

House Bill 5512 (Substitute H-2)
First Analysis (5-26-98)

Sponsor: Rep. Kirk A. Profit
Committee: Tax Policy

THE APPARENT PROBLEM:

Under the Headlee amendment to the state constitution, adopted by the voters in 1978, the state is prohibited from reducing its share of the costs of activities and services mandated by the state and provided by local governments from the level paid as of December 22, 1978, or from increasing the level of required services or activities after that date, without paying the costs associated with them. The amendment contains language allowing taxpayers to bring suit to enforce these requirements. Article IX, Section 32 of the State Constitution of 1963 says:

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.

(Article IX, Sections 25 through 31 contains the above-described requirement for state government to reimburse local governments for state-mandated costs, as well as provisions establishing a revenue limit on state government, prohibiting the reduction of state spending paid to local units of government below the level in effect in fiscal year 1978-79, and requiring voter approval of local tax increases.)

In 1980, a group of school districts and taxpayers filed suit against the state, claiming that the state had reduced the proportion of state education aid -- specifically, aid for special education programs -- below the constitutionally required level. The case, *Durant v State of Michigan* and its companion cases, was finally settled 17 years later, in July 1997. The state eventually paid (or will pay) over \$844 million to plaintiff and nonplaintiff school districts.

The length of time it took for taxpayers to receive relief in this case is of great concern. Though the constitutional language specifically allows such suits to be taken directly to the court of appeals, some have observed that the court was "unwilling" to consider the *Durant* case on its merits, choosing instead to dismiss the case on technical grounds. Though state law and

court rules authorized the court to appoint a fact finder when factual issues were in dispute, the court did not take this step until ordered by the supreme court to do so, nearly six years after the commencement of the case. Some have attributed this reluctance to hear the case on its merits to the nature of the court itself: it was established as an appellate body that resolves issues of law raised on appeal from trial courts, not as a trier of fact.

Another reason for the lengthy delay in resolving the complaint, according to the supreme court in its decision, was the state's "prolonged recalcitrance" in the case, including continuing to "evade its obligation to fund" the services in question after the court of appeals first ruled on the issue of liability in the case.

Clearly, the taxpayers are not well served by having litigation between two levels of government drag on for so long, resulting in staggering legal costs and, if damages are ordered to be paid, large amounts due for interest on the sums. Some people believe that legislation should be enacted to encourage an expedited process for resolving future Headlee claims.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to provide that if a taxpayer brings an action in the court of appeals under Article IX, Section 32 of the state constitution, the court of appeals could designate a person to be a fact finder for that action. The person designated could be a judge or a retired judge.

The fact finder would conduct hearings and prepare proposed findings of fact, which would have to be made on the record. The court would be required to establish deadlines for the conclusion of hearings and for the filing of a written report of findings. The deadlines would have to be fixed so as to ensure that the action was adjudicated promptly. The fact finder could order discovery as otherwise permitted by court rules, with or without a motion by the parties.

The bill would require the supreme court and the court of appeals to expeditiously adjudicate an appeal from circuit court in an action commenced under Article IX, Section 32 of the state constitution. If the court of appeals or the supreme court determined that any facts of consequence in such an action remained unresolved, or that any fact finding by the circuit court was clearly erroneous and that further fact finding was necessary, the court of appeals or the supreme court would have to remand the issue to the trial court for fact finding, while retaining jurisdiction and imposing deadlines for action. Upon receipt of the findings from the trial court, the court of appeals or supreme court would have to proceed promptly to a resolution of the appeal on the merits.

The bill would require that a court conducting a review of a decision or order of the Local Government Claims Review Board or considering any further appeal from a lower court to adjudicate the review or appeal expeditiously. If such a court determined that any facts of consequence remained unresolved, or that any fact finding by the board was clearly erroneous and that further fact finding was necessary, the court would have to remand the matter to the board for further fact finding while retaining jurisdiction and setting deadlines for action. Upon receiving the findings, the court would have to proceed promptly to a resolution of the review proceeding or appeal on the merits.

MCL 600.308b et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in costs for the court of appeals if the court appointed a fact finder to prepare proposed findings in Headlee claim cases. A preliminary estimate of annual costs would be \$500,000. (5-22-98)

ARGUMENTS:

For:

The *Durant* case took 17 years to resolve, in part because it was the first to sort out the complicated legal issues raised by the 1978 Headlee amendment to the state constitution, but also because, according to some, the state's actions needlessly prolonged the matter. This is grossly unfair to taxpayers, who wound up paying the costs for their school districts to sue their state government -- and then for their state government to repay disputed amounts to their school districts. The bill would make several improvements in the process for adjudication of Headlee claims. It would specifically authorize the court of appeals to appoint a fact finder in these cases, which would assist the court

in handling the complicated factual issues of such cases as the "trier of fact". It would require the court to set deadlines for the fact finder's hearings and findings to be concluded, and it would require that if actions are started in the other permissible forums (the circuit court or the Local Government Claims Review Board), a court hearing those issues or appeals from them would likewise set deadlines for actions to be completed. Most importantly, it would establish clearly the legislature's intent that these cases be resolved expeditiously.

Response:

It is also important that the Local Government Claims Review Board, created to help resolve these disputes as part of the 1979 implementing legislation for the Headlee amendment but long moribund, be invigorated. This has been the recommendation of both the Governor's Blue Ribbon Commission on the Headlee amendment (1994) and of the Citizen's Research Council in its 1998 report on the *Durant* decision. In fact, the governor has recommended funding for the board in his fiscal year 1998-99 budget recommendations, and has recently appointed members to the board.

Against:

The attorney general's office has raised several concerns. Under the bill, the standard for remanding an appeal back to a circuit court or to the Local Government Claims Review Board would be whether any fact finding in the case was "clearly erroneous"; this is a phrase that has not been tested by litigation. It is unclear whether this is a higher or lower standard than the standard for reviewing a state administrative action in a contested case hearing under the Administrative Procedures Act. That standard is whether an action is "supported by competent, material and substantial evidence on the whole record". Further, the bill would appear to allow a person who brought an action to the Local Government Claims Review Board to then have an expedited appeal to the court of appeals or the supreme court, rather than following the usual process for appealing a state administrative decision to the circuit court. And, in other similar appeals of state agency actions, an appeal from the circuit court to the court of appeals is "by leave" (by application to the court), rather than "by right" (an automatic right to appeal). The bill would appear to be creating an unprecedented "shortcut" in the judicial process.

Response:

Taxpayers are already constitutionally authorized to seek redress in the court of appeals for Headlee claims, so it is hard to argue that the bill adds a new right. It simply seeks to expedite the process that the constitution guarantees to taxpayers.

Against:

The bill may raise constitutional questions of separation of powers, as it would require the supreme court and the court of appeals to take certain steps and set certain deadlines for adjudication of Headlee claims. The judicial branch is a coequal branch of government, and as such the legislature may not issue such ultimatums to the court.

POSITIONS:

The Department of Management and Budget supports the concept of the bill. (5-21-98)

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.