

A stylized graphic of a classical column with a capital at the top, five fluted shafts, and a base with three horizontal lines. The letters 'CRC' are superimposed on the capital.

CRC

STATEWIDE BALLOT ISSUES: PROPOSAL 00-1
SCHOOL CHOICE

September 2000

Report No. 331

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September 2000

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Citizens Research Council of Michigan

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STATEWIDE BALLOT ISSUES: PROPOSAL 00-1
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STATEWIDE BALLOT ISSUES: PROPOSAL 00-1

SCHOOL CHOICE

I. Introduction

Proposal 00-1 is on the November 7, 2000, statewide ballot as a result of petitions circulated by Kids First! Yes! It seeks to amend Article VIII, Section 2, of the 1963 Michigan Constitution by removing the prohibition against indirect aid by the state to nonpublic schools and would add a Section 10 to Article VIII, which would provide for

legislative implementation of a system of elementary-secondary school vouchers in Michigan. The proposal also requires legislative adoption of a program of teacher testing for teachers in public schools and in nonpublic schools that accept vouchers. Finally, it provides for a floor in per pupil state-local school operating revenue.

II. Background

In November 1970, Michigan voters approved Proposal C on the statewide ballot, the so-called “Parochial Aid Amendment.” The proposal, which greatly limited direct and indirect public aid to nonpublic schools, was on the ballot as the result of a citizen initiative, the first such action taken

under what was, at that time, the relatively new 1963 Michigan Constitution. The petitions were circulated in response to perceived changes in state policy regarding public financing of nonpublic education.

A. Pre-1970

Michigan policy dealing with public aid to nonpublic schools has had a long history.

Direct vs. indirect aid. Beginning in 1929, legislative policy in Michigan ran counter to *direct* support of nonpublic schools:

“No school district shall apply any of the moneys received by it from the primary school interest fund or from any and all other sources for the support and maintenance of any school of a sectarian character. . .” (CL 1929, 7379).

The original school transportation law of 1939, however, permitted *indirect* aid to nonpublic schools:

“The provisions of this section shall not be construed to prohibit the transportation to and from school of pupils attending private or parochial schools. . .” (CL 1948, 352.20).

Twenty-four years later, the school bus law was amended to *require* free transportation for students in nonpublic schools (Public Act 241 of 1963).

In 1965, *indirect* assistance to nonpublic schools was further extended by Public Acts 341 and 343. Under these two laws, any auxiliary services provided by a school dis-

trict or local health department to resident children attending public schools were also to be provided on an equal basis to children attending nonpublic elementary and secondary schools. Such auxiliary services included:

- Health and nursing services and examinations;
- Speech correction;
- Street crossing guard services;
- Remedial reading;
- Visiting teacher services for delinquent and disturbed children;
- Diagnostic services for mentally handicapped children;
- Teacher counselor services for physically handicapped or emotionally disturbed children; and
- National defense education testing services.

Attempts to provide direct aid. The legislative actions providing the impetus for the circulation of petitions that resulted in Proposal C involved attempts to provide *direct* financial aid to nonpublic schools. Those attempts had been unsuccessful until 1970 when advocates of direct aid succeeded in attaching a section to the school aid act containing the following language:

“The legislature declares as public policy of the state that the public good and general welfare require that state ap-

appropriations now provided to public school districts under this act for the purpose of furnishing opportunities for public school children to secure a quality secular education be extended to assist in providing opportunities for quality secular education to children attending non-public elementary and high schools, as part of a general program to foster and encourage knowledge so as to provide a mature citizenry capable of contributing to good government, and to the

safety and the economic well-being of all the people of the state.”

The act provided that the state would pay to an eligible nonpublic school, for fiscal years 1971 and 1972, a sum not to exceed 50 percent of the salaries of certified lay teachers who teach secular subjects. In years following, state aid would equal 75 percent of such salaries.

B. Proposal C of 1970

Early in 1970, several groups, coming together as a Council Against Parochialism, circulated petitions to amend the Michigan Constitution to prohibit both direct and indirect aid to nonpublic schools. After a lengthy legal challenge to the wording of the petition, the Michigan Supreme Court, on September 14, 1970, ordered the proposal placed on the November ballot. On the same day, the court ruled that the FY71 and FY72 appropriations for nonpublic school teacher salaries were constitutional.

Proposal C was approved by the voters on November 3, 1970, by a margin of 56.8 percent to 43.2 percent.

Language of Proposal C. Proposal C amended the Michigan Constitution by adding the second paragraph to Article VIII, Section 2.

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, preelementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school.

Michigan Supreme Court Ruling. The amendment went into effect on December 19, 1970. Three months later, on March 31, 1971, the Michigan Supreme Court, in *Traverse City School District v. Attorney General* (384 Mich. 390, 185 NW2d 9), issued a declaratory judgment on the effect of Proposal C. In that judgment, the Court concluded that

- Chapter 2 of Public Act 100 of 1970 had been unconstitutional since the effective date of Proposal C. (This chapter made appropriations to lay teachers in nonpublic schools to teach secular subjects.)
- Proposal C prohibits state funding of purchased educational services in a nonpublic school where the hiring and control is in the hands of the nonpublic school.
- Shared time instruction is permitted under Proposal C provided that the program is under the control of the public school system and that the courses are open to all eligible to attend the public school.
- Proposal C does not prohibit auxiliary services and drivers training, which are general health and safety services.
- Proposal C does not interfere with the distribution of Federal funds.
- Proposal C does not prohibit the operation of a social welfare institution, such as a foster home.
- Proposal C does not change Michigan’s policy of tax exemption for religious, charitable, and educational institutions.
- The language “or at any location or institution where instruction is offered in whole or in part to such nonpublic school students” in Proposal C is unconstitutional under the U.S. Constitution and is unenforceable. The unconstitutional language is, however, severable and capable of being removed from Article VIII, Section 2, without altering the purpose and effect of the balance of the section.

C. Since Proposal C

Proposal H of 1978. On the November 1978 ballot as a result of initiative petitions, Proposal H would have amended Articles VIII (education article) and IX (finance and taxation) of the 1963 Michigan Constitution to:

- Require the state legislature to provide for the issuance of an education voucher to the parent of each child in attendance at public and nonpublic elementary and secondary schools to be applied toward the cost of that child's education in the state-approved school of his or her parent's or guardian's choice.
- Prohibit the levying of ad valorem property taxes for el-

ementary and secondary public school operation, for intermediate school districts, and for vocational education and special education purposes after January 1, 1979.

- Require the state legislature to establish a program of general state taxation to support the operation of elementary and secondary state-approved schools, intermediate school districts, and vocational education, special education, and compensatory education programs.
- Remove "tuition voucher" from the list of prohibited uses of public funds to support any private, denominational, or other nonpublic elementary-secondary school.

School Choice: Vehicles

The Education Commission of the States has characterized the range of vehicles available to provide parental choice of schools as follows (Number of states as of March 2000):

Charter schools. (37 states, including Michigan) Semi-autonomous public schools formed by teachers, parents, and/or community members. Such schools are freed from most state and local laws and/or policies in exchange for a written contract (or charter) which specifies certain results that must be met.

Choice (Open enrollment). (31 states) "Interdistrict" open enrollment programs allow choice of public schools across and within district boundaries. (Includes Michigan.)

"Intradistrict" open enrollment programs allow choice within district boundaries. (Includes Michigan.)

"Mandatory" open enrollment programs require districts within a state to participate in the program, given that space is available.

"Voluntary" open enrollment programs allow districts to choose whether to participate, given that space is available in the district. (Includes Michigan.)

Tax credits. (5 states, not including Michigan) A direct reduction in the taxpayer's tax liability. For example, an individual owes \$1,000 in income taxes, but qualifies for a \$500 credit. The net tax liability is then \$500.

Tax deductions. (1 state, not including Michigan) A reduction in taxable income made prior to the calculation of tax liability. For example, an individual with a taxable income of \$100,000 qualifies for a \$1,500 deduction. Taxable income is thereby reduced to \$98,500.

Postsecondary enrollment. (30 states) Programs that allow secondary school students to enroll in postsecondary courses and apply course credit at the secondary school, a postsecondary institution, or both.

"Comprehensive" postsecondary enrollment programs allow students to enroll in postsecondary courses at minimal or no cost, permit course credit to be applied at both the high school and postsecondary institutions and contain few restrictions on eligible courses for student enrollment. (Includes Michigan.)

"Limited" postsecondary enrollment programs require students to pay tuition costs of postsecondary classes, restrict where course credit may be applied and contain stringent criteria on eligible courses for student enrollment.

Vouchers. A *private voucher* is a payment a private organization makes to a parent, or an institution on a parent's behalf, to be used for a child's education expenses. (32 states, including Michigan)

A *public voucher* is a payment the government makes to a parent, or an institution on a parent's behalf, to be used for a child's education expenses. (5 states, not including Michigan. Legal status in 2 states uncertain.)

Courtesy: Education Commission of the States.

Had it been adopted, Proposal H would have dramatically restructured Michigan education finance and taxation. It was, however, defeated at the polls by a margin of 74.3 percent to 25.7 percent.

School Choice Initiatives. In recent years, initiatives directed at increasing the range of schools from which Michigan parents might choose have been adopted or proposed. These initiatives have taken three principal forms:

Adopted programs:

- **Public school academies (charter schools):** Authorized by Public Act 362 of 1993 and Public Act 416 of 1994, public school academies (PSAs) are schools chartered by public universities, community colleges, intermediate school districts, and school districts. Attendance at a PSA is voluntary and PSAs are therefore subject to more direct market forces than are mainstream public schools. PSAs are not subject to the same degree of state regulation as regular public schools, but their charters may be withdrawn by the chartering authority. In the 1999-2000 school year there were 172 public school academies in Michigan.
- **Schools of choice:** Authorized in 1996 by the School Aid Act, the schools of choice program permits pupils to transfer from the public school district of residence to another and to have the school aid resources move

with them. In the first year of operation of the plan, 1996-97, students were permitted to transfer to other districts within the intermediate school district of residence. Accepting districts are required to publicize the availability of openings and select students randomly if the number of applications exceeds the number of openings.

Since 1996, the program has been modified three times. The scope of the program has been expanded and beginning in the 2000-01 school year, students may attend schools of choice in contiguous intermediate districts. The equivalent of 17,400 full-time pupils participated in 1999-2000, up from 5,600 in 1997-98.

Proposed program (not directly linked to Proposal 00-1):

- **Tuition tax credits:** An example of a plan for providing tax credits for tuition paid to nonpublic schools is one advanced by the Mackinac Center for Public Policy (*The Universal Tuition Tax Credit: A Proposal to Advance Parental Choice in Education*, November 1997). Described as a “better choice” than vouchers or traditional tax credits, the plan would allow credits against any of three state taxes (individual income, single business, state education) paid by individuals or businesses contributing toward the tuition of a pupil attending either a private school or an out-of-district public school charging tuition. It also called for amending Article VIII, Section 2.

Public Vouchers Outside of Michigan

The Education Commission of the States (ECS) notes that publicly-funded voucher programs exist in five states:

Wisconsin. The Milwaukee Parental Choice Program (MPCP) was adopted in 1989. Originally limited to nonsectarian schools, MPCP was expanded to include sectarian schools in 1998. The amount of the voucher (currently about \$5,100) is the lesser of the nonpublic school’s operation and debt service cost per pupil or the state aid per pupil to the Milwaukee Public Schools (MPS). Pupils must come from families with incomes no greater than 175 percent of the federal poverty level. No more than 15 percent of MPS enrollment may participate in MPCP in any school year. MPCP enrollment in 1999-2000 was 7,586. Although MPCP participation quadrupled during the 1990s, the total percentage of Milwaukee pupils attending nonpublic schools dropped during that time from 19.9 percent to 17.6 percent, including a decline of 0.5 percent from 1997-98 to 1998-99.

Ohio. A pilot scholarship and tutoring program was established by the Ohio Legislature for Cleveland in 1995. The vouchers under this program may be used at any public or nonpublic school, although no more than 25 percent of the vouchers may be awarded to pupils already enrolled in nonpublic schools. The

voucher amount is limited to \$2,500 and is conditioned by family income. Pupils may remain in the program through the 8th grade. In 1998-99, 3,678 pupils participated.

Florida. (Ruled to violate Florida Constitution) In 1999, Florida adopted a statewide voucher plan for pupils in “failing” districts as determined by test scores, attendance, graduation rates, discipline data, and college readiness. In 1999, four schools were deemed to qualify under these criteria. Pupils may move to a higher-rated public school or a nonpublic school with a voucher of approximately \$4,000. Nonpublic sectarian schools that accept voucher pupils are barred from collecting additional tuition and from requiring participation in religious instruction, prayer, or worship.

Maine and Vermont. If no public school exists to serve secondary students in Maine and Vermont, these states allow districts to send their pupils to nonsectarian nonpublic schools and pay their tuition.

All of these plans were legislatively adopted. According to ECS, no state ballot initiative authorizing vouchers, tax credits, or deductions has passed to date.

STATEWIDE BALLOT ISSUES: PROPOSAL 00-1 - SCHOOL CHOICE

Language of Proposal.

Proposal 00-1 would amend Article VIII, Section 2, and add a Section 10 to Article VIII of the Michigan Constitution. The language of the proposal is as follows (Deleted language is ~~lined through~~. New language is in CAPS.):

Local Option and Qualified District Voucher

Article VIII, Section 2

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. ~~No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students.~~ The legislature may provide for the transportation of students to and from any school.

Teacher Testing

SUBJECT TO THE PROVISIONS OF SECTION 4 OF ARTICLE I, THE LEGISLATURE SHALL PROVIDE FOR REGULAR TESTING OF THE KNOWLEDGE IN ACADEMIC SUBJECTS OF TEACHERS IN PUBLIC SCHOOLS AND IN NONPUBLIC SCHOOLS WHICH REDEEM TUITION VOUCHERS UNDER THIS SECTION.

Qualified Schools and Local Option Tuition Voucher

SUBJECT TO THE PROVISIONS OF SECTION 10, UNDER PROCEDURES ESTABLISHED BY LAW, QUALIFIED SCHOOL DISTRICTS AND ANY APPROVING SCHOOL DISTRICT SHALL PARTICIPATE IN AN EDUCATIONAL CHOICE PROGRAM TO PERMIT ANY PUPIL RESIDENT IN THE DISTRICT TO RECEIVE A VOUCHER FOR ACTUAL ELEMENTARY AND SECONDARY SCHOOL TUITION TO ATTEND A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL.

School District Per Pupil Funding Guarantee

BEGINNING IN THE 2001-2002 STATE FISCAL YEAR, THE STATE SHALL GUARANTEE THAT THE TOTAL STATE AND LOCAL PER PUPIL REVENUE FOR SCHOOL OPERATING PURPOSES FOR EACH LOCAL SCHOOL DISTRICT, AS ADJUSTED FOR CONSOLIDATIONS, ANNEXATIONS, AND BOUNDARY CHANGES, SHALL NOT BE LESS THAN IN THE 2000-2001 STATE FISCAL YEAR; PROVIDED THE SCHOOL DISTRICT DOES NOT LEVY A MILLAGE RATE FOR SCHOOL DISTRICT OPERATING PURPOSES LESS THAN IT LEVIED IN 2000.

SECTION 10

SEC. 10. THE PROVISIONS OF THIS SECTION SHALL APPLY TO SECTION 2 OF THIS ARTICLE.

THE TUITION VOUCHER ESTABLISHED IN SECTION 2 SHALL BE LIMITED TO THE LESSER OF ONE-HALF THE AVERAGE PER-PUPIL STATE AND LOCAL REVENUE FOR OPERATING PURPOSES IN PUBLIC SCHOOLS IN THE PRECEDING FISCAL YEAR OR THE ACTUAL TUITION PAID PER PUPIL AT A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL. THE TUITION VOUCHER MAY BE SUPPLEMENTED FOR PUPILS WHO REQUIRE SPECIAL EDUCATION SERVICES.

THE STATE TREASURER SHALL, BEFORE THE END OF EACH CALENDAR YEAR, CERTIFY THE AVERAGE PER-PUPIL STATE AND LOCAL REVENUE FOR OPERATING PURPOSES IN PUBLIC SCHOOLS FOR THE FISCAL YEAR CONCLUDING IN THAT CALENDAR YEAR.

