

*Michigan Senate Testimony*

Senate Local Government Committee April 30, 2014

Testimony on Senate Bills: 495, 496, 497 & 498

Alan G. Vanderberg, Ottawa County Administrator



---

---

---

---

---

---

---

---

*American System of Government has Checks and Balances*

- Rule of Law
- Separation of Powers
- Federalism



---

---

---

---

---

---

---

---

*Roles of Michigan County Government*

- Grassroots deliverer of State services at the local level, most of those services are "mandated."
- Provide social safety net services per the Great Society legislation in concert with federal funding and state priorities/funding.
- Provide discretionary services as desired and approved by county residents and the county board of commissioners.



---

---

---

---

---

---

---

---

### Mandated County Services

- Courts
- Jail
- Veteran's Affairs
- Public Health
- Clerk
- Treasurer
- Prosecutor
- Sheriff
- Drain Commissioner
- Register of Deeds
- Child Care
- Community Mental Health
- Equalization
- Medical Examiner



---

---

---

---

---

---

---

---

### Headlee Amendment, Michigan Constitution, 1963

- The so called "second sentence" of the Headlee Amendment prohibits the State of Michigan from imposing "new" services not in existence as of state fiscal year 1978/79 ("Headlee Base Year"), or, "increasing the level" of mandated services in existence in the Headlee Base Year without state payment.



---

---

---

---

---

---

---

---

### Mandate Burden

- A 2004 study revealed that only 59.4% of mandates are covered by revenue.
- The total cost to local government of unfunded mandates has been estimated into the billions.



---

---

---

---

---

---

---

---

*The "second sentence" has been regularly violated by all three branches of state government.*



---

---

---

---

---

---

---

---

 *REFORMING THE PROCESS FOR IDENTIFYING AND FUNDING SECTION 29 MANDATES ON LOCAL GOVERNMENTS, July 2009, Report 355, Citizens Research Council*

- "Over the 30 years since adoption of the Headlee Amendment, the Section 29 obligation to fund state requirements has been both actively opposed and ignored by state officials."
- "Reform should touch on all branches of state government – Legislative, Judicial, and Executive."



---

---

---

---

---

---

---

---

*Legislative Unfunded Mandate - Public Health Code*

- The Public Health Code Requires the State to pay 50% of the cost of mandates to local governments under this code.
- The State currently pays 32% of the cost of Public Health Code Mandates in Ottawa County.
- This causes Ottawa County taxpayers to ante up over \$1 million per year to cover what the State is legally required to pay.



---

---

---

---

---

---

---

---



### Judicial Unfunded Mandate

Wayne County v. Michigan, Michigan Court of Appeals, 1993

- In a published opinion the Court of Appeals stated that counties have no damage remedy when the state increases a level of mandated service or even when it adds a new mandate.
- A county's only right when faced with these illegal increases in levels of previously mandated services or new mandates is civil disobedience; namely, to refuse to impose the mandate.



---

---

---

---

---

---

---

---

*"The specific course of action a claimant faced with an unfunded new activity or service should take is to refuse to fund the activity or service in question, while at the same time seeking a declaratory judgment on its obligation under the Headlee Amendment to fund those services, Durant v. Michigan (1997). "The state would then either have to fund the activity, remove the mandate, or obtain a stay from the judiciary."*



---

---

---

---

---

---

---

---

- This is untenable. It forces counties to disobey the law or lack any financial recourse.
- A far better result is if the state calculates the cost of compliance when imposing the mandate.
- In Wayne County, there were over 20 increases in mandate levels identified. Forcing civil disobedience was determined to be Wayne's only remedy, which is the opposite of good government based on best practices.



---

---

---

---

---

---

---

---

*Forcing a fiscal analysis and publishing fiscal notes with all legislation that potentially increases county government cost will aid the State in complying with the Headlee mandate and guide the counties on a course of action.*



---

---

---

---

---

---

---

---

**CRC Report**

"It is understandable that state officials would be adverse to funding mandates that would create large costs in the state budget, but those officials are not given discretion in their oaths of office to enforce only those provisions of the State Constitution they find favorable. The Constitution expresses the will of the people and, until sections are amended or repealed, is expected to be enforced as written and interpreted by the courts."



---

---

---

---

---

---

---

---



Alan G. Vanderberg  
Ottawa County Administrator  
616-738-4068  
avanderberg@mioottawa.org



---

---

---

---

---

---

---

---