THE FIRST ROUND OF LEGISLATIVE REFORMS IN THE POST-*SERRANO* WORLD

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I

THE RELATION BETWEEN LITIGATION AND LEGISLATION

During the 1972-73 legislative year, eleven states substantially reformed their programs of public school aid.[1] The timing of this legislation—after the first round of successful suits challenging the constitutionality of school financing mechanisms,[2] but before the first major reversals of some of the earlier decisions[3]—suggests that litigation had a substantial impact on its enactment.

In a few states, that causal relationship appears relatively straightforward. School finance programs in Kansas and Michigan had been held unconstitutional by the state courts, requiring new legislation.[4] In Montana, statutory changes were prompted by fear of a court suit: in 1972, when that state's Constitutional Convention met, the general consensus was that the United States

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[1] The eleven states are California, CAL. EDUC. CODE §§ 17301—18480 (West Supp. 1974); Colorado, COLO. REV. STAT. ANN. §§ 123-44-1—123-44-17 (Cum. Supp. 1973); Florida, FLA. STAT. ANN. §§ 236.012—236.68 (Supp. 1974); Illinois, ILL. ANN. STAT. ch. 122, §§ 18-1—18-12 (Smith-Hurd Supp. 1974); Kansas, KAN. STAT. ANN. §§ 72-7030—72-7079 (Supp. 1973); Maine, ME. REV. STAT. ANN. tit. 20, §§ 3711—13, 3731—34 (Supp. 1973); Michigan, MICH. COMP. LAWS ANN. §§ 388.1101—388.1279 (Supp. 1974); Montana, MONT. REV. CODES ANN. §§ 75-6902—75-6927 (Supp. 1973); North Dakota, N.D. CENT. CODE §§ 15-40.1-05—15-40.1-16 (Supp. 1974); Utah, UTAH CODE ANN. §§ 53-7-16—53-7-24 (Supp. 1973); Wisconsin, WIS. STAT. ANN. §§ 121.02—121.22 (Supp. 1974). The newly enacted legislation of each of these states is summarized in the Appendix. An earlier and somewhat different version of this summary is found in NATIONAL LEGISLATIVE CONFERENCE, TASK FORCE ON EDUCATION, NEW PROGRAMS OF STATE SCHOOL AID (Childhood & Gov't Project Reprint Ser. No. 7, 1974). The table at the end of this article, adapted from Table 1, *id.* at 4-5, lists the principal reform features contained in the legislation.

[2] The decisions which very likely influenced legislation enacted during 1972-73 include Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1971); Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); Caldwell v. Kansas, Civil No. 50616 (Kan. Dist. Ct., Aug. 30, 1972); Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972). One of the ironies in the school finance litigation area is that the *Serrano* case in California, the first with an opinion supporting the plaintiffs, is not likely to be finally decided for some time to come, inasmuch as a decision on the merits was only handed down by the trial court in April, 1974. Memorandum Opinion re Intended Decision, Serrano v. Priest, Civil No. 938254 (Cal. Super. Ct., Apr. 10, 1974).

[3] These include the Supreme Court's reversal of the decision in Texas, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973), and the reversal of the Arizona Superior Court decision, Hollins v. Shofstall, 111 Ariz. 88, 515 P.2d 590 (1973). The decision in Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972), was vacated on rehearing by the Michigan Supreme Court after two of its previous members had been replaced, 390 Mich. 389, 212 N.W.2d 711 (1973). The newly constituted court held that the writ had been improvidently granted.

[4] KAN. STAT. ANN. §§ 72-7030—72-7079 (Supp. 1973); MICH. COMP. LAWS ANN. §§ 388.1101—388.1279 (Supp. 1974). The Michigan legislation was signed by the Governor in August, 1973, well before the decision in *Milliken* was vacated. *See* note 3 *supra*.

Supreme Court would uphold the *Rodriguez* decision. Under the assumption that Montana's foundation program[5] could not withstand a similar challenge in the courts, the Convention authorized the legislature to revamp the state's school finance system.[6] Similarly, the school finance legislation recently enacted in California has been interpreted as an attempt to forestall a finding of unconstitutionality in the *Serrano* case.[7]

In the remaining states which modified their systems of school finance,[8] the impact of litigation was considerably less direct. The focusing of national attention on school finance suits in the early 1970's had stimulated the formation of numerous state commissions, the objective of which was to evaluate state finance mechanisms.[9] Virtually every commentary on school finance in the past few years has referred to the *Serrano* decision and its successors, and the arguments and evidence common to the successful suits reappeared in the reports of the various state commissions. But those reports, as well as academic commentary dealt with an additional series of issues which were not considered in resolving the legal question of whether an existing finance system violated a constitutional mandate.

The most important of these issues is the extent to which states should permit disparities in school expenditures, even those disparities which are not related to district property wealth. The legal strategies which dominated the successful litigation focused on the relationship between expenditures and district wealth;[10] but it is nevertheless possible to eliminate that relationship without necessarily reducing disparities in expenditures.[11]

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[5] A "foundation" program has been defined as follows:

> [t]he state establishes a dollar level (foundation) of spending per pupil which it guarantees to every district.... To qualify for the guarantee a district must tax at a certain minimum property tax rate.... The amount raised by the district at that tax rate will be supplemented by state aid to the extent necessary to insure the district the foundation level offering.... To preserve incentive, the district is allowed to tax more than the minimum rate whenever it wants additional local revenues.

J. COONS, W. CLUNE & S. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION 64 (1970).

[6] Written communication between the author and Mr. Carrol Blend, Office of the Montana State Superintendent of Education.

[7] At trial, the defendants argued that the passage of the new school finance bill, A.B. 1267, rendered the claims of the plaintiffs moot. Defendants' Trial Brief at 150, Serrano v. Priest, Civil No. 938,254 (Cal. Super. Ct., Apr. 10, 1974). However, in his recent Memorandum Opinion, Judge Bernard Jefferson concluded that "[a]t best... AB 1267 will narrow or diminish the preexisting disparities in expenditures between school districts, but will still leave disparities in per-pupil expenditures between school districts that are substantial and significant because... [the new legislation has] continued the tax-base factor as the determinant of a school district's ability to raise money for its educational needs." Memorandum Opinion re Intended Decision at 71, *id.*

[8] The remaining states are Colorado, Florida, Illinois, Maine, North Dakota, Utah, and Wisconsin.

[9] For a bibliography of the various commission reports, see A. STAUFFER, MAJOR SCHOOL FINANCE CHANGES IN 1973 app. 1 (1973).

[10] For the legal strategy which focused on the correlation between expenditures and wealth, see J. COONS, W. CLUNE & S. SUGARMAN, *supra* note 5. An earlier argument, essentially untested in the courts, presented the case that all expenditure variation unrelated to educational needs is unconstitutional, whether correlated with wealth or not. *See* A. WISE, RICH SCHOOLS, POOR SCHOOLS (1967).

[11] District power equalizing (DPE), proposed by J. COONS, W. CLUNE & S. SUGARMAN, *supra* note 5, ch. 6, as a wealth-free way of financing schools, would permit a school district to spend at any desired level, by adopting a school tax rate pegged to the spending level selected. The higher the tax rate, in other words, the higher would be the permitted school spending. However, spending would not be tied to the amount of revenues collected, but to an amount

A second issue which has received attention from courts—although not the primary basis on which school finance systems have been held unconstitutional—is the horizontal inequity involved when some school districts must levy higher tax rates than others to raise equal amounts of revenue.[12] The issue is potentially important because court orders to equalize expenditures could be satisfied even though greater disparities in local tax rates resulted.[13] Conversely, any school financing mechanism which permits variations in expenditure levels without equalizing the tax rate required for an additional dollar of revenue per pupil will not satisfy the *Serrano* mandate that wealth and property valuation be unrelated to one another.[14]

Finally, there is the question of whether some measure of outputs of the schooling process, rather than dollar inputs, should be used to determine inequality.[15] Earlier litigation, which urged a more comprehensive measure

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determined by the tax rate selected. The state would "recapture" the revenues raised in excess of those necessary for the predetermined spending level and distribute them (along with state funds, if necessary) to poorer districts whose tax rates did not raise sufficient revenue to meet the predetermined spending levels corresponding to the rates selected by those districts. *See id.* at 210-42. The virtues of district power equalizing are touted as the elimination of the correlation between expenditure levels and wealth while preserving "local choice" in school finance—that is, variation in expenditures. For evidence that district power equalizing by itself would not reduce the variation in school resources which prevailed in the pre-*Serrano* era, see N. GRUBB & S. MICHELSON, STATES AND SCHOOLS: THE POLITICAL ECONOMY OF PUBLIC SCHOOL FINANCE ch. 8 (1974) [hereinafter cited as STATES AND SCHOOLS]. For a more detailed description of the various types of DPE formulations, see note 22 *infra*.

[12] The *Serrano* court illustrated this point by comparing Baldwin Park with Beverly Hills, both school districts in Los Angeles County:

> Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968-1969, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100 . . . Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. [Footnote omitted] Poor districts, by contrast, have no cake at all.

Serrano v. Priest, 5 Cal.3d 584, 598-600, 487 P.2d 1241, 1250-52, 96 Cal.Rptr. 601, 610-12 (1971).

More generally, the issue of horizontal equity in school finance should involve a consideration of the net benefits—benefits minus costs—to residents in different jurisdictions, and therefore both the results of expenditures in schools and assessment practices should be weighed. However, if we make the assumption, implicit in most of the recent school finance litigation, that the level of per pupil spending is an adequate proxy for educational benefits, the variation in tax rate per dollar of school revenue is an accurate measure of horizontal inequity.

It should be noted that the third cause of action in the original *Serrano* suit alleged inequalities in tax rates among districts, but the court failed to focus on this as a separate issue. The trial judge in *Robinson v. Cahill*, however, seemed to go much further, indicating that even apart from the issue of unequal spending levels, it was unconstitutional to have unequal tax rates among districts for a common state purpose (education). 118 N.J. Super. at 280, 287 A.2d at 218. This ground for the decision was expressly disavowed by the New Jersey Supreme Court. Robinson v. Cahill, 62 N.J. 473, 503, 303 A.2d 273, 288 (1973).

[13] *See* Silard, *Alternative Legislative Options for Achieving Public Education Equalization*, 7 COMPACT, Dec. 1971, at 40.

[14] It is relatively easy to demonstrate that eliminating the correlation between wealth and total revenues requires a state aid formula which incorporates a matching rate inversely related to wealth. Under the simplest assumptions, this results in a district power equalizing formula, one which equalizes the tax rates per marginal dollar of revenue across school districts. *See* N. Grubb, Intergovernmental Aid and Resource Disparities: School Finance in Massachusetts, ch. 5, Aug. 1973 (unpublished draft, Childhood and Government Project). Under other assumptions, complex and less familiar formulas, all of them incorporating matching rates, would be required. *See id*; M. Feldstein, Wealth Neutrality and Local Choice in Public Education, July 1973 (Discussion Paper No. 293, Harvard Institute of Economic Research).

[15] For a discussion of the reasons for a focus on resource inputs rather than on a more out-

of educational need, had failed.[16] Thus suits which followed the *Serrano* strategy used dollar inputs as the basis of equalization. Accordingly, compensatory education, one of the most significant educational developments of the past decade, was not even considered as an appropriate remedy, nor were cost-of-living differences among school districts considered in these court cases.[17] Partly due to the failure to take these aspects into account, much of the initial commentary on the school finance decisions was pessimistic, predicting that the results of the litigation would be disastrous both for children of poor families and for poor school districts.[18]

In retrospect, much of this criticism seems ill advised. It incorrectly read the failure to treat a number of issues in litigation as a license for legislatures to ignore these issues forever—or at least to ignore these issues until the courts were ready to approach the standards of educational need broached in *McInnis* and *Burruss*.[19] Since the relationship between court decisions and the 1972-73 legislation was less direct than simple compliance to a court order that "the quality of public education [as measured in dollars per pupil] may not be a function of wealth, other than the wealth of the state as a whole,"[20] the school finance legislative reforms encompassed more than the precise legal issues disputed in the courts.

All caveats about the role of litigation notwithstanding, last year's legislative activity constitutes a burst of activity in an area previously distinguished by hesitant reform.[20a] This article provides an overview of recent legislation, and describes a number of similarities among the bills enacted in the first round of post-*Serrano* revisions, similarities which can be construed as an indication of the trend of future school finance reform.