A QUALIFIED SCHOOL DISTRICT IS A DISTRICT THAT HAD A FOUR-YEAR GRADUATION RATE OF LESS THAN TWO THIRDS AS REPORTED BY THE DEPARTMENT OF EDUCATION FOR THE 1998-1999 SCHOOL YEAR, AS CERTIFIED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

A SCHOOL DISTRICT MAY APPROVE THE EDUCATIONAL CHOICE PROGRAM BY VOTE OF THE ELECTED SCHOOL BOARD OR OF THE ELECTORS IN THE SCHOOL DISTRICT, WHO SHALL HAVE THE RIGHT OF INITIATIVE TO INVOKE THE INITIATIVE, PETITIONS SIGNED BY A NUMBER OF REGISTERED ELECTORS, NOT LESS THAN TEN PERCENT OF THE TOTAL NUMBER OF ELECTORS CASTING BALLOTS FOR SCHOOL BOARD AT THE LAST PRECEDING ELECTION AT WHICH MEMBERS OF THE SCHOOL BOARD WERE ELECTED, SHALL BE REQUIRED.

THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE IMPLEMENTATION OF THIS SECTION.

Proposal 00-1 Ballot Language

Article XII, Section 2, of the Michigan Constitution requires that the purpose of a proposed amendment be stated on the ballot in not more than 100 words, exclusive of caption. As approved by the Board of State Canvassers, the ballot language is as follows:

A PROPOSAL TO AMEND THE CONSTITUTION TO PERMIT THE STATE TO PROVIDE INDIRECT SUPPORT TO STUDENTS ATTENDING NONPUBLIC PRE-ELEMENTARY, ELEMENTARY AND SECONDARY SCHOOLS; ALLOW USE OF TUITION VOUCHERS IN CERTAIN SCHOOL DISTRICTS; AND REQUIRE ENACTMENT OF TEACHER TESTING LAWS

The proposed constitutional amendment would:

- 1.) Eliminate ban on indirect support of students attending nonpublic schools through tuition vouchers, credits, tax benefits, exemptions or deductions, subsidies, grants or loans of public monies or property.
- 2.) Allow students to use tuition vouchers to attend nonpublic schools in districts with a graduation rate under 2/3 in 1998-99 and districts approving tuition vouchers through school board action or a public vote. Each voucher would be limited to 1/2 of state average per-pupil public school revenue.
- 3.) Require teacher testing on academic subjects in public schools and in nonpublic schools redeeming tuition vouchers.
- 4.) Adjust minimum per-pupil funding from 1994-1995 to 2000-2001 level.

Should this proposal be adopted?

III. What Proposal 00-1 Would Do

A. Provisions of Proposal 00-1

Proposal 00-1 would do five things:

1. *Remove general prohibition against indirect aid.* The proposal would remove the *general* prohibition against action by the legislature or subdivision of the state or other state agency to provide *indirect* aid to private, denominational, or other nonpublic schools.
2. *Remove specific prohibitions against certain forms of aid.* The proposal would remove the *specific* prohibitions against—
 - Payments
 - Credits
 - Tax benefits, exemptions, or deductions
 - Tuition vouchers
 - Subsidies
 - Grants
 - Loans of public property or money

to support the attendance of any student or the employment of any person in any nonpublic school.

3. *“Section 10” Vouchers.* The amendments to Section 2

call for a program of educational choice, set out in Section 10, to be implemented by law, in which pupils resident in either a “qualified” district or an “approving” district could receive vouchers for “actual elementary and secondary school tuition to attend a nonpublic elementary or secondary school.”

Qualified school districts have a four-year graduation rate of less than two-thirds as reported by the Department of Education for the 1998-99 school year, as certified by the Superintendent of Public Instruction.

Approving school districts are those that choose to participate in the voucher plan authorized by Section 10 as a result of either—

- a vote of the elected school board, or
- a vote of the electors as the result of initiative petitions signed by a number of registered electors, not less than ten percent of the total number of electors casting ballots for school board at the last preceding election at which members of the school board were elected.

Vouchers called for in Section 10 are to be limited to the lesser of—

- one-half the average per-pupil state-local public school operating revenue in the preceding fiscal year, or
- actual tuition paid per pupil at a nonpublic elementary or secondary school.

The voucher amount may be supplemented for pupils requiring special education services.

Before the end of each calendar year, the State Treasurer is to certify the average per-pupil state-local operating revenue for the fiscal year concluding in that calendar year.

4. *Funding Guarantee.* The proposal would require the State to guarantee that total state-local per-pupil operating revenue for each district, as adjusted for consolidations, annexations, and boundary changes shall not be less than in FY2001, provided that the district does not levy an operating millage less than it levied in 2000.

5. *Teacher Testing.* Subject to the provisions of Article I, Section 4, of the Michigan Constitution (religious liberty), the Legislature is to provide for regular testing of the knowledge in academic subjects of teachers in public schools and in nonpublic schools that redeem vouchers under Section 2.

B. Impact of Proposal

Financial Impact. No estimate of the likely financial consequences of the proposal can be undertaken with confidence until a legislative program is put forth. The level of participation by nonpublic schools and the utilization of vouchers would likely depend in part on the specific provisions adopted by the Legislature in implementing the proposal. In addition, Proposal 00-1 opens the door to legislative adoption of other approaches, including tax credits, grants, loans, or alternative voucher plans, which may, in the long run, prove more significant than the plan outlined in Section 10.

Calculation of the Section 10 Voucher Amount. Section 10 of the proposal limits the amount of a voucher adopted under the provisions of that section to “the lesser of one-half the average per-pupil state and local revenue for operating purposes in public schools in the preceding fiscal year or the actual tuition paid per pupil at a nonpublic elementary or secondary school.” Since the proposal does not define “revenue for operating purposes,” that definition would be left to legislative determination.

The average foundation allowance is one possible measure

The Question of Nonpublic School Availability

Irrespective of the number of vouchers authorized under either Section 10 or any legislatively-initiated program of school choice, actual utilization of the vouchers will depend on the availability of private school facilities. Availability will be determined by:

- *Physical capacity.* A basic limit on voucher-funded enrollment will be the physical space that can be made available to accommodate those with vouchers. The space may be made available by using currently underutilized facilities; adding temporary or permanent classrooms to existing facilities; reopening closed facilities; purchasing vacant public schools; purchasing public or private properties that may be utilized as schools; or constructing entirely new school buildings.
- *Programmatic capacity.* Even if physical capacity is available, the personnel and other resources necessary to provide an educational program for the additional pupils must be available as well.
- *Proximity.* If the nearest nonpublic school of interest to parents with vouchers is outside of a reasonable commuting radius, the family may have to choose between foregoing use of the voucher or moving closer to the school, if by doing so it can remain eligible to receive vouchers.
- *Willingness to accept vouchers.* It is probable that some nonpublic schools will decline to participate in a voucher plan. Some may take the general position that if vouchers are redeemed, the door to an unacceptable level of state intervention in the affairs of the school will be opened. Others may object to specific provisions or conditions contained in the implementing legislation.
- *Willingness to accept specific pupils.* Under present law, nonpublic schools are not required to provide special education services and have substantial latitude in which pupils they will retain. Religious nonpublic schools may give preference to pupils from families of the respective affiliated faith.

of operating revenue. The foundation allowance came about as a result of Proposal A of 1994, which made significant changes in taxation and school finance in Michigan. To implement Proposal A, the base dollars per pupil received by each district prior to its adoption were computed. Base revenue included local school operating property taxes plus state school aid formula payments and certain categorical payments. These revenues were “rolled up” into a foundation allowance. (Other categorical programs, notably special education, remain outside the foundation allowance.)

The *base* foundation allowance (BFA) for 2000-01 is \$6,000, a 20 percent increase from the BFA adopted to implement Proposal A in 1994-95. The *average* foundation allowance is somewhat higher, however, because it includes districts with foundation allowances substantially higher than the BFA. The average foundation allowance for 2000-01 is estimated at \$6,636 and is expected to rise to \$7,013 in 2001-02 and to \$7,214 in 2002-03.

