Analysis of School Finance Ballot Proposal and Statutory Plan

*

***

*

Citizens Research Council of Michigan

625 Shelby Street, Suite 1B
Detroit, Michigan 48226-3220

Phone (313) 961-5377 Fax (313) 961-0648

1502 Michigan National Tower
Lansing, Michigan 48933-0423

Phone (517) 485-9444 Fax (517) 485-0423

Introduction

On December 24, 1993 the Legislature adopted a complex plan to restructure the funding of elementary-secondary education. The plan consists of a ballot proposal to amend the state Constitution, together with implementing legislation, and an alternative statutory plan which will take effect if the ballot proposal is rejected. The ballot proposal (Proposal A) will be submitted to voters at a special election on March 15, 1994, and would amend several state constitutional provisions to:

— Permit school operating taxes to be imposed on a nonuniform basis.

— Limit assessment increases on individual parcels of existing property to the lesser of five percent or inflation beginning in 1995. Property would be reassessed at 50 percent of true cash value upon transfer in ownership.

— Increase the sales tax rate from 4 to 6 percent, beginning May 1, 1994. The additional revenue from the sales tax (and other taxes) would be dedicated to the state school aid fund.

— Require that the state guarantee each local school district in the 1995-96 state fiscal year and thereafter at least as much combined state and local operating revenue per pupil as in the 1994-95 fiscal year.

— Require a three-fourths vote of the Legislature to increase school operating taxes beyond those in effect February 1, 1994.

The major difference between the two approaches is that Proposal A and its implementing legislation rely primarily on a sales tax increase, while the statutory alternative plan relies primarily on increases in the income tax and the single business tax. The proposed sales tax increase requires voter approval of an amendment to the state Constitution, while the Legislature can increase the income tax rate and the single business tax rate by statute.

Proposal A is a proposed constitutional amendment and it must be distinguished from the various statutes adopted by the Legislature to implement it. It is Proposal A, and not the implementing legislation, which voters will approve or reject on March 15, 1994. By contrast, the implementing legislation for Proposal A, as well as that for the statutory alternative, are subject to alternation at the discretion of the Legislature.

For example, under the statutory alternative the rate of the income tax is to increase from 4.6 percent to 6.0 percent if Proposal A is rejected, but is to decrease to 4.4 percent if Proposal A is approved. However, there is nothing in Proposal A itself which would affect the income tax rate. Thus, regardless of the disposition of Proposal A, legislative discretion to either increase or decrease the rate of the income tax, or the rate of any other tax not limited by the Constitution, will remain unchanged

Part I. The Proposed Constitutional Amendment

Proposal A was placed on the ballot by joint resolution of the Legislature and will be submitted to voters at a special election on March 15, 1994.

A. The Local Property Tax

Section 3 of Article 9 of the Michigan Constitution states that

> [t]he legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1996, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

Section 3 of Article 9 imposes three requirements upon the Legislature regarding how property taxes must be assessed and levied: ad valorem property taxes must be levied uniformly across various classes of property, property must be uniformly assessed at the same proportion of true cash value, and the Legislature is required to provide a system for the equalization of assessments. Proposal A would affect each of these requirements.

1. Uniformity of Ad Valorem Taxation

The rule of uniform taxation is the basic property tax requirement in Michigan which underlies the entire tax structure. While the requirement does not restrict the Legislature's power to prescribe what property is taxable and what property is exempt, it does require that property taxed on an ad valorem basis must be taxed in a uniform manner. The exception for property paying specific taxes is the method by which the Legislature may classify property for special treatment or adopt taxes other than ad valorem property taxes.

Purpose of Uniformity Requirement. The uniformity requirement has been part of Michigan's fundamental law for over 93 years. Its history suggests that the requirement was intended to prohibit the Legislature from classifying property for ad valorem taxation purposes and imposing different levels of taxation on each class.* The term "classification," as it relates to taxation of property,* describes a process under which different classes of property are assessed according to different standards, or different percentages of the same standard, or are taxed at different rates. Although classification may results as the by-product of the failure of local assessment practices to comport with a constitutional or statutory standard of uniformity, classification may also occur as a matter of public policy in absence of constitutional or statutory provisions to prohibit such variation among different classes of property.

* Public Act 206 of 1893 as amended, the general property tax act, establishes sic classes of real property (agricultural, commercial, developmental, industrial, residential, and timber-cutover) and five classes of personal property (agricultural, commercial, industrial, residential, and utility). Under Proposal A, each of these classes or other new classes that the Legislature might establish, such as homestead property, could be taxed at a different level for school operating purposes.

That the present uniformity provision was intended to prohibit the Legislature from classifying property for ad valorem taxation purposes and levying different levels of taxation upon each class is manifest from the record of the 1961 Constitutional Convention debates. The present uniformity language was introduced in the 1961 Constitutional Convention on February 7, 1962 in the form of Committee Proposal 51. A minority report of the committee on finance and taxation proposed an alternative that would have allowed the Legislature to impose ad valorem or other taxes provided they were uniform within classes of persons or property. In response to this alternative proposal, Delegate Van Dusen made the following observation:

> Bear in mind that the opposite of uniformity, which is what the majority report seeks in property taxation, is discrimination. You either have uniformity or you have discrimination. Now, what the minority report suggest is that the legislature ought to have the unlimited right to discriminate in subjecting property to taxation. There just isn't any question about it. Classification is a form of discrimination. 1 Official Record, Constitutional Convention 1961, at 860.

Impact of Proposal A. Proposal A would amend Section 3 of Article 9 to permit the Legislature to authorize ad valorem property taxes on a nonuniform basis for school operating purposes. Because Proposal A, if adopted would become part of the state Constitution, no meritorious question could be broached concerning its constitutionality on state grounds. However, given the fact that the uniformity requirement has been part of the state's fundamental law since 1900, amending the state Constitution to authorize the Legislature to levy ad valorem taxes on a nonuniform basis would represent a significant departure in public policy. Whether the Legislature may achieve the same end (nonuniform taxation of property on an ad valorem basis) but without amending the Michigan Constitution is a matter which is discussed in Part II.

2. Uniformity of Assessments

The second requirement of Section 3 of Article 9 which Proposal A would affect is that real and tangible personal property not exempt by law be uniformly assessed at no more than 50 percent of its true cash value — its usual selling price. The Legislature has provided by law that property is to be assessed annually at 50 percent of its true cash value; in effect, a market-value based system of assessing property.

Impact of Proposal A. Proposal A would superimpose upon the present system, a modified acquisition-value system of assessing property. Beginning with 1995 taxes, instead of annual assessments of property at 50 percent of current market value, annual assessment increases on individual parcels of existing property would be limited to the lesser of five percent or inflation. A parcel of property would not be reassessed "at the applicable proportion of current true cash value" until it was transferred as defined by law. Presumably, the phrase "applicable proportion of current true cash value" is intended to refer to the statutory standard of 50 percent, but arguably it might also refer to the actual percentage of true cash value that property in a given jurisdiction would then be assessed at because of the assessment cap.

The annual assessment cap and the reassessment-when-sold provisions of Proposal A would create significant disparities in assessments among parcels. Because of the assessment cap,

houses with a greater appreciation in price would have relatively lower assessments in relation to current market value. For example, assuming a five percent inflation rate, a house that increased in market value at five percent annually would continue to be assessed at 50 percent of market value, while one that increased by seven percent annually would be assessed at only 41 percent of its actual market value after ten years.

