

HOUSE BILL No. 6228

November 5, 1998, Introduced by Reps. Richner, Perricone, Raczkowski, Scranton, Voorhees, Goschka, Birkholz, Godchaux, Hammerstrom, Middaugh and Dalman and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding section 1457.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 1457. (1) A COURT OF THIS STATE SHALL NOT ENTER ANY
2 ORDER OR APPROVE ANY SETTLEMENT THAT REQUIRES THE STATE OR A
3 POLITICAL SUBDIVISION OF THE STATE TO IMPOSE, INCREASE, LEVY, OR
4 ASSESS ANY TAX FOR THE PURPOSE OF ENFORCING ANY FEDERAL OR STATE
5 COMMON LAW, STATUTORY, OR CONSTITUTIONAL RIGHT OR LAW, OR HAS THE
6 EFFECT OF IMPOSING, INCREASING, LEVYING, OR ASSESSING ANY SUCH
7 TAX.
- 8 (2) A COURT OF THIS STATE SHALL NOT ENTER ANY ORDER OR
9 APPROVE ANY SETTLEMENT THAT REQUIRES THE STATE OR A POLITICAL
10 SUBDIVISION OF THE STATE TO IMPLEMENT A SPENDING MEASURE FOR THE
11 PURPOSE OF ENFORCING ANY FEDERAL OR STATE COMMON LAW, STATUTORY,

1 OR CONSTITUTIONAL RIGHT OR LAW, UNLESS THE COURT FINDS BY CLEAR
2 AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING CONDITIONS ARE
3 MET:

4 (A) THERE ARE NO OTHER MEANS AVAILABLE TO REMEDY THE VIOLA-
5 TION OF RIGHTS OR LAWS AND THE PROPOSED SPENDING MEASURE IS NAR-
6 ROWLY TAILORED TO REMEDY THE VIOLATION AT ISSUE.

7 (B) THE SPENDING MEASURE WILL NOT CONTRIBUTE TO OR EXACER-
8 BATE THE VIOLATION INTENDED TO BE REMEDIED.

9 (C) THE PROPOSED SPENDING MEASURE WILL NOT RESULT IN A LOSS
10 OF REVENUE FOR THE POLITICAL SUBDIVISION IN WHICH THE SPENDING
11 MEASURE IS TO BE IMPLEMENTED.

12 (D) THE PROPOSED SPENDING MEASURE WILL NOT RESULT IN THE
13 LOSS OR DEPRECIATION OF PROPERTY VALUES OF THE TAXPAYERS WHO ARE
14 AFFECTED.

15 (E) THE PROPOSED SPENDING MEASURE WILL NOT CONFLICT WITH THE
16 APPLICABLE LAWS OF THIS STATE OR THE POLITICAL SUBDIVISIONS
17 CONCERNED.

18 (F) PLANS SUBMITTED BY STATE AND LOCAL AUTHORITIES WILL NOT
19 EFFECTIVELY REDRESS THE VIOLATION AT ISSUE.

20 (3) A FINDING UNDER SUBSECTION (2) SHALL BE SUBJECT TO IMME-
21 DIATE INTERLOCUTORY DE NOVO REVIEW.

22 (4) NOTWITHSTANDING ANY LAW OR RULE OF PROCEDURE, ANY
23 AGGRIEVED CORPORATION, UNINCORPORATED ASSOCIATION, OR OTHER
24 PERSON RESIDING OR PRESENT IN THE STATE OR POLITICAL SUBDIVISION
25 IN WHICH A SPENDING MEASURE IS IMPLEMENTED IN ACCORDANCE WITH
26 SUBSECTION (1) OR (2), AND ANY OTHER ENTITY LOCATED WITHIN THAT

1 STATE OR POLITICAL SUBDIVISION, MAY INTERVENE IN ANY PROCEEDING
2 CONCERNING THE IMPLEMENTATION OF THE SPENDING MEASURE.

3 (5) A PERSON OR ENTITY THAT INTERVENES PURSUANT TO SUBSEC-
4 TION (4) MAY PRESENT EVIDENCE AND APPEAR BEFORE THE COURT TO
5 PRESENT ORAL AND WRITTEN TESTIMONY AND APPEAL ANY FINDING
6 REQUIRED TO BE MADE BY THIS SECTION OR ANY OTHER RELATED ACTION
7 TAKEN TO IMPOSE A SPENDING MEASURE THAT IS THE SUBJECT OF THE
8 INTERVENTION.

9 (6) NOTWITHSTANDING ANY LAW OR RULE OF PROCEDURE, ANY ORDER
10 DESCRIBED IN SUBSECTION (2) THAT IS ENTERED BY A COURT OF THIS
11 STATE, AND ANY SETTLEMENT DESCRIBED IN SUBSECTION (2) THAT IS
12 APPROVED BY A COURT OF THIS STATE, SHALL AUTOMATICALLY TERMINATE
13 ON THE DATE THAT IS 1 YEAR AFTER THE LATER OF THE FOLLOWING:

14 (A) THE DATE ON WHICH THE SPENDING MEASURE IMPOSED BY COURT
15 ORDER IS FIRST IMPLEMENTED.

16 (B) THE DATE OF THE ENACTMENT OF THIS SECTION.

17 (C) AN EARLIER DATE, IF THE COURT DETERMINES THAT THE VIOLA-
18 TION OF RIGHTS OR LAWS HAS BEEN CURED TO THE EXTENT PRACTICABLE.

19 (7) ANY NEW ORDER OR SETTLEMENT RELATING TO THE SAME ISSUE
20 TO WHICH AN ORDER OR SETTLEMENT DESCRIBED IN SUBSECTION (6) IS
21 APPLICABLE IS SUBJECT TO ALL THE REQUIREMENTS OF THIS SECTION.

22 (8) THERE IS A PRESUMPTION THAT A SPENDING MEASURE REQUIRED
23 BY A COURT OF THIS STATE IS NOT A NARROWLY TAILORED MEANS OF REM-
24 EDYING VIOLATIONS OF FEDERAL OR STATE RIGHTS OR LAWS.

25 (9) AS USED IN THIS SECTION, "SPENDING MEASURE" MEANS A LAW
26 OR OTHER MEASURE REQUIRING THE EXPENDITURE OF FUNDS FOR A

1 PARTICULAR PURPOSE IN ADDITION TO FUNDS ALREADY AVAILABLE FOR
2 THAT PURPOSE.

3 Enacting section 1. In enacting this legislation, it is the
4 intent of the legislature to reaffirm both of the following con-
5 stitutional principles:

6 (a) Pursuant to section 1 of article IX of the state consti-
7 tution of 1963, only the legislature has the power to impose
8 taxes.

9 (b) Pursuant to section 25 of article IX of the state con-
10 stitution of 1963, any court-ordered tax increase requires direct
11 voter approval.