If the proposal is implemented in 2001-02, operating revenue for 2000-01 would be used as the base and, if it is defined as the average foundation allowance, the Section 10 voucher limit would be one half of \$6,636, or \$3,318.

While the drafters of Proposal 00-1 assume that the average foundation allowance is the appropriate base for determining the voucher limit, the Legislature could define “revenue for operating purposes” differently. A more expansive definition might include non-debt revenue from all state and local sources, including state school aid, operating revenues from K-12 district property taxes, and special education and vocational education revenues from intermediate school district property taxes. A definition this broad would raise per pupil operating revenues to \$7,909 in 2000-01, \$8,326 in 2001-02, and \$8,588 in 2002-03. The corresponding voucher limit for 2001-02 would be \$3,955.

Some nonpublic school tuition rates, especially in sectarian elementary schools, are currently below \$3,318, owing in part to subsidies coming from their respective churches and from other fundraising efforts. Unless prohibited by implementing legislation, these rates presumably would rise to the voucher amount in participating schools, thereby eliminating any difference. This could create situations in which tuitions would rise for pupils living in non-voucher districts who attend nonpublic schools in which vouchers are redeemed. An arrangement, such as a scholarship program, could alleviate this difference.

Voucher Mechanics. In Milwaukee, nonpublic schools participating in the Milwaukee’s Parental Choice Program certify a list of pupils eligible for vouchers to the Milwaukee Department of Public Instruction, which, in turn, issues quarterly checks payable to both the nonpublic school and to the parents of the pupils. It would be likely that this approach, or some variation, would be used under a Michigan voucher plan.

Whether the actual funding of a voucher program in Michigan could come from the School Aid Fund is questionable. Article IX, Section 11, of the Michigan Constitution provides, in part—

There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education, and school employees’ retirement systems, as provided by law.

It appears that the School Aid Fund created by this section could not be used to finance vouchers. If school aid to a local district were paid by the district to a nonpublic school, it might be deemed to violate Article VIII, Section 2, which would read, in part, after adoption of Proposal 00-1—

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school.

On the other hand, if school aid were paid to a parent to then be transmitted to a nonpublic school, it might be deemed to violate Article IX, Section 11, noted above. There appears to be no barrier to use of the General Fund, however.

Stages of Financial Impact. Depending on the nature of the legislative response, the proposal could have three kinds of financial impact—

1. Adoption of Section 10 vouchers in qualified districts;
 2. Adoption of Section 10 vouchers in approving districts;
 3. Adoption of legislatively-initiated programs.
1. *Section 10 Vouchers in Qualified Districts.* The Department of Education has released the four-year graduation rates for 1998-99. Included on the list are seven districts with rates below two-thirds. These districts would constitute the list of qualified districts under

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Section 10, *provided that* the Legislature does not prescribe a different method of calculating the graduation rate *and* that the rates are certified by the Superintendent of Public Instruction:

These districts had a total enrollment in 1998-99 of 179,991. This enrollment equals 10.6 percent of the 1998-99 total state enrollment of 1,696,501. The Detroit City School District accounts for 173,557, or 96.4 percent, of the pupils in the presumptive qualified districts. The remaining six districts comprise 6,434 pupils, or 0.4 percent of the total non-Detroit statewide enrollment.

Although it is known which districts are presumed to qualify for vouchers under Section 10 (although not which ones will actually be certified), significant assumptions as to availability of nonpublic school slots for transfers and subsequent migration of public school pupils to those slots will have to be made in order to estimate voucher utilization.

Should the graduation rate in a non-qualified district fall below two-thirds in 1999-2000 or beyond, it would not become a qualified district under the proposal, although presumably the Legislature could provide for automatic qualification by statute. On the other hand, however, a district determined to be a qualified district in 1998-99 would apparently retain that status indefinitely regardless of future graduation rates because no means is provided in the proposal for reverting to non-qualified status.

It is unclear what effect this provision would have on school district reorganization. Consolidation of a qualified district and non-qualified district could create a district with an ambiguous status respecting vouchers.

The Legislature might find it necessary to make a determination as to the status of the previously qualified portion of the new district.

2. *Section 10 Vouchers in Approving Districts.* The number of districts that may become approving districts, either through vote of the elected school board or through voter initiative, will, of course, rest on political considerations. Those considerations may include the number of voters voting for Proposal 00-1 in the district; the number of families with children already in nonpublic schools (no loss of state aid would occur by making them eligible for vouchers); the availability of nonpublic spaces in or near the district; and the perceived quality of the public schools in the district.

Should voters choose to employ the initiative in placing the question of vouchers on the local ballot, securing adequate signatures should normally not be an obstacle. Voter turnout in school elections is typically low. Relatively few districts have had voter turnouts in recent school board elections that would result in signature requirements of more than 100. As a result, in districts in which the school board does not approve of vouchers, there will be little impediment to placing the question on the ballot.

Contrary to the case with qualified districts, it appears that the Legislature could provide for a method of reversing a decision to become an approving district.

Voucher Math. Although the list of presumptive qualified districts has been announced, it is currently not known 1) which districts will approve voucher participation; 2) how many nonpublic spaces will be made available; or 3) what the voucher limit will be. Enough is known that some idea

Table 1
Presumptive Qualified Districts Under Section 10 of Proposal 00-1

<i>District</i>	<i>1998-99 Four-year Graduation Rate</i>	<i>1998-99 Enrollment</i>	<i>2001-02 Foundation Allowance</i>
Mackinaw City	54.4	253	\$7,182
Coleman	52.3	1,106	6,000
Holton	54.3	1,257	6,000
Vanderbilt	60.6	324	6,000
Buena Vista	51.8	1,745	7,200
Detroit	46.0	173,557	6,584
Inkster	20.5	1,749	6,987

Source: Michigan Department of Education

of the potential dimensions of the voucher plan proposed by Section 10 can be gained by making a few assumptions. While these assumptions may not be verified in actual practice should Proposal 00-1 pass, they provide an idea of the potential operation of a voucher plan under Section 10 of the proposal.

Assumptions:

- 1) Nonpublic schools will participate at an 80 percent rate, i. e., schools which now enroll 80 percent of total number of existing nonpublic pupils will accept pupils with vouchers. It is clear that some presently unknown number of nonpublic sectarian schools, as well as many nonpublic secular schools, will determine that a voucher plan may entail problems that will make participation unattractive.
- 2) Participating schools can absorb a 25 percent increase in enrollment. According to the Michigan Association of Nonpublic Schools, a 25 percent increase in enrollment could be accommodated while still remaining within programmatic limits. Obviously, this will vary from school to school and could change over time.
- 3) All slots available to be filled by pupils transferring from public schools will be filled. Logistical, as well as other considerations, will almost certainly result in some available slots not being filled. In Milwaukee, for example, some schools participating in the MPCP voucher plan have waiting lists, while others have vacancies. For present purposes, however, the assumption will be made that all slots will be filled.
- 4) Qualified districts (less than two-thirds graduation rate) will be the seven announced districts and will contain 10.5 percent of the total public school K-12 enrollment. It is likely that the list of qualified districts will change following review by the Department of Education, and certification by the Superintendent of Public Instruction.
- 5) In any given area, public schools will comprise 90 percent of total K-12 enrollment. This mirrors the current statewide ratio. In actuality, the percentage varies widely, from 99.9 percent in the Sanilac Intermediate School District to 82.5 percent in the Ottawa Area ISD.

Statewide public K-12 enrollment as projected by the State Budget Office for 2001-02 is 1,708,000, implying, under the above assumptions, a nonpublic enrollment of 189,778. The average foundation allowance for 2000-01 is estimated at \$6,636 per pupil and total operating revenue per pupil at \$7,909, yielding a range of voucher limits for 2001-02

of \$3,318 to \$3,955.

Milwaukee's Parental Choice Program (MPCP) is often used as a reference point for estimating the usage of vouchers under Section 10. MPCP, however, is substantially different from the program outlined in Section 10. The Milwaukee program is available only to parents, pupils, and nonpublic schools within the City of Milwaukee, involved a voucher amount in 1999-2000 of \$5,106, and is limited to pupils from families with incomes at or below 175 percent of the federal poverty level. Thus, while three percent of the Milwaukee Public School pupils eligible for MPCP may have migrated to nonpublic schools (Senate Fiscal Agency estimate), it is not clear that this has any predictive power with respect to Section 10.)

