



**Navigating State and Federal Requirements During
Economic Crisis:
Findings and Recommendations of
Legislative Commission on Statutory Mandates**

**Michigan Association of Treasurers
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Oakland County

Take Aways

- Headlee Amendment passed in Nov., 1978; became effective December 23, 1978.
- Unfunded mandates occurred unabated for 30 years – many governors and many sessions of the Legislature.
- No system to identify and fund mandates imposed on local units of government.
- Legal challenges during the past 30 years under Headlee Amendment took substantial time in the courts and funding.

Take Aways

- Legislative Commission on Statutory Mandates (LSCM) created.
- Task: to review ALL mandates and related costs in Dec. 2007. Scope of work required revision – done in 2008. Appropriation - \$10,000.
- Interim report issued June 2009 with findings.
- Final report issued Dec. 2009 with recommendations to *prevent* mandates from occurring and *cure* those imposed without appropriate funding.

Take Aways

- Testimony taken. Issues researched. Involved member associations of legal units of government, State officials, public, etc.
- Legislation and court rule changes proposed as part of final report.
- **CRITICAL** – need to continue the support of complying with Headlee Amendment and encourage the movement by State to address the legislation and court rule changes.

State Budget Issues

- State's fiscal and budgetary problems for FY-2011 and beyond are substantial – and recurring. Little equity remains. Reliance on one-time budget transactions and recently federal stimulus funds.
- Revenue estimation conference in January 2010 – consensus was \$1.7 billion short for FY-2011.
- Reforms will be difficult in time remaining. If no second federal stimulus then, cuts and / or new taxes likely.
- Not out of the realm of possibility that attempts will be made to 'push down' State functions. Some attempts already in the public health operations in the past year.

Headlee Amendment

- Headlee prohibition on unfunded mandates "*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.*" Michigan Constitutional Amendment, 1978.

Background

- Prohibition ignored by State over last 30 years. Governors, Legislators, and Court.
- During Fall 2007 budget crisis Legislature recognized that unfunded mandates were creating major fiscal crisis for local units and needed to be analyzed. Recommendations sought.
- Legislation passed in Oct. 2007 to create Legislative Commission on Statutory Mandates (LCSM).



Background – (Cont.)

- Commission members have met monthly in calendar 2008 and 2009 since LCSM's establishment.
- Comprised of Amanda Van Dusen (Miller, Canfield - Partner), Dennis Pollard (Attorney), Lou Schimmel (Bond consultant / former Ecorse Receiver), Dallas Winegarden (Attorney), and Robert Daddow (Oakland County).
- Charged with identifying ALL mandates and reports imposed by the State on local units of government and related cost of compliance – scope too broad.



Background – (Cont.)

- Scope of work revised in 2008 – incorporate 10 mandates as recommended by the related associations (schools / ISDs, counties, municipalities, townships, road commissions, and community colleges).
- Commission took testimony, reviewed related previous research, and prepared an interim report.
- Citizens Research Council prepared a report of similar funding restrictions as the Headlee Amendment in other states – with an assessment (issued July 2009). LCSM based much of its recommendations on the successes / failures of other state's controls over imposition of unfunded mandates. (Web Site: crcmich.org).

Findings - General

- State developed and passed P.A. 101 in 1979 (procedures to ensure compliance with Headlee), but failed to pass joint House / Senate procedures – it was not ever in effect. Act was essentially ignored by State government in its entirety.
- For example, Headlee committee to review funding violations has not been seated for a few decades.
- Interim report documented that the State ignored Headlee Amendment completely and did not fund mandates and reporting requirements imposed on local units. Supported by written testimony, other reports and oral testimony.

Findings - General

- Courts have failed to timely enforce the Headlee Amendment – Durant I, for example, took 17 years to run its course.
- Courts have taken the position that they will not instruct Legislature to appropriate funds to comply with the Headlee Amendment – based on separation of powers concept. Leaves Headlee Amendment, to a large degree, toothless.
- Subtlety to significant delays - the local units of government cover the mandate's costs out of local resources while litigation slowly winds its way through courts.

Findings – General (cont.)

- In fact, the Supreme Court wrote of the concern in the Durant opinion – “....We anticipate that taxpayer cases filed in the Court of Appeals will proceed to rapid decision on the issue of whether the state has an obligation under art. 9, sec. 29 to fund an activity or service....”
- Yet, the Adair school district litigation involving a Headlee complaint started in 1999 and remains still unaddressed – 10 years later.

Findings – General (cont.)

- Incorporated as part of the Interim report in four categories – 10 association recommended mandates:
 - Mandate but preceded Headlee (requires no funding by State). Act 312, for example.
 - Mandate at time Headlee effective (requires same proportionate funding presently – however, no benchmark was ever prepared). Public health / community mental health funding.
 - Mandate after Headlee effective (100% funding required). School reforms.
 - Was not a mandate.

