STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 20-01

Approval Needed to Change Data Sources in TACIR Fiscal-Capacity Model for BEP Funding Formula

Question

Whose approval is required for changing the data sources in the Tennessee Advisory Commission on Intergovernmental Relations fiscal-capacity model used to equalize funding through the Basic Education Program funding formula?

Opinion

Changes to the data sources in the Tennessee Advisory Commission on Intergovernmental Relations fiscal-capacity model must be adopted by the State Board of Education and approved by the Commissioners of Education and Finance and Administration. Legislative approval is not required for such changes, nor is approval of the BEP Review Committee.

ANALYSIS

The Basic Education Program (BEP) is the funding formula through which state education dollars for the K-12 public school system are generated and distributed to Tennessee schools. The BEP formula has 45 separate "components" related to the basic needs of students, teachers, and administrators within a school system and reflective of the various costs of providing a basic education. The formula generates funding through these components.

The funds generated under the BEP formula are distributed to the local school districts that operate Tennessee's public schools. A portion of these funds is provided by the State at the percentages set in Tenn. Code Ann. § 49-3-307(a)(2)(B).[1] The remaining funds are provided by local governments. Id.

The percentages in Tenn. Code Ann. § 49-3-307(a)(2)(B) represent the average percentages of state funding across all Tennessee's districts. But under the formula, districts do not all receive the same percentage of state funding. That is because the BEP formula takes into consideration the fiscal capacity of the various local governments, see Tenn. Code Ann. § 49-3-307(a)(10), and allocates to each district a different percentage of state funding based on the unique fiscal capacity of its local government. If a local government cannot generate significant tax revenue, the State pays a greater percentage of that district's BEP funds as compared to the state

[1] The formula components are divided into four major categories: benefits, instructional, classroom, and non-classroom. The State provides 70% of funding for instructional salaries and benefits, 75% of funding for classroom components, and 50% of funding for non-classroom components. Tenn. Code Ann. § 49-3-307(a)(2)(B).

average. Conversely, if a local government can generate significant tax revenue, the State pays a lesser percentage of the district's funds. By considering the fiscal capacity of local governments, the BEP works to equalize funding levels across Tennessee's districts.

Tennessee uses two models to measure the fiscal capacity of local governments. *See* Tenn. Code Ann. § 49-3-307(a)(10). One model was developed by the Tennessee Advisory Commission on Intergovernmental Relations (the "TACIR model"). The other model was developed by the University of Tennessee's Center for Business and Economic Research (the "CBER model"). The TACIR model and the CBER model are weighted equally under the BEP formula. Tenn. Code Ann. § 49-3-307(a)(10)(C).

The Tennessee Code does not specify the data sources that TACIR must use to measure the fiscal capacity of local governments. It provides only that "[t]he [BEP] formula shall . . . recognize the ability of local jurisdictions to raise local revenues as determined by the multiple regression analysis model developed by the Tennessee advisory commission on intergovernmental relations pursuant to § 4-10-104(10)." Tenn. Code Ann. § 49-3-307(a)(10)(B).

The TACIR multiple-regression-analysis model used to measure fiscal capacity assesses several factors related to a county's ability to fund education, including a county's tax base. In assessing a county's tax base, the TACIR model considers the estimated value of tax equivalency payments, also known as payments in lieu of taxes. The TACIR model estimates these payments using data from the Comptroller's Division of Local Finance as the "data source."

The Tennessee Code does not directly address the process for changing the data sources in TACIR's fiscal-capacity model. However, the Tennessee Code does specify that the State Board of Education must adopt—and the Commissioners of Education and Finance and Administration must approve—the BEP formula, which includes its fiscal-capacity models. The BEP formula is largely the domain of the State Board of Education, which has a duty to "[d]evelop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools." Tenn. Code Ann. § 49-1-302(a)(4)(A); *see also* Tenn. Code Ann. § 49-3-351(a) ("State funds appropriated for the BEP, kindergarten through grade twelve (K-12), shall be allocated pursuant to the formula devised by the state board of education pursuant to § 49-1-302."). As part of this duty, the State Board must adopt a formula that distributes funds for "equalization purposes." Tenn. Code Ann. § 49-3-356(a).[2] The formula adopted for equalization purposes ("the equalization formula") must also be approved by the Commissioners of Education and Finance and Administration. *Id.*

The requirements of Tenn. Code Ann. § 49-3-356(a) are ongoing such that the equalization formula, in its current form, must have been adopted by the State Board and approved by the Commissioners of Education and Finance and Administration. This necessarily means that any changes to the equalization formula must be adopted by the State Board and approved by the Commissioners.

[2] Section 49-3-356(a) provides that "[f]rom the local portion of such revenues, there shall be a distribution of funds for equalization purposes pursuant to a formula adopted by the state board, as approved by the commissioners of education and finance and administration."

The TACIR model is undoubtedly part of the equalization formula that Tennessee uses for distributing funds to local school districts. *See* Tenn. Code Ann. § 49-3-307(a)(10)(B). The TACIR model measures the fiscal capacity of local governments, and those measurements determine the percentage of state funding that each district receives under the BEP formula. Because the TACIR model is part of the equalization formula, under Tenn. Code Ann. § 49-3-356(a), any changes to the model must be adopted by the State Board and approved by the Commissioners of Education and Finance and Administration.

Moreover, the data sources used in the TACIR model should be considered part of the equalization formula for purposes of Tenn. Code Ann. § 49-3-356(a). And because data sources are part of the equalization formula under Tenn. Code Ann. § 49-3-356(a), any changes to the data sources must be adopted by the State Board and approved by the Commissioners of Education and Finance and Administration. The data sources are integral to the calculation of a local government's fiscal capacity because they affect what data is considered in measuring fiscal capacity. A local government's fiscal capacity may change depending on the data source that is used. For instance, the estimated value of a local government's tax equivalency payments may be different if measured by data from the Comptroller's Division of Local Finance as opposed to another source.

Neither legislative nor BEP Review Committee approval is required for a change in data sources. Legislative approval is needed for changes to BEP "*components*" under Tenn. Code Ann. § 49-3-351(a)(3).[3] "Components" in § 49-3-351(a)(3) refers to the cost components that generate funding under the BEP formula; it does not refer to the fiscal-capacity models used in distributing those funds. Since the data sources in the TACIR model are not "components" within the BEP formula, this provision for legislative approval is not applicable to changes in data sources.

The BEP Review Committee has the responsibility for reviewing the BEP formula and proposing changes to the formula, *see* Tenn. Code Ann. § 49-1-302(a)(4)(B), but its approval is not required for actually making changes to the formula, including a change in data sources. The Review Committee must provide an annual report that includes "recommendations on needed revisions, additions, and deletions to the formula." *Id.* Although the Review Committee can recommend changes to the TACIR model, its approval is not required to implement changes.

[3] Section 49-3-351(a)(3) provides that "[b]efore any subsequent amendment or revision to the components of the formula of the Tennessee BEP shall become effective, it shall be submitted to the education committee of the senate and the education committee of the house of representatives for review and recommendation, and shall be approved by resolutions of the senate and house of representatives . . . ." Changes to BEP components also require the approval of the Commissioners of Education and Finance and Administration. *See* Tenn. Code Ann. § 49-1-302(a)(4)(A).

In sum, changes to the data sources in the Tennessee Advisory Commission on Intergovernmental Relations fiscal-capacity model must be adopted by the State Board of Education and approved by the Commissioners of Education and Finance and Administration. Legislative approval is not required for such changes, nor is approval of the BEP Review Committee.

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