

November 25, 2003

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Election Code Section 9005, we have reviewed the proposed measure entitled "Equal Opportunity in Education Initiative" (File No. SA2003RF0046).

Proposal

If enacted by the voters, this constitutional measure creates a system of K-12 Free Choice Schools similar to private schools, but state funded. Specifically, the measure has the following major provisions:

- ***Licensing of Free Choice Schools.*** The Department of Consumer Affairs (DCA) would license Free Choice Schools. The licensing procedure requires DCA to hold Free Choice School applicants to the same standards applicable to K-12 private schools. The Free Choice Schools could not charge tuition, and could not use funds to support sectarian or denominational purposes.
- ***Free Choice Schools Funding.*** The State Controller would provide Free Choice Schools per student funding equivalent to the statewide average per student expenditures for K-12 public schools, as determined by a specific nonprofit organization or an independent auditor hired by the State Controller. In addition, Free Choice Schools are entitled to apply for and receive other funding available to other publicly funded schools. Up to 1 percent of the Free Choice Schools funding would be collected by the DCA as a licensing fee to cover administrative costs.
- ***Reporting Requirements of Free Choice Schools.*** After the first quarter of operations, a school must make available the following: (1) background qualifications of all staff employed by the institution; (2) regularly scheduled

academic performance testing, reviews and reports; and (3) proof of liability insurance.

Fiscal Effect

This measure would have major fiscal impacts on the state and local school districts. The size of these fiscal impacts would depend on legal interpretations of the proposition and such factors as:

- *How Per Pupil Expenditures Are Defined.* The nonprofit organization or independent auditor could take a narrow approach to defining per student expenditures (including only state and local funds used for operational expenses) or they could take a very broad approach (including state and local debt service, contributions to employee retirement systems, federal funds, and local revenues). A narrow interpretation could result in Free Choice Schools receiving as low as \$6,500 per student, while a broad interpretation could exceed \$9,000 per student.
- *How People Respond to the Availability of Free Choice Schools.* For example, the fiscal effect would depend on how many parents choose to send their children to Free Choice Schools.
- *What Actions the Legislature Takes in Response to the Measure.* The fiscal effect would depend on the amount of funding provided to traditional K-12 public schools (which, in turn, could affect the funding level for Free Choice Schools).
- *What Actions Local School Districts Take in Response to the Measure.* For example, the fiscal effect would depend on whether existing school districts convert some or all of their schools to Free Choice Schools.
- *The Conversion of Existing Private Schools to Free Choice Schools.* Currently, few public resources are provided to private schools. Under this measure, many private schools would have a strong financial incentive to convert to Free Choice Schools.

Impact on Proposition 98 Minimum Guarantee

Proposition 98, approved by the voters in 1988, establishes a minimum funding level for public schools and community colleges (K-14 education). Proposition 98 permits the state to spend more, or under specified circumstances less, than this minimum guarantee. The current estimated minimum funding level for K-14 education is over \$45 billion. This minimum funding level increases each year generally with changes in public school attendance and growth in the state's economy. (K-14 education also receives additional funds from sources that are "outside" of Proposition 98, such as federal funds and lottery funds.)

This measure would affect Proposition 98 funding in two main ways:

Private School Conversions. This measure would result in an increase in the minimum guarantee as private schools converted to Free Choice Schools (public schools). Currently, over 600,000 students attend private schools. As private schools convert to Free Choice Schools, attendance in public schools would increase, resulting in a higher Proposition 98 minimum guarantee. If even half of existing private school students moved to Free Choice Schools over time, this would increase state Proposition 98 costs by billions of dollars annually.

Public School Conversions. Many existing public schools would have a fiscal incentive to convert some or all of their schools to Free Choice Schools. Currently, school districts' funding per pupil varies widely due to a number of facts. For example, elementary school districts receive less general purpose funding per pupil than do unified or high school districts. In addition, a portion of state funding for school districts is provided through state categorical programs providing additional resources, for example, to districts with high numbers of socio-economically disadvantaged pupils, low-performing students or English language learners. Under this measure, any public school district receiving *below-average* funding would have an incentive to convert to a Free Choice School to increase their funding per pupil. Unless funding were taken away from schools with above average funding per pupil, the state would be required to provide additional funding as low funded schools converted. Over time, these costs also could be in the billions of dollars annually.

Summary of Fiscal Effects. This measure would have the following major fiscal impact:

- Over time, potential increase in state school funding costs in the billions of dollars annually.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance