

## Statutory Options for School District Mergers: Report addressing House Resolution 30, 2011

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### Executive Summary

The General Assembly passed House Resolution 30 in 2011, requesting the Comptroller of the Treasury and the Department of Education to conduct a study on the present statutes relative to the abolition, transfer of administration, consolidation, or merger of public school districts in Tennessee. This document represents the Comptroller's contribution to that study.

In reviewing the Public Acts related to school district consolidations, two paths emerge:

- elimination of special school districts, with the resulting transfer of students to the local county district, and
- consolidation of all districts within a county into a unified county school district, using a planning commission.

The first path is reflected in at least two efforts by the legislature to reduce the number of special school districts throughout the state. In 1925, the legislature abolished all special school districts that were not taxing districts<sup>1</sup> and in 1982, abolished special school districts that were not operating schools or did not have outstanding debt.<sup>2</sup> Further, the legislature prohibited any new special districts from being created and limited counties to a maximum of three or six school districts of any kind (special, municipal, or county) depending on the county population.<sup>3</sup> The legislature has not passed legislation to abolish municipal school districts, but did prohibit cities from creating new municipal school districts after 1998.<sup>4</sup>

The second path is the result of the more complex procedures in state statute for a mutually-agreed-upon consolidation of municipal and/or special districts with the local county school system under the guidance of a

planning commission convened under specific state guidelines.

Laws for these two paths – transfer and consolidation – are in different sections of the Tennessee Code and prescribe different procedures for districts to carry out changes. For example, under the transfer path, special school districts can be abolished and their students transferred to the local county school district after a majority vote in favor of such action by citizens within the special school district. Such a vote can be requested by the special district school board or by petition of 25 voters within the district.<sup>5</sup> Similarly, municipal districts may transfer administration of their schools to the county school board with a majority vote of the city's residents.<sup>6</sup> Under the second, planning commission consolidation path, a majority in each municipal, special, and county school district must approve the consolidation before it is implemented.

The most recent changes in district governance, in particular those in cities like Knoxville and Chattanooga, have involved municipal districts choosing to end operations, thereby transferring their students to the authority of the county school districts. The decision in December 2010 by Memphis City Schools to end its operations brought attention to some of the inconsistencies of the two sets of laws controlling changes in school governance. Memphis City Schools is a special school district, rather than a municipal district, with a unique relationship to the City of Memphis.

Most of the issues discussed in this report highlight the inconsistencies and conflicts resulting from these two separate paths for school district governance changes, including:

- transition planning,
- requirements for districts consolidating under the countywide planning commission procedures,
- the role of counties in public education and in changes in school district governance,
- requirements for protection of teachers' rights and other school employees' rights,
- the role of the Department of Education,
- provisions for "maintenance of effort" local funding for new districts, and
- transfer of school buildings and property.

This report also addresses potential issues raised by the new provision included in Public Acts 2011, Chapter 1, allowing counties meeting certain criteria to establish new municipal or special districts. Currently, the only county that meets the statutory criteria is Shelby County. No new municipal or special school districts have been allowed in the state since 1998.<sup>7</sup>

Recommendations note that the legislature may wish to consider amending or rewriting laws affecting school consolidation in Title 49, Chapter 2, Parts 5, 10, and 12, as well as Chapter 5, Part 2, to eliminate certain inconsistencies, add clarity, and identify key provisions applicable to all changes in school district governance, whether through transfer or consolidation.

### Background

The General Assembly passed House Resolution 30 in 2011, requesting the Comptroller of the Treasury and the Department of Education to conduct a study on the present statutes relative to the abolition, transfer of administration, consolidation, or merger of public school districts in Tennessee. This document represents the Comptroller's contribution to that study. Specifically, the resolution directed the two agencies to:

- Review and study relevant statutes in Tennessee Code Annotated that govern the abolition, transfer of administration, consolidation or merger of school districts in Tennessee.
- Determine the effectiveness of the current process as set forth in statute as to consolidation or transfer of existing administration, staff, faculty, real property and

other property controlled by the merging school systems.

- Make recommendations that would bring greater efficiency to the process.
- Report in writing findings and recommendations for changes and efficiencies to the General Assembly by January 1, 2012.<sup>8</sup>

### Review of Relevant Statutes

State provisions controlling the structure and operation of school districts are found in the Tennessee Constitution and in both public and private acts of the state legislature.

The Tennessee Constitution, Article XI, Section 12, assigns the state legislature the ultimate authority for providing for the maintenance, support, and eligibility standards of a system of free public schools in Tennessee. The Tennessee Supreme Court has clarified that the state's constitutional responsibility is to ensure a system of free public schools that affords substantially equal educational opportunities to all students.<sup>9</sup> The state can carry out this function by delegating certain duties and responsibilities to local boards of education.<sup>10</sup> The state cannot delegate taxation powers to boards of education; those powers can be delegated only to counties and incorporated towns and cities.<sup>11</sup> Although special school districts are frequently cited as having their own taxing authority, they in fact must rely upon the General Assembly to authorize any tax levy for their districts.<sup>12</sup>

School districts can be created, i.e., granted a charter, by private acts passed by the General Assembly. This is the case for all special school districts and for at least some county school districts.

Examples:<sup>13</sup>

- Paris Special School District – Ch. 150, Private Acts of 1919
- Franklin Special School District – Ch. 710, Private Acts 1925 (replaced by Ch. 563, Private Acts of 1949)
- Hamilton County – Ch. 475, Private Acts 1917
- Sevier County – Ch. 380, Private Acts 1927 (replaced by Ch. 74, Private Acts 2002)
- Shelby County – Ch. 381, Private Acts 1923

Municipal school districts are generally authorized under city and town charters, the majority of which have been granted by the state through private acts.<sup>14</sup>

Private acts must be approved by the municipality or county for which they are written (either by two-thirds vote of the city or county legislative body or by two-thirds vote of the citizens) as required by Article XI, Section 9, of the state constitution. However, The Tennessee Supreme Court has ruled that this does not apply to Private acts related to special school districts. Thus no local approval is necessary for private acts creating or pertaining to a special school district.<sup>15</sup>

Private acts creating school districts can specify the boundaries of the district, governance structure, school board elections, and board duties and powers. In the case of Memphis City Schools, the private acts also authorized how the district could be dissolved. If conflicts are found between specific school district laws in private acts and general education laws in public acts, the private acts are declared void.<sup>16</sup> (See Recommendation I at the end of this report.)

Public acts, compiled in Tennessee Code Annotated (TCA), are usually considered to override any conflicting private acts, in part because private acts have more limited application.<sup>17</sup> Chapters 1 and 2 of TCA Title 49 cover state and local administration of public education. Provisions in these chapters establish county school boards as having the responsibility to provide public education, unless all the children in the county are served by city and/or special school districts, as is the case in Gibson County.<sup>18</sup>

There shall be a local public school system operated in each county or combination of counties. There may be a local public school system operated in a municipality or special school district. (TCA 49-1-102(c) – emphasis added)

Notwithstanding any other provision of this title, in those counties in which all students in grades kindergarten through twelve are eligible to be served by city and special school systems, the county shall not be required to operate a separate county school system, nor

shall it be necessary that a county school board be elected or otherwise constituted. (TCA 49-2-501 (b)(2)(C))

Thus, if city or special school districts within the county cease operations for whatever reason, the state has designated the county school board as having responsibility for educating any students previously enrolled. General education laws, such as the Education Improvement Act of 1991, enacted through public acts, have over time made certain provisions for school boards and school operations in private acts and city charters no longer applicable.<sup>19</sup> Local school boards generally have powers of eminent domain, to sue and be sued, make contracts, and hold title to land.<sup>20</sup>

Public acts specifically pertaining to the abolition, transfer of administration, consolidation, or merger of school districts in Tennessee are listed in Exhibit 1. Throughout the report, those statutes highlighted in yellow are referred to as the transfer statutes and those highlighted in green are referred to as the Part 12 statutes. See Appendix 1 for a summary of key provisions in the statutes.

**Parts 4 and 5** were established over time to describe authority, duties, and funding of municipal and special school districts. In 1982, the legislature abolished certain special school districts and limited the number of school districts of any kind (county, municipal, special) each county could have. In the same law, the legislature prohibited the creation of new special school districts, but allowed that “existing operating districts may merge or consolidate.”<sup>21</sup>

The 1982 statutory provisions for how counties were to reduce the number of school districts and the process for closing or merging those districts were incorporated into Part 5, concerning special school districts, but were not aligned or integrated with previously existing Parts 10 and 12 that also addressed transferring or consolidating school systems. Public Acts 2011, Ch. 1, which establishes procedures for the merger of Memphis City Schools and Shelby County Schools, attempts this alignment in part by incorporating Sections 49-2-1201 through 49-2-1204, dealing with creation and duties of a consolidation planning

commission, into 49-2-502 (abolition of special district by school officials), under specified circumstances.

**Part 10** outlines provisions for both city and special school districts to be operated by county school boards through a contract (Public Acts 1925, Ch. 115) or transferred to county school boards, to be directly administered by county school boards (Public Acts 1947, Ch. 145).

**Part 11** outlines provisions for joint operations by any two or more school districts through a contract (Public Acts 1957, Ch.12).

Most of **Part 12** outlines provisions for a “unification educational planning commission” or “planning commission” (Public Acts 1963, Ch. 246). This part establishes a process whereby all the schools in a county – municipal, special, and county – would consolidate into one system, with very specific requirements for the planning process and an approval

process for all legislative bodies and citizens involved. The rest of Part 12 (TCA 49-2-1251 through 49-2-1266 (Public Acts 1992, Ch. 535)) deals with multi-county consolidations; school districts have not used these provisions to date.<sup>22</sup>

Changes to these statutes have often been piecemeal, and have left school boards, cities, and counties with multiple methods to choose from when restructuring their school districts. A 1997 Attorney General’s Opinion, addressing a question of what statutes applied to the transfer of Chattanooga city schools to the Hamilton County school board, stated that the “General Assembly did not intend to repeal alternative procedures available to the City of Chattanooga under other statutes to relinquish its schools to the county.”<sup>23</sup>

In general, statutes in Parts 5 and 10 have their focus on the transfer of municipal or special school districts to the county district so that the municipal/special district can go out of business. Voters of municipal/

**Exhibit 1: Tennessee Code Annotated, Title 49 – Education: Chapter 2 – Local Administration**

Part 4 – Municipal Schools	No sections pertaining to consolidation
Part 5 – Special School Districts	<p><b>49-2-501</b> Abolition of special school districts on petition of voters</p> <p><b>49-2-502</b> Abolition of Special District on initiative of school officials</p> <p><b>49-2-503</b> Disposition of special school district funds</p>
Part 10 – Transfer and Joint Operation of Schools Generally	<p><b>49-2-1001</b> Operation of municipal or special district schools by county</p> <p><b>49-2-1002</b> Transfer of municipal or special district schools to county (several provisions in this section reference 49-2-502 when applicable to special school districts)</p>
Part 12 – Consolidation of Systems	<p><b>49-2-1201</b> Planning commission</p> <p><b>49-2-1202</b> Consolidated board</p> <p><b>49-2-1203</b> Director</p> <p><b>49-2-1204</b> Rights of employees</p> <p><b>49-2-1205</b> Transitional board</p> <p><b>49-2-1206</b> Consolidation plan</p> <p><b>49-2-1207</b> Powers of state regarding consolidation</p> <p><b>49-2-1208</b> Construction</p> <p><b>49-2-1251 – 49-2-1266</b> Multi-county consolidated school systems</p>

special districts are asked to approve transferring their districts in a referendum. Voters of the receiving county district do not have a voice because the county school district does not have a choice in accepting responsibility for students in the transferring district. As noted previously, state law assigns ultimate responsibility to the county for public education.

Part 12, by contrast, focuses generally on the mutually-agreed-to consolidation of two or more districts into one. A multi-step planning process is prescribed and if the plan gets to the referendum stage, voters of all affected districts are included. There must be majority approval within each district for the consolidation to occur.

The statutes related to change in school district governance outline a process based on the assumption that county school districts would serve as the receiving district for transfers or the foundation for a consolidated district. However, at least one example of a county school system closing with students transferring to a new special school district or other municipal/special districts is Gibson County, 1981.<sup>24</sup>

Exhibit 2 shows the variety of methods used by school districts over the last 50 years to accomplish transfer or consolidation.

#### Unique features of the Memphis City School district

The Memphis City School district was created by private act and has been ruled by the courts to be a special school district, but is not funded through private funding acts like other special school districts.<sup>25</sup> The City of Memphis is required to provide a portion of the school district's funding, and taxes its city residents to do this, making it more analogous to a municipal school district. The Memphis City Schools holds its own charter – like other special school districts – which is why the City of Memphis cannot abolish the district as other cities, which control their school systems charters, have been able to.

The Memphis City School Board surrendered its charter and transferred its operations under TCA 49-2-502 instead of the more commonly used 49-2-1002. Its choice lay in the fact that Memphis City Schools (MCS) is a special school district and

provisions covering transfer of special school districts are in 49-2-502. Chattanooga and Knoxville school districts were municipal systems, and as such, their mergers were subject to the provisions of 49-2-1002. See Appendix 2 for a timeline of actions taken relative to the merger of Memphis City Schools with Shelby County Schools.

The method by which the Memphis City school board dissolved its charter allowed for no transition period. Again, Chattanooga and Knoxville are good comparison cases.

The City Council of Chattanooga passed a resolution in August 1994 that would amend the city charter by repealing, as of June 30, 1997, all provisions relating to the operation of a city school, including the relevant private acts of the General Assembly.<sup>26</sup> The resolution also repealed city ordinances related to the Board of Education. The resolution provided that an amendment to the city charter be placed on the ballot for voters' approval at the next general state election.

In the case of Knoxville, after a failed attempt at a joint agreement, the City Council voted to put a proposed amendment to the city charter on the November 1986 ballot that would abolish the city school system.<sup>27</sup> The amendment passed, creating a consolidated school system "by default" and the Knox County school board was scheduled to take over the city schools as of July 1, 1987. The transfer occurred as scheduled, despite a lawsuit related to city teachers' pensions.

In the case of Memphis City Schools, the school board's resolution did not give an effective date of the dissolution of its school system or its transfer to Shelby County.<sup>28</sup> (See further discussion of the lack of transition period in district transfers at Issue A.)

Another issue highlighted by the Memphis transfer was the conflict between private and public acts. Memphis is unique in that its authorizing private acts make specific provisions for surrendering its charter that may not be applicable in other school systems. (See Additional Recommendations at the end of this report.)

The Memphis School Board can surrender its charter to the Secretary of State, subject to the approval of the

**Exhibit 2: Tennessee School District Consolidations Since 1960**

<b>Year of Referendum</b>	<b>Year Effective</b>	<b>Dissolving District</b>	<b>Receiving District</b>	<b>Legal Method</b>
1963	1964	Clarksville	Montgomery	TCA 49-2-1201
1962	1964	Nashville	Davidson	Consolidation of Governments TCA 7-2-108(a)(18)
1968	1969	Shelbyville	Bedford	TCA 49-2-1002
---	1969	McMinnville	Warren	TCA 49-2-1002
---	1970-71	Brownsville Special	Haywood	Special school district abolished and transferred to city's Board of Mayor and Alderman. Private Acts 1970, Ch. 273
1969	1970-71	Sparta	White	TCA 49-2-1002
---	1980-81	Watertown Special	Wilson	TCA 49-2-502
1981 <sup>+</sup>	1981-82	Atwood Special Trezevant Special	West Carroll Special	Created new special school district and suspended operations of previous districts within its boundaries. Private Acts 1981, Ch. 109 Private Acts 1982, Ch.229
1981 <sup>+</sup>	1981-82	Gibson County	Gibson County Special	Created new special school district and in the referendum approved existing schools to become part of the new district. Private Acts 1981, Ch. 62 & 181
*	1983-84	Crockett Mills Special Friendship Special Gadsden Special	Crockett	TCA 49-2-501(b)(4)
n/a	1985-86	Morristown	Hamblen	TCA 49-2-1101
1986	1987-88	Knoxville	Knox	TCA 49-2-1002
1989	1990-91	Jackson	Madison	TCA 49-2-1201
1994	1997-98	Chattanooga	Hamilton	TCA 49-2-1002
2000	2003-04	Covington	Tipton	TCA 49-2-1002
2001	2003-04	Harriman	Roane	TCA 49-2-1002
2011	2013-14	Memphis City Special	Shelby	TCA 49-2-502 Private Acts 1961, Ch375

— Indicates date could not be determined.

