Advisory Commission on Intergovernmental Relations and California's mandate law.

Mandate Exceptions

The provisions of 1979 PA 101 require that the state fund any new requirements or an increase in level of service imposed on local governments after December 22, 1978. The act specifically defines a state requirement to mean:

> *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 state law*

This definition exempts the following from the definition of “state requirements”:

- Statutes or constitutional amendments adopted pursuant to an initiative petition or state laws or rules enacted or promulgated to implement such statutes or amendments.
- Statutes or constitutional amendments placed on the ballot by the legislature or state laws or rules enacted or promulgated to implement such statutes or amendments.
- A court requirement.
- A due process requirement.
- A federal requirement.
- A state requirement applying to a larger class of persons or corporations and not principally or exclusively applying to local governments.
- A requirement of a state law that does not require a local unit of government to perform an activity or service but allows a local government to do so as an option, and by opting to perform the activity or service, the local unit must comply with certain minimum standards, requirements, or guidelines.

- 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 by existing law or state law, but is provided at the option of the local unit of government.
- A requirement of a state law enacted pursuant to Article 6, Section 18 of the constitution, which provides for judicial salaries.

Implementation

The act also requires that the legislature annually appropriate funds for the necessary cost of each state requirement, that the governor include with the annual budget recommendation a report on the funds necessary to comply with the requirements, and that proposed administrative rules requiring a disbursement to local units be accompanied by fiscal notes estimating the cost of a rule. The act also created procedures for the disbursement of funds.

A number of factors have impacted the implementation of Section 29, according to the 1994 Governor's Headlee Blue Ribbon Commission, including:

1. A narrow wording of the Act's definition of "state requirement."
2. Court rulings upholding the Act's language limiting application only to mandated activities.
3. Court rulings upholding the Act's language that the state is not required to fund increased or expanded requirements on activities or services that are not mandated, but merely optional.

In addition, the Local Government Claims Review Board only met sporadically and never approved a local unit claim. The Board was dissolved by Executive Order No. 2006-20. Its duties are to be assumed by the State Administrative Board.

Nonetheless, according to a 1988 U.S. General Accounting Office (GAO) report on state mandates, the Headlee Amendment has been successful in deterring mandates. The report identified only two mandates of local government. Reportedly, one was ultimately funded with a $2.4 million appropriation and the courts ruled that counties did not have to comply with the other until the state provided funding. (The GAO report did not specifically identify the nature of the mandates.) The GAO stated that "…in some cases the legislature has avoided the reimbursement requirement by making the provision of the service, not the mandate itself, optional, state officials said. In reality, local governments often cannot avoid providing these services and thus must accept the mandate as well."

Prepared by
Terry Bergstrom

Since 1941

Implementing Section 29 of the "Headlee Amendment"

Article IX, Section 29 of the Constitution, as added by Proposal E (Headlee Amendment), prohibits the state from reducing the state-financed share of funding for existing programs required by state law. This section also requires that a new activity or increase in the level of any activity required by state law shall not be required unless a state appropriation is made and disbursed to pay the local unit for any increased costs. This section is implemented by 1979 PA 101.

The Michigan Legislature has enacted a number of laws to implement the requirements mandated by Proposal E. As to implementation of Section 29, being MCL §§21.231-21.244, 1979 PA 101 was enacted to provide that the state shall pay for state-required increases in activities or services by local units of government. Under this law, neither the Michigan Legislature nor any state agency can require local governments to undertake a new activity or service or to increase the level of an activity or service beyond that required by existing law unless a state appropriation is made and disbursed to pay for any necessary increased costs.

The Legislature impaneled the Legislative Commission on Statutory Mandates in 2007 to investigate the funding of state mandates imposed on local governments. The Commission requested assistance in compiling information on the extent to which the provisions of 1979 PA 101 had been complied with since its enactment. This Brief is a compilation of available information documenting compliance with 1979 PA 101. Three other documents have been produced in this compilation, including a list of all the original source materials reviewed for this compilation (see the Highlights Box for Titles).

Highlights

- Article IX, Section 29 as added to the Constitution by the Headlee Amendment prohibits the imposition of unfunded mandates on local units of government.
- Section 29, implemented by 1979 PA 101, sets up mechanisms to identify state mandates, develop cost estimates and disburse funds, and establishes a process to review and adjudicate local claims.
- Compliance with Section 29 and 1979 PA 101 has long been contested.

Titles in the Headlee Collection:

Michigan Tax Limitation Amendment: Section 29 "Headlee Amendment" Mandates, Research Brief Vol. 5 Iss. 4, March 2008

Implementing Section 29 of the Headlee Amendment, Research Brief Vol. 5 Iss. 5, March 2008

Local Government Claims Review Board, At-A-Glance Vol. 5 Iss. 3, March 2008.

Section 5 of 1979 PA 101

Section 5 of 1979 PA 101 (MCL § 21.235) generally provides for disbursements to local units of government. It also requires the governor to submit, in conjunction, with the annual budget recommendation, a report on these disbursements. Specifically, section 5 requires the following:

1) Section 5(1) [MCL § 21.235(1)], requires the Legislature to annually appropriate an amount sufficient to make disbursements for the necessary cost of state mandates. These appropriations have not been made. A DMB report on the Local Government Claims Review Board, prepared in conjunction with a November 1992 memorandum from

Director Patti Woodworth to Governor John Engler, stated that the legislative argument for its inaction was that the"…Legislature has never knowingly passed any legislation with a Headlee mandate." The paper footnoted a comment from the Department of the Attorney General stating that the mandate provisions of Section 29 and Act 101 have had virtually no applicability since "The Legislature generally has been consistent and conscientious in the drafting of new legislation concerning local governments so as to avoid requiring mandated activities or services…."

2) Section 5(2) [MCL § 21.235(2)], requires that initial payments to local governments be made in advance under a schedule of disbursements. These disbursements have not been made. According to a conversation with Gary L. Buckberry of the Department of Management and Budget, who at one time was the department's lead person on state mandates, the department would argue that the governor could not recommend disbursements to meet any such requirements, since the Legislature never implemented joint rules to identify those bills imposing state requirements of local governments.

3) Section 5(3) [MCL § 21.235(3)], requires that the governor submit a report, in conjunction with the annual budget recommendation, on the amount deemed to be required to make disbursements to local units of government. The reports were never submitted, and according to Gary L. Buckberry, the Department would argue that, since the Legislature never developed joint rules to identify mandates, the governor had no disbursements to report.

4) Section 5(4) [MCL § 21.235(4)], requires that, if the amount of appropriations is insufficient to fully fund a state imposed requirement, that a prorated payment be made. A supplemental appropriation was to make up the difference. These appropriations were never made according to Gary L. Buckberry, as the Department would again argue that the Legislature's failure to identify new or increased services or activities, through a joint rule mechanism, precluded it from making such recommendations.

