

MICHIGAN SENATE
TESTIMONY

SENATE GOVERNMENT OPERATIONS COMMITTEE
NOVEMBER 4, 2015
TESTIMONY ON SENATE BILLS: 388, 389 & 390

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 OFFICES/DEPARTMENTS/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.



THE "SECOND SENTENCE" HAS BEEN REGULARLY VIOLATED BY ALL THREE BRANCHES OF STATE GOVERNMENT.



PA 101 OF 1979

- IMPLEMENTING LEGISLATION FOR THE HEADLEE AMENDMENT
- STATE CREATED A CATALOGUE OF STATE-IMPOSED MANDATES
 - NOTHING MORE THAN A LEGISLATIVE LISTINGS OF "SHALL" LAWS
 - NO DETERMINATION OF COST WAS MADE AT THE TIME
 - PRACTICALLY IMPOSSIBLE TO RECREATE THAT ANALYSIS NOW

SOURCE: DR. ERIC SCORSONE



PA 101 OF 1979 CONT...

- FOR RULES PROMULGATED UNDER A STATE LAW WHICH REQUIRES A DISBURSEMENT UNDER THIS ACT, THE STATE AGENCY PROMULGATING THE RULES SHALL PREPARE AND SUBMIT A FISCAL NOTE.
- THE FISCAL NOTE SHALL INCLUDE AN ESTIMATE OF THE COST OF THE RULE DURING THE FIRST 3 FISCAL YEARS OF THE RULE'S OPERATION.
- THE LEGISLATURE SHALL THEN APPROPRIATE THE AMOUNT REQUIRED IN AN APPROPRIATION BILL INTRODUCED AS A RESULT OF THE REQUEST.



UNFUNDED 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.





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."



FINAL REPORT OF THE LEGISLATIVE COMMISSION ON STATUTORY MANDATES

- PROPOSED LEGISLATION AND COURT RULE AMENDMENTS





Final Report
of the
Legislative Commission on
Statutory Mandates

DATE SUBMITTED TO GOV

Michigan Legislature and the Governor
Pursuant to MCL 4.111 et seq., MCL Act No. 2007-027 and Public Act 124 of 2008.

State of Michigan
Honorable Stephen J. Lecher
Governor
Honorable Dan Claitor
Deputy Governor
Honorable Robert A. Woodworth
Chairman
Honorable Robert A. Woodworth
Honorable Robert A. Woodworth
Honorable Robert A. Woodworth
Honorable Robert A. Woodworth

EXECUTIVE UNFUNDED MANDATE –
DEPARTMENT OF COMMUNITY HEALTH

- DCH ENDED THE LONG-TERM PRACTICE OF ALLOWING COMMUNITY MENTAL HEALTH DEPARTMENTS AND AUTHORITIES TO CARRY OVER FUND BALANCES FOR BOTH MEDICAID AND STATE GENERAL FUND REVENUE. THIS RESULTS IN A REDUCTION OF \$4.5 TO \$7.5 MILLION IN FLEXIBILITY TO MEET SERVICE DEMANDS OF OUR MOST FRAGILE AND AT RISK POPULATION.
- THE MEDICAID PER-CAPITA DISTRIBUTION HAS BEEN IN PLACE FOR OVER 10-YEARS, DUE TO A DECISION OF DCH. OTTAWA COUNTY HAS RECEIVED THE LOWEST PER CAPITA DISTRIBUTION OF STATE GENERAL FUNDS SINCE THE FORMULA WAS CREATED.



DHHS UNFUNDED MANDATE: REIMBURSEMENT
OF FOSTER PARENTS FOR TIME AND TRAVEL

DHHS BOLLERPLATE LANGUAGE FROM FY 2014-2015 BUDGET

- PA 252, ARTICLE X, SECT. 562
- SEC. 562. THE DEPARTMENT SHALL PROVIDE TIME AND TRAVEL REIMBURSEMENTS FOR FOSTER PARENTS WHO TRANSPORT A FOSTER CHILD TO PARENT-CHILD VISITATIONS. AS PART OF THE FOSTER CARE PARENT CONTRACT, THE DEPARTMENT SHALL PROVIDE WRITTEN CONFIRMATION TO FOSTER PARENTS THAT STATES THAT THE FOSTER PARENTS HAVE THE RIGHT TO REQUEST THESE REIMBURSEMENTS FOR ALL PARENT-CHILD VISITATIONS. THE DEPARTMENT SHALL PROVIDE THESE REIMBURSEMENTS WITHIN 60 DAYS OF RECEIVING A REQUEST FOR ELIGIBLE REIMBURSEMENTS FROM A FOSTER PARENT.
- PG. 168
- COST: EST. \$12,000 PER YEAR



STATE OF MICHIGAN DHHS V
CHILDREN'S RIGHTS CLASS ACTION
SETTLEMENT (MODIFIED SETTLEMENT
AGREEMENT "MSA")

- FAR REACHING CHANGES TO FOSTER CARE, JUVENILE JUSTICE SERVICE PROVISION IN THE STATE. COUNTIES NOT CONSULTED BEFORE SETTLEMENT.
- REQUIRED ALL HOMES THAT CHILD VICTIMS OF ABUSE & NEGLECT BE IN LICENSED HOMES, EVEN HOMES OF EXTENDED FAMILY, AT COUNTY COST.
- COST IMPACT TO OTTAWA COUNTY \$250,000 TO \$500,000 ESTIMATED.



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 UNDEFENDABLE. 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."





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