

# OXFORD FOUNDATION

## Memorandum

Date: July 9, 2012  
To: Interested Persons In the Education Community  
From: Richard D. McLellan  
Re: Drafting a “Michigan Education Finance Act of 2013” to Replace the School Aid Act of 1979

The Memorandum is addressed to organizations and individuals interested and involved in Michigan’s public education system, particularly the annual funding of public education and schools through the School Aid Act.

It is an invitation to participate in a project being undertaken on behalf of Governor Rick Snyder by the Oxford Foundation to draft a new “Michigan Education Finance Act of 2013” to replace the annual amendment and appropriations process of the School Aid Act of 1979 (“Project”).

This Memorandum will outline the Project and the approach we plan to use. The Governor gave three specific instructions:

1. Time is of the essence and he hopes to have the legislation complete for introduction as part of his 2013-2014 school funding proposal in early 2013.
2. Bill Rustem of his staff will coordinate the Project.
3. To involve stakeholders, including the Superintendent of Public Instruction, legislators, legislative staff, school districts, charter schools, universities, teacher unions, etc.

<b>Project:</b>	Drafting a “Michigan Education Finance Act of 2013”
<b>Sponsor:</b>	Oxford Foundation
<b>Executive Office Liaison:</b>	Bill Rustem, Director of Strategy, Executive Office
<b>Legislative Liaison:</b>	Darin Ackerman, Deputy Director, Legislative Affairs, Executive Office
<b>Project Director:</b>	Richard D. McLellan
<b>Principal Drafter</b>	Peter B. Ruddell, Attorney, Wiener Associates
<b>Assistant to Mr. Ruddell:</b>	Mary M. Van Halst
<b>Meeting Coordinator:</b>	Jen Satterlee, McLellan Law Offices
<b>Public Relations:</b>	Danna Halinski, MRG

## **Background**

On April 27, 2011, Michigan Governor Rick Snyder issued “A Special Message from Governor Rick Snyder: Education Reform.” The Message called for extensive changes, including:

Michigan’s education system must be reshaped so that all students learn at high levels and are fully prepared to enter the work force or attend college. They must think and act innovatively, demonstrate high performance, and meet the highest expectations. In addition, our students must leave high school with the skills to make sound financial decisions and demonstrate a basic understanding of personal finance.

The Special Message was followed by the enactment of several pieces of legislation amending Michigan Revised School Code and other education laws, including:

- Expanding the number of authorized cyber schools.
- Lifting the cap on charter schools and schools of excellence.
- Reforming Michigan’s teacher tenure act.
- Eliminating “last in/first out” policies.

In addition, the Governor’s Office has drafted significant additional education reform legislation including bills to:

- Expand online learning and blended learning.
- Authorize new forms of schools including international schools and advanced learning academies with selective enrollments.
- Create a new structure to address academically failing schools, the Education Achievement Authority.
- Authorize residential public schools for special populations, including a military/public safety academy.
- Use adjunct instructors from university and college faculties and from business and professional leaders.
- Allow redeployment of unused public school buildings for charter and other schools.

These Revised School Code proposals, however, have not addressed significant required changes in the law relating to school finance – the School Aid Act of 1979.

The State School Aid Act of 1979 is severely out of date and prohibits the effective implementation of many of the new education concepts. A proposed new Michigan Education Finance Act would replace the current “membership” and school district-centric model with education financing based on a more modern vision of public education, including the following from Governor Snyder’s Education Message:

- *Michigan’s education system has revolved around a static approach to education delivery that can be at odds with individual learning styles.*
- *I am proposing a new —Any Time, Any Place, Any Way, Any Pace public school learning model.*
- *Proficiency-based funding rather than seat time requirements.*
- *Michigan’s state foundation allowance should not be exclusively tied to the school district a child attends. Instead, funding needs to follow the student.*
- *Eliminate barriers to true choice in education and give parents and students the flexibility to employ education programming that ensures their future success.*

The Work Plan being developed for the Project includes the following:

- The Oxford Foundation will act as fiscal agent for the Executive Office to administer the Project. The Oxford Foundation was established in 1991 by the then-Governor to assist the state in “lessening the burdens of government.” It is a 501(c)(3) organization and is registered with the Attorney General.
- Bill Rustem of the Governor’s staff will coordinate the project.
- Retained lawyers will undertake the initial legislative drafting. They will work with the professional drafters in the Legislative Service Bureau (“LSB”).
- An initial meeting of education interest groups will be held July 17 in the Governor’s Office. The purpose of the meeting is to outline the process, seek involvement of interested groups and answer questions.
- A statewide conference is contemplated at the end of the Project to involve stakeholders, including the Superintendent of Public Instruction, legislators, legislative staffs, school districts, charter schools, universities, teacher unions, etc.
- Richard McLellan will assist the Executive Office and the drafters on a *pro bono* basis.

The Project is designed to propose a Michigan education funding law to replace the 1979 School Aid Act with a modern education financing law that reflects the present structure of Michigan’s public school system and allows for future changes reflecting the Governor’s vision for public education.

### **History and Shortcomings of the School Aid Act**

- The statutory structure for financing Michigan’s system of free public and elementary schools is based on a school district model that was replaced by the voters and the legislature.
- For over 100 years, Michigan relied primarily on geographically based school districts and locally raised property taxes for public schools.
- Since 1994, however, with the adoption of Proposal A and Michigan’s constitutionally guaranteed per pupil allowance for school operating, parents and students have had broader ability to select from available public options that meet the student’s educational and family needs and objectives.

- Now, the present system of public education includes both local property taxes and a wide range of state taxes, including a state real estate tax, dedicated sales taxes, lottery revenue and other state taxes to pay for a wide range of public schools including district schools, public school academies, urban high school academies, schools of excellence, cyber schools, and dual enrollment of high school students in college classes.
- The State School Aid Act of 1979 (“Act”) that annually appropriates \$14+ billion plus for public schools, is a unique statute in that it serves as both a substantive law supplementing the Revised School Code and an annual appropriations act that must be amended each year to appropriate funds for K-12 education.
- The Act is exceptionally opaque and, while it serves the interests of legislators and representatives of education interests who control the education system, is generally inaccessible to the general public.
- As presently written, the Act makes it very difficult to implement new ideas and new forms of education, including the following proposals put forward by Governor Rick Snyder:
  - Greater choice for students and parents.
  - A state foundation allowance should not be tied exclusively to the school district.
  - Funding that follows the student.
  - Early college attendance.
  - Total on-line learning.
  - Experiential learning models.
  - Mandatory “schools of choice,” i.e., inter-district choice.
  - Education system that offers unfettered flexibility and adaptability for student learning models and styles.
  - Proficiency-based funding rather than “seat time” requirements.
  - A system that is more cost-efficient, competitive, innovative and effective in motivating student achievement.
  - A system that embraces innovative learning tools.
  - Changing from a static approach to education delivery to one responsive to individual learning styles.
- A fundamental anachronism in the present State School Aid Act is that it is structured around the concept of “membership” in a local school district, whereby a student is essentially treated as the property (and responsibility) of the school district because of the school aid funds that flow to the district through enrollment of pupils in membership. Any other form of public education is treated as an exception, frequently requiring approval of the school district of residence.

- A modern public education law would be based primarily on the interests of the student, not the particular school or schools he or she attends. A 21<sup>st</sup> Century public education system would recognize the diversity of competing schools and educational approaches necessary to meet the needs of a diverse population.
- And a school financing system that is more cost-efficient, competitive, innovative and effective in motivating student achievement would be transparent and understandable to the consumers of education services – parents and students.
- The Oxford Foundation Project is a 6-month intensive project to draft and submit for the Governor’s consideration a new, modern Michigan Public Finance Act of 2013 to replace the 32-year old State School Aid Act of 1979.
- By proposing a new school financing law for fiscal year 2013-2014, effective October 1, 2013, the structure and the financing of Michigan’s public education system can be modernized to be more responsive to the educational and economic challenges the state faces.

### **Specific Elements of the Project**

- Eliminate, or prepare transition language for, outdated and superfluous language in the present School Aid Act.
- Transfer substantive, permanent education policies that are more appropriate in the Revised School Code.
- Replace the school district-centric structure with a student centered structure, including, but not limited to:
  - Greater choice for students and parents.
  - Clarify role of geographic local unit school districts in financing model.
  - A per pupil funding system not tied to a school district.
  - Funding that follows the student.
  - Inter-district choice as part of a public system that maximizes innovative learning tools that meet a student’s needs.
  - Expanded opportunities for early college attendance, diverse online education.
  - Option for total on-line learning.
  - Education system that offers unfettered flexibility and adaptability for student learning models and styles.
  - Proficiency-based funding rather than “seat time” requirements.
  - A system that is more cost-efficient, competitive, innovative and effective in motivating student achievement.
  - A system that embrace innovative learning tools.
  - Changing from a static approach to education delivery to one responsive to individual learning styles.

- Allow nonpublic school students and home school students maximum access to public education resources within the constraints of Michigan’s constitution.
- Provide transition provisions to allow school districts and all public schools time to adjust to the new system.
- Create greater transparency in public education funding for the benefit of teachers, administrators, students, parents and taxpayers.
- Match the education funding act with the substantive changes in the Revised School Code proposed to implement the Governor’s education reform strategies.

### **Process**

- July 2012 to November 2012 timeframe.
  - Establish an understanding of the constitutional requirements and limits for public education funding.
  - Deconstruct the School Aid Act to better understand the underlying paradigm used for school financing.
  - Strip content of present School Aid Act to its essentials and identify policy decisions incorporated in the Act.
    - Prepare pro forma version of existing Act stripped of all outdated and superfluous language.
    - Identify language that should be retained in law but incorporated in School Code.
  - Prepare outline of change from a district centered to a student centered financing model.
    - Create chart comparing new and old approaches.
    - Develop new controls based on performance to replace seat time method.
  - Draft a Michigan Education Finance Act of 2013 to replace the School Aid Act.
- Time Frame
  - June 2012 Professional team selected. Develop list of key education groups and staff members. Meet with Superintendent and his staff. Advise legislators of Project.
  - Mid-July: Advise organizations of Project. Initial meeting with interest groups.
  - July-September: Research and drafting; consulting with education interests and legislators
  - October Statewide conference; review draft bill. LSB to prepare draft bill. Submit draft to Governor and legislators

- Nov.- December      Development of 2013-14 budget
- 2013                      New school aid model in budget message
- October 1, 2013      New school aid act takes effect

### **Staffing**

The Project will include a combination of donated services and retained professionals, including:

- Bill Rustem of the Executive Office (or his nominee) will direct the overall Project.
- Richard McLellan, for the Oxford Foundation, will supervise the Project and the drafting
- Peter B. Ruddell, Esq., of Wiener and Associates, will be the primary drafter working with the LSB.
- A person with knowledge of the existing school finance system will assist.
- Advice will be sought regarding special education matters.
- Donna Halinski of MRG will help assure transparency in the process.
- Assistance from the State Budget Office staff, House and Senate Fiscal Agency staff and Legislative Service Bureau (“LSB”) attorneys.
- The State Superintendent of Public Instruction has been asked to provide consultation throughout the process.
- The State Treasurer, the Budget Director and the Attorney General will be asked to participate.
- Key legislators their staffs will asked to be active participants in the Project.

### **Transparency**

Because public education and school financing is such an important subject to many organizations and the general public, the Project will be conducted with maximum transparency, including:

- All legislative drafts, reports and recommendations will be public and accessible on-line.
- Regular consultations will be held with education interest group.
- The Superintendent and professional staff of the Michigan Department of Education will be asked to be actively involved with their expertise.
- Key education and appropriations staffs in the legislature will be asked to participate on a bipartisan basis.

Appendix A sets for the background for the Constitutional Basis of Michigan’s K-12 Education System.

For further information contact:  
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## **Appendix A**

### **Background: The Constitutional Basis of Michigan's K-12 Education System**

Michigan's public education system has been a part of our constitutional system since Michigan became a state. Our constitution includes words that predated Michigan and were part of the Northwest Ordinance:

Art. VIII, § 1 Encouragement of education.

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Public education in Michigan is a state function, with a constitutional mandate to the legislature "define by law" a public school system:

Art. VIII, § 2. Free public elementary and secondary schools; discrimination.

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

In addition to the role of the legislature, the People created a state board of education:

§ 3 State board of education; duties.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

The vehicle for dedicated tax revenue for public education is the constitutionally established school aid fund:

Art. IX, § 11. State school aid fund; source; distribution; guarantee to local school district.

Sec. 11. There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education, and school employees' retirement systems, as provided by law.

Given the legislature’s duty to “maintain and support” public education, significant state and local tax revenues have been appropriated for schools. As local property tax burdens created pressure for increased taxes, Michigan adopted “Proposal A”, a constitutional amendment and accompanying legislation that changed school taxation and funding.

One element was dedication of a specific portion of a sales tax increase to the school aid fund.

Art. IX, § 8. Sales and use taxes.

Sec. 8. Except as provided in this section, the Legislature shall not impose a sales tax on retailers at a rate of more than 4% of their gross taxable sales of tangible personal property.

Beginning May 1, 1994, the sales tax shall be imposed on retailers at an additional rate of 2% of their gross taxable sales of tangible personal property not exempt by law and the use tax at an additional rate of 2%. **The proceeds of the sales and use taxes imposed at the additional rate of 2% shall be deposited in the state school aid fund established in section 11 of this article. ...**

In addition, in 1994, the People, in adopting Proposal A, shifted to a per pupil funding concept in financing public education:

Art. IX, § 8. Sales and use taxes.

... Beginning in the 1995-96 state fiscal year and each state fiscal year after 1995-96, **the state shall guarantee that the total state and local per pupil revenue for school operating purposes** for each local school district shall not be less than the 1994-95 total state and local per pupil revenue for school operating purposes for that local school district, as adjusted for consolidations, annexations, or other boundary changes. However, this guarantee does not apply in a year in which the local school district levies a millage rate for school district operating purposes less than it levied in 1994.

The per pupil funding requirement has been reflected in the Revised School Code (“Code”) and the Act through several changes, including:

- Public school academies, independent schools treated as school districts without geographic boundaries or elected school boards.

- Limited inter-district choice for student enrollment.
- Limited dual enrollment in college courses using state school aid funds.
- 2 cyber schools providing complete online learning.

The Michigan legislature generally enacts laws in two distinct categories:

- Substantive laws or public acts that are permanent until changed by a future legislature or the people.
- Annual appropriations acts that spend state funds on an annual, fiscal year basis.

But the School Aid Act is a hybrid law that remains a permanent act but must be amended each year to comply with the annual appropriations requirements of the constitution:

§ 17 Payments from state treasury.

Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Art. V, § 18. Budget; general and deficiency appropriation bills.

Sec. 18. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing **fiscal period** setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit bills to meet deficiencies in current appropriations.

Art. IV, § 25. Revision and amendment of laws; title references, publication of entire sections.

Sec. 25. No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

Art. IV, § 31. General appropriation bills; priority, statement of estimated revenue.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the **current fiscal year's** operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

### **State School Aid Acts**

The Michigan Compiled Laws website lists 6 previously enacted school aid acts that have since been repealed:

Act 26 of 1948 (1st Ex. Sess.)(Repealed)  
Act 238 of 1955 (Repealed)  
Act 188 of 1956 (Repealed)  
Act 312 of 1957 (Repealed)  
Act 230 of 1964 (Repealed)  
Act 258 of 1972 (Repealed)

The present State School Aid Act of 1979, Act 94 of 1979, MCL 388.101 *et seq*, was enacted 32 years ago and has been amended annually to meet the constitutional requirement on annual appropriations. Its present title states:

AN ACT to make appropriations to aid in the support of the public schools and the intermediate school districts of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to supplement the school aid fund by the levy and collection of certain taxes; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts.