



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
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BILL HASLAM
GOVERNOR

CANDICE MCQUEEN
COMMISSIONER

March 27, 2015

The Honorable Bill Haslam
1st Floor, State Capitol
Nashville, TN 37243

Dear Governor Haslam,

Enclosed please find the Basic Education Program (BEP) Task Force Status Report, which summarizes the work of the task force over the past year. The report contains a number of recommendations and considerations and attempts to bring a focus to the many issues surrounding the state's method of distributing resources for education.

The task force members thank you for the opportunity to serve and stand ready to continue working upon your direction.

Sincerely,

A handwritten signature in cursive script that reads "Candice McQueen".

Candice McQueen

cc: BEP Task Force Members

Basic Education Program (BEP) Task Force
Chairman's Status Report to the Governor
March 2015

INTRODUCTION

In January of 2014, Governor Bill Haslam announced the creation of the Basic Education Program (BEP) Task Force and appointed 12 representatives¹ of state and local school districts as well as government stakeholders to serve as members. With the last major revision to Tennessee's education funding formula taking place in 2007 ("BEP 2.0"); the identification of concerns from school districts and communities - both large and small - relative to the state's distribution of available resources; and recognition of the numerous and significant reforms and changes to the state's K-12 education system over the past seven years, the task force members were tasked with studying the funding formula and education funding issues from a fresh perspective for the purpose of determining the formula's appropriateness for today's classrooms and students.

Specifically, the task force was charged with examining the state's method of distributing resources within the BEP to school districts throughout the state. Distinguishable from the BEP Review Committee, a creation of state law, which historically has identified and recommended additional funding requests and needs, the task force had the responsibility of understanding the state's current methods of determining resource allocation and recommending principles and potential improvements or considerations. Thus, while the issue of funding adequacy has been discussed by various stakeholders throughout the years, the task force was not directed to reach a conclusion or outline recommendations on this subject.

Education funding formulas are extremely complex, built from unique histories, compromises, court rulings and legal interpretations. Tennessee's BEP is no exception. It would be naïve to think that the principles and areas identified for further discussion in this report would be met with unanimous approval or end debate on the issues. That was not the intent of the task force creation and it is not the intent of this work. Rather, the hope is that this report will generate further discussion from all of the state's education stakeholders and drive toward future work and revisions that will ultimately help foster continued improvement in achievement for our state and our students.

It's important to recognize that despite the criticisms often heard about the BEP in terms of equity, fairness and transparency, the work of the task force over the past year confirms Tennessee's formula is not unique in its received criticism. Almost all states share in similar debate about the structure of their education funding formulas and, specifically, the distribution of available resources. If anything, this initial work of the task force has confirmed no perfect funding formula exists and, regardless of proposals or future revisions, debate will continue.

The body of this report is not intended to provide a thorough history of the BEP or an analysis of its many components. This information exists in various publicly available documents or resources and, in some cases, is reflected in the appendices of this report. Rather, the report builds from the unique

¹ Appendix A.

knowledge and expertise of the task force members and the considerable testimony and information provided.

Finally, the creation of the task force and this status report are in no way a critique of the work of numerous Tennesseans and experts who crafted, developed and refined the BEP over the past 20+ years. To the contrary, there is widespread recognition that the BEP is a vast improvement over the state's previous funding formula and has resulted in tremendous improvements in the state's K-12 system. Many of the individuals involved in developing the BEP served on this task force, provided testimony and offered invaluable insight into the methodology, reasoning, history and practicality of different aspects of the current formula and potential revisions. The state of Tennessee and the task force owe a debt of gratitude to these individuals.

TOPICS OF DISCUSSION

The BEP Task Force met multiple times over the course of the year. Initial meetings were designed to outline the current status of the BEP funding formula with a focus on the existing components and fiscal capacity models, which determine resource allocation. Later meetings built upon the base knowledge with topics including:

- **BEP History**

The Tennessee Department of Education provided an overview² of the BEP as well as historical context, including a summary of the series of Tennessee Supreme Court cases known as "Small Schools I, II and III³," which led to the creation and adoption of the BEP after the Court declared the state's previous funding formula unconstitutional for not providing equal educational opportunities for all of the state's students.

- **BEP Components & Calculations**

The Tennessee Department of Education outlined each of the 45 components of the BEP and described how the funding for each component is determined.⁴

Acknowledging Comptroller Justin Wilson's push for increased transparency, the department created the BEP Handbook in 2011, which, for the first time, provided the public with significant detail and data on how each component is calculated. This handbook can be accessed on the department's website at <http://tn.gov/education/districts/finance.shtml>.

- **Fiscal Capacity Models – TACIR & CBER**

Fiscal capacity is a calculation of the ability of a county to fund the BEP from local sources.

Since its inception in 1992, the BEP has utilized a fiscal capacity model developed by the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) in the early 1990s.⁵

² Appendix B.

³ Appendix C.

⁴ Appendix D.

⁵ Appendix E.

With the revision of the BEP in 2007 (BEP 2.0), a new model produced by the Center for Business and Economic Research (CBER) was incorporated.⁶

Upon full implementation of BEP 2.0, the state is required to utilize only the CBER model. Today, both models are equally weighted.

- **Income Inclusion & Measurement**

One of the most notable and debated differences between the TACIR and CBER fiscal capacity models is the treatment of income.

Per capita income is included in the TACIR fiscal capacity model as a proxy measurement for ability to pay for education and attempts to address all other local revenue not accounted for by property or sales taxes.

The CBER model does not include a measure of income and is based on the premise that taxable sales and property can accurately account for the ability of a locality to pay for education.

- **Student-Based Allocation**

Student-based allocation, also referred to as student-weighted funding, flows from the principle that funding should follow students to the schools they attend and the amount of funding a school receives for each student should reflect the student's education need.⁷ The state establishes a minimum level of funding that districts receive for every student and then determines additional funding for students with greater needs, such as English language learners or economically disadvantaged students.

Nationally-recognized school finance expert and Associate Research Professor at Georgetown University, Marguerite Roza, offered her insight on the subject to the task force.⁸

- **County vs. System-Level Fiscal Capacity Models**

Both of Tennessee's fiscal capacity models estimate the ability of counties to pay for education; however, the state has several counties with multiple school districts (28) and allocates funds through the BEP at the school district level.

The Governor's Task Force on Teacher Pay, appointed by Governor Bredesen, recommended a system-level fiscal capacity model in 2003 as a means to provide a fairer method of determining local contribution. The General Assembly followed by adopting legislation in 2004 directing the BEP Review Committee to give "special consideration" to a system-level fiscal capacity model. The BEP Review Committee then recommended in November of 2004 that the state move from

⁶ Appendix F.

⁷ Public Impact & Partnership for Learning. (2011). *Student-based budgeting: Revamping school funding in Washington to improve performance*. Chapel Hill, NC: Public Impact and Seattle, WA: Partnership for Learning.

⁸ Appendix G.

a county-level model to a system-level model. In October of 2005, TACIR produced a report outlining its prototype model for school system-level fiscal capacity in Tennessee.⁹

- **Outliers**

The BEP Task Force examined commonly referenced “outliers” within the formula, most notably areas with significant government service burden where the ratio of available tax base to income level of county residents is significantly larger than the rest of the state.

- **Comparison to Other State Models and Policies**

The Education Commission of the States (ECS) presented information on other state finance policies and methods for allocating the share of education costs.¹⁰

- **Revenue – current status and projections**

Department of Finance & Administration Commissioner Larry Martin provided an update on the state’s budget and revenue picture.¹¹

- **Stakeholder Feedback & Recommendations**

Multiple stakeholders representing various constituencies, including large/urban and small/rural school districts and local governments presented information and outlined recommendations for BEP reform.¹²

- **2014 Legislation**

Legislation related to BEP allocations was discussed, including legislation to address early graduation and the corresponding funding impact due to the weighting of student counts.¹³

PRINCIPLES

Within the last decade, widely cited studies have been conducted¹⁴ on state K-12 funding structures and resource allocation formulas with the conclusion that high-quality finance systems include the following four characteristics:

⁹ Tennessee Advisory Commission on Intergovernmental Relations. (2005). *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why & How*.

¹⁰ Appendix H.

¹¹ Appendix I (Minutes – May 7, 2014).

¹² Appendix I (Minutes – Oct. 27, 2014).

¹³ SB 1458/HB 1976, SB 2353/HB 2107 (2014).

¹⁴ See the following: Public Impact & Partnership for Learning. (2011). *Student-based budgeting: Revamping school funding in Washington to improve performance*. Chapel Hill, NC: Public Impact and Seattle, WA: Partnership for Learning.; Doyle, D., Hassel, B.C. & Locke, G. (2012). *Smarter funding, better outcomes: Georgia’s roadmap for K-12 finance reform*. Chapel Hill, NC: Public Impact; and Atlanta, GA: Georgia Chamber of Commerce; Hill, Paul T., Roza, Marguerite, Harvey, James (2008). *Facing the Future: Financing Productive Schools*. Center on Reinventing Public Education.

1. **Equity:** Schools receive resources to support the academic needs of their students.
2. **Efficiency and Effectiveness:** Each dollar is used in a way that maximizes student achievement.
3. **Flexibility and Innovation:** Schools have the freedom and encouragement to use funding in ways that meet the unique needs of their students, including new and creative ways.
4. **Transparency:** The average citizen can understand how money is allocated.

Any revisions to Tennessee’s funding system should align with these four principles and the following recommendations and items for further consideration reflect these principles.

RECOMMENDATIONS & CONSIDERATIONS *(not listed in any particular order)*

1. The BEP should incorporate one fiscal capacity model with one set of components.

Principles addressed: Transparency, Equity

Currently, a locality or county’s ability to pay for education is based on two fiscal capacity models – the TACIR model and the CBER model, with each model weighted at 50 percent. Legislation adopted in 2007, commonly referred to as BEP 2.0, established a shift from a formula represented by the TACIR model to one represented by the CBER model, which focuses on the ability of localities to generate revenue from property and local option sales taxes.¹⁵ Such shift was set to be phased in over time as funding became available.

While wide disagreement exists over the fairness and appropriateness of the models (e.g., the Tennessee School Systems for Equity, an organization that represents 82 of the state’s school systems, opposes full implementation of the CBER formula), operating under two fiscal capacity models, each with different components or inputs, does not exude confidence in the distribution of resources and creates confusion among stakeholders and the public in attempting to understand funding allocations and determinations.

This recommendation is not an attempt to endorse either fiscal capacity model currently in use; rather, the state should fully endorse and/or develop one fiscal capacity model with one set of components and fully implement the model as soon as such implementation is reasonable.

Note: Legislation introduced in 2014 (SB 1876/HB 2231) and referred to the task force attempted to revert the state to pre-BEP 2.0 and utilize only the TACIR model.

Considerations:

- **The BEP Task Force should further consider whether the inclusion of income, in some form, in the fiscal capacity model better ensures true local ability to pay for education.**

¹⁵ Tenn. Code Ann. § 49-3-307.

While the TACIR model does include per capita income as a measure, the CBER model does not. This has been a major point of contention since the inception of BEP 2.0, with reasonable arguments on both sides. From one perspective, the use of property and sales tax bases represents revenue but not necessarily wealth.¹⁶ From another, including income in a state without an income tax requires an arbitrary decision about what weight to place on income versus other revenue sources that are based on actual figures and outcomes. It can also be argued that property tax bases indirectly reflect income in that the values are reflective of the ability of residents to pay for the property.

- **The BEP Task Force should consider the appropriateness of including a cost of living factor within the fiscal capacity model to account for the cost of doing business.**

Currently, the county cost differential factor (CDF) is used to adjust BEP funding in systems where the cost of living in the county is greater than the statewide average. The BEP uses CDF to adjust salary components. The CDF multiplies the average wage in each of a set of nongovernmental industries by the proportion of the statewide labor force employed in that industry. Counties with above-average wages according to this index receive an increase, and counties with average or below-average wages do not.

With the adoption of BEP 2.0 in 2007, CDF was eliminated from the formula; however, because BEP 2.0 has not been fully phased in, systems receiving CDF adjustments are currently receiving 50 percent of the total calculated CDF.

In Fiscal Year 2015, 16 school districts received CDF payments, with the sum of such payments exceeding \$66 million.

The CDF has been a subject of scrutiny for several years and there have been questions about the methodology and overall fairness of the distribution of CDF funds. With that said, there is recognition that certain school districts must pay higher salaries to compete with other employers in the county and region.

As part of any discussion related to CDF, special attention should be given to salary equity funds that districts with significant funding challenges and with historically lower than average teacher salaries have received. In FY 15, equity funds totaled \$8.5 million.

- **The BEP Task Force should consider adjustments in the fiscal capacity model to account for unique situations where sales and property tax revenues may not be as reflective of the ability to pay for education expenses.**

Since the inception of the BEP, there has been discussion and debate about outliers and the fairness of local funding requirements. A review of revenue and expenditure figures does reveal that certain counties experience situations where there are relatively high expenditure needs for non-education items and, therefore, less property and sales tax revenue available for education. In addition, these areas can have very high sales tax

¹⁶ Appendix I (Minutes – August 13, 2014). See also ECS presentation in Appendix H.

revenue relative to the income of its citizens. Areas with high tourism, municipal overburden and low population density experience these challenges and make them unique to the rest of the state. For example, Sevier County has a sales tax to personal income ratio of 98 percent while no other county in the state exceeds 50 percent.¹⁷

While the state should consider appropriate measures to address outliers, it must ensure any policy decisions do not create incentives for local governments to make choices that reward decreased expenditures on education. In many cases, the availability of resources to fund schools are reflective of decisions made at the local level and the state should not incentivize local governments to divert funds that otherwise could or should be spent on schools.

Note: Legislation introduced in 2014 (SB 1472/HB 1514) attempted to address a small number of instances where districts receive less than a 65 percent state share in the instructional components of the BEP. This legislation would increase state expenditures by an estimated \$83 million.

2. The BEP’s fiscal capacity model should, to every extent possible, measure the ability of each local government entity with established schools to fund education.

Principles addressed: Transparency, Equity

The two fiscal capacity models currently utilized by the BEP are county-level models, meaning all school districts within a county are deemed to have the same ability to pay regardless of actual ability to raise revenue for schools. The county-level model has been used to equalize funding through the BEP since its inception but has been met with repeated critique for its attempt to address funding equity among the state’s counties within a funding formula that is school-system based. Even prior to the BEP, as early as 1990, there was recognition by the state board of education that a funding formula should include a “system-level gauge of ability to fund schools”.¹⁸ Once the county-level model was approved and implemented, however, discussion of a system-level model was set aside as the BEP was fully phased in.

As previously noted, subsequent studies and analyses of the BEP and its fiscal capacity measures have resulted in recommendations for the utilization of a system-level model to improve equity; however, for multiple reasons, the county-level model remains in place today. Certainly, the complexity of Tennessee’s public school funding laws, rules and regulations – arguably the most complex of any state in the country – has provided significant challenges, both with the existing county-level model and in system-level model discussions and proposals. As noted by TACIR in a 2006 brief and reiterated to the task force:

¹⁷ Appendix I (Minutes – September 23, 2014). See *CBER Presentation*.

¹⁸ Tennessee Advisory Commission on Intergovernmental Relations. (2005). *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why & How*.

http://tn.gov/tacir/PDF_FILES/Education/Prototype%20Why%20How.pdf

School systems in Tennessee differ not only in governance, but also in their powers to tax and to access other own-source local revenues, and in their statutory fiscal relationships with one another. The result is a group of fiscal entities that in many ways are not comparable to one another and a state that is not comparable to any other state.¹⁹

Another factor that can't be ignored is the often-assumed effect of a system-level model—one that results in a lesser percentage of state funding going to municipal and special school districts due to the fact these entities tend to have greater capacity and authority to spend more funds on education.

Considerations:

- **The BEP Task Force should further consider the feasibility of a system-level fiscal capacity model to determine local school districts' ability to pay.**

Complexity and political reality, while certainly as relevant today as ever, should not prevent further consideration of system-level fiscal capacity model. Tennessee currently has 142 school districts with 28 of the state's 95 counties containing more than one district.²⁰ It is widely recognized and acknowledged that systems within a county have differing abilities to pay for education; however, it is also recognized that, to date, no proposed solution to the issue has received either enough confidence in its methodology or stakeholder support to move forward. Additionally, the TACIR prototype model proves that a system-level model will not necessarily result in significantly more funds to county systems in counties with multiple school districts and that such a model can have a large impact on districts that don't even share the county boundaries with others.²¹

- **The BEP Task Force should study and consider the impact of revenue raising and sharing laws, rules and regulations in a continued effort to address equity.**

Because the state has three different governmental entities operating schools – county governments, city governments, and special school districts – each with varying ability to raise revenue and different requirements for sharing those revenues with other school districts within the county, it is a significant challenge to accurately determine the fiscal capacity of Tennessee's school districts.

County governments must levy county-wide taxes for schools and must share revenue from property, sales, or other activities, such as wheel taxes, with other school districts in the county based on the number of students in each district. County governments do not have the authority to levy taxes outside the boundaries of any city or special school district within the county. City governments may also levy taxes on property, sales, and

¹⁹ Tennessee Advisory Commission on Intergovernmental Relations. Staff Education Brief. (2006). *Searching for a Fiscal Capacity Model: Why no other state is comparable to Tennessee.*

²⁰ The 142 districts include the state-run Achievement School District.

²¹ Appendix I (Minutes – September 23, 2014). *See CBER Presentation.*

other activities to fund city school systems but are not required to share the revenue with any other school systems within the county. Special school districts may tax property and, like city governments, are not required to share revenue with any other school systems within the county.

Certainly, revenue sharing requirements impact funding differences among districts within a county. For example, in 2008, TACIR reported that in Fiscal Year 2007, Anderson County could spend only 73 percent per pupil as much as Oak Ridge, which, at the time, was the highest spending system in the state.²² A presentation to the task force by Washington County also highlighted the funding realities brought about, at least in part, by revenue sharing requirements.²³ Of course, it is also true that all revenue raised by a county is not necessarily paid by county residents.

Perhaps a brief issued by TACIR in 2008 provides an appropriate summation on this general topic noting that neither fiscal capacity model currently in place (TACIR or CBER) reflects the actual tax structure and revenue sharing requirements imposed on counties by the state. This report further concludes the models are “proxies for reality and both are imperfect. When two flawed models are combined, the result is a third flawed model.”²⁴

3. To the extent possible, the BEP should allocate resources on the basis of students with funds attached to each student based on need.

Principles addressed: Equity, Efficiency and Effectiveness, Flexibility and Innovation, Transparency

According to the Education Commission of the States (ECS), Tennessee is one of only six states that allocate resources through its education funding formula in the form of units – generally teachers and other personnel – which have dollar allocations tied to them.²⁵ According to ECS’s Michael Griffith, who presented to the task force, this resource allocation system is rare due to a number of factors:

- 1) It is viewed as a “top-down” approach. Although, unlike other states with resource allocation formulas, Tennessee, for the most part, does not require unit allocations to be spent on those specific units;
- 2) The difficulty in keeping up with changes in education. No matter how many units or components are included, there will always be some that are missing. Likewise, once components are added, they are rarely revisited or removed; and

²² Ibid.

²³ Appendix I (Minutes – October 27, 2014). See *Washington County Presentation*.

²⁴ Tennessee Advisory Commission on Intergovernmental Relations. Staff Education Brief. (2008). *Fiscal Capacity and Fiscal Equity*.

²⁵ Appendix I (Minutes – August 13, 2014). See also *ECS presentation in Appendix H*.

3) Calculating the cost of each unit or component can be difficult and time consuming and lead to questions and criticism related to transparency.

Since the BEP generates units based on student counts rather than funds based on the individual student, scenarios can arise where one school system may generate an additional position or unit with associated funding while another system with one less student receives nothing. Since units are delivered rather than funds tied to specific students, the increments are larger and less flexible. In addition, it would be inaccurate to describe the state's funding formula as one that spends the same dollar amount on each student (prior to fiscal capacity determinations) regardless of where the student attends.²⁶

Considerations:

- **The BEP Task Force should consider a student-based allocation or weighted student funding model.**

A student-based allocation or weighted student funding model flows from the principle that funding should follow students to the schools or districts, they attend, and the amount of funding a school receives for each student should reflect the student's educational need. From a state perspective, this type of model requires three steps:

- 1) Set a minimum level of funding to cover the cost of a basic education with all districts receiving this amount for every student.
- 2) Determine how much additional funding districts should receive for students with particular characteristics that indicate greater need, such as being an English-language learner or qualifying for free or reduced-price lunch.
- 3) Distribute funding to the districts, where district and school leaders determine how best to allocate resources for their students.²⁷

At the core of the student based allocation model are two principles: 1) funding should follow the child, on a per student basis, and 2) per-student funding should vary according to the student's needs.

Perhaps the most significant difference between the student allocation model and the way many states address and think about per pupil allocations is that the funding truly follows the child with a real dollar amount moving with a specific child to the school

²⁶ Miller, Larry; Roza, Marguerite; Simburg, Suzanne (2014) *Funding for the Students' Sake: How to Stop Financing Tomorrow's Schools Based on Yesterday's Priorities*. Building State Capacity and Productivity Center. Edvance Research, Inc.

²⁷ Public Impact & Partnership for Learning. (2011). *Student-based budgeting: Revamping school funding in Washington to improve performance*. Chapel Hill, NC: Public Impact and Seattle, WA: Partnership for Learning.

district or even school as opposed to a calculation that is based on the number and characteristics of a group of students. For example, presently, the Tennessee Department of Education reports per pupil BEP revenue in each school district and breaks down such figures at the state and local levels. However, such reporting is representative of the average per-pupil revenue and simply takes the generated revenue earned through the BEP and divides by the number of students in the district. Because of the BEP's unit cost methodology, when a student transfers from one district to another, that transfer does not necessarily result in a transfer of the same state per pupil revenue to the new district. Instead, the student would be added to the overall student counts for the new district which may or may not result in additional units and, thus, additional BEP funds. Likewise, the loss of a student to another district may not result in actual state BEP funding reductions. Adding to the complexity, in the case of funding for charter schools or schools in the state's Achievement School District, the average per pupil revenue does follow the student, and, likewise, charter schools and the ASD will see actual reductions in revenue for each student that leaves.

From a transparency perspective, the student based allocation model is intriguing in that it clearly designates how much funding each student should receive, based on need, and, therefore, how much each district should receive. In addition, it provides a tool for the public and districts to better understand and discuss appropriate funding levels at individual schools.

- **The BEP Task Force should focus on maintaining, at a minimum, the funding flexibility provided to school districts and consider expanding flexibility where feasible.**

While the BEP itself is often lauded for the flexibility it provides to school districts in terms of spending - the only mandates being that funds earned within the instructional and classroom categories be spent on components within those categories - state and local policies can greatly restrict the actual flexibility districts have to innovate and address budget challenges. For example, state mandated maximum class size requirements can greatly restrict local school district spending. Tennessee law mandates arguably the most restrictive teacher-to-student ratios in the country restricting spending flexibility at the local level despite no conclusive research to support the assumption that smaller classes result in better educated students and despite evidence showing teachers would prefer to have a few additional students in return for increased compensation.²⁸

The student based allocation concept is dependent on maximum flexibility, dismissing the idea of correct spending so that those closest to the students and those accountable for results can provide those services that meet the greatest needs of the community and do so in the most efficient way.

²⁸ Appendix I (Minutes – August 13, 2014). See *M. Roza presentation*.

- **The BEP Task Force should ensure an on-going mechanism to review education costs.**

The BEP is presently based on 45 components with each component reviewed annually to determine costs and appropriate inflationary adjustments made to components each year. The inflationary adjustments are based on outside factors such as the Consumer Price Deflator for Government Purchase, and, in some cases, component adjustments are made based on actual expenditures in local school districts. For example, instructional equipment cost is based on the total expenditure data from the three years prior. In recent years, these adjustments, coupled with student enrollment increases, have resulted in BEP funding increases between \$40 million and \$60 million. And, because of past and present administrations' and general assemblies' commitments to the BEP, adopted state budgets have included these annual increases. This commitment should not be understated as many states during recent challenging budget environments have decreased education spending.

Any move away from the current unit cost model in the BEP should not result in the state discontinuing annual cost review of education functions and services. Not only could such discontinuation negatively impact the recent historic progress in education achievement in the state but it would also ignore one of the major principles or directives of the Tennessee Supreme Court, which at least partly approved the current funding formula because of its built-in mechanism for cost determination and an annual cost review.²⁹

- 4. The BEP Task Force should couple any major recommended structural changes to the BEP with appropriate phase-in mechanisms.**

Principles addressed: Efficiency and Effectiveness

Because potential revisions to BEP, including those to the fiscal capacity model, result in changes to each school district's required local BEP match and/or result in redistribution of the state's existing resources for K-12 education, some districts will receive additional funds and some will receive less. Because of the potential negative impact on those districts receiving less funding, all consideration should be given to ensuring appropriate phase-in provisions.

Hold harmless and phase-in provisions can create challenges to enacting structural changes to funding formulas because they can require significant resources to implement – resources that are often simply unavailable, as is the case today, or, if available, could be used for general funding improvements within the existing structure. From a political and public perspective, these funds are often not recognized as funding improvements even though they may represent a tremendous investment in our schools.

- 5. The BEP Task Force should strive to ensure that the public has easy access to clear and intelligible information about how education funding is being distributed and spent.**

²⁹ Appendix C.

Principles addressed: Equity, Efficiency and Effectiveness, Transparency

Since the inception of the BEP, criticisms have existed relative to the complexity and lack of clear information available to the public. The BEP is often described as a formula that no one can explain or understand. While some involved in school finance work may disagree with this description and point to the need to ensure proper accountability and fairness over simplicity, the perception at least points to the need to enhance the amount of school funding information available and improve upon the quality and public notice of the information that currently exists.

As previously stated in this report, acknowledging Comptroller Justin Wilson's push for increased transparency, the Tennessee Department of Education created the BEP Handbook in 2011, which, for the first time, provided the public with significant detail and data on how each component is calculated. This handbook has been praised by education stakeholders and the BEP Review Committee for its transparency and thoroughness; however, the handbook does not address what happens to public funds once they reach the district level. Likewise, the Annual Statistical Report published by the department contains a wealth of school finance data at the district level but does not address the distribution of those resources at the school level.

Considerations:

- **The BEP Task Force should consider methods to improve reporting of and public access to school level spending information.**

District allocation practices can be extremely complex and lack uniformity making it difficult for the public and even school administrators and school board members to know the level of funding available to or spent at any particular school.

One observation of this lack of transparency speaks directly to the subject matter and challenges faced by the task force:

The lack of transparency in school funding today has allowed inequity and bias to fester and grow without much scrutiny... By contrast, clear information about funding empowers educators, parents and community members to advocate for changes that will improve equity and outcomes. As an added benefit, good data about school revenues and expenditures will enable stronger research linking resource use to student outcomes.³⁰

School districts should strive to provide information on spending in a clear way that allows stakeholders to understand how dollars have been allocated to each school within the district and even to specific programs within the school. And, stakeholders

³⁰ Thomas B. Fordham Institute. Fund the Child: Tackling Inequity & Antiquity in School Finance. June 2006.

should have better ways to determine if that spending has been effective in terms of student achievement.

CONCLUSION

The principles, recommendations and considerations included in this report are meant to drive and focus further discussion and action on the state funding formula for education. Clearly, more work remains and it is recommended that the BEP Task Force continue its work with a focus on the recommendations and considerations outlined in this report. Ultimately, any revisions to the formula must be based not on specific funding outcomes to particular districts but rather on the right policies - policies that are student-focused and meet the identified four principles of equity; efficiency and effectiveness; flexibility and innovation; and transparency.

School finance formulas often hold for two decades or more. It is likely that whatever Tennessee does it will be in place for two decades. Because of this, don't just tinker with the plan or formula but plan on building a structure that will be relevant in 2034. ...The one thing we know is that there will be students, so design around the students.

- Marguerite Roza. Presentation to the BEP Task Force. August 2014.

Appendix A

Basic Education Program (BEP) Task Force Members

- Kevin Huffman, commissioner, Tennessee Department of Education, Chair
- Rep. Harry Brooks (R-Knoxville), chairman, House Education Committee
- David Connor, executive director, Tennessee County Services Association
- Sen. Dolores Gresham (R-Somerville), chairman, Senate Education Committee
- Chris Henson, chief financial officer, Metropolitan Nashville Public Schools
- Kevin Krushenski, research analyst, Tennessee Municipal League
- Larry Martin, commissioner, Tennessee Department of Finance & Administration
- Gary Nixon, executive director, State Board of Education
- Larry Ridings, Tennessee School Systems for Equity
- Lynnise Roehrich-Patrick, executive director, Tennessee Advisory Commission on Intergovernmental Relations
- Justin Wilson, Comptroller of the Treasury
- Mark Cate, chief of staff, Governor's Office (ex officio member)

Appendix B



Basic Education Program: Overview and Historical Context

BEP Task Force
March 24, 2014

What is the BEP?

- Formula that determines the funding level required for each school system to provide a common, basic level of service for all students.

History

- Adopted by the General Assembly in 1992 as part of the Education Improvement Act
- Developed in response to successful legal challenge by 77 small school districts, which claimed the state's previous funding mechanism (TN Foundation Program) was unconstitutional due to inequities
- Revised in 2007 (BEP 2.0)

TN Supreme Court Decisions

- Small Schools I (1993)
 - Court finds the state's funding method unconstitutional due to inequities for children living in areas with a lesser ability to raise revenue.
- Result:
 - General Assembly adopts the BEP (1992), providing for allocation of funds based on ability of local governments to raise revenue and the costs of components deemed by the state board to be necessary for school districts to provide a basic education.
 - Teacher salaries not included as part of the formula.

TN Supreme Court Decisions

- Small Schools II (1995)
 - Court declares state's educational plan must include equalization of teacher salaries according to the formula.
- Result:
 - General Assembly attempts to equalize salaries by appropriating funds (\$12 million) to districts with low salary averages but does not include salaries as a component of the formula

TN Supreme Court Decisions

- Small Schools III (2002)
 - Court finds the state's teacher salary equity plan does not equalize salaries according to the formula as it contains no mechanism for cost determination or annual cost review.
- Result:
 - Gov. Bredesen and General Assembly add \$27 million in the FY04 Budget for salary equalization
 - Task Force on Teacher Pay established by the Governor.
 - Teacher salaries included as a component of the BEP formula for FY05, using a component cost of \$34,000.

BEP Highlights

- Comprehensive funding mechanism with components necessary for funding a "basic" education (45 components)
- No "targeted" funding
- Funding is flexible; BEP is a funding formula, not a spending plan
- Formula heavily considers local ability to pay to address equity and the mandates of the TN Supreme Court

BEP Components: 3 Categories

1. Instructional (State/Local = 70%/30%)
 - Ex: Teaching Positions
2. Classroom (State/Local = 75%/25%)
 - Ex: Textbooks, Instructional Equipment, etc.
3. Non-classroom (State/Local = 50%/50%)
 - Ex: Capital Outlay, Transportation

How Does the BEP Work?

1. Funding

- State (TDOE) determines need

2. Equalization

- Based on Local Ability to Pay or Fiscal Capacity
 - Fiscal Capacity Indices provided by:
 - » Tennessee Advisory Commission on Intergovernmental Relations (TACIR)
 - » UT Center for Business and Economic Research (CBER)

Determining Need - ADMs

- ADMs (student enrollments) drive the formula – funded on prior year's ADMs
 - *Note: LEAs also receive growth funding based on current year growth. This is outside the BEP but distributed based on BEP formula.*
- ADMs generate:
 - Positions – teachers, supervisors, assistants
 - Funding – ADMs are multiplied by a Unit Cost for supplies, equipment, textbooks, travel, capital outlay, etc.
- Funding months and weighting
 - Month 2 – 12.5%
 - Month 3 – 17.5%
 - Month 6 – 35%
 - Month 7 – 35%

Fiscal Capacity

CBER Model (newer model per BEP 2.0)

- Determines a county's capacity to raise local revenues for education from its property and sales tax base
- Each county's fiscal capacity is the sum of:
 - The County's equalized assessed property plus IDBs multiplied by a statewide average property tax rate for education (1.1583) *plus*
 - The County's sales tax base multiplied by a statewide sales tax rate for education (1.5570%)
- Each county's fiscal capacity index is the ratio of its fiscal capacity to the total statewide fiscal capacity

Fiscal Capacity

TACIR Model (complex multiple-regression model)

- Per pupil own-source revenue
- Per pupil equalized property assessment
- Per pupil taxable sales
- Per capita income
- Tax Burden
- Service Burden

Fiscal Capacity Used in FY 14 BEP

- 50% of TACIR Model & 50% of CBER Model
- Volunteer County Index
 - (TACIR Capacity Index x 50%) + (CBER Capacity Index x 50%)
 - » (1.83% x 50%) + (1.71% x 50%)
 - » 0.915% + .855%
 - » = 1.77%

Stability Provision

- An LEA is on stability if the total state BEP funds it generates in the current year are less than the total state BEP funds generated the previous year
- Occurs most often due to declining ADMs
- Provides a one-year grace period before funding is reduced

Baseline Provision

- An LEA is on baseline if the total state BEP funds it generates in the current year are less than the total state BEP funds generated in 2006-07 (per BEP 2.0 – “Hold Harmless”)
- Essentially, baseline systems receive funding at a level greater than the formula, by itself, generates
- Currently affects 7 systems – most notably Sevier County

Mandatory Increase

- Allows systems on stability to receive additional funds for state-mandated increases in salary, TCRS contributions or insurance
- Receives mandatory increase amount for each BEP generated position
- Received in addition to stability or baseline amount

Cost Differential Factor (CDF)

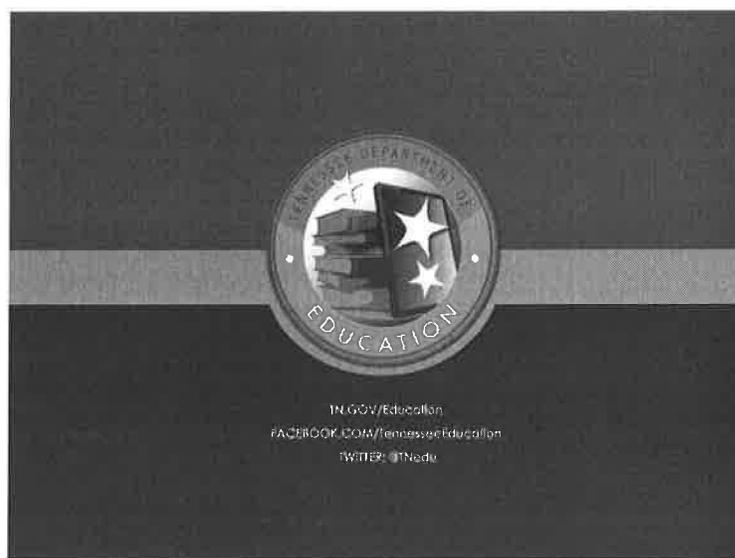
- Used to adjust BEP funding in systems where the cost of living in the county is greater than the statewide average
- Compares county wages in non-government industries to statewide wages
- Counties with above-average wages according to this index receive an increase
- Increase is applied to salaries, retirement contributions and FICA contributions
- Eliminated in BEP 2.0
- Counties receiving an adjustment currently receive 50% of the calculated CDF due to 50/50 TACIR/CBER split

Maintenance of Effort

- Separate from BEP, although BEP match requirement factors into MOE
- Supplanting test used to ensure maintenance of local effort
- Governed by TCA 49-2-203 and TCA 49-3-314
- Budgeted local revenue must be equal to or greater than the previous year's budgeted amount, unless ADMs have decreased or unless there is a local agreement for one-time expenditures

For Additional Information

- Tennessee Basic Education Program: An Analysis
 - <http://www.comptroller1.state.tn.us/orea/>
 - See legislative brief
- State Board of Education
 - <http://www.tn.gov/sbe/bep.shtml>
 - BEP Blue Book – up to date data on BEP components
 - BEP Handbook – comprehensive guide on calculations



Appendix C

[11] The second victim, six-year-old "S", testified that the defendant fondled her and penetrated her digitally on more than one occasion. She did not differentiate one event from the others. The medical expert noted only evidence of irritation in her genital area. The jury found the defendant guilty of aggravated sexual battery as to this victim. In view of the nature of the evidence presented on this charge and the *Burlison* error resulting from the state's failure to elect, we conclude that the conviction cannot be sustained. The judgment is reversed, and the case is remanded for further proceedings on this count.

[12] The third count of the indictment charged the defendant with unlawful sexual contact with seven-year-old "C". Because the trial judge found her not qualified as a witness, "C" did not testify. Moreover, the medical expert found "no evidence of irritation and ... no physical evidence of any problem [related to possible sexual abuse of "C"]." The only testimony tending to prove the defendant guilty on this count was the brief and thoroughly non-specific testimony of the other two victims that "C" had been abused by the defendant. The jury nevertheless found the defendant guilty of aggravated sexual battery on this count. Beyond the *Burlison* error committed in connection with this charge, we find that the evidence is legally insufficient to sustain the defendant's conviction for this offense. The judgment, therefore, must be reversed and the charge against the defendant dismissed.

[13] We appreciate the difficulties involved in prosecuting cases of sexual abuse committed against small children. In such cases, the rules of evidence and the rules of procedure have been relaxed to some extent to accommodate very young witnesses. Nevertheless, the constitutional protections guaranteed a criminal defendant, who is presumed by law to be innocent until proven guilty, cannot be suspended altogether because of the victim's age or relative inability to testify. In cases such as this one, the state must either limit the testimony of prosecuting witnesses to a single event, or

prepare the case so that an election can be made before the matter is submitted to the jury to decide.

The judgment as to the first count of the presentment is reversed, and the charge is dismissed with prejudice. The judgment as to the second count is reversed, and the charge is remanded to the trial court for further proceedings consistent with this opinion. The judgment as to the third count, as well as the 25-year sentence imposed on the defendant as a result of his conviction on this count, is affirmed.

REID, C.J., and DROWOTA, O'BRIEN and ANDERSON, JJ., concur.



TENNESSEE SMALL SCHOOL
SYSTEMS, et al., Plaintiffs-
Appellants,

v.

Ned Ray McWHERTER, et al.,
Defendants-Appellees,

Charles O. Frazier, Director of Metropolitan
Nashville, Davidson County Public
Schools, et al., Defendants-Intervenors-Appellees.

Supreme Court of Tennessee,
at Nashville.

March 22, 1993.

Suit was commenced on behalf of small school districts against state officials contending that state funding of public school system violated equal protection provisions of State Constitution and sought declaratory judgment that funding statutes were unconstitutional. The Chancery Court, Davidson County, C. Allen High, Chancellor, following bench trial, issued memorandum in favor of small school districts which was adopted by the Circuit

Court. Defendants appealed. The Court of Appeals, Todd, J., reversed and dismissed. Appeal was taken. The Supreme Court, Reid, C.J., held that: (1) constitutionality of state school funding scheme was justiciable question; (2) clause of State Constitution guaranteeing education provided enforceable standard; and (3) local control of public schools was not rational basis needed to justify disparate educational opportunities provided under state funding scheme.

Reversed and remanded.

1. Schools ⇨11

State Constitution imposes upon General Assembly obligation to maintain and support system of free public schools that afford substantially equal educational opportunities to all students. Const. Art. 1, § 8.

2. Appeal and Error ⇨1082(1), 1091(1)

Supreme Court must conduct de novo review of record accompanied by presumption that trial court's findings are correct, unless preponderance of evidence is otherwise, where there has been no concurrence by trial judge and the Court of Appeals. T.C.A. § 27-1-113; Rules App.Proc., Rule 13(d).