\* TCA 49-2-501(b)(4) limits the total number of districts in a county to either three or six, depending on the population of the county. The process for consolidation to meet the county limit under this law does not specifically require a public referendum and was only applicable from April 1982 through July 1983.

+ In Carroll and Gibson counties, private acts creating new special school districts were originally made dependent on the approval of voters in those districts. Such provisions were later declared unconstitutional. Although referenda were held and voters approved the acts, subsequent private acts in both counties amended the original acts to eliminate references to required voter approval.

n/a The requirement for a public referendum was not applicable because the change in administration of the school district was accomplished through contractual agreement.

Sources: Sidney Hemsley, Municipal Technical Advisory Service, Letter: "How Can the City School System be Abolished," April 25, 2007; Marcus Pohlmann, with Joy Clay and Kenneth Goings, School Consolidation: State of Tennessee, (Parts I and II), July 2001; Ed Young and Harry Green, "School System Consolidation," Tennessee Advisory Commission on Intergovernmental Relations, Nov. 2005; Department of Education, List of school system closures, 1968-2004; Ed Young, "Questioning Consolidation," Tennessee School Board Association Journal, Spring 1994; Bd of Educ. of Shelby County, Tenn. V. Memphis City Bd. of Educ., 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug 8, 2011); Various news reports, websites, and county election office contacts to confirm years of referenda and mergers.

Memphis City Council.<sup>29</sup> This was considered to be in conflict with, and thus superseded by general state law, which requires a public referendum to approve a special school district's transfer of administration to the county district.<sup>30</sup> When this issue, among others, was heard in federal court, the judge ruled that the private act established a procedure for the Memphis City school board to surrender the charter of the Memphis City Schools, which causes the transfer of responsibility for education from the city school board to the county school board. The general state law imposed a process that must be completed before the transfer of administration of the special district schools to the county board of education is complete.<sup>31</sup> In its explanation of why it found no conflict between the private act and general law, the court stated:

Transferring administration refers to the organization and operation of schools in a special school district that becomes part of a county school district. Ultimate responsibility is the final accountability for educating students. The transfer of ultimate responsibility to the county can occur by default. [The law] does not address or limit the default outcome of a county's assuming ultimate responsibility when a special school district surrenders its charter. . . . The Tennessee General Assembly could have addressed that outcome, for example, by amending Tennessee Code Annotated 49-1-102 (c). . . . the General Assembly chose not to do so . . .<sup>32</sup>

(See further discussion of issues associated with transfer or consolidation by default at Issue B.)

### **Determine Effectiveness of Current Process and Make Recommendations for Greater Efficiency**

The effectiveness of existing laws related to transfer and consolidation of school districts is hampered by the lack of provisions for a transition/planning period and a limited role for the Department of Education. (See issues A and D.) Inconsistency or lack of clarity in requirements for merging districts could be remedied in the areas of eligibility of referendum voters, protection of teachers' and non-teaching employees' rights, maintenance of effort for new districts, and transfers of school buildings and property. (See Issues B, E, and

F.) Laws governing consolidations under designated planning commissions are confusing in their mix of optional and required elements and could be streamlined. (See Issue C.) Issues arising from the potential creation of new districts in Shelby County include transfer of school property and State Board of Education rules. (See Issues F and G.)

### **A. Issue: Lack of Required Transition Planning under Transfer Laws**

With the exception created by a 2011 amendment,<sup>33</sup> the laws by which special and municipal school districts can transfer their administration to the local county districts do not require a transition or planning period, nor do they require notification of the Department of Education of their transition plans. Once voters in the special or municipal districts approve the transfer in the required referenda, there are no provisions for how either the transferring district or the receiving county district should proceed.

If special or municipal school districts are abolished, whether under state statute,<sup>34</sup> private act (as in the case of Memphis City Schools), or revision of city charter (as in the case of Knoxville and Chattanooga), they create "consolidation by default" because their students automatically become the responsibility of the county school district.<sup>35</sup> The 2011 amendment (Public Chapter 1) mandates a transition period for planning, but only for special school districts meeting certain conditions. Chattanooga's dissolution of its school district included a transition period because the resolution dissolving the district and transferring its operations included an effective date many months after the public referendum,<sup>36</sup> but there is no requirement for school districts to do so.

Districts that consolidate under Part 12 statutes<sup>37</sup> are required to conduct a consolidation study and submit a report, or a consolidation plan if one is prepared, to the state Department of Education. (See further discussion of Part 12 consolidations at Issue C.) There are no requirements for school districts to use Part 12 provisions, except certain special school district transfers that meet the criteria under Public Chapter 1; currently the Memphis City School district transfer is the only one that qualifies.

## RECOMMENDATION A:

1. The legislature may wish to consider incorporating into all transfer or consolidation statutes some requirement for a transition period before the transfer takes effect. This could be accomplished by (1) setting the effective date of implementation at some point after the required referenda for voters in a special or municipal school district, with stipulations that it take precedence over any private act or city charter, or (2) making an implementation date a required item in a mandated consolidation plan.

2. The legislature may wish to consider incorporating into all statutes relating to school district transfer or consolidation the requirement for affected districts to develop a transfer or consolidation plan and submit it to the Department of Education for review and comment. Any requirement for a transition plan could use the existing requirements in TCA 49-2-1201(i) and subsections 1202 through 1205, and could urge or require review of additional issues, e.g., contracts, transportation, student assignment including required school choice situations, student services including special education, Section 504, homebound services, students under suspension or expulsion, debt, and charter schools.

Transfers of school district administration from one district to another might be more efficient and effective with adequate time for planning. A minimum period for transition planning could help prevent a “crisis mode” consolidation.

Input from the Department of Education on issues of concern could also make for smoother district transfers. In the recent Memphis City – Shelby County schools transfer decision, the department requested information on transition plans “to have a better understanding of the processes that have been put in motion to ensure that the best interest of students remains the top priority.” Although the state is required by law to approve only teacher employment plans, the Governor explained the department’s request for additional information as necessary to meet the state’s “moral” and “common sense” responsibilities to ensure that the transition between school systems would be achieved with minimal disruption and that nothing impairs the opportunity for every child to get a good

education.<sup>38</sup> The Commissioner referred to Part 12 statutes as potentially “helpful in providing detailed guidance” on the information the Department of Education would be looking for and as an “orderly procedure for effecting a transaction of the magnitude contemplated in Shelby County.”<sup>39</sup> (See further discussion of the department’s role in district transfers and consolidations at Issue D.)

The Department of Education does not have approval over cities or special districts discontinuing their school systems or authority to determine the appropriate party responsible for the students of those systems,<sup>40</sup> but an opportunity to review and comment on an impending change in governance structure could improve efficiency, since the state has significant regulatory and funding responsibilities of all public schools.

## **B. Issue: Lack of Clarity in City and County Participation in Consolidation Planning and Approval**

Confusion around the rights of voters and governing bodies to participate in planning or in the approval process of districts that transfer or consolidate may reduce the efficiency of the process. The transfer statutes include provisions for an election or referendum for voter approval of any school district transfer or consolidation, but the requirements for who can vote in such a referendum are not clearly spelled out. Statutes outlining the process for city and special district dissolution referenda have been interpreted to mean only the voters in the dissolving district can vote, but Attorney General Opinion 11-05 (Jan. 10, 2011) states, “And while Tenn. Code Ann. § 49-2-502 does not precisely state who may vote in the referendum . . .”<sup>41</sup>

Thus, transfers of city school systems to counties using 49-2-1002 have been interpreted to require a referendum by the voters of the city only. Transfers of special districts to the county using 49-2-502 have been interpreted to require a referendum by the voters of the special district only. This allows transfers of school districts to the county school boards without the approval of the county boards themselves or their constituents. However, because the state has designated county school boards as the entities with primary responsibility for public education, the county school boards and the voters in their district do not have



the option to avoid this responsibility if a city or special district decides to go out of business.<sup>42</sup>

**RECOMMENDATION B:** The legislature may wish to clarify in the transfer statutes specifically who is allowed to vote in the required referenda.

### **C. Issue: Consolidation under Planning Commission Law**

Part 12 provisions for countywide consolidations using legally prescribed planning commissions are a mix of optional and required provisions. This law includes some effective consolidation provisions, but is often cumbersome to follow due to numerous requirements embedded in optional choices. Two systems have been identified as having used this method to consolidate: Clarksville-Montgomery County schools in 1964 and Jackson-Madison County schools in 1990. At least four other counties have undertaken school consolidation studies, but it is not clear if all of them used the Part 12 process.<sup>43</sup> (See Exhibit 2.)

The Part 12 statute (TCA 49-2-1201 through 49-2-1208) includes a number of requirements within a county's option to establish a planning commission to study consolidation and within a planning commission's option to develop a consolidation plan, such as:

- how a planning commission is to be appointed,<sup>44</sup>
- submission of a report on the commission's findings or a consolidation plan to the Department of Education after a public hearing,<sup>45</sup>
- items to be addressed in a consolidation plan,<sup>46</sup>
- composition, terms, and district boundaries for a consolidated school board,<sup>47</sup> and
- public hearings, individual governing body votes, and individual district majorities in a referendum required for approval.<sup>48</sup>

Although the focus of this analysis is on consolidation of districts within a single county (TCA 49-2-1201 through 1208) a similar analysis can be made of provisions for multi-county consolidation under a planning commission (TCA 49-2-1251 through 1266).

Part 12 states that in all counties where there are separate school systems maintained by the county and

by one or more municipalities or one or more special school districts, there may be created a planning commission to study and consider the need for and associated problems with the consolidation of all public schools within the county.<sup>49</sup> It is optional for a planning commission to be created, but once that option is taken, the commission must be created by the legally prescribed local authorities and must follow the other statutory provisions.

Once created, it is required to file a written report with the Department of Education, which – if the report recommends consolidation – may include a consolidation plan. The commission is required to file a report with the Department of Education within one year after the first meeting of the commission, and must hold a public hearing before presenting any proposed consolidation plan or its report to the department.<sup>50</sup>

If the planning commission does choose to develop a consolidation plan, Part 12 requires the plan to include at least nine specified items, including:

- plans for transferring assets and liabilities of the municipal and special school districts,
- plans for preserving existing tenure, sick leave, salary schedule, and pension rights of teachers and nonteaching personnel in the respective systems, and
- plans for contributions by the municipal and special school districts to the county district for school operations during the transition to a unified system.<sup>51</sup>

If the commission develops a consolidation plan, it must be submitted to the Department of Education for review. The commission must consider any departmental recommendations for revision, but does not have to accept them. If the planning commission chooses not to develop a consolidation plan, the school districts could conceivably consolidate under a plan they or another party develop. There is no requirement that districts use a planning commission plan.<sup>52</sup>

These Part 12 requirements for specific consolidation plan elements and departmental review and comment were incorporated into the law affecting the Memphis City-Shelby County schools consolidation.<sup>53</sup>

Any consolidation plan developed by the planning commission is to provide for a consolidated board of education. Part 12 prescribes three alternatives that the planning commission can choose for the consolidated board of education.<sup>54</sup> However, the alternatives for board composition and terms may not be aligned with the general law concerning school boards (TCA 49-2-201).

Specific concerns with the Part 12 law are:

1. Because the planning commission process is optional, and any planning commission convened is not required to prepare a consolidation plan, the advantages to developing a plan with attention to required elements can be avoided if districts wish to. Only plans developed by a planning commission as described in statute are subject to any of the requirements in Part 12 (e.g., review by the department, approval by all parties, and a referendum by all affected citizen blocs).
2. The appointing authorities for commission members include the county mayor, the mayor of each municipality operating a school system, and the chair of each special school district board of education. This omits school board representatives of the county and any municipal school districts.
3. It is unnecessary for a planning commission to hold a public hearing and submit a report to the Department of Education if the commission is not recommending consolidation.
4. The requirements for a school board of a countywide, consolidated district to be constituted under one of the three statutory alternatives may be overly prescriptive and may not be aligned with general law. The general law itself contains numerous exceptions, suggesting that individual counties meeting basic criteria for fairly elected boards could develop their own school board structure using existing law.

The approval process requires the proposed consolidation plan to be submitted to the governing body of the county and of all affected municipalities and

to the school boards of affected special districts. Each such body must hold at least one public hearing, then vote to approve or disapprove the plan. Where at least one body approves the plan, there shall be a referendum election. Qualified voters countywide are allowed to vote, but results are to be counted separately by each city school district, each special school district, and the county district area outside those school systems. Any one of the balloting areas that votes the plan down causes the plan to be rejected.<sup>55</sup> Note that Part 12 provisions for a multi-county consolidated school system do not require any referendum.<sup>56</sup> Any such plan developed is considered adopted once approved by all governing bodies in the participating counties.<sup>57</sup>

The Part 12 law does not reflect the fact that if a municipal or special school district chooses to transfer its operations to the county district and has the approval from the majority of citizens within such district, it can do so without the guidance of a planning commission or the consent of the county district or its citizens.<sup>58</sup> Among the 28 counties that have more than one school district, 20 have only one district, municipal or special, other than the county district.<sup>59</sup>

RECOMMENDATION C: If the legislature wishes to make Part 12 (49-2-1201 through 1208, as well as the corresponding 49-2-1251 through 1266) more generally applicable, it may wish to consider revisions to simplify and clarify the consolidation planning process by reducing the number of required provisions and by considering alignment with existing statutes for transferring administration of special and municipal school districts to county school systems (TCA 49-2-501, 49-2-502, 49-2-1002). See also Additional Recommendations at the end of this report.

Specifically within Part 12, the legislature may wish to consider revising the statutes to address the omission of school board representatives from the planning commission, the requirement for planning commissions to submit a report to the Department of Education if they do not recommend consolidation, and the alignment of requirements for consolidated school boards with requirements in general law.

#### **D. Issue: Department of Education Guidance is Limited**

The Department of Education has limited authority to provide guidance to school districts preparing to change their governance. Under the Part 12 law for districts consolidating under a planning commission, the department and its commissioner are given the following responsibilities:<sup>60</sup>

1. Formulate recommended policies and procedures for conducting consolidation programs.
2. Develop suggested methods of procedure and a manual as guides for use by the planning commissions.
3. Provide professional assistance in consolidation studies and development of consolidation proposals.
4. Appraise reports of studies made by the planning commission and examine plans for consolidation, recommending changes or modifications where deemed desirable.
5. Afford financial assistance that may be required by counties in effecting consolidation, within the limits of funds available for such purposes.

These duties apply only to districts consolidating under Part 12; the department has not implemented several of them. Although the department may have provided assistance with consolidation studies (item 3) and reviewed planning commission reports and/or plans (item 4), it has not compiled records of which counties have submitted planning commission reports over the years and does not have information on when it has provided such assistance or made such reviews.<sup>61</sup>

Existing department requirements for creating policies and procedures and a manual for planning commissions may be unnecessary since Part 12 consolidations happen rarely; districts and counties involved in such consolidations may have such different needs and conditions that each case is essentially unique. State funds have not been available to help counties with consolidation.<sup>62</sup>

In a section of the Tennessee Code concerning teachers' rights and duties, the Commissioner of Education is assigned the responsibility of determining

that the rights and privileges of teachers are not impaired by any change in school district governance, whether due to transfer or consolidation.<sup>63</sup> In this capacity, the department reviews personnel plans to ensure that salary, pension, retirement, sick leave, and tenure benefits are not diminished by the change. The Commissioner must approve districts' plans before a change in governance is completed.<sup>64</sup> (See further discussion at Issue E.) The statute gives the commissioner authority to withhold state funds to enforce this requirement.<sup>65</sup>

In an informal capacity, the department offers assistance and provides guidance to districts involved in transfer/consolidation.<sup>66</sup> Until the 2011 adoption of Public Chapter 1 there was no statutory requirement for the department to be involved or to review any plans when municipal or special districts transfer authority to a county. The new law requires Memphis City and Shelby County schools to prepare a merger plan and requires the department to review and comment on it, as the department would if the merger were occurring under Part 12. In the Memphis-Shelby transfer case, the department requested information related to transitioning planning beyond its sole legal duty to confirm that teachers' rights were protected in order for the department "to have a better understanding of the processes that have been put in motion to ensure that the best interest of students remains the top priority."<sup>67</sup>

**RECOMMENDATION D:** The consistency and effectiveness of district transfers and consolidations might be increased by requiring the Tennessee Department of Education to review and comment on all plans for change in school governance, rather than only those conducted under Part 12 provisions. Further, the legislature may wish to eliminate department requirements pertaining to Part 12 which appear unnecessary or have never been implemented.

#### **E. Issue: The Protection of Teachers' Rights or All Employees' Rights**

There is a discrepancy among statutes as to whether the pay and benefits of only teachers, or of all employees of a school district, must be protected when school districts transfer or consolidate. School districts consolidating under Part 12 statutes

with a planning commission and those special school districts that meet the conditions of transfer outlined in Public Chapter 1 must preserve the salaries and benefits of both teachers and non-teachers.

- TCA 49-2-1201(i)(5) – (6) states that if a planning commission decides to develop a consolidation plan, the plan shall provide for the preservation of existing pension, tenure, sick leave, and salary schedule rights of all teachers and nonteaching personnel in the respective systems.
- TCA 49-2-1204 requires any plan of consolidation to continue a local retirement system for all officers, teachers, and other employees, and to provide for a new retirement system or coverage under TCRS. It also provides that no consolidation plan shall abridge, diminish, or impair any tenure right or sick leave right that any officer, teacher, or other employee may have earned during service in a component system, and that no salary schedule for teachers or other employees shall be lower than it was prior to consolidation, even after three years, when a new salary schedule for the consolidated system may be adopted.
- TCA 49-2-1254(c)(5) – (6) states that consolidation plans for a multi-county consolidated system must provide for the preservation of the existing pension, tenure, sick leave, and salary schedule rights of all teachers and nonteaching personnel in the respective systems.
- TCA 49-2-502, as amended by Public Chapter 1 (when school officials abolish special districts that meet certain conditions), includes by reference the requirements of TCA 49-2-1201 and 49-2-1204 to preserve the tenure, sick leave, salary schedule, and pension rights of all teachers and nonteaching personnel in the respective systems.

When special school districts that do not meet Public Chapter 1 conditions or when municipal school districts

transfer administration to the county district, the salaries and benefits of only the teachers are required to be protected, although municipalities are authorized to transfer pension or retirement service credits, payments, employee contributions, and earnings for teachers and non-teachers who elect participation in the county school districts' retirement plans.

- TCA 49-2-501(b)(4)(G) states that rights and privileges of teachers in districts merged, abolished, or consolidated under this section shall be protected as provided in TCA 49-5-203, which addresses the rights of teachers only.
- TCA 49-2-1002(e) addresses pensions only, providing that towns and cities transferring their schools to the county districts are authorized to take necessary actions or make required payments to provide credit for service for any or all school employees of the transferring town or city who elect to receive the credit, in any pension or retirement plans in which employees are entitled to participate after the transfer. The pension board or other administering agency is authorized to transfer employee contributions and earnings of any transferring employees directly to the post-transfer retirement plans.
- No other provisions related to transfer of municipal districts to the counties address employee rights. TCA 49-5-203, requiring the Commissioner to protect rights, would apply, which addresses the rights of teachers only.

Under TCA 49-5-203, the Commissioner of Education is required to determine that the rights and privileges of teachers shall not be impaired, interrupted, or diminished prior to any consolidation, abolition, transfer, or other change in governing structure of school districts becoming effective. Rights and privileges include, but are not limited to, salary, pension or retirement benefits, sick leave accumulation, tenure status, and contract rights, whether granted by statute, private act or governmental charter.

Salaries and benefits of other employees are mentioned in situations of consolidation under a

planning commission (directly or by reference). Pension or retirement benefits of other employees are mentioned in situations of municipal district transfer. Statutory language “preserves” these rights or directs that governance changes not “abridge, diminish, or impair” such rights. The retention and applicability of salary, benefits, retirement, and pension rights may be an issue for standardization in law.

Recent changes in law affecting employment conditions of teachers and other school employees may also affect salary and benefits rights of school employees. Such changes include:

- elimination of collective bargaining rights,
- strengthening of teacher evaluation procedures and tenure requirements,
- the increase in district flexibility to develop alternative pay schedules, and
- elimination of contracts for non-certified school employees.<sup>68</sup>

**RECOMMENDATION E:** The legislature may wish to review TCA 49-2-501, 49-2-1002, 49-2-1201, 49-2-1254, and 49-5-203 and determine whether it chooses to protect the rights and benefits of teachers only or of all school employees in the event of a district consolidation or transfer, which rights and benefits should be included in such protection, which kind of school governance changes are affected, and in what circumstances the Commissioner of Education must approve the protections.

#### **F. Issue: Laws on Transfer of Funds, Debt, and Real and Other Property**

Maintenance of effort laws do not clearly address the creation of new school districts, including those created from the transfer of a special school district to a county district. There are potential property issues if and when new districts are created in Shelby County. (See further discussion of new districts at Issue G, below.) No issues were identified for funds and debt transfers; applicable laws are included here for informational purposes.

#### Changes in Funding

Laws affecting “maintenance of effort”<sup>69</sup> provide a three-year exception to the local funding requirements

for new school districts in counties where county and city schools are being combined. The wording in these statutes leaves it unclear that the same exception applies to

- new school districts created in counties where county and city schools are not being combined, and
- new school districts created in counties where other types of districts are being combined, e.g. county and special districts, two or more special districts, or two or more municipal districts.

For districts consolidating under Part 12 statutes, the relevant provision includes special school districts, but does not address requirements for maintenance of effort funding. Statutes addressing changes in funding are below.

- TCA 49-2-203(a)(10)(C), TCA 49-3-314 (c)(1) – Provide that there is a three-year transition period before the “maintenance of effort” local funding requirements are re-set for a “newly created LEA [local school district] in any county where the county and city schools are being combined.”
- TCA 49-2-1201(h)(7) – Provides that for districts consolidating under Part 12, the planning commission must develop appropriate plans for contribution by municipalities or special school districts to the county for the operation of a unified system of schools during the period of transition following unification, not to exceed three years.
- TCA 49-3-317(c) – Provides that if there is a change in boundaries to a school district, such as the dissolution of a district or the creation of a new district, that involves shifting of students from one district to another then the Commissioner of Education shall determine the average daily membership involved in the shift for purposes of distribution of state education funds.

## Property

The Court Order on the Memphis City-Shelby County schools merger states that the Memphis City School board has the authority to wind up its affairs, including the transfer of assets to the Shelby County school board.<sup>70</sup> Statutes relating specifically to school property are below. No statutes address the transfer of school buildings or property from an existing school district to a new district. There may be private acts for specific school districts that address disposition of real property.<sup>71</sup>

- TCA 49-2-1002(d) – The county school board shall operate the schools of any municipal or special school district transferred to it under the transfer statutes as a coordinated part of the county school system. (The context of this provision is the transfer of administration from a municipal or special school district to the county district, but may imply school buildings as well.)
- TCA 49-6-2006 – The school board is vested with the title to property purchased or acquired through funds appropriated or donated for the public schools. A school board has the power to dispose of any property the title to which is vested in the board. This statute also permits the school board to transfer surplus real or personal school property to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale.
- TCA 49-6-2007 – The legislative intent is that surplus property in local school systems acquired by taxpayers' dollars be sold or transferred to local governments, rather than being destroyed.
- TCA 49-2-203 lists many duties and powers of the local school board, including:
  - To manage and control all public schools established under its jurisdiction,
  - To purchase all supplies, furniture, fixtures and material of every kind, and
  - To lease or sell buildings and property it determines are not being used.

The issue of if and how new school districts created in Shelby County under Public Chapter 1 could acquire existing school buildings from the Shelby County School District is being discussed in public meetings. Property statutes 49-6-2006 through 2007 suggest that district property would need to be declared surplus before it could be transferred to a new municipal school district, although consultant reports to suburban cities suggest that case law and annexation precedents support a simple transfer of property without cost or a designation as surplus.<sup>72</sup>

## Funds and Debt

- TCA 49-2-503 – Directs the county trustee to pay over to the county school board any special school district balance of funds when a special school district is abolished. Any such funds must be applied and expended by the county school board for the benefit of the schools of the former district.
- TCA 49-2-1002 – Similarly provides that any city or special school district transferring administration to the county school board is authorized to devote all its schools funds, including state funds, to the county school board to cover maintenance and operation costs of the schools. All funds of the former district are to be expended entirely for the benefit of the schools of the former district. Where there is any school indebtedness owed by the city or special district at the time transfer is accomplished, it remains the obligation of the city or special district. Existing arrangements for retirement of such debt shall be continued until the debts are paid in full, unless the county legislative body agrees to assume the debt.
- TCA 49-2-1201(i) – For schools consolidating under part 12 (including special school district transfers that meet Public Chapter 1 criteria), the designated planning commission must provide for the transfer of assets and liabilities of municipal and special school district systems to the county system and plan for the disposition of existing bonded indebtedness such that it will not impair the rights of any bondholder.

