I. INTRODUCTION

Twenty years ago, after a general election held on November 7, 1978, Michigan voters ratified an initiative petition, Proposal E, amending Article IX of the Michigan Constitution.1 This constitutional amendment, popularly known as the Headlee Amendment, “was proposed as part of a nationwide ‘taxpayer revolt’ in which taxpayers were attempting to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and state level.”2 The Headlee Amendment added Sections 25-34 to Article IX. The following is a summary of the added sections.

Article IX, Section 25 summarizes the four core provisions of the Headlee Amendment:3

1. Property taxes, other local taxes, state taxation, and state spending may not exceed the limitations of the Amendment, absent voter approval.

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* Professor of Law, Michigan State University – Detroit College of Law.
1. Article II, § 9 of the Michigan constitution allows for modification of the constitution by initiative or referendum. Through either process, the voters may propose and adopt laws independent of the Legislature or approve or reject laws enacted by the Legislature. The 1978 amendments to Article IX were enacted through the initiative process.
3. Section 25 provides:

Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in Sections 26 through 34, inclusive, of this Article.

The Michigan Supreme Court has stated that Section 25 “is merely an introduction to the provisions contained in §§ 26-34 and is not an independent statement of rights or duties.” Durant, 381 N.W.2d at 666 n.4.
2. The state is prohibited from requiring new or expanded activities by local governments without full state financing.

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

4. The state is prohibited from shifting the tax burden to local governments.

Sections 26 through 34 of Article IX expand on Section 25's broad provisions. First, Section 26 limits the amount of taxes the state may collect in any given fiscal year to 9.49 percent of personal income in Michigan during the preceding calendar year. Section 26 further provides that taxpayers are to receive a refund if revenues exceed the limit by 1 percent or more.

Second, in the event of a fiscal emergency, Section 27 permits a one-year suspension of the Section 26 revenue limit upon the Governor's request and the two-thirds concurrence of the Legislature.

Third, Section 28 prohibits deficit spending.

Fourth, Section 29 prohibits the state from circumventing the taxing and spending limits of Sections 26 and 28 in two respects. Section 29 prohibits the state from reducing the state financed proportion of necessary costs for mandated programs in effect when the Headlee Amendment was ratified. This provision is known as the maintenance-of-support provision. Section 29 further prohibits the state from requiring units of local government to perform new or increased activities since ratification of the Headlee Amendment without appropriating funds to cover the necessary increased costs.

Fifth, Section 30 is a corollary to Section 29. While Section 29 ensures that the proportion of state money paid to local government to cover necessary costs will not decrease from fiscal year 1978-79 levels, Section 30 provides that the percentage of the total state budget earmarked for local government spending will not decline from the fiscal year 1978-79 level.

Sixth, Section 31 contains three provisions aimed at protecting the taxpayer from paying an increased share of his income to local government units: (a) voter approval is required for any new local tax

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4. HEADLEE BLUE RIBBON COMM'N REPORT TO GOVERNOR JOHN ENGLER, 9, 1994 [hereinafter HEADLEE COMM'N REPORT]. See also MICH. CONST. art. IX, § 26.
5. HEADLEE COMM'N REPORT, supra note 4, at 9.
6. MICH. CONST. art. IX, § 27.
7. MICH. CONST. art. IX, § 28.
8. MICH. CONST. art. IX, § 29.
9. Id.
10. MICH. CONST. art. IX, § 30.
or any increase in the rate of an existing local tax; (b) if the base upon which any existing local tax is expanded, then the tax rate must be reduced; and (c) if annual property valuations are greater than the annual rate of inflation, then the property tax rate in the local governmental unit must be reduced so that the increased tax levy on existing property is no greater than the rate of inflation.\textsuperscript{11}

Seventh, Section 32 gives taxpayers standing to challenge alleged violations of the Headlee Amendment and vests the Court of Appeals with original jurisdiction over such taxpayer suits.\textsuperscript{12}

Finally, Section 34 authorizes the Legislature to enact implementing legislation to bring the terms of the Headlee Amendment into effect in Michigan.\textsuperscript{13} The following table summarizes the Headlee Amendment's provisions:

\begin{table}
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\hline
\textbf{Section} & \textbf{Provision} \\
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31 & or any increase in the rate of an existing local tax; (b) if the base upon which any existing local tax is expanded, then the tax rate must be reduced; and (c) if annual property valuations are greater than the annual rate of inflation, then the property tax rate in the local governmental unit must be reduced so that the increased tax levy on existing property is no greater than the rate of inflation.\textsuperscript{11}
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34 & Finally, Section 34 authorizes the Legislature to enact implementing legislation to bring the terms of the Headlee Amendment into effect in Michigan.\textsuperscript{13}
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\textsuperscript{11} MICH. CONST. art. IX, § 31.
\textsuperscript{12} MICH. CONST. art. IX, § 32.
\textsuperscript{13} MICH. CONST. art. IX, § 34.
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This article is a restatement of the law of the Headlee Amendment. It summarizes the Amendment's provisions, provides an overview of the statues enacted by Legislature since 1978 to
implement those provisions, and analyzes the growing body of case law interpreting the Amendment.

II. ARTICLE IX, § 26: THE STATE REVENUE LIMIT

Section 26 limits the amount of taxes the state may impose in any given fiscal year to 9.49 percent of personal income in Michigan during the preceding calendar year.\(^\text{14}\) Section 26 provides in full:

There is hereby established a limit on the total amount of taxes which may be imposed by the Legislature in any fiscal year on the taxpayers of this state. This limit shall not be changed without approval of the majority of the qualified electors voting thereon, as provided for in Article 12 of the Constitution. Effective with fiscal year 1979-1980, and for each fiscal year thereafter, the Legislature shall not impose taxes of any kind which, together with all other revenues of the state, federal aid excluded, exceed the revenue limit established in this section. The revenue limit shall be equal to the product of the ratio of Total State Revenues in fiscal year 1978-1979 divided by the Personal Income of Michigan in calendar year 1977 multiplied by the Personal Income of Michigan in either the prior calendar year or the average of Personal Income of Michigan in the previous three calendar years, whichever is greater.

For any fiscal year in the event that Total State Revenues exceed the revenue limit established in this section by 1% or more, the excess revenues shall be refunded pro rata based on the liability reported on the Michigan income tax and single business tax (or its successor tax or taxes) annual returns filed following the close of such fiscal year. If the excess is less than 1%, this excess may be transferred to the State Budget Stabilization Fund.

The revenue limitation established in this section shall not apply to taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under Section 15 of this Article, and loans to school districts authorized under Section 16 of this Article.

If responsibility for funding a program or programs is transferred from one level of government to another, as a consequence of constitutional amendment, the state revenue and spending limits may be adjusted to accommodate such change, provided that the total revenue authorized for collection by both state and local

\(^\text{14}\) See HEADLEE COMM’N REPORT, supra, note 4, at 9.
governments does not exceed that amount which would have been authorized without such change.\(^\text{15}\)

A. Definitions

Section 33 of Article IX defines the terms “Total State Revenues” and “Personal Income of Michigan” as follows:

“Total State Revenues” includes all general and special revenues, excluding federal aid, as defined in the budget message of the Governor for fiscal year 1978-1979. Total State Revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities.\(^\text{16}\)

“Personal Income of Michigan” is the total income received by persons in Michigan from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency.\(^\text{17}\)

Pursuant to the authority granted under Section 34 of Article IX to enact appropriate implementing legislation, the Legislature, in 1998, provided definitions of “total state revenues” and “personal income of Michigan” that expand on the Section 33 definitions.\(^\text{18}\) It is important to note that while the Michigan Legislature is authorized to enact appropriate implementing legislation, the Legislature’s statutory definitions of constitutional terms are not binding on the courts. In some instances, Michigan courts have accepted the Legislature’s Headlee Amendment definitions.\(^\text{19}\) In other instances, the courts have rejected the Legislature’s definitions.\(^\text{20}\)

Turning to the Michigan Legislature’s interpretation of Section 26 definitions, Section 18.1350a of the Michigan Compiled Laws provides:

As used in sections 26 to 28 of Article IX of the state constitution of 1963:

\(^{15}\) MICH. CONST. art. IX, § 26.

\(^{16}\) MICH. CONST. art. IX, § 33.

\(^{17}\) Id.

\(^{18}\) MICH. COMP. LAWS ANN. § 18.1350a (West 1994).


\(^{20}\) See, e.g., Durant v. State Bd. of Educ., 381 N.W.2d 662 (Mich. 1985) (rejecting the Legislature’s exclusion from the term “necessary costs” costs recoverable from the federal government).
(a) "Personal income of Michigan" for a calendar year means total annual personal income as officially reported by the United States department of commerce, bureau of economic analysis, in August of the year following the calendar year for which the report is made. Revision of the total annual personal income figure as reported by the bureau of economic analysis after August of the year following the calendar year for which the report is made shall not cause personal income of Michigan as defined to be revised.

(b) "Total state revenues" means the combined increases in net current assets of the general fund and special revenue funds, except for component units included within the special revenue group for reporting purposes only. For fiscal years beginning after September 30, 1986, total state revenues shall be computed on the basis of generally accepted accounting principles as defined in this act. However, total state revenues shall not include the following:

(i) Financing sources which have previously been counted as revenue, for the purposes of section 26 of Article IX such as, beginning fund balance, expenditure refunds, and residual-equity and operating transfers from within the group of funds.

(ii) Current assets generated from transactions involving fixed assets and long-term obligations in which total net assets do not increase.

(iii) Revenues which are not available for normal public functions of the general fund and special revenue funds.

(iv) Federal aid.

(v) Taxes imposed for the payment of principal and interest on voter-approved bonds and loans to school districts authorized under section 16 of Article IX of the state constitution of 1963.

(vi) Tax credits based on actual tax liabilities or the imputed tax components of rental payments, but not including the amount of any credits not related to actual tax liabilities.

(vii) Refunds or payments of revenues recognized in a prior period.
(viii) The effects of restatements of beginning balances required by changes in generally accepted accounting principles.

(c) The calculation of total state revenues required by section 350b(3) shall not be adjusted after the filing of the report required by June 30, 1989, unless future changes in generally accepted accounting principles would substantially distort the comparability of the base year and the current and future years. In no event shall intervening years be recalculated.\(^{21}\)

B. Reporting Requirements.

Before 1986, the revenue limit referred to in Article IX, Section 26 had not been officially calculated and there was no annual report of compliance with said limit. Some evidence existed that the limit may have been exceeded in fiscal year 1984-85.\(^{22}\) Reaction to this evidence triggered an intensive review by the Governor's Office and the Legislature of the original methodology used to determine the tax limit. This review produced a limit of 9.49 percent, compared to the 10.1 percent limit that had been widely accepted before 1986.\(^{23}\) The 9.49 percent limit was approved by the Auditor General in 1986.\(^{24}\) Following this inter-branch review, the Legislature enacted a law that requires the Director of the Department of Management and Budget (DMB) to submit a report that calculates the revenue limit on an annual basis and the Director of DMB and the State Treasurer to prepare an annual report that summarizes in detail the State's compliance with the revenue limit.\(^{25}\) This report is then reviewed by

\(^{21}\) MICH. COMP. LAWS ANN. § 18.1350a (West 1994) (footnote omitted).

\(^{22}\) HEADLEE COMM’N REPORT, supra note 4, at 9.

\(^{23}\) Id.

\(^{24}\) Id.

\(^{25}\) MICH. COMP. LAWS ANN. §§ 18.1350b(3), 18.1350e, 205.30b (West 1994).

Per these statutes, the State Budget Director is also required to submit monthly financial reports to the Legislature that state, \textit{inter alia}, the amount of monthly revenue collected by the state. Section 18.1386 of the Michigan Compiled Laws provides:

(1) The state budget director shall prepare monthly financial reports.

(2) Within 30 days after the end of each month, the state budget director shall transmit copies of the monthly financial report to all the appropriations committee members and the fiscal agencies. The monthly financial report due by November 30 shall be the first monthly financial report to include statements concerning the fiscal year which began on October 1.

(3) Each monthly financial report shall contain the following information:

(a) A statement of actual monthly and year-to-date revenue collections for
the Auditor General who examines the past and present methodology of calculating revenues.

C. Refunds of Excess Revenues.

The second paragraph of Article IX, Section 26 of the Michigan Constitution provides that taxpayers are to receive a refund if tax revenues exceed the revenue limit by 1 percent or more. Legislation enacted in 1988 clarified that refunds are predicated on revenues (not personal income) exceeding the revenue limit by 1 percent. Section 18.1350d of the Michigan Compiled Laws sets forth the following revenue refund procedure:

(1) The procedures enumerated in this section shall be followed when revenues are required to be refunded pursuant to section 26 of Article IX of the state constitution of 1963.

(2) For any fiscal year in which total state revenues exceed the revenue limit as provided in section 26 of Article IX of the state constitution of 1963 by 1% or more, the revenues in excess of the revenue limit shall be refunded pro rata based on the liability reported on the state income tax return filed pursuant to section 441 of Act No. 281 of the Public Acts of 1967, being section 206.441 of the Michigan Compiled Laws, and the single business tax return filed each operating fund; the general fund/general purpose revenues, school aid fund revenues, and the tax collections dedicated to the transportation funds; including a comparison with prior year amounts, statutory estimates, and the most recent estimates from the executive branch.
(b) A statement of estimated year-end appropriations lapses and overexpenditures for the state general fund by principal department.
(c) A statement projecting the ending state general fund balance for the fiscal year in progress.
(d) A summary of current economic events relevant to the Michigan economy, and a discussion of any economic forecast or current knowledge of revenue collections or expenditure patterns that is the basis for a change in any revenue estimate or expenditure projection.
(e) A statement of estimated and actual total state revenues compared to the revenue limit provided for in section 26 of Article IX of the state constitution of 1963.
(f) A statement of the estimated fiscal year-end balance of state payments to units of local government pursuant to section 30 of Article IX of the state constitution of 1963.
(g) Any other information considered necessary by the state budget director or jointly requested by the chairpersons of the appropriations committees. Id.

MICH. COMP. LAWS ANN. § 18.1386 (West 1994).
27. MICH. COMP. LAWS ANN. § 18.1350d (West 1994).
pursuant to section 97 of Act No. 228 of the Public Acts of 1975, being section 208.97 of the Michigan Compiled Laws, for the taxpayer's tax year beginning in the fiscal year for which it is determined that the revenue limit has been exceeded.

(3) A refund shall not be required if total state revenues exceed the revenue limit by less than 1%.

(4) If total state revenues exceed the revenue limit by less than 1%, the Governor shall recommend to the Legislature that the excess be appropriated to the countercyclical budget and economic stabilization fund, or its successor.

(5) A refund required pursuant to this section shall be refunded during the fiscal year beginning on the October 1 following the filing of the report required by section 350e which determines that the limit was exceeded in the prior fiscal year for which the report was filed.\(^28\)

A Headlee Amendment refund was authorized by the Legislature in 1995 in the form of a tax credit equal to 2 percent of the taxpayer’s tax liability for the 1995 tax year.\(^29\)

The second paragraph of Section 26 further provides that “[i]f the excess is less than 1%, this excess may be transferred to the State Budget Stabilization Fund.”\(^30\) Although Section 18.1350e(4) of the Michigan Compiled Laws requires the Governor to recommend that revenues that are less than 1 percent in excess of the limit be placed in the budget stabilization fund, there is no provision in the implementing legislation that requires the Legislature to accept the Governor's recommendation, nor is there any provision for an alternative disposition of such excesses in the event the Legislature does not accept his recommendation. If such a situation were to arise, political pressure presumably would be brought to bear on the Legislature to either accept the Governor’s recommendation and deposit the excess in the budget stabilization fund or, in the alternative, refund the excess to taxpayers.

\(\text{D. Adjustments to the Revenue Limit}\)

The final paragraph of Section 26 provides for an adjustment of the revenue limit in the event that responsibility for funding a program is transferred, pursuant to a constitutional amendment,

\(^{28}\) \textit{Id.} (footnote omitted).

\(^{29}\) \textit{See} MICH. COMP. LAWS ANN. § 206.252. (West 1994).

\(^{30}\) MICH. CONST. art. IX, § 26 (emphasis added).
from the local to the state level, or vice versa. In addition, the paragraph states that the total revenue collected after the change may not exceed the amount authorized before the transfer.

E. Imposition of New State Taxes

According to the Attorney General, Sections 25 and 26 do not prevent the state from imposing new taxes, provided the projected revenues and all other state revenues do not exceed the revenue limit of Section 26. This provision was most prominently challenged in 1986. In 1986, the Attorney General ruled on whether the state excise taxes on hotel rooms and liquor that were credited to the convention facility development fund violated the Headlee Amendment. Based upon projections for fiscal year 1986, it was determined that total revenues collected, including those from the subject state excise taxes, would not exceed the Section 26 revenue limit. Therefore, the Attorney General concluded that the state excise taxes credited to the convention facility development fund did not violate Section 26.

III. ARTICLE IX, § 27: THE FISCAL EMERGENCY EXCEPTION

Section 27 of Article IX acts as a safety valve in the event of a fiscal emergency. It permits a one-year suspension of the Section 26 revenue limit upon the Governor's request and the two-thirds concurrence by the Legislature. Section 27 provides in full:

The revenue limit of Section 26 of this Article may be exceeded only if all of the following conditions are met: (1) The Governor requests the Legislature to declare an emergency; (2) the request is specific as to the nature of the emergency, the dollar amount of the emergency, and the method by which the emergency will be funded; and (3) the Legislature thereafter declares an emergency in accordance with the specific of the Governor's request by a two-thirds vote of the members elected to and serving in each house. The emergency must be declared in accordance with this section prior to incurring any of the expenses which constitute the emergency request. The revenue limit may

32. Although implementing legislation has not been enacted for this paragraph, it has been suggested that implementing legislation be enacted that would eliminate the taxing authority of the transferor agency or unit of government upon a transfer of funding responsibilities via constitutional amendment. See Headlee Comm'n Report, supra note 4, at 12.
36. Id.
be exceeded only during the fiscal year for which the emergency is declared. In no event shall any part of the amount representing a refund under Section 26 of this Article be the subject of an emergency request. 57

To date, no Section 27 emergency has been declared.

IV. ARTICLE IX, § 28: THE STATE EXPENSE LIMIT

The Section 26 revenue limit and the Section 28 expense limit work in tandem. Section 28 prohibits deficit spending and provides: "No expenses of state government shall be incurred in any fiscal year which exceed the sum of the revenue limit established in Sections 26 and 27 of this Article plus federal aid and any surplus from a previous fiscal year." 38

In implementing Section 28, the Michigan Legislature enacted the following provisions:

(1) Expenditures of state government which exceed the sum of the following amounts shall not be incurred in any fiscal year:

(i) The revenue limit established in section 350b.

(ii) A surplus from a previous year.

(iii) Federal aid.

(iv) Taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under section 15 of article IX of the state constitution of 1963.

(v) Loans to school districts authorized under section 16 of article IX of the state constitution of 1963.

(vi) The dollar amount of an emergency established pursuant to section 27 of article IX of the state constitution of 1963.

(vii) Other amounts excluded from the calculation of the revenue limit under the definition established in section 350a.

(2) For the purposes of this section, an amount withdrawn from the countercyclical budget and economic stabilization

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37. MICH. CONST. art. IX, § 27.
38. MICH. CONST. art. IX, § 28.
Since 1978, the annual state budget has been under the Section 26 revenue limit. Consequently, Section 28 has not to date been the subject of litigation.

V. ARTICLE IX, § 29: THE MAINTENANCE-OF-SUPPORT CLAUSE

After limiting state spending under Sections 26 and 28, the Headlee Amendment also prevents the state from circumventing these limits either by shifting the burden of administering state-mandated programs to units of local government without the requisite funds to carry them out, or by reducing the state's proportion of spending for mandated programs in effect when the Headlee Amendment was ratified. Section 29 of the Headlee Amendment provides citizens protection from such state actions.\(^{40}\)

Section 29, also known as the maintenance-of-support clause, places two prohibitions on the State. First, the State is prohibited from reducing the state-financed proportion of the necessary costs of any activity or service required under state law of local governmental units prior to the adoption of the Headlee Amendment.\(^{41}\) Second, the State is prohibited from requiring new activities or services or increased in new activities or services of units of local government without a state appropriation and disbursement of funds to pay for the increased costs since the adoption of the Headlee Amendment.\(^{42}\) Section 29 provides:

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

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41. MICH. CONST. art. IX, § 29.

