

March 23, 2004

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 Elections Code 9005, we have reviewed the proposed measure entitled "California Scholarship Opportunity Act" (File No. SA2004RF0012).

Proposal

This constitutional amendment creates a program to provide students attending underperforming public schools with state-funded scholarships to attend eligible nonpublic schools. Specifically, the measure has the following major provisions:

- ***Eligible Students.*** The parents of students newly entering kindergarten or who were enrolled in the previous school year in grades kindergarten through 11 in an "underperforming school" would receive, upon request, a scholarship for the student to attend a nonpublic school of their choice. Once identified as an "eligible student," the student would continue to receive a scholarship to attend an eligible nonpublic school until he or she completed the highest grade level offered by the school or withdrew from school. Students attending an eligible nonpublic school in which the highest grade level offered was eighth grade would be eligible to reapply for a scholarship, provided that the public school that they would otherwise have been required to attend was an underperforming school.
- ***Underperforming Schools.*** Underperforming schools are defined as those public schools that score in the bottom five deciles of the Academic Performance Index based on the standardized achievement tests administered pursuant to the state testing program (Standardized Testing and Reporting tests).

- ***Value of Scholarship.*** The value of the scholarship would be determined by the State Department of Education (SDE) and would be equal to the lesser of: (1) the average per pupil allocation of state revenues to the school district in which the eligible student resides or (2) the actual cost of tuition and fees at the nonpublic school that the student attends.
- ***Eligible Nonpublic Schools.*** To be eligible to participate in the scholarship program, a nonpublic school would have to: (1) certify that it meets the minimum requirements for private schools as of January 1, 2004; (2) comply with all applicable health and safety laws; (3) if operating for fewer than three years, demonstrate fiscal soundness through specified procedures; (4) for at least two years prior to participating in the program, administer to its students a nationally recognized standardized achievement test; (5) comply with the antidiscrimination provisions of federal law; (6) not advocate unlawful behavior or fostering hatred of any person or group; (7) agree not to compel any student to profess a specific ideological belief, pray, or worship; (8) not deliberately provide false or misleading information about the school; (9) not allow any person convicted of any specified felony or crime, including child abuse or molestation, to own, contract with, or be employed by the school. In addition, a participating high school would be required to certify either that (1) its coursework meets the requirements for admission to an accredited college or university or (2) it has received provisional or full accreditation from an agency recognized by the state.
- ***Admissions Procedures.*** Participating nonpublic schools would be required to provide an open enrollment period of at least 30 days for eligible students to register for their program. If the total number of eligible students exceeded the school's capacity, admission would be determined by a lottery monitored by SDE, in which all eligible students would have an equal chance of being admitted. Schools could refuse admission to students who had been subjected to disciplinary action for behavior problems at any school that they previously attended.
- ***Proposition 98.*** Expenditures for scholarships issued pursuant to the program would count toward meeting the minimum funding requirements for public schools and community colleges established by Proposition 98 of 1988. Students enrolled in eligible nonpublic schools, however, would not count toward enrollment for the purposes of computing the Proposition 98 minimum funding guarantee.

Fiscal Effect

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

- *How Per Pupil Revenues Are Defined.* The SDE could take a narrow approach to defining the allocation of per pupil state revenues to school districts (including only state funds provided for operational purposes) or it could take a broader approach (including state aid and local property taxes used for operational purposes). For purposes of our analysis, we have assumed that per pupil state revenues include local property taxes and average about \$7,000.
- *How People Respond to the Program.* For example, the fiscal effect would depend on how many parents of eligible children choose to send their children to participating nonpublic schools.
- *How Private Schools Respond to the Program.* The fiscal effect would depend on how many new or existing private schools choose to become eligible nonpublic schools and the extent to which they offer admission to eligible students.
- *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 also affect the funding level for eligible nonpublic schools).

State General Fund Impact

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 funding level for Proposition 98 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.)

Change in Proposition 98 Guarantee. By excluding students in eligible nonpublic schools from enrollment for purposes of determining the Proposition 98 minimum funding guarantee, the guarantee would grow more slowly than it would have absent this measure. At the same time, the measure would require the state to use Proposition 98 funds for scholarships both for students transferring from public to private schools and for students who would have attended private school absent this measure. If the Legislature funded Proposition 98 at the minimum guarantee, funding

for public schools and community colleges would need to be decreased by (1) the reduction in the minimum guarantee and (2) the state cost of the scholarships. On the other hand, the Legislature could choose to fund Proposition 98 at a level above the minimum guarantee. The impact of this measure on total state spending for K-12 education therefore cannot be determined, as it would depend on how the Legislature decided to respond to it.

Net Cost of Scholarships. For an average student receiving a scholarship to leave the public school system, the cost to the state would be minimal since the state would reduce funding to school districts by the same amount as the scholarship. However, over time, some students starting in kindergarten who would have attended private school absent this measure would now receive a \$7,000 scholarship to attend private school. The cost to the state of these students would grow over time, and would depend on the number of private school students living in the enrollment area of decile 1 through decile 5 schools. We estimate that these costs could exceed \$1 billion annually in the long run. These costs would be paid for within the total level of Proposition 98 funding.

Administrative Cost Impacts. The administrative duties of SDE would include computing the value of scholarships; identifying underperforming schools; processing scholarship checks to recipients; ensuring that recipients were eligible to receive, and nonpublic schools eligible to redeem, such checks; and monitoring admissions lotteries at eligible nonpublic schools. These costs would be in the millions of dollars annually.

Local Impact

As students leave public schools for private schools, school district funding generally would be reduced by the school district's average funding per pupil (roughly \$7,000 per pupil on average). Thus, the impact on individual school districts would depend on whether the cost of educating these transfers was more or less than the average funding level.

With regard to aggregate state spending on public schools, the total would have to include the cost of scholarships for students not currently supported with state funds (described above). As a result, public school per pupil funding likely would grow more slowly over time than it would have absent this measure.

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

- Unknown impact on overall state spending for K-12 education. State would incur costs potentially over a billion dollars annually in the long run to

provide scholarships to eligible pupils who would otherwise have attended private schools absent this measure.

- Per pupil funding for pupils remaining in public schools likely to grow more slowly over time.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance