

ALABAMA

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I. GENERAL BACKGROUND

State

State aid for public education in Alabama is primarily through a foundation program approved by the Legislature in 1995 (ALA. CODE § 16-13-230, 1975). This 1995 Foundation Program was supported by Governor Fob James subsequent to the 1993 Liability Order of the Montgomery County Circuit Court in *Ace v. Hunt*, 624 So.2d 107 (Ala. 1993). This Order declared public education funding in Alabama to be unconstitutional. Governor James contended the state courts had no jurisdiction in this matter and vigorously contested this Order in the State Supreme Court while supporting the 1995 Foundation Program to replace the 1935 Foundation Program (a.k.a. the State Minimum Program).

The 1995 Foundation Program is annually funded by the Legislature (Alabama's state fiscal year begins October 1 and ends September 30) in the education appropriations act through a combination of state and local funds. Local funds for each local board of education are the equivalent of 10.0 mills of local school district(s) property tax from the previous fiscal year. These local funds may be from any local tax source and are required local tax effort charged against the cost of the 1995 Foundation Program. The balance of the cost of the 1995 Foundation Program is appropriated by the Legislature from the Education Trust Fund (ETF), a statutory state fund comprised of taxes earmarked "...for educational purposes only." The state sales and income taxes comprise the major share of this fund.

The second fund appropriated annually is the Public School Fund, known interchangeably as the Educational Fund. This is a constitutional fund consisting primarily a 3.0 mill statewide property tax (*Constitution of 1901*, Section 260 as amended by Amendment 111). The Fund is allocated as follows: (a) funding for interest due to certain local boards of education for sixteenth section lands held in trust by the state; and (b) a hold harmless amount for those local boards whose state funding would have been decreased by the implementation of the 1995 Foundation Program; and (c) the balance distributed as a guaranteed tax yield fund to local boards of education for capital outlay purposes. This state allocation must

be matched by local funds restricted to capital outlay purposes (ALA. CODE § 16-13-234, 1975).

The 1995 reform also established a fully-funded transportation reimbursement program from the Educational Trust Fund (ETF). This categorical aid program is in two parts: (a) an allowable reimbursement for operations of the state-mandated transportation program for students living more than two miles from school. (b) an allowance for depreciation of school buses that shall be set aside in a restricted fund by local boards for fleet renewal only. This allowance is earned for all school buses 10 years and less of age and is based on a state average price (ALA. CODE § 16-13-234, 1975).

The Legislature further required that at least \$100 be budgeted per student defined as “at risk.” These funds are required to be spent on tutorial assistance programs for students one or more grade levels below the national norm (ALA. CODE § 16-6B-3, 1975). The Legislature currently makes an annual appropriation from the ETF for this purpose as a categorical aid program (Act 98–504).

Several new categorical aid programs have been added since the 1995 reform. The first is an additional salary allocation to supplement the salary matrix in the 1995 Foundation Program. Another is a phase-in of a school nurses program. In addition, another 200 teacher units have been added for K–3, two days (with pay) have been added to the school calendar for in-service training for all 9, 10, and 11-month employees (both professional and support), and a \$4 million appropriation has been earmarked to assist high school students who failed the high school exit examination.

In addition to the 128 local systems of the statewide system of public schools, the Legislature also annually funds the Department of Youth Services School District (juvenile correction program), the Alabama High School of Fine Arts, the Alabama High School for Math and Science, and the Alabama Institute for Deaf and Blind. These agencies are independent from the State Board of Education.

An equity funding lawsuit was filed in Montgomery County Circuit Court on May 3 1990, by a group of 25 local schools systems incorporated as the Alabama Coalition for Equity (ACE). Representatives of children with disabilities filed a similar suit. The two suits were consolidated for trial, which was bifurcated into a liability phase and a remedy phase. The Court held for the plaintiffs in March of 1993, granting public education in Alabama a “fundamental right” status and granting students rights to an equal and adequate educational opportunity and to

equal protection and due process under the state constitution. With the consent of then Governor Jim Folsom, the Court issued a Remedy Order on August 22, 1993. The new Governor, Fob James, vigorously opposed both orders in the State Supreme Court. On December 3, 1997, the State Supreme Court upheld the Liability Order and vacated the Remedy Order. In addition, the executive and legislative branches of government were given reasonable time to comply with the Liability Order and the case remanded to trial court should plaintiffs wish to reopen the case.

Local

There are 128 local boards of education in Alabama, 67 county and 61 city. While there are many different laws pertaining to these two types of local school systems, none in Alabama has taxing authority.

The majority of local revenues are derived from the property tax. The property tax is strictly limited by the Constitution of 1901; each local tax levy requires specific authorization by the Constitution. A local referendum is necessary to levy any local property tax. The next most common local tax is the excise, franchise, and privilege license tax that can be levied for school purposes by a majority vote of either the county commission or the city council. The sales tax is most representative of this type of tax. In addition, the county commission or the city council may make appropriations from property or sales tax levies specifically levied for public schools or from any local government revenue source.

Funding Summary 1998–1999

Total State School Aid (All Programs)		\$ 2,661.5 million
Grants in Aid	2,453.6 million	
Teacher Retirement Contributions	81.5 million	
FICA	126.4 million	
Total Local School Revenue		\$ 1,092.4 million
Property Tax	450.2 million	
Other local source tax revenue	266.8 million	
Local source non-tax revenue	375.4 million	
Total Combined State and Local School Revenue		\$ 3,753.9 million
State Financed Property Tax Credits Attributable to School Taxes		0

State Financed Property Tax Credits attributed to School Taxes

The original permanent school fund created by the grant of sixteenth section lands was created in 1828. The present Constitution of 1901 continues that fund as the Public School Fund, adding the proceeds of a statewide 3.0 mill property tax. Homestead exemption was granted as a tax credit on these 3.0 mills in 1947 by Amendment 61. In calculating the tax due on the homestead (not to exceed 160 acres) of an individual, the following exemptions may apply:

1. For a homeowner age 65 or under, no taxes are due on the first \$4,000 in assessed value.
2. For a homeowner over age 65, no taxes are due.
3. For a homeowner, regardless of age, retired due to total and permanent disability, or who are blind, no taxes are due (ALA. CODE § 40-9-19, 1975).
4. The amount of this property tax credit is replaced in the Public School Fund from the first proceeds of the statewide income tax (ALA. CODE § 40-9-24, 1975).
5. For FY 1998–1999, this amount is estimated to be \$26.8 million. The total Public School Fund for FY 1998–1999 is estimated to be \$78.5 million.

II. LOCAL SCHOOL REVENUE

School Taxes for General Operating Funds

Local revenues for general operations of local boards of education in Alabama come primarily from the property tax and the sales tax. The Constitution of 1901, commonly referred to as an anti-tax and anti-debt constitution, was enacted to limit the excesses of the Reconstruction Period in Alabama. In accomplishing this, the Constitution levied a 3.0 mill statewide property tax for school purposes, limited total state property tax to 6.5 mills, and permitted a 1.0 mill local county school property tax to be submitted to a local referendum. The total property tax (state and local) permitted for public schools in 1901 was 4.0 mills.

The Constitution of 1901 also prohibited the levying of either a state or local income tax. While Amendment 25 in 1932 did authorize a statewide income tax, no such authorization exists for a local income tax. The Constitution of 1901 did permit the levying of both state and local excise, franchise privilege license taxes. Four constitutional amendments with general application have been approved which allow as a mix of countywide and school district taxes up to 15.0 mills. More than seventy local application constitutional amendments have been approved which affect only one local board of education.

Local boards of education are not given taxing authority. All property tax levies are subject to a local referendum. The appropriate local governmental unit must be petitioned to hold a referendum for a permitted levy. If a local board is currently at its maximum permitted levy, an amendment to the Constitution is necessary to increase its maximum permitted levy. The levy of excise, franchise, and privilege license taxes by county commissions and city councils upon their authority has become a significant source of local revenues. Alabama prefers to levy the sales and use taxes because of the ease of access and the aversion to the property tax.

Property Tax

Subjects of Taxation. Although the Constitution restricts the levy of property tax and defines the assessment ratios, the Legislature can decide the objects of taxation (ALA. CODE § 14-11-1, 1975).

Appraised Value. The appraised value of property in Alabama is defined as what the property would sell for if placed on the open market and sold to a willing

buyer. In application, both tangible and intangible personal property escape appraisal while tangible business personal property is marginally appraised.

Assessment Ratio. Property in Alabama is assessed for the purpose of taxation in one of four property classification classes. These were established by Amendment 373 to the Constitution of 1901 in 1978 in response to a federal court order requiring uniform state assessment. These classes with the applicable assessment ratios follow:

Assessment Ratios by Class of Property

Class	Description of Property	Assessment Ratio
I	All property of utilities	30%
II	All property not otherwise classified	20%
III	All agricultural, residential, forest property and historical building sites	10%
IV	All private passenger automobiles and Motor trucks used for personal use	15%

Given the distribution of these four classes of property in Alabama, the average effective assessment ratio is about 17%. Of course, this varies by governmental unit given the unique distribution of property in that unit.

Millage Rates for Public Schools. Authorization for a local property tax for education purposes began with the Public Education Act of 1854, providing for a one-mill countywide tax. This tax was continued in the Constitution of 1901. Over the years, efforts to improve local education funding has led to additional constitutional authority to hold a referendum to levy additional local property taxes. The ballot for voting for such a tax must include the rate of tax, the time which it is to continue (the time cannot be longer than 30 years), and the purpose of the tax. The requirement for a local board of education to participate in the Equalization Program of 1927 was that the millages authorized the § 269 (1.0 mill county) and Amendment 3 (3.0 mill county and 3.0 mill district) be levied, for a total levy of 7.0 mills. This requirement was continued for participating in the 1935 Foundation Program. The constitutional provisions permitting the levying of a local property tax follow.

General Constitutional Authorization for Local School Property Taxes

Authorization	Rate	Type of Tax	Approval Procedure
ALA. CONST § 269	1 mill	Countywide	Petition of 200 qualified voters
Amendment 3	3 mills	Countywide	Petition of 200 qualified voters
Amendment 3	3 mills	School Dist.	Resolution of School Board
Amendment 202	5 mills	Countywide	Resolution of School Board
Amendment 382	3 mills	School Dist.	Resolution of School Board

In addition to these authorizations with statewide application, numerous constitutional amendments have been approved which are local application only and refer to one county or local school system. Amendment 373, the “Lid Bill,” also provides a method for increasing the rate of a property tax that is already levied. In 1980 the Legislature removed any requirement for a property tax to be levied by a local board of education. No requirement currently exists.

Homestead Exemption for Local Property Taxes. Local property taxes for public schools may be granted county and district homestead exemptions. The specific conditions follow for property not to exceed 160 acres in area:

1. For a homeowner age 65 or under, no county taxes are due on the first \$2,000 in assessed value, except countywide and school district property taxes - mandated by State.
2. At the discretion of the local taxing authority (county, municipal, or other), for a homeowner age 65 or under, no county, municipal, or other taxes are due on the first \$4,000 of assessed value; provided, however, that such exemption from countywide or school district taxes must also be approved by the local school board and governing body(s) who are affected.
3. For a homeowner over age 65 with an adjusted gross income of less than \$12,000 as reflected on the most recent state income tax, or who are retired due to permanent disability regardless of age, or who is blind whether retired or not, no county taxes are due on the first \$5,000 in assessed value (ALA. CODE § 40-9-19, 1975).

When the rate of a tax currently levied is increased under the provisions of Amendment 373, the governing board of the municipality may grant partial or complete exemption from such increases. The following are eligible: residents over age 65; residents retired at any age due to disability; or residents who are blind (ALA. CODE § 40-9-19, 1975).

Furthermore, a principal residence and 160 acres adjacent shall be exempt from all property taxation for anyone who is totally disabled or who is 65 years of age or older if they have a net annual taxable income of \$7,500 or less on the latest federal tax return (ALA. CODE § 40-9-21, 1975).

Abatements from Local Property Taxes. Prior to the Tax Incentive Reform Act of 1992, abatements from all local property, irrespective of purpose, could be granted for all property taxes and sales and uses taxes due for construction. The reform act limited the life of such abatements to ten years and excluded from the abatement education taxes. These include those property taxes that must, pursuant to the Constitution of Alabama 1901, as amended, legislative act, or the resolution or other action of the governing board authorizing the tax, be used for educational purposes or for capital improvements for education and local construction related transaction taxes levied for educational purposes or for capital improvements for education (ALA. CODE § 40-9B-3, 1975).

Franchise, Excise, and Privilege License Taxes

In 1969 Alabama authorized the local levy of franchise, excise, and privilege license taxes for school purposes. While specific authorization for local government, agencies through local legislation had allowed such taxes earlier, the 1969 legislation granted general statewide authorization. This authority is commonly used to levy sales and use taxes.

County Tax. The governing boards of the counties, by ordinance or resolution, have been granted the authority to levy a franchise, excise, and/or privilege license tax. The statute further allowed the authority the discretion to submit the question to the qualified electors in a referendum. A tax so levied must be expended only for public school purposes, including specific capital improvements and the payment of debt service on obligations issued therefor. In all counties having more than one local board of education, revenues collected shall be distributed within such county on the same basis of the total calculated costs for the 1995 Foundation Program for those local boards of education within the county.

No tax measured by gross receipts, except a sales or use tax, may be levied. Such a sales or use tax must parallel, except for the rate of tax, the sales or use tax imposed by the state. An additional restriction is placed on the levying of a privilege tax on a person engaged in a business or profession. The tax must be uniform and at the same rate, except that such tax shall be measured by the

number of employees of such business or the number of persons engaged in the pursuit of such profession (ALA. CODE § 40-12-4, 1975).

Municipal Tax. Municipalities were granted somewhat different authority in 1969 for the levy of franchise, excise, and privilege license taxes. The council or other governing body of all incorporated cities and towns were empowered to provide by ordinance for the levy and assessment of sales taxes parallel to the levy of the state sales tax (ALA. CODE § 11-51-200, 1975).

Further authority was granted for the levy and assessment of excise or use taxes parallel to the state levy and assessment of excise and use taxes (ALA. CODE § 11-51-202, 1975). No spending restriction was placed upon the proceeds of such a levy.

Amusement Tax and Tobacco Tax. Local school systems may receive proceeds from a city tobacco tax, an amusement tax or other excise, franchise, or privilege license taxes. If a county license tax is levied for school purposes, it must be used exclusively for school purposes. The distribution to the school systems of the county must be on the same basis of the total calculated costs for the 1995 Foundation Program for those local boards of education within the county (ALA. CODE § 40-12-4, 1975).

Other Local Taxes

Alcoholic Beverage Taxes. Alabama allows a county to choose by referendum to become a “wet” county or a county where alcoholic beverages can be legally distributed and sold (ALA. CODE § 28-2-22, 1975).

Any county or municipality that allows the sale of malt beverages shall be authorized to levy and collect a tax of not to exceed \$.05 on each 12 fluid ounces or fraction thereof. However, the county shall not impose the tax on any incorporated municipality therein. A minimum of 60% of the proceeds of such tax shall be used for public education and the balance for any other public use. The county commission shall distribute the proceeds of this tax for public education to school systems within the county of the same basis as the total calculated costs of the Foundation Program for the local boards of education within the county (ALA. CODE § 28-2-23, 1975).

In addition, a state distribution of beer tax receipts is distributed in part to wet counties, with many different earmarking provisions regarding the purpose for

which the funds shall be used. Some of these proceeds are earmarked for public education (ALA. CODE § 28-3-190, 1975).

Gasoline Tax. Counties may levy a local gasoline tax if the Legislature passes a local act authorizing the county commission to do so. Municipalities may levy a municipal gasoline tax by city ordinance. Five counties in the State currently levy a local gasoline tax, and local municipalities may be given a share. The Constitution of 1901 restricts any state fee, excise tax, or license taxes relating to fuels propelling vehicles or relating to their registration and operation to purposes maintenance and repair of public highways and bridges only. The exception to this is allowing the distribution of proceeds for charges for personalized license plates or tags for any purpose defined by statute. The public schools of Dallas, Lowndes, Montgomery, Perry, and Sumter counties receive proceeds from a county gasoline tax, as do the public schools of Ft. Payne City. The public schools of Andalusia City, Brewton City, Decatur City, Haleyville City, and Opp City receive proceeds from a city gasoline tax as their gasoline taxes were approved prior to the constitutional limitation (ALA. CODE § 40-17-50, 1975).

Mineral Lease Documentary Tax. Every mineral lease registered in Alabama is assessed a state tax. This tax is distributed 30% to the State General Fund, 35% to the County General Fund, and 35% to the County Public School Fund. This tax is in lieu of all ad valorem taxes on non-producing mineral leases, includes local school taxes and the Public School Fund (ALA. CODE § 40-20-30, 1975). The statewide allocation for public education is about \$150,000 annually.

School Appropriations from Local Governmental Units

Local school systems may receive tax-based revenues as an appropriation from a local governing body. Statutory authorization exists for any appropriate local governing body at any meeting in any calendar year to appropriate any funds it may deem proper and expedient out of the general funds of the governing body's treasury to local boards of education. This appropriation may be for the construction, repair, operation, maintenance, and support of new or existing public schools within the jurisdiction of said governing body (ALA. CODE § 16-13-36, 1975).

These appropriations may come from a local governing body tax that at the time of its passage was earmarked for public schools. An example of an earmarked tax would be a municipal property tax, which is pledged to the municipal school system for capital outlay purposes. Or the appropriation may come from any

revenue source to the local governing body general fund. This could be an unrestricted property tax, excise, franchise, or privilege license tax, an alcoholic beverage tax, an occupational tax, or a payment in-lieu-of-taxes from an entity benefiting for an abatement such as Tennessee Valley Authority Payments.

Tennessee Valley Authority Payments in Lieu of Taxes. The Tennessee Valley Authority, under the provisions of federal law 16 U.S.C. § 831, makes annual in-lieu-of-taxes payments to the states in which its power properties and operations, previously subject to state and local taxation, are located. This amount is calculated as 5% of gross revenues from the sale of power in the preceding fiscal year, less revenues from power sold to federal agencies. A state's share is one-half of the annual amount divided proportionately among the states according to the value of the TVA's power property in each state and one-half divided proportionately on the basis of the TVA's power revenues from each state to the TVA's total power revenues.

Alabama's annual payments are distributed as follows: (1) 20% to the State General Fund; (2) 75% to the counties and municipalities served by TVA, and (2) 5% to the dry counties and municipalities not served by TVA. The allocation to local government units is on a formula basis. State allocations are made to the governing bodies of the served counties. The county authority then makes to affected agencies within its boundaries. This unrestricted revenues may then be appropriated all or in part to local boards of education (ALA. CODE § 40-28-2,3, 1975).

Occupational Taxes. The occupational tax, which is measured by a percentage of gross income or gross receipts, is designated as a license or privilege license tax. The Legislature has granted any county in Alabama with a population of 500,000 or more the authority to levy a license or privilege tax upon any person engaging in any business for which he is not required by law to pay any license or privilege tax to either the State of Alabama or the county (Act 406, 1967 Regular Session). Jefferson County levied such a tax in January of 1988 at a rate of 0.5%. The county commission can appropriate the receipts from this revenue source for any legal purpose, including an appropriation to the county school system.

Any municipality in Alabama has statutory authority "to license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the Constitution or laws of the state which may be engaged in or carried on in the city or town" (ALA. CODE § 11-51-90). Under this provision, several municipalities in Alabama have levied an occupational tax in accordance with state law. The

current rate for the City of Birmingham is 1.0%. The receipts from this revenue source can be appropriated by the city council for any legal purpose, including an appropriation to the city school system.

General Local Revenue. Any local governmental unit is permitted to appropriate to a local board of education from any funds available. Therefore, if a local governmental unit has access to a unique source of revenue, such as a grant in-lieu of taxes from a local industry or business, they may in turn appropriate those funds to a local board of education. Such an intergovernmental transfer of funds makes those funds tax-based for the purpose of determining equivalent mills for local tax effort by the local board.

III. TAX AND SPENDING LIMITS

Two types of tax and spending limits are constitutionally imposed in Alabama. The first is the prohibition on deficit spending at both the state and local level. The second is the cap or “lid” on the rate of property taxation.

Limit on Spending - Proration

Alabama has balanced its budget (controlled expenditures) since 1932 by statute and since 1933 by constitutional amendment in two steps by reducing the amount allotted (step one) to equal the amount of revenues available in each fund of state government during the fiscal year to reducing the amount appropriated at the end of the fiscal year (step two) (ALA. CODE § 41-4-80 to § 41-4-96, 1975).

Under the provisions of the Budget and Financial Control Act, no appropriations made by the Legislature are available for expenditure until allotted with the approval of the governor. Should the estimated budget resources of a fund available during the year be insufficient to pay appropriations in full, the governor is directed to restrict allotments. Local boards are subsequently restricted by law as to which expenditures may be subject to proration. This is to insure that there is not deficit or overdraft in the several funds of the state at the end of the fiscal year (ALA. CODE § 41-4-90, 1975).

In addition, budget procedures approved by the State of Alabama during this same period prohibit local boards of education from deficit spending. While allowances are made from short-term loans, the State Superintendent of Education is required to assess financial penalties should a local board of education deficit spend.

Limit on Property Taxes

Each classification of property as defined by its assessment ratio also has a maximum or “lid” on the amount of tax liability that may be assigned to that class. These absolute caps or limit on property taxation are described in the following Table. Given the fact that several municipalities exceeded the cap when Amendment 373 was proposed in 1978, the property located in the cities of Mountain Brook, Vestavia Hills, and Huntsville were specifically exempted from this cap. All other local governmental units are under the “lid.”

Lids or Caps on Property Taxation by Classification

Class	Description of Property	Assessment Ratio	Lid As A Percent	Percent As Mills
Class I	Utility	30%	2.00	66.67
Class II	Commercial	20%	1.50	75.00
Class III	Residential, Agricultural	10%	1.00	100.00
Class IV	Motor vehicles personal use	15%	1.25	83.20

The lid as a percent means that no tax will be due which exceeds the percent value of the property. The state rate of 6.5 mills, in addition to local millage rates, is included in calculating the “lid.” Should a rate of taxation be levied in any local government unit that exceeds the maximum rate permitted by class, then the actual tax assessed is reduced to the level of the cap. The reduction in tax revenues is prorated to each of the constituent levies that make up the rate. There are no limits regarding growth in the appraised value of property in Alabama. As long as the percentage of the appraised value of property that is constitutionally limited is not exceeded, the only limit on the revenue that may be collected as property tax is the number of mills.

IV. STATE/PROVINCIAL EARMARKED TAX REVENUE

Alabama earmarks approximately 85% of its revenue for designated purposes. While over 100 earmarked funds exist in the state treasury, two are dedicated in purpose for funding public education.

Education Trust Fund

Alabama created in 1927 a fund whose major purpose was for lengthening the minimum school term and equalizing educational opportunity in the State. The Alabama Special Educational Trust Fund was “. . . set apart as a Trust Fund for educational purposes only.” Over time, it would receive the majority of the proceeds of the state sales tax (1936/37) and the state income tax (1947), making it the largest fund in the State. The following Table lists the tax revenue sources of the Education Trust Fund for FY 1997–1998:

Education Trust Fund Net Receipts for FY 1997–1998

Source of Funds	Net Receipts	Percent of Total
1 Income tax	\$1,969.7 million	52.8%
2 Sales tax	1,244.2 million	33.3%
3 Utility tax	254.5 million	6.8%
4 Use tax	168.9 million	4.5%
5 Insurance premium tax	31.0 million	0.8%
6 Tobacco tax	22.4 million	0.6%
7 Beer tax	19.4 million	0.5%
8 Rental/Leasing tax	22.7 million	0.6%
9 Hydroelectric tax	0.6 million	less than 1%
10 Store licenses	0.4 million	less than 1%
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Subtotal Taxes	\$3,734.0 million	100.0%

The net proceeds of the income tax to the Education Trust is earmarked “for public school teachers salaries only.” It is furthermore significant that this earmarking is constitutional (*Constitution of 1901*, Amendment 61). The Education Trust Fund is the primary source of state education appropriations in Alabama, funding the 1995 Foundation Program and all categorical aid programs with the single exception of the Public School Fund that follows.

Public School Fund

The Public School Fund was created by the *Constitution of 1901* § 260. Enumerated revenues sources included the income arising from the 16th section

trust fund, the surplus revenue fund, a special annual statewide property tax of 3.0 mills, the principal from the sale or other disposition of lands or other property which may be granted to the State (§ 257) and property given by individuals and all estates of deceased persons who die without leaving a will or heir (intestate)(§ 258).

Statewide 3.0 Mill Property Tax. The Constitution of 1901 levies a statewide property tax of 3.0 mills earmarked to the Public School Fund (§ 260). The name of the Public School Fund was changed to the Education Fund by Amendment 111; however, the name in common use remains the Public School Fund).

V. BASIC SUPPORT PROGRAM

Funding in 1998–1999: \$2,368.3 million.

Percentage of Total State Aid: 89.0%.

Nature of Program: Foundation Program approved in 1995.

Allocation Units: The 1995 Foundation Program retains the teacher unit as the allocation unit as did its predecessor of 1935. Regular teacher units are earned by grade level by building site based on student divisors. Students are counted in Average Daily Membership (ADM); the pupil counting period is the first forty scholastic days of the academic year. The divisors are weighted by grade level as follows for FY 1998–1999:

Grade	Divisors
K–3	14
4–6	22
7–8	21
9–12	18

These variable divisors by grade are the only component of vertical equity in the 1995 Foundation Program. These divisors are defined as including teacher units for both special education and for vocational education. The incidence of need for special and vocational education is defined as being normally distributed.

Special Education Adjustment of Divisor. The initial adjustment for funding special education programs was based upon assigning 5% ADM weighted 2.5 in all grades for special education. The divisor is adjusted by $(5) \times (2.5)$ or 12.5%. Therefore the stated divisor to adjust for special education to get the equivalent divisor for the regular education program must be increased by 1.125 or 112.5%. Therefore,

88.89% of each teacher unit is imputed to be available for regular education and 11.11% of each teacher unit is imputed to be available for special education in each grade. These weights are recommended annually by the State Board of Education. They are unchanged for FY 1998–1999.

Vocational Education Adjustment of Divisor. The adjustment for funding vocational education was based upon 7.4% ADM weighted 1.4 in grades seven and eight and 16.5% ADM weighted 2.0 in grades nine through twelve. Therefore the stated divisor must be increased by $(7.4) \times (1.4)$ or 0.1036 in grades seven and eight and $(16.5) \times (2)$ or .3300 to get the equivalent divisor for the regular education program. These weights are recommended annually by the State Board of Education. They are unchanged for FY 1998–1999.

Class Size Caps Imposed By State Board of Education. The State Board of Education on September 11, 1997 approved maximum classroom sizes or caps for local school classrooms by Resolution as follows:

Grade	Class Cap
K–3	18
4–6	26
7–8	29
9–12	29

These class caps do not include classes in physical education, musical performing groups, ROTC, or typing. Such classes were limited to 1,000 student contacts per week. Such limits are not extended to the grades at the elementary level. The State Superintendent of Education can grant waivers for these class caps on a case-by-case basis.

Instructional Support Teacher Units

The 1995 Foundation Program provides for the allocation of Instructional Support Units that are earned for the positions of principal, assistant principal, counselors, librarians, vocational directors, and vocational counselors. These units are added to a school's classroom teacher units based on accreditation standards of the Commissions comprising the Southern Association of Colleges and Schools or as otherwise determined by an accreditation system adopted by the State Board of Education (ALA. CODE § 16-13-232, 1975).

Current Teacher Units

An amount is calculated for current units based upon comparison of grade by grade membership for the first forty scholastic days of the current and prior school year. The change in membership on a grade by grade basis divided by the appropriate divisor yields the positive and negative changes in earned teacher units. The sum of these changes by grade shall determine if current units are earned by a local school system. No current units are earned by a local school system in the sum of changes by grade is equal to or less than zero.

The determination of the dollar value of a current teacher unit is defined as the average dollar value of a teacher unit in the current foundation program. The distribution of current teacher units is due by December 1 of each fiscal year. If the number of estimated current teacher units is inadequate to fulfill the amount of current teacher units actually earned, then the allocation due each local school system shall be prorated to the funds actually available. Should the number of current teacher units actually earned be less than the estimated amount, then the estimated amount in excess of the earned amount shall be distributed to all local school systems as an increase in Other Current Expense as in the 1995 Foundation Program.

Local Fiscal Capacity: Assessed property valuation.

How the Formula Operates: The 1995 Foundation Program uses four cost factors to define the dollar allocation per teacher unit, which are calculated at the building site level. These are (1) Salaries, (2) Fringe Benefits, (3) Instructional Support, and (4) Other Current Expense.

Salaries

Salary Matrix - State Salary Allocation. The 1995 Foundation Program uses a salary matrix for reimbursement of teachers' salaries by educational attainment and years of service. The degree levels included are bachelors' degree, masters' degree, six-year or educational specialist degree, and the doctoral degree. In addition, provision is made for non-degree personnel at the bachelors' level for five types of educational attainment. The salary matrix for non-degree personnel provides identical salaries to the Bachelor Degree holder. The experience adjustment is based upon each three years of experience for a total of 24 years. This creates an overall 5 x 8 salary matrix. The relationships between each cell are recommended annually by the State Board of Education and approved by the Legislature.

Initially, the matrix calculated a salary allocation schedule from which each local board of education was required to pay teachers in their local salary schedule at least 95% of each cell. The residual salary allocation could be used to supplement the local salary schedule, to hire additional teachers, or to hire teacher aids. This flexibility was removed in 1997 and is discussed in the following section. Each local board of education is required to develop a local salary schedule equal to at least 100% of the salary matrix by degree and experience (see following section). Instructional Support Units, with the exception of principals, are placed on the salary matrix the same as teachers. The cost for an elementary principal unit is increased by 22% and a secondary principal unit by 33% to adjust for time and responsibility of that unit over and above a regular teacher unit.

Salary Matrix - Minimum State Salary Schedule. In 1997, the Legislature approved requiring each local board of education to pay at least 100% of the salary matrix by cell. The legislature appropriated an additional salary allocation of \$16,596,039 for FY 1998–1999 as a supplement to the calculated salary matrix by teacher units to assist local boards. The salary matrix is now the minimum state salary schedule. This additional allocation for salaries is actually a categorical aid program outside the 1995 Foundation Program Calculations.

Fringe Benefits

Fringe benefit allocations are calculated either as a percent of salary or by a fixed amount per teacher by building site as a companion cost to salaries. These benefit programs are administered at the state level and applicable rates approved annually by the Legislature. These factors are adjusted annually to reflect cost changes in the operation of the various programs. FICA and Medicare are 7.65% as set by federal regulation. TRS and PEEHIP rates are set by action of their respective Boards. In 1998–1999, these rates were 4.03% and \$2,700 respectively. The Unemployment Compensation rate is set by the State Insurance Commission. Leave benefits are based upon two personal and five sick leave days per teacher reimbursed at a rate of \$35.00 per day. In addition, these rates apply to all locally funded employees. The current rates for Teachers' Retirement System include cost-of-living allowances for retirees. The current rates for Public education Health Insurance include an allowance for retirees.

Classroom Instructional Support

Classroom Instructional Support includes the following items of expenditure that existed prior to 1995 as categorical aid programs. These were consolidated in the 1995 Foundation Program into a single cost factor.

Textbooks. The costs for student textbooks are calculated on a per student basis the same as for calculating teacher units. A recommendation is made by the State Board of Education on an annual basis for the amount per child for textbooks. This amount is \$52.50 per foundation unit for FY 1998–1999.

Library Enhancement. A uniform amount is multiplied by the number of teacher units earned. The appropriation is for K–12 Public School Library/Media Centers and may be spent for book binding, repair, CD ROMs, computer software, computer equipment, cataloging, audio-visual materials, newspapers, magazines, recordings, and video tapes. This amount was set at \$135 per foundation unit for FY 1998–1999.

Classroom Materials and Supplies. Classroom materials and supplies are set as a uniform amount per earned foundation unit. These funds must be expended in accordance with a plan developed by a school's faculty. In 1999, this requirement for a faculty plan was extended for the budgeting of library enhancement, professional development, and technology monies. This amount was set at \$500 per foundation unit for FY 1998–1999.

Professional Development. Professional development funds are set as a uniform amount per earned teacher unit that may be used for individual or collective activities. This amount was set at \$60 per foundation unit for FY 1998–1999.

Technology. Technology is set up as a uniform amount per earned teacher unit and is to be used for the implementation and ongoing support of educational technology. This amount was set at \$75 per foundation unit for FY 1998–1999.

The sum of these five categories constitutes a local school's allotment for Classroom Instructional Support.

Other Current Expense

The purpose of "Other Current Expense" is to provide funding for administrative costs, additional salary support for principals and other administrative staff,

support personnel salaries and fringe benefits, salaries above the allocation amount, fringe benefits for local funded education personnel, additional teachers, central office costs, utilities, facility maintenance, travel, and any other expense incurred in the normal operation of the day school. This amount was set at \$10,429.34 per foundation unit for FY 1998–1999.

Total Cost Of the 1995 Foundation Program

The sum of the four cost factors by school site represents the foundation program cost for that school. The sum of the school sites constituting a local school system is the foundation program cost for that local school system. From this total cost of the Program is subtracted the Required Local Effort funds or Chargeback. This is the equivalent yield from local tax-based revenues of ten mills of school district tax calculated for each local board of education. This chargeback for FY 1998–1999 is \$221.9 million. The balance of the funding due the 1995 Foundation Program (state share) is annually appropriated from the Education Trust Fund.

Although the foundation program cost is calculated for each local school site, the state amount from the ETF is distributed on an equal monthly basis to the local school system. The Education Trust Fund allocation is requested monthly by the State Superintendent of Education and the State Comptroller distributes the amount by electronic transfer as soon in the month as tax receipts are available.

Local Effort Share: Local fiscal capacity is measured by one variable - the yield of 1.0 mill of school district property tax. Appraised or assessed valuation by local school system is not collected at the state level. The proxy is the yield of the school district tax that is used since exemptions may be applied to the countywide property tax as well as costs of collection. Alabama's wealth index for each local school system is that local school system's share of a mathematically created statewide 1.0 mill property tax. In order for a local school system to participate in the 1995 Foundation Program, the appropriate local governing body must insure that the local school system is receiving an amount of local tax receipts equal to ten mills of school tax. This is the required local taxation, i.e. the amount that is the chargeback required local effort or local share in the 1995 Foundation Program (ALA. CODE §§ 16-13-231 (b) (1)a, 16-13-237, 1975).

In addition, for a local school system to participate in the allocation of the Public School Fund, each local board of education must provide a local match. This allocation is also based upon the same yield of 1.0 mill of school district tax. However, this amount of local taxation is not required to be levied and collected

at the local level (ALA. CODE § 16-13-234 (e), 1975). Therefore, required local taxation is numerically less than required local effort in Alabama.

The requirement of the State of Alabama that 7.0 mills of local property tax must be levied was repealed in 1980 and replaced with the current requirement of 10 or the equivalent of 10.0 mills of school district tax. In 1969, the Legislature had authorized through general legislation the levy and collection of the franchise, excise, and privilege license taxes for local school funding purposes. These could be levied by resolution of the county commission or the city council. Local school systems could meet their required local taxation minimums from any tax-based revenue source. Currently local tax effort for the purpose of accountability is measured in terms of the number of equivalent mills reported by the following formula:

$$\text{Equivalent Mills} = \frac{\text{Local Tax-Based Revenues}}{\text{Yield of 1.0 Mill of School District Tax}}$$

Adjustments for Special Factors: None

Aid Distribution Schedule: Information not reported.

Districts Off Formula: None.

VI. TRANSPORTATION

Funding for 1998–1999: \$167.0 million.

Percentage of Total State Aid: 6.3%.

Description: The 1995 Foundation Program removed transportation as a cost factor from the 1935 Foundation Program and established it as a fully state funded categorical aid program. The basic provisions governing the transportation system were unchanged. An allowance is made to each local board of education operating a school transportation system based upon the product of the number of students transported on approved routes and an amount per pupil transported. In addition, a depreciation allowance was funded.

Current Operations

In determining the cost of current operations, transported students must live two miles or more from a school center. However, physically disabled students who live closer shall be included in the determination of average daily transported students. The State Superintendent must approve the school centers. If safety of children is an issue, the State Superintendent may waive the two-mile limit. This pupil count shall be for the previous year. The cost per pupil per day is the operating cost which included funding for social security, unemployment compensation, retirement, and health insurance. Of the total reimbursement of \$146.0 million, about \$29 million was attributable to fringe benefit costs not previously included in transportation reimbursement.

Fleet Renewal

Based upon the age of each school bus in operation, an amount for depreciation is included in the operating cost. This amount, based on a chassis life of ten years, is set aside as a fleet renewal allocation to be expended only for the purchase of new school buses. These funds may be carried over to future years. Fleet renewal funds of \$20,001,666 were identified in the FY 1998–1999 allocation for transportation. As additional new buses enter the depreciation schedule, this cost will increase.

Extent of Participation: Not Reported.

VII. SPECIAL EDUCATION

Funding in 1998–1999: Funded in basic support program.

Percentage of Total State Aid: N/A.

Description: Special Education is funded in the 1995 Foundation Program as an adjustment of the divisors for determining classrooms. The adjustment reflects 5% average daily membership (ADM) weighted 2.5 in all grades. This means that the divisor must be adjusted by 12.5%. Therefore, the stated divisor must be multiplied by 112.5%. No stipulation is made on local boards as to how this service shall be delivered. These weights are to be recommended annually by the State Board of Education (ALA. CODE § 16-13-232 (b), 1975).

The Legislature enacted the Alabama Exceptional Child Education Act in 1971. Its provisions for allocating special education teacher units to local boards of

education was amended in 1981 and recognized the student load earning a teacher unit. These included one for each group of eight to 15 exceptional children, whether in a special class or taught to homebound students or hospitalized students or students in public state institutions. Twenty percent of teacher units so earned were required to be used for the purpose of instruction of gifted children. This set aside for gifted children was repealed in 1995 while leaving the mandate to provide appropriate instruction intact (ALA. CODE § 16-39-7, 1975).

Among the special services ordered to be provided to exceptional children is transportation (ALA. CODE § 16-39-2, 1975). The Legislature in 1971 recognized that transportation would involve additional costs to local boards of education and provided for reimbursement from the Education Trust Fund. The allocation is to be in addition to reimbursement for regular transportation services and provided as prescribed by regulations of the State Board of Education (ALA. CODE § 16-39-11, 1975).

No provision was included in the 1995 reform to provide for this cost in the calculation of transportation costs. No regulations of the State Board of Education are available to define implementation of any cost reimbursement. However, regulations do exist which further require the provision of transportation services.

Special Education of Preschool Handicapped Children

In 1991, the Legislature approved the Alabama Preschool Special Education Act. The purpose of the Act was to establish a preschool special education program for children with disabilities for ages three through five years inclusive. All local boards of education are required under the provisions of this Act to provide free appropriate public education for all eligible children with disabilities. This Act is in accordance with the Individuals with Disabilities Education Act. Free and appropriate public education must be provided as defined by federal statute under Public Law 91-230 (ALA. CODE § 16-39A-1-3, 1975).

Catastrophic Trust Fund for Special Education

The Alabama State Department of Education administers a statutory trust fund for the purpose of assisting local county and city boards of education in providing special education and related services to children and youth with disabilities in catastrophic cases. The trust fund is a revolving fund with an earmarked revenue source from traffic fines. Local boards must apply each year for a grant. The

dollar amount of each grant is a 75% match for a local contribution of 25%, unless waived by the State Superintendent of Education (ALA. CODE § 16-39-30, 1975).

Extent of Participation: Not Reported.

VIII. COMPENSATORY EDUCATION

Funding for 1998–1999: \$30.7 million.

Percentage of Total State Aid: 1.2%.

Description: Each local board of education is required by statute to budget the amount of at least \$100.00 for each student at risk, based partially on academic performance one or more grade levels below national norm (ALA. CODE § 16-6B-3, 1975). The purpose of these funds shall include, but not be limited to, the following: before and after school programs; summer programs; tutoring programs; weekend programs; and training parents and teachers. The plan of expenditure must be approved annually by the State Superintendent of Education. Special grant funding is available through the State Department of Education.

These funds are allocated to local boards of education for local schools based upon the following criteria. The first is the number of free and reduced price lunch eligible students at the end of the first 40 days of the current school year. The second is the number of students scoring in stanines 1,2,3, or 4 in the prior year SAT testing program. Each of these criteria is weighted equally in determining the local board's share of the statewide program.

Extent of Participation: Not Reported.

IX. GIFTED AND TALENTED EDUCATION

As described elsewhere in this article, funding for special education is imputed to be included in the classroom divisor used in calculating the 1995 Foundation Program. While no specific funding exists for the education of exceptional children, such costs are assumed to be normally distributed and included. Separate state law identifies the definition of Exceptional Children to include “*the intellectually gifted.*” This law requires that each local board of education provide not less than 12 consecutive years of appropriate instruction and special services for exceptional children. The statute requires that the funds for such services shall come from any revenue source (ALA. CODE § 16-39-3, 1975).

X. BILINGUAL EDUCATION

There is no state program and consequently no state aid for this purpose.

XI. EARLY CHILDHOOD EDUCATION

Funding in 1998–1999: No state aid provided.

Percentage of Total State Aid: N/A.

Description: There is no state prescribed program and consequently no general state aid for this purpose. However, there is an annual appropriation to the State Department of Education for the Administrative Services Program for the Pre-School Program in the amount of \$2.5 million for FY 1998–1999. The purpose of this appropriation is to implement the provisions of the Special Education of Preschool Handicapped Children Act of 1991 (ALA. CODE § 16-39A-1, 1975). The funds provided are restricted to handicapped preschool students and are passed-through by the State Department of Education to purchase required services.

Extent of Participation: Not Reported.

XII. OTHER CATEGORICAL PROGRAMS

Endowment Interest Program

Funding in 1998–1999: \$0.5 million.

Percentage of Total State Aid: less than 1%.

Description: The first claim on revenues to the Public School Fund is interest on endowment for those sixteenth section land funds and other funds whose principal was lost by the state. This has become a permanent debt of the state to those respective school systems. The annual debt interest payment of \$532,864 is appropriated annually from the Education Trust Fund to the Public School Fund. This categorical aid program is allocated annually to eligible local boards of education. The amount of \$532,864 for FY 1998–1999 is 0.02% of total state aid.

Extent of Participation: Not Reported.

Hold-Harmless Program

Funding in 1998–1999: \$9.4 million.

Percentage of Total State Aid: less than 1%.

Description: The second claim on the Public School Program is for the Hold-Harmless Program before the balance is allocated for capital outlay purposes. This is a categorical aid program designed to insure that no local board of education receives fewer funds on a per pupil basis than it did in FY 1994–1995, the base year before the new 1995 Foundation Program going into effect. However, the basis for calculation has been amended twice to exclude certain allocations for pay raises from counting against hold-harmless.

Extent of Participation: Not Reported.

Additional Salary Allocation

Funding in 1998–1999: \$16.6 million.

Percentage of Total State Aid: N/A.

Description: The additional salary allocation provided as a categorical aid program was discussed in the section on the cost factors of the 1995 Foundation Program.

Extent of Participation: Not Reported.

XIII. TEACHER RETIREMENT AND BENEFITS

Funding in 1998–1999: \$207.9 million.

Percentage of Total State Aid: 7.8%

Description: Fringe benefits are provided at the state level for public education employees in Alabama. These include (1) retirement; (2) health insurance; (3) social security and medicare; (4) unemployment compensation; and (5) personal and sick leave (see the cost factors in the 1995 Foundation Program above). These benefits are determined annually by recommendations from the administering boards, subject to approval of the Legislature. Before 1995, benefits

were paid-on-behalf by the Legislature annually from the Education Trust Fund for all employees, state, local and federal (social security was provided in this fashion from 1954 to 1988; federal law ended paid-on-behalf funding and required direct funding by employers). Annually, the cost for employees funded from federal programs or restricted grants would be reimbursed to the Education Trust Fund.

The 1995 education finance reform package converted the paid-on-behalf process to direct employer pay and included the cost of the fringe benefits in the 1995 Foundation Program. These benefits are direct cost calculations for certificated personnel and indirectly calculated for support and transportation personnel. The transfer of the fiscal responsibility for paying fringe benefits to local boards of education was a necessary step in equalizing education funding in Alabama.

Teachers Retirement System

The Teachers' Retirement System (TRS) was created by the Legislature in 1939 and all full-time public education employees are required to participate. The mandatory contribution for employees is 5% of annual salary. Before 1995, state contributions or the employer contribution to the TRS were paid by direct annual appropriation, which included amounts for regular, term life insurance, and cost-of-living allowances previously granted by the Legislature. This became a direct pay contribution by employers in 1995.

In addition to the program created for active employees, the Legislature has created a supplemental benefit program for retired employees. The Legislature periodically grants, usually in conjunction with a teachers' pay raise, a cost-of-living adjustment (COLA) for retirees. The calculation of the cost of this COLA, prior to FY 1995–1996, was included in the direct appropriation to the Teachers' Retirement System. This additional allocation for retirees is now calculated as a percentage of the current salary of active employees and is included in the employer rate. For FY 1998–1999, the combined rate for active and employees, including COLA's for retirees, is 4.03%. This rate is very low due to the exception management of the TRS portfolio and the transition from book value to market value of the portfolio. The rate for 1997–1998 was 9.66%. The projected rate for FY 1999–2000 is 6.35% due to a pay raise and COLA granted teaches for FY 1998–1999.

Public Education Employees Health Insurance Program

The Public Education Employees Health Insurance Program (PEEHIP) was created by the Legislature in 1984 as a paid-on-behalf program for all eligible employees. The statute creating PEEHIP provides coverage to active employees whose agencies are under the auspices of the State Board of Education. These include (1) public schools, (2) the two year college system, (3) the Alabama Institute for Deaf and Blind; (4) the Alabama School of Mathematics and Science; and (4) the Alabama School of Fine Arts. An annual appropriation was made to the governing board of his program considered adequate to provide the approved program of health insurance for covered members. Since 1984, the employee cost for single coverage has been fixed at \$2.00 per month.

The employer contribution is recommended to the Legislature annually by the Board and included in the certificated employee direct cost calculation in the 1995 Foundation Program and as an indirectly calculation for support and transportation employees. The premium per active employee includes an amount to partially fund the cost of coverage for retired employees. The change from paid-on-behalf to direct employer pay was a part of the equity reform in 1995. The employer cost for FY 1998–1999 is \$225.00 per employee per month for single coverage.

Federal Insurance Contributions Act (FICA)

In 1954, a referendum of employees approved membership in FICA. Before 1988, an appropriation was made on behalf of all education employees in the Teachers Retirement System to the State Social Security Agency from the Education Trust Fund. Reimbursement was made to the Education Trust Fund for employees from federal or restricted grant funding sources. The paid-on-behalf approach ended in 1988 with federal law requiring direct funding; the state share was included in O&M allocations to agencies and institutions. In 1995, FICA and Medicare costs were included in the 1995 Foundation Program as previously described for the Teachers Retirement System. For FY 1998–1999, the employee cost for participation is 5% of salary; the employer cost is 6.20% for FICA and 1.45% for Medicare.

Unemployment Compensation, 1939

Before the 1995 Foundation Program, funding for Unemployment Compensation was made directly to the State Unemployment Compensation Fund in the Department of Industrial Relations (ALA. CODE § 25-4-1, 1975). In the 1995

Foundation Program change, this was made a cost factor as described previously. For FY 1998–1999, the contribution rate for employers is 0.125% of wages.

Leave, Personal and Sick

Before 1995, appropriations were allocated to local boards of education to reimburse for five days of sick leave and two days of personal leave for teachers. In the 1995 Foundation Program, leave was included as a cost factor and provided for at the rate of \$35.00 per day for seven days. This amount remains unchanged for FY 1998–1999. In addition, reimbursement for leave previously granted for support personnel is imputed to be included in Other Current Expense.

XIV. TECHNOLOGY

Funding in 1998–1999: \$3.5 million.

Percentage of Total State Aid: less than 1%.

Description: General state aid to local boards of education for technology began with the 1995 Foundation Program. In the calculation of cost factors in the 1995 Foundation Program, one of the components of the Classroom Instruction Support Factor is funding for technology. This shall be a uniform amount for each teacher unit and is recommended annually by the State Board of Education. This amount for FY 1998–1999 is \$75.00 per teacher unit. This allocation may be expended by school or by the school system as a whole (ALA. CODE § 16-13-231, 1975). In addition, allocations from state bond issues are allowed to purchase technology equipment.

Extent of Participation: Not Reported.

XV. CAPITAL OUTLAY AND DEBT SERVICE

Funding in 1998–1999: \$68.6 million.

Percentage of Total State Aid: 2.6%.

Description: Capital Outlay and Debt Service in Alabama for public schools has been a sporadic activity. Historically, the state provided funding for teachers and capital outlay was left to local boards of education. However, local boards were always limited in capital spending by strict constitutional limitations on both local

taxation and debt. In addition, the capital outlay factor included in the 1935 Foundation Program was always inadequate to build schools. Local debt was generally restricted to the issuance of revenue warrants and some funding came from the state through periodic state bond issues. The 1995 finance reform provided the first substantial state aid for capital outlay by earmarking a state fund for that purpose. In addition, two state bond issues during the 1995 quadrennium have provided substantial additional state funding for capital outlay.

Capital Improvement Program

The Legislature in 1995 redirected the purpose of the annual appropriation from the Public School Fund for capital improvement purposes. Each local board's allocation must be matched on a wealth-adjusted basis and set aside for capital outlay purposes only. This is a guaranteed tax yield program. Local wealth is determined by the yield of 1.0 mill of school district tax per pupil in ADM. The determination of wealth is based on the prior fiscal year tax yield and the prior year's first 40 scholastic days ADM.

State Allocation for Capital Improvement

Alabama's state match is based upon a target that is two times the maximum yield per mill per ADM. The number of mills that will be matched depends upon the funds available from the state. The statutory formula follows:

State Share from Public School Fund = $Z [(KM)-Y] A$ where

Z	=	number of guaranteed mills
K	=	2
M	=	maximum yield per 1.0 mill of all local boards
Y	=	yield per 1.0 mill per ADA for a local board of education
A	=	prior year ADM for a local board of education

The result of setting $K = 2$ is that $\frac{1}{2}$ of the funds are distributed as a flat grant allocation per student in ADM to each local board of education and $\frac{1}{2}$ of the funds are distributed as a guaranteed tax yield grant. This feature diminishes the equalizing capacity of the allocation. For FY 1998–1999, the number of mills calculated for this funding program was 0.678228. The amount of state funding for this purpose was \$68,596,962. This represented 2.58% of total state aid. The amount of funds available determines the number of mills as Z that will be equalized.

Local Board Funds for Capital Improvement

The formula for determining local match follows:

$$\text{Local Board Funds} = Z * Y * A$$

The required local share depends on the number of mills Z that the state can include in the guaranteed tax yield program. As the total fund available increases (this will occur through the termination of the hold harmless program and through growth in statewide assessed valuation) the number of mills will increase. The sum of the state public school funds and the matching local funds must be spent for capital purchase projects, including the planning, construction, reconstruction, enlargement, improvement, repair or renovation of public school facilities, for the purchase of land for public school facilities and for the acquisition and/or purchase of education technology and equipment (ALA. CODE § 16-13-233 (d) (e), 1975). These funds must implement the state approved comprehensive, long-range capital need plan which addresses the facility, educational technology, and equipment needs of the local board of education (ALA. CODE § 16-13-234 (e), 1975).

State Bond Issues

Alabama's Constitution of 1901 prohibits state debt, which includes borrowing through bond issues. In order to bypass this prohibition, state courts ruled that revenue bonds issued by a statutory bonding authority that is a public corporation with an earmarked revenue source do not constitute a debt of the state. A general obligation bond issue still requires a constitutional amendment. With the loophole so created by the courts, it was now possible for the Legislature to begin paying for public school, college and university capital outlay by issuing revenue bonds. Such revenue bonds could be issued by statutory authority of the Legislature and the need to amend the Constitution by a vote of the people was bypassed.

Alabama Public School and College Authority

The Legislature created the Alabama Public School and College Authority in 1965 composed of the governor, the state superintendent of education and the director of finance (ALA. CODE § 16-16-1-13, 1975). The sales tax first and the use tax second are pledged to retire any bonds. Generally, an amount is stipulated for elementary/secondary education along with a plan of apportionment for each local

board of education. Also, an amount and a plan of apportionment is stipulated for higher education. In addition, a discretionary amount(s) may be identified to be allocated for a general or specific purpose as directed by the Authority.

Local Bond and Revenue Warrant Issues and Appropriations

Alabama's Constitution of 1901 zealously guards the people from both taxation and debt. In addition to setting a taxation limit on local government, it also set a debt limit on local government. Any local bond issue must be submitted to a local referendum. Since the Constitution of 1901 failed to discuss the precise definition of the term "bond," and since bonds require (1) negotiability and (2) transferability, a similar financial instrument without negotiability and transferability could be a legal financial instrument. The Supreme Court of Alabama has held for more than 80 years that that the Constitutional prohibition does not apply to interest bearing warrants. Consequently, this has become the financial instrument most used at the local level for funding capital outlay.

While a local city or county government can hold a referendum to issue bonds for capital outlay for schools, the common practice has been for local boards of education to issue revenue warrants as provided by statute. Certain local revenues, mostly property taxes, are statutorily permitted to be pledged to repay revenue warrants. Limits exist, however, on the percent of the tax that can be pledged and the interest rate that can be paid. Furthermore, the state superintendent of education must approve all such issues.

In addition, local governmental units can provide for capital outlay and debt service for local boards by contributions on behalf. This could include expenditures from earmarked taxes or general appropriations.

Extent of Participation: Not Reported.

XVI. STANDARDS/ACCOUNTABILITY MEASURES

Accompanying the education finance reform approved by the Legislature in 1995 were provisions for both financial and academic accountability.

Financial Accountability

Alabama implemented a local school budgeting system in 1939 that has remained virtually unchanged today. The major change in 1995 was in financial

accounting, from a system-centered program to a site- or school-based program. The 1995 reform legislation stipulated that local boards of education must be financially accountable just as they are accountable for student achievement. Local boards of education are required to provide annual financial budgets and financial statements which are cost-center-based (by school site and by area vocational/technical education center), which are program based (by regular, special, and vocational education), and which are resource based (by source of funds - federal, state, and local).

The State Board of Education is directed to require and approve budgets and financial statements and any other such report that is deemed necessary to assess the financial stability of each local board of education. Any budget deemed fiscally unsound will be resubmitted with the assistance of the State Department of Education. Any determination of an unsound fiscal condition in any local board of education will lead to an appointee of the State Superintendent of Education advising the local board on the day-to-day financial operations. Should the unsound fiscal condition persist, the State Superintendent of Education, with the approval of the State Board of Education, will assume direct control of the fiscal operation of the local board of education through the appointment of a chief fiscal officer. Such appointees would be required to give bond with a surety company authorized to do business in Alabama. This direct control shall be for the period of time deemed necessary to bring the local board into fiscal compliance as determined by the State Board of Education (ALA. CODE § 16-6B-4, 1975).

In the case of a school in academic assistance, the legislation requires that local boards make the effort and commit the resources necessary to improve the instructional program for a school in need of assistance. Such a school in need of academic assistance must have budgeted to be spent in that school all of the funds earned in the cost calculations of the 1995 Foundation Program (ALA. CODE § 16-6B-3, 1975). In addition, each local board of education shall prepare annually for each school and area vocational/technical center and for itself an accountability report to be provided to the public. This consists of a Funding and Expenditure Report which shall include the amount of foundation program funds or vocational/technical education funds, or both, earned and of all funds expended, and any other data deemed necessary by the local board of education or the State Board of Education to inform the public about the financial status of each school (ALA. CODE § 16-6B-7, 1975).

Public hearings were made mandatory for the first time for local budgets in 1997. The State Department of Education is required to prepare annual budget forms for each local board of education and make the forms available to each local superintendent of education for use with public hearings. Each local board of education shall hold at least two open public hearings pertaining to its proposed annual budget. Copies of the proposed budget shall be provided to the public at each hearing on forms provided by the State Department of Education. Each board shall seek input from the public concerning the proposed budget and the allocation of resources. Each hearing shall be held during a scheduled board meeting in a place and at a time convenient for the public to attend. The chair of each board shall publicize the date and time of each hearing in the local media in advance of the hearing. In addition, notice of each hearing shall be posted in a conspicuous place at the offices of the local board of education, the county courthouse, the main municipal building, and at each affected school. The proposed budget shall reflect the total amount of resources available to the board from all funding and revenue sources. The projected enrollment and the total proposed expenditures by each board and for each school shall be available at the public hearings. The proposed budget shall clearly delineate the number of teachers, librarians, counselors, administrators and other support personnel projected to be employed at each school. The proposed budget shall clearly list the operating costs by category or function at each school. The proposed budget shall delineate by school those operating resources earned, including, but not necessarily limited to, those items contained in the Instructional Support Program of the Foundation Program, designating the amount of funds earned at each school per item based on average daily membership. After at least two public hearings have been held, the local board and superintendent shall cause a final budget to be developed consistent with the laws of this state, and shall make copies of the final budget available to the public upon request (ALA. CODE § 16-13-140, 1975).

Academic Accountability

The State Board of Education shall determine a school in need of academic assistance when that school has a majority of its students scoring one or more grade levels below the national norm on the state adopted achievement test. Alabama has chosen the Stanford Achievement Test, Version 9. If a majority of students score in Stanines 1, 2, and 3 in a school, that school is placed on Academic Alert and is required to develop a self-improvement plan. Failure to make satisfactory progress after two years will require the State Superintendent of Education to appoint a person or persons to run the day-to-day operations of the

school. Satisfactory progress is defined as an annual 5% decrease in the number of students scoring in Stanines 1, 2, and 3.

All local school systems not on Alert status but with a majority of its students scoring in Stanines 1, 2, 3, and 4 are placed on Academic Caution status. These schools must show at least a 2% decrease in the number of students scoring in Stanines 1, 2, 3, or 4 to be considered as making satisfactory progress. Failure to make satisfactory progress will experience the same sanctions specified for Academic Alert schools.

Should a local school system have a majority of its schools in need of assistance as determined by the State Board of Education, then the same steps for intervention are followed. Intervention after the third year of insufficient improvement means that the State Superintendent of education shall assume the direct management and day-to-day operation of the local board of education for such period of time as may be necessary for student achievement to improve (ALA. CODE § 16-6B-3, 1975).

XVII. REWARDS/SANCTIONS

Alabama provides no rewards for schools and/or school systems. No matter how exemplary or poor the performance, each school is under the same rules and regulations that generally control public education in Alabama. The sanctions that apply were discussed in the preceding section for financial and academic accountability.

XVIII. FUNDING FOR NON-TRADITIONAL PUBLIC SCHOOLS

No state recognition or funding exists for non-traditional public schools.

XIX. AID TO PRIVATE SCHOOLS

Funding in 1998-1999: \$0.7 million.

Percentage of Total State Aid: less than 1%.

Description: Alabama does not provide general state aid to private schools. However, two types of exceptions do exist. (1) Alabama does provide through separate appropriations bills state aid to two private military academies. For FY 1998–1999, this aid consisted of \$215,711 to Lyman Ward Military Academy and

\$489,240 to Marion Military Institute. (2) Alabama does provide small grants to several private schools and agencies offering services to exceptional children and to mentally disabled citizens. Neither of these categories is considered in the general state aid for public education.

Extent of Participation: Not Reported.

XX. RECENT/PENDING LITIGATION

On May 3, 1990, based upon constitutional claims, a lawsuit was filed in Montgomery County Circuit Court by the Alabama Coalition for Equity, Inc. (ACE) comprised of approximately 25 local school systems and a number of parents and schoolchildren. Attorneys presenting claims for students with disabilities known as the Harper plaintiffs filed a similar suit in January of 1991. These two suits were consolidated for trial and were styled as *Alabama Coalition for Equity, Inc. v. Guy Hunt* and *Mary Harper Et Al. v. Guy Hunt*, 624 So.2d 107 (Ala.1993). These lawsuits challenged the constitutionality of Alabama's system of public schools citing their failure to offer adequate and equitable educational opportunities to the schoolchildren of the state. The plaintiffs requested that the trial be bifurcated into a liability and remedy phase.

The Liability Order was entered on May 31, 1993, in favor of the plaintiffs. Judge Gene Reese of the Montgomery County Circuit held that Section 256, the constitutional statement in Article XIV, provides as follows: "The Legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years." Judge Reese concluded that under these circumstances, there can be no question that Alabama schoolchildren have an enforceable constitutional right to an education as guaranteed by § 256.

The Court further held that Alabama's present system of public schools violates the constitutional right of plaintiffs to equal educational opportunity as guaranteed by the Alabama Constitution, that students have equal protection and due process rights under the Alabama Constitution, and that public education is a fundamental right in Alabama. The Court Ordered, Adjudged and Decreed that pursuant to the Alabama Constitution, art I, §§ 1, 6, 13, 22 and art. XIV, § 256, Alabama school-age children, including children with disabilities, have and enjoy a constitutional right to attend school in a liberal system of public schools, established, organized, and maintained by the state, which shall provide all such schoolchildren with substantially equitable and adequate educational opportunities.

On August 22, 1993, Judge Reese released the Remedy Order which compelled the Legislature of Alabama to craft a system of public education in the State of Alabama funded sufficiently to enable all public schools to fully achieve Constitutional and statutory standards of educational equity and adequacy, including all components of the court order.

The new Governor appealed both Liability and Remedy Orders to the State Supreme Court where the issues remained inactive until 1997. The Supreme Court concluded that the Liability Order was within the purview of the Circuit Court and ruled the Liability Order final on January 10, 1997. However, the Supreme Court found the Remedy Order to have been written in haste without the opportunity for the state to develop its own remedy plan. On December 3, 1997, the Supreme Court vacated the Remedy Order, returned the case to Circuit Court, and allowed the Legislature a reasonable time to develop a remedy. On December 12, 1997, the Alabama Supreme Court ordered the attorney's fees paid which were actually paid in September of 1998 in the amount of \$4,390,296. The education finance reforms passed by the Legislature in 1995 have yet to be tested in the Court to see if they conform to the judicial standard of an equitable and adequate educational opportunity.

XXI. SPECIAL TOPICS

None.