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School Finance Reform in Wyoming

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Wyoming's system of school finance was declared to be unconstitutional in 1980 by the state Supreme Court. During the next three years, major legislative reforms and an amendment to the Constitution were made. The new system began July 1, 1983, and substantially altered both the revenue collection and state aid distribution aspects of the Wyoming Foundation Program. The new system is complex, but it should provide much greater equity in the fiscal resources available to the state's 49 school districts. The authors describe the old system, review the reform process and considerations, and discuss the new system.

SCHOOL FINANCE REFORM IN WYOMING

*Joseph B. Meyer and Edgar Young**

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INTRODUCTION

During the 1983 session the Wyoming Legislature enacted two comprehensive public education finance bills¹ in response to the 1980 Wyoming Supreme Court opinion in *Washakie County School District No. 1 v. Herschler*.² The basis for the *Washakie* decision, which declared that Wyoming's school finance system was unconstitutional, was that the quality of a child's education depended upon the property tax resources of his or her school district rather than the wealth of the state as a whole, which amounted to a denial of equal protection.³

This article addresses the changes which have occurred in Wyoming's school finance system from the implementation of new legislation which took effect on July 1, 1983. We will use a few of the statistical analyses and computer model projections developed during the 1980-83 work on Wyoming school finance reform by three legislatures and three Interim Select Committees to Study School Finance. We review the old state school finance system, discuss the major choices made by legislators, and attempt to explain the new system from historical, statistical and legal viewpoints. The new system is complex, but it represents a major change in how the state supports its public schools.

The Washakie Decision

In its *Washakie* decision, the Wyoming Supreme Court unanimously held that the state's entire school finance system was unconstitutional. The court directed the legislature to propose constitutional amendments to be in effect by July 1, 1983. It also directed the Hot Springs District Court (Laramie County Judge Joseph Maier sitting by designation) to retain jurisdiction and take necessary action to insure legislative conformity with its opinion.

Washakie was the second time the Wyoming Supreme Court considered school finance reform. In the context of school district reorganization across county lines to promote greater educational opportunities for

1. 1983 WYO. SESS. LAWS Ch. 136 (school finance) and 1983 WYO. SESS. LAWS Ch. 95 (school district capital construction). This article does not discuss school construction.

2. 606 P.2d 310 (Wyo. 1980). The *Washakie* decision and some possible legislative responses were discussed in Comment, *Wyoming's Equal Protection Clause Mandates Fiscal Neutrality in School Funding*, 16 LAND & WATER L. REV. 691 (1981). See also Comment, *Equal Protection and the Financing of Public Education in Wyoming*, 8 LAND & WATER L. REV. 273 (1973) for an earlier discussion of the "power equalization" school finance concept eventually utilized in the 1 mill local option portion of the state's new system.

3. 606 P.2d at 332. The phrase "equal protection" does not appear in Wyoming's Constitution. However, the Wyoming Supreme Court has held that equal protection is granted by Article 1, Section 34, which states that "[a]ll laws of a general nature shall have a uniform operation." *Id.* at 320, *Johnson v. Schrader*, 507 P.2d 814, 816 (Wyo. 1973); *Nehring v. Russell*, 582 P.2d 67 (Wyo. 1978). *Washakie* relied in part upon the equal protection analysis of *Serrano v. Priest* (*Serrano I*), 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

Once the state Supreme Court had confirmed that education was a fundamental interest guaranteed by the state constitution, it applied an equal protection strict scrutiny analysis to Wyoming's school finance system. 606 P.2d at 333. The system had the practical effect of classifying available school district resources based upon local property wealth. The Court concluded that the old system unconstitutionally discriminated on the basis of wealth. *Id.* at 334-335.

students in "poorer" school districts,⁴ the court had nine years earlier similarly relied on the landmark case of *Serrano v. Priest* (*Serrano I*)⁵ to conclude that "[t]he time has come when we can no longer ignore inequalities throughout our state in the matter of taxation for school purposes." In the 1971 Wyoming Supreme Court decision known as *Hinkle I*,⁶ the court called for legislative action to provide greater funding equity among the state's school districts, and retained jurisdiction over the matter until the legislature could act. Two months later, however, in the follow-up case of *Hinkle II*⁷ the court agreed that it should relinquish jurisdiction so that Sweetwater County's school district reorganization could proceed locally. The court reminded the legislature, however, that school finance reform had to be made. When succeeding legislatures failed to take seriously this admonition, the *Washakie* court acted on its *Hinkle II* suggestion⁸ and allowed adversely-affected taxpayers to maintain an action challenging the constitutionality of the system.⁹

Non-Monetary Factors

The *Washakie* opinion discussed Appellees' assertion¹⁰ that money was only a minor factor in providing equal educational opportunity to all of the state's students, but dismissed the claim for lack of any convincing argument or supporting authority.¹¹ The court agreed that other factors not easily measured or compared affected education; however, no test other than money was available or manageable. The court said that its

exploration of the subject [had] resulted only in discovery of a quagmire of speculation, so slippery that it evades any secure grasp for judicial decision making. It is nothing more than an illusion to believe that the extensive disparity in financial resources does not relate directly to quality of education.

It is our view that until equality of financing is achieved, there is no practicable method of achieving equality of quality. To decide otherwise only places the whole question, as observed by the trial judge, in a posture of delay and further expensive litigation of questionable value.¹²

The Search for Fiscal Neutrality

"Fiscal neutrality" is a term of art in school finance reform consideration. A little background will put the term in perspective. The difference between equality and equity is particularly significant in school finance reform. Equality concepts assume that the needs of school districts and

4. As used in this article "poorer," "richer" and "wealthy" school districts describe only a local district's assessed valuation-per-ADM or per-CRU as compared to other local districts in the state.

5. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

6. Sweetwater County Planning Committee for the Organization of School Districts v. Hinkle (*Hinkle I*), 491 P.2d 1234, 1237 (Wyo. 1971).

7. Sweetwater County Planning Committee for the Organization of School Districts v. Hinkle (*Hinkle II*), 493 P.2d 1051 (Wyo. 1972).

8. *Id.* at 1051.

9. *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 317 (Wyo. 1980).

10. Brief for Appellees at 34-35 and 39-40, *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980).

11. 606 P.2d at 310.

12. *Id.*

their students are identical. As equals, they should be treated equally in an ideal school finance system. An equality-based school finance system tries to achieve a flat amount of state aid per pupil for each student in the public schools within the state.

However, the equality assumption is probably unsupportable. Few school districts have the same student body makeup, educational needs, or facilities. Students are not identical. Therefore, school finance reform invariably looks toward equity instead of equality. Equity concepts assume that school districts and their students are not equal. They must therefore be treated differently to "equalize" educational opportunities. However, equity involves difficult value judgments as to which funding factors will be dealt with and how.

"Equal educational opportunity" is a widely desired goal which encompasses more than school finance factors. But, unless it is defined as a guaranteed basic program, the term is probably unquantifiable. Quantification is a prerequisite for any school finance system. *Serrano I* provided the analytical framework for achieving equity in school finance systems by developing the concept of "fiscal neutrality." Fiscal neutrality means the state provides educational financing without regard to wealth differences between school districts within the state. Although perfect fiscal neutrality is probably unachievable, the concept does provide a judicially-manageable framework for determining the constitutionality of a school finance system.

Fiscal neutrality principles are violated when a state's education expenditures are dependent upon local school district property wealth, rather than the wealth of a state as a whole. It is, after all, the state's responsibility to provide a public education system for resident students.¹³ A fiscally neutral school finance system uses state education funds to offset differing levels of local school district revenues, in a manner which accounts for differing local district needs and special categories of students for which educational costs are higher.

Consistent with a philosophy which aims for a very high degree of fiscal neutrality, the 1980 through 1983 Wyoming Legislatures, and the three Interim Select Committees, resolved to view the funding of education from a total resource perspective¹⁴ to determine the range of disparity of resources available to the state's forty-nine school districts. Thus legislators were able to study and enact laws addressing disparities resulting from almost all sources of school revenues.

Legislative Choices

The legislative judgments made for the new system represent collective political judgments and line-drawing decisions made by popularly

13. WYO. CONST. art. 1, § 23; WYO. CONST. art. 7, § 1.

14. The *Washakie* opinion mentioned many, but not all fiscal resources available to school districts. However, the 1980-83 Legislatures and Select Committees to Study School Finance went beyond the specific tax resources mentioned in *Washakie* to study all resources. Thus, although the new school finance system was developed in response to the *Washakie* mandate, its operation is broader than a surface reading of *Washakie* indicates was necessary.

elected representatives. As such they are entitled to deference, since legislative enactments are presumed to be constitutional and all reasonable doubt is to be resolved in their favor.¹⁵ In light of this deference, in fact, it took the Wyoming Supreme Court nine years to invalidate the state's school finance system.¹⁶

Lawmakers prefer to enhance the reasonableness of their enactments by using all available information to support their decision-making. In this case, massive amounts of information were collected, analyzed and relied upon in developing the state's new school finance system. The 1980-83 Legislatures and Interim Select Committees studied other states' systems, utilized consultants and organizations with national expertise in school finance, heard many days of testimony from school districts, professional educators and the public at large, developed a sophisticated computer model to analyze the fiscal impact of various proposals, and collected data on the state system from the State Department of Education and other sources.¹⁷

In developing a solution which constitutionally addressed the disparities noted in *Washakie*, the legislators had no clear idea what amount of deviation from absolute fiscal neutrality would satisfy the court's mandate. Earlier, in *Hinkle I*, the court had stated that it would "not consider any invidious discrimination [was] involved if the legislature sees fit to permit local initiative within any district, for expenditures other than for capital improvements, to the extent of 10 per cent or 15 per cent of the level of income guaranteed for the district by the state in any year."¹⁸

However, this guidance was not as clear as it might seem. *Hinkle* was in the unique context of school district reorganization, not general school finance reform litigation. The ten to fifteen percent deviation could be a total figure; or it could mean deviation from the average, representing an allowable total statistical deviation of twenty to thirty percent from the average.¹⁹ To what average, mean or other figure was the ten to fifteen percent to be applied? And how does that standard apply to a very small (less than one-half percent of the state's student population) school district like Park County No. 16 (Meeteetse) which has great wealth when measured on a per-student basis?²⁰

Finally, *Washakie* declared the entire school finance system, rather than specific statutes, unconstitutional.²¹ Legislators were ultimately left without guidelines for forming a new system which would satisfy the man-

15. *Carfield v. State*, 649 P.2d 865, 870 (Wyo. 1982); *Witzenberger v. State*, 575 P.2d 1100, 1114 (Wyo. 1978); *Lund v. Schrader*, 492 P.2d 202, 206 (Wyo. 1971).

16. 606 P.2d at 319.

17. This information and the numerous reports developed during the process are cataloged in a series of yellow binders available in the main office of the Legislative Service Office on the second floor of the State Capitol Building in Cheyenne, Wyoming.

18. 491 P.2d at 1238.

19. See *infra* text discussion on Measuring Fiscal Disparity accompanying notes 179-83.

20. STATISTICAL REPORT SERIES 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1981-82, STATE DEPARTMENT OF EDUCATION. *Washakie*, *Hinkle I* and *Hinkle II* made clear the proposition that school district reorganization was not required to make the school finance system constitutional.

21. 606 P.2d at 335.

date to produce a body of law in constitutional compliance with the *Washakie* mandate.²²

Total Resources Available to Public Schools

For the 1983 fiscal year, funds dedicated to Wyoming's public schools were approximately:²³

22. *Id.* at 336-37.

23. Data accuracy and consistency is an inherent problem of school finance system reform. Of particular concern to this state is accuracy of data reported by local school districts, particularly those not eligible to participate in the Foundation Program. See *infra* Data Accuracy section accompanying notes 171-78.

But a more basic problem faced the persons working on school finance reform in Wyoming, as in many other states. There is no universally accepted way to collect or analyze data about school finance systems. The standard sources of data and analysis available in Wyoming in 1980 were not wholly suitable for producing a new school finance system.

For example, the *Washakie* opinion relied upon the three sets of statistical reports prepared each year by the State Department of Education. STATISTICAL REPORT SERIES No. 1, 1978 SCHOOL DISTRICT PROPERTY VALUATIONS, MILL LEVIES AND BONDED DEBT, STATE DEPARTMENT OF EDUCATION; STATISTICAL REPORT SERIES No. 2, 1978 SCHOOL DISTRICTS ORAL REPORT OF STAFF, TEACHERS/PUPILS/SCHOOLS, ENROLLMENTS, STATE DEPARTMENT OF EDUCATION; STATISTICAL REPORT SERIES No. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING, 1977-78, STATE DEPARTMENT OF EDUCATION. The Select Committees and their staff from the Legislative Service Office also relied upon these reports. But, those reports were insufficient. They did not, for example, provide the state total of potential revenue from all school districts' imposition of the 25 mill special school district levy (since not all school districts imposed the maximum 25 mills under the old system).

Other standard references for development of the new system were the 1980-1981 and 1982 ANNUAL REPORTS, STATE DEPARTMENT OF REVENUE AND TAXATION, AD VALOREM TAX DIVISION. However, those reports also had limitations. For example, delinquent taxes are reported in the fiscal year received, not the year they were due. Yet, as with the 25 mill potential revenue yield, the full revenue resource yield is what was required by legislators in establishing a new school finance system. Further, tax revenue changes are realized the fiscal year after the assessed valuation changes, making consistency in projections and data analysis difficult. In fact, tax revenues actually received by the county or state treasurer rarely match precisely the revenue projections that were derived from assessed valuation figures.

The legislative consideration of school finance reform spanned three fiscal years. As new data and analysis became available, it would be used by Select Committees. Then supporting data would have to be adjusted so that consistency in fiscal year data was achieved where possible. Thus, during the tenure of its consideration, the Select Committees depended upon charts, data and analyses from differing fiscal years. The authors of this article believe that the most accurate representation of legislative action taken to reform the school finance system in this state can be portrayed by using examples from different charts, data and analysis as they were actually presented to legislators over the three-year time period. Thus, some charts, data, and analysis used in this article will be taken from each of the Fiscal Years 1981, 1982, and 1983.

Finally, the Select Committee often needed data and analyses that had not been compiled in that specific manner previously within the state. Often, it was necessary for the Legislative Service Office to rely upon data and analysis made informally by the Ad Valorem Tax Division, State Department of Education, or their own calculations.

Therefore, many of the data, analyses and projections used by the Select Committees, and in this article, cannot be attributed to any specific published source. Rather than spend time detailing the source for many specific numbers which do not appear in that form in any published source, the authors will cite the numbers used by legislators and give an explanation of their significance. One of the authors, Joseph B. Meyer, was the principal staff person for legislators considering school finance reform in this state, and personally prepared almost all analyses and projections used by legislators, as well as being the primary statutory draftsman of the new system. All of the back up material is contained in a series of yellow binders in the main office of the Legislative Service Office on the second floor of the State Capitol Building.

While these problems are an obvious weakness of the data and analyses cited in this article, the authors suggest that the legislators relied upon the best available data during

Total School District Resources

Potential²⁴ Resources

| | |
|--|---------------|
| 1. State six mill levy ²⁵ | \$ 48,645,500 |
| 2. County twelve mill levy ²⁶ | \$ 97,291,000 |
| 3. Special school district twenty-five mill levy ²⁷ | \$202,690,000 |
| 4. Up to three mill local option levy ²⁸ | \$ 24,300,000 |
| 5. Common school land income revenues ²⁹ | \$ 22,000,000 |
| 6. Fines and forfeitures ³⁰ | \$ 3,000,000 |
| 7. Motor vehicle tax distributed to schools ³¹ | \$ 17,000,000 |
| 8. Federal mineral royalties ³² | \$ 60,000,000 |
| 9. General fund appropriation ³³ | \$ 11,858,000 |

their consideration. As more accurate data and universally accepted analyses become available, legislators will use them to make adjustments to the new system. However, it is not likely that any state's complex school finance system can ever achieve balance sheet accuracy to the dollar of assessed valuation, tax revenues and expenditures. It is unlikely that a state's, county's and school district's tax revenue and expenditure accounting systems can ever be made that precise. Meanwhile, legislators and courts will necessarily rely upon the best available data and analysis that they can obtain at the moment.

24. Varying portions of some revenues, such as the 3 mill local levy with voter approval, were not used frequently under the old system. A few relatively smaller resources are not listed, such as national forest reserve funds, Taylor Grazing Act funds, and tuition received from other districts or parents. See *infra* note 118.
25. The old 6 mill state levy was raised to 12 mills by the 1982 amendment to Article 15, Section 15 of the Wyoming Constitution. See WYO. STAT. § 39-2-402 (a) (iv) (Supp. 1983).
26. The old 12 mill county levy was lowered to 6 mills by the 1982 amendment to Article 15, Section 17 of the Wyoming Constitution. See WYO. STAT. §§ 21-13-201 and 39-2-402 (b) (ii) (Supp. 1983).
27. The 25 mill special school district levy is contained in WYO. STAT. § 21-13-102 (a) (Supp. 1983).
28. The old 3 mill local option levy required voter approval for all 3 mills, and was rarely utilized by school districts. WYO. STAT. § 21-13-101(a) (i) (1977). STATISTICAL REPORT SERIES No. 1, 1982 SCHOOL DISTRICT PROPERTY EVALUATIONS, MILL LEVIES AND BONDED DEBT, STATE DEPARTMENT OF EDUCATION at 6. In the new school finance system, up to 1 mill may be locally imposed by a school board without a vote of the people, and up to 2 mills may be imposed with voter approval. WYO. STAT. § 21-13-102(a) (Supp. 1983). The new optional 1 mill is power equalized; that is, the Foundation Program will make up any difference between a district's revenue from the 1 mill and the state wide average of revenue for 1 mill. WYO. STAT. § 21-13-102 (d) (Supp. 1983).
29. Each school district receives income from the common school account within the permanent land income fund. WYO. STAT. §§ 21-13-301 and 302 (Supp. 1983).
30. All fines and forfeitures go to the school district within whose boundary they are collected. WYO. CONST. art. 7, § 5.
31. Motor vehicle registration fees are distributed among school districts, municipalities, counties and the state. WYO. STAT. § 31-4-401 (1977).
32. 37½ percent of federal mineral royalties received by the state pursuant to federal law (See 30 U.S.C. §§ 181, 191 (1976)) goes into the Foundation Program. WYO. STAT. § 9-4-601 (1977). An additional 10 percent goes into a capital construction account for building needs of various public entities, including school districts. WYO. STAT. §§ 9-4-601 (a) (vii), (viii) (Supp. 1983); WYO. STAT. § 9-4-603 (Supp. 1983). School district capital construction programs are beyond the scope of this article.
33. Under the old system, a legislative appropriation was made from the general fund into the Foundation Program, which was a trust and agency fund. 1982 WYO. SESS. LAWS Ch. 69., § 2. Under the new system, the Foundation Program became the Foundation Account, an earmarked revenue fund. 1983 WYO. SESS. LAWS Ch. 136., § 4. No general fund appropriation was made into the Foundation Account for Fiscal Year 1984, although \$184,450,000 of the Foundation Program was appropriated by the 1983 Legislature. Being a state whose mineral industry pays almost two-thirds of the revenues available to support the public schools, Wyoming has been hard hit by the national recession and lessened demand for the energy products which it exports, and the 1983 Legislature found that there was almost no new money available in the general fund for the new school finance system.

10. Interest earnings³⁴

| | |
|-------|---------------|
| | \$ 750,000 |
| Total | \$487,534,500 |

Wyoming had 101,665 students enrolled in public schools in the fall of 1982.³⁵ Thus, the state's total potential revenues for public schools in fiscal year 1983 were approximately \$4,795 per student. Of the total potential revenues, approximately forty-five percent derived from school district revenue sources, thirty-two percent from state revenue sources, twenty-one percent from county revenue sources, and one percent from federal revenue sources.³⁶

Distribution of the actual revenues for fiscal year 1983, listed by each school district, were:³⁷

Current Total Resources By District³⁸
Per ADM³⁹ and Per CRU⁴⁰

| DISTRICT | \$/ADM | \$/CRU |
|---|----------|-----------|
| Park County #16 (Meeteetse) | \$24,255 | \$306,727 |
| Hot Springs County #1 (Thermopolis) | \$11,422 | \$220,806 |
| Campbell County #1 (Gillette) | \$ 8,555 | \$179,617 |
| Fremont County #24 (Shoshoni) | \$ 7,941 | \$128,500 |
| Carbon County #1 (Rawlins) | \$ 6,737 | \$140,882 |
| Sublette County #9 (Big Piney) | \$ 6,583 | \$119,781 |
| Sheridan County #3 (Clearmont) | \$ 6,548 | \$ 73,834 |
| Park County #6 (Cody) | \$ 6,114 | \$127,056 |
| Fremont County #9 (Jeffrey City) | \$ 6,104 | \$ 80,037 |
| Fremont County #21 (Ft. Washakie Elementary) | \$ 5,840 | \$ 88,453 |

34. By practice, the state treasurer invests all state funds until needed for disbursement. The pooled interest income is then distributed to the governmental entities, including school districts, from whose funds it was derived.

35. STATISTICAL REPORT SERIES No. 2, 1982 SCHOOL DISTRICTS, STATE DEPARTMENT OF EDUCATION at 68.

36. STATISTICAL REPORT SERIES No. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1981-1982, STATE DEPARTMENT OF EDUCATION at 9.

37. REPORT No. 6 (Nov. 1982), LEGISLATIVE SERVICE OFFICE.

38. The disparity between wealthiest (Meeteetse) and poorest districts is different when the measurement is \$/ADM (807 percent, with Sheridan as the poorest district) and when measured in \$/CRU (483 percent, with Guernsey as the poorest district).

39. ADM is Average Daily Membership as defined in WYO. STAT. § 21-13-101 (a) (i) (1977).

40. CRU is Classroom Unit, the statutory weighted school district funding unit which is utilized to distribute state aid to school districts through the Foundation Program under WYO. STAT. §§ 21-13-308 to -313 (1977). The CRU value is established each year by statute, and represents a legislative consensus about the next year's level of state aid for the public schools.

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| <u>DISTRICT</u> | <u>\$/ADM</u> | <u>\$/CRU</u> |
| Washakie County #2 (Ten Sleep) | \$ 5,795 | \$ 67,498 |
| Uinta County #1 (Evanston) | \$ 5,615 | \$115,137 |
| Laramie County #2 (Pine Bluffs) | \$ 5,581 | \$ 68,809 |
| Big Horn County #1 (Byron) | \$ 5,429 | \$ 69,492 |
| Fremont County #38 (Arapahoe Elementary) | \$ 5,246 | \$ 81,959 |
| Sweetwater County #2 (Green River) | \$ 5,214 | \$105,635 |
| Lincoln County #1 (Kemmerer) | \$ 5,124 | \$109,875 |
| Sweetwater County #1 (Rock Springs) | \$ 5,065 | \$ 98,927 |
| Converse County #1 (Douglas) | \$ 4,959 | \$105,980 |
| Niobrara County #1 (Lusk) | \$ 4,951 | \$ 79,645 |
| Park County #1 (Powell) | \$ 4,948 | \$102,889 |
| Carbon County #2 (Saratoga) | \$ 4,915 | \$ 87,194 |
| Fremont County #6 (Pavillion/Kinnear) | \$ 4,839 | \$ 77,615 |
| Fremont County #14 (Ethete Elementary) | \$ 4,774 | \$ 83,007 |
| Crook County #1 (Sundance) | \$ 4,701 | \$ 74,205 |
| Big Horn County #4 (Basin) | \$ 4,653 | \$ 67,545 |
| Fremont County #2 (Dubois) | \$ 4,567 | \$ 64,578 |
| Big Horn County #3 (Greybull) | \$ 4,432 | \$ 81,939 |
| Sublette County #1 (Pinedale) | \$ 4,379 | \$ 81,713 |
| Weston County #7 (Upton) | \$ 4,369 | \$ 68,508 |
| Converse County #2 (Glenrock) | \$ 4,194 | \$ 86,649 |
| Johnson County #1 (Buffalo) | \$ 4,190 | \$ 74,920 |
| Goshen County #1 (Torrington) | \$ 4,174 | \$ 69,177 |
| Big Horn County #2 (Lovell) | \$ 4,137 | \$ 79,021 |
| Platte County #1 (Wheatland) | \$ 4,133 | \$ 74,331 |

| <u>DISTRICT</u> | <u>\$/ADM</u> | <u>\$/CRU</u> |
|-------------------------------------|---------------|---------------|
| Sheridan County #1 (Ranchester) | \$ 4,103 | \$ 68,899 |
| Albany County #1 (Laramie) | \$ 3,898 | \$ 72,470 |
| Teton County County #1 (Jackson) | \$ 3,822 | \$ 69,681 |
| Uinta County #4 (Mountain View) | \$ 3,746 | \$ 69,406 |
| Platte County #2 (Guernsey) | \$ 3,738 | \$ 63,519 |
| Fremont County #1 (Lander) | \$ 3,685 | \$ 69,665 |
| Washakie County #1 (Worland) | \$ 3,563 | \$ 72,863 |
| Uinta County #6 (Lyman) | \$ 3,532 | \$ 70,269 |
| Weston County #1 (Newcastle) | \$ 3,501 | \$ 69,043 |
| Fremont County #25 (Riverton) | \$ 3,381 | \$ 65,733 |
| Lincoln County #2 (Afton) | \$ 3,361 | \$ 67,832 |
| Laramie County #1 (Cheyenne) | \$ 3,342 | \$ 68,503 |
| Natrona County #1 (Casper) | \$ 3,339 | \$ 69,850 |
| Sheridan County #2 (Sheridan) | \$ 3,004 | \$ 65,197 |

Comparing the Local Districts

The select committees had to decide which method of comparing school districts was the most meaningful and useful in devising a new system to carry out the *Washakie* mandate for school finance reform.

