STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
(BORRELO, PJ, AND METER AND SHAPIRO, JJ)

TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM and SARA KANDEL,

Plaintiffs,

-vs-

THE STATE OF MICHIGAN, THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET OF THE STATE OF MICHIGAN; and the MICHIGAN OFFICE OF THE AUDITOR GENERAL,

Defendants.
_____/

Supreme Court Nos. 160658, 160660

Court of Appeals No. 334663

AMICUS CURIAE BRIEF BY MICHIGAN MUNICIPAL LEAGUE (MML), GOVERNMENT LAW SECTION (GLS) OF THE STATE BAR OF MICHIGAN, THE MICHIGAN TOWNSHIPS ASSOCIATION (MTA), AND MICHIGAN ASSOCIATION OF COUNTIES (MAC) IN SUPPORT OF PLAINTIFFS-APPELLEES TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, ET AL

JOHN C. PHILO (P 52721)
SUGAR LAW CENTER FOR
ECONOMIC & SOCIAL JUSTICE
Attorney for Plaintiffs
4605 Cass Avenue
Detroit, MI 48201

JOHN E. MOGK (P 17866)
WAYNE STATE UNIVERSITY LAW SCHOOL
Co-Counsel for Plaintiffs
471 W. Palmer Avenue
Detroit, MI 48202

FADWA A. HAMMOUD (P 74185)
MATTHEW B. HODGES (P 72193)
DAVID W. THOMPSON (P 75356)
MICHAEL S. HILL (P 73084)
OFFICE OF THE ATTORNEY GENERAL
Attorneys for Defendants
P.O. Box 30754
Lansing, MI 48909

TRACY ANNE PETERS (P 76185)
TRACY A PETERS PLLC
Co-Counsel for Plaintiffs
3494 Harvard Road
Detroit, MI 48224-2340

THOMAS R. SCHULTZ (P42111)
CAROL A. ROSATI (P 32288)
ELIZABETH SAARELA (P 60265)
STEVEN P. JOPPICH (P 46097)
ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Attorneys for *Amici Curiae*
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

Amici adopt the Statement of Appellate Jurisdiction as set forth by Defendants/Appellants in their Brief on Appeal dated September 9, 2020 and Appellee Brief dated November 4, 2020.

STATEMENT OF THE QUESTIONS PRESENTED

I. WHETHER THE STATE SHOULD BE PROHIBITED FROM COUNTING PROPOSAL A REVENUES IN THE "NUMERATOR" OF THE HEADLEE PROPORTION FRACTION, BECAUSE IT IMPROPERLY CHANGES THAT PROPORTION AND GIVES PROPOSAL A AN EFFECT THAT WAS NEVER INTENDED

Plaintiffs answer: Yes
Defendants answer: No
The Court of Appeals answered: No
This Court should answer: Yes

II. WHETHER PUBLIC SCHOOL ACADEMIES SHOULD BE CONSIDERED PART OF A STATE PUBLIC SCHOOL SYSTEM, NOT LOCAL PUBLIC SCHOOLS, THEREFORE PRECLUDING FUNDS PAID TO SUPPORT SUCH ACADEMIES FROM BEING CONSIDERED AS AID PAID TO LOCAL GOVERNMENTS.

Plaintiffs answer: Yes
Defendants answer: No
The Court of Appeals answered: No
This Court should answer: Yes

III. WHETHER THE COURT OF APPEALS ERRED BY HOLDING THAT STATE FUNDS DIRECTED TO LOCAL GOVERMENTS TO SATISFY STATE OBLIGATIONS UNDER §29 OF HEADLEE CANNOT BE COUNTED TOWARD THE PROPORTION OF STATE FUNDS REQUIRED UNDER §30 OF HEADLEE.

Plaintiffs answer: No
Defendants answer: Yes
The Court of Appeals answered: No
This Court should answer: No

IV. WHETHER THE COURT OF APPEALS ERRED BY HOLDING THAT THE AUDITOR GENERAL IS SUBJECT TO MANDAMUS RELIEF

Plaintiffs answer: No
Defendants answer: Yes
The Court of Appeals answered: No
This Court should answer: No

STATEMENT OF INTEREST

The Michigan Municipal League (MML) is a Michigan non-profit corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership comprises hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund (LDF). The Michigan Municipal League operates the LDF through a board of directors that is broadly representative of its members. The purpose of the LDF is to represent the member cities and villages in litigation of statewide significance.

The Government Law Section of the State Bar of Michigan (GLS) is a voluntary membership section of the State Bar of Michigan, comprising approximately 852 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, boards and commissions, and special authorities. Although the Section is open to all members of the State Bar, its focus is centered on the laws, regulations, and procedures relating to governmental law. The GLS provides education, information and analysis about issues of concern to its membership and the public through meetings, seminars, the State Bar of Michigan website, public service programs and publications. The GLS is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the GLS participates in cases that are significant to governmental entities throughout the State of Michigan. The Section has filed numerous *amicus curiae* briefs in state and federal courts. The position expressed in the *amicus curiae* brief is that of the Government Law Section only and is not the position of the State Bar of Michigan.

The Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consists of more than 1,225 townships within the State of Michigan (including both general law and charter townships) joined together for the purpose of providing education, exchange of information, and guidance to and among township officials to enhance the more

efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan. The MTA is governed by a Board of Directors who are township government officials.

The Michigan Association of Counties (MAC), a non-profit association founded in 1898, consists of 83 Member Michigan Counites. It is a statewide organization dedicated to representing the interests of Michigan's county commissioners. It promotes the education of those county officials and communication and cooperation between them, and it advocates on their behalf in the Michigan and federal legislatures.

The governing bodies of the above entities have all authorized and directed this office to file an *amicus curiae* brief in the within cause in support of Plaintiffs.

This Court's Order Granting Leave to Appeal, dated July 1, 2020, invites all of the above-named entities to file an *amicus* brief.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Amici adopt the Statement of Material Proceedings and Facts as set forth by Plaintiffs/Appellants in their Brief on Appeal dated September 9, 2020 and Appellee Brief dated November 4, 2020.[1]

STANDARD OF REVIEW

The Constitutional issues raised on appeal are reviewed *de novo*, with the primary goal of ascertaining the purpose and intent of any constitutional provisions at issue. *Mahaffey v Attorney General*, 222 Mich App 334, 335; 564 NW2d 104 (1997).

ARGUMENT

A considerable amount of ink has been spilled by experts over the past few years to chronicle, explain, and almost without exception lament Michigan's broken municipal finance system—how we have fallen behind other states economically because of disinvestment in our communities, why our government finance policies are largely responsible for that, and how we might go about fixing it all. This Court can, by judicial notice, avail itself of a wealth of information out there on the subject generally. The Michigan Municipal League (MML), whose Legal Defense Fund (LDF) is one of the *Amici* here, makes some of those resources available on its website.[2] Among the materials that can be found there are reports that establish how Michigan ranks dead last among the 50 states in state support for local government, and how over the years the State of Michigan's revenues have grown substantially while the financial resources of its local governments have withered.

[1] No counsel for a party authored this Brief in whole or in part. No counsel or party made a monetary contribution to the preparation of this Brief.
[2] https://www.savemicity.org/research

While the approval by voters of two amendments to the State Constitution, the Headlee Amendment in 1978[3] and Proposal A in 1994,[4] in some respects pointed the way to the hard place we find ourselves—also dead last among all 50 states in overall municipal general revenues—it is the subsequent choices made by the State government that have put us on a particular path that we didn't necessarily have to go down. This case is about recognizing that some things that the State has done over the years since Proposal A's passage are not just bad fiscal policy but actually violate the State Constitution and the voters' intent when they adopted both Headlee and Proposal A.

This Brief supports the positions on appeal taken by Taxpayers for Michigan Constitutional Government, Steve Duchane, Randall Blum, and Sara Kandel (collectively, "Taxpayers").[5] *Amici* agree with Taxpayers that counting Proposal A funding as State spending throws off the proportion of State spending for local government required by Headlee and results in a shifting of the State's tax burden to local units of government, and also that counting State aid to charter schools is not permitted because they not part of a local unit of government for purposes of Headlee.

More specifically, *Amici* agree with Taxpayers that the Court of Appeals erred by finding, consistent with the State's arguments, that the inclusion of Proposal A funding in the calculation of State spending on local government for purposes of §25 and §30 of Headlee[6] merely effects a voter-approved "re-balancing" of State spending *among* local units of government. *Michigan Taxpayers for Constitutional Government, et al v State of Michigan*, 330 Mich App 295, 310-311

[3] Const. 1963, art 9, §25-33
[4] Const. 1963, art 9, §11
[5] This Brief utilizes substantial portions of the Brief previously filed on behalf of *Amici* by Dennis R. Pollard and Jennifer C. Hill of Secrest Wardle in the Court of Appeals. See Brief of *Amici Curiae* dated March 13, 2018. This includes the materials and analyses attached, including the document entitled "Estimated Local Impact of Proposal A Tax and Spending Shifts, February 2018," attached as Exhibit A to the Court of Appeals Brief. To the undersigned's knowledge, no party objected to the analysis of such materials in the Court of Appeals.
[6] Const. 1963, Art 9, §25 and §30.

(2019). Instead of a re-balancing of State spending, the inclusion of Proposal A funding in the calculation is part of a larger *un*-balancing of State aid to local governments that has been ongoing for years and has now reached a breaking point.

Amici also agree with Taxpayers that the Court of Appeals erred when it accepted the State's argument that charter schools fall within the definition of a unit of government simply because the State Legislature has—quite helpfully for its own purposes here—passed a law that deems charter schools to be school districts for purposes of the receipt of State school aid. *Michigan Taxpayers, supra*, at 312-313. The determination by the State to so classify these essentially private, non-profit corporate entities as public school districts did not confer upon them a *constitutional* status as a local unit of government—particularly given that they operate as basically State-run schools virtually unaccountable to any local unit of government, as opposed to locally-run and locally-accountable public schools.[7]

Whether you think Michigan is well on its way to becoming an economic backwater and our State fiscal policies are a leading cause of that, or you think the State's current fiscal status and trajectory are just fine, it can't actually be argued that the State's actions in funding local governments have kept the faith with the purpose, or provenance, of either Headlee or Proposal A. Headlee in particular contemplates that the State be held to funding local governments in the same proportion as was in place in 1978, when it was adopted, and also that it be prohibited from shifting tax burdens to locals; that was the "trade off" that voters understood when they correspondingly limited the right of local governments to raise local revenues. Proposal A did not change that. And yet the balance between the State and local units of government is no longer holding true.

[7] *Amici* also support Taxpayers' position with respect to the separate but related appeal by the State seeking to overturn the relief that was granted by the Court of Appeals with respect to mandamus relief under §29 of Headlee.

The State now raises and holds onto a much larger share of tax revenues than the local units, which are shrinking and cutting services as a result. With Proposal A, some State legislators, employees, and consultants—not the voters—came up with a plan that saw local school districts stripped of the ability to locally fund their own schools, which those State officials then addressed by crafting a "crisis" constitutional amendment (Proposal A) for voters to accept as a necessary solution. As further described below and in Taxpayers' Brief(s) on Appeal, the quiet victory for the State was a new control of most funding for local schools that it could now count *against* other (non-school) local units of government for purposes of Headlee, using it to justify the elimination of other long-standing sources of State aid to them. A win-lose proposition not contemplated by the voters in 1994.

With charter schools, some State legislators, employees, and consultants—not the voters—came up with a way to fund what are in reality non-public, non-local schools that basically compete with local public schools, and then use the funding for that program to offset payments to local governments generally. Again, not what voters in 1978 would have contemplated when voting to cast the proportion of State funding for local governments in stone.

The aid dollars lost to local governments as a result of these two decisions by the State are mind-boggling. Billions of dollars just from 1994 forward, as discussed below. The State shrugs its shoulders and says "Tighten your belt or bite the bullet and raise taxes—that's what the voters wanted when they passed Headlee, and what they understood when they passed Proposal A." But what the State is doing with Proposal A school funding and charter school funds is really a perversion of Headlee—or, given the extent of the loss of funding for local units, maybe better described as a weaponization of it. It is really the State directing local government policy by default and from afar by forcing constant funding crises at the local level. The State's premise that things are working perfectly as intended by the voters is not a reality that would be

recognized by those voters who attend their local council and board meetings each year at budget time.

"The object of construction, as applied to a written constitution, *is to give effect to the intent of the people adopting it*." 1 Cooley, *Constitutional Limitations* (5th Ed) 1883, pg. 68 (emphasis in original). The State offers page after page in its Briefs devoted to different ways of saying "we're just applying the text of §30 as it was written." But neither the State nor the Court of Appeals in upholding the State's reading are really at all interested in applying the "common understanding" touchstone of constitutional analysis required by the Courts of this State over the years since Cooley's guidance, or in finding and giving effect to the true intent behind either Headlee and Proposal A. That antiseptic, hyper-technical approach is what has allowed the State to pull apart the otherwise balanced framework of Headlee and remake it in the State's favor. This Court needs to take the opportunity to put local government funding issues back into line with what Headlee requires and what the voters expected and intended, both in 1978 when it was adopted and in 1994 when Proposal A was approved without any corresponding amendment to—let alone a stated intention to effectively abolish—Headlee.

I. THE STATE SHOULD BE PROHIBITED FROM COUNTING PROPOSAL A REVENUE IN THE "NUMERATOR" OF THE HEADLEE PROPORTION FRACTION, BECAUSE IT IMPROPERLY CHANGES THAT PROPORTION AND GIVES PROPOSAL A AN EFFECT THAT WAS NEVER INTENDED

Taxpayers make a compelling case as to how counting Proposal A funding as part of State spending for purposes of Headlee reduces the required proportion of State funding to local governments and results in a tax shift in violation of the both the letter and spirit of §25 and §30 of Headlee. Before Proposal A, school funding was primarily a local endeavor. Most school funding came from local real and personal property taxes. Those locally-raised dollars were "neutral" as far as Headlee was concerned, since they were not part of the State aid calculation.

In 1993, the State passed a law (not a constitutional amendment), PA 145 of 1993, that basically took away local governments' ability to impose taxes for their schools, leaving us collectively with a school funding crisis to resolve. Having intentionally created the problem, the State then led the crafting of a proposed solution in the form of Proposal A, which operates essentially as a State "takeover" of local school funding, with a collection of property and other taxes levied by the State and then paid over to local school districts according to a formula.[8]

This part of the litigation between Taxpayers and the State results from the fact that now, according to the State and its Department of Technology Management and Budget, this new source of State dollars being paid over to local school districts should be counted in the "numerator" of the Headlee §30 "proportion fraction" that is supposed to govern State aid to local government: "Total State Spending Paid To All Units Of Local Government**/**All State Spending." As will be discussed below, the extent to which the State's treatment of this new funding has come to adversely affect local governments has reached completely untenable levels—particularly because it enabled other State government actions that have raided other traditional sources of local government revenues to stanch the flow of the State's own red ink.

A. The Constitutional Framework – §25 and §30 of Headlee and Proposal A

An understanding of what the State has wrought over the past quarter century or so involves a basic history of some pretty sweeping laws. The Headlee Amendment is a collection of new sections of the State Constitution passed in 1978 that affected how local and State government can levy and collect property taxes. The lead-off provision is §25, which lays out what the whole group intends to do:

> 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

[8] There are some continuing local aspects to school funding to deal with existing funding levels in various school districts throughout the state, but this description is generally accurate.

> 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.

Basically, local governments lost the right to raise property taxes without specific voter approval, but the tradeoff was a promise of continued State spending at then current (1978/79) levels, and a prohibition against the State shifting its own tax burden to local government—given the new constraints local units were now subject to. That lays the groundwork for §30, also at the heart of Taxpayers' claim here, which further explains the promise of continued State spending in terms of a "proportion":

> 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.

That proportion can be reduced to a fraction that is expressed as "Total State Spending Paid To All Units Of Local Government**/**All State Spending," which can in turn be reduced to a percentage.

The Parties agree that, on the basis of calculations that involve an historical analysis of what the State was spending on local governments in 1978/79, the percentage of State spending described in §30 is 48.97%.[9] That is, 48.97% of all State spending is to be paid to local units of government, "taken as a group," leaving no more than 51.03 % to be retained and utilized by the State for its purposes. Also of relevance to this discussion, §33 of Headlee defines "local governments" to include "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."[10]

Proposal A was a constitutional amendment in 1994 that (among other things) limited the ability of local school districts to impose property taxes as funding for local schools, as had been

[9] But see pp 25-27 below as to how that percentage wasn't always agreed to by the State.
[10] Const 1963, art 9, §33.

the practice in Michigan for many years—including 1978 when Headlee was adopted. Instead, Proposal A created a new system of mostly State funding for local schools.[11]

As a result of the State including the newly-authorized Proposal A funding (basically, new State-levied tax dollars that replaced what used to be local tax dollars) in its calculation of State spending paid to local units of government, one category of local government—school districts—has ended up receiving a steady stream of State aid while all the other categories of local governments—cities, villages, townships, and counties—have seen the share of total State spending paid to them regularly and relentlessly reduced below 1978/1979 levels. That has affected much more than the school funding question in Michigan, which is what Proposal A was designed to address. It has basically upended the whole Headlee framework—which is what Taxpayers' claim seeks to remedy by relying on and seeking enforcement of the words of *both* §25 and §30.

The Court of Appeals, however, found that §25 was not capable of "enforcement," because it is only "an introductory paragraph to the amendment that summarize the revenue and tax limits imposed on state and local governments by other provisions in the amendment." As the basis for that conclusion, the Court of Appeals cited *Durant v State of Michigan*, 456 Mich 176, 182-183; 566 NW2d 272 (1997). But *Durant* does not actually *say* that §25 is not capable of being enforced, or that it has no substantive effect. It simply describes the "complex system of revenue and tax limits" as being "summarized" in §25 and "implemented" in the following sections.

The Court of Appeals also cited *Waterford Township School District v State Board of Education* (after remand), 130 Mich App 614-620; 344 NW2d 19 (1983), aff'd 424 Mich 364 (1985), as making that categorical statement—that §25 is not intended to be given the substantive effect of creating specific rights and duties. But that is a Court of Appeals opinion, not an opinion of this Court.

[11] See generally, https://www.senate.michigan.gov/sfa/departments/datacharts/dck12_schoolfundingbasics.pdf

Amici agree with Taxpayers that §25, while it is a summary provision, is indeed a substantive and effective provision of the Headlee Amendment. This is consistent with the idea that *all* provisions of the Constitution should be given force and effect:

> Every such instrument is adopted as a whole, and a clause which, standing by itself, might seem of doubtful import, may yet be made plain by comparison with other clauses or portions of the same law. It is therefore a very proper rule of construction, that the whole is to be examined with a view to arriving at the true intention of each part. * * * The rule applicable here is, that effect is to be given, if possible, to the whole instrument, and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle or nugatory.
>
> This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication. It is scarcely conceivable that a case can arise where a court would be justified in declaring any portion of a written constitution nugatory because of ambiguity.

Cooley, *supra*, at 71. It is also consistent with the position taken in this very case by the longstanding government "watchdog" group here in Michigan, Taxpayers United Michigan Foundation, in its February 11, 2020 Amicus Brief in support of Taxpayers' Application for Leave to Appeal. Taxpayers United traces its lineage back to Richard Headlee himself.

There is certainly nothing in the language of §25 itself that says it is not to be given substantive effect. And as a summary provision it does quite a good job of saying—to the voters and to the courts—what the provisions of the Headlee Amendment in total are all about, and what they are intended to accomplish.

B. The State's contention that treating Proposal A funds as State aid to local governments is just implementing the "simple fraction" of Headlee ignores how doing so changes the funding proportion established for the protection of local government in Headlee and therefore results in a prohibited shift of the relative tax burden

Section 31 of Headlee severely limited the right of local units of government to impose real and personal property taxes. The "trade-off" for that is supposed to be an assurance, through the

other sections of Headlee, of the same level of revenue through guaranteed State aid. The whole point of §30 of Headlee in particular is to prohibit the State from upsetting the equilibrium between the State and its local governments by using its normally superior position over local governments to increase its proportion of funds at the expense of local governments.

So, to that end, §30 means that in no case can payments to local units of government dip below the 48.97% base year number. That percentage is a "guarantee," or a floor, of support. While that means that the State can get up to the remaining 51.03% of State revenues, there's no corresponding requirement in Headlee that it *has to*. The 51.03% is a ceiling, not a floor. So as long as local governments receive *at least* the 48.97% of total state spending, no part of the Headlee voters' intent is disregarded.

Stated somewhat differently, the State is prohibited by operation of §30 from having available for spending purposes *more than* the remaining 51.03%—because that would necessarily infringe on local governments' assured proportion of total state spending—but if the State's portion for spending purposes resulted in something less than 51.03% being available for State spending purposes in any given year, Headlee's protections for local governments are still carried out. That's a message from the voters that the State has ignored or forgotten.

1. The depth of the problem

Attached as Exhibit A to this Brief is a report—supported by verifying affidavits from the authors of the report—showing how the voter-approved proportion of state spending for local and State purposes has fallen out of equilibrium or become un-balanced. The report accumulates and analyzes this data from published State sources and reports.[12]

[12] Some of the supporting tables in Exhibit A have been updated from the sum of the tables previously submitted by Taxpayers in their January 25, 2018 brief in answer to the state's motion for summary disposition. However, the data in Exhibit A is not a material variance to the information in the sworn report accompanying Plaintiffs' earlier briefing.

The report was prepared by two retired state government officials who were deeply involved in State fiscal matters during their careers. One of the authors of the report, Mitchel E. Bean,[13] served as the Director of the House Fiscal Agency from 1999 through 2011 and previously as Senior Economist, House Fiscal Agency from 1993 to 1999. The other author, Robert Kleine,[14] served as State Treasurer from 2006 to 2011 and in other financial capacities in the private sector and within State government, including 10 years as Director of the Department of Treasury, Office of Revenue and Tax Analysis. Both Mr. Bean and Mr. Kleine are now retired from state service.

Their report (the "Bean/Kleine Report") explains in plain language how the State has materially reduced funding to municipalities as measured by the proportion that was being paid by the State to local governments in 1978/1979. Payments to local governments *other than* school districts from total State revenues has been reduced by more than half from 1994 (the inception of Proposal A) through 2016; that is, it has been reduced from 32.4% to 16.1%, as adjusted for inflation during that period. (Bean/Kleine Report, Table E, Exhibit A.) Relevant to Taxpayers' challenge, Fiscal Year-end 2016 is the most recent year for which audited State data was available for purposes of this proceeding, but there is no reason to doubt that this massive reduction continued to exist at a comparable or greater extent for the 2016/2017 Fiscal Year and beyond to today.

[13] Mr. Bean's resume documenting his extensive involvement in the State's financial affairs from 1992 to 2011 is attached to his affidavit as Exhibit 1. His credentials include developing expanded and standardized fiscal agency publications and programs; creating appropriation process training sessions for new House members and staff; initiating programs of economic and budget presentations (14 in 2008; over 40 in 2010) for House members, policy staff, and professional and citizen groups; addressing the full House during session to update members on economic and revenue problems; and serving seven different Speakers (Michigan House of Representatives) and nine House Appropriation Committee Chairs.

[14] Mr. Kleine's resume documenting his extensive involvement in the State's financial affairs as State Treasurer from 2006 to 2011 is attached to his affidavit as Exhibit 2. In addition to serving as State Treasurer, Mr. Kleine also has experience in analyzing public policy issues, State and local government budgets, economic forecasting, tax policy analysis, and school organization and finance. Mr. Kleine was employed by the state of Michigan for seventeen years, the last ten as Director of the Office of Revenue and Tax Analysis, where he was responsible for State economic and revenue forecasts and development of State tax policy.

This reduction is occurring for local governments while over the same period of time, also documented in the Bean/Kleine Report, the State's own proportionate share from total State revenues collected has *increased* from 1994 to 2016 by 56.4%, as adjusted for inflation. (Bean/Kleine Report, Table E, Exhibit A.) So, while the local mainstays of Michigan's governmental system have needed to either eliminate locally-provided services, or significantly reduce their services at the local level, or seek to have tax increases authorized by local voters due to these reductions,[15] *State* expenditures have been increased by more than 50% from the inception of Proposal A in 1994. This is *surely* not what was intended by Michigan voters through the Headlee Amendment as expressed in §25 and §30.

2. How the State's actions created, and then exacerbated, the problem

This great un-balancing between State and local government started with the State's application of newly authorized revenues received by operation of Proposal A. Its conversion of Proposal A revenues bumped up the "numerator," or top line, of the §30 proportion fraction, because the State had not, before Proposal A, provided much State aid to local schools. When the State took school funding away from locals and re-constituted that previously-local support as State funds provided to local units, that created what the State then pointed to as a huge *surplus* of funding available for State expenditures. So, for many years, the State calculated the "fraction" at much greater than 48.97%—again, because the Proposal A money *at first* added quite a bit to

[15] Local governments are also prohibited under §31 of the Headlee Amendment from increasing the rate of taxation of an existing tax authorization without voter approval. Specifically, they are prohibited in what they can levy based on the maximum authorized rate reduced to the rate of inflation from year to year; i.e., the Headlee rollback. This prohibition has been most devastating to cities, village, and townships and counties due to the substantial reductions in the State Equalized Values of taxable property which occurred during the recession of 2007 to 2009. Their return to the levels of operating income received prior to that recession is limited by the modest cost of living increases which have subsequently occurred. The return to pre-recession levels of income may take many tens of years assuming no comparable recession occurs during the interim. See Citizens Research Council of Michigan, *The Prolonged Recovery of Michigan's Taxable Values* (Dec. 2016, last visited March 9, 2018, 1.39 P.M.), https://cremich.org/the-prolonged-recovery- of-michigans-taxable-values-2016.

the "total State aid" number. That is, until the State started bleeding the surplus away. (Bean/Kleine Report, Table D, Fourth Column "Percent Total," Exhibit A).[16]

It is that steady bleeding away over the years of that "surplus" that has driven our steady downward spiral over the years, because the "aid" that the State claimed to be giving local governments is entirely illusory. Because the State didn't really fund local schools when Headlee went into effect in 1978, school aid never really counted "against" locals before 1994 (the time of the State's implementation of Proposal A). Schools were locally funded, and that was it; there was no real Headlee impact. And had the State kept things that way, Proposal A—which is just a school funding mechanism, after all—really wouldn't have been a factor in funding things other than schools at the local level.

But the State decided that its own budget needed some attention, and so it looked around for resources. What it found was that grossly inflated "numerator" line of the Headlee fraction with the Proposal A money. And what it decided on (primarily) was a reduction to State "revenue sharing," a term that describes the way the State used to transfer monies to the local governments to help provide services. While there is a certain level of revenue sharing that the State has to do, some aspects of revenue sharing have been discretionary with the State, albeit historically and regularly provided by the State.

Cities, villages, and townships are entitled under Article 9, §10 of the Constitution to receive 15% of the gross collections of the state sales tax, so that revenue is "safe" from the State every year at budget time. Those local governments are also *ostensibly* entitled by statute to receive an amount equal to 21.3% of the 4% gross collections of the State sales tax "that are

[16] Stated otherwise, under its application of §30, more monies become available to the State as a combined consequence of: (a) the new Proposal A tax proceeds levied and collected by the State to fund the operating expenses of local school districts in excess of the amounts necessary to meet the state's Proposal A guarantee to school districts, *and* (b) not having to pay monies to school districts under §30 *before* Proposal A. See also, Robert Klein & Mary Schultz, Center for Local Government Finance and Policy Michigan State University White Paper, *Service Solvency: An Analysis of the Ability of Michigan Cities to Provide an Adequate Level of Public Services,* (Sept. 2017), http://msue.anr.msu.edu/uploads/235/75790/GML062_Service_Solvency_Report-9-2017.pdf.

available"—i.e., as and if appropriated, pursuant to the State Revenue Sharing Act. See MCL 141.913(3) and (19). Counties are also ostensibly entitled under that Act to receive an allocation equal to 25.06% of 21.3% of the gross sales tax, as and if appropriated. See MCL 141.911(4). Of course, it is the State Legislature that gets to decide if the funds are "available," and whether to "appropriate" them. They never seem to be available anymore, though.

In fact, in the case of counties, the State Legislature paid nothing for revenue sharing purposes during the four-year period of 2004/2005 through 2007/2008. (Bean/Kleine Report, Table B and C, Exhibit A). The fluctuating amount of these under-appropriations (including the four years of zero appropriations for counties) is how a substantial proportion of the reductions in revenue sharing for municipalities was accomplished. Tables B and C of the Bean/Kleine Report detail the history of the payments made (and not made) to Michigan municipalities for purposes of revenue sharing. The specific amounts are detailed in terms of the cuts or reductions in revenue sharing payments to municipalities over the last 20-plus years. The reductions were $5.79 billion from 1980/1981 to 2015/2016. (Bean/Kleine Report, Table B, Exhibit A). Inflation adjusted revenue sharing percentage reductions of 30.7% occurred from FY 1994/1995 through FY 2015/2016. (Bean/Kleine Report, Table C, Exhibit A)

As a result of its reduction of "discretionary" non-Proposal A funding, since 1994 the State has realized materially greater proportionate (an *increase* of 56.4%) and absolute (an *increase* of $16.509 billion) dollars available for state spending. (Bean/Kleine Report, Table E, Exhibit A). That windfall to the State comes at the expense of a 37.1% *reduction* in funding available to municipalities measured from 1994/2016. (Bean/Kleine Report, Table E, Third Line, "Payments to Other Local Governments," Exhibit A).