42. Id.
section shall not apply to costs incurred pursuant to Article VI, Section 18.43

Section 29 is intended to prevent a reduction below 1979 levels in the proportion of state funding for state-mandated activities and services, and to prevent unfunded state mandates for new or increased activities and services after 1979. Thus, a unit of local government that carries out a state-mandated program in 1998 is entitled to receive the same percentage of funding that the state provided for that program on a statewide basis in the base year 1978-79 (this is only applicable, of course, for state-mandated programs in effect in 1978-79). For example, assume that in the base year 1978-79 the statewide necessary costs to units of local government to carry out state-mandated Program A were $2 million, and that the State funded and disbursed a total of $1 million to units of local government in connection with Program A. The base-year percentage would be 50 percent. Next assume that in 1994-95 (the payout year), the statewide necessary costs to units of local government of Program A were $4 million, but that the State funded and disbursed a total of $1.75 million to units of local government for Program A. The payout-year percentage would be 43.75 percent. The State would have underpaid 6.25 percent (50-43.75), or $250,000 (6.25% x $4 million).

In Schmidt v. Department of Education,44 the Michigan Supreme Court filled one of the gaps created in Section 29 of the Headlee Amendment by providing a methodology for determining whether the state is meeting its obligation to maintain existing levels of funding to units of local government. The court ordered that the Schmidt parties to brief the three proposed methods of determining the state's compliance with Section 29: (1) state-to-state, (2) state-to-local, and (3) local-to-local.45 As two commentators explained:

To illustrate the three competing approaches, assume that when the Headlee Amendment was adopted, state funding in the aggregate to local units for Service X was 50 percent of the aggregate costs of Service X statewide, with state funding to District A for Service X at 40 percent of the total cost of Service X to District A and state funding to District B for Service X at 60 percent of the total cost of Service X to

43. Id. Article VI, § 18 of the Michigan Constitution governs the salaries of judges.
44. 490 N.W.2d 584 (Mich. 1992). The Schmidt case was a consolidation of three groups of actions filed in the Michigan Court of Appeals under article 9, Section 32 of the Michigan Constitution. For a history of the Durant proceedings, see Durant v. State of Michigan, 566 N.W.2d 272, 276-78 (Mich. 1997).
45. Schmidt, 490 N.W.2d at 589.
Under the state-to-state method, the state is obliged to continue aggregate funding at 50 percent of aggregate costs, while the costs of providing Service X in particular districts is not determinative. The state-to-local method requires the state to fund both districts at a level of 50 percent of the districts’ costs for providing Service X, representing an increase in District A’s funding and a decrease in District B’s funding. Under the local-to-local method, the state must continue funding each local unit at the level in effect at ratification of Headlee, such that District A’s funding is continued at 40 percent of its costs to provide Service X and District B’s funding is continued at 60 percent of its costs to provide Service X.\footnote{Michael C. Fayz & Clara G. DeQuick, Annual Survey of Michigan Law: Constitutional Law, 40 WAYNE L. REV. 533, 546-47 (1994).}

The Schmidt court adopted the state-to-local approach. The court observed that the first sentence of Section 29 focuses on a single proportionate obligation by the state measured during the base year, while the second sentence refers to unit and governmental body in the singular.\footnote{Schmidt, 490 N.W.2d at 590.} This suggested to the court that the voters intended that the state’s obligation ran to each unit of local government.\footnote{Id. at 591.}

In Mayor of Detroit v. State of Michigan,\footnote{579 N.W.2d 378 (Mich. Ct. App. 1998), aff’d on other grounds sub nom. Judicial Attorneys Ass’n v. State of Michigan, 586 N.W.2d 894 (Mich. 1998).} the Michigan Court of Appeals held that a legislative act abolishing Detroit Recorder’s Court and merging it with the Wayne Circuit Court did not violate Section 29 of the Headlee Amendment. The court compared the method of funding state trial court operations in 1978 — the Headlee base year — with the method required under the act.\footnote{Id. at 385.} The court concluded that the act did not mandate new activities for local units vis-à-vis the state in comparison with 1978, nor did it increase the level of activity required of local units.\footnote{Id. at 386} The fact that a particular local unit (i.e., Wayne County) may now be financing activities previously financed by another local unit (i.e., the City of Detroit) did not violate Headlee:

The Headlee Amendment does not directly address state mandates that result in shifts among local units or reductions in post-1978 state subsidies for particular units; it only guarantees that each local unit will receive the same
proportion of state funding provided on a statewide basis in the base year of 1978.\textsuperscript{52}

In the court’s view, the legislative act merging the two courts merely continued existing activities, as opposed to mandating new activities or increasing the level of existing activities.\textsuperscript{53} Thus, the only remaining Headlee-related issue was whether the act reduced the state-financed proportion of the necessary costs of trial court operations to the units at issue from that provided on a statewide basis in 1978.\textsuperscript{54} The court found that, in 1978, the only state contribution to trial court operations was the financing of a portion of judicial salaries, and that the state still provides at least the same proportion of the total necessary costs of trial court operations to the units at issue as it provided on a statewide basis in 1978.\textsuperscript{55} Thus, no Headlee violation was found.

In 1995, Wayne County brought an action against the state in the Court of Claims seeking money damages for an alleged violation of the unfunded state mandate provision of Section 29. In \textit{Wayne County Chief Executive v. Engler},\textsuperscript{56} the Court of Appeals held that (1) money damages are neither a necessary nor proper remedy in a suit in which a violation of the second sentence of Section 29 is established; (2) because money damages are not a remedy available in a suit brought pursuant to the second sentence of Section 29, the Court of Claims lacks subject-matter jurisdiction to hear Headlee Amendment claims; and (3) because money damages are not an available remedy in a suit brought pursuant to the second sentence of Section 29, neither the one-year limitations period governing Headlee taxpayer suits nor the three-year limitations period governing actions brought in the Court of Claims are applicable.\textsuperscript{57}

\textbf{A. The Implementing Legislation}

The implementing legislation for Section 29 contains four provisions.

First, in connection with disbursements of state funds to units of local government, the DMB is responsible for administering the disbursement of state funds to units of local government. The DMB also publishes guidelines and forms for units of local government

\begin{itemize}
\item \textsuperscript{52} \textit{Id.}
\item \textsuperscript{53} \textit{Id.} at 386-387.
\item \textsuperscript{54} \textit{Mayor of Detroit,} 579 N.W.2d at 387.
\item \textsuperscript{55} \textit{Id.}
\item \textsuperscript{56} 583 N.W.2d 512 (Mich. Ct. App. 1998).
\item \textsuperscript{57} \textit{Id.} at 514.
\end{itemize}
when submitting a claim for disbursement. The implementing legislation requires an initial advance disbursement in accordance with a schedule of estimated payments that is adequate to meet state requirements as they fall due. The Governor is required to recommend to the Legislature those amounts which the Governor determines are required to be made to each unit of local government and the total amount of state disbursements required for all units of government. In the event a deficiency arises, the State Budget Director is to prorate the appropriated amounts among the eligible units of local government and is to recommend a supplemental appropriation to the Legislature sufficient to cover the deficiency.

Second, regarding administrative rules promulgated by a state agency that either mandate new activities or services to be performed by units of local government or increase the level of activity or service beyond that required by existing law, the state agency promulgating the administrative rule must submit a fiscal note to the Joint Committee on Administrative Rules (JCAR) and to the Director of DMB. The fiscal note must estimate the cost of the rule for the first three years of the rule’s operation. The department is to submit a request for an appropriation, if necessary, for all rules approved by JCAR. The Legislature is then to appropriate the amount required as stated in the Department’s request.

Third, the Legislature is required to promulgate joint rules that provide a method of identifying whether legislation creates a state mandate on units of local government, and that provide a method of estimating the revenue needed to reimburse units of local government. The Legislature has never promulgated these joint rules.

Instead, the Senate and House Fiscal Agencies make regular estimates for the Legislature of any costs that proposed legislation will impose on the state and units of local government. In addition, the

58. MICH. COMP. LAWS ANN. § 21.235(5) (West 1994). Procedures that the DMB is to follow when disbursing state funds to units of local government, and that units of local government are to follow when making a claim for disbursements, are set out in MICH. COMP. LAWS ANN. § 21.238 (West 1994).
59. Id.
60. Id.
62. Id. § 21.236.
63. Id.
64. Id. As of 1992, 28 states had adopted fiscal note requirements in an effort to raise legislators' awareness of the mandate problem and curb the passage of unfunded mandates. See Shaffer, supra note 40, at 1066.
66. The Senate and House Fiscal Agencies are nonpartisan agencies whose primary mission to provide expert assistance to the Michigan Senate and House,
implementing legislation to Section 29 directs the DMB to submit an annual report to the Legislature that includes the following information:

(1) 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 units of local 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. 67

Fourth, to administratively resolve cases involving disputed facts, the Section 29 implementing legislation creates the Local Government Claims Review Board within DMB. 68 The Board consists

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68. See id. § 21.240.
of nine members appointed by the Governor with the advice and consent of the Senate. Each member is appointed for a three-year term. At least four members of the Board must be representatives of local government. The Board’s function is set forth in Section 10(4) of the implementing legislation:

\[ \text{[T]he Board shall hear and decide upon disputed claims or upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose.} \]

If the Board approves a claim, a concurrent resolution of the Legislature must be adopted before the claim is paid. Appeals are limited to the following issues:

(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.

The statute directs the DMB to adopt Board procedures for receiving claims, including a procedure for a hearing on a claim if so requested by a local unit of government. The DMB adopted such procedures in 1987.

The most significant jurisdictional limitation on the Local Government Claims Review Board is that it has no power to hear cases brought by taxpayers challenging violations of the Headlee Amendment. As explained below, Section 32 of Article IX makes the Court of Appeals a court of original jurisdiction where taxpayers may bring Headlee Amendment challenges.

The Headlee Commission noted in late 1994 that the Local Government Claims Review Board has been underutilized. The Commission’s Report observed:

69. Id. § 21.240(4).

70. Id.

71. Id. § 21.240(6) (footnotes omitted).

72. Id. § 21.244.


74. See MICH. CONST. art. IX, § 32.
Although claims have been filed with the state, the Claims Review Board has never met to review those claims. This has principally occurred because the issues pending before the Board have been tied up in the *Durant* litigation. The ongoing delay in that litigation has unfortunately discouraged local units from filing claims on other issues.\(^\text{75}\)

It seems safe to conclude that the Local Government Claims Review Board has not yet realized its full potential.

**B. The Meaning of the Term “Necessary Costs”**

Section 29 prohibits the state from reducing the state-financed proportion of the *necessary* costs of any existing activity or service required of units of local government under state law. The Legislature has defined the term “necessary cost” as follows:

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 [sic] 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 minimis 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 minimis 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.\(^\text{76}\)

\(^{75}\) *Headlee Comm’n Report*, *supra* note 4, at 16.

The term "de minimis cost" is defined as "a net cost to a local unit of government resulting from a state requirement which does not exceed $300.00 per claim."\(^{77}\)

In *Durant v. State Board of Education (Durant II)*,\(^{78}\) the Michigan Supreme Court addressed the issue of what constitutes a "necessary cost" within the meaning of the maintenance-of-support provision of Article IX, Section 29. (The term "necessary costs" and "necessary increased costs" are both found in Section 29, the latter term being used in the context of post-Headlee state mandates. Presumably, the courts would interpret both terms in the same manner.) The *Durant II* plaintiffs argued that the term "necessary costs" means "useful or beneficial," citing *McCulloch v. Maryland*,\(^{79}\) the seminal U.S. Supreme Court decision interpreting the "necessary and proper" clause.\(^{80}\) The *Durant II* defendants argued that "necessary" was synonymous with "essential or indispensable."\(^{81}\) The defendants urged the court to adopt the Legislature's definition of "necessary costs" found in the implementing legislation quoted above. The court accepted the defendants' argument, concluding that the more limited definition of "essential or indispensable" was closer to the voters' intent.\(^{82}\) The court approved the Legislature's definition of "necessary costs" found in the first part of the implementing legislation.\(^{83}\) The court agreed that the Legislature's use of the actual cost to the state if it provided the service is a legitimate benchmark, adding that the actual market cost would also be a reliable measure.\(^{84}\)

The Michigan Court of Appeals has cautioned that the "actual costs" that a unit of local government incurs is not necessarily to be equated with "necessary costs."\(^{85}\) However, the same court has held that the "incremental costs" of providing a state-mandated program, such as special education, do not necessarily equate with "necessary costs" because the existing infrastructure provided by a regular education program would have to be furnished to special education students in the absence of a regular education program.\(^{86}\) In one of the last phases of the *Durant* litigation, the court of appeals held that once it is established that an activity or service is required by state law, the plaintiff has the burden of showing the actual cost to all units of

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77. *Id.* § 21.232(4).
78. 381 N.W.2d 662 (Mich. 1985).
80. *Durant*, 381 N.W.2d at 672-73. *See also* U.S. CONST. art. I, § 8, cl. 18.
81. *Id.* at 673.
82. *Id.*
83. *Id.*
84. *Id.*
86. *Id.* at 201.
local government resulting from carrying out the state-mandated activity or service.\(^{87}\) Once a prima facie case is established, the burden then shifts to the state to show that these “actual costs” were not “necessary costs.”\(^{88}\) In an earlier phase of the *Durant* litigation, the court of appeals stated that “necessary costs” would be the least expensive among alternative methods by which a unit of local government could satisfy the state-mandated activity or service.\(^{89}\)

In *Durant II*, the Michigan Supreme Court invalidated the legislative exclusion from necessary costs contained in Section 21.233(6)(d) of the Michigan Compiled Laws, stating “[T]he [Headlee] amendment unambiguously forbids state reduction of the proportion of state aid below the 1978-79 levels for specific requirements imposed by statute or state agency rule.”\(^{90}\) The court held that as long as the activity is state-mandated, even if federally-funded in part, to the extent the State uses that section of the implementing legislation to reduce the amount of categorical school aid and to require units of local government to make up the difference through the use of outside funding, the statute violates the Headlee Amendment’s prohibition on reductions in the proportion of state aid below 1978-79 levels for specific requirements imposed by statute or state agency rule.\(^{91}\)

C. The Meaning of the Term “Required . . . by State Law”

What is the meaning of the phrase “required . . . by state law,” found in Article IX, Section 29? In the implementing legislation for Section 29, the Legislature has conflated the terms “required” and “state law” into the single term “state requirement.” The legislation defines “state requirement” as follows: “[s]tate 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.”\(^{92}\)

The Legislature has excluded from its definition of “state requirement” 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

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88. Id.
90. *Durant*, 381 N.W.2d at 673-74.
91. Id. at 674.
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.

(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. 93


93. Id. §§ 21.234 (a)-(j).

94. These terms are defined as follows:

"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.

Id. § 21.232(3).
I. Are state constitutional provisions within the scope of the term “state law” found in Article IX, Section 29?

In Durant II, the Michigan Supreme Court addressed the issue of whether state constitutional provisions are within the scope of the term “state law” as used in Article IX, Section 29. The specific issue was whether the constitutional mandate of Article VIII, Section 2 of the Michigan Constitution, providing for a free public education is a “state law” for purposes of Section 29. The Michigan Supreme Court answered this question in the negative, holding that it was not the intent of the voters to include in Section 29 any obligations that may be imposed upon local governmental units by Article VIII, Section 2 of the Constitution (and, by a parity of reasoning, by any other provision of the State Constitution), with the expressly stated exception of Article VI, Section 18. Reading the first and second sentences of Section 29 as being in pari materia, the court concluded that the term “state law” found in the first sentence of Section 29 refers to state statutes and state agency rules, given that the phrase “required by the Legislature or any state agency” is used in the second sentence of Section 29. The court added that a restrictive view of the term “state law” is warranted because ballot proposals are carefully scrutinized in Michigan to eliminate any possibility of confusion.

"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.

Id. § 21.232(7).

"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.

Id. § 21.233(2).

"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 units of local 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.

Id. § 21.233(3).

95. Durant, 381 N.W.2d at 667.

96. Id.

97. Id. at 668.

98. Id. The Court refused to place any reliance on the Drafters’ Notes to the
2. What activities or services are "required" under state law?

Section 29's freeze on the proportion of state money paid to units of local government to defray their necessary costs applies only to activities or services that are required by state law and that are funded, in whole or in part, by the state. The Michigan courts have held that the State is not obligated to reimburse units of local government for increased or expanded activities or services if the initial activity or service is optional.99 The courts have also been asked to determine whether certain activities and services performed by units of local government are "required" by state law, as that term is used in Article IX, Section 29. The following cases are illustrative of their holdings:

a. Public Education

In Durant II, the Supreme Court concluded that free public education, being required under the State Constitution, is thus not required under state law as that term is used in Section 29, notwithstanding Section 380.1284 of the Michigan Compiled Laws, which mandates 180 days of school. Federally-mandated educational programs administered by the State also are not within the ambit of Section 29.100 However, if the activity or service is also mandated under state law, such as special education programs, then it is within the ambit of Section 29.101

b. Fire Protection

The state is not required to reimburse a municipality for fire protection for state-owned buildings because municipalities are not required by state law to provide fire protection services.102 Similarly, because municipalities are not required to provide fire protection under state law, state-mandated overtime compensation to firefighters is outside the scope of Section 29.103

c. Waste Disposal and Other Public Works Projects

Because a county is not required to operate a solid waste disposal site, the Michigan courts have held that the state is not required to reimburse the county for upgrading a landfill in order to comply with...
a state environmental law. 104 Similarly, the courts have also held that the costs associated with implementing state requirements regarding sewage disposal systems operated by municipalities are not within the scope of Section 29 because sewage disposal is an optional activity under state law. 105

The Attorney General has issued an opinion that Section 339.2011 of the Michigan Compiled Laws, which requires units of local government engaged in public works projects to use licensed architects, engineers, and land surveyors on projects costing $15,000 or more, is not within the scope of Section 29 because units of local government are under no state-mandated obligation to engage in public works projects. 106

d. Assistance to the Accused and to Crime Victims.

The Attorney General has issued an opinion that state law requiring county prosecutors to assist the accused in locating and serving witnesses is within the scope of Section 29, as are services to crime victims provided by county prosecutors pursuant to the Crime Victim’s Rights Act. 107

D. The Method of Funding New State Mandates.

If a unit of local government is mandated by state law to perform a new activity or service, must the Legislature enact a new appropriation that specifically identifies and provides the necessary funds, or may the Executive Branch reimburse the unit of local government from the existing budget? In Mahaffey v. Attorney General, 108 plaintiffs brought a state constitutional challenge to 1993 legislation that required physicians to provide information to female patients contemplating an abortion. In the context of the Headlee Amendment, the Attorney General conceded that the informed consent law requires new activities or services to be performed by local public health departments. 109 The funding for this new activity or service was to come from the Department of Health’s existing budget. The plaintiffs argued that any funding had to come from a specific appropriation from the Legislature earmarked for that

104. Livingston County, 425 N.W.2d at 72.
109. Id. at 112.
The court of appeals agreed with the Attorney General’s position that the Headlee Amendment does not require the Legislature to enact a new appropriation specifically identifying and providing funds for new services required of units of local government. The court stated that Article IX, Section 29 requires only that a state appropriation be made to pay the local governmental unit for any increased costs. In accord with the voters’ call for responsible and cost-efficient government reflected in the Headlee Amendment, the executive branch may fund a new activity or service required of units of local government by the Legislature from an existing appropriation.

VI. ARTICLE IX, SECTION 30: PROHIBITION AGAINST REDUCING THE PROPORTION OF TOTAL STATE FUNDS PAID TO LOCAL GOVERNMENT

Section 30 of the Headlee Amendment is a corollary to Section 29. While Section 29 ensures that the proportion of state money paid to local government to cover necessary costs will not drop below fiscal year 1978-79 levels, Section 30 provides that the percentage of the total state budget earmarked for local government spending will not decline from the fiscal year 1978-79 level. Section 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 1978-79.”

The DMB has determined that the fiscal year 1978-79 proportion of state spending for local government is 41.61 percent. The DMB used three criteria to determine whether state spending was paid to a unit of local government: (1) the unit must be a governmental entity; (2) the unit must receive payment from the state; and (3) the source of the payment must be from state-raised revenues rather than from federal funds or private or local funds that might flow through the state treasury. According to the DMB, the state has failed to meet that percentage in only two years, fiscal year 1981-82 when the percentage of state spending on units of local government was 41.34 percent, and fiscal year 1982-83 when the percentage of state spending on units of local government was 41.25 percent.