Similarly, the Proposal A assessment cap and reassessment-upon-sale provisions would also result in significantly different assessments on given parcels of the same market value, depending upon when they were sold. For example, with a seven percent annual increase in market value, a house sold after ten years would be assessed at 21 percent more than a comparable house that had not been sold. This difference in assessment would result in differences in the amount of taxes paid. In short, a modified acquisition-value assessment system would create significant disparities in the taxes paid on houses of the same market value which received the same benefits from local government services. These factors may explain, at least in part, why Michigan voters have rejected three other ballot proposals in the last 15 months (two in November 1992 and one at a special election in June 1993) which would have amended the state Constitution to establish an assessment cap and reassessment-upon-sale approach.

3. Equalization of Assessments

Finally, Section 3 of Article 9 of the state Constitution requires the Legislature provide for a system of equalization of assessments. Because Michigan has about 1500 local assessing jurisdictions, cities and townships, equalization of assessments is necessary to equitably distribute the tax burden among the assessing jurisdictions within each of the 83 counties in the state and to ensure uniformity in assessments among the counties.

The modified acquisition-value system of Proposal A would be superimposed upon the existing system of equalization of assessments. Since assessments within a given assessing jurisdiction would be no longer at 50 percent of market value, assessments among assessing jurisdictions would also vary from this 50 percent standard, depending on their relative rates of increase in property values and relative rates of turnover from property sales. Legislation implementing Proposal A would be needed to address this impact upon the system of equalization of assessments.

B. The State Sales Tax

Section 8 of Article 9 of the state Constitution limits the rate of the general sales tax to 4 percent. The state Constitution requires that 60 percent of sales tax collections be deposited in the state school aid fund, 15 percent be distributed to townships, cities, and villages on a population basis, and the remaining 25 percent be deposited in the state general fund.

Proposal A would amend Section 8 of Article 9 of the state Constitution to increase the rate of the sales and use taxes to 6 percent beginning May 1, 1994. Revenues from these increases would be dedicated to the state school aid fund. It is estimated that a two percentage point increase in the sales and use tax rates would generate $1.9 billion during the 1994-95 state fiscal year.

The 4 percent general sales tax rate in Michigan is relatively low compared to other states. The median state sales tax rate in the 45 states imposing sales taxes is 5 percent and 16 of those states

impose state-level rates of 6 percent or higher. In addition, 31 states have local general sales taxes which are not authorized in Michigan. Michigan sales taxes were $341 per capita in 1991, about 31 percent below the national average of combined state and local sales taxes. Increasing the Michigan sales tax rate to 6 percent would raise Michigan sales tax collection per capita to slightly higher than the national average (2.9 percent) of state and local general sales taxes.

C. Other Issues

1. The Three-Fourths Vote Requirement

Proposal A would add to the end of Section 3 of Article 9 of the state Constitution the following sentence:

> A tax that increases the statutory limits in effect as of February 1, 1994 on the maximum amount of ad valorem property taxes that may be levied for school district operating purposes requires the approval of 3/4 of the members elected to and serving in the Senate and in the House of Representatives.*[*]

Two considerations arise. First, given the complexity of the legislation that would implement Proposal A, it is not precisely clear to what phrase "the statutory limits in effect as of February 1, 1994" refers. At a minimum, the phrase may refer to the 6-mill statutory limit upon the statewide property tax and the 18-mill statutory limit upon the local property tax which could be imposed if Proposal A is approved. (However, it might also include local school district enhancement millages, hold-harmless millages, and intermediate school district millage. These millages are described in **Part III**.)

Second, it may be said of limitations in general that the protections afforded by them may be diminished by increasing the number of items to which the limitations do not apply. Since Proposal A does not define the term "school district operating purposes," conceivably the state Legislature could circumvent the three-fourths vote requirement by redefining the term. If at some future date, the statutory limits in effect as February 1, 1994 were deemed unduly restrictive and the requisite three-fourths vote could not be obtained, it is conceivable that the Legislature might attempt to remove items from the category of school district operating purposes and thereby from the constraints of the statutory limits.

2. Public Service Business Property

The state Legislature is required under Section 5 of Article 9 of the Michigan Constitution to provide by law for the assessment of public service business (utility) property. While such property is to be assessed at the same percentage of true cash value as other property (50 percent), the millage rate levied upon utility property is the statewide average rate instead of the actual rate of the taxing jurisdiction in which it is located. Proposal A would amend Section 5 of Article 9 to

[*] The only provision of the state Constitution that presently imposes a three-fourths vote requirement upon the Legislature is Section 9 of Article 2, which governs legislative amendment or repeal of an initiated law adopted by voters. In general, legislative actions require only a simple majority. The Constitution does require a two-thirds majority in certain instances: for example, to give a law immediate effect, to override a gubernatorial veto, to alter or repeal a banking law, or to propose an amendment to the state Constitution.

require that utility property be taxed at the statewide average rate levied upon only other "commercial, industrial, and utility property." As a result, utility property taxes would not reflect the reduction in school operating property taxes levied upon homestead property, but would reflect the reduction in property taxes levied upon business property.

3. Earmarking of Tobacco Taxes

Proposal A would add a section 36 to Article 9 of the state Constitution which would require that "[s]ix percent of the proceeds of the tax on tobacco products shall be dedicated to improving the quality of health care of the residents of this state."

4. The Implementing Legislation

If Proposal A is approved by voters on March 15, 1994, numerous statutory tax changes will subsequently take effect, as are summarized below. As was noted in the Introduction, Proposal A should be distinguished from its implementing legislation. It is Proposal A, not the implementing legislation, which voters will approve or reject on March 15, 1994 and which will, if approved, become a part of the state Constitution. The implementing legislation could be altered at the discretion of the Legislature even if Proposal A is approved by voters.

Personal Income Tax. Public Act 328 of 1993 amends Public Act 291 of 1967, the income tax act. Beginning on May 1, 1994, the rate of the income tax would be decreased from 4.6 percent to 4.4 percent. The reduction in the rate would decrease state revenue by $255 million. Act 328 would also provide tax relief to renters by increasing from 17 percent to 20 percent the amount of rent counted as property taxes. This would reduce state revenues by an additional $40 million. Despite these reductions, the net yield of the income tax would increase by $399 million due to reduced homestead property tax credits. Act 328 would require that 14.4 percent of gross income tax collections generated at the 4.4 percent rate be deposited in the school aid fund, beginning October 1, 1994.

Use Tax. Public Act 326 of 1993 amends Public Act 94 of 1937, the use tax act, to increase the rate of the tax from 4 percent to 6 percent. Revenues from the use tax increase will be deposited in the state school aid fund. Act 326 also adds certain interstate telephone communications to the use tax base. The increase in rate does not apply to the consumption of electricity, natural gas, or home heating fuels used for residential purposes.

Commercial Facilities Tax Abatements. Public Act 340 of 1993 amends Public Act 255 of 1978. The specific tax rate for commercial facilities would be equal to one-half of 1993 school operating taxes plus one-half of all other ad valorem property taxes. (The same would be true of technology park facilities.)

Industrial Facilities Tax Abatements. Public Act 334 of 1993 amends Public Act 198 of 1974. The specific tax rate for replacement facilities would be calculated in the present manner. The specific tax for new facilities would equal:

-- (for abatements effective before January 1, 1994) one-half of 1993 school operating taxes plus one-half of all other ad valorem property taxes.