And yet, every fiscal year since 1994 the State has reported that it is exceeding the 48.97% base year proportion of spending under §30 the Headlee Amendment *when counting the Proposal*

A revenue guarantee as part of the §30 equation. (Bean/Kleine Report, Table D, Percent Total, Exhibit A). The resulting shortfall for FY 2015/2016 and all years dating back to FY 1994/1995 adds up to an unconscionable $64 billion. The proportionate *decrease* over that time period for those units of local government has swung from 40.9% in FY 1994/1995 to 34.3% for FY 2015/2016. (Bean/Kleine Report, Table D, Eighth Column, "Percentage Adjusted State Spending," Exhibit A).

These net reductions demonstrate how this major source of municipal revenues has been eroded by the State since Proposal A, solely by operation of legislative discretion. There is no mystery as to why municipalities have experienced a 37.1% reduction in revenue from State payments, adjusted for inflation, since the FY 1994/1995. (Bean/Kleine Report, Table E, "Payments to Other Local Governments," Exhibit A).

As documented in Table B of the Bean/Kleine Report, revenue sharing payments and cuts to that source of payments from total state spending to municipalities is documented from year to year since 1980/1981. (Bean/Kleine Report, Table B, Exhibit A). The amounts of those payments have moved up and down, serving as a balancing account by the State each year for State budgeting purposes and representing cuts or reductions in that source of funding to those municipalities. In total, the reductions since 1980/1981 amount to approximately $5.8 billion.

This pattern of discretionary underfunding of revenue sharing dollars has substantially contributed to the disruption of the voter-intended equilibrium through §30 of Headlee as between State revenues and State spending paid to all units of local government, including municipalities. The voters didn't cause or demand the disruption, as the State argues; the State itself did.

C. This is not a re-balancing of State aid contemplated by Headlee, as the State and the Court of Appeals contend; it is a prohibited shift not intended by the voters, and that matters

The State's response to Taxpayers' claims is really two things: First, it says that the inclusion of Proposal A funds in the State spending calculation does not accomplish a tax shift in violation of §25 and §30 because it is "voter-approved," and amounts to nothing more than what the Court of Appeals called a permitted and expected "periodic re-balancing" of the allocation of funds as between the different units of local government. *Taxpayers, supra*, 330 Mich App at 311.

And secondly...So what? The State's position seems generally to be that one of the main goals of Headlee was to force local units of government to regularly bring tax increase or bond funding questions to local taxpayers as an appropriate way to address the loss of State aid and the regular slapping on by the State of yet more obligations for local units to pay for things that the State demands they do. The State's Brief is more or less a full-throated endorsement of Headlee as it was supposed to work *before* Proposal A, but it falls well short of convincing given the State's actions *since* 1994 and the passage of Proposal A.

In fact, the State goes much farther than that. It characterizes Proposal A as some sort of boon to local governments—an actual favor the State has done to local governments by taking the school funding "burden" off its hands. (State's Combined Brief, p 15.) If there is an appropriate time for the use of the colloquial term "gaslighting" in a brief, this would be it: the foregoing shows just what a disaster the combination of Headlee and Proposal A has been—and it's not at all arguable. There has been no burden lifted from non-school local governments by the State either because of or after Proposal A—only a steady loss of state financial support and broken local budgets

Hence, perhaps, the State's alternative argument: "we're just applying the text of §30 as written." Or, more oleaginously, this is what "the people" wanted. (State's Combined Brief, pp 15, 16, 19). According to the State, it's not the current approach that stands Headlee "on its head," but rather Taxpayers' reading of the law, which the State says disrespects the voters' intent to put local funding decisions in the hands of local voters. But what the State characterizes as local control is, perversely, just the State demanding a higher level of local taxes to address decisions that the State is making at the executive or legislative levels to balance its own budget. What the State has done to local units of government is not a re-balancing of State spending as between those local units in a way contemplated by the voters, but an un-balancing as between the State and local units. If it is any kind of a re-balancing, it is of relative power away from locals and to the State, just the opposite of what *Durant* described, and not what the voters intended in either 1978 or 1994.

1. Not a re-balancing, but an un-balancing

The Court of Appeals says that all the State is doing is "re-balancing" the spending between schools and the other units of local government—something the State argues is contemplated under §30 by virtue of the phrase "units of local government *taken as a group*...." This opportunity to enhance State spending is made available to the State because of its own self-serving interpretation as to how it is permitted to use or characterize the newly available tax revenues provided by operation of Proposal A. The question, though, is how that argument fits within the *intent* of the §30 Headlee State versus local government payment/funding scheme. And the answer is that such an argument cannot be squared with the intent of §30, because, *what the State is really arguing is that the passage of Proposal A made Headlee moot*.

In the State's view, as relates to maintaining the 1978/79 proportion of spending from total State revenues paid to municipalities, the Headlee voters' objective as to all local governments has

essentially ceased to exist—without any amendment by the voters. The "taken as a group" defense ultimately fails for the simple reason that in 1978 the State didn't have primary funding responsibility for local schools. If it gets to use its Proposal A school funding to wipe out funding for other units, the only other potential winner in that scenario is the schools—to some degree at least, because they don't have to directly seek as much funding from local taxpayers as they used to. The proportion of spending from total State revenue sources for school districts has risen from $2.630 billion in 1994 to $11.919 billion in 2016; this is a 279.7% increase, adjusted for inflation. But correspondingly, monies spent from total state spending for other units of local governments, (i.e., municipalities) has only increased during that 22-year period from $4.844 billion in 1994 to $4.933 billion spent for 2016—actually a 37.1% *decrease* when adjusted for inflation during that 22-year period. (Bean/Kleine Report, Table E, Exhibit A).

The *shortfall* in payments from total state spending or payments to all non-school district units of local governments for the most recent fiscal year for which audited data is available, FY 2015/ 2016, was $4.402 billion. (Bean/Kleine Report, Table D, Exhibit A). Over the 22-year post-Proposal A time period, as adjusted for inflation, it is cumulatively $64.67 billion.

This obliteration of State funding for non-school local governments—never comprehended by voters in either 1978 or 1994—has forced municipalities to do exactly those things that the Headlee Amendment was supposed to avoid. Municipalities have reduced or eliminated important services to the detriment of their constituents. As the government "closest to the people" in the most basic sense, those services are often what voters understand as those most vital to them: police and fire protection; local road systems; basic sanitation (drinkable water and working sewers, garbage collection); storm water drainage systems to avoid flooding; parks and recreation; environmental protections; blight remediation; building safety; planning and zoning for the protection of property values.

Municipalities have increased local taxation by way of millage proposals or increases or municipal bond initiatives in order to continue to finance services that would have been paid in the normal course if not for these funding shortfalls. When the voters are requested to authorize additional taxes or to approve bond issues to compensate for current shortfalls, they are in reality voting to make up for the over $64 billion in revenue reductions by State government from the level of funding that existed pre-Proposal A. This state of affairs is fundamentally inconsistent with §25 of Headlee, which plainly says that "The state is prohibited...from reducing the proportion of state spending in the form of aid to local governments...." It is also at odds with Headlee's primary purpose of "relieving the electorate from overwhelming and overreacting taxation," as described in *Durant v Michigan, supra*, 456 Mich 176, 214 (1997).

In response to Taxpayers' contention that the State's failure to properly view and apply the "proportion" language of §30 amounts to a shifting of the tax burden, the State argues that a prohibited tax shift can only result from an unfunded State mandate prohibited under §29 of the Headlee Amendment and that Proposal A was adopted by vote of the people anyway; and this cannot constitute a shift.

The State misunderstands or ignores the point. The State is shifting the tax burden to pay for the operating costs of municipalities statewide by refusing to allocate existing and available State revenue sources to maintain the same proportion of total state spending for municipalities at 1978/1979 levels, in violation of §30. Again, as explained by Table E of the Bean/Klein Report, the unanticipated State revenue surplus generated by the State being able to count the new Proposal A revenue as a payment to "local governments" has upended the balance voters thought they had accomplished with Headlee. (Bean/Kleine Report, Table E, Exhibit A).

For the State, it's the ultimate "free lunch." The State has realized a 56.4% increase in spending from total state resources between FY 1994 and FY 2016, while local governments (other

than school districts) have experienced a decrease of 37.1% in the proportion of total spending over the same period—a net difference of 119.6% (adjusted for inflation). This indeed is a dramatic shift by the State of the tax burden for municipal operating costs statewide, as principal units of affected local governments.

The State has permitted these reductions to occur while municipalities must deal with the Headlee constraints that limit municipalities' ability to find alternative financial resources specifically due to the strictures of §31 of Headlee. After experiencing the substantial reductions in taxable property valuations due to the 2007/2009 recession, the §31 limitation restricting municipalities from recognizing the increasing values in those property valuations for taxable purposes to the lesser of market value increases or cost of living increases prevents municipalities (for the foreseeable future) from regaining pre-recession operating revenues in the ever increasing environment of rising costs occurring during the interim. This phenomenon is well-documented and explained in a recent publication by the non-partisan Citizens Research Council of Michigan, entitled *"The Prolonged Recovery of Michigan Taxable Values."*[17]

The State argues that this is just how Headlee works—that it's just applying a "simple provision with a single fraction," as the State calls it. (State's Combined Brief at p. 36). The State also tries out the "pie" metaphor: State funding is all just one big pie, cut into two pieces, one for the State, and one for local governments "as a group." (State's Appellee Brief, p. 1). But the State apparently gets to choose the ingredients of the pie, and bake it, and cut it. What the State has done over the years is gradually come up with a recipe that puts all the filling on the State's side of

[17] *See* Citizens Research Council of Michigan, *The Prolonged Recovery of Michigan's Taxable Values* (Dec. 2016, last visited March 9, 2018, 1.39 P.M.), https://crcmich.org/the-prolonged-recovery-of-michigans-taxable-values-2016/. *See* also Robert Klein & Mary Schultz, Center for Local Government Finance and Policy Michigan State University White Paper, *Service Solvency: An Analysis of the Ability of Michigan Cities to Provide an Adequate Level of Public Services,* (Sept.2017), http://msue.anr.msu.edu/uploads/235/75790/GMI 062 Service_Solvency_Report-9-2017.pdf.

the pie, leaving most local governments with a top and bottom crust and the State's best wishes in filling up their piece.

This is not to argue that the proponents of the Headlee Amendment envisioned that nothing would ever change the *status quo* in future funding. But any such change should only occur in a manner consistent with Headlee's clear objectives. A shift has occurred as a result of the change in school funding occasioned by Proposal A. How that shift has evolved is anything but consistent with a combined and coherent reading of *both* the Headlee Amendment and Proposal A.

2. This is not what the voters intended

The Headlee Amendment has been around for over 40 years now, and it is admittedly a sore subject in some circles. But it is the law, and for good or ill it was intended to be—and it has been—a *major* reform as far as the collection and disbursement of State tax revenues and spending is concerned.[18] It was radical for its time, but more than that it was quite literally a "grass roots" effort.

Unlike the drafters of Proposal A, whose proponents were mostly politicians and financial technicians working for the State, the Headlee Amendment was by contrast largely a citizen-driven endeavor. The drafters were not government officials but regular citizens. Their efforts arose from their perception that *State* government was in particular not acting entirely in their interests.[19] The group's efforts were also unique; there is no other similar amendment to the Michigan Constitution where such specific controls were placed on state and local taxation and spending.[20]

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[18] *Durant v State Bd of Educ,* 424 Mich 364, 378; 381 NW2d 662 (1985). The Supreme Court characterized the motivating intent of the Headlee voters in that case: "It 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 the state level." *Id.*

[19] *Durant,* 424 Mich at 378.

[20] *Id.;* See also *Bolt v City of Lansing,* 459 Mich 152, 161; 587 NW2d 264 (1998), quoting *Airlines Parking, Inc v Wayne Co,* 452 Mich 527, 532; 550 NW2d 490 (1996).

No speculation is required as to the voters' intent with regard to §25 and §30 of Headlee, which had as a primary objective to maintain the 1978/79 *status quo* in terms of the proportions of State spending paid from total State revenues to *all* units of local governments from that time forward. While concededly the phrase "taken as a group" qualifies that intent, it cannot be read to have meant something as monumental as the revenue shift to the State/school districts of several tens of billions of dollars annually as a result of Proposal A, some 16 years later, together with corresponding reductions to other units of local government to the point that the proportions of funding as between the State and those local units would no longer even remotely resemble in any sense the original 1978/79 equilibrium. The drafters of the Headlee Amendment could not have envisioned, in 1978, that radical shift.

While the drafters were not clairvoyant enough to anticipate the changes that would be wrought by Proposal A some 16 years later, they nonetheless articulated, for posterity, their intention that State government should not deprive local governments of necessary revenues on a proportionate basis. That prohibition acknowledged that there are distinct forms of local government, controlled by locally elected citizens, whose efforts should not be undone by the shifting sands of the budgeting practices of State government. Hence, §25 of Headlee.

Headlee requires that a full and faithful respect be given to the voters' manifest intent as enforced by this Court. As this Court put it in *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979):

> The primary and fundamental rule of constitutional or statutory construction is that the Court's duty is to ascertain the purpose and intent as expressed in the constitutional or legislative provision in question. Also, while intent must be inferred from the language used, it is not the meaning of the particular words only in the abstract or their strictly grammatical construction alone that governs. *The words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the general purpose sought to be*

> *accomplished or the evil sought to be remedied by the constitution or statute.* (Citation omitted) (Emphasis added)[21]

The cases from this Court that talk about applying constitutional provisions provide the general guidance that we are to look first to "the common understanding." *Advisory Opinion on Constitutionality of 1978 PA 426*, 403 Mich 631, 638 (1978). "'The cardinal rule of construction, concerning language, is to apply that meaning which it would naturally convey to the popular mind.'" *Id.,* citing *People v Dean*, 14 Mich 406, 417 (1866). *Advisory Opinion* adds a few other rules of construction, including (1) that specific provisions prevail over general ones; and (2) that when construing constitutional provisions where the meaning may be questioned, the Court should have regard to the circumstances leading to their adoption and the purpose sought to be accomplished.

Despite the State's incantation of the textualist mantra that it is only applying the plain language of Headlee and Proposal A as written, a reviewing court has an obligation to make sure that these constitutional provisions are applied in such a way that in fact carries out the voters' intent. The State ultimately makes no real effort to find out what these constitutional provisions really mean, because it's not in the State's interest to do so. The State benefits from a results-free interpretation of Headlee's language, so why would it really engage in that effort?

But *Advisory Opinion* makes clear that this Court must try to find out what the voters meant and intended *given the task that they were engaged in* when passing the Headlee Amendment. Severing the text of Headlee from its intention may benefit the State—and surely, given the State's great good fortunes over the years at the expense of its local governments as described above it surely has—but it is not an honest application of the standard of review.

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[21] See also, *Adair v Mich*, 486 Mich 468, 477-478; 785 NW2d 119 (2010) ("When interpreting constitutional provisions, we are mindful that the interpretation given the provision should be "'the sense most obvious to the common understanding' " and one that "'reasonable minds, the great mass of the people themselves, would give it.' " "[T]he intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed....")

The State would likely respond that it *does* think that its reading of §30 is consistent with what the voters wanted—the "but the people voted" part of its analysis, referring mainly to the vote on Proposal A that allowed the State to send us spinning off axis. But Proposal A does not mention Headlee. There is no basis on which to conclude that when the voters approved that school funding plan in 1994, they intended to upend the entire structure of municipal finance set forth in Headlee. This Court is thus constrained by law to find a way to harmonize the 1994 law with Headlee in a way the State has refused to do.

The State looks at Proposal A as, at worst, some sort of semantic accident that can't be fixed. In other words, the voters passed Proposal A, and the State just "implemented" its text, and if it took a while to truly find out what that text meant as applied by the State, well, that's not our fault, says the State. And yet, that is not how the law is supposed to work. The courts should not countenance a reading of constitutional text that makes what the voters wanted and intended irrelevant.[22]

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[22] It would be charitable to call the State's arguments on this Proposal A issue dismissive of local governments' position on this issue. Ultimately, though, its arguments distort the very purpose of Headlee. As this Court stated in *Durant v State of Michigan,* 424 Mich 364, 383; 381 NW2d 662 (1985), "...while the voters were concerned about the general level of state taxation, they were also concerned with ensuring control of local funding and taxation by the people most effected, the local taxpayers." The State's history as far as honoring this intent is sketchy, at best.

Consider the State's initial position on the proportion percentage that the Parties now accept as 48.97% when Headlee first took effect, the State reported it as 41.61%. There was a challenge, addressed by the Court of Appeals in *Oakland Co v Dep't of Mental Health,* 178 Mich App 48, 54-55; 443 NW2d 805 (1989). The issue was whether payments for Statewide mental health services for mentally ill and developmentally-disabled persons could be taken into account for purposes of the base year (1978/79) calculation. Those services were required by the State Mental Health Code, MCL 330.1001, *et seq.*, to be provided by state government as opposed to local governments. Oakland County contended that these expenses were (and had been since 1974) the State's responsibility and not that of counties, and thus should not count as State aid. The Court of Appeals agreed.

While the State's application for leave to appeal to this Court was pending, a resolution was reached wherein the State agreed to recalculate the base year funding proportion and apply the statewide costs of mental health services as a payment of a State obligation during the base year. That's where the current 48.97% proportion of total State spending now used comes from.

There are two points to be gleaned from the *Oakland County* case. The first is just how much money is at stake when it comes to revenue allocations. For each fiscal year from 1979/1980 through 1991/1992 (two fiscal years after the suit was resolved) the amount of the shortfall in payments to local governments was more than 5% below the 48.97% threshold each year, with the total amount of the shortfall in payments to local governments during that period, just on that issue, being over $8 billion. (Bean/Kleine Report, Table A, Exhibit A).

Finally, because *Amici* are representing local governments in this case, they have a peculiar gloss to put on the Court's obligations that—admittedly—might not exactly be a mainstay of Headlee litigation: the constitutional right of local governments to have all constitutional provisions construed liberally in *their* favor. Article 7, §34 is pretty straightforward:

> *The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor*. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution. (Emphasis added.)

Citing the "Address to the People" portion of the new 1963 Constitution, this Court in *Associated Builders v City of Lansing*, 499 Mich 177, 186; 880 NW2d 765 (2016), highlighted the intention of the framers that this section be a "more positive statement of municipal powers, giving home rule cities and villages full power over their own property and government, subject to this constitution and law." While not directly on point, the concept that local governments are not dis-favored as against the State is worth keeping in mind as Headlee's interpreted.

D. There is no legal or equitable support for the State's contention that the Court should not act to grant relief because the effect on the State's budget will be "staggering."

The State frames its §30 argument in language asserting that Taxpayers want to turn the voters' intent "on its head" and "upend" 25 years of budgeting and accounting at the state level. (State's Combined Brief, pp 16-17.) While Taxpayers' argument does pretty clearly look to change the way the State has—for a very long time—done its budgeting and accounting, it isn't asking the Court to change the voters' intent. Just the opposite: it asks the Court to recognize that the State has ignored the voters' intent for all this time.

The second is that the State knew exactly what it was doing when it set the initial percentage. State fiscal personnel were certainly aware in 1979/1980, when the base year proportion was first calculated, that the responsibility for the costs of mental health services was the obligation of the State and not local governments. The 1974 Mental Health Code was only four years old when the Headlee Amendment was ratified by Michigan voters in November of 1978.

Oakland County reflects a certain predisposition within State government. The reliability of its calculation was entirely reliant on the integrity of its views about its obligations to local units. The relative leverage that the State enjoys against local governments needs to be kept in mind as the current issues work their way through review by the courts.

But, would the actual effect of ruling in Taxpayers' favor be "staggering?" In both its Combined Brief on Appeal and its Appellee Brief, the State ramps up its plea for the Court to take into account the significant changes that would be wrought by a ruling for Taxpayers on this issue. Taxpayers have responded with an update by Messrs. Bean and Kleine that appears to pretty handily deflate those claims to what are much more manageable numbers, as far as the State is concerned. (See Exhibit A to Taxpayers' Appellee Brief.) And as Taxpayers note in their response brief, unlike the local governments subject to Headlee's §30, the State has means available to it to make up that shortfall that aren't available to local governments.

Even if the impact of a ruling for local governments against the State would be of some magnitude, that isn't a basis for the Court to decline to rule on the issues raised by Taxpayers. The State's argument gets this exactly backward. The severity of a remedy doesn't negate a cause of action. Courts determine the cause of action first, not the remedy. "It is not the remedy that supports the cause of action, but rather the cause of action that supports a remedy. *Henry v Dow Chemical Co.,* 473 Mich 63, 96-97, 701 NW 2d 684 (2005), quoting *Wood v Wyeth-Ayerst Labs*, 82 SW 3d 849, 855 (Ky., 2002). The concept in American law that there is a remedy for every wrong is so plain that it's taught at the very beginning of every constitutional law class: "[It] is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." *Marbury v Madison*, 1 Cranch 137 (1803), quoting Blackstone's Commentaries, Vol 3, p 23.

II. PUBLIC SCHOOL ACADEMIES SHOULD BE CONSIDERED PART OF A STATE PUBLIC SCHOOL SYSTEM, NOT LOCAL PUBLIC SCHOOLS, THEREFORE PRECLUDING FUNDS PAID TO SUPPORT SUCH ACADEMIES FROM BEING CONSIDERED AS AID PAID TO LOCAL GOVERNMENTS.

Amici support Taxpayers' arguments in favor of its Application for Leave on the question whether funding or aid provided by the State to charter schools should be counted as State aid to local governments for purposes of Headlee. Judge Meter's dissenting opinion in the Court of

Appeals below sets forth an appropriate, and convincing, basis for determining that it should not. Consistent with the "friend of the court" concept, *Amici* offer the following additional thoughts on Taxpayers' Application on this issue.

In 1994, the State Legislature created a system of what really should be called a system of *statewide* public schools:

> Sec. 501. (1) A public school academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 12251 and section 1351a,2 and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state.

MCL 380.501(1).

These entities, called Public School Academies (PSAs), were created for the clear purpose of competing with local public schools. More commonly known as "charter schools," they are governed by articles of incorporation meeting minimum standards required by State law, as set forth in Section 502 3(c) of the Public School Academies Act, Public Act 362 of 1993, MCL 380.502 (the Act). Those standards include a governance structure for the school, its educational goals, an admission policy complying with the Act, a school calendar and day schedule, a description of staff responsibilities, and an agreement to comply with the Act. The Act, and these standards, are in essence the "charter" of the school pursuant to which it is obliged to operate.

Any person or entity can apply to open and operate a charter school as a non-profit corporation guided by a board of directors. However, a contract to operate a PSA is awarded by the sponsoring entity on a competitive basis. MCL 380.502.

The State delegated its inherent authority to oversee the operation of its privately-run, competing state school system to various entities, which receive payment for services rendered

for oversight. While Section 502(4) of the Act delegates oversight responsibilities, it does not relieve the State itself of its ultimate enforcement and supervisory responsibility for such schools:

> (4) An authorizing body shall oversee, or shall contract with an intermediate school district, community college, or state public university to oversee, each public school academy operating under a contract issued by the authorizing body. The authorizing body is responsible for overseeing compliance by the board of directors with the contract and all applicable law. This subsection does not relieve any other government entity of its enforcement or supervisory responsibility.

MCL 380.502(4).

"Authorizing bodies" undertaking the State's oversight obligation for a fee may be any of the following:

> (a) "Authorizing body" means any of the following that issues a contract as provided in this part:
>
> (i) The board of a school district.
> (ii) An intermediate school board.
> (iii) The board of a community college.
> (iv) The governing board of a state public university.
> (v) Two or more of the public agencies described in subparagraphs (i) to (iv) exercising power, privilege, or authority jointly pursuant to an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

Id.

In practice, State public universities are the predominant type of authorizing body overseeing charter schools, responsible for 205 of the approximately 300 charter schools in the State of Michigan. An additional 48 charter schools are overseen by community college districts. The remaining 44 charter schools are overseen by approximately 7 local or intermediate school districts, including Detroit Public Schools, Muskegon Heights, Highland Park, and one charter school each in the Bay-Arenac, Grand Rapids, Macomb, and Livingston School Districts. See, *Public School Academies by Authorizer List,* published by the Michigan Department of Education.

Those local or intermediate school districts that have agreed to be authorizing bodies on behalf of the State are typically school districts that are otherwise underfunded or

underperforming as compared to other surrounding school districts. They get a fee for oversight services rendered, and gain some options for residents to attend the nearby charter schools, which are generally better funded than are the local public schools.

Section 504(5) of the Act ensures that the State retains the authority to enforce the charter, while Section 504(6) sets the manner and limitations on payment by the State to the authorizing bodies for undertaking these monitoring services delegated by the State.

Again, oversight by the authorizing bodies is done as a paid service, undertaking the State's obligations for monitoring the charter schools under the Act on a fee basis, with such fee not to exceed 3% of that charter school's total budget:

> (6) An authorizing body shall not charge a fee, or require reimbursement of expenses, for considering an application for a contract, for issuing a contract, or for providing oversight of a contract for a public school academy in an *amount that exceeds a combined total of 3% of the total state school aid received by the public school academy in the school year* in which the fees or expenses are charged. An authorizing body may provide other services for a public school academy and charge a fee for those services, but shall not require such an arrangement as a condition to issuing the contract authorizing the public school academy. (Emphasis added.)

MCL 380.502(6).

The cost of operating a charter school is paid by the State directly from the State School Aid Fund, and is based on the charter school's budget. MCL 380.507. The authorizing body receives the payment from the State from the School Aid Fund as the State's "middleman," and the authorizing body then issues the check to the charter school, passing on all the money to the charter school. MCL 380.507(3). When a charter school is established, no additional monies are paid to a local or intermediate school district to benefit the local school district's operations overall, except those minimal fees paid directly for the cost of the oversight—and then only if, of course, the local or intermediate school district is the authorizing body overseeing the charter school (which, again, very few are).

Except for that nominal fee for services, a local or intermediate school district gains little for authorizing a charter school, other than perhaps the dubious honor of having a competing State public school within its borders. That "benefit" can also (and usually does) happen without a school district becoming an authorizing body, since most are authorized by State public universities.[23]

Charter schools are thus in every real sense *State public schools* that are predominantly overseen by State public universities and that admit anybody who is a resident of the State as a student. MCL 380.504(3). According to the Public School Academies Handbook for District Authorizers, published by the Michigan Department of Education, attached as Exhibit B, enrollment is not even limited by geographic area:

> *Our school district does not offer Schools of Choice. Would the new charter school be able to accept students from outside the district?* Yes. Pursuant to MCL 504(3), charter schools have a *statewide geographic boundary*. A charter school must be open to all pupils whose parent or guardian resides within the geographic boundaries of the state. A charter school may not be selective or screen out students based on disability, race, religion, gender, test scores, etc. As mentioned previously, if the number of students seeking admission exceeds the number of available seats, the charter school must utilize a random selection process to determine which pupils will be enrolled. If a student is enrolled in a charter school during a particular school year, the student may automatically be granted enrollment privileges for succeeding school years. Siblings of admitted students and dependents of charter school founders may also be granted enrollment priority. (Emphasis added.)

See p. 3. The Manual further explains:

> It is also important to note that the new charter school is free and open to all students by parent selection, pursuant to Michigan law. If the number of students seeking admission exceeds the number of available seats, the charter school must utilize a random selection process to determine which pupils will be enrolled. Discrimination is prohibited. Thus, the authorizing school district is not able to decide which students will be served by the charter school and cannot compel the new charter school to provide specific enrollment priorities for any individual student or groups of students.

[23] In a small number of instances, a local or intermediate school district might contract with an authorizing body to actually run the charter school; but this would also be on a contract basis, and subject to the same charter oversight as required under MCL 380.502. In such a case, the local or intermediate school district would essentially be an independent contractor for the state, running a state public school.

Charter schools are thus not in any normal sense of the term *local* public schools.

Since the funding from the State School Aid Fund that is paid to public school academies is going to support a form of State public school that was created literally to *compete with* local and intermediate school districts, it should not be calculated as "aid to local governments." Including amounts paid to support charter schools as aid to local government amounts to a shifting the State's own tax burden to local government, which is also prohibited by §25 of Headlee. Indeed, because the funding for charter schools is going to fund a State government obligation in the form of an alternate statewide public school system—completely independent of and in competition with local public schools—counting those funds against local units seems frankly worse than a mere tax shift; more like a tax conversion.

The Michigan Department of Education's Charter Schools Frequently Asked Questions (FAQ) publication, attached as Exhibit C, confirms the State's own understanding of its charter school system as a *separate and independent* statewide public school system:

> *What is a public school academy (PSA)?* Pursuant to the Revised School Code (RSC), also known as Public Act 451 of 1976, a *PSA is a state-supported public school* under the state constitution, operating under a charter contract issued by a public authorizing body [RSC §380.501(1)]. PSAs are also commonly referred to as charter schools.

Attributing funds used to support a charter school—"a state-supported public school" that competes with local school districts for enrollment—as aid to local government unconscionably also directly reduces the proportion of State spending paid to units of local government, which amounts to violation of §30 of Headlee.

The State argues that MCL 18.350 requires charter school funding must be included in §30 funding "because education services such as those provided by charter schools are a function previously performed by a unit of local government (i.e., traditional public schools), and are now performed by charter schools. . . ." (State's Combined Brief, pp 25.) But this Court in *Durant v.*

State Bd. of Educ., *supra*, at 388, found that public education, generally, is not required by state law:

> In conclusion, we find that education is not an activity or service required by state statute or state agency rule.

