Headlee Amendment
Enforcement:
Taxpayers for Michigan Const. Govt.
v.
State of Michigan

JOHN C. PHILO
SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE
DETROIT, MI
**Headlee Amendments**

**Local Governments**

**Tax Limitations**

- **Article IX § 25**
  - Local taxes capped, voter approval to exceed

- **Article IX § 31**
  - Prohibition on any new tax not authorized by law/charter in 1978 without voter approval
  - Prohibition from increasing the rate of an existing tax above 1978 rate without voter approval
  - Limitations on broadening base of existing tax/assessed property value increases

**State Prohibitions**

- **Article IX § 25**
  - Prohibition on unfunded state mandates
  - State prohibited from reducing the proportion of state spending in the form of aid paid to local governments
  - State prohibited from shifting the tax burden to local government

- **Article IX § 29**
  - Prohibition against reducing the state financed proportion of the necessary costs of any existing activity required of Local Government by state law
  - Prohibition on unfunded state mandates

- **Article IX § 30**
  - Proportion on reducing state payments to all units of Local Government, taken as a group, below the proportion existing in 1978-79
THREE PROHIBITIONS

- Unfunded Mandates
- Tax Shifts
- Revenue Sharing
State Prohibitions:

Unfunded State Mandates

“...The state is prohibited from requiring any new or expanded activities by local governments without full state financing...”

Article IX § 25

“...A new activity ... or an increase in the level of any activity or service ... shall not be required ... of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs...”

Article IX § 29
State Prohibitions:

Preservation of Revenue Sharing

§ 25 Voter approval of increased local taxes; prohibitions; emergency conditions; repayment of bonded indebtedness guaranteed; implementation of section.

Sec. 25.

Property taxes and other local taxes, without direct voter approval. The state, from state financing, from reducing the tax burden to local government. Any bonded indebtedness is guaranteed. In the event of any deficiency in the tax collected herein without full the tax guaranteed herein without full the tax guaranteed herein without full

“...The state is prohibited ... from reducing the proportion of state spending in the form of aid to local governments ...”

Article IX § 25

§ 30 Reduction of state spending paid to units of local government.

Sec. 30.

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 1978-79."

Article IX § 30
State Prohibitions:

Shifting The Tax Burden to Local Government

“... The state is prohibited ... from shifting the tax burden to local government ...”

Article IX § 25
Headlee Amendment

Local Governments

Property and other tax at existing levels.

Prohibition against shifting the tax burden.

Preservation of state revenue sharing at existing levels.

Prohibition against shifting the tax burden.

Preservation of Local Government Income Streams.
### Own Source Revenue: Michigan Municipalities

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2007</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own Source Revenue (millions)</td>
<td>$5,564</td>
<td>$6,693</td>
<td>$6,288</td>
</tr>
</tbody>
</table>

### Federal Revenue: Michigan Municipalities

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2007</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Revenue (millions)</td>
<td>$608</td>
<td>$479</td>
<td>$670</td>
</tr>
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</table>

### State Revenue: Michigan Municipalities

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2007</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Revenue (millions)</td>
<td>$3,098</td>
<td>$1,563</td>
<td>$1,333</td>
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</table>

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Change MI</td>
<td>-49.6%</td>
<td>-14.7%</td>
<td>-57.0%</td>
</tr>
<tr>
<td>Change US</td>
<td>16.1%</td>
<td>6.6%</td>
<td>23.8%</td>
</tr>
<tr>
<td>National Rank</td>
<td>50</td>
<td>43</td>
<td>50</td>
</tr>
</tbody>
</table>

### Municipal General Revenue, 2002-2012

<table>
<thead>
<tr>
<th></th>
<th>Michigan</th>
<th>Ohio</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change 2002 to 2012</td>
<td>-8.5%</td>
<td>25.4%</td>
<td>48.9%</td>
</tr>
<tr>
<td>National Rank</td>
<td>50th</td>
<td>49th</td>
<td></td>
</tr>
</tbody>
</table>
MUNICIPAL GENERAL REVENUE BY SOURCE (2014)

EXCLUDES INCOME TAX CITIES

- Property Tax 59%
- Revenue Sharing 14%
- Permits, Fees, Fines, and Other Revenue 27%

Total Revenue Sharing to Cities, Villages, and Townships

Statutory revenue sharing is estimated to be $585 million below the full funding of the statutory dedication. Since Proposal A in 1994, the cumulative amount of cuts to statutory revenue sharing for cities, villages, and townships is estimated to be more than $5.5 billion.
John Mogk
Professor, Wayne State University, Law School

Nick Guttman

Bob Sedler

Tracy Peters
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 1978-79.*
TPMCG v. State of Michigan

Annually constitutional proportion is determined by:

\[
\text{NUMERATOR} \geq 48.97\% \\
\frac{(\text{Total State Spending Paid to Local Units of Gov't in the form of Aid})}{\text{DENOMINATOR}} \\
\text{DENOMINATOR} \geq \frac{(\text{Total State Spending from State Sources})}{\text{NUMERATOR}}
\]
TPMCG v. State of Michigan

Art. IX § 30 Numerator

Payments from Prop. A Revenue

Payments for Funded Mandates
Payments to Charter Schools
Payments from Prop. A Revenue

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.

When included in the numerator, payments from Prop. A revenue are an impermissible tax shift, prohibited by Art. IX, § 25
Payments from Prop. A Revenue

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.

DRAFTERS NOTES

Section 25

Section 25 specifically prohibits the state from circumventing the intent of the amendment by shifting tax burdens from the state to local governmental levels.

Any action by the state which would result, directly or indirectly, in increased local taxation through a shift in funding responsibility is clearly prohibited by this Section.

P. 3
Payments from Prop. A Revenue

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.
Payments from Prop. A Revenue

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.
Payments to Charter Schools

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.

- **State pending included in the numerator**, can only include payments to units of local government. Art. IX, § 30

- Charter schools are not units of local government as defined by Art. IX, § 33
Sec. 33.

“Local Government” means any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government.
Charter schools, by law, are required to be private nonprofit corporations. MCL 380.502

A constitution is made for the people and by the people. The interpretation that should be given it is that … most obvious to the common understanding” [at the time it was ratified] - Justice Thomas Cooley
Payments to Fund State Mandates

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.

► **When included in the numerator**, payments to fund new state mandates (after 1978) defeat the purpose of Art. IX, § 29 and Art. IX, § 30
Payments to Fund State Mandates

Cannot be included within the numerator for determining the Article IX § 30 constitutional proportion.

DRAFTERS NOTES

Section 29

This section requires reimbursements to local units for necessary new costs for all state mandates ... The state is prohibited from reducing the state financed proportion of specific existing activities or services below the proportion funded by the state in the base year.

Section 30

Additional or expanded activities mandated by the state, as described in Section 29 would tend to increase the proportion of total state spending paid to local government above that level in effect when the section becomes effective.
Annual Report of Funded State Mandates

MCL 21.235.

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.

... (3) The governor shall include in a report ... those amounts ... [of] 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.
### TABLE D: SHORTFALLS IN ADJUSTED STATE PAYMENTS INCREASE SINCE PROPOSAL A

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>FY 2015-16</td>
<td>$29,943</td>
<td>$16,692</td>
<td>$14,663</td>
<td>55.75%</td>
<td>$5,381</td>
<td>$1,211</td>
<td>$10,100</td>
<td>33.7%</td>
<td>($4,563)</td>
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<tr>
<td>FY 2014-15</td>
<td>$29,524</td>
<td>$16,313</td>
<td>$14,458</td>
<td>55.25%</td>
<td>$5,375</td>
<td>$1,181</td>
<td>$9,757</td>
<td>33.0%</td>
<td>($4,701)</td>
</tr>
<tr>
<td>FY 2013-14</td>
<td>$28,301</td>
<td>$15,701</td>
<td>$13,859</td>
<td>55.48%</td>
<td>$5,368</td>
<td>$1,144</td>
<td>$9,189</td>
<td>32.5%</td>
<td>($4,670)</td>
</tr>
<tr>
<td>FY 2012-13</td>
<td>$27,313</td>
<td>$15,369</td>
<td>$13,375</td>
<td>56.27%</td>
<td>$5,334</td>
<td>$1,053</td>
<td>$8,981</td>
<td>32.9%</td>
<td>($4,394)</td>
</tr>
</tbody>
</table>
Shortfall in Art. IX § 30 Payments

Results of the state improperly counting spending on Proposal A and Charter Schools as aid required by the State of Michigan Constitution.
“[W]e grant summary disposition to plaintiff’s on Count IV and declare that pursuant to §29, funding for new or increased state mandates may not be counted for purposes of §30. Finally, we grant mandamus relief and direct the State, and its officers and departments, to comply with the reporting and disclosure requirements of MCL 21.235(3) and MCL 21.241.”
“If state spending to fund new state-mandates under § 29 may be included in the State’s calculation of the proportion … under § 30, then § 29 state funding for new mandates would supplant state spending intended for local use and, thereby, allow funding for new mandates to serve two conflicting purposes, i.e., to fund new state mandates as well as to the 1978-1979 level of state funding to local governments. This double-duty would force units of local government to choose between cutting services or raising taxes to make up for the funds lost to pay for the necessary costs of new mandates. Such a result is at odds with … the Headlee Amendment.”
“[T]he voters intended, as revealed in the plain language of § 30, that the State be free from time to time to rebalance how § 30 revenue sharing is distributed among “all units of Local Government, taken as a group” so long as the overall proportion of funding remains at the constitutionally-mandated level. The inclusion of Proposal A funding in § 30 spending reflects a constitutionally sanctioned rebalancing of the distribution of that revenue sharing.”
“We conclude, however, that state funding of PSAs constitutes funding of a local unit of local government for the purpose of calculating state aid under the Headlee Amendment.”

- “in light of the Revised School Code, MCL 380.1 et seq., which provides that “[a] public school academy … is a school district for purposes of section 11 of article IX of the state constitution of 1963”; and

- “the School Aid Act, MCL 388.1601 et seq., includes PSAs in the definition of “district.””
“I would find that a Public School Academy (PSA) is neither a “political subdivision of the state,” generally, nor a “school district,” specifically, within the meaning of § 33 and, thus, is not a species of local government for purposes of § 30.”
“Nowhere in our Constitution does it state that local-government equivalency suffices; the provision simply states “local . . . government.” It is thus irrelevant to note all of the functions that the Tribe provides that are similar to that of, for example, the city of St. Ignace—that the two entities function similarly in some respects does not make them the same.”
Current Status