3. Declaratory Judgment ⇨210

Whether state educational funding system for public schools violated provision of State Constitution requiring system of free public schools affording substantially equal opportunities to all students was justiciable issue. Const. Art. 1, § 8; Art. 11, §§ 8, 12.

4. Schools ⇨11

State Constitution requirement that General Assembly provide education established enforceable standard for assessing educational opportunities provided in public school districts throughout state. Const. Art. 11, § 12.

5. Constitutional Law ⇨242.2(1)

Equal protection provision of State Constitution assures nondiscriminatory performance of the General Assembly's duty to provide education through system of

free public schools. Const. Art. 1, § 8; Art. 11, § 12.

6. Constitutional Law ⇨242.2(2.1)

Schools ⇨19(1)

Local control of public schools was not rational basis for state funding scheme which resulted in substantial disparities in educational opportunities to students in various school districts and, thus, state funding program violated equal protection guarantees of State Constitution. Const. Art. 1, § 8; Art. 11, §§ 8, 12.

Lewis R. Donelson, H. Buckley Cole, Philip S. McSween, Nashville (Heiskell, Donelson, Bearman, Adams, Williams & Kirsch, of counsel), for plaintiffs-appellants.

Charles W. Burson, Atty. Gen. & Reporter, John Knox Walkup, Sol. Gen., Jane W. Young, Asst. Atty. Gen., Rachel L. Steele, Asst. Atty. Gen., Nashville, for defendants-appellees.

Earnest G. Kelly, Jr., Memphis, for defendants-intervenors-appellees.

OPINION

REID, Chief Justice.

This appeal is from the judgment of the Court of Appeals reversing the trial court and dismissing the plaintiffs' complaint that the statutory scheme for funding the kindergarten-through-12th grade public school system violates the education clause and equal protection provisions of the Tennessee Constitution.

[1] The constitutional mandate that the General Assembly shall provide for a system of free public schools guarantees to all children of school age in the state the opportunity to obtain an education. The provisions of the constitution guaranteeing equal protection of the law to all citizens, require that the educational opportunities provided by the system of free public schools be substantially equal. The constitution, therefore, imposes upon the General Assembly the obligation to maintain and support a system of free public schools that affords substantially equal educational

opportunities to all students. The means whereby this obligation is accomplished, is a legislative prerogative. The system may include the imposition of funding and management responsibilities upon counties, municipalities, and school districts, within their respective constitutional powers. However, the constitution does not permit the indifference or inability of those state agencies to defeat the constitutional mandate of substantial equality of opportunity.

The record in this case supports the Chancellor's finding that there are constitutionally impermissible disparities in the educational opportunities afforded under the state's public school system. The record also supports the Chancellor's findings that "[t]he statutory funding scheme has produced a great disparity in the revenues available to the different school districts," and that there is a "direct correlation between dollars expended and the quality of education a student receives." However, the record also shows that many factors other than funding affect the quality of education provided and that the costs of operating schools may vary significantly. Consequently, all relevant factors may be considered by the General Assembly in the design, implementation, and maintenance of a public school system that meets constitutional standards.

The case will be remanded to the trial court for further proceedings consistent with this Opinion.

I. STATEMENT OF THE CASE

The original complaint in this case was filed on July 7, 1988. The plaintiffs are the Tennessee Small School Systems, an unincorporated association of small school districts; superintendents and board of education members from several of those districts; students; and parents of students. The defendants are the Governor and other officials of the executive and legislative departments of the state in their official capacities. On appeal, no issue is made as to the parties or the plaintiffs' standing to sue.

The complaint, as amended, alleges that Article XI, Section 12 of the Tennessee

Constitution, which requires that the General Assembly maintain and support a system of free public schools, establishes a fundamental right to an adequate free education and that the defendants are depriving the students, on whose behalf the suit was filed, of this fundamental right. The complaint further alleges that the funding system violates the equal protection provisions of Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution because the system results in inequalities in the provision of those educational opportunities guaranteed by Article XI, Section 12. The complaint seeks a declaratory judgment that the funding statutes are unconstitutional, that the defendants be enjoined from acting pursuant to those statutes, and that the state be required to formulate and establish a funding system that meets constitutional standards.

The defendants' response to the complaint, after a motion for summary judgment on the issues now presented was denied, is that Article XI, Section 12 "offers no enforceable qualitative standard" whereby the courts can "assess the quality of education and the sufficiency of the funding" provided by the legislative and executive departments. The defendants assert that the only right guaranteed by the education clause is "one of access to a free public school meeting the minimum standards applied statewide," and that the equal protection provisions "only assure the nondiscriminatory performance of the duty created by the education clause." The defendants' position is that education is the exclusive business of the legislative and executive branches.

Nine urban and suburban school systems, including those in Davidson, Shelby, Knox, and Hamilton Counties, were allowed to intervene as defendants. Their position is that the funding scheme enacted by the General Assembly is not subject to review by the courts, but if the issues presented are justiciable, the remedy for any constitutional violation should recognize "the differentials in costs and needs among the various school systems." Stated perhaps more simply, the larger, more

affluent systems do not want the funding scheme which favors their systems disturbed. They argue further that the smaller, less affluent systems should not be heard to complain because those systems have not made their best efforts to raise locally any additional funding needed. The intervenors characterize the evidence on which the Chancellor based his findings as "simplistic" and "anecdotal" and suggest that a "notion of substantial equality" is an "illusion." They express grave concern that the result will be "a redistribution of education funds away from the central cities and the growing suburbs."

The trial began on October 29, 1990, and lasted approximately six weeks. On July 25, 1991, the Chancery Court issued a Memorandum Opinion in which the court ruled in favor of the plaintiffs. On August 6, 1991, the trial court entered a declaratory judgment "in favor of the plaintiffs on the basis that the present public education funding system violates the equal protection requirements of the Tennessee Constitution." On September 13, 1991, the court entered a final judgment in which it found that the fashioning of an appropriate remedy was the prerogative of the General Assembly.

The defendants and intervenors appealed. The Court of Appeals reversed the judgment of the trial court and dismissed the case. Judge Todd, writing for the majority, ruled that the plaintiffs had failed to establish that the challenged funding system could not withstand scrutiny under any of the three standards of analysis—the rational basis test, intermediate scrutiny, or strict scrutiny—that are traditionally applied in equal protection cases. Judge Cantrell, concurring in a separate opinion, argued that the fundamental right granted by the constitution extends only to an education that meets the minimum standards set by the legislature or its designee. Judge Lewis dissented and, after an exhaustive review of the evidence, concluded that the facts found by the trial court are supported by the record and that the Chancery Court's judgment should have been affirmed on both the education clause and

equal protection provisions of the state constitution.

II. FINDINGS OF FACT

[2] The majority of the Court of Appeals did not address the sufficiency of the evidence or the standard of review. However, by reversing the judgment of the trial court, the majority necessarily, though not explicitly, concluded that the record in this case does not support the trial court's findings of fact. Where there has been no concurrence by the trial court and the Court of Appeals, this Court must conduct a *de novo* review of the record, "accompanied by a presumption of the correctness of the [trial court's] finding, unless the preponderance of the evidence is otherwise." Tenn.R.App.P. 13(d); T.C.A. § 27-1-113 (1980).

The record consists of more than 4,500 pages of transcript, 18 depositions, and 152 exhibits, and contains the testimony of several state officials, including the Chairman of the State Board of Education, the Executive Director of the State Board of Education, the Commissioner of Education, the Commissioner of Finance and Administration, several county superintendents of education, a performance audit drafted by the Comptroller of the Treasury, and the testimony of several expert witnesses.

After reviewing all of this material, the trial court summarized the organizational structure of the public school system, as follows:

The current statutory scheme concerning education is compiled in Volume 9 Title 49 of the Tennessee Code. There are currently 140 districts providing a Kindergarten through 12th grade for some 860,000 students. Responsibility for administering the system is divided between the state board of education, the commissioner of education, the local board of education, and the local superintendents. The state board has the responsibility of adopting policy statements and guidelines and has promulgated minimum rules and regulations entitled "Rules, Regulations and Minimum Standards for the Governance of Public

Schools in Tennessee." These rules comprise four volumes and deal with everything from minimum square feet for class rooms to the number of urinals in a school, curriculum formulation and teacher classification. Title 49 also details the mechanism for generating and distributing the funds which maintain and support the public education system. The trial court then reviewed the statutory funding scheme, as follows:

THE FUNDING SYSTEM

Public education in Tennessee is funded approximately 45% by the state, 45% by the local government, and 10% by the federal government.

The largest source of state funding is the Tennessee Foundation Program (TFP). The balance of state funding is in the form of categorical grants for textbooks, transportation, career ladder, and teacher fringe benefits. TFP funds are allocated based on an average daily attendance formula weighted for cost factors such as grade level, vocational courses, and similar factors, whereas categorical grants contain no provision for equalization among the various school districts. The TFP equalization formula accounts for differentials in assessed property values, but the amount available for equalization is less than \$60,000,000 out of an expenditure of \$2.5 billion. Adjustments are also made for the training and experience of the teachers which results in more funds to school districts with better trained and more experienced teachers. This tends to benefit the wealthier school districts. As a result, the state funds provide little real equalization.

Local funding comes principally from property tax and local option sales tax. Some cities raise additional funds for public education through a wheel tax, beer tax, etc. The property tax is based on assessed property values and the tax rate specified for that purpose. T.C.A. § 67-5-801. Counties and municipalities are authorized to enact a local sales tax. T.C.A. § 67-6-702. One-half of the local option sales tax must be allocated to

education in the county or municipality where the tax is collected. T.C.A. § 67-6-712. These funds are not tied to the number of pupils in the school district, the cost of providing education to the pupils, or any educational factor. However, in a county with more than one school district, the local option sales tax is divided on an average daily attendance of each school district. T.C.A. § 49-3-306. There is no provision for any equalization of local option sales tax funds between counties.

Finally, the Chancellor made the following findings of fact:

FINDING OF FACTS

The statutory funding scheme has produced a great disparity in the revenues available to the different school districts. In 1986-87 fiscal year, the highest per capita county sales tax base was ten times that of the lowest. Because of lack of fiscal capacity, there is little the poor school districts can do to offset the differences. Per classroom spending varied in 1988-89 from \$110,727 in Kingsport to \$49,167 in Lewis County.

Total current funds available per pupil by county averaged \$2,337 in the school year 1987 and varied from \$1,823 to \$3,669. Most of this variation results from the state's higher reliance on local government to fund education and the varying ability of the local government to raise sufficient funds. School districts with more sales and with higher property values and commercial development have more funds to educate their children. The wide disparity is related to differences in fiscal capacity and not necessarily from inadequate local effort. "Most school districts in the state—especially non-urban—cannot reasonably raise sufficient revenues from local sources to provide even the average amount of total funds for education per pupil statewide."

Under the current funding system, schools in plaintiffs' districts offer far less to students than schools in wealthier districts. Specifically, the evidence

shows that students in plaintiffs' schools are not afforded substantially equal access to adequate laboratory facilities, computers, current and new textbooks, adequate buildings, advance placement courses, varied curricula, advanced foreign language courses, music and art courses, drama and television courses. Plaintiffs' districts also fail in their efforts to retain teachers, fund needed administrators, and provide sufficient physical education and other programs.

The wealthier districts offer a wide variety of advanced placement courses; a broad curriculum with advanced science and math courses; adequate labs in both junior high and high schools; a choice of foreign languages; multiple computer courses; art, music, and drama courses; sufficient and current textbooks; and adequately supplied libraries. The schools are newer, cleaner, and safer. They provide an environment conducive to learning.

The evidence indicates a direct correlation between dollars expended and the quality of education a student receives. In the ten richest districts for the school year 1988-89, [66%] of the elementary schools and 77% of the secondary schools were accredited compared to 7% and 40% among the ten poorest districts. All of the schools in the Kingsport and Shelby County districts are accredited. In contrast, none of the Clay County, Wayne County, Hancock County and Crockett County schools are accredited. Some of the poorer school districts cannot even comply with the state's "minimum standards" because of inadequate funding.

Graduates from accredited high schools have better success in college acceptances. Students in plaintiffs' districts are more likely to attend unaccredited schools. Children in the poorer districts suffer from poor standardized test results, and have a higher need for remedial courses at college resulting in poorer chances for higher education.

The Board of Education and the Governor have proposed a New Basic Education Program Funding Plan. Under this plan the state would provide two-

thirds of the funds to support and maintain a basic education program. One-third of the funds would be available for equalization based upon fiscal capacity including sales tax base as well as property tax base. This program will require greatly increased state funding.

(Footnotes and citations omitted.)

The record also shows that over the years, the distribution of sales tax and property tax revenues has become more concentrated as economic activity has moved from small local communities to larger regional retail centers. Purchases previously made by residents of rural school districts locally, are now made in the more urban counties, and the sales tax on those purchases is collected in the wealthier counties. With the construction of large retail centers in the urban counties, property tax revenues, though much less significant than sales tax revenues, also are concentrated in those same communities rather than distributed more evenly throughout the entire state. Because all revenues from the property tax and the local option sales tax are received by the county or city where collected, the result is the progressive exacerbation of the inequity inherent in a funding scheme based on place of collection rather than need.

Because such a small portion of state funding is allocated to equalization, disparities in economic resources among the school districts of the state have resulted in great disparities in the amount of funds available for education in the various districts. An audit of the Department of Education performed by the Comptroller of the Treasury in February of 1990 concluded:

Funds available for public education vary considerably from school district to school district in Tennessee. Most of this variation results from the state's high reliance on local governments to fund education and the varying ability of local governments to raise funds. The current formulas to distribute state funds attempt to equalize funds available for education, but they have had little effect because these formulas apply only

to a very small percentage of educational funding.

....

The funds available for education and the source of funds vary substantially county by county in Tennessee. Total current funds available per pupil averaged \$2,337 in school year 1987 and varied from \$1,823 to \$3,669.

Though not of critical importance for the purposes of this suit, the audit report also indicates that the disparity in available funding among the various counties and school districts does not, as contended by the defendants and intervenors, result from a lack of effort by the poorer districts. As noted by the Comptroller:

Comparing the actual revenues collected and the potential revenues available in each school district shows that about half the school districts have unused potential and half are above their potential. However, 15 of the 20 school districts with the lowest potential—those districts at the bottom of the list—had actual revenues for education greater than their potential. These counties tax at higher than the statewide average. Thirteen of the 20 school districts with the highest potential—those at the top of the list—have actual revenues for education below their potential. These counties taxed at below the statewide average.

This information shows that most school districts in the state—especially nonurban districts—cannot reasonably raise sufficient revenues from local sources to provide even the average amount of total funds spent for education per pupil statewide.

The regressive effect of the continuation of the existing scheme upon educational opportunities in those counties in which schools are inequitably funded was described in dramatic terms by the Wayne County Superintendent of Schools. He testified that the county's efforts to recruit industry to the area were severely hampered by the fact that the schools in the district were not accredited by the Southern Association of Colleges and Schools. Without additions to the tax base provided

by new industry and related business, the county's property and sales tax revenues will continue to decline, further reducing funds available to support the school system. The vicious cycle thus continues.

The record establishes that the disparities in resources available to the various school districts result in significantly different educational opportunities for the students of the state.

The record also establishes that sufficient funds have not been available to some of the school districts to provide the programs and facilities necessary for an adequate educational system. Trial testimony indicates that many schools in the poorer school districts have decaying physical plants, and that some school buildings are not adequately heated and have non-functioning showers, buckling floors, and leaking roofs. School superintendents and students also testified that the poorer school districts do not provide adequate science laboratories for the students, even though state regulations require such facilities. In fact, evidence was adduced that some districts' laboratories are so inadequate that only teachers use the equipment in order to "demonstrate" lab techniques. At other schools, the teachers buy supplies with their own money in order to stock the labs. Still other schools engage in almost constant fundraising by students to provide needed materials.

Similarly, the textbooks and libraries of many of the poorer school districts are inadequate, outdated, and in disrepair. One compelling photograph in the record depicts a library in a Hancock County school. The library consists of only one bookcase nestled in a room containing empty boxes, surplus furniture, a desktop copier, kitchen supplies, a bottle of mouthwash, and a popcorn machine. When asked why newer textbooks and more functional libraries were not provided in the schools, the responsible official stated that the additional money needed for such improvements was not available. The lack of funds in some of the plaintiffs' districts also prevents schools in those areas from offering advanced placement courses,

state-mandated art and music classes, drama instruction, extracurricular athletic teams, or more than one foreign language in high school.

State officials directly responsible for the operation of the public school system have recognized the substantial inadequacy and the significant disparity in the funds available to the several school districts caused by the statutory funding scheme. The basic program for funding the public school system has been the Tennessee Foundation Program (TFP). The state comptroller's February 1990 performance audit found that, "The current formulas to distribute state funds do not effectively equalize the total funds available for education." The response of the Department of Education to this finding was:

The department concurs and states that the state is currently engaged in a study of revising the state's K through 12 funding formula and will present the results to the General Assembly. The study will focus on disparity in educational funding.

The response of the Board of Education to this finding was:

The board concurs and states that its Basic Education Program funding formula would result in a decrease in the disparity of funding available to local school systems. The board indicates that the Basic Education Program formula would gauge state appropriations to school systems according to their ability to raise local tax revenue for schools.

The Chairman of the Board of Education stated that the TFP "does not relate appropriations to actual costs of delivering programs and services." That official also recognized that under the TFP:

[T]here is no link between the changes in the costs of delivering programs and services at the local level and changes in appropriations.

... the amount of funding provided is too little to insure adequate funding of a basic educational program.

... [And, the TFP] does not assure the children in Tennessee equal access to quality educational resources.

Nonetheless, the TFP budget for the 1991-1992 school year was reduced approximately \$113.5 million from the previous year. See 1992 Tenn.Pub.Acts, ch. 1018, sec. 11, Item 4.

In 1984, the State Board of Education, at the direction of the General Assembly, developed a Master Plan for Tennessee Schools. That plan has been reviewed and revised each year. The 1990 Master Plan, released in November 1990 during the course of the trial, addressed three major components, one of which was funding. The Introduction to the Plan includes the following statement:

Accomplishing this transformation [of education in Tennessee] will require adequate and sustained funding. Existing disjointed funding mechanisms must be abandoned in favor of a logical funding formula. The Basic Education Program (BEP) funding formula has been incorporated into this plan to provide adequate and equitable support to reform activities and future school programs. This formula ensures that essential school resources, such as teachers, materials, facilities, and transportation, will be available when and where they are needed.

The Master Plan for Tennessee Schools lists 17 goals to be accomplished in the next decade. The plan includes strategies for achieving the goals and sets forth how we will measure our progress in meeting the goals.

The Plan focuses on "three key result areas," one of which is "providing adequate and sustained school funding." In the funding section of the Plan, the "Current Situation" is described as follows:

Current funding mechanisms are not related to the costs of an adequate statewide educational program.

The Plan provides that the state's share of funding is to be two-thirds of the total. Using this ratio, the state's share of additional funds necessary to fund the BEP would be \$287 million in fiscal year 1992,

\$389 million in fiscal year 1993, \$500 million in fiscal year 1994, \$618 million in fiscal year 1995, and \$664 million in fiscal year 1996.

The defendants, pressing their position that the public school system is adequate, have asked the Court to take judicial notice of the Educational Improvement Act of 1992 (1992 Tenn. Pub. Acts, ch. 535, codified in Title 49, Tennessee Code Annotated), which was enacted in furtherance of the Master Plan. The defendants emphasize that the Act contains a new formula which would replace the TFP and "more than a dozen categorical grants." The defendants state the following as "major innovations" under the new formula:

- a) greater equalization of the local share distributed under the formula; b) fiscal capacity calculations based on sales tax base, property tax base, and income as opposed to just property tax base as under the TFP; and c) the BEP formula factors in differences in competitive salaries earned in different counties.

The defendants emphasize the provisions of the BEP, which included a proposed funding statute, from the perspective of November 1990. The plaintiffs, in response, press the Court to notice the September 1992 Master Plan Program Report prepared by the State Board of Education. While the Court can take judicial notice of the Educational Improvement Act of 1992 and compare its provisions with the proposed statute in the 1990 Master Plan, the 1992 Report itself is outside of the record, although it was included in the appendix to the plaintiffs' reply brief, apparently without objection by the defendants. At the time of the trial of this case, the BEP had been proposed but had not been enacted or funded. Funding, of course, is crucial; an educational plan heavily dependent upon additional funding provides little support for the defendants' contention that the public school system meets constitutional requirements.

The defendants' position in this case is that "there is no systematic relationship between expenditures and student performance," but if there is, the "disparities in

expenditures were [not] caused by [plaintiffs'] lack of fiscal capacity." This position seems to be at odds with the 1990 Master Plan for Tennessee Schools, its stated goals and strategies, and the purpose of the Education Improvement Act of 1992. The commentaries and proposals, explicit and implicit in these documents emanating from the executive department, cast grave doubt upon the defendants' assertion that "[a]t the very least, the Tennessee system of education provides for the mastering of basic skills and minimum proficiencies by the students in every district of the state without regard to size or the wealth of the district."

The record supports the Chancellor's findings that the statutory funding scheme has produced great disparity in the funds available to the different school districts and that significant inadequacies and inequities in the system persist.

III. JUSTICIABILITY

The intervenors contend that the issues presented in this case are inappropriate for adjudication by the courts. The same objections have been raised in other jurisdictions. See *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156 (1981); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); *Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359 (1982), *appeal dismissed*, 459 U.S. 1138, 103 S.Ct. 775, 74 L.Ed.2d 986 (1983); *Board of Educ. of the City School Dist. of Cincinnati v. Walter*, 58 Ohio St.2d 368, 390 N.E.2d 813 (1979), *cert. denied*, 444 U.S. 1015, 100 S.Ct. 665, 62 L.Ed.2d 644 (1980); *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (Tex.1989); *Seattle School Dist. No. 1 of King County v. State*, 90 Wash.2d 476, 585 P.2d 71 (1978); *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied*, 449 U.S. 824, 101 S.Ct. 86, 66 L.Ed.2d 28 (1980). In all of these cases, the respective courts held that the constitutionality of the state's education funding system presented a justiciable issue. As the Court of Appeals of New York stated in *Nyquist*:

With full recognition and respect . . . for the distribution of powers in educational matters among the legislative, executive and judicial branches, it is nevertheless the responsibility of the courts to adjudicate contentions that actions taken by the Legislature and the executive fail to conform to the mandates of the Constitutions which constrain the activities of all three branches. That because of limited capabilities and competences the courts might encounter great difficulty in fashioning and then enforcing particularized remedies appropriate to repair unconstitutional action on the part of the Legislature or the executive is neither to be ignored on the one hand nor on the other to dictate judicial abstention in every case.

Nyquist, 57 N.Y.2d at 39, 453 N.Y.S.2d at 648, 439 N.E.2d at 363.

[3] Likewise, under settled Tennessee law, the issues raised in this case are justiciable. As stated in *Biggs v. Beeler*, 180 Tenn. 198, 219, 173 S.W.2d 946, 948 (1943):

[B]eginning with the leading case of *Marbury v. Madison*, 1 Cranch. 137, 154, 2 L.Ed. 60, in which Chief Justice Marshall sailed an uncharted sea, and, citing no authority, relied alone on principle and reason, our Courts have not hesitated to strike down legislative action which disregarded, transgressed and defeated, either directly or indirectly, mandates of the organic and fundamental law laid down in the Constitution.

Similarly, in this case, it is our duty to consider the question of whether the legislature, in establishing the educational funding system, has "disregarded, transgressed and defeated, either directly or indirectly," the provisions of the Tennessee Constitution. As the Kentucky Supreme Court observed recently in response to the same argument, "[t]o avoid deciding the case because of 'legislative discretion,' 'legislative function,' etc., would be a denigration of our own constitutional duty." *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d at 209.

IV. EDUCATION CLAUSE CHALLENGE

The plaintiffs assert that the statutory scheme of funding the K-through-12 system of public education violates the provisions of Article XI, Section 12 of the Tennessee Constitution. Article XI, Section 12 provides as follows:

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.

The defendants deny that Article XI, Section 12 guarantees "an education which is exactly or substantially the same education received by children in other counties." They maintain that the education clause contains "no enforceable qualitative standard for assessing the quality of education." The defendants insist that the only effect of Article XI, Section 12 "is for the legislature to authorize a system whereby K-12 education may be delivered" and that "despite disparities in expenditures and educational opportunities," the present system "satisfies the constitutional mandate."

This issue has been extensively litigated in other jurisdictions during the last several years, but the decisions of the courts in those jurisdictions provide little guidance in construing the reach of the education clause of the Tennessee Constitution. This is true because the decisions by the courts of other states are necessarily controlled in large measure by the particular wording of the constitutional provisions of those state charters regarding education and, to a lesser extent, organization and funding. Based upon the language of their respective state constitutions, some courts have rejected education clause challenges to public school funding legislation. See, e.g., *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo.1982) (*en banc*) (Colorado Constitution's requirement of a "thorough and uniform system of free pub-

lic schools," while mandating equal educational opportunities, does not, as contended by the plaintiffs, necessitate equal educational expenditures per pupil); *McDaniel v. Thomas*, 285 S.E.2d at 164 (constitution requires only an "adequate education," not equal educational opportunities); *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635, 647 (1975) (equal educational opportunities not required by constitutional requirement of "general, uniform and thorough system" of public schools); *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 458 A.2d 758, 776 (1983) ("thorough and efficient" clause commands only that legislature provide the students of the state "with a basic public school education"); *East Jackson Pub. Schools v. State*, 133 Mich.App. 132, 348 N.W.2d 303, 305 (1984) (provision mandating legislature to "maintain and support a system of free public elementary and secondary schools" grants only a right to an adequate education); *Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d at 47-48, 453 N.Y.S.2d at 653, 439 N.E.2d at 368-69 (constitutional provision for "the maintenance and support of a system of free schools" contemplates only "minimal acceptable facilities and services"); *Britt v. North Carolina State Bd. of Educ.*, 86 N.C.App. 282, 357 S.E.2d 432, 436 (1987) (state constitutional provision requiring "general and uniform system of free public schools ... wherein equal opportunities shall be provided for all students" mandates only equal access to schools, not a right to identical opportunities); *Board of Educ. of the City School Dist. of Cincinnati v. Walter*, 390 N.E.2d at 825 (constitutional requirement that a "thorough and efficient" education be provided mandates only that students not be deprived of "educational opportunity"); *Fair School Fin. Council of Oklahoma, Inc. v. State*, 746 P.2d 1135, 1149 (Okla.1987) (mandate to "establish and maintain" a public school system guarantees only a "basic, adequate education according to [state] standards ..."); *Olsen v. State ex rel. Johnson*, 276 Or. 9, 554 P.2d 139, 148 (1976) (constitution prescribing a "uniform and general system" of schools guarantees only a mini-

imum of educational opportunity); *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360, 365 (1979) (a "thorough and efficient" education is equated with an "adequate," "minimum," or "basic" education); *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470, 472 (1988) (constitutional requirement that legislature maintain and support public schools guarantees equal standards and equal opportunity under the method of funding chosen by the legislature).

However, the courts in other states have upheld constitutional challenges based upon their respective education clauses. See, e.g., *Rose v. Council for Better Educ.*, 790 S.W.2d at 211 (the constitutionally required "efficient" system of public schools "must be substantially uniform throughout the state," providing every child in the state "with an equal opportunity to have an adequate education"); *Helena Elementary School Dist. No. 1 v. State*, 236 Mont. 44, 769 P.2d 684, 690 (1989) (constitution expressly provides for "equality of educational opportunity"), modified in, 236 Mont. 44, 784 P.2d 412 (1990) (delaying effective date of decision); *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 368-69 (1990) ("thorough and efficient" system will provide an "equal educational opportunity for children" enabling each student to become "a citizen and ... a competitor in the labor market"); *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex.1989) ("efficient" system guarantees "substantially equal access to similar revenues per pupil at similar levels of tax effort" so that students are "afforded a substantially equal opportunity to have access to educational funds"); *Seattle School Dist. No. 1 of King County v. State*, 585 P.2d at 97 (constitutional language calling for "ample provision" for a "general and uniform" system of schools imposes a duty to "make ample provision for the 'basic education' of our resident children through a general and uniform system supported by dependable and regular tax sources"); *Pauley v. Kelly*, 162 W.Va. 672, 255 S.E.2d 859, 877 (1979) ("thorough and efficient" education is one which "develops, as best the state of education expertise allows, the minds, bod-

ies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically”).

An education clause was first added to the Tennessee Constitution in 1835. Article XI, Section 10 of the 1835 Constitution provided as follows:

Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end; it shall be the duty of the General Assembly in all future periods of this Government, to cherish literature and science. And the fund called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriation, and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and *for the equal benefit of all the people thereof*; and no law shall be made authorizing said fund, or any part thereof, to be diverted to any other use than the support and encouragement of common schools....

(Emphasis added.)

The declaration that “[k]nowledge, learning, and virtue, [are] essential to the preservation of republican institutions,” contained in the same provision of the constitution that created a public school system and provided for its support through a common school fund, established the legal right to public education in Tennessee. This basic policy was reaffirmed by retention of the same language in Article XI, Section 12 of the Constitution of 1870. However, the requirement “to cherish literature and science” imposed upon the General Assembly in the Constitutions of 1835 and 1870 was

replaced by the substantive and definitive command that the “General Assembly shall provide for the maintenance [and] support ... of a system of free public schools,” found in the 1978 amendment to Article XI, Section 12.

The defendants contend that the 1978 amendment to the Education Clause “provides no standard against which the quality of education ... may be judged” and, therefore, there is no standard whereby the courts can measure the adequacy of funding or the educational program itself. The defendants recite a long history of statutory and administrative inequities in the funding of the system prior to 1978 and argue that “a system meeting those principles [of uniformity and equality] did not then exist and had never existed.” The defendants also note as significant the absence in the 1978 amendment of such words as “uniform” or “efficient,” relied upon by other courts to grant relief.

[4] The defendants’ argument overlooks the plain meaning of Article XI, Section 12. That provision expressly recognizes the *inherent value* of education and then requires the General Assembly to “provide for the maintenance, support and eligibility standards of a system of free public schools.” The constitution speaks directly to a right of inherent value, education. As used in Article XI, Section 12, the word “education” has a definite meaning and needs no modifiers in order to describe the precise duty imposed upon the legislature. The first definition of “education” in the unabridged edition of *The Random House Dictionary of the English Language*, 454 (2d ed. 1987) is: “The act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually for mature life.” Indeed, modifiers would detract from the eloquence and certainty of the constitutional mandate—that the General Assembly shall maintain and support a system of free public schools that provides, at least, the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare

students intellectually for a mature life. Contrary to the defendants' assertion, this is an enforceable standard for assessing the educational opportunities provided in the several districts throughout the state.

The defendants would use the flexibility of means granted by the constitution to avoid the certainty of responsibility. The record of the 1977 convention shows clearly that the delegates recognized that the responsibility for designing and maintaining a free public school system rested on the General Assembly and that the General Assembly needed flexibility in meeting that responsibility. One delegate, Walter Helms of Humboldt, reported to the convention:

We wanted a standard sort of article in the Constitution that would leave the legislature free to act as conditions and circumstances change, to provide the necessary types of programs across the State that the people need and to fund it in a way that was feasible at that particular time. All of us have seen periods of maybe abundance and periods of scarcity. We cannot predict those. *The legislature needs a free hand in the funding of its programs.*

The Journal of the Debates of the Constitutional Convention of the State of Tennessee (1977), 395 (Sept. 28, 1977) (emphasis added). Delegate Helms's report recognized the legislature's responsibility to provide the necessary educational programs "across the state" and the need for a flexible funding scheme that would accommodate times of abundance and scarcity. According to that report, the "free hand" given to the legislature relates to "funding," not the programs "the people need."

The value of education to each person and to society in general is immeasurably great. Several state supreme courts in school finance cases have recognized that education is a fundamental right. The West Virginia Supreme Court in *Pauley v. Kelly*, 255 S.E.2d at 878, held that because that state's constitution contained an education clause, education is a fundamental right in that state. In *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d

at 332, the Wyoming Supreme Court found that "in the light of the emphasis which the Wyoming constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest." In *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359, 373 (1977), the Connecticut Supreme Court stated that "in the light of the Connecticut constitutional recognition of the right to education . . . it is, in Connecticut, a fundamental right."

The United States Supreme Court addressed the value of education in *Brown v. Board of Educ.*, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954), as follows:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The significant value of education and the responsibility of the state with regard to education was recognized by this Court in *Leeper v. State*, 103 Tenn. 500, 515, 53 S.W. 962, 965 (1899), with this declaration:

[T]he kind and quality of instruction given to the young is as important as the food furnished the people, and the public school is, in the highest sense, a public institution. . . .

The certain conclusion is that Article XI, Section 12 of the Tennessee Constitution guarantees to the school children of this state the right to a free public education.

Because, as discussed below, the plaintiffs are entitled to relief under the equal protection provisions of the state constitution, the precise level of education mandated by Article XI, Section 12, and the extent, if any, to which the system does not comport with the education clause need not be determined at this time.

V. EQUAL PROTECTION CHALLENGE

The plaintiffs did not appeal from the trial court's decision that, based on the United States Supreme Court decision in *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), they are not entitled to relief under the equal protection provisions of the Fourteenth Amendment to the United States Constitution. The Court found in *Rodriguez* that, for the purpose of equal protection analysis, education is not a fundamental right under the federal constitution because it is neither explicitly nor implicitly protected by that constitution. After rejecting strict scrutiny analysis, which would have been appropriate had the court found education to be a fundamental right, the Court held that the factor of local control provided a "rational basis" for the admittedly "imperfect" Texas financing system.

[5] The plaintiffs contend, however, that they are entitled to relief under the equal protection provisions of the Tennessee Constitution. The equal protection provisions of the Tennessee Constitution and the Fourteenth Amendment are historically and linguistically distinct. They differ in their perspective because of their respective positions in the nation's scheme of federalism. See Note, *State Constitutional Analysis of Public School Finance Reform Cases: Myth or Methodology*, 45 Vand.L.Rev. 129 (1992); Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 Va.L.Rev. 1639 (1989). As stated in *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn.1988), "In the interpretation of the Tennessee Constitu-

1. In the Tennessee Reports, this case is referred to as stated above. In the South Western Re-

tion, this Court is always free to expand the minimum level of protection mandated by the federal constitution." Nonetheless, the Court has stated in previous decisions that Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution and the Fourteenth Amendment to the Constitution of the United States confer essentially the same protection upon the individuals subject to those provisions. *Marion County Tenn. River Transp. Co. v. Stokes*, 173 Tenn. 347, 350, 117 S.W.2d 740, 741 (1938); *Motlow v. State*, 125 Tenn. 547, 560, 145 S.W. 177, 180 (1912).

Pursuant to Article I, Section 8:

No man to be disturbed but by law.—

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the judgment of his peers or the law of the land.

Article XI, Section 8 provides:

General laws only to be passed.—The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

These two provisions of the Tennessee Constitution apply to different circumstances but, together, guarantee equal privileges and immunities for all those similarly situated. As stated in *The Stratton Claimants v. The Morris Claimants*,¹ 89 Tenn. 497, 522, 15 S.W. 87, 92 (1891):

Citizens may be classified under Article I, Section 8, of the Constitution when the object of the Legislature is to subject them to the burden of certain disabilities, duties, or obligations not imposed upon

porter cited above, however, this case is referred to as *Dibrell v. Morris' Heirs*.

the community at large. And citizens may be classified under Article XI, Section 8, of the Constitution when the object of the Legislature is to confer upon them certain rights, privileges, immunities, or exemptions not enjoyed by the community at large.

If the classification is made under Article I, Section 8, every one who is in, or may come into, the situation and circumstances which constitute the reasons for and the basis of the classification, must be subjected to the disabilities, duties, obligations, and burdens imposed by the statute, or it will be partial and void. And if the classification is made under Article XI, Section 8, every one who is in, or may come into, the situation and circumstances which constitute the reasons for and basis of the classification, must be entitled to the rights, privileges, immunities, and exemptions conferred by the statute, or it will be partial and void.

Thus these provisions of the Tennessee Constitution assure the nondiscriminatory performance of the duty created by Article XI, Section 12.

This Court has followed the framework developed by the United States Supreme Court for analyzing equal protection claims. *Doe v. Norris*, 751 S.W.2d at 840-42. It has utilized three standards of scrutiny, depending upon the right asserted. See *City of Memphis v. International Brotherhood of Elec. Workers Union*, 545 S.W.2d 98, 101 (Tenn.1976), (reduced scrutiny); *Mitchell v. Mitchell*, 594 S.W.2d 699, 701 (Tenn.1980) (heightened scrutiny); *Doe v. Norris*, 751 S.W.2d at 840 (strict scrutiny). In the case before the Court, the Chancellor found the public school system to be constitutionally invalid under all three levels of scrutiny.

However, if the system fails to meet the "rational basis" test, which imposes upon those challenging the constitutionality of the system the greatest burden of proof, the plaintiffs will be found to prevail and further analysis will not be necessary. The "rational basis" analysis was discussed in *Doe v. Norris* as follows:

The concept of equal protection espoused by the federal and our state constitutions guarantees that "all persons similarly circumstanced shall be treated alike." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed. 989 (1920); see *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982); *State ex rel. Department of Social Services v. Wright*, 736 S.W.2d 84 (Tenn.1987). Conversely, things which are different in fact or opinion are not required by either constitution to be treated the same. *Plyler v. Doe*, *supra* 457 U.S. at 216, 102 S.Ct. at 2394. "The initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the States," and legislatures are given considerable latitude in determining what groups are different and what groups are the same. *Id.* In most instances the judicial inquiry into the legislative choice is limited to whether the classifications have a reasonable relationship to a legitimate state interest. *Id.*; see *State v. Southern Fitness and Health, Inc.*, 743 S.W.2d 160, 164 (Tenn.1987); *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978).

In *Harrison v. Schrader*, 569 S.W.2d 822, 825-826 (Tenn.1978), the Court also found that the determinative issue is whether the facts show some reasonable basis for the disparate state action. The Court stated as follows:

Under this standard, if some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it, the classification will be upheld.

* * * * *

The test to be applied has been set forth in numerous cases. The classification must rest upon a reasonable basis. If it has a reasonable basis, it is not unconstitutional merely because it results in some inequality. Reasonableness depends upon the facts of the case and no general rule can be formulated for its determination.

The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute; and if any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld.

(Citations omitted.)

[6] The defendants hardly can deny that the record demonstrates substantial disparities in the educational opportunities afforded students in the several school districts. Indeed, they acknowledge that "there are undoubtedly disparities in expenditures and educational opportunities in Tennessee." They assert, though with little success, that the legislature "may act incrementally" in addressing educational reform and that there is "a body of thought and evidence disputing the existence of a direct relationship between expenditures and performance." However, they rest their case, in large measure, upon the contention that the benefits of local control of public schools justify the inequities in educational opportunities provided.

A number of courts from other jurisdictions have upheld state education financing systems challenged on equal protection grounds after subjecting those funding systems to the "rational basis" test. Those decisions, like *Rodriguez*, have most often offered as the reason for tolerating differences in spending from school district to school district, the need to promote and protect the policy of "local control" over the operation of public schools. See, e.g., *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005; *Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359. See also *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156; *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635; *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 458 A.2d 758; *East Jackson Pub. Schools v. State*, 133 Mich.App. 132, 348 N.W.2d 303; *Board of Educ. of the City School Dist. of Cincinnati v. Walter*, 58 Ohio St.2d 368, 390 N.E.2d 813; *Fair School Fin. Council of Oklahoma, Inc. v.*

State, 746 P.2d 1135; *Olsen v. State*, 276 Or. 9, 554 P.2d 139; *Kukor v. Grover*, 148 Wis.2d 469, 436 N.W.2d 568 (1989). In most of these cases, the opinions contain only conclusory statements concerning the importance of local control.

For example, in *Lujan* the court held that the legitimate state purpose of the funding system legislation was "local control": "That is, control of the locally elected school board by the voters in the district. Such control is exercised by influencing the determination of how much money should be raised for the local schools, and how that money should be spent." *Lujan*, 649 P.2d at 1022-23. In *Nyquist*, the court said that "the justification offered by the State—the preservation and promotion of local control of education—is both a legitimate State interest and one to which the present financing system is reasonably related." *Nyquist*, 57 N.Y.2d at 44, 453 N.Y.S.2d at 651, 439 N.E.2d at 366. In *Kukor*, the Wisconsin Supreme Court also applied the "rational basis" test and stated that "[t]he principle of local control in Wisconsin . . . is not merely a theoretical notion, but rather is a constitutionally based and protected precept as to which the framers of our constitution were firmly committed." *Kukor*, 436 N.W.2d at 580-581. The finding that the need for local control of the public school system was a rational basis for the state's funding system thus led the court to rule that the Wisconsin system was constitutional.

We conclude that the better reasoned opinions are those which have rejected the argument that local control is justification for disparity in opportunity. In *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983), the Supreme Court of Arkansas identified the weaknesses inherent in relying upon the concept of "local control" to justify spending disparities. Applying the "rational basis" test, the court held in *Dupree* that the Arkansas system was unconstitutional. In its opinion, the court rejected the concept of "local control" as a rational basis for the state's public school funding system:

The trial court found the educational opportunity of the children in this state

should not be controlled by the fortuitous circumstance of residence, and we concur in that view. Such a system only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged.

Those jurisdictions finding no equal protection violation in a system based on district wealth generally uphold the system of funding by finding a legitimate state purpose in maintaining local control. We find however, two fallacies in this reasoning. First, to alter the state financing system to provide greater equalization among districts does not in any way dictate that local control must be reduced. Second, as pointed out in *Serrano v. Priest*, 18 Cal.3d 728, 761, 135 Cal.Rptr. 345, 364, 557 P.2d 929, 948 (1976), "The notion of local control was a 'cruel illusion' for the poor districts due to limitations placed upon them by the system itself.... [So long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will truly be able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide.] Far from being necessary to promote local fiscal choice, the present system actually deprives the less wealthy districts of the option." Consequently, **even without deciding whether the right to a public education is fundamental**, we can find no constitutional basis for the present system, as it has no rational bearing on the educational needs of the districts.

Dupree, 651 S.W.2d at 93. [Emphasis added.] See also *Serrano v. Priest (Serrano I)*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971); *Serrano v. Priest (Serrano II)*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (1976), cert. denied sub nom. *Clowes v. Serrano*, 432 U.S. 907, 97 S.Ct. 2951, 53 L.Ed.2d 1079 (1977).

There is no doubt that county and school district officials collectively control, in the management sense, the educational resources within a school district. However,

in some counties, this is a very different matter from effective control of the quality of education provided by the local system. Property and local option sales tax revenues, which constitute a substantial part of the total funds available to a district, are limited by the economic conditions of the county in which the district is located. If a county has a relatively low total assessed value of property and very little business activity, that county has, in effect, a stone wall beyond which it cannot go in attempting to fund its educational system regardless of its needs. In those cases, local control is truly a "cruel illusion" for those officials and citizens who are concerned about the education of the county's school children. In those circumstances, actual control is in the hands of those who have the constitutional power and duty to remove the obstacles to education, whether those obstacles be inability to raise additional funds locally or indifference to the quality of education.

There is an even more serious flaw in the defendants' argument that local control justifies disparities in opportunity. There has been no showing that a discriminatory funding scheme is necessary to local control. In their discussion of this issue, the defendants comment upon the "beneficial, indeed essential, role played by local responsibility for and community involvement in local education." This cannot reasonably be disputed. However, it does not follow that the community must be limited by its own resources in providing that education. The defendants' premise seems to be that if the state asserts its constitutional duty to maintain and support a public school system, the state must exercise complete control over the system. Defendants even quote a line from a federal court decision making the same point: "The one who pays the educational piper generally gets to call the educational tune...." *Kelley v. Board of Educ.*, 836 F.2d 986, 999 (6th Cir.1987), cert. denied, 487 U.S. 1206, 108 S.Ct. 2848, 101 L.Ed.2d 885 (1988).

The appropriate response to this is found in the defendants' own argument, which is as follows: the taxing power of counties

and municipalities is found at Article II, Section 29 of the Tennessee Constitution; that provision authorizes the legislature to give counties and municipalities the power to impose taxes in accordance with state law, a power which includes taxes for the support of education; and Article II, Section 24, the State Spending Clause, gives the General Assembly the widest discretion in assigning the relative shares of responsibility of the state and local governments for funding state mandated services. The defendants' reasoning continues: these provisions establish the constitutional relationship between the state and local government; while counties are provided for in the constitution, the constitution does not expressly set out the subject matter about which counties may legislate; for the most part, the powers of counties are left to the discretion of the legislature (*Edmonson v. Walker*, 137 Tenn. 569, 583, 195 S.W. 168, 171 (1917)); local governments have no power to tax absent legislative delegation of that power; the state may also require a county to appropriate funds for a state purpose or for a purpose common to both state and county (*State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn.1985)); and indeed, it is clear that the constitution gives the legislature the greatest flexibility in determining the allocation of responsibilities between state and local government.

In describing the constitutional relationship between the state and local government and their respective powers, the defendants have stated well the reason local control is no justification for a system that discriminates on the happenstance of residence. But, as we have previously noted, the legislative flexibility mentioned in the defendants' rationale does not extend to using the inability or indifference of local government to excuse a duty specifically imposed upon the General Assembly by the constitution.

The proof before us fails to show a legitimate state interest justifying the granting to some citizens, educational opportunities that are denied to other citizens similarly situated, and, thus, fails to satisfy even the "rational basis" test applied in equal protection cases.

The record supports the Chancellor's finding that the disparities in educational opportunities available to public school students throughout the state, found to be constitutionally impermissible, have been caused principally by the statutory funding scheme, which, therefore, violates the constitutional guarantee of equal protection.

The essential issues in this case are quality and equality of education. The issue is not, as insisted by the defendants and intervenors, equality of funding. Some factors that bear upon the quality and availability of educational opportunity may not be subject to precise quantification in dollars. Other obviously significant factors include geographical features, organizational structures, management principles and utilization of facilities. Nor is the issue sameness. The defendants contend that the requirement that the system provide substantially equal educational opportunities would "squench innovation." Given the very nature of education, an adequate system, by all reasonable standards, would include innovative and progressive features and programs. The defendants also contend that application of equal protection principles to education would "quickly lower the quality of education in the state to the lowest common denominator." That surely is not the meaning or purpose of either the equal protection or education provisions of the constitution.

The power of the General Assembly is extensive. The constitution contemplates that the power granted to the General Assembly will be exercised to accomplish the mandated result, a public school system that provides substantially equal educational opportunities to the school children of Tennessee. The means whereby the result is accomplished is, within constitutional limits, a legislative prerogative. Consequently, the trial court's holding that the appropriate remedy should be fashioned by the General Assembly is affirmed.

The judgment of the Court of Appeals is reversed, and this matter is remanded to the trial court for the assessment of costs

and such other proceedings that may be necessary.

The costs of this appeal are taxed one-half against the defendants and one-half against the intervenors.

DROWOTA, O'BRIEN, DAUGHTREY, and ANDERSON, JJ., concur.



Mark D. ARCHER, Petitioner-Appellant,

v.

STATE of Tennessee, Respondent-Appellee.

Supreme Court of Tennessee,
at Knoxville.

March 22, 1993.

Petitioner sought writ of habeas corpus, alleging that guilty pleas were entered by him involuntarily and therefore could not be used for enhancement of punishment for later offense. The Criminal Court, Hamilton County, Joseph F. DiRisio, J., converted the petition to one for postconviction relief and held that the petition was time barred. On appeal, the Court of Criminal Appeals affirmed, and petitioner appealed. The Supreme Court, Daughtrey, J., held that: (1) petition did not allege proper grounds for habeas corpus relief, and (2) petition was time barred under statute of limitations for postconviction relief.

Affirmed.

1. Habeas Corpus ¶507

Punishment imposed beyond that authorized for particular crime may be challenged by petition for writ of habeas corpus.

2. Habeas Corpus ¶464

Writ of habeas corpus is available to contest convictions imposed under unconsti-

tutional statutes as unconstitutional law is void and can, therefore, create no offense.

3. Criminal Law ¶998(5)

Under Post-Conviction Procedure Act, postconviction petitioners, unlike habeas corpus petitioners, may challenge convictions or sentences that are either void or voidable because of constitutional deprivations. T.C.A. § 40-30-105.

4. Habeas Corpus ¶745.1

Petition for writ of habeas corpus was properly dismissed without hearing where allegations of petition did not suggest that challenged convictions were void due to trial court's lack of jurisdiction over either subject matter of proceeding or over person of defendant, that trial court's actions were unauthorized, or that defendant's sentence had expired and that he was thus being restrained illegally.

5. Habeas Corpus ¶443.1, 510(1)

Habeas corpus relief is available only when it appears upon face of judgment or record of proceedings upon which judgment is rendered that convicting court was without jurisdiction or authority to sentence defendant, or that defendant's sentence of imprisonment or other restraint has expired.

6. Habeas Corpus ¶285.1

Petition that challenged voluntariness of guilty pleas, alleging only that, upon introduction of further proof and after appropriate findings of fact by trial judge, the facially valid judgments may be voided should have been challenged through postconviction relief petition, and not petition for writ of habeas corpus.

7. Habeas Corpus ¶603

Proper petition for issuance of writ of habeas corpus may be brought at any time while petitioner is incarcerated, to contest void judgment or illegal confinement. Const. Art. 1, § 15.

8. Criminal Law ¶998(14.1)

For petition which sought only to void judgment valid on its face and valid on record of proceedings held to render judgment, claim had to be brought within time

**TENNESSEE SMALL SCHOOL
SYSTEMS, et al., Plaintiffs-
Appellants,**

v.

**Ned Ray McWHERTER, et al.,
Defendants-Appellees,**

Charles O. Frazier, Director of Metropolitan Nashville, Davidson County Public Schools, et al., Defendants-Intervenors/Appellees.

Supreme Court of Tennessee.

Feb. 16, 1995.

Association of small school districts brought action challenging constitutionality of state's method of funding public education. After Chancery Court decision finding funding scheme to be unconstitutional was reversed and dismissed by the Court of Appeals, the Supreme Court, 851 S.W.2d 139, held that existing funding scheme violated State Constitution's guarantee of right to free public education that afforded substantially equal educational opportunities to all students, and Court deferred to legislature to develop such plan. Following enactment of the Basic Education Program (BEP) in which objectives would be accomplished incrementally but no later than certain specified date, the Chancery Court, Davidson County, C. Allen High, Chancellor, denied plaintiffs' demand that funding for all local school systems be equalized immediately. Plaintiffs appealed. The Supreme Court, Reid, J., held that: (1) substantial improvement in educational opportunities throughout the state under BEP could best be accomplished incrementally and only if complete equalization of funding were accomplished incrementally also, and (2) BEP must include equalization of teachers' salaries according to the BEP formula.

Modified and remanded.

1. Schools ⇐19(1)

Basic Education Program (BEP) adequately addressed constitutionally impermis-

sible disparities in educational opportunities afforded students under state's existing public school funding scheme, even though BEP provided for incremental equalization of funding over period of years rather than immediately.

2. Schools ⇐19(1)

Failure of Basic Education Program (BEP), enacted to incrementally equalize educational opportunities afforded by state's public school system, to include provision for increasing or equalizing teachers' salaries would substantially impair BEP's objectives; thus, BEP must include such provision.

Lewis R. Donelson, Phillip S. McSween, H. Buckley Cole (Heiskell, Donelson, Bearman, Adams, Williams & Caldwell, of counsel), Nashville, for appellants.

Charles W. Burson, Atty. Gen. & Reporter, Michael E. Moore, Sol. Gen., Michael Catalano, Associate Sol. Gen., Rachel L. Steele, Asst. Atty. Gen., Nashville, for defendants-appellees.

Ernest G. Kelly, Jr., Memphis, for defendants-intervenors.

OPINION

REID, Justice.

This second appeal presents for review the decision of the chancery court denying the plaintiffs' demand that funding for all local school systems be equalized immediately. The judgment of the trial court is modified, and the case is remanded.

PRIOR PROCEEDINGS

In *Tennessee Small School Systems v. McWhorter*, 851 S.W.2d 139, 151 (Tenn.1993), this Court held that the Tennessee Constitution guarantees to the school children of this State the right to a free public education and imposes upon the General Assembly the obligation to maintain and support a system of free public schools that affords substantially equal educational opportunities to all students. The Court found that there existed constitutionally impermissible disparities in educational opportunities available to public

school students throughout the State, and that those disparities had been caused principally by the State's statutory funding scheme. The Court held that the funding scheme violated the constitutional guarantee of equal protection of the law. *Id.* at 156. However, rather than fashion a remedy for the constitutional deficiency, the Court deferred to the legislature the opportunity to establish a public school system that would afford substantially equal educational opportunities to the public school students throughout the State. The opinion was released on March 22, 1993.

In 1991 while this case was pending in the chancery court, the Basic Education Program (BEP), which the defendants insist eliminates the constitutional deficiencies, and a proposal to fully fund the BEP were submitted to the legislature. Included in the 1991 version of the BEP was an allocation of \$565 million for the purpose of equalizing the funding of local school systems. However, both the BEP and the funding proposal were rejected by the legislature. In fact, the legislature reduced substantially the funding for education at the 1991 session.

In July of 1991, following the adjournment of the legislature, the chancellor found the State educational system to be unconstitutional, but delayed the effective date of the order until June 30, 1992, obviously allowing the legislature an opportunity to correct the constitutional deficiencies.

At a special session of the legislature in January, 1992, called by the Governor for the purpose of dealing with education issues, a proposal to enact the BEP fully funded was again rejected by the legislature.

While the case was pending in this Court, the legislature, at the regular 1992 session, enacted the Educational Improvement Act of 1992. That Act incorporated the BEP, with significant amendments affecting teacher salary increases and funding. Legislation adopting the BEP provided that full funding be phased in, beginning with the 1992-93 fiscal year and ending with appropriations for the fiscal year beginning July 1, 1997.

1. The primary case relied upon by the plaintiffs on this issue is *Watson v. City of Memphis*, 373 U.S. 526, 83 S.Ct. 1314, 10 L.Ed.2d 529 (1963),

Acts 1992, chapter 481, Tenn.Code Ann. § 49-3-354(i).

THE ISSUES

The plaintiffs contend that the statutory funding scheme enacted violates the equal protection provisions of the constitution because complete equalization is accomplished over a period of years rather than immediately, and because the plan contains no provision for equalizing teachers' salaries.

The plaintiffs rely upon the principle that the violation of constitutional rights must be corrected with all deliberate speed,¹ and they insist that incremental equalization of funding is not compliance with that constitutional mandate and is not permitted by the prior decision of the Court in this case. They maintain that legislative prerogative applies to the means of establishing a constitutional system, not the time within which that objective must be accomplished. They contend that, since the State does not claim there is any absolute obstacle to equalizing the funding of all local systems, immediate equalization is required. They further contend that the failure to require the equalization of teachers' salaries and the failure to provide "catch-up" funds for capital improvements will perpetuate constitutional disparities.

The defendants defend the incremental equalization as being constitutional and responsible. They argue that teachers' salaries do not affect quality of instruction or educational opportunity. They insist that immediate equalization of funding, including that for capital improvements, would not equalize educational opportunities, which is the constitutional mandate.

Resolution of the issues presented requires an examination of the education program contained in the BEP and the provisions for the equalization of funding.

THE BASIC EDUCATION PROGRAM (BEP)

The funding scheme that caused the constitutionally impermissible disparities in edu-

pertaining to the desegregation of Memphis's city parks and recreation facilities.

cational opportunities was the Tennessee Foundation Program (TFP) augmented by categorical grants from the State to local school systems. Funding under that program, which included only a token amount for equalization of the local systems, was not related to the costs of providing programs and services by the several local school systems. State funding for the local systems was based primarily on average daily attendance of students. Local funding depended upon local sales tax collections and discretionary appropriations by local governments. The TFP was principally a state-ordered program with little managerial discretion at the local level.

The BEP is quite different from the TFP in concept. It is designed to provide, when fully funded, the programs and services essential to a basic education for public school children in grades K through 12 throughout the State. That objective is to be accomplished by defining the essentials of an effective education plan suitable for every local system and implementing that plan through organizational structure, disciplined management and adequate funding.

Under the BEP, the appropriation and distribution of funds are determined by the cost of a program necessary to provide an adequate basic education for the students in all local systems throughout the State. The total funds necessary to fully fund the BEP is substantially greater than that made available under the TFP. Using fiscal year 1990-91 as a base, additional funds are provided to each local system each year in order to improve its education program and also to reduce existing disparities in funding among the local systems.

The BEP, as enacted, provides for the allocation of funds to each local school system based on the costs of 42 "components" found by the State Board of Education to be needed by all local systems. Included among the 42 components are basic, vocational, and special education; guidance counseling; textbooks; art, music, and physical education; services of librarians, social workers, and psychologists; computer technology; supervisory and administrative staffs; transportation; and capital expenditures for physical

facilities. The allocation formula uses average daily membership of students rather than average daily attendance. The BEP limits the ratio of students to teachers and other personnel and also to support functions and facilities.

The formula whereby the component parts of the program are determined is reviewed annually by a BEP review board, which includes the Commissioner of Education, the Commissioner of Finance and Administration, representatives of various local school systems, representatives of professional education organizations, and other members designated by the State Board of Education. After review by the Board of Education, the BEP formula may be adjusted to reflect changes whereby the system can be improved. However, the components of the plan approved by the Board of Education for fiscal year 1992-93 cannot be changed without the approval of the Commissioner of Education and the Commissioner of Finance and Administration, and the revised formula must be approved by resolutions of the Senate and House of Representatives before any change can become effective.

The actual cost of each component of the BEP for each local school system is determined annually, according to a formula which reflects the variations in the costs of providing programs and services throughout the State. Tenn.Code Ann. § 49-3-351(a). The total cost of the BEP for each local system is the sum of the costs of the 42 components. The total cost of the BEP is, of course, the total costs of all local systems.

This cost, the actual cost of providing the programs and services embodied in the BEP, determines the funding to be provided by the State and the minimum funding to be provided by local governments each fiscal year.

The significant provisions of the BEP other than funding are characterized as governance and accountability measures. These reforms are designed to address "the relative indifference" to education demonstrated by some local systems, which this Court found to be a contributing factor to the inequities in educational opportunities. *Tennessee Small School Sys. v. McWhorter*, 851 S.W.2d at 156.

The BEP purports to accomplish these objectives by granting to local officials more discretion in the management of the system and holding those officials accountable for obtaining measurable accomplishments in providing an effective educational system.

Each local system is required to develop a long-range plan, including goals and strategies, and distribute annually a report that shows the results of the system's management. Performance by each local system is monitored by State officials. Any local system that fails to achieve the objective standards set forth in the plan may be "placed on probation" by the Commissioner of Education with the approval of the State Board of Education. Tenn.Code Ann. § 49-1-602. During the first year of probation, the State Department of Education is required to make a comprehensive study of the local system and make recommendations on how the system can improve its performance and meet the applicable standards. After two consecutive years on probation, some or all of the members of the local board of education and/or the superintendent may be removed from office by the Commissioner of Education with the approval of the State Board of Education. The statute provides for the selection of their successors.

The BEP requires state and local funding, but the amount of funds collected or appropriated by a local government does not affect the funding provided to that local school system under the BEP. The 42 components of the BEP are divided into two categories, classroom components and system support components. The State is obligated to fund 75 percent of the cost of the classroom components and 50 percent of the system support components, and the local systems collectively must provide 25 percent of the cost of the classroom components and 50 percent of the system support components. A proportionate share of the total cost of the BEP is assigned to each local system based on its county's relative ability to pay, its "fiscal capacity." Fiscal capacity is calculated by using a methodology developed by the Tennessee Advisory Commission on Intergovernmental Relations. Each county's fiscal capacity is calculated as a percentage of the

total capacity of all counties in the State. The capacity calculations are based on sales tax base, property tax base and income. Each local government is required by statute to appropriate the funds determined to be its share.

EQUALIZATION UNDER THE BEP

Equalization under the BEP will be completed according to the five-year funding plan adopted in 1992. It utilizes as a base the amount of funds distributed by the State to each local system in fiscal year 1990-91. The TFP funding scheme is used for no purpose other than identifying the base amount. No school system will receive annually an amount less than its base amount. The difference between the base amount and the total cost of the BEP fully funded is the determinative factor in the equalization formula. Annual funding in excess of the base amount is distributed among the local systems on a pro rata basis according to the difference between each local system's base amount and the amount that local system would receive if the BEP were fully funded. Tenn.Code Ann. § 49-3-354(e). During the transition period, the local system that has the greatest difference between its base and its entitlement under the BEP fully funded, will receive the greatest percentage increase in funding. Conversely, the system that has the least difference between its base and its entitlement will receive the least percentage increase in funding.

In addition to the funding for the 42 components of the BEP provided by the State and by local systems, the State provides a "growth fund" to systems experiencing growth in enrollment of two percent or more during a school year, funding for an information management computer system connecting all schools in a local system to the central office and all central offices to the office of the State Department of Education in Nashville, and additional funding for the technology component. Although these three items are outside of the basic plan of 42 components, the funding is allocated according to the BEP incremental equalizing formula.

*EXCLUSION OF TEACHERS' SALARIES
FROM EQUALIZATION*

Funding based on determined costs is mandated for each component of the basic education plan except teachers' salaries. The allocation for teachers' salaries to each local system is the product of the amount of the system's average teacher salary, based on the State salary schedule plus the mandated local supplement, multiplied by the number of BEP teacher positions in that local system. Local systems are allowed to use classroom funds for any of the classroom components and they are allowed to use system support funds for any of the system support components. However, they are prohibited from using BEP funds for the purpose of increasing teachers' salaries. Since the adoption of the BEP, teachers have received the same increases in salaries as other State employees, except the total amount paid teachers has been distributed according to the BEP formula. However, there is no provision in the BEP for increasing teachers' salaries or equalizing teachers' salaries.

The State's explanation, and justification, for this treatment of the funding of teachers' salary increases is that historically all funds made available to local systems have been applied to teachers' salaries, resulting in other needs being neglected. The State takes the position in this case that increasing and equalizing teachers' salaries is *not* a component of a basic education, that it "does not affect student performance." The argument is dramatically weakened by the inclusion of this item in earlier BEP proposals.

The decision by the architects of the BEP to prohibit the use of classroom funds and system support funds to increase teachers' salaries does not require that funds for teachers' salary increases be excluded from the plan. Obviously, it can be a separate category of funding, along with classroom components and support system components.

The omission of a requirement for equalizing teachers' salaries is a significant defect in the BEP. The rationale supporting the in-

clusion of the other important factors constituting the plan is equally applicable to the inclusion of teachers' salaries. Teachers, obviously, are the most important component of any education plan or system, and compensation is, at least, a significant factor determining a teacher's place of employment. The costs of teachers' compensation and benefits is the major item in every education budget. The failure to provide for the equalization of teachers' salaries according to the BEP formula, puts the entire plan at risk functionally and, therefore, legally.

CONCLUSION

[1, 2] The Court accepts the State's insistence that substantial improvement in educational opportunities throughout the State under the BEP can best be accomplished incrementally and only if complete equalization of funding is accomplished incrementally also. The Court finds, however, that exclusion of teachers' salary increases from the equalization formula is of such magnitude that it would substantially impair the objectives of the plan; consequently, the plan must include equalization of teachers' salaries according to the BEP formula. The record does not support the plaintiffs' contention that funding for capital improvements should be given priority over other needs. The plan, as modified, is approved for the purposes of this proceeding.

It appears that the BEP addresses both constitutional mandates imposed upon the State—the obligation to maintain and support a system of free public schools and the obligation that that system afford substantially equal educational opportunities.²

The BEP is designed to accomplish two significant objectives—provide an excellent education program for all K thru 12 students throughout the State and provide substantially equal educational opportunities for those students. Under the BEP, neither objective will be accomplished immediately, but both objectives are scheduled to be accomplished no later than fiscal year 1997-98. Adequate

tution.

2. Article 11, Section 12; Article 1, Section 8; and Article 11, Section 8 of the Tennessee Consti-

funding is essential to the development of an excellent education program, and immediate equalization of funding would not necessarily insure immediate equalization of educational opportunities or a more excellent program.

The essentials of the provision of the plan relating to funding are that funding determined by the costs of implementing the BEP will be provided in full beginning with fiscal year 1997-98; and that, prior to that time, an increased amount of funding will be made available to each local system each year according to the equalization formula set forth in the plan, which favors those systems in greater need of additional resources. The essentials of the governance provisions of the BEP are mandatory performance standards; local management within established principles; performance audits that objectively measure results; public disclosure by each local system of objectives, strategies, and results; removal from office of local officials unwilling or unable to effectively manage a local system; and final responsibility upon the State officials for an effective educational system throughout the State. Each of these factors relating to funding and governance is an integral part of the plan and each is indispensable to its success. Consequently, none of the factors can be compromised without destroying the integrity and effectiveness of the plan.

The source of funding for the plan addresses the discretion of the legislature. The Court's approval of the plan, as modified, as a means to accomplish the constitutional mandate is not conditioned upon any particular source of revenue. The inadequacy of particular sources of revenue would not justify modification of the education program or the funding schedule.

The cause is remanded to the chancery court for such proceedings as may be appropriate.

Costs are taxed to the State.

ANDERSON, C.J., and DROWOTA,
O'BRIEN and BIRCH, JJ., concur.



STATE, ex rel. Jerry McCORMICK, Sr., by his next friend, Nancy HIRST, on his own behalf and on behalf of all others similarly situated, Petitioner/Appellant,

v.

Charles BURSON, Attorney General and Reporter, State of Tennessee,
Respondent/Appellee,

and

Wayne Hayes, Administrator,
Metropolitan Bordeaux
Hospital, Respondent.

Court of Appeals of Tennessee,
Western Section.

Oct. 26, 1994.

Application for Permission to Appeal
Denied by Supreme Court
Feb. 21, 1995.

Ward of conservatorship petitioned for writ of habeas corpus for release from hospital and conservatorship, and seeking to certify as class action claim that conservatorship laws were unconstitutional. The Chancery Court, Davidson County, C. Allen High, Chancellor, dissolved conservatorship, denied petition for class certification, and found that conservatorship laws were constitutional. Appeal was taken. The Court of Appeals, Highers, J., held that: (1) constitutional challenges to conservatorship laws did not become moot when conservatorship was dissolved; (2) statutory means for determining whether ward remains incompetent satisfied procedural due process requirements; (3) safeguards for ensuring that ward remains incompetent satisfied ward's substantive due process rights; (4) conservatorship laws did not violate equal protection; and (5) incompetent ward was not "qualified individual" under Americans with Disabilities Act.

Affirmed.

1. Appeal and Error \S 781(1)

Public interest exception to mootness doctrine applied to appeal by former ward

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
Heard in Knoxville
May 1, 2002 Session

**TENNESSEE SMALL SCHOOL SYSTEMS, ET AL. v. NED RAY
McWHERTER, ET AL.**

**Appeal pursuant to Tenn. Code Ann. § 16-3-201
from the Chancery Court for Davidson County
No. 88-1812-II Carol L. McCoy, Chancellor**

No. M2001-01957-SC-R3-CV - Filed October 8, 2002

This is the third appeal to this Court of the plaintiffs' suit challenging the constitutionality of the manner in which the State funds public education. In the first appeal, we held that the State was required by the Tennessee Constitution to maintain and support a system of public schools that affords substantially equal educational opportunities to all students, and we found that the State's school funding scheme unconstitutionally denied equal educational opportunities to all students. Tennessee Small School Sys. v. McWherter, 851 S.W.2d 139 (Tenn. 1993) ("Small Schools I"). In the second appeal, we conditionally upheld a new funding plan allocating funds to school systems according to a formula based on the cost of forty-three components necessary for a basic education, known as the Basic Education Program ("BEP"), Tenn. Code Ann. §§ 49-3-351 to -360. Tennessee Small School Sys. v. McWherter, 894 S.W.2d 734 (Tenn. 1995) ("Small Schools II"). We found, however, that the omission of a requirement for equalizing teachers' salaries was a significant defect in the Basic Education Program ("BEP"), which put the entire plan at risk both functionally and legally, and we concluded that "the plan must include equalization of teachers' salaries according to the BEP formula" in order for the plan to be constitutional. Id. at 738.

In this third appeal, the question is whether the State's current method of funding salaries for teachers – the salary equity plan found in Tennessee Code Annotated § 49-3-366 – equalizes teachers' salaries "according to the BEP formula" or whether it fails to do so and violates equal protection by denying students substantially equal educational opportunities. The trial court dismissed the case after finding that the State had met its constitutional obligation to equalize teachers' salaries under Small Schools II. The plaintiffs then filed a motion asking this Court to assume jurisdiction of the appeal, see Tenn. Code Ann. § 16-3-201 (Supp. 2001),¹ asserting that the

¹ The "reach-down" statute, Tenn. Code Ann. § 16-3-201(d)(1), provides that the "supreme court may, upon the motion of any party, assume jurisdiction over an undecided case in which a notice of appeal . . . is filed before any intermediate state appellate court . . ." The statute applies "only to cases of unusual public importance in which there is a special need for expedited decision and which involve: (A) State taxes; (B) The right to hold or retain public office; or (C) Issues of constitutional law." Tenn. Code Ann. § 16-3-201(d)(2)(Supp. 2001).

State failed to comply with this Court's directive in Small Schools II to equalize teachers' salaries according to the BEP formula for funding public education. We granted the motion.

After careful consideration of the record and applicable authorities, we find that the salary equity plan embodied in Tennessee Code Annotated § 49-3-366 does not equalize teachers' salaries according to the BEP formula and contains no mechanism for cost determination or annual cost review of teachers' salaries, unlike the BEP conditionally approved in Small Schools II. We further find that no rational basis exists for structuring a basic education program consisting entirely of cost-driven components while omitting the cost of hiring teachers, the most important component of any education plan and a major part of every education budget. Therefore, the lack of teacher salary equalization in accordance with the BEP formula continues to be a significant constitutional defect in the current funding scheme. Accordingly, we hold that the salary equity plan fails to comply with the State's constitutional obligation to formulate and maintain a system of public education that affords a substantially equal educational opportunity to all students. The trial court's judgment dismissing the case is reversed and the case is remanded.

**Appeal Pursuant to Tenn. Code Ann. § 16-3-201; Judgment of the Trial Court
Reversed and Remanded.**

E. RILEY ANDERSON J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C.J., ADOLPHO A. BIRCH, JR., JANICE M. HOLDER, and WILLIAM M. BARKER, JJ., joined.

Lewis R. Donelson, Christopher G. Boling, Jonathan J. Cole, Angie C. Davis and Marianne Bell Matthews, Memphis, Tennessee, for the plaintiffs-appellants, Tennessee Small School Systems, et al.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Kate Eyler, Deputy Attorney General; and Kimberly J. Dean, Deputy Attorney General, Nashville, Tennessee, for the defendants-appellees, Ned Ray McWherter, et al.

Karl F. Dean and James L. Charles, Nashville, Tennessee, for the intervenors-appellees, Metropolitan Nashville-Davidson County Public School System.

Mary Neil Southerland, Chattanooga, Tennessee, for the intervenors-appellees, Chattanooga-Hamilton County Public School System.

Jack Mitchell, Clarksville, Tennessee, for the intervenors-appellees, Clarksville-Montgomery County Public School System.

Jerry D. Kizer, Jackson, Tennessee, for the intervenors-appellees, Jackson-Madison County Public School System.

Michael Moyers, Knoxville, Tennessee, for the intervenors-appellees, Knox County Public School System.

Ernest G. Kelly, Memphis, Tennessee, for the intervenors-appellees, Memphis City Public School System.

Thomas A. Varlan, Knoxville, Tennessee, for the intervenors-appellees, Sevier County Public School System.

Thomas R. Russell, Memphis, Tennessee, for the intervenors-appellees, Shelby County Public School System.

E. Patrick Hull, Kingsport, Tennessee, for the intervenors-appellees, Sullivan County Public School System.

OPINION

BACKGROUND

In 1988, a group of rural school districts,² superintendents, board of education members, students, and parents filed suit claiming that Tennessee's education funding system violated article XI, section 12 of the Tennessee Constitution³ because the funding system denied public school students the right to an equal education due to a disparity in resources between rural and urban counties. To place the issues in the present dispute in the appropriate context, we begin by reviewing the extensive procedural history.

Small Schools I – Tennessee Foundation Program

² The following county school systems are identified in the notice of appeal as plaintiffs-appellants: Crockett, Grundy, Hancock, Hickman, Overton, Pickett, Trousdale, and Wayne.

³ "The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools." Tenn. Const. art. XI, § 12.

In their initial lawsuit in 1988, the plaintiffs sought a declaratory judgment that the State's educational funding statutes were unconstitutional, that the defendants be enjoined from acting pursuant to those statutes, and that the State be required to formulate and establish a funding system that met constitutional standards. The State, along with several school systems located in urban and suburban counties across the state who were allowed to intervene, opposed the plaintiffs' suit on the ground that the funding scheme enacted by the legislature was not reviewable by the courts.⁴ In sum, the defendants argued that article XI, section 12, of the state constitution provided no qualitative standards for measuring the quality of education or the sufficiency of funding and that such matters were left to the exclusive province of the legislative and executive branches. Small Schools I, 851 S.W.2d at 141. After a six-week trial, the trial court agreed with the plaintiffs and declared the State's funding system unconstitutional.

On appeal, this Court agreed with the trial court's findings that there were impermissible disparities in the educational opportunities available to public school students, as evidenced by significant differences in teacher qualifications, student performance, and basic educational programs and facilities. We noted, for example, that many schools in the rural districts had decaying physical plants, inadequate heating, showers that did not work, buckling floors, leaking roofs, inadequate science laboratories, and outdated textbooks and libraries. Small Schools I, 851 S.W.2d at 145. Furthermore, the evidence showed that some of the school districts were unable to offer advanced placement courses, more than one foreign language, or the state-mandated art and music classes, drama instruction, and athletic programs. Id. at 145-46.

We also agreed with the trial court that the gross disparities in educational opportunities available to public school students were caused by the State's then-existing funding scheme, the Tennessee Foundation Program ("TFP"), which included only a "token amount" of state funds for the equalization of school systems and, significantly, was unrelated to the costs of providing programs and services by the local schools. Small Schools II, 894 S.W.2d at 736. Indeed, state funding under the TFP was based primarily on average daily attendance of students, while local funding depended heavily on local sales tax collections and discretionary funding by local governments. Small Schools I, 851 S.W.2d at 143. We therefore concluded that the state funding scheme violated equal protection principles:

The constitutional mandate that the General Assembly shall provide for a system of free public schools guarantees to all children of school age in the state the opportunity to obtain an education. The provisions of the constitution guaranteeing equal protection of the law to all citizens, require that the educational opportunities provided by the system of free public schools be substantially equal. The

⁴ The suit was filed against various State officials, including the Governor and other executive branch officials, leaders of the General Assembly, and members of the State Board of Education. The intervenors consisted of nine school districts: Davidson County, Chattanooga-Hamilton County, Knox County, Jackson-Madison County, Memphis City, Clarksville-Montgomery County, Sevier County, Shelby County, and Sullivan County.

constitution, therefore, imposes upon the General Assembly the obligation to maintain and support a system of free public schools that affords substantially equal educational opportunities to all students.

Id. at 140-41.

Although we held that the TFP was unconstitutional, we elected not to fashion a specific remedy for the deficiencies of the plan, but rather, gave the legislature the opportunity to establish a public school system that affords substantially equal educational opportunities to all students. Small Schools I, 851 S.W.2d at 140-41. In doing so, we recognized that the means whereby the State could achieve its constitutional obligation is a legislative prerogative and that the legislature's power in this regard is extensive. Id. at 141, 156. We observed that an acceptable funding plan could include the imposition of funding and management responsibilities on local governments, but that the Constitution would not permit "the indifference or inability of those [local governments] to defeat the constitutional mandate of substantial equality of opportunity." Id. at 141.

Small Schools II – The Basic Education Plan

In Small Schools II, the plaintiffs contended that the State's new plan, which omitted teachers' salaries as a component of the Basic Education Plan ("BEP") and failed to equalize salaries, amounted to an unconstitutional denial of a substantially equal education opportunity to all students.

The BEP, which was enacted by the legislature while Small Schools I was pending in this Court, provided for the allocation of funds to local school systems "on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues." Tenn. Code Ann. § 49-3-356. The BEP required both state and local funding, but with the proportionate local share determined by each county's relative ability to pay, or its "fiscal capacity."⁵ Small Schools II, 894 S.W.2d at 737. Each local government was required to appropriate the funds determined to be its share under the plan, see Tenn. Code Ann. § 49-3-356, but the amount of separate state funding no longer depended upon the amount of revenue collected or appropriated by the local government. Small Schools II, 894 S.W.2d at 737.

The BEP formula was based on the cost of forty-three components that the legislature deemed necessary "for [Tennessee] schools to succeed," Tenn. Code Ann. § 49-3-302(3) (Supp. 2001). The components included items such as the cost of vocational education, guidance

⁵ A county's fiscal capacity is calculated using a formula developed by the Tennessee Advisory Commission on Intergovernmental Relations. Each county's fiscal capacity is expressed as a percentage of the total capacity of all counties in the State and is based on its sales tax base, property tax base, and income. Small Schools II, 894 S.W.2d at 737.

counseling, textbooks, physical education, computer technology, transportation, library services, special education, art, music, classroom supplies, alternative schools, travel, and capital expenditures for facilities. The components also included the costs of hiring secretaries, nurses, librarians, social workers, principals and their assistants, assessment personnel, coordinators, supervisors, custodians, psychologists, and superintendents but, significantly, omitted the cost of hiring teachers, the most important component of any education plan and a major part of every education budget. Small Schools II, 894 S.W.2d at 736, 738. In addition, the BEP formula included provisions for an annual review of the actual cost of each component and for reviewing the formula each year to make any adjustments for improving the system. Id. at 736.

In Small Schools II, the plaintiffs challenged the BEP formula based on the fact that costs associated with increasing or equalizing teachers' salaries was not one of the components "deemed necessary for schools to succeed," resulting in a disparity in teachers' salaries across the state. The BEP in its original form as proposed by the State Board of Education included teachers' salaries as one of the components of the formula necessary for schools to succeed, but the plan as enacted into law by the legislature did not.⁶ The defendants nonetheless argued that teachers' salaries did not affect the quality of instruction or educational opportunity and that, therefore, the BEP formula did not need to provide for the equalization of teachers' salaries as one of its components.

On appeal, this Court emphasized that "[t]eachers, obviously, are the most important component of any education plan" and that their compensation – the major item in every education budget – is a significant factor in determining where teachers choose to work. Id. at 738. Moreover, we concluded that the rationale supporting the inclusion of the other components of the BEP applied with equal, if not greater, force to the inclusion of teachers' salaries. Id. Accordingly, we held that the "omission of a requirement for equalizing teachers' salaries is a significant defect in the BEP" and that the "failure to provide for the equalization of teachers' salaries according to the BEP formula, puts the entire plan at risk functionally and, therefore, legally." Id. We emphasized that the "plan must include equalization of teachers' salaries according to the BEP formula" in order for the plan to be constitutional. Id.