110. Id. at 108.
111. Id. at 112.
112. Id.
113. Id.
A. The Implementing Legislation

The current version of the Section 30 implementing legislation was first enacted in 1984, and was substantially amended in 1988. The implementing legislation begins with Section 18.1349 of the Michigan Compiled Laws, which provides:

In accordance with the provision of section 30 of Article IX of the state constitution of 1963, the proportion of total state spending from state sources paid to all units of local government shall not be less than the proportion in effect in fiscal year 1978-1979. The executive budget submitted to the Legislature and the budget enacted by the Legislature shall be in compliance with section 30 of Article IX of the state constitution of 1963.\(^{118}\)

Next, Section 18.1350 of the Michigan Compiled Laws, addresses the accounting methodology for certain aspects of state spending. It provides:

1. If state government assumes the financing and administration of a function, after December 22, 1978, which was previously performed by a unit of local government, the state payments for the function shall be counted as state spending paid to units of local government.

2. Amounts excepted from the financial liability of a county under section 302(2)(c) of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1302 of the Michigan Compiled Laws, shall be counted as state spending paid to local units of government.

3. State spending paid to units of local government shall include the same proportion of the state’s short-term interest and interfund borrowing expense as the proportion of state spending from state resources paid to all units of local government, as is established pursuant to section 349.

4. Refunds or other repayments of prior year revenues shall not be considered in the determination of total state spending.\(^{119}\)

Additionally, the Legislature has enacted definitions of the terms “state spending paid to units of local government,” “total state spending,” “total state spending from state sources,” and “unit of local government.” \(^{120}\)

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119. Id. at § 18.350.
120. Those terms are defined as follows:
The Legislature has also directed the State Budget Director to make an annual report to the Legislature of Section 30 funding. It has also adopted a procedure for making up deficiencies in Section 30 funding that requires that deficiencies be made up in the fiscal year following the fiscal year in which the deficiency in payments was identified and reported to the Legislature.

"State spending paid to units of local government" means the sum of total state spending from state sources paid to a unit of local government. State spending paid to a unit of local government does not include a payment made pursuant to a contract or agreement entered into or made for the provision of a service for the state or to state property, and loans made by the state to a unit of local government.

Id. § 18.1304(3).

"Total state spending" means the sum of state operating fund expenditures, not including transfers for financing between funds.

Id. § 18.1305(1).

"Total state spending from state sources" means the sum of state operating fund expenditures not including transfers for financing between funds, federal aid, and restricted local and private sources of financing.

Id. § 18.1305(2).

"Unit of local 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 service for citizens in a geographically limited area of the state and has the power to act primarily on behalf of that area.

Id. § 18.1115(6).

Article IX, § 33 defines the term "Local Government" as follows:

"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.

121. Section 18.1497(1) of the Michigan Compiled Laws provides:

The director shall transmit to the auditor general for review and comment, not later than May 31 of each year, an itemized statement of the state spending paid to units of local government and total state spending from state sources for the fiscal year in which this act takes effect, and each fiscal year thereafter, including a calculation of the proportion of state spending paid to units of local government to total state spending from state sources. The report shall be published by submission to the Legislature not later than June 30 of each year.


122. Section 18.1497(2)-(3) of the Michigan Compiled Laws provides:

(2) If the proportion calculated pursuant to subsection (1) [Mich. Comp. Laws Ann. § 18.1497(1)], is less than required by section 349 [Mich. Comp. Laws Ann. § 18.1349], the statements required by this section shall report the amount of additional payments to units of local government which would have been necessary to meet the requirements of section 349. This amount shall be payable to units of local government not later than in the fiscal year following the fiscal year in which the deficiency in payments to units of local government was ascertained and reported to the Legislature.
Finally, the Legislature has established a local government payment fund when additional state funding to units of local government is required under Section 30.\textsuperscript{123}

\textbf{B. Judicial Interpretation of Section 30}

The Section 30 case law is sparse. The Supreme Court has rejected the argument that Section 30 mandates that state funds paid to individual units of local government (for example, school districts) must remain in the same proportion as it was in fiscal year 1978-79. The \textit{Durant II} court dismissed this contention, noting:

The clear language of this provision makes it unnecessary to explore this issue further. The term "taken as a group" clearly requires that the overall percentage allotment of the state budget for local units of government must remain at 1978 levels. We decline to accept a strained interpretation of an unambiguous statement of intent by the voters.\textsuperscript{124}

Likewise, the Michigan Court of Appeals has held that Section 30 does not require the state to allocate a fixed percentage of its budget to a specific purpose or unit of local government (for example, to public education or to school districts).\textsuperscript{125} At the same time, however, in satisfying its Section 30 obligation, the state may not categorize as state spending to units of local government payments made to reimburse a local governmental unit for providing a service that was the state's obligation to provide in 1978.\textsuperscript{126} Thus, for purposes of

\begin{footnotesize}
\begin{enumerate}
    \item Any appropriations to the fund which are intended to make up a shortfall in payments to units of local government for a prior fiscal year shall not be considered as state spending from state resources or as state payments to units of local government in the fiscal year in which the amounts are appropriated.
\end{enumerate}
\end{footnotesize}

\textit{Id.} § 18.1497(2)-(3) (footnote omitted).

\textsuperscript{123} Section 18.1498 of the Michigan Compiled Laws provides:

\begin{enumerate}
    \item The local government payment fund is hereby created. Money appropriated to the fund by the Legislature shall be reserved for use in a fiscal year when additional state payments to units of local government are necessary to meet the requirements of section 349.
    \item The amounts recommended by the Governor or appropriated by the Legislature into the fund described in subsection (1) shall be considered, for purposes of fulfilling the requirements of section 349, as state spending to be paid to units of local government.
\end{enumerate}

\textit{Id.} § 18.1498.

\textsuperscript{124} \textit{Durant}, 381 N.W.2d at 674 (citations omitted).


\textsuperscript{126} \textit{See} Oakland County \textit{v. Dep't of Mental Health}, 443 N.W.2d 805 (Mich. Ct. App. 1989) (holding that the provision of mental health care services is a state obligation).
Section 30, when state funds are paid to a unit of local government for the purpose of discharging the state's obligation, such funds cannot be counted as "state spending paid to all units of local government." If a contrary interpretation of Section 30 was adopted, then in times of shrinking state budgets, adding state payments for such programs to the category of state spending on units of local government could dilute the amount of state money paid to programs originally included in the 41.61-percent base-year level.

VII. ARTICLE IX, § 31: PROHIBITION AGAINST NEW OR INCREASED LOCAL TAXES WITHOUT VOTER APPROVAL

While the focus of Article IX, Sections 26-30 is on state government revenue and spending limits, the focus of Article IX, Section 31 is on limiting the power of local government to tax. Article IX, Section 31 provides:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. If the definition of the base of an existing tax is broadened, the maximum authorized rate of taxation on the new base in each unit of Local Government shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.

The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this amendment.128

127. Id. at 811.
128. Mich. Const. art. IX, § 31. Article IX, Section 33 defines the term "General Price Level" as the "Consumer Price Index for the United States as defined and
The initial two sentences of Section 31 contain three main premises. First, voter approval is required for any new local tax or any increase in the rate of an existing tax. Second, if the base upon which any existing tax is expanded, then the rate must be reduced. For example, assume the state law establishing the base of the general property tax was amended to eliminate one or more of the current exemptions, with the result that the state equalized value of all property (the tax base) is increased. In that event, the maximum authorized property tax rate in each unit of local government would have to be reduced so that the total property tax levy of each local governmental unit would not increase as a result of the change in the base. This part of Section 31 prevents an increase in the total revenue yield that results from changes in the tax base.

Third, the tax rate that is limited by Section 31 is "the rate authorized by law" or "the maximum authorized rate." This tax rate limitation ties into Article IX, § 6 which requires voter approval for any millage increase.

The third sentence of Section 31 is arguably the most well-known part of the Headlee Amendment, at least for Michigan property owners. It creates a mechanism for reducing property taxes when assessments increase faster than the rate of inflation. This sentence of Section 31 provides for what is popularly known as "Headlee rollbacks." The provision undergirds the first two sentences of Section 31 that require voter approval for new or increased local taxes and that require a proportional reduction in the rate of any existing local tax when the base is broadened. A millage that is allocated from the basic 15 mills or the separate 18 mill tax limitation established under Article IX, Section 6 is subject to Headlee rollbacks. As observed by the Attorney General:

Thus, for example, if the property tax revenue of a township is generated by one of the 15 mills received from the annual allocation and the assessed valuation as equalized of property in the township increases by a greater percentage than the increase in the General Price Level, that one mill rate must be "rolled back" as provided in Const. 1963, art. 9,
§ 31 unless the qualified electors in that township vote to restore that tax rate or vote for additional millage.\textsuperscript{135}

To illustrate further, if the state equalized value of property in a unit of local government is $10 million and rises to $11 million in the following year, exclusive of new construction, there would be a 10-percent increase in the state equalized value. If the Consumer Price Index increases by only 6 percent, Section 31 requires that the property tax rate in the local governmental unit be reduced so that the tax levy on existing property increases by no more than 6 percent. Thus, if the total tax levy of the local governmental unit had been $200,000 in Year 1 (i.e., 20 mills x $10 million), in Year 2 the total tax levy on existing property may not exceed $212,000 ($200,000 x 1.06). Because the new state equalized value of existing property is now $11 million and the maximum authorized rate of taxation is $212,000, the millage must be reduced to 19.273 mills ($212,000 maximum tax levy - $11 million state equalized value). Any new construction added to the tax rolls will be taxed at the rolled-back millage rate of 19.273 mills. The Legislature has enacted an implementing statute for the Headlee rollback provision. It also enacted legislation in 1993 providing for Headlee “rollups.” The implementing legislation is discussed below in Section D of this Part.

The last sentence of Section 31 excludes preexisting debt service taxes and ties into the Article IX, Section 6 provision authorizing the repayment of general obligation bonds with unlimited taxes. After the Headlee Amendment, voter approval is required before new general obligation bonds that are to be repaid with unlimited taxes can be issued. General obligation bonds are to be distinguished from limited tax general obligation (LTGO) bonds. A unit of local government may issue LTGO bonds without voter approval because they are paid from taxes the issuing unit of government is authorized to impose by law and other non-tax revenues the issuer may receive. The use of LTGO bonds has been criticized by the Headlee Commission as a subversion of the restrictions imposed on units of local government by the Headlee Amendment because they tie the hands of successor governments and erode the voting power of the people.\textsuperscript{136}

A. What Constitutes a “Local Tax” Under Section 31?

The plain language of Article IX, Section 31 prohibits local governmental units from levying any new taxes or increasing any existing tax beyond the maximum authorized rate after December 23, 1998.


\textsuperscript{136} See HEADLEE COMM'N REPORT, supra note 4, at 54; See also Sessa v. County of Macomb, 559 N.W.2d 70, 74-76 (Mich. Ct. App. 1997) (Markman, J., concurring).
1978, unless local voters approve the levy. 137 What if the Legislature enacts a new tax that directly benefits certain localities? Examples of such taxes enacted since the inception of Headlee include a city utility users tax that benefits Detroit;138 an airport parking excise tax that largely benefits Wayne County;139 the convention and tourism marketing taxes;140 and the Tiger Stadium tax, which authorizes an excise tax to be levied on hotel and motel accommodations.141

The basic focus in answering the question of what is a "local tax" under Section 31 is on the entity responsible for levying the tax. If the entity responsible for levying the tax is the Legislature, then the tax is a state tax for purposes of Section 31, even if the tax benefits localities. (However, such a state tax would then be subject to the limits of Article IX, Section 26.) The leading case on this issue is Airlines Parking, Inc. v. Wayne County.142 There, the Michigan Supreme Court concluded that because the Act was in effect at the time the Headlee Amendment was ratified, there could be no Section 31 violation. The Legislature responded to the litigation with the following statute, which was enacted in 1990:

Sec. 8. This act is intended to eliminate the confusion surrounding the legal status of Act No. 198 of the Public Acts of 1970 resulting from an opinion of the attorney general regarding the validity of enactment of various public acts, OAG, 1987-1988, No 6438, p 80 (May 21, 1987) and a circuit court decision in the matter of Ace Tex Corp v Detroit rendered on February 2, 1990 (Wayne County Circuit Court Case No. 88-807858-CZ), as to which an appeal is pending, and to resolve legislatively the issues raised by the appeal. Before that circuit court decision, the Legislature had been advised by the attorney general's office in May 1987 that legislative action was not necessary to authorize the collection of the city utility users tax after July 1, 1988 under Act No. 198 of the Public Acts of 1970. In light of the circuit court decision of February 2, 1990, which is presently on appeal, it appears that legislative action is advisable to clarify the authorization for and to ratify the collection of the tax from July 1, 1988, to authorize the continued collection of the tax, and to resolve legislatively the issues raised by appeal. The Legislature by enactment of this act intends to validate, ratify, and revive effective from July 1, 1988 a city utility users tax. This act is remedial and curative and is intended to revive and assure an uninterrupted continuation of the authority to collect a city utility users tax. The Legislature finds the city utility users tax was authorized by law on the date when section 31 of Article IX of the state constitution of 1963 was ratified.

MICH. COMP. LAWS ANN. § 141.1158 (West 1994) (footnotes omitted).

137. MICH. CONST. art. IX, § 31.
138. MICH. COMP. LAWS ANN. § 141.801 (West 1994). The City Utility Users Tax was first enacted in 1972, thus predating the Headlee Amendment. It expired, but was reenacted in 1988. The revised version of this Act was successfully defended against a Section 31 challenge. See Taxpayers Allied For Constitutional Taxation v. Wayne County, 537 N.W.2d 596 (Mich. 1995). The Court concluded that because the Act was in effect at the time the Headlee Amendment was ratified, there could be no Section 31 violation. The Legislature responded to the litigation with the following statute, which was enacted in 1990:

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MICH. COMP. LAWS ANN. § 141.1158 (West 1994) (footnotes omitted).
139. Id. §§ 207.371-.383.
140. Id. §§ 141.871-.880.
141. Id. §§ 207.751-.759.
Court held that the airport parking tax that is levied on parking facilities within 5 miles of Metropolitan Airport is a state excise tax, and not a "local" tax. The court noted that "because it is at least theoretically possible that the state could levy a tax that was local in character, the entity imposing the tax in question may not conclusively resolve the Headlee question." Notwithstanding that some local governmental units directly benefit from the tax (tax receipts are distributed to Wayne County monthly), the court nevertheless found that the tax is a state tax because it is styled as a state tax, structured as a state tax, serves a state purpose, was enacted by the Legislature, is collected by the state, and is distributed by the state. In contrast, the court added, local taxes are collected by local government, are administered directly by that local entity, and are spent by the local government according to local fiscal policy.

B. Local Tax Increases Necessitated By A Court Judgment

If a local tax increase becomes necessary in order to satisfy a court judgment, is that tax increase outside the scope of Section 31's prohibitions? The RJA authorizes a court to order the levy of ad valorem property taxes to satisfy a money judgment entered against enumerated types of local governmental units. The RJA also provides generally that if a judgment is rendered against any municipality, the legislative body of that municipality may issue certificates of indebtedness or bonds of that municipality for the purpose of raising funds to pay the judgment. That section was enacted before the effective date of the Headlee Amendment. Because the Headlee Amendment does not prevent the imposition of a tax or tax increase that was authorized prior to its effective date, a tax increase necessitated by a court judgment entered pursuant to the RJA arguably does not come within the restrictions of Section 31. Moreover, because a court is not a unit of local government (as the latter term is defined in Article IX, Section 33), one federal court has concluded that there would be no violation of Section 31 if local taxes were increased to pay a court judgment.

143. Metropolitan Airport is the only airport in Michigan that fits the statutory definition of "a 'regional airport facility," i.e., "an airport that services 4,000,000 or more emplacements annually." MICH. COMP. LAWS ANN. § 207.372(h) (West 1994).
144. Airport Parking, Inc., 550 N.W.2d at 493.
145. Id. at 493-94.
146. Id. at 494.
147. MICH. COMP. LAWS ANN. § 600.6093 (West 1994).
148. Id. § 600.6097(1).
150. See id. at 90.
On the other hand, the Michigan Court of Appeals has stated that while a unit of local government may issue LTGO bonds to pay a judgment levy without violating the last sentence of Section 31, it may not do so without voter approval if the bonds would cause the local governmental unit to exceed its authorized rate of taxation.\footnote{Sessa, 559 N.W.2d at 72.}

The Headlee Commission suggested that the RJA be amended to provide that a judgment levy be paid out of regular property tax levies or by issuing LTGO bonds (which are paid from existing tax revenues), but that in either case the judgment would at least be satisfied from funds that come from voter-approved taxing authority.\footnote{See Headlee Comm'n Report, supra note 4, at 37.} In this way, local governmental units will be forced to make the politically difficult budgetary choices that they may have been avoiding, which may have been the catalyst for the litigation that resulted in the judgment levy in the first place.

C. What Constitutes a “New Tax” Under Section 31?

As previously noted, in the absence of voter approval, Section 31 prohibits units of local government from levying any new tax or from increasing the rate of an existing tax above the rate authorized by law or charter when Section 31 was ratified. A vexing issue is what constitutes a “new tax” as opposed to a “user fee” or “special assessment” under Section 31. Section 31 requires that a “new tax” receive voter approval. A “user fee” and a “special assessment,” on the other hand, if not a “tax,” are not subject to the same constitutional constraint. The Headlee Amendment does not define the term “tax,” nor has the Legislature done so in implementing legislation.\footnote{Missouri’s Hancock Amendment, which is modeled after the Headlee Amendment, uses the phrase “tax, license or fees.” One commentator has concluded that “[t]he decisions defining the phrase ‘tax, license or fees’ have created a hodgepodge of results with no clear guiding standard.” Joanne L. Graham, Toward a Workable Definition of "Tax, License, or Fees": Local Governments in Missouri and the Hancock Amendment, 62 UMKC L. Rev. 821, 824 (1994).}

1. User Fees

In \textit{Bolt v. City of Lansing},\footnote{561 N.W.2d 423 (Mich. Ct. App. 1997).} the Michigan Court of Appeals considered a Section 31 challenge to a charge imposed by the City of Lansing on landowners for the cost of separating storm water runoff from raw sewage and treating the runoff. The plaintiffs claimed that the charge was a new tax that had not been approved by the voters and thus violated Article IX, Section 31. The City of Lansing
maintained that the charge was a "user fee" and not subject to voter approval under Section 31. The court of appeals agreed with the city of Lansing, offering the following definition of "fee": "In general, a fee is exchanged for a service rendered or a benefit conferred, and there must be some reasonable relationship between the amount of the fee and the value of the service or benefit."\(^{155}\)

The court of appeals conceded that a charge for sewage disposal and treatment falls somewhere between two ends of a spectrum, with one end being an ad valorem property tax, and the other being a charge for a city snow removal service that a landowner voluntarily uses.\(^{156}\) Relying on *Ripperger v. City of Grand Rapids*,\(^{157}\) a 1954 Michigan Supreme Court decision in which the court analogized a charge for sewage treatment to a user fee for furnishing water to city residents, the court of appeals concluded that the Lansing storm water runoff charge was a user fee and not a new tax.\(^{158}\)

The Michigan Supreme Court granted leave to appeal in the *Bolt* case and reversed the court of appeals decision.\(^{159}\) The court held the Lansing storm water service charge a tax for purposes of Article IX, Section 31 of the Headlee Amendment, and thus subject to a vote of the people. The court conceded that there is no bright-line test for distinguishing between a valid user fee and a tax that violates the Headlee Amendment.\(^{160}\) The court noted that a user fee generally

(1) serves a regulatory rather than a revenue-raising purpose, (2) is proportionate to the necessary costs of the service, and (3) is voluntary.\(^{161}\) The lack of correspondence between the Lansing stormwater runoff charges and the benefit conferred demonstrated to the court that the city of Lansing had failed to differentiate any particularized benefits to property owners, (upon whom the tax was imposed) from the general benefits conferred on the public.\(^{162}\)

### 2. Special Assessments

Special assessments are widely used by local governmental units to defray the costs of a variety of local improvement projects. Special assessments rather than general property taxes are used to finance

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155. *Bolt*, 561 N.W.2d at 426 (citations omitted).
156. *Id.* at 427.
158. *Bolt*, 561 N.W.2d at 427.
160. *Id.* at 268.
161. *Id.* at 269-70.
162. *Id.* at 271. Compare *County of Saginaw v. John Sexton Corp. of Michigan*, 591 N.W.2d 52 (Mich. Ct. App. 1998) (stating that a landfill surcharge qualifies as a regulatory fee for purposes of Section 31 of the Headlee Amendment because it is reasonably related to the costs involved in managing the county's disposal of solid waste).
such public improvements because such improvements do not benefit the general population within the unit of local government. Accordingly, it is appropriate that the direct beneficiaries of such improvements pay for them.163

Traditionally, special assessments are distinguishable from general property taxes in at least three respects. First, general property taxes are levied on real and tangible personal property, whereas special assessments are levied only on real property.164 Also, real property otherwise exempt from general property taxes are not *ipso facto* exempt from special assessments unless specifically exempted under the legislation authorizing the special assessment.165

Second, general property taxes are levied across the board within the assessing jurisdiction to defray the costs of government in general, whereas special assessments are levied only within a special assessment district which is comprised of the land and improvements that are specially benefited by the public improvements.166 However, the Legislature has authorized the creation of special assessment districts that arguably benefit the general public, such as for ambulance service.167

Third, in theory general property taxes are levied on an ad valorem basis, whereas special assessments are levied on the basis of frontage or land area.168 For example, a lakefront owner with a 100-foot frontage would pay theoretically twice as much for a dam installation to control the lake level as would a lakefront owner on the same lake with 50 feet of frontage.

The Michigan Supreme Court has defined a “special assessment” as an imposition or levy upon property for the payment of the costs of public improvements which confer a corresponding and special benefit upon the property assessed.169 In *Blake v. Metropolitan Chain Stores*,170 the Supreme Court distinguished “special assessments” from “taxes”: “[a] special assessment is laid on the property specially benefited by a local improvement in proportion to the benefit received for the purpose of defraying the cost of the improvement.”171

164. Id.
165. Id.
166. Id.
171. Id. at 588.
The word "taxes" represents to the mind exaction to defray the ordinary expenses of the government and the promotion of the general welfare of the county. It is not generally understood as applying to improvements, levied upon property with a resultant benefit thereto to the amount thereof.\footnote{Id.}

A Michigan Supreme Court opinion that approached the tax vs. special assessment question with arguably the greatest precision and candor is \textit{St. Joseph Township v. Municipal Finance Committee.}\footnote{88 N.W.2d 543 (Mich. 1958).} There, the court stated:

While the word "tax" in its broad meaning includes both general taxes and special assessments, and in a general sense a tax is an assessment, and an assessment is a tax, yet there is a recognized distinction between them in that assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed. \textit{The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot (at least in most States) be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality.} The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not an assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax.\footnote{Id. at 547-48 (citing \textit{Blake v. Metropolitan Chain Stores}, 225 N.W.2d at 588)(quoting 1 \textsc{Cooley On Taxation} § 31 (4th ed.) (emphasis added)).}

The Attorney General's Office has issued two opinions regarding the status of "special assessments" under Section 31. The first opinion addressed the status of special assessments, apportioned on an ad valorem basis, for police and fire protection, garbage collection, and street lighting. Citing \textit{Blake v. Metropolitan Chain Stores}, the Attorney General concluded that if the charge is imposed only on those property owners who are benefited by the charge, then it is a special assessment and not a tax.\footnote{See 1979-1980 Mich. Op. Att'y Gen. 389, 390.} The second opinion addressed the status of a special assessment district established to defray the cost of ambulance service provided by a city.\footnote{See 1979-1980 Mich. Op. Att'y Gen. 770.} The Attorney General concluded that since a municipality's ambulance service must benefit
all its residents, and since the property specially assessed does not receive a corresponding special benefit not provided the general public, such a "special assessment" would be a "tax" for purposes of Article IX, Section 31.

The Headlee Commission recommended that the Legislature define the terms "special assessment" and "user fee" as follows:

A "special assessment" is a payment for a physical improvement yielding a proportionate increase in the value of property, in which the revenue from the special assessment is used only for the costs of the improvement.

A "fee for service" or "user fee" is a payment made for the voluntary receipt of a measured service, in which the revenue from the fees is used only for the service provided.

As noted in the Headlee Commission Report, local governmental units have increasingly resorted to imposing mandatory user fees since ratification of the Headlee Amendment, including fees for mandatory recycling programs and fees for emergency telephone service. 177

D. The Assessed Value of Property as Finally Equalized

In order to implement Headlee rollbacks, a millage reduction fraction has to be determined. Pursuant to Article IX, Section 31, if the aggregate values of property as determined by the assessing units of any county are more or less than 50% of true cash value, the State Tax Commission "equalizes" the county assessment by using a multiplier to add to or subtract from the aggregate assessed valuation of the county's taxable and real personal property. That process yields the state equalized value. The purpose of equalization is to adjust for differences in the modes of assessment among assessing units of government with the goal of achieving uniformity of property tax assessment at both the intra-county and intercounty levels. 178

177. HEADLEE COMM’N REPORT, supra note 4, at 26-29.
178. See Allied Supermarkets, Inc. v. City of Detroit, 216 N.W.2d 755 (Mich. 1974). Enacted in 1981, the Truth in Assessing Act, requires that when the state equalized valuation of a city or township exceeds its assessed valuation, the city or township must reduce its maximum authorized millage rate so that the amount of taxes collected does not exceed the amount that would have been collected had the city or township levied upon its assessed valuation. See MICHIGAN COMP. LAWS ANN. § 211.34 (West 1994).

The Truth in Taxation Act, enacted in 1982, provides that a local unit of government shall not benefit from an increase in state equalized valuation unless the unit's governing body holds a public hearing designed to acquaint the public with the fact that the total tax dollars collected from existing authorized millage rate will be increased due to increases in the state equalized value of taxable property. Units of
In Michigan, there are six classes of real property and five classes of personal property. The State Tax Commission equalizes the value of taxable property in each of the classifications. The assessed valuation of property as finally equalized for the separate classes is added together, and that sum is used in determining a "millage reduction fraction." This fraction is multiplied by the maximum millage rate authorized by the unit of local government in determining the tax rate for the local government. Section 211.34d(7) of the Michigan Compiled Laws states the method by which the millage reduction fraction is calculated:

A millage reduction fraction shall be determined for each year for each local unit of government. For ad valorem property taxes that became a lien before January 1, 1983, the numerator of the fraction shall be the total state equalized valuation for the immediately preceding year multiplied by the inflation rate and the denominator of the fraction shall be the total state equalized valuation for the current year minus new construction and improvements. For ad valorem property taxes that become a lien after December 31, 1982 and through December 31, 1994, the numerator of the fraction shall be the product of the difference between the total state equalized valuation for the immediately preceding year minus losses multiplied by the inflation rate and the denominator of the fraction shall be the total state equalized valuation for the current year minus additions. For ad valorem property taxes that are levied after December 31, 1994, the numerator of the fraction shall be the product of the difference between the total taxable value for the immediately preceding year minus losses multiplied by the inflation rate and the denominator of the fraction shall be the total taxable value for the current year minus additions. For each year after 1993, a millage reduction fraction shall not exceed 1.

In O'Reilly v. Wayne County, the court of appeals considered a challenge to the millage reduction fraction methodology. The court concluded that separate millage reduction fractions need not be

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179. The classes of real property are agricultural, commercial, developmental, industrial, residential, and timber cutover. The classes of taxable personal property are agricultural, commercial, industrial, residential, and utility. See Mich. Comp. Laws Ann. § 211.34c (West 1994).


calculated for each class of property specified in Section 211.34c of the Michigan Compiled Laws. The court rejected the plaintiff's argument that the phrase in Section 31, "assessed valuation of property as finally equalized," must be interpreted to mean the assessed valuation of each separate class of property as finally equalized. The court found nothing in the language of Section 31 to suggest an intent to prohibit an increase of taxes within a class of property when such an increase results from equalization of assessments of that class with other classes at the same percentage of true cash value.

E. The Implementing Legislation for Headlee Rollbacks and Rollups

The third sentence of Article IX, Section 31 requires that property tax millage rates be rolled back when assessed values, excluding new construction, exceed the rate of inflation. The implementing legislation provides a methodology and procedures for implementing Headlee rollbacks.

What if the rate of inflation exceeds the increase in property valuations? Can local taxing authorities reach back to prior years when property values exceeded inflation and "recapture" a portion of the increase in property values? A 1993 amendment to the implementing legislation prohibits Headlee "rollups" that would have allowed an increase in property taxes up to the "maximum authorized rate" if the rate of inflation exceeded the growth rate in property valuations. The 1993 amendment prohibits rollups without voter approval, thereby permanently reducing property taxes. Section 211.34d(16) of the Michigan Compiled Laws provides:

Beginning with taxes levied in 1994, the millage reduction required by section 31 of Article IX of the state constitution of 1963 shall permanently reduce the maximum rate or rates authorized by law or charter. The reduced maximum authorized rate or rates for 1994 shall equal the product of the maximum rate or rates authorized by law or charter before application of this section multiplied by the compound millage reduction applicable to that millage in 1994 pursuant to subsections (8) to (12). The reduced maximum authorized rate or rates for 1995 and each year after 1995 shall equal the product of the immediately preceding year's reduced maximum authorized rate or rates multiplied by the current year's millage reduction fraction and shall be adjusted for millage for which authorization

182. Id. at 495-97.
183. Id. at 498.
184. See MICH. COMP. LAWS ANN. § 211.34d (West 1994).
has expired and new authorized millage approved by the voters pursuant to subsections (8) to (12).\textsuperscript{185}

The Headlee Commission has concluded that the implementing legislation, although “extremely complex and difficult to understand,”\textsuperscript{186} nevertheless limits the increase in property tax revenue to the rate of inflation plus new construction.

VIII. ARTICLE IX, § 32: TAXPAYER SUITS

Section 32 of the Headlee Amendment gives taxpayers standing to challenge alleged violations of the Headlee Amendment and vests the Court of Appeals with original jurisdiction over such taxpayer suits. Section 32 provides:

Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.\textsuperscript{187}

The apparent purpose of vesting the Court of Appeals with original jurisdiction over taxpayer suits was to expedite the judicial review process by eliminating the circuit court step. If this was the drafters’ intent, it was misguided. As the experience from the 17-year long Durant litigation amply demonstrates, because the Court of Appeals is not a factfinding body, all disputed questions of fact are referred to a special master (i.e., a circuit court judge)\textsuperscript{188}, who makes findings of fact and recommendations to the Court of Appeals.\textsuperscript{189} Other than the applicable standard of appellate review, the only differences between this process and the normal circuit court adjudicatory process followed by an appeal to the Court of Appeals seem to be matters of form rather than substance.

