



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 17 December 2020

SUBJECT: Senate Joint Resolution 593 (Multi-School System Counties)–Final Report
for Approval

The attached Commission report is submitted for your approval. It was prepared in response to Senate Joint Resolution 593 (110th General Assembly), sponsored by Senator Haile, which directs the Commission to study the overall effect on public K-12 education in Tennessee of the laws and regulations related to the sharing of resources among and operation of multiple school systems located in the same county. Senate Joint Resolution 593 further notes that “the creation of new school districts has in the past created conflict regarding the ownership of existing school buildings and facilities.” In response, this report also considers options for the transfer of school property to new city school systems.

Since the draft report was presented at the September 2019 meeting, staff has added maps and tables showing school systems by county, the number and type of school systems by county, and grades served by school system; information about a proposed new school building in Jonesborough; additional information on Tennessee statutes and case law pertaining to building transfer issues; and, in response to concerns raised by local government representatives, clarifying language regarding student and taxpayer inequities and a call for further study by a task force of stakeholders to develop a set of specific legislative proposals for consideration by the Governor and the General Assembly. Staff also made revisions clarifying and updating information regarding the mixed drink tax. Previous versions of the draft report included a recommendation to remove the expiration in state law on provisions that determined the distribution of mixed drink tax revenue in counties with more than one school system. When the law

was amended in 2014 to reflect the current distribution formula, it included an expiration date since there was ongoing litigation surrounding the previous distribution statute. The 111th General Assembly removed this expiration, so the mixed drink tax recommendation was likewise removed from the report. Following an October 2020 meeting of the local government working group, staff added language reiterating the need for a comprehensive review of the Basic Education Program funding formula. These changes are highlighted in yellow in the report, and other than the mixed drink tax recommendation, the suggested alternatives remain unchanged from the draft report.

In counties with multiple school systems, whether local revenue must be shared among all systems in the county varies under state law depending on its source, what the revenue is allocated for, and whether it is earmarked for specific purposes. In particular, revenue from state and local sources that counties allocate for schools' operation and maintenance must be shared with all school systems in the county. For revenue spent on capital expenditures, state law requires multisystem counties to share proceeds from countywide school bonds with all systems in the county, but counties are not required to share revenue for capital expenditures from sources other than countywide bonds. For cities and special school districts, in contrast, there are no sharing requirements.

According to some representatives of counties, disparities that result from the state's current education revenue sharing requirements raise equity concerns. City officials raise similar concerns about achieving equity for students and taxpayers and face their own challenges because of the complexity of Tennessee's local tax and governance structures and school finance system. State courts, including Tennessee's highest court, have taken the position that equity for students necessitates neither equal funding nor sameness, but rather equal opportunity. Equality of opportunity has been a longstanding issue in education.

Another longstanding point of discussion in education finance is that of taxpayer equity. The challenge is devising a way to ensure that taxpayers derive similar benefit from the taxes they pay regardless of whether they live in or receive services from the taxing jurisdiction. Consequently, Tennessee has several examples of taxpayer inequities, some of which favor cities and some of which favor counties.

A county's ability to use countywide revenue in lieu of bonds to fund education capital expenditures without sharing this revenue is one example that improves student equity at the expense of taxpayer equity. This is arguably unfair to taxpayers living in city school systems or special school districts, but it's one of only a few ways counties can address student equity under current law. **Because countywide property taxes and**

countywide local option sales taxes apply to property and sales within cities and special school districts, the General Assembly could require counties to share this revenue when they use it for education capital expenditures as is required when they use it for education operations and maintenance. But if the state does so, it should consider adopting other alternatives that would improve student equity in counties with multiple school systems while adhering to principles of taxpayer equity. Any such change should be prospective only so as not to create problems with revenues committed to repayment of existing debt or with state or federal maintenance of effort requirements.

One alternative that could improve both student and taxpayer equity is to remove the requirement that counties share their portion of the un earmarked half of local option sales tax when it is budgeted for education operations and maintenance. This revenue is distributed based on where the sale was made, and therefore none of it is generated within cities. Again, any such change should be prospective only so as not to create problems with revenues committed by cities to debt repayment or maintenance of effort requirements. **Another alternative that would decrease disparities for students as well as taxpayers would be to transition from calculating fiscal capacity at the county level to calculating it at the system level** when equalizing funding through the Basic Education Program funding formula. A system level model would take into account intra-county disparities, such as counties' relative lack of access to unshared tax bases and the concentration of commercial and industrial tax bases within cities, which leaves counties with less ability to raise local revenue for county school systems when compared with city school systems and special school districts in the same county.

While forming new special school districts has been prohibited since 1982, state law allows the creation of new city school systems. But state law does not require counties to transfer school property to new school systems, and there is no process in Tennessee law for determining the disposition of school property following the creation of a new city school system. In the 110th General Assembly, Senate Bill 1755 by Senator Gardenhire, House Bill 1757 by Representative Harry Brooks, as amended, would have created "a process for determining the amount that a city must pay to fairly compensate the county for the school property the city seeks to obtain" but did not pass.

While the law in Tennessee does not speak to the transfer of real or personal property when an existing city forms a new school system, current annexation statutes and those for disbanding school systems, the agreements reached in the creation of city school systems in Shelby County, as well as laws in other states may provide guidance for establishing requirements and method. Options range from imposing specific obligations to requiring a local committee to create a plan for the transfer by agreement.

For example, current statutes authorize the creation of a planning commission for consolidating school systems when an existing system is being disbanded or systems are merging and sets out considerations for those commissions that include the transfer of assets and liabilities. Current annexation laws in Tennessee require local agreements for transferring property and arbitration to settle disagreements. Providing a method in statute should ensure greater predictability and fairness for school systems and taxpayers and may reduce the likelihood of litigation. Because of the uncertainty surrounding this issue, **the General Assembly should establish a method for transferring school property, both real and personal, to new school systems formed by existing cities.** A local committee could be created to determine what property should be transferred and what the city should pay for it. Whoever determines the city's liability should consider past and future contributions of the city and the county to procure and maintain the property in question. Relevant unit costs in the BEP could be used to calculate the value of new real and personal property subject to transfer. For instance, textbook unit costs are based on the actual cost of textbooks that will be purchased for the upcoming school year. Currently, city residents vote in the referendum on whether to form a new city school system before they know what it will cost the city, and by extension the city's taxpayers, to acquire all of the property it will need to operate a school system. To remedy this, **the General Assembly should require that the purchase price of the property be determined before the city referendum on the creation of a city school system.**