

TENNESSEE

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I. GENERAL BACKGROUND

State

The state's school funding formula is the Basic Education Program (BEP), a weighted regression formula that determines the full amount of funding needed by Tennessee's K–12 schools. The BEP was part of Tennessee's 1992 Education Improvement Act (TENN. CODE ANN. § 49-3-351) that addressed inadequacies and inequities in Tennessee's school funding.

The purpose of Tennessee's basic support program, the Basic Education Program (BEP), is to address the inadequacies and inequities in public education that were the driving force behind the landmark 1988 Tennessee Small Schools lawsuit. Prior to the 1990s in Tennessee, public schools were funded using minimum foundation program mechanisms that were based on the weighted average daily attendance, but the level of equalization was small. The result was an inequitable distribution of learning resources to meet the needs of Tennessee's children.

The Education Improvement Act (EIA) of 1992 provided the following: Created the BEP, the Education Trust Fund, and the BEP account. Provided for a phase-in of full funding over a six-year period. Established that an unexpected balance of the BEP account would not revert to the General Fund, but rather remain in the Education Trust Fund. Required that the state provide 75% of funds generated by the BEP formula in classroom components and 50% in non-classroom components. Authorized the creation of a funding formula that provided unprecedented flexibility to school systems to determine how state funds should be spent to meet local needs. Required BEP funds earned in classroom components to be spent solely in the classroom. Authorized incentive grants for schools that exceed performance standards. Set out conditions and requirements for local education agencies to receive BEP funds. Mandated class size

reductions. Provided for education on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues.

Tennessee has no state income tax and is dependent on sales and use taxes and property taxes to fund public education.

Tennessee's system of funding with sales tax was found to be inadequate and inequitable by the state Supreme Court in *Tennessee Small School Systems v. McWherter*, 851 S.W. 2nd 139 (Tenn. 1993). The state is not wealthy; it has rural counties with child poverty rates among the highest in the nation. For example, Hancock County's child poverty rate was 49.9% in the 1990 U.S. Census Report. Hancock County was used as an example in a small school system lawsuit against the state and subsequent ruling that the state's method of funding education as unconstitutional paved the way for the BEP.

The BEP was designed to embody the concepts of adequacy and equity of education funding. Adequacy of funding programs is determined through the annual application of inflation and reevaluation of unit costs based on actual expenditures. Equity in funding is established through fiscal equalization among the local education agencies.

The BEP, including improvements, accounts for approximately 90.7% of the recommended state allocation for K–12 public education. The remaining K–12 education funds are designated for curriculum and instruction, driver education, adult and community education, technical assistance and administration, and special schools.

After five years of graduated funding, full funding for the BEP was reached during the 1997–98 school year. Tennessee has provided more than \$1 billion in new state funds for local school system budgets since the 1992 passage of the Education Improvement Act, including funds for teachers' salaries, technology and other school improvements.

Local

Tennessee has 138 school districts; comprised of (95) county, (29) city and (14) special districts. Special districts were created by private acts of the legislature. Only special districts are fiscally independent but city, county and special districts must rely on the county governing body to set the county school tax rate. However, city districts may also petition the city governing body for additional funding and tax rates. The boards of education of special districts may levy tax

rates in addition to the county rate. For tax rate increases beyond those limits established in the acts that created the districts, special school districts may petition directly to the state legislature.

Funding Summary 1998-99

Total State School Aid (All Programs)			\$ 2,216.2 million
Grants in aid	1,919.5	million	
Teacher retirement contributions	129.7	million	
FICA	167.0	million	
Total Local School Revenue			\$ 2,274.1 million
Property tax	1,846.2	million	
Other local source tax revenue	193.9	million	
Local source non-tax revenue	234.0	million	
Total Combined State and Local School Revenue			\$ 4,490.3 million
State Financed Property Tax Credits			
Attributable to School Taxes			0

II. LOCAL SCHOOL REVENUE

Primary sources of local district tax revenues for the 138 school districts are property taxes and local option sales taxes. Statewide, 28% of local revenue for education is from local option sales taxes and 36.5% is from property taxes.