-- (for abatements effective after December 31, 1993) the sum of one-half of all property taxes other than the state education tax plus all of the state education tax. The state treasurer could grant an exemption from the state education tax for economic reasons.

Statewide Property Tax. Public Act 331 of 1993 establishes a state education tax. Beginning in 1994, the state would impose a 6-mill statewide property tax upon all property not exempt by law from ad valorem property taxation. It is estimated that during the 1994-95 state fiscal year the tax would generate approximately $1,062 million which would be deposited in the school aid fund.

School District Property Tax. Public Act 312 of 1993 amends Public Act 451 of 1976, the school code. Beginning in 1994, a local school district could levy for school operating purposes a property tax of not more than 18 mills, or the number of mills that were levied for school operating purposes in 1993, whichever was less. Homestead property would be exempt. It is estimated the 18 mill tax would generate approximately $1,389 million. Additional mills could be imposed by local school districts with per pupil expenditures above $6,500 and by intermediate school districts for special education, vocational education, and operating purposes. The additional local and intermediate school district millages would generate $223 million and $510 million, respectively. No revenue estimate is available for enhancement millage that might be levied.

State Real Estate Transfer Tax. Public Act 330 of 1993 creates the state real estate transfer tax. Beginning January 1, 1995 transfers of interest in real property would be taxed at the rate of $10 per $500 (two percent) of the value of the property being transferred. The proceeds of the tax would be deposited in the state school aid fund. It is estimated the tax would generate $340 million during the 1994-95 state fiscal year.

Tobacco Taxes. Public Act 327 of 1993 imposes upon tobacco product sales a tax at a rate of 16 percent of the wholesale price for non-cigarette tobacco products and at a rate of 37.5 mills per cigarette (75 cents per pack). This compares to a current rate of 12.5 mills per cigarette (25 cents per pack). Act 327 requires that 100 percent of the tax on non-cigarette tobacco products be deposited in the state school aid fund. Revenue from the cigarette tax would be allocated as follows: 25.3 percent to the state general fund, 63.4 percent to the school aid fund, 4 percent to the health and safety fund, and 1.3 percent to local health departments. (The remaining 6 percent would be earmarked b Proposal A to improve the quality of health care for state residents.) Act 327 is expected to generate approximately $343 million in additional revenue.

Part II. The Alternative Statutory Plan

A. General Considerations

Whether proposed by the state Legislature or by initiative petition, statewide ballot proposals regarding local property taxation and school finance have not fared well. During the past 22 years, Michigan voters have rejected 13 of 14 statewide ballot proposals intended to address either or both of these issues. All of the ballot proposals that were rejected would have reduced reliance upon the local property tax, including five proposals which would have increased the state sales tax rate. No doubt cognizant of this history, the Legislature on December 24, 1993, also adopted a number of statutory enactments which are to take effect if Proposal A is rejected. These statutes were signed into law by the Governor on December 31, 1993 and are summarized below.

1. Tax Changes

Personal Income Tax. Public Act 328 of 1993 amends Public Act 281 of 1967, the income tax act. Beginning on May 1, 1994, the rate of the income tax would increase from 4.6 percent to 6 percent and the personal exemption would increase to $3,000 from $2,100 (to $3,900 for seniors). Act 328 also would provide tax relief to renters by increasing from 17 percent to 20 percent amount of rent counted as property taxes. The increase in rate would generate approximately $1,782 million. The increased personal exemptions and renters' credit would reduce state revenues by about $352 million and $40 million, respectively. However, these reductions would be offset by a $573 million increase in state revenues due to a reduction in homestead property tax credits. As a result, the net income tax yield would be approximately $1963 million. Beginning May 1, 1994, total gross income tax collections from the increase in rate would be deposited in the school aid fund, together with 10.5 percent of the gross collections from the existing 4.6 percent rate, beginning October 1, 1994.

Use Tax. Public Act 326 of 1993 amends Public Act 94 of 1937, the use tax act, to add certain interstate telephone communications to the use tax base.

Single Business Tax. Public Act 329 of 1993 amends Public Act 228 of 1975, the single business tax act. Beginning May 1, 1994, the rate of the single business tax would be increased from 2.35 percent to 2.75 percent. The estimated $349 million increase in revenue would be deposited in the school aid fund.

Commercial Facilities Tax Abatements. Public Act 340 of 1993 amends Public Act 255 of 1978. The specific tax rate for commercial facilities would be equal to one-half of 1993 school operating taxes plus one-half of all other ad valorem property taxes. (The same would be true of technology park facilities.)

Industrial Facilities Tax Abatements. Public Act 334 of 1993 amends Public Act 198 of 1974. The specific tax rate for replacement facilities would be calculated in the present manner for abatements effective before January 1, 1994. In the case of abatements effective after December 31, 1993, neither replacement facilities nor new facilities would receive any abatement of school taxes (the state education tax, local school district taxes, and intermediate school district taxes),

nor any abatement of nonschool taxes levied by other units of local government that had exempted their taxes from abatement.

No new industrial abatement exemption certificate could be approved and issued by the state unless the local governmental unit and the owner of the industrial facility entered into a written agreement. The agreement would have to be filed with the Michigan Department of Treasury.

Tax Increment Financing. Public Act 334 of 1993 amends Public Act 450 of 1980 to require the Legislature to appropriate to tax increment finance authorities a sum to repay certain "eligible advances" or "eligible obligations" where tax increment revenues are insufficient as a result of a reduction in local school district operating millage. Public Act 323 of 1993 amends Public Act 197 of 1975 and Public Act 333 of 1993 amends Public Act 281 of 1986 to impose essentially the same requirements upon the Legislature with respect to downtown development authorities and local development finance authorities, respectively. Eligible advances or obligations would be those made or incurred before August 19, 1993.

Statewide Property Tax. Public Act 331 of 1993 establishes a state education tax. Beginning in 1994, an "education finance authority" would levy a 12-mill statewide property tax upon all non-homestead property not exempt by law from ad valorem property taxation. Before March 1 every other year (in every even-numbered year), an owner of property used as a homestead could claim exemption from the tax. It is estimated that during the 1994-95 state fiscal year the tax would generate approximately $926 million, which would be deposited in the school aid fund.

School District Property Tax. Public Act 312 of 1993 amends Public Act 451 of 1976, the school code. Beginning in 1994, a local school district could levy for school operating purposes a property tax not to exceed 12 mills. This tax would be levied upon all property not otherwise exempt and would require voter approval, unless existing voter approval had already been granted. It is estimated the 12-mill tax would generate $2,124 million. Additional mills could be imposed by local school districts with per pupil expenditures above $6,500 and by intermediate districts for special education, vocational education, and operating purposes. The additional local and intermediate school district millages would generate $223 million and $503 million, respectively. No revenue estimate is available for enhancement millage that might be levied.

State Real Estate Transfer Tax. Public Act 330 of 1993 creates the state real estate transfer tax. Beginning May 1, 1994, transfers of interest in real property would be taxed at a rate of $5 per $500 (one percent) of the value of the property being transferred. The proceeds of the tax would be credited to the state school aid fund. It is estimated the tax would generate $213 million annually.

Tobacco Taxes. Public Act 327 of 1993 imposes upon tobacco product sales a tax at a rate of 16 percent of the wholesale price for non-cigarette tobacco products and at a rate of 20 mills per cigarette (40 cents per pack). This compares to a current rate of 12.5 mills per cigarette (25 cents per pack). Act 327 requires that 100 percent of the tax on non-cigarette tobacco products be deposited in the state school aid fund. Revenue from the 40 cents-per-pack cigarette tax is to be allocated as follows: 47.5 percent to the state general fund; 42.5 percent to the school aid fund; 7.5 percent to the health and safety fund; and 2.5 percent to local health departments. Act 327 is expected to generate $135 million in additional revenue

Table 1

Revenue Impact of Proposal A (including Implementing Legislation) and Statutory Alternative

(In Millions)

	Ballot Proposal	Statutory Plan
STATE TAXES		
Sales and Use Tax	$ 1,898	9
Residential Utilities	(70)	--
Personal Income	(255)	$1,782
Renter's Credit	(40)	(40)
Personal Exemption	--	(352)
Property Tax Credit	694	573
Single Business Tax	--	349
Statewide Property Tax	1,062	926
State Real Estate Transfer Tax	340	213
Tobacco Taxes	343	135
Telephone Use Tax	60	40
Utility Property Tax	76	76
Industrial and Commercial Abatements	165	132
Tax Increment Finance Capture	--	(27)
TOTAL STATE TAXES	**$4,273**	**$3,816**
LOCAL TAXES		
School District Property Tax	1,389	2,124
Local School District Hold Harmless	223	223
Intermediate School Districts	510	503
Assessment Lag Elimination	102	102
Restored Tax Increment Finance Revenue	--	101
Tax Increment Finance Capture	--	(27)
Restored Tax Abatement Revenue	15	--
Property Tax Collection Fee	14	11
TOTAL LOCAL TAXES	**$2,253**	**$3,037**
TOTAL STATE AND LOCAL TAXES	**$6,526**	**$6,853**

Source: Michigan Department of Treasury; CRC calculation.

B. Constitutional Questions

There are two provisions of the statutory plan enacted by the Legislature concerning which questions of constitutionality may reasonably arise. The first question concerns whether the Legislature may authorize nonuniform taxation of property on an ad valorem basis by statute, notwithstanding the constitutional mandate that the Legislature "shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law." The second question concerns the constitutionality of Public Act 312 of 1993 which would authorize, among other matters, local school districts to establish themselves as charter authorities that are excluded from the tax limitations of Section 6 of Article 9 of the Michigan Constitution.

1. Uniformity of Ad Valorem Taxation

The uniformity provision of the Michigan Constitution, Section 3 of Article 9, was examined above (beginning at **Page 2**) as it related to the ballot proposal. The question considered there focused upon public policy: namely, whether the Michigan Constitution should be amended to authorize the Legislature to depart from the uniformity provision with respect to taxes imposed for school operating purposes. Michigan voters will resolve the public policy question on March 15, 1994, by approving or rejecting Proposal A. The question considered here is whether the Legislature may achieve the same result (nonuniform taxation of property on an ad valorem basis) without amending the state Constitution. As the Michigan Supreme Court has noted, "[i]n coming to our conclusion in this cause, we shall keep in mind that the provision of the Constitution relating to a uniform rule of taxation cannot be repealed or amended directly or indirectly be the legislature, nor can it be set aside by the courts...." **Thoman** v **City of Lansing**, (315 Mich 566, 571; 1946).

The uniformity requirement has been construed to be complied with when all the taxable property within a taxing jurisdiction is subjected to the same rate of taxation based upon a uniform mode or method of ascertaining the taxable value of property. (OAG, 1961-62, No. 3602.) Likewise, in **Titus** v **State Tax Commission**, (374 Mich 476, 480; 1965), the Michigan Supreme Court construed the requirement in the following terms:

> What is meant by the words "taxing by a uniform rule?" And to what is the rule applied by the Constitution? No language in the Constitution, perhaps, is more important than this; and to accomplish the beneficial purposes intended, it is essential that they should be truly interpreted, and correctly applied. "Taxing" is required to be "by a uniform rule;" that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation. But this is not all. The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform over all the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable.

As was noted earlier, although the uniformity provision imposes no restriction upon the Legislature's power to prescribe by lay what property is taxable and what property is exempt, it does establish the requirement that property being taxed on an ad valorem basis be subject to a uniform rule of taxation. The exception found in Section 3 of Article 9 of the state Constitution for property paying specific taxes is the authorization under which the Legislature is free to classify property for special treatment through taxation "in lieu of general ad valorem taxation."

Impact of Statutory Plan. The statutory plan, as concerns the matter in question, consists of Public Acts 312 and 331 of 1993. Act 312 amends the school code to require local districts to levy upon all property not otherwise exempt an ad valorem property tax of up to 12 mills for operating purposes, beginning in 1994. Act 331 establishes a separate state education tax of 12 mills to be levied by a state education authority. The state education tax also would be levied upon all property not otherwise exempt; however, a homestead property would be taxed at only 12 mills while non-homestead property would be taxed at 24 mills.*[*]

There are in essence two arguments made in support of the constitutionality of the taxation scheme authorized under Acts 312 and 331. The first is that the uniformity provision is not applicable because it applies only to property not exempt by law and that the Legislature has chosen, by law, to exempt homestead property from school operating millage. The second argument is that, even if the uniformity provision is applicable, it is not violated because each tax is to be levied at a uniform rate throughout its respective taxing jurisdiction.

It must be noted regarding the first argument that while the uniformity provision authorizes the Legislature to grant an exemption, the purpose is to allow the Legislature to impose specific taxes in lieu of ad valorem taxation, or to exempt property from taxation altogether, nor adopted specific taxes. The Legislature instead authorized two taxes, both of which are to be levied on an ad valorem basis. There is nothing in the language of the uniformity provision which suggests the Legislature may exempt some classes of property from ad valorem taxation under the general property tax act and then reimpose ad valorem taxation at different rates under separate statues.

Second, there is the argument that the uniformity provision, even if applicable, would not be contravened because both the local tax and the statewide tax would be levied uniformly throughout the respective taxing jurisdictions. In other words, the local tax would be levied at a uniform rate within each local school district, while the state education tax would levied at a uniform rate statewide, subject to the aforementioned exemption for homestead property.

It is doubtful that the constitutionality of the taxes under consideration can turn upon the use by the Legislature of separate statutes. The uniformity provision applies to ad valorem taxation in

---

[*] It was noted above at **Page 3** that when the present uniformity provision was introduced in the state Constitutional Convention, a minority report proposed an alternative proposal which would allow the Legislature to impose ad valorem or other taxes uniform within classes of persons or property. In the opinion of the minority report authors, a principle defect of the uniformity provision as proposed (and, ultimately adopted by the Convention and ratified by voters) was that it imposed too great a restriction upon the Legislature. For example: "[p]resently, all taxes levied on real property and personal property must be uniform, or the same. There can be no distinction between the two. The legislature cannot classify homes differently from industrial property. Distinctions between personal property and inventories cannot be considered." 1 Official Record, Constitutional Convention 1961, at 857; emphasis supplied.

general, without regard to a particular method by which it may be imposed. Again, there is nothing in the history of the provision to suggest that either the Convention that drafted it, or the voters who ratified it, intended to permit the Legislature to achieve through a combination of taxes imposed under separate statutes what was expressly prohibited if attempted under a single tax imposed under one statue: ad valorem taxation of property on a nonuniform basis. It is equally unclear whether the Legislature for certain purposes only (for school operating purposes, for example) but not for other purposes.

It will remain for the courts, if called upon to do so, to supply a definitive answer. What does seem clear, however, is that if the Legislature may by statute, or a combination of statutes, levy ad valorem taxation at different rates upon different types of property, then so far as the uniformity requirement is concerned, "the inescapable conclusion [is] that the people have done a futile thing: they have voted themselves a constitutional protection [which is] good only until the next session of the legislature." **Lockwood** v **Commissioner of Revenue**, (357 Mich 517, 554; 1959.)

2. The Fifty Mill Limitation and Charter Authority Millage

A second question regarding the statutory alternative plan is whether the Legislature may authorize local school districts to establish themselves as charter authorities. One of the most significant property tax limitations of the state Constitution is contained in Section 6 of Article 9, the first paragraph of which provides that

> [e]xcept 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 herein before 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 *** * *.**

Although the 50 mill limitation appears expansive at first blush, in actuality the limitation itself is quite limited. It applies only to operating millage levied by unchartered counties, unchartered townships, and school districts. This results from the second paragraph, the so-called "nonapplication of limitation provision," which enumerates the millage rates to which the limitations of the first paragraph do not apply:

> 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 *** * *** 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.

Purpose of "Charter Authority" Exclusion. Among the millage excluded from the fifty mill limitation is that imposed by a "charter authority or other authority." Clearly the intent of the 1961 Constitutional Convention in placing authorities within the nonapplication of limitation provision was to adjust for their exclusion from the "local option" 18 mill limit. At the time the Convention met, some authorities were allocated millage from within the existing 15 mill limit. The concern expressed at the Convention was that if the voters of a county adopted an 18 mill fixed allocation, authorities would be deprived of any millage because the 18 mill limit applied only to counties, townships, and school districts therein. While this concern might have been resolved by including authorities within the 18 mill limit, the Convention instead chose to exempt them from the limitations of Section 6 of Article 9. 2 Official Record, Constitutional Convention 1961, at 3162

Impact of Statutory Plan. Public Act 312 of 1993 amends the school code to add a Section 1211b which would authorize a local school board to "vote to establish the school district as a charter authority exempt from the provisions of section 6 of article IX of the state constitution of 1963." (Section 705a(8) of Act 312 would authorize local districts within an intermediate school district to establish a regional enhancement authority, the millage of which also could be imposed outside the limitations of Section 6 of Article 9.)

Section 6 of Article 9 does not define the term "authority." Thus, the question arises whether the Legislature may circumvent the constitutional limitations of Section 6 of Article 9, either by redefining as authorities the only local units still subject to them (school districts, unchartered counties, and unchartered townships), which is what Act 312 proposes to authorize for school districts, or by establishing new taxing entities and denominating them as authorities, which is what Act 312 proposes to authorize for school districts, or by establishing new taxing entities and denominating them as authorities with regional enhancement authorities? Michigan case law suggests the answer to the question is no, notwithstanding the fact that state Legislature has authorized an ever expanding category of millages beyond constitutional limitations simply by declaring the taxing entities to be "authorities."

The Bacon Decision. Establishing numerous authorities and providing them with statutory "charters" would be analogous to the discredited approach engaged in under the 15 mill amendment. The original 15 mill amendment, which was adopted in 1932, contained no exception for authorities, but did contain an exception for "municipal corporations." At the time the amendment was adopted, the term "municipal corporations" was commonly understood to include only four types of local municipalities: home-rule cities, special-charter cities, fourth-class cities and incorporated villages. However, during the 26-year period after the amendment's adoption, a series of state court decisions expanded the category to include: charter townships, **Charter Township of Warren** v **Municipal Finance Commission,** (341 Mich 607; 1954); local school districts, **Hall** v **Ira Township,** (348 Mich 402; 1957); and county school district special education millage, **Kent County Board of Education** v **Kent County Tax Allocation Board,** (350 Mich 327; 1957).

Eventually, when the state Legislature attempted to further expand the municipal-corporations exception, the state Supreme Court called a halt to the practice. **Bacon** v **Kent-Ottawa Metropolitan Water Authority,** (354 Mich 159; 1957). The matter as framed by the Court in **Bacon** is precisely that at issue concerning the legislative act presently in question, Public Act 312 of 1993:

> But what about the existing law defining "a municipal corporation" with respect to which the people presumptively determined to apply such final exception? Was it intended to include an "authority" which -- a quarter century later -- has been authorized or created by legislative act and dubbed, by legislative fiat, "a municipal corporation"? To speak plainly, an affirmative answer to this last question -- if given -- will automatically grant to the legislature the power of outright repeal of a duly-voted constitutional provision.
>
> The presumption to which we refer is that the framers and electors meant this exception to be interpreted in accordance with existing laws and legal usages of the time, *** * *** in accordance with existing understanding of such existent laws and usages. These general premises considered, grave questions loom. Did the people will that the expression "a municipal corporation: should be construed as meaning or referring to some entity or agency other than those already commonly known or recognized by "existing laws" as municipal corporations? Did they bother to resolve a statewide constitutional limitation upon the power of property taxation and, by the same instrument of resolution, mean to provide the legislature with the power to nullify the limitation as applied to legislatively manufactured new types of "municipal corporation"? (354 Mich at 169; emphasis in original.)

The **Bacon** decision stands for the straightforward principle that language used in a constitutional provision is to be construed as understood at the time the provision was adopted by voters. The Court summarized the matter as follows:

> We do not question the power of the legislature to call any commission, board, bureau, authority, entity, or tribunal, to which some public or municipal duty or job has been committed or assigned, "a municipal corporation." We do deny legislative power to circumvent the 15-mill amendment by calling any legislative creature "a municipal corporation" when that creature would not, in 1932, have been propel classed as "a municipal corporation." (354 Mich at 177.)

Part III. The School Finance Allocation System and Education Quality

A. The Allocation System

For many years, school finance reform had three major focuses: to reduce reliance on the local property tax as the principal revenue source to support elementary and secondary education; to shift more of the funding responsibility to the state level; and to reduce the per pupil financial resource disparities among school districts. More recently, school finance reform has expanded to include educational quality and accountability. These issues were the cornerstone of the debate which culminated in the current plan to restructure elementary and secondary education.

In contrast to the alternative revenue plans to restructure the revenue side of school finance, there is a single allocation system that is established by statute. One exception to the single plan is there are differences in property taxes that will be levied depending on whether Proposal A or the statutory alternative revenue plan is implemented. The total amount of revenue available to school districts is the same under both plans.

School finance reform, historically, has had as one of its objectives to reduce reliance on the property tax as the principal revenue source to support elementary-secondary education. This has been accomplished, although not to the extent as occurred when Public Act 145 of 1993 was adopted, which exempted all property from school operating millage and reduced total property taxes by an estimated $6.9 billion. Proposal A would restore an estimated $3.3 billion in property taxes at the state and local level, and the statutory plan contemplates restoration of $3.9 billion.