If education is not required by state law, it is not clear how the operation of a *competing* school system to the local public school system would otherwise be aid to local government as argued by the State.

Nor would the task of creating a school system to compete with local or intermediate school district schools be something a local government would do. Local government already has its local and intermediate school system. Charter schools are not *required* as a part of that local public school system. In fact, charter schools are not even actually a part of a local school system; charter schools are an option created by the state.

Local governments do not need charter schools to provide a local public education. Local governments are not required to undertake opening charter schools to provide public education, and most local governments do not. Where they do, their participation is merely as a paid contractor for the state government under MCL 380.503a, or as an overseer of other contractors acting on behalf of the state government with respect to the statutory requirements for charter schools under MCL 380.502. Charter schools are schools that compete with local schools for attendance. They are an *alternative form* of public school that local government has no specific interest in providing. Local and intermediate school districts can and do function as intended without any charter schools in their districts.

While charter schools admittedly function in some respects like a local school district, simply because they are *public* and *provide education*, that is not enough to find that they are equivalent to "local government" as it is contemplated in the State Constitution. They can be both public and provide education and be a statewide entity—more like a State university than a local

government. Perhaps this is one reason why two-thirds of charter schools are operated by State universities.

Although the State's argument dismisses *Paquin v City of St. Ignace*, 504 Mich 124, 135; 934 NW2d 650, 656 (2019), as inapplicable because tribal government is not a "creature of state law," *Paquin* supports the premise that just because an entity functions in some ways like a local government, it does not follow that it is local government. The Court in *Paquin* stated:

> Nowhere in our Constitution does it state that local-government equivalency suffices; the provision simply states "local ... government." It is thus irrelevant to note all of the functions that the Tribe provides that are similar to that of, for example, the city of St. Ignace—*that the two entities function similarly in some respects does not make them the same.* (Emphasis added.)

Paquin seems particularly relevant where the State's position hinges upon the fact that the State Legislature has decreed by statute that charter schools are a "school district" for purposes of receiving State school aid funding, citing MCL 380.501(1). But that doesn't make them units of local government (or their equivalent) for purposes of Headlee.

The State contends ultimately that the 1996 changes to Michigan education laws in the Revised School Code (presumably by Public Act 289 of 1995) together with the school financing law, Public Act 145 of 1995, essentially "re-made" schools in Michigan, and that the idea of considering these non-local, competing schools as part of a local school system is just all of a piece with that fundamental change. But these are again changes *the Legislature* has made, on behalf of the State. That they promote yet more of a drain on truly local resources just continues the State's mockery of what the voters actually intended with Headlee.

III. THE COURT OF APPEALS DID NOT ERR BY HOLDING THAT STATE FUNDS DIRECTED TO LOCAL GOVERMENTS TO SATISFY STATE OBLIGATIONS UNDER §29 OF HEADLEE CANNOT BE COUNTED TOWARD THE PROPORTION OF STATE FUNDS REQUIRED UNDER §30 OF HEADLEE.

While this is a Brief in Support of Taxpayers' appeal issues above, *Amici* also support Taxpayers' position in response to the State's appeal. It is worth adding that the positions taken in the State's Brief on the issues that it lost below, including mandamus regarding funded mandates being included in State spending on local governments, reflect what the State really thinks about the relative balance of power under Headlee. It more or less argues that it can de-fund pretty much anything that local governments do, because the number of things that the State actually *mandates* communities to do (triggering the State's obligation to fund it, however reluctantly) is incredibly small.

In just the last few years, for example, the State has prevailed upon the courts to say to local governments that the State has no obligation to help fund State mandates in connection with such "discretionary" or "voluntary" things municipalities "choose" to do, like build and maintain roads (in the Court of Appeals, *City of Riverview v MDEQ*, 2013 WL 5288907, Docket Nos. 301549, 302903, 301551, 302904, 301552, 302905; September 13, 2013), and provide drinking water (in the Court of Claims, *Oakland County Water Resources, et al, v MDEQ*, Case No. 2018-000259-MZ).

According to the State, there's nothing wrong or violative of the spirit and intent of Headlee when it pairs some new mandate with a corresponding cut to current aid for some other thing that it doesn't technically "require" locals to do. In fact, the State asserts that the Court of Appeals' decision as to §29 mandates is incorrect, protests that it is Taxpayers and the Court of Appeals who are misunderstanding the intent of Headlee. It argues that every individual taxpayer has an interest in both State and local taxation, and from there it justifies its "death by a thousand cuts" approach to Headlee as somehow just doing what voters intended.

Again, though, it is really just the opposite. Repeatedly forcing local taxpayers to vote on local tax increases or bond issuances to remedy the State's cuts to aid and revenue-sharing and its piling on of more and more unfunded obligations for things like roads and water and storm drains that really aren't "voluntary" in anyone else's mind is not "taxpayer control." It's all still the State deciding—at the State legislative and executive levels, and without direct voter input—the local tax policy that must result. That's not what the provisions of Headlee that were meant to stabilize local governments vis-à-vis the State were about.

IV. THE COURT OF APPEALS DID NOT ERR BY HOLDING THAT THE AUDITOR GENERAL IS SUBJECT TO MANDAMUS RELIEF.

Amici support Taxpayers' position on this issue, as set forth in their Brief on Appeal dated September 9, 2020 and Appellee Brief dated November 4, 2020.

CONCLUSION AND RELIEF REQUESTED

Woven through the State's plea for the Court to deny relief to Taxpayers as to Proposal A and charter schools, while granting its requested relief as to injunctive relief under §29, is a plaintive admonition that if the Court determines to actually enforce Headlee as intended by the voters who approved it some very serious consequences might occur that we do not know the full extent of. While we do at this point know the extent to which the deprivation of State funding for local governments has harmed local governments, that is actually the secondary concern here. The Court's primary concern—every level of government's primary concern, in fact—should be whether we are properly following what the Headlee Amendment intended. That radical reform was in fact a delicate balance; it has become un-balanced. The State has consistently refused to do anything about that, and in fact continues to work to find new ways to exploit its advantage. It falls to this Court to apply the Headlee provisions of the Constitution, with a keen and honest

regard to what the voters were in fact engaged in doing when they approved it, because where we are now is not that.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

/s/ Thomas R. Schultz
THOMAS R. SCHULTZ (P 42111)
CAROL A. ROSATI (P 32288)
ELIZABETH SAARELA (P 60265)
STEVEN P. JOPPICH (P 46097)
Attorneys for *Amici Curiae*
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the Court's e-filing system which will send notification of such filing to all attorneys of record.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

/s/ Julie A. Hinkle
Julie A. Hinkle
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100

EXHIBIT A

Estimated Local Impact of Proposal A Tax and Spending Shifts

February 2018

The Michigan Municipal League (MML) retained Great Lakes Economic Consulting (GLEC) to estimate the impact of Proposal A related tax and spending shifts on local government resources.

Since 1994 (passage of Proposal A) the state has failed to provide the level of funding required by Article 9, Section 30 of the so-called Headlee Amendment. The state has failed to provide local governments the same level of support (as a share of state spending) as in FY 1979, as required by the constitution, by counting payments to school districts (resulting from a tax shift), and payments to charter schools as local support.

As a consequence, local governments have been deprived of legally entitled state funding estimated at $4.4 billion in FY 2016, and about $65 billion since 1994.

The combination of the loss of this revenue and a weak economy have created fiscal stress for many local governments, particularly cities, forcing significant cuts in vital public services, arguably placing the health and safety of Michigan citizens at risk. The plight of our cities, as exemplified by the Detroit bankruptcy and the Flint water crisis, has placed our state in an unfavorable light nationally, and could have a negative economic impact long term. There is also the potential during the next economic downturn for a wave of municipal bankruptcies.

In 1978, the voters approved the so-called Headlee Amendment which limited the taxing power of state and local governments. One the provisions, Article 9, Section 30, limited the ability of the state to reduce aid to local governments.

> *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 drafters of the amendment wanted to ensure that the state would not shift the financial burden to local governments. However, with the passage of Proposal A in 1994, this is just what happened. Proposal A largely shifted support for K-12 education from local school districts to the state. As a result, the state counted the payments from the state to the school districts as spending to local governments, increasing the proportion of state spending from the required 48.97 to 58.55% in

FY 1995 (the first full year proposal A was in effect), rendering the Headlee local spending requirement moot. The percentage peaked at 64.3% in FY 2002. As a consequence, the state was able to cut revenue sharing payments to locals when it ran into budget problems in the early 2000's. If the required proportion of state spending had remained at 48.97%, and not increased due to Proposal A, the state would not have been able to make significant cuts to revenue sharing.

As shown in Table A, state support to local units doubled from FY 1980 to FY 1994, an inflation adjusted increase of 42.6% However, since 1995, state aid to locals has declined 4% adjusted for inflation. However, the cut in state revenue sharing payments was much more dramatic. From FY 1981 to FY 1994, statutory revenue sharing payments to Cities, Villages, Townships (CVT's) and Counties increased from $311 million to $634 million. In FY 2016, statutory revenue sharing was $463 million, 55% below the 1994 level adjusted for inflation. (see Exhibits B and C). All of the decline has occurred since FY 2002, as a weak economy forced budget cutbacks, which fell disproportionally on local governments. Total payments to local governments fell from a peak of 64.3% of state spending from state sources in 2002 to 56.28% in FY 2016 (refer to Table D). Total revenue sharing payments fell from 6.3% of state spending from state sources in FY 2001 to 4.1% in FY 2015, and statutory payments fell from 3.7% to 1.6%. While state spending from state resources was increasing 19.5%, statutory revenue payments were reduced almost 50%.

In FY 2016, state payments to local governments were 56.3% of state spending from state sources. This percentage is above the 48.97% constitutional requirement (Headlee section 30). However, if the Proposal A payments for K-12 education (and other contested payments, for example, charter school payments) were excluded from the state payment percentage, payments to local units would be only 34.3% of state spending, resulting in a shortfall of about $4.6 billion to local governments (see Table D).

As shown in Table E, state payments to local units excluding school aid have declined 37%, adjusted for inflation, since 1994, and have fallen from about 32% of state spending to 16% of state spending, while state spending from state resources has increased 26% (adjusted for inflation).

This could not have been the intention of the Headlee amendment. Our view is that the amendment was aimed at general local governments and not school districts. Resources to schools have increased slightly while payments to other

local governments have been cut drastically just what Headlee was trying to prevent.

Declines in state support for local governments in Michigan have severely affected services. As shown in Figure 2, nationwide, local governments increased FTE's (full time equivalent) from 1997 to 2014 by 3 percent while local government in Michigan cut FTE's by 26 percent or 86,231. Nationwide local government increased police officers by 12 percent and firefighters by 16 percent while Michigan communities reduced police officers by 20 percent (4,205 FTE's) and firefighters by 28 percent (2,874 FTE's). Local governments in Michigan also experienced very significant declines in FTE's associated with Solid Waste; Sewerage; Parks and Recreation; and Housing and Community Development.

These types of personnel cuts were necessitated by state shifting the burden from state programs to local governments. State cuts to municipalities of this magnitude have had potentially significant negative impacts on public safety and quality of life that are beyond the control of municipalities.

TABLE A: STATE SPENDING FROM STATE SOURCES GOING TO LOCAL GOVERNMENT (In Millions)

	Total State Spending from State Sources	Total to Locals	Proportion	Shortfall From 48.97%
FY 1993-94	$14,948.8	$7,474.2	50.00%	$0.0
FY 1992-93	$13,462.6	$6,496.0	48.25%	$96.6
FY 1991-92	$12,450.9	$5,399.2	43.36%	$698.8
FY 1990-91	$12,799.0	$5,657.6	44.20%	$610.1
FY 1989-90	$12,806.3	$5,490.9	42.88%	$780.3
FY 1988-89	$11,896.5	$5,067.7	42.60%	$758.0
FY 1987-88	$11,435.8	$5,017.1	43.87%	$583.0
FY 1986-87	$10,729.4	$4,711.4	43.91%	$542.8
FY 1985-86	$10,252.8	$4,397.6	42.89%	$623.2
FY 1984-85	$9,562.0	$4,008.5	41.92%	$674.0
FY 1983-84	$8,588.5	$3,575.1	41.63%	$630.7
FY 1982-83	$7,708.3	$3,179.9	41.25%	$594.9
FY 1981-82	$7,195.6	$2,974.7	41.34%	$549.0
FY 1980-81	$6,986.0	$2,913.8	41.71%	$507.2
FY 1979-80	$6,948.4	$2,892.0	41.62%	$510.6

Source: STATE of MICHIGAN COMPREHENSIVE FINANCIAL REPORT (SOMCAFR) various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE B: REVENUE SHARING PAYMENTS and CUTS: $5,790.7 MILLION IN CUTS SINCE PROPOSAL A
(In Millions)

	Total Intergovernmental Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Statutory Payments to Counties	Statutory Revenue Sharing Cuts
FY 2015-16	$1,213.5	$750.0	$248.8	$214.7	$549.3
FY 2014-15	$1,210.6	$750.7	$248.7	$211.2	$560.1
FY 2013-14	$1,120.6	$739.1	$235.7	$145.8	$550.7
FY 2012-13	$1,077.6	$722.2	$224.8	$130.6	$543.7
FY 2011-12	$1,032.2	$707.5	$209.7	$115.0	$543.2
FY 2010-11	$1,091.5	$664.7	$314.3	$112.5	$427.4
FY 2009-10	$994.2	$629.2	$309.7	$55.3	$359.8
FY 2008-09	$1,040.1	$649.1	$388.0	$3.0	$302.7
FY 2007-08	$1,076.2	$688.2	$388.0	$0.0	$344.4
FY 2006-07	$1,070.9	$666.0	$404.9	$0.0	$303.8
FY 2005-06	$1,102.5	$680.1	$422.4	$0.0	$301.4
FY 2004-05	$1,112.0	$668.7	$443.3	$0.0	$268.2
FY 2003-04	$1,304.7	$653.1	$469.5	$182.1	$225.6
FY 2002-03	$1,451.4	$660.3	$588.5	$202.6	$114.2
FY 2001-02	$1,517.3	$649.3	$650.5	$217.5	$40.5
FY 2000-01	$1,555.5	$642.8	$684.0	$228.7	$0.0
FY 1999-00	$1,462.1	$628.4	$619.4	$214.3	$49.3
FY 1998-99	$1,380.7	$580.3	$599.8	$200.6	$17.7
FY 1997-98	$1,364.0	$563.8	$599.6	$200.6	$0.0
FY 1996-97	$1,300.4	$537.6	$580.2	$182.6	$140.4
FY 1995-96	$1,259.9	$524.5	$557.4	$178.0	$81.3
FY 1994-95	$1,168.6	$477.0	$516.9	$174.7	$67.0
FY 1993-94	$1,111.7	$477.6	$471.1	$163.0	$54.5
FY 1992-93	$1,032.5	$424.2	$454.8	$153.5	$45.5
FY 1991-92	$926.5	$404.4	$399.4	$122.7	$112.2
FY 1990-91	$1,016.3	$400.6	$468.6	$147.1	$10.7
FY 1989-90	$1,032.9	$400.0	$484.9	$148.0	
FY 1988-89	$993.5	$385.3	$464.6	$143.6	
FY 1987-88	$929.6	$365.2	$429.6	$134.8	
FY 1986-87	$877.7	$345.4	$404.4	$127.9	
FY 1985-86	$832.3	$335.4	$376.1	$120.8	
FY 1984-85	$760.2	$308.2	$338.8	$113.2	
FY 1983-84	$674.3	$279.4	$291.6	$103.3	
FY 1982-83	$595.1	$243.6	$255.0	$96.5	$11.9
FY 1981-82	$525.2	$237.4	$213.4	$74.4	$40.0
FY 1980-81	$542.1	$231.0	$232.8	$78.3	$43.5

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE C: INFLATION ADJUSTED REVENUE SHARING PAYMENTS: FY 2015-16 PAYMENTS LOWER THAN PAYMENTS IN FY 1982-83; DOWN 30.7% SINCE FY 1994-95
(IN MILLIONS of 1983 ADJUSTED DOLLARS)

	Total Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Payments to Counties
FY 2015-16	$548.6	$339.1	$112.5	$97.1
FY 2014-15	$552.5	$342.6	$113.5	$96.4
FY 2013-14	$505.9	$333.7	$106.4	$65.8
FY 2012-13	$491.8	$329.6	$102.6	$59.6
FY 2011-12	$479.9	$328.9	$97.5	$53.5
FY 2010-11	$519.8	$316.5	$149.7	$53.6
FY 2009-10	$485.7	$307.4	$151.3	$27.0
FY 2008-09	$512.9	$320.1	$191.3	$1.5
FY 2007-08	$526.0	$336.4	$189.6	$0.0
FY 2006-07	$538.1	$334.7	$203.5	$0.0
FY 2005-06	$562.8	$347.2	$215.6	$0.0
FY 2004-05	$588.4	$353.8	$234.6	$0.0
FY 2003-04	$707.5	$354.2	$254.6	$98.8
FY 2002-03	$797.5	$362.8	$323.4	$111.3
FY 2001-02	$854.8	$365.8	$366.5	$122.5
FY 2000-01	$895.0	$369.9	$393.6	$131.6
FY 1999-00	$868.7	$373.4	$368.0	$127.3
FY 1998-99	$848.1	$356.4	$368.4	$123.2
FY 1997-98	$858.4	$354.8	$377.3	$126.2
FY 1996-97	$836.8	$345.9	$373.4	$117.5
FY 1995-96	$831.6	$346.2	$367.9	$117.5
FY 1994-95	$792.3	$323.4	$350.4	$118.4
FY 1993-94	$778.0	$334.2	$329.7	$114.1
FY 1992-93	$744.9	$306.1	$328.1	$110.8
FY 1991-92	$685.8	$299.3	$295.6	$90.8
FY 1990-91	$767.6	$302.6	$353.9	$111.1
FY 1989-90	$814.6	$315.5	$382.4	$116.7
FY 1988-89	$823.1	$319.2	$384.9	$119.0
FY 1987-88	$809.8	$318.1	$374.2	$117.4
FY 1986-87	$792.9	$312.0	$365.3	$115.5
FY 1985-86	$769.9	$310.3	$347.9	$111.7
FY 1984-85	$718.5	$291.3	$320.2	$107.0
FY 1983-84	$658.5	$272.9	$284.8	$100.9
FY 1982-83	$598.7	$245.1	$256.5	$97.1

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE D: SHORTFALLS IN ADUSTED STATE PAYMENTS INCREASE SINCE PROPOSAL A

	State Source Spending (millions)	Local Payments (millions)	Required Payments 48.97% (millions)	Percent Total	Est. Proposal A Funding Shift (millions)	Charter Schools (millions)	Adjusted Local Spending (millions)	Percent Adjusted State Spending	Shortfall in Local Payments (millions)
FY 2015-16	$29,943	$16,853	$14,663	56.28%	$5,381	$1,211	$10,261	34.3%	($4,402)
FY 2014-15	$29,524	$16,313	$14,458	55.25%	$5,375	$1,181	$9,757	33.0%	($4,701)
FY 2013-14	$28,301	$15,701	$13,859	55.48%	$5,368	$1,144	$9,189	32.5%	($4,670)
FY 2012-13	$27,313	$15,369	$13,375	56.27%	$5,334	$1,053	$8,981	32.9%	($4,394)
FY 2011-12	$27,153	$14,955	$13,297	55.08%	$5,311	$909	$8,735	32.2%	($4,562)
FY 2010-11	$26,184	$14,924	$12,822	57.00%	$5,296	$863	$8,765	33.5%	($4,057)
FY 2009-10	$25,797	$14,530	$12,633	56.32%	$5,275	$817	$8,438	32.7%	($4,195)
FY 2008-09	$25,835	$15,112	$12,651	58.49%	$5,257	$772	$9,083	35.2%	($3,569)
FY 2007-08	$28,144	$15,805	$13,782	56.16%	$5,159	$773	$9,873	35.1%	($3,910)
FY 2006-07	$26,763	$15,575	$13,106	58.20%	$5,089	$743	$9,743	36.4%	($3,363)
FY 2005-06	$26,653	$15,602	$13,052	58.54%	$4,995	$667	$9,940	37.3%	($3,112)
FY 2004-05	$25,688	$15,258	$12,579	59.40%	$4,967	$594	$9,698	37.8%	($2,882)
FY 2003-04	$24,854	$15,430	$12,171	62.08%	$4,960	$531	$9,939	40.0%	($2,232)
FY 2002-03	$25,205	$15,804	$12,343	62.70%	$4,946	$488	$10,371	41.1%	($1,972)
FY 2001-02	$24,702	$15,883	$12,097	64.30%	$4,762	$454	$10,666	43.2%	($1,430)
FY 2000-01	$24,686	$15,495	$12,089	62.77%	$4,628	$384	$10,483	42.5%	($1,606)
FY 1999-00	$23,452	$14,461	$11,484	61.66%	$4,500	$302	$9,660	41.2%	($1,825)
FY 1998-99	$22,791	$13,888	$11,161	60.94%	$4,252	$202	$9,434	41.4%	($1,707)
FY 1997-98	$21,570	$13,466	$10,563	62.43%	$4,038	$130	$9,298	43.1%	($1,265)
FY 1996-97	$20,400	$12,397	$9,990	60.77%	$3,796	$74	$8,528	41.8%	($1,462)
FY 1995-96	$20,012	$11,885	$9,800	59.39%	$3,655	$31	$8,199	41.0%	($1,601)
FY 1994-95	$19,525	$11,431	$9,561	58.55%	$3,443	$4	$7,985	40.9%	($1,577)
Total Shortfall									($64,510)

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

Table E: State Payments to Local Governments (excluding schools) Has Declined Sharply

millions)

	FY 1994	FY 2016	% Change Adjusted for Inflation
Payments to Local Govts	$7,474	$16,852	39.2%
Payments to School Districts	$2,630	$11,919	279.7%
Payments to Other Local Govts.	$4,844	$4,933	-37.1%
Local School Property Taxes	$5,857	$2,054	-78.4%
Total School Expenditures (Excludes Federal Aid)	$8,487	$13,973	1.6%
Total State Spending from State Resources	$14,949	$30,547	26.1%
Payments to Other Local Govts. as % of State Spending	32.4%	16.1%	
Total State Spending less payments to other local Govts	$10,105	$26,614	56.4%

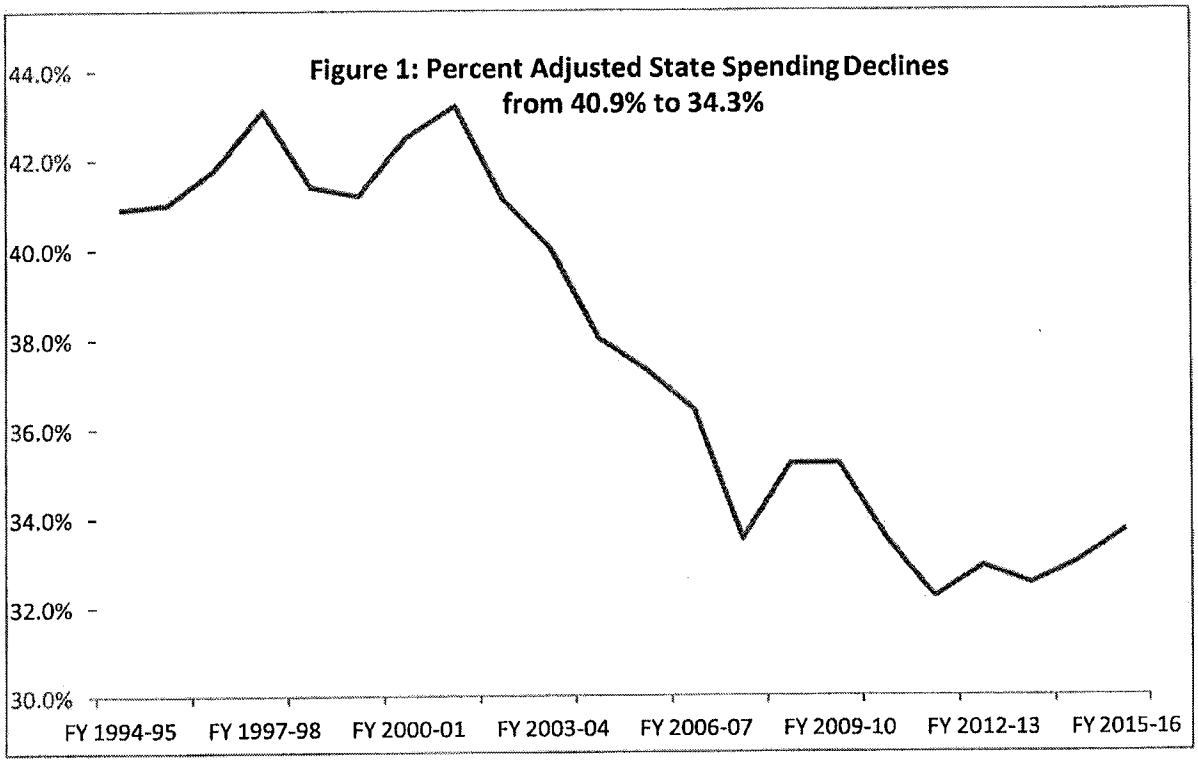
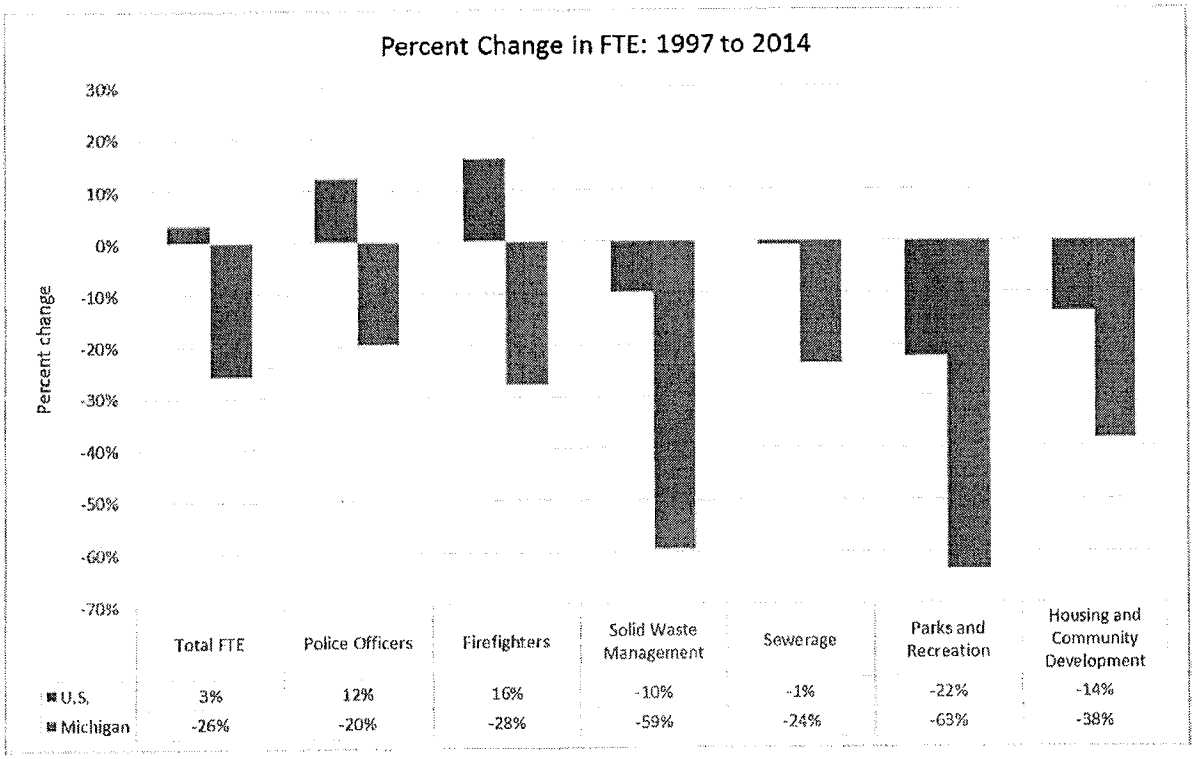


FIGURE 2: MICHIGAN AND US LOCAL GOVERNMENT EMPLOYMENT CHANGES



Source: US Census Bureau, 2014 Annual Survey of Public Employment and Payroll.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, And SARA KANDEL,

Plaintiffs,

V

THE STATE OF MICHIGAN, THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET OF THE STATE OF MICHIGAN; and the MICHIGAN OFFICE OF THE AUDITOR GENERAL,

Defendants.

Court of Appeals No. 334663

JOHN C. PHILO (P52721)
ANTHONY D. PARIS (P71525)
Attorneys for Plaintiffs
SURAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue, Second Floor
Detroit, MI 48201
(313) 993-4505

JOHN E. MOGK (P17866)
ROBERT A. SEDLER (P31003)
Co-Counsel for Plaintiffs
WAYNE STATE UNIVERSITY LAW SCHOOL
471 W. Palmer Ave.
Detroit, MI 48202
(313) 577-3955

TRACY ANNE PETERS (P76185)
Co-Counsel for Plaintiffs
TRACY A PERS PLLC
3494 Harvard Rd.
Detroit, MI 48224
(313) 693-5155

BILL SCHUETTE, Attorney General
AARON D. LINDSTROM (P72916)
Solicitor General Counsel of Record
MATTHEW SCHNEIDER (P62190)
Chief Legal Counsel
ADAM P. SADOWSKI (P73864)
MATTHEW B. HODGES (P72193)
DAVID W. THOMPSON (P75356)
MICHAEL S. HILL (P73084)
Assistant Attorney General
Attorneys for Defendants
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

DENNIS R. POLLARD (P18981)
JENNIFER HILL (P59023)
Attorneys for Amici Curiae'
2600 Troy Center Drive
P.O. Box 5025
Troy, MI 48007-5025
(248) 851-9500

SECREST WARDLE

AFFIDAVIT OF MITCHELL E. BEAN

I, MITCHELL E. BEAN, being duly sworn affirm, and based on knowledge, information and belief do hereby state as follows:

1. I have over twenty-five years of experience as a professional economist and presently work as an independent economics consultant on public policy issues with a fiscal or economic impact.