Local Option Sales and Use Taxes

Tennessee's greatest revenue producer is its sales and use taxes that provide more than half of the state's total tax income. Sales tax is imposed at some point on virtually every item of tangible personal property a business buys or sells and applies to many services as well. Six percent is the general rate that applies to the gross proceeds derived from the retail sale or use of tangible personal property and specific services. A one-half of one- percent portion is earmarked solely for the Education Fund in the state budget and the remaining 5.5% portion is distributed to various funds (TENN. CODE ANN. §§ 67-6-201 through 67-6-205, § 67-6-221). The state budget's Education Fund received 65.0970% of the remaining 5.5% after the allocation to the Transportation Equity Trust Fund and

100% of one-half of one percent of the gross tax (TENN. CODE ANN. § 67-6-103, § 49-3-357).

Although the current state rate of 6% was established in 1992, local option taxes are levied currently by all 95 counties and some cities. The combined county and city taxes may equal up to 2.75%. Counties have priority and can levy the entire 2.75% if they wish; cities may levy the difference, if any. A few cities straddle county lines – meaning there may be one county rate in one part of the city and another county rate in the other part. Some such cities levy different city rates in each county to make the sum of the tax rates equal.

The sales tax applies to any person or company who manufactures, distributes, or retails tangible personal property within Tennessee. The sales tax applies to leases, flea markets, services, software, amusements, groceries, mail order, and telecommunications.

Sales tax is structured to ensure that no sale or use of any item of tangible personal property in the state escapes the tax and that any item is taxed only once. Transactions exempt from the state sales tax include interstate commerce, resale exemptions, manufacturer's exemptions, occasional and isolated sales, and non-sales such as deductions or refunds.

Items exempt from sales tax include advertising, agricultural, aircraft, amusement exemptions, computer media exchange, design materials, food stamps, fuel, industrial or farm machinery, construction machinery, motion picture production companies, packaging, pollution control, publishing and printing, railroads, real property, residential utilities, veterinarians, and miscellaneous items.

Property Tax

Historically, the property tax has been the largest source of education funding. Since education is predominantly a local function, the property tax is the major local tax revenue source for education. In Tennessee, the property tax provides 52.3% of total education revenue.

County and municipal governments levy property tax on real and personal property. With the source of revenue severely limited local governments lean heavily on the property tax to provide operating funds since their sources of revenue are very limited.

In the last 30 years, Tennessee's property tax system has experienced radical changes and is still in the state of slow flux. Tennessee has different assessment

levels for utility, business, and residential and farm property. The business tax which replaced personal property taxes on inventory has two parts including an annual license fee of \$15 and a tax on gross receipts which varies for five classifications of wholesale and retail sales. Additionally, the property tax is subject to special state constitutional rules not applicable to most other state taxes. The property tax must be uniformly applied which means a host of the exemptions that have shown up over the years are unconstitutional.

The amount of property tax that must be paid is determined by three factors:

1. the appraised value of the property as determined by the county tax assessor:
2. the level of assessment for that kind of property as set in Tennessee's Constitution:
3. the tax rate set by the local government.

The type of property determines the level of assessment. The state has a classified property tax system with different assessment ratios:

<u>Classification</u>	<u>Assessed at</u>
Utility real property	55% of value
Commercial/industrial property	40% of value
Personal property	30% of value
Residential/farm property	25% of value

Property tax rates are determined at the local level; most counties have different rates for rural and municipal areas. Most municipalities have their own property tax rates. The rate must apply equally to all classes of property at a particular local, but tax rates in different parts of a county have historically varied substantially .