Resources-per-Classroom Unit (\$/CRU) had the advantage of weighting factors such as differing grade levels,⁴¹ impact problems caused by rapid population growth,⁴² and the perceived higher costs associated with vocational education,⁴³ one-teacher rural schools,⁴⁴ and handicapped children.⁴⁵ CRU weightings were cumulative legislative judgments as to which factors should be favored and by how much, and not empirically

41. WYO. STAT. § 21-13-308 (b) (c) (1977). The 1983 Legislature added separate CRU divisors for junior high schools to the existing elementary and high school divisors. WYO. STAT. § 21-13-308 (c) (e) (Supp. 1983).

42. WYO. STAT. § 21-13-308 (d) (1977); redesignated as WYO. STAT. § 21-13-308 (f) (Supp. 1983) under the new system.

43. WYO. STAT. § 21-13-308 (e) (1977); redesignated as WYO. STAT. § 21-13-308 (g) (Supp. 1983) under the new system.

44. WYO. STAT. § 21-13-308 (f) (1977); redesignated as WYO. STAT. § 21-13-308 (h) (Supp. 1983) under the new system.

45. WYO. STAT. § 21-13-308 (h) (1977); redesignated as WYO. STAT. § 21-13-308 (j) (Supp. 1983) under the new system.

based analytical decisions. As such, they might have represented factors which made the old system unconstitutional. The \$/CRU figures were a function of the distributional aspects of the old school finance system, rather than an accurate measurement of the resource disparity which was the focus of the *Washakie* opinion. Also, the old system gave financial rewards to certain "add-on" costs,⁴⁶ by reimbursing school districts for previous expenditures for school bus transportation,⁴⁷ out-of-district tuition payments,⁴⁸ educational services for isolated or homebound students,⁴⁹ and handicapped students.⁵⁰

Because these CRU weightings and add-ons might have been a part of what made the old system unconstitutional, the select committees primarily used the Resources-per-Average-Daily-Membership (\$/ADM) comparison method. In doing so, legislators understood that the \$/ADM comparison has a problem common to any per-pupil analysis: it fails to take into account the fact that all students do not cost the same to educate. Any school finance system based solely upon a flat dollar amount per student is probably unconstitutional, because it fails to account for special student and local district differences.⁵¹ However, the \$/ADM analysis better served legislators' need to develop a system which would collect revenues based upon the wealth of the state as a whole. After the basic revenue premises of the new system were developed to achieve greater fiscal neutrality under a \$/ADM analysis, differences between districts could then be taken care of by adjusting CRU and add-on weightings in the Foundation Program's distribution system.

Thus, legislators primarily relied upon \$/ADM analyses in establishing the revenue portion of the new system. They used \$/CRU analyses more when making adjustments to the Foundation Program as a state aid distribution system.

The Foundation Program

In order to fully appreciate the nature and causes of the disparities in revenue-per-ADM among the forty-nine school districts, an understanding of the operation of the Wyoming Foundation Program is necessary. Any program of state aid to public schools will include both revenue collection and fund distribution aspects. The state's first system of comprehensive state aid to local school districts, or a "Foundation Program," was begun in 1935.⁵² The initial Foundation Program was enacted that year with a \$287,000 allocation from the state's first sales tax of \$.02.⁵³ The current

46. "Add-on costs" are local costs for which the Foundation Program reimburses districts for prior fiscal year expenditures. See *infra* note 109 and accompanying text.

47. WYO. STAT. § 21-13-309 (b) (1977 & Supp. 1983).

48. WYO. STAT. § 21-13-309 (c) (1977 & Supp. 1983).

49. WYO. STAT. § 21-13-309 (d) (1977 & Supp. 1983).

50. WYO. STAT. § 21-13-309 (e) (1977 & Supp. 1983).

51. *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d at 336.

52. 1935 WYO. SESS. LAWS Ch. 69 and Ch. 74., § 19. Four years later, the Legislature established a \$900 minimum program (precursor of the CRU) for one-room rural schools, a \$1,000 minimum program for grades 1-8, and a \$1,300 minimum program for grades 9-12. 1939 WYO. SESS. LAWS Ch. 94., § 2.

53. *Id.*

Foundation Program⁵⁴ was enacted in 1955 and provided for a \$5,500 Classroom Unit.⁵⁵ Since 1955, the Foundation Program has primarily been funded by thirty-seven and one-half percent of all federal mineral royalties received by the state, the proceeds of the six mill state levy on all real property, and general fund appropriations.⁵⁶

The Foundation Program,⁵⁷ greatly simplified, worked as follows under the old system (changes under the new system are noted):

1. The average number of students attending school in each district during the school year was determined. This number was the Average Daily Membership (ADM) and was computed both in the fall and spring of each school year.
2. Next, the number of a district's ADM was allocated between the students attending schools within municipal boundaries and outside municipal boundaries. The latter category was favored by weighting for "ruralness."⁵⁸ The number of ADM in each category was converted to Classroom Units (CRUs)⁵⁹ by applying two statutory tables of "divisors."⁶⁰ The reported number of ADM was divided by the appropriate table of divisors, one for grades 1-8 and one for grades 9-12. Kindergarten ADM was divided in half⁶¹ and was reported after application of a common divisor of twenty-five. The total of these three calculations was a specific number of CRUs for each district. Since the

54. The "Foundation Program" is Wyoming's system for financial aid to the state's 49 public school districts. It includes both revenue and expenditure sides. Revenues available to school districts are described *infra* in the text section on Total Resources Available To Public Schools accompanying notes 23-40. The Foundation Program revenues include the state levy, general fund appropriations and federal mineral royalties, as well as amounts recaptured from wealthy districts under the new system. Expenditures include those amounts budgeted and spent by local districts according to statute, principally Chapter 13 [WYO. STAT. §§ 21-13-101 to -504 (1977)] of the Education Code of 1969.

55. 1955 WYO. SESS. LAWS Ch. 119.

56. WYO. STAT. § 9-4-601 (a) (ii) (1977); WYO. STAT. § 21-13-303 (1977).

57. WYO. STAT. §§ 21-13-305 to -314 (1977).

58. Both the old and new systems implement a legislative judgment that rural or smaller schools have higher costs per student than urban districts, by weighting the CRU divisors toward those schools with a smaller student population. The new system increases this weighting by lowering the number of students needed to obtain CRUs. WYO. STAT. § 21-13-308 (a-e) (1977 & Supp. 1983). Also, the new system codifies the prior State Department of Education practice of counting together for CRU calculation purposes, all school buildings within the boundaries of an incorporated city or town. WYO. STAT. § 21-13-308 (b) (Supp. 1983). See also *infra* discussion in text section on Ruralness accompanying notes 155-63.

59. The CRU value is set each session by the Legislature. Since education represents a major commitment of state resources to a program which affects each legislator's constituency differently, it is often one of the last appropriation matters to be resolved each session.

60. A CRU "divisor" is the statutory number by which a local district's reported number of ADM attending elementary, junior high and high school is divided to establish the general CRU entitlement for the district. WYO. STAT. § 21-13-308 (b-e) (1977). The divisors represent legislative consensus as to weighting of the specified factors. Though ADM and divisor numbers have been changed periodically since their introduction in 1955 (1955 WYO. SESS. LAWS Ch. 119., § 4), the new system made the first major change since 1955, by creating a third divisor category. Under the new system, separate junior high divisors were added to prior elementary and secondary (now high school) divisor categories. WYO. STAT. § 21-13-308 (c-e) (Supp. 1983).

61. Kindergarten students normally attend school half days. For Foundation Program calculation purposes, the kindergarten ADM is reduced by one-half. WYO. STAT. § 21-13-309 (c) (Supp. 1983).

elementary and secondary divisors favored rural schools, smaller school districts received a higher level of state aid than they would have under a strict \$/ADM, or per-pupil, distributional system.⁶²

3. Additional Classroom Units were then "added-on" for one-teacher schools, vocational classes and special education classes. Classroom Units for special education classes were computed using a common divisor of either eight or ten, depending upon the severity of the handicapping condition involved.⁶³
4. Next, the number of Classroom Units computed for each district was multiplied by a statutory CRU value (set by the legislature at \$41,550 for fiscal year 1983, the last year under the old system) to produce a general entitlement amount.⁶⁴
5. Additional Foundation Program aid to local districts was then added to reimburse school districts for their prior expenditures in the following categories: transportation costs, tuition costs, isolation and home-bound educational program costs, and handicapped children costs.⁶⁵

62. Using old system divisors for hypothetical districts with elementary students totalling 24, 48, 96, 192, or 384 ADM, their general entitlement for elementary schools of various sizes can be illustrated as follows:

| # ADM | + Divisor = | #CRUs | × CRU Value = | General entitlement | (\$/ADM) |
|-------|---------------|--------|---------------|---------------------|----------|
| 24 | 10 (under 25) | 2.4 | \$41,550 | \$ 99,720 | \$ 4,155 |
| 48 | 18 (45-89) | 2.6667 | " | \$ 110,801 | \$ 2,308 |
| 96 | 20 (90-139) | 4.8 | " | \$ 199,440 | \$ 2,078 |
| 192 | 23 (140-199) | 8.3478 | " | \$ 356,851 | \$ 1,807 |
| 384 | 25 (200 +) | 15.36 | " | \$ 638,208 | \$ 1,662 |

Under the new system, the CRU value was set initially at \$73,000 (WYO. STAT. § 21-13-309 (a) (Supp. 1983)), but all 25 mills of the mandatory special school district levy, rather than the 10 mills as previously, must be counted as a local resource. WYO. STAT. § 21-13-102 (a) (Supp. 1983). Therefore, the much higher CRU value does not really represent a substantial increase in state aid to education. Applying the new divisors, but retaining the old \$41,500 CRU value for comparison purposes, the same elementary ADM numbers would yield the following:

| # ADM | + Divisor = | #CRUs | × CRU Value = | General entitlement | (\$/ADM) |
|-------|--------------|---------|---------------|---------------------|----------|
| 24 | 12 (10-25) | 2.0 | \$41,500 | \$ 83,100 | \$ 3,463 |
| 48 | 14 (26-75) | 3.4286 | " | \$ 142,458 | \$ 2,968 |
| 96 | 16 (76-150) | 6.4 | " | \$ 265,920 | \$ 2,770 |
| 192 | 19 (151-300) | 10.1053 | " | \$ 419,875 | \$ 2,187 |
| 384 | 22 (301-500) | 17.4545 | " | \$ 725,234 | \$ 1,889 |

63. Smaller divisors have the effect of giving relatively greater state aid for a student in smaller schools and special education categories. Special education is not only favored as a CRU weighting under WYO. STAT. § 21-13-308 (j) (Supp. 1983); it is also funded as an add-on under WYO. STAT. § 21-13-309 (e) (Supp. 1983). There are statutory provisions in both Section 308(j) and Section 309 (e) to prevent overfunding of local special education costs. Section 308(j) will be collapsed into Section 309(e) on July 1, 1984. 1983 WYO. SESS. LAWS Ch. 136, § 3.

64. WYO. STAT. § 21-13-309 (a) (Supp. 1983). The Fiscal Year 1984 CRU value is \$73,000. *Id.*

65. The Foundation Program added state reimbursement for a portion of local school district costs for transportation (WYO. STAT. § 21-13-309 (b) (Supp. 1983)), tuition paid for resident students to attend school out-of-district in the best interests of the student and the district (WYO. STAT. §§ 21-4-502 to -505 (1977); WYO. STAT. § 21-13-309 (c) (Supp. 1983)), maintenance of educational services for isolated or homebound resident students (WYO. STAT. § 21-4-401 (1977); WYO. STAT. § 21-13-309 (d) (Supp. 1983)), and provision of educational services to handicapped resident students (WYO. STAT. § 21-13-309 (e) (Supp. 1983); WYO. STAT. §§ 21-14-101 to -103 (1977); 20 U.S.C. §§ 1401-1461 (1976); 29 U.S.C. § 791 (1976)).

The total of all these steps was the guaranteed Foundation Program for each district.

6. Since the Foundation Program included local and federal revenues as well as state aid, however, a district's local and federal revenues had to be subtracted to determine a district's state aid entitlement. In this way the old Foundation Programs took into account for equalization purposes most of the revenues available to a school district. (This statement is also true of the new system.) Those subtractions included:

- a. Twelve mill county levy.⁶⁶
- b. Special school district levy.⁶⁷ School districts, as political subdivisions of the state,⁶⁸ were authorized by statute to levy not more than twenty-five mills (twenty mills in the case of an elementary nonunified school district)⁶⁹ by action of the school district board of trustees, plus an additional three mills (1.8 mills in the case of an elementary nonunified district) with electorate approval.⁷⁰ The framers of the Wyoming Constitution placed no limitation upon the amount of these special school district levies,⁷¹ thereby distinguishing school districts from counties (twelve mill constitutional maximum)⁷² and cities (eight mill constitutional maximum),⁷³ preferring to allow the legislature to establish the maximum mill levy for schools. Although a few of the wealthier school districts did not levy all of the allowable twenty-five mills, most districts did. The special district levy was the mainstay of school finance in Wyoming under the old system. The Foundation Program, however, only counted ten mills of the twenty-five mill levy as a local resource.⁷⁴

66. WYO. CONST. art. 15, § 17, adopted in 1966. Under the new system this is only 6 mills. *Id.*

67. WYO. STAT. § 21-13-310 (a) (ii) (A) (Supp. 1983).

68. *Witzenburger v. State ex rel. Wyoming Community Development Authority*, 575 P.2d 1100, 1110 (Wyo. 1978).

69. Three Fremont County elementary school districts on the Wind River Reservation are the only nonunified school districts in the state. Those districts (No. 14, Ethete; No. 21, Ft. Washakie; and No. 38, Arapahoe) do not offer grades 9-12. They contract with neighboring unified school districts to provide high school for their resident students.

70. WYO. STAT. §§ 21-13-101 (1977); WYO. STAT. §§ 21-13-102 (a) (i) and (ii) (Supp. 1983).

71. Unlike most other political subdivisions of the state, school districts are not under any constitutional maximum limiting the legislature's ability to impose taxes in support of the public schools. In 1918, the Wyoming Supreme Court held that Article 15, Section 5 of the Wyoming Constitution, which provides for a 12 mill levy for all purposes including general school taxes, did not prevent the legislature from providing for separate mill levy authority for each school district. There has been a special school district tax separate and apart from county contributions since 1869. *McCague Investment Co. v. Mallin*, 23 Wyo. 201, 147 P. 507 (1915), *affirmed*, 25 Wyo. 373, 170 P. 763, 768-769 (1918). During the constitutional debates a proposed section limiting mill levies for school districts was deleted following the remarks of Mr. Potter: "We are going to authorize the state to maintain a system of common schools, if there is anything we believe in spending money for it is to keep up the schools, and we ought not have a limitation on that. We ought to leave that to be acted upon by the legislature." JOURNAL AND DEBATES OF THE WYOMING CONSTITUTIONAL CONVENTION, 704 (1889).

72. WYO. CONST. art. 15, § 5.

73. WYO. CONST. art. 15, § 6.

74. WYO. STAT. § 21-13-310 (a) (ii) (Supp. 1983).

- c. Common school land income.⁷⁶ By the terms of the United States Act admitting Wyoming to the Union⁷⁶ as a state, land grants (primarily sections sixteen and thirty-six in every township) were made to the state to be held in trust for the support of schools.⁷⁷ Proceeds from mineral royalties and the sale of these lands were placed in a permanent trust fund.⁷⁸ Interest earnings from the investment of the trust fund, and grazing rentals, were annually distributed to all school districts in the state.⁷⁹ Prior to 1979 the income was distributed based upon a census taken every year of the number of children within each school district between ages six and twenty-one, regardless of whether they attended school. Since passage of a constitutional amendment in 1978,⁸⁰ the income has been distributed to all school districts in the state, based upon their ADM. Regardless of whether the district is entitled to receive state aid through the Foundation Program, it receives common school land income.
- d. Fines and forfeitures. Since statehood, all fines from criminal actions, forfeitures and escheats have been dedicated to the support of the schools.⁸¹
- e. Federal forest reserve funds. Since 1907, a portion of the funds received by each county under the federal Forest Reserve Act,⁸² for the sale of timber and other rights, has been allocated to the schools.⁸³ In fiscal year 1980, \$192,758 of revenue flowed to the state's school districts from this source.⁸⁴
- f. Taylor Grazing Act Funds. Since 1937, a portion of revenues under the federal Taylor Grazing Act⁸⁵ has been dedicated to the support of the schools.⁸⁶ In fiscal year 1980, about \$450,000 was received by the state's school districts from this revenue source.⁸⁷
- g. Motor vehicle fees. Since 1921, motor vehicle registration fees have been allocated to school districts in the proportion which the total school levies bear to total property tax levies in a county.⁸⁸ These revenues approximated \$17 million in fiscal year 1982.⁸⁹

75. WYO. STAT. §§ 21-13-301 to -302 (1977).

76. Act of Admission, 26 St. 222 (1890).

77. *Id.*

78. WYO. STAT. § 9-4-305 (1977).

79. WYO. STAT. § 9-4-305 (1977); WYO. STAT. § 21-13-301 (1977).

80. The 1978 amendment to Article 7, Section 8 of the Wyoming Constitution eliminated the annual census of school age children to determine how common school land fund income would be distributed among the school districts in counties having more than one district. 1978 WYO. SESS. LAWS at 429. See WYO. STAT. §§ 21-4-201 to -203, *repealed* by 1979 WYO. SESS. LAWS Ch. 75., § 2. Since April 1, 1979, common school land income has been allocated among all school districts based upon ADM, and includes payments to districts not in the Foundation Program.

81. WYO. CONST. art. 12, § 5.

82. 16 U.S.C. § 500 (1976).

83. 1907 WYO. SESS. LAWS Ch. 7; WYO. STAT. §§ 9-4-501 to -504 (Supp. 1983).

84. STATISTICAL REPORT SERIES NO. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1979-80, STATE DEPARTMENT OF EDUCATION at 1.

85. 43 U.S.C. §§ 315-316a (1976).

86. 1937 WYO. SESS. LAWS Ch. 57; WYO. STAT. §§ 9-4-401 to -402 (Supp. 1983).

87. See *supra* note 84.

88. 1921 WYO. SESS. LAWS Ch. 69; WYO. STAT. § 31-4-401 (b) (1977).

89. See *supra* note 23.

- h. Seventy-five percent of tuition paid for children who are residents of other school districts. The tuition is paid by the student's parents or another school district.⁹⁰
7. Finally, Supplemental Aid was added. In 1971, the legislature adopted a supplemental aid program, which was designed to guarantee that each school district would receive as much revenue from a mill levy of seventeen mills per classroom unit as the statewide average of seventeen mills would bring.⁹¹ This aid was in addition to other entitlements under the Foundation Program and was a legislative effort to equalize aid in favor of poorer school districts.

The Constitutional Amendment

The legislature proposed in 1981, and the electorate approved in 1982, the following amendment to the Wyoming Constitution:

Article 15, Section 15. State tax for support of public schools. For the support of the public schools in the state there may be levied each year a state tax not exceeding twelve mills on the dollar of the assessed valuation of the property in the State.

Article 15, Section 17. County levy for support and maintenance of public schools. There shall be levied each year in each county of the state a tax of not to exceed six mills on the dollar of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide. The legislature may authorize boards of trustees of school districts to levy a special tax on the property of the district. The legislature may also provide for the distribution among one or more school districts of not more than three-fourths of any revenue from the special school district property tax in excess of a state average yield, which shall be calculated each year, per average daily membership.

The 1982 Amendment to article 15, section 15 raised the six mill state levy to a twelve mill state levy.

The 1982 amendment to article 15, section 17 made three changes. First, the mandatory twelve mill county levy was lowered to six mills.

90. WYO. STAT. § 21-13-310 (a) (ix) (Supp. 1983). Students must be admitted in any district in the state that has room for them, but tuition may be charged any nonresident student. WYO. STAT. §§ 21-4-501 to -502 (b) (1977). If it is in the best interests of both the resident district and the student for the student to attend school elsewhere, the district may pay the tuition. WYO. STAT. § 21-4-502 (1977). When an appropriate placement of a handicapped student cannot be made in the resident district, an out-of-district placement must be made at no cost to the parent or student. WYO. STAT. § 21-14-101 (1977); 20 U.S.C. § 1412(2)(B) (1976); 34 C.F.R. §§ 300.300 to 300.307 (1982). However, tuition paid for handicapped student placements is not to be counted as a local district resource in the Foundation Program. WYO. STAT. § 21-13-310 (a) (ix) (Supp. 1983).

91. WYO. STAT. § 21-13-314 (1977); repealed June 30, 1983, by 1983 WYO. SESS. LAWS Ch. 136, § 3. Supplemental Aid was a 1971 legislative program, modified between 1973 and 1975, to provide additional state aid to districts whose assessed valuation-per-CRU was below the state average. The equalizing effect of supplemental aid has been otherwise provided for in the new system, so it was repealed when the new system took effect. *Id.*

Second, the legislature was given specific authority to permit school districts to levy property taxes, previously unmentioned in the Constitution, but authority which the Wyoming Supreme Court had supported in 1918,⁹² and which was consistent with the intent of the framers of the Constitution.⁹³ Third, the legislature was given authority to redistribute up to seventy-five percent of any special school district mill levy revenues to the extent they might exceed the state average-per-ADM. The 1983 Legislature continued, but made mandatory, the full twenty-five mills special school district tax. Further, the 1983 Legislature established a recapture mechanism to redistribute a portion of the funds above the statewide average from wealthy districts.⁹⁴

School Finance Reform Legislation

The 1983 Legislature enacted House Bill 212A (HB212A) as House Enrolled Act 44 (HEA44).⁹⁵ HB 212A, coupled with the constitutional amendment adopted in the 1982 general election,⁹⁶ made substantial changes to the existing school finance structure in the state.⁹⁷ A summary of the legislative reforms made prior to HB 212A is provided in the footnotes.⁹⁸

The original Select Committee constitutional amendment proposal submitted to the 1981 Legislature would have allowed the legislature to

92. *McCague Investment Co. v. Mallin*, 23 Wyo. 201, 147 P. 763 (1918).

93. JOURNAL AND DEBATES OF THE WYOMING CONSTITUTIONAL CONVENTION, 704 (1889).

94. WYO. STAT. § 21-13-102 (b-c) (Supp. 1983).

95. 1983 WYO. SESS. LAWS Ch. 136.

96. The 1981 and 1982 Legislatures also made changes to the old system as a part of the state's school finance reform. See *infra* note 98 for a description of those changes. Statutory changes also were made in the laws governing school district capital construction (e.g. 1983 WYO. SESS. LAWS Ch. 95), but this article does not cover school construction).

97. Though in response to *Washakie*, the reforms went beyond the specific requirements of that decision. See *supra* note 14.

98. The post-*Washakie* school finance reform process in Wyoming has spanned three years so far. During that time the following has occurred:

The 1980 Legislature formed the first Select Committee to Study School Finance.

The 1981 Legislature approved the constitutional amendment proposal (1981 WYO. SESS. LAWS at 329); repealed the 3 mill general county school levy based upon the number of teachers and bus drivers in a school district (WYO. STAT. §§ 21-13-202 to -215 (1977), WYO. STAT. § 21-13-301 (a) (iii) (1977), WYO. STAT. § 39-2-401 (b) (i) (1977) *repealed* by 1981 WYO. SESS. LAWS ch. 43); transferred the approximately \$7.2 million fees collected by the Lands Commissioner from the general fund to a new school capital construction account (WYO. STAT. § 36-3-110 (b) (1977)); apportioned school districts' advance of construction entitlements at a 60 percent share of federal mineral royalty income, subject to any bond repayment obligation (WYO. STAT. §§ 9-7-603 (g) and (k) (1977)); limited school district capital construction disbursements to pay project costs as they become due (WYO. STAT. § 21-15-102 (a) (1977)); raised the indebtedness requirement for school district's receipt of construction entitlement advance to 85 percent (WYO. STAT. § 21-15-104 (a) (1977)); set Farm Loan Board criteria and added the necessity for the Superintendent of Public Instruction's recommendation for capital construction entitlement advances (WYO. STAT. § 9-7-603(g) (1977)); (WYO. STAT. § 21-15-104 (a) (1977)); allowed school districts to collect supplemental aid if their levy was within 1 mill of the 25 mill maximum special school district levy (WYO. STAT. § 21-14-214 (c) (1977)); and formed the second (continued) Select Committee to Study School Finance.

The 1981 Special Session of the Legislature enacted the Wyoming Bond Reserve Act, hoping to enhance local districts' ability to finance capital construction through bonds issued with a higher rating and lower interest rate (WYO. STAT. §§ 21-13-801 to -802 (1977)).

The 1982 Legislature repealed the School Bond Reserve Act, which made no difference in school district bond ratings or interest rates (WYO. STAT. §§ 21-13-801 to -802 (1981)).

"recapture"⁹⁹ revenues from either the twelve mill county levy or the twenty-five mill special school district levy.¹⁰⁰ However, public comment during the session was concerned with loss of local control of the schools. Last-minute compromises, therefore, resulted in the amendment as approved in 1982, which only partially converts the county school levy into a state school levy.¹⁰¹ The Select Committees discovered, however, that because of the interdependent relationship between the CRU level, levels of recapture, and general fund appropriations, the remaining six mill county level did not have a significant statistical effect in reducing the fiscal neutrality of the new system.¹⁰² Also, as approved by the electorate in 1982, the constitutional amendment limited future legislatures to recapturing seventy-five percent of the amount that special school district levies might exceed the state average-per-ADM.¹⁰³

Recapture

In Wyoming's new system, recapture is the rebate, by a school district whose local resources exceed the Foundation Program cost figure¹⁰⁴ by a statutorily-specified amount,¹⁰⁵ to the state for redistribution to poorer school districts through the Foundation Program. The State Department of Education includes recapture funds in its calculation of available state aid resources and distributes state aid funds through the Foundation Program. Recapture was authorized by the 1982 amendment to article 15, section 17 of the Wyoming Constitution.

The 1982 Select Committee attempted to design a statutory recapture mechanism which would implement the constitutional amendment then pending voter approval. During the course of this study, the Select Committee developed three methods of implementing recapture. These methods differed in how local resources were calculated.

Using the wealthiest urban school district, Campbell County School District No. 1 (Gillette) as an example, the following illustrates the three methods:¹⁰⁶

99. "Recapture" is the transfer of a portion of revenues from the 25 mill special school district levy to the state for redistribution to poorer school districts through the Foundation Program. See *infra* the text sections in Recapture accompanying notes 104-29.

100. 1981 WYO. SESS. LAWS, at 328-29.

101. The Select Committee's original constitutional amendment proposal contained no limit upon the amount of recapture which could be imposed by the Legislature. However, this brought out fears of nonpassage and accomplishing school finance reform on the backs of the richer districts. Therefore, the 75 percent limitation upon recapture was written into the amendment for the purposes of protecting local control over schools, leaving some additional resources in the richer districts bearing the impact of rapid growth, providing an incentive for richer districts to impose any special taxes which might be legislated in the future, limiting future legislature's ability to impoverish the presently richer districts, and aiding passage of the amendment.

102. Under the new system, which bases state aid upon statewide averages, none of several interdependent factors can be changed without significantly altering the impact of the other interdependent factors, and significantly affecting the system's level of fiscal neutrality. The interdependent factors include the CRU value, recapture categories and levels, and general fund appropriation.

103. WYO. CONST. art. 15, § 17.

104. As determined under WYO. STAT. § 21-13-309 (Supp. 1983).

105. WYO. STAT. § 21-13-102 (b-c) (Supp. 1983).

106. SCHOOL FINANCE HANDBOOK FOR HB 212 (Jan. 1983), SELECT COMMITTEE TO STUDY SCHOOL FINANCE.

1. assume a school district has 306.09 total CRUs;¹⁰⁷
2. multiply the total number of CRUs by some assumed statutory CRU value, in this case \$73,500,¹⁰⁸ or \$22,497,615;
3. assume add-on costs¹⁰⁹ totaling \$5,672,014 which, when added to the amount calculated in Step 2, equals a guaranteed Foundation Program of \$28,169,629.
4. Subtract the district's local resources:
 - (a) first, subtract the county levy which, after the constitutional amendment, is six mills, or \$8,496,317;
 - (b) then subtract the special district levy using one of three calculation methods. All three different methods were considered to implement the constitutional amendments, but each had a different impact on local districts. The three methods were:
 - (i) compute what the state average yield from twenty-five mills would be for the number of ADM in the district (\$13,166,882 for Gillette) and add the one-quarter "surplus"¹¹⁰ from the twenty-five mills which was not recaptured (\$5,557,330 for Gillette)—the total arrived at is \$18,724,212; or
 - (ii) compute what the state average yield from twenty-five mills would be for the district's number of ADM and enter that figure (\$13,166,882 for Gillette) and do not count the one-quarter surplus (\$5,557,330) as a local resource; or
 - (iii) enter what the twenty-five mill levy generates in the district (\$35,401,319 for Gillette).

107. The assumption is derived from REPORT NO. 6 (Nov. 1982) LEGISLATIVE SERVICE OFFICE. Report No. 6 was the final major analysis and projection document prepared for the 1982 Select Committee prior to the convening of the 1983 Legislature. By this time, several assumptions, including CRU level and proposed divisor changes, had been incorporated into the projections.

108. The many projections made for the 1980-82 Select Committees used various CRU values between \$67,000 and \$80,000. \$73,500 was a CRU value frequently used in projections near the end of the 1982 Select Committee's tenure. In fact, the 1983 Legislature enacted a \$73,000 CRU value. WYO. STAT. § 21-13-309(a) (Supp. 1983).

109. "Add-on costs" are local costs, for which state Foundation Program aid is not determined by application of divisors to reported ADM, but by state reimbursement of actual costs reported spent by school districts in specific categories in the past. Add-ons are a reimbursement form of state aid to local school districts. The add-on categories include vocational education (WYO. STAT. § 21-13-308 (g) (Supp. 1983)), one-teacher schools (WYO. STAT. § 21-13-308 (h) (Supp. 1983)), special education (WYO. STAT. § 21-13-308 (j); WYO. STAT. § 21-13-309 (e) (Supp. 1983)), transportation (WYO. STAT. § 21-13-309 (b) (Supp. 1983)), tuition (WYO. STAT. § 21-13-309 (c) (Supp. 1983)), and isolated and homebound instruction (WYO. STAT. § 21-13-309 (b) (Supp. 1983)).

110. The $\frac{1}{4}$ "surplus" was the balance of revenue from the 25 mill special school district levy which had to be left in the local districts under the constitutional amendment to Article 15, Section 17. "Surplus" was the term used by legislators considering school finance reform; however, "remainder," "exempted portions," "balance" or "local incentive" would be equally accurate descriptive phrases. As will be discussed *infra* under the Recapture Options section of the text accompanying notes 136-54, the new system in fact recaptures less than the 75 percent constitutional limit.

- (c) Subtract the common school land income, which was \$1,301,801 in Gillette; and finally
- (d) subtract other resources, such as fines and forfeitures (\$1,283,097 for Gillette).

Applying these methods to Gillette produced the following projections:

| | Calculation by 1st method | Calculation by 2nd method | Calculation by 3rd method |
|---|---------------------------------|---------------------------------|---------------------------------|
| Guaranteed Program¹¹² | \$28,169,629 | \$28,169,629 | \$28,169,629 |
| Local Resources¹¹³ | | | |
| 6 mill County Levy ¹¹⁴ | \$ 8,496,317 | \$ 8,496,317 | \$ 8,496,317 |
| 25 mill Special School District Levy ¹¹⁵ | \$13,166,882 | \$13,166,882 | \$35,401,319 |
| ¼ surplus ¹¹⁶ | \$ 5,557,330 | NA | NA |
| Land income ¹¹⁷ | \$ 1,301,801 | \$ 1,301,801 | \$ 1,301,801 |
| Other ¹¹⁸ | \$ 1,283,097 | \$ 1,283,097 | \$ 1,283,097 |
| Total Local Resources¹¹⁹ | \$29,805,427 | \$24,248,097 | \$46,482,534 |

111. This chart illustrates the dramatic effect of the three options for calculating step 4(b) on the state's wealthiest school district. The numbers were computed by the Legislative Service Office for consideration by 1982 Select Committee members, from numerous sources. See *supra* note 23. Note that, regardless of which computation method is used, the totals for the guaranteed program, mill levies, land and other income, and total available resources do not change. The ¼ surplus is counted as a local resource only under the first method. The district would be entitled to receive state aid through the Foundation Program only under the second method. As is discussed in the text following the chart, these were the reasons that the Select Committee rejected the first and second calculation methods.

112. The guaranteed program is the Foundation Program. See *supra* note 54. Funds which make up the Foundation Program are the state 12 mill levy, federal mineral royalties, and general fund appropriations, plus recapture rebates under the new system.

113. Local resources are those local tax revenues listed in WYO. STAT. § 21-13-310 (Supp. 1983). They include the 6 mill county levy, the 25 mill special school district levy, common school land income, fines and forfeitures, forest reserve funds, Taylor Grazing Act funds, county motor vehicle funds, tuition received for nonhandicapped students who reside in another district, and (under the first calculation method only) the ¼ surplus after recapture.

114. WYO. CONST. art. 15, § 17.

115. WYO. STAT. § 21-13-102 (a) (Supp. 1983).

116. The amount not rebated by wealthy school districts to recapture under WYO. STAT. § 21-13-102 (b-c) (Supp. 1983). Since all projections made until very near the end of the three year Wyoming school finance reform process assumed that the full 75 percent recapture would be taken, the ¼ surplus was used in analyses provided legislators. In fact, the new system ended up recapturing less than the full 75 percent. But since the first calculation method, which counted the surplus as local resource, was not enacted, the ¼ surplus amount has not been changed on the table for illustrative purposes.

117. Each school district receives income from the common school account within the permanent land income fund. WYO. STAT. §§ 21-13-301 to -302 (Supp. 1983).

118. Other local resources are: fines and forfeitures, which go to the schools (WYO. CONST. art. 7, § 5); national forest reserve funds, which under federal law go to the state for school and road purposes (WYO. STAT. § 9-4-501 (Supp. 1983); 16 U.S.C. § 500 (1976)); Federal Taylor Grazing Act lease and sale funds, which under federal law go to the state for school purposes (WYO. STAT. §§ 9-4-401 to -402 (Supp. 1983); 43 U.S.C. §§ 315-316o (1976)); the district's share of motor vehicle registration fees (WYO. STAT. § 31-4-401 (b) (1977)); and tuition collected for nonhandicapped students not residents of the district (WYO. STAT. §§ 21-4-501 to -505 (1977)).

119. The total of all the local resources listed in the chart.

| | | | |
|---|--------------|--------------|--------------|
| Foundation Entitlement ¹²⁰ | —0— | \$ 3,921,532 | —0— |
| Lost Local Revenues ¹²¹ | | | |
| 6 mill shift ¹²² | \$ 8,496,317 | \$ 8,496,317 | \$ 8,496,317 |
| Net recapture ¹²³ | \$16,677,107 | \$12,745,575 | \$12,819,034 |
| % recapture ¹²⁴ | 75% | 75% | 70% |
| Total Lost Local Revenues ¹²⁵ | \$25,173,424 | \$21,241,892 | \$21,315,351 |
| Total Resources ¹²⁶ | \$54,978,851 | \$54,978,851 | \$54,978,851 |

Although the three computational options were simply different ways of implementing the same statutory system of recapture, the Gillette example illustrates how dramatically the differences between the options could affect an individual district. For example, under the first method, the state would have recaptured \$16.7 million from Gillette, or about \$4 million more than under the other two options. Under the second method, the state would have given \$3.9 million back to the richest district, from which it had recaptured \$16.7 million.

The first (step 4(b)(i)) calculation option was originally used in making projections for the Select Committee. But several school districts objected to counting the one-quarter surplus as a local resource on the grounds that it nullified the one-quarter surplus as an advantage to wealthy districts subject to recapture. The Committee agreed with that objection and decided that the one-quarter surplus should not be considered as a local resource, thus eliminating the first calculation option. Next, the second (step 4(b)(ii)) calculation option was used. But the second method introduced the anomaly of making the richest district both subject to recapture and entitled to state aid, a rather inefficient and seemingly unnecessary administrative burden.

Finally, the Committee approved the use of the third option (step 4(b)(iii)) to calculate recapture. This simplified the projection calculation process somewhat by eliminating the need to include the one-quarter surplus as a local resource or to rebate part of the rebate to wealthy districts. To calculate recapture using the third method, the guaranteed

120. A district's eligibility to receive state aid from the Foundation Program, and the amount of that aid, is determined under WYO. STAT. §§ 21-13-307 to -311 (Supp. 1983).

121. "Loss" to a district as a result of the new system or revenues derived from the 6 mills that was constitutionally shifted from a local to state levy by Article 15, Sections 15 and 17, and the amount recaptured from wealthy district's excess of the 25 mill special school district levy above the state average-per-ADM. See WYO. STAT. § 21-13-102 (b-c) (Supp. 1983).

122. The 1982 amendments to Sections 15 and 17 of Article 15 of the Wyoming Constitution reduced the county levy from 12 to 6 mills and raised the state levy from 6 to 12 mills. WYO. CONST. art. 15, §§ 15 and 17.

123. Recapture is calculated under WYO. STAT. § 21-13-102 (b-c) (Supp. 1983).

124. Article 15, Section 17 of the Wyoming Constitution allows the legislature to set any rate of recapture up to 75 percent of the excess of assessed valuation-per-ADM above the state average. The first two methods of calculation were used when all projections for the Select Committee assumed that the full 75 percent recapture would be taken. But about the time the Select Committee chose the third calculation method, it also took up serious consideration of the effect of different rates of recapture. The 70 percent recapture figure was the basis for one of the last projections made before the concept of variable recapture was adopted by legislators. See *infra* note 127.

125. The total of the 6 mill shift in net recapture amounts.

126. Total resources are all the statutory state, local and federal resources available to a school district. See REPORT No. 6 (Nov. 1982), LEGISLATIVE SERVICE OFFICE.

program was subtracted from the local resource total and the difference multiplied by a stated percentage of recapture, in this case seventy percent.¹²⁷

The end result of the computation under any of the methods was essentially the same as far as the state was concerned. Also, the same amount of recaptured dollars could be obtained by using the first method, but applying a lower rate of recapture. Thus, the key feature of recapture is not what method was used for calculation, but what rate of recapture was applied. The first two calculation methods indicated that, if necessary, the legislature could recapture enough to bring all wealthy districts down to the state average, or below, or make all state school districts eligible for state aid under the Foundation Program.¹²⁸ However, nothing in the *Washakie* opinion required such a drastic result.¹²⁹

Distributional Disparities

The Select Committees discovered the disparities in the amount of revenue-per-ADM among the school districts were not due solely to disparities in property tax revenue. The Select Committees discovered that disparities among districts were also created in the old system

- (a) by statutory divisors which weighted the number of classroom units in favor of rural districts;¹³⁰
- (b) by counting only ten mills of revenue as a local resource;¹³¹
- (c) by, in the interest of local control, allowing school boards to determine how many vocational education classes they wished to offer—a district

127. The Select Committee determined that an appropriate level of recapture from the Gillette district would be the approximate \$12.7 million obtained under the second method. Then, when the Select Committee chose the third calculation option, it reduced the recapture rate to 70 percent in order to generate the approximate same revenue to the state through recapture. This is one illustration of the interdependence of several factors in the new system noted in *supra* note 102.

128. The 1980 Select Committee considered several very different school finance reform systems, including ones that would transfer so much local property tax revenues to the state that all school districts would be poor and thus participants in the Foundation Program. Those proposals made achievement of a very high level of fiscal neutrality much simpler. However, legislators regarded them as unacceptably diluting local control over the schools, unnecessarily going beyond the requirements of *Washakie*, and being politically unrealistic. Thus, the new system combines several techniques: a shift of 6 mills from a local to state revenue source, power equalization (See *supra* note 28), recapture, adjustments to the distributional formulas, requiring a uniform 25 mill special school district levy on all real property within the state for school purposes, counting all 25 mills as a local resource, changes to local tax leeways, and an effort to remedy the perceived underassessment of property in some counties. WYO. STAT. § 21-13-311 (c) (Supp. 1983).

129. Nothing in the *Washakie* opinion indicated that all school districts would have to be made dependent upon state aid for the school finance system to be constitutional. Wealthy districts argued persuasively that they should be allowed to keep some of their excess wealth to deal with their special impact growth problems, for which raises in assessed valuation lag a year or more behind the need for the extra services. They also persuaded legislators that a high level of fiscal neutrality could be achieved by less drastic means, such as those eventually enacted into the new system.

130. See *supra* note 58.

131. By not counting 15 of the 25 mills special school district levy under the old system, 60 percent of the local district property tax resources were outside the equalizing mechanisms of the Foundation Program.

which favored vocational education classes received a higher proportion of state aid;

- (d) by allowing greater aid to school districts which reported a larger number of special education students; and
- (e) by a supplemental aid program¹³² which distributed state aid to districts having lower assessed valuation, but which ignored other financial resources which might be disproportionately available to districts receiving supplemental aid.¹³³

HB 212A of the 1983 session was the major school finance reform bill.¹³⁴ With HB 212A, the legislature corrected the more obvious disparity causing features of the Foundation Program, including a mandate for each district to count all twenty-five mills as a local resource and repealing the supplemental aid program. Other features of the old Foundation Program which led to disparities in educational funding (such as CRU divisor weightings and categorical reimbursement aid for add-ons) were more difficult to remedy and were matters of legislative policy needing additional study.¹³⁵

Recapture Options

An additional problem faced by the 1982 Select Committee was to determine the rate of recapture to be applied. Initially, the Committee worked with a flat rate of recapture which applied uniformly to all school districts which would be subject to the rebate. However, after several series of projections were made using flat rates of recapture, it became obvious that a flat rate of recapture would create an undesirable result. In fact, some previously wealthy districts might be made poor in the new system, falling substantially below the state average of revenue-per-ADM. This result was unacceptable to legislators and not required by the *Washakie* opinion.¹³⁶ Therefore, some method of implementing recapture other than flat rates had to be developed.

132. See *supra* note 91.

133. Resources outside the equalizing mechanisms of the Foundation Program frustrate state efforts to achieve a higher level of fiscal neutrality. For example, fines and forfeitures go to local school districts. Though they do not make a large statistical difference in comparing districts (since fines and forfeitures are a small percentage of any district's budget), they may benefit urban districts relatively more than rural districts. Of the \$2.8 million in fines and forfeitures reported in Fiscal Year 1982, \$546,620, or 19.5 percent, were in two districts, Cheyenne and Casper. See STATISTICAL REPORT SERIES No. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1981-82, STATE DEPARTMENT OF EDUCATION. In most listings presented legislators studying school finance, Casper was a medium-poor district and Cheyenne one of the poorest. See STATISTICAL REPORT No. 5 (April 1982), LEGISLATIVE SERVICE OFFICE. However, by an ADM analysis, fines and forfeitures do not disproportionately favor the two largest districts, since those districts reported 21 percent of the ADM in 1981-82. STATISTICAL REPORT SERIES No. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1981-82, STATE DEPARTMENT OF EDUCATION.

134. 1983 WYO. SESS. LAWS Ch. 136. This article is limited to school finance, and has not attempted to discuss the companion legislative actions taken on the capital construction for school districts. See 1983 WYO. SESS. LAWS Ch. 95., which was the school construction reform package of the 1983 Legislature, introduced as House Bill 208.

135. See, e.g., *supra* note 58. The Legislature is continuing its work on school finance, paying particular attention to the divisors and add-ons. See 1983 WYO. SESS. LAWS Ch. 136., § 6.

136. Nothing in *Washakie* suggests that fiscal neutrality can only be achieved by impoverishing previously wealthy districts.

The Committee observed that some districts were significantly wealthier than others. As the 1982 Select Committee narrowed its focus on recapture options to eleven of the wealthiest districts,¹³⁷ it seemed logical that the eleven districts should not be subject to the same rate of recapture. A study of the relationship of local resources-per-ADM of those districts,¹³⁸ as compared with the state average, indicated the following ratios:¹³⁹

Relative Wealth of Non-Foundation Program Districts

| | |
|-------------|----------------------------|
| Meeteetse | 770.7% x the state average |
| Thermopolis | 328.3% x the state average |
| Shoshoni | 257.2% x the state average |
| Gillette | 242.2% x the state average |
| Rawlins | 203.6% x the state average |
| Big Piney | 198.6% x the state average |
| Cody | 174.3% x the state average |
| Evanston | 171.0% x the state average |
| Kemmerer | 159.8% x the state average |
| Green River | 149.3% x the state average |
| Douglas | 144.1% x the state average |

The 1982 Select Committee considered a suggestion that *categories* of recapture districts might be appropriate. Several projections were made using variable rates of recapture to determine the end result by district. It appeared that the most functional approach was to set a series of recapture categories. For example, any district which had less than 180 percent of the state average of local resources-per-ADM could be at a zero recapture level,¹⁴⁰ any district between 180 percent and 240 percent could be subject to a forty-five percent recapture level, and any district with more than 240 percent could be subject to a sixty-five percent recapture level. This method of applying recapture rates depending upon relative wealth of districts was adopted by the 1982 Select Committee and contained in House Bill 212, as introduced in the 1983 session of the Wyoming House of Representatives.

By the time the House finished considering HB 212, it had been revised significantly and designated as House Bill 212A. During Senate Education Committee hearings on the Bill, however, a different method of recapture was presented which provided for variable recapture rates based upon a sliding scale. The effect of a sliding scale approach was to cushion the drastic impact upon the budget of a district which changed recapture

137. Under the old system, the concentration of high mineral assessments in a few of the 49 local school districts, made increasing numbers of districts not eligible to participate in the Foundation Program. See *infra* note 155. The fewer the number of districts in the Foundation Program, the more difficult it is for the school finance system to achieve a high level of fiscal neutrality, since so many districts are beyond the Foundation Program's equalizing mechanisms. Under the new system, eleven districts are initially non-Foundation Program districts, as determined under WYO. STAT. §§ 21-13-201 to -314 (Supp. 1983). Of the eleven, nine districts are subject to recapture and two (Green River and Douglas) fall below the initial recapture threshold.

138. WYO. STAT. § 21-13-310 (Supp. 1983).

139. REPORT NO. 6 (Nov. 1982) LEGISLATIVE SERVICE OFFICE.

140. A school district in the zero recapture category is not in the Foundation Program, but does not have to rebate anything under recapture.

categories.¹⁴¹ This new method of implementing recapture was supported by all districts which are subject to recapture except one,¹⁴² and was adopted by the Senate Education Committee. It was then accepted by both houses of the legislature and signed into law.

As enacted, the recapture provision provided that any district which has less than 1.5 times the state average resources-per-ADM is exempt from recapture.¹⁴³ Any district which has more than 1.5 times the state average resources-per-ADM must rebate twelve percent recapture.¹⁴⁴ Any district which has more than 1.75 times the state average resources-per-ADM must rebate thirty-two percent recapture after allowing a partial credit for amounts paid at the twelve percent rate.¹⁴⁵ Any district which has more than 2.2 times the state average resources-per-ADM must rebate forty-two percent recapture, after allowing a partial credit for amounts rebated at the twelve percent and thirty-two percent rates.¹⁴⁶

As the state gains experience with the process of recapture and more accurate school district data becomes available, the variable rates and sliding scale points may be adjusted. A more sophisticated recapture method may also be developed.