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put-related measure, see McDermott & Klein, *The Cost-Quality Debate in School Finance Litigation: Do Dollars Make a Difference?*, 38 LAW & CONTEMP. PROB. 415 (1974).

[16] Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.*, 397 U.S. 44 (1970); McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394, U.S. 322 (1969).

[17] But see some of the more recent cases, for example, Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), in which the court suggested that the state, in meeting its constitutional mandate to guarantee to all pupils equality of educational opportunity, could "recognize differences in area costs." *Id.* at 520, 303 A.2d at 298. A lower state court in Idaho, in holding its state's system of financing education unconstitutional, also suggested that the state is not "obligated to insure that all districts have the same dollar input per pupil. The state may recognize differences in educational costs so long as the differences are based on relevant economic and educational factors." Thompson v. Engelking, Civil No. 47,055, (Idaho Dist. Ct., Nov. 16, 1973) at 17.

[18] *See, e.g.* Berke & Callahan, Serrano v. Priest: *Milestone or Millstone for School Finance*, 21 J. PUB. L. 23 (1972); Dimond, *Serrano: A Victory of Sorts for Ethics, Not Necessarily for Education*, 2 YALE REV. L. & SOC. ACTION 133 (1971); Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano v. Priest *and Its Progeny*, 120 U. PA. L. REV. 504 (1972). *See also* J. CALLAHAN, W. WILKEN & M. SILLERMAN, URBAN SCHOOLS AND SCHOOL FINANCE REFORM: PROMISE AND REALITY (1973); Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303 n.2 (1972).

[19] Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Pa. 1969), *aff'd mem.*, 397 U.S. 44 (1970); McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969). While this criticism appears to have misjudged the political response to court cases, much of it was also theoretically and empirically faulty. *See* Grubb & Michelson, *Public School Finance in a Post-*Serrano *World*, 8 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 550 (1973).

[20] Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280, 284 (W.D. Tex. 1971).

[20a] For brief histories which stress the slow pace of school finance reform, see J. COONS, W. CLUNE & S. SUGARMAN, *supra* note 5, at 39-95; STATES AND SCHOOLS ch. 2.

II

AN OVERVIEW OF RECENT LEGISLATION

A. District Power Equalizing

In nine of the eleven states[21]—Colorado, Florida, Illinois, Kansas, Maine, Michigan, Montana, Utah, and Wisconsin—the newly enacted statutory programs distribute state aid on the basis of district power equalizing (DPE) formulas.[22] [The Florida legislature, in its most recent session, drastically revised its new school finance legislation, knocking out the DPE provision, restoring the local (non-equalized) millage—but lowering the 10 mill max-

[21] A proposal for the revision of school finance in Oregon included a DPE provision, but this reform, after passage by the legislature, was defeated by a referendum under a state constitutional provision, ORE. CONST. art. IV, § 1.

[22] District power equalizing formulas tend to be more complex than those of the foundation and flat grant programs which have dominated state aid in the past. Moreover, DPE formulas can take several different forms. It may, therefore, be helpful to review them in order to clarify what is being discussed. First of all, the state aid involved in these formulas is non-categorical aid, that is, not restricted for any particular purpose. The most important distinction is that between matching aid, which depends on the level of local revenue raised, and non-matching aid. State aid can be described by the expression

(1) $S = m \cdot L + A$

where m is the matching rate applied to local revenue, $m \cdot L$ is matching aid, and A is non-matching aid. S and L represent state and local revenue per pupil.

In the most general form of district power equalizing, total expenditures or revenues are assumed to be a function of the local tax rate T (measured in mills, meaning that property values are computed in thousands of dollars) only:

(2) $S + L = f(T)$

or, assuming f to be a linear function,

(3) $S + L = k \cdot T$

where k is constant across all districts. In this form, district power equalizing appears to grant each district the same effective property values per pupil, since the total revenue is the same as that raised by a district with a property value per pupil of k. Equivalently, subtracting L from both sides of equation (3) and substituting in $L = T \cdot P$, where P is district property valuation per pupil, one gets

(4) $S = (k - P) \cdot T$.

This form makes it clear that state aid makes up the difference (or takes away the difference—"recapture") between what the local tax rate would raise with an actual local property valuation P and what would be raised with a property value per pupil of k. Equivalently, substituting $T = L/P$ into equation (4), one gets

(5) $S = (k/P - 1) \cdot L$

from which the matching rate is evidently $(k/P - 1)$, which is negative if P is greater than k. Finally, multiplying equation (5) through by P/k, adding S to both sides, and rearranging terms, yields

(6) $S = (1 - P/k) \cdot (S + L)$

which is recognizable as the usual percentage equalizing formula. This is often expressed with $k = \bar{P}/c$, where $\bar{P}$ is the state average property value per pupil:

(7) $S = (1 - c \cdot P/\bar{P}) \cdot (S + L)$.

In the equivalent forms given in equations (3), (4), (5), (6), and (7), the expression for state aid can be negative for districts with high property values per pupil. This implies that wealthy districts must remit revenues to the state—a process usually termed recapture—instead of receiving state aid. The case where state aid is constrained to be non-negative has sometimes been considered a separate formula. However, in such a case, where relatively wealthy districts are allowed to keep all the revenue generated by their property base, the DPE condition of equation (2) is *not* satisfied: total revenue is a function of the tax rate only for those districts with property valuation per pupil less than k. For wealthier districts total revenue depends on property valuation. This caveat applies to all of the programs described in this article except those of Maine and Wisconsin.

imum to 8 mills, thereby increasing the state share, and thus taking a substantial step toward full state funding.* Editor's Note.] This represents a substantial increase in the number of states distributing aid in this way, and a marked departure from the foundation programs and flat grants which most states have used for allocating educational resources.[23] The virtues of DPE formulas, exhaustively reiterated in the course of litigation and debate,[24] correspond to the requirements of the *Serrano* mandate: they preserve local choice while tending to eliminate dependence of expenditures on local wealth.[25] The other two states, California and North Dakota, kept their previous foundation programs. The changes in these two states amounted to little more than a doubling of state aid allocated in accordance with the same old formula.

Two characteristics were shared by the nine states which adopted DPE legislation following the first round of litigation. First, school finance reform had been under discussion in each state legislature for some time prior to the legal challenges which began in 1970.[26] Second, most of the nine were relatively homogeneous, either in terms of previous school expenditure patterns,[27] or by virtue of being largely rural. (The exceptions were Illinois, which passed the weakest of the DPE bills, and Michigan and Kansas, where court decisions played important roles.) This suggests that these first states to revamp their school financing programs were, not surprisingly, those in which the political problems associated with equalization were less severe than in the more complex political milieu of states with greater variation in school expenditures and with greater heterogeneity among districts.

Since district power equalizing formulas might abruptly decrease state aid to wealthier districts—in some cases making it negative—each state has also incorporated save-harmless clauses and minimum grants in its legislation. A pure form of percentage equalizing, which would require the wealthiest

*[Personal communication from Dr. Marshall Harris, Office of the Governor's Advisor on Education, Tallahassee, Florida, July 3, 1974. *See* ch. 74-277, §§ 1-41, [1974] Fla. Acts 608. Editor's Note.]

[23] As of 1971-72, twelve states distributed revenue through some form (usually highly modified) of district power equalizing; the twelve were Iowa, Kansas, Maine, Massachusetts, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, Utah, Vermont, and Wisconsin. However, Kansas, Maine, Oklahoma, and Utah distributed relatively small amounts of revenue through such formulas. *See* T. JOHNS, PUBLIC SCHOOL FINANCE PROGRAMS, 1971-72 (1972).

[24] *See, e.g.*, J. COONS, W. CLUNE & S. SUGARMAN, *supra* note 5. An earlier espousal of DPE formulas is in C. BENSON, THE ECONOMICS OF PUBLIC EDUCATION (1961). This was one of the important influences on the pre-*Serrano* development of DPE formulas in the states cited in note 23 *supra*.

[25] The elimination of this correlation requires, at least in theory, a DPE formula with very precisely determined parameters. *See* M. Feldstein, *supra* note 14; N. Grubb, *supra* note 14, at ch. 5.

[26] *See* Berke, *The Recent Adventures of State School Finance: A Saga of Rocket Ships and Glider Planes*, 82 SCHOOL REV. 183 (1974). Brief histories of past political activity are included in the following papers delivered at the National Symposium on School Finance Reform, Nov. 26, 1973: A. Buchmiller, Wisconsin's Elementary-Secondary School Finance Reform Legislation: Assembly Substitute Amendment 1 to 1973 Assembly Bill 300; G. Caesar, R. McKerr & J. Phelps, New Equity in Michigan School Finance; B. Furse, An Analysis of Senate Bill 72 School Finance Program in Utah; M. McGhehey, Analysis of a State School Finance Reform Legislative Proposal in Kansas; K. Nickerson, An Idea Whose Time Has Come: Analysis of an Act Equalizing the Financial Support of School Units; E. Steinbrecher, An Analysis of Senate Bill 72, Colorado Public School Finance Act of 1973.

[27] Colorado, Florida, and Utah each had relatively low intrastate variations in expenditures. M. BENDIXSEN, IN SEARCH OF EQUALITY: SCHOOL FINANCE REVISITED 8-9 (1972).

districts to remit revenues to the state for increases in local expenditures, has not been generally acceptable: only in Maine is the percentage equalizing provision subject to recapture, while Wisconsin's legislation provides for recapture to begin with the 1977-78 school year.[28]

Since DPE formulas may still permit substantial variation in expenditures, two other aspects of the recent legislation are significant. Four of the nine states using DPE formulas—Florida, Maine, Montana, and Utah—have combined high levels of non-matching aid, which cannot vary from district to district except in accordance with educational needs, with much smaller amounts of matching aid under percentage equalizing formulas. This combination reduces the range of expenditure levels open to local choice, limiting the possible variation in per pupil revenues. These four states also require that a specific property tax rate be levied. Since any revenues in excess of the amount of non-matching aid must be remitted to the state, this provision is in effect a statewide property tax.

B. Increased Level of State Aid

The amount of state aid has been drastically increased in all eleven states which have revised their state distribution formulas. Since increases in state aid alone have considerable power in reducing inequalities among districts, independent of the form in which the aid is distributed,[29] this by itself should reduce the extent of previous disparities. In fact, many of the equalizing provisions of the new bills are somewhat uncertain in their impact: save-harmless clauses and the lack of recapture in DPE provisions make their potential effects unclear; DPE distribution formulas are susceptible to being undermined politically;[30] voter overrides and the nature of local response to new programs of state aid contribute additional sources of uncertainty. Thus, it may well be that increases in the level of state aid will be the most significant aspect of the new school finance legislation.

C. Restrictions on Tax Rates and Revenue Levels

In addition to promoting equalization by raising the level of state aid substantially, a second mechanism for narrowing resource disparities, which has been adopted in each of the eleven states, is that of restricting tax rates or revenue levels. In most cases this takes the form of a ceiling on permissible tax rates or revenues, but Colorado, California, and Wisconsin constrain the annual rate of increase in the level of revenue. Every state except Wisconsin

[28] Note, however, that non-matching aid in Florida, Maine, Montana, and Utah is subject to recapture, in that revenues must be remitted to the state if proceeds from the required tax rate exceed permitted expenditures. *See* FLA. STAT. ANN. § 236.081 (Supp. 1974); ME. REV. STAT. ANN. tit. 20, § 3713 (Supp. 1973); MONT. REV. CODES ANN. § 75-6912 (Supp. 1973); UTAH CODE ANN. § 53-7-18 (Supp. 1973). *See also* WIS. STAT. ANN. § 121.08 (1972), *as amended* by A.B. 300 (1973).

[29] *See* STATES AND SCHOOLS ch. 4. *See also* B. LEVIN, T. MULLER, W. SCANLON, & M. COHEN, PUBLIC SCHOOL FINANCE: PRESENT DISPARITIES AND FISCAL ALTERNATIVES ch. 1 (1972).

[30] For a description of the changes made in a DPE formula by the legislature of Massachusetts, thereby severely limiting the equalizing power of the formula, see A. DANIERE, COST-BENEFIT ANALYSIS OF GENERAL PURPOSE STATE SCHOOL-AID FORMULAS IN MASSACHUSETTS (1970).

permits voters to override these restrictions. Hence, their effectiveness in narrowing resource disparities may be weakened, or even destroyed, if voters in wealthy districts choose to override such limitations regularly.

D. Educational Need and Cost Differentials

The program elements described thus far control the distribution of revenues without allowing for the diverse needs of different types of pupils or for differences among regions in the cost of equivalent educational resources. Some of the legislation has gone further, incorporating sophisticated adjustments to allocate revenues according to prevailing concepts of educational need. Colorado, California, Florida, Illinois, Utah, and Wisconsin all distribute additional revenue for compensatory education. Some of these adjustments are trivial in amount—Florida weights each pupil eligible for compensatory education by an additional five per cent while the allocation for compensatory schooling in California amounts to less than four per cent of the state's aid budget—but they demonstrate that existing formulas can be adjusted for educational needs in a number of ways.[31] Florida's statute also includes a correction for cost-of-living differences among districts;[32] both the Colorado and Michigan programs now take municipal overburden into account.[33] Thus the special problems of urban school systems have received some consideration, and it appears from the evidence now available that their fiscal position has been improved in this round of legislation.

E. Property Tax Administration

Finally, a small number of states have revised the administration of the property tax. Such revision is often seen as a prerequisite to school finance reform because property taxes—both local and state—will continue to bear a substantial share of the burden of financing public schools in most states. Florida, Maine, and Montana have all passed legislation which will bring about the centralization of property tax administration to eliminate uneven assessment. Michigan has enacted a "circuit-breaker provision"[34] to reduce the re-

[31] Minnesota, which in response to Van Dusartz v. Hatfield, 334 F. Supp. 890 (D. Minn. 1971), had substantially reformed its school financing system earlier than the states under discussion in this article, had provided for an additional 0.5 pupil weighting for pupils from families receiving AFDC funds (Aid to Families with Dependent Children) in school districts where such families account for more than ten per cent of the total number of pupils. MINN. STAT. ANN. § 124.17 (Cum. Supp. 1971). By a 1973 amendment, Minnesota increased the pupil weighting to 0.85, a not so trivial adjustment compared to the adjustments in the states referred to in the text. MINN. STAT. ANN. § 124.17 (Cum. Supp. 1974).

[32] *See* FLA. STAT. ANN. § 236.081 (Supp. 1974).

[33] The term "municipal overburden" refers to the property tax rate for non-school municipal services, generally considerably higher in large city school districts than in suburban or rural school districts. According to one theory, this is relevant to the extent that non-school taxes paid by individuals in a particular district affect the ability to pay school taxes. *See* J. COONS, W. CLUNE & S. SUGARMAN, *supra* note 5, at 346.

[34] Circuit-breaker legislation gets its name from the electrical device that cuts off electricity when the circuit is overloaded; similarly this tax relief provision cuts in when the property tax burden reaches a percentage of family income that the state considers excessive. The excess is recovered by the taxpayer either through credit against his state income tax liability or as a direct cash refund if he has no state income tax liability. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BIG BREAKTHROUGH FOR CIRCUIT-BREAKER 3 (ACIR Information Bull. No. 73-2, 1973).

gressivity of the property tax.[35]

III

ADHERENCE TO THE *SERRANO* MANDATE

Despite the clear intent of most of the new state aid programs to live up to the conditions of the *Serrano* mandate,[36] there are at least three weaknesses common to the legislation which may permit a correlation between property valuation and expenditures to persist, even though it will surely be diminished. The most important of these loopholes is the lack of recapture under DPE provisions, which, in effect, creates a dual financing system. One standard applies to those districts not wealthy enough to be potentially subject to recapture, while another applies to wealthy districts affected by the lack of recapture. The former districts experience an identical revenue yield per mill of tax, while the yield per mill of the latter remains a function of the local tax base.[37] This is clearest in the case of Illinois which maintained its previous foundation programs for wealthy districts and instituted a DPE "option" for other districts. Although the correlation between wealth and revenues may be lower because of the incentives provided in DPE formulas for poorer districts to increase expenditures, wealthy districts can still utilize their tax base to raise local revenues.

Another provision with a similar effect is that allowing for voter overrides of expenditure or tax rate limitations. In all ten states which permit such overrides, expenditures in excess of the statutory limitation come wholly from local sources. Hence, wealthy districts can be expected to have a greater propensity to vote overrides than poorer districts. This would not only preserve a positive relation between wealth and expenditures, it would also increase the absolute variation in expenditures.

The inclusion of save-harmless clauses reflects both political necessity and a justifiable desire to minimize the disruption of the transition to a new financing system. However, such provisions clearly limit the power of state programs to achieve greater equity. The problem, in the long run, is whether the provisions will be phased out over time, as embodied in legislation, or whether legislatures will continue to extend them at the behest of wealthy districts. In the latter eventuality, a dual financing system would again be created, with separate schedules of state aid for poor and wealthy districts.

It is, therefore, reasonably clear, at least in the short run, that there are sufficient weaknesses in even the best of the school finance reforms to allow some inequities to persist. Only in Kansas (and perhaps in California) will it

[35] For two overviews of weaknesses of the property tax as presently administered and possible reforms, see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, FINANCING SCHOOLS AND PROPERTY TAX RELIEF—A STATE RESPONSIBILITY (ACIR Report No. A-40, 1973); PROPERTY TAX REFORM (G. Peterson ed. 1973).

[36] California and North Dakota seem to be exceptions.

[37] For a graphic presentation of the effect of the failure to recapture excess revenues, see C. BENSON, P. GOLDFINGER, G. HOACHLANDER, & J. PERS, PLANNING FOR EDUCATIONAL REFORM: FINANCIAL AND SOCIAL ALTERNATIVES 66-67 (1974). Lack of recapture results in a discontinuity in matching rates, which are inversely related to wealth in the case of poorer districts, but zero for wealthy districts.

be possible to attack the reforms which perpetuate these disparities as failing to comply with a court decision. However, on the assumption that legislative pressure rather than litigation will dominate school finance reform in most of the states described herein, knowledge of the loopholes—with respect to the *Serrano* mandate—is a crucial first step in preventing the deterioration of the present legislation.

IV

ISSUES BEYOND THE *SERRANO* MANDATE

There remain, of course, a number of issues which the current wave of legislation has only begun to touch. Physically and mentally handicapped students, vocational students, "gifted" students, and economically disadvantaged students may require more and different types of resources than so-called average students. Although various commentators have urged that any distributional formula must reflect these differing educational "needs,"[38] there are currently available no adequate indices of relative need in terms of fiscal resources. Since such indices should relate educational outcomes to fiscal inputs, they would have to be based on educational production functions.[39] Given the underdeveloped state of research in this area, debate over the extent of variation in educational need and possible remedies must remain within the realm of ad hoc measures and intuitive judgments[40] for the present.

Nonetheless, the recent school finance legislation does more than illustrate that varying educational needs can be, and have been, considered by state legislatures; it also provides models for different ways in which such reform might be accomplished. The two most common methods are illustrated by Florida, which uses different pupil weightings to reflect varying needs, and by Colorado, California, Illinois, and Wisconsin, which allocate categorical grants for the same purpose. Utah uses a combination of both methods. The use of weighted pupils in a DPE formula is closer to the *Serrano* ideal: even though the ratio of expenditures on children with special needs to expenditures on other children is constant and fixed by the state for each category of need, the amounts so spent are effectively matched by the state so that they are not a function of local wealth. Under a categorical grant program, any supplements to state monies—that is, any exercise of local choice in expenditure levels—must come from local resources and thus would generally vary according to local wealth.

A second unresolved problem for state legislatures involves revenues for

[38] *See, e.g.*, J. CALLAHAN, W. WILKEN & M. SILLERMAN, *supra* note 18; B. LEVIN, T. MULLER & C. SANDOVAL, THE HIGH COST OF EDUCATION IN CITIES (1973).

[39] For a more thorough discussion of the information needed to equalize on some basis other than simple dollar inputs, see STATES AND SCHOOLS ch. 1.

[40] It has often been suggested that need indices could be derived from the relative cost figures developed by the National Educational Finance Project. *See, e.g.*, PLANNING TO FINANCE EDUCATION (R. Johns, K. Alexander & F. Jordan eds. 1971). The Florida weights are partly based on these figures, GOVERNOR'S CITIZENS' COMMITTEE ON EDUCATION, IMPROVING EDUCATION IN FLORIDA 117-18 (1973). But the NEFP figures are based on relative costs in "best practice" schools and therefore reflect current expenditure patterns rather than the resources necessary to achieve some targeted educational output.

construction and for debt service. While such expenditures never became a separate issue in the courts,[41] equity in terms of resources available would seem to require equalization of both current and capital expenditures.[42] The new school finance laws enacted in Michigan and Utah provide revenue for capital expenditures through separate DPE formulas,[43] while Wisconsin's basic DPE formula provides funds for both capital and operating expenditures. Florida has entirely centralized the funding of school construction with a provision designed to fund building projects in relation to need and locally available wealth.[44] These two methods contrast with the distribution of construction aid by state categorical grants, the usual form in which construction aid is distributed to school districts in those states which provide grants for construction.[45] Since state categorical grants pay only a portion of total construction costs in any district, the remaining funds must be raised locally, meaning that capital expenditures above the categorical amount are a function of district wealth.

While the problem of municipal overburden has been on the list of inequities in school finance for at least a decade, remedies have been limited to additional direct grants to large cities. The inclusion in the recent Colorado statute of lump-sum education aid to districts of high population density, large size, or with a high concentration of poor residents provides another example of such practice.[46] But the Michigan legislation includes a novel and more precise mechanism for alleviating the burden on school districts produced by extensive non-school public service requirements—additional state aid is allocated to districts with high tax rates for non-school purposes.[47] While lack of information on the actual impact of municipal overburden may hamper policy formulation,[48] the experience of Michigan should provide some of the needed information for future legislative efforts in other states.

Although price variation among districts has been identified as a source of serious inequity in current state finance mechanisms,[49] the price index

[41] Hollins v. Shofstall, Civil No. C-253652 (Ariz. Super Ct., Jan. 13, 1972), *rev'd*, 111 Ariz. 88, 515 P.2d 590 (1973), was one of the few cases in which the issue was even mentioned. The *Hollins* court noted that capital outlay funds are even more a function of district wealth than operating funds, as in Arizona the state makes no contribution to capital costs. Thus the amount of money which can be raised for construction and debt service is directly tied to the district property base.

[42] Levin, *Alternatives to the Present System of School Finance: Their Problems and Prospects*, 61 GEO. L.J. 879, 907 (1973).

[43] Utah has also authorized a one-time allocation to districts with substandard facilities. Since capital facilities are dominated by the existing stock rather than new construction, equalizing construction revenues would not equalize facilities except in the very long run.

[44] This provision amounts to full state funding of capital expenditures, where both expenditure levels and tax rates are set by the state. However, Florida permits additional capital expenditures from local revenue sources.

[45] Many states provide loans rather than grants for school construction while other states provide no assistance at all. Of the states discussed in this article, only Maine provides categorical grants for construction.

[46] California, Maryland, New York, Ohio, and Pennsylvania previously provided additional educational aid to cities based on density of population. *See* T. JOHNS, *supra* note 23, at 4.

[47] MICH. COMP. LAWS ANN. § 388.1125 (Supp. 1974).

[48] The only measure of actual impact—as distinct from descriptions of non-school needs in cities—is that in STATES AND SCHOOLS ch. 7.

[49] *See, e.g.*, B. LEVIN, T. MULLER & C. SANDOVAL, *supra* note 38.

included in Florida's legislation represents the only attempt to date to measure actual price differences across all districts. Conceptual problems precede those of data availability: indices based on teacher salaries ignore the problem of teacher quality variations and may even serve to reinforce current salary differentials, while indices using a variation on the Bureau of Labor Statistics approach (such as the Florida figures) require data which are currently unavailable.

Finally, no state has moved to equalize revenue differentials caused by factors other than district property wealth.[50] The most important source of variation in expenditures, other than property valuation, is probably income—although its importance varies from state to state.[51] Failure to consider income variations not only leaves open the possibility of a positive correlation between income and school resources, but penalizes poor children who may need additional school resources most.[52] Other unaccounted sources of spending variation which may seem equally unfair or arbitrary include occupational status, adult educational status, district age structure or the proportion of families without children, and the rate of utilization of private schools.[53]

In summary, this brief description of the issues only partially treated in the 1972-73 legislation affirms the importance of the various court decisions on recent school finance reform legislation: while legislators did not ignore the issues of educational need described in this section, they treated them less thoroughly than they did the issue of expenditure variation due to wealth differences—the one issue which has dominated litigation. This observation, of course, might simply reflect the difficulty of the issues and not the influence of court decisions. But since legislatures routinely enact laws without adequate information, the conclusion that the court decisions were independently influential in isolating certain problems for remedial treatment is surely warranted.

V

CONCLUSIONS: THE PACE AND DIRECTION OF SCHOOL FINANCE REFORM

The changes initiated during 1972-73 accelerated the pace of school finance reform in two major ways. First, while the average state share of school revenues has increased by only 20 per cent during this century,[54] much greater

[50] The one exception is Kansas, which has continued its index of local fiscal ability, weighting district income equally with property valuation.

[51] *See* N. Grubb, Wealth, Income, and Price Effects, Apr. 18, 1974 (paper delivered at the American Educational Research Association Meetings).

[52] *See* J. CALLAHAN, W. WILKEN & M. SILLERMAN, *supra* note 18. When district power equalizing formulas correcting for district income rather than property valuation differences are simulated, the result is a significant increase in the resources flowing to districts with large numbers of poor children. *See* STATES AND SCHOOLS ch. 7.

[53] For reviews of the literature on the determinants of school expenditures, see J. MINER, SOCIAL AND ECONOMIC FACTORS IN SPENDING FOR PUBLIC EDUCATION (1963); Bahl, *Studies on Determinants of Public Expenditures: A Review*, in S. MUSHKIN & J. COTTON, SHARING FEDERAL FUNDS FOR STATE AND LOCAL NEEDS: GRANTS-IN-AID AND PPB SYSTEMS 184 (1969); Siegel, *On the Positive Theory of State and Local Expenditures*, in P. KLEINSORGE, PUBLIC FINANCE AND WELFARE: ESSAYS IN HONOR OF C. WARD MACY 171 (1966).

[54] *See* U.S. EDUC. BUREAU, DEP'T OF INTERIOR, BIENNIAL SURVEY OF EDUCATION, 1920-22 (1925); U.S. OFFICE OF EDUC., DEP'T OF HEALTH, EDUCATION & WELFARE, ELEMENTARY AND SECONDARY EDUCATION: STATISTICS OF STATE SCHOOL SYSTEMS, 1969-70, at 11-12 (1973).

increases have already been projected for the first year of these reforms: for example, from 31 to 51 per cent in Colorado,[55] and from 35 to 60 per cent over three years in Maine.[56] Second, the sophistication of state aid formulas in dealing with interdistrict inequalities has been slow to develop in the past—from flat grants to foundation programs to the percentage equalizing formulas first adopted in the 1960's—but the 1972-73 legislation more than doubled the number of states using variable matching grant formulas.

Both kinds of changes have in the past been instrumental in reducing disparities among districts, and—despite the caveats expressed in Part III of this article—there is little doubt that the 1972-73 reforms will reduce the interdistrict differences in per pupil expenditures and the relation between local property wealth and expenditures.[57] In addition, by taking into account cost differences, compensatory education, cost-of-living variations, and municipal overburden, the new legislation in these eleven states, taken as a whole, has moved in the direction of equity based on real school resources rather than mere dollar amounts. While many advocates of school reform will feel that these reforms have been too hesitant, especially in the treatment of poor children and large urban districts, at least the progressive trend of the legislation is clear.

The process of reforming existing school finance systems continues. In Idaho a district court ruled the financing program unconstitutional on state grounds and gave the legislature until July 1, 1975, to revise the school aid program.[58] Efforts at legislative reform are progressing—in the form of either state commission reports or preliminary legislative work—in Connecticut, South Dakota, Kentucky, Georgia, Arizona, and Pennsylvania.[59]

While these developments are certainly grounds for optimism regarding future reform, there are several countervailing forces at work. First, the fruits of reform—which grew from initially successful litigation—are being challenged in the courts: a suit has been filed by wealthy districts in Montana charging that the new legislation violates the state's home rule provisions;[60] a suit is pending in Florida over the cost-of-living correction in the revised formula;[61] and wealthy districts are contemplating litigation in Wisconsin.[62]

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[55] E. Steinbrecher, Understanding Colorado School Finance, 1974 (unpublished paper on file with the Colorado Dep't of Educ.).

[56] K. SIMON & W. GRANT, DIGEST OF EDUCATIONAL STATISTICS: 1972 EDITION (DHEW Pub. No. (OE) 73-11103, 1973).

[57] It will be rather difficult to assess the actual impact of this legislation for a number of years, as the existence of save-harmless clauses will seriously affect the data on revenue patterns for the first few years.

[58] Thompson v. Engelking, Civ. No. 47055 (Idaho Dist. Ct., Nov. 16, 1973). The decision is being appealed to the state's supreme court.

[59] For descriptions of current changes affecting taxes and expenditures at the state and local level, see generally From the State Capitals (mimeo newsletter on file with the author).

[60] *Id.*

[61] *Id. See* District School Bd. of Bay County v. Department of Administration, Civil No. 73-1747, (Fla. Cir. Ct., Mar. 8, 1973). [This suit was brought by forty-two district school boards in rural counties. Because of the legislature's recent changes in the law, see Editor's Note, p. 464 *supra*, the suit has been postponed indefinitely and is unlikely to be resurrected. Personal communication from Dr. Marshall Harris, Office of the Governor's Advisor on Education, Tallahassee, Florida, July 8, 1974. Editor's Note.]

[62] From the State Capitals, *supra* note 59.

In addition, the new legislation creates a number of incentives for districts—both wealthy and poor—to subvert it to their own ends. Since district power equalizing applies to schools only, the differences in yield per mill of tax between the school and the non-school public services sectors create an incentive for poor districts to transfer functions from non-school institutions (such as libraries and recreation departments) to schools. Moreover, one of the arguments against greater equalization has been that parents in wealthy districts will have no incentive to maintain their children in the public schools and will abandon them entirely. And, given the political pressures which have resulted in a positive correlation between social class and school resources, greater equalization among districts provides the incentive for districts to increase inequalities within the district so as to favor children of wealthy parents.[63]

Finally, there is the continuing incentive for legislatures to change school finance programs for political purposes. Such pressure will hardly be abated in the post-*Rodriguez* period. Rather, it seems likely that the issue of school resource allocation will remain a contentious subject for a considerable period to come.

Appendix

1972-73 SCHOOL FINANCE REFORMS

I

CALIFORNIA

The California school finance reforms[64] increased substantially the amount of aid available under the foundation program. State revenues for education approximately doubled. For elementary school districts, the guaranteed foundation amount per pupil is now $765 with a required participation rate of 2.23 mills, compared to $391 per pupil and a 1 mill rate under the previous act.[65] For secondary school districts, the guaranteed aid is now $950 per pupil with a 1.64 mill required minimum rate, compared with $524 per pupil at a required rate of .80 mills under the previous act.[66] The new act retains the basic aid grant of $125 per pupil, which goes to all districts regardless of property wealth.[67]

[63] *See* Benson, *How to Beat Serrano: Rules for the Rich*, SATURDAY REV. (Education) Dec. 9, 1972, at 35. *See also* Grubb & Michelson, *supra* note 19.

[64] CAL. EDUC. CODE §§ 17301-18480 (West Supp. 1974).

[65] *Id.* §§ 17656-17660, 17702. The new formula for elementary districts is

$$S = \$765 - (2.23 \cdot P)$$

instead of

$$S = \$391 - (1.00 \cdot P)$$

where S = state share
P = district assessed valuation per pupil
$765 = new guarantee amount
2.23 = new participation rate
$391 = old guarantee amount
1.00 = old participation rate.

[66] *Id.* §§ 17664—17665, 17702.

[67] CAL. EDUC. CODE §§ 17751, 17801 (West 1969). While this minimum basic or flat grant

In addition to doubling the amount of state revenue available to most districts, the new act places limits on the rate at which revenues can increase over time, permitting low-spending districts to increase expenditures at faster rates than high-spending districts. The revenue limit can never be below the current foundation level, which will grow at 6 to 7 per cent per year because of a built-in inflation factor.[68] School boards may exceed the revenue limits for certain purposes specified in the law; with voter approval, the limits may be overridden for any purpose.

The California legislature authorized additional funds for compensatory education, allocated in accordance with a composite index based on pupil transiency, poverty, and the number of bilingual pupils. But this aid—$80 million in 1973-74—constitutes less than 4 per cent of total state aid to education.

II

COLORADO

The new Colorado school finance program[69] distributes aid according to a district power equalizing formula, but without requiring recapture of excess revenues from wealthy districts. The law also includes provisions which ensure a minimum amount of state aid for even the wealthiest districts, as well as provisions which place upper limits on total education expenditures (from state and local sources). As with other programs which include a power equalizing element, the level of state aid will increase substantially under the new act. State school revenue for general purposes is anticipated to increase from $160.3 million in 1973 to $294 million in 1974, while categorical aid is expected to increase from $27 million to $35 million. Taking into account both general and categorical aid, state revenue should increase from 31 per cent of total school resources to 51 per cent.

The law guarantees each district $25 per mill of tax in 1974.[70] The guaranteed yield per mill will be increased to $27 in 1975 and to $29 in 1976. There are also minimum state aid provisions such that no district will receive less than $8 in state aid per mill of tax in 1974, $9 in 1975, and $10 in 1976. (The 1974 minimum applies to those districts with property values greater than

reduces the equalizing potential of state aid, there are political difficulties in removing it since all but $5 is mandated by article 9, section 6 of the state constitution.

[68] The permitted increase is given by the formula

$$(F_{-1}/RL_{-1})\, F_{-1} \cdot IF$$

where F_{-1} is the previous year's foundation level, RL_{-1} is the previous year's revenue limit, and IF is an inflation factor constrained to be between 5 per cent and 6 per cent. The permitted increase as a fraction of the previous year's revenue limit is the expression noted above divided by RL_{-1}; hence, the permitted increase is limited to a fraction $(F_{-1}/RL_{-1})^2$ (which will be less than one for those districts with relatively high revenues per pupil) times the inflation factor of 5 per cent to 6 per cent.

[69] COLO. REV. STAT. ANN. §§ 123-44-1—123-44-17 (Supp. 1973).

[70] *Id.* § 123-44-5. The formula is therefore:

$$(S + L) = \$25 \cdot T$$

where S = state aid
L = local share
T = tax rate in mills
$25 = guaranteed yield in dollars.

$17,000 per pupil, 42 per cent more than the statewide average per pupil property value of $12,000.) In addition, there is a one-year save-harmless provision that guarantees any poor district[71] an 18 mill tax reduction in its previous tax rate and an expenditure level of at least $750 per pupil.

While the provision for minimum state aid guarantees makes the distribution of resources less equalizing, the legislation also contains provisions for limiting the maximum amount of revenues, intended to narrow the differences between low-spending and high-spending districts over time. All districts which spent less than $800 in 1973 from state and local sources are permitted to increase revenues per pupil 12 per cent per year.[72] The permitted rate of increase declines for higher-spending districts, with the highest-spending districts—those which raised more than $1,000 per pupil in 1973—constrained to a maximum of 7 per cent. The overall effect, therefore, is that low-spending districts will be able to increase expenditures faster than high-spending districts, with a consequent narrowing of resource disparities over time. However, these revenue limitations can be overridden in two ways: by local voter approval[73] or by approval of the state board of budget review. Thus the effectiveness of the law's provisions in narrowing revenue differentials depends on the extent to which these override provisions are utilized.

Colorado's new school finance system has two other features worth noting. First, very small rural districts qualify for additional state revenues. Second, additional state aid is provided to any district which has any of the following three features: (1) more than 15 per cent of its pupils are from families receiving AFDC aid, (2) its population per square mile is greater than 700, or (3) its population is over 300,000. This provision, which increases the qualifying district's entitlement per mill of tax by 15 per cent, is phrased in general terms, but Denver is the only district currently qualifying for such aid.

III

FLORIDA

Florida's new legislation[74] is intended to "guarantee to each student in the Florida public school system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors."[75] The new financing system, perhaps the most sophisticated of the recently enacted reforms, has two basic parts. The first

[71] Poor districts are defined as those where the county per capita income in 1972 was less than $1,200, and where revenues from the local property tax and state equalization aid were less than $750 per pupil.

[72] Districts which had raised less than $670 per pupil in 1973 are permitted to increase revenues to $750.