Small Schools III – Salary Equity Plan

⁶ In Small Schools I, we discussed the plan developed by the State Board of Education at the direction of the General Assembly, which included factors to consider "differences in competitive salaries earned in different counties." Indeed, we noted that the defendant asked the Court to take judicial notice of the plan, which had not yet been enacted, in support of its position that the education system was adequate. 851 S.W.2d at 146-47. As noted, however, the plan as eventually enacted by the legislature did not include teachers' salaries. The result has been years of litigation and untold expense for all concerned.

In 1995, following Small Schools II, the legislature enacted the salary equity plan in Tennessee Code Annotated § 49-3-366, which on a one-time basis attempted to equalize teachers' salaries in those school districts where the average salary was below \$28,094 as of 1993,⁷ but did not include teachers' salaries as a component of the BEP. The plan provided for state and local funds "in support of teachers' salary equity" to increase teacher compensation in school districts averaging less than \$28,094 per year per instructional position. Tenn. Code Ann. § 49-3-366(a)(3). Although the plan required the State to pay the same percentage of salary equity funds for each school district as it pays toward the cost of classroom components of the BEP for each district and also required local governments to appropriate funds sufficient to pay their proportionate share,⁸ it did not include provisions for annual review or cost determination of teachers' salaries under the BEP.

The plaintiffs filed this action arguing that the salary equity plan establishes an arbitrary floor for teachers' salaries unrelated to the BEP in violation of Small Schools II, and that the plan does not submit teachers' salaries to the annual review and cost determination process applicable to all of the other cost components under the BEP. Accordingly, the plaintiffs sought to enforce the directive in Small Schools II that teachers' salaries be included as a component of the BEP.

After a two-day hearing, the trial court found that the State had met its constitutional obligation to equalize teachers' salaries under Small Schools II and dismissed the action. In sum, the trial court reasoned that even though Small Schools II mandated that salary equalization be in accordance with the BEP formula, it did not demand that the legislature adhere strictly to the mechanisms of that plan.⁹

Thereafter, the plaintiffs filed a motion pursuant to Tennessee Code Annotated § 16-3-201(d) (Supp. 2001) asking this Court to assume jurisdiction of the appeal, as it had in Small Schools II, on the grounds that the case is one of unusual public importance in which a special need for an expedited decision exists and which involves issues of constitutional law. The plaintiffs argued in

⁷ The figure of \$28,094 was determined by using the actual average instructional compensation package for each school system as of December 1, 1993. The salary figures used in the calculation included both state and local contributions. In order to exclude the extremes from the calculation, the top and bottom five percent of school systems were dropped from the calculation.

⁸ In fact, a school district is prohibited from commencing school in the fall "until its share of such allocation for teachers' salary equity . . . has been included in the budget approved by the local legislative body." Tenn. Code Ann. § 49-3-366(a)(3). In addition, school districts receiving salary equity funds cannot use them for any purpose other than raising teachers' salaries. Tenn. Code Ann. § 49-3-366(b). Further, salary equity funds, both state and local, must be reduced proportionally in all school districts in the event "state funds appropriated for teachers' salary equity are insufficient to meet the local public school systems' entitlements" under the statute. Tenn. Code Ann. § 49-3-366(c). The legislature has appropriated approximately \$12 million dollars annually under Tenn. Code Ann. § 49-3-366 to increase and equalize teacher compensation.

⁹ The trial court concluded that "[i]n truth, the plaintiffs are complaining about the adequacy of teachers' salaries statewide when the effect of the General Assembly's action has been to equalize teachers' salaries statewide in accordance with the BEP plan."

their motion that the State had not complied with this Court's directive in Small Schools II that teachers' salaries be included in the BEP formula.

We granted the motion and now hold that the salary equity plan in Tennessee Code Annotated § 49-3-366 fails to comport with the State's constitutional obligation to formulate and maintain a system of public education that affords substantially equal educational opportunity to all students. We come to this conclusion because the plan does not include teachers' salaries as a component of the BEP necessary to provide a basic education, while including superintendents, principals, librarians, and other personnel, and does not equalize teachers' salaries according to the BEP formula inasmuch as it contains no mechanism for cost determination or annual cost review of teachers' salaries.

ANALYSIS

A.

The main issue throughout these appeals since 1988 has been whether the legislature has complied with its constitutional obligation to maintain and support a system of public schools that affords substantially equal educational opportunities to all students in this state. The resolution of the present appeal in large part begins with our statement in Small Schools II that the "exclusion of teachers' salary increases from the equalization formula is of such magnitude that it would substantially impair the objectives of the plan; consequently, the plan must include equalization of teachers' salaries according to the BEP formula." Small Schools II, 894 S.W.2d at 738.

The plaintiffs assert that the salary equity plan amounts to little more than an arbitrary floor for teachers' salaries, unrelated to the BEP, in violation of our ruling in Small Schools II. They argue that the legislature enacted the plan as a "token" supplement to the BEP and, as such, failed to comply with the directive in Small Schools II that teachers' salaries be made a component of the BEP formula. The plaintiffs also assert that the plan violates equal protection because Tennessee Code Annotated § 49-3-366 does not provide for cost determination or annual cost review of salaries, as do BEP components, and that the same large disparities in teachers' salaries that existed when Small Schools II was decided still exist today. Thus, the plaintiffs argue that the legislature has not corrected the disparities in teachers' salaries, and they seek an order from this Court directing the legislature to make teachers' salaries a component of the BEP, subjecting salaries to annual cost determination and review like other components of the BEP.

The defendants concede that the legislature did not make teachers' salaries a component of the BEP by enacting the salary equity plan. The defendants also agree that there is no provision in the plan to increase the target salary of \$28,094 and that there is no annual review or cost determination of teachers' salaries, as is performed with all of the other components under the BEP. The defendants nonetheless contend that the State has complied with the mandate of Small Schools II to achieve substantially equal educational opportunities by creating a salary equity plan and by

using part of the methodology of the BEP formula in setting minimum salaries under Tennessee Code Annotated § 49-3-306.

B.

Turning to the merits of this appeal, we recognize that the purpose of the salary equity plan was to increase and support teacher salary equity,¹⁰ and that there are some similarities between the salary equity plan and the BEP primarily involving the distribution of funds and regulation of local school districts. For instance, the salary equity plan set out in Tennessee Code Annotated § 49-3-366 requires the State to pay the same percentage of salary equity funds for each school district as it pays toward the cost of classroom components of the BEP for each district,¹¹ Tenn. Code Ann. § 49-3-366(a)(3), and it requires local governments to appropriate funds sufficient to pay their proportionate shares.¹² In addition, school districts receiving salary equity funds cannot use them for any purpose other than raising teacher salaries, just as funds disbursed under the BEP must be spent on the basic education components that comprise that plan. Tenn. Code Ann. §§ 49-3-366(b), 49-3-351(c).¹³ Finally, the salary equity plan, like the BEP, attempts to ensure that the amount of state funds received by a local school system will not depend on the amount the local government collects or appropriates for its schools. See Small Schools II, 894 S.W.2d at 737; see also Tenn. Code Ann. § 49-3-356.

¹⁰ Funds appropriated under the salary equity plan are for the “support of teachers’ salary equity,” and “compensation improvement” under the plan can be in the form of salaries, employer-paid health insurance premiums, or both. Tenn. Code Ann. § 49-3-366(a)(3),(b).

¹¹ Under the BEP, the State’s share of classroom components is seventy-five percent, and the local school districts’ share is twenty-five percent. Tenn. Code Ann. § 49-3-356.

¹² The BEP provides that “[e]very local government shall appropriate funds sufficient to fund the local share of the basic education program.” Tenn. Code Ann. § 49-3-356. The salary equity plan similarly provides that “[e]very local government shall appropriate funds sufficient to fund the local share of the allocation for teachers’ salary equity established in this section.” Tenn. Code Ann. § 49-3-366(a)(3).

¹³ Under the BEP, “[a]ll funds generated for the basic education program shall be spent on basic education program components.” Tenn. Code Ann. § 49-3-351(c). Under the salary equity plan, “[a]ny [local school district] that receives funds for teachers’ salary equity . . . shall apply such funds to establish a schedule that raises the average compensation package” of teachers. Tenn. Code Ann. § 49-3-366(b).

The salary equity plan, however, is different from the BEP; indeed, it is the differences that are critical in addressing the constitutional issue raised in this case. As noted above, for example, a key feature of the BEP is that the actual cost of each of the forty-three components is determined annually, and the formula itself is reviewed each year by state officials, including the legislature, so that adjustments can be made for improvements in the system.¹⁴ Small Schools II, 894 S.W.2d at 736. Thus, unlike the prior funding scheme found to be constitutionally deficient in Small Schools I (the TFP), the BEP reflects the variations in the costs of providing educational programs and services throughout the State. Id. In contrast, the salary equity plan contains no mechanism for cost determination or annual cost review, a flaw admitted by the defendants. The TFP was likewise unrelated to the costs of providing programs and services by the local schools, and the plan was declared unconstitutional. Id.

We can think of no rational basis, and the defendants have not suggested one, for structuring a basic education program where all of its components, including salaries for custodians, secretaries, nurses, librarians, social workers, principals and their assistants, assessment personnel, coordinators, supervisors, psychologists, and superintendents, are cost-driven, except for the largest and most important component of all, the cost of providing teachers. It seems to us, as we said in Small Schools II, that the rationale for cost determination and annual review of the BEP components applies with equal if not greater force to teachers' salaries, for it is undeniable that teachers are the most important component of any effective education plan, and that their salaries, a major item in every education budget, are a significant factor in determining where teachers choose to work. Small Schools II, 894 S.W.2d at 738. We recognized this fact seven years ago in Small Schools II, and we strongly reiterate it again today. Id.

Likewise, we recognized in Small Schools II that teacher salaries are an indispensable part of any constitutional funding plan, and that no part of that plan can be compromised without destroying the integrity and effectiveness of the entire plan. Id. Thus, although the salary equity plan has some similarities to the BEP it does not include an indispensable and fundamental part of the BEP plan, *i.e.*, cost determination and annual cost review of all components, including teachers' salaries. Therefore, the State has not complied with the unambiguous finding in Small Schools II that a constitutional plan "must include equalization of teachers' salaries according to the BEP formula." Id. If the costs associated with hiring custodians, secretaries, nurses, librarians, social workers, principals and their assistants, assessment personnel, coordinators, supervisors, psychologists, and superintendents are components necessary "for [Tennessee] schools to succeed," surely it is

¹⁴ As we explained in Small Schools II, "[t]he formula whereby the component parts of the [BEP] are determined is reviewed annually by a BEP review board, which includes the Commissioner of Education, the Commissioner of Finance and Administration, representatives of various local school systems, representatives of professional education organizations, and other members designated by the State Board of Education. After review by the Board of Education, the BEP formula may be adjusted to reflect changes whereby the system can be improved. However, the components of the plan . . . cannot be changed without the approval of the Commissioner of Education and the Commissioner of Finance and Administration, and the revised formula must be approved by resolutions of the Senate and House of Representatives before any change can become effective." 894 S.W.2d at 736.

undeniable that the cost of teachers is a component necessary for Tennessee schools to succeed. To state the obvious, teachers are an absolutely essential school resource.

The lack of cost determination and periodic cost review of teachers' salaries is a problem of constitutional dimensions today and will constitute a much larger problem over time, given that the salary equity plan is based solely on average teacher compensation as of 1993, or \$28,094. Indeed, the average teacher salary in Tennessee as of 1998-1999 was \$31,894 according to the parties' joint statement of undisputed facts; \$35,273 according to a report prepared by the BEP Review Committee; and \$36,896 according to a report produced by the Department of Education. Whatever the average salary may have been in 1998-1999, it is clear that the target salary in the equity plan bears no relationship to the current, actual cost of providing teachers as this opinion is written in 2002, leaving a gap that will widen with each passing year. Moreover, the record reveals that a top priority of the BEP Review Committee in 2000 was to obtain funding for teacher salaries based on *actual* salary data, rather than the state's minimum salary schedule.

In short, we hold that the lack of teacher salary equalization according to the BEP formula continues to be a significant constitutional defect in the State's funding scheme. We have now held on two occasions since 1988 that the legislature's constitutional mandate is to maintain and support a system of public education that affords substantially equal educational opportunities to all students. Although we have left policy considerations such as the funding and level of salaries to the legislature,¹⁵ the constitutional mandate has not changed. Moreover, whatever mechanism is chosen by the legislature, it must comport with the principles we have been espousing since the inception of the Small Schools saga. Until that mandate is met, the inherent value of education will not be fully realized by all students in the state, regardless of where they live and attend school, and the students of Tennessee will continue to be unconstitutionally denied substantially equal educational opportunities.

C.

The State maintains that aside from the salary equity plan under Tennessee Code Annotated § 49-3-366, salaries have been equalized because all public school teachers have a minimum salary based on training and experience factors. Specifically, the Commissioner of Education, with the approval of the State Board of Education, annually formulates a mandated salary schedule applicable to all licensed teachers, taking into account training and experience. Tenn. Code Ann. § 49-3-306(a) (Supp. 2001). Local school systems can supplement teachers' salaries with non-BEP funds from

¹⁵ We recognize, for example, that Small Schools II did not specifically address whether the legislature could devise another way of addressing the issue of teachers' salaries besides making salaries a component of the BEP itself, although that continues to seem to us to be the simplest and most effective way of solving the problem. Indeed, the first time this case was before us, this Court observed that the means whereby the state could achieve its constitutional obligation to provide substantially equal educational opportunities is a legislative prerogative and that the legislature's power in this regard is extensive. Small Schools I, 851 S.W.2d at 141, 156. Similarly, we observed in Small Schools II that the architects of the BEP could have made teachers' salaries "a separate category of funding." 894 S.W.2d at 738.

their own local sources, but the State's salary schedule represents a minimum salary statewide. Tenn. Code Ann. § 49-3-306(b) (Supp. 2001).

The State's contention that salaries have been equalized because all public school teachers have a minimum salary based on training and experience factors is unconvincing. Tennessee Code Annotated § 49-3-306 has been the law since 1977. Assuming the State has been using the salary schedule mandated by that statute all along, particularly prior to Small Schools II, the State's reliance on it does little to help its cause. In fact, we alluded to Tennessee Code Annotated § 49-3-306 in Small Schools II when we described how teacher salaries were calculated, 894 S.W.2d at 738,¹⁶ and we observed in Small Schools I that making adjustments based on training and experience benefitted wealthier school districts because more funds were channeled to districts where better trained and experienced teachers worked, 851 S.W.2d at 143. Most importantly, Tennessee Code Annotated § 49-3-306 does nothing to address the problem of having an education funding system consisting entirely of cost-driven components except for the most important component of providing teachers.

D.

Finally, we address the intervenors' argument that the plaintiffs have not shown any injury resulting from the current funding method. According to the intervenors' claim, teacher salary disparities have decreased since 1995 when Small Schools II was decided. In addition, the intervenors allege that student-teacher ratios in the plaintiffs' districts are now lower than the statewide average, and that teachers in the plaintiffs' districts have, on average, only about one year less experience than teachers elsewhere in the State. They also claim that student graduation rates and test scores are now about the same, and in some instances better, than statewide averages, and that drop-out rates for students in the plaintiffs' districts are less than the statewide average. The intervenors therefore argue that the plaintiffs are no longer deprived of substantially equal educational opportunities.

Several problems exist with the intervenors' fact-based argument that the plaintiffs are no longer being deprived of substantially equal educational opportunities. The first problem is that the trial court made no factual findings on any of the matters that form the basis of the intervenors' contentions. The second and more compelling problem is that this Court already has decided the issue of whether a constitutional deprivation of educational opportunity occurred. The focus at this point is the remedy, not the wrong. It seems to us that the intervenors are essentially attempting to retry the case by raising issues on which this Court has already ruled.

¹⁶ Without making teachers' salaries a component of the BEP, the allocation for teachers' salaries to each school district is the product of the amount of the school district's average teacher salary, based on the State's salary schedule, plus the mandated local supplement, multiplied by the number of teaching positions in the district generated by the BEP teacher-student ratio. Small Schools II, 894 S.W.2d at 738.

The third problem with the intervenors' position is that the record supports the plaintiffs' argument that for the most part, the same disparities in teachers' salaries that existed when Small Schools II was decided still exist today. For example, in 1995, the City of Alcoa paid teachers an average of \$40,672, while Jackson County paid teachers an average of \$23,934, a difference of \$16,738. In 1997, Oak Ridge paid its teachers an average of \$42,268, while in Monroe County the figure was \$28,025, a disparity of \$14,243. In 1998-1999, the disparity between Oak Ridge and Monroe County grew to \$14,554. Thus, wide disparities still exist, and it takes little imagination to see how such disparities can lead to experienced and more educated teachers leaving the poorer school districts to teach in wealthier ones where they receive higher salaries.¹⁷ In the end, the rural districts continue to suffer the same type of constitutional inequities that were present fourteen years ago when this litigation began.

In reaching the conclusion that the salary equity plan is constitutionally deficient, we are mindful that teachers' salaries will not be identical in every school district. We also stress that our opinion does not hinge upon the adequacy of the average salary relied upon by the legislature, *i.e.*, "\$28,094," which the plaintiffs characterize variously as an "inadequate floor," "artificial," "erroneous," and "extremely outdated." It is not the business of the courts to decide how salaries are funded or at what level teachers should be compensated, for it is the legislature who "speaks for the people on matters of public policy" such as these. See Van Tran v. State, 66 S.W.3d 790, 804 (Tenn. 2001). In addition, nothing in the law prevents a local school system from supplementing teachers' salaries from its own local non-BEP funds when such funds are in addition to its local BEP contribution. As such, some disparities in teachers' salaries from school district to school district will exist. In short, determining how to fund teachers' salaries and the appropriate level of those salaries are choices for the legislature to make, assuming of course that the legislature discharges its powers in a manner that comports with the Constitution.

As we recognized in Small Schools I, local spending on education will also vary due to differences in "geographical features, organizational structures, management principles and utilization of facilities," as well as other "factors that bear upon the quality and availability of educational opportunity [which] may not be subject to precise quantification in dollars." 851 S.W.2d at 156. The critical point, however, is that the educational funding structure be geared toward achieving equality in educational opportunity for students, not necessarily "sameness" in teacher compensation. See id. The objective of teacher salary equalization is to provide substantially equal opportunities for students, not teachers. While this case focuses largely on the methodology used to fund teachers' salaries, we realize that many elements, of which funding is but one, must come together in order for Tennessee schools to succeed and for children in this State to receive a substantially equal educational opportunity.

¹⁷ The intervenors cite a survey of teachers suggesting that 21% of teachers moving to another district to teach did so primarily because of salary considerations. However, the same study reveals that 61.7% of those surveyed cited salary as the reason they preferred working in their current school system over their former one, and 53.3% said that salary influenced their decision to migrate from one system to another.

CONCLUSION

After reviewing the record and applicable authority, we find that the salary equity plan under Tennessee Code Annotated § 49-3-366 does not include equalization of teachers' salaries according to the BEP formula because it contains no mechanism for cost determination or annual cost review of teachers' salaries, unlike the BEP approved in Small Schools II. This significant defect substantially undermines the effectiveness and legality of the plan and continues to put the entire plan functionally and legally at risk. In our view, no rational basis exists for structuring a basic education funding system consisting entirely of cost-driven components except for teacher salaries. Thus, the lack of teacher salary equalization according to the BEP formula continues to be a significant constitutional defect in the current funding scheme. Accordingly, we hold that the salary equity plan fails to satisfy the State's constitutional obligation to formulate and maintain a system of public education that affords substantially equal educational opportunity to all students. Therefore, the trial court's judgment dismissing the case is reversed, and the case is remanded for such further proceedings as may be appropriate. Costs of this appeal are taxed to the defendants and intervenors for which execution may issue if necessary.

E. RILEY ANDERSON, JUSTICE

Appendix D



BEP Task Force

June 2, 2014



BEP Components

BEP Components

- Original components established by the state board of education for the 1992-1993 school year
- By statute, the board has the authority to approve changes in the components but those changes must first be approved by the commissioners of education and finance & administration
 - *BEP Review Committee is charged with reviewing the BEP Components and issuing a report to the board*
- Prior to any amendments or revisions being effective, they must first be submitted to the education committees of the House and Senate for review and recommendation and then approved by resolutions of the House and Senate. (Not subject to amendment)
 - *Note BEP 2.0*
- Most recent revision prior to BEP 2.0 was in 2006 for FY 07 (at-risk; ELL improvements)
- Most recent component addition was in 2002 (ELL)

BEP Components (45)

- Instructional
 - Regular Education
 - Career and Technical Education (CTE)
 - Special Education
 - Elementary & Secondary Guidance
 - Elementary Art, Music and Physical Education
 - Elementary & Secondary Librarians
 - ELL Instructors and Translators
 - Principals
 - Elementary and Secondary Assistant Principals
 - System-wide Supervisors (Regular, Special & CTE)
 - Special Education Assessment Personnel
 - Social Workers & Psychologists
 - Staff Benefits & Insurance

BEP Components

- Classroom
 - K-12 At-risk Class Size Reduction
 - Duty-free Lunch
 - Textbooks
 - Classroom Materials & Supplies
 - Instructional Equipment
 - Classroom Related Travel
 - Vocational Center Transportation
 - Technology
 - Nurses
 - Assistants (Instructional, Special Education & Library)
 - Staff Benefits & Insurance
 - Substitute Teachers
 - Alternative Schools
 - Exit Exams

BEP Components

- Non-classroom
 - Superintendent
 - System Secretarial Support
 - Technology Coordinators
 - School Secretaries
 - Maintenance & Operations
 - Custodians
 - Non-instructional Equipment
 - Pupil Transportation
 - Staff Benefits & Insurance
 - Capital Outlay

How Does the BEP Work?

- Two Separate Parts:
 - **Funding** – Department of Education determines need.
 - **Equalization – based on Local Ability to Pay or Fiscal Capacity**
 - Fiscal Capacity Indices provided by:
 - » Tennessee Advisory Commission on Intergovernmental Relations (TACIR)
 - » UT Center for Business and Economic Research (CBER)

Determining Need - ADMs

- ADMs (average daily membership) drive the Formula – funded on prior year's ADMs.
- ADMs generate:
 - Positions – teachers, supervisors, assistants
 - Funding dollars – ADMs are multiplied by a Unit Cost for supplies, equipment, textbooks, travel, capital outlay, etc.
- Funding months and weighting
 - Month 2 – 12.5% Month 6 – 35%
 - Month 3 – 17.5% Month 7 – 35%

BEP Components Determining Formula Inputs

Components and Unit Costs

- Refer to BEP Handbook for Computation
 - Page numbers referenced
 - All positions are rounded to nearest .5 position



BEP Instructional Components

Components and Unit Costs

- Instructional Components
 - Direct instruction
 - 100% personnel
 - Salary unit cost \$40,447
 - Salary component adjusted by increases approved by the General Assembly
 - Benefits
 - » FICA (6.2%)
 - » Medicare (1.45%)
 - » TCRS (8.88% in FY14)
 - Health insurance
 - » Unit cost of \$5,346.24 (as of January 2014)
 - State funds on average 70% of instructional components



Regular K-12 Teachers

- Page 5
- Calculated on a system wide basis
- Funding ratios based on pupil-teacher ratios
 - Grades 7 – 9
 - Class size ratio 30:1
 - Adjusted within formula to allow for planning period to 25:1
 - Grades 10 – 12
 - Class size ratio 30:1
 - Adjusted within formula to allow for planning period to 22.08:1
 - Grades K – 6 provide planning period through music, art and physical education

CTE Teachers

- Page 6
- Calculated on a system wide basis
- Uses system wide 7 – 12 CTE FTEADM
- Funding ratios based on pupil-teacher ratios
 - Class size ratio 20:1
 - Adjusted within formula to allow for planning period to 16.67:1

Special Education Teachers

- Page 7
- Calculated on a system wide basis
- Uses the number of special education students identified and served
- Funding ratios based on pupil-teacher ratios for each option

English Language Learner Teachers

- Page 8
- Calculated on a system wide basis
- Uses a headcount of ELL students
- Funding ratios based on pupil-teacher ratio of 30:1

English Language Learner Translators

- Page 9
- Calculated on a system wide basis
- Uses a headcount of ELL students
- Funding ratios based on pupil-translator ratio of 300:1

Physical Education Teachers

- Page 10
- Calculated on a system wide basis
- Grades K – 4 ratio of 350:1
- Grades 5 – 6 ratio of 265:1

Elementary Art Teachers

- Page 11
- Calculated on a system wide basis
- Grades K – 6 ratio of 525:1

Elementary Music Teachers

- Page 12
- Calculated on a system wide basis
- Grades K – 6 ratio of 525:1

Elementary Guidance Counselors

- Page 13
- Calculated on a system wide basis
- Grades K – 6 ratio of 500:1
- Multi-system counties may prorate a guidance position if one or more systems do not generate a full position
 - Marion County 4.71
 - Richard City .29

Secondary Guidance Counselors

- Page 14
- Calculated on a system wide basis
- Grades 7 – 12 plus CTE ADMS ratio of 350:1
- Multi-system counties may prorate a guidance position if one or more systems do not generate a full position
 - McMinn County 8.45
 - Athens City .84
 - Etowah City .21

Elementary Librarians

- Page 15
- Calculated on *school level* basis for grades K - 8
- Enrollment:
 - Below 265 .5
 - 265 – 439 1.0
 - 440 – 659 1.0 (plus .5 library assistant)
 - Above 660 1.0 (plus 1 library assistant)

Secondary Librarians

- Page 16
- Calculated on *school level* basis for grades 9 - 12
- Enrollment:
 - Below 300 .5
 - 300 - 999 1.0
 - 1,000 – 1,499 2.0
 - Above 1,499 2.0 (plus 1 for each additional 750 students)

Principals

- Page 17
- Calculated on *school level* basis for all grade levels
- Enrollment:
 - Below 100 not allocated a principal
 - 100 - 224 .5
 - Above 225 1.0

Elementary Assistant Principals

- Page 18
- Calculated on *school level* basis grades K - 8
- Enrollment:
 - Below 660 not allocated an assistant principal
 - 660 - 879 .5
 - 880 – 1099 1.0
 - 1,100 – 1,319 1.5
 - Above 1,319 2.0

Secondary Assistant Principals

- Page 19
- Calculated on *school level* basis grades 9 - 12
- Enrollment:
 - Below 300 not allocated an assistant principal
 - 300 - 649 .5
 - 650 - 999 1.0
 - 1,000 – 1,249 1.5
 - Above 1,249 2.0 (plus 1 for each additional 250 students)

Regular Education Supervisors

- Page 20
- Calculated on a system wide basis
- ADMs:
 - Below 500 1.0
 - 500 – 999 2.0
 - 1,000 – 1,999 3.0
 - Above 1,999 3.0 (plus 1 for each additional 1,000 students)
- Supervises instruction, guidance, materials

Special Education Supervisors

- Page 21
- Calculated on a system wide basis
- Identified and Served funding ratio of 750:1

CTE Supervisors

- Page 22
- Calculated on a system wide basis
- FTEADM funding ratio of 1,000:1

Psychologists

- Page 23
- Calculated on a system wide basis
- Funding ratio of 2,500:1
- Multi-system counties may prorate a guidance position if one or more systems do not generate a full position
 - Loudon County 2.05
 - Lenoir City .95

Social Workers

- Page 24
- Calculated on a system wide basis
- Funding ratio of 2,000:1
- Multi-system counties may prorate a guidance position if one or more systems do not generate a full position
 - Lincoln County 1.91
 - Fayetteville City .59

Special Education Assessment Personnel

- Page 25
- Calculated on a system wide basis
- Identified and served funding ratio of 600:1

BEP Classroom Components



Components and Unit Costs

- Classroom Components
 - Classroom costs excluding professional personnel
 - Personnel
 - Rounded to nearest .5 position
 - Unit costs vary by position
 - Salary components adjusted by increases approved by the General Assembly
 - Benefits
 - » FICA (6.2%)
 - » Medicare (1.45%)
 - » TCRS (8.88% certified, 10.30% non-certified in FY14)
 - Health insurance
 - » Unit cost of \$4,989.82 (as of January 2014)
 - Other non-personnel costs
 - Unit cost is greater of calculated value or previous year's unit cost
 - State funds on average 75% of classroom components

School Nurses

- Page 28
- Calculated on a system wide basis
- Funding ratio of 3,000:1
- Each system receives funding for a minimum of one nurse
- Salary unit cost is \$40,447

Regular Teacher Assistants

- Page 29
- Calculated on a system wide basis for grades K - 6
- Funding ratio of 75:1
- Salary unit cost is \$20,100

Special Education Teacher Assistants

- Page 30
- Calculated on a system wide basis for special education students identified and served
- Funding ratio of 60:1
- Salary unit cost is \$20,100

Elementary Library Assistants

- Page 31
- Calculated on *school level* basis for grades K - 8
- Enrollment:
 - Below 440 0.0
 - 440 - 659 0.5
 - Above 659 1.0

At-Risk – Class Size Reduction

- Page 34
- Calculated on system wide basis of identified at-risk students
- At-risk currently defined as eligible for free or reduced price lunch
- Unit cost from prior year is inflated one year using CBER's deflator schedule
- Unit cost for FY14 is \$519.38 per identified at-risk student

Substitute Teachers

- Page 35
- Based on three years actual expenditures taken from Annual Financial Report (AFR) as entered by the systems into eReporting, divided by same year ADMs
- Most recent three years per ADM expenditures are averaged, then inflated up two years using CBER's deflator schedule
- Unit cost for FY14 is \$61.75

Alternative Schools

- Page 36
- Calculated using system ADMs
- Unit cost from prior year is inflated one year using CBER's deflator schedule
- Unit cost for FY14
 - Grades K-6 \$ 3.43
 - Grades 7-12 \$29.75

Duty Free Lunch

- Page 37
- Provides teachers with lunch period free from student supervision responsibility
- Calculated using system ADMs
- Unit cost from prior year is inflated one year using CBER's deflator schedule
- Unit cost for FY14 is \$11.00 per ADM

Textbooks

- Page 38
- Calculated using system ADMs
- Textbook unit cost is received from Curriculum and Instruction based on projected cost of current adoption
- Averaged with two prior years' unit costs
- Three-year average is inflated up two years using CBER deflator schedule
- Unit cost for FY14 is \$76.75 per ADM

Materials and supplies

- Page 39
- Calculated using system ADMs (Regular & Alternative, Special Education and CTE)
- Based on three years actual expenditures taken from Annual Financial Report (AFR) as entered by the systems into eReporting, divided by same year ADMs
- Most recent three years per ADM expenditures are averaged, then inflated up two years using CBER's deflator schedule
- Unit costs for FY14
 - Regular/Alternative Education \$ 74.50
 - Special Education \$ 36.50
 - CTE \$157.75

Instructional Equipment

- Page 40
- Calculated using system ADMs
- Based on three years actual expenditures taken from Annual Financial Report (AFR) as entered by the systems into eReporting, divided by same year ADMs
- Most recent three years per ADM expenditures are averaged, then inflated up two years using CBER's deflator schedule
- Unit cost for FY14
 - Regular/Alternative Education \$ 64.25
 - Special Education \$ 13.25
 - CTE \$ 99.75

Classroom-Related Travel

- Page 41
- Includes Professional Development, PD Related travel and local travel
- Calculated using system ADMs (Regular & Alternative, Special Education and CTE)
- Based on three years actual expenditures taken from Annual Financial Report (AFR) as entered by the systems into eReporting, divided by same year ADMs
- Most recent three years per ADM expenditures are averaged, then inflated up two years using CBER's deflator schedule
- Unit costs for FY14
 - Regular/Alternative Education \$ 14.00
 - Special Education \$ 17.25
 - CTE \$ 21.50

Exit Exams

- Page 42
- Calculated using system ADMs for grades 11 and 12
- Based on three year average cost of ACT and SAT for grade 11
- Based on three year average cost of Work Keys for grade 12
- Three-year averages are inflated up two years using the CBER deflator schedule
- Unit costs for FY14
 - Grade 11 \$35.75
 - Grade 12 (CTE) \$11.25

Technology

- Page 43
- \$20,000,000 designated for technology
- Distributed on a per ADM basis
- Per ADM amount in FY14 is \$20.90
- Total amount has not changed since BEP was adopted as state funding formula

Vocational Center Transportation

- Page 44
- Supplemental transportation for systems with vocational centers
- Based on the number of CTE students transported and the number of one-way miles
- Unit cost is derived from prior year actual expenditures reported by systems, then inflated up two years using the CBER deflator schedule
- Unit cost in FY14 is \$27.91

BEP Non-classroom Components

Components and Unit Costs

- Non-classroom Components
 - Personnel
 - Superintendent
 - Technology Coordinator
 - School-level personnel
 - Unit costs vary by position
 - Salaries adjusted for increases approved by the General Assembly
 - Benefits
 - » FICA (6.2%)
 - » Medicare (1.45%)
 - » TCRS (8.88% certified, 10.30% non-certified in FY14)
 - Health insurance
 - » Unit cost of \$7,484.73 (Superintendent and Technology Coordinator)
 - » Unit cost of \$4,989.82 (all other personnel)
 - Maintenance, Operations, Transportation and Capital Outlay
 - State funds on average 50% of non-classroom components



Superintendent

- Page 45
- Each county is allocated one superintendent
- In multi-system counties the position is pro-rated based on each system's ADMs
- Unit cost in FY14 is \$96,800

Technology Coordinator

- Page 46
- Calculated on a system wide basis
- Funding ratio of 6,400:1
- Salary unit cost is \$40,447

System Secretarial Support Personnel

- Page 47
- Calculated on a system wide basis
- System ADM
 - Below 500 1.0
 - 500 – 1,250 2.0
 - 1,251 – 1,999 3.0
 - Above 1,999 3.0 (plus 1 for every additional 1,000)
- Salary unit cost based on Education Research Service – salaries paid to support personnel in southern states and adjusted for increases approved by the General Assembly
- Salary unit cost for FY14 is \$36,200

School Secretarial Support Personnel

- Page 48
- Calculated on *school level* basis
- Enrollment:
 - Below 225 0.5
 - 225 – 374 1.0
 - Above 375 1.0 (plus 1 for every additional 375 students)
- Salary unit cost based on Education Research Service – salaries paid to support personnel in southern states and adjusted for increases approved by the Legislature
- Salary unit cost for FY14 is \$28,300

Custodians

- Page 49
- Calculated on per square footage basis:
 - Grades K-4 100 square feet per ADM
 - Grades 5-8 110 square feet per ADM
 - Grades 9-12 140 square feet per ADM
- Funding ratio is 22,376 square feet per custodian
- Salary based on Education Research Service – salaries paid to support personnel in southern states and adjusted for increases approved by the General Assembly
- Salary unit cost for FY14 is \$21,600

Non-classroom Equipment

- Page 52
- Includes equipment expenditures from non-instructional categories
- Calculated using system ADMs
- Based on three years actual expenditures taken from Annual Financial Report (AFR) as entered by the systems into eReporting, divided by same year ADMs
- Most recent three years per ADM expenditures are averaged, then inflated up two years using CBER's deflator schedule
- Unit cost for FY14 is \$18.75

Pupil Transportation

- Page 53
- Formula estimates the cost of transportation services provided by each LEA
- Major inputs
 - Number of students transported (ADT)
 - Number of miles students are transported
- Uses three-year averages of data from Annual Transportation Report and the AFR
 - Three-year average transportation cost per ADM (AFR)
 - Ratio of three-year ADT to ADM (Transportation Report)
 - Ratio of three-year average miles traveled to ADM (Transportation Report)
 - Percent of ADT to total ADM (Transportation Report)
- Three-year averages are inflated up two years using CBER's deflator schedule

Pupil Transportation (continued)

- Multiple regression model used to estimate the impact of four factors on each LEA's transportation spending over the prior three years
 - Average daily students transported (ADT)
 - Average daily special education students transported (SpEdADT)
 - Daily one-way miles driven
 - ADM
- Model estimates average statewide effects (coefficients) of these factors on the transportation costs
- Model multiplies coefficients by each LEA's factors to calculate the estimated cost of providing transportation services
- Estimated cost of transportation is entered into the BEP formula in non-classroom component

Maintenance and Operations

- Page 54
- Funds allocated on a per square foot basis
 - Grades K-4 100 square feet per grade level ADM
 - Grades 5-8 110 square feet per grade level ADM
 - Grades 9-12 130 square feet per grade level ADM
- Prior year per square foot cost inflated up one year using the CBER deflator schedule
- Unit cost in FY14 is \$3.12

Maintenance and Operations – Staff Benefits

- Page 55
- 60% of total maintenance and operations funding is allocated to salary for benefits calculations
- Benefits percentage in FY14 is 17.95% (FICA, Medicare and TCRS)
- Insurance percentage is ratio of insurance to total salary – 18.66% in FY14

Transportation – Staff Benefits

- 45% of total transportation funding is allocated to salary for benefits calculations
- Benefits percentage in FY14 is 17.95% (FICA, Medicare and TCRS)
- Insurance percentage is ratio of insurance to total salary – 18.66% in FY14

Capital Outlay

- Page 56
- Calculates cost of construction for elementary, middle and high schools
- Square footage
 - Elementary 100 square feet per ADM
 - Middle 110 square feet per ADM
 - High 130 square feet per ADM
- Construction cost per square foot
 - Elementary \$134 per square foot
 - Middle \$134 per square foot
 - High \$132 per square foot

Capital Outlay (continued)

- Additional costs included
 - 10% of construction cost for equipment
 - 5% of construction cost for architect fees
 - 6% of construction cost for debt retirement
- Useful life of building estimated at 40 years
- Grand total of construction costs divided by 40 to determine current year capital outlay funding

Cost Differential Factor (CDF)

- Used to adjust BEP funding in systems where the cost of living in the county is greater than the statewide average
- Compares county wages in non-government industries to statewide wages
- Counties with above-average wages according to this index receive an increase
- Increase is applied to salaries, retirement contributions and FICA contributions
- Eliminated in BEP 2.0
- Counties receiving an adjustment currently receive 50% of the calculated CDF

QUESTIONS?



IN.GOV/Education
FACEBOOK.COM/TennesseeEducation
TWITTER: @TNedu

Appendix E



TACIR



Fiscal Capacity in the BEP Formula—the TACIR Model *A presentation to Governor Haslam's Task Force on Education Funding*

Lynnise Roehrich-Patrick
Executive Director, TACIR

7 May 2014

www.tn.gov/tacir



Why Equalize Education Funding?

- Tennessee's Constitution requires substantially equal educational opportunity for all students.
- Different local governments cannot raise the same amount of revenue per student with the same tax rates.
- The state must make up the difference.

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*If a county has a relatively low total assessed value of property and very little business activity, that county has, in effect, **a stone wall** beyond which it cannot go in attempting to fund its educational system regardless of its needs. In those cases, **local control is truly a “cruel illusion”** for those officials and citizens who are concerned about the education of the county’s school children.*

Tennessee Supreme Court, 1993

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Four Steps in Determining BEP Funding

1. **Basic Education Program Funding Formula:** Establishes total amount needed by each school system
2. **Local Share, State Share:** Set by law to divide responsibility between the state and local governments
 - **Instructional costs:** 30% local, 70% state (phasing up to 75% state via appropriations bill)
 - **Other classroom costs:** 25% local, 75% state
 - **Non-classroom costs:** 50% local, 50% state
3. **Fiscal Capacity:** Used to allocate local share among counties
4. **State makes up the difference:** total cost of the BEP minus the local share for each school system

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Major Fiscal Capacity Principles

I

Fiscal capacity should be estimated from a comprehensive, balanced tax base.

II

Fiscal capacity should focus on economic bases rather than policy determined revenue bases.

III

Tax base estimates should be as current and accurate as possible.

IV

Similarly situated taxpayers should be treated similarly in terms of taxes paid and the services received.

V

Tax exportability should be measured—resident taxpayers in different jurisdictions should have similar fiscal burdens.

VI

Fiscal capacity measures should reflect service responsibilities that vary across jurisdictions.

VII

Estimates should be based on multiyear averages to mitigate data and statistical errors.

TACIR



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The Starting Point

Fundamental Principles of Equalization

- *Substantially Equal Educational Opportunity for All Students*
- *Comprehensive Measure of Actual Fiscal Structure*
- *Taxpayer Equity*

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The Starting Point

Fundamental Principles of Equalization

- *Substantially Equal Educational Opportunity for All Students*
- *Comprehensive Measure of Actual Fiscal Structure*
- *Taxpayer Equity*

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Comprehensive Measure of Actual Fiscal Structure

- *Statutory authority of counties to tax*
- *Statutory authority of cities to tax*
- *Statutory authority of special school districts (SSDs) to tax*
- *Statutory requirement of sharing by counties with cities & SSDs*

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Taxpayer Equity

- *Similarly situated taxpayers treated similarly—
consideration of **economic well-being***
- *Differently situated taxpayers treated differently—
consideration of **tax exportability***

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Fiscal Capacity

- Answers the question: *How much must each local government contribute to the BEP?*
- Measures: *The potential ability of local governments to fund education from their own taxable sources, relative to their cost of providing services.*
- County-level model: *All systems within each county pay the same percentage of their BEP allocation.*

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Process

- A set of averages drawn from actual tax bases, income, etc. is compared with actual revenue.
- The amount of weight to give each factor is determined by estimating the statistical relationship between them.
- Multiple regression analysis
 - a common statistical method used to understand relationships among factors for a wide range of issues
 - simultaneously compares all variables for all counties to determine how much weight to give each factor
- Weights are multiplied by the factors for each county to estimate potential local revenue for each of the 95 counties.
- Actual revenue is used as a control.

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Factors Used to Determine Fiscal Capacity

- **Own-Source Revenue Per Pupil:** The actual amount of money local governments raise to fund their schools divided by enrollment (average daily membership (ADM)), the control factor that keeps the estimates within the bounds of what local governments actually do.
- **Taxable Sales Per Pupil:** The locally taxable sales for the county area divided by ADM, a measure of the local ability to raise revenue.
- **Equalized Property Assessment Per Pupil:** The total assessed property value for the county area, equalized across counties using appraisal-to-sales ratios, and then divided by ADM, a measure of the local ability to raise revenue.
- **Equalized Residential and Farm Assessment Divided by Total Equalized Assessment (Tax Burden):** A proxy for a county's potential ability to export taxes through business activity—the higher this number, the lower the level of business activity and the higher the risk of heavy tax burdens on county residents.
- **Per Capita Income:** A proxy for county residents' ability to pay for education and for all other local revenue not accounted for by property or sales taxes.
- **ADM Divided by Population (Service Burden):** A reflection of spending needs. The larger the number of public school students per 100 residents, the greater the fiscal burden for each taxpayer.

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Effect of Changes in Fiscal Capacity Factors

The relationship between fiscal capacity and specific variables (other things being equal)

Factor Increases . . .	Effect on Fiscal Capacity
Property Tax Base	↑Increases
Sales Tax Base	↑Increases
Per Capita Income	↑Increases
Residential & Farm Share of Property	↓Decreases
Service Burden	↓Decreases

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Appendix F

CBER Fiscal Capacity Model

William F. Fox, Director
Center for Business and Economic Research
The University of Tennessee, Knoxville

May 7, 2014

THE UNIVERSITY OF TENNESSEE
KNOXVILLE
CENTER FOR BUSINESS &
ECONOMIC RESEARCH

Grant Formula Characteristics

- Simplicity
- Transparency
- Achieve objectives
 - Fairness in addressing differences in student population characteristics and revenue capacity
 - Encourage desired behavior or discourage undesired behavior – governments respond to formulae

May 7, 2014

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2

Two Sides to the BEP

- Expenditure Needs – 45 factors that determine what expenditures districts need to make to provide minimum schooling
- Revenue Capacity – used to determine the contribution that each local jurisdiction must make to finance the total local share of the expenditure needs

CBER Approach to Revenue Capacity

- Estimates the revenue that a county can raise if it levies average tax rates on the bases that are permitted for local taxation
 - Property tax base
 - Sales tax base
 - Bases as determined by statute before any adjustments by local governments
- Could add income as a component of the structure, though it shifts the concept of revenue that would be raised at average rates

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4

CBER Fiscal Capacity Formula

$$\left[\begin{array}{c} \text{County} \\ \text{Local Option} \\ \text{Sales Tax} \\ \text{Base} \end{array} \right] \times \left[\begin{array}{c} \text{Average} \\ \text{Sales} \\ \text{Tax} \\ \text{Rate} \end{array} \right] + \left[\begin{array}{c} \text{County} \\ \text{Equalized} \\ \text{Property Tax} \\ \text{Base} \end{array} \right] \times \left[\begin{array}{c} \text{Average} \\ \text{Property} \\ \text{Tax} \\ \text{Rate} \end{array} \right]$$

Bledsoe County*

Bledsoe County Local Option Sales Tax Base	State Average Sales Tax Rate	Bledsoe County Equalized Property Tax Base	State Average Property Tax Rate
↓	↓	↓	↓
(\$30.1mil x 1.5863%)		+ (\$205.7mil x 1.1769%)	
= \$2.898 mil of capacity, or 0.1025 percent of the total state capacity			

Bledsoe County* and Trousdale County*

BLEDSE (\$30.1mil x 1.5863%) + (\$205.7mil x 1.1769%)
= \$2.898 mil of Capacity

TROUSDALE (\$30.4mil x 1.5863%) + (\$127.6 mil x 1.1769%)
= \$1.984 mil of Capacity

*FY2012 Fiscal Capacity

Two Thoughts on Capacity

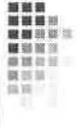
- Revenue capacity as used here is a relative concept, so design is very important because any changes that lower one county raise another
- Formulae should be independent of county policy choices or they will create incentives for undesired behavior
 - Tax rates used in the calculations do not depend on how much the individual county collects for education or which tax is relied upon more heavily – only on average values for state
 - Tax bases should be independent of local decisions so that county policies do not shift the burden to other Tennessee counties (PILOTs)

Data Calculations



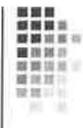
- Complications are in the data
- All data available from public sources
- A three-year average of the tax bases is used to smooth out changes up or down

Property Tax Base



- All property tax base data are collected from the Office of the Comptroller and are publicly available
- Equalized assessed tax base from all forms of property – residential, business, public utility
- Add estimated in lieu of property tax base so that county decisions do not affect other places

Sales Tax Base



- All sales tax base data are obtained from the Department of Revenue
- County sales tax base
- Revenues collected in tourist development zones or convention and sport center zones are included so that county/municipal decisions do not affect other counties capacity

District versus County Capacity



- County fiscal capacity is simply the addition of the fiscal capacity of each local jurisdiction
- For example, Blount County's fiscal capacity is the sum of Maryville City, Alcoa City and the rest of Blount County. Maryville City contributes all of its tax bases to Blount County.
- But, the implications are hard to discern because a Blount County tax is levied in all three places (where the base is located) but the revenues are shared on a per public basis.

Blount County Total Property Assessment 2013



Alcoa City	\$463.1
Maryville City	\$810.4
Blount County Remainder	\$1,993.2
Blount County Total	\$3,266.7

Source: Comptroller of the Treasury, Division of Property Assessments, 2013 Tax Aggregate Report of Tennessee.

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BEP Fiscal Capacity Inputs

Average Sales Tax Rate =

$$\frac{\text{Sum of All Sales Tax Spent on Education}^*}{\text{Sum of All Local Option Sales Tax (less add'l cities) Base}}$$

Average Property Tax Rate =

$$\frac{\text{Sum of All Property Tax Spent on Education}}{\text{Sum of All Equalized Property Tax Base}}$$

*50.0% of collections or reported amount if greater than 50%

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Appendix G

Setting the conditions for productivity: Student Based Allocation

Presented by:
Marguerite Roza
Director, Edunomics Lab
Associate Research Professor, Georgetown University
mrl170@georgetown.edu

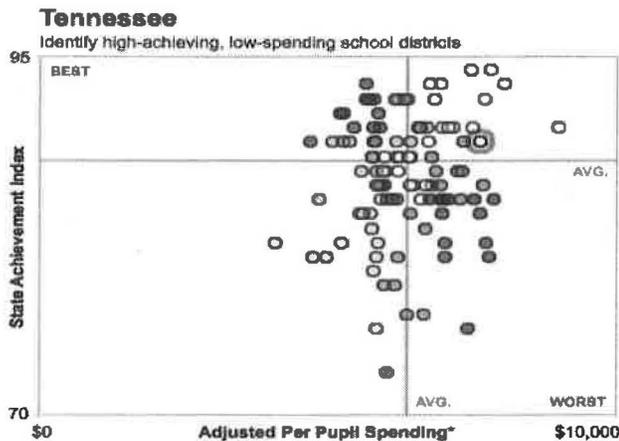
Current conditions

- ⇒ Over next decade, costs will likely escalate faster than revenue.
- ⇒ We haven't yet asked this system to work on getting the most bang for the buck. The result: Poor relationship between spending and outcomes.
- ⇒ Some schools are already more "productive" than others. (And two schools can spend the same money in the same way and get different results.)
- ⇒ System productivity hinges on the state's allocation system.



2

Districts within states vary on spending, outcomes and ROI



Data from the ROI project at the Center for American Progress

3

Current conditions

- ⇒ Over next decade, costs will likely escalate faster than revenue.
- ⇒ We haven't yet asked this system to work on getting the most bang for the buck. The result: Poor relationship between spending and outcomes.
- ⇒ Some schools are already more "productive" than others. (And two schools can spend the same money in the same way and get different results.)
- ⇒ System productivity hinges on the state's allocation system.

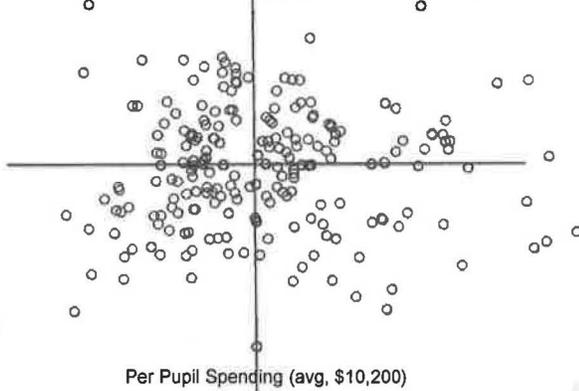


4

Relationship between spending and outcomes is no better at the school level.

All WA State Elementary Schools with > 75% F/R/L

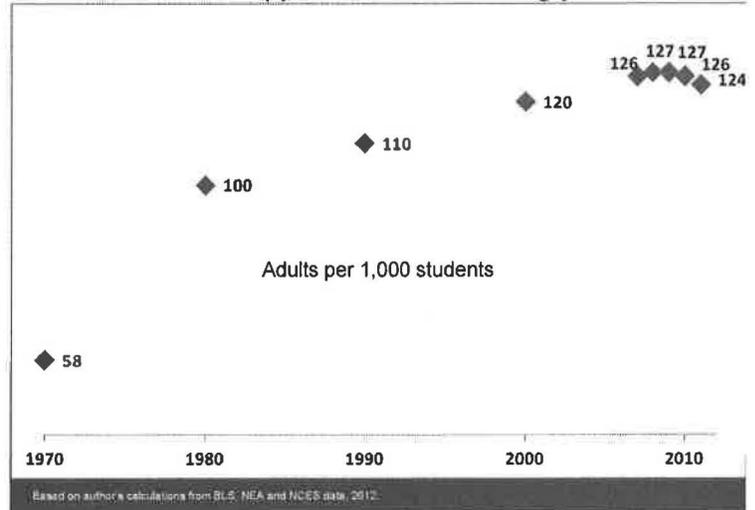
Math performance



For information on this analysis, please contact Marguerite Roza, MR1170@georgetown.edu



What will happen to staff in coming years?



Financial models show staffing innovations that expand "reach" have productivity implications.

E.g. High performing teachers could earn sizable bonuses for taking on 3 more students, by reallocating the savings.

	Elementary
Existing class size	21.6
Current average teacher salary	\$50,620
Bonus per teacher per additional student	
Bonus per teacher for taking 3 additional students	

Analysis by Suzanne Simburg on Cypress-Fairbanks district in TX.



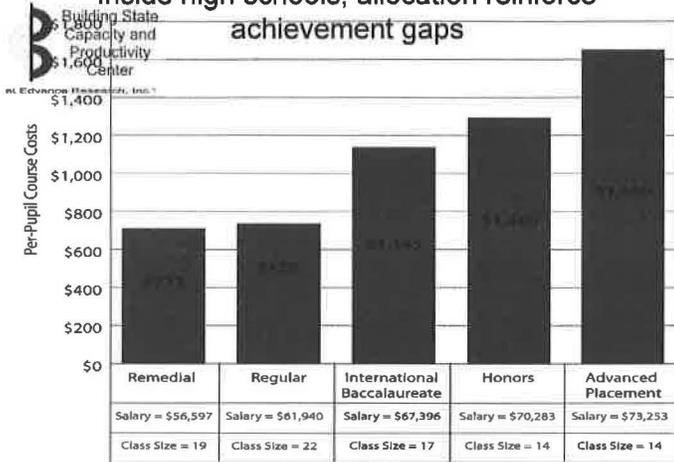
What do you prefer?

- \$5K bonus 83% or 2 fewer students in each class you teach
- \$5K bonus 85% or 1/5 of an aide
- \$5K bonus 63% or 3.5 hours more prep time per week



Survey by Golshaber & DeArmond

Inside high schools, allocation reinforce achievement gaps



Analysis by author on a north-west district

The goal:
Structure funds so that funds are used to leverage greatest possible outcomes

Innovations provide insight into productivity improvements: Rocketship

Classroom #1	Classroom #2	Classroom #3	Classroom #4
Humanities teacher #1	Math/sci teacher	Humanities teacher #2	Tech lab
	Tech lab		Math/sci teacher
Math/sci teacher	Humanities teacher #1	Tech lab	Humanities teacher #2
Tech lab		Math/sci teacher	

Boas and Steingard (2012) Improving Toward Sustainability: How Computer Labs Can Enable New Staffing Structures and Fine-Tune Schools in Crisis paper series, CRPE

An allocation system to support productivity

1. Equity -- Equity per student or student type
2. Efficiency and effectiveness
 - Aligns spending with students not processes.
 - Compares spending with outcomes.
3. Flexibility and innovation
 - Prioritize funding flexibility so that districts and schools are free to pursue productivity improvements
 - Schools and districts can apply funds in line with the strengths/weaknesses of each school community
4. Transparency
 - Clarity in allocation
 - Clarity in measurement of outcomes
 - Access to spending practices from high productivity peers

Student based allocation

☐ Structure state allocations to follow students, not processes, or purchased inputs.

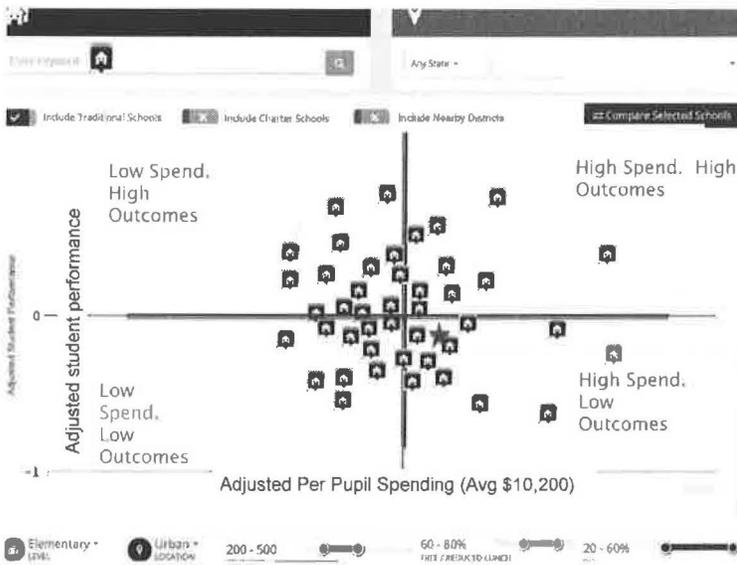
- Eliminate targeted funds for salaries, class sizes, programs, reimbursements, etc.
- Allocate a fixed amount of funds per student type with greater amounts for higher student needs.

☐ Remove state regulations that inhibit resource decisions, such as staffing requirements, schedule prescriptions, etc.

- Where not possible, institute a waiver mechanism

☐ State shares information on spending vs outcomes *by school*.

☐ State celebrates high productivity schools



Generate information to guide leaders to focus on productivity.

Compare Spending:

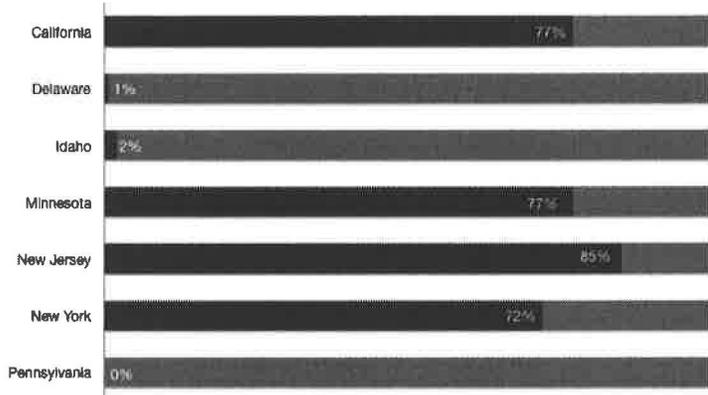
★ your school	○ selected schools (4)	
Central services.....	3,201	1,805
Instruction (11.9%).....	3,171	3,786
cert salaries.....	2,812	2,701
benefits.....	307	280
services/contracts.....	0	190
software.....	47	0
salaries.....	97	110
benefits.....	26	0
services.....	5	17
School Leadership.....	572	159
Guidance/Counseling Svcs.....	140	52
Social Work Services.....	0	0
Health Services.....	78	0
Food.....	107	88
Co-curricular.....	50	290
Plant Maint/Operation.....	629	412
Security/Monitoring.....	9	0
Data Processing Svcs.....	0	8,115
Regular.....	4,703	5,592
Gifted & Talented.....	0	0
Career & Technical.....	0	0
Students with Disabilities.....	547	834
Accelerated Education.....	59	26
Bilingual.....	152	525
Athletic Programming.....	29	180

High ROI schools are in systems that spend 43% less on central services

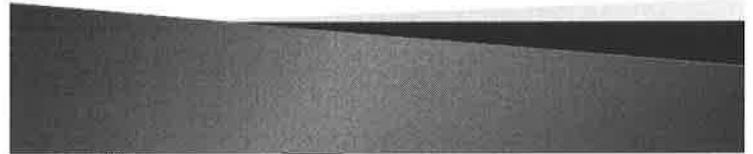
Higher ROI schools spend about 200% more on software

Higher ROI schools spend 32% less on plant maintenance

What share of state/local allocations follows students?



Marguerite Roza
Research Associate Professor
Director, Edunomics Lab
Georgetown University
MR1170@georgetown.edu



Appendix H



Tennessee School Funding Task Force

Nashville, Tennessee
August, 2014

Michael Griffith
School Finance Consultant
Education Commission of the States

Education Commission of the States

Education Commission of the States

- ▶ Founded in 1965 to enlighten, equip and engage education policy makers
- ▶ Provides nonpartisan unbiased advice to policymakers throughout the country
- ▶ 53 member states, territories and the District of Columbia
- ▶ Web Site: www.ecs.org

Education Commission of the States

School Funding Presentation

- Overview of State Funding Formulas
- Discussion of various school funding components
- Thinking about funding changes in Tennessee
 - Major overhaul or
 - Minor Changes

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Most Common School Funding Question

Why do we always have to adjust our school funding formula almost every year?

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Resource Allocation System (6 states)

1. Identify education components
2. Cost-out each component
3. Calculate the amount of resources for each district should receive
4. Determine state vs. local split
5. Add on outside funding (*capital, transportation, other*)

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Tennessee BEP Components

Instructional Components

1. Regular Education
2. Vocational Education
3. Special Education
4. Elementary Guidance
5. Secondary Guidance
6. Elementary Art
7. Elementary Music
8. Elementary Physical Education
9. Elementary Librarians (K-8)
10. Secondary Librarians (9-12)
11. ELL Instructors
12. ELL Translators
13. Principals
14. Assistant Principals Elementary
15. Assistant Principals Secondary
16. System-wide Instructional Supervisors
17. Special Education Supervisors
18. Special Ed Early Intervention
19. Vocational Education Supervisors
20. Special Ed Assessment Personnel
21. Social Workers
22. Psychologists
23. Staff Benefits and Insurance

Classroom Components

1. K-12 At-risk Class Size Reduction
2. Duty-free Lunch
3. Textbooks
4. Classroom Materials & Supplies
5. Instructional Equipment
6. Classroom Related Travel
7. Vocational Center Transportation
8. Technology
9. Nurses
10. Instructional Assistants
11. Special Education Assistants
12. Substitute Teachers
13. Alternative schools

Non-Classroom Components

1. Superintendent
2. System Secretarial Support
3. Technology Coordinators
4. School Secretaries
5. Maintenance & Operations
6. Non-Instructional equipment
7. Pupil Transportation
8. Staff benefits & Insurance
9. Capital outlay

Why Have States Adopted Resource Allocation Systems?

- Clarity in the amount of resources that a district/school receives from the state
- States can use this system to dictate the number of teachers (and other resources) that should be in a school

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Why Have More States Not Adopted This System?

- It is seen by some as a “top-down” system
- No matter how many components you put into the system you may miss some
- Calculating the cost of each “education component” is time consuming both for the state and districts

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Foundation Formula (32 States)

1. Determine foundation/base amount
2. Count students with weights
3. Multiply student count by the foundation amount
4. Determine state vs. local split
5. Add on outside funding (*capital, transportation, other*)

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How Do States Determine Foundation Amounts?

- Some states conduct studies to determine their foundation amount (*Maryland, Rhode Island, Oregon*)
- Other states use a set of educational cost components (*Georgia*)
- The majority of states use a number that is determined through the state's budget process

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What Are Weighted Counts?

- In a foundation formula general education students are given a weight of 1.0
- Students with special needs are given additional weights

For Example: If it is determined that an At-risk student requires 50% additional funding then they would be given an additional weight of 0.5

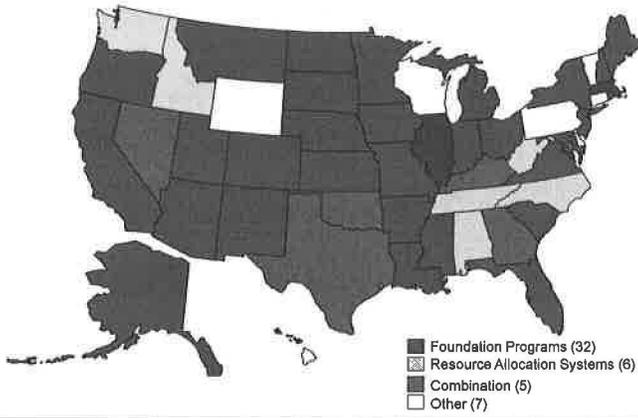
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Why do so Many States Use a Foundation Formula

- Easy to establish
- Easily adjusted to meet a state's/district's educational needs and economic circumstances
- Provides districts with autonomy in decision making
- Has been accepted by state courts in both equity and adequacy lawsuits

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School Funding Formulas



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Issues In School Funding

- Measuring a district's wealth
- High-need students
 - Special education
 - At-risk students
 - English Language Learners
- Regional Cost Adjustments

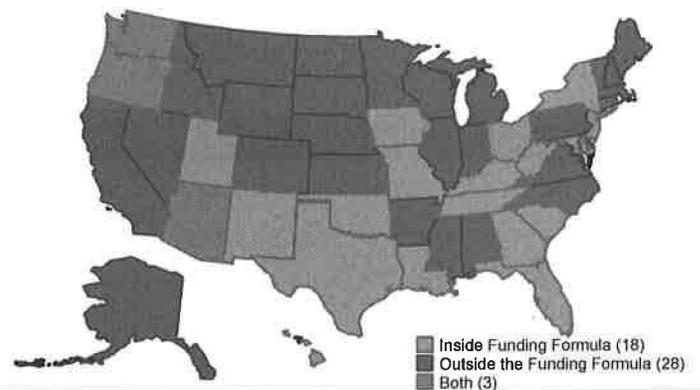
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Measuring A Districts Wealth

- The majority of states use property values as the only measure of wealth (*41 states*)
- 8 states use other methods (*CT, MD, MA, NJ, NY, RI, TN & VA*)
- Tennessee uses property value and sales tax base – this measures revenue but does not necessarily measure wealth

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Special Education Funding



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Special Education

- 1st generation
 - Single weight/dollar amount or
 - Reimbursement
- 2nd generation
 - Multi-level based on disability
- 3rd generation
 - Based on services provided
- Some states are using a “census based” system

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At-Risk Student Funding

There are 3 issues with at-risk funding:

1. How does the state identify which students are at-risk?
2. What additional funding will the state provide?
3. How will the state provide that funding to districts?

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Identifying At-Risk Students

- Of the **35** states that provide at-risk funding – **23** use some form of free/reduced price lunch to identify at-risk students
 - **15** states use free or reduced price (F/R L) lunch as their sole identifier for at-risk funding
 - **3** states use only free lunch as an identifier
 - **5** states use F/R L as one of the measures for identifying at-risk students

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Why Do States Use Free/Reduced Price Lunch

- A good tool for identifying at-risk students
 - Accounts for more than 57% of the variations in student achievement across schools
- Easy number to collect
 - This number is already collected by the federal government
- Consistent over time

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Issues with F/R Lunch as a Measure

- Free/Reduced price lunch does not identify all students who are at-risk of failing
- The number of F/R lunch students decreases as students grow older
- More states are adopting student achievement measures as an identifier for at-risk students

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Other At-Risk Identifiers

- Some states provide at-risk funding to districts based on total enrollment (Florida & West Virginia)
- Some states use student achievement measures as an identifier for at-risk students
 - Low performing students (Georgia & Utah)
- Some states make use of other poverty figures instead of F/R lunch
 - Student from low income families (Nebraska, North Carolina & Vermont)
 - Qualification for Title I (Montana & New Mexico)

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At-Risk Funding

- Funding Levels: This will vary depending on what goals the state has set for their at-risk population
- Distribution: Some states mandate programs for at-risk students (*after-school, summer school, reading programs*) others provide freedom to districts

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English Language Learners

Public schools are mandated to provide the academic and fiscal resources to help ELL students to overcome language barriers and gain English fluency

(U.S. Civil Rights Act of 1964 and Equal Opportunity Act of 1974)

The federal government provides Title III funding to states to help them achieve this goal

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The Cost of an ELL Education *What the Research Says*

- National studies recommend between 14% and 100% additional funding per ELL student
- Research has also shown that there are factors that can influence costs, including:
 - Small districts with few ELL students
 - Large districts with a high density of ELL students
 - Educating a student population with multiple languages

Education Commission of the States

What are States Doing

- 42 states provide some form of additional funding for ELL students
- The amount of additional funding ranges from 10% (Texas) to 99% (Maryland) (*AIR, 2012*)
- The average additional funding that states provide equates to 38.7% (*AIR, 2012*)

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Time Limits for ELL Students

- Arizona (Proposition 203)
 - *“...require that all classes be taught in English except that pupils who are classified as “English Learners” will be educated through sheltered English immersion programs during a temporary transition period”*

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Regional Cost Adjustments

- These programs are designed to take into account the fact that the cost of delivering educational services in some districts is higher than the state average
- About a dozen states have some form of RCA in their formula
- Most state programs are based on salary costs – but some states are looking at the cost of “hard to staff” schools

Education Commission of the States

Other Issues to Think About

1. Connecting funding to student outcomes
2. Transportation & capital funding
3. Funding virtual learning programs
4. Migrant student populations
5. Other emerging issues

For More Information

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Appendix I

Basic Education Program (BEP) Task Force

March 24, 2014

Minutes

The first meeting of the Governor's Basic Education Program (BEP) Task Force was held on March 24, 2014 at 1 p.m. in the Executive Conference Room of the Tennessee State Capitol.

Members present: Commissioner Kevin Huffman (chair); Representative Harry Brooks; Mr. Mark Cate; Mr. David Connor; Senator Dolores Gresham; Mr. Chris Henson; Mr. Kevin Krushenski; Commissioner Larry Martin; Dr. Gary Nixon; Mr. Larry Ridings; Ms. Lynnise Roehrich-Patrick; Comptroller Justin Wilson.

Governor Haslam began by thanking all of the members for serving on the BEP Task Force. He noted that school finance decisions are challenging and that education is a major focus of this administration. Tennessee has had the fourth largest increase in education spending in the country during his administration and has continually increased the share of education spending in the state budget. Research shows that increased funding does not always lead to better outcomes, but we have a duty to reach a certain level of equity for all systems across the state. Governor Haslam added that there will always be questions about how the Basic Education Program (BEP) funding formula will work. The current BEP formula is in part a result of court decisions, and we are currently in a place where 50 percent of the total BEP is from one funding model and 50 percent is from the other. The state is fully funding the BEP and has continued to grow its funding, but it would take a substantial additional amount of money to fully fund BEP 2.0. He has heard concerns from across the state about the formula, and it has been seven years since the last major changes were made. Seven years is a substantial amount of time and it is time to make sure that the formula is as up-to-date as possible. Governor Haslam stated that the administration does not have a predetermined outcome for the work of the task force. The administration wants to make sure that there is a formula that is equitable, in line with the court's guidance, clear, fair, and has a consistent way to determine fiscal capacity while also including the right components for today's schools. He asked for a report outlining the task force's findings and recommendations by the end of 2014.

Mr. Stephen Smith, assistant commissioner for policy and legislation at the Tennessee Department of Education then gave a presentation with an overview of the BEP and its historical context. Gov. Haslam asked what the state education funding program was prior to 1992. Mr. Smith replied that at that time, the state funding program was more of a straight per pupil allocation. Mr. Larry Ridings added that the Tennessee Foundation Program was 92.5 percent state funding and 7.5 percent local, with the local funding purely based on property taxes. Regarding slide 17, Mr. Kevin Krushenski asked if any districts would be "below water" or on "baseline" if the state enacted BEP 2.0. Mr. Smith replied yes, and stated that we can run a report to find out the exact number of districts. Representative Brooks asked what it would cost if we fully funded BEP 2.0. Mr. Smith responded that it would cost \$147 million. Mr. Smith stated the BEP handbook will be completely updated by the next task force meeting.

Commissioner Huffman invited members to share their individual perspectives on priorities and concerns for the task force's work. He began by reiterating that the administration does not have a preordained perspective on a destination, but that the task force should wind up with something that is fair and supports academic outcomes. He noted that he has visited all of Tennessee's school systems and there is enormous diversity throughout the state, but one thing that stands out is that the smallest and most rural systems have the least central office capacity. These offices find that they have a small

number of people with three to four jobs each. As the work that our systems are engaging in becomes more complex, it becomes increasingly difficult for smaller, more rural districts to keep up with that work. Some things that have really helped academic outcomes around the state, like instructional coaches, are something that rural systems simply do not have the capacity for. He also observed that some components of the BEP formula have not evolved with time. Specifically, technology has been funded at the same level for a long time, but schools' needs are very different today than in the past. The task force should consider what components might be missing and whether the components fit current needs.

Senator Dolores Gresham said the first concern is academic achievement outcomes and ensuring whatever the state does will lead to academic achievement. Whatever the state does must be very respectful of LEA autonomy. The state should ensure flexibility for LEAs to make their own decisions on how they spend their resources and should cut down on state mandated categories.

Mr. Ridings agreed that the formula components must be looked at because some are underfunded, misconfigured, or simply missing. He stated that he was more concerned with the equalization model than the actual components. There is a disparity in how the two formulas address equalizing counties. The concern is not so much overall cost, but rather if there are differences between rural and urban districts, and if the models favor one area over the other. Even if there may not be a major difference in the end in overall cost, the task force needs to look at the individual system-level impact.

Ms. Lynnise Roehrich-Patrick encouraged everyone to look at the issue from the perspective of the entire state and students. She also suggested looking into missing components, such as funding central offices. For example, the BEP has never funded any finance staff. She added that she would like to see the integrity of BEP's concept maintained. Its complexity can create difficulty in understanding, but it is also the main thing that supports continued funding for systems in a way that the old system did not. With the BEP, one cannot simply pick a number to appropriate and then back into how to fund it. She also stated she appreciates the effort to fund the formula even as it drives costs up for the state. Governor Haslam's commitment to education funding is extremely impressive. Going forward, that commitment should be maintained and made more effective by improving equity and adequacy.

Comptroller Justin Wilson stated that education accounts for 40 percent of the state budget, and should therefore be transparent, understandable, and verifiable.

Mr. Kevin Krushenski agreed with the comptroller, and said that he agreed with an outcomes perspective. He said that the component review structure is right, with the BEP review committee annually reviewing the components. He stated that one can argue how effective it has been but it is the right idea and has the right purpose. Equalization of the formula needs to be fair and transparent. He also stated that he keeps hearing from cities that they want to better understand maintenance of effort and that the state should consider developing a more modern perspective on maintenance of effort.

Dr. Gary Nixon noted that the BEP review committee publishes a report each year on improving the formula components and funding levels. Due to restrictions on funding, there has not been any ability to act on many of those recommendations. He would like to put some of those reports on the table for consideration of those recommendations. Commissioner Huffman confirmed that those reports will be made available to all the members of the task force.

Mr. Chris Henson stated that while many of the review committee reports may look more to adequacy, that equity is also important. For example, English Learner (EL) students and adequate resources is a long-standing recommendation in the BEP review committee report, specifically calling for reducing the ratio of EL pupils to teachers. Mr. Henson added the funding formula itself is based on prior year enrollment with some growth funding, but does not fully fund all growth. He suggested that it would make sense to fund the actual number of students being educated in that year and without having a floor or ceiling for growth funding. He voiced concern about eliminating the cost differential factor (CDF). Using the CDF may not be the best method but there has to be some way to differentiate the cost of doing business from one area or county to another. Eliminating the CDF completely would make the inaccurate assumption that it costs the same to do business anywhere in Tennessee by ignoring variances in the cost of competing with private business, cost of living, and cost of wages. He also noted that fiscal capacity is currently calculated county-wide, but there are differences between the 95 counties and 130 plus districts. The fiscal capacity of a county may not accurately reflect the city school system, and fiscal capacity should instead be considered at a school system level. Mr. Henson stated that he agreed with the comments on focusing on student outcomes. He noted that many of the current components are input-based, like how much money the district spent in prior years, but that may not be the best way to determine the funding formula. He stated that he wholeheartedly agreed with the concept that the BEP is a funding formula rather than a spending plan, and it gives districts a great deal of flexibility. Mr. Henson said it is important to have something like maintenance of effort in place, but with the current definition, it does not matter how much the funding grows from one year to the next or how much the local government has to pay the next year in order to get the same level of service as they are currently receiving. Instead it only requires a flat level of budgeted local revenue. There should be some provision that is based on inflation or additional student enrollment that helps consider when the maintenance of effort test is applied.

Mr. David Connor said he agreed overall that equalization affects people, and that he has heard this from both rural and urban districts. When the fiscal capacity rules change, it is hard to explain and understand how reality did not change but the rules changed. Increasing funding at the time of the changes was key. Education makes up 40 percent of state dollars, 65 to 70 percent of a typical county budget, and capital needs can be on top of that. Mr. Connor noted that urban districts may face challenges around having 40 or more languages spoken throughout the district, small rural systems may be faced with capacity challenges, and high growth counties may be opening one to two new facilities a year and facing new capital needs. The input basis of the formulas can depress funding overall, for example, during a recession, funding can artificially depress even though the needs are still there. He went on to note that the state is funding 70 percent of the instructional salaries while BEP 2.0 calls for 75 percent at full implementation. It is this discrepancy that makes up a large portion of what is left to fund BEP 2.0 and locals are left trying to fill the void.

Representative Brooks stated that he liked BEP 2.0 because of the salary issues that Mr. Connor raised. He also said that if the objective is to be college and career ready, we need to measure our policies against that concept. If a child is ready to graduate from high school in December, we should encourage that. We then need to apply all the other policies toward that, for example, the policies on weighting attendance counts in later months more than those in earlier months. He continued that the AP programs, dual enrollment, etc. were not as pronounced when BEP was set up. It does not make sense to have a senior student taking classes just for the sake of being enrolled in school.

Mr. Mark Cate stated that when he was a school board member, he realized how little he understood the BEP. If a funding formula is a good formula, it will be complex, but that the comptroller's point is

well-taken as well. After a year and a half of a lot of conversations about BEP, he has realized that a lot has changed in seven years [since the last major formula revisions] and even in the last two years. Addressing and accommodating the outliers is really important. He ended by reiterating that the administration does not have an end game in mind. Governor Haslam said in the State of the State that we are not looking for our answers; rather we are looking for the right answers. We all know how hard it is to get this totally right, but this is the challenge before us.

Mr. Larry Martin stated until a few months ago, he had not thought much about BEP. The points made about the components and what to include in the formula were important, and he agreed with the appropriateness of looking at the current formula to see how it is structured. He acknowledged the comment that circumstances among the 95 counties have changed. He also noted that part of the overall discussion around BEP and funding should be the state's fiscal capacity as a whole.

Commissioner Huffman proposed the following meeting options for the next two meetings of the BEP task force: Wednesday, May 7th from 10 a.m. to 12 p.m. or Thursday, May 8th from 2 to 4 p.m., and Monday, June 2nd from 2 to 4 p.m. or Tuesday, June 3rd from 10 a.m. to 12 p.m. He said an email would be sent to see which of these times work best. He also noted that monthly meetings may not ultimately be enough to reach a conclusion and more regular meetings may be needed. He also asked for additional topics that the members want to dive into. His initial thoughts included looking more in-depth at funding formulas of other states that do not have an income tax, to see what they do, what is working and not working, and what litigation has revealed in those states. Mr. Cate added that the task force should also compare student achievement in those states.

Commissioner Huffman also suggested reviewing the existing components in more depth, and trying to understand whether they have been changed over time, if they need to be changed, and what is included and not included. The task force will look to the work of the Comptroller's office and the BEP review committee in this area.

Ms. Roehrich-Patrick stated that when looking at other states, to also look at the balance between tax bases available to the state and local government when looking at the appropriate share and split.

Comptroller Wilson asked that the task force circulate the analysis of the three court decisions, because they are the underlying requirements for the funding formula.

Representative Brooks stated the Comptroller's office had reviewed inputs and academic outputs four or five years ago. He requested updating this information from the standpoint of states without income taxes.

Commissioner Huffman adjourned the meeting.

Basic Education Program (BEP) Task Force

May 7, 2014

Minutes

The second meeting of the Governor's Basic Education Program (BEP) Task Force was held on May 7, 2014 at 10 a.m. in the Executive Conference Room of the Tennessee State Capitol.

Members present were Commissioner Kevin Huffman (chair); Representative Harry Brooks; Mr. Mark Cate; Mr. David Connor; Senator Dolores Gresham; Mr. Chris Henson; Mr. Kevin Krushenski; Commissioner Larry Martin; Mr. Larry Ridings; Ms. Lynnisse Roehrich-Patrick; and Comptroller Justin Wilson.

I. Welcome

Commissioner Huffman began by welcoming the group and presenting members with the BEP Handbook for Computation, along with the BEP Review Committee's 2013 Executive Summary, three Tennessee Supreme Court decisions related to school funding, and the minutes from the Task Force meeting held on March 24, 2014. Commissioner Huffman noted that Dr. Gary Nixon would present the BEP Review Committee's recommendations at the next Task Force meeting. Commissioner Huffman also noted that it was important to look at the legal cases provided because they provide a basis of decision making on education funding.

Commissioner Huffman then briefly went over the agenda explaining the goal for this meeting was to gain information and understanding on how we fund our education system today, which is important when considering changes and alternative plans. The desired plan for the next Task Force meeting is to focus on potential alternatives by looking at other states' funding formulas.

II. State Budget Overview

Commissioner Martin provided a presentation (attached) on the FY15 Budget highlighting declining revenues from corporate taxes; significant inflationary costs (health care, education, and prisons); achieving efficiencies in government operations; continue funding for services to vulnerable populations (DIDD, DCS); and building a healthy Rainy Day Fund. Commissioner Martin noted that revenue for the state did not reach predicted levels creating a budget gap and requiring adjustments between the budget presented on February 1st and that presented on April 1st. These budget amendments affected the proposed teacher salary increase (\$48.6 million), higher education (\$12.9 million), and the BEP salary equity fund (\$6 million). The BEP growth fund was reduced by \$10 million with \$5 million added back in non-recurring dollars.

Commissioner Martin communicated that the sales tax makes up about 60 percent of state revenues creating a heavy reliance. Martin said that revenue numbers are beginning to show some signs of stabilization and that June will be a very telling month.

Comptroller Wilson observed that the real issue is priorities. It's important how we choose to spend the dollars we have. In the FY15 Budget, the BEP is fully funded. Comptroller Wilson additionally noted that the state is meeting existing constitutional requirements to fund K-12 education. Commissioner Huffman pointed out that the growth that we've been funding so far has been well beyond the statutory requirements.

Mark Cate explained the purview of this task force is not to make the budget “pie” bigger but to determine the best way to divide the pie. Mr. Cate noted that since 2011, Tennessee is one of only six states in the country that has consistently increased state spending on K-12 education as a percentage of our total budget. Also, since 2011, Tennessee has had the 4th largest increase in education spending compared to the rest of the country.

Chairman Brooks asked Commissioner Martin what the future looks like for the budget. Commissioner Martin noted that we have strong reserve funds and seeing revenue growth at around 3 percent going forward is not out of the realm of possibility. Additionally, the governor has charged F&A to do an in-depth look at our F&E tax. Mark Cate asked Dr. Bill Fox about the Market Place Fairness Act and whether he could provide a sense of what this would like for Tennessee. Dr. Fox said that Tennessee is losing more than \$400 million in state and local revenue because of online transactions. Dr. Fox said the Market Place Fairness Act is a step in the right direction but it will not address the entire problem.

Chris Henson asked what the additional cost would be to fund all student growth in the current year. Estimates show it would take approximately \$30 million. The state funded \$27.5 million in FY14. Next year, the state will fund \$15 million.

Mr. Krushenski asked about the elasticity of TN’s tax base. Dr. Fox noted it has decreased slightly due to the extremely slow growth of corporate taxes that has occurred since the recession and low inflation. State taxes are much more volatile and a 3 percent revenue growth is the best case scenario.

III. TACIR Fiscal Capacity Model

Lynnise Roehrich-Patrick provided a presentation (attached) on the TACIR model. Mrs. Roehrich-Patrick began by talking about why we equalize education funding. In large part, it’s because our constitution calls for it. Also, different local governments cannot raise the same amount of revenue per student with the same tax rates. Once we determine how much local governments can contribute, the state must make up the difference.

Fiscal capacity answers the question of how much must each local government contribute to the BEP. The measure used for this is the potential ability of local governments to fund education from their own taxable sources, relative to their cost of providing services. The TACIR model creates a set of averages drawn from actual tax bases, income, etc. compared with actual revenue. The amount of weight to give each factor is determined by estimating the statistical relationship between them. This is where the TACIR model becomes more complicated than the CBER model. In order to determine weighting, a multiple regression analysis is conducted. Weights are multiplied by the factors for each county to estimate potential local revenue for each of the 95 counties. Actual revenue is used as a control.

Mrs. Roehrich-Patrick discussed the factors used to determine fiscal capacity: own-source revenue per pupil; taxable sales per pupil; equalized property assessment per pupil; equalized residential and farm assessment divided by total equalized assessment (tax burden); per capita income, which is a proxy for county residents being able to pay for public education; and ADM divided by the population (service burden).

Commissioner Huffman noted that a major decision point is whether to include income in any future model.

Comptroller Wilson noted that in both models the state is seeking to meet a statutory requirement grounded in our constitution. The TACIR model deals with this requirement by determining what can be afforded by the county and what is a county's tax equity.

Mrs. Roehrich-Patrick shared a slide on the effect of changes in fiscal capacity factors showing how an increase in one area could result in a decrease in another. Mrs. Roehrich-Patrick also shared a slide of the long term fiscal capacity trends from FY00 to FY14.

IV. CBER Fiscal Capacity Model

Dr. Bill Fox provided a presentation on the CBER fiscal capacity model noting that it's important to recognize the state is dealing with the revenue side. How are the local governments going to share the local component of the BEP model? Mr. Fox stated that he understands his goal is to accomplish simplicity and transparency while achieving fairness and encouraging desired behavior or discouraging undesired behavior from governments.

There are two sides to the BEP:

- I. Expenditure needs: there are 45 factors that determine what expenditures districts need to make to provide minimum schooling.
- II. Revenue capacity: used to determine the contribution that each local jurisdiction must make to finance the total local share of the expenditure needs.

The question is - given this set of expenditures and given the local share, how are we going to determine the share of spending among the local governments in Tennessee?

The CBER approach to revenue capacity is to estimate the revenue that a county can raise if it levies average tax rates on the bases that are permitted for local taxation. The CBER model is not a regression analysis but a straightforward multiplication and addition problem. Dr. Fox demonstrated the model using Bledsoe and Trousdale counties.

Dr. Fox explained that fiscal capacity is a relative concept and that it's important that this formula be independent of anything the county chooses to do. In addition, Dr. Fox explained that it is important the tax base is independent of local control so that county policies do not shift the burden to other Tennessee counties.

The complications are in the data and not in the calculation. We use publically available data from public sources. We use a three-year average of the tax bases to smooth out changes up or down. The data that we use includes the property tax base from the Comptroller's office. We also use the county sales tax base from the Department of Revenue.

Dr. Fox addressed the concept of developing a school district level fiscal capacity model versus the existing county model. He explained it's a complicated process because one cannot really separate the cities or individual school districts from the county meaning it's difficult to create a district level number that is very meaningful.

Dr. Fox also addressed the debate related to inclusion of income, stating that it is not included in the CBER model since income is not taxed in Tennessee. If income is included, the state would have to

arbitrarily decide what weight to give it. He also stated that including income does not benefit those school districts that people generally believe will benefit.

V. Discussion/Next Steps

Mr. Krushenski asked whether either fiscal capacity model looked at the correlation between income and property sales tax. Dr. Fox stated they were highly correlated.

Mr. Ridings stated that a large number of districts were negatively impacted as far as their fiscal burden when BEP 2.0 and CBER went into effect and that most of those districts were small and medium sized.

Dr. Fox responded that when thinking about a formula, it's important not to focus on any one piece. CBER has examined the changes that have taken place over the past several years and has found that local shares are continuing to decrease for most counties. Dr. Fox stated he would share those data points with the group.

Mrs. Roehrich-Patrick explained that because of the concentration of the growth in the economy, we should expect that relative to everyone else, the effects that Mr. Ridings is seeing are because of what's happening in the rest of the counties. The shift really occurred when we put the two models together. They are likely moving in the same direction.

Commissioner Huffman stated that the task is to look at the smart and right system versus the politics of different decisions. Commissioner Martin agreed.

Chairman Brooks stated the Task Force needs to separate the fiscal capacity concept and the BEP formula and asked whether there is anything about the capacity concept that creates inequity in regard to that part we are trying to do. Dr. Fox replied he does not believe there is, stating that places with low tax bases pay a smaller share of the local contribution to the BEP.

Comptroller Wilson outlined that the state is trying to accomplish having equal education measured up to a certain standard. That's an obligation of the state and the taxpayers. To do that, the state doesn't look at the needs of the counties or whether a parent has a child in school to determine taxation. The underlying premise is that the state doesn't look at the individual.

Mrs. Roehrich-Patrick reiterated that the BEP is not TACIR or CBER. They are different and they should be different. That is a key point.

Chris Henson stated that if a county has a city school district and/or a special school district in a county, the county district will seemingly always have less money and thus create a fairness problem. Dr. Fox said the state guarantees that city systems can have more money than a county system creating real issues with the funding formula. This is not an issue that can be addressed on the fiscal capacity side however. Mrs. Roehrich-Patrick agreed that this is an equity issue.

Commissioner Huffman ended the meeting and thanked everyone for their participation.



FY15 Budget

May 7, 2014



FY15 Budget Challenges

1. Declining revenues from corporate taxes.
2. Significant inflationary costs (health care, education, prisons).
3. Achieving efficiencies in government operations.
4. Continue funding for services to vulnerable populations (DIDD, DCS).
5. Building a healthy Rainy Day Fund.



Overview: Available Revenues

	Recurring	Non-Rec
Base Increase/(Decrease)	(\$116.2)	\$0
Revenue Growth @ 3.25%	\$323.0	\$0
Inheritance Tax Exemption	(\$20.4)	\$20.4
Other State Revenue	\$32.1	\$532.1
Overappropriation Increase	\$17.0	\$0
Revenue from FY14	\$0.2	\$256.2
Debt Service Fund Revenue	\$25.0	\$0
Total Available Revenues	\$260.7	\$808.7

(Millions)



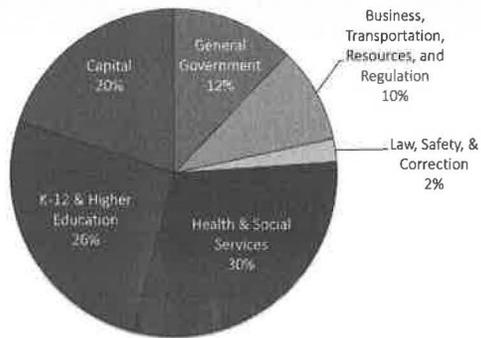
Overview: Revenues and Expenditures

	Recurring	Non-Rec
Available Revenues	\$260.7	\$808.7
Less Cost Increases	(\$393.5)	(\$827.4)
Preliminary Balance	(\$132.8)	(\$18.7)
Revenue Restored Through Base Expense & Vacancy Reductions	\$132.9	\$19.1
Final Balance	\$0.1	\$0.4

(Millions)



State Funding of Cost Increases

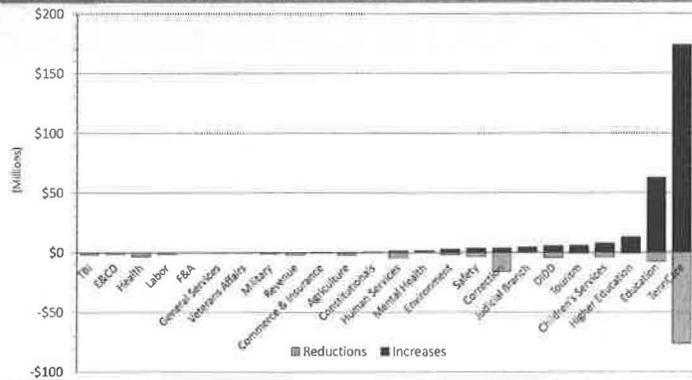


State Budget Presentation, BEP Taskforce

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Reductions and Increases

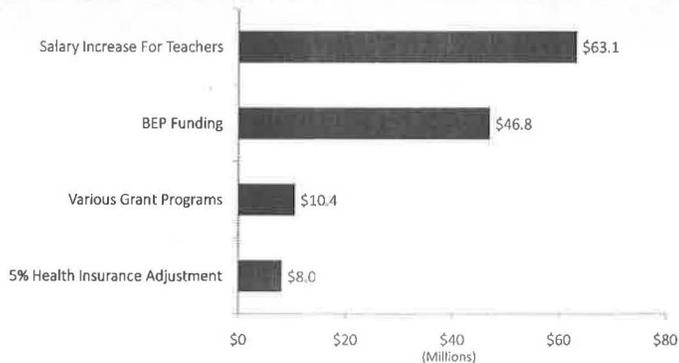


State Budget Presentation, BEP Taskforce

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K-12 Education



State Budget Presentation, BEP Taskforce

7



FY14 Balancing

	FY14
Revised Revenue Estimate	(\$150)
Diesel Fuel Legislation	(.6)
Litigation	14
Tobacco MSA	(.7)
Revised Balance	(137.3)
Reversion and Reserves	147.2
Reserve For FY15 Appropriations	(9.8)
FY14 Balance	\$1

(Millions)

State Budget Presentation, BEP Taskforce

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FY15 Balancing

	Recurring	Non-Recurring
Beginning Balance	\$.1	\$.39
Revised Estimate	(155)	9.8
Revenue Adjustments	(5)	0
Legislation and Other Adjustments	4.6	5.9
BEP Formula Growth	(5.7)	0
Property Tax Relief	0	(5.5)
Revised Balance	(161)	10.6
Balancing Adjustments	161.1	(10.5)
FY15 Balance	\$.1	\$.1

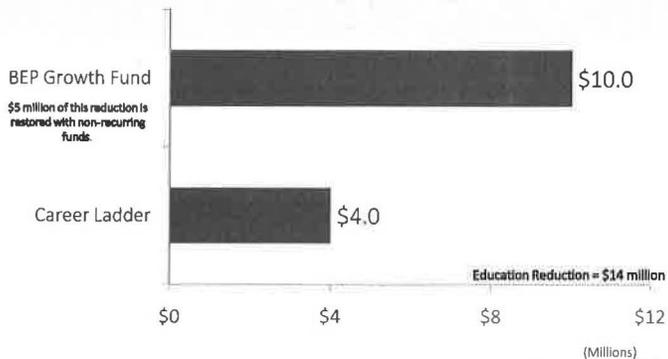
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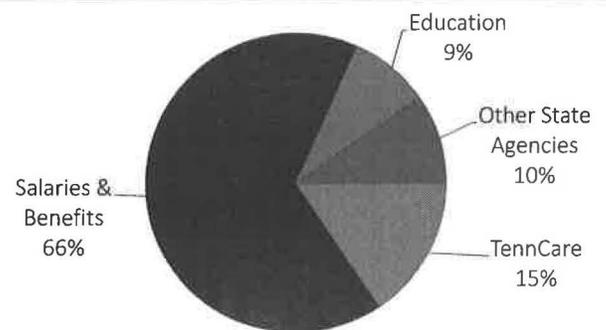
Recurring Balancing Reductions: Salaries & Benefits



Recurring Balancing Reductions: Education



Recurring Balancing Reductions: Summary





Objectives For Next Year

1. Remain a low-tax state while funding our obligations.
2. Review corporate tax structure and recommend updates for our current business environment.
3. Develop and implement efficiency goals for all agencies in state government.

Basic Education Program (BEP) Task Force

June 2, 2014

Minutes

The third meeting of the Governor's Basic Education Program (BEP) Task Force was held on June 2, 2014 at 2 p.m. in the Executive Conference Room of the Tennessee State Capitol.

Members present were Commissioner Kevin Huffman (chair); Representative Harry Brooks; Mr. Mark Cate; Mr. David Connor; Senator Dolores Gresham; Mr. Chris Henson; Commissioner Larry Martin; Mr. Gary Nixon; Mr. Larry Ridings; Ms. Lynnisie Roehrich-Patrick; and Comptroller Justin Wilson.

Members not present were: Mr. Kevin Krushenski.

I. Welcome

Commissioner Huffman began by welcoming the group and outlining the day's agenda.

II. BEP Component Review - Stephen Smith, Assistant Commissioner, Department of Education; Maryanne Durski, Executive Director of Local Finance, Department of Education

Stephen Smith began by describing the BEP components and the process for revising the components. The original components were established by the state board of education for the 1992-1993 school year. By state statute, the board has the authority to approve changes in the components but those changes must first be approved by the commissioners of education and finance & administration. The BEP Review Committee is charged with reviewing the BEP Components and advising the board.

Prior to any amendments or revisions to the BEP being effective, they must first be submitted to the education committees of the House and Senate for review and recommendation and then approved by resolutions of the House and Senate. These resolutions are not subject to amendments.

With the 2007 adoption of BEP 2.0, goals were established in terms of funding ratios and unit costs. These improvements are accomplished through the appropriations act and have most notably included improvements to teacher salaries through the teacher salary component.

Maryanne Durski, Executive Director of Local Finance, went through a detailed presentation of the 45 BEP components. There are three main categories: instructional, classroom, and non-classroom. The list of components is in the attached presentation. The BEP works using two separate parts: funding (DOE determines needs) and equalization (based on local ability to pay or fiscal capacity). The fiscal capacity indices are provided by TACIR and CBER. District enrollment, as determined by Average Daily Membership (ADM), is the primary driver of the formula. ADMs generate positions and funding dollars. Mark Cate asked why the ADM weighting for the year differs among the four chosen months. Durski replied that historically this weighting has provided the most accurate picture of what full-year membership looks like. Smith suggested this could be revisited in light of increases in early graduations.

Durski then went over the instructional components, which primarily include salary for personnel. The state funds, on average, 70 percent of instructional components. Regular K-12 teachers are calculated on a system-wide basis and are not broken down by school. Funding ratios are based on pupil-teacher ratios, which vary based on grade level. Chairman Brooks asked about whether systems receive more

money by having more CTE programs since the funding ratio for CTE teachers is lower. Durski responded yes; however, Lynnisse Roerich-Patrick pointed out that CTE teachers cost more so it doesn't necessarily result in a windfall for districts. Special education teachers are also calculated on a system-wide basis as are ELL teachers.

David Connor asked Durski if we have any information on the average size of most elementary schools. She responded that she did not but could provide it to the task force at a later date.

Durski walked through each of the instructional positions including principals and assistant principals. Chris Henson asked why the elementary definition changes from K-6 to K-8. Durski said she did not know the history. Gary Nixon said his suspicion is that it relates to SACS standards. Connor said that it continues to be a recommendation of the BEP Review Committee that the assistant principal ratios match SACS standards and then asked if there were other areas of the BEP that did not align to SACS. Durski said she was not aware of the other areas where the SACS recommendations did not align with the formulas in the BEP.

Durski then transitioned into the classroom components (details included in attached presentation). The state funds, on average, 75 percent of classroom components. Connor asked about alternative schools and pointed out that some systems don't have alternative schools. Durski said that if a system doesn't have an alternative school, they can use the money for other resources.

Comptroller Wilson reminded the task force that this is a funding formula not a spending plan with a variety of different categories that can be attributed to different items. He stated the state could simplify the formula by tying a dollar amount to each ADM. Durski said the costs of certain students could be significantly different, so there would need to be some differentiation. Huffman reiterated the comptroller's statement about the BEP not being a spending plan and added that the BEP components may or may not come close to what districts actually spend money on because the components really haven't changed in 20 years. Nixon stated the actual expenditures drive the component costs and that the more components there are, the more accurately the state can capture what is being spent. Wilson said this was what the general assembly thought it would take to run a classroom 20 years ago. Larry Ridings said the intention was to revisit this each year, but that has not happened in a significant way. Smith countered by pointing out the funding itself has substantially increased based on the unit costs increasing.

Ridings said the review committee has looked at many items over the years, including technology, but has not been able to get anything accomplished because of the way the committee procedure is set up. Henson pointed out that the review committee asks whether or not anything can be removed but there is nothing that jumps out as no longer necessary. Henson said there is an assumption that what is needed is what is spent and that this is not necessarily a good assumption. Huffman stated that there are some areas where there is a number building on what the previous numbers were but it's not really attached to much reality. Connor said that a lot of school districts are rolling non-classroom money over to instructional salaries in order to raise teacher salaries. Henson pointed out the challenge of having class size mandates within a school while having a formula that generates positions based on district numbers.

Durski then covered non-classroom components. On average, the state funds 50 percent of non-classroom components. Connor asked how many systems hit the statutory floor of 25 percent on non-classroom state funding. Durski said there are two: Davidson and Sevier Counties.

Each county is allocated one superintendent even if the county has more than one school system. Huffman asked if a district gets a technology coordinator, for example, even if they have less than 6,400 students. Durski replied that generally a district must have at least half of the number to generate a half of the position; however, each county generates a minimum of one technology coordinator. Henson asked if there are limitations on how close a student lives or how far they live from school in order to be included for funding. Mrs. Durski said yes, and that a student must live at least 1.5 miles from the school in order to be included.

Durski also spoke briefly about the cost differential factor (CDF). This is a factor used to adjust BEP funding in systems where the cost of living in the county is greater than the statewide average. The state receives this figure from CBER. There are currently six systems that receive CDF funding: Anderson, Davidson, Haywood, Sullivan, Williamson and Shelby. Haywood will be removed next year. CDF was eliminated in BEP 2.0 with CBER, but since we are presently 50 percent TACIR/50 percent CBER, these districts still receive half of the CDF amount.

Henson asked about the insurance included in the formula. Durski said it was based on 10 months of the annual premium. Connor asked about the reporting that comes in from districts and what is done to audit those numbers. Durski said that the state monitors the numbers coming in and each system is audited each year.

III. BEP Review Committee Recommendations and Analysis - Gary Nixon, Executive Director, State Board of Education

Nixon provided a brief overview of the BEP Review Committee's structure, charge and recommendations. Nixon began the presentation by reviewing the BEP Review Committee's guiding principle statement. The committee has the statutory responsibility to make sure that the state is funding districts in the way that meets the constitutional requirements as directed by the Tennessee Supreme Court.

The top priority recommendation from the BEP review committee was to fund the 12-month insurance premiums. The second priority was to improve teacher compensation. The BEP review committee suggested structuring salaries in a way that makes us competitive with other states. Cate asked why the top priority would be insurance versus salary. Roehrich-Patrick pointed out that it's probably because districts are already paying for twelve months. Nixon then displayed a table of recommendations that have not been prioritized. The list is included in the attached presentation along with the cost to the state to accomplish each of the items. Wilson asked if the committee recommended reducing anything. Nixon said they had looked at it but there was nothing that they found worth recommending.

Huffman then asked what the \$146 million to fully fund the BEP 2.0 would actually cover. Durski said it includes the removal of CDF, moving to 100 percent CBER, reducing ELL ratios, and changing the instructional component from 70 percent to 75 percent. Dr. Nixon stated that in its process this year the committee will study the issue of buying teacher planning time for flexibility to provide RTI (Response to Intervention) services.

Wilson pointed out that if we want to fund any of these things, based on our current financial situation, we are either going to have to cut into health care or cut education spending in other areas.

Henson asked about the capital outlay restoration from two years ago and how it ties to fully funding the formula. He asked if the definition of BEP full funding is based on the General Assembly's definition. Roehrich-Patrick replied yes.

IV. Discussion/Future Agenda Items/Dates for Upcoming Meetings

Brooks asked about local capacity and the early projections versus the final numbers provided to school districts. The early set of numbers and the final set of numbers were different from one another. Brooks stated districts are all told the early estimates are in fact estimates, but for the numbers to have changed so substantially from the initial to final was unusual. Roehrich-Patrick said that there were differences from April to May because of two main things: 1) updates to the fiscal capacity formula and 2) updated student counts. The fiscal capacity numbers are calculated each year. The numbers used in April were the current year. The ones used in May were for the future year. TACIR bases its personal income figures on the numbers provided by the U.S. Bureau of Economic Analysis. The bureau revised its methodology, which did impact the fiscal capacity numbers, and, in a few cases, the impact was substantial. Brooks asked if there would be anyway that districts could receive updated numbers in April going forward. Roehrich-Patrick said she thinks this is possible.

Huffman announced that a follow-up email with potential dates for the next meeting would go out soon. He then thanked everyone for attending and adjourned the meeting.

Basic Education Program (BEP) Task Force

August 13, 2014

Minutes

The Basic Education Program (BEP) Task Force met on August 13, 2014 at 1 p.m. in the Nashville Room of the William R. Snodgrass Tennessee Tower.

Members present were Commissioner Kevin Huffman (chair); Representative Harry Brooks; Mark Cate; David Connor; Senator Dolores Gresham; Chris Henson; Commissioner Larry Martin; Gary Nixon; Larry Ridings; and Kevin Krushenski.

Members not present were Lynnisse Roehrich-Patrick and Comptroller Justin Wilson. Melissa Brown represented Ms. Roehrich-Patrick and Russell Moore represented Comptroller Wilson.

I. Welcome

Commissioner Huffman began by welcoming the group and outlining the day's agenda. Commissioner Huffman noted the focus for the meeting would be on other state's funding formulas; particularly on student-based budgeting as opposed to unit-based costs.

II. School Funding Presentation - Michael Griffith, School Finance Consultant, Education Commission of the States

Mike Griffith began with an overview of school funding formulas. Mr. Griffith noted that when considering changes to its funding formula, Tennessee needed to decide if it wanted to undertake a major overhaul or just minor changes. Most states' major revisions stay around for about 25 years. Tennessee is one of six states that currently has a "resource allocation system", which identifies components; costs-out each; calculates how much of those resources districts should receive; determines a state v. local split; and adds on outside funding (e.g., capital). However, unlike other states with component-based, unit cost systems, Tennessee, for the most part, does not earmark expenditures on those components.

Most states determine a foundation/base amount per student rather than utilize a unit cost model. Base amounts are designed to represent the cost of educating a general education student to state standards. Additions to the base amount are made to represent additional needs – for example, at-risk, special education, etc. The advantages of this type of formula are that it is easy to adjust based on needs and economic circumstances; gives districts autonomy in spending; and has been accepted by state courts with regard to adequacy and equity.

In terms of measuring wealth, a majority of states use property values as the only measure. Property wealth does not equal overall wealth, esp. in vacation areas and factories. Tennessee uses property value and sales tax base to measure wealth, at least under the CBER model. The state does not include income since Tennessee does not have an income tax. Rhode Island takes the unique approach of identifying the percentage of children who are poor as a measure of ability to pay (since average income can mask high percentage of low income people with small number of very wealthy).

One major issue in funding formulas is funding for high-need students (special education, at-risk students, ELL). Several states are looking to revise their special education funding. Special education can be funded within a formula or outside of the formula. Currently 18 states fund special education inside the funding formula, 28 states fund outside the formula and three states fund it both ways. Rhode Island does not do additional special education funding. There are three generations of special education funding approaches: The first is a single weight/dollar amount for every SPED student or reimbursement program for some percentage of cost/expenditures. The challenge with this first generation approach is that reimbursement funds often run out before end of year and are unpredictable. The second generation approach is multi-level based on disability. Tennessee utilizes this approach. The third generation approach is based on services provided.

Chairman Brooks noted that in Tennessee, some LEAs become a magnet for special education services and asked if that was occurring elsewhere? Mr. Griffith replied that it does happen across the country for various reasons, including the fact that better services can lead to migration.

Commissioner Huffman asked how states determine weights. Mr. Griffith noted weights tend to be based on what works in the budget. Commissioner Huffman then asked if states revise the weights or the base. Mr. Griffith responded that the base is flexible and fluid while weights tend to remain solid.

Commissioner Huffman asked if foundation programs are more susceptible to equity lawsuits. Mr. Griffith said no and that when sued for equity, states often move to foundation models as they are easier to explain and defend to courts.

Mr. Griffith then discussed “at-risk” students and pointed out that this is a category that is often difficult to define and identify. Of the 35 states that provide additional funding for at-risk students, 23 use free and reduced priced lunch figures; however, this is not a perfect factor as the number tends to decrease as students get older due to stigma.

Commissioner Huffman asked if free and reduced price lunch program revisions from the federal government are creating challenges for states. Mr. Griffith said yes and that some states are assuming 3-year previous average will stay level, which may work temporarily.

Mr. Henson asked about the impact of concentration of poverty on funding formulas? Mr. Griffith acknowledged that this is a challenge and that states struggle with addressing high concentrations in particular areas.

Mr. Griffith then moved to the subject of English Language Learners (ELL). He stated there is considerable debate on the subject throughout the country as more states are grappling with an influx of ELL students. Traditionally, states have utilized a one-size fits all approach to ELL without differentiating age, literacy, parents’ educational attainment, etc.

The next topic related to regional cost adjustments (additional funds to those areas with higher costs of delivering educational services). Mr. Griffith stated about a dozen states have some sort of regional cost adjustment. In Tennessee, this would be the Cost Differential Factor (CDF), which is part of the TACIR model. Some are based on salary costs, while others examine “hard to staff” schools. In several cases, the places where it is most expensive to deliver educational services tend to be wealthiest— for example, Colorado has a regional cost adjustment and the district that benefits the most is Aspen.

Mr. Griffith ended his presentation recommending the task force consider the following additional issues:

- Connecting funding to student outcomes;
- Transportation and capital funding;
- Funding virtual learning programs;
- Migrant student populations; and
- Other emerging issues

Mr. Connor asked how states are treating class sizes with budget challenges. Mr. Griffith said in the past, increased funding was driven by the desire for smaller class sizes. Then, many states pulled back, in part because of finances but also because states had not seen gains with smaller classes. The research is mixed at best on this subject.

Chairman Brooks asked about funding student outcomes. Mr. Griffith said there have been some small pilots on this but they have not been successful with some growth in early years but then growth leveling off.

Commissioner Huffman stated that it seems with foundation program and weighting, there can be just as much complication as with a unit-cost mode in that states still have to pick factors and weights. Mr. Griffith agreed.

Mr. Cate asked about measuring wealth and stated that the income question has been a major one in Tennessee, partly because one of our fiscal capacity models uses it and the other does not. He asked Mr. Griffith if property may be more of a hypothetical way of measuring ability to raise revenue v. actual measure. Mr. Griffith responded that when looking at property value alone, states are not looking at ability to pay taxes on property – for example, some areas have vacation properties but people who live there can't afford to pay substantially higher property taxes. Also, some places have low property value per person but high income.

Commissioner Huffman followed up by asking how we should measure income if that was something we decided was appropriate. Mr. Griffith stated most places utilize state income tax returns; however, in Tennessee, since there is no income tax, federal tax returns would have to be used, which is much less reliable when trying to get income data to overlap with school districts.

Mr. Krushenski asked how states with top-down approaches tend to restrict spending. Mr. Griffith stated that restrictions include caps on how much districts can spend per pupil as well with some states only applying such caps to the largest districts. He pointed out that states with the most freedom at the local level tend to have the largest inequities and those with the most restrictions have the most equity.

Commissioner Huffman asked what happens in other states if local districts don't meet their required local funding levels. In Tennessee, one challenge is that if a local fails to meet required match, the state's only option is to withhold funds which is not helpful. Mr. Griffith said there are really no great options. Some states allow for a one-year grace period. Others issue waivers year after year.

Mr. Krushenski asked if it makes any difference if the local districts are meeting the state standards. Mr. Griffith said the difficult part is determining what "achievement" means. Some wealthier districts would

like lower property taxes and could have lower taxes if they had relief from the required local funding. However, states have balked at that idea.

Commissioner Huffman asked about adequacy challenges. Mr. Griffith said these challenges and rulings are all over the map with no way to predict a state's Supreme Court's decision.

III. Student Based Budgeting - Marguerite Roza, Director, Ednomics Lab

Marguerite Roza began her presentation by discussing current budget conditions in states and local governments. The following points were made:

- Costs inside current system are likely to escalate faster than revenue (labor and benefits).
- Historically, the education funding system hasn't been focused on providing the most benefit for each scarce dollar. There is a poor relationship between spending and outcomes.
- Some schools are more productive than others (even within a district).
- System productivity hinges on the state's allocation system.
- States have tried to add productivity by adding adults. This is very expensive and there are different staffing innovations that could expand reach and impact productivity:
 - Flexibility on class sizes is one such innovation. High performing teachers could receive sizable bonuses for taking on three or more students. Productivity improvement, greater outcomes per dollar, a raise in teacher compensation, and students learning more are the outcomes and teachers readily accept that deal.
 - Kevin Krushenski asked how districts would apply this type of policy in terms of which teachers would receive the bonuses. Ms. Roza focused on high performing teachers. One district that actually implemented this type of plan gave high performing teachers a choice and, in almost all cases, the teachers wanted the additional students in return for the additional compensation. Even parents were given the choice and parents overwhelming chose having their children be in the classroom of the high performing teacher even if the class was two or three students larger.
 - Larry Ridings asked about the selection of the three additional students. For example, who selects the additional students? Ms. Roza explained it occurs the same way students are placed now.
 - When asked, what do you prefer - \$5,000 bonus or two fewer students in each class, 83 percent of teachers prefer the bonus.
- Inside high schools, allocations reinforce achievement gaps. Schools spend more per student in honors or AP classes than in remedial or regular education.
- Principals tend to be unclear on how much things cost or how much their school budgets actually are because so much is controlled at the district level.
- The goal should be to structure funds so that they are used to leverage the greatest possible outcomes. Some key features to look for are:
 - Equity: equity per student or student type
 - Efficiency and effectiveness: Align spending with students, not processes. Compare spending with outcomes and consider spending only in context of outcomes
 - Flexibility and innovation: Free districts and schools to pursue productivity improvements; let them use funds in line with strengths/gaps in each community
 - Transparency: clarity in allocation, clarity in measurement of outcomes, access to spending practices from high productivity peers

Mr. Krushenski asked if research shows a point of diminishing returns where a high-performing teacher can cease being high-performing. Ms. Roza responded that many schools worry about doing anything new out of fear that the results will not be positive, but what we are doing now is not working. Certainly it may be the case where certain teachers can't manage 30 students. But there are also probably teachers who aren't comfortable with 20. Class sizes could be decided locally. We don't know yet what the limits are because we haven't tried. Also, it could be the most effective teachers may also leverage technology more effectively. We should resist temptation to put limits and constraints because we'll find answers in outcomes data.

Commissioner Huffman pointed to state to district restrictions and district to school restrictions and asked if Ms. Roza was advocating for freedom in both scenarios —pushing spending decisions as far down as you can. Ms. Roza responded yes and that flexibility should land at the district level at the very minimum.

Ms. Roza continued with the following points:

- Structure state allocations to follow students, not processes or purchased inputs.
 - Eliminate targeted funds for salaries, class sizes, programs, reimburses
 - Allocate a fixed amount of funds per student type with greater amounts for higher student needs
- Remove state regulations that inhibit resource decisions, such as staffing requirements, schedule prescriptions, etc. Where not possible, institute a waiver mechanism.

Commissioner Huffman asked how these recommendations play out when we are thinking about state contributions and local match requirements. In Tennessee, virtually all districts fund at least a little above required match. One argument districts have made against real freedom and flexibility is that local funding bodies may cut back expenditures since there are fewer requirements. Ms. Roza said that is a common fear but the data doesn't show this occurs. In fact, nationally, local spending is inversely proportional to how much states regulate.

Ms. Roza made the following additional points:

- States needs to share information on spending v. outcome by school. This seems difficult at first but states have found it can be done fairly easily.
- States should celebrate high-productivity schools. Call attention to these schools and build training models to school boards and parent groups. This gives lower productivity schools a place to look and learn what outcomes are possible.

Chairman Brooks asked how critical is it to have a building-by-building budget? Ms. Roza said, at absolute minimum, schools need to know how much money is spent and on what items that money is spent. For example, in one school where she was asked to assist, a principal thought it was great to use a librarian for hall duty and errands and then saw that her salary + benefits cost more than \$100,000. Schools need to reconnect people with the cost of what they're doing.

Mr. Henson said his district (MNPS) is moving to school-based and student-based budgeting with 55 schools in a second year of pilot. One struggle is budgeted costs v. actual costs with labor. Ms. Roza responded that, while this may not be the issue in Mr. Henson's district, this type of struggle can happen when districts use average teacher costs versus actual costs.

Mr. Cate asked Ms. Roza what high-level guidance and principles she would offer as the task force proceeds with its work. She responded by saying school finance formulas often hold for two decades or more – proving the point that it is extremely difficult to generate the energy and support for change. So, it is likely that whatever Tennessee does, it will be in place for two decades. Because of this, don't just tinker with the plan or formula but plan on building a structure that will still be relevant in 2034. This is a very tough challenge because we don't know what schools will look like then - staffing models, time, technology, the school year, etc. will be different. The one thing we do know is that there will be students so design around the students.

Basic Education Program (BEP) Task Force

September 23, 2014

Minutes

The Basic Education Program (BEP) Task Force met on September 23 at 1:30 p.m. in the Executive Conference Room of the Capitol.

Members present were Larry Ridings; Senator Dolores Gresham; Chris Henson; Kevin Krushenski; Comptroller Justin Wilson; Commissioner Larry Martin; David Connor; Lynnisse Roehrich-Patrick; Mark Cate; Chris Henson; and Commissioner Kevin Huffman.

Representative Harry Brooks participated in the meeting by phone.

I. Welcome

Mark Cate began by welcoming the group and outlining the day's agenda.

II. Including Ability to Pay in Education Funding Formulas, William Fox, Center for Business and Economic Research

Bill Fox began with a presentation relative to including ability to pay in education funding formulas (attached).

When including ability to pay, the structure of the formula should be based on the intended objectives. States need to structure their formula differently depending on which goal they are trying to achieve.

There are two basic types of school finance formulas: foundation formulas and power equalization formulas.

Tennessee operates under a foundation formula; however, it is more complex than some simple foundation formulas in other states. Foundation formulas have two components: 1) spending needs, and 2) distribution of cost between local and state governments. Tennessee addresses spending needs through the 45 components in the BEP. When answering how to distribute cost, states must look at how much it costs to fund the desired education.

Mr. Fox then described the foundation formula. There are several ways to determine a district's ability to pay. The CBER model utilized in Tennessee uses a foundation formula to measure wealth, where funding is directly related to amount of property tax in the district.

Regardless of the method used there are several important features that need to be kept in mind when constructing ability to pay measures. Measures must easily explain what is trying to be accomplished and they must use updated, high-quality data that is available for every county and school district. Wealth measurement should not be controllable by a county or school district, meaning a state look at how much money a district COULD raise not how much they do raise.

Mr. Fox then noted several different ways states measure ability to pay.

Mr. Krushenski asked how many states incorporate ability to pay into their formulas. Mr. Fox responded he did not have the exact numbers but most states include some ability to pay factor.

Mr. Fox's presentation continued with the subject of measuring income. If income is brought directly into the formula, there are several different measures of income that can be used. For example, aggregate income; unit measures of income, including per capita personal income; median household income and median family income; wages; measures of low-income, including percent poverty, percent with free and reduced price lunch and percent receiving SNAP payments; and federal tax returns (done by zip code). Median family and median household incomes are available by districts. Data is determined by sample and data can therefore be volatile for small districts.

Mr. Cate asked how household income is defined. Mr. Fox responded that it is the total income for all people living in a building.

Mr. Fox noted that if a state wants to utilize a measure of ability to pay with more than one dimension, there must be aggregation and weighting. CBER aggregates different measures of ability to pay by calculating the average reliance on sales tax and average reliance on property tax. TACIR, the other model utilized in Tennessee, uses regression analysis.

Mr. Fox explained that states can treat low-income areas differently so income doesn't come into play directly.

Comptroller Wilson noted that calculating ability to pay is a separate discussion than how best to spend the money and that within these formulas the foundation amount is how much should be spent. He further noted that how a state determines if it uses different formulas vs. one formula, etc. are all philosophical decisions.