Section 7 of 1979 PA 101

Section 7 of the act (MCL § 21.237), generally requires that the Legislature shall establish joint rules to provide for a method of identifying whether or not legislation proposes a state requirement of local government. It also requires that the joint rules are to provide for a method of estimating these costs. Specifically:

1) Section 7(1) [MCL § 21.237(1)], provides that the legislature shall establish joint rules to identify mandates. A thorough review of the House and Senate Journals indicate that these joint rules were never adopted. The Joint Ad Hoc Task Force on Proposal E Implementation was created in 1979. On February 22, 1979, Speaker Bobby Crim appointed Representatives Richard E. Young, H. Lynn Jondahl, George Montgomery, Gary Owen, Martin Buth, and Ralph Ostling to the Joint Ad Hoc Task Force. Senate Majority Leader William Faust appointed Senators Gary Corbin, Jerome T. Hart, Doug Ross, Bill Huffman, Harry Gast, and Harry DeMaso to the Joint Ad Hoc Task Force. According to entries in the House and Senate Journals, the Joint Ad Hoc Task Force was scheduled to meet on March 19, 1979; April 26, 1979; May 14, 1979; and, finally, on June 14, 1979. Reportedly, the main product of the Joint Ad Hoc Task Force was the preparation of 1979 PA 101. According to the Department of Management and Budget analysis of 1979 Senate Bill No. 460 (which was enacted as 1979 PA 101), the Joint Ad Hoc Task Force was presented with two working drafts to implement Section 29 of the Constitution. One of these was incorporated into a substitute for 1979 Senate Bill No.

460, which was ultimately approved by the committee. It was enacted as the state disbursements to local units of government act.

Nonetheless, with the adoption of the Headlee Amendment, the Senate Fiscal Agency began publishing a report identifying public acts having fiscal implications to the state and local governments. In its August 1980 report, the agency identified 66 acts adopted in 1979 having fiscal implications for local units. The preface went on to state that:

> With the passage of Proposal E in November of 1978, Section 29 of Article 9 of the State Constitution requires the State to reimburse units of local government for the "necessary cost" of any new or expanded activity or service activity required by them by them by a public act or rule. In 1979, no bills were enacted which "mandated" a new or expanded activity or service.

It appears that this 1980 report was the last in the two-volume series.

2) Section 7(2) [MCL § 21.237(2)], requires that the Legislature shall establish joint rules to identify the estimated costs necessary to provide necessary disbursements to these local units. A review of the House and Senate Journals indicates that these joint rules were never submitted or adopted.

3) Section 7(3) [MCL § 21.237(3)], requires that the joint rules identify costs for the first 3 years of the mandate legislation's operation. A review of the House and Senate Journals indicates that these joint rules were never submitted or adopted.

4) Section 7(4) [MCL § 21.237(4)], provides the Legislature with the authority to review any records on claims or claim requests and to request Auditor General audits to verify the actual amount of the necessary cost of a state requirement. I was unable to identify any request for records or related audits. No Headlee mandate reviews were listed in any of the Annual Reports of the Auditor General published from 1980 to 2007.

Section 8 Disbursements under 1979 PA 101

Section 8 of 1979 PA 101 (MCL § 21.238), sets forth the criteria for making disbursements, prorating claims, and the payment of disbursements. This section also requires that local claims be paid within 45 days of the receipt of a claim.

1) Section 8(1) [MCL § 21.238(1)], requires the DMB to certify disbursements to local units of government. According to Gary L. Buckberry with the DMB, these disbursements have not been made.

2) Section 8(3) [MCL § 21.238(3)], requires the DMB director to notify the governor and the Legislature if claims have been prorated. According to Gary L. Buckberry with the DMB, these disbursements have not been made.

3) Section 8(4) [MCL § 21.238(4)], requires the director to adjust prorated claims if supplemental appropriations are received. According to Gary L. Buckberry with the DMB, these disbursements have not been made.

4) Section 8(5) [MCL § 21.238(5)], requires the State Treasurer to pay all required disbursements to local treasurers. According to Gary L. Buckberry with the DMB, these disbursements have not been made.

Section 11 of 1979 PA 101

Section 11 requires the preparation of a comprehensive report on existing state mandates. It also requires the Legislature to adopt a concurrent resolution certifying the state financed proportion of the necessary cost of an existing activity or service required of local units by existing law. Specifically:

1) Section 11(1) [MCL § 21.241(1)], requires the preparation of material for a report on existing state mandates to the Legislature by January 31, 1980. DMB Budget Director Gerald Miller submitted the report on Existing State Requirements of Michigan Local Governments on January 31, 1980.

2) Section 11(3) [MCL § 21.241(3)], required the submission of the mandate report to the Legislature by January 31, 1980. DMB Budget Director Gerald Miller submitted the report on Existing State Requirements of Michigan Local Governments on January 31, 1980. This section went on to provide that the Legislature adopt a concurrent resolution certifying the state financed proportion of the necessary cost of an existing activity or service required of local government by existing law. No such concurrent resolution was found in a review of the House and Senate Journal entries of the concurrent resolutions introduced in the Eightieth Legislature (1979-1980). Finally, the DMB mandate report was to be updated annually. According to Gary L. Buckberry with DMB, the updates were never prepared because the Legislature had not identified any state requirements of local units. In addition, according to the DMB, the annual supplement has not been prepared because the Legislature has not identified new activities or services through the joint rule mechanism outlined in section 7 of the act.

Section 12 of 1979 PA 101

Section 12 of 1979 PA 101 (MCL § 21.242), provides that a state law shall not be enacted that requires a reduction in the state financed proportion of the necessary costs of an existing activity or service required of local governments by existing law, unless the existing law requiring the activity or service is repealed. I was unable to identify any instance where this scenario may have taken place.

Section 11b of the Revised School Code

Finally, section 11b of the Revised School Code (MCL § 380.11b), was added to the act by 1995 PA 289 (Senate Bill No. 679). This measure made a number of significant reforms to the School Code of 1976, including the renaming of the act the Revised School Code. Section 11b specifically requires that the State Board of Education prepare and submit to the Legislature's education committees a report on mandates applying to school districts. According to the School Finance and School Law division of the Department of Education, the report meeting the requirement in 1995 PA 289 was not prepared. However, in 1981, the Office of Legislation and School Law, in conjunction with the Michigan Association of School Boards, did prepare a mandate report shortly after the adoption of the Headlee Amendment.

Prepared by
Terry Bergstrom

Exhibit A

At-a-Glance

Research Services Division

Local Government Claims Review Board

(Section 10 of 1979 PA 101)

Implementation of Section 29 of the Headlee Amendment pursuant to Public Act 101 of 1979 was accomplished, in part, by the Local Government Claims Review Board created in Section 10 of the Act (MCL 21.240). The Board was created to "hear and decide disputed claims or upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose." An appeal for a disbursement for a state-required cost was to be limited to appeal of an alleged incorrectly reduced payment to a local unit of government, an incorrectly or improperly reduced disbursement for a claim, or failure to receive a proper disbursement of funds appropriated to satisfy the state finance portion of necessary costs. The Board was given the authority to increase or reduce the amount requested or allow or disallow the claim.

The Local Government Claims Review Board's initial members were appointed on March 27, 1980. An extended process of promulgating rules of procedure occupied most of the Board's activity in the ensuing five years. The Claims Review Board had its inaugural meeting on June 21, 1985. This meeting was reportedly followed by a May 19, 1986 meeting held to approve the proposed rules of procedure. These rules (R 21.101-21.401 of the *Michigan Administrative Code*), were finalized on July 24, 1986. The board did not meet for another 12 years, however, but it was temporarily revived in the 1990's.

Following the recommendations of the Headlee Blue Ribbon Commission, Governor John Engler proposed that the Board be reinvigorated. New members were appointed to the Board, and the board met a number of times in 1998 and 1999. The new Board held its organizational meeting on July 16, 1998. This meeting was followed by meetings that took place on December 18, 1998; February 26, 1999; April 30, 1999; September 24, 1999; and, finally, on November 19, 1999. Ultimately, the Local Government Claims Review Board was abolished by E.O. No. 2006-20. Its duties are to be assumed by the State Administrative Board.

The tables that follow present a summary of claims filed and the response of the Board. Summaries were developed from the careful review of Board records from 1979 to present maintained by the State Administrative Board. Twenty-three claims were submitted by 19 local units of government concerning 18 different statutory requirements. This tally does not include Durant claims, which are not addressed in this At-A-Glance.

Prepared by
Terry Bergstrom

Titles in the Headlee Collection:

Michigan Tax Limitation Amendment: Section 29 "Headlee Amendment" Mandates, Research Brief Vol. 5 Iss. 4, March 2008

Implementing Section 29 of the Headlee Amendment, Research Brief Vol. 5 Iss. 5, March 2008

Local Government Claims Review Board, At-A-Glance Vol. 5 Iss. 3, March 2008.

Headlee Resources, At-A-Glance Vol. 5 Iss. 4 March 2008.

Local Unit Submitting Claim	Date	Claim Requesting Funds for…	Board Response
St. Joseph, city	1979	flags and flag holders at veterans' graves pursuant to 1979 PA 142 amendment to 1915 PA 63.	**No disbursement - "rules for the board had not yet been promulgated and no appropriation had been made."**
Muskegon, city	1980	flags and flag holders at veterans' graves pursuant to 1979 PA 142 amendment to 1915 PA 63.	**No disbursement - legislature had not identified the state requirements in the act and appropriations had not been made.**
Harrison Charter Township	1980	Township passed a resolution asking the state to fund an accelerated tax remittance requirement pursuant to 1979 PA 211.	**No response - Board determined a "resolution" was not a claim and a response was not appropriate.**
Traverse City	1980	accelerated tax remittance requirement pursuant to 1979 PA 211.	**No disbursement - legislature had not identified the state requirements in the act and appropriations had not been made. Board acknowledged enacting section 3 of 1979 PA 211 provided for annual appropriation of amounts necessary to cover increase in costs associated with the amendatory act.**
Grand Rapids, city	1981	accelerated tax remittance requirement pursuant to 1979 PA 211.	**No disbursement - legislature had not identified the state requirements in the act and appropriations had not been made.**
Bay City	1981	cost of implementing equalization of property class, pursuant to 1979 PA 214.	**Board determined no state costs had been identified and no appropriation had been made.**
Detroit, city	1981	cost of implementing equalization of property class, pursuant to 1979 PA 214.	**Board determined no state costs had been identified and no appropriation had been made.**
Oakland, county	1982	deaf interpreters in court proceedings pursuant to 1982 PA 15.	**Board determined that Headlee exempted costs required to assure due process.**
Oakland, county	1982	increasing Board of Canvassers compensation rates pursuant to 1982 PA 154.	**No disbursement - legislature had not identified state-required costs and there were no administrative rules.**
Huntington Woods, city	1983	"back payments" for two special elections and issuing new ID cards.	**Claim denied - responsibility for special election and ID cards existed in state law before 1978.**
Breen Township	1983	solid waste activities	**Barred from receiving state funds - Township had not appealed Circuit Ct. decisions finding that statute did not impose new activities on the township.**
Pontiac, city	1984	costs of a landfill pursuant to 1978 PA 641	**Claim denied - MI S. Ct. ruled than landfill operation was discretionary governmental operation, no Headlee violation occurs when state imposes additional requirements on local units that operate such sites.**

Local Unit Submitting Claim	Date	Claim Requesting Funds for…	Board Response
Canton Township	1984	costs to establish 4 new election precincts under reapportionment.	**Claim denied - AG letter stated reapportionment and accompanying duties existed in state law before 1978.**
Canton Township	1984	compensation award made pursuant to the police and fire arbitration law 1969 PA 312.	**Board staff responded that requirement existed in law before 1978.**
32nd Judicial Circuit Court	1985	Gogebic County Friend of the Court - request sent to State Treasurer and forward to Claims Review Board.	**Board determined that letter did not constitute a claim, so no response necessary.**
West Ottawa Public Schools	1985	sought information on filing a claim to offset costs for training swimming pool personnel in CPR pursuant to 1979 revisions to R 325.2198.	**Board determined that operation of a pool was voluntary and no legal basis for a claim.**
Mecosta, county	1985	implementing the crime victims rights program pursuant to 1985 PA 87, sought minimum of $10,000	**Board determined claim moot - OAG No. 6576 determined PA 87 imposed Headlee obligations, legislature recognized funding responsibility and made appropriations to cover costs.**
Community Mental Health Board, Monroe County	1986	implementing family support subsidy program pursuant to 1983 PA 249.	**Board staff responded with letter in 1999 that Claims Review Board had been reappointed and all outdated claims were to be dismissed unless an objection to dismissal was filed.**
Jackson, city	1987	implementing workplace hazardous materials right-to-know requirements pursuant to 1986 PA 80	**No disbursement - legislature had not identified state-required costs and there were no administrative rules.**
Oakland, county	1987	covering increased costs for each original transcript page charged by court recorders and reporters pursuant to 1986 PA 308	**No disbursement - legislature had not identified state-required costs and there were no administrative rules.**
Oakland, county	1987	offsetting costs of providing State Police fingerprints within 72 hours after arrest for certain crimes pursuant 1986 PAs 231-232	**No disbursement - legislature had not identified state-required costs and there were no administrative rules.**
Troy, city	1987	distribution of domestic violence information in personal protection cases under 1983 PAs 228-230	**No disbursement - legislature had not identified state-required costs and there were no administrative rules.**
Concealed Weapons Licensing Board, Ingham County	2002	implementing changes to concealed weapons permitting rules under 2000 PA 381.	**No decision - claim still outstanding**

At-a-Glance

Research Services Division

Section 29 Headlee Amendment Resources

RESOURCES

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Personal Communication. Douglas C. Drake. Public Policy Associates. Former staffer for the House Taxation Committee. February 21, 2008 and March 13, 2008.

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Prepared by
Terry Bergstrom

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Implementing Section 29 of the Headlee Amendment, Research Brief Vol. 5 Iss. 5, March 2008

Local Government Claims Review Board, At-A-Glance Vol. 5 Iss. 3, March 2008.

Headlee Resources, At-A-Glance Vol. 5 Iss. 4 March 2008.

Exhibit B

THE LEGISLATURE
LANSING, MICHIGAN

Joint Committee on Administrative Rules
P.O. Box 30036 Lansing, MI 48909-7536
Tel. (517) 373-6476 ~ Fax (517) 373-5548 ~ jcar@legislature.mi.gov

Memorandum

TO: Legislative Commission on Statutory Mandates

FROM: Colleen S. Curtis, Joint Committee on Administrative Rules (JCAR)

DATE: March 20, 2008

RE: The State Disbursements to Local Government Units Act, 1979 PA 101, MCL 21.236

The Joint Committee on Administrative Rules (JCAR) is providing the Commission with a response to the request for information on whether the actions, reporting obligations or other duties specified in section 6 of the State Disbursements to Local Government Units Act, 1979 PA 101, MCL 21.236, are being complied with at any time since 1979 to the present. The information provided in this response is based on JCAR procedures and records as emphasized below. Section 6 of 1979 PA 101 provides:

> 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. 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. [Emphasis added]

Short Answer: 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) pursuant to the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.245. 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. The required content of the RIS is specified in subdivisions (a) through (y) of subsection 3 of section 45 of the APA, MCL 24.245(3). 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).