[73] The provision for local voter-approved overrides becomes effective in the 1975 budget year. Any revenue increase allowed by the budget review board or voted by the electorate must come from local revenues for the first year, but thereafter it becomes part of the revenue base and may be partially funded by the state.

[74] FLA. STAT. ANN. §§ 236.012—236.68 (Supp. 1974). *See also* FLORIDA DEPARTMENT OF EDUCATION, REGULAR LEGISLATIVE REPORT NO. 10 (June 7, 1973).

[75] FLA. STAT. ANN. § 236.012 (Supp. 1974).

is a provision for non-matching aid, which guarantees each district the "basic student cost" per weighted pupil, and requires a 7 mill tax on property assessed at 95 per cent of market value. The second is a percentage equalizing provision which guarantees a minimum amount of revenue for each mill of tax between 7 and 10 mills. Thus, the bill combines rather large amounts of revenue under the non-matching portion—revenue which cannot vary among districts except according to standards of "educational need" (described below)—with smaller amounts of revenue under the equalization provision. [The Florida legislature, at the close of the last legislative session, which ended in June of 1974, eliminated the DPE provision and restored the local—nonequalized—millage, limiting it to an 8 mill maximum, and moved further toward full state funding. Personal communication from Dr. Marshall Harris, Office of the Governor's Advisor on Education, Tallahassee, Florida, July 3, 1974. Editor's Note.].

Under the non-matching portion of the formula, the state makes up the difference if a 7 mill tax fails to raise the basic cost per pupil; conversely, any tax revenues in excess of the basic cost are remitted to the state. Since the amount of tax and the amount of available revenue are independent, the tax amounts to a statewide property tax, with the basic cost per pupil effectively distributed as a flat grant. The act leaves the determination of the basic cost per weighted pupil to the legislature, but from supplementary appropriations bills this is estimated to be $579 per weighted pupil for 1973-74.

The equalization provision of the statute guarantees each district 7 per cent of the basic student cost per mill of tax, except that the tax rate is restricted to from 1 to 3 mills in addition to the required 7 mills. Equalization aid is non-negative—that is, wealthy districts can keep the "excess" funds generated by their property base.[76]

Each district's entitlement is calculated on the basis of weighted pupils, with weights based on age, special needs, and compensatory education. The weights for normal children are 1.20 for kindergarten through third grade, 1.00 for grades four through ten, and 1.10 for grades eleven and twelve. It should be noted that the highest weights apply to the first four years, rather than to the secondary grades which is customary in states which have differentiated between elementary and secondary students, reflecting recent knowledge regarding the importance of early childhood education. For handicapped children and for special programs, such as vocational education, the weights range from 2.3 to 15.0. Finally, an additional .05 for compensatory education is provided for pupils with low achievement test scores, low socioeconomic status, and/or low scores on a standard English comprehension test. To insure that students with high weightings actually receive extra resources, the statute creates a statewide school-by-school accounting program which will be used

[76] The Florida formula for 1973-74 is therefore:

$$S + L = \$587 + \$41 \cdot (T - 7)$$

where S = state aid
L = local share
T = tax rate (mills)
$587 = basic student cost
$41 = aid per mill under the equalization provision, 7% of basic student cost
7 = the 7 mill statewide tax.

to enforce the statutory requirement that 90 per cent of funds generated by these weightings be spent in the school with the appropriate pupils.

Finally, there is an adjustment for cost-of-living differences, with provisional weights from .91 to 1.09,[77] but with authority for the legislature to adjust these according to future cost studies. The cost-of-living factor is multiplied by the basic student cost and the number of weighted pupils to arrive at the total basic amount for current operating expenditures. Aid under the 3 mill equalization provision is not, however, adjusted for cost-of-living differences, although it is adjusted for differences in pupil weights.

In at least three ways, the Florida legislation seems to have been designed to circumvent current criticisms of *Serrano*-inspired school aid formulas. First, the large amount of non-matching aid limits the tendency of percentage equalizing formulas to permit large interdistrict disparities. Second, the equalization provision provides for "local control" of expenditure levels without penalizing poorer districts.[78] Third, the weighting and cost-of-living adjustments are responses to criticisms of the potential inflexibility of district power equalizing formulas.

Enactment of the Florida bill was accompanied by appropriations increasing state revenues for schools from $698 million in 1972-73 to $830 million in 1973-74. In view of the debate over whether increased state aid limits local control, it is interesting to note that the Florida law also includes among its stated intentions the desire to "increase the authority and responsibility of districts for deciding matters of instructional organization and method and to encourage district initiative in seeking more effective and efficient means of achieving the goals of the various programs."[79]

The enacted legislation contains a number of provisions for categorical aid; that relating to construction aid is the most important. The state commissioner of education is empowered to distribute money according to a district's projected construction needs, taking into consideration, however, the monies available for construction from other sources.[80] Other categorical programs include transportation, community schools, educational leadership training programs, school lunch programs, textbooks, bilingual education, driver education, elementary school counselors, occupational and placement specialists, a safe school program, and reimbursement to local districts for tax losses resulting from additional homestead exemptions.

There are few provisions for smoothing the transition to the new program. In 1973-74, the first year of the new program, the required local tax rate is set at 6.235 mills instead of 7 mills, the cost-of-living index is slightly different, and there is a save-harmless provision designed to assure each district at least

[77] These weights were derived, using Bureau of Labor Statistics methods, by a special survey. *See generally* GOVERNOR'S CITIZENS' COMMITTEE ON EDUCATION, *supra* note 40, app. B, § V. (1973).

[78] [*But see* Editor's Note, p. 464 *supra*, for recent legislative developments in Florida.]

[79] FLA. STAT. ANN. § 236.012 (Supp. 1974).

[80] While the provisions of the Florida statute are vaguely worded, they refer to the methodology for determining construction needs and locally available resources, backed up by a census of all school facilities, described in GOVERNOR'S CITIZENS' COMMITTEE ON EDUCATION, *supra* note 40, app. B, § III.

the amount of revenues which they would have received under the 1972-73 foundation program with a 10 mill local tax plus 5 per cent. The bill contains no other save-harmless provisions extending past this first year.

Finally, a separate act reorganizing the administration of the property tax deserves mention, because of its potential importance for school financing. The act increases state control over assessment and encourages the use of computerized analysis and expanded training for assessors, with the goal of eliminating uneven assessment practices. Given the allegation that taxpayer revolts may be in part due to inequities in property tax administration, such improvements may affect the generation of revenues as well as the equity of tax burdens.[81]

The new program in Florida constitutes a complete break with the previous one, which allocated state revenue according to a foundation plan based on instructional units—one teacher for 28 pupils with salary adjustments for teachers with advanced degrees and additional years of experience.[82] The transition to a program with much greater equalization may well have been facilitated by the district structure in Florida: there are 67 county-wide districts, meaning that there is less interdistrict variation in expenditures than in states with more numerous, smaller, and more homogeneous districts.[83]

IV

ILLINOIS

The recently enacted school finance law in Illinois[84] retains the previous foundation program, but institutes an important option for poorer school districts. The option is a district power equalizing plan with upper limits on the local revenues which will be matched by the state. Hence, the new Illinois program is a hybrid: less equalizing than a straightforward DPE plan because of the retention of the foundation program which wealthy districts may choose, but more equalizing than the previous program because of the DPE option.

The foundation program requires an 8.4 mill local tax[85] and provides a basic amount of $520 per pupil.[86] There are two minimums which apply. First, every district is guaranteed at least $48 per pupil. Second, if state aid would be less than $120 under this formula, a district receives state aid of $120 x ($47,619/district property value per pupil), where $47,619 is the property valuation per pupil which would yield $400 ($520—$120). The founda-

[81] FLA. STAT. ANN. § 195.0011 *et seq.* (Supp. 1974).

[82] Some of the school finance issues arising under Florida's previous system were aired in Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971), which dealt with Florida's restriction on local property tax levies, rather than with the distribution of school resources.

[83] Interdistrict inequalities have in fact been smaller in Florida than in most states. For a summary of comparative data from 1940 to 1970, see M. BENDIXSEN, *supra* note 27, at Table 1A. Data on interdistrict disparities by state indicates that southern states with county-wide districts generally have less inequality. Similarly, a regression analysis of 1960 interdistrict disparities in per pupil expenditures indicates that inequality was less in states with relatively fewer districts. *See* STATES AND SCHOOLS, ch. 4.

[84] ILL. ANN. STAT. ch. 122, §§ 18-1—18-12 (Smith-Hurd Supp. 1974).

[85] For districts with less than 100 pupils, a 9 mill tax is required.

[86] The Illinois foundation formula is then:

$$S = (\$520 - 8.4 \cdot P) \cdot 1.25$$

tion plan grants large districts (those with weighted ADA over 10,000) more state aid by increasing the average daily attendance figure used to calculate total state aid.

Under the new option, each district is guaranteed the yield per mill of tax which a district with a property valuation per pupil of $42,000 would have, if the district operates grades kindergarten through twelve. The guaranteed yield corresponds to a property valuation of $64,615 for elementary districts (grades kindergarten through eight), and to a property valuation of $120,000 for secondary districts (grades nine through twelve).[87]

Under the new equalization option, there are operating tax rate limits of 30 mills (in K-12 districts), 19.5 mills (in K-8 districts), and 10.5 mills (in 9-12 districts) which can be exceeded only under one of the following conditions: (1) districts previously taxing above the limit must reduce their previous rate and the applicable rate limit; (2) districts previously spending more than $1,260 per pupil may continue to levy higher taxes to maintain their 1972-73 spending levels; (3) any district may exceed these rate limits in order to increase expenditures for innovative, experimental, and enrichment programs up to 15 per cent over 1972-73 expenditures. Districts may exceed the rate limits to increase spending by *more* than 15 per cent only with the approval of local voters, although local taxes in excess of the tax rate limits are not equalized by the state.

In addition, all pupils eligible for Title I aid are given a weight of between 1.375 and 1.75 in calculating state aid under the alternative formula, with the weight increasing with the number of Title I pupils. The provision is designed to provide additional revenues for compensatory education, but without the safeguards of the Florida program to insure that these monies are spent on the children who most need compensatory education. (However, districts over 10,000 ADA must submit a plan to the state to insure that the additional revenues are spent for the improvement of instruction.) The provisions of the foundation program which give additional aid to large and small districts apply to the DPE alternative as well, so that these districts are not penalized by choosing this option. During 1973-74, 64 per cent of the districts, representing about 85 per cent of all pupils in the state, elected the DPE alternative.

V

KANSAS

The enactment of a new system of school finance in Kansas[88] was prompted

where S = state aid
$520 = the foundation amount
8.4 = required tax rate
P = district assessed valuation
1.25 = addition to each district's equalization aid.

[87] Illinois' optional equalization formula—as applied to a unified district (grades K through 12)—is:

$$S = (\$42{,}000 - P) \cdot T$$

where S = state aid
$42,000 = guaranteed valuation per pupil
P = district assessed valuation
T = tax rate.

[88] KAN. STAT. ANN. §§ 72-7030—72-7079 (Supp. 1973).

in part by the decision in *Caldwell v. Kansas*,[89] which ruled that the existing method of financing schools was unconstitutional. The court gave the legislature until July 1, 1973, to devise a new school finance program. The legislature has responded with a finance system which relies on a district power equalizing formula restricted so as to narrow the range of possible expenditure levels, but without a recapture provision. In a memorandum decision, the court found the new system acceptable under both the Kansas and United States Constitutions.[90]

The new formula is a percentage equalizing formula with two important twists. First, the size of the district is incorporated into the rate at which the state matches local revenues. This adjustment is designed to compensate for the presumed diseconomies of scale faced by small districts. Second, the matching rate is inversely related to district income as well as property valuation. Under the new formula, the amount of state aid each district receives is the difference between each district's elected budget per pupil for operating expenditures and the required local tax effort. Local tax effort in turn is the product of the local effort ratio (which varies with enrollment) and district wealth, which is the sum of district taxable income plus its state equalized property valuation. District receipts from three other revenue sources—the county foundation fund, an intangibles tax, and P.L. 874 aid (federally impacted areas aid)—are also included in local effort.[91] The result is a percentage equalizing formula where the matching rate varies inversely with property values—as in all other matching formulas which have been adopted—but which also varies inversely with district income and with enrollment.[92]

Since there is no non-matching aid distributed for general purposes, the unrestricted operation of the formula might produce large expenditure disparities. However, there is a limitation on the rate of increase in expenditures, designed to narrow existing disparities over time. No district may spend more than 115 per cent of its previous year's expenditure per pupil or more than 105 per cent of the previous year's median expenditures among districts in the same

[89] No. 50616 (Kan. Dist. Ct., Aug. 30, 1972). The Kansas legislature had been working on changes in the school finance system before the *Serrano* or the *Caldwell* decisions.