This formula is used to calculate the tax on a parcel:

$$\text{Tax} = \text{Appraised Value} \times \text{Assessment Level} \times \frac{\text{Tax Rate}}{100}$$

The use of property tax among the Tennessee's school systems varies significantly. According to data from the Tennessee Department of Education, the dependence on property tax ranges from nearly 90% of local education revenue to 15%.

Several categories of real and personal property are exempt from property taxes. Governments do not pay property taxes on the property they own; however they

may be subject to payments “in lieu” of property taxes. An example is the federally subsidized utility the Tennessee Valley Authority.

Income Taxes

Tennessee does not have a personal income tax.

III. TAX AND SPENDING LIMITS

At least 50% of the local option sales taxes must be allocated to support education, according to TENN. CODE ANN. § 67-6-712 (1). There is no maximum general-purpose tax rate or levy in effect for local governments.

School bond issues do not need to be submitted to voter referendum (TENN. CODE ANN. § 49-3-1002), but may be (TENN. CODE ANN. § 49-2-101 (5)). Tennessee does not set a debt limit. The BEP also authorizes local school boards to participate in bond funding under TENN. CODE ANN. § 49-2-101 (4).

IV. STATE EARMARKED TAX REVENUE

The sales tax increase made in 1993 from 5.5% to 6% was earmarked for education. The following taxes are earmarked for education:

Litigation privilege tax – a portion of the privilege taxes on litigation, based on the first \$2 derived from criminal cases and from a 25% share of 11.2% of the balance of litigation taxes which are not otherwise earmarked (TENN. CODE ANN. § 67-4-602, § 67-4-606). The Education Fund in the state budget receives 100% of the litigation privilege tax. It is earmarked for drivers’ education in public schools.

Tobacco Tax – This tax includes \$.40065 per cigarette or \$.13 per package of 20; \$.0005 per cigarette pack enforcement fee; 6% of wholesale price on other tobacco products; license fees of \$10 to \$20 per location for sellers, distributors, and handlers; proceeds of sale of confiscated goods; and penalties of \$100 to \$5,000 for violations of the Unfair Cigarette Sales Law. The Education Fund in the state budget receives approximately 99.4% of this tax. This includes 99.4% of cigarette taxes, earmarked for grades 1–12; 100% of license fees and penalties; and 96% of other tobacco taxes and proceeds of sale of confiscated tobacco products (TENN. CODE ANN. § 67-4-1025, § 49-3-357).

Mixed Drink Tax – This is a 15% gross receipt tax on sales. The state budget’s Education Fund receives 50% of the 15% gross receipt tax (TENN. CODE ANN. § 57-4-306).

V. BASIC SUPPORT PROGRAM

Funding in 1998–99: \$2,198.3 million.

Percentage of Total State Aid: 99.2%.

Nature of the Program: Foundation.

Allocation Units: Pupils. Average Daily Membership (ADM).

Local Fiscal Capacity: The Tennessee State Board of Education has the responsibility for determining fiscal equalization. The State Board adopted a local fiscal capacity index developed by the Tennessee Advisory Commission for Intergovernmental Relations. Factors determining local fiscal capacity are property and sales tax bases, ability to pay (i.e. resident income), resident tax burden, service responsibility, local revenue for education.

How the Formula Operates: Calculation of the formula begins with student counts; student counts are a part of every component of the formula. Ratios and unit costs are applied to the student counts to generate the cost of each component. Components that fund personnel costs generate positions, and up-to-date salary and benefit costs are applied to those positions. Additionally, adjustments are made to the cost of positions based on a comparison between average local non-governmental wages and average statewide non-governmental wages.

Components are grouped into two categories for determining state and local shares of formula funding in each school system: classroom and non-classroom.

Classroom: These components provide the resources for human resources including teachers, counselors, assistants, and other professional staff members. Classroom components also provide resources for textbooks and other instructional materials and supplies including staff benefits and insurance. State government is responsible for funding 75% of the classroom components.

Non-classroom: These components provide funds for certain administrative and support personnel, maintenance and operations, pupil transportation, and capital

outlay. State government is responsible for funding 50% of the non-classroom components.

The regression formula determines the full amount of funding needed by Tennessee's K-12 schools.

Embodied in the formula are the concepts of adequacy of funding programs through the annual application of inflation and reevaluation of unit costs based on actual expenditures and equity in funding through fiscal equalization among the local education agencies. The BEP, including improvements, accounts for approximately 90.7% of the recommended state allocation for K-12 public education. The remaining K-12 education funds are designated for such initiatives such as curriculum and instruction, driver education, adult and community education, technical assistance and administration, and special schools.

The BEP regression formula determines the funding level required for each school system to provide a common, basic level of service for all students, funds are then allocated between classroom and non-classroom components. There are 42 components in the BEP regression formula. They are measured primarily on the basis of average daily membership (ADM) in specified classifications.

State and Local Share: The EIA requires the state to pay 75% of the statewide cost of the classroom components and 50% of the statewide cost of the non-classroom components. The local portion of the revenues required to fund the formula is divided among the school systems based on differences in ability to raise local revenues. This process is called equalization and is based on a weighted regression formula developed by the Tennessee Advisory Commission on Intergovernmental Relations.

Weighting Procedures: Equalizing the classroom and non-classroom components and the statutory ratios is the last step in the process. It was the intent of the Tennessee General Assembly concerning the fiscal equalization of state education funding to "provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenue" according to Section 49-3-337 of the Education Improvement Act.

The General Assembly established a ratio for equalizing spending under the BEP. Collectively, the local education agencies are responsible for 25% of the classroom components and 50% of the non-classroom components. A statistical

model is used to measure the relationship among these factors for Tennessee's 95 counties. Per pupil fiscal capacity is then generated from the estimated relationships among these fiscal capacity factors.

Major funding Components of the Basic Education Program

Regular Education:

- 1 per 20 ADM K-3
- 1 per 25 ADM 4-6
- 1 per 30 ADM 7-9
- 1 per 26.5 ADM 10-12

Special Education: Based on caseload allocations for students identified and served.

Vocational Education: 1 per 20 vocational ADM K-3.

Other Certified and non-certified personnel based on ratios.

Regular, vocational and Special Education supervisors, principals, Assistant principals, Librarians, Art, Music, Physical Education, Social Workers, Psychologists, Guidance Counselors, Nurses, Substitute Teachers, At-risk Assistants

Materials, Equipment, Supplies and Travel based on ADMs by program area. Textbooks based on Total ADMs.

Staff Benefits: Insurance and retirement funded by position.

Alertive Schools, duty-free lunch, technology: Based on ADM.

Superintendent: One per county (counties with more than one system receive portion based on share of total ADM.

System and School secretaries technology coordinators: Based on ADM.

Maintenance and Operations: Based on square feet allocation per k-4, 5-8 and 9-12 ADM at M & O cost per square foot with custodians allocated for specified amount of square feet based on survey data.

Non-instructional Equipment: Based on total ADM.

Adjustments for Special Factors: None.

Aid Distribution Schedule: Not reported.

Districts Off Formula: None.

VI. TRANSPORTATION

Funding in 1998–99: Included in the basic support program.

Percentage of Total State Aid: N/A.

Description: State financial assistance for transportation is not included in the BEP regression formula, component 40.0. The formula includes the number of students, the number of miles and a density factor. Based on formula which estimates per ADM transportation costs.

State and Local Shares: The state's share of the total expenditures is 50%. Local districts also contribute 50% adjusted by their fiscal capacity index.

Extent of Participation: From the school districts' resources: 113 districts provide transportation; 11 contract for transportation from adjoining districts; and 15 districts do not provide transportation.

VII. SPECIAL EDUCATION

Funding in 1998–99: Included in the basic support program.

Percentage of Total State Aid: N/A.

Description: State financial assistance for special education is now included in the BEP formula.

State and Local Shares: The state's share of the total classroom expenditures for special education is 75%, and for non-classroom expenditures is 50%. Local districts also contribute 25% and 50% respectively as adjusted by their fiscal capacity.

Extent of Participation: All 138 school districts receive special education funds.

VIII. COMPENSATORY EDUCATION

No state aid provided.

IX. GIFTED AND TALENTED EDUCATION

Funding in 1998–99: Included in the basic support program.

Percentage of Total State Aid: N/A.

Description: The education of gifted and talented students is included in the special education program. Students are reported on the special education census and receive state funds based on the option of service they receive in special education program.

State and Local Shares: The state's share of the total classroom expenditures for gifted and talented education is 75%, and for non-classroom expenditures is 50%. Local districts also contribute 25% and 50% respectively as adjusted by their fiscal capacity index.

Extent of Participation: All 142 school districts receive special education funds.

X. BILINGUAL EDUCATION

No state aid provided.

XI. EARLY CHILDHOOD EDUCATION

Funding for 1998–99: \$3.1 million.

Percentage of Total State Aid: less than 1%.

Description: The focus is to increase the availability of developmentally appropriate early childhood programs for all children aged three and four that are economically at risk. This funding level will provide developmentally appropriate programs for a minimum of 5.5 hours per day for 180 days.

State and Local Shares: This budget includes funds for staff within the Tennessee State Department of Education. Local education agencies are responsible for providing the physical facility for the program.

Extent of Participation: Serves 600 children in 30 classrooms at 14 school systems and eight non-profit agencies.

XII. OTHER CATEGORICAL PROGRAMS

Career Ladder

Funding in 1998–99: \$104.5 million.

Percentage of Total State Aid: 4.1%.

Description: An incentive program designed to promote staff development among teachers and to reward with pay supplements those teachers evaluated as outstanding.

State and Local Shares: 100% state.

Extent of Participation: There are approximately 47,500 educators participating in this program.

Safe Schools

Funding in 1998–99: \$10 million.

Percentage of Total State Aid: less than 1%.

Description: The Safe Schools Act of 1998 authorized the awarding of grants to each of the 138 local education agencies for one or more of the following: innovative prevention programs, conflict resolution, disruptive or assaultive behavior management, improved school security, peer mediation, and training for employees.

State and Local Shares: The funds are to be distributed to local education agencies in the same percentage as their BEP funding and such funding is subject to a 25% local match, adjusted for the agency's fiscal capacity under the BEP formula.

Extent of Participation: All 138 local education agencies in Tennessee

XIII. TEACHER RETIREMENT PROGRAMS

Funding in 1998–99: \$296.7 million.

Percentage of Total State Aid: 13.4%.

Description: Teachers (all certificated personnel working in the public schools unless the code specifies otherwise) participate in the state retirement system, Tennessee Consolidated Retirement System (TENN. CODE ANN. § 8-37-402), more commonly known as TCRS or in one of six, now closed, local retirement plans operated by local school districts. The local plans were established (TENN. CODE ANN. § 45-9-501) prior to TCRS changing to its current benefit and membership format. All teachers entering service since 1977 participate in the state plan. TCRS provides retirement annuities to both state and local plan teachers. The 1992 Education Improvement Act amended TENN. CODE ANN. § 8-37-402 to send appropriations for TCRS contributions to the Tennessee Department of Education for distribution to the local education agencies under the Basic Education Program BEP formula, requiring local education agencies to transmit those amounts to the TCRS.

State and Local Share: Contributions for retirement in 1998–99 are specified in the BEP formula and are included in overall teacher cost on the classroom side of the model. The local school districts contribute to the state retirement fund based on the recommendations of their consulting actuary. In 1998–99 school systems contributed 5.47% of a teacher’s salary, and the teacher contribution was 5%.