## RECOMMENDATION F:

1. The legislature may wish to clarify whether the statutes on maintenance of effort in local funding with regard to the three-year transition period for new school districts applies to all such districts, including those resulting from transfer or consolidation.

2. The legislature may wish to consider adding a clarifying provision to existing statutes on district transfers and consolidations concerning the transfer of school buildings and property. The legislature may also wish to address conditions under which school buildings and property are to be transferred or sold to new districts created within an existing school district's boundaries.

### **G: Issue: Creation of New Municipal or Special School Districts**

In 1982 the General Assembly prohibited the creation of new special school districts, and in 1998 prohibited the creation of new municipal districts.<sup>73</sup> Public Chapter 1, 2011, lifts those prohibitions for counties where consolidating school districts meet certain criteria – currently only Shelby County. New districts can be created in Shelby County after August 2013, the effective date of the transfer of Memphis City to Shelby County schools.

This provision was one of many issues under review in a recent federal lawsuit; the judge declined to rule on this issue, citing the “ripeness doctrine,” which prevents courts from “entangling themselves in abstract disagreements through premature adjudication.”<sup>74</sup> Since no new school districts have yet been created, their impact on the future consolidated system is speculative and rest[s] on “contingent future events that may not occur as anticipated, or indeed may not occur at all.”<sup>75</sup> Although this provision of Public Chapter 1 is perceived as affecting only Shelby County, the court found that the act as a whole had broader applicability:

The record demonstrates that Public Chapter 1 does not apply only to Shelby County and would apply to two other counties if the special school districts in those counties decided to transfer administration to the counties [Gibson and Carroll Counties]. It may apply to other

counties in the future if student population changes occur. Instead of contravening a mandatory general law, Public Chapter 1 fills a void in the law by providing legislative guidance about how to conduct the transfer of administration from a special school district to a county board of education where transferring administration would increase enrollment in the county school system by one hundred percent or more.<sup>76</sup>

Several municipalities in Shelby County are considering creating new districts. The communities of Arlington, Bartlett, Collierville, Germantown, Lakeland, and Millington hired consultants to explore the feasibility of starting their own school districts. Feasibility reports were presented to the communities in January 2012.<sup>77</sup>

Germantown's city charter allows for a municipal school system. Germantown prepared a public presentation for creation of its own district before the Memphis referendum triggered the Public Chapter 1 provision lifting the statewide ban on new districts. Other Shelby County communities have had public meetings around the issue of municipal school districts. One of the biggest questions is whether existing school buildings located in those municipalities can be acquired from the Shelby County School District at a reasonable cost. For example, there are eight county schools within the city limits of Germantown. The net book value of those schools is \$28 million; the insured value is \$132 million.<sup>78</sup> (See previous discussion of transfer of assets at Issue F.)

Several communities have developed websites to organize community efforts regarding municipal schools. A Shelby Municipal Schools Political Action committee has been established to raise funds for lobbying state legislators regarding separate school districts.<sup>79</sup>

Passage of a private act of the legislature would be required to establish a new special school district. A new municipal district could be established through city charters or selected public acts. There is no Department of Education approval process for new school districts; the department would be involved in approval of state funding for any new district.<sup>80</sup> Funding

is usually based on prior year enrollment, but existing law gives the Commissioner of Education authority to determine the appropriate shift in state funding where there has been a shift in students from one LEA to another since the prior year.<sup>81</sup>

Although current laws pertaining to the establishment and operation of municipal school districts still exist, they are inoperative because of the 1998 law prohibiting the creation of new school districts. Prior to 1998, cities and towns with certain forms of governance had the authority to establish municipal schools. Cities under either mayor-alderman or city manager-commission forms of governance were allowed to establish schools. State law for the modified city manager-council form lays out guidelines for school operation only if such cities are authorized to establish schools under general law.

These statutes are summarized below.

1. TCA 6-2-201(29) – Powers of Municipalities with Mayor-Aldermanic Charter  
Establish schools, determine the necessary boards, officers and teachers required therefore, and fix their compensation, purchase or otherwise acquire land for or assess a fee for use of, or impact upon, schoolhouses, playgrounds, and other purposes connected with the schools, purchase or erect all necessary buildings and do all other acts necessary to establish, maintain, and operate a complete educational system within the municipality.
2. TCA 6-19-103 – Powers under City Manager-Commission Charter  
Such town may establish, erect, and maintain public schools, and may assess and levy taxes for such purposes.  
Provisions for school operation are laid out under 6-21-801 through 6-21-807.
3. TCA 6-36-101 to 6-36-118 – Public Schools under Modified City Manager-Council Charter  
If a city incorporated under this charter is authorized, pursuant to general law, to

establish and operate a school system, the control and management of the schools of the city shall be the responsibility of the board of education . . .

If the courts find no legal issue to prohibit municipalities in Shelby County from creating new school districts, certain existing statutes would still control their formation. TCA 49-2-501 limits the total number of school districts in counties with more than 25,000 population (per 1980 census) to six. Five municipalities could create separate districts in addition to the unified Shelby County Schools.

TCA 49-2-106 requires that no city or special district school systems be created unless the school system is large enough to offer adequate educational opportunities for the pupils of grades 1 through 12 in keeping with standards of the State Board of Education. The State Board approved standards for the creation or reactivation of city school systems in 1992.<sup>82</sup> No standards were adopted for special school districts because at the time the board adopted its rule for city schools, creation of new special districts had already been banned.

Municipal districts must meet the following standards:

- No city school system shall be created unless it has a student-age population within its boundaries that will assure a minimum enrollment of 1,500 students or has a minimum of 2,000 students currently enrolled in the “proposed school system.”
- Any such system must employ a full-time superintendent who is paid an annual salary of at least the same amount paid to a county superintendent with equivalent training and experience under the state salary schedule. It must employ teachers with comparable training to those in the existing system and pay salaries equivalent to the parent system.
- Such a city system must make operational expenditures, in addition to the amount required to be raised by the county, at least equal to that which a \$0.15 tax levy per \$100



taxable property would produce if the same were all collected.

- The city must hold a referendum election indicating the willingness of the local people to meet the standards of adequacy set forth and to provide the necessary local funds to do so. The city must furnish to the Commissioner of Education certified results of a referendum showing willingness of citizens to meet all previous requirements as well as furnish all information requested relating to creation of a new school system.

If new municipal districts are created in Shelby County, the existing municipal school provisions on school operations in Title 49, Chapter 2, Part 4, will apply. These relate to city taxes for schools, apportionment of general state school funds, and other issues.

RECOMMENDATION G: The State Board of Education may wish to adopt standards for the creation of new special school districts per TCA 49-2-106, similar to those already in place for municipal districts, in light of the possibility that new special districts can be created in Shelby County. The Department of Education may wish to ensure that it has procedures in place to develop a funding basis for possible new districts and procedures to review any requirements new school districts must meet to be approved for state funding.

### **Additional Recommendations**

RECOMMENDATION H: The legislature may wish to consider revising the school transfer and consolidation laws and grouping them together in the Tennessee Code to give more cohesive and consistent direction to school districts and communities and counties considering changes in school governance. In any such revision or regrouping of such laws, the legislature may wish to include laws concerning school district contracts for operation of other districts (TCA 49-2-1001 and 49-2-1101 through 1104).

RECOMMENDATION I: A review of private acts relating to municipal and special school districts was not within the scope of this report. Individual districts established by private acts, or county school boards in counties containing such city and/or special school districts that are established under private acts, may wish to review the applicable private acts to determine if there are laws in the private acts governing district dissolution or transfer that may impact county schools or may be in conflict with more recent public acts.

## Endnotes

- <sup>1</sup> Public Acts of 1925, Chapter 115 (Tennessee Code Annotated 49-2-501).
- <sup>2</sup> Public Acts 1982, Chapter 907, Section 1.
- <sup>3</sup> Ibid.
- <sup>4</sup> Public Acts 1998, Chapter 1101, Section 13(b).
- <sup>5</sup> Tennessee Code Annotated 49-2-502(a), 49-2-501(a)(2).
- <sup>6</sup> Tennessee Code Annotated 49-2-1002.
- <sup>7</sup> Creation of new special school districts was banned in 1982 (Public Acts 1982, Chapter 907) and creation of new municipal districts was banned in 1998 (Public Acts 1998, Chapter 1101).
- <sup>8</sup> [House Resolution 30](http://www.capitol.tn.gov), 2011, <http://www.capitol.tn.gov> (accessed Sept. 14, 2011).
- <sup>9</sup> Tennessee Constitution, Article XI, Sec. 12; Tennessee Small School Systems v. McWherter, et al., 851 S.W. 2d 139 (Tenn. 1993), as cited in Tennessee Attorney General Opinion 08-194, Dec. 29, 2008, p.3, and in Tennessee Encyclopedia of History and Culture 2.0, "[Tennessee Small School Systems v. McWherter](http://tennesseencyclopedia.net)," Dec. 25, 2009, <http://tennesseencyclopedia.net> (accessed Feb 2, 2011).
- <sup>10</sup> Hamblen County et al v. City of Morristown, Court of Appeals of Tennessee, Eastern Section, May 25, 1979.
- <sup>11</sup> Tennessee Office of Attorney General, Opinion 83-141, March 21, 1983.
- <sup>12</sup> Dr. Phillip E. Doss and Eric Wormhoudt, Special School Districts: A Report to the Education Oversight Committee, Tennessee Comptroller of the Treasury, Sept. 1997, p.4.
- <sup>13</sup> County Technical Assistance Service, [Compilations of Private Acts for Henry, Williamson, Hamilton, Sevier, and Shelby counties](http://www.ctas.tennessee.edu), <http://www.ctas.tennessee.edu> (accessed various dates); Franklin Special School District, "[Discover FSSD – History](http://www.fssd.org)," <http://www.fssd.org> (accessed May 5, 2011).
- <sup>14</sup> Attorney General Opinion 01-076, May 8, 2001, stated in footnote 2, "The difference between a municipal and a special school districts is that a municipal district is created under the city's charter by the city's voters. Special school districts are created by private act of the General Assembly;" Municipal Technical Advisory Service, "[Tennessee City Codes and Charters](http://www.mtas.tennessee.edu)," <http://www.mtas.tennessee.edu> (accessed Oct. 10, 2011).
- <sup>15</sup> Tennessee Office of Attorney General, Opinion 00-149, Oct. 4, 2000, and Opinion 96-055, March 27, 1996.
- <sup>16</sup> For example, see Tennessee Code Annotated 49-2-103, "Notes to Decisions," citing Public Acts 1959, Chapter 14, permitting division of school funds on a basis other than average daily attendance, as well as Private Acts 1947, Ch. 711, and 1955, Ch. 351, providing for division of funds between the City of Memphis and Shelby County on different basis, which were found void as suspending the general law contrary to the state constitution. No conflict was found by the federal court between public and private acts in the recent Memphis case when it surrendered its charter. (See [Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.](http://www.tnwd.uscourts.gov), 11-2101, 2011 WL 3444059 (W.D. Tenn., Aug. 8, 2011), pp.106-107, <http://www.tnwd.uscourts.gov> (accessed Sept. 15, 2011).)
- <sup>17</sup> Tennessee Code Annotated 49-2-203, Notes to Decisions, No.11 "Validity of Private Acts."
- <sup>18</sup> Tennessee Code Annotated 49-1-102, 49-2-501(b)(2)(C); Department of Education, [2010 Annual Statistical Report](http://www.tn.gov/education), Table 7: Average Daily Membership, <http://www.tn.gov/education> (accessed Feb 1, 2012).
- <sup>19</sup> Office of Attorney General, Opinion 96-123, Oct 15, 1996; County Technical Assistance Service, [Private Acts of Shelby County, Tennessee](http://ctas-notes.ips.utk.edu), 2006, p. 277, <http://ctas-notes.ips.utk.edu> (accessed Dec. 16, 2011).
- <sup>20</sup> Shelby County Attorney General, [Opinion 86-0017](http://www.caseonpoint.com/shelby), Dec. 1, 1986, <http://www.caseonpoint.com/shelby> (accessed May 5, 2011).
- <sup>21</sup> Tennessee Code Annotated 49-2-501(b)(3).
- <sup>22</sup> Ed Young, "Questioning Consolidation," Tennessee School

- Board Association Journal, Spring 1994, p. 1.
- <sup>23</sup> Office of Attorney General, Opinion 97-151, Oct. 23, 1997.
- <sup>24</sup> Ed Young and Harry Green, *School System Consolidation*, Tennessee Advisory Commission on Intergovernmental Relations, Nov. 2005, <http://www.tn.gov/tacir> (accessed April 19, 2011).
- <sup>25</sup> Chapter 30, Private Acts 1869, as amended by Chapter 375, Private Acts 1961; *Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.109, <http://www.tnwd.uscourts.gov> (accessed Sept. 15, 2011; Office of Attorney General, Opinion 96-055, March 27, 1996, and Opinion 05-021, March 10, 2005).
- <sup>26</sup> City Council, *Ordinance No. 10079*, Aug. 12, 1994, <http://www.chattanooga.gov> (accessed Feb. 24, 2011).
- <sup>27</sup> Marcus Pohlmann, Ph.D., *School Consolidation: Knoxville, Tennessee, Part II*, July 2001, pp.11-14, <http://www.wreg.com> (accessed Oct. 6, 2011).
- <sup>28</sup> Memphis City Schools, *Resolution to Surrender Charter*, Dec. 20, 2010, <http://www.mcsc12.net> (accessed April 26, 2011).
- <sup>29</sup> Private Acts 1961, Chapter 375.
- <sup>30</sup> Tennessee Code Annotated 49-2-502.
- <sup>31</sup> *Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), pp.107, 113, 115, <http://www.tnwd.uscourts.gov> (accessed Sept. 15, 2011).
- <sup>32</sup> *Ibid.*, p. 115.
- <sup>33</sup> Public Acts 2011, Chapter 1.
- <sup>34</sup> Only Tennessee Code Annotated 49-2-501(a) specifically addresses abolishing a special school district, and that is in terms of abolishing the taxing district. Although Tennessee Code Annotated 49-2-502 is titled “Abolition of special district on initiative of school officials – Transition plans,” it actually provides only for the transfer of district administration. Tennessee Code Annotated 49-2-503 makes reference to “when and if the law or laws creating the special school district have been repealed,” suggesting that transfer of district administration and operations and abolition of such district do not necessarily go hand-in-hand.
- <sup>35</sup> *Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.107, <http://www.tnwd.uscourts.gov> (accessed Sept 15, 2011); Dr. Ed Young, Association of Independent and Municipal Schools, “Questioning Consolidation,” Tennessee School Board Association Journal, April 1994, p.33.
- <sup>36</sup> Chattanooga City Council, *Ordinance No. 10079*, Aug. 12, 1994, <http://www.chattanooga.gov> (accessed Feb. 24, 2011).
- <sup>37</sup> Tennessee Code Annotated 49-2-1201 through 1206.
- <sup>38</sup> TN.gov Newsroom, “Haslam Outlines State Responsibilities in Memphis Consolidation,” Feb. 1, 2011, <http://news.tnanytime.org> (accessed Feb. 10, 2012).
- <sup>39</sup> Patrick Smith, Acting Commissioner, Department of Education, *letter to Mr. John Aitken and Dr. Kriner Cash*, Feb. 1, 2011, <http://news.tn.gov> (accessed March 30, 2011).
- <sup>40</sup> *Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p. 116, <http://www.tnwd.uscourts.gov> (accessed Sept 15, 2011).
- <sup>41</sup> Office of Attorney General, Opinion 11-05, Jan. 10, 2011.
- <sup>42</sup> Tennessee Code Annotated 49-1-102(c); *Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.107, <http://www.tnwd.uscourts.gov> (accessed Sept 15, 2011).
- <sup>43</sup> Sidney Hemsley, Letter: “How can the City School System be Abolished,” Municipal Technical Advisory Service, April 25, 2007, <http://www.mtas.tennessee.edu> (accessed April 19, 2011); Kentucky New Era, “School Merger Gets Approval,” Nov. 19, 1963, <http://news.google.com> (accessed Feb.13, 2012). Four counties that have conducted consolidation studies but chose not to consolidate include White County, 1965 (see Sparta Expositor and News-Pictorial, Sept. 23, 1965, and Sept. 30, 1965), Dyer County, 1997 (see Attorney General Opinion 97-115), Washington County, 2005 (see