[90] Caldwell v. Kansas, No. 50616 (Kan. Dist. Ct., July 5, 1973).

[91] The treatment of P.L. 874 aid (federally impacted areas aid)—subtracting it from the locally elected expenditure level in determining the level of state aid—is an effort to avoid a kind of double-counting. Districts which receive P.L. 874 aid are presumed to have relatively low property values per pupil, because of the presence of tax exempt federal property with large numbers of federal employees and their school-attending dependents. Yet low per pupil property values are taken into account in the equalization provision of the state formula. Thus, since P.L. 874 aid is also intended to compensate for this phenomenon, it is subtracted from state aid to avoid double reimbursement for the presence of tax exempt federal property. The Office of Education initially indicated that the deduction of P.L. 874 aid in computing state aid, being illegal, *see, e.g.*, Douglas v. Jorgenson, 293 F. Supp. 849 (S. D. 1968); Hergenreter v. Hayden, 295 F. Supp. 251 (D. Kan. 1968); Shepheard v. Godwin, 280 F. Supp. 870 (E.D. Va. 1968), would lead to a loss of *all* federal school aid to Kansas. *See Kansas Carries the Fight on "Impact Aid"*, 7 COMPACT, Nov.-Dec. 1973, at 24. A similar warning was given to North Dakota. However, this conflict was resolved in favor of the Kansas statute for 1973-74 through special congressional legislation. Pub. L. No. 93-150, § 11 (Nov. 7, 1973).

[92] The local effort ratio (LER) is defined in relation to the *norm* budget per pupil BPP, where the norm is

$$BPP = \$936 - .2311(E - 400)$$

enrollment category, whichever is less. All districts may increase their expenditures by 5 per cent. Thus high-spending districts would be restricted to a 5 per cent increase per year, while low-spending districts would be permitted a 15 per cent per year increase, narrowing the disparities over time. However, there are several exceptions to these restrictions. Upon approval by its voters, any district may increase its expenditures beyond these limits as long as the increase does not exceed 15 per cent of the previous year's expenditures. This exception clearly diminishes the opportunity for narrowing existing disparities.[93] Other exceptions apply to districts with severely reduced enrollments and to districts which have not significantly increased expenditures in previous years.

The new Kansas program contains two provisions which govern revenue sources. The first requires districts to share the burden of both a 2 mill county school foundation property tax and the district's share of an intangibles tax. The amounts available to districts through these taxes are also subtracted from the maximum general fund budget in calculating state aid to local districts. Both of these taxes are in effect state taxes, since the rate at which property and intangibles are taxed is constant throughout the state. Since local collections of these two taxes do not affect available revenues among districts, local districts merely serve as state tax collectors.

The second revenue provision returns 10 per cent of the state income tax generated in each district to the schools. Since the amount of the tax transferred is not under local control, and since there is no redistribution among districts under this provision, this section amounts to a state mandate that all school districts levy a personal income tax at a rate equal to 10 per cent of the state's rate, an attempt to supplant the local property tax. Thus the percentage equalizing formula is statutorily defined in terms of the district's elected budget per pupil rather than the local tax rate, since the tax rate would vary among districts by the amount of revenue available under the state-required personal income tax. Finally, the Kansas system provides categorical aid for transportation,

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where E = enrollment. The local effort ratio is then

$$LER = \frac{S + L}{BPP} \cdot .015.$$

That is, districts choosing expenditure (S+L) at the norm level have a local effort ratio of 1.5%, and the local effort ratio increases or decreases as operating expenditures vary with respect to the norm.

State aid is then

$S = (S + L) - LER \cdot W -$ P.L. 874 aid $-$ county foundation revenue $-$ intangibles tax receipts where W is district wealth, property value P plus income Y. Ignoring the three sources of local receipts, this implies

$$S = \left(1 - \frac{.015(P + 1)}{BPP}\right) \cdot (S + L)$$

which is similar to the form of percentage equalizing in equation (6) of note 22 *supra* except that Y appears along with P. Isolating S on the left-hand side yields

$$S = \left(\frac{BPP/.015}{P + Y} - 1\right) \cdot L$$

similar to equation (5) of note 22 *supra*. Hence the matching rate is inversely related to both P and Y, and—from the formula for BPP given above—inversely related to enrollment as well.

The figures for BPP were set according to average expenditure levels of various size districts. There is no apparent evidence that these differences are due to diseconomies associated with small size, rather than to local preferences, quality differences, or other factors not controlled for.

[93] However, only one such election was held in 1973; hence other exceptions appear more important.

special education, vocational education, driver training, and food services.

As in Florida, the shift to a more equalizing formula has been accompanied by increased levels of state funding. The present estimate of state revenue in 1973-74 is $180.8 million ($157.8 million for general aid and $12 million for transportation aid), an increase of $76.3 million over 1972-73. The state will provide about 43 per cent of total school funds under the new legislation, compared with 28 per cent in 1972-73. The previous program was basically a foundation program, with the local share inversely related to district income as well as property valuation. But it was not a percentage equalizing formula since state aid was non-matching. It appears that the stimulus of the *Caldwell* decision has prompted a significant change in the patterns of school financing in Kansas.

VI

MAINE

Maine's new state aid program[94] provides a rather high amount of non-matching aid per pupil, with smaller amounts of aid allocated under a percentage equalizing formula. Of all the percentage equalizing formulas described in this article, Maine's is the only one which provides for full recapture of excess revenues. However, there are other adjustments and save-harmless provisions which are likely—at least in the short run—to render the recapture provisions relatively ineffective. The new aid package will increase the state's share of educational expenditures to 60 per cent (from 35 per cent in 1972-73) over a period of three years—but with the caveat that the state board of education "shall be conscious of the need for prudent restraint in educational financing."[95]

The basic allocation to each district is $600 per elementary school pupil and $915 per secondary school pupil,[96] plus the total amounts spent in each district the previous year for special education, vocational education, transportation, capital outlay, and debt service. Hence, the state appears to assume complete financial responsibility for the various special programs mentioned. While state controls over outlays for transportation, debt service, and construction are included in the statute, there are none covering special or vocational education.

The allocation for elementary and secondary pupils may be adjusted in various ways. The first of these adjustments is essentially a phase-in provision: if a district spent less than the state average the preceding year, the per pupil allocation is its previous year's expenditures plus one-third of the difference between this and the statewide average. If a district's expenditures per pupil were greater than the average, it may elect either the state average expenditure or half of the difference between its previous year's expenditure per pupil and the state average. (For the 1974-75 year, the latter alternative would be chosen

[94] ME. REV. STAT. ANN. tit. 20, §§ 3711—13, 3731—34 (Supp. 1973).

[95] *Id.* § 3713.

[96] The $600 and $915 per pupil figures apply to the 1974-75 school year only; future levels will be based on statewide average per pupil expenditures in subsequent years.

only if 1973-74 expenditures per elementary pupil were greater than twice the normal allocation per pupil—that is, greater than $1,200 per pupil for elementary school districts, or $1,830 per pupil for secondary school districts.) The second adjustment to the basic aid allocation may be made in the case of districts determined by the state board of education to be geographically isolated.

Finally, there is a save-harmless provision which permits any district to levy additional local taxes to maintain per pupil expenditures at its 1973-74 level. Over time, the applicability of this exception should decrease as expenditure levels increase.

Each district is required to levy a state-mandated tax rate, calculated as that rate which will raise 50 per cent of total required state revenues for education. This tax is, in effect, a statewide property tax. An additional tax is required of all districts, amounting to 7¾ mills beginning April 1, 1974, and increasing by 1½ mills per year for the succeeding four years. The taxes raised under this provision are for non-school municipal purposes. Of the taxes raised in each district, one-half may be spent by the local government. This latter half, then, is an additional state property tax levy. The half which may be kept by each district can be viewed as a state mandate that districts raise a certain minimum for non-school purposes, but this amount is likely to be small relative to current levies, and therefore may have little effect.

There is a save-harmless clause which applies to the tax requirements: any district which would be forced to increase its present tax rate by more than 2½ mills to reach the mandated rate will receive additional state aid so that the maximum increase will be 2½ mills.

The above description applies only to Maine's system of non-matching aid. In addition, matching aid is distributed to districts according to a provision which allows each district to levy a local tax, in addition to those already discussed, of up to 2½ mills, with a guarantee of $50 per pupil per mill.[97] There is full recapture under this provision: that is, all districts with more than $50,000 property valuation per pupil must remit excess revenues to the state if they choose to raise additional funds under this matching provision.

Like the Florida legislation, the Maine statute leaves some crucial elements of its aid program unspecified, such as the required basic tax rate. Without these crucial parameters, and without knowing more about the current distribution of property values and expenditures in the state, it is difficult to predict the real effect of the legislation, especially in the first three transition years. However, it is clear that the purpose of the statute is to increase the average level of state support from 35 per cent to 60 per cent. In addition, the present statute restricts permissible variations to relatively small amounts (fully equalized) disbursed under the matching provision—aside from save-harmless clauses, which usually counteract the equalizing tendencies of state

[97] The formula is

$$S + L = \$50 \cdot (T - Tr)$$

where S = state aid
L = local share
T = tax rate, not to exceed 2½ mills over Tr
Tr = required statewide tax rate
$50 = guaranteed amount per pupil.

aid programs. Finally, like Florida and Montana, Maine also enacted legislation to begin the centralization of property tax administration.

VII

MICHIGAN

The finance reforms in Michigan[98] are of particular interest because they were prompted in part by litigation.[99] In *Milliken v. Green*[100] the previous financing system had been ruled unconstitutional under the education provisions of the Michigan constitution.[101] The legislative response is basically a percentage equalizing system without negative matching rates. It guarantees a minimum yield per mill of tax, but does not equalize the yield across all districts. But the most interesting aspects of the new legislation are the adjustment for municipal overburden and the extension of district power equalizing to construction and debt service.

The basic formula for the distribution of state general-purpose revenue under the new Michigan system guarantees each district a yield of $38 per pupil per mill.[102] For 1973-74, the tax rate equalized by the state cannot exceed 22 mills, and for 1974-75, it must be less than 25 mills. These tax rate limits can be exceeded, but any additional mills levied are not equalized by the state. Beginning with the 1975-76 school year, the equalized tax rate is unlimited. In addition, the guaranteed yield of $38 per mill rises to $39 in 1974-75 and to $40 in 1975-76. Since there is no provision for recapture, the new formula permits wealthy districts (for 1973-74, those with property valuation per pupil above $38,000) to raise as much revenue with their own tax base as they desire.

One save-harmless measure was included. Districts levying less than 20 mills are credited with two-thirds of their deficiency under 20 mills in computing state aid in 1973-74, and with one-third of this deficiency in 1974-75. Conversely, to save districts with higher tax efforts, districts levying more than 20 mills are guaranteed an amount equal to their 1972-73 aid per pupil minus the amount which 20 mills would raise if applied to the increase in property valuation in 1973-74.[103] In addition, the state's largest district, Detroit, was authorized through separate legislation to levy a local income tax of up to 1 per cent—to be considered as 6½ mills in the state aid formula—whenever

[98] MICH. COMP. LAWS ANN. §§ 388.1101—388.1279 (Supp. 1974).

[99] *See* Hain, Milliken v. Green: *Breaking the Legislative Deadlock*, 38 LAW & CONTEMP. PROB. 350 (1974).

[100] Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972). *See* note 3 *supra*.

[101] On rehearing the court vacated its prior opinion, Milliken v. Green, 390 Mich. 389, 212 N.W.2d 711 (1973), but this occurred after the passage of Senate Bill 110.

[102] The formula is

$$S = (\$38{,}000 - P) \cdot T$$

where S = state aid
P = district assessed valuation per pupil
T = tax rate
$38,000 = guaranteed valuation per pupil.

[103] Two additional save-harmless clauses, designed to prevent any district from having to reduce expenditures and to reward high effort districts, were passed by the legislature, but the Governor vetoed them with a request that they be rewritten in a special fall session. MICH. COMP. LAWS ANN. § 388.1121 (4) & (5) (Supp. 1974). A revision is now pending in the state senate.

the total allocated and extra-voted levy drops below 22 mills.[104] Conceivably, future developments could dictate consideration of similar alternatives for other districts.

The municipal overburden correction allocates additional revenues to those districts in which local tax rates for non-school purposes are high relative to the state average. The non-school tax rate is computed as total local taxes minus taxes levied for school operating purposes, divided by local property valuation.[105] If the non-school tax rate is greater than 125 per cent of the statewide average non-school tax rate, the local property valuation used in calculating state aid is correspondingly reduced, so that the district receives more state aid than it would otherwise.[106] While this formula directs revenues to those districts which are characterized by municipal overburden,[107] it also creates some undesirable disincentives. For example, depending on the ratio of school to non-school tax rates, it may prove advantageous for districts to shift their school services from the school sector to the non-school sector.[108] Even if this is not done, the formula gives all districts an incentive to increase non-school services, since by doing so they appear to be more "overburdened" and will receive additional school aid. Hence, one might see districts being partially reimbursed under school aid programs for swimming pools and similar municipal services.[109]

Under the new legislation, revenues levied for capital outlay and debt retirement purposes will be district power equalized. The tax rates levied for these purposes by a district for the preceding year will be guaranteed a $37 per mill yield, but with a 22 mill limitation applying to capital and operating millage combined.[110] Moreover, each district receiving state aid under this provision will

[104] Mich. Pub. Act No. 47, § 1 (Mar. 19, 1974), *amending* MICH. COMP. LAWS ANN. § 340.689 (Supp. 1974). The technical language of the legislation permits income taxes in a few other school districts lying wholly within municipalities where local income taxes are already levied, but other conditions make it highly improbable that any will be enacted.

[105] The tax rate so calculated includes taxes levied for school construction and debt service, and so is not strictly a non-school tax rate.

[106] If the non-school tax rate is denoted by t_{ns}, with a state average of $\bar{t}_{ns}$, then the property valuation which enters the formula in note 71 *supra* is reduced by $t_{ns}/(1.25 \cdot \bar{t}_{ns})$. The effective formula becomes:

$$S = (38 - P)\left(1 - \frac{t_{ns}}{1.25\,\bar{t}_{ns}}\right) \cdot t_s = (38 - P) \cdot \frac{t_s + (t_s)}{1.25\,\bar{t}_{ns}} \cdot L_{ns}$$

where L_{ns} is local revenue for non-school purposes. Hence the formula provides for a matching rate of $t_s/1.25\,\bar{t}_{ns}$ applied to L_{ns}.

[107] Non-school tax rates are strongly related to those characteristics associated with municipal overburden. The ratio of non-school tax rate to total tax rate is a function of total population, population density, population growth, and the preponderance of AFDC families. A simulation of a district power equalizing formula incorporating this variable as a correction for overburden indicates that more revenue would in fact be distributed to cities and to districts where children of poor families live. *See* STATES AND SCHOOLS chs. 7-8.

[108] However, it should be noted that the matching rate applying to local non-school revenues is a function of the tax rate for school purposes, so that any shift of resources from the school to the non-school sector reduces the matching rate on local non-school revenue. This diminishes, but may not eliminate, the incentive to shift school services from the school to the non-school revenue sector.

[109] *See* note 63 *supra* and accompanying text. It should be noted that Detroit is currently the prime beneficiary of this overburden correction, so that the possibilities for abuse in Michigan are rather small.

[110] After the 1973-74 school year, another mill of local tax is equalized if payments are due the

be required to apply these funds to debt retirement and lower its bonding millage to the fullest extent that such application permits. In 1975-76, bonding millage will be reimbursed on the basis of the preceding year's tax rates with a $39 per pupil per mill guarantee and a 25 mill limitation applying to the combined operating and bonding millage. As in the case of general-purpose aid, there is no recapture of excess funds generated by wealthy districts.

Finally, the legislation allocates categorical aid for such purposes as the department of corrections, reading support programs, neighborhood education centers, experiments with teaching gifted children, "non-residential alternative juvenile rehabilitation programs," special education, vocational education, transportation, aid to intermediate districts, educational media centers, and cooperative educational programming among districts. However, no allocation is authorized for compensatory education, aside from that implicit in the programs receiving categorical aid. Nevertheless, revenues unallocated during 1972-73 can be reallocated to those districts which provide "a different educational delivery system than was provided for students who did not achieve 75 per cent of prescribed minimum performance objectives in 1972-73." Approval of the "delivery systems" receiving reallocated aid is contingent on performance at 75 per cent of minimum standards by the underachieving children. How much money will be reallocated under this provision, what kinds of experiments will be approved, and how adequate performance is to be measured and monitored is ignored by the statute.

The Michigan legislature also enacted two laws designed to change the structure of state and local taxes in Michigan and to reduce certain tax rates.[111] The most significant change is the circuit-breaker provision appended to the state income tax, designed to reduce the regressivity of the local property tax. The state will refund 60 per cent of property taxes which exceed 3.5 per cent of total income; this provision applies to renters as well as homeowners. Even greater tax relief is available for those over 65, for disabled veterans, and for blind homeowners.[112]

VIII

MONTANA

The enactment of Montana's new school finance system[113] presents an interesting example of how court pressure may influence legislation. When the Montana Constitutional Convention met in 1972, the consensus was that the Supreme Court would uphold the *Rodriguez* decision. Under the assumption that Montana's foundation program could not withstand a *Rodriguez*-type challenge, the Convention authorized the legislature to revamp the state's

state for loans under article 9, section 16 of the state constitution.

[111] MICH. COMP. LAWS ANN. §§ 205.132—205.1339, 206.30, 206.258, 206.504—206.530 (Supp. 1974).

[112] Other measures of the tax relief program are an increase from $1,200 to $1,500 in the personal exemption allowed on the state income tax, a business inventory tax credit, and a reduction in the state intangibles tax.

[113] MONT. REV. CODES ANN. §§ 75-6902—75-6927 (Supp. 1973).

school finance system.[114]

The new Montana program provides large amounts of non-matching aid per pupil, institutes a statewide property tax, and allows for a small additional amount of revenue under a percentage equalizing provision. It is therefore similar to the reforms enacted in Florida and Maine. Under the non-matching portion of the state program, each district receives 80 per cent of the "maximum general fund budget." A 40 mill property tax is required, with any excess revenues over the district's allocation reverting to the state; hence, this tax amounts to a statewide property tax. In addition, 25 per cent of the state personal and corporate income taxes are earmarked for aid under this section, and additional statewide property taxes may be levied in the event that the state lacks adequate revenues to cover necessary distributions.

For matching aid, up to 20 per cent of the maximum general fund budget can be allocated to districts if they levy a certain minimum rate, depending upon the type of district—6 mills for secondary districts; 9 mills for elementary districts. Thus, the state guarantees each secondary district 3⅓ per cent of the maximum general fund budget per mill of tax, and each elementary district 2 2/9 per cent of the applicable general fund budget per mill of tax.[115]

Although there is no recapture provision under this permissive levy, the maximum general fund budget does limit the total resources available to even the wealthiest districts. Moreover, there is a limitation on the increase in total expenditures of 7 per cent per year,[116] with exceptions for new programs, extraordinary increases in enrollment, and cutbacks in federal revenue. As in most other states, districts may increase total revenues by more than 7 per cent on approval of the voters. However, all additional revenues resulting from voter overrides must come from local sources, and this provides a mechanism whereby wealthy districts may increase school spending without limit and without recapture by the state of funds over a guaranteed amount.

The Montana legislature also enacted three laws relating to the property tax[117] which are instrumental in creating a more equitable administration of the new school finance program. Previously, Montana did not provide for state equalization of local assessment ratios;[118] hence districts with low assessment-to-sales ratios would appear relatively poor, and would receive relatively more state aid under either a foundation program or a percentage equalizing program where the matching rate depends on local property valuation. In

[114] Written communication to the author from Mr. Carrol Blend, Office of the Montana State Superintendent of Education. Article X, section 1, paragraph 3 of the Montana constitution provides that the state "shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system."

[115] This can be formulated as

$$S + L = (.0222 \cdot GFB) \cdot T$$

where S = state aid
L = local share
T = tax rate
.0222 = yield guaranteed to elementary districts
GFB = general fund budget.

[116] Note that this applies to total expenditures, *not* to expenditures per pupil. This is likely to be insufficient to keep up with inflation.

[117] MONT. REV. CODES ANN. §§ 84-601—84-734 (Supp. 1973).

[118] *See* A. STAUFFER, PROPERTY ASSESSMENT AND EXEMPTIONS: THEY NEED REFORM 36 (1973).

essence, the three newly enacted statutes transfer the functions previously performed by the board of equalization to the state's Department of Revenue, and make all county assessors agents of the Department of Revenue. Hence, assessment is centralized, and equalization for purposes of the state aid program can be more readily carried out.

IX

NORTH DAKOTA

North Dakota's school finance legislation[119] increases the level of foundation support available from $260 per pupil with a required 21 mill local levy to $540 per pupil with a 20 mill rate.[120] There is no recapture of excess funds under the new foundation formula. Although the new law establishes a tax limit of 24 mills (except for Fargo[121]), it does permit districts with populations greater than 4,000 to increase their tax rate above the limit by local vote. Finally, the new law changes the pupil weights slightly, with different weights for high schools and with weights varying according to district enrollment.

X

UTAH

The Utah legislature passed three laws in 1973 revising the state's school finance system.[122] While the distribution of basic school aid was changed only slightly, the mechanisms for allocating construction aid were changed substantially. Despite the fact that percentage equalizing provisions for general purpose aid are not new to Utah, they are described here for the sake of completeness.

Under section 53-7-18, the state provides $508 per weighted pupil of nonmatched aid, with a required tax rate of 28 mills. Districts raising in excess of $508 per pupil with a 28 mill tax rate must return the excess to the state. (At present, however, property values are such that no district raises more than $508 per pupil with the 28 mill tax.) With this recapture provision, the local levy has no impact on the amount of revenues available to local districts, and therefore the 28 mills amounts to a state property tax.

A DPE provision provides smaller amounts of revenue. A district, with local voter approval, may levy up to 10 additional mills of tax, with a guarantee of $4 per weighted pupil per mill in excess of 28 mills.[123] There is no recapture

[119] N.D. CENT. CODE §§ 15-40.1-05—15-40.1-16 (Supp. 1974).

[120] The new formula is therefore

$$S = \$540 - (\$20 \cdot P)$$

where S = state share
P = district assessed valuation per pupil
$540 = guaranteed amount
$20 = mandated tax rate in mills.

[121] There is also a provision which will reduce by 15 mills the tax rates of Fargo and of certain districts which had "unlimited levies" in 1972. N.D. CENT. CODE § 15-40.1-10 (Supp. 1974).

[122] UTAH CODE ANN. §§ 53-7-16—53-11-60 (Supp. 1973).

[123] *Id.* § 53-7-24. The formula for the equalization portion of the Utah basic school finance system is:

$$S + L = 4 \cdot (T - 28)$$

in the event that each additional mill of tax raises more than $4 per pupil; thus, the law permits disparities among districts up to the amount which a 10 mill tax would levy in the wealthiest districts. The level at which the state equalizes is quite low: only districts with less than $4,000 per pupil property value receive aid from the state under this provision. But despite the potentially unequalizing effects of the DPE option, the revenues involved in 1973-74 amount to less than 2 per cent of total state and local expenditures for operation and maintenance. Aid is distributed on the basis of weighted pupils, the number of weighted pupils being derived by averaging ADA and ADM, and adjusting for the number of kindergarten children, for necessary small schools, for ten categories of handicapped children, for five categories of vocational education, and for the experience levels and advanced degrees of professional staff.[124]

The Utah reforms also provide categorical aid for instructional media centers, extended year or day programs, community school programs, "distinguished quality teaching and teacher leadership" salaries, special career development programs, elementary school guidance, and experimental programs. A new program of categorical aid for compensatory education has been added, with funds distributed on the basis of low-income families, Spanish-American and Native American children with bilingual characteristics, foster children, neglected and delinquent children, and children from homes receiving AFDC.

The more important of the two measures dealing with construction aid amended the existing construction aid formula, which is essentially a percentage equalizing formula.[125] A district is now guaranteed $216.50 per mill of tax, for each school building participation unit, with a required minimum levy of 8 mills and a maximum levy of 13.5. However, since there is no requirement for wealthy districts to return funds in excess of $126.50 per mill to the state, wealth-based disparities in available revenues for construction may still exist, though they will presumably be less than before. Each district has one school building unit per 26 weighted pupils, plus one unit for each $5,600 in outstanding bonds as of July 1 (except that bonds in excess of 1.3 per cent of property valuation cannot be counted).

The second construction aid provision[126] provides a one-time amount of $5.5 million to be distributed to districts deemed to have critical building needs which they are unable to meet with other resources. This supplementary aid was intended to permit districts with dilapidated and inadequate facilities

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where S = state aid
L = local share
T = total tax rate
4 = guarantee per mill over 28 mills
28 = the required levy.

However, because the guarantee is so low and because of the lack of recapture, this formula actually applies to very few districts.

[124] This last adjustment is intended to compensate districts for presumed cost differentials. While this adjustment does prevent large staff turnover because of insufficient funds, it also has the effect of perpetuating present disparities in teacher experience and training levels.

[125] UTAH CODE ANN. § 53-11-30 (Supp. 1973) *amending* UTAH CODE ANN. § 53-11-30 (Supp. 1972).

[126] UTAH CODE ANN. § 53-11-58 (Supp. 1973).

to catch up to other districts, under the assumption that the construction aid program of section 53-11-30 would provide for future capital needs on an equitable basis.

In sum, there are two important changes in Utah's school finance program. First, the basic aid bill raised the required property tax rate from 16 mills to 28 mills, with equalization of yield and full recapture for the 12 mill increase. Thus, the new law substantially increased the amount of non-matched aid relative to the amount of matched aid which districts can receive, a change that should narrow disparities in the distribution of available resources. Second, the method of distributing funds has been changed from the previous classroom unit basis to a weighted pupil basis.

XI

WISCONSIN

Wisconsin previously employed a district power equalizing formula to distribute about 46.8 per cent of state aid, with an additional 21.3 per cent distributed through a flat grant program to districts which were either too wealthy or spending too much to receive aid under the DPE provision. Recent legislation[127] eliminates the flat grant program and institutes a non-linear district power equalizing formula, with a lower guaranteed yield per mill as expenditures increase. Although save-harmless clauses guarantee that most districts will receive some state aid in the next few years, the bill provides that wealthy districts may in the future have to remit excess revenues under the DPE formula to the state. In addition, the statute institutes a categorical aid program for compensatory education.

The equalization portion of the state's program is designed to reimburse districts for a percentage of "shared costs," which include normal operating expenditures, annual capital outlays, and payments of principal and interest on long-term debt. For a shared cost up to 110 per cent of the state average for the previous year, each district is guaranteed a yield per mill of tax corresponding to that which would be raised in a district with per pupil property values of $71,200 (for districts operating grades kindergarten through twelve), $68,200 (for districts with grades kindergarten through eight), and $170,500 (for districts with grades nine through twelve).[128] These guarantees are for 1973-74; each year thereafter they are increased by 5 per cent. If the shared cost chosen is above the 110 per cent limit, the guaranteed yield is somewhat lower. The decline in the yield per mill of tax rate as expenditures increase creates less of an incentive (for both wealthy and poor districts) to spend above the 100 per cent level than would otherwise be the case.

There are two save-harmless clauses which apply to Wisconsin's state aid

[127] WIS. STAT. ANN. §§ 121.02—121.22 (Supp. 1974).

[128] The basic formula is identical to that of Michigan:

$$S = (\$71{,}200 - P) \cdot T$$

where S = state aid
P = district assessed valuation per pupil
T = tax rate
$71,200 = guaranteed valuation per pupil for K-12 districts.

SUMMARY OF NEW SCHOOL FINANCE PROGRAMS*

STATE	TYPE OF AID PROGRAM	GUARANTEED YIELD PER MILL IN FIRST YEAR (in dollars per pupil)	RECAPTURE PROVISION	NON-MATCHING AID (in dollars per pupil)	VOTER OVER-RIDE	BUDGET LIMITS AND TAX CEILINGS	MINIMUM STATE AID
CALIFORNIA	Foundation program	None	No	$765 (E) @ 2.23 mills $950 (S) @ 1.64 mills	Yes[1 2]	Rate of annual expenditure increase limited, with low spending districts permitted to increase at a faster rate than high spending	$125 per pupil
COLORADO	DPE	$25/mill	No	None	Yes[3]	7 to 12% increase depending on previous level of spending	$8/mill
FLORIDA†	Large non-matching grant plus smaller DPE grant	$41/mill up to 3 mills (7% of basic non-matching aid)	Yes on non-matching aid; no on DPE provisions	$579 (weighted) @ 7 mills	No	10 mill ceiling	None
ILLINOIS	Foundation program with DPE option	$42/mill (unified district)	No	$520 @ 8.4 mills	Yes[2]	Millage limits	$48 per pupil[5]
KANSAS	DPE	$48.5 to 62.4/mill, depending inversely on enrollment	No	None	Yes[7]	5 to 15% depending on budget size	50% of 1972-73 state aid
MAINE	Large non-matching grant plus smaller DPE grant	$50/mill up to 2½ mills	Yes	$600 (E) $915 (S)	No	Millage ceiling	None
MICHIGAN	DPE	$38/mill	No	None	Yes[2]	Mill limits for 2 years (for equalized state aid)[8]	3 different provisions (see text)
MONTANA	Large non-matching grant plus smaller DPE grant	2²/₉% of General Fund Budget (GFB) (C) and 3½% of GFB (S) per mill	Yes on non-matching aid; no on DPE provisions	80% of GFB	Yes[2]	7% budget increase limit; millage limits on DPE	None
NORTH DAKOTA	Foundation program	None	No	$540 @ 20 mills	Yes[2]	24 mill ceiling	—
UTAH	Large non-matching grant plus smaller DPE grant	$4/mill up to 10 mills	Yes on non-matching aid; no on DPE provisions	$508 @ 28 mills	No	38 mill ceiling	—
WISCONSIN	DPE	$71.2/mill (unified district with lower yield if share cost exceeds 110% of previous year's average)	Yes (after 2 years)	None	No	$100 per pupil increase in capital expenditures	Yes—declining over 9 years

*Based on table in NATIONAL LEGISLATIVE CONFERENCE, TASK FORCE ON EDUCATION, NEW PROGRAMS OF STATE SCHOOL AID 4-5 (Childhood & Gov't Project Reprint Ser. No. 7, 1974).

†[The Florida legislative session ending June 1974 saw the repeal of the DPE provision and the lowering of the millage ceiling to 8 mills. *See* Editor's Note, p. 464 *supra*.]

[1] Note that the foundation participation rate is low, leaving considerable leeway for supplemental local levies. Districts are free to set their own tax rate as long as the expenditure limit is not exceeded.

[2] Amounts raised through voter overrides are not power equalized, so that these revenues are directly related to the wealth of a district.

[3] After the first year of operation, voter approved budget increases will qualify for equalization under the DPE plan.

SAVE HARMLESS PROVISION	EFFECTIVE STATE PROPERTY TAX RATE	CIRCUIT-BREAKER FOR PROPERTY TAXES	PUPIL NEED WEIGHTS	AREA COST WEIGHTS	BENEFICIARIES OF AREA COST WEIGHTS	ADDITIONAL AID FOR COMPENSATORY EDUCATION	CONSTRUCTION AND BUILDING FUND AID
No	None	No	Yes—differentiating elementary and secondary pupils	Yes—for necessary small schools	Small districts	Yes—categorical based on poverty, transience, bilingual index	No
Minimum aid of $750 for low income/expenditure districts	None	No	No	For small rural districts; for large urban districts	Denver and very small rural districts	Yes	No
Yes	7 mills	No	Yes	Yes[4]	Urban districts	Yes	Yes
Optional program for rich districts[5]	None	No	Yes	Yes[6]	Large cities and small rural districts	Yes[6]	No
50% of 1972-73 state aid	Share of county 2 mill property tax and share of intangibles tax	No	No	Yes—based on district size	Small districts	No	No
Yes—applicable to both expenditures and tax rates	Tax rate which yields 50% of the state requirement plus 7 mills (1974-75) for non-school purposes	No	No	Yes	Rural districts	No	Yes
Yes (see text)	None	Yes	No	Correction for municipal overburden	Detroit; possibly other large urban districts	No	Yes—DPE formula
No	40 mills	No	Yes—differentiating elementary and secondary pupils	No	—	No	No
No	None	No	Yes	Yes	Unclear	No	No
No	28 mills	No	Yes	Yes—for very small districts	Small districts	Yes	Yes—DPE formula
Yes	None	No	No	No	—	Yes	Yes—as part of basic DPE formula

[4] Cost-of-living adjustments.

[5] The DPE option in Illinois is superimposed on a basic foundation program which remains in effect for wealthier districts. The foundation option guarantees a $48 per pupil minimum.

[6] Title I pupils are weighted as 1.35. Since there is no requirement that these monies be spent for compensatory education, the provision acts as an increase in general aid to districts with high Title I concentrations (particularly Chicago and East St. Louis). Very large and very small districts also are affected by special provisions.

[7] High spending districts may override the 5% limit, but no district may exceed the 15% ceiling.

This limit is only a ceiling on the tax which will be equalized by the state. Districts are free to exceed this limit, but revenues raised from tax rates above the limits are not equalized.

as calculated by this non-linear DPE formula.[129] First, a district is guaranteed an amount of state aid equal to the normal amount calculated under the new law plus nine-tenths of the difference between this amount and the 1972-73 allotment. The parameter nine-tenths decreases by one-tenth for the next eight years, so that this exception is in effect until the school year 1981-82. The second save-harmless provision guarantees that state aid will be non-negative. for the first three years, until 1975-76.[130] However, beginning in 1976-77, districts with excess revenues above the state guarantee will have to remit those revenues to the state.[131]

In addition to the non-linear DPE schedule which is intended to limit school spending, the new program restricts increases in capital expenses to no more than $55 per pupil in the next year.[132] The only exceptions allowed are those approved by the state superintendent, in the event that the limitation would force a district to provide programs below state standards, or to discontinue programs formerly funded by federal revenue. The law does not specifically permit voter overrides. However, the statutory language is so vague that it may not preclude such overrides.

Finally, the statute provides categorical programs for the compensatory education of "pupils who have or are likely to have low levels of academic achievement, especially in relation to social and economic factors."[133] The criteria for educational need and the guidelines for approving local programs are to be established by the state superintendent. The law requires that compensatory education aid supplement rather than supplant other funds spent on the targeted pupils, that priority be given to pre-school and elementary pupils, and that local advisory councils—including parents and community representatives—be established to "advise on the development of applications and the implementation of approved programs." As with the other legislation described in this article, the new Wisconsin statute provides for more state revenue than has been distributed in the past. Appropriations for general purpose aid are $425 million for 1973-74, and $457 million for 1974-75, as compared to $223 million in 1971-72.

[129] It is non-linear because the parameter K from equation (3) of note 22 *supra* is not constant as T increases, but decreases. That is, the function f in equation (2) is non-linear. *See* C. BENSON, P. GOLDFINGER, G. HOACHLANDER & J. PERS, PLANNING FOR EDUCATIONAL REFORM: FINANCIAL AND SOCIAL ALTERNATIVES (1974).

[130] WIS. STAT. ANN. § 121.08 (Supp. 1974).

[131] *Id.* § 121.08. However, it appears likely that the first save-harmless provision will prevent negative amounts of state aid for a few additional years. In 1976-77, the save-harmless provision will guarantee to each district a minimum of the 1976-77 formula allotment plus six-tenths of the difference between this allotment and the 1972-73 grant. Thus the state share is negative only when the 1976-77 formula allotment is less than (−.6) (the 1972-73 grant). This will be a fairly large negative number, and it therefore appears likely that no districts will have to remit excess funds to the state until this first save-harmless clause has nearly expired.

[132] [1973-75] Wis. Biennial Sess. Laws ch. 90, § 550 (1) (a) (1973). This limitation actually applies to changes in shared costs minus expenditures for transportation, capital outlay interest and principal payments on long-term debts, and a portion of teacher retirement and social security payments; this figure is slightly different from operating expenses.

[133] WIS. STAT. ANN. § 115.90 (Supp. 1974).