(Cont.)

Exhibit B

JCAR Background: The Joint Committee on Administrative Rules (JCAR) is statutorily created bipartisan legislative committee comprised of 5 senate members and 5 house members. State agencies are required under the APA to submit proposed rules to JCAR for 15 session days of review prior to filing the rule with the Secretary of State. The role of JCAR has changed since the enactment of 1979 PA 101. The JCAR can issue a Notice of Objection during the 15-session-day review period which will cause legislation to be introduced in both houses of the legislature under section 45a of the APA, MCL 24.245a. However, the JCAR is no longer able to approve rules or disapprove rules in order to prevent them from being filed. See Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530 (2000). Under the present APA, if JCAR takes no action, the state agency can immediately file the rule with the Secretary of State.

Regulatory Impact Statement (RIS): For background purposes, the Regulatory Impact Statement (RIS) requirement was added to the APA by the enactment of 1980 PA 455, effective January 15, 1981. Since 1981, the APA has statutorily required state agencies to prepare and transmit to JCAR the RIS; and JCAR is required to provide a copy of the RIS to the Senate and House fiscal agencies under section 45 of the Administrative Procedures Act (APA), 1969 PA 306, MCL 24.245. Some changes were made to the RIS requirements in 1999 when the Legislature enacted 1999 PA 262, effective April 1, 2000. The 1999 amendments added a requirement that state agencies prepare and submit the RIS to the State Office of Administrative Hearings and Rules (SOAHR) (formerly the Office of Regulatory Reform) prior to an agency public hearing on a rule. In addition, the SOAHR is required to review and approve the RIS under subsection 4 of section 45 of the Administrative Procedures Act, 1969 PA 306, MCL 24.245.

The required content of the RIS is specified in subdivisions (a) through (y) of subsection 3 of section 45 of the APA, MCL 24.245(3). In preparing the RIS, the agencies estimate the cost of the rule; however, the estimate of the cost of the rule 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. Prior to the creation of the Office of Regulatory Reform by Executive Order 1995-6, the JCAR provided the state agencies with the RIS form in order to assist them in preparing the content of the RIS. See attachment A. After the establishment of the Office of Regulatory Reform, which was created to coordinate the processing of rules by state agencies, the state agencies began to use an RIS form provided by the Office of Regulatory Reform. See attachment B. Then in 1999, the APA was amended and the RIS statutory requirements were modified. The State Office of Administrative Hearings and Rules (formerly the Office of Regulatory Reform) now provides the agencies with the RIS form. See attachment C.

Senate and House Fiscal Agencies: The JCAR is required to electronically transmit to the Senate Fiscal Agency and the House Fiscal Agency a copy of each rule and Regulatory Impact Statement filed with JCAR under subsection 3 of section 45. JCAR has forwarded the rule and RIS to the Senate Fiscal Agency and the House Fiscal Agency for fiscal analysis pursuant to MCL 24.245(5).

Document Information: The RIS documents dating from 1995 to present may be available online through the SOAHR website at http://www.michigan.gov/dleg/0,1607,7-154-10576_35738---,00.html. JCAR also has records on the RIS documents; however, any records that remained in existence at the JCAR Office dating from 1980 to 2001 have been transferred to the Michigan Historical Center Archives.

Exhibit B

ATTACHMENT A

STATE OF MICHIGAN
Joint Committee on Administrative Rules

REGULATORY IMPACT STATEMENT
(required by P.A. 455 of 1980)

After the Legislative Service Bureau and the attorney general have approved a proposed rule but before the agency has formally adopted the rule, the agency shall transmit by letter copies of the rule bearing certificates of approval and copies of the rule without certificates to the Joint Committee on Administrative Rules. The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the Joint Committee on Administrative Rules.

The statement shall provide estimates of the impact of the proposed rule upon all of the following:

RULE TITLE AND SUBJECT	DATE

DEPARTMENT AND AGENCY SUBMITTING	SIGNATURE

A. REVENUES, EXPENDITURES AND PAPERWORK REQUIREMENTS OF THE AGENCY PROPOSING THE RULE.

B. REVENUES AND EXPENDITURES OF ANY OTHER STATE OR LOCAL GOVERNMENT AGENCY AFFECTED BY THE PROPOSED RULE.

Exhibit B

B REVENUES AND EXPENDITURES OF ANY OTHER STATE OR LOCAL GOVERNMENT AGENCY AFFECTED BY THE PROPOSED RULE

C TAXPAYERS CONSUMERS INDUSTRY OR TRADE GROUPS SMALL BUSINESS OR OTHER APPLICABLE GROUPS AFFECTED BY THE PROPOSED RULE

THE FOLLOWING IS A CHECKLIST FOR A COMPLETE STATEMENT TO THE JOINT ADMINISTRATIVE RULES COMMITTEE

REGULATORY IMPACT STATEMENT

		none
☐	on agency	☐
☐	on other state agencies	☐
☐	on local governments—fiscal note under P.A. 101 of 1979 as "state requirement" required	☐
☐	on local government—not a "state requirement"	☐
☐	on taxpayers	☐
☐	on consumers	☐
☐	on industry	☐
☐	on trade groups	☐
☐	on small business	☐
☐	on other groups	☐

Exhibit B

ATTACHMENT B

Office of Regulatory Reform

Romney Building, Fourth Floor

Lansing, Michigan 48933

Phone: (517) 373-0526

Fax: (517) 373-0259

Brian D. Devlin, Director

REGULATORY IMPACT STATEMENT

I. GENERAL:

I-A. Rule Number(s):

R 393.101 through R 393.199 of the Michigan Administrative Code are the current rules. The proposed rules will be R 393.1 through R 393.56.

I-B. Identify relationship of the rule to state and federal statutes and regulations:

I-C. Identify how the rule compares to an industry standard set by a state or national licensing organization.

I-D. Is the rule more restrictive or less restrictive than the federal rule or industry standard?

I-E. What are the sanctions on the state if the rule is not adopted?

II. GOAL OF RULE:

II-A. Identify the conduct and its frequency of occurrence that the rule is designed to change.

II-B. Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

II-C. Estimate the change in the frequency of the targeted conduct expected from the rule change:

II-D. Identify any alternatives to regulation by rule that would achieve the same or similar goals:

II-E. Discuss the feasibility of establishing a regulatory scheme within the industry independent of state intervention:

III. COSTS TO GOVERNMENT UNITS:

III-A. Estimate the cost of rule imposition on the department or agency promulgating the rule, including the costs of the equipment, supplies, labor and increased administrative costs for initial imposition of the rule and any ongoing monitoring:

III-B. Estimate the cost of rule imposition on other state or local government agencies, including the cost of equipment, supplies, labor, and increased administrative costs, in both initial imposition of the rule and any ongoing monitoring:

IV. COSTS TO REGULATED INDIVIDUALS:

IV-A. Estimate the actual statewide compliance costs of the rule to individuals, including the costs education, training, application fees, examination fees, license fees, new equipment or increased labor, exclusive of those costs identified in section III above:

IV-B. Identify any compliance costs requiring reports and the estimated cost of their preparation by individuals who would be required to comply with the rule:

IV-C. Estimate the cost of any legal, consulting and accounting services and any other administrative expenses individuals will incur in complying with the rule:

IV-D. Estimate the number of individuals the rule affects:

IV-E. Will the rule have a disproportionate impact on individuals based on their geographic location?

V. COSTS TO BUSINESS:

V-A. Estimate the actual statewide compliance costs of the rule to businesses, including the costs of equipment, supplies, labor, training, application fees, permit fees, supervisory costs, exclusive of those identified in sections III and IV above:

V-B. Identify any reports the rule requires and the estimated cost of their preparation by businesses:

V-C. Estimate the cost of any legal, consulting and accounting services and any other administrative expenses businesses will incur in complying with the rule:

V-D. Estimate the number of businesses the rule affects:

V-E. Identify any disproportionate impact the rule may have on small businesses because of their size or geographic location:

V-F. Discuss the ability of small businesses to absorb the costs estimated above without suffering economic harm and without adversely affecting competition in the marketplace:

V-G. Estimate the cost to the agency enforcing or administering the rule to exempt or set lesser standards for small businesses:

V-H. Determine the impact on the public interest of exempting or setting lesser standards for small business:

V-I. Explain how the agency reduced the economic impact of the rule on small businesses, as section 24.240 of the Michigan Compiled Laws requires, or discuss why such a reduction was not feasible:

V-J. Discuss whether and how the agency has involved both industry and small business in the development of the rule:

VI. BENEFITS OF RULE:

VI-A. Estimate the direct benefits of the rule, including but not limited to the rule's impact on business competitiveness, the environment, worker safety, and consumer protection:

VI-B. Estimate the secondary or indirect benefits of the rule, including spin-off benefits to business, the environment, workers, and consumers:

VI-C. Are the direct and indirect benefits of the rule likely to justify the cost?

VI-D. Estimate the cost reductions to government, individuals, and businesses as a result of the rule:

VI-E. Estimate the increased revenues to state or local government units as a result of the rule:

VI-F. Identify the sources you relied upon in calculating your cost and benefit responses:

ROA ________________________ ORR OFFICER ____________________________

DATE: ________________________ DATE: ____________________________

APPROVED:

ORR # ______DISAPPROVED: MORE INFORMATION:

Exhibit B

ATTACHMENT C

State Office of Administrative Hearings and Rules
PO Box 30695; 611 W. Ottawa Street
Lansing, MI 48909-8195
Phone (517) 335-2484 FAX (517) 335-6696

REGULATORY IMPACT STATEMENT

The department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the State Office of Administrative Hearings and Rules no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions may be made to **soahr_rules@michigan.gov**. The SOAHR will review the regulatory impact statement and send its response to the agency (see last page).

A. GENERAL

1. **SOAHR #, title, and rule numbers (or rule set range of numbers):**

2. **Identify the relationship of the rule to state and federal statutes and regulations:**

3. **Identify how the rule compares to an industry standard set by a state or national licensing organization.**

4. **Is the rule more restrictive or less restrictive than the federal rule or industry standard?**

5. **What are the sanctions on the state if the rule is not adopted?**

B. GOAL OF RULE:

6. **Identify the conduct and its frequency of occurrence that the rule is designed to change:**

7. **Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

8. **Estimate the change in the frequency of the targeted conduct expected from the rule change:**

9. **Identify any alternatives to regulation by rule that would achieve the same or similar goals:**

10. **Discuss the feasibility of establishing a regulatory scheme within the industry independent of state intervention:**

C. COSTS TO GOVERNMENT UNITS:

11. **Estimate the cost of rule imposition on the department or agency promulgating the rule, including the costs of equipment, supplies, labor, and increased administrative costs for initial imposition of the rule and any ongoing monitoring:**

12. **Estimate the cost of rule imposition on other state or local governmental agencies, including the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring:**

D. COSTS TO REGULATED INDIVIDUALS:

13. **Estimate the actual statewide compliance costs of the rule to individuals, including the costs of education, training, application fees, examination fees, license fees, new equipment or increased labor, exclusive of those costs identified in section C above:**

14. **Identify any compliance costs requiring reports and the estimated cost of their preparation by individuals who would be required to comply with the rule:**

15. **Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses individuals will incur in complying with the rule:**

16. **Estimate the number of individuals the rule affects:**

17. **Will the rule have a disproportionate impact on individuals based on their geographic location?**

E. COSTS TO BUSINESSES:

18. **Estimate the actual statewide compliance costs of the rule to specifically include small businesses, including the costs of equipment, supplies, labor, training, application fees, permit fees, supervisory costs, exclusive of those identified in sections C and D above:**

19. **Identify any reports the rule requires and the estimated cost of their preparation by businesses; specifically include small businesses:**

20. **Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses businesses will incur in complying with the rule; specifically include small businesses:**

21. **Estimate the number of businesses the rule affects:**

22. **Identify any disproportionate impact the rule may have on small businesses because of their size or geographic location:**

23. **Discuss the ability of small businesses to absorb the costs estimated above without suffering economic harm and without adversely affecting competition in the marketplace:**

24. Estimate the cost of the agency enforcing or administering the rule to exempt or set lesser standards for small businesses:

25. Determine the impact on the public interest of exempting or setting lesser standards for small businesses:

26. Explain how the agency reduced the economic impact of the rule on small businesses, as MCL 24.240 requires, or discuss why such a reduction was not feasible:

27. Discuss whether and how the agency has involved both industry and small business in the development of the rule:

F. BENEFITS OF RULE:

28. Estimate the primary and direct benefits of the rule, including but not limited to the rule's impact on business competitiveness, the environment, worker safety, and consumer protection.

29. Estimate the secondary or indirect benefits of the rule, including spin-off benefits to business, the environment, workers, and consumers:

30. Are the direct and indirect benefits of the rule likely to justify the cost?

31. Estimate the cost reductions to government, individuals, and businesses as a result of the rule:

32. Estimate the increased revenues to state or local government units as a result of the rule:

33. Identify the sources you relied upon in calculating your cost and benefit responses:

Exhibit B

Reviewed by Department Regulatory Affairs Officer:

Reviewed by SOAHR Representative:

SOAHR Response:

Date received:		
Approval		
Disapproval		Explain:
More information needed		Explain:
Date approved:		SOAHR #:

STATE DISBURSEMENTS TO LOCAL UNITS OF GOVERNMENT
Act 101 of 1979

AN ACT to implement section 29 of article 9 of the state constitution of 1963; to provide a state disbursement to local units of government for costs required to administer or implement certain activities or services required of local units of government 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

The People of the State of Michigan enact:

21.231 Meanings of words and phrases.

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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.231, which pertained to payment of expenses of certain state officers, was repealed by Act 208 of 1962.

21.232 Definitions; A to D.

Sec. 2. (1) “Activity” means a specific and identifiable administrative action of a local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not an administrative action.

(2) “Board” means the local government claims review board created by this act.