Ms. Roehrich-Patrick responded that if Tennessee used arbitrary weights, it would lead to the state making arbitrary decisions. By using actual Tennessee data, we make less arbitrary decisions. In addition to philosophical decision, politics plays into funding formulas.

Mr. Fox then moved into a discussion of power equalization formulas. These formulas attempt to answer how to divide local share across the state. The amount provided to each district is not fixed since it rises with the local tax rate. Power equalizing formulas provide matching grants, with the matching rate depending on ability to pay. Wisconsin and Kentucky both have power equalizing structures.

Mr. Connor stated that equalization seemed more of an education policy issue.

Mr. Fox also noted that using a power equalizing formula creates the notion that you're going to ensure that for every penny in property tax you're going to raise the same revenues per student.

In overview, Mr. Fox noted that with foundation formulas a state creates block grants and with power equalizing formulas a state creates a matching program.

Mrs. Roehrich-Patrick asked about setting lower limits and upper limits. She stated that if a state's lower and upper limits are far apart, it can have an effect on equalization.

Mr. Fox then discussed adjustments for unique situations. These adjustments would be for non-education expenditure needs. Presuming that some of the property and sales tax bases are not available for education, such as tourism, municipal overburden, costs of offsetting low population density, etc. When looking at funding formulas, states must look at what they are trying to fix. States can build these

unique situations into formulas but they have to decide what they are trying to fix. Sevier County is often noted as being unique in Tennessee in that it has an unusually large tax base based on tourism.

Mrs. Roehrich-Patrick noted that Sevier County does currently receive special tax breaks from the state.

Mr. Connor asked specifically about tourist development zones. Mr. Fox responded that this revenue is being added back into tax base and being counted as if it's available to schools since this is a local decision.

Mr. Cate noted that in doing this you have to be careful that you're not incentivizing behavior for the future. Mr. Fox agreed with this.

Mr. Fox concluded with other measures of ability to pay including using only residential property in the formula or replacing sales with personal income in the formula for those counties where the share of personal income in total state personal income is smaller than the share of county sales tax in total sales tax. There are many ways to bring ability to pay in and we need to decide how best to bring them into formula for Tennessee and how to aggregate them.

Mr. Conner asked if Mr. Fox has run the numbers for replacing property with personal income. Mr. Fox responded that he did not but he could look at those numbers and see how they would play out.

III. System-level Fiscal Capacity – Observations & Challenges, Lynnise Roehrich-Patrick, Tennessee Advisory Commission on Intergovernmental Relations

Mrs. Roehrich-Patrick began with a background of the system-level fiscal capacity model discussion in Tennessee. Discussion on a system-level model really began in 1995 with the Small Schools II lawsuit in 1995. In 2003, Governor Bredesen's Task Force on Teacher Pay and the BEP Program Review Committee called for a system-level fiscal capacity model that created a fair method of determining local contribution. The Tennessee Advisory Commission on Intergovernmental Relations worked to refine the county-level fiscal capacity model that was in place at the time.

When changing or altering the equalization method as TACIR did, there are several challenges that tend to arise. The first challenge is the high amount of controversy that is created by shifts in state funding across school systems.

Another challenge is what the comptroller's office describes as a structural flaw because it attempts to equalize funding in a system-level formula at the county level. Correcting this flaw is particularly problematic in Tennessee because of challenge three - the fiscal complexity of its local system for funding public schools. With three distinct types of school systems, each with authority to impose various taxes and subject to certain intra-county sharing requirements, Tennessee has equalization challenges that other states do not.

In 2003, TACIR put a team together to determine a system-level model. The team had four major objectives: 1) account for major statutory sources of revenue available locally and restrictions placed on them; 2) mirror the collective behavior of local officials in allocating funds for schools; 3) account for equity factors affecting local tax rates; and 4) resolve as many of the issues raised with respect to the county model as possible.

In attempting to develop a system-level model, TACIR encountered the challenges listed above, specifically the tax structure challenges.

Comptroller Wilson noted that to address tax structure challenges, Tennessee would likely need to change statutes to change taxing authority.

Mr. Ridings asked which model, CBER or TACIR, attempts to get at ability to pay for counties. Mrs. Roehrich-Patrick responded that both get at ability. The TACIR model was chosen because it got to a particular outcome and the CBER model was chosen because it got to a particular outcome. Both the CBER and TACIR models were tested and run to look at different outcomes over a period of two years. When the state went from property tax to bringing in sales tax, Knox and Williamson counties were really impacted. When CBER and TACIR were combined, it limited some of that impact and that is the position we are in now.

Mr. Cate asked if CDF (Cost Differential Factor) was a mitigating factor in the impact on Knox and Williamson counties. Mr. Fox responded that it was.

Mrs. Roehrich-Patrick concluded with several observations about the current landscape: the current model limits the state's capacity to achieve equity for students in all 141 systems; the fiscal structure of the three types of local governments that fund schools complicates attempts to create a system-level model; and any change in the equalization model will be disruptive.

Mr. Connor asked how county level fiscal capacity vs system-level fiscal capacity impacts power equalization. Mr. Fox responded that if a state had a power equalization approach it would want system-level data.

Mr. Krushenski noted that spending issues beyond the BEP, like maintenance of effort, etc., is a big issue.

Mr. Henson asked if it was logical to assume that city and special school districts have higher ability to pay than county system because the county has to share with city and special school districts. Mr. Fox agreed that they are advantaged. Mrs. Roehrich-Patrick noted that by statutory requirement a city school system can't be formed unless it raises more money.

Mr. Henson noted that it seemed inherent that city and special school districts have higher fiscal capacity.

Mr. Henson then asked, without CDF, would the cost of doing business basically be considered the same across the state.

Mrs. Roehrich-Patrick responded that there is recognition that wages are higher in some areas. The state has tried to find a model to determine how to attract the same quality teacher to smaller counties. Mr. Fox added that the assumption in this situation is that labor market is only the county labor market, which isn't correct.

Mr. Conner noted that a system-level model in Washington County doesn't seem to help the county but does penalize Johnson City and asked if this true elsewhere.

Mrs. Roehrich-Patrick noted that she couldn't fully answer without thinking about all factors. It is hard to say whether the effects are effects that should occur or not when the only comparison is what we have now. Data analyses suggest some interaction between city and county.

Mr. Nixon spoke on the reports that the BEP Review Committee has done over the years and noted that if Tennessee is going to move forward with a change in the model more money will be needed for transition period. It would be impossible to do one without the other.

IV. Dates for Upcoming Meetings/Future Agenda Items

Commissioner Huffman announced the next meeting of the Task Force will be open for public presentations.

Commissioner Huffman also noted that as the meetings of the Task Force draw to a conclusion, the Task Force would move towards summarizing the work and creating principles to use as a foundation for discussion going forward.

INCLUDING ABILITY TO PAY IN EDUCATION FUNDING FORMULAS

Presented to
BEP Review Commission
William Fox, Director
Center for Business and Economic Research
September 23, 2014



Formula Design

- Structure should depend on the intended objectives
- Some possible goals:
 - Provide local governments with revenues to finance education
 - Equalize education spending – offset differences across school districts in fiscal capacity and expenditure needs
 - Encourage more local spending on education

September 23, 2014

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Two Basic Types of School Finance Formulae

- Foundation formula
- Power Equalization formula

Foundation Formula

- Two components to formula
 - Foundation amount
 - Revenue distribution between local and state
- Foundation amount - Expenditures
 - Intent to fund an adequate education
 - TN 45 factor formula
 - Should adjust here if believe the formula is not accounting for the costs of some aspect of delivering adequate education

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Foundation Formula Shares

- State Share = Foundation – Local Share
- State aid is a fixed amount per school district – essentially a block grant that varies across districts based on ability to pay
- Local share is determined by some measure of ability to pay.
- Most common approach is to multiply some tax base times a common tax rate – similar to the CBER approach
- Often relies on equalized property tax as the measure of ability to pay
- State Share = Foundation – Property base * t
- State aid is inversely related to size of property tax base

Foundation Formula Local Share

- Issue of whether to recapture payments from wealthy districts if the local share exceeds the foundation amount (KS, VT, NH, TX, and CA have done so at times)

Desired features of ability to pay measures

- May be theoretically easy to understand what are trying to accomplish, the issue is application
- Data must be available for all locations, of good quality and updated regularly – updating allows ability to pay to evolve with differing economic growth rates across the state
- Must provide an acceptable relative measure of ability to pay
- Should be understood/transparent
- Should be characteristics not under the direct control of local governments. E.g. not actual revenues raised, but ability to raise revenue (unless the intent is to increase local spending on education)

Approaches to local ability to pay

- Resources available to people in the jurisdiction – such as income
- Resources available to local government in the county/school district – measures of taxation
- Obviously, these are related, but not identical

Measures of Ability to Pay

- Georgia, Kentucky, Illinois (most districts), Iowa, Texas, Wisconsin, South Carolina (though does not include residential housing) use property tax base
- Missouri – Property tax base, mixture of other taxes including the local income and financial institution taxes
- New Jersey – Property tax base, Aggregate Income
- North Carolina – Counties receive more than the base amount per pupil if wealth (based on Property tax base, per capita income) is relatively low

Measures of Ability to Pay, Cont'd

- Ohio – Property valuation, Median Income, though income only involved when income is relatively lower than property values
- Virginia – Property tax base, adjusted gross income, taxable retail sales
- Rhode Island Property tax base, % of PK-6 students eligible for free and reduced price lunch (which may be a measure of at risk students and not of ability to pay)

Measures of Income

- Aggregate income
 - Personal Income – BEA
- Unit measures of income
 - Per capita personal income – BEA
 - Median household income – Census
 - Median family income – Census
- Wages
 - County Business Patterns – Census
 - Wages – BEA
- Low income approaches
 - Percent in poverty - Census
 - Percent with free and reduced price lunch
 - Percent receiving SNAP payments – DHS
- Federal tax returns, if permitted

Aggregating Different Measures of Ability to Pay

- Must aggregate the different measures of ability to pay if use more than one
- Arithmetic, based on some “weights”
 - Actual reliance on tax bases – TN
 - Assumed relative values – VA (.5 property tax base, .4 adjusted gross income, .1 taxable retail sales), RI
- Regression, or other statistical approach – didn't see any other states using these approaches, but there may be some
- Sometimes use aggregate measures of ability to pay, sometimes per student or per capita. Didn't see any states that mix per capita and aggregate directly in the same formula
- Sometimes make districts relative to the state in the formula (VA)

Rhode Island State Share Ratio Calculation

$$\text{State Share Ratio (SSR)} = \sqrt{\frac{\text{SSRC}^2 + \%PK6FRPL^2}{2}}$$

$$\text{Where SSRC} = 1 - (0.475 * \left[\frac{\text{District EWAV/District RADM}}{\text{State EWAV/State RADM}} \right])$$

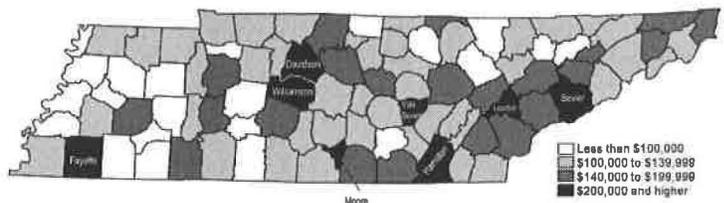
A Power Equalizing Formula

- Ensure that each district can raise the same revenue per student for each \$.01 on the property tax
- The amount that can be raised for any tax rate is set by the state
- Wisconsin and Kentucky (in part) have power equalizing structures.

Power Equalization Example

- Assume \$1.00 must raise \$2600 per student
- Davidson County, \$2589, state pays \$11/student
- Sevier County, \$2487, state pays \$113/student
- Carter County, \$1076, state pays \$1524/student
- Union County, \$564, state pays \$2036/student

Total Property Assessment Per Average Daily Membership, FY2013



Source: 2013 Tax Aggregate Report of Tennessee; State of Tennessee Annual Statistical Report of the Department of Education for the Scholastic Year Ending June 30, 2013.

Characteristics of a Power Equalizing Formula

- State probably wants to set a minimum tax rate so that a minimum level of spending occurs
- The amount provided to each district is not fixed since it rises with the local tax rate. Power equalizing formulas provide matching grants, with the matching rate depending on ability to pay. State may want to set a maximum rate on which it will share to limit its exposure.

Adjustment for Unique Situations

- Adjustment for non-education expenditure needs, presuming that some of the property and sales tax bases are not available for education – tourism, municipal overburden, costs of offsetting low population density
- Could look for a proxy for the tourism sector, then could adjust the formula
 - For all places depending on the size of the sector in their jurisdiction
 - For places with a sector that lies above some threshold. For example, only include sales tax base up to 40 percent of personal income

Ratio of Sales Tax Base to Personal Income, FY2013

County	Ratio	Ranking	County	Ratio	Ranking	County	Ratio	Ranking	County	Ratio	Ranking
Sevier	98.3%	1	Marion	31.7%	25	Gibson	24.2%	49	Perry	17.5%	73
Putnam	48.0%	2	Shelby	31.5%	26	Lincoln	24.1%	50	Haywood	17.4%	74
Madison	47.2%	3	Lawrence	31.5%	27	Fentress	24.0%	51	Grundy	17.0%	75
Knox	44.2%	4	Marshall	31.3%	28	Robertson	23.5%	52	Wayne	16.8%	76
Washington	41.3%	5	Warren	31.3%	29	Macon	22.9%	53	Chester	16.6%	77
Hambden	41.1%	6	Dyer	31.1%	30	Carter	22.9%	54	Clay	16.5%	78
Davidson	40.4%	7	Anderson	30.7%	31	McNairy	22.7%	55	Tipton	16.0%	79
Rutherford	38.6%	8	Williamson	29.9%	32	Decatur	22.7%	56	Houston	15.1%	80
Hamilton	38.5%	9	Lewis	29.7%	33	Weakley	21.5%	57	Union	15.0%	81
Coffee	38.2%	10	Rhea	29.3%	34	Overton	21.4%	58	Hancock	14.9%	82
Sullivan	36.5%	11	Montgomery	29.2%	35	Sequatchie	21.3%	59	Stewart	14.7%	83
Dickson	35.8%	12	Monroe	29.1%	36	DeKalb	21.1%	60	Hickman	14.5%	84
Mauzy	35.7%	13	Scott	28.8%	37	Pickett	21.1%	61	Cannon	13.8%	85
Blount	34.8%	14	Giles	28.6%	38	Lauderdale	21.0%	62	Fayette	13.5%	86
Cumberland	34.5%	15	Benton	27.5%	39	Unicoi	20.1%	63	Moore	12.6%	87
Obion	34.1%	16	Campbell	27.4%	40	Johnson	20.0%	64	Meigs	12.0%	88
Henry	34.0%	17	White	27.4%	41	Smith	20.0%	65	Crockett	12.0%	89
Cocke	33.8%	18	Greene	26.5%	42	Hardeman	19.6%	66	Bledsoe	11.7%	90
Bradley	33.0%	19	Humphreys	25.9%	43	Carroll	19.1%	67	Van Buren	11.2%	91
Hardin	33.0%	20	Franklin	25.9%	44	Claborn	19.1%	68	Trousdale	11.1%	92
McMinn	32.8%	21	Bedford	25.5%	45	Hawkins	19.0%	69	Morgan	10.8%	93
Henderson	32.3%	22	Sumner	25.5%	46	Lake	18.6%	70	Grainger	10.7%	94
Roane	32.2%	23	Jefferson	25.2%	47	Polk	18.3%	71	Jackson	9.3%	95
Wilson	31.9%	24	Loudon	25.0%	48	Cheatham	17.8%	72			

Tourism-Related Employment as a Share of Total, 2012

County	Share	Rank									
Sevier	52.6%	1	Carter	17.2%	25	Lewis	13.1%	49	Roane	9.8%	73
Polk	35.2%	2	Hambden	16.7%	26	Henry	12.8%	50	Rhea	9.5%	74
Knox	24.2%	3	Cheatham	16.6%	27	Lawrence	12.8%	51	Wayne	9.2%	75
Montgomery	24.1%	4	Jefferson	16.6%	28	Greene	12.7%	52	DeKalb	9.1%	76
Coffee	23.9%	5	Dyer	16.4%	29	Campbell	12.3%	53	Jackson	9.0%	77
Shelby	22.8%	6	Monroe	15.8%	30	Franklin	12.1%	54	Lauderdale	9.0%	78
Davidson	21.6%	7	Sullivan	15.7%	31	Cumberland	12.0%	55	McNairy	8.7%	79
Williamson	21.4%	8	Lincoln	15.6%	32	Warren	11.7%	56	Houston	8.6%	80
Madison	21.0%	9	Hawkins	15.6%	33	Benton	11.6%	57	White	8.2%	81
Rutherford	20.9%	10	Cannon	15.6%	34	Union	11.3%	58	Fayette	7.8%	82
Sumner	20.4%	11	Morgan	15.0%	35	Tipton	11.1%	59	Fentress	7.6%	83
Hamilton	20.3%	12	Giles	15.0%	36	Dickson	11.0%	60	Carroll	7.5%	84
Blount	20.2%	13	Stewart	14.7%	37	Grundy	10.9%	61	Grainger	7.5%	85
Bradley	20.0%	14	Henderson	14.7%	38	Bedford	10.9%	62	Haywood	7.4%	86
Pickett	19.9%	15	Lake	14.5%	39	Unicoi	10.6%	63	Meigs	6.6%	87
Marshall	19.8%	16	Loudon	14.5%	40	Macon	10.6%	64	Hardeman	6.4%	88
Robertson	19.8%	17	Sequatchie	14.2%	41	Overton	10.6%	65	Decatur	5.7%	89
Chester	19.3%	18	Obion	14.2%	42	Humphreys	10.4%	66	Crockett	4.2%	90
Wilson	18.9%	19	Anderson	14.2%	43	Scott	10.3%	67	Bledsoe	4.0%	91
Weakley	18.5%	20	Hickman	14.1%	44	Claborn	10.2%	68	Perry	3.3%	92
Cocke	18.3%	21	Putnam	14.0%	45	McMinn	10.1%	69	Moore	3.2%	93
Mauzy	17.9%	22	Washington	13.9%	46	Smith	10.1%	70	Hancock	-	-
Marion	17.4%	23	Clay	13.4%	47	Johnson	9.9%	71	Van Buren	-	-
Trousdale	17.3%	24	Hardin	13.1%	48	Gibson	9.9%	72	TENNESSEE	20.8%	x

Other Options

- Only use residential property in the ability to pay formula
- Replace sales with personal income in the ability to pay formula for those counties where the share of personal income in total state personal income is smaller than the share of county sales in total state sales.

Blount County Fiscal Capacity

Situs	Local Option Sales Tax Base x Avg Rate 1.5883%	Equalized Property Tax Base (incl. Public Utilities and IDBs)	Property Tax x Avg Rate 1.1937%	FY2013 FISCAL CAPACITY
BLOUNT COUNTY AGGREGATE	\$ 19,923,939	\$ 3,231,221,803	\$ 38,571,340	2.014%
Blount County, unincorporated	\$ 3,762,804	\$ 1,968,315,685	\$ 23,495,934	0.94%
Alcoa	\$ 7,797,221	\$ 461,842,252	\$ 5,513,046	0.46%
Maryville	\$ 8,363,914	\$ 801,063,866	\$ 9,567,360	0.62%
STATE AVERAGE	\$ 1,118,651,776		\$ 1,786,333,159	100.0%

Source: Center for Business and Economic Research, BEP 2.0 Fiscal Capacity FY2013.

Presentation to Governor Haslam's Basic Education Program Task Force
23 September 2014

System-level Fiscal Capacity— Observations & Challenges

Lynnise Roehrich-Patrick, Executive Director
Tennessee Advisory Commission on
Intergovernmental Relations

Background

- Requested by Governor Bredesen's Task Force on Teacher Pay formed in February 2003
- Requested by the State Board of Education's Basic Education Program Review Committee responding to 2004 legislation asking that it
 - “give special attention to . . . the development and implementation of a system-level fiscal capacity model.”
- 2005 BEPRC annual report recommended converting to a system-level equalization model.

Background

(continued)

- July 2003 report titled *Funding Public Schools: Is the BEP Adequate?* by the Tennessee Comptroller's Office of Education Accountability noted that the use of a county fiscal capacity model in a system-level funding formula results in

“funding inequities among LEAs with multi-LEA counties.”

Background

(continued)

- October 2003 report by Governor Bredesen's Task Force on Teacher Pay also recommended adoption of a system-level method of equalizing the local match required by the BEP:

"#4. Introduce a New District-level Fiscal Capacity Model—Introduce a new district/system-level fiscal capacity model in order to provide a fairer method of determining local contribution."

Development

The Team

- Staff provided by
 - TACIR
 - Comptroller
- Review provided by
 - Middle Tennessee State University
 - Tennessee State University
 - Vanderbilt University
- Reported to
 - Governor's Task Force on Teacher Pay

Challenge #1

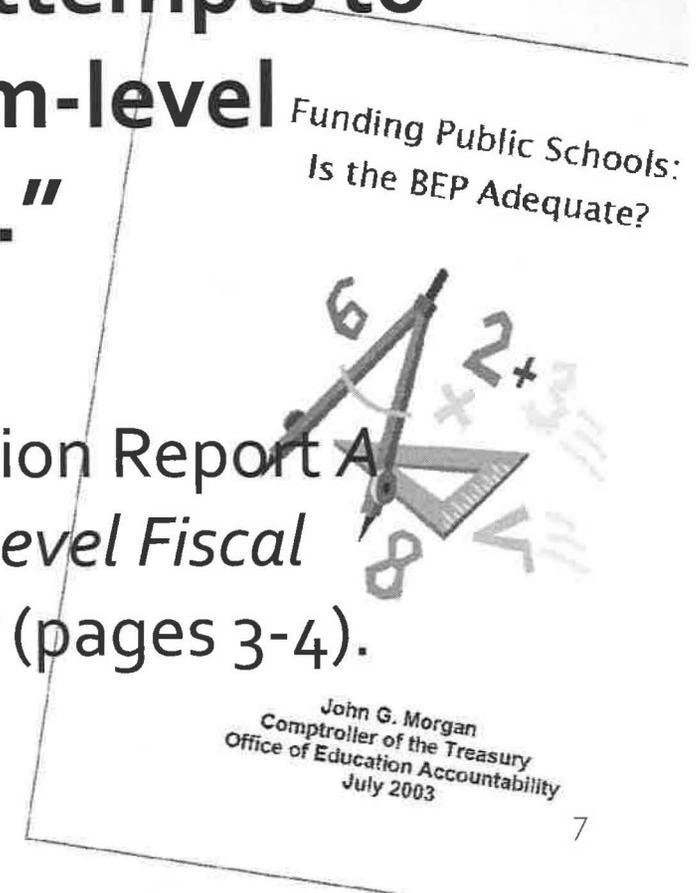
“Any change in the equalization method will necessarily cause shifts in state funding across Tennessee’s [now 141] public schools systems and is, therefore, highly controversial.”

TACIR’s October 2005 Staff Information Report A *Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 3).

Challenge #2

“Still the current method, in the words of the Comptroller’s Office, creates a structural flaw because it attempts to equalize funding in a system-level formula at the county level.”

TACIR’s October 2005 Staff Information Report A
Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How (pages 3-4).



Comptroller's 1990 Performance Audit

**Response of State Board of Education to
Comptroller's finding that "[f]unds
available for public education vary
considerably from school district to
school district" . . .**

TACIR's October 2005 Staff Information Report A
*Prototype Model for School-System-Level Fiscal
Capacity in Tennessee: Why and How* (page 6).

Comptroller's 1990 Performance Audit

(continued)

State Board of Education concurs:

"The Board's Basic Education Program proposal would resolve much of this problem by gauging state appropriations for schools to *each system—county, city or special school district—according to the ability of each to raise local tax revenue for schools.*"

TACIR's October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 6).

1995 Small Schools II

Response of State Board and Commissioner of Education:

**Requested that TACIR further study a
system-level model.**

TACIR's October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 11).

Challenge #1

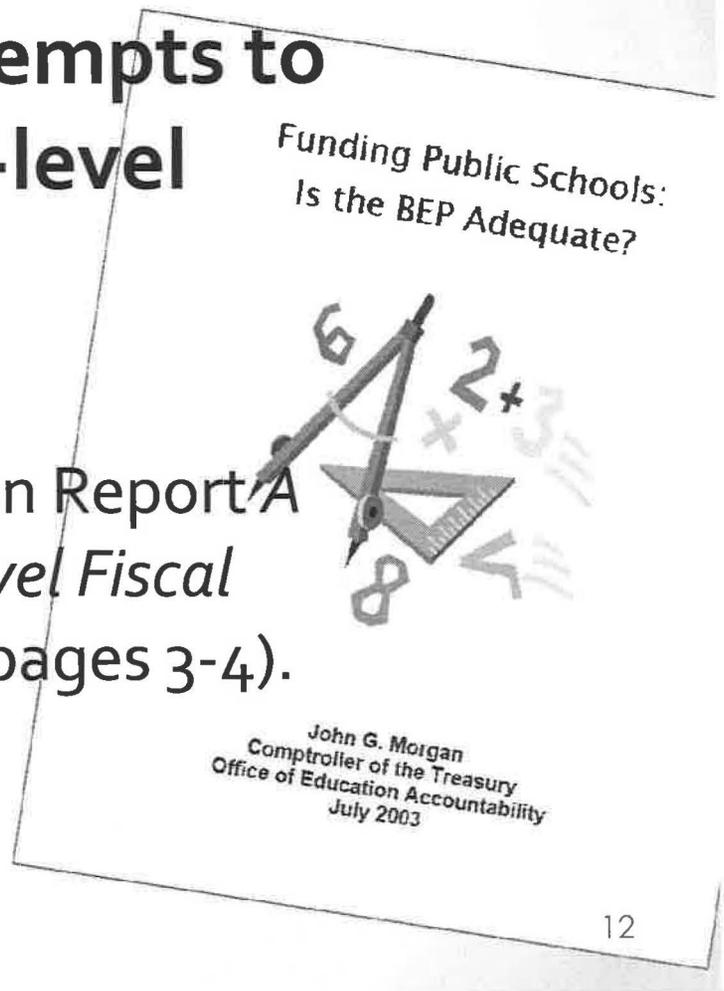
“Any change in the equalization method will necessarily cause shifts in state funding across Tennessee’s [now 141] public schools systems and is, therefore, highly controversial.”

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TACIR’s October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (pages 3-4).



Challenge #3

“Correcting this flaw is particularly problematic in Tennessee because of the fiscal complexity of its local system for funding public schools.”

TACIR's October 2005 Staff Information Report A *Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 4).

Challenge #3

(continued)

“With three distinct types of school systems, each with authority to impose various taxes and subject to certain intra-county sharing requirements,

“Tennessee has equalization challenges that other states do not.”

TACIR’s October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 4).

Figure 1. Tennessee's Unique Challenge
How to Handle Disparate Fiscal Entities in a Single Model

Measuring fiscal capacity for Tennessee's 136 school systems presents

Two Significant Challenges

different authority to tax and raise revenue

different fiscal relationships among systems

County governments*

Must levy county-wide tax for schools if operating a county system

May tax property

May tax sales

May tax other activities or items (e.g., wheel tax)

Must share school taxes with other systems in county

May use revenue from state-shared taxes for schools without sharing

City governments

May make general fund transfers for schools or establish school tax rates

May tax property

May tax sales

May tax other activities or items

Not required to share school funds with any other system

May use revenue from state-shared taxes for schools without sharing

Receive share of county governments' school revenue

Special School Districts

May only tax property

Need not share school funds with any other system

Receive share of county governments' school revenue

TACIR's
October 2005
Staff
Information
Report A
Prototype
Model for
School-
System-Level
Fiscal
Capacity in
Tennessee:
Why and
How (page
27).

Objectives of the 2003 Team

- **Account for major statutory sources of revenue available locally and restrictions placed on them.**
- **Mirror the collective behavior of local officials in allocating funds for schools.**
- **Account for equity factors affecting local tax rates.**
- **Resolve as many of the issues raised with respect to the county model as possible.**

TACIR's October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 28).

Tax Structure Challenges

Figure 2. Sources of Shared and Unshared Revenue by Type of School System

Revenue Source	County School Systems	City School Systems	Special School Districts
Taxable Property			
♦ Shared	Yes—retain portion of county taxes based on share of WFTEADA	Yes—receive from county based on share of WFTEADA	Yes—receive from county based on share of WFTEADA
♦ Unshared	No—county revenue for education must be shared ¹⁴	Yes—at individual city's discretion or through general fund transfer	Yes—based on rate established by legislature
Taxable Sales			
♦ Shared	Yes—retain portion of county taxes based on share of WFTEADA	Yes—receive from county based on share of WFTEADA	Yes—receive from county based on share of WFTEADA
♦ Unshared	No—county revenue for education must be shared ¹⁴	Yes—at individual city's discretion or through general fund transfer	No—not authorized by legislature
State-shared Tax Revenue			
	Yes—no sharing requirement	Yes—no sharing requirement	No—not eligible to receive

TACIR's
 October 2005
 Staff
 Information
 Report A
*Prototype
 Model for
 School-
 System-Level
 Fiscal
 Capacity in
 Tennessee:
 Why and
 How* (page
 30).

Tax Structure Challenges

A note about state-shared taxes from the 2005 report:

“TACIR staff’s current work on fiscal capacity confirms that revenue from certain state-shared taxes is often used by local governments to fund schools and is a quite substantial source of revenue for some systems.”

TACIR’s October 2005 Staff Information Report *A Prototype Model for School-System-Level Fiscal Capacity in Tennessee: Why and How* (page 21).

Tax Structure Challenges *Unique to Tennessee*

No other state has the variety of school system types in combination with the complex fiscal powers and interrelationships among school systems that exist in Tennessee.

TACIR's September 2006 Staff Education Brief *Searching for a Fiscal Capacity Model: Why No Other State is Comparable to Tennessee* (page 8).

Summary Data for Other States with More Than One Type of School System

State	Types of School Systems (a)	Different Systems and Different Fiscal Authority	Capacity Measure Used	Major Own-Source Revenues Considered (b)	Other Minor Revenue Available (b)
	(1)	(2)	(3)	(4)	(5)
Alabama	C,M	N	Y	P	S
Alaska	M,B,S	N	Y	P	S,NT
Arizona	I,C	N	Y	P	N
California	I,C,M	N	N	NA	NA
Connecticut	I,M,T	N	Y	P	N
Maine	I,M,T	N	Y	P	V
Massachusetts	I,C,M,T	N	Y	P	M,H
Michigan	I,M,S	N	Y	P	N
New Hampshire	I,C,M	N	Y	P	N
New Jersey	I,C,M,T	N	Y	P	NT
New York	I,C,M	N	Y	P	S
Rhode Island	I,M,T	N	N	NA	NA
Tennessee	I,C,M	Y	Y	P,S	State-shared Taxes
Virginia	I,C,M	N	Y	P,S	Other

Source: "2002 Census of Governments" and individual state data.

- Notes (a) Types of school systems: I = independent school district, C = county system, M = municipal system, T = town or township system, S = state school, B = borough system.
- (b) Major own-source revenues: P = property taxes, S = sales taxes, I = income tax, V = annual vehicle excise tax, H = hotel motel taxes, NT = non-tax revenue, Other = state reimbursement payments for phased-out local vehicle property taxes. NA = not applicable because fiscal capacity not a consideration in distribution of funds.

TACIR's
September
2006 Staff
Education
Brief
*Searching
for a Fiscal
Capacity
Model: Why
No Other
State is
Comparable
to Tennessee
(page 7).*

Observations

- **The current model limits the state's capacity to achieve equity for students in all 141 systems.**
- **The fiscal structure of the three types of local governments that fund schools complicates attempts to create a system-level model.**
- **Any change in the equalization model will be disruptive.**

Basic Education Program (BEP) Task Force

October 27, 2014

Minutes

The Governor's Basic Education Program (BEP) Task Force met on October 27, 2014, at 1:30p.m. in the Executive Conference Room of the Tennessee State Capitol.

Members present: Commissioner Kevin Huffman (chair); Larry Ridings; Senator Dolores Gresham; Chris Henson; Kevin Krushenski; Comptroller Justin Wilson; Commissioner Larry Martin; David Connor; Lynnise Roehrich-Patrick; Mark Cate; Chris Henson; Gary Nixon; and Commissioner Larry Martin (by phone).

I. Welcome

Commissioner Huffman welcomed the group and explained that today's meeting would provide stakeholders with the opportunity to share their thoughts on the Basic Education Program. He said presentations would begin with Tennessee School Systems for Equity and then introduced Mr. Wayne Qualls.

II. Tennessee School Systems for Equity: Larry Ridings and Wayne Qualls

Mr. Qualls provided a brief history of the Tennessee School Systems for Equity (TSSE) and turned presentation over to TSSE member, Larry Ridings. Mr. Ridings noted that stakeholder meetings are important because they provide everyone with the chance to share their perspective and since Tennessee is so diverse we are going to have to do something more with the BEP than what we've done.

Mr. Ridings explained that TSSE is an organization that represents 82 school districts which are mostly rural and funded at a low level. There are 20 other school districts that are similar in nature but are not actually part of TSSE. The purpose of TSSE is to ensure that education funds for state school districts are distributed in a fair and equitable manner. Since 1992, TSSE has tried to develop a method to determine how possible changes made to the BEP would impact school districts. In 2008, TSSE contracted with a researcher at Vanderbilt to help determine such impacts.

Mr. Ridings noted that the BEP formula is much better than the old TFP formula. Some of the advantages of the BEP over the TFP include more equalization, it is dynamic and it is tied to objective criteria. Even with these advantages there are still some changes to the BEP that need to occur.

Mr. Ridings described the history of changes to the BEP formula beginning with the determination of the components in 1992. Changes to the BEP formula were supposed to be routed through the BEP Review Committee; however this was not happening, which was a concern. TSSE suggested three changes to the BEP review committee in order to ensure transparency and accountability. The first recommendation was to have the Department of Education establish written guidelines for the annual computation of the BEP. Mr. Ridings noted that this has already been done. The second recommendation is to require the BEP Review Committee to inform every school district of the impact of any proposed change to the BEP and to hold at least one public hearing prior to their Nov. 1 Report. The third recommendation would be

to consider a method of grouping together districts with similar characteristics when analyzing and reporting on the estimated impact of any proposed changes to the BEP's calculation.

Mr. Ridings then discussed the Cost Differential Factor (CDF). CDF was included in the BEP formula but was not something that was discussed during the development of the BEP and when CDF was implemented it completely un-equalized the BEP formula.

In 1998, as a result of Small Schools II lawsuit, teacher salaries had to be part of the BEP formula. These salary equity dollars served essentially the same function as the CDF but for poor districts and this also created un-equalization. In 2004, all salary equity dollars were removed from districts.

In 2007, the CBER equalization model was implemented. This led to the current state of 50% TACIR formula and 50% CBER formula. With this, 106 districts saw reductions in state funding and 29 districts saw an increase in funding.

Mr. Ridings also mentioned the issue of insurance. If the instructional component is change then insurance is impacted. If the formula moves to 75% instructional component then insurance will need to be increased. He noted that there will need to be a lot of new money to make any changes.

Mr. Ridings suggested the state needs to figure out all the components needed by surveying districts on the areas they are funding outside the BEP. If 51% of districts in this state are paying for an extra assistant principal, then maybe we need to look at that as a possible component. Mr. Ridings stated he believes there are too many positions out there that are being funded completely by local dollars. System-level fiscal capacity also needs to be examined. Mr. Ridings concluded by indicating that even though it is difficult to talk about, sales tax also needs be looked at.

Kevin Krushenski asked if the reductions for the 106 districts mentioned were just phase in for BEP 2.0. Mr. Ridings responded that that figure represents an actual figure based on gains and losses. Commissioner Huffman clarified that it is the loss if compared to 100% TACIR and that districts didn't actually lose money during transition year because districts were held harmless.

Mr. Krushenski asked if the Department could gather data to see where districts were prior to the implementation of BEP 2.0 and where they are today. Commissioner Huffman stated the Department would get that information for the task force.

III. Coalition of Large Area School Systems (CLASS): Robert Gowan and Elizabeth Millsaps

Ms. Millsaps read a letter in support for full implementation of BEP 2.0.

Mr. Gowan added that discussion surrounding BEP 2.0 began years before 2007. The conversation changed in 2007 with consideration of a 40 cent cigarette tax increase. This extra revenue would have provided enough money and would have allowed the districts a hold harmless. Any changes to the BEP will require additional revenue to implement those changes.

Mr. Gowan wondered if Ridings figures accounted for the level of growth that has occurred in the four big districts since 2007. The new Shelby County is losing students, but even with the reduction in population, the ELL population in Shelby County has increased by 20 percent.

Commissioner Huffman asked the percentage of students within the CLASS systems that were ELL and "at-risk". Ms. Millsaps did not have that exact data but stated she would make it available.

Mr. Gowan concluded by stating that when BEP 2.0 is fully implemented the CDF will go away and they would like to see a mechanism in place that accounts for the fact that there are differences in the cost of doing business across the state.

IV. Chattanooga, Memphis, Knoxville and Nashville Chamber of Commerce: Adam Lister

Mr. Lister read a letter requesting the state's funding formula recognize the additional resources needed to serve the unique population of students located within their four districts.

V. Sevier County: Karen King

Mrs. King began with the unique circumstances facing Sevier County. Sevier County is a tourism driven community which has created a funding anomaly in Sevier County. Revenue sources in Sevier, like every other county, are from three primary sources: BEP, property tax, and sales tax. Sevier County property values are incredibly high because of the tourism draw; however, 52% of the people working in Sevier County earn minimum wage and have home values higher than anywhere else in the state.

As far as sales tax, Mrs. King noted that there are a far greater numbers of people that visit Sevier County than live in Sevier County. Most states have provisions for circumstances like these but Tennessee does not.

Mrs. King noted Sevier is recognized as the wealthiest county in the State. This means they generate the most sales tax per capita and also the highest ability to pay of any school district in TN; however, 63% of students are on FRPL, the unemployment rate is 10.4%, and per-capita income is \$31,675. Sevier County is the third largest sales tax producer and yet receives the least amount of state dollars from the BEP.

The total operating budget for Sevier County Schools (FY2014) is \$131 million. This equates to 31.6% coming from state funding and more than 60.5% from local dollars. The state average for state dollars is 48.7% and for local dollars is 40.1%. Per pupil funding for Sevier County is roughly \$2,100.

The gap between state revenues for Sevier County children and other school districts will continue to grow. Mrs. King stated that revenues for supporting education in Sevier County must be increased for the operation of the school system's most basic needs.

Mrs. King presented possible equity solutions: (1) cost differential factor based on economy (government service burden); (2) floor in the funding formula not to fall below 65% in state funding; (3) change in criteria indices including some consideration of free/reduced population, employment

indexes, and ELL populations; (4) change indexes to TACIR only (this would increase Sevier county by \$4M)

Sevier County taxes at the maximum amount. And the property tax rate has been edging upwards. The actual property tax (dollar amount) is lower, but the assessed value is exponentially more. We don't drive out those who are current residents, but they are having trouble affording it.

Mark Cate stated it is important to point out that it is difficult to address anomalies when policy decisions that create or increase an anomaly are made locally. We have to make sure that the state is not chasing local policy. Mrs. King agreed.

Commissioner Huffman asked if the change in criteria mentioned as a possible equity solution would be something akin to having a per-pupil amount and then having a multiplier. Mrs. King responded yes, that this would be a service burden and would be a different way of thinking.

Commissioner Huffman asked if Sevier County taxes at or below the state average. Mrs. King responded that Sevier taxes at the maximum. Commissioner Huffman then asked the year the tourist development zone went into effect. Mrs. King noted that it went into effect the same year as BEP 2.0 so two major revenues were impacted at the same time.