One of the features of the new allocation system is the shift to state funding for a majority of the total cost of elementary-secondary education. It is estimated that 1994-95 state and local revenues will be $10.5 billion. Under Proposal A, an estimated 80 percent will be state revenues and 73 percent will be state revenues under the statutory plan. By contrast, the most recent state school finance estimate for 1993-94 indicates state funds account for 39 percent. Ordinarily, a system with a preponderance of state funds results in an allocation system that minimizes per pupil revenue disparities. However, due to the cost of leveling up and the political problems with leveling down, the reduction of per pupil disparities under the new allocation system will occur over time, although the lowest spending school districts will receive a significant increase in 1994-95.

There has been an increase in state revenues earmarked to the school aid fund, but there still is a significant amount of general fund monies appropriated to the school aid fund. In 1994-95 under the ballot plan, $438.7 million in general fund monies are appropriated, and under the statutory plan the figure is $387 million.

1. The Basic Membership Allowance

With the adoption of Public Act 101 of 1973, the state adopted a membership formula based on the power-equalizing concept. Although the power-equalizing formula was “tinkered” with over the years, it remained the membership formula through the 1993-94 school year. Public Act 336

of 1993 replaces the power-equalizing formula with a base foundation grant effective with the 1994-95 school year. Michigan used a foundation grant formula prior to 1973.

Transition to the New System. A 1993-94 base revenue figure was established for each district using 1993-94 state and local revenues. State figures included the basic membership allowance and most categorical programs including the state's contribution for FICA (social security) and retirement. State categoricals that continue as categoricals in 1994-95 were excluded from the base revenue figure, most notably special education, adult education, early childhood education, vocational education for intermediate school districts, and intermediate school district operating support. Local level revenues included are ad valorem school operating taxes, specific taxes levied and retained by the district up to a statewide limit of $85 million, and in some instances a district may include its fund equity up to a statewide limit of $20 million. The 1993-94 base revenue figure for each district will be used to calculate its 1994-95 foundation allowance.

Under the new system, many school districts are expected to experience cash flow problems because there no longer will be significant property tax collections for schools. Also the school district fiscal year begins July 1, and state appropriations are made on the state fiscal year, which begins October 1. The new school aid system provides transitional payments to assist school districts with their cash flow problems. Act 336 appropriates $300 million, or about $189 per pupil, to be allocated on August 20, 1994. This will increase state school aid expenditures by $300 million from what they otherwise would have been in 1993-94. Additional $300 million state payments will be made in the months of October 1994, and August and September 1995. These transitional payments will be offset by $200 million state aid reductions in the months of April, May and June, 1995. For school districts' 1994-95 fiscal year (July 1 to June 30) these transitional payments do not provide an increase in total revenues. State aid will be "front loaded:" that is, a greater percent of total state aid will be distributed in the early months of a school district's fiscal year than in later months of the fiscal year to assist school district's with cash flow problems. In addition to the $300 million increase in the 1993-94 fiscal year, the state also will expend $300 million more in the state 1994-95 fiscal year than it would if there were no transitional payments.

The 1994-95 Base Foundation Grant. For 1994-95, the base foundation grant is set at $5,000 per pupil, but the foundation grant is to be adjusted to accommodate the per pupil revenue disparities that currently exist in the state. In order to reduce disparities low revenue districts receive larger per pupil increases than high revenue districts. Under the new system, revenue growth is constrained in high revenue districts. The 1994-95 formula operates at three levels as follows:

-- Local districts with 1993-94 per pupil revenue below $4,200 will be raised to that level or will receive a $250 per pupil increase, whichever is greater.

-- Local districts with 1993-94 per pupil revenue between $4,200 and $6,500 will receive per pupil increases of between $250 and $160 on a sliding scale. The formula is $250 - [$90 x (1993-94 base - $4,200 - $2,300)].

-- Local districts above $6,500 per pupil in 1993-94, are authorized a per pupil increase of $160.

Act 336 authorizes a supplemental state allowance of up to $1,500 per pupil for local school districts that are guaranteed more than the $5,000 per pupil foundation grant. For any district with authorized per pupil revenue of more than $6,500, there is a provision for the district, with voter approval, to levy the necessary millage to raise per pupil revenue that will hold the district harmless above $6,500 and to provide a $160 per pupil increase. It is estimated that there will be 48 districts above $6,500 per pupil in 1994-95 but only 35 will need to levy millage to be held harmless. The 13 other districts either have fewer than 100 pupils or need to levy 0.5 mills or less to provide a $160 per pupil increase. In both instances, provisions in Act 336 require the state to provide the required hold harmless revenue. As will be explained below, the amount of revenue authorized for high expenditure districts becomes more complicated beginning in 1995-96.

The state's share of district's per pupil allowance will be the basic foundation grant, plus any supplemental state allowance less the per pupil revenue raised locally. The amount of revenue raised locally will vary under each plan. Under Proposal A, a district will levy 18 mills or the number of mills levied in 1993, whichever is less, on non-homestead property. The statutory plan authorizes a levy on all property not to exceed 12 mills. Enhancement millage revenue, which is explained below, is not a deduct from the foundation grant.

As part of the legislative reform package, Public Act 362 of 1993 was adopted. This act authorizes the creation of public school academies (charter schools) as public schools. The 1994-95 formula provides a per pupil foundation allowance of $5,500 or an amount equal to the foundation allowance of the district in which the academy is located, whichever is less.

The 1995-96 Base Foundation Grant. Beginning in 1995-96, the basic foundation allowance will be determined by adjusting the prior year's foundation grant by a statutory index. The index, essentially, is the percentage increase in school aid fund revenue over the prior year, as adjusted for any change in the base or rate of a tax whose revenue is dedicated to the school aid fund, and any change in pupil membership. In 1995-96, for example, if the adjusted index were three percent, the $5,000 foundation grant would increase to $5,150.

In 1995-96, districts that received a foundation allowance between $4,200 and $5,000 per pupil in 1994-95 will receive a per pupil increase equal to twice the index amount as adjusted on a sliding scale. Under the sliding scale, districts at $4,200 per pupil in 1994-95 will receive the maximum increase and the increase will be proportionally reduced to the $5,000 per pupil level. No district in the $4,200-$5,000 group can receive a foundation grant greater than $5,000 plus the amount generated by the index. Districts above the $5,000 foundation grant in 1994-95 will receive a 1995-96 foundation allowance increase equal to the dollar amount per pupil generated by the index.

Beginning in 1995-96 under Proposal A, school districts with per pupil revenue of $6,500 and above in 1994-95 will grow by the per pupil amount authorized by the statutory index, or the per pupil increase derived from the percentage increase in the consumer price index, whichever is the lesser amount. As was described above for 1995-96, an index of 3 percent would result in a $150 per pupil increase in the foundation grant, unless the increase in the consumer price index was less the 3 percent, in which case the lower percentage increase would apply. For example, if the consumer price increase was 2 percent, the increase in the foundation grant would be $100

per pupil for districts with per pupil revenue of $6,500 and above in 1994-95. Under the statutory plan, districts that had per pupil revenue of $6,500 or more in 1994-95, the increase is the percentage increase from the index but it is applied to the per pupil revenue base of the prior year rather than a flat dollar increase. Thus, a school district with per pupil revenue of $10,000 in 1994-95, and using an index of 3 percent, would be allowed a per pupil increase of $300 rather than $150. There is no consumer price index limit under the statutory plan. However, under the statutory plan a district could levy no more than the number of mills levied in 1994. The per pupil increases under the statutory plan generally would be greater than under Proposal A. The effect of the statutory percentage increase provision is disequalizing as compared with Proposal A.

2. Per Pupil Finance Disparities

It is clear that the new foundation allowance has at least two salutary effects in reducing per pupil financial disparities. One, the largest increase in the foundation allowance, in absolute dollars and percentage increase, is inverse to the amount of a district's revenue base. Second, there is a cap on the revenue growth of high revenue districts, which is more restrictive under Proposal A than it is under the statutory plan.

Per pupil revenue disparities will be reduced under the new funding allocation systems. There are three commonly cited measures of disparities in financial resources: 1) the range in revenues per pupil between the highest and lowest spending districts which ignores disparities among all of the other districts; 2) the coefficient of variation which measures the disparities in revenues among all of the school districts; and 3) the Gini coefficient measures the disparities in revenues among all of the students.

Under all three measures there will be an immediate reduction in disparities. The range between the lowest revenue per pupil district ($3,277) and the highest district ($10,358) in 1993-94 is 1:3.2. In 1994-95 that range would be reduced to 1:2.5 under both Proposal A and the statutory alternative (range from $4,200 to $10,518). The coefficient of variation and the Gini coefficient would be reduced by about ten percent each under both plans in 1994-95. Assuming future increases in school aid fund revenues and in the base foundation grant, there will continue to be reductions in per pupil revenues disparities over the next several years under both plans. Much of the reduction in disparities in the first year and over the next several years under both plans is the result of bringing the under $4,200 districts up to that level and giving districts under the base foundation level ($5,000 in 1994-95) larger dollar increases than those above that level.

After the low revenue per pupil districts are brought up to the base foundation level, disparities will continue to decrease as districts between $5,000 and $6,500, as indexed, will receive the same dollar amount of increase each year and as the base becomes larger, the percentage differences among those districts will decline.

In the long-run, the reduction in disparities will be greater under Proposal A than under the statutory plan. For those districts with $6,500 or more in per pupil revenue Proposal A limits their future annual increases in revenue to the per pupil <u>dollar</u> amount of increase in the base foundation grant or the increase in the consumer price index, whichever is less. The statutory plan permits the over $6,500 districts to increase their revenues by the same <u>percentage</u> as the increase in the base foundation grant. Thus, if the base foundation allowance increases three

percent from $5,000 to $5,510 under Proposal A a district with $10,000 in revenues could increase its revenues by the same $150 to $10,150, while under the statutory plan it could increase its revenues by three percent or $300 to $10,300. This difference between the two plans is the treatment of the over $6,500 districts, compounded over time, results in a greater reduction in disparities in revenue among school districts and pupils under Proposal A than under the statutory plan.

This discussion has dealt with per pupil financial disparities. Another facet is taxpayer equity in the future. It will be increasingly difficult to justify imposing statewide taxes on all citizens and then distributing these state revenues unequally throughout the state on the basis of what revenue the district had available in 1993-94. This suggests the transition period to a uniform foundation grant be accomplished as soon as possible.

3. At-Risk Pupils Categorical

A state categorical program is one that earmarks state aid to a specific activity (e.g. special education) and that cannot be used for any other purpose. For over 25 years, the state has appropriated funds for a compensatory education categorical program. Compensatory education funds were to compensate for the lack of educational opportunity afforded some children. The best known such program is Head Start, a federally funded for pre-schoolers.

Specific criteria to identify pupils eligible for compensatory education programs have been used in the past. Initially, the state used socio-economic criteria such as the percent of children living in substandard housing and the proportion of children living in broken homes. Subsequently, scores on the Michigan educational assessment program (MEAP) were used to determine eligibility for state compensatory education programs. In 1993-94, a total of $23.5 million was appropriated for the state compensatory education program.

The 1994-95 compensatory education program for at-risk pupils is significant in several respects. The appropriation is $230 million or almost ten times the current year program level. The state is returning to a socio-economic criterion to determine eligibility for the program. A district, including a public school academy, will receive an allocation based upon the number of district pupils who meet the income eligibility for the program. A district, including a public school academy, will receive an allocation based upon the number of district pupils who meet the income eligibility requirement for free lunches under the federal government's school lunch act. Any district with 1994-95 per pupil revenue in combined state and local funds of $6,500 or above is ineligible to receive funds from the at-risk appropriation. Except for these high revenue districts, it appears that all K-12 school districts will qualify for the at-risk program. For each pupil who meets the income eligibility criterion, the allocation is 11.5 percent of the district's foundation allowance. For example, in a $5,000 foundation grant district, the at-risk allowance would be an additional $575 per at-risk pupil.

At-risk funds must be used to provide instructional programs for students who qualify under the federal free lunch guidelines. For those districts that must be expended on the school breakfast program. No funds may be expended on the general administration of the school district.

This will be a significant revenue source to use for improving the instructional program for many districts. An estimated 65 districts will receive $200 or more per membership pupil. For example, the Beecher Community School district in Genessee County is estimated to receive $485 per membership pupil, City of Muskegon Heights School District $479 per pupil, and the Detroit City School District $423 per pupil. It is estimated that 38 of the 65 districts will receive a greater per pupil increase from the at-risk allocation than the increase from the foundation grant.

4. Other Categorical Appropriations

One objective of school finance reform was to reduce the number of categorical appropriations made by the state and include the money in the basic foundation grant. There has been a proliferation of such appropriations over the last several years. Categorical appropriations have the effect of diverting funds from the membership formula, thus reducing the level of equalization that can be achieved. Significant reductions in the number of categorical appropriations has been achieved. (See **Table 2**.) Total categorical appropriations have been reduced from $2.1 billion, to $1.2 billion, a reduction of 44 percent.

In addition to the transitional payments and the at-risk categoricals, other major categorical appropriations include special education ($235.4 million) and adult education ($257 million). There are minor differences between the two plans for tax increment finance authorities (TIFA) hold-harmless funds, and appropriations for FICA (social security) and retirement for intermediate school district employees.

Table 2

Estimated K-12 Operating Revenues

(In Millions)

	1993-94*	Ballot 1994-95*	Statutory 1994-95*
LOCAL			
School District-Property Tax	$ 5,596.8	$ 1,612.3	$ 2,320.0
ISD - Property Tax	495.0	509.5	502.8
Specific Taxes	81.0	0.0	0.0
TOTAL LOCAL	**$ 6,172.8**	**$ 2,121.8**	**$ 2,822.8**
STATE AID			
Membership	$ 1,792.5	$ 7,174.8	$ 6,481.8
Categorical Appropriations			
At-Risk Pupils	$ 0.0	$ 230.0	$ 230.0
Compensatory Education	23.5	-.-	-.-
Transitional Payments	300.0	300.0	300.0
Recapture	(55.0)	-.-	-.-
Court Placed	17.1	-.-	-.-
Municipal Overburden	20.0	-.-	-.-
Low Income	20.0	-.-	-.-
Early Childhood	27.6	42.6	42.6
Special Education	210.0	235.4	235.4
Vocational Education	35.8	17.9	17.9
Transportation	102.0	-.-	-.-
Intermediate School Districts	24.2	27.4	27.4
Adult Education	357.1	257.0	257.0
FICA	293.1	14.8	20.2
Retirement	664.4	21.5	29.5
Adjustments	9.5	-.-	-.-
TIFA Hold Harmless	40.0	22.0	12.0
Miscellaneous	58.8	40.0	40.0
SUBTOTAL	**$ 2,148.1**	**$ 1,208.6**	**$ 1,212.0**
TOTAL STATE	**$ 3,940.6**	**$ 8,383.4**	**$ 7,693.8**
TOTAL STATE AND LOCAL	**$10,113.4**	**$10,505.2**	**$10,516.6**

Source: House Fiscal Agency. *State fiscal year.

5. School District Property Taxes

There are a number of local property tax provisions, which were referred to in Parts I and II, that provided additional taxing authority for local school districts, and restore taxing authority for intermediate school districts eliminated by Public Act 145 of 1993. In all instances, the taxing authority would be different under Proposal A than under the statutory plan.

Under Proposal A, intermediate school district millage for operating purposes, special education, and vocational education would be restored, but capped at their 1993 levels. Under the statutory plan, the system in effect for 1993 would be restored; thus, millage rates could be increased in the future with voter approval.

Under Proposal A, the districts with per pupil revenue of more than $6,500 in 1993-94, and levying millage to hold the district harmless and provide the authorized per pupil increase, would levy their millage only on homestead property up to 18 mills. Any additional levy would be uniform on all property. The statutory plan would require a uniform levy upon all property, and it would be in addition to the 12 mill local levy on all property.

Enhancement Millages. Public Act 312 authorizes enhancement millages under both proposals. Under Proposal A, for 1994 through 1996, a local school district may levy, with voter approval, up to three mills for school operating purposes. Approval must be obtained after December 31, 1993. Beginning in 1997, an enhancement property tax of not more than three mills may be levied by an intermediate school district, with approval by a majority of the intermediate district voters. Revenue generated from the regional tax would be shared on a per pupil basis among local school districts.

The statutory plan provides two methods for levying enhancement millage, both requiring voter approval. The primary method authorizes a millage at the intermediate district level. Act 312 provides a sliding scale under which intermediate school districts would be authorized to levy millage necessary to generate the same revenue (sic per pupil) as the intermediate district with the highest state equalized valuation per pupil could generate at two mills. It is estimated that the intermediate district with the lowest state equalized valuation per pupil could levy up to 7.75 mills in order to provide the same per pupil revenue as the two mill intermediate school district. Revenue would be shared on a per pupil basis among local school districts within the intermediate school district.

In any intermediate district that did not levy its full enhancement millage, a local school district could seek voter approval to levy the difference between the millage levied by the intermediate district and the authorized millage for the intermediate district. If more than one district received voter approval to levy millage, the districts would be required to share the revenue on a per pupil basis. Revenue from any mills levied in excess of what is levied in any other district need not be shared. For example, if one local district levied two mills and two other local districts levy one mill each, only the revenue generated by one mill would be shared among the three districts.

B. Education Quality

In recent years, educational quality and accountability have become part of the debate. There were a number of educational quality and accountability issues discussed as part of the overall reform discussions. Although, a number of program improvements were adopted, progress in the program reform area was not as substantial as in the revenue and allocation areas.

1. Public School Academies

Public Act 362 of 1993 amended the school code to add a Part 6A which authorizes the establishment of public school academies (charter schools). An approved public school academy is a public school district for the purpose of receiving state aid under Section 11 of Article 9 of the state Constitution. Although academies are considered public schools, they are seen as an alternative to the regular public education program in a school district, and introduce an element of choice and competition that proponents believe will result in improving the educational quality in existing schools.

A contract for the organization and operation of an academy may be granted by the board of a local school district, intermediate school district, the board of a community college, or the governing board of a state university. In the case of a local school district, intermediate school district, and community college, the board cannot approve an academy outside the geographic boundaries of the district. In addition, a community college board cannot grant more than one charter, and it cannot grant a charter to a public school academy to operate in a school district of the first class (Detroit).

Enrollment is open only to pupils who reside within the geographic boundaries of the authorizing body. Academies granted a contract by a state university would be open to students statewide, but statewide enrollment would not be possible for the academies.

If a contract for an academy is denied by a local school district, the applicant may circulate a petition to require the board to place the issue on the ballot at the next annual school election. The petition must contain the signatures of at least 15 percent of the electors of the school district. No appeal process exists for denials by any of the other contract granting bodies.

There are requirements relating to the establishment of educational goals, pupil assessment, admission policy, school calendar, and the age or grade range of pupils. It should be noted that a public school academy will be covered by collective bargaining agreements that apply to other employees in the district. A public school academy must operate at a single site. An academy operated by a state public university or community college may use noncertificated faculty members, who meet specific requirements to teach. An academy cannot charge tuition or discriminate in its pupil admission policies on the basis of intellectual or athletic ability, measures of achievement or aptitude or handicapped status. A public school academy cannot be organized by a church or other religious organization.

2. General School Code Amendments

Core Curriculum. Public Act 335 of 1993, which also amends the school code, includes a number of provisions that impact on educational quality. The State Board of Education is re-

quired to develop a recommended core curriculum that sets, "forth desired learning objectives in math, science, reading, history, geography, economics, American government, and writing." By September 1, 1994, the State Board of Education is required to develop rules establishing a required core academic curriculum and submit them to a public hearing under Public Act 306 of 1969, the administrative procedures act of 1969. Effective with the 1997-98 school year, a local school district must provide the core curriculum promulgated by the State Board of Education. In order for the schools of a school district to be accredited by the state, the school district must comply with the core curriculum requirements. Provision is made for the development of a specific core curriculum for special education pupils to allow them to demonstrate their competencies in appropriate curriculum areas.

Performance Standards. Complementary to the establishment of a core curriculum are provisions requiring the establishment of pupil performance standards in order to measure achievement of the academic outcomes specified in the core curriculum. An academic performance standards committee, representative of broad based interest groups and citizens, is established to assist in the development of performance standards. These standards must be developed by December 31, 1995. By July 1, 1997, any school district that desires its schools to be accredited shall adopt the state standards or establish its own performance standards.

State Endorsed High School Diploma. Provisions for a state-endorsed high school diploma are established in the school code. Previously, the state school aid act contained provisions relating to a state endorsed high school diploma. Pupils graduating in 1994 through 1998 and seeking an endorsement in the subject areas of communication arts, mathematics and science must demonstrate proficiency on an appropriate assessment instrument. Beginning in 1999, social studies is added as an endorsement subject. A student who fails to meet state endorsement requirements, but who meets local school board requirements for graduation may be awarded a diploma without a state endorsement.

Instructional Hours. In a move to provide In a move to provide more instructional time, the number of hours of annual instruction have been increased from 900 hours for the 1994-95 school year until reaching 1,080 hours in 1999-2000. Specifically the minimum will increase to 990 hours for the 1995-96 and 1996-97 school years, 1,035 hours for the 1997-98 and 1998-99 school years before reaching 1,080 in the 1999-2000 school year. Based on a 180 day school calendar, the daily increase is from five hours to six hours. The penalty for not providing the required number of hours is loss of state aid for the instructional hours not provided.

Professional Development. Provisions have been added that specifically describe a professional development system, including how funds are to be allocated and the purposes for which the funds may be used. Twenty percent of available funds are allocated to the Department of Education, 15 percent to intermediate school districts and 65 percent to local school districts. The latter two allocations are based on a per pupil distribution.

In addition to conventional professional development programs for administrators and teachers, there are a number of innovative programs for which funds are to be used. A biennial education policy leadership institute for the governor, lieutenant governor, legislators, and other state officials is required to examine current education policy issues. Provision is made for community development training for community members and sabbatical leave for master teachers is required.