During the legislative session questions were raised concerning the constitutionality of using a variable rate of recapture instead of a flat rate of recapture applied uniformly to all districts. The constitutional basis for those questions was said to be the uniform taxation provision of article 1, section 28 of the Wyoming Constitution.¹⁴⁷ However, House Bill 212A provides that every district shall levy twenty-five mills. Recapture is predicated on a sum of local resources, a portion of which is the twenty-five mill levy. Therefore, since all property in the state is now subject to the same mandatory twenty-five mill levy for schools, it is difficult to conclude that any school district property is not subject to uniform taxation, regardless of its location in the state.

Regarding recapture, the constitutional amendment can and should be viewed as reversing any prior court decisions¹⁴⁸ which might be construed as prohibiting the legislature from taking property tax revenues from one school district and distributing them to other districts. The amendment also established a maximum amount which can be recaptured from any one district, seventy-five percent. Since the amendment did not mandate any particular method of determining the amount of recapture which is to be

141. As a wealthy district became relatively more or less wealthy, the recapture amount which it would have to rebate varied less drastically under this sliding scale proposal.

142. Park County School District No. 16 (Meeteetse).

143. Douglas and Green River Districts.

144. Gillette, Shoshoni, Thermopolis, Meeteetse, Rawlins, Big Piney, Kemmerer and Cody Districts.

145. Gillette, Shoshoni, Thermopolis, Meeteetse, Rawlins and Big Piney Districts.

146. Gillette, Shoshoni, Thermopolis and Meeteetse Districts.

147. "All taxation shall be equal and uniform." WYO. CONST. art. 1, § 28.

148. See, e.g., *Tennant v. Sinclair Oil and Gas Co.*, 355 P.2d 887 (Wyo. 1960). *Tennant* contained language suggesting that state redistribution of locally-assessed property tax revenues was unconstitutional. *Id.* at 890-91. As amended in 1982, Art. 15, Section 17 of the Wyoming Constitution expressly permits recapture such as contained in the state's new school finance system. WYO. CONST. art. 15, § 17.

taken related to equalization of school financing and does not result in recapturing more revenue than allowed by the amendment, it satisfies the requirements of article 15, section 17 of the Wyoming Constitution.

The method of implementing recapture which was finally selected arose as a result of at least 100 different projections using different rates and other variable features for recapture. The Select Committee and the legislature viewed the results of each projection, which included a district-by-district as well as statewide analysis, to avoid recapture methods which might impoverish any district. The legislature determined that, at least for the first year, a relatively simple ranking of districts by a measure of their wealth, and the application of variable rates of recapture, provided a method of school funding which appeared "fairer" and more "equitable" than any other method which had been discussed.¹⁴⁹

Washakie was decided by the Wyoming Supreme Court without a district court trial on the merits. The district judge had been unsuccessful in getting the parties to stipulate to the facts so that the constitutional question could be certified to the supreme court. Therefore, much of the *Washakie* appeal record was devoted to procedural questions of standing, pleading and appropriate use of declaratory judgment actions. The supreme court decided those procedural issues in favor of plaintiffs, who had appealed the district court's granting of the state's motion to dismiss. Then, however, the supreme court reached the merits of the case by taking judicial notice of statistical reports regularly prepared each year by the State Department of Education from information reported to it by local school districts. In doing so, the supreme court made clear its perturbation at the legislature's failure to take seriously its *Hinkle I*¹⁵⁰ and *Hinkle II*¹⁵¹ decisions almost a decade earlier.¹⁵² This failure of the court to let the parties present the merits of the case as they saw fit was a principal argument in the unsuccessful effort by several *Washakie* school district defendants to have the United States Supreme Court consider the case.¹⁵³ Once legislators began investigating ways to carry out the *Washakie* mandate, however, it became apparent that all school revenue sources should be examined. This necessitated the collection of data and analysis never before available in the state, and not available to the Wyoming Supreme Court. Increased information gathering and analysis will continue to guide fine-tuning of the new system.¹⁵⁴

149. While the *Washakie* opinion relied upon a single analysis of statistical reports produced by the State Department of Education, the Select Committee was able to utilize many additional references and focus upon many revenue sources and distributional aspects of the old system. The Select Committees developed a sophisticated computer model to study the effect of dozens of variables upon various statistical measures of fiscal equity and neutrality. See *supra* note 23.

150. 491 P.2d 1234 (Wyo. 1971).

151. 493 P.2d 1051 (Wyo. 1972).

152. 606 P.2d at 319-320.

153. 449 U.S. 824 (1980).

154. See *infra* note 156.

Ruralness

The question of divisors and how they should be weighted was a continual problem during the course of Wyoming's legislative study to reform school finance.¹⁵⁵ Advocates of increasing the weighting for rural districts stated their belief that, in general, costs of education in rural districts are higher than they are for urban districts. In addition, these advocates stated that the number of course offerings were substantially fewer in rural districts. For example, most rural districts could offer only one foreign language course although it is common for larger school districts to offer several foreign language courses. A more rural weighting in the divisors would allow additional funding to permit smaller districts to expand their course offerings.¹⁵⁶

If additional weighting in favor of rural districts was adopted, it became obvious that the resulting shift in funding would be at the expense of the more urban schools.¹⁵⁷ Opponents of additional weighting for rural schools countered that no definitive study demonstrating that rural schools are more expensive had ever been done and that any added weighting for ruralness was unwise until supported by empirical evidence. They also asserted that even among rural districts costs vary dramatically; as illustrated by the four school districts in Big Horn County, all of which have comparable student populations but two of which have substantially larger revenues-per-ADM after equalization.¹⁵⁸ Opponents of greater weighting for rural schools noted the adverse effect rural weighting has upon the new system's level of fiscal neutrality¹⁵⁹ and reminded legislators that the Wyoming Supreme Court specifically directed their attention toward *fiscal*

155. Legislators have continually sought less subjective information to support decisions they must make about divisors and add-ons. Many school districts have combined in a project, coordinated by the State Department of Education, to produce a cost-of-education index, to quantify the factors for which the Foundation Program gives financial benefit to local school districts. The 1983 Legislature expressed its hope that the index can aid the future fine tuning which will be necessary for the new system. See 1983 WYO. SESS. LAWS Ch. 136., § 6(3).

156. The debate on the ruralness or sparsity factor illustrates the lack of objective standards in many areas of school finance reform. On one hand, larger districts may utilize economies of scale to offer many diverse courses and programs, which several smaller districts argued would be impossible for them to offer without relatively greater funding. On the other hand, smaller districts did not want the state to direct the greater funding for expanded curriculum had to be spent for that purpose. In the name of local control, several smaller wealthy districts under the old system had chosen not to offer the expanded courses, programs and facilities that they could have afforded. Several patrons of smaller districts expressed their desire to retain the quality of life and lower teacher/student ratios that they regarded as unique to rural districts. Further, the whole subject of *program equity* goes beyond the *Washakie* mandate to provide greater *fiscal equity*. 606 P.2d at 334. See *supra* notes 10-12 and accompanying text.

157. The eight largest school districts (those reporting over 3,000 ADM that year), with their 1982 reported ADM totals (combined for almost 54,000 of the state's total 98,951 ADM) listed in parentheses, were: Natrona No. 1 (Casper: 14,325 ADM), Laramie No. 1 (Cheyenne: 12,672 ADM), Campbell No. 1 (Gillette: 6,426 ADM), Sweetwater No. 1 (Rock Springs: 5,613 ADM), Albany No. 1 (Laramie: 4,082 ADM), Sheridan No. 2 (Sheridan: 4,019 ADM), Sweetwater No. 2 (Green River: 3,591 ADM), and Fremont No. 25 (River-ton: 3,227 ADM). STATISTICAL REPORT SERIES No. 3, WYOMING PUBLIC SCHOOLS FUND ACCOUNTING AND REPORTING 1981-82, STATE DEPARTMENT OF EDUCATION.

158. This may be due to those districts' greater number of separate schools and local board decisions on curriculum. For example, if a district decided to increase its vocational education program, it could gain extra CRUs, due to the extra weighting given vocational education. WYO. STAT. § 21-13-308 (g) (Supp. 1983).

159. See *supra* note 58.

equity rather than *program* equity.¹⁶⁰ To the extent that program equity considerations were necessary, opponents pointed out that less expensive ways to finance rural districts (such as technologically-assisted instruction and allowing school districts to work together to develop enrichment programs) were available.

The Select Committee resolved the issue by proposing additional weighting in favor of rural schools with a new set of divisors. Under the old system, there were elementary and secondary school divisors. The 1983 Legislature enacted separate divisors for kindergarten through grade six, junior high school (grades seven through nine), and senior high school.¹⁶¹ However, only the new senior high school divisors were made effective July 1, 1983. The remaining divisor changes became effective July 1, 1984.¹⁶² In the interim, the State Department of Education has coordinated a project, involving most local school districts in the state, to develop a cost-of-education index. It is hoped that the cost-of-education index will establish some empirical basis for evaluating divisor weightings—then legislators can make appropriate adjustments to the new system in light of data and analyses produced during the new system's first year.¹⁶³

Vocational Education

Presently, add-ons for vocational education lack accountability.¹⁶⁴ Reduced fiscal neutrality because of each district's opportunity to apply for Foundation Program reimbursement¹⁶⁵ for as many vocational education courses as it wishes to offer may be rationalized by a legislative policy to encourage vocational education classes. However, the same legislative intent could be achieved more directly by requiring each school district to maintain a minimum course offering in vocational education. The cost of any additional vocational education courses could then be funded by local school boards from their available general revenues. This option would remove disparities caused by the current system which arise from add-on funding of vocational education. Other options may be developed for legislative consideration. Vocational education funding is one of the school finance areas being studied by the 1983 Joint Interim Education Committee.

Special Education

As with vocational education, there are presently large differences between similar districts in their reported funding of special education programs. Some of the disparities between districts are likely caused by known facts: the prevalence and severity of special education student's handicaps

160. "Program equity" advocates have continued their arguments that giving smaller districts more money to expand course offerings is as important as fiscal equity. See *supra* text discussion of Non-Monetary Factors accompanying notes 10-12.

161. WYO. STAT. § 21-13-308 (c-e) (Supp. 1983).

162. 1983 WYO. SESS. LAWS Ch. 136., § 7.

163. A section of HB 212A requires the Superintendent of Public Instruction and State Board of Education to annually present a written report to the Legislature and Governor on the current and future fiscal year operation of the Foundation Program, including recommendations on the CRU value, recapture percentages and other needed changes. WYO. STAT. § 21-13-102 (f) (Supp. 1983).

164. There is no requirement that extra state aid sent to a district be used only for the extra vocational education programs it supposedly funds as an add-on. See *supra* note 158.

165. See WYO. STAT. § 21-13-308 (g) (Supp. 1983).

can vary enormously from district to district; some districts that are small or are not involved in a joint effort to provide special education services;¹⁶⁶ and, finally, a rapid growth of transient workers often brings a disproportionately high number of special education students into a particular school district.¹⁶⁷ By its action in adopting HB 212A, the legislature acknowledged that there are legitimate reasons for differences between districts in special education costs.

However, legislators noted that Wyoming is one of the few states which fully reimburses special education costs for districts entitled to state aid. Also, the old system contained two methods for funding special education.¹⁶⁸ Since all handicapped students in the state are entitled to a free and appropriate public education under pervasive federal law,¹⁶⁹ and since there was some legislative concern over accountability of costs in this volatile area, HB 212A provided that in the future only one method of funding special education would be provided in the Foundation Program. Effective July 1, 1984, all special education costs will be funded under the actual cost reimbursement add-on process known as section 309(e).¹⁷⁰

Data Accuracy

School finance equalization will be an evolving process over the next several years, requiring fine-tuning by legislators. For example, it historically has not been advantageous for non-Foundation Program districts¹⁷¹ to accurately report their program costs and ADM. Yet prompt

166. *E.g.*, through BOCES (Board of Cooperative Educational Services). WYO. STAT. §§ 21-20-101 to -109 (1977).

167. In his oral testimony to a Select Committee meeting, Wheatland School Superintendent Edward Hunter noted that planning for increased special education services was a notable weakness in otherwise excellent preparations for the rapid growth of that small community, the site of new major power plant construction. Whereas about 11 percent of the Wyoming student population qualifies as handicapped under federal definitions, almost a third of the students coming into the area during the construction time period were entitled to special education services. (U.S. DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PROGRAMS BRANCH REPORT, HANDICAPPED CHILDREN RECEIVING SPECIAL EDUCATION AND RELATED SERVICES AS REPORTED BY STATE AGENCIES UNDER P.L. 94-142 AND 89-313, SCHOOL YEAR 1982-83, WYOMING).