(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) “De minimus cost” means a net cost to a local unit of government resulting from a state requirement which does not exceed $300.00 per claim.

(5) “Department” means the department of management and budget.

(6) “Director” means the director of the department of management and budget.

(7) “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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.242, which pertained to payment of expenses of certain state officers, was repealed by Act 208 of 1962.

21.233 Definitions; E to N.

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) “Federal requirement” means a federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which requires the state to take action affecting local units of government.

(3) “Implied federal requirement” means a federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which does not directly require the state to take action affecting local units of government, but will, according to federal law, result in a loss of federal funds or federal tax credits if state action is not taken to comply with the federal action.

(4) “Legislature” means the house of representatives and the senate of this state.

(5) “Local unit of government” means a political subdivision of this state, including 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

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area.

(6) “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 state if the state were to provide the activity or service mandated as a state requirement, unless otherwise determined by the legislature when making a state requirement. Necessary cost does not include the cost of a state requirement if the state requirement satisfies 1 or more of the following conditions:

(a) The state requirement cost does not exceed a de minimus cost.

(b) 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 a de minimus cost.

(c) The state requirement imposes additional duties on a local unit of government which can be performed by that local unit of government at a cost not to exceed a de minimus cost.

(d) The state requirement imposes a cost on a local unit of government that is recoverable from a federal or state categorical aid program, or other external financial aid. A necessary cost excluded by this subdivision shall be excluded only to the extent that it is recoverable.

(7) “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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Constitutionality: Categorical aid to school districts for specific, identifiable programs which the districts are required to provide by statute or agency rule may not be reduced below the proportion paid by the state during the 1978-79 fiscal year, such as by requiring districts to offset any deficiency in categorical aid due by use of unrestricted aid. *Durant v State Board of Education*, 424 Mich 364; 381 NW2d 662 (1985).

21.234 Definitions; S.

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. The provision of a benefit for, or the protection of, public employees of a local unit of government is not a program.

(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 legislative or 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 financed by the state on December 23, 1978. For purposes of this definition, necessary costs shall not include costs required of local units of government by an existing law which do not exceed a de minimus cost and costs imposed by existing law on a local unit of government which are recoverable from a federal or state categorical aid program, or other financial aid.

(4) “State law” means a state statute or state agency rule which is not existing law.

(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 adopted pursuant to an initiative petition, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(b) A requirement imposed on a local unit of government by a state statute or 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, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(c) A court requirement.

(d) A due process requirement.

(e) A federal requirement.

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(f) An implied federal requirement.

(g) A requirement of a state law which applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.

(h) 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.

(i) 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.

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

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.235 Disbursements to local units of government; appropriation; purpose; schedule of estimated payments; duty of governor; prorating amount appropriated; supplemental appropriation; administration of act; personnel; guidelines; forms.

Sec. 5. (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.

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

(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 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.

(5) The department shall administer this act and shall assign sufficient personnel to assure proper and adequate administration. The department shall publish guidelines and furnish forms which shall be available to a local unit of government for submitting a claim for the disbursements required by this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.236 Fiscal note for rules requiring disbursement; request for appropriation.

Sec. 6. 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. 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.237 Joint rules; establishment; purpose; review of records; requesting audit.

Sec. 7. (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.

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(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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.238 Certification of disbursements; procedure; report on prorated claims; adjustment of prorated claims; payment of disbursements.

Sec. 8. (1) The department shall certify disbursements to each local unit of government for the necessary costs of state requirements from funds appropriated for that purpose.

(2) The department shall certify disbursements to a local unit of government as follows:

(a) Before a state requirement initially takes effect, the department shall notify each local unit to which the state requirement applies not less than 180 days before the effective date of the state requirement. The notice shall include a preliminary claim form for estimating the necessary cost of the state requirement for the initial state fiscal year in which the state requirement takes effect. The notice shall clearly indicate a date by which a claim must be postmarked to qualify for full advance disbursement as provided in subdivision (2)(b) of this section.

(b) To qualify for a full advance disbursement for a state requirement during the initial fiscal year in which a state requirement takes effect, each local unit of government desiring an advance disbursement shall submit the preliminary claim form provided by the department postmarked no later than 90 days before the effective date of the state requirement. If the claim is postmarked between 1 and 89 days before the effective date of the state requirement, the advance disbursement shall be equal to 90% of the estimated amount the unit would otherwise be entitled to.

(c) Each local unit of government shall submit a final claim for full reimbursement or final adjustment on a form provided by the department and postmarked not later than 90 days after the close of the local unit of government's fiscal year. If the final claim is postmarked between 91 days and 24 months after the close of the local unit of government's fiscal year, the director shall make a reimbursement or final adjustment payment equal to 90% of the amount the unit is otherwise entitled to.

(d) In any case, a preliminary or final claim for a de minimus cost shall not be allowed. A final claim postmarked more than 24 months after the close of the fiscal year shall not be allowed.

(e) The department may review the records 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 director shall cause to be paid a disbursement for only the necessary cost and shall adjust the payment to correct for any underpayment or overpayment which occurred in the previous state fiscal year.

(f) The provisions of subdivisions (a) and (b) of this section may be waived by a 2/3 majority vote of the members elected and serving in both houses of the legislature, if the legislature determines that an emergency exists necessitating that a state requirement become effective before the provisions of subdivisions (a) and (b) allow. The declaration of an emergency shall be established in each state requirement.

(g) The department shall pay all claims within 45 days after receiving the claim from a local unit of government. The department shall pay all claims pursuant to section 10(4) within 30 days.

(3) If the director prorates claims pursuant to section 5(4), the director immediately shall report this action in writing to the governor and the legislature.

(4) The director shall adjust prorated claims if supplementary funds are appropriated for that purpose.

(5) The state treasurer, upon certification by the director, immediately shall pay all required disbursements directly to the treasurer of the appropriate local unit of government.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: In subsection (2)(d), “de minimus” evidently should read “de minimis.”

21.239 Separate accounting for funds; purpose.

Sec. 9. 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

21.240 Local government claims review board; creation; duties; appointment, qualifications, and terms of members; majority vote required to approve claim; concurrent resolution approving payment; adoption of procedures; limitations on appeal; powers of board;

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report.

Sec. 10. (1) The local government claims review board is created in the department and shall advise the director on the administration of this act and perform other duties as required by this section.

(2) The board shall consist of 9 members appointed by the governor with the advice and consent of the senate. Each member shall be appointed to serve for a 3-year term, except that of the members first appointed, 3 shall be appointed for a term of 3 years, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 1 year.

(3) Not less than 4 members shall be representatives of a local unit of government.

(4) Subject to subsection (6), the board shall hear and decide upon disputed claims or upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose. The board shall not consider or approve a claim for a de minimus cost. A vote of a majority of the board members appointed to and serving on the board shall be required to approve a claim submitted to the board. If a claim is approved by the board, a concurrent resolution approving payment shall be adopted by both houses of the legislature before the claim is paid.

(5) The board shall adopt procedures for receiving claims under this section and for providing a hearing on a claim if a hearing is requested by an affected local unit of government. The procedures shall provide for the presentation of evidence by the claimant, the department, and any other affected state agency.

(6) An appeal submitted under this section for a disbursement for a state-required cost shall be limited to the following:

(a) An appeal alleging that the director has incorrectly reduced payments to a local unit of government pursuant to section 5(4).

(b) An appeal alleging that the director has incorrectly or improperly reduced the amount of a disbursement when a claim was submitted pursuant to section 8(2).

(c) An appeal alleging that the local unit of government has not received a proper disbursement of funds appropriated to satisfy the state financed proportion of the necessary costs of an existing activity or service required of a local unit of government by existing law, pursuant to section 12.

(7) In determining the merits of an appeal made pursuant to subsection 6(a), (b), or (c), the board, after reviewing the evidence presented, may increase or reduce the amount requested by the claimant or may allow or disallow the claim.

(8) Before January 31 of each year, the board shall report to the legislature and the governor on the number and amount of the claims the board has approved or rejected on appeal pursuant to this section.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Constitutionality: Taxpayers have standing to bring actions in the Court of Appeals under article 9 of the Michigan Constitution to enforce the provisions of §§ 25-31, including cases in which there are disputed facts; the local government claims review board has jurisdiction only over appeals under article 9 by local units of government. *Durant v State Board of Education*, 424 Mich 364; 381 NW2d 662 (1985).

Compiler's note: In subsection (4), “de minimus” evidently should read “de minimis.”

21.241 Information; collection and tabulation; scope; report to legislature; concurrent resolution; updating report.

Sec. 11. (1) Within 6 months after the effective date of this act the department shall collect and tabulate relative information as to the following:

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

(b) The nature and scope of each state requirement which shall require a disbursement under section 5.

(c) 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.

(2) The information shall include:

(a) 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.

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

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

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

(e) 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.

(3) The resulting information shall be published in a report submitted to the legislature not later than

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January 31, 1980. A concurrent resolution shall be adopted by both houses of the legislature certifying the state financed proportion of the necessary cost of an existing activity or service required of local units of

government by existing law. This report shall be annually updated by adding new state requirements which require disbursements under section 5 and each action imposing a cost on a local unit of government which does not require a disbursement under this act.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.241, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.242 State law causing reduction in state financed proportion of necessary costs.

Sec. 12. 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.242, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.243 State laws providing for other forms of state aid, cost-sharing agreements, or methods of making disbursements; MCL 21.234(5)(i) inapplicable to police, fire, or emergency medical transport services.

Sec. 13. 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.

Although not required by article IX, section 29 of the state constitution of 1963, the provisions of section 4(5)(i) shall not apply to any standards, requirements or guidelines which require increased necessary costs for activities and services directly related to police, fire, or emergency medical transport services.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Compiler's note: Former MCL 21.243, which pertained to uniform method of payment to state employees, was repealed by Act 256 of 1964.

21.244 Rules; purpose.

Sec. 14. 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.

History: 1979, Act 101, Imd. Eff. Aug. 3, 1979.

Administrative rules: R 21.101 et seq. of the Michigan Administrative Code.

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Exhibit D

Mandates Identified by Associations
Legislative Commission on Statutory Mandates
June 2009

		Recommended Mandate by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Mandates Pre-Headlee Amendment	Not a Mandate	Range of Estimated Costs of Mandate	Comments
Michigan Association of Counties (MAC)								
1		Court Funding - MAC believes that the funding of Circuit, Probate and District Courts is a mandate from the State requiring funding.				X	N/A	Courts are excluded from Headlee Amendment funding.
2		Constitutional Officers at Minimum Staffing Levels - MAC believes that the countywide elected officials' compensation should be funded by the State, as well as required bond coverage for officers and employees.				X	N/A	No funding required under the Headlee Amendment.
3		Operation and Maintenance of County Jail - MAC believes that the requirements for each county to provide, at its own expense, a suitable and sufficient jail in good working order should be funded by the State.				X	N/A	The jail statutes existed before the passage of the Headlee Amendment and were not funded by the State. Therefore, no unfunded mandate exists.
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			To be calculated.	
	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				To be calculated.	
	C	DHS Lawsuit Settlement - The Department of Human Services entered into a lawsuit settlement regarding the operation of foster care related to unlicensed settings.	X				MAC has estimated the cost of the consent agreement at $32 million.	

Exhibit D

Mandates Identified by Associations
Legislative Commission on Statutory Mandates
June 2009

	Recommended Mandate by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Mandates Pre-Headlee Amendment	Not a Mandate	Range of Estimated Costs of Mandate	Comments
5	Friend of the Court (FOC) - MAC believes that the State statutes have resulted in increased program levels over those in existence at the time of the Headlee Amendment passage. A detail report has been prepared by the FOC Association on the various statute changes.		X			To be determined.	
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			To be determined.	
7	Mental Health-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.		X			To be determined.	While the State funds 90% of the net cost of mental health operations, the expansion of services through mandates has resulted in burdens on counties. For example, the federal government requires developmentally disabled individuals to stay in school through age 21; State requirements have been expanded to age 26.
8	Economic Development - MAC believes that entities such as TIFAs strip funding sources from county operations on a local level.				X	N/A	Because TIFAs are not mandated by the State and are permissible, no funding is required.
9	Court Reporters - MAC believes the various costs of court reporting for the Circuit, Probate and District Courts should be funded by the State.				X	N/A	Courts are excluded from Headlee Amendment compliance and these services (which were not funded) by the State existed before the Headlee Amendment became effective.
10	Solid Waste Planning - MAC believes the State imposed a mandate on counties requiring periodic preparation of planning reports for submission to the State.				X	N/A	Solid waste planning is discretionary and, therefore, is not a mandate under the Headlee Amendment.
11	Veterans' Relief Fund - Counties are required to set aside no less than 1/10 of a property tax mill for veterans' relief services.				X	N/A	Mandate predated the Headlee Amendment and no State funding was provided at December 23, 1978.

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12	County Medical Care Facilities - Various mandates have been imposed over the years on medical care facility operations.				X	N/A	Because the operation of a county medical care facility is a discretionary service (i.e. not a mandate), there can be no mandate under the Headlee Amendment.
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. The data is used by the State in a funding formula. The data is no longer used by the legislature in determining appropriations.	X				To be determined.	
2	Native American Tuition Waivers - Public community colleges must waive tuition for any North American Indian who qualifies for admission as a full-time, part-time or summer school student and is a legal resident of Michigan for at least 12 consecutive months. There are currently 2,173 waivers.		X			To be determined.	The MCCA has determined that the cost of the waivers is $1,759,241 in this past year. Because the waiver program existed at the time of the Headlee passage, it must be compared with the proportionate funding levels at December 22, 1978.
3	Contributions to Michigan Public School Employee Retirement System (MPSERS) - In 1980, the State updated a 1945 public act and imposed a funding mandate upon community colleges. The 1980 public act creates a formula based upon the actuarial report. By the 1990s, the full cost of funding MPSERS was burdened on the community colleges.		X			To be determined.	The prior funding levels at December 23, 1978, and the current levels must be compared with the excess resulting in an unfunded mandate.
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				To be determined.	Programs include Michigan Nursing Program, Michigan Tuition Incentive Program, Michigan Competitive Scholarship, Michigan Children of Veterans Trust, Michigan Merit/Promise Scholarship, Michigan Educational Opportunity Grant and Michigan Adult Part-time Grant.

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5	Auditing Requirements - 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			To be determined.	Certain additional audit requirements were required after the time the Headlee Amendment was passed. The present costs of audits must be compared to the costs of less routine audits at the time of Headlee Amendment passage.
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.).	X					
Michigan Municipal League (MML)							
1	Binding Arbitration for Police and Fire Services (Act 312) - MML believes that Act 312 is a mandate.			X		N/A	Act 312 was in existence at the time of the Headlee Amendment passage but not funded by the State. Therefore, while a mandate, no funding of the mandate is required.
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.	X				To be determined.	
3	Segregation of Major/Local Street Funds - The State requires that two separate funds be used for accounting of major and local distributions from the State increasing the cost by limiting the use and transfers between these funds.			X		N/A	Requirements predate the Headlee Amendment passage.
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.	X				To be determined.	The cost of the services imposed by the recent mandate requires quantification; such costs would then be offset against the school reimbursements to assess whether there is an unfunded mandate.

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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				To be determined.	
6	Publication of Notices in Newspapers - Various municipal actions require notice to the public in local newspapers of general circulation.	X				To be determined.	The MML believes that there have been additional mandates for the publication of notices in newspapers required since the passage of the Headlee Amendment. Certain requirements could have existed at the time of the passage or prior thereto. As part of the assembly of the cost information, the specifics of this assertion must be refined.
7	Compost Permitting - The State has imposed a fee of $600 on local units of government for compost operations.				X	N/A	Compost operations are discretionary and are, therefore, not a Headlee Amendment mandate.
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.	X				To be determined.	
9	Quarterly Investment Reports by Treasurer to Local Boards/Councils - Investment officers are required to periodically report performance to the governing board/council.		X			To be determined.	The mandate existed at the time of the Headlee Amendment passage. Research is underway to determine the proportionate cost paid (if anything) at December 23, 1978, to assess whether an unfunded mandate exists.
10	Requirements to Share Master Plans - MML believes that the sharing of master plans relating to a planning commission is a mandate.				X	N/A	Since planning commissions are not required, this issue is not a mandate requiring State funding.

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	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, but it is believed to be insufficient to cover all costs of the mandate.	X				To be determined.	
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.	X				To be determined.	The cost of the services imposed by the recent mandate requires quantification; such costs would then be offset against the school reimbursement to assess whether there is an unfunded mandate.
3	Defending Utility Property Tax Appeals - The State recently changed the personal property tax multipliers that resulted in substantial local legal costs. MTA believes these costs arising from the State changes should be an unfunded mandate.				X	N/A	The cost of defending property tax appeals existed prior to the Headlee Amendment and was not reimbursed by the State on December 23, 1978.
4	New Assessing Requirements - Proposal A was passed in 1994 that required substantial added services for local assessors and county equalization departments.	X				To be determined.	
5	Binding Arbitration for Police and Fire Services (Act 312) - MTA believes that Act 312 is a mandate.			X		N/A	Act 312 was in existence at the time of the Headlee Amendment passage but not funded by the State. Therefore, while a mandate, no funding of the mandate is required.
6	Municipal Publication of Notices in Newspapers - Various municipal actions require notice to the public in local newspapers of general circulation.	X				To be determined.	The MML believes that there have been additional mandates for the publication of notices in newspapers required since the passage of the Headlee Amendment. Certain requirements could have existed at the time of the passage or prior thereto. As part of the assembly of the cost information, the specifics of this assertion must be refined.

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	Recommended Mandate by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Mandates Pre-Headlee Amendment	Not a Mandate	Range of Estimated Costs of Mandate	Comments
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.	X				To be determined.	
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.	X				To be determined.	
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			To be determined.	Certain additional audit requirements were required at the time the Headlee Amendment was passed. The present costs of audits must be compared to the costs of less routine audits at the time of Headlee Amendment passage.
10	Requirement to Share Master Plans - MTA believes that the sharing of master plans relating to a planning commission is a mandate.				X	N/A	Planning commissions are not required by the State. However, recent additional mandates involving planning commissions have burdened townships with added compliance costs. While it may be feasible to discontinue a planning commission, for all practical purposes this becomes an unfunded mandate even if there is no legal requirement of the State to fund these costs.

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	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. Related to the above is the annual audit report. 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			To be determined.	Certain annual audit requirements were required after the Headlee Amendment was passed. The present cost of audits must be compared to the costs of less routine audits at the time of the Headlee amendment passage.
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. Related to the above in the Annual Audit Report.		X			To be determined.	Certain annual audit requirements were required at the time the Headlee Amendment was passed. The present cost of audits must be compared to the costs of less routine audits at the time of Headlee amendment passage.
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. In doing so, these added burdens are mandates requiring State funding.	X				To be determined.	
4	Asset Management - The State requires road commissions to evaluate and report on infrastructure status.		X			N/A	While a mandate, CRAM asserts that the mandate is funded.
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			To be determined.	Certain additional audit requirements were required after the time that the Headlee Amendment was passed. The present costs of audits must be compared to the cost of less routine audits at the time of Headlee Amendment passage.

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6	Michigan Manual of Uniform Traffic Control Devices (2F.05) - CRAM has indicated that MDOT has mandated the lettering sizes on traffic control signs, requiring additional expense.				X	N/A	MDOT has indicated no such requirement exists and is not enforced, meaning it is a guideline not a mandate. MDOT's assertion and CRAM's understanding of the issue will require reconciliation prior to the final report.
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.	X				To be determined.	
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.		X			N/A	While the Clinton County Road Commission may be correct that it is a mandate, the estimated cost (which is considered di minimus) is $510 to do so on an annual basis.
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			To be determined.	
10	Township Reporting Requirements - Road commissions are required to report on township financial support in the annual Act 51 reports.	X				N/A	Luce and Hillsdale Road Commissions have indicated that the annual cost of preparing this report is $500 and $1,000 respectively.
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				To be determined.	Hillsdale County indicates a loss of $44,000 annually.

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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				To be determined.	The Road Commission of Oakland County estimates a cost of $100,000 annually to comply with this requirement.
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 required funding contribution 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.	X				Estimated at $1.45 billion.	
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 use each school's general fund resources in order 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				To be determined.	The Michigan Supreme Court ruled in 1997 that the State is obligated to fund special education services under the Headlee Amendment. The Court avoided ruling in a subsequent case that the revised funding scheme, to the extent that the source of funding for those same services is each school's general fund revenues, meets the Headlee Amendment requirements.

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		Recommended Mandate by Association	Mandates Post-Headlee Amendment	Mandates In Existence December 23, 1978	Mandates Pre-Headlee Amendment	Not a Mandate	Range of Estimated Costs of Mandate	Comments
	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			To be determined.	The Supreme Court ruled in a subsequent case, known as the Adair case, that while numerous post Headlee mandates may be violative of the Headlee Amendment, the schools were untimely in challenging any underfunding that is occurring unless the source of the mandate postdates the 1997 Durant decision. The present services have been placed in effect subsequent to the Durant decision and are, thus, not barred by operation of that decision.
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				To be determined.	
	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				To be determined.	
4		Data Reporting Requirements						

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	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.	X				To be determined.	The legislature granted a one-time $3.4 million appropriation for schools' start-up costs during the 2001-2002 school year. No funding has been subsequently provided by the State for the costs of these services which continue to be required through the present time.
	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.						
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			To be determined.	
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			To be determined.	