In making the calculations, certain factors must be taken into consideration. First, the primary initial impact of a Section 10 voucher plan would be to provide vouchers to pupils already attending nonpublic schools. In the Milwaukee plan, vouchers are no longer available to parents who were already paying nonpublic school tuition (although current voucher families were grandfathered under the recent change). It is clear from the language of Proposal 00-1, however, that such an exclusion under Section 10 would not be permissible.

Second, for each public school pupil that transfers to a nonpublic school, the affected school district will lose its foundation allowance for that pupil. Foundation allowances vary, but for 2001-02, the average foundation allowance is currently estimated at \$7,013. As a result, in an average district, although the State would pay \$3,318 for the voucher in 2001-02, it would save \$7,013 in foundation allowance, a net saving of \$3,695. Presumably, this saving could be passed on to the school district, but that would be a legislative determination.

To put Table 2 in context, even the highest total voucher cost in the above table represents 5.3 percent of projected total state-local K-12 operating expenditures in FY02 (\$14,221.0 million).

3. *Legislatively-Initiated Programs.* For the long run, the greatest potential for expanding aid to nonpublic schools would derive from the repeal by the proposal of the prohibitions against various forms of indirect aid. Although several possibilities exist, the approaches normally given the most attention are tuition tax credits and alternative voucher plans. (*Cont. on page 15.*)

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Table 2

**Potential Fiscal Impact Under Section 10 of Proposal 00-1
Alternative Utilization Assumptions
Fiscal Year 2001-02*
(\$ in millions)**

<i>Voucher Amount:</i>	<i>½ Foundation Allowance (\$3,318)</i>		<i>½ Total Operating Revenue (\$3,955)</i>	
	<i>Cost of Vouchers to:</i>		<i>Cost of Vouchers to:</i>	
	<i>Existing Nonpublic</i>	<i>Transfers</i>	<i>Existing Nonpublic</i>	<i>Transfers</i>
Qualified Districts:	\$66.1	\$16.5	\$78.8	\$19.7
Public enrollment: 179,340				
Existing nonpublic vouchers: 19,926				
Transfer vouchers: 4,982				
 Total voucher cost:		\$82.6		\$98.5
Foundation allowance reduction:				
<i>Detroit</i>		\$31.6		\$31.6
<i>Others</i>		<u>\$ 1.2</u>		<u>\$ 1.2</u>
Total		\$32.8		\$32.8
Net cost to State:		\$49.8		\$65.7
 Approving Districts:	\$251.9	\$63.0	\$300.2	\$75.1
(1/2 of total public enrollment)				
Public enrollment: 854,000				
Existing nonpublic vouchers: 75,911				
Transfer vouchers: 18,978				
 Total voucher cost:		\$314.9		\$375.3
Foundation allowance reduction:		\$133.1		\$133.1
Net cost to State:		\$181.8		\$242.3
 Approving Districts:	\$503.7	\$125.9	\$600.5	\$150.1
(Statewide)				
Public enrollment: 1,708,000				
Existing nonpublic vouchers: 151,822				
Transfer vouchers: 37,956				
 Total voucher cost:		\$629.6		\$750.6
Foundation allowance reduction:		\$266.2		\$266.2
Net cost to State:		\$363.4		\$484.4

(NOTE: This illustration assumes that all pupils moving from public to nonpublic schools will not be counted in their public school district enrollment in the year of their transfer. Current procedures use 20 percent of the pupil count in February of the previous school year and 80 percent of the count in October of the current school year to determine foundation allowances. For example, a pupil previously enrolled in a public school who begins attending a private school in September, could still be counted at 20 percent for the public school district based on his or her enrollment during the prior year. The procedure might be subject to legislative adjustment.)

* For comparison purposes it is assumed that vouchers could be implemented statewide in the first year. This would, of course, be nearly impossible and it might be that vouchers would never be available in every district in the state.

Sources: State Budget Office, Department of Management and Budget; State Policy Center, Wayne State University; CRC calculations.

What is a Four-Year Graduation Rate?

A “qualified” district in Section 10 of the proposal is one whose “four-year graduation rate” for 1998-99 is below two-thirds. The proposal does not define “four-year graduation rate,” but such a statistic has been prepared annually since 1989-90 by the Michigan Department of Education, based on numbers submitted by each school district. Although it is assumed that this is the measure that will be used in determining which districts are qualified, the Legislature could provide for a different measure, using data that are available from Department of Education files.

Computation. The Department of Education calculation is made for a single year and reflects the retention and dropout experience for the four high school classes in the same year. It is computed by multiplying together the actual retention rates for all four high school grades to obtain a figure that “indicates, with no change in future retention rates, the percentage of 9th grade students who will complete their senior year of school and graduate.”

The following table, which uses hypothetical data, illustrates the computation of the four-year graduation rate:

<i>Class of—</i>	<i>2001</i>	<i>2000</i>	<i>1999</i>	<i>1998</i>	<i>Totals</i>
Enrollment, Fall 1997	280	275	273	259	1,087
Transfer Data (Over last 12 months)					
In from other districts	10	5	12	3	30
Within same district	0	0	1	0	1
Out to other districts	(5)	(7)	(8)	(2)	(22)
Within same district	(0)	(1)	(0)	(0)	(1)
To alternative	(0)	(0)	(0)	(2)	(2)
Retained in grade (not promoted)					
For 1997-98 school year	(0)	(2)	(0)	(2)	(4)
For 1998-99 school year	2	0	2	0	4
Adjusted Fall Count, 1998	287	270	280	256	1,093
Actual Fall Count, 1998	283	269	270		
Graduates, Spring 1998				251	1,073
Residual students not accounted for (dropouts)	4	1	10	5	20
1998 Retention Rate	98.61	99.63	96.43	98.05	98.17
1998 Dropout Rate	1.39	0.37	3.57	1.95	1.83
Estimated Four-Year Graduation Rate*					92.88

* 0.9861 x 0.9963 x 0.9643 x 0.9805 = 0.9288

Source: Michigan Department of Education

Critical to the accuracy of these rates, particularly in districts with high pupil mobility, is the quality of the transfer data. When a pupil transfers from one district to another, the receiving district normally requests a file from the pupil’s previous district. It is that request that results in categorization of the pupil as a transfer. If no request is forthcoming or it is not recorded, the pupil is determined to be a dropout, thereby lowering the retention rate and, by extension, the four-year graduation rate.

Issues with the four-year Graduation Rate. The Michigan Department of Education has released the four-year graduation rates for 1998-99, and the list of those with graduation rates below two-thirds includes seven districts with a total 1998-99 enrollment of 179,991 pupils, only 6,434 of whom are not in the Detroit City School District. An examination of graduation rates for 1996-97, 1997-98, and 1998-99 indicates that—

- In 1996-97, 38 districts had graduation rates below the qualifying threshold. In 1997-98, the total was 32. In

1998-99, the total was seven. Significantly, out of a total of 60 districts that were on the three lists, only three fell below the threshold in all three years, if Detroit’s disputed 1997-98 figure is counted as below two-thirds.

- Many of the districts on the lists are small. As a result, a few pupils can make a great deal of difference in percentage terms. This may be the reason for such wide percentage swings as those noted in the table at the top of page 13.

Failure to receive or record file requests from receiving districts may have resulted in reported graduation rates that are significantly below the actual rates. Moreover, it is evident that there is widespread misunderstanding among school district personnel of the procedures involved in deriving these figures. And, because no consequence, positive or negative, has previously been associated with the accuracy of these figures, there has been little incentive on the part of the districts or the Department to ensure their accuracy.

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<i>District</i>	<i>1998-99</i>			
	<i>Enrollment</i>	<i>1996-97</i>	<i>1997-98</i>	<i>1998-99</i>
Colon	933	86.5	54.6	82.6
Clintondale	3,233	45.5	78.9	77.7
Muskegon	6,867	44.4	78.7	84.6
Hale	840	85.9	63.8	86.8
Bloomingtondale	1,450	46.0	75.8	86.1
Hillsdale	2,030	54.6	71.8	76.7
Buena Vista	1,745	91.9	77.2	51.7
Coleman	1,106	82.1	86.3	52.3
Mackinaw City	253	77.2	90.4	54.4

The drop from 32 districts with rates below two-thirds in 1997-98 to seven in 1998-99 was unexpected by most observers. It is possible that the Department of Education scrutinized the data submitted by the districts more carefully for 1998-99 than it did in previous years because of the possibility that it might assume greater significance if Proposal 00-1 should pass. It is also possible that many of the districts exercised greater scrutiny prior to submitting the data. Nevertheless, it is likely that, should the proposal be adopted, the certified list will be somewhat different than the list currently being circulated, since the Department of Education describes the data as "unaudited."

Alternative Calculation. Since the proposal does not define "four-year graduation rate," it must be assumed that the Legislature could implement the Section 10 plan using another measure. From a conceptual standpoint, it would be possible to rearrange data already collected to track a single class from initial enrollment in the 9th grade through graduation. This is the only meaningful alternative to the present approach of determining graduation rates. The following table portrays the type of calculation that could be made using some of the same hypothetical data:

<i>Freshman</i>	<i>Sophomore</i>	<i>Junior</i>	<i>Senior</i>		
<i>Class of-</i>	<i>Year</i>	<i>Year</i>	<i>Year</i>	<i>Year</i>	<i>Four-Year</i>
<i>School Year</i>	<i>1998</i>	<i>1998</i>	<i>1998</i>	<i>1998</i>	<i>Summary</i>
	<i>1994-95</i>	<i>1995-96</i>	<i>1996-97</i>	<i>1997-98</i>	
Enrollment, Fall Count	280	279	269	270	280
Transfer Data (Over Preceding 12 Months)					
In from other districts	10	5	12	3	30
Within same district	0	0	1	0	1
Out to other districts	(5)	(7)	(8)	(2)	(22)
Within same district	(0)	(1)	(0)	(0)	(1)
To alternative	(0)	(0)	(0)	(2)	(2)
Retained in grade (Not promoted)					
Current class	(2)	(0)	(2)	(0)	(4)
From year-ahead class	0	2	2	0	4
Expected Fall Count	283	278	274	269	286
Actual Fall Count	279	269	270		
Graduates, Spring 1998				251	251
Residual Pupils Not Accounted For (Dropouts)	4	9	4	18	35
Yearly Retention Rate	98.59	96.76	98.54	93.31	
Yearly Dropout Rate	1.41	3.24	1.46	6.69	
Graduation Rate*					87.76

* 251/286 x 100 = 87.76

A calculation of this sort would be slower to reflect changes in retention rates, both favorable and unfavorable. To the extent that changes reflect improvements causing increased retention that may be expected to continue, a district's calculation done in this manner would have to wait until the pupils actually graduate.

Regardless of what method is used to calculate the four-year graduation rate, it is only one of many possible indicators of school performance that might have been chosen.

CRC REPORT

Michigan School Districts With Four-Year Graduation Rates Below Two-Thirds 1996-97, 1997-98, and 1998-99

District	1996-97		1997-98		1998-99	
	Rate	Enrollment	Rate	Enrollment	Rate	Enrollment
01010 Alcona			65.2	1,058		
03050 Fennville			59.1	1,612		
05070 Mancelona			57.5	1,097		
06050 Standish-Sterling			65.4	2,078		
11010 Benton Harbor	51.5	6,030	54.8	5,810		
11030 Lakeshore	64.8	3,008				
11033 River Valley			63.3	1,323		
11160 Galien			54.2	456		
11250 Eau Claire	38.5	918	57.0	893		
12020 Bronson	65.7	1,491				
14020 Dowagiac	65.1	3,058	66.2	3,074		
16070 Mackinaw City					54.4	253
18060 Harrison	64.4	2,347				
23010 Bellevue			65.5	1,031		
24040 Pellston	66.6	751				
25010 Flint	62.1	25,460				
25280 Lakeville			62.0	2,287		
29100 St. Louis	64.9	1,415				
30010 Camden-Frontier	58.3	775	65.1	719		
30020 Hillsdale	54.6	2,251				
31050 Chassell	65.5	357				
33020 Lansing			36.3	19,049		
34120 Saranac			65.6	1,230		
35020 Hale			63.8	822		
37060 Shepard	65.4	1,894				
38090 East Jackson	66.0	1,543				
38170 Jackson			56.8	7,657		
41020 Godwin Heights			66.2	2,350		
43040 Baldwin	63.2	792				
50070 Clintondale	45.5	2,887				
50170 New Haven	59.7	1,109				
50220 Van Dyke	57.9	4,538				
51060 Onekama	60.1	527				
56030 Coleman					52.3	1,106
59125 Central Montcalm	63.0	2,335				
61010 Muskegon	44.4	6,953				
61020 Muskegon Heights	54.1	2,754	52.5	2,477		
61120 Holton	62.0	1,287	62.6	1,267	54.3	1,257
63030 Pontiac	62.6	12,778	61.8	12,771		
69040 Vanderbilt	62.8	312			60.6	324
70010 Grand Haven			64.7	957		
71050 Onaway			65.3	961		
73010 Saginaw	55.4	13,226				
73080 Buena Vista					51.8	1,745
75040 Colon			54.6	2,809		
78030 Durand	65.9	2,176				
79010 Akron-Fairgrove	65.0	552				
80010 South Haven			62.8	2,809		
80090 Bloomingdale	46.0	1,365				
80110 Cobles	63.9	1,003				
82010 Detroit	29.7	175,798	67.6	174,730	46.0	173,557
82040 Dearborn Heights No. 7	65.5	2,358				
82060 Hamtramck	65.1	3,236	55.6	3,367		
82070 Highland Park	65.8	3,734	63.3	3,629		
82080 Inkster	38.0	1,982	38.7	1,799	20.5	1,749
82120 River Rouge	59.2	2,352	53.9	2,546		
82160 Wayne Westland			64.7	15,135		
82250 Ecorse	47.5	1,323	50.8	1,256		
82340 Huron			64.9	1,943		
83060 Manton	64.0	955				

Districts with graduation rates below two-thirds for 1998-99 are in **bold**.

Source: Michigan Department of Education.

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Depending on the nature of such legislative initiatives, the cost could be minimal or substantial. It is only significant at this point to note that the long-term financial and pro-

grammatic impact of Proposal 00-1 will not be limited to the costs associated with Section 10 vouchers.

C. Funding Guarantee

Proposal 00-1 provides that, beginning in FY2002, the State is to guarantee that total state-local *per-pupil* operating revenue for each district, as adjusted for consolidations, annexations, and boundary changes shall not be less than in FY2001, provided that the district does not levy an operating millage less than it levied in 2000.

This guarantee is an update of virtually identical language placed into Article IX, Section 11, of the Michigan Constitution by Proposal A of 1994, which set the base year as FY1996. Although the language applies to individual districts, rather than to total statewide operating revenue, some indication of legislative action in this regard since the adoption of Proposal A is evident from the following table:

Table 3

Average Local District Foundation Allowance Michigan, FY1994-95 to FY2000-01

<i>Fiscal Year</i>	<i>Average Allowance</i>	<i>Percent Increase</i>
1994-95	\$5,492	-
1995-96	5,685	3.5
1996-97	5,876	3.4
1997-98	6,059	3.1
1998-99	6,068	0.1
1999-00	6,336	4.4
2000-01	6,636	4.7
<i>Total Percent Increase, FY95-FY01</i>		20.8

Sources: Office of Education, Department of Management and Budget; Senate Fiscal Agency; State Policy Center, Wayne State University

At no time during that period did the average allowance decline from one year to the next and now, six years later, it is unlikely that the foundation allowance would be permitted to fall below the 1995-96 level. The funding guarantee in Proposal A has less meaning with each passing year as would probably be the case with any fixed dollar guarantee.

If the guarantee operates in the same manner as it has under Proposal A of 1994, it will be influenced by Article IX, Section 31, of the Michigan Constitution, which reads, in part—

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.

Although this requirement, known as the “Headlee rollback,” has had much less effect since the advent of the cap on taxable value introduced by Proposal A of 1994, Headlee rollbacks in school districts still occur. Headlee rollbacks may be negated by popular vote restoring the affected authorized millage rate to its pre-rollback level. In 1999, 18 school districts voted to “roll up” their rates following Headlee rollbacks. If a rollback occurs in a school district and the millage rate is not restored by the voters, the district could potentially receive less than the full funding guarantee.

In addition, as with the base of the voucher limitation, no definition of “revenue for school operating purposes” is supplied. The drafters of the proposal indicate that the term is to be defined to exclude capital and categorical (e. g., special education) programs. In addition, the Michigan Court of Appeals, in the *Durant II* decision concluded that per-pupil state-local operating revenue is the same as the foundation allowance. The Legislature, nevertheless, could define the term differently.

U. S. Constitutional Issues Respecting School Choice Plans

If the prohibitions against aid to nonpublic schools found in Article VIII, Section 2, of the Michigan Constitution are removed by the adoption of Proposal 00-1, the issue would then arise: Would either the voucher plan outlined in Section 10 of the proposal, or another plan involving aid to sectarian nonpublic elementary-secondary education that might be initiated by the Michigan Legislature at some point in the future, violate the First Amendment to the U. S. Constitution?

The First Amendment says, in part—

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

— and is made applicable to the states by means of the Fourteenth Amendment to the U. S. Constitution.

Several U. S. Supreme Court decisions, particularly in the last thirty years, have attempted, with limited success, to define the conditions under which public aid to sectarian schools to assist in the carrying out of the education function is permissible under the Establishment Clause of the First Amendment.

The Court attempted a definitive statement regarding the constitutionality of state statutes providing aid to church-related elementary and secondary schools in 1971. In the case of *Lemon v. Kurtzman*, the Court put forth a three-part test. To be constitutional under that test—

1. A statute must have a secular legislative purpose;
2. Its principal or primary effect must be one that neither advances nor inhibits religion;
3. It must not foster an excessive government entanglement with religion.

In *Roemer v. Board of Public Works of Maryland* (1976), the Court ruled as impermissible aid to an institution that is so “pervasively sectarian” that secular activities could not be separated from sectarian ones. In *Bowen v. Kendrick* (1988), it noted that the secular and sectarian can be so intertwined as to create the risk that public funding “even if it is designated for specific secular purposes, may nonetheless advance the pervasively sectarian institution’s ‘religious mission.’”

With respect to the specific issue of tax credits or deductions, the Court ruled in 1973 (*Committee for Public Education and Religious Liberty v. Nyquist*) that a tax credit or deduction from income not related to the amount of tuition and limited to the class of parents of private school children is unconstitutional. In *Mueller v. Allen* (1983), the Court drew a distinction between a true deduction for actual tuition and a tax incentive to

enroll pupils in sectarian schools, holding that a statute that does not limit tuition deductions to parents of private school pupils, but is available to all parents incurring specified tuition costs, is an extension of tax benefits to all members of the public without regard to religious belief.

Recent Court decisions exhibit a trend toward permitting greater public support of education in religious schools. Perhaps the most significant of these is *Agostini v. Felton* (1997), in which the Court held that federal funds under Title I of the Elementary and Secondary Education Act could be provided to support remedial education even in pervasively sectarian schools as long as that aid is neutral, that is, “without regard to the sectarian-nonsectarian, public-nonpublic nature of the institution benefited.” It also approved of aid that “ultimately went to religious institutions . . . only as a result of the genuinely independent and private choices of individuals.” In *Agostini*, the Court explicitly departed from the rule that all government support that directly aids the education function of a religious school is invalid, overturning a portion of *Grand Rapids School District v. Ball* (1985), which had held that a shared time program represented a symbolic union of church and state.

In *Agostini*, the three-part *Lemon* test was reconstituted to provide that government aid has the effect of advancing religion, and is constitutionally impermissible if it—

1. Results in governmental indoctrination;
2. Defines its recipients by reference to religion; or
3. Creates an excessive entanglement.

School choice or voucher plans have yet to be ruled on directly by the U. S. Supreme Court. The Milwaukee Parental Choice Program (MPSC), which, from its beginning in 1990, had been limited to providing vouchers for use in nonsectarian schools, was amended in 1998 to permit their use in religious schools as well. The amended MPSC was approved in 1998 by the Wisconsin Supreme Court, which held that the program 1) has a secular purpose; 2) does not have the primary effect of advancing religion because it is neutral and relies on the numerous private choices of individual parents of school-age children; and 3) does not result in excessive governmental entanglement with religion because much of the administration and monitoring occurring under the program was already in place. The U. S. Supreme Court refused to hear this case on its merits on appeal, thereby permitting the MPSC, with its assistance to religious schools, to continue.

An Ohio case, challenging a voucher plan in Cleveland, is making its way toward the U.S. Supreme Court and many legal experts expect a direct ruling on the issue of vouchers for

religious schools to come from this case. Some of these experts argue that an indication of how the Court will rule in that case can be gleaned from its recent decision in *Mitchell v. Helms* (2000).

In *Mitchell*, a fragmented Court held that federal funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981 may be used to provide educational materials and equipment to religious schools. A plurality of the Court (4 justices) held that, while public aid could be diverted to religious uses, such aid is constitutional if it does not have an impermissible content. If the aid is 1) neutral, making a broad array of schools eligible without regard to their religious affiliations or lack thereof and 2) allocates that aid based on the private choices of students and parents as to which schools to attend, it is acceptable.

Although two additional justices concurred with the ruling of

the plurality in *Mitchell*, they did not entirely concur with the reasoning, largely because of the importance attached by the plurality to the criterion of neutrality. Moreover, it may be significant that both *Agostini* and *Mitchell* approved the use of federal funds appropriated by Congress. As a result, it remains unclear where the Court may come down on a specific issue regarding a state-funded school choice plan, such as the redeeming of vouchers in religious schools.

The evolution in the thinking of the Court on public aid to sectarian schools has resulted in a murky line between the permissible and impermissible. Although this quotation is nearly thirty years old, it could have been written in the year 2000:

“Candor compels acknowledgement that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of the law.”

—Chief Justice Warren E. Burger in *Lemon v. Kurtzman* (1971)

D. Teacher Testing

Proposal 00-1 requires that, subject to the provisions of Article I, Section 4, of the Michigan Constitution, the Legislature is to provide for regular testing of the knowledge in academic subjects of teachers in public schools and nonpublic schools that redeem vouchers under Section 2.

Public Act 282 of 1992 requires that teaching certificates shall be issued only to persons who have passed appropriate examinations. Examinations are conducted in basic skills (“basic language and mathematical skills and other skills necessary for the certificate sought”); subject areas; and elementary certification (“core subjects normally taught in elementary classrooms”).

A secondary level certificate requires that the applicant pass the basic skills and subject area examinations. An elementary certificate requires that the applicant pass the basic skills and elementary certification examination.

A person need pass the appropriate tests only once to obtain and retain a teaching certificate. Also, teachers certified before July 1, 1992, were not required to take these examinations.

Proposal 00-1 does not define the terms “regular testing,” or “academic subjects,” so the Legislature would be left with the task of determining how frequently tests would be administered and what constitutes an “academic” subject.

The proposal also does not indicate the purpose of the testing program. Would penalties or requirements for further training be attached to low test scores? Could low test scores result in decertification?

Article I, Section 4, provides—

Section 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

According to the drafters of Proposal 00-1, the reference to Article I, Section 4, was placed in the language of the proposal in order to “subordinate the authority for teacher testing to the provisions of Section 4 of Article I” and to “ensure that no test of ‘knowledge in academic subjects’ could ever be used as a religious test.”

Nonpublic Schools in Michigan

Nonpublic elementary-secondary schools educate approximately 10 percent of the total number of K-12 pupils in Michigan. According to the Michigan Department of Education, there were 191,687 pupils reported as enrolled in 977 nonpublic schools in 1998-99. (Not all nonpublic schools reported their enrollments, so the actual number is larger by some unknown amount.) This total has been quite stable during the decade of the nineties. In 1989-90, nonpublic enrollment was reported as 191,237. It reached a low of 184,514 in 1992-93 and a high of 195,034 in 1995-96.

Distribution. Nonpublic enrollment varies widely by region in Michigan. In total numbers, 1998-99 nonpublic enrollment ranges from 42,271 in the Wayne Regional Educational Services Agency (RESA) to 156 in the Oceana Intermediate School District (ISD). As a percentage of total K-12 enrollment, it ranges from a high of 17.5 percent in the Ottawa Area ISD to 0.1 percent in the Sanilac ISD.

The proportion of pupils educated by nonpublic schools declines from elementary to secondary grades, sometimes dramatically. In the Huron ISD, for example, 15.3 percent of K-5 pu-

pils are in nonpublic schools, while none of the 9-12 pupils are nonpublic. In a few, such as Kalamazoo Valley, Kent, Oakland, and Ottawa, the proportion of nonpublic students holds up into high school, but these are clear exceptions.

Religious Affiliation. Nonpublic schools in Michigan are overwhelmingly religious in their affiliation.

State Regulation. Nonpublic schools must meet certain state requirements:

- They must comply with fire and health and safety codes
- They must offer courses covering
 - mathematics, reading, English, science, and social studies
 - the constitutions of the United States and Michigan
 - the history and present form of civil government in the U. S., Michigan, and its political subdivisions (The state does not regulate the content of the courses.)
- They must employ certified teachers, unless the nonpublic school declares a sincerely held religious belief objecting to teacher certification.

**Nonpublic School Enrollment by Religious Affiliation
School Year 1998-99
(Fully reporting nonpublic schools only)**

<i>Religious Affiliation</i>	<i>Percent of Total Nonpublic Enrollment</i>
Roman Catholic	50.0
Christian Schools International	11.0
Lutheran (Missouri Synod)	10.9
Lutheran (Wisconsin Synod)	1.9
Baptist	3.3
Jewish	1.3
Seventh Day Adventist	1.2
SDA Lake Region Conference	0.1
Unaffiliated-Religious	11.9
Unaffiliated-Secular	<u>8.4</u>
Total	100.0

Source: Michigan Department of Education

STATEWIDE BALLOT ISSUES: PROPOSAL 00-1: SCHOOL CHOICE

Nonpublic Enrollment as Percentage of Total K-12 Enrollment by Intermediate School District 1998-99 School Year

(Fully reporting nonpublic schools only)

<i>Intermediate School District</i>	<i>Grade level</i>			<i>Total</i>
	<i>K-5</i>	<i>6-8</i>	<i>9-12</i>	
Allegan	11.6	7.9	2.1	8.0
Alpena-Montmorency-Alcona	10.2	5.7	0.4	5.9
Barry	8.7	3.7	2.2	5.5
Bay-Arenac	22.2	13.1	2.7	14.5
Berrien	14.2	8.7	8.2	11.4
Branch	6.1	2.8	0.9	3.8
Calhoun	6.5	4.3	3.1	5.0
Lewis Cass	2.1	1.9	0.5	1.6
Charlevoix-Emmet	9.2	3.9	2.1	5.8
Cheboygan-Otsego-Presque	14.7	9.2	4.1	10.1
Eastern Upper Peninsula	3.8	1.2	0.0	2.0
Clare-Gladwin	6.4	2.3	1.3	3.9
Clinton	14.5	8.8	1.0	9.0
Delta-Schoolcraft	7.7	8.0	0.2	5.4
Dickinson-Iron	7.6	4.8	0.1	4.6
Eaton	6.2	1.6	0.8	3.5
Genesee	8.4	7.1	6.2	7.5
Gogebic-Ontonagon	6.5	4.1	0.0	3.8
Traverse Bay Area	12.2	6.9	10.3	10.4
Gratiot-Isabella	13.2	6.8	4.3	9.1
Hillsdale	3.6	4.5	5.4	4.4
Copper Country	4.0	2.1	1.1	2.6
Huron	15.3	11.0	0.0	9.5
Ingham	11.4	8.6	6.3	9.3
Ionia	11.1	6.7	3.7	7.8
Iosco	5.1	2.1	0.6	3.0
Jackson	10.4	9.8	9.2	9.9
Kalamazoo Valley	12.6	12.1	10.4	11.9
Kent	17.3	15.5	15.3	16.3
Lapeer	7.0	5.3	3.8	5.7
Lenawee	9.5	5.7	3.8	6.9
Livingston	7.9	4.8	0.3	5.0
Macomb	13.3	10.0	5.4	10.4
Manistee	16.1	11.1	6.0	11.8
Marquette-Alger	4.5	2.9	0.0	2.6
Mason-Lake	6.1	1.0	0.0	3.1
Mecosta-Osceola	8.8	5.9	1.5	5.9
Menominee	7.3	5.7	0.1	4.6
Midland	8.6	4.1	2.5	5.8
Monroe	15.1	10.5	7.6	11.8
Montcalm Area	5.9	5.3	8.5	6.5
Muskegon Area	6.9	5.1	6.2	6.3
Newaygo	6.4	4.7	0.2	4.2
Oakland	14.6	11.9	12.3	13.4
Oceana	6.7	3.7	0.0	3.9
Ottawa Area	19.9	16.9	13.7	17.5
C.O.O.R.	4.7	3.4	0.2	3.0
Saginaw	14.0	13.3	8.6	12.3
St. Clair	9.0	4.6	2.7	6.1
St. Joseph	10.8	7.8	4.9	8.5
Sanilac	0.0	0.1	0.1	0.1
Shiawassee Regional ESD	8.0	5.2	2.6	5.8
Tuscola	13.0	8.9	0.1	8.1
Van Buren	6.5	2.7	0.5	3.9
Washtenaw	10.1	9.6	5.9	8.8
Wayne RESA	11.4	10.3	9.5	10.7
Wexford-Missaukee	10.4	5.3	4.9	7.5
Statewide Totals	11.8	9.3	7.4	10.0

Source: Michigan Department of Education

E. Implementation Issues

Proposal 00-1 would require legislative implementation in order to go into effect. As noted elsewhere in this analysis, definitions for such terms as “revenue for operating purposes” and “graduation rate” would need to be supplied and a program of teacher testing developed. Legislative implementation would find it necessary to address other issues, as well. Two of the more significant of these issues are closely related to each other: accountability and conditions for participation.

Accountability. Two schools of thought exist regarding the issue of accountability for the expenditure of voucher funds. The first school argues that the nature of voucher dollars changes when those dollars pass from the State Treasury through the hands of private individuals making independent choices to private schools. Once this occurs, the parents become the source of accountability. If they are dissatisfied, they can remove their children from the school and send them to another nonpublic school or to a public school, and if enough parents make such a determination, the school will either change or go out of business. In any event, the State has no reason to contravene a decision made by parents, who have the most intense interest in the welfare of their children.

The second school argues that the State has responsibility for assuring a certain level of education for every child in Michigan and that that responsibility becomes even greater when public funds are appropriated for the purpose of funding vouchers. When nonpublic schools are funded solely with private dollars, the kind of information the State may require from nonpublic schools may be minimal. When public dollars are involved, however, the State must require information from the nonpublic schools sufficient to at least assure the taxpayers that the expenditure of those funds has

been consistent with the educational purposes for which they were appropriated.

Conditions for Participation. The State might take the position that, while it may permit a wide range of nonpublic schools to enroll pupils, it may impose a different set of standards for those that redeem vouchers or it may place certain conditions on the program. Examples of the kinds of conditions that might be imposed are—

- Random assignment of transfer pupils. By randomly assigning pupils with vouchers to nonpublic schools, the problem of a large number of pupils selecting a few chosen schools can be reduced. Parental choice, of course, is also reduced by this method.
- Requiring that participating nonpublic schools accept pupils with special needs. Proposal 00-1 provides that the voucher amount may be supplemented for special education. Many nonpublic schools currently provide special education.
- Requiring participation in state assessments. Nonpublic schools currently may, but are not required to, administer state assessments, such as the Michigan Educational Assessment Program (MEAP).
- Require that transfer pupils be allowed to be exempted from religious instruction or activity.
- Require that participating nonpublic schools employ certified teachers.

Moreover, the question of what constitutes an acceptable curriculum could arise. Depending on the nature of certain schools proposing to redeem vouchers, it could become necessary for the State to make determinations as to the appropriateness of public funds being used to underwrite attendance at those schools.



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