



# TACIR



## TACIR Memo and AG Opinion

Presentation to the Basic Education Review  
Committee

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# Attorney General Opinion 20-01

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




# The Question

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



# 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 salary and wages costs:** 30% local, 70% state
  - **Instructional benefit costs:** 30% local, 70% state
  - **Other classroom costs:** 25% local, 75% state
  - **Non-classroom costs:** 50% local, 50% state
    - School system will receive no less than a 25% state share in non-classroom components (Davidson and Sevier receive a 25% state share in non-classroom because of this provision)
- 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



# Factors Used in TACIR's Fiscal Capacity Regression

- **Own-Source Revenue Per Student:** 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.
- **Sales Tax Base Per Student:** The locally taxable sales for the county-area divided by ADM. This is a measure of the local ability to raise revenue.
- **Equalized Property Assessment Per Student:** The total assessed property value for the county-area, equalized across counties using appraisal-to-sales ratios, and then divided by ADM. This is also a measure of the local ability to raise revenue.



# Factors Used in TACIR's Fiscal Capacity Regression (cont.)

- **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.



# Tax Equivalency Payments

- The estimated value of property subject to payment-in-lieu-of-tax (PILOT) agreements, also called tax equivalency payments, is included in the Equalized Property Assessment Per Student variable.
- Calculated by dividing the reported tax equivalency payments by the equalized property tax rate.
- May be more or less than the taxes that could have otherwise been collected as property tax (typically PILOTs are a lot less; e.g., in 2016, PILOTs were about 47% of the amount that could have been collected otherwise).



# Tax Equivalency Payments (contd.)

- Including TEPs increases equity by helping ensure that no reduction in the property tax base is made based on “agreements entered into by the local jurisdiction that result in payments in lieu of taxes being made to the local jurisdiction.” See Tenn. Code Ann. § 49-3-307(a)(10).
- TEPs data was produced by the Comptroller’s Division of Local Finance as part of its County and Municipal Finances report, which was discontinued in 1995.





# IDB Assessment Data

- The Comptroller started collecting industrial development boards (IDB) assessment data in 2007.
- The data tells us the market values of government-owned properties, which can be used to determine, given a property tax rate, the tax revenue that could potentially be generated if these properties were sold to entities that are required to pay property taxes.
- IDB assessment data is used in the fiscal capacity formula produced by UT-CBER.



# TACIR Recommended Changing Variable

- In a 2005 presentation to the BEP Review Committee, before the IDB data was available, TACIR staff recommended removing outdated tax-equivalency-payment data from the property tax calculation used in the model.
- The issue was raised again as part of the discussions during Governor Haslam's 2014 Task Force on Education Funding, with TACIR staff recommending that more current payment-in-lieu-of-tax data be substituted for the outdated tax-equivalency-payment data.



# January 2018 TACIR Report

- In *Encouraging More Cooperation and Accountability in Payment in Lieu of Tax Agreements*, TACIR's members recommended updating its fiscal capacity calculation to include the new IDB assessment data, rather than continuing to use the 1993-1995 tax equivalency data.
- The report said that doing so would require a change in state law or a recommendation by the BEP Review Committee and approval by the General Assembly.



# 2018 TACIR Memo

- On May 23, 2018, I sent a memo to the executive director of the Tennessee State Board of Education and to the Commissioner of Education to respectfully request that the BEP Review Committee consider our recommendation.
- My memo noted that the change would result in some counties seeing an increase in their percentage of state funding, and others seeing a decrease. At the time, the DOE estimated the substitutions would result in changes in state share funding ranging from a \$433,000 decrease in Montgomery County to a \$583,000 increase in Knox County.



# Effect of Replacing TEP with IDB

- Updated estimates show the average of absolute change in percent of total fiscal capacity across counties from the substitution would be 1.7893%. See Table 1 for each county area's change.
- Largest increase would be Bradley County (9.9421%).
- Largest decrease would be Trousdale County (-3.3872%).
- The Department of Education will be providing estimates of the effect on state funding shares following my presentation.



# Response from DOE and SBE

- On August 16, 2019, they responded:
  - They agreed that “using the current IDB assessment amounts in the TACIR fiscal capacity model would reflect the most current data available, and would be more consistent with the data used in the CBER fiscal capacity model.”
  - They added that in their view, the BEPRC’s authority to “regularly review the BEP components, as well as identify needed revisions, additions or deletions to the formula” does not cover changes to data sources in TACIR’s fiscal capacity model.
  - They suggested that TACIR has authority to unilaterally make these changes without the approval of the BEPRC and proposed that TACIR seek passage of a law authorizing it to do so if it does not believe it has such authority.



# Request for Attorney General Opinion

- After discussing these issues at TACIR's September 5, 2019, commission meeting, members voted to seek an attorney general's opinion to help clarify them.
- In a request dated October 28, 2019, TACIR Chairman Mike Carter asked Attorney General Herbert H. Slatery III for an opinion on the following question:

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



# Key Points from Opinion 20-01

- The Tennessee Code does not directly address the process for changing the data sources in TACIR's fiscal-capacity model. However, the Tennessee Code does specify that the State Board of Education must adopt-and the Commissioners of Education and Finance and Administration must approve-the BEP formula, which includes its fiscal-capacity models.
- The requirements of Tenn. Code Ann. §49-3-356(a) are ongoing such that the equalization formula, in its current form, must have been adopted by the State Board and approved by the Commissioners of Education and Finance and Administration. This necessarily means that any changes to the equalization formula must be adopted by the State Board and approved by the Commissioners.





# Key Points from Opinion 20-01

- Because the TACIR model is part of the equalization formula, under Tenn. Code Ann. §49-3-356(a), any changes to the model must be adopted by the State Board and approved by the Commissioners of Education and Finance and Administration.
- Moreover, the data sources used in the TACIR model should be considered part of the equalization formula for purposes of Tenn. Code Ann. §49-3-356(a). And because data sources are part of the equalization formula under Tenn. Code Ann. §49-3-356(a), any changes to the data sources must be adopted by the State Board and approved by the Commissioners of Education and Finance and Administration.



# Key Points from Opinion 20-01

- Legislative approval is needed for changes to BEP “components” under Tenn. Code Ann. §49-3-351(a)(3). “Components” in §49-3-351(a)(3) refers to the cost components that generate funding under the BEP formula; it does not refer to the fiscal-capacity models used in distributing those funds. **Since the data sources in the TACIR model are not “components” within the BEP formula, this provision for legislative approval is not applicable to changes in data sources.**
- **The BEP Review Committee has the responsibility for reviewing the BEP formula and proposing changes to the formula, see Tenn. Code Ann. §49-1-302(a)(4)(B), but its approval is not required for actually making changes to the formula, including a change in data sources.**



# Attorney General Opinion 20-01

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



# Questions?