Extent of Participation: All 138 school districts participate.

XIV. TECHNOLOGY

Funding in 1998–99: \$20 million.

Percentage of Total State Aid: less than 1%.

Description: Technology is one of the components of the BEP cost formula. The districts are allowed to use the funds for any item considered “technology.”

State and Local Shares: The BEP provides 75% of the technology appropriation as provided in the formula based on \$22.39 per ADM until the fund is depleted.

Extent of Participation: All 138 districts participate.

XV. CAPITAL OUTLAY AND DEBT SERVICE

Funding in 1998–99: \$315.1 million.

Percentage of Total State Aid: 14.2%.

Description: Capital outlay funds may be used for the purchase of large capital items such as equipment, building facilities or debt retirement. Allocation is based on square feet allocation per k-4, 5-8 and 9–12 ADM at construction cost per square foot adding 10% for equipment, 5% for architect’s fee, and debt service at state bond rate.

State and Local Shares: The BEP provides 75% of the capital outlay appropriation as provided based on an allocation per square foot of building needs formula. K-4 = \$61, 5-8 = \$68, 9–12=\$64 per square foot.

Extent of participation: All 138 districts participate.

XVI. STANDARDS/ACCOUNTABILITY MEASURES

Tennessee has multiple measure sources for checks and balances on the education finance system in Tennessee. The Tennessee General Assembly, the Department of Finance and Administration, the Comptroller of the Treasury, the Department of Education and the State Board of Education all play a major role in overseeing the education fiscal process.

The General Assembly established performance and fiscal accountability requirements in the Education Improvement Act. The General Assembly also established an Education Trust Fund, a Basic Education Program revenue account, and an Office of Education Accountability in the Comptroller’s Office.

The Division of Accounts in the Department of Finance and Administration maintains a Basic Education Program Revenue Account in the Education trust Fund. Earmarked funds are deposited into the BEP account.

The Department of Education authorizes the disbursement of funds to local education agencies based on the BEP funding formula and the Tennessee advisory Commission on Intergovernmental Relations local capacity index.

The State Board of Education adopts accountability standards, based on recommendations by the Commissioner of Education, to guide local education agencies and serve as a basis for evaluation.

The Department of Education publishes an annual report card with accountability information about each local education agency. These detailed annual reports provide data on the quality and performance of local school systems. The Report Card includes a standard set of data for every school system compared with statewide averages. Information in the reports include attendance for individual schools and school systems, promotion rates, dropout rates, achievement test scores, and value-added scores.

The Department of Education and the State Board of Education report to the Education Oversight Committee, the Senate Education Committee, and the House Education Committee. Budget information is reviewed annually by the General Assembly.

The Tennessee Advisory Commission on Intergovernmental Relations researches and publishes an annual study on education funding accountability, pursuant to HJR 191.

The Department of Education enforces the maintenance of local effort accountability requirement.

The comptroller of the Treasury conducts financial audits on the Department of Education, the State Board of Education, and the Local education agencies.

The Office of Education Accountability within the Comptroller's Office monitors the performance of Tennessee schools in accordance with the Education Improvement Act. Other means of accountability include school improvement plans, and Tennessee Value Added Assessment Program, and the Basic Education Program, and the Report Card.

School Improvement Plans

Since 1997–98, every Tennessee school has been required to submit for state review an improvement plan with measurable goals for meeting state and local performance standards. The school improvement plans are a central part of the accountability process for each school and will show where progress or lack of progress is being made. Other accountability measures call for every local school system to assess the needs of students and to develop five-year plans to address those needs with measurable goals and objectives.

Tennessee Value-Added Assessment

This system was adopted by the Tennessee General Assembly in 1992 (TENN. CODE ANN. § 49–1-603). Value-added is a concept borrowed from economics that has been applied to schooling and children.

The Tennessee Value-Added Assessment System (TVAAS) measures how much progress or academic growth Tennessee students make each year in specific subjects. The TVAAS system is not a test. It is a statistical methodology applied to scale scores from tests administered as part of the Tennessee Comprehensive Assessment Program (T.C.A.P). Calculations are made on annual estimates of teacher effects on students programs (TENN. CODE ANN. § 49–1-606).

TVAAS results are not intended to be used like a power ranking for a football team. Instead of comparing test scores in one system against those produced by another, TVAAS is designed to level the playing field by measuring the amount of progress that schools and school systems make from one year to the next.

TVAAS assessments are based on the premise that schools and teachers have a significant role in student achievement and that it is possible to measure that effect by calculating the gains, or value added, in student achievement. The goal established by the Education Improvement Act is for Tennessee student gains to equal or exceed national norm gains in each subject by the end of this century.

The value-added reports complement the T.C.A.P reports and provide additional information on students' academic success. This system assumes that all students can improve academically each year and at the same rate as all other students. With value-added assessments, it is possible to tell which schools are making the most academic progress, regardless of whether their test scores are lower or higher than those in other systems are. The TVAAS results show that schools whose students already have high-test scores can make just as much improvement as those can with lower scoring students.

TVAAS has been a controversial innovation. Schooling is a complicated and typically immeasurable process involving outside, intervening variables that often cannot be controlled by the educational process. The tests used must measure what the teachers are teaching, and teachers must teach state required curriculum frameworks. The test must match the curriculum in order to be valid and reliable.

Accountability standards were implemented during the first year of the Basic Education Program. The Education Improvement Act charges the Commissioner of Education with recommending fiscal performance accountability standards for local school systems to the State Board of Education. The board releases notices based on these standards, which are subsequently used in evaluating the operations of the local school systems.

Performance standards that have been phased in include: Setting student performance goals; Maintaining acceptable attendance and dropout rates; Establishing value-added assessment; Comparing the BEP components with the program components existing in each school system during the reporting year; Establishing school site-based decision-making; and Establishing an Office of Education Accountability within the Office of the Comptroller of the Treasury.

XVII. REWARDS/SANCTIONS

Tennessee provides bonus funding as an incentive for schools and school systems that exceed performance goals. A total of 358 schools have shared \$2 million in state incentive funds since the grants were first provided in 1994–95 (TENN. CODE ANN. § 49-3-360).

Tennessee also imposes sanctions for school systems that fail to measure up to prescribe performance standards, including notice or probation for the school system, and in the most severe cases, removal of the local superintendent and school board members from office. In addition, the Educational Improvement Act gives the Commissioner of Education authority to oust a school board member who fails to take part in a mandated annual training program (TENN. CODE ANN. § 49-1-601).

XVIII. FUNDING FOR NON-TRADITIONAL PUBLIC SCHOOLS

No state aid provided.

XIX. AID TO PRIVATE SCHOOLS

No state aid provided.

XX. RECENT/PENDING LITIGATION

The Tennessee Small School Systems Lawsuit

Tennessee was thrust into the equity battle by a group of 77 small school systems in *Tennessee Small School Systems (TSSS) v. McWherter*, 851 S.W. 2nd 139 (Tenn. 1993). The rural school districts claimed in the 1988 suit that the Tennessee Foundation Program, established in 1977, was inequitable under the state constitution.

Inequities occurred between school districts since some districts generated more sales tax revenues than other districts. For example, when individuals living in rural areas travel to urban areas to shop, the local option sales tax on their purchases benefits the urban school district where they are shopping, not their own school district. Since rural populations have little choice other than to purchase many items outside their own district, gross inequities in rural school district's ability to generate local funds were created.

In 1991, a trial court ruled in favor of the TSSS and declared that Tennessee school funding was in violation of the state constitution. The Tennessee General Assembly was assigned responsibility for the reform of school funding before June 30, 1992. An appeal was filed by the state in 1991 and in 1992 the Appeals Court reversed the trial court. The TSSS requested that the Tennessee Supreme Court review the case.