The implementing legislation for Section 32 provides:

Sec. 308a. (1) An action under section 32 of article 9 of the state constitution of 1963 may be commenced in the court of appeals, or in the circuit court in the county in which venue is proper, at the option of the party commencing the action.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{185}  MICH. COMP. LAWS ANN. § 211.34d(16) (West 1994).
\item \textsuperscript{186}  HEADLEE COMM’N REPORT, supra note 4, at 34.
\item \textsuperscript{187}  MICH. CONST. art. IX, § 32.
\item \textsuperscript{188}  For example, in the Durant litigation, the Court of Appeals appointed special masters, both of whom were circuit court judges, on two occasions.
\item \textsuperscript{189}  See MICH. COMP. LAWS ANN. § 600.308a(5) (West 1994). See also MICHIGAN COURT RULES 7.206(D)(3).
\end{enumerate}
\end{footnotesize}
(2) The jurisdiction of the court of appeals shall be invoked by filing an action by a taxpayer as plaintiff according to the court rules governing procedure in the court of appeals.

(3) A taxpayer shall not bring or maintain an action under this section unless the action is commenced within 1 year after the cause of action accrued.

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

(5) The court of appeals may refer an action to the circuit court or to the tax tribunal to determine and report its findings of fact if substantial fact finding is necessary to decide the action.

(6) A plaintiff who prevails in an action commenced under this section shall receive from the defendant the costs incurred by the plaintiff in maintaining the action.\(^{190}\)

Although the implementing legislation vests the circuit court and the Court of Appeals with concurrent jurisdiction over taxpayer suits, there are no reported cases in which a taxpayer initiated a Headlee Amendment challenge in circuit court.\(^{191}\) However, taxpayer lawsuits alleging not only Headlee Amendment violations but also other violations of state law must be filed in circuit court.\(^{192}\)

A. The One-Year Limitations Period

All taxpayer suits must be brought within one year after the cause of action accrues. The Michigan Supreme Court has upheld the statutory one-year limitations period as a reasonable restriction designed to protect the fiscal integrity of government units that

\(^{190}\) Id. § 600.308A.

\(^{191}\) Because local governmental units are not "taxpayers," the provisions of Section 32 are inapplicable to them. Claims by units of local government brought under the Headlee Amendment may be filed with the Local Government Claims Review Board, and from there to the circuit court. Id. § 21.246.

\(^{192}\) See, e.g., Macomb County Taxpayers Ass'n v. L'Anse Creuse Public Schools, 564 N.W.2d 457 (Mich. 1997) (where the plaintiff's complaint filed in circuit court alleged violations of both state law and of Article IX, Section 29).
might otherwise face the prospect of losing several years' worth of tax revenues.\textsuperscript{195}

In connection with a challenge to the issuance of bonds, the Court of Appeals has held that if the taxpayer's challenge goes to the legality of a bond issue under the Headlee Amendment, that challenge is barred if brought after the bonds are issued, even if the taxpayer suit is filed within one year of the bond issuance.\textsuperscript{194} Known as the \textit{Bigger} rule,\textsuperscript{195} the rule protects the vested interests of third-party bondholders. In this connection, the Legislature has protected the interests of taxpayers by requiring publication of a notice of intent to bond, thereby giving taxpayers adequate notice and an opportunity to bring a Headlee challenge in the Court of Appeals.\textsuperscript{196}

\subsection*{B. Recovery of Fees and Costs}

Section 32 provides for the recovery of "costs" by a successful taxpayer in a Section 32 lawsuit. In \textit{Macomb County Taxpayers Association v. L'Anse Creuse Public Schools},\textsuperscript{197} the Michigan Supreme Court held that the term "costs" used in Section 32 includes reasonable attorney's fees. The court adopted the reasoning of the court of appeals in \textit{Durant v. Board of Education},\textsuperscript{198} that the term "costs" include attorney fees:

\begin{quote}
Litigation brought pursuant to § 32 can be complex and protracted. The financial outlay needed for maintaining a suit of this nature can be extremely burdensome and inhibitive. Attorney fees compose a substantial portion of such outlays. Without the ability to recoup all costs of maintaining an action to enforce the Headlee Amendment, including reasonable attorney fees, the average taxpayer could not withstand the financial obligation incurred as a result of exercising that taxpayer's right to bring suit. Accordingly, we conclude that, in ratifying the Headlee Amendment, "the great mass of people themselves" intended the term "cost" to include reasonable attorney fees.\textsuperscript{199}
\end{quote}

\begin{footnotes}
\item[193.] See Taxpayers Allied for Constitutional Taxation v. County of Wayne, 537 N.W.2d 596 (Mich. 1995) (in which plaintiffs brought an action nearly ten years after the tax increase went into effect).
\item[194.] Sessa, 559 N.W.2d at 73.
\item[195.] See Bigger v. City of Pontiac, 210 N.W.2d 1 (Mich. 1973).
\item[196.] See MICH. COMP. LAWS ANN. § 123.958b(3).
\item[197.] 564 N.W.2d 457 (Mich. 1997).
\item[199.] L'Anse Creuse, 564 N.W.2d at 460 (quoting \textit{Durant v. Bd. Of Educ.}, 463 N.W.2d at 477-78).
\end{footnotes}
The Supreme Court also consulted the drafters' notes which, although not authoritative, weigh in favor of a conclusion that "costs" includes attorney fees. The drafters' notes state that "costs" mean all expenses incurred in maintaining a taxpayer's lawsuit, including filing, service, witness, and attorney fees. However, only individual taxpayers are entitled to recover their Section 32 costs; associations and governmental units are ineligible.

IX. SUMMARY AND CONCLUSION

In summary, unfunded state mandates are prohibited under the Headlee Amendment. What constitutes a state mandate to local government, thereby triggering the provisions of Section 29 of the Headlee Amendment prohibiting such unfunded mandates to local government? The implementing legislation for Section 29 defines the term "state requirement" broadly 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 law." The Michigan Supreme Court has held that requirements upon local government imposed under the Michigan Constitution are not a "state requirement" for purposes of Section 29 and unfunded state mandates.

If the state does require local governmental units to perform certain services, what costs incurred by local government must the state fund? Section 29 prohibits the State from reducing the state-financed proportion of the necessary costs of any existing activity or service required of units of local government under state law. The Legislature has defined the term "necessary cost" to mean "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."

If the Legislature underfunds units of local government in violation of Section 29, what is the remedy? The Michigan Supreme Court held in its 1997 Durant decision that the state is liable in damages if it violates Section 29, measured by the amount of underfunding of the state-mandated activities. The damage award

200. L'Anse Creuse, 564 N.W.2d at 461.
201. See supra note 93 and accompanying text.
202. See supra note 96 and accompanying text.
203. MICH. CONST., art. IX, § 29. See also Durant, 566 N.W.2d 272, 280 (Mich. 1997).
must be distributed to the units of local government adversely affected by the underfunding.\textsuperscript{206} The units of local government in turn distribute the monies in a manner they deem appropriate, including distributing the funds to local taxpayers.\textsuperscript{207} An award of interest on the damage lies within the discretion of the courts. Successful taxpayers are also entitled to an award of attorneys' fees.\textsuperscript{208}

If the Legislature enacts a tax that benefits local government, is that a "local tax" under the Headlee Amendment? This question captures one of the more troublesome issues that have arisen over the last twenty years. The Michigan Supreme Court has held that a tax is a state tax if it is styled as a state tax, is structured as a state tax, serves a state purpose, was enacted by the Legislature, is collected by the state, and is distributed by the state.\textsuperscript{209} In contrast, the court added, a tax is a local tax if it is collected by local government, is administered directly by that local entity, and is spent by the local government according to local fiscal policy.\textsuperscript{210} The focus of the court's analysis is on whether the monies collected are subject to a state appropriate. Less important to the court is the fact that the beneficiary of the state appropriate is a specific unit of local government.\textsuperscript{211} Such state tax legislation for the benefit of local units of government arguably undercuts the requirement in Headlee of local voter approval of all new local taxes.

In a closely related vein, are user fees and special assessments a "new tax" under the Headlee Amendment that require local voter approval? There is no legislation defining the terms "user fee" or "special assessment."\textsuperscript{212} In general, a fee is exchanged for a service rendered or a benefit conferred.\textsuperscript{213} A fee is distinguishable from a tax in that a fee provided there is some reasonable relationship between the amount of the fee and the value of the service or benefit.\textsuperscript{214} As previously stated, special assessments are distinguishable from general property taxes in at least three respects: 1) general property taxes are levied on real and tangible personal property, whereas special assessments are levied only on real property; 2) general property taxes are levied across the board within the assessing jurisdiction to defray the costs of government in general, whereas

\begin{itemize}
  \item \textsuperscript{206} Id.
  \item \textsuperscript{207} Id. at 288-90.
  \item \textsuperscript{208} See supra note 200 and accompanying text.
  \item \textsuperscript{209} See Airlines Parking, Inc. v. Wayne County, 550 N.W.2d 490, 494 (Mich. 1996).
  \item \textsuperscript{210} Id.
  \item \textsuperscript{211} Id. at 495.
  \item \textsuperscript{212} See supra note 177 and accompanying text.
  \item \textsuperscript{213} See supra note 163 and accompanying text.
  \item \textsuperscript{214} See Vernor v. Sec'y of State, 146 N.W. 338 (Mich. 1914). See also Merrelli v. City of St. Clair Shores, 96 N.W.2d 144 (Mich. 1959).
\end{itemize}
special assessment are levied only within a special assessment district which is comprised of the land and improvements; and 3) in theory general property taxes are levied on an ad valorem basis, whereas special assessments are levied on the basis of frontage or land area.215

Again, as with state tax legislation that directly benefits local government, it is arguable that special assessments and user fees circumvent the Headlee Amendment requirements that all new local taxes be submitted for local voter approval.

Finally, if a unit of local government does increase its millage rate without voter approval, does it violate the Headlee Amendment? There may be a narrow set of circumstances where a local government can increase the millage rate without running afoul of Headlee. The Headlee Amendment does not prohibit millage increases without voter approval if the increase is within "the rate authorized by law" or "the maximum authorized rate." Therefore, for example, if a unit of local government was authorized by the voters to assess 18 mills before adoption of the Headlee Amendment, but it had only levied 16 of 18 mills so authorized, that unit is most likely free to assess the remaining two mills without voter approval.

215. See supra notes 164-66 and accompanying text.