Lynnis Roehrich-Patrick asked how this had impacted property tax. Mrs. King stated that property tax had been edging upwards and while the dollar figure is lower than the rest of the state, the assessed value is exponentially higher in Sevier County.

VI. Washington County: Mayor Dan Eldridge

Mayor Eldridge explained that Tennessee's current education funding formula prevents "substantially equal educational opportunity" for Washington County students.

Johnson City, located inside Washington County, has a significantly higher per pupil amount than Washington County students. Johnson City's per-pupil amount is \$9,384 compared to Washington County's per-pupil amount of \$8,258.

This funding disparity can be attributed to three main factors. The first is county level fiscal capacity in which a disproportionate share of sales tax collection within Johnson City (86%) vs. rural Washington County (7%). The second factor is the sharing requirement which dictates that the county must share all revenue with Johnson City schools regardless of collection sites. The third factor is that there is no sharing requirement for the city system even though most of the revenue is generated in Johnson City by Washington County residents but the county has sharing requirement regardless of where revenues are generated.

This \$1100 disparity in per-pupil amount has significant impact on student achievement. Data and research from Washington County shows that the Washington County students have noticeably lower student achievement compared to Johnson City students even though the demographic data for the students is very similar.

The local option sales tax allocation creates the biggest funding disparity in Washington County. Johnson City is unique in that it is considered a regional retail destination and generates 86% of total sales tax revenue for Washington County, however, 40% of the sales tax is paid by non-Washington County residents and 32% paid for by rural Washington County and Jonesborough residents. The sales tax revenue is then allocated to the Johnson City general fund which is then allocated to Johnson City schools without any requirement to share with the County schools.

Johnson City puts \$10.5 million of their general fund into the school system. This is a good thing that they don't want compromised. Washington County designates entire second half of sales tax to school system. This is something unique to Washington County. Washington County has to share this while Johnson City does not have to share its second half of the sales tax. The demographic data suggest that distribution of the second half of local option sales tax disproportionately benefits Johnson City, creating the 14% per-pupil funding disparity.

There is currently no mechanism to eliminate this funding disparity even though Washington County is willing to do it locally. Mayor Eldridge noted several possible solutions to resolve the funding disparity; the first would be to exempt from the sharing requirements any revenues that are distributed to Washington County on the basis of the situs of their collection; the second would be to allow Washington County to appropriate to its school system from the county property tax rate, without being subject to sharing, the per-pupil equivalent of an amount, over and about the amount of county appropriations that were subject to sharing, but not to exceed the amount appropriated by Johnson City from municipal revenues to its school system in the preceding year.

Both of these solutions are local solutions and would not impact the BEP formula or the funding. Washington County cannot continue to allow inequity to exist in the county and are willing to use local money to close gap but they need a way to make it legal.

Commissioner Huffman asked what is argument is for keeping system as it is now. Mayor Eldridge said it is due to a Court ruling from the 1970s and reiterated that they are not interested in asking for sales tax to be re-allocated just asking for way to supplement local funding to close the gap.

Mr. Krushenski asked if what Washington County was advocating for is a rural property tax. Mayor Eldridge responded that they were not looking for a rural property tax, just the ability to take county property tax revenue and allocate that to county schools without sharing until it can be equalized.

Mr. Cate asked if the reallocation would result in a reduction to Johnson City. Mayor Eldridge responded that it would not be a reduction, it just wouldn't be an increase, and it would be forgone revenue.

Commissioner Huffman noted that the second solution mentioned would be tough for Johnson City because it would mean a raise in their taxes with no return; however the other side to the argument is that disparity is real and needs to be addressed.

VII. Roane County: County Executive Ronald Woody

Mr. Woody read a letter to the Task Force on behalf of the Roane County Commission and the Roane County Board of Education. The letter expressed support for the BEP cost model and encouraged its continuous review update; expressed support for a system fiscal capacity rather than the county fiscal capacity; and a ranking system that would rank counties separately from cities until inequity in funding is addressed.

Mr. Cate asked if they were advocating for a particular system fiscal capacity model. Mr. Woody stated they were not recommending any particular model but just that it needs to be a consideration.

VIII. Cumberland County: Carmin Lynch, Retired County Commissioner

Mr. Lynch, representing Cumberland County, stated the current BEP formula is unnecessarily complex and outdated. He noted that many of the 45 components are antiquated and have not kept up with the demands of today. For example the BEP funds 10 months of insurance so Cumberland County funds the other two months locally, at a great expense. Additionally many of the positions generated are inadequate; the BEP funds 1 school nurse per 3,000 students, with all the new health concerns and requirements this ratio is adequate. The same goes for technology coordinators who are funded 1 per 6,400 students, there is simply no way one technology coordinator could handle the demands of 6,400 students. Substitute teachers are based on \$61.75 per-student; this is not helpful in budgeting and does not make logical sense. Districts are measured on if they are SACS accredited, however the BEP formula does not adequately fund for the required vice principals. Mr. Lynch noted Cumberland County built two new high schools, rather than one big one, to have smaller schools for the students. These two high schools generated just three vice principals but if they would have built just one school, the BEP would have funded six assistant principals for the same number of students.

In addition to the outdate components, using two fiscal capacity models is problematic. These models themselves are highly complex and the application of each is unclear. Cumberland County lost \$1.2 million in funding with the implementation of BEP 2.0. Instead of using the two models they would like to see just the TACIR model implemented.

Overall the BEP formula is outdated, uses highly complex formulas, is difficult to understand, creates a poor relationship between funding and spending outcomes, is managed at the highest levels instead of the lowest levels and in order to rectify these issues the entire formula needs to be replaced.

Commissioner Huffman noted the challenge of keeping the components current and asked Mr. Lynch if he would be supportive of getting rid of the components and instead have a per-pupil amount with some kind of multiplier? Mr. Lynch noted he would be supportive of that to get to an equitable dollar per student.

IX. Oak Ridge: Mayor Tom Beehan

Mayor Tom Beehan read a letter to the Task Force that expressed several concerns with the BEP formula, including local fiscal capacity which does not accommodate for the unique situations in Oak Ridge. For example, nearly 60% of the land in the city is tax exempt. Another concern is the long-term

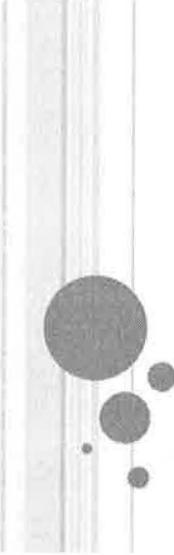
impact that the \$6 billion Uranium Processing Facility at the Y12 National Security Complex will have on the city's school system. The project will generate huge amounts of sales tax revenues that will benefit the city in the short term, but once it goes away Oak Ridge will have to deal with a maintenance of effort requirement in school funding.

David Conner asked if Oak Ridge would benefit from some smoothing effect. Mayor Beehan responded that would be very helpful because they know this investment in the processing facility has a shelf-life.

X. Dates for Upcoming Meetings/Future Agenda Items

Commissioner Huffman thanked all the presenters and noted that hearing specific examples like the ones that were provided were extremely helpful.

Commissioner Huffman noted that the next step for the BEP Task Force would be to come together around common principals to help lead further discussions around the formula.



IMPACT OF MAJOR CHANGES TO BEP

Tennessee School Systems for Equity

TENNESSEE SCHOOL SYSTEMS FOR EQUITY

- o Tennessee School Systems for Equity (TSSE) is an organization that represents 82 school districts.
- o TSSE districts are mostly rural and poorly funded.
- o TSSE districts do not always have the resources or personnel to monitor the changes to the BEP and the effect the changes make on their systems.

2

PURPOSE OF TSSE

*To ensure that education funds
for state school districts are
distributed in a fair and
equitable manner.*

TSSE

o TSSE has contracted with Jeff Springer, Basis Policy Research, since 2008 to:

- Replicate the formula
- Run scenarios to project the impact of changes
- Compare impact of changes on TSSE systems and non-TSSE systems

1

HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Flaws
<p>1992:</p> <p>BEP a method of determining the allocation of funds to Tennessee school districts by listing "all" the components necessary to operate a "basic" education program in Tennessee schools.</p> <ul style="list-style-type: none"> ▪ These components were to include the basic components (of which there are now 45). ▪ Each component was to be based upon measurable, objective data. 	<p>Many operational costs such as:</p> <ul style="list-style-type: none"> ▪ insurance, ▪ liability, ▪ unemployment, ▪ property, ▪ fixed charges, ▪ clerical positions ▪ teacher salaries <p>were either:</p> <ul style="list-style-type: none"> ➢ a. Not included initially ➢ b. Not upgraded to the level necessary to reflect current needs and objectives as a component

HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Flaws
<p>1992:</p> <p>BEP Review Committee: The purpose of the committee is to:</p> <ul style="list-style-type: none"> ▪ Oversee the BEP ▪ Recommend changes 	<p>Until recently (2011)* there was no procedure to insure that any changes to the BEP were routed through this committee to insure:</p> <ul style="list-style-type: none"> ➢ Transparency and ➢ Accountability

*RECOMMENDATIONS FROM TSSE

- TSSE suggested 3 recommendations to the BEP Review Committee to correct the flaw and insure:
 - Transparency
 - Accountability
- These recommendations were adopted by the committee in 2011.

RECOMMENDATION I

- The Tennessee Department of Education should establish written guidelines for the annual computation of the BEP, including submission to the BEP Review Committee of :
 - Any proposed changes to the model's calculations and assumptions
 - An analysis of the impact of those proposed changes on all districts.

RECOMMENDATION II

- o The BEP Review committee should be required to:
 - Inform every school district of the impact of any proposed changes to the BEP, and
 - Hold at least one public hearing to obtain school districts input prior to the November 1st BEP Review Committee's Report to the Governor and the State Board of Education.

RECOMMENDATION III

- o Consideration should be given by the State Department of Education to some method of grouping school districts with similar characteristics when analyzing and reporting on the estimated impact of any proposed changes to the BEP's calculations and assumptions on school districts, including the model's two equalization formulas (TACIR and CBER).¹

HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Flaws
1992: CDF Cost Differential Factor, a multiplier which increased certain districts funds for certified salaries. ■ Approximately 17 districts have received these funds since 1992 in the amount of approximately 135 million dollars annually.	These funds completely "un-equalize" the BEP formula.

HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Flaws
1998: Salary Equity Dollars In response to <u>Small Schools II Lawsuit</u> , the Supreme Court ruled that teacher salaries had to be a part of the BEP formula. ■ Legislature granted 39 million dollars to 76 poorer districts as categorical funds for teacher salaries.	These funds served essentially the same purpose as the CDF dollars for poor systems but also "un-equalized" the BEP formula.
2004: All salary equity dollars were removed from districts	

HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Flaws
<p>2007:</p> <p>BEP 2.0</p> <ul style="list-style-type: none"> A new equalization formula, CBER, was implemented. Currently 50% of TACIR formula is retained and 50% CBER is included in calculations. 	<p>State funding:</p> <ul style="list-style-type: none"> > 106 districts see reductions in state funding > 29 districts see increases in state funding

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CHANGES IN TENNESSEE SCHOOL DISTRICTS FISCAL BURDEN WITH BEP FORMULA AT 50% TACIR / 50% CBER 0% TACIR / 100% CBER

Total dollar change in state funding in the aggregate:		
Number of Districts	50% TACIR / 50% CBER	0% TACIR / 0% CBER
29 Districts	Gain of \$63,649,000	Gain \$127,298,000
106 Districts	Loss of \$63,421,000	Loss of \$126,842,000
All Districts	Gain of \$203,000	Gain of \$406,000

▪Note: When BEP formula increases to 100%CBER and 0%TACIR the per-pupil and amount effectively doubles from 100%TACIR and 0% CBER.

▪Estimates based on FY2013 BEP Model.

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HISTORY OF MAJOR BEP CHANGES

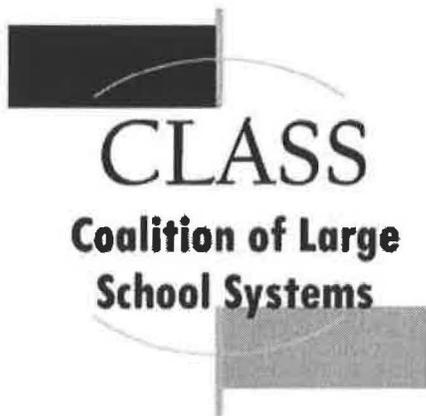
Date and Implementation	Change	
	TSSE	Non-TSSE
<p>2008:</p> <p>BEP 2.0</p> <p>Additional changes were made:</p> <ul style="list-style-type: none"> Instructional component increased from 65% to 70% CDF was reduced to 50% 	<p>+29 million</p> <p><6 million></p>	<p>+124 million</p> <p><71 million></p>

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HISTORY OF MAJOR BEP CHANGES

Date and Implementation	Change	
	TSSE	Non-TSSE
<p>2014:</p> <p>Replaced portion of \$39 million of Salary Equity Dollars</p>	+ 7.8 million	-0-

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Memorandum

TO: Governor's BEP Task Force
FROM: Coalition of Large School Systems
DATE: October 17, 2014
RE: Statement of support for full implementation of BEP 2.0

The Coalition of Large School Systems (CLASS), which includes Knox County Schools, Hamilton County Schools, Metropolitan Nashville Public Schools and Shelby County Schools, supports the full implementation of the BEP 2.0 public school funding formula.

CLASS and their respective local funding bodies and mayors advocated for the changes to the BEP formula included in BEP 2.0 for several years before the General Assembly passed Public Chapter 369 in 2007. CLASS and the big four counties were not the only advocates for these changes: for several years prior to the passage of BEP 2.0, the BEP Review Committee also recommended the major changes included in BEP 2.0, including:

- Increasing funding for at-risk and ELL students
- Increasing the state share of instructional salaries to 75%
- Full funding of system growth, and
- A more accurate mechanism for equalizing funding among counties and districts

The BEP Review Committee has also recommended full implementation of BEP 2.0 since 2007.

The needs reflected in the changes to the BEP that were begun in 2007 have not diminished since that time, and in most cases the needs have increased. If there are changes that will be proposed to the BEP formula, CLASS appreciates the opportunity to continue to be a part of this discussion.



October 20, 2014

To the members of the BEP Task Force:

We are writing to you today representing the business community in the four largest metropolitan regions of the state.

It is our understanding that the Commissioner's BEP Task Force is charged with examining potential changes to Tennessee's K-12 funding formula, operating under the assumption there will be no additional new revenue beyond the formula growth that is typically funded by the legislature each year. As you know, local governments in our urban centers provide a disproportionate amount of the total funding to their Local Education Agency (LEA) compared to most schools districts across the state, and Tennessee's per pupil funding for K-12 education ranks in the bottom quartile of the 50 states according to the U.S. Census Bureau. As you examine potential changes to the formula that may negatively impact the finances of the state's four largest school districts, we ask that you consider:

- The school districts in Davidson, Hamilton, Knox and Shelby Counties educate a greater share of Tennessee's students with significant challenges. According to the 2013 state report card, these districts serve 34% of all K-12 students in Tennessee, but 37% of the state's economically disadvantaged students and 56% of all English Language Learner (ELL) students. Funding levels for ELL students outlined in the last major revision of the BEP formula (BEP 2.0) have yet to be implemented;
- 83 of the 85 priority schools identified by the state for 2015 are located in the four most-populated counties, including the priority schools being overseen by the Achievement School District. The state's lowest performing schools need a combination of reforms and additional resources in order to meet the academic needs of their students;
- The state's funding formula should recognize real differences in cost of living and purchasing power in urban school districts. According to the U.S. Census, median monthly home owner costs were higher in Tennessee's four urban counties by 3% to 14% more than the state overall. Outstanding educators must be incentivized through appropriate compensation to teach the state's most challenged students.

Our business communities believe that the improvement of our urban school districts must be supported if our regions are to continue serving as economic drivers for our state. We look forward to reviewing your recommendations.

Sincerely,

Bill Kilbride

Bill Kilbride
Chattanooga Area Chamber of Commerce

Michael Edwards

Michael Edwards
Knoxville Chamber

Phil Trenary

Phil Trenary
Greater Memphis Chamber

Ralph Schulz

Ralph Schulz
Nashville Area Chamber of Commerce

A FUNDING ANOMOLY

DR. JACK A. PARTON
SUPERINTENDENT, SEVIER COUNTY SCHOOLS
KAREN KING
ASSISTANT SUPERINTENDENT, FINANCE

EDUCATION OPERATING FUNDS

Revenue sources for funding education in Sevier County is derived from three primary sources:

1. Basic Education Plan (BEP)
2. Property tax
3. Sales tax

What is BEP?

- The Basic Education Program (BEP) is the funding formula through which state education dollars are generated and distributed to Tennessee schools to provide a basic level of education for Tennessee students.
- The BEP has three major categories related to the basic needs of students, teachers, and administrators within a school system.
 - › Instructional (typical State share- 70%)
 - › Classroom (typical State share- 75%)
 - › Non-Classroom (typical State share- 50%)

FORMULA CALCULATIONS

- The BEP Formula utilizes a statistical estimate of a county's relative ability to raise revenue for education (fiscal capacity).
- Fiscal capacity is determined by 2 indexes:
 1. TACIR Index
 2. CBER/Fox Index

TACIR INDEX

1. The amount of money the county reports it spends on education.
2. The property assessment
3. Local sales tax
4. Per Capita Income
5. Tax burden when calculating farm and residential properties against total assessment
6. Service burden for education dividing total ADM by county population

CBER INDEX (Fox Plan)

1. The County's Property Tax
2. Sales Tax

Multiplied by an average tax base for the state to determine the county's local fiscal capacity

When the fiscal capacity is determined and applied to the formula, our local economy creates an anomaly that exists nowhere else in the State of Tennessee.

THE ANOMALY and the PROBLEM

- Sevier County is recognized as the wealthiest county in the State of Tennessee based on these fiscal capacity indexes, even though we have :
 - 63% free/reduced lunch rate, as of Feb. 2014
• (nearly 9,000 students)
 - 10.4% unemployment rate as of Feb. 2014
 - Per-capita income= \$31,675 TACIR Fiscal Capacity Info Sheet

Sevier County –

The State of Tennessee's third largest tax producer out of 95 counties

Receives the least amount of state education funding.

SEVIER COUNTY SCHOOL SYSTEM FUNDING

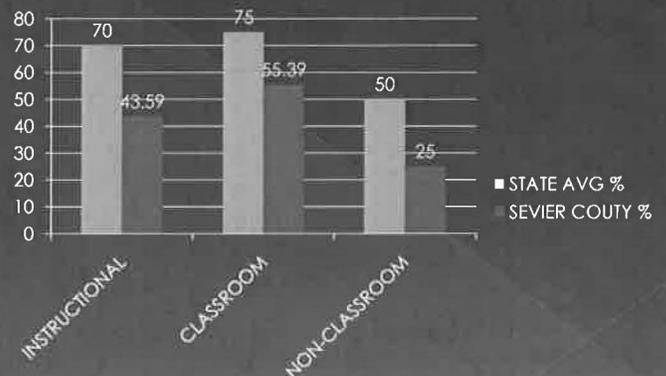
- The total operating budget for Sevier County Schools for the 2013-2014 fiscal year is **\$131,954,645**.
- This equates to **31.6%** coming from state funding and more than **60.5%** from local funding.

East TN Public Schools Ranked by Funding

source: Knox News Sentinel Sunday Feb 16, 2014

	LOCAL	STATE	FEDERAL
Sevier County	60.50%	31.60%	7.80%
Knox County	53.90%	36.70%	9.40%
Roane County	41.40%	48.70%	9.90%
Blount County	39.50%	52.30%	8.20%
Anderson County	36.70%	48.30%	15.00%
Jefferson County	28.40%	61.00%	10.70%
State Average	40.10%	48.70%	11.30%

BEP FUNDING IN SEVIER COUNTY



Top 10 Districts in Student Populations

District	BEP Funding	ADM	Per student
Shelby	\$651,226,000	149,974	\$4,343
Davidson	\$252,620,000	77,670	\$3,252
Knox	\$173,190,000	56,773	\$3,051
Hamilton	\$131,119,000	42,194	\$3,108
Rutherford	\$164,993,000	39,746	\$4,150
Williamson	\$107,204,000	32,887	\$3,260
Montgomery	\$126,044,000	29,837	\$4,224
Sumner	\$120,936,000	27,993	\$4,330
Wilson	\$61,346,000	16,014	\$3,831
Sevier	\$38,495,000	14,246	\$2,702

FY14 ESTIMATED PER PUPIL BEP FUNDING

District	FY13-14 BEP Allocation	ADMs	Per Pupil Funding	BEP \$ Difference from Sevier Co.	Total Dollar Variance
Sevier	\$38,495,000	14,246	\$2,702		
Knox	\$173,190,000	56,773	\$3,051	\$348	\$4.9M
Hamilton	\$131,119,000	42,194	\$3,108	\$405	\$5.7M
Davidson	\$252,620,000	77,670	\$3,252	\$550	\$7.8M
Williamson	\$107,204,000	32,887	\$3,260	\$557	\$7.9M
Johnson City	\$25,620,000	7,517	\$3,408	\$706	\$10.0M
Washington	\$30,745,000	8,937	\$3,440	\$738	\$10.5M
Madison	\$44,583,000	12,695	\$3,511	\$809	\$11.5M

IMPACT ON SEVIER COUNTY SCHOOLS

- When the formula is calculated and the funds are distributed, Sevier County receives the **lowest per child funding** of any district in the State.
- The **gap** between Sevier County and **Knox County** is **\$348.45 per child** (\$4,963,954.17 additional funds)
- Williamson County** (wealthiest county in state) receives **\$557.64 more per child** than Sevier County (\$7,944,000.00 additional funds)

EQUITY SOLUTIONS

- Cost differential factor based on economy (government service burden)
- Floor in the funding formula not to fall below 65% in state funding (\$10M+)
- Change in criteria indexes including some consideration of free/reduced population (at risk), employment indexes, ELL populations
- Change indexes to TAGIR only (\$4M+)

WHAT HAPPENS IF NO CHANGE IN FUNDING FORMULA?

- The gap between state revenues for Sevier County children and other school districts will continue to grow.
 - 2008 gap= \$80.00 per student
 - 2013 gap= \$379.34 per student
 - 2014 gap= ????
- The revenues for supporting education in Sevier County must be increased for the operation of our school system's most basic needs.

Creating Equality in Educational Opportunity for the Students of Washington County, Tennessee

Presentation to the Governor's Basic Education Program Task Force
Dan Eldridge, Washington County Mayor
October 27, 2014

The Issue

Tennessee's education funding allocation method prevents "substantially equal educational opportunity" for

ALL

17,000 students in Washington County.

Enrollment & Spending

- Johnson City – 7,738 students - \$9,384/pupil
- Washington County – 9,057 students - \$8,258/pupil
- Total Funding Disparity - \$10,200,000

Funding Disparity Due to

- County Level Fiscal Capacity
 - Disproportionate share of sales tax collection within Johnson City (86%) vs. rural Washington County (7%)
- Sharing Requirement
 - County required to share all revenue with Johnson City schools regardless of collection situs
- Lack of Sharing Requirement for Johnson City Revenue Regardless of Payer

Reality of Current Funding Allocation

- Washington County can never close the education funding gap by even ONE DOLLAR, regardless of the amount of local funding appropriated to education.

Impact on County Students

- Lower student achievement in the Washington County system as compared to Johnson City schools
- Demographic data suggests Washington County student outcomes should be similar to or even higher than outcomes for the city school students

Educational Achievement Comparison

- 3rd Grade Reading Proficiency
 - Johnson City Schools - 65.2%
 - Washington County Schools - 49.7%
- Average ACT Composite Score
 - Johnson City Schools - 22.1
 - Washington County Schools - 19.6
- Graduation Rate
 - Johnson City Schools - 91.7
 - Washington County Schools - 90.3

Demographic Comparison

Population Comparison



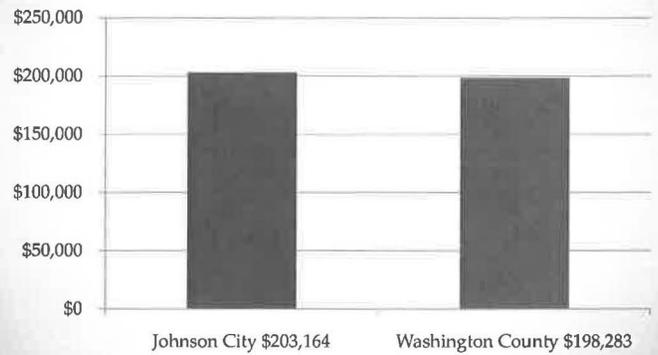
Comparison of Households



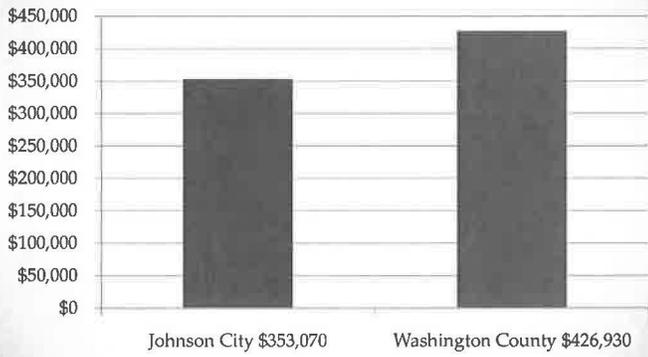
Residential Property Assessed Values



Average Home Value



Average Household Net Worth



Median Household Income



Median Disposable Income

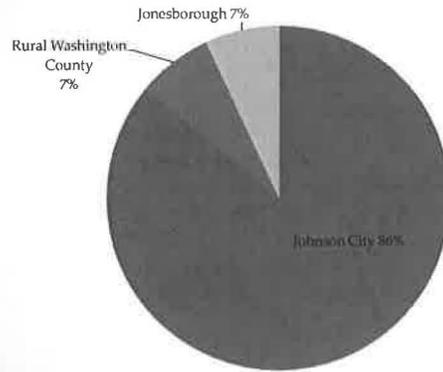


Effect of Local Option Sales Tax
Allocation on School Funding

Payers of Sales Tax



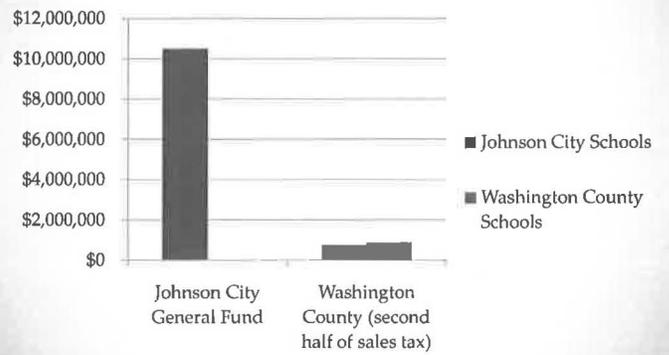
Local Option Sales Tax Collections by Situs



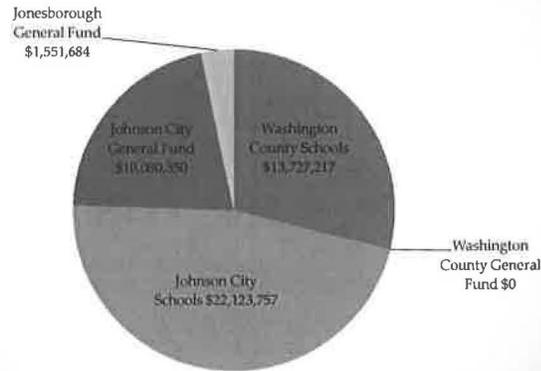
Sales Tax Allocation – FY13



Local Government “Discretionary” School Funding Allocations



Sales Tax After Local Government Discretionary Allocation to Schools



Summary

- A fourteen percent (\$1,126) per pupil funding disparity has been created between the Johnson City and Washington County school systems as a result of Johnson City's ability to allocate General Fund revenue (sales tax being a significant component) without a requirement to share with the County schools.
- Demographic data suggests distribution of the second half of local option sales tax disproportionately benefits Johnson City; thereby, creating an opportunity for funding disparity.
- The disparity prevents Washington County from offering a "substantially equal educational opportunity" to its nine thousand county school students.
- No mechanism exists to reduce or eliminate the funding disparity.

How do we resolve the funding disparity in Washington County?

- Exempt from the sharing requirement any revenues that are distributed to Washington County on the basis of the situs of their collection,
- Allow Washington County to appropriate to its school system from the county property tax rate, without being subject to sharing, the per-pupil equivalent of an amount, over and above the amount of county appropriations that were subject to sharing, but not to exceed the amount appropriated by Johnson City from municipal revenues to its school system in the preceding year.

Benefit of Solving the Problem

- Enhanced Academic Achievement for 9,057 Students
- Improvement in Career Readiness
- Greater Likelihood of Post-secondary Success
- More Competitive Workforce
- Attraction of New Investment and Higher Quality Jobs
- Enhanced Career Opportunities Encouraging Graduates to Stay in Washington County
- Higher Standard of Living
- Economic Impact Benefits the Entire Region

Thank you



Office of the County Executive Roane County Courthouse

October 20, 2014

Governor's Basic Education Program (BEP) Task Force
Nashville, TN

Dear Board members:

I would like to thank the Governor's BEP Task Force for their work and commitment on identifying funding concerns of our local school systems.

BEP Cost Model

I am a supporter of the BEP cost model while recognizing that the model should continue to be reviewed, modified and refined as our education system evolves. Within the current model a number of cost components appear not to be included, and various cost components, which are included, may represent an inadequate cost of operations.

Examples of costs not included:

- Risk management function
- Business office function

Examples of costs which may not be adequately funded:

- Nursing services (systems having more nurses than earned in the formula)
- Technology costs (rapid expansion of technology used within the classroom)

Items such as these should continue to be reviewed and updated.

Fiscal Capacity

I feel that the biggest issue of the BEP funding model revolves around the fiscal capacity index. In reviewing Roane County's ranking in fiscal capacity, it would not appear possible based on the percentage of free and reduced lunch eligibility, along with other economic factors, that Roane County would rank higher than many other counties.

We must have confidence in the fiscal capacity index.

It was noted in a couple of the task force meetings that education lawsuits generally focus on adequacy and equity in funding. It was also discussed that city school systems could not be established unless it was evident that additional funding was available for the city system above funding available for the county system. This additional available funding indicates a fundamental inequity in funding. The per pupil revenues and expenditures of city systems versus county systems continue to reflect this inequity. Furthermore, a county's fiscal capacity index allows a city system to benefit from a county's lower fiscal capacity and increases the county system's fiscal capacity index by including the city's wealth in the fiscal capacity calculation. The task force discussed having a system fiscal capacity as opposed to a county fiscal capacity.

I would recommend a system fiscal capacity instead of the county fiscal capacity.

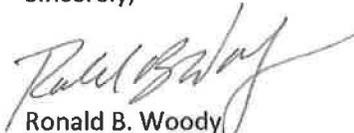
Reporting Comparison

The state should address the equity issues between the city systems and the county systems. Until the inequity in funding is addressed, the funding disparity between county and city systems will continue to grow.

Therefore, I would recommend that the reporting and ranking of systems be separated into, at minimum, a comparison of county systems with other county systems and city/special district systems with city/special district systems until the equity issue is resolved.

Thank you for the opportunity to comment on education funding issues faced by our local school systems.

Sincerely,


Ronald B. Woody
County Executive

C: Roane County Commission
 Roane County Board of Education

BEP FORMULA

CUMBERLAND COUNTY

BEP FORMULA

A "COUNTY'S-EYE" VIEW
Cumberland County

- Unnecessarily Complex Formula
 - 45 Antiquated Components
 - Most Sub Formulas unchanged in 22 years
 - Many Inadequate for 21st Century
 - Transfer Rules
 - 2 Fiscal Capacity Indexes (County's Ability to Pay)
 - Highly complex formulas in themselves
 - Unclear rationale
 - Application of each unclear

10/27/2014

Carmin E. Lynch

7

BEP FORMULA

CUMBERLAND COUNTY

- Many Components Inadequate for 21st Century - Examples

- Health Insurance Only funded for 10 months of the year
- School nurses based on one per 3,000 Students
- Technology Coordinators based on one per 6,400 Students
- Substitute Teachers based on \$61.75 per Student (??)
- Art, Music, Physical Education only funded through Sixth Grade
- Elementary School Vice Principals Inadequate for SACS Accreditation
- High School Principals Inconsistent calculations
- Custodial, Maint. & Operations, and Capital based on State calculated Square Feet

10/27/2014

Carmin E. Lynch

3

BEP FORMULA

CUMBERLAND COUNTY

- Transfer Rules Complexities

Three Major Categories – Nominal State Funding (Varies based on Fiscal Capacity Indices)

- Instructional Funding 70%
- Classroom Funding 75%
- Non-Classroom Funding 50%

Funding can be moved by LEA from Non Classroom to Classroom and/or Instructional Account

Funding can be moved from Classroom Funding to Instructional Account
Funding cannot be moved from Instructional to any other Category
Distorts Local Contribution

10/27/2014

Carmin E. Lynch

4

BEP FORMULA

Cumberland County

- Fiscal Capacity Indices (TACIR & CBER/Fox) Attempt to define how State & local Governments will share the costs computed by the BEP formula
- Weighted Average Application
- Highly Complex
 - TACIR considers county sales tax generation, property assessments, residential to farm assessments, per capita income, students to total population, based on multiple regression analysis
 - CBER considers county sales tax generation and property assessments weighted based on State Averages

10/27/2014

Carmel E. Lynch



BEP FORMULA

CUMBERLAND COUNTY

- Comptroller Opinions
 - The BEP Formula does not adequately fund Public Schools. The BEP Formula does not include some components that research indicates could help achieve adequacy, nor fully fund others. John Morgan, Comptroller, July, 2003.
 - The BEP Formula is difficult to understand, non-verifiable, and non-transparent. Paraphrasing Winston Churchill, "it is a riddle, wrapped in a mystery, inside an enigma." Justin Wilson, Comptroller, March, 2011.

10/27/2014

Carmel E. Lynch



BEP FORMULA

CUMBERLAND COUNTY

- EXPERT OPINION
 - School finance formulas often hold for two decades or more. It is likely that whatever Tennessee does it will be in place for two decades. Because of this, don't just tinker with the plan or formula but plan on building a structure that will be relevant in 2034. ...The one thing we know (about what schools will look like in 2034) is that there will be students, so design around the students.
 - Marquerite Roza, Director, Edunomics Lab, Georgetown University, August, 2014.

10/27/2014

Carmel E. Lynch



BEP FORMULA

CUMBERLAND COUNTY

- CONCLUSION
 - BEP Formula is 22 years old
 - Highly complex formulas
 - Difficult to understand
 - Poor relationship between funding, spending, outcomes
 - Formula is inadequate to provide a Basic Education Program
 - Managed at the highest levels instead of lowest levels
 - Entire Formula needs to be replaced

10/27/2014

Carmel E. Lynch





October 27, 2014

Basic Education Program (BEP) Task Force
Kevin Huffman, Chairman
Tennessee Department of Education
710 James Robertson Parkway
Andrew Johnson Tower, 9th Floor
Nashville, TN 37243

Dear Commissioner Huffman and Honorable Members of the BEP Task Force:

Thank you for the work you've done over the past months to examine issues related to funding public education in Tennessee. Distribution of funds for education is among the most challenging issues facing states across the nation, and Tennessee is no exception.

In forming the Task Force, Governor Haslam acknowledged that many changes have occurred in the educational landscape since the last revision of the Basic Education Program (BEP) formula seven years ago. As a local government official, I can attest that many changes have also occurred at the local level, as cities and counties strive to provide essential services to their citizens with increasingly limited resources. In fact, the timing of the last BEP formula revision coincided with the beginning of a national recession, from which we are just beginning to emerge, and which has had an impact on the state's ability to fully implement BEP 2.0.

Therefore, I appreciate the opportunity to raise an issue as it relates to local fiscal capacity, which is the key equalization component in the BEP. I am concerned that the existing BEP model does not accommodate unique situations like we have in Oak Ridge, where approximately sixty percent (60%) of real property is tax exempt. While the federal government pays a modest, discretionary in-lieu-of tax payment on the almost 33,000 acres it owns, the payment represents just a small fraction of the estimated revenues that would be available if the large industrial and commercial facilities were privately held. As a result, the higher property tax rates in the City of Oak Ridge, Roane, and Anderson Counties may convey a local fiscal capacity that is artificial.

Another factor that significantly impacts Oak Ridge's fiscal capacity is that the federal government built the city all at once during World War II. As a result, much of the original infrastructure is in need of replacement, placing enormous pressure on this small city to spread a limited tax base and rate base across the capital projects, education and municipal service needs of 30,000 residents. Likewise, of the approximately 12,000 housing units in our community, about half consist of modest, war-era housing that was meant to be temporary. Many of these units have been converted to rental property, typically with tenants whose service demands—including education—outpace the revenue derived from the property valuations of their rentals.

Moreover, Oak Ridge sees a daily influx of thousands of commuters who work at the federal facilities, placing a burden on municipal services and infrastructure not unlike those related to the tourism sector in Sevier County. Less than twenty percent (20%) of the employees who work at the federal facilities reside in Oak Ridge; employees frequently mention Oak Ridge's higher combined property tax rates as a reason for locating in surrounding communities. In his September 23rd presentation to the Task Force, Dr. Bill Fox identified the need to consider an adjustment for unique situations where some of the property and

sales tax bases may not be available for education due to non-education expenditure needs such as tourism, municipal overburden, and the costs of offsetting low population density. We urge the Task Force to continue its research in order to illuminate and analyze special circumstances, as we have in Oak Ridge, which can have an effect on local capacity.

Massive fluctuations in sales tax collections related to upswings and downturns in federal work in Oak Ridge also create huge problems for the city as we seek to fund our schools and city services at consistent levels. The Maintenance of Effort (MOE) requirement to fund education at a base level no less than the year prior, is not sustainable when a local economy rises sharply, then falls, as we have historically seen in Oak Ridge. Although not a direct component of the BEP formula, the MOE has a huge impact on our community's fiscal capacity and needs to be adjusted to accommodate fluctuations in local economic conditions. This matter is urgent, as the federal government is about to embark on one of the largest public works projects in Tennessee history in Oak Ridge. We are concerned that a significant influx of sales tax collections will create a MOE burden that cannot be sustained once the project is completed.

Finally, as the Task Force seeks to identify strengths and weaknesses of the BEP formula and determine whether or not changes should be made, I offer these additional comments:

- The current BEP formula excludes classes of education-related employees with the result that state-mandated raises become an unfunded mandate which falls on local governments;
- The BEP formula should be modified to hold local governments harmless for decisions made at the state level such as reducing sales tax and reducing/eliminating the Hall tax upon which local governments rely to help fund education;
- The funding formula should be simplified in order to enhance public understanding of how education is funded. Additional public outreach and public input sessions should be considered, similar to those recently announced pertaining to the process for a public review of the state's K-12 academic standards in English language arts and math.
- Continue to clarify state laws and Department of Education policies that relate to circumstances under which BEP funds can be withheld; and
- Consult with local governing bodies before integrating new, prescriptive components into the BEP. For example, consideration was given last year to include school resource officers as a component of the BEP formula. In lieu of a mandate, our police department worked in conjunction with school administrators to develop a memorandum of agreement for school resource officers, which is working well to address our local needs.

Thank you again for the opportunity to provide comments on the BEP, and for listening to the many stakeholders who work to promote quality education for our students across the state. Should you have further questions, feel free to contact Mark Watson, City Manager, (865) 425-3550.

Sincerely,



Thomas L. Beehan
Mayor