

From Alan  
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# Editorial: End county budgeting by lawsuit

Legislation would restrict legal squabbles among county officials over appropriations

*When voters elect county executives and county commissioners, they expect them to make budget decisions — not local circuit court judges. But in a number of cases, particularly in Wayne County, other county officials, unhappy with their budgets, sometimes seek to circumvent the local budget process through lawsuits. The state House has adopted legislation to stop these legal end runs. The Michigan Senate should do so as well.*

Currently, Wayne County is being sued by Prosecutor Kym Worthy, contending that her budget isn't adequate. The county was sued by former Sheriff Warren Evans, and by the Wayne Circuit Court judges.

A Wayne Circuit judge found for the sheriff; a Livingston County judge's ruling in favor of the courts pushed the Wayne County government into a \$55 million settlement.

Michigan Supreme Court cases have held that courts have the "inherent power" under the state constitution to compel appropriations necessary to maintain their operations. But the rulings have said courts can only compel county funds to maintain court functions at an "adequate" level, not an "optimum" one.

The legislation adopted by the House, HB 5076, can't change that and doesn't try.

But it does bar litigation by other elected members of a county's executive branch, such as prosecutors and sheriffs, from suing to compel additional appropriations from county commissions or executives.

In Wayne County, the county charter vests the power to propose budgets in the county executive, and the ultimate budget authority with the county commission.

The budget process at the county level is the same as at the state level. The commissioners hold budget hearings and department heads are allowed to make their case for appropriations. If they are still not satisfied, they have the bully pulpit of their offices to take their cause to the public.

That's where the process should end. If a sheriff, county clerk or prosecutor wants more money, he or she should be a skilled enough politician to work the legislative branch and the public. Law enforcement officials such as sheriffs and prosecutors should enjoy a natural advantage in the budget process, since their work is highly valued by the public and they are often the most visible faces of county government. It is not an accident that the Wayne and Macomb county executives are former sheriffs and the Oakland executive is a former prosecutor.

Worthy's suit began in October. This legislation shouldn't affect the outcome of her case and we don't intend to intrude ourselves into the particulars of her case. But sheriffs, clerks, treasurers and prosecutors in the future should understand when they seek office that their budgets will ultimately be decided by the

commissioners, not by circuit judges on a case-by-case basis.

Such a process, if followed in Oakland County, for example, would wreck its successful multi-year budgeting program.

June West, a spokeswoman for Wayne exec Robert Ficano, notes that the county last year had to pay \$3 million in legal costs for suits brought against it to overturn the budget process. Currently, there is no incentive to reach an agreement if the taxpayers will be burdened not only with the costs of the outcome of a suit for more appropriations, but the legal fees as well.

Budgets should be decided in the political arena, where the players are directly accountable to the voters, not in courtrooms. This legislation will help return budget-making to the right venue.

OUR EDITORIALS

# Budget battle is hurting Wayne County

*County should get permanent relief from circuit court spending from appellate courts*

**W**ayne County is suffering financially, in part because of the mismanagement of funds by the Wayne County Circuit Court. This is not a new problem, but the consequences are growing.

We've noted the problem with the court's spending previously, but recently, Standard & Poor's lowered its rating on the county's previously issued bonds from an "A+" to a "BBB+," meaning the agency is less confident the county can repay its debt. This could also make it harder for the county to borrow in the future. In a new analysis, the rating service lays out one of the chief reasons for the lowered rating: "While Wayne County has done, in our view, a commendable job managing the operations under its control, the impact on

the county's financial position by the circuit court system is both notable and volatile."

The meaning is clear.

While several factors contribute to the lowered bond rating, the problems with the circuit court are glaring. The county has a requirement to fund circuit court operations - but possesses a limited ability to rein in costs because the courts operate independently. And when the county does try to control spending, the court sues. "You can't budget by litigation," says County Executive Robert Ficano.

Other departments, including his own, have taken pay and benefit cuts, but Ficano says nothing "shames" the court. The circuit court refuses to make concessions. It also has rejected other commonsense cost-saving measures, such as integrating human resources and information technology services with the county.

When the court overspends, the county is left to cover the extra costs. The county has tried to impose restraints on the court and has ended up in a court

battle over the matter. The state high court has ruled previously that courts have the authority to ensure county boards are meeting the needs of the local courts.

But the needs must be "serviceable" and "reasonable and necessary," not simply a wish list.

After a lower court instructed Wayne County to remove any spending controls, a state appellate court granted the county a stay in March to continue with the measures.

While this was a temporary win for the county, it is not a permanent fix. Standard and Poor's recommends the county find a long-term solution that would allow it to control court expenditures. As of now, the court is "making the county's financial position less stable," the rating agency states.

Last fiscal year, the county allocated about \$70 million of its \$580 million general fund to the circuit court; now the court is requesting an additional \$21 million, Ficano says. This is money the county doesn't have to give out, in light of its declining revenues.

Virgil Smith, chief judge of the Wayne Circuit Court, has argued the court deserves every penny it's given - and that it should be granted more. In *The Detroit News*, Smith wrote that the court is "one of the 15 busiest

trial courts in the nation," processing more than 100,000 cases each year. Regardless of problems within the

court, the impasse between the county and circuit court should end. As Ficano notes, the system needs to change. At the very least, appellate courts should overturn the ruling imposing more circuit court costs on Wayne County.

Detroit Free Press

## OPINION

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## Editorial

## A blank check for Wayne County courts is out of order

Wayne County was right to appeal an out-of-town circuit judge's decision that it should cough up hundreds of millions of dollars more to operate the county's courts.