168. Under WYO. STAT. § 21-13-308 (h) (1977), special education classrooms had a lower (8 or 10, depending upon severity of handicapping condition involved) CRU divisor, and thus were entitled to higher levels of state aid. Under WYO. STAT. § 21-13-309 (e) (1977), reimbursement for special education program actual expenditures of the previous year was a state aid add-on. Both Section 308(h) and 309(e) contain clauses designed to avoid over-reimbursement for local special education expenditures.

169. 20 U.S.C. §§ 1401-1461 (1976); 34 C.F.R. § 300 (1982); 29 U.S.C. § 504 (1976); 34 C.F.R. § 104 (1982). *See* WYOMING STATE BOARD OF EDUCATION, RULES AND REGULATIONS GOVERNING PROGRAMS AND SERVICES FOR HANDICAPPED CHILDREN IN WYOMING SCHOOL DISTRICTS (1981).

170. WYO. STAT. § 21-13-308 (j) (Supp. 1983). The other method was under WYO. STAT. § 21-13-309 (e) (Supp. 1983). Effective July 1, 1984, WYO. STAT. § 21-13-308 (j) (Supp. 1983) will be repealed. 1983 WYO. SESS. LAWS Ch. 136., § 3.

171. Of Wyoming's 49 school districts, only three are not unified and not offering K-12 programs. Those three are elementary school districts on the Wind River Indian Reservation.

Because of their relative wealth, a significant number of Wyoming's school districts have not been eligible to participate in the Foundation Program. For example, in the 1982-83 school year, 16 school districts (33 percent) were outside the equalizing effort of the Foundation Program. Previously, 14 school districts (29 percent) were not participants in 1981-82, 12 school districts (24 percent) were not participants in 1980-81, and 14 school districts (29 percent) were not participants in 1979-80. In 1983-84, the first,

and accurate data reporting is essential under the new system, which is based upon statewide averages.¹⁷² Data available from past years appears to be understated in some cases. Since recapture is predicated in part upon those program costs, the amount of recapture may be overstated in the projections. At least one year under the new system will probably be required in order to obtain sufficient data to make an accurate statistical analysis of the new system.¹⁷³

One feature of the new system which should be carefully considered is the application of a stated percentage of recapture to the difference between a district's guaranteed Foundation Program cost and the sum of its local resources. By this feature, the new system achieves equalization from revenues received by a local school district,¹⁷⁴ but considers for recapture *only* those local revenues which exceed the state guaranteed program. Thus, the new system impacts more than property tax revenues but does not recapture all the local resources of wealthy districts which have experienced the problems of impact growth.

Given the complexity and nature of the subject, the history of equalization efforts in other states, and the great public and political stakes in school finance reform, the Wyoming Select Committees and the legislature deserve a place in history for developing and enacting the new system—including preparation of the constitutional amendment.¹⁷⁵ In doing so, legislators maintained Wyoming's tradition of supporting quality education in the public schools. Wyoming is unique in achieving substantial

under the new system, 11 school districts (22 percent) will not be participants. However, several aspects of the new system, which emphasizes statewide data and averages, enhance its greater ability to equalize funding over all 49 districts. For the 11 districts not under the Foundation Program, the amount of local resources subject to recapture will vary greatly, according to a variable recapture implemented on a sliding scale. *See supra* text discussion under Recapture Options section accompanying notes 136-54.

172. *See* WYO. STAT. § 21-13-313 (c) (Supp. 1983).

173. The *Washakie* case is not over. On July 25, 1983, the Hot Springs District Court granted the state defendants' motion to continue the case at least until October 1, 1984, when actual data will be available on the new system's operation. On August 2, 1983, the District Court also postponed until August 1, 1984, consideration of the Cheyenne School District's motion to intervene in the case. *Washakie County School District No. 1 v. Herschler*, No. 6770 (5th Dist., Hot Springs Cty., Wyo.).

174. Only those local revenues listed in WYO. STAT. § 21-13-310 (Supp. 1983) are included in Foundation Program calculations. Although the new system made dramatic strides in recognizing most local revenues, a few are still excluded, notably federal funds and interest earnings. Most federal funds cannot be used to supplant other local or state funds, and federal law prevents their inclusion as a local resource under state school finance systems. One particular type of federal funds, however, may be different. The legal and practical ability of a state to count federal impact aid is unclear. Impact aid was designed to aid local taxing entities where federal property reduces the local property tax base. Almost half of Wyoming's school districts receive some impact aid, but the amount is less than 3% of the budget for all but the three elementary districts on the Wind River Reservation. A dispute over counting at least part of impact aid funds as a local resource was the last issue resolved (by not including it as a local resource) by the 1983 Legislature in enacting HB 212A.

175. *See supra* text sections on The Constitutional Amendment and School Finance Reform Legislation accompanying notes 92-103 for a description of the 1980-83 Legislative action.

school finance equalization reform without significantly raising taxes,¹⁷⁶ requiring substantial additional general fund appropriations,¹⁷⁷ or lessening local control of the schools.¹⁷⁸

Measuring Disparity

During the course of its study, the Select Committee settled upon a statistical measurement called mean deviation from the average, or MDA. The MDA indicates how great a departure from the average exists for any given school finance distribution system. It is one measure of fiscal neutrality. For example, the MDA for all districts in fiscal year 1982 was 26.7 percent.¹⁷⁹ Assuming the state average resources-per-ADM under the old system was \$4,500, the normal distribution of resources-per-ADM was 26.7 percent above and 26.7 percent below the average, a range of \$3,299 to \$5,702. In contrast, under HB 212A, the new system has an MDA of 12.94 percent.

When the Select Committee discovered that inherent distributional disparities¹⁸⁰ affected the fiscal neutrality of the old system, they determined to quantify the extent of that effect. An analysis of the MDA was computed by placing all current revenues for school districts into the Foundation Program and distributing them equally. This would reveal the statistical deviation caused solely by CRU weightings and add-ons. The MDA turned out to be 8.7 percent. If the new divisors favoring ruralness¹⁸¹ are included, the inherent MDA rises to about 9.5 percent. What this means is that through various legislative policy considerations (such as divisor

176. For the three Indian elementary districts, HB 212A raised the local property tax levy from 20 to 25 mills. HB 212A also required all school districts to levy the full 25 mills, thus raising the levy in a few of the richer districts which previously had set their levy at a lower rate. Overall, HB 212A raised the property taxes of only a small percentage of the state's taxpayers. No sales taxes were raised and no state income tax was initiated as a result of this major school finance reform. HB 212A did substantially redistribute state resources for education without significantly raising taxes.

177. Due to a sudden drop in the funds available, largely because of reduced market value of oil and minerals taken from the state and the national recession, the 1983 Legislature made no new additional general fund appropriation to the Foundation Program. This was a marked departure from the legislature's long history of state general fund support for education, and may be changed as soon as improved state revenues permit. The 1983 general fund revenue reduction affected all programs, not just education. Even with the funds reduced, however, the legislature did provide for interfund borrowing to handle anticipated cash flow problems resulting from different receipt and Foundation Program payment schedules. Also, HB 212A converted the entire Foundation Program from a trust and agency fund account into an appropriate earmarked fund account, which is annually appropriated by the legislature for education.

178. Wyoming's tradition of local control of the public schools by locally-elected school boards is one of the staunchest in the nation. Wirt, *What State Laws Say About Local Control*, PHI DELTA KAPPAN 517 (April 1978). HB 212A made no significant shift away from local control of the state's school districts. The locally available resources were reduced in some richer districts and raised in many poorer ones, but HB 212A also created a new 1 mill local school board optional levy. WYO. STAT. § 21-13-102 (a) (i) (B) (Supp. 1983). The new stringent data reporting requirements should not be regarded as any infringement on local control, unless local control includes a school district's right to operate without public scrutiny or accountability.

179. Since an MDA figure is both plus and minus from the average, a 26.7 percent MDA actually represents a 53.4 percent total statistical deviation.

180. See *supra* text discussion under Distributional Disparities section accompanying notes 130-35.

181. The new elementary divisors contained in WYO. STAT. § 21-13-308 (c) (Supp. 1983) do not take effect until July 1, 1984. 1983 WYO. SESS. LAWS Ch. 136., § 7.

weightings and add-ons), the old school finance system had a built-in deviation of between 8.7 percent and 9.5 percent MDA.

HB 212A was projected to reduce the school finance system's MDA from 26.7 percent to 12.94 percent. Thus, subtracting built-in deviation, it can be estimated that the new system's deviation caused by redistribution of all revenue sources is only 3.44 percent MDA.¹⁸² By any standard, the legislature has made a major move towards fiscal neutrality under the new system.¹⁸³

182. 12.94 percent MDA minus 9.5 percent MDA built-in deviation equals 3.44 percent MDA. A 3.44 percent MDA represents a 6.88 percent total statistical deviation. Whether this is sufficient to satisfy the *Washakie* mandate cannot be predicted.

| 183. DISTRICT | PROJECTED \$/ADM | PROJECTED \$/CRU |
|---------------|---------------------|---------------------|
| Meeteetse | \$ 12,520 | \$145,503 |
| Clearmont | 8,728 | 83,646 |
| Ten Sleep | 7,195 | 76,525 |
| Jeffrey City | 7,120 | 84,163 |
| Pine Bluffs | 6,909 | 79,824 |
| Byron | 6,621 | 76,476 |
| Thermopolis | 6,377 | 114,524 |
| Arapahoe | 6,261 | 97,810 |
| Ft. Washakie | 6,000 | 90,879 |
| Shoshoni | 5,957 | 94,224 |
| Sundance | 5,862 | 80,958 |
| Basin | 5,644 | 78,023 |
| Dubois | 5,626 | 76,088 |
| Pavillion | 5,474 | 82,484 |
| Ethete | 5,452 | 93,659 |
| Lusk | 5,361 | 79,409 |
| Big Piney | 5,360 | 92,396 |
| Gillette | 5,328 | 109,351 |
| Ranchester | 5,276 | 80,361 |
| Rawlins | 5,211 | 101,977 |
| Torrington | 5,190 | 80,257 |
| Upton | 5,134 | 77,756 |
| Cody | 4,990 | 100,743 |
| Evanston | 4,948 | 97,213 |
| Buffalo | 4,967 | 80,475 |
| Saratoga | 4,961 | 78,712 |
| Jackson | 4,900 | 84,347 |
| Guernsey | 4,894 | 77,804 |
| Wheatland | 4,747 | 79,832 |
| Kemmerer | 4,597 | 93,926 |
| Mt. View | 4,574 | 81,813 |
| Greybull | 4,571 | 78,719 |
| Pinedale | 4,534 | 79,327 |
| Laramie | 4,496 | 82,673 |
| Green River | 4,387 | 87,471 |
| Rock Springs | 4,378 | 83,928 |
| Newcastle | 4,350 | 78,643 |
| Lander | 4,346 | 80,099 |
| Afton | 4,315 | 79,259 |
| Lovell | 4,313 | 77,646 |
| Worland | 4,250 | 83,366 |
| Douglas | 4,234 | 87,137 |
| Lyman | 4,137 | 79,641 |
| Powell | 4,116 | 81,110 |
| Riverton | 4,040 | 78,538 |
| Glenrock | 3,970 | 76,290 |
| Cheyenne | 3,886 | 79,546 |
| Casper | 3,799 | 78,785 |
| Sheridan | 3,666 | 78,387 |

(Source: Legislative Service Office calculations. See *supra* note 23.).

CONCLUSION

Given the Wyoming Supreme Court's mandate in the *Washakie* case, the legislature has made substantial progress in equalizing school funding. HB 212A should produce a net shift in revenue from wealthy to poor school districts approximating \$49 million, or approximately twenty-five percent of all revenues from the twenty-five mill school district levy.¹⁸⁴ The relative equalization and greater degree of fiscal neutrality under the new system are obvious. Whether it is sufficient to be in constitutional compliance is a matter of conjecture.

Equalization of school finance has been a topic of concern in Wyoming since statehood. HB 212A does not represent a final solution to the problem, but it is one important step along the way.

184. See DEPARTMENT OF REVENUE AND TAXATION, AD VALOREM TAX DIVISION, 1982 ANNUAL REPORT.