2. I hold a Master of Arts Degree in Economics from Michigan State University and a Bachelor of Arts Degree in Economics from Washington State University.

3. From 1992 to 1993, I was employed as Economist in the Michigan Department of Treasury's Office of Revenue and Tax Analysis. Part of my work at that time involved working with a team to develop property tax and school finance reform proposals.

4. From 1993 to 1999, I was employed as a Senior Economist with the Michigan House of Representatives, House Fiscal Agency. My work included analyzing State budgets and providing analysis of the fiscal impact of proposed legislation on the State economy and revenue.

5. From 1999 to 2011, I was employed as a Director of the Michigan House of Representatives, House Fiscal Agency. My work included providing nonpartisan information and analysis to State legislators regarding State revenue and expenditures on State budget matters.

6. My resume, attached as Exhibit A, further details my professional history, education, and additional information regarding my experience as Economist with expertise on State budget matters.

7. My resume, attached as Exhibit A, further details my professional history, education, and additional information regarding my experience as an economist with expertise on Michigan state budget matters.

8. Attached as Exhibit B is a report, dated February 2018, which I participated in creating with Mr. Robert J. Kleine as principals of Great Lakes Economic Consulting for the Michigan Municipal League under retainer from that entity. The report consists of an initial commentary containing conclusions that I have drawn from relevant published data from state government resources as indicated in the several tables attached thereto.

9. The conclusions in that commentary as to the estimated impact on Michigan local governments as a proximate result of the treatment by State government of the taxes collected and state expenditures following adoption by Michigan voters of a Constitutional Amendment in 1978, commonly known as the Headlee Amendment, and from the 1994 Amendment to the Michigan Constitution, commonly known as Proposal A, are accurate and reliably based in my professional judgment. Relative to the latter Amendment, the data reported reflects the resulting shifts in spending by State government of those taxes between state and local governments which in my professional judgment are accurate and reliably based. The data reflected in the Tables A through E attached to the report are accurate and reliably based on the sources identified in each Table.

I swear or affirm that the above and foregoing representation are true and correct to the best of my information and knowledge. Further Affiant Sayeth Naught.

By: Mitchell E Bean
MITCHELL E. BEAN
Great Lakes Economic Consulting LLC

11889 Plains Road
Eaton Rapids, MI 48827

Dated: February 26th, 2018

Subscribed and sworn before me, Mae Holmes
A Notary Public, on 2-26-18.

Notarizing Mitchell Bean's Signature

Notary Public, Ingham County, MI.
My commission expires 6-1-22.

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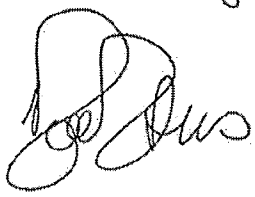


SECREST WARDLE

EXHIBIT A

Mitchell E. Bean

11889 Plains Road, Eaton Rapids, MI 48827
Email: beanmitch@gmail.com

PROFESSIONAL EXPERIENCE

Director, House Fiscal Agency, Michigan House of Representatives: 1999 to 2011
Directed nonpartisan, professional, confidential staff of 30 providing the House Appropriations Committee, and other House members, with information and analysis of revenue, expenditure, and budget matters; led and/or participated in biyearly Consensus Revenue Estimating Conference process; worked closely with leadership of Republican and Democratic parties, and with Senate and Executive branches; anticipated policy and legislative needs/requirements.

Key Contributions/Achievements: Expanded and standardized Fiscal Agency publications program; created appropriation process training sessions for new House members and staff; initiated program of economic and budget presentations (14 in 2008; over 40 in 2010) for House members, policy staff, and professional and citizen groups; addressed the full House during session to update members on economic and revenue problems; served seven different Speakers (Michigan House of Representatives) and nine House Appropriation Committee Chairs.

Senior Economist, House Fiscal Agency, Michigan House of Representatives: 1993 to 1999
Analyzed/forecasted national/State economy and State revenue, determined fiscal impact of proposed legislation with potential to affect State revenue, served as economic and technical resource for Agency staff and members of the House of Representatives.

Economist, Office of Revenue and Tax Analysis, Michigan Department of Treasury: 1992 to 1993
Analyzed Single Business Tax and tax expenditure issues; worked with team developing school finance and property tax reform proposals.

Instructor, Department of Economics, Michigan State University: 1992
Intermediate Microeconomics.

ASSOCIATIONS

National Conference of State Legislatures (NCSL)
Deficit Reduction Task Force, 2010 to 2011: Reviewed NCSL policy, interacted with congressional committees, reported recommendations to NCSL Executive Committee.

Staff Vice-Chair for Standing Committees, 2010 to 2011: Reviewed pending policy resolutions, identified emerging state/federal issues, coordinated outreach to legislators and staff.

Budgets and Revenue Committee, 2008 to 2011: Intermediate Past Staff Chair, Staff Vice Chair, Moderator (Build America Bonds), Panelist (Lessons on Crafting Tax Policy), Panelist (State Unemployment Funds: Going for Broke?), Speaker (Impact of Tax Expenditures on Budget Shortfalls).

The Pew Charitable Trusts — Featured speaker at November 2009 briefing following release of The Pew Center report (Beyond California, States In Fiscal Peril).

MacNeil/Lehrer Productions — Participant in November 2009 documentary, (By the People—Hard Times, Hard Choices), Panelist (Spending Cuts and Taxes).

Federal Reserve Bank of Chicago — Regular participant in Midwest Economic Roundtable.

National Tax Association — Member, 1990 to 2011

EDUCATION

Master of Arts in Economics (ABD), Michigan State University, East Lansing, Michigan

Bachelor of Arts in Economics (Cum Laude, Phi Beta Kappa), Washington State University, Pullman, Washington

PUBLICATIONS

"Budget Areas Synopses FY 2010-11," with Kyle I. Jen, November 2010.

"State Unemployment Funds: Implications for Michigan's Budget," National Conference of State Legislatures, July 28, 2010.

"Standard Principles and Practice in Public Finance," National Conference of State Legislatures, July 25, 2010.

"Civil Service Salary and Benefit Comparisons," with Viola Bay Wild and Jim Stansell, November 2008.

Medicaid's Impact on the State Budget," with Bill Fairgrieve, Fiscal Forum, January 2004.

Revenue Review, with Rebecca Ross, quarterly, 2000 through 2011.

"The Income Tax," with Kyle I. Jen, April 1999.

"Michigan Economic and Industrial Trends," with Steve Marasco, Fiscal Focus, November 1998.

"Michigan and Internet Taxation," with Marjorie Bilyeu, Fiscal Focus, February 1998.

"Toward Deregulation of Michigan's Electric Utility Industry: What Should We Expect?, with Marjorie Bilyeu, Fiscal Focus, February 1998.

"Internet Taxation in Michigan," with Marjorie Bilyeu, *State and Local Taxes Weekly*, February 1, 1998.

"Recent Legislative Changes to Michigan's Limited Liability Company Act," with Marjorie Bilyeu; Kemp, Klein, Umphrey, & Endleman, P.C. Quarterly Commentator, Winter 1997/1998; Fiscal Forum, October 1997; *Michigan Tax Lawyer*, Volume XXIII, Issue 3, Third Quarter 1997.

"Michigan's Short Statute of Limitations Applying to Tax Laws: A Constitutional Controversy," with Marjorie Bilyeu, Fiscal Forum, October 1997; *State and Local Taxes Weekly*, October 6, 1997.

"Mail Order Sales: Is Michigan Getting Its Fair Share of Sales and Use Taxes?," with Marjorie Bilyeu, Fiscal Forum, September 1997.

"State Cash Flow and Borrowing Costs," Fiscal Focus, June 1997.

"Dynamic Revenue Estimating, Will It Work For Michigan?;" with Jay Wortley, Senate Fiscal Agency, and Mark P. Haas, Michigan Department of Treasury; March 1997.

"Revenue Performance and Economic Conditions in Michigan," National Tax Association Proceedings. 90th Annual Conference, Chicago, Illinois, 1997.

"Michigan Economic Outlook and Revenue Estimates," with Steve Marasco; Fiscal Years 1997-98 and 1998-99, 1998-99 and 1999-2000, 1999-2000 and 2000-01.

"Pupil and Taxpayer Equity in Michigan: Initial Analysis of School Finance Reform," with Hank Prince, National Conference of State Legislatures National Seminar on Property Tax Reform, Atlanta, Georgia, October 19, 1995.

"Trade Sanctions and Economic Welfare," with Michael Ahmad, Fiscal Forum, June 1995.

Key Economic Indicators Update, Bi-monthly, 1995 through 1999.

"Overview of the Headlee Limit on State Revenues," Fiscal Forum, June 1994.

"Fiscal Effects of Tax Increment Financing," 1994.

"Analysis of the Michigan Single Business Tax," Office of Revenue and Tax Analysis, Michigan Department of Treasury, 1993.

"Tax Expenditure Appendix to the Executive Budget," Office of Revenue and Tax Analysis, Michigan Department of Treasury, 1993.

"The Economic Impact of Michigan State University to the State of Michigan," with Ronald Fisher, John Goddeeris, and Margie Tieslau, A Report to the Vice President for Research and Graduate Studies, Michigan State University, 1992.

ECONOMIC AND BUDGET PRESENTATIONS

November 2010: Michigan Library Association; New Members of the Michigan House of Representatives.

October 2010: Oakland University; Rotary Club of Portage, Michigan; UAW Region 1-C, Annual Cap Conference; MSU Institute for Public Policy and Social Research, State Tax and Budget Round Table; Michigan Future, Inc.; Grand Valley Metro Council.

September 2010: Governmental Consultants Services, Inc. and Ottawa County.

August 2010: Michigan Judges' Association.

May 2010: Michigan Municipal League; Michigan Association of School Nurses; Town Hall Meeting With State Representative Corriveau; Town Hall Meeting With State Representative Segal; Business Leaders for Michigan; National Association for Business Economics.

April 2010: Town Hall Meeting With State Representative Stamas; Macomb Intermediate School District; Allegan County Local Officials; Town Hall Meeting With State Representative Nathan; Town Hall Meeting With State Representative Roberts.

March 2010: Michigan Association of Counties; Michigan County Medical Care Facilities Council; Architects and Engineers; Town Hall Meeting With State Representative Kurtz; State Bar of Michigan; State Farm Insurance.

February 2010: MSU Institute for Public Policy and Social Research, Michigan Political Leadership Program; Central Michigan University; Michigan Society of Association Executives; MSU Institute for Public Policy and Social Research, Michigan Policy Forum Series; Town Hall Meeting With State Representative Jones.

January 2010: Michigan Office of Services to the Aging; Michigan Association of Health Plans; Lansing State Journal; Town Hall Meeting With State Representative Barnett; Town Hall Meeting With State Representative Bauer; The Economist (Interview); U.S. Representative Hoekstra; University of Michigan, Flint Campus.

December 2009: Detroit Free Press; Fight Crime: Invest in Kids; Michigan League for Human Services; Michigan Utilities Directors Association; University of Michigan, Ann Arbor Campus.

November 2009: MacNeil/Leher Productions "By the People;" Town Hall Meeting With State Representative Byrnes; Town Hall Meeting With State Representative Opsommer; Public Affairs Associates; The Pew Center; Tri-County Office on Aging Advisory Council.

October 2009: Association of Businesses Advocating Tariff Equity; Presidents Council, State Universities of Michigan; UAW Region 1-C, Annual CAP Conference.

September 2009: Black Caucus Foundation Institute; Michigan Farm Bureau.

August 2009: Town Hall Meeting With State Representative Bauer.

July 2009: City, County, and Village Officials in City of Kalamazoo and Van Buren County; Michigan Municipal League.

May 2009: Allegan County Local Officials; Medical Care Advisory Council; Michigan Community College Association; Michigan Long Term Care Support and Service Advisory Commission; Michigan Professional Fire Fighters Union; The Capitol Club; Western Michigan University.

March 2009: Michigan Bankers Association; Architects and Engineers.

February 2009: Michigan Association of Counties; Michigan Association of Public Employees Retirement System; MSU Institute for Public Policy and Social Research, Michigan Political Leadership Program; Cable Television Show With State Representative Anger.

January 2009: Early Childhood Investment Corporation, Great Start Parent Liaison Institute; Michigan School Business Officials.

EXHIBIT B

Estimated Local Impact of Proposal A Tax and Spending Shifts

February 2018

The Michigan Municipal League (MML) retained Great Lakes Economic Consulting (GLEC) to estimate the impact of Proposal A related tax and spending shifts on local government resources.

Since 1994 (passage of Proposal A) the state has failed to provide the level of funding required by Article 9, Section 30 of the so-called Headlee Amendment. The state has failed to provide local governments the same level of support (as a share of state spending) as in FY 1979, as required by the constitution, by counting payments to school districts (resulting from a tax shift), and payments to charter schools as local support.

As a consequence, local governments have been deprived of legally entitled state funding estimated at $4.4 billion in FY 2016, and about $65 billion since 1994.

The combination of the loss of this revenue and a weak economy have created fiscal stress for many local governments, particularly cities, forcing significant cuts in vital public services, arguably placing the health and safety of Michigan citizens at risk. The plight of our cities, as exemplified by the Detroit bankruptcy and the Flint water crisis, has placed our state in an unfavorable light nationally, and could have a negative economic impact long term. There is also the potential during the next economic downturn for a wave of municipal bankruptcies.

In 1978, the voters approved the so-called Headlee Amendment which limited the taxing power of state and local governments. One the provisions, Article 9, Section 30, limited the ability of the state to reduce aid to local governments.

> *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 drafters of the amendment wanted to ensure that the state would not shift the financial burden to local governments. However, with the passage of Proposal A in 1994, this is just what happened. Proposal A largely shifted support for K-12 education from local school districts to the state. As a result, the state counted the payments from the state to the school districts as spending to local governments, increasing the proportion of state spending from the required 48.97 to 58.55% in

FY 1995 (the first full year proposal A was in effect), rendering the Headlee local spending requirement moot. The percentage peaked at 64.3% in FY 2002. As a consequence, the state was able to cut revenue sharing payments to locals when it ran into budget problems in the early 2000's. If the required proportion of state spending had remained at 48.97%, and not increased due to Proposal A, the state would not have been able to make significant cuts to revenue sharing.

As shown in Table A, state support to local units doubled from FY 1980 to FY 1994, an inflation adjusted increase of 42.6% However, since 1995, state aid to locals has declined 4% adjusted for inflation. However, the cut in state revenue sharing payments was much more dramatic. From FY 1981 to FY 1994, statutory revenue sharing payments to Cities, Villages, Townships (CVT's) and Counties increased from $311 million to $634 million. In FY 2016, statutory revenue sharing was $463 million, 55% below the 1994 level adjusted for inflation. (see Exhibits B and C). All of the decline has occurred since FY 2002, as a weak economy forced budget cutbacks, which fell disproportionally on local governments. Total payments to local governments fell from a peak of 64.3% of state spending from state sources in 2002 to 56.28% in FY 2016 (refer to Table D). Total revenue sharing payments fell from 6.3% of state spending from state sources in FY 2001 to 4.1% in FY 2015, and statutory payments fell from 3.7% to 1.6%. While state spending from state resources was increasing 19.5%, statutory revenue payments were reduced almost 50%.

In FY 2016, state payments to local governments were 56.3% of state spending from state sources. This percentage is above the 48.97% constitutional requirement (Headlee section 30). However, if the Proposal A payments for K-12 education (and other contested payments, for example, charter school payments) were excluded from the state payment percentage, payments to local units would be only 34.3% of state spending, resulting in a shortfall of about $4.6 billion to local governments (see Table D).

As shown in Table E, state payments to local units excluding school aid have declined 37%, adjusted for inflation, since 1994, and have fallen from about 32% of state spending to 16% of state spending, while state spending from state resources has increased 26% (adjusted for inflation).

This could not have been the intention of the Headlee amendment. Our view is that the amendment was aimed at general local governments and not school districts. Resources to schools have increased slightly while payments to other

local governments have been cut drastically just what Headlee was trying to prevent.

Declines in state support for local governments in Michigan have severely affected services. As shown in Figure 2, nationwide, local governments increased FTE's (full time equivalent) from 1997 to 2014 by 3 percent while local government in Michigan cut FTE's by 26 percent or 86,231. Nationwide local government increased police officers by 12 percent and firefighters by 16 percent while Michigan communities reduced police officers by 20 percent (4,205 FTE's) and firefighters by 28 percent (2,874 FTE's). Local governments in Michigan also experienced very significant declines in FTE's associated with Solid Waste; Sewerage; Parks and Recreation; and Housing and Community Development.

These types of personnel cuts were necessitated by state shifting the burden from state programs to local governments. State cuts to municipalities of this magnitude have had potentially significant negative impacts on public safety and quality of life that are beyond the control of municipalities.

TABLE A: STATE SPENDING FROM STATE SOURCES GOING TO LOCAL GOVERNMENT (In Millions)

	Total State Spending from State Sources	Total to Locals	Proportion	Shortfall From 48.97%
FY 1993-94	$14,948.8	$7,474.2	50.00%	$0.0
FY 1992-93	$13,462.6	$6,496.0	48.25%	$96.6
FY 1991-92	$12,450.9	$5,399.2	43.36%	$698.8
FY 1990-91	$12,799.0	$5,657.6	44.20%	$610.1
FY 1989-90	$12,806.3	$5,490.9	42.88%	$780.3
FY 1988-89	$11,896.5	$5,067.7	42.60%	$758.0
FY 1987-88	$11,435.8	$5,017.1	43.87%	$583.0
FY 1986-87	$10,729.4	$4,711.4	43.91%	$542.8
FY 1985-86	$10,252.8	$4,397.6	42.89%	$623.2
FY 1984-85	$9,562.0	$4,008.5	41.92%	$674.0
FY 1983-84	$8,588.5	$3,575.1	41.63%	$630.7
FY 1982-83	$7,708.3	$3,179.9	41.25%	$594.9
FY 1981-82	$7,195.6	$2,974.7	41.34%	$549.0
FY 1980-81	$6,986.0	$2,913.8	41.71%	$507.2
FY 1979-80	$6,948.4	$2,892.0	41.62%	$510.6

Source: STATE of MICHIGAN COMPREHENSIVE FINANCIAL REPORT (SOMCAFR) various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE B: REVENUE SHARING PAYMENTS and CUTS: $5,790.7 MILLION IN CUTS SINCE PROPOSAL A
(In Millions)

	Total Intergovernmental Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Statutory Payments to Counties	Statutory Revenue Sharing Cuts
FY 2015-16	$1,213.5	$750.0	$248.8	$214.7	$549.3
FY 2014-15	$1,210.6	$750.7	$248.7	$211.2	$560.1
FY 2013-14	$1,120.6	$739.1	$235.7	$145.8	$550.7
FY 2012-13	$1,077.6	$722.2	$224.8	$130.6	$543.7
FY 2011-12	$1,032.2	$707.5	$209.7	$115.0	$543.2
FY 2010-11	$1,091.5	$664.7	$314.3	$112.5	$427.4
FY 2009-10	$994.2	$629.2	$309.7	$55.3	$359.8
FY 2008-09	$1,040.1	$649.1	$388.0	$3.0	$302.7
FY 2007-08	$1,076.2	$688.2	$388.0	$0.0	$344.4
FY 2006-07	$1,070.9	$666.0	$404.9	$0.0	$303.8
FY 2005-06	$1,102.5	$680.1	$422.4	$0.0	$301.4
FY 2004-05	$1,112.0	$668.7	$443.3	$0.0	$268.2
FY 2003-04	$1,304.7	$653.1	$469.5	$182.1	$225.6
FY 2002-03	$1,451.4	$660.3	$588.5	$202.6	$114.2
FY 2001-02	$1,517.3	$649.3	$650.5	$217.5	$40.5
FY 2000-01	$1,555.5	$642.8	$684.0	$228.7	$0.0
FY 1999-00	$1,462.1	$628.4	$619.4	$214.3	$49.3
FY 1998-99	$1,380.7	$580.3	$599.8	$200.6	$17.7
FY 1997-98	$1,364.0	$563.8	$599.6	$200.6	$0.0
FY 1996-97	$1,300.4	$537.6	$580.2	$182.6	$140.4
FY 1995-96	$1,259.9	$524.5	$557.4	$178.0	$81.3
FY 1994-95	$1,168.6	$477.0	$516.9	$174.7	$67.0
FY 1993-94	$1,111.7	$477.6	$471.1	$163.0	$54.5
FY 1992-93	$1,032.5	$424.2	$454.8	$153.5	$45.5
FY 1991-92	$926.5	$404.4	$399.4	$122.7	$112.2
FY 1990-91	$1,016.3	$400.6	$468.6	$147.1	$10.7
FY 1989-90	$1,032.9	$400.0	$484.9	$148.0	
FY 1988-89	$993.5	$385.3	$464.6	$143.6	
FY 1987-88	$929.6	$365.2	$429.6	$134.8	
FY 1986-87	$877.7	$345.4	$404.4	$127.9	
FY 1985-86	$832.3	$335.4	$376.1	$120.8	
FY 1984-85	$760.2	$308.2	$338.8	$113.2	
FY 1983-84	$674.3	$279.4	$291.6	$103.3	
FY 1982-83	$595.1	$243.6	$255.0	$96.5	$11.9
FY 1981-82	$525.2	$237.4	$213.4	$74.4	$40.0
FY 1980-81	$542.1	$231.0	$232.8	$78.3	$43.5

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE C: INFLATION ADJUSTED REVENUE SHARING PAYMENTS: FY 2015-16 PAYMENTS LOWER THAN PAYMENTS IN FY 1982-83; DOWN 30.7% SINCE FY 1994-95
(IN MILLIONS of 1983 ADJUSTED DOLLARS)

	Total Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Payments to Counties
FY 2015-16	$548.6	$339.1	$112.5	$97.1
FY 2014-15	$552.5	$342.6	$113.5	$96.4
FY 2013-14	$505.9	$333.7	$106.4	$65.8
FY 2012-13	$491.8	$329.6	$102.6	$59.6
FY 2011-12	$479.9	$328.9	$97.5	$53.5
FY 2010-11	$519.8	$316.5	$149.7	$53.6
FY 2009-10	$485.7	$307.4	$151.3	$27.0
FY 2008-09	$512.9	$320.1	$191.3	$1.5
FY 2007-08	$526.0	$336.4	$189.6	$0.0
FY 2006-07	$538.1	$334.7	$203.5	$0.0
FY 2005-06	$562.8	$347.2	$215.6	$0.0
FY 2004-05	$588.4	$353.8	$234.6	$0.0
FY 2003-04	$707.5	$354.2	$254.6	$98.8
FY 2002-03	$797.5	$362.8	$323.4	$111.3
FY 2001-02	$854.8	$365.8	$366.5	$122.5
FY 2000-01	$895.0	$369.9	$393.6	$131.6
FY 1999-00	$868.7	$373.4	$368.0	$127.3
FY 1998-99	$848.1	$356.4	$368.4	$123.2
FY 1997-98	$858.4	$354.8	$377.3	$126.2
FY 1996-97	$836.8	$345.9	$373.4	$117.5
FY 1995-96	$831.6	$346.2	$367.9	$117.5
FY 1994-95	$792.3	$323.4	$350.4	$118.4
FY 1993-94	$778.0	$334.2	$329.7	$114.1
FY 1992-93	$744.9	$306.1	$328.1	$110.8
FY 1991-92	$685.8	$299.3	$295.6	$90.8
FY 1990-91	$767.6	$302.6	$353.9	$111.1
FY 1989-90	$814.6	$315.5	$382.4	$116.7
FY 1988-89	$823.1	$319.2	$384.9	$119.0
FY 1987-88	$809.8	$318.1	$374.2	$117.4
FY 1986-87	$792.9	$312.0	$365.3	$115.5
FY 1985-86	$769.9	$310.3	$347.9	$111.7
FY 1984-85	$718.5	$291.3	$320.2	$107.0
FY 1983-84	$658.5	$272.9	$284.8	$100.9
FY 1982-83	$598.7	$245.1	$256.5	$97.1

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE D: SHORTFALLS IN ADUSTED STATE PAYMENTS INCREASE SINCE PROPOSAL A

	State Source Spending (millions)	Local Payments (millions)	Required Payments 48.97% (millions)	Percent Total	Est. Proposal A Funding Shift (millions)	Charter Schools (millions)	Adjusted Local Spending (millions)	Percent Adjusted State Spending	Shortfall in Local Payments (millions)
FY 2015-16	$29,943	$16,853	$14,663	56.28%	$5,381	$1,211	$10,261	34.3%	($4,402)
FY 2014-15	$29,524	$16,313	$14,458	55.25%	$5,375	$1,181	$9,757	33.0%	($4,701)
FY 2013-14	$28,301	$15,701	$13,859	55.48%	$5,368	$1,144	$9,189	32.5%	($4,670)
FY 2012-13	$27,313	$15,369	$13,375	56.27%	$5,334	$1,053	$8,981	32.9%	($4,394)
FY 2011-12	$27,153	$14,955	$13,297	55.08%	$5,311	$909	$8,735	32.2%	($4,562)
FY 2010-11	$26,184	$14,924	$12,822	57.00%	$5,296	$863	$8,765	33.5%	($4,057)
FY 2009-10	$25,797	$14,530	$12,633	56.32%	$5,275	$817	$8,438	32.7%	($4,195)
FY 2008-09	$25,835	$15,112	$12,651	58.49%	$5,257	$772	$9,083	35.2%	($3,569)
FY 2007-08	$28,144	$15,805	$13,782	56.16%	$5,159	$773	$9,873	35.1%	($3,910)
FY 2006-07	$26,763	$15,575	$13,106	58.20%	$5,089	$743	$9,743	36.4%	($3,363)
FY 2005-06	$26,653	$15,602	$13,052	58.54%	$4,995	$667	$9,940	37.3%	($3,112)
FY 2004-05	$25,688	$15,258	$12,579	59.40%	$4,967	$594	$9,698	37.8%	($2,882)
FY 2003-04	$24,854	$15,430	$12,171	62.08%	$4,960	$531	$9,939	40.0%	($2,232)
FY 2002-03	$25,205	$15,804	$12,343	62.70%	$4,946	$488	$10,371	41.1%	($1,972)
FY 2001-02	$24,702	$15,883	$12,097	64.30%	$4,762	$454	$10,666	43.2%	($1,430)
FY 2000-01	$24,686	$15,495	$12,089	62.77%	$4,628	$384	$10,483	42.5%	($1,606)
FY 1999-00	$23,452	$14,461	$11,484	61.66%	$4,500	$302	$9,660	41.2%	($1,825)
FY 1998-99	$22,791	$13,888	$11,161	60.94%	$4,252	$202	$9,434	41.4%	($1,707)
FY 1997-98	$21,570	$13,466	$10,563	62.43%	$4,038	$130	$9,298	43.1%	($1,265)
FY 1996-97	$20,400	$12,397	$9,990	60.77%	$3,796	$74	$8,528	41.8%	($1,462)
FY 1995-96	$20,012	$11,885	$9,800	59.39%	$3,655	$31	$8,199	41.0%	($1,601)
FY 1994-95	$19,525	$11,431	$9,561	58.55%	$3,443	$4	$7,985	40.9%	($1,577)
Total Shortfall									($64,510)

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

Table E: State Payments to Local Governments (excluding schools) Has Declined Sharply
millions)

	FY 1994	FY 2016	% Change Adjusted for Inflation
Payments to Local Govts	$7,474	$16,852	39.2%
Payments to School Districts	$2,630	$11,919	279.7%
Payments to Other Local Govts.	$4,844	$4,933	-37.1%
Local School Property Taxes	$5,857	$2,054	-78.4%
Total School Expenditures (Excludes Federal Aid)	$8,487	$13,973	1.6%
Total State Spending from State Resources	$14,949	$30,547	26.1%
Payments to Other Local Govts. as % of State Spending	32.4%	16.1%	
Total State Spending less payments to other local Govts	$10,105	$26,614	56.4%

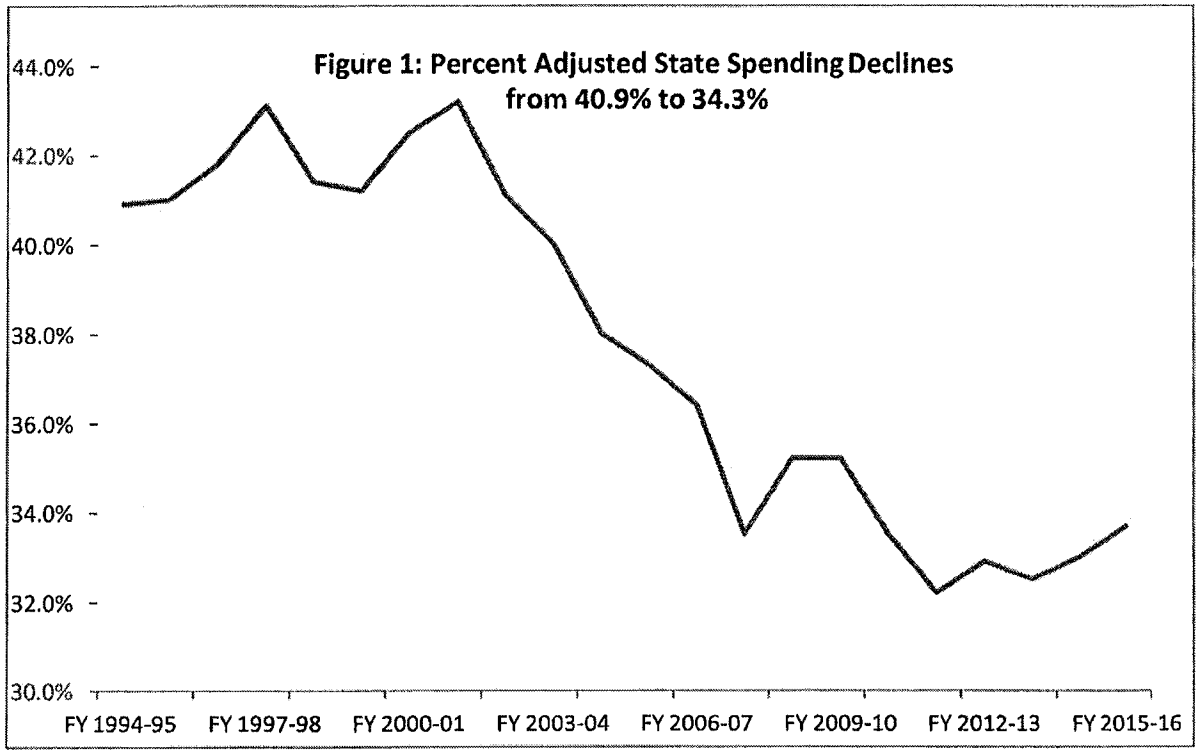
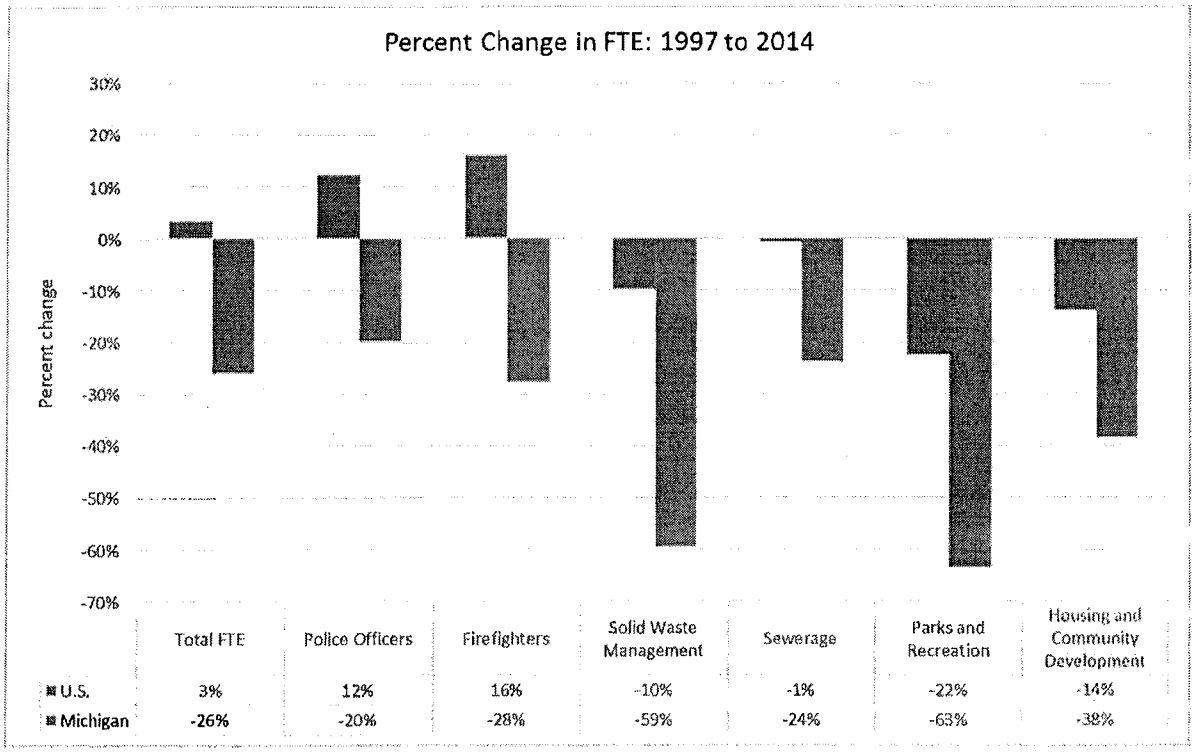


FIGURE 2: MICHIGAN AND US LOCAL GOVERNMENT EMPLOYMENT CHANGES



Source: US Census Bureau, 2014 Annual Survey of Public Employment and Payroll.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, And SARA KANDEL,

Plaintiffs,

V

THE STATE OF MICHIGAN, THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET OF THE STATE OF MICHIGAN; and the MICHIGAN OFFICE OF THE AUDITOR GENERAL,

Defendants.

Court of Appeals No. 334663

/

JOHN C. PHILO (P52721)
ANTHONY D. PARIS (P71525)
Attorneys for Plaintiffs
SURAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue, Second Floor
Detroit, MI 48201
(313) 993-4505

JOHN E. MOGK (P17866)
ROBERT A. SEDLER (P31003)
Co-Counsel for Plaintiffs
WAYNE STATE UNIVERSITY LAW SCHOOL
471 W. Palmer Ave.
Detroit, MI 48202
(313) 577-3955

TRACY ANNE PETERS (P76185)
Co-Counsel for Plaintiffs
TRACY A PETERS PLLC
3494 Harvard Rd.
Detroit, MI 48224
(313) 693-5155

BILL SCHUETTE, Attorney General
AARON D. LINDSTROM (P72916)
Solicitor General Counsel of Record
MATTHEW SCHNEIDER (P62190)
Chief Legal Counsel
ADAM P. SADOWSKI (P73864)
MATTHEW B. HODGES (P72193)
DAVID W. THOMPSON (P75356)
MICHAEL S. HILL (P73084)
Assistant Attorney General
Attorneys for Defendants
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

DENNIS R. POLLARD (P18981)
JENNIFER HILL (P59023)
Attorneys for Amici Curiae'
2600 Troy Center Drive
P.O. Box 5025
Troy, MI 48007-5025
(248) 851-9500

/

AFFIDAVIT OF ROBERT J. KLEINE

I, ROBERT J. KLEINE, being duly sworn affirm, and based on knowledge, information and belief do hereby state as follows:

1. I have fifty years of experience as a professional economist and presently work as interim director of the MSU Center for Local Government Finance and Policy. The Center works on issues affecting the financial stability local governments.

2. I hold a Master of Business Administration Degree in Finance from Michigan State University. I also hold a Bachelor of Arts Degree in Economics and History from Western Maryland College (now McDaniel College).

3. From 1966 to 1975, I was employed as Economic Analyst with the State of Michigan's Budget Office where my work included preparing revenue estimates and economic forecasts and developing and analyzing tax proposals.

4. From 1976 to 1977 and 1984 to 1985, I was worked as Senior Analyst in Michigan Public Finance with the Advisory Commission on Intergovernmental Relations. During the course of this work I prepared a primer on state and local income taxes and delivered papers and reports on property tax relief, state tax incentives, and other tax issues.

5. From 1975 to 1984, I served as Director of the Michigan Department of Management and Budget's Office of Revenue Report and Tax Analysis. My responsibilities included preparation of state revenue estimates and economic forecasts; developing and analyzing state tax proposals; and analyzing all legislation affecting Michigan state revenues and the Michigan economy.

6. From1985 to 2001, I was employed as a Vice President, Senior Economist and Editor of Public Sector Reports publication. My responsibilities included revenue and economic

forecasts, preparing issue papers and studies on Michigan tax and economic matter, and providing technical assistance to staff and clients.

7. From 2001 to 2006, I worked with Kleine Consulting serving as economic advisor to the Delta Dental Plan of Michigan and correspondent for State Tax Notes.

8. From 2006 to 2010, I served as the Treasurer of the State of Michigan. In addition to overseeing the Michigan Department of Treasury, the State Treasurer serves as the chief economic and tax policy advisor to the Governor.

9. From 2016 to present, I served as Interim Director of Michigan State University's Center for Local Government Finance and Policy. My responsibilities have included research and dissemination of information on local government finance and organization issues along with providing leadership training to local government officials.

10. My resume, attached as Exhibit A, further details my professional history, education, and additional information regarding my experience as an economist with expertise on Michigan state budget matters.

11. Attached as Exhibit B is a report, dated February 2018, which I participated in creating with Mr. Mitchell E. Bean as principals of Great Lakes Economic Consulting for the Michigan Municipal League under retainer from that entity. The report consists of an initial commentary containing conclusions that I have drawn from relevant published data from state government resources as indicated in the several tables attached thereto.

12. The conclusions in that commentary as to the estimated impact on Michigan local governments as a proximate result of the treatment by State government of the taxes collected and state expenditures following adoption by Michigan voters of a Constitutional Amendment in 1978, commonly known as the Headlee Amendment, and from the 1994

Amendment to the Michigan Constitution, commonly known as Proposal A, are accurate and reliably based in my professional judgment. Relative to the latter Amendment, the data reported reflects the resulting shifts in spending by State government of those taxes between state and local governments which in my professional judgment are accurate and reliably based. The data reflected in the Tables A through E attached to the report are accurate and reliably based on the sources identified in each Table.

I swear or affirm that the above and foregoing representation are true and correct to the best of my information and knowledge.

By: Robert J. Kleine
ROBERT J. KLEINE
Great Lakes Economic Consulting LLC
11889 Plains Road
Eaton Rapids, MI 48827

Dated: February 20, 2018

Subscribed and sworn before me,
A Notary Public, on 2/20/2018.

Notary Public, Ingham County, MI.
My commission expires 9/28/2020.

ELIZABETH MARTIN
Notary Public, State of Michigan
County of Ingham
My Commission Expires 09-28-2020
Acting in the County of Ingham

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SECREST WARDLE

EXHIBIT A

ROBERT J. KLEINE

1135 Farwood.
East Lansing, Michigan 48823
517/332-7825(home) 517/881-8481(cell)

EDUCATION

Western Maryland College (now McDaniel College), B.A., Economics and History, 1963; American University, Business Administration, 1965-1966; Michigan State University, M.B.A., Finance, 1970

PREVIOUS PROFESSIONAL EXPERIENCE

September 2016- April 2018- Interim Director, Michigan State University Center for Local Government Finance and Policy, Conduct research and disseminate information on local government finance and organization issues. Provide leadership training to local government officials. Provide support to local government organizations.

2011-Present – Partner, Great Lakes Economic Consulting, Provide consulting services to a wide range of public and private organization. Prepared reports on municipal finance, indigent defense, juvenile justice, casino gambling, and the Michigan economy.

2006-2010 - Treasurer, State of Michigan, Responsible for managing a Department of 1,700 employees. The Michigan Department of Treasury is responsible for collecting all state revenue, managing state pension funds, overseeing local government finances and the property tax system, issuing and managing state debt, overseeing student financial aid programs including MET and MESP, preparing economic and revenue estimates, and developing and analyzing state tax policy. The State Treasurer serves as the chief economic and tax policy advisor to the Governor.

2001- 2006 - *Kleine Consulting*, Serve as economic advisor to Delta Dental Plan of Michigan and Michigan correspondent for *State Tax Notes.* Have prepared studies for a number of organizations including Michigan Judges Association, Public Sector Consultants, Public Policy Associates, Japanese Consulate, and Ann Arbor School District.

1985-2001- Vice President, Senior Economist, and Editor **of Public Sector Reports.** Responsible for revenue and economic forecasts, preparing issue papers and studies on tax and economic matters, and providing technical assistance to staff and clients. Conducts research and writes reports on policy issues for the firm and its clients. Manages research projects, which includes scheduling, client contact, supervision of project team, budget monitoring, and fulfillment of contract terms. Authored major reports on property tax exemptions, a proposed income tax for South Dakota, and state and local tax systems.

1998-2000 Taught graduate course in public finance at Michigan State University.

1988 Taught graduate class on school finance at Michigan State University.

1984-85 Senior Analyst in Public Finance, Advisory Commission on Intergovernmental Relations. Authored reports on cigarette tax evasion and the value-added tax. Prepared report on revenue and program turnbacks. Wrote article on federal tax reform for ACIR magazine.

1975-84 Director, Office of Revenue and Tax Analysis, Michigan Department of Management and Budget. Responsible for preparing state revenue estimates and economic forecasts, developing and analyzing tax proposals, and analyzing all legislation affecting state revenues or the Michigan economy. Played a major role in developing the Single Business Tax and "circuit breaker" property tax relief program. Directed the Governor's Task Force on Property Tax Revision. Selected outstanding employee in Budget Office in 1979. Supervised staff of eleven employees.

1976-77 Senior Analyst in Public Finance, Advisory Commission on Intergovernmental Relations. Authored reports on cigarette bootlegging, the Michigan value-added tax, and regional economic growth and state tax competition. Prepared a primer on state and local income taxes, drafted legislation to implement cigarette bootlegging recommendations, and delivered papers on property tax relief and state tax incentives.

1966-1975 Economic Analyst, Michigan Budget Office. Prepared revenue estimates and economic forecasts. Assisted in preparing governor's economic report and monthly reports on revenues and economic developments. Assisted in developing and analyzing tax proposals. Analyzed economic and tax legislation. Assisted in implementing Planning, Programming, and Budgeting System, including preparation of cost-effectiveness analyses. Served as chief of Revenue Research Section from 1972 to 1975. Supervised three employees.

1965-1966 *Assistant Trust Officer,* Riggs National Bank, Washington, D.C. Assisted in managing individual trust portfolios. Managed common trust fund. Evaluated investment worth of selected securities. Monitored economic and investment developments.

1963-1965 Lieutenant, U.S. Army Served as missile control officer in air defense artillery unit.

SELECTED CONSULTING REPORTS AND PUBLICATIONS

(A complete list of Public Sector Consultants and Great Lakes Economic Consulting publications is available upon request. Several of these publications were reprinted by other organizations.)

"*Someone to Watch Over me: State Monitoring of Local Fiscal Conditions*", with Carol Weissert and Phil Kloha, Vol. 35, No. 3, 2005.

"*Monitoring Local Government Fiscal Health: Michigan's New 10-Point Scale of Fiscal Distress*, Government Finance review, June, 2003.

"*Developing and Testing a Composite Model to Predict Local Fiscal Distress*", with Carol Weissert and Phil Kloha, *Public Administration Review,* May/June 2005.

"*A Detailed Examination of the Michigan Economy*", for the Japanese Consulate, April, 2002.

"*Michigan Charter School Initiative: from Theory to Practice*, with Nick Khouri and Laurie Cummings, Public Sector Consultants, Inc., February, 1999.

"Economic Benefits of Michigan's Nonprofit Sector", Public Sector Consultants, Inc., 1999.

"Michigan School Finance Reform: a series of papers (with others), Public sector Consultants, Inc., 1994

"Public Welfare Benefits: A Comparison" (with Frances Spring), prepared for the Michigan Department of Social Services, August 1991.

"A Proposal to Reduce the Federal Deficit and the National Debt," Public Policy Advisor, Public Sector Consultants, August 17, 1990.

"High Technology Employment Trends in Michigan," Public Policy Advisor, Public Sector Consultants, October 22, 1990.

"Profiling Michigan's School Districts" (with Frances Spring), Public Sector Consultants, November 1989.

"U.S. State-Local Tax Systems: How Do They Rate?", Public Sector Consultants, 1988.

"The Personal and Corporate Income Tax: An Evaluation for South Dakota," Public Sector Consultants, December 1988.

"Characteristics of a Balanced State-Local Tax System," in *Reforming State Taxes.* Denver: National Conference of State Legislatures, 1987.

"A Study of the New Jersey Property Tax System and Options for Change," Public Sector Consultants, June 1987.

"Tax Increment Financing: Effect on Local Government Revenue," Public Policy Advisory, Public Sector Consultants, May 1987.

"Michigan Property Tax Exemptions and Their Effect," Public Sector Consultants, July 1986.

"Characteristics of a Balanced State-Local System," in Proceedings of the Seventy-Eighth Annual Conference. *Denver: National Tax Association, 1985. pp. 134-43.*

"Cigarette Tax Evasion: A Second Look," Advisory Commission on Intergovernmental Relations (ACIR), A-100. Washington, D.C.: March 1985.

"Regional Growth: Interstate Tax Competition" (with others), ACIR, A-76. Washington, D.C.: March 1985.

"Strengthening the Federal Revenue System: Implications for State and Local Taxation and Borrowing" (with others), ACIR, A-97. Washington, D.C.: October 1984.

"National Consumption Taxes: The View from the States," National Tax Journal *(September 1984): 313-21.*

"A Different Approach to State Business Taxation: The Michigan Single Business Tax," ACIR, M-114. Washington, D.C.: April 1978.

"State-Local Tax Incentives and Industrial Location," in Revenue Administration 1977. *Washington, D.C.: Federation of Tax Administrators, 1977.*

"Cigarette Bootlegging: A State and *Federal Responsibility." Washington, D.C.: ACIR, May 1977.*

PROFESSIONAL ASSOCIATIONS (former)

National Association of State Treasurers
National Association of Tax Administrators
National Tax Association (Member of Property Tax Committee)
Michigan Economic Society.

VOLUNTEER EXPERIENCES

Present - Treasurer, Michigan League for Public Policy
Present - President – Treasurer, Eastminister Presbyterian Church
Present - Chair of the Budget & Finance Committee, Lake Michigan Presbytery
Present - Member, East Lansing Financial Team

7/27/2016

EXHIBIT B

Estimated Local Impact of Proposal A Tax and Spending Shifts

February 2018

The Michigan Municipal League (MML) retained Great Lakes Economic Consulting (GLEC) to estimate the impact of Proposal A related tax and spending shifts on local government resources.

Since 1994 (passage of Proposal A) the state has failed to provide the level of funding required by Article 9, Section 30 of the so-called Headlee Amendment. The state has failed to provide local governments the same level of support (as a share of state spending) as in FY 1979, as required by the constitution, by counting payments to school districts (resulting from a tax shift), and payments to charter schools as local support.

As a consequence, local governments have been deprived of legally entitled state funding estimated at $4.4 billion in FY 2016, and about $65 billion since 1994.

The combination of the loss of this revenue and a weak economy have created fiscal stress for many local governments, particularly cities, forcing significant cuts in vital public services, arguably placing the health and safety of Michigan citizens at risk. The plight of our cities, as exemplified by the Detroit bankruptcy and the Flint water crisis, has placed our state in an unfavorable light nationally, and could have a negative economic impact long term. There is also the potential during the next economic downturn for a wave of municipal bankruptcies.

In 1978, the voters approved the so-called Headlee Amendment which limited the taxing power of state and local governments. One the provisions, Article 9, Section 30, limited the ability of the state to reduce aid to local governments.

> *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 drafters of the amendment wanted to ensure that the state would not shift the financial burden to local governments. However, with the passage of Proposal A in 1994, this is just what happened. Proposal A largely shifted support for K-12 education from local school districts to the state. As a result, the state counted the payments from the state to the school districts as spending to local governments, increasing the proportion of state spending from the required 48.97 to 58.55% in

FY 1995 (the first full year proposal A was in effect), rendering the Headlee local spending requirement moot. The percentage peaked at 64.3% in FY 2002. As a consequence, the state was able to cut revenue sharing payments to locals when it ran into budget problems in the early 2000's. If the required proportion of state spending had remained at 48.97%, and not increased due to Proposal A, the state would not have been able to make significant cuts to revenue sharing.

As shown in Table A, state support to local units doubled from FY 1980 to FY 1994, an inflation adjusted increase of 42.6% However, since 1995, state aid to locals has declined 4% adjusted for inflation. However, the cut in state revenue sharing payments was much more dramatic. From FY 1981 to FY 1994, statutory revenue sharing payments to Cities, Villages, Townships (CVT's) and Counties increased from $311 million to $634 million. In FY 2016, statutory revenue sharing was $463 million, 55% below the 1994 level adjusted for inflation. (see Exhibits B and C). All of the decline has occurred since FY 2002, as a weak economy forced budget cutbacks, which fell disproportionally on local governments. Total payments to local governments fell from a peak of 64.3% of state spending from state sources in 2002 to 56.28% in FY 2016 (refer to Table D). Total revenue sharing payments fell from 6.3% of state spending from state sources in FY 2001 to 4.1% in FY 2015, and statutory payments fell from 3.7% to 1.6%. While state spending from state resources was increasing 19.5%, statutory revenue payments were reduced almost 50%.

In FY 2016, state payments to local governments were 56.3% of state spending from state sources. This percentage is above the 48.97% constitutional requirement (Headlee section 30). However, if the Proposal A payments for K-12 education (and other contested payments, for example, charter school payments) were excluded from the state payment percentage, payments to local units would be only 34.3% of state spending, resulting in a shortfall of about $4.6 billion to local governments (see Table D).

As shown in Table E, state payments to local units excluding school aid have declined 37%, adjusted for inflation, since 1994, and have fallen from about 32% of state spending to 16% of state spending, while state spending from state resources has increased 26% (adjusted for inflation).

This could not have been the intention of the Headlee amendment. Our view is that the amendment was aimed at general local governments and not school districts. Resources to schools have increased slightly while payments to other

local governments have been cut drastically just what Headlee was trying to prevent.

Declines in state support for local governments in Michigan have severely affected services. As shown in Figure 2, nationwide, local governments increased FTE's (full time equivalent) from 1997 to 2014 by 3 percent while local government in Michigan cut FTE's by 26 percent or 86,231. Nationwide local government increased police officers by 12 percent and firefighters by 16 percent while Michigan communities reduced police officers by 20 percent (4,205 FTE's) and firefighters by 28 percent (2,874 FTE's). Local governments in Michigan also experienced very significant declines in FTE's associated with Solid Waste; Sewerage; Parks and Recreation; and Housing and Community Development.

These types of personnel cuts were necessitated by state shifting the burden from state programs to local governments. State cuts to municipalities of this magnitude have had potentially significant negative impacts on public safety and quality of life that are beyond the control of municipalities.

TABLE A: STATE SPENDING FROM STATE SOURCES GOING TO LOCAL GOVERNMENT (In Millions)

	Total State Spending from State Sources	Total to Locals	Proportion	Shortfall From 48.97%
FY 1993-94	$14,948.8	$7,474.2	50.00%	$0.0
FY 1992-93	$13,462.6	$6,496.0	48.25%	$96.6
FY 1991-92	$12,450.9	$5,399.2	43.36%	$698.8
FY 1990-91	$12,799.0	$5,657.6	44.20%	$610.1
FY 1989-90	$12,806.3	$5,490.9	42.88%	$780.3
FY 1988-89	$11,896.5	$5,067.7	42.60%	$758.0
FY 1987-88	$11,435.8	$5,017.1	43.87%	$583.0
FY 1986-87	$10,729.4	$4,711.4	43.91%	$542.8
FY 1985-86	$10,252.8	$4,397.6	42.89%	$623.2
FY 1984-85	$9,562.0	$4,008.5	41.92%	$674.0
FY 1983-84	$8,588.5	$3,575.1	41.63%	$630.7
FY 1982-83	$7,708.3	$3,179.9	41.25%	$594.9
FY 1981-82	$7,195.6	$2,974.7	41.34%	$549.0
FY 1980-81	$6,986.0	$2,913.8	41.71%	$507.2
FY 1979-80	$6,948.4	$2,892.0	41.62%	$510.6

Source: STATE of MICHIGAN COMPREHENSIVE FINANCIAL REPORT (SOMCAFR) various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE B: REVENUE SHARING PAYMENTS and CUTS: $5,790.7 MILLION IN CUTS SINCE PROPOSAL A
(In Millions)

	Total Intergovernmental Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Statutory Payments to Counties	Statutory Revenue Sharing Cuts
FY 2015-16	$1,213.5	$750.0	$248.8	$214.7	$549.3
FY 2014-15	$1,210.6	$750.7	$248.7	$211.2	$560.1
FY 2013-14	$1,120.6	$739.1	$235.7	$145.8	$550.7
FY 2012-13	$1,077.6	$722.2	$224.8	$130.6	$543.7
FY 2011-12	$1,032.2	$707.5	$209.7	$115.0	$543.2
FY 2010-11	$1,091.5	$664.7	$314.3	$112.5	$427.4
FY 2009-10	$994.2	$629.2	$309.7	$55.3	$359.8
FY 2008-09	$1,040.1	$649.1	$388.0	$3.0	$302.7
FY 2007-08	$1,076.2	$688.2	$388.0	$0.0	$344.4
FY 2006-07	$1,070.9	$666.0	$404.9	$0.0	$303.8
FY 2005-06	$1,102.5	$680.1	$422.4	$0.0	$301.4
FY 2004-05	$1,112.0	$668.7	$443.3	$0.0	$268.2
FY 2003-04	$1,304.7	$653.1	$469.5	$182.1	$225.6
FY 2002-03	$1,451.4	$660.3	$588.5	$202.6	$114.2
FY 2001-02	$1,517.3	$649.3	$650.5	$217.5	$40.5
FY 2000-01	$1,555.5	$642.8	$684.0	$228.7	$0.0
FY 1999-00	$1,462.1	$628.4	$619.4	$214.3	$49.3
FY 1998-99	$1,380.7	$580.3	$599.8	$200.6	$17.7
FY 1997-98	$1,364.0	$563.8	$599.6	$200.6	$0.0
FY 1996-97	$1,300.4	$537.6	$580.2	$182.6	$140.4
FY 1995-96	$1,259.9	$524.5	$557.4	$178.0	$81.3
FY 1994-95	$1,168.6	$477.0	$516.9	$174.7	$67.0
FY 1993-94	$1,111.7	$477.6	$471.1	$163.0	$54.5
FY 1992-93	$1,032.5	$424.2	$454.8	$153.5	$45.5
FY 1991-92	$926.5	$404.4	$399.4	$122.7	$112.2
FY 1990-91	$1,016.3	$400.6	$468.6	$147.1	$10.7
FY 1989-90	$1,032.9	$400.0	$484.9	$148.0	
FY 1988-89	$993.5	$385.3	$464.6	$143.6	
FY 1987-88	$929.6	$365.2	$429.6	$134.8	
FY 1986-87	$877.7	$345.4	$404.4	$127.9	
FY 1985-86	$832.3	$335.4	$376.1	$120.8	
FY 1984-85	$760.2	$308.2	$338.8	$113.2	
FY 1983-84	$674.3	$279.4	$291.6	$103.3	
FY 1982-83	$595.1	$243.6	$255.0	$96.5	$11.9
FY 1981-82	$525.2	$237.4	$213.4	$74.4	$40.0
FY 1980-81	$542.1	$231.0	$232.8	$78.3	$43.5

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE C: INFLATION ADJUSTED REVENUE SHARING PAYMENTS: FY 2015-16 PAYMENTS LOWER THAN PAYMENTS IN FY 1982-83; DOWN 30.7% SINCE FY 1994-95
(IN MILLIONS of 1983 ADJUSTED DOLLARS)

	Total Revenue Sharing	Constitutional Payments	Statutory CVT Payments	Payments to Counties
FY 2015-16	$548.6	$339.1	$112.5	$97.1
FY 2014-15	$552.5	$342.6	$113.5	$96.4
FY 2013-14	$505.9	$333.7	$106.4	$65.8
FY 2012-13	$491.8	$329.6	$102.6	$59.6
FY 2011-12	$479.9	$328.9	$97.5	$53.5
FY 2010-11	$519.8	$316.5	$149.7	$53.6
FY 2009-10	$485.7	$307.4	$151.3	$27.0
FY 2008-09	$512.9	$320.1	$191.3	$1.5
FY 2007-08	$526.0	$336.4	$189.6	$0.0
FY 2006-07	$538.1	$334.7	$203.5	$0.0
FY 2005-06	$562.8	$347.2	$215.6	$0.0
FY 2004-05	$588.4	$353.8	$234.6	$0.0
FY 2003-04	$707.5	$354.2	$254.6	$98.8
FY 2002-03	$797.5	$362.8	$323.4	$111.3
FY 2001-02	$854.8	$365.8	$366.5	$122.5
FY 2000-01	$895.0	$369.9	$393.6	$131.6
FY 1999-00	$868.7	$373.4	$368.0	$127.3
FY 1998-99	$848.1	$356.4	$368.4	$123.2
FY 1997-98	$858.4	$354.8	$377.3	$126.2
FY 1996-97	$836.8	$345.9	$373.4	$117.5
FY 1995-96	$831.6	$346.2	$367.9	$117.5
FY 1994-95	$792.3	$323.4	$350.4	$118.4
FY 1993-94	$778.0	$334.2	$329.7	$114.1
FY 1992-93	$744.9	$306.1	$328.1	$110.8
FY 1991-92	$685.8	$299.3	$295.6	$90.8
FY 1990-91	$767.6	$302.6	$353.9	$111.1
FY 1989-90	$814.6	$315.5	$382.4	$116.7
FY 1988-89	$823.1	$319.2	$384.9	$119.0
FY 1987-88	$809.8	$318.1	$374.2	$117.4
FY 1986-87	$792.9	$312.0	$365.3	$115.5
FY 1985-86	$769.9	$310.3	$347.9	$111.7
FY 1984-85	$718.5	$291.3	$320.2	$107.0
FY 1983-84	$658.5	$272.9	$284.8	$100.9
FY 1982-83	$598.7	$245.1	$256.5	$97.1

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

TABLE D: SHORTFALLS IN ADUSTED STATE PAYMENTS INCREASE SINCE PROPOSAL A

	State Source Spending (millions)	Local Payments (millions)	Required Payments 48.97% (millions)	Percent Total	Est. Proposal A Funding Shift (millions)	Charter Schools (millions)	Adjusted Local Spending (millions)	Percent Adjusted State Spending	Shortfall in Local Payments (millions)
FY 2015-16	$29,943	$16,853	$14,663	56.28%	$5,381	$1,211	$10,261	34.3%	($4,402)
FY 2014-15	$29,524	$16,313	$14,458	55.25%	$5,375	$1,181	$9,757	33.0%	($4,701)
FY 2013-14	$28,301	$15,701	$13,859	55.48%	$5,368	$1,144	$9,189	32.5%	($4,670)
FY 2012-13	$27,313	$15,369	$13,375	56.27%	$5,334	$1,053	$8,981	32.9%	($4,394)
FY 2011-12	$27,153	$14,955	$13,297	55.08%	$5,311	$909	$8,735	32.2%	($4,562)
FY 2010-11	$26,184	$14,924	$12,822	57.00%	$5,296	$863	$8,765	33.5%	($4,057)
FY 2009-10	$25,797	$14,530	$12,633	56.32%	$5,275	$817	$8,438	32.7%	($4,195)
FY 2008-09	$25,835	$15,112	$12,651	58.49%	$5,257	$772	$9,083	35.2%	($3,569)
FY 2007-08	$28,144	$15,805	$13,782	56.16%	$5,159	$773	$9,873	35.1%	($3,910)
FY 2006-07	$26,763	$15,575	$13,106	58.20%	$5,089	$743	$9,743	36.4%	($3,363)
FY 2005-06	$26,653	$15,602	$13,052	58.54%	$4,995	$667	$9,940	37.3%	($3,112)
FY 2004-05	$25,688	$15,258	$12,579	59.40%	$4,967	$594	$9,698	37.8%	($2,882)
FY 2003-04	$24,854	$15,430	$12,171	62.08%	$4,960	$531	$9,939	40.0%	($2,232)
FY 2002-03	$25,205	$15,804	$12,343	62.70%	$4,946	$488	$10,371	41.1%	($1,972)
FY 2001-02	$24,702	$15,883	$12,097	64.30%	$4,762	$454	$10,666	43.2%	($1,430)
FY 2000-01	$24,686	$15,495	$12,089	62.77%	$4,628	$384	$10,483	42.5%	($1,606)
FY 1999-00	$23,452	$14,461	$11,484	61.66%	$4,500	$302	$9,660	41.2%	($1,825)
FY 1998-99	$22,791	$13,888	$11,161	60.94%	$4,252	$202	$9,434	41.4%	($1,707)
FY 1997-98	$21,570	$13,466	$10,563	62.43%	$4,038	$130	$9,298	43.1%	($1,265)
FY 1996-97	$20,400	$12,397	$9,990	60.77%	$3,796	$74	$8,528	41.8%	($1,462)
FY 1995-96	$20,012	$11,885	$9,800	59.39%	$3,655	$31	$8,199	41.0%	($1,601)
FY 1994-95	$19,525	$11,431	$9,561	58.55%	$3,443	$4	$7,985	40.9%	($1,577)
Total Shortfall									($64,510)

Source: SOMCAFR various years; Senate Fiscal Agency; House Fiscal Agency; GLEC calculations.

Table E: State Payments to Local Governments (excluding schools) Has Declined Sharply

millions)

	FY 1994	FY 2016	% Change Adjusted for Inflation
Payments to Local Govts	$7,474	$16,852	39.2%
Payments to School Districts	$2,630	$11,919	279.7%
Payments to Other Local Govts.	$4,844	$4,933	-37.1%
Local School Property Taxes	$5,857	$2,054	-78.4%
Total School Expenditures (Excludes Federal Aid)	$8,487	$13,973	1.6%
Total State Spending from State Resources	$14,949	$30,547	26.1%
Payments to Other Local Govts. as % of State Spending	32.4%	16.1%	
Total State Spending less payments to other local Govts	$10,105	$26,614	56.4%

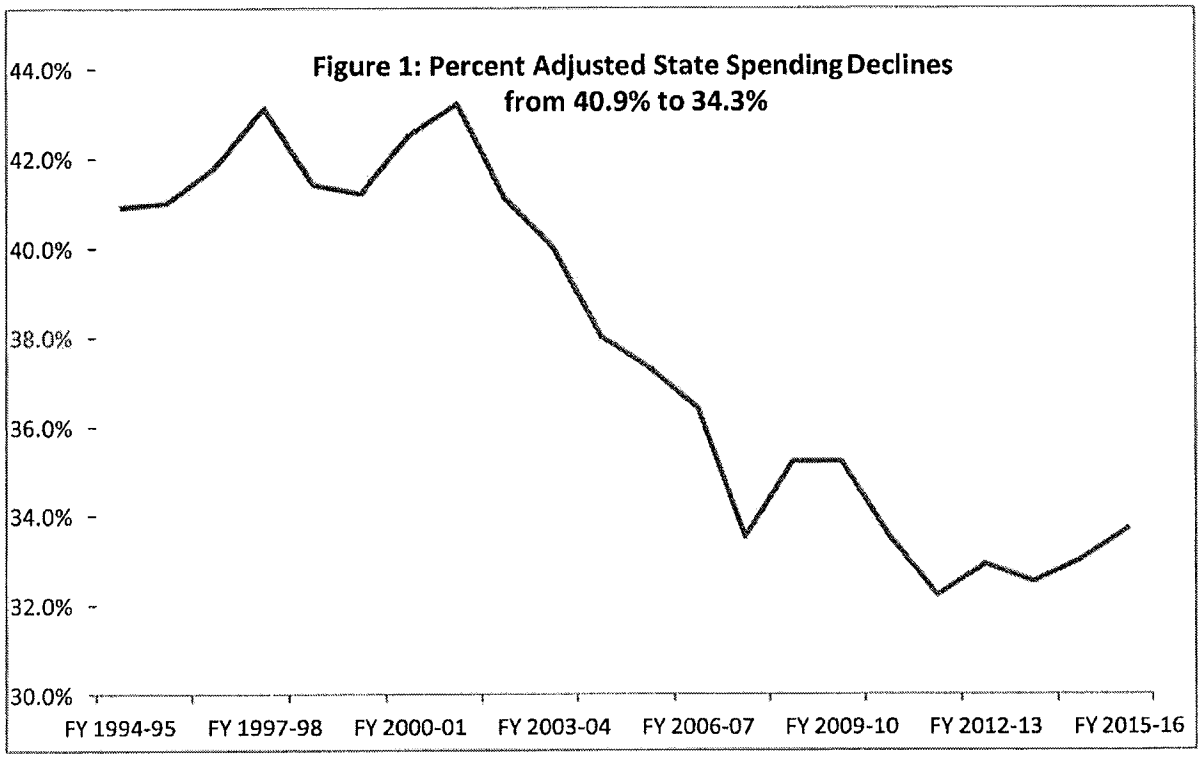
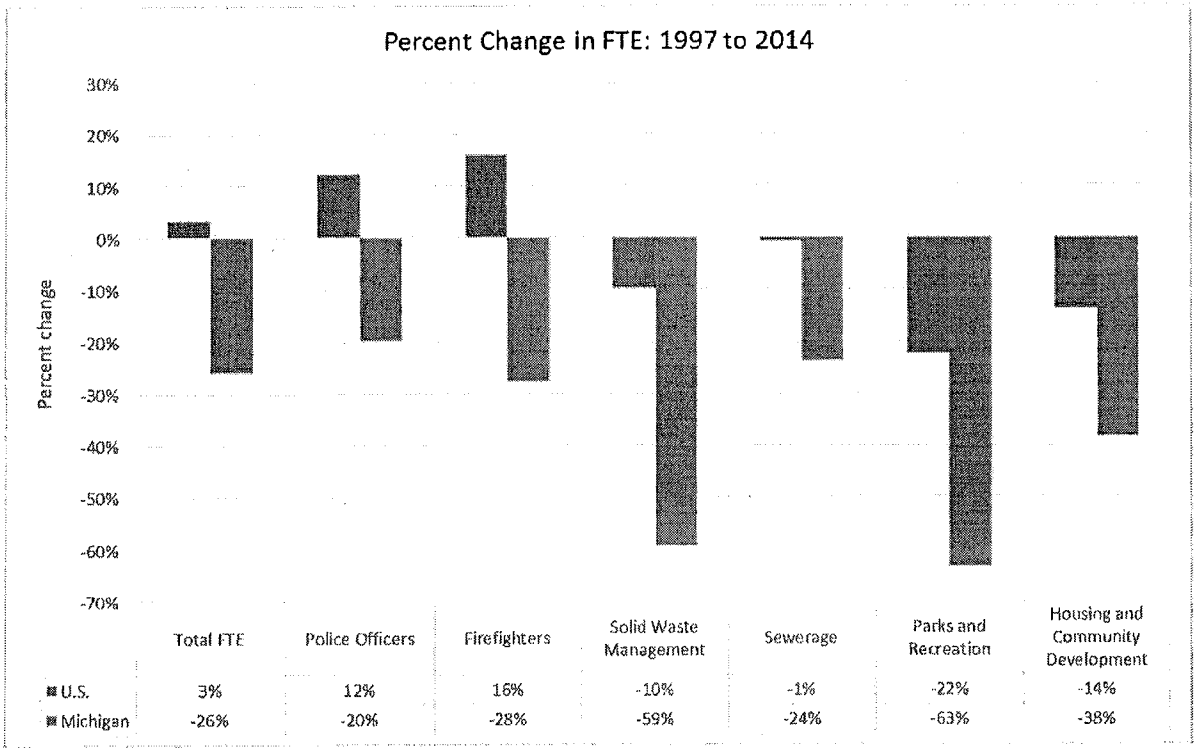


FIGURE 2: MICHIGAN AND US LOCAL GOVERNMENT EMPLOYMENT CHANGES



Source: US Census Bureau, 2014 Annual Survey of Public Employment and Payroll.

EXHIBIT B

Updated as of April 1, 2014

MICHIGAN Department of Education

HANDBOOK
FOR DISTRICT AUTHORIZERS

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Public School Academies,
Office of Education Improvement & Innovation
608 West Allegan Street
P.O. Box 30008
Lansing, Michigan 48909
Phone: 517-373-4631
www.michigan.gov/charters

Overview

A growing number of Michigan school districts are expressing interest in becoming authorizers of charter public schools (or public school academies, as they are identified in state law). As district leaders explore the nature of this work, they are beginning to encounter a series of common opportunities, challenges, and concerns.

In response to the questions raised by would-be district authorizers, the Public School Academies (PSA) unit within the Michigan Department of Education (MDE) has undertaken a comprehensive review of literature pertaining to school district authorizing experiences. This handbook builds upon that research to suggest a sound framework for future district-level decision-making and to identify resources that can support new authorizers as they adapt to this additional set of responsibilities.

Statutory Basics

The roles and responsibilities associated with becoming a charter school authorizer are clearly laid out and defined. It is essential for district leaders to understand the duties they will assume.

Michigan law states that a charter school must be organized and administered under the direction of a nonprofit board of directors. That board of directors is not the same school board that governs the local public school district. It is a separate legal entity and is governed by an independent group of community leaders who have the capacity needed to lead a public school.

The new nonprofit, charter school board of directors may receive a charter contract from the local school district board. Because the school district board will hold the charter school board accountable for a certain set of academic and operational performance results, it is important to ensure an appropriate arms-length relationship between the two public bodies. There can be no board members in common, and any related staffing and service agreements must be clearly defined to ensure that conflicts of interest are carefully avoided.

It is also important to note that the new charter school is free and open to all students by parent selection, pursuant to Michigan law. If the number of students seeking admission exceeds the number of available seats, the charter school must utilize a random selection process to determine which pupils will be enrolled. Discrimination is prohibited. Thus, the authorizing school district is not able to decide which students will be served by the charter school and cannot compel the new charter school to provide specific enrollment priorities for any individual student or groups of students.

Charter schools in Michigan are subject to essentially the same legal requirements as all other public schools. They must comply with state and federal requirements related to health and safety, staffing, management and accountability, and transparency just like any other public school. Language contained in Act 277 of 2011 increases the amount of information charter schools and management companies must provide to the public, especially as it relates to financial reporting and the disclosure of operating expenses.

Recent changes in the law has removed the requirement that authorizing contracts issued by school districts that requires all charter school employees to be included in the school district's bargaining units. Thus, regardless of the employment relationships for the charter school staff, they are no longer required to be subject to existing union contracts.

Any Michigan school district that currently serves grades K-12 can choose to act as an authorizer. They may charter an unlimited number of schools within its geographic boundaries. Additionally, recent legislation has also permitted two or more types of authorizers to enter into interlocal governmental agreements for the purposes of chartering schools. Depending on the types of authorizers participating in the agreement, the geographic boundaries may be expanded significantly.

As an authorizer, the K-12 school district is responsible for all of the following minimal activities under Michigan law:

- Reviewing applications and awarding charters to qualified applicants,
- Establishing the method of selection and appointment for board members,
- Issuing charter contracts that include clear expectations for performance,
- Acting as a fiscal agent for state school aid funds,
- Ensures the charter school follows applicable state and federal law,
- Gathering and evaluating data related to school compliance and performance, and ultimately,
- Taking action based on a school's performance relative to the expectations set forth in the charter contract, and
- Uses academic achievement as the most important factor in determining whether a charter school contact should be renewed.

No formal MDE filing or approval is required for a K-12 school district to become an authorizer. Pursuant to Michigan Codified Law (MCL) 502(3), the school district must notify MDE of its actions and provide a single copy of the charter contract to the Superintendent of Public Instruction within ten (10) days of approval.

State law permits an authorizer to retain up to 3% of the total state school aid received by the charter school. The authorizer may provide other services to a charter school it authorizes for a fee, but shall not require such an arrangement as a condition to issuing the charter contract. Pursuant to MCL 502(6), no fee or reimbursement can be charged for considering an application, for issuing a contract, or for providing oversight of a contract for a charter school in an amount that exceeds a combined total of 3% of the total state aid received by the charter school in the year in which the fees or expenses are charged.

? Can I "convert" an existing public school in my district into a charter under Michigan law?

State statute does not provide a process for immediate "conversion" of a traditional district school. However, a school district can certainly close one of its buildings and issue a charter contract to a nonprofit, charter school corporation to operate in that location or neighborhood. This has happened on a relatively limited basis in the past even though it remains one of the four options for restructuring pursuant to No Child Left Behind school reform models.

? If my district wishes to start a charter school, why must we act as the authorizer? Why don't we just run the school and get a contract from a public university or other existing authorizer?

While there is no specific prohibition against this approach, starting a PSA does not normally make good practical or economic sense unless a separate governance structure is helpful or needed. School districts can open new schools and reallocate resources at any time without a charter. Any school district wishing to pursue this approach should closely examine the potential litigation that may be forthcoming is the new charter school can be seen as a related entity for labor purposes.

? Can my school district provide management, instructional or support services to the new charter school? Can district teachers work at the new charter school?

Michigan law permits district staff to provide fee-based services to a charter school it authorizes as long as conflicts of interest are carefully managed and the service arrangement is not made a condition of receiving a charter. Schools are advised to consult legal counsel to ensure such service agreements are properly structured and completed. An incomplete charter may delay access to state aid.

? Our school district does not offer Schools of Choice. Would the new charter school be able to accept students from outside the district?

Yes. Pursuant to MCL 504(3), charter schools have a statewide geographic boundary. A charter school must be open to all pupils whose parent or guardian resides within the geographic boundaries of the state. A charter school may not be selective or screen out students based on disability, race, religion, gender, test scores, etc.

As mentioned previously, if the number of students seeking admission exceeds the number of available seats, the charter school must utilize a random selection process to determine which pupils will be enrolled. If a student is enrolled in a charter school during a particular school year, the student may automatically be granted enrollment privileges for succeeding school years. Siblings of admitted students and dependents of charter school founders may also be granted enrollment priority.

? What elements are required to be included in the charter application and charter contract?

According to MCL 380.502(3), a charter application and contract must include a significant number of components. Prospective authorizers are encouraged to engage the services of charter school-familiar legal services for the construction of a complete and comprehensive application and charter contract. While the use of an old example or template may be convenient, they may not reflect the changes created from recent legislation.

The PSA website (www.michigan.gov/charters) may provide some assistance as the charter contract checklist is updated and made available on a recurring basis. The Michigan Council of Charter School Authorizers' (MCCSA) website (www.mccsa.us) also contains a sample Phase I charter school application.

? How will the new charter school be funded? Does a charter school qualify for federal and state grant funds in the same manner as a local school district?

A charter school receives funding through the per-pupil base foundation allowance as defined through the State School Aid Act (1979 PA 94, as amended). By law, this amount may not exceed the per-pupil base foundation received by the local school district where the charter school is geographically located.

A charter school is treated as a Local Education Agency (LEA) and, as such, may access state and federal grants in the same manner as local school districts.

? Are their additional funds that may be available to support the PSA chartering process?

Yes, the federal Charter School Planning Grant funds may be available through MDE's online application which can be accessed through the Michigan Electronic Grants + (MEGS+) process. Instructions and an application checklist are available at the PSA website (www.michigan/gov/charters).

? Who can apply for a charter school contract? Who can be issued a charter contract?

With very few exceptions, anybody can make application for a charter. Non-profit groups and education management companies are the entities that are most frequent applicants. When evaluating an application, potential authorizers should not only consider the potential student academic achievement impacts, but should also consider the potential conflicts of interest that may exist between the applicant and the potential authorizer.

? What does a local school district have to do to before they can become an authorizer?

All K-12, local school districts are eligible to be charter authorizers but that doesn't mean they are fully prepared to do so. A local district looking to become an authorizer should:

- Establish a process for accepting applications to include the actual design and approval of an actual Phase I application,
- Create a review process and rubric for reviewing Phase I applications,
- Create a Phase II interview process designed to vet the applicant,
- Create a Phase II charter development process along with a delegation of responsibilities and distribution of labor between the applicant and the potential authorizer,
- Recognize that the development of a new charter school is a difficult and time consuming process with the creation of a timeline and deadlines for the submission of information from the applicant to the authorizer, and
- Establish a process to vet and select the new charter school board directors.

Important Considerations

The Advantages of Chartering

Traditional K-12 school districts appear to have several objectives in mind when they begin to discuss the idea of chartering a school. It is important for district officials to identify their objectives clearly and objectively in order to ensure the correct strategic approach.

- ☐ Ability to Restructure Low Performing Schools

  No Child Left Behind provides school buildings that have failed to make Adequate Yearly Progress over a period of years with an opportunity to close and re-open as charter public schools. This approach offers districts that meet specific requirements an ability to "start fresh" in certain instances, shuttering poorly performing buildings and re-opening them with new leadership, new programs, and a set of concrete performance targets for the future.

  > As a way to provide options for children in failing schools, chartering offers new opportunities to districts. First, districts can avoid forcing potentially overcrowded existing schools to enroll additional students. Second, district leaders can authorize charters targeted to the needs of a particular neighborhood or student group. Third, districts can encourage high-capacity institutions such as foundations, colleges, museums, and social service providers to run or contribute to the program mix in new schools.
  >
  > In the past, districts have had few options for turning around chronically low-performing schools other than to reconstitute a school by closing it and opening jobs up to all current members of the district teaching force. This approach left the possibility of re-creating a new school very much like the one that it was supposed to replace. The chartering option opens up a new possibility: creating an entirely new school staffed with new people (including some not previously employed in the district) and organized around a new plan. (Ziebarth and Wohlstetter, 2005).

  While this option has not been widely utilized to date, it offers promise for districts that need innovative solutions to resolve individual school performance problems.

- ☐ Greater Autonomy for Neighborhood Schools

  One of the appeals charter schools hold for students and families is the ease of access to key decision makers. Smaller schools with site-based management are sometimes more appropriate to the needs and concerns of various constituencies.

  District leaders – particularly in large urban areas – who wish to exercise control over the performance outcomes of individual buildings while lightening the load of their internal administrative structures, are beginning to regard charter schools in a new light. By issuing a charter to a neighborhood school, a sense of local school "ownership" and immediacy of access are restored to the community. Meanwhile, the authorizing district monitors and oversees a series of highly accountable operations without dealing with the daily management issues they currently face.

- Retention of Quality Control Mechanisms

By developing a sound performance contract with specific measures of success, district authorizers retain a measure of control on the quality and outcomes of each school they authorize. Schools that fail to attain appropriate achievement levels can be closed if necessary to ensure the caliber of educational opportunity available within a particular geographic area remains strong.

> It is a little recognized paradox that school system authorizers can achieve greater control over public education outcomes by delegating operational control to charter schools. When an authorizer approves a school and develops a performance agreement, it can foster and guide development of any program that it believes will meet the needs of students in the system. Even the state and federal regulations that inevitably constrain this discretion usually give greater flexibility and decision-making authority to the agency as authorizer than to the same agency acting as traditional school district or department of education. The school system authorizer can foster and guide development of a particular program and of a governance structure that makes successful implementation of the program more likely. It can also foster development of a management environment in which decision-making—including employment decision-making—is based, first and foremost, on meeting the terms of the charter. At all times the authorizer retains authority to intervene, as appropriate, based on fulfillment of the charter's terms—including removing the school's right to continue operating, if necessary. Nowhere else in public education is there such decisive authority regarding individual schools. (Tucker & Haft, 2003).

- New Opportunities for Community Engagement

The effective development of a new charter school requires a significant amount of community dialogue and outreach. The opportunity to rekindle the interest of all or a portion of a school district's population is often one that can be beneficial to a school district if handled well. Town hall meetings, media outreach, and board "listening" sessions provide dynamic opportunities for meaningful engagement with parents, opinion leaders, and others.

Although a discussion of adding new local charter schools often draws opposition, as noted later in this handbook, school districts do have clear opportunities to handle this issue well and drive meaningful local change through careful, decisive community engagement.

In addition, the development of one or more new charter models can draw in other community organizations – government, non-profits, foundations, arts organizations and social service providers all can be brought to the table to carve out innovative models of collaboration that can strengthen the community as a whole.

> To engage the community, we have…observed new charter schools partnering with community-based organizations. …Partnering with well-established and respected organizations, such as the Boys and Girls Clubs of America or the Urban League, can enhance the charter school's legitimacy and credibility within the community. (Ziebarth & Wohlstetter, 2004).

- ☐ Support to Financial Restructuring

  With the financial difficulties being encountered by local school districts, chartering options are being explored on a more frequent basis. Local school districts wishing to investigate the chartering option as a means to address financial problems should consider the wider implications of academic achievement first.

  However, if the opening of a new charter school is not likely to be an overwhelmingly negative enrollment factor, there are a plethora of opportunities to mitigate financial challenges being encountered in local districts. Unlike local school districts, charter schools can contract for instructional services, are not currently bound by local district collective bargaining agreements, and may not be required to participate in the Michigan Public School Employees Retirement System.

  Additionally, local school districts may find the development of a charter school to be a potential vendor of excess capacity or potential leasees for vacant buildings. Stated another way, a vacant building leased by the district to the new charter school may turn that building from a liability to an asset. The same could be said for excess and unused capacity in programs like special education, transportation, food service, technology, and financial management.

Cautionary Note

Another frequently-cited factor for school districts that are considering chartering was summed up in a 2007 article from *Education Next*:

> …under the guise of restructuring, district officials … take their worst-performing schools and slap a charter label on them. Think about it: You're a superintendent with some pretty good schools and a dozen lousy ones. Invoke NCLB, charter them out, and in one fell swoop you have moved the bottom feeders from the district column to the charter column. Your district scores skyrocket, and all those that failed to make Adequate Yearly Progress (AYP) - 0h... well, you know, they're charter schools. (Smith, 2007)

Districts that have this objective in mind are cautioned that Michigan authorizers are charged with the responsibility of holding their charter schools accountable for performance. An authorizing school district cannot evade responsibility for the achievement of the schools it oversees; in fact, stepping out into the world of chartering may result in greater scrutiny.

Authorizing Challenges

Authorizers across Michigan and the U.S. report common pitfalls and areas of concern when it comes to establishing effective charter school oversight and support operations. New district authorizers must anticipate and plan for these issues well in advance.

- ☐ Ensuring Organizational "Fit"

  Not all organizations are well suited to authorize charter schools. According to the Michigan Council of Charter School Authorizers, this work "requires strong administrative, financial and philosophical commitments on the part of the chartering institution to maintain a clear focus on the work at hand and not to be swayed by critics and detractors." (Van Koevering, et al, 2008)

> Experienced authorizers suggest that new authorizers carefully evaluate their reasons for entering the practice. They caution against quick decisions, and advise the creation of exploratory or advisory committees to thoroughly examine how well the creation of an authorizing arm will align with the mission, philosophies, and practices of the organization as a whole. The governing board of the would-be authorizer must also be thoughtfully and clearly engaged, given that the act of authorizing will require their involvement and support, and could ultimately be tested in the media, the courts, or the ballot box. (Van Koevering, et al, 2008).

Even if all possible care is taken, would-be authorizers should be aware of changes in leadership and governance that could threaten the stability of the authorizing operation. Constant internal communication is needed to ensure that the organization remains committed to providing quality oversight and support for the schools it oversees.

The promise of "increased accountability" can be realized only if an authorizer is willing to act decisively to end charter contracts that do not succeed in attaining their objectives. Holding firm to that intention is work every bit as unpopular as closing a school, and unless potential authorizers are willing and able to exercise this authority, they may not be a good "fit" for the oversight role.

- ☐ Engaging Constructively with Critics

An important consideration relative to organizational "fit" is political, rather than practical. In many instances, new authorizers face some level of public opposition when they begin to contemplate establishing their operations. Since their inception, charter public schools have been controversial and those who engage in this type of work need to prepare for some degree of resistance.

> Unions, school boards, and communities may react negatively to restructuring efforts merely because they are accompanied by the term *charter*. Schools that are most successful at conversion are able to withstand opposition when necessary, but also engage and educate parents and community leaders to help them embrace necessary changes. No matter the political environment in the district, community engagement is a critical component of the charter conversion process. (Arkin & Kowal, 2005).

In many instances, it is this type of political backlash that stops would-be charter authorizers in their tracks. Indeed, it may be prudent to engage in some degree of public opinion sampling may be appropriate to ensure sound decision-making. This type of advance polling and/or focus group testing may even turn the tide of public opinion through innovative community engagement strategies. This type of work was used very effectively in San Diego, where charter conversions have proven quite successful.

> At the same time that [San Diego School Superintendent Alan] Bersin was looking for outside help with restructuring his troubled schools, he and his staff established "workgroups" of teachers, administrators, parents, union representatives, and community leaders at each of the schools out of a strong belief that reforms would take at the schools only if representatives of each school community were invested in change. Bersin also believed that board members and teacher-union leaders, important powerbrokers in public school systems, would not support such dramatic change unless they were presented with clear evidence of such bottom-up support from parents and others. (Williams & Toch, 2006).

Other superintendents and school leaders have spent time going door to door, working with community members on a one-on-one basis to dispel rumors and promote their efforts to build lasting educational change. (Paulson, 2005).

☐ Building Operational Capacity

The development of a quality authorizer operation requires a great deal of an organization. New systems and strategies must be formulated to ensure equity, consistency and performance across the board.

> Authorizers build their most important organizational capacity by creating processes that promote coherence and quality while reducing static. Even the small charter authorizer should develop a "policies and procedures" manual that codifies both its organizational routines and its relationship to schools. Application guidelines should be supported by decision rubrics, so that the bases for approval and denial are as clear to subsequent agency staff as they are to current applicants. Accountability policies and renewal protocols should be supported by consistent methods of generating and reviewing evidence. (Smith & Herdman, 2004).

Adequate staffing and resources are needed to ensure this work happens on the front end. This, too, can be challenging given the budget pressures facing many school districts. Careful financial planning is required to ensure that an authorizer's operations are sufficient to develop effective oversight and support operations. This challenge may be partially addressed by entering into an interlocal agreement with a current charter authorizer with demonstrated capacity.

This work can be intriguing for an innovative school district leader who is interested in advancing new ideas about school leadership and practice.

> Charter school authorizers generally have a fair amount of latitude in designing accountability policies. Legislation establishes boundaries and constraints on authorizers' powers - particularly in the level of funding, if any, allocated to authorizing staff, minimum standards or required assessments - but laws generally do not spell out the specifics of how the agencies are supposed to hold charter schools accountable for results. Therefore, authorizers generally have some flexibility about how to craft their charter school accountability policies. This discretion is both a burden and an opportunity. It poses a burden if authorizers are saddled with authorizing responsibilities but few additional resources; however, it is an opportunity because it provides authorizers a chance to redefine how public schools are held accountable. (Hassel & Herdman, 2000).

☐ Special Concerns for Districts

For district authorizers, a significant shift in thought and practice is also required. Overseeing a school is very different from actually operating a school, in that it is focused on performance outcomes and deliverables rather than direct management issues and program inputs. District leaders often are tempted to involve themselves in the day-to-day management decisions of the schools they authorize and thus defeat the purpose of creating a separate charter. However, when a new, independent board of directors is created to operate a charter – one that has its own statutory powers and autonomy – and the district authorizer must be prepared to let that board do its job.

This challenge is particularly great if the school district authorizer is closing one of its buildings and reopening it as a charter under NCLB.

> …the reopen option under NCLB is not without pitfalls. Because many districts are hesitant to give up their influence over a school's operations, districts might opt to charter a school in name only—that is, although the school becomes a charter school, it maintains the same staff and the same approach to teaching that existed in its previous struggling form. (Ziebarth & Wohlstter, 2005).

Thus, it is even more critical that school district authorizers establish well-defined tools, structures and policies to help clarify their roles and responsibilities on the front end of this process.

☐ Finding a Trusted Partner

As mentioned above, the school district authorizer will oversee an independent board of directors that is charged with operating the new charter school program. As the district board and the PSA board embark together on this new venture, it is critical that there be a high degree of mutual support and trust on both sides of the charter contract.

> Good authorizers nurture "social capital" – the intangible ties of trust and reliability that facilitate cooperation…Despite the presence of a contract that spells out mutual obligations, relations between schools and authorizers can be friendly or confrontational, cooperative or compliance-driven, and building social capital between authorizer and schools is a good way to prevent a charter school initiative from becoming rule-bound. As historian Francis Fukuyama points out, "[n]o contract can possibly specify every contingency that may arise between the parties; most presuppose a certain amount of goodwill that prevents the parties from taking advantage of unforeseen loopholes." (Smith & Herdman, 2004)

District authorizers can help maximize opportunities for success by selecting a PSA partner that demonstrates both strong capacity and a school program that meshes well with the authorizer's objectives. Some authorizers may wish to go so far as to "seed" new programs within the community by recruiting development partners and offering support for desired approaches.

> Through the charter application, states and districts should specify the types of problems that need to be tackled at any school identified for restructuring, as well as the types of knowledge, resources, and skills that the state or district feels are necessary to address these problems. The selected operators must not only be familiar with the challenges within chronically low-performing schools, but also must have a track record of success in meeting such challenges….To increase the odds of success, states and districts should choose charter school petitions that emphasize proven practices, whether it is a community-run school using a successful curriculum or a national management organization replicating an effective school. Although the charter school movement is also an opportunity for innovation, restructuring a clearly floundering school is not the place for experimentation. (Ziebarth & Wohlstetter, 2005).

? Setting up a successful authorizer operation looks like it takes some time, and so does the development of an effective charter school. How long should we allow for these processes?

The amount of time to be allotted varies depending on the needs and capacity of the authorizer and the school. Most authorizers try to allow 12-18 months for the initial work to be completed, but it can be done in significantly less or significantly greater amounts of time depending on local circumstances.

? Is there any funding available to help my district become an authorizer, or to help a charter school that's just getting started?

At this time, there is no dedicated funding stream for new authorizers. Some private or local dollars may be available to authorizers who choose to pursue them.

There is a federal grant program that can help new charter school founders plan and implement their work. The program is administered by MDE. Application instructions and additional information can be accessed at www.michigan.gov/charters.

? Where can I get help and assistance in developing an authorizer operation?

Please refer to the resource listing in the back of this handbook for technical assistance and support. The PSA unit at MDE also is available to provide more detailed technical assistance and to answer specific questions. Visit www.michigan.gov/charters, or call (517) 373-4631.

Districts should also consult with charter school-familiar legal counsel at all steps of the process to develop sound applications and contracts, to help the school district avoid conflicts of interest, and to ensure full compliance with applicable state and federal laws.

? If our school district authorizes a new charter school, does it become affiliated with the district somehow? What sorts of financial liabilities might our district assume?

Charter schools are separate legal entities with operations that are separate and distinct from the legal structure of their authorizers. Many charter school contracts contain provisions stating that there is no contractual or organizational affiliation between the two organizations.

In addition, MCL 380.503b states that:

> (1) An agreement, mortgage, loan, or other instrument of indebtedness entered into by a public school academy and a third party does not constitute an obligation, either general, special, or moral, of this state or an authorizing body. The full faith and credit or the taxing power of this state or any agency of this state, or the full faith and credit of an authorizing body, may not be pledged for the payment of any public school academy bond, note, agreement, mortgage, loan, or other instrument of indebtedness.
>
> (2) This part does not impose any liability on this state or on an authorizing body for any debt incurred by a public school academy.

? Our school district already knows what it wants to do and who we want to charter. Do we have to do a competitive application process, or can we just move forward?

MCL 380.503(1) requires that:

> Public school academy contracts shall be issued on a competitive basis taking into consideration the resources available for the proposed public school academy, the population to be served by the proposed public school academy, and the educational goals to be achieved by the proposed public school academy. (emphasis ours)

PSA authorizers are encouraged to develop application rubrics that reflect their unique priorities and needs, and to communicate those rubrics publicly in advance of evaluating applications.

? Our school district has a person on staff that is developing the new charter school we want to establish. Can we keep that person and just make him/her into our authorizing staff person or charter school liaison later on?

School district authorizers should be mindful of the need for a competitive application process, as described above, and the need for conflict-free, arm's-length contracts and agreements. As the new charter school authorizer, school district staff will be holding a school accountable for achieving the performance results and outcomes set forth in the charter agreement. It is essential to ensure that the same staff that will be holding the school accountable are not also making leadership and management decisions for the charter school, or are actually doing the work for the charter school.

Make prudent use of your school district legal counsel in evaluating the appropriateness of all staff and board relationships between the school district authorizer and the new charter school. MDE closely scrutinizes these relationships and will notify you of identified problems.

? Our school district wants to investigate chartering options. What should we do?

The school district leadership should review the MDE PSA website at www.michigan.gov/charters as well as the webinars that are linked at that website. Then, the district leadership should contact their trusted peers who may have already gone through the research process and gain any benefit they can from their experience. And then, if they still want to pursue the chartering options they should contact the MDE PSA unit ((517) 373-4631) to schedule a meeting appointment. The PSA unit staff will do whatever is necessary to answer the remaining questions, and to assist the district with the process.

As has been described earlier in this document, it is important that the district leadership be open and frank with the district stakeholders specifically regarding the potential chartering option, especially the school board, the labor organizations, and the existing staff.

? Our school district is thinking about closing one of our school buildings. Since making the announcement we have been approached by an entity that is interested in acquiring the facility. What should we do?

The school district needs to determine if selling or leasing the school building is in its best interest. If the school district currently owns the building being closed it should consider how the building will be utilized and what expenses the district will have to incur to maintain the facility. A school district may lease, rent, or sell school property if it chooses to do so. Current law (380.1260) prohibits a school district from refusing to sell or lease property to a charter school "solely" because they are a charter school.

? Our school district has some unused space in one of our school buildings. Can we lease that space to a charter school?

Yes. The current law provides school districts with the full authority to leasing or rent school property. Lease or rental agreements must be configured to meet the legal requirements for shared property. Since charter schools are public entities, they are required to abide by the same health, safety and occupancy requirements as traditional districts. It is common for lease agreements in these types of situations to address shared spaces, utilities, snow removal, etc.

? Our school district has already issued a charter to one school. Can we charter another one?

That depends. The school district authorizer must maintain a K-12 presence. Larger districts with multiple elementary, middle and high schools generally do not have to worry about this issue. A small school district with one high school, one middle school and one elementary school can charter as many schools as they desire. However, many small school districts lack the capacity to comprehensively oversee more than one or two charter schools. A small school district wishing to charter multiple schools might want to consider entering into an agreement with another authorizer possessing the demonstrated capacity to oversee multiple charter schools.

? Our intermediate school district is thinking about chartering a Strict Discipline Academy that serves all of the schools within the ISD. Can they limit enrollment to just the ISD geographic boundaries?

Yes. The Strict Discipline Academy authorized by an ISD may limit its enrollment to students from within the geographic boundaries of that same intermediate school district if it chooses to do so.

? Our school district is thinking about closing some schools and then reopening them as charter schools. Can we limit enrollment to just the neighborhood catchment area of the closed school?

No. The current law provides that a charter school with a school district authorizer can limit enrollment to the geographic boundaries of the authorizer, but to a specific neighborhood. For example, if Tipacanoe School District authorizers a charter school, that charter school can limit enrollment to the geographic boundaries of the Tipacanoe School District, but it can't limit enrollment to just a portion of that same district.

Self-Assessment Tools

The following questions are designed to help guide would-be school district authorizers in their thinking about their readiness and ability to authorize a new charter school in Michigan. They are best answered by a working group consisting of stakeholders from across the district as part of the initial exploration and planning process, and can provide an excellent framework for guided discussion.

Chartering Objectives

- ☐ Why do we want to authorize a new charter school? What will the school district gain from it?
- ☐ What unmet local needs will the charter school meet that our school district cannot meet directly?
- ☐ Where are the students who will attend the charter school going to school now? If the school district decides not to authorize the charter school, where will they go?
- ☐ Do we have a school that will be closed down or restructured as part of this process, and are we comfortable that this is the best solution for that particular school?

Practical/Legal Considerations

- ☐ Do we have a good understanding of what our responsibilities as an authorizer would be under Michigan law?
- ☐ Have we identified a technical resource or mentoring partner to aid us in this work?
- ☐ Is our legal counsel confident that we can do this job correctly?
- ☐ Can we do this work without entering into relationships that are not arms-length or conflict-free? Are we confident that we have no unclear staff or board relationships?

Organizational Issues

- ☐ How would charter school authorizing fit with and complement our organizational mission, vision, and philosophy?
- ☐ Is our board prepared to accept, defend, and promote the school district's decision to authorize a new charter school?
- ☐ How will we manage staff to ensure best organizational "fit"?
- ☐ How involved will the superintendent and other school administrative leaders be in this endeavor? Are they prepared to accept, defend, and promote the decision with the public?

Community Engagement and Response

- ☐ How will the community respond to news that we are thinking of authorizing a charter school?
- ☐ Are there "safe" groups with which we can test this idea before we announce it publicly? Can we find a way to test our messages?
- ☐ Where are the pockets of strongest support likely to be?
- ☐ Where are the pockets of opposition likely to be?
- ☐ Do we have any available resources to help us manage our work with the community? What should our action plan look like?
- ☐ Do we have any local partners that can strengthen our ideas or help us develop a more compelling program?

Financial and Administrative Considerations

- ☐ Have we done the math? Can we afford to lose some school district pupils to the new charter school in exchange for a 3% oversight fee? Are staffing or service agreements possible?
- ☐ Are we prepared to commit other organizational resources to this effort over and above the 3% oversight fee, if necessary?
- ☐ Are there community members or private funders that have an interest in financially supporting a portion of this project?
- ☐ How will we ensure the new charter school does not enter into any financial or lease agreements that would limit their operational flexibility?
- ☐ Who will staff the new charter school operation? How will we ensure that they have adequate resources and tools to get the job done right? Can we or should we contract for all or some of that work?
- ☐ What is our timeline for making decisions and completing the contract development and approval work?

Finding a Trusted Partner

- ☐ What will our application rubric look like?
- ☐ Are we working to recruit qualified local candidates?
- ☐ Might we issue more than one charter? How will we recruit and evaluate multiple developers?

Oversight Considerations

- ☐ Are we comfortable relinquishing control over the daily management of a school? Can we play the oversight role in a manner that is true to its underlying design?
- ☐ Are there areas where we are unwilling to relinquish control or provide autonomy to the charter school? Can we accommodate these areas in a way that meets the requirements of the law?
- ☐ Do we have the institutional will and ability to close this charter school if it fails to meet the terms of its charter agreement? Can we be tough if we need to be?
- ☐ Conversely, do we have the institutional will and ability to provide appropriate levels and types of support to the charter school if necessary to allow effective services to students and families? Can we be fair and flexible, and not knee-jerk to closure when problems arise?
- ☐ Which performance measures do we feel are most important to include in a charter contract?
- ☐ Can we do this by ourselves or should we work with another authorizer?

Special Restructuring Considerations

- ☐ What barriers to performance exist at the struggling school? How will converting the school to a charter address those barriers?
- ☐ What kinds of improvement activities have been tried in the past? Why have they failed, and how will restructuring as a charter be different?
- ☐ What will happen to the teachers at the closing school? How or when will the union(s) become involved? Are the processes in place within the current evaluation mechanisms to retain the best and brightest teachers?
- ☐ How will we develop and maintain a positive, cooperative, working environment with the new charter school?

Most of the questions posed above represent a small list that new school developers and local LEA authorizers may address individually and/or collectively. Some of the questions are derived from a legal compliance framework and others come from an understanding of the multi-faceted, multi-dimensional issues that may arise as new schools are created.

The items listed on the next seven pages are taken directly from the MDE's Authorizer Assurance & Verification checklist which is used by the Public School Academies unit when it visits authorizing agencies. While these visits are normally scheduled once every three years, all authorizers should strive to maintain the systems and processes from the point when that authorizing body decides to engage in the chartering process.

Overseeing Application, Authorization and Contracting.

- Every authorizer must have a process in place for issuing charters, including an open solicitation, evaluating multiple applicants and the consistent application of criteria including statutory requirements.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation of the most recent solicitation for applications, the number of applications received in response, criteria for selection and decisions made to issue charters
        - ✓ Documentation of the decision-making process and outcome
        - ✓ Charter application forms and technical assistance materials
        - ✓ Correspondence
        - ✓ Copies of contract amendment supporting documents
- Every authorizer must have a process in place for ensuring that PSAs obtain and properly maintain Michigan non-profit incorporation status.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Online check of the Department of Licensing and Regulatory Affairs (LARA) website
        - ✓ Copies of corporation updates
        - ✓ Correspondence
        - ✓ Compliance process to ensure submission of annual reports to LARA
- Every authorizer must have a process in place for ensuring that required documents (including contracts, amendments and reauthorizations) submitted to MDE are complete, accurate, timely and updated.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Submission dates of reauthorization files to MDE
        - ✓ Submission dates of authorization files to MDE
        - ✓ Charter amendment records
        - ✓ Compliance documents submitted to MDE are timely

- Every authorizer must have a process in place for determining and communicating reauthorizations, revocations and non-renewals of charters.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Revocation files
        - ✓ Formal notifications
        - ✓ Correspondence
        - ✓ Due process procedures and documentation
        - ✓ Specific contract language related to the renewal/non-renewal process
        - ✓ Reauthorization documents and rubric/scoring guide
        - ✓ Documentation that reflects student achievement/growth as the most important factor for reauthorization.
- Every authorizer must have a process in place for conducting oversight or supervisory visits to the PSAs it authorizes.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation of oversight visits and related feedback
        - ✓ Letters and correspondence pertaining to visits
        - ✓ Authorizer site visit form(s)
        - ✓ Documentation of authorizer staff who visit each PSA

Overseeing PSA Governance

- Every authorizer must have a Board Appointment Process in place for ensuring that PSA Board vacancies are filled in a timely manner and member files are accurate and available.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation of process for board member appointments including applications, interview records, background checks, etc.
        - ✓ Copies of constitutional Oaths of Office and conflicts of interest statements
        - ✓ Board members files
        - ✓ Documentation to validate U.S. citizenship for all board members
- Every authorizer must have a process in place for ensuring that PSAs comply with all applicable law, and for following up on allegations to the contrary.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation of authorizer processes to ensure legal compliance with:
            - ➢ Management of potential conflicts of interest
            - ➢ Open Meetings Act compliance
            - ➢ Enrollment requirements involving random selection processes
        - ✓ Documentation of follow-up and disposition of allegations of legal non-compliance by a PSA from other MDE offices or stakeholders
- Every authorizer must have a process in place for ensuring that PSA boards establish reasonable governing policies, properly record and publish minutes, and ensure policies and minutes are readily available.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation of board governance policies
        - ✓ Copies of board agendas and minutes
        - ✓ Copies of board policies and evidence that policies are readily

available to the public.

- ✓ Compliance documents
- ✓ Correspondence
- ✓ Copies of student and staff handbooks

- Every authorizer must have a process in place for ensuring that PSAs operate an open application/enrollment process, properly noticed, which employs random selection, if necessary, when the allocation of limited slots exists.
  - Evidence of compliance with these requirements includes:
    - ✓ Related policies and procedures
    - ✓ Documentation of an open application/enrollment process
    - ✓ Documentation that the enrollment process is properly noticed
    - ✓ Documentation that explains the random selection process when it becomes necessary to do so.
    - ✓ Copies of open application/enrollment notices from media sources
    - ✓ Correspondence
- Every authorizer must have a process in place for ensuring that PSAs who engage ESPs perform due diligence, employ independent legal counsel and negotiate "arms-length" agreements that are available for public review.
  - Evidence of compliance with these requirements includes:
    - ✓ Related policies and procedures
    - ✓ Evidence of authorizer ESP contract review processes
    - ✓ Correspondence
    - ✓ Copies of ESP contracts and locations for public review
    - ✓ Documentation of PSA board legal counsel arrangements
    - ✓ Charter contract language allowing authorizer to deny ESP contracts
    - ✓ Evidence authorizer mandates ESP to share all required information with PSA in a timely manner & assist in the transparency process

Overseeing Facilities.

- Every authorizer must have a process in place for ensuring that all required occupancy and facility approvals have been issued, and that local health and safety citations are documented and followed up on as they are identified.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures
        - ✓ Documentation that a process is in place and has been implemented
        - ✓ Correspondence
        - ✓ Certificates of occupancy
        - ✓ Department of Agriculture licenses
        - ✓ Public health inspection reports
        - ✓ Documentation of forms and processes for PSA facility safety visits

Overseeing Quality of Learning.

- Every authorizer must have a process in place for ensuring that PSAs have established goals aligned to state, federal, and authorizer requirements, have identified methods of assessment (including MEAP/MME) that are rigorous and measurable, and have in place a process that monitors a PSA's student progress (growth) in achieving those goals.
    - Evidence of compliance with these requirements includes:
        - ✓ Related policies and procedures for PSAs to modify instruction based on assessment data
        - ✓ Documentation that a process is in place for compliance
        - ✓ Correspondence
        - ✓ Copies of AYP reports and all required self-assessment reports
        - ✓ Academic performance booklets, documents, etc.
        - ✓ Standardized test results
        - ✓ Copies of PSA school improvement plans
- Every authorizer must have a process in place for ensuring that PSAs employ teachers (or that the contracted ESP employs teachers) who are certificated and highly qualified according to state board rule or who qualify under Section 505(2) of the revised school code, and have undergone criminal background and unprofessional conduct checks.

- Evidence of compliance with these requirements includes:
  - ✓ Related policies and procedures
  - ✓ Documentation that a process is in place and has been implemented, including reports and findings
  - ✓ Correspondence
  - ✓ Registry of Education Personnel (REP) data submission process including who submits the data and how the data is reviewed for accuracy and completeness
  - ✓ Copies of teacher certifications and background check documents
  - ✓ Process to ensure teachers are actually teaching subjects they are certified to teach

Overseeing Financial Accountability.

- Every authorizer must have a process in place for ensuring that PSAs obtain an annual financial audit and submit it to ISD/MDE, and for monitoring all PSA responses to any audit exceptions, including identified related-party transactions or other issues identified in management letters.
  - Evidence of compliance with these requirements includes:
    - ✓ Related policies and procedures
    - ✓ Documentation that a process is in place for completing the Financial Infrastructure Database (FID)
    - ✓ Correspondence
    - ✓ Disposition of audit exceptions cited in management letters
    - ✓ Management letter responses
    - ✓ Contract language that requires an independent audit
    - ✓ Copies of actual PSA audits
- Every authorizer must have a process and standards in place to determine financial stability.
  - Evidence of compliance with these requirements includes:
    - ✓ Related policies and procedures
    - ✓ Documentation that a process is in place and has been implemented
    - ✓ Copies of quarterly financial statements

- ✓ Correspondence
- ✓ Copies of insurance certifications and verification documents
- ✓ Copies of board-approved annual PSA budgets
- ✓ Evidence that long-term financial stability is a reauthorization factor

- Every authorizer must have a process in place to assist PSAs in avoiding or resolving any potential conflict of interest, related-party transactions, and/or in determining fair-market value when it cannot be established by ordinary means.
  - Evidence of compliance with these requirements includes:
    - ✓ Related policies and procedures
    - ✓ Documentation that a process is in place for the review and resolution of an identified potential conflict of interest and its management by a PSA
    - ✓ Documentation of an authorizer process for assisting a PSA in determining fair-market value of a transaction when a related-party transaction has been identified or disclosed
    - ✓ Correspondence
    - ✓ Documentation of a process to assist PSAs when making a major purchase

Resource Directory

Michigan Department of Education
Public School Academies
Office of Education Improvement & Innovation
608 West Allegan Street
P.O. Box 30008
Lansing, Michigan 48909
517-373-4631
www.michigan.gov/charters

MI Council of Charter School Authorizers
201 Townsend, Suite 900
Lansing, MI 48933
(517) 487-4848
www.mccsa.us

Michigan Association of Public School Academies
105 W. Allegan
Suite 300
Lansing, MI 48933
(517) 374-9167
www.charterschools.org

Michigan Association of Charter School Boards
2284 Fieldstone Drive
Okemos, MI 48864
(517) 819-4777
www.macsb.org

The Education Policy Center at Michigan State University
201 Erickson Hall
East Lansing, MI 48824
www.epc.msu.edu

National Charter Schools Institute
2520 S. University Park Drive
Mt. Pleasant, MI 48858
(989) 774-2999
www.nationalcharterschools.org

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202
(800) USA-LEARN
www.ed.gov

Recommended Reading:

- Michigan's Revised School Code, Part 6A (MCL 380.501 et seq)
- The Michigan State School Aid Act (MCL 388.1601 et seq)
- "The Authorizer Experience," "Balanced Leadership for Lasting Change," and other publications of the Michigan Council of Charter School Authorizers
- "Starting Fresh in Low-Performing Schools: A New Option for School District Leaders Under NCLB" and other publications of the National Association of Charter School Authorizers
- "Reopening as a Charter School," published by The Center for Comprehensive School Reform and Improvement

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EXHIBIT C

Michigan Charter Schools - Questions and Answers

GENERAL

1. What is a public school academy (PSA)?

Pursuant to the Revised School Code (RSC), also known as Public Act 451 of 1976, a PSA is a state-supported public school under the state constitution, operating under a charter contract issued by a public authorizing body [RSC §380.501(1)]. PSAs are also commonly referred to as charter schools.

Charter schools may include grades K-12 or any combination of those grades. They may not charge tuition and must serve anyone who applies to attend up to enrollment capacity; that is, they may not screen out students based on race, religion, gender, or test scores. Students are selected randomly for admission if the number of students applying exceeds the school's enrollment capacity [RSC §380.504(2)]. The Every Student Succeeds Act (ESSA) eliminates the Highly Qualified Teacher (HQT) provision and reverts to state standards. Michigan requires all charter school educators to be certified. Charter school students are assessed annually as part of the Michigan Student Test of Educational progress (M-STEP), and charter schools are required to administer other state-mandated assessments such as the Michigan Merit Exam (MME) and the English Language Proficiency Assessment (ELPA). Charter schools cannot be religiously affiliated [RSC §380.502(1)].

2. What laws govern the establishment and operation of a Michigan charter school?

Part 6A of Michigan's Revised School Code was adopted to allow for the establishment of PSAs in Michigan (MCL 380.501 *et seq*). Following this change, three additional sections of the law were added to provide for the establishment of three additional categories of charter schools:

- Urban High School Academies (UHSAs) chartered under MCL 380.521 – 380.529, commonly referenced as Part 6C of the Revised School Code. These schools can only be authorized by state public universities.

- Schools of Excellence (SOEs) chartered under MCL 380.551 -380.561, commonly referred to as Part 6E of the Revised School Code. Schools of Excellence are established as either (1) a replication of a high performing school (2) a cyber school or (3) a conversion of a 6A PSA based on criteria that define superior academic performance.

- Strict Discipline Academies (SDAs) chartered under the Revised School Code (MCL 380.1311b – 380.1311l). SDAs are established to serve suspended, expelled or incarcerated young people.

In December 2011, the state legislature passed Public Act 277, which contained numerous amendments to sections 6A, 6C, and 6E. Collectively, PSAs, UHSAs, SOEs, and SDAs are called charter schools throughout the remainder of this document. While UHSAs and SDAs are defined as charter schools under certain sections of Michigan law, these entities have some unique statutory features. Individuals and organizations interested in developing schools in any of these three categories should review the documents available at www.michigan.gov/charters, and then contact the MDE Public School Academies Unit at (517) 373-4631 with specific questions.

3. Who may apply for a charter?

Any parent, teacher, group or entity may apply for a charter. Please refer to question six (6) for more details.

4. How are charter schools funded?

All charter schools are funded through the State School Aid Act [1979 PA 94, as amended, Article 1 §388.1606(6)(1)]. A charter school receives funding through the per-pupil base foundation. By law, this amount may not exceed the per-pupil base foundation received by the local school district where the charter school is geographically located [1979 PA 94, as amended, Article 2 §388.1620(6)].

5. Does a charter school qualify for state and federal grant funds in the same manner as a local school district?

Yes, a charter school may access state and federal grants in the same manner as local school districts [RSC §380.504a(f)]. Various factors apply to the eligibility of charter schools and school districts to apply for grants.

STARTING A CHARTER SCHOOL

6. What steps are needed to start a charter school?

A charter school must be chartered by the governing board of a public body that is authorized to issue charter contracts pursuant to Michigan law. In Michigan, an "authorizing body" means any of the following, pursuant to RSC §380.501(1):

- State Public University
- Community College
- K-12 Local Education Agency (Traditional School District)
- Intermediate School District (ISD)

- Two or more of these public agencies exercising power, privilege, or authority jointly pursuant to an interlocal agreement

However, not all potential authorizers take advantage of the opportunity to issue charters. The list of authorizers of current authorizers is located at the MDE PSA unit website (www.michigan.gov/charters) under the Directories and Lists link.

The fact that not all eligible entities choose to authorize does not preclude charter school developers from requesting consideration from any potential authorizer. At one time there was a cap imposed on the number of charter schools that state public universities could authorize. This cap expired as of December 31, 2014. The only remaining caps on the establishment of charter schools apply to cyber schools and their authorizers. See companion FAQ document for Schools of Excellence that are Cyber Schools found at www.michigan.gov/charters.

Interested developers should review and become familiar with all the materials on the MDE PSA website before embarking on the charter school development journey. (www.michigan.gov/charters)

7. May private schools become charter schools?

Private schools may become charter schools only if they cease operating as a private entity, obtain a charter from a qualified authorizer, and re-open as a public school that meets all the requirements of state law (Additional information on this can be found in the 2011 Federal Charter School Program Nonregulatory Guidance located as a link under Information for Developers at the MDE PSA website).

8. May a charter school be religiously affiliated?

No. A charter school must maintain the separation of church and state. If a charter school is utilizing a building that has religious symbols present, they **must** be removed or covered [RSC §380.502(1)].

WORKING WITH AN AUTHORIZER

9. Which authorizers are accepting charter applications?

To determine which authorizers are accepting charter applications, begin with an analysis of where the proposed charter school will be located. There are multiple eligible authorizers to work with each development team. The local school district, intermediate school district, and community college can issue charter school contracts within their geographic boundaries.

The University authorizers along with Bay Mills Community College can issue charters anywhere within the State of Michigan.

10. How does a developer apply for a charter?

Each Michigan authorizer has its process, forms, and requirements. However, the Michigan Council of Charter School Authorizers (MCCSA) has developed a common Phase I charter application that can help developers plan for the types of questions they will be asked. The form is available at any current authorizer's web site. For a list of current authorizers see www.michigan.gov/charters and follow the Directories and Lists link. As chartering opportunities become available, each authorizer will identify the specific process to be used.

11. What should be contained in a contract issued to organize and administer a charter school?

Please refer to the contract checklist available at the MDE PSA website under Charter School Authorizers and Vendors section and/or review RSC §380.503(6). You can also view copies of existing charter school contracts on most authorizers' websites.

EDUCATIONAL PROGRAM/SUPPORT SERVICES

12. Are charter schools required to adopt core content standards?

Local education agencies and public school academies are required to adopt a model core curriculum per Section 380.1278 of the Revised School Code. The curriculum should follow the core content standards adopted by the State of Michigan. Various sections of the Revised School Code require that the written curriculum be part of the charter contract itself. [Part 6a: 502(3)(e)(ii), Part 6c: 522(4)(e)(ii), Part 6e: 552(7)(e)(ii), 1311b et seq: 1311d(3)(e)(ii); 1311e(5)(d)]

13. May a charter school offer a single-gender program?

A charter school may offer a single gender class or program in which enrollment is limited to pupils of a single gender if the charter school permits enrollment of students of both genders. The charter school must also make available to pupils a substantially equal coeducational class or program and a substantially equal class or program for pupils of the other gender or both genders. Also, participation in the single-gender school, class, or program must be voluntary [RSC §380.475 and 380.1146]. In short, a single gender program may be offered if the two other programs (single gender for the opposite gender, and coeducational) are also available, and of equal scope and quality.

Charter schools that opt to pursue a single-gender program are advised to work very closely with legal counsel to determine that all aspects of the program are handled appropriately.

14. May charter schools be granted waivers for rules and regulations?

Waivers may be requested for sections of law or rule where the State Superintendent of Public Instruction has the legal authority to grant such a waiver. Two examples of such authority are the seat time requirement and after Labor Day start requirement. Also, some MDE offices have the waiver programs for administrative fees related to their areas of specialty (For example, Food and Nutrition Services). Requests typically go to the program office. If recommended for approval, it will go to the State Superintendent of Public Instruction for approval. For more information, see http://www.techplan.org/seat-time-waivers/ AND http://www.michigan.gov/mde/0,4615,7-140-66254---,00.html (MDE's Food and Nutrition Office).

15. Who provides transportation to a charter school?

In general, a charter school is considered a local school district and is responsible for following the same legislative guidelines for transporting students as a local traditional school district, except that charter schools are not considered districts under RSC 380.1321, as they have no resident students. Therefore, a charter school may charge for transportation, contract with a 3rd party vendor who charges for this service or opts out of providing transportation. For further information on

transportation issues, call (517) 373-6388 to contact the Office of Grants Coordination and School Support.

16. Does a charter school have to use certified teachers?

Certification requirements for charter school teachers are identical to those of local school district teachers. Special exceptions are made for a charter school that is authorized by a state public university or community college that may wish to use their staff or adjunct professors to teach charter school students (refer to RSC §380.505).

17. Are charter schools required to report immunization regarding their students? If so, how?

Charter schools are required to report immunizations. If the charter school is new, then it **must** report on **all s**tudents. If the charter school has been open for more than a year, it must report only on the **newly enrolled pupils**. For more information on this topic, please contact the Office of Grants Coordination & School Support at (517) 373-1122.

18. Do charter schools have to offer instruction in health and sex education?

Charter schools are bound by the same statutory curricular requirements as any traditional school district. Those regulations are found in various sections of the Revised School Code and School State Aid Act.

ENROLLMENT

19. May a charter school be selective in its admissions policy?

Except as prescribed in law, a charter school may **not** be selective in its enrollment process. It may not screen out students based on disability, race, religion, gender, test scores, etc. It may predetermine the ages, grades, and a number of students it will serve. A random selection process must be used if the number of applicants exceeds the school's enrollment capacity.

20. If a student is enrolled in a charter school during a school year, does the student have to be part of the random selection if the charter school exceeds its enrollment number the following school year?

No, a student is automatically granted enrollment privileges for succeeding school years. Siblings of admitted students are granted enrollment priority, and children of school employees and board members may be offered enrollment priority.

21. If a student voluntarily leaves a charter school, must the student's resident school district enroll the student?

Yes, except expulsion due to possession of weapons, committing arson, or criminal sexual conduct in a school building or on school grounds, as outlined in the Revised School Code, MCL 380.1311. Expulsions should be handled on an individual basis.

22. If a student voluntarily leaves a local school district, must a charter school enroll the student?

Yes, with a couple of notable exceptions. A charter school may deny enrollment if the charter reached its enrollment capacity for that student's age or grade, or the school's total enrollment cap as established by the charter contract

23. Does a charter school have to enroll a student that has been expelled from another district?

A PSA or UHSA does **not** have to accept the expelled student. The school may choose to enroll a student who was expelled from their resident district only if the student was not expelled under the mandatory expulsions sections described below. In the case of SDAs, the acceptance of expelled or adjudicated students is central to the school's purpose.

It is important to note that Michigan law does provide for permanent expulsion under certain circumstances. Unless the school district operates or participates in an alternative education program appropriate for a student expelled pursuant to RSC §380.1311(2) and at the school district's discretion admits the student to that program or a "strict discipline academy," the student is expelled from all Michigan public schools. The student cannot be enrolled unless reinstated pursuant to the provisions discussed below [RSC §380.1311(2)].

A program operated for expelled students must ensure that a student is physically separated at all times during the school day from the general pupil population. A student who has been suspended or expelled from his or her resident district for any reason may attend a nonresident alternative education program without the resident district's approval [MCL 388.1606(6)(h)]. If the student is not placed in an alternative education program or a "strict discipline academy," the school district may provide or arrange for the intermediate school district to provide to the student appropriate instructional services at home. Homebound services are designed to help students who are unable to attend school to keep up with their studies [MCL 388.1709].

It is the responsibility of the parent or legal guardian to locate a suitable alternative education program and to enroll their child in a program during the expulsion. For further information regarding alternative education programs available in your area, contact your local or intermediate school district or the Office of Safe Schools at (517) 373-1024.

24. When a student transfers from one school to another, how are his/her records handled?

Michigan law requires that within 14 days after enrolling a transfer student, the school shall request the student's record, including any Individualized Educational Plan (IEP) for a special education pupil, in writing from the previous school (RSC §380.1135). The previous school has up to 30 days to comply. All Michigan schools have been advised that they should have procedures in place to facilitate these transfers.

FACILITIES

25. What requirements are in place for charter school facilities?

Michigan law requires that any school operating in the state have a valid Certificate of Occupancy and make available to the public all health and safety reports regarding school facilities. Failure to obtain necessary inspections and obtain this certificate results in a potential withholding of State Aid.

Information about the requirements and procedures for obtaining a Certificate of Occupancy is maintained at the Bureau of Licensing and Regulatory Affairs (LARA). Please feel free to call (517) 241-9302 with specific questions.

26. Are resources available to support charter schools with their facilities costs?

Property occupied by a public school academy and used exclusively for educational purposes is exempt from some real and personal property taxes.

The Michigan Public Educational Facilities Authority is dedicated to providing opportunities for low-cost financing and technical assistance for qualified public educational facilities and public school academies through its bonding and loan programs. Please feel free to call (517) 335-0994 to learn more.

FINANCE

27. Can a charter school charge tuition?

Unlike traditional school districts, a charter school may **not** charge tuition. Charter schools are, by statute, free and open to all Michigan residents.

28. Must all state and federal education dollars be sent directly to the authorizing body of the charter school?

No. The law requires only that payments under the State School Aid Act be sent directly to the authorizing bodies. A charter school may receive federal grant funds directly from the Michigan Department of Education by following the same procedures that traditional school districts are required to follow.

29. Is a charter school considered a constituent district in intermediate school districts for purposes of area vocational/career and technical education millage, and do charter school students have access to the programs and services provided with those funds?

Yes, just as with any other traditional school district located in the intermediate school district. Services funded through vocational/career and technical education millage dollars must be allocated to a charter school on the same proportional basis used for other constituent districts.

30. Is a charter school eligible for categorical vocational/career and technical education state aid payments?

Yes. The program must meet necessary guidelines and be approved by the Office of Career and Technical Education. Please feel free to call (517) 373-3373 with specific questions.

31. Where can a charter school get more information about vocational/career and technical education program approval?

Contact the Office of Career and Technical Education by reviewing their website, or call (517) 373-3373 with specific questions.

32. What are the common responsibilities of charter schools to the Michigan Department of Education (MDE) as they relate to financial reporting?

a. Charter schools are required to follow a common fiscal year. That year begins July 1 and ends June 30 of the following calendar year (RSC §380.1133).

b. Charter schools are required to follow accepted accounting principles for governmental entities. The Michigan School Accounting Manual addresses many of these principles and should be used as a reference. Specific questions related to school accounting issues may be directed to the Office of State Aid and School Finance at (517) 335-0524.

c. Charter schools are required to follow a uniform chart of accounts. The chart of accounts is found in the Michigan School Accounting Manual. RSC §380.1281(c) of the Revised School Code requires the Michigan Department of Education to:

> "Prescribe appropriate uniform pupil and finance accounting records for use in school districts, public school academies, and intermediate school districts and promulgate rules for their adoption."

d. Charter schools are to submit an annual comprehensive financial report into the Financial Information Database (FID) maintained by the Center for Educational Performance and Information (CEPI) using the chart of accounts prescribed in the Michigan School Accounting Manual. The report is submitted electronically and is filed with MDE by November 15 of each year. The penalty for noncompliance is the **withholding** of state school aid payments. See Sections 388.1618(3) and (5) of the State School Aid Act.

e. Charter schools are required to have an independent audit of their financial accounting records conducted at least annually by a certified public accountant. The audit reports are filed with MDE no later than November 15 of each year. Guidance for the audit is given in the Michigan School Auditing Manual. The penalty for noncompliance is the withholding of state school aid payments. See Sections 388.1618(2) and (5) of the State School Aid Act.

f. All charter school financial audits are subject to Government Auditing Standards (GAS). The book describing the standards is available online by visiting www.gao.gov.

g. Charter school boards shall adopt a budget before the commencement of the fiscal year, using the minimum levels of appropriation described in Section IV of the Michigan School Accounting Manual.

h. Charter schools are not to adopt or operate under a "deficit budget" (State School Aid Act, MCL 388.1702. MDE closely monitors entities that violate this statute). In the event a charter school falls into a deficit, they are required to file a deficit elimination plan and post it with the transparency items under "the mitten." Deficit elimination plans are approved by and monitored by the _____office within MDE. It is important to note that fiscal viability is one of the criteria for reauthorization, and their authorizer may close schools that run a deficit.

i. Charter schools should always seek competent legal counsel before entering into any binding legal or borrowing agreement.

j. Charter schools must provide the same transparency information on their website that all public schools provide [MCL 388.1618(2) and RSC 380.503(6)(1)].

PROBLEMS/CONCERNS

33. What is the chain of accountability to be used if a problem is identified at the academy?

The school should have in place a student handbook that may address the issue. If not, the protocol for raising issues and concerns are, to begin with, the teacher, then the principal, and then the board of directors of the academy. It is important to give the school and its leadership an opportunity to correct the problem first. If the problem or concern continues after discussing it at the school level, the next step is to contact the school's authorizer.

34. What question should a parent ask a charter school representative before choosing to send a child to that school?

All charter schools are different, even if they use the same curriculum. Visit the school and ask questions about the school's educational program, leadership (governing board and administration), faculty, and policies. Most schools will provide a Parent/Student Handbook, which includes general information.

Several online resources for choosing a school are also available, such as http://bridgemi.com/2015/02/caspio_highcharts/ OR http://www.greatschools.org/michigan/. You can obtain recent test score averages for any school (and compare them to each other and the state) at www.mischooldata.org.

35. Can a charter school charge for uniforms or badges/emblems to be worn on clothing?

Michigan's State Board of Education has issued the following position statement on clothing and uniforms: It is recommended that any fees be disclosed in a student handbook and that the student handbook is made available to every student and parent. Administrators are encouraged to distribute the handbooks at the beginning of each school year and that they require acknowledgment of the receipt by parents and students.

A. School districts may require fees for clothing and food which are offered during the regular school program.

B. Swimming suits, gym clothing, gym shoes, football shoes, baseball shoes, spats, leggings or special shoes to wear with a band uniform need not be supplied by the school district. School districts may make a reasonable charge for the use of any of these items that it supplies to its students. Parents, however, may purchase or supply their own above- mentioned items that are satisfactory for use.

C. If the school district requires a specific color, style, and the manufacturer, then the school district must supply the item free of charge.

D. Special clothing (no robes or band uniforms) for extracurricular activities such as choir or band or orchestra need not be supplied or paid for by the school district. Example: For choir, a white blouse or shirt, dark trousers or skirt, and black shoes and stockings.

Emblems or badges to be worn on clothing are to be provided by the school free of charge if they are required.

36. Can a charter school charge parents who do not pick up students on time after school?

This is a local issue to be decided by each school and formalized in a written board policy. It is recommended that school boards that choose to adopt such policies consult their attorneys, ensure adequate notice and information is provided to students and parents, perhaps through publication in the school's student handbook.

START-UP FUNDING

37. Are there federal charter school dollars to help start an academy?

There is currently no federal start-up grants available in the State of Michigan. However, private funders such as the Walton Foundation may have funds available. Typically, charter advocacy organizations such as the Michigan Association of Public School Academies (MAPSA) can provide information on startup funding. http://www.charterschools.org/

STAFFING

38. Are employees of an outside company who are providing instructional services to charter school students members of the Michigan Public School Employees' Retirement System (MPSERS) and local union?

Attorney General Opinion No. 6915 (1996) addressed two issues: whether charter schools are subject to section 380.1231 of the Revised School Code, requiring the board of a school district to "hire and contract with qualified teachers"; and whether employees of an outside company who are providing instructional services to charter school students are members of MPSERS.

Although instruction in charter schools is to be provided by certificated teachers, pursuant to this opinion, charter schools may contract with outside companies for the provision of instructional services. Teachers who are providing instructional services to students of a charter school, who are employed by an outside company rather than by the charter school, are not members of MPSERS.

In December 2011, Public Act 277removed the requirement that school districts authorizing a PSA must cover PSA staff under that district's current collective bargaining agreements.

39. How does employment as a teacher in a Michigan charter school affect that teacher's college Perkins loan?

A teacher who works in a Michigan charter school that is classified as low-income and non-profit may be eligible for Perkins Loan forgiveness according to all of the following requirements:

a. The Perkins Loan Forgiveness is processed (money and request for forgiveness) at the college level, which is based on the input received from the Michigan Department of Treasury.

b. Students who have a Perkins Loan can request their loan be forgiven if the school they work for participates in the National School Lunch, School Breakfast, and/or Special Milk Program; and where 30% or more of the enrolled children have been approved for free and/or reduced-price meals or free milk.

c. If a teacher works for and receives a paycheck from an educational management organization, then the teacher's Perkins student loan is **NOT** forgiven.

d. If a teacher works for a charter school and receives a paycheck from the academy, then the teacher's Perkins student loan may be forgiven. Text from the above link states, "To receive a cancellation, the borrower must be *directly employed* by the school system."

e. All college loan related questions/answers should be confirmed by the college that issued the loan.

AUTHORIZERS

40. What are the major responsibilities of an authorizing body?

Pursuant to Section 380.502(4): "An authorizing body shall oversee, or shall contract with an intermediate school district, community college, or state public university to oversee, each public school academy operating under a contract issued by the authorizing body. The authorizing body is responsible for overseeing compliance by the board of directors with the contract and all applicable law."[1] These oversight duties include:

[1] "If the superintendent of public instruction finds that an authorizing body is not engaging in appropriate continuing oversight of 1 or more public school academies operating under a contract issued by the authorizing body, the superintendent of public instruction shall suspend the power of the authorizing body to issue new contracts to organize and operate public school academies. A contract issued by the authorizing body during the suspension is void. A contract issued by the authorizing body before the suspension is not affected by the suspension." [MCL 380.502(5)]

a. Thoroughly reviewing the applicant's educational plan. The plan must address the educational needs of the students, curriculum goals and objectives, teaching methods, and student assessment;[2]
b. Determining if all fire, safety, and health codes are met;
c. Developing a description of the methods to be used to monitor the charter school's compliance with applicable law and its performance in meeting its targeted educational objectives. Authorizers must implement a corrective plan of action for their schools that do not meet those standards;
d. Ensure charter school boards operate independently of any educational management company involved in the operation of the school;
e. Developing a description of the process for amending the contract during the term of the contract;
f. Setting and enforcing the terms of the authorizing contract, including adopting a resolution establishing the method of selection, length of term, and a number of members of the board of directors of the charter school. Authorizers must also ensure the local community is represented on the board and that all board members are US citizens; and
g. Within ten days after issuing a charter school contract, a charter school contract must be submitted to the Superintendent of Public Instruction.
    i. A contract with a charter school may be revoked by the authorizing body if one or more of the following occurs:
        1. failure of the charter school to demonstrate improved academic achievement for all groups of pupils or meet the educational goals outlined in the contract
        2. failure of the charter school to comply with applicable law
        3. failure of the charter school to meet accepted public sector accounting principles and demonstrate sound fiscal stewardship
        4. or other grounds for revocation specified in the contract.

Additional powers granted to authorizing bodies in the RSC §380.507, include acting as fiscal agent for the charter school—the state school aid payment for the charter school is paid to the authorizing body that is the fiscal agent for the charter school, which then forwards the payment, less up to a maximum of 3 percent, to the charter school.

41. If a school district, intermediate school district or community college is interested in becoming an authorizer, what action steps are needed?

No formal MDE filing or approval is required for an organization to become an authorizer. Pursuant to RSC §380.502(3), the organization must notify MDE of its actions and provide copies of the charter application and contract to the Superintendent of Public Instruction within ten (10) days of approval.

It is advisable for an eligible organization considering becoming an authorizer to weigh all aspects of this decision carefully. A wide array of resources and insights are available. Visit www.michigan.gov/charters to learn more, and call MDE at (517) 373-4631 with specific questions after reviewing available online resources.

[2] The Revised School Code states that to the extent applicable, pupils shall be assessed using at least a Michigan education assessment program (MEAP) test or an assessment instrument developed under section 1279 for a state-endorsed high school diploma. [MCL 380.502(3)(e)(ii)]

42. How do authorizers decide which schools to authorize?

In deciding whether to issue a contract for a proposed public school academy, the authorizing body is required to consider:

a. The resources available for the proposed academy;
b. The population to be served by the proposed academy;
c. The education goals to be achieved by the proposed academy;
d. The applicant's track record, if any, in organizing public school academies;
e. The graduation rate of a school district in which the proposed academy is proposed to be located;
f. The population of a county in which the proposed public school academy is proposed to be located;
g. The number of schools in the proximity of a proposed location of the proposed public school academy that is identified as among the lowest achieving 5% of all public schools in the state;
h. The number of pupils on waiting lists of public school academies in the proximity of the proposed location of the Academy.

Also, authorizer decisions related to contract renewal must include increases in student academic achievement for all groups of pupils as "the most important" factor [RSC §380.503(6)(h)].

SERVICE PROVIDERS

43. What does an education service provider (also known as an ESP or management company) do for a school?

Michigan law permits charter school boards to contract with service providers/management companies for various school staffing and support functions, which may include facility management, personnel management, payroll and accounting, curriculum development, and professional development services for staff and teachers. Roughly four out of five charter schools in Michigan have contracted with a service provider.

Each charter school/service provider agreement is unique. Some charter school boards contract for only one or two services, such as human resources or accounting, whereas others choose to contract for all day-to-day staff functions. The variation in service provider/management company arrangements is broad and difficult to quantify. Some service providers/management companies work with only one charter school, while others contract with multiple charter schools in Michigan and across the country. Some act in only a limited capacity, while others offer complete "turn-key" operations. This widely varied approach to charter school contracting has allowed for the creation of a diverse service provider/management company marketplace in Michigan.

Service providers/management companies are accountable to the non-profit charter school boards that hire them. The boards are responsible for setting policy, directing operational and academic performance, and ensuring fiscal stability. Regardless of the type or level of support for which it is contracted, each service provider/management company operates under the direction of the charter school board.

44. How accountable are service providers/management companies in Michigan?

Many aspects of service provider/management company spending are already reported through their schools' data submissions to the state. Michigan's Center for Educational Performance and Information (CEPI) maintains academic, personnel and financial information about each of the service provider-managed schools, just as it does for all other schools. Charter schools are required to report salaries of staff who work at the school, even if they are employed by a 3rd party. Additionally, service providers/management companies are vendors, hired and overseen by the charter school board through a performance agreement, often referred to as a management contract. There are no current statutes that specify requirements for contracts between PSA boards and the management companies they hire. However, best practice dictates that management contracts should contain specific performance targets, aligned to the goals (and other provisions) in the charter contract. Charter school boards should hold all vendors, including service providers/management companies, accountable for the services they provide.

CHARTER SCHOOL BOARDS

45. How are charter school board members appointed?

Charter school board members are public officials that have sworn a constitutional oath of office in Michigan. Each board member undergoes a selection and appointment process established by the charter school's authorizer before being named by the authorizer's governing board. Boards must have representation from the local community, and board members must be citizens of the United States.

Some concerns have been raised about whether or not service providers/management companies in Michigan can name their governing boards and thus exercise some undue level of influence or control over these boards once a school is established. While Michigan law permits the developer of a new charter school to name the members of an initial governing board, it is up to the authorizer to ensure that those board members are qualified, independent voices on behalf of the charter schools they serve.

To ensure procedural consistency across Michigan's authorizing community, the Michigan Council of Charter School Authorizers (MCCSA) has adopted standards for this selection and appointment process. At a minimum, these standards presume written application for a board appointment, criminal records check, and a personal interview.

The standards also discuss potential conflict of interest issues and recommend the use of a disclosure form be completed by charter school board members on an annual basis. These procedures are designed to ensure board member quality and autonomy and prevent inappropriate charter school board member/service provider relationships. Visit www.mccsa.us to learn more.

46. Can the board and/or staff of a school be family members, or otherwise closely related to members of the board?

No. The December 2011 amendment to the Revised School Code requires the academy board to prohibit specified family relationships among board members, individuals who have an ownership interest in or who are officers or employees of an ESP involved in the operation of the academy and employees of the academy. The potential for or existence of conflicts of interest among board members are items that are carefully monitored by Michigan authorizers.

As mentioned, MCCSA oversight and accountability standards recommend the use of a disclosure form be completed by charter school board members on an annual basis. These procedures are designed to ensure board member quality and autonomy and prevent inappropriate charter school board member/service provider relationships. Visit www.mccsa.us to learn more.

SPECIAL EDUCATION

47. What options may a charter school use to meet its responsibilities to provide a free appropriate public education, as required by state and federal law, to a student with a disability?

As provided in §380.1751 of the Revised School Code:

> The board of a local school district [or charter school] shall provide special education programs and services designed to develop the maximum potential of each disabled person in its district on record…for whom an appropriate educational or training program can be provided by the intermediate school district special education plan, in either of the following ways or a combination thereof:
>
> a. Operate the special education program or service.
>
> b. Contract with its intermediate school board, another intermediate school board, another local school district board, and adjacent school district board in a bordering state, the Michigan School for the Blind, the Michigan School for the Deaf, the Department of Community Health (DCH), or the Department of Human Services. The intermediate school district where the local school district [or charter school] is located shall be a party to each contract even if the intermediate school district does not participate in the delivery of the program or services.
>
> Pursuant to Attorney General Opinion No. 6915 (1996), charter schools are not required directly to employ teachers. Instruction at charter schools is to be provided by certificated teachers (exception-refer to Section 380.505) however; charter schools may contract with outside companies for the provision of instructional services. Therefore, "a public school academy is not subject to Section 380.1231 of the Revised School Code, which requires the board of a school district to 'hire and contract with qualified teachers' and it may contract with an outside company for the provision of instructional services by employees of that company."
>
> In addition to the methods listed above, a charter school may contract with an agency approved by the State Board of Education for delivery of ancillary or related professional education services

48. If a charter school chooses to hire staff or contract with a private agency for "services," is the charter school entitled to apply for reimbursement under the State School Aid Act (Section 388.1651a, special education funding) and the intermediate school district special education millage?

Yes. A charter school is considered to be a local school district under Section 388.1603(5) of the State School Aid Act and is considered a local district to be included in the intermediate school district plan for special education programs and services. Therefore, charter schools have the same right to participate in state school aid and intermediate school district special education funding as any other local school district, by the provisions to the intermediate school district plan for special education programs and services.

49. If a charter school is entitled to intermediate school district special education millage funds, is the charter school held to the same limitations as other local districts, i.e., the cap on student-staff ratio used for certain categories of programming?

Yes. For purposes of special education services, a charter school is bound to the same requirements as other local constituent districts served by their respective intermediate school districts. To participate, the charter school, just as any other constituent district, must be recognized in its respective intermediate school district plan for special education programs and services.

50. Is a charter school eligible for Individuals with Disabilities Education Act funds?

Yes. Federal special education funds under the Individuals with Disabilities Education Act (IDEA) are granted to the intermediate school districts. These funds are distributed to constituent local school districts according to the intermediate school district plan for special education programs and services, which must comply with state and federal regulations controlling use and distribution of the funds. The intermediate school district plan for special education programs and services is developed cooperatively with local constituent school districts, including charter schools.

51. If a charter school is eligible for intermediate school district special education millage and Individuals with Disabilities Education Act Funds, must a charter school follow the same requirements as other local educational agencies for obtaining funds, e.g., the filing of forms and applications?

Yes. A charter school must follow the same requirements as other local educational agencies. Both state and federal funds are appropriated under Article 5 of the State School Aid Act of 1979, *as amended,* MCL 388.1651a *et seq*.

a. Article 5 of the State School Aid Act indicates the funds may be used to reimburse districts and intermediate school districts for special education programs, services, and special education personnel.

b. Article 5 of the State School Aid Act allocates funds for:

   i. Special education programs and services as defined in Article 3 of the RSC §380.1701, *et seq*.

ii. A total of salaries and other compensation paid to approved special education personnel. Rule 340.1771 through Rule 340.1799g provide personnel approval criteria.

c. Section 388.1658 of the State School Aid Act, allocates funds to districts and intermediate districts for providing specialized transportation services, as determined by MDE, for pupils in special education programs and services as defined in Section 388.6 of the Revised School Code. Specialized transportation services are defined in Rule 388.371 of the Michigan Administrative Code Rules governing State Aid for Transportation of School Children.

52. Must a charter school adhere to all provisions of IDEA, the Michigan Revised Administrative Rules for Special Education, the Family Education Rights and Privacy Act, and other state and federal statutes?

Yes. The IDEA considers the entire state. If the state (as a whole) receives federal funds, then all entities of the public education system are responsible for complying with IDEA provisions, including ensuring that each eligible child with a disability is provided a "free appropriate public education." Michigan complies with the IDEA in its implementing regulations. A charter school is required to adhere to Michigan statutes and rules for special education, as well as the federal requirements.

The Family Education Rights and Privacy Act (34 CFR Part 99) (FERPA) has broader applicability than special education; it applies to all public educational entities and their students, whether or not special education is at issue. The purpose of FERPA is to protect the confidentiality of student educational records. FERPA is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Educational institutions shall not release educational records to non-school employees without the consent of the parents. FERPA does permit schools to work with juvenile justice system agencies. Failure of an educational agency or institution to comply with FERPA can result in loss of federal funding.

Section 504 of the Rehabilitation Act of 1973, *as amended*, P.L. 93-112, requires that "no qualified handicapped person shall, by handicap, be excluded from participation in, be denied the benefits from Federal financial assistance…." The Office for Civil Rights of the U.S. Department of Education enforces the law prohibiting specific discriminatory activities. The law applies to elementary and secondary, as well as postsecondary schools. The Act was reauthorized in 1998 with amendments and added links to the Workforce Investment Partnership Act of 1998. The Rehabilitation Act Amendments of 1998 included extensive links between vocational rehabilitation agencies and state workforce systems.

Section 504 also includes "hidden disabilities," such as physical and mental impairments that are not clear to others (i.e., learning disabilities, diabetes, epilepsy, heart disease, and chronic illness).

53. Is the intermediate school district required to monitor special education programs and services?

Yes. A charter school is identified in statute as a local public school district and has the same rights and responsibilities as any other school district. MDE is required to monitor local and intermediate school districts for compliance with the IDEA and with

Michigan's Administrative Rules for Special Education. This activity includes a charter school.

The intermediate school districts are an integral part of the monitoring process. As such, intermediate school districts must monitor a charter school to ensure their compliance with pertinent special education requirements.

54. To what extent is an intermediate school district responsible for charter schools serving pupils whose parents reside outside of the intermediate school district where the charter school is located?

For purposes of special education, the charter school is a constituent district of the intermediate school district in which it is located. The intermediate school district has the same responsibility to the charter school as it does to any other constituent district. It is not unusual for a public school district to serve pupils who come from other districts, including pupils whose parents live in another intermediate school district. The intermediate school district has the same obligation to pupils whose parents live elsewhere as it does to any other pupil legally enrolled by a constituent district.

Section 51a (15) of the State School Aid Act (MCL 388.1651a(15)) further clarifies:

> (15) If a public school academy enrolls pursuant to this section a pupil who resides outside of the intermediate district in which the public school academy is located and who is eligible for special education programs and services according to statute or rule, or who is a child with disabilities, as defined under the individuals with disabilities education act, Public Law 108-446, the provision of special education programs and services and the payment of the added costs of special education programs and services for the pupil are the responsibility of the district and intermediate district in which the pupil resides unless the enrolling district or intermediate district has a written agreement with the district or intermediate district in which the pupil resides, or the public school academy for providing the pupil with a free appropriate public education and the written agreement includes at least an agreement on the responsibility for the payment of the added costs of special education programs and services for the pupil.

55. Is there a need to certify charter school students for special education services and identify them as such on the enrollment count if the charter school is not planning to claim additional state funding or federal funding?

If "certify" refers to the process of identifying children who are suspected to have a disability under state or federal law, the response is yes. This is called Child Find under the federal regulations. There is a need to complete the "child find" requirements irrespective of application or claim for additional state or federal funding.

The State of Michigan is responsible for ensuring a free and appropriate public education for every student with a disability who is enrolled in its public school system. Since a charter school is a public school, it is bound by the same requirements as other public intermediate and local school districts within the state. The determination of a charter school to seek no state or federal funds related to special education does not exempt it from this obligation.

56. If a charter school contracts with a private entity to provide speech, psychological, and social work services: (a) must the credentials of the providers be the same as those employed by public schools in general; and (b) must the charter school submit its personnel inventory to the intermediate school district?

This response is intended to refer only to professional personnel related to "special education programs or services."

In response to part "(a)" of the question, the answer is yes. Standards are articulated in the Administrative Rules for Special Education and the rules governing different professional specialties.

In response to part "(b)" of the question, to meet federal reporting requirements prerequisite to receipt of federal funds requires reporting information about public school students and professional personnel to the federal government on an annual basis. This information is collected through the Michigan Department of Education's Registry of Education Personnel (REP). REP data are collected semi-annually in December and June. This process is implemented through the local school districts procedures for data collection. If there are students with individualized education programs enrolled in a charter school, then the information about special education programs or services to those students must be reported as part of the "December One Count" through the Michigan Compliance Information System (MICIS).

For further information regarding special education, you may contact MDE's Office of Special Education & Early Intervention Services at (517) 373-0923.