The TSSS lawsuit 1992 appeal was heard after the Education Improvement Act was signed into law. The Education Improvement Act established the Education Trust Fund in which all funds for K–12 education are placed. Within this fund a special revenue account entitled Basic Education Program was created. Into this account, all earmarked revenues for K–12 must be deposited. This is to ensure legislative accountability to the public for the tax increase that was necessary to fund education reform.

In an opinion filed in 1993, all five justices of the Supreme Court unanimously endorsed the conclusions of the trial court. The case was then remanded back to the trial court for the judge to craft an order to correct the school-funding crisis in Tennessee.

The TSSS stated in a 1993 hearing that the BEP solved much of the equity problem, but asked that it be fully funded and that additional funds be allocated to improve the rural schools' physical plants and equalize teachers' salaries. The

chancellor denied the petition and filed an order in 1993 recognizing full funding of the BEP over five years to be constitutional. The TSSSS appealed the same issues to the Tennessee Supreme Court in 1994. See Table 4 for an illustration of the BEP's five-year funding. The Supreme Court, in an opinion filed in 1995, agreed with the chancellor that under the BEP, improvements in the state's public education can best be accomplished incrementally and the record did not show that funding for capital improvements be given priority over other educational needs. The Supreme Court did find that exclusion of teachers' salary increases from the equalization formula was contrary to the BEP's objectives of equity. This issue will be discussed under the heading Recent/Pending Litigation in this chapter.

Teacher Salary Equity

On July 8, 1998 the Tennessee Small School Systems et al. filed motion in Chancery Court for the State of Tennessee for an Order requiring equalization of teacher salaries across all school districts in the state. In the Plaintiffs memorandum of law (No. 88-1812-II S. Ct. No. 01-501-9209-CH-00101) they indicate that on appeal from the original trial (July 1988) the Tennessee Supreme Court found that constitutionally impermissible disparities existed in the educational opportunities afforded under Tennessee's system of public schools. The Plaintiffs also indicate:

“Two Supreme Court rulings later, and ten years after this case was filed, the statutory funding scheme continues to produce a great disparity in the revenues available to different school districts, and there continue to be constitutionally impermissible disparities in the educational opportunities afforded under Tennessee's system of public schools. Specifically, the state has failed to take action to remedy the teacher salary disparity noted by the Supreme Court which held that exclusion of teachers' salary increases from the equalization formula is of such magnitude that it would substantially impair the objectives of the plan; consequently, the plan must include equalization of teachers' salaries according to the BEP formula.” (Tennessee Small School Systems v. McWherter, 894 S.W.2d 734, 738) (Tenn. 1995).

The plaintiffs have urged the court to find the education allocation portion (50%) of the local option sales tax unconstitutional and order the funds to be collected on a per pupil basis in accordance with the BEP. Plaintiffs furthermore propose that equalization would require recapturing the education portion of local sales tax and using it for salary equalization. The court has not rendered a decision at the date of this writing.

XXI. SPECIAL TOPICS

Teacher Salary Equity

Funding in 1998–99: \$12.3 million.

Percentage of Total State Aid: less than 1%.

Description: The Tennessee General Assembly funded a salary equity plan during the 1995 legislative session to address the disparity between salaries among school systems. Systems were eligible if the system's average compensation package (actual average instructional salary and employer-paid health insurance premium) was less than the target compensation package of \$28,094. The goal was to increase the average pay by the difference. The target compensation package of \$28,094 was determined by calculating the average compensation for each school system using the December 1, 1993 average instructional salary. The top and bottom 5% of systems were then excluded and a simple average was calculated.

State and Local Shares: Funding is subject to a local match adjusted for the agency's fiscal capacity under the BEP formula. The match is approximately 13%.

Extent of Participation: Paid to 50 school systems in FY 1998–99.