"If I could appoint Brooks Patterson and Mark Hackel, I bet I could get a pretty favorable ruling," said county Executive Robert Ficano, referring to the incongruity of having a circuit court judge rule on another circuit court's pleas that it be allowed to spend whatever it deems necessary -- in fact, in this case, more than the court had requested.

Patterson and Hackel, Ficano's fellow executive and executive-elect in neighboring Oakland and Wayne Counties, surely would sympathize.

But Wayne County is cursed with its own brand of internecine warfare, as elected officials go at each other's throats. Beleaguered -- and already well-taxed -- citizens can't help but wonder why their elected officials won't pull together during hard times.

Now, with a ruling in hand that says they don't have to pull together, Wayne County circuit judges are unlikely to try to save any money. Their patron, St. Clair County Circuit Judge Peter Deegan, has ordered Ficano to come up with 110 more sheriff deputies and other court employees to serve them (at a cost of roughly \$1.1 million a year), to hire enough temporary help in the county clerk's office to bring filings up to date, to fund a new computer system of the court's choosing, to provide more janitors, and to fix or replace three of the court's four buildings. Deegan also is forcing the county to hire a special master named by him to ensure that "the citizens of Wayne County may truly have access

to justice."

Ficano likens the situation to having your neighbor possess your credit card and indulge whatever spending they like. While his initial response was overwrought, including the \$500-million total he tallied as the bill

that would result from Deegan's order, he

has the higher ground in defense of the county's taxpayers.

Nonetheless, Deegan rounded up some appalling testimony.

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Most notably, Wayne County needs to take seriously the deteriorating physical conditions and security at the Lincoln Hall of Justice, where juvenile and family division cases are handled. Filing backlogs include 10,000 warrants and at least 65,000 documents for the Child and Family Division. Friend of the Court collections of child support are behind by \$5 billion.

The court is also stymied by a lack of adequate, and interactive, information technology. But Deegan should not be ordering a specific system, which he did, and his insistence that the circuit Now, with a ruling in hand that says they don't have to pull together, Wayne County circuit

court have full control is hardly a recipe for collaboration and may not even be a recipe for success.

As Deegan documented, Wayne County has a running deficit projected at \$266 million as of Sept. 30, nearly a quarter of which is attributed to the circuit court not staying within the budget set by the County Commission. Neither the county nor the 3rd Circuit Court can continue on this path, and the pressure to cut spending will only grow as property taxes decline farther. Instead of savoring victory in their suit against the county, the leaders of the Wayne County Circuit Court need to sit down and negotiate an economical way forward. Taxpayers are not going to be nearly as eager to hand them blank checks as a fellow circuit court judge seems to be.

# Ruling a setback for Worthy's budget hopes

BY STEVE PARDO  
The Detroit News

**Detroit** — In a setback for Wayne County Prosecutor Kym Worthy, a judge on Tuesday lifted a budgetary restraining order that kept her office funded at a previous higher rate than officials approved for the fiscal year.

Worthy sued the county on Oct. 1, the day the fiscal year started, saying the \$25.6 million budget approved by county commissioners was insufficient to run her department and would cause her to issue mass layoffs. She said she needs at least \$34 million and was promised that

amount for fiscal year 2012-13 by County Executive Robert Ficano in 2010.

Wayne County Circuit Judge Wendy Baxter issued the restraining order in early October that kept funding at a yearly rate of about \$28 million, the amount for her budget last year.

But the county challenged the order and in a ruling Wednesday, Baxter said Worthy's office failed to show it would suffer immediate harm if the restraining order continued.

To date, no action has been taken that reduces plaintiff's 2011-12 staff to the fewer wage

and salary allotments under the 2012-13 budget appropriation," Baxter wrote.

Baxter cited testimony in October from Kevin Haney, the county deputy chief financial officer, that showed prosecutorial staffers will be on the payroll until the end of the year. That directly refuted the allegations of imminent harm, Baxter said.

Worthy's office said it will continue to fight for the extra funding. "She has ruled that our request for a preliminary injunction is premature, at this time, because we have not yet demonstrated immediate and irrepara-

ble harm," Worthy said in a statement. "We are continuing to pursue our legal remedies, which may necessitate a trial."

Wayne County officials said they would work with Worthy's office over funding issues.

"We appreciate the judge's careful review of this matter," Ficano said in a statement. "We all understand that times are tough and the county has been struggling to keep a balanced budget with \$100 million less in property tax revenue than five years ago. We respect the prosecutor, and I'm confident we'll pull together to make it work."

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## WAYNE COUNTY

### Judge lifts order; Worthy to face cuts

Wayne County Prosecutor Kym Worthy must face off again with county budget cutters after a judge lifted a restraining order that kept last year's budget in place.

Wayne County Circuit Judge Wendy Baxter ruled Tuesday that Worthy "did not carry her burden of proof to show immediate harm" as a result of a \$26.5-million budget that County Executive Robert Ficano requested and commissioners approved.

Worthy had argued to commissioners during budget hearings that she couldn't fulfill her duties as required by the constitution and other laws with the smaller budget. But commissioners followed Ficano's recommendation and reduced her budget as part of cost cutting in county government.

Worthy pointed out that the ruling doesn't end the case and said she'll continue preparing a lawsuit. Meanwhile, though, a bill in the state Legislature would limit the ability of officials such as Worthy to sue the county that funds them.