

Michigan Association of Counties Legislative Conference

Understanding the Headlee Amendment

March 22, 2022

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OUTLINE

- **What Is the Headlee Amendment?**
- **Voter Approval Requirement For Local Unit Tax Increases Or Certain Bond Debt**
- **Headlee Rollbacks and Headlee Overrides**
- **Taxes vs. User Charges – Bolt v Lansing Case**
- **State Funding of Local Government**
- **Unfunded Mandates**
- **State Revenue Limitation**
- **Questions and Answers**

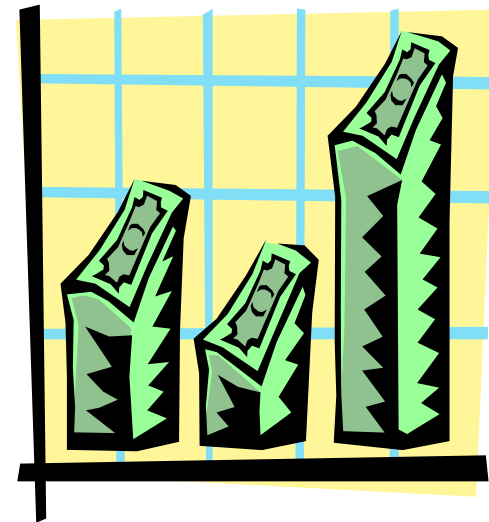
WHAT IS THE HEADLEE AMENDMENT?

- 1978 Constitutional Amendment approved by voters on November 7, 1978
- Proposal E - also called Tax Limitation Amendment, but is now known by its nickname after its principal proponent Richard Headlee
- Initiatory amendment written by Taxpayers United in the spirit of “Tax Revolt”



WHAT IS THE HEADLEE AMENDMENT?

- Amends Article IX, Section 6 of Michigan Constitution of 1963; and adds Sections 25 to 34
- Limits local taxation without voter approval
- Limits local taxation for bonds without voter approval
- Limits State taxation and revenue growth
- Prohibits the State from requiring new activities by local governments without State financing (aka unfunded mandates)
- Prohibits the State from reducing State spending to local units of government below pre-Headlee levels
- Authorizes any taxpayer to file a lawsuit in the Michigan Court of Appeals to enforce the Amendment
- Authorizes the Legislature to write laws to implement the Amendment



Article IX, Section 25

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

VOTER APPROVAL REQUIREMENT FOR LOCAL UNIT TAX INCREASE

- Local units cannot levy a tax or increase the rate of an existing tax without voter approval
- Limit applies to any tax not authorized by law or charter in 1978



Article IX, Section 31

- **§ 31 Levying tax or increasing rate of existing tax; maximum tax rate on new base; increase in assessed valuation of property; exceptions to limitations.**
- Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.
- If the definition of the base of an existing tax is broadened, the maximum authorized rate of taxation on the new base in each unit of Local Government shall be reduced to yield the same estimated gross revenue as on the prior base.
- [Revenue Rollback sentence]
- The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this amendment.

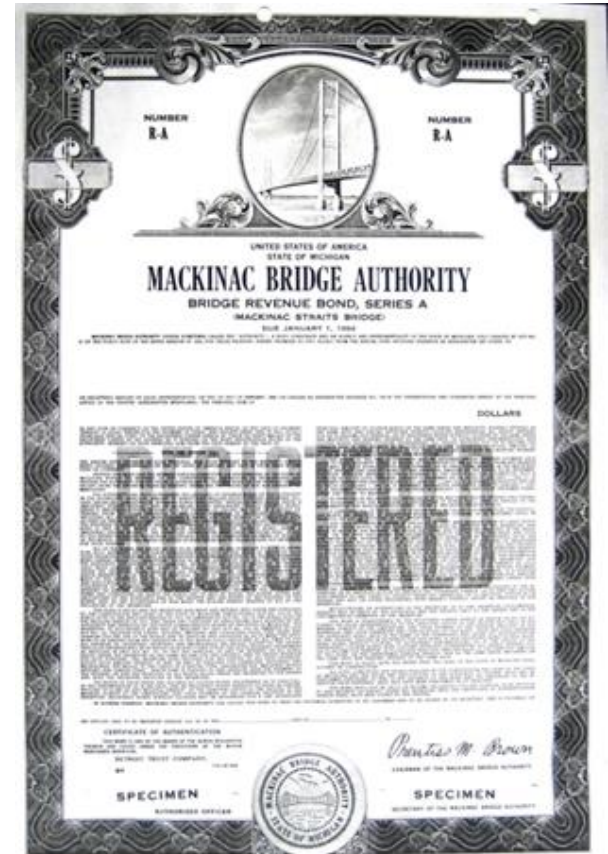
PRE-HEADLEE TAXES

- **County Hotel-Motel Tax**, Bailey v Muskegon County Board of Commissioners (1983)
- **Judgment Tax**, American Axle v Hamtramck, (1997)
- **Charter Township Taxes**, Oshtemo Charter Township v Kalamazoo County (2021)



Voter Approved and Non-Voter Approved Bonds

- Bonds must be approved by voters in order to authorize a new tax levy to pay debt service
- Bonds may also be issued without voter approval, but local unit cannot increase taxes above existing limitations to pay debt service
- Debt levy for voter-approved bonds is not subject to rollback or other limitations

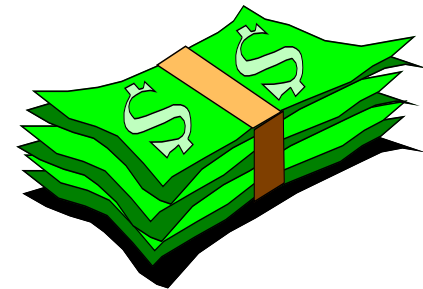
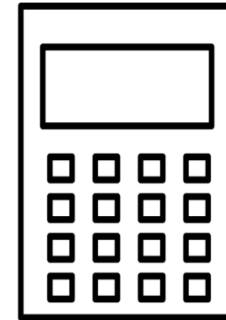


Article IX, Section 6

- **§ 6 Real and tangible personal property; limitation on general ad valorem taxes; adoption and alteration of separate tax limitations; exceptions to limitations; property tax on school district extending into 2 or more counties.**
- Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized.
- Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.
- The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds APPROVED BY THE ELECTORS or other evidences of indebtedness APPROVED BY THE ELECTORS or for the payment of assessments or contract obligations in anticipation of which bonds are issued APPROVED BY THE ELECTORS, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Section 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

HEADLEE MILLAGE ROLLBACKS

- The Headlee property tax revenue limitation requires that if the assessed value of a local tax unit's total taxable property increases by more than the inflation rate, the maximum property tax millage must be reduced so that the local unit's total taxable property yields the same gross revenue, adjusted for inflation.
- This is calculated looking at the total SEV change from one year to the next.
- It is based on the entire tax unit's jurisdiction, not based in each parcel.
- The change of SEV from one year to the next does not include any change that resulted from new construction.



Article IX, Section 31

- **§ 31 Levying tax or increasing rate of existing tax; maximum tax rate on new base; increase in assessed valuation of property; exceptions to limitations.**
- [Local Unit Tax Voter Approval]
- [Local Unit Base Revenue Increase]
- If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.
- [Limitation not applicable .

CALCULATION OF HEADLEE MILLAGE ROLLBACKS

Millage Reduction Fraction – MRF Required by MCL 211.34d

$$\text{MRF} = \frac{(\text{prior year's taxable value} - \text{losses}) \times \text{inflation rate multiplier}}{\text{current year's taxable value} - \text{additions}}$$

Example:

County Operating Millage = 4 mills Inflation 3.3%

2021 Taxable Value = \$2 billion 2022 Taxable Value \$2.1 billion (5% increase)

$$\text{MRF} = \frac{(2 \text{ billion} - 0) \times 1.033}{2.1 \text{ billion}} = \frac{2.066 \text{ billion}}{2.1 \text{ billion}} = .9838$$

CALCULATION OF HEADLEE MILLAGE ROLLBACKS

L-4029 Report– Tax Rate Request

2022 MRF = .9838

2021 Millage Rate x 2022 MRF = 2022 Maximum Allowed Rate
5.0 x 0.9838 = 4.919 mills

2021 Tax Levy = \$10,000,000

2022 Tax Levy = \$10,329,900

2022 Tax Levy without Rollback = \$10,500,000

Impact of Rollback = \$170,100

HEADLEE OVERRIDE VOTE

Question: Can I get back to 5 mills (e.g. override the Rollback)?

Answer: Yes. With the approval of the voters, as Headlee Amendment treats this a tax increase.

These types of questions are called a “Headlee override” vote.

But State law requires calling the rolled back amount an increase in taxes in the ballot proposal. It cannot be considered or called a renewal.



HEADLEE OVERRIDE VOTE

Example: How to get back the .8 mills rolled back on County operating millage

Operating Millage Proposal

Shall the limitation on the amount of taxes which may be imposed on taxable property in the County of _____, be increased by Eighty Cents (\$0.80) per thousand dollars (0.8 mills) of the taxable value for a period of twenty (20) years, from 2022 through 2041, as new additional millage in excess of the limitation imposed by operation of the Headlee amendment, to provide funds for general operating purposes? It is estimated that 0.8 mills would raise approximately \$1,760,000 when first levied in 2022.

HEADLEE OVERRIDE VOTE

Example: Parks Millage up for Renewal
Originally 1 mill, now rolled back to .7432 mills –
want to get back to 1 mill

County Park Millage Proposal

Shall the limitation on the amount of taxes which may be imposed on taxable property in the County of _____, be increased by One Dollar (\$1.00) per thousand dollars (1 mill) of the taxable value for a period of twenty (20) years, from 2022 through 2041, as a renewal of that portion of a 1 mill authorization previously approved by the electors as reduced by operation of the Headlee Amendment, which was 0.7432 mills in 2021, plus new additional millage in the amount equal to the amount reduced by operation of the Headlee amendment, which was 0.2568, to provide funds for parks and recreation purposes? It is estimated that 1 mill would raise approximately \$2,200,000 when first levied in 2022.

HEADLEE OVERRIDE VOTE

Example: Parks Millage up for Renewal
Originally 1 mill, now rolled back to .7432
mills – just want to ask for the renewal

County Park Millage Renewal Proposal

Shall the limitation on the amount of taxes which may be imposed on taxable property in the County of _____, be increased by Seventy-Four and Thirty-Two Hundredths Cents (\$0.7432) per thousand dollars (0.7432 mill) of the taxable value for a period of twenty (20) years, from 2022 through 2041, as a renewal of a previously authorized millage to provide funds for parks and recreation purposes? It is estimated that 0.7432 mill would raise approximately \$1,635,040 when first levied in 2022.

LAWSUITS TO ENFORCE HEADLEE

- Headlee Amendment allows any taxpayer to file a suit to enforce the Headlee Amendment
- Lawsuit is filed in the Court of Appeals (very unusual court of original jurisdiction)
- If plaintiffs win, the government has to pay their legal fees and costs too



Article IX, Section 32

- **§ 32 Suit to enforce sections 25 to 31.**
- Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

WHAT IS A TAX VS A USER CHARGE? BOLT LAWSUITS

- Since the *Bolt v Lansing* case in 1998, taxpayers have used Headlee to sue local units claiming “user charges” were really “taxes”
- If Court of Appeals finds it is not a valid “user charge” and is a “tax”, user charge is not permitted unless it was approved by the voters
- Problem is that there is no legal ability for many of these “user charges” to be submitted to the voters



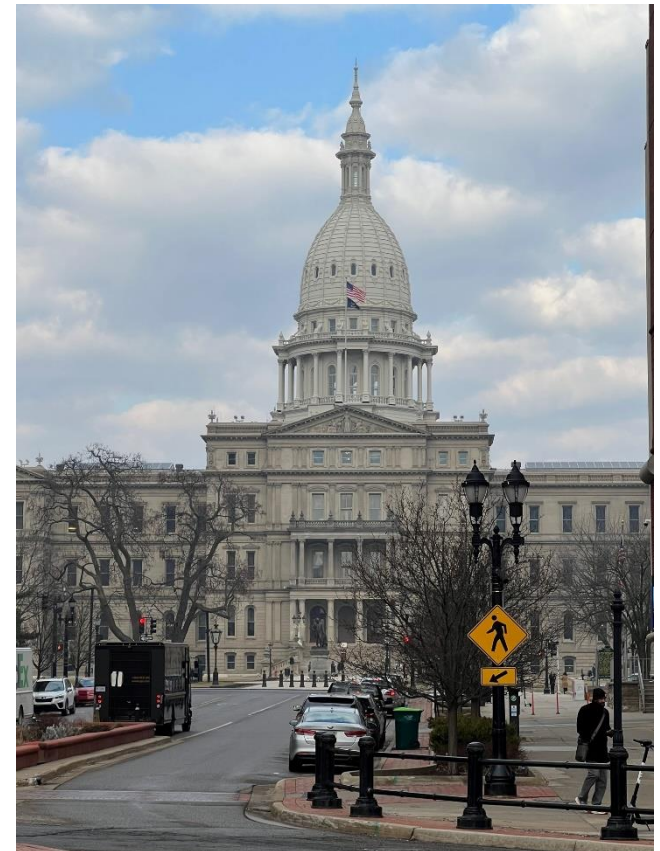
BOLT LAWSUITS

- Bolt lawsuits have been filed challenging:
 - Stormwater Fees
 - Water and Sewer Usage Fees
 - Cable TV Fees
 - Electric System Fees
 - Building Inspection Fees
 - Demolition Permits and Fees
 - Pawnshop Reporting Fees
 - Airport Authority Fees



UNFUNDED MANDATES

- State is prohibited from reducing the State-financed proportion of existing services required by local units
- Local units have sued State when mandates require extra expense by locals to comply
- Courts have generally sided with the State on grounds that many of the services provided are not mandated by the State, so when they regulate an activity or service that costs more money, they didn't mandate the service
- EX: Livingston County v Dept of Management and Budget (1988) – State does not mandate landfill operation, by can regulate it.



Article IX, Section 29

- **§ 29 State financing of activities or services required of local government by state law.**
- The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law.
- A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.
- The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

STATE FUNDING OF LOCAL GOVERNMENT

- State cannot reduce the proportion of State spending to “units of Local Government” below 1978 levels – originally 41%, now set at 48.97%
- Lawsuit by Taxpayers for Michigan Constitutional Government v Michigan (2021)
 - Supreme Court ruled in favor of State that Proposal A state spending on schools counts as payments to Local Government
 - Supreme Court ruled in favor of plaintiffs that payments of State Aid to charter schools did not count as Local Government



Article IX, Section 30

- **§ 30 Reduction of state spending paid to units of local government.**
- 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

STATE REVENUE LIMITATIONS

- The State total annual revenue from all of its taxes cannot exceed 9.49% of Personal Income in Michigan (1977 level)
- State can exceed the limit with a vote of the people
- If State exceeds limit by less than 1%, money must go into Budget Stabilization Fund
- If State exceeds limit by more than 1%, must pay refund to Michigan taxpayers through income tax credit.



Article IX, Section 26

- **§ 26 Limitation on taxes; revenue limit; refunding or transferring excess revenues; exceptions to revenue limitation; adjustment of state revenue and spending limits.**
- There is hereby established a limit on the total amount of taxes which may be imposed by the legislature in any fiscal year on the taxpayers of this state.
- This limit shall not be changed without approval of the majority of the qualified electors voting thereon, as provided for in Article 12 of the Constitution.
- Effective with fiscal year 1979-1980, and for each fiscal year thereafter, the legislature shall not impose taxes of any kind which, together with all other revenues of the state, federal aid excluded, exceed the revenue limit established in this section. The revenue limit shall be equal to the product of the ratio of Total State Revenues in fiscal year 1978-79 divided by the Personal Income of Michigan in calendar year 1977 multiplied by the Personal Income of Michigan in either the prior calendar year or the average of Personal Income of Michigan in the previous three calendar years, whichever is greater.
- For any fiscal year in the event that Total State Revenues exceed the revenue limit established in this section by 1% or more, the excess revenues shall be refunded pro rata based on the liability reported on the Michigan income tax and single business tax (or its successor tax or taxes) annual returns filed following the close of such fiscal year. If the excess is less than 1%, this excess may be transferred to the State Budget Stabilization Fund.
- The revenue limitation established in this section shall not apply to taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under Section 15 of this Article, and loans to school districts authorized under Section 16 of this Article.
- If responsibility for funding a program or programs is transferred from one level of government to another, as a consequence of constitutional amendment, the state revenue and spending limits may be adjusted to accommodate such change, provided that the total revenue authorized for collection by both state and local governments does not exceed that amount which would have been authorized without such change

Article IX, Section 27

- **§ 27 Exceeding revenue limit; conditions.**
- The revenue limit of Section 26 of this Article may be exceeded only if all of the following conditions are met: (1) The governor requests the legislature to declare an emergency; (2) the request is specific as to the nature of the emergency, the dollar amount of the emergency, and the method by which the emergency will be funded; and (3) the legislature thereafter declares an emergency in accordance with the specific of the governor's request by a two-thirds vote of the members elected to and serving in each house.
- The emergency must be declared in accordance with this section prior to incurring any of the expenses which constitute the emergency request. The revenue limit may be exceeded only during the fiscal year for which the emergency is declared.
- In no event shall any part of the amount representing a refund under Section 26 of this Article be the subject of an emergency request.

Article IX, Section 28

- **§ 28 Limitation on expenses of state government.**
- No expenses of state government shall be incurred in any fiscal year which exceed the sum of the revenue limit established in Sections 26 and 27 of this Article plus federal aid and any surplus from a previous fiscal year.

DEFINITIONS AND LEGISLATION

- Some of the definitions involved in Headlee and rollback calculations are included in the Constitution, so hard to change (e.g. definition of General Price Level and Consumer Price Index)
- Other aspects of the implementation of the Headlee Amendment can be adjusted or changed by the Legislature



Article IX, Section 33

- **§ 33 Definitions applicable to sections 25 to 32.**
- **Definitions.** The definitions of this section shall apply to Section 25 through 32 of Article IX, inclusive.
- "Total State Revenues" includes all general and special revenues, excluding federal aid, as defined in the budget message of the governor for fiscal year 1978-1979. Total State Revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities.
- "Personal Income of Michigan" is the total income received by persons in Michigan from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency.
- "Local Government" means any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government.
- "General Price Level" means the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency.

Article IX, Section 34

- **§ 34 Implementation of sections 25 to 33. Sec. 34.**
- The Legislature shall implement the provisions of Sections 25 through 33, inclusive, of this Article.

Questions? Thank you!



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