Findings – Costing Barriers

- Accounting information for programs were not created following Headlee Amendment adoption to document base year (1978) proportion of funding mandated services.
- No State attempt to create accounting system to track ongoing costs of continuing mandates.
- Presently, over 30 years of history. Accounting records and institutional memory lost.
- Legal interpretation can be costly and complex – particularly with federal components (example – environmental issues).



Findings – Costing Barriers

- Long time to challenge any Headlee violation.
- Assembly of cost data for litigation is generally difficult for all of the above issues.
- However, for those Headlee challenges are successful, the legal fees paid by State.

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Association Recommended Mandates

- Associations who supplied 10 mandates – MAC, MTA, MML, MSBO, CRAM and MCCA.
- Interim report cited roughly 10 mandates per association with a legal evaluation of each of the mandates.
- Mandates involve 3 time frames – as noted previously:
 - Unfunded mandate. Preceded Headlee (requires no funding by State).
 - Mandate at time Headlee effective (requires same proportionate funding presently – however, no benchmark was ever prepared).
 - Mandate after Headlee effective (100% funding required).

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Association Recommended Mandates

- Some association-recommended mandates were so complex that it defied a costing calculation (particularly with only \$10,000 in funding LSCM) – environmental requirements, public health, friend of the court, and community mental health as examples. Changes in mandates over the years complicated matters as well.
- Costing of mandates, to the extent possible, conducted by MSU. Of the mandates where costs could be assembled, the range was \$2.2B to \$2.5B *annually*.
- No realistic way State can cover these costs any time soon.



Final Report - Recommendations

- Honor the intent of the Headlee Amendment.
- Preventative and Curative Measures. **Prevent** unfunded mandate from being imposed. If adopted, then provide a **curative** process to resolve legislation passed with mandates but insufficient funding to cover the local units' costs.
- Citizens Research Council cited that states use *either* preventative and curative measures but not both. Using one process – prevent or curative – was not successful in any state. Commission recommends use of both.
- Prevent:
 - Fiscal note on all statutes involving any request for action by local units of government.
 - Tie-bar mandate legislation to an appropriations bill.



Final Report - Recommendations

- Prevent (continued):
 - Involvement by associations in cost assembly incorporated into the fiscal note. Increases the associations' stature in the legislative process. Could build support for passage.
 - If legislation is passed with no fiscal note, legislation is not effective on local governments until such time as one is included and / or funding provided.
 - Other steps to help prevent an unfunded mandate from being passed by Legislature and signed into law by Governor.

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Recommendations (Cont.)

- Curative (assuming mandate legislation is passed but underfunded):
 - Section 32 – Headlee: “Any taxpayer of the State shall have standing to bring suit in the ... Court of Appeals to enforce the provisions of the Amendment.”
 - Court of Appeals filing.
 - Use of a special master to facilitate the evaluation of mandate. Performs research – not normally a function of Court of Appeals.
 - Special master would determine only if there is mandate and whether it is underfunded (or, unfunded altogether, for example).

Recommendations (Cont.)

- Curative (continued):
 - If mandate and underfunded (or no action taken by special master), after six months local unit of government would not have to comply with the mandate absent funding from the State. Shifts timely responsibility to the State.
 - Local units still can comply with mandate at the end of the six month period – at their option.
 - Burden of proof shifts to State to explain why it isn't unfunded mandate.
 - Changes in joint House / Senate procedures / court rules required.
 - Various periodically-issued reports imposed on the State to demonstrate compliance with the Headlee Amendment.

Recommendations (Cont.)

- Other recommendations:
 - State DMB to develop the requisite accounting systems to track mandates and related fiscal status.
 - Fund the mandates as best the State can.
 - State a larger, on-going project to review all past unfunded mandates beyond the scope of work of the LCSM.

Various Issues and Concerns

- Past violations: Commission recognized numerous and costly past violations imposed on local units of government. Would be costly to assemble details if it can be done. State's financial situation prevents / limits funding but non-compliance still opens the State up to litigation potential.
- Eliminate mandate: In lieu of funding mandate, change the *required* component of the legislation and shift it to *permissive* legislation – eliminating mandates and thereby, the State's obligation to fund.

Various Issues and Concerns (Cont.)

- “Good Mandates” – services should be performed by local units anyway and should not require State funding – it is governments’ role. So, only the ‘bad mandates’ passed by the State require funding? Which ones are these? Headlee says what it says. All new mandates must be funded.
- No staff – due to reductions, the State has no staff to perform the analysis. Nothing in Headlee allows for relief due to no staff availability – prioritize.

Summary

- Headlee Amendment not complied with for the past 30 years.
- The significant fiscal issues of the State could expose the local units to added mandates not properly funded.
- Need to adopt the LCSM recommendations to prevent unfunded mandates / cure those that get through.
- **MOST IMPORTANTLY** - Need to secure support from associations to ensure that the legislation is passed in 2010 to avoid future unfunded mandates. Contact your local senator / representative and support the recommendations.