- Private Acts 2005, Ch. 53), and Sullivan County, 2006 (see Impact of Consolidation of the Sullivan County School Systems, May 11 2006, [http://s92850900.onlinehome.us/LK\\_CIP/Presentation.pdf](http://s92850900.onlinehome.us/LK_CIP/Presentation.pdf) (accessed May 3, 2011)).
- <sup>44</sup> Tennessee Code Annotated 49-2-1201(b).
- <sup>45</sup> Tennessee Code Annotated 49-2-1201(e)(2), (f)(2), and (h)(1).
- <sup>46</sup> Tennessee Code Annotated 49-2-1201(i).
- <sup>47</sup> Tennessee Code Annotated 49-2-1202.
- <sup>48</sup> Tennessee Code Annotated 49-2-1206.
- <sup>49</sup> Tennessee Code Annotated 49-2-1201(a)(1).
- <sup>50</sup> Tennessee Code Annotated 49-2-1201 (a)(2), (d)(2), and 49-2-1206(a).
- <sup>51</sup> Tennessee Code Annotated 49-2-1201(i).
- <sup>52</sup> Tennessee Code Annotated 49-2-1201 (f)(1-3) together suggest a planning commission need not prepare and submit a consolidation plan to the Department of Education; it is only required to submit a report on its studies and findings. Tennessee Code Annotated 49-2-1206(a)(1), et seq., provides steps for official approval and referenda on a plan the planning commission has submitted to the department but is silent on further actions of a planning commission that chose to just submit a report.
- <sup>53</sup> Tennessee Code Annotated 49-2-502(b).
- <sup>54</sup> Tennessee Code Annotated 49-2-1202.
- <sup>55</sup> Tennessee Code Annotated 49-2-1206 (a)(1)-(5), (b)(8)-(9), (b)(11).
- <sup>56</sup> Tennessee Code Annotated 49-2-1251, et seq.
- <sup>57</sup> Tennessee Code Annotated 49-2-1257.
- <sup>58</sup> Tennessee Code Annotated 49-2-501, 49-2-502, 49-2-1002.
- <sup>59</sup> Analysis of school districts listed at Department of Education, 2010 Annual Statistical Report, <http://www.tn.gov/education> (accessed Jan 12, 2012).
- <sup>60</sup> Tennessee Code Annotated 49-2-1207. An identical provision is found in Tennessee Code Annotated 49-2-1263, relating to multi-county consolidations.
- <sup>61</sup> Christy Ballard, Legal Counsel, and Stephen Smith, Assistant Commissioner of Legislation and Policy, Department of Education, interview, Nov. 7, 2011.
- <sup>62</sup> Ibid.
- <sup>63</sup> Tennessee Code Annotated 49-5-203.
- <sup>64</sup> Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ., 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.119, <http://www.tnwd.uscourts.gov> (accessed Sept 15, 2011).
- <sup>65</sup> Tennessee Code Annotated 49-5-203(d).
- <sup>66</sup> Christy Ballard, Legal Counsel, and Stephen Smith, Assistant Commissioner of Legislation and Policy, Department of Education, interview, Nov. 7, 2011.
- <sup>67</sup> Patrick Smith, Acting Commissioner, Department of Education, letter to Mr. John Aitken and Dr. Kriner Cash, Feb. 1, 2011, <http://news.tn.gov> (accessed March 30, 2011).
- <sup>68</sup> Tennessee Code Annotated 49-5-601, 49-5-503; State Board of Education Policy 5.201, Teacher and Principal Evaluation Policy; Department of Education, “Tennessee First to the Top: Data,” <http://www.tn.gov/firsttothetop> (accessed July 26, 2011); and Public Acts 2011, Chapter 335.
- <sup>69</sup> The “maintenance of effort requirement” is that no local school district can use state funds to supplant total local current operating funds, excluding capital outlay and debt service, unless enrollment declines or state funding drops for non-enrollment reasons.
- <sup>70</sup> Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ., 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.140, <http://www.tnwd.uscourts.gov> (accessed Sept. 15, 2011).
- <sup>71</sup> See, for example, Private Acts 1917, Ch. 165, and a related Opinion of the Attorney General (No. 77-99, March 31, 1977) related to the now defunct Harriman City School District.

- <sup>72</sup> Lela Garlington, “113-year-old lawsuit could be key as possible battle over school buildings looms,” The Commercial Appeal, Nov. 21, 2011, [www.commercialappeal.com](http://www.commercialappeal.com) (accessed Nov. 25, 2011); Bill Dries, “Suburban Schools Reports Conclude: No Cost to Get buildings,” The Daily News, Jan. 2012, [www.memphisdailynews.com](http://www.memphisdailynews.com) (accessed Jan 18, 2012).
- <sup>73</sup> Public Acts 1982, Ch. 907, prohibited the creation of any new special school districts after April 30, 1982. Public Acts 1998, Ch. 1101, Section 13(b), prohibited the creation of any new municipal school districts after May 19, 1998.
- <sup>74</sup> Bd. of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ., 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), p.56, <http://www.tnwd.uscourts.gov> (accessed Sept 15, 2011).
- <sup>75</sup> Ibid., p. 61.
- <sup>76</sup> Ibid., p. 94.
- <sup>77</sup> Clay Bailey, “Costs vary on starting Memphis-area suburban municipal schools,” The Commercial Appeal, Jan. 22, 2012, [www.commercialappeal.com](http://www.commercialappeal.com) (accessed Jan. 24, 2012).
- <sup>78</sup> City of Germantown, “County City School Consolidation: What does it mean for Germantown?” <http://www.google.com> (accessed Feb 2, 2012).
- <sup>79</sup> Clay Bailey, “Arlington school group forms political action committee,” The Commercial Appeal, Oct. 5, 2011, [www.commercialappeal.com](http://www.commercialappeal.com) (accessed Oct. 20, 2011).
- <sup>80</sup> Christy Ballard, General Counsel, Department of Education, and Stephen M. Smith, Assistant Commissioner of Legislation and Policy, Department of Education, interview, Nov. 7, 2011.
- <sup>81</sup> Tennessee Code Annotated 49-3-317.
- <sup>82</sup> State Board of Education, Rules and Regulations, 0520-1-8.

## Appendix 1: Key Statutes on School Consolidation

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### TCA 49-1-102

Administration generally

(c) There shall be a public school system operated in each county or combination of counties. There may be a school system(s) operated by a municipality or special school district. (See exception below.)

TCA 49-2-501(b)(2)(C) (exception)

Allows those counties in which all students in grades K-12 are eligible to be served by city or special districts to not operate a separate school system, notwithstanding any other provision of this title.

### TCA 49-2-106

Creation or expansion of city or special school districts

No city school system or special district school system shall be created or reactivated for the purpose of operating a system of schools, unless the school system is large enough to offer adequate educational opportunities for the pupils of grades 1-12 in keeping with standards established by the state board of education.

### TCA 49-2-501

Abolition of special districts on petition of voters—  
Maximum number of school districts within county

(See additional provision listed below under 49-1-102)

Special school districts that were not taxing districts were abolished by the Public Acts of 1925, Ch 115. In 1982, limits were placed on the total number of districts per county. Special and municipal districts in excess of that limit were abolished, consolidated, or merged. Districts with outstanding bond indebtedness were exempted from abolition. Revisions to the statute in 1982 prohibit the creation of special school district after April 30, 1982.

### TCA 49-2-502

Abolition of special district on initiative of school officials

Authorizes special school district officials to transfer the administration of the schools to the county board of education in the county where the special district is located after approval by two-thirds of voters in a referendum.

Amended by Chapter 1, 2011 Public Acts

Public Ch. 1 of 2011 prescribed a three-year transition period for special school districts seeking transfer of administration to the county meeting certain criteria. This Act also allowed the creation of new special and municipal districts in Shelby County beginning in fall of 2013.

**TCA 49-5-203**

Disposition of special school district funds

The commissioner of TDOE shall determine that teachers' rights are not impaired upon any change in school district governing structure.

**TCA 49-2-1002**

Transfer of municipal or special district schools to county

The governing body of any town or city maintaining a separate school system can transfer the administration of the town or city school system to that county's board of education. A referendum must be conducted and a majority of the voters in the referendum must vote in favor of the transfer before it occurs. The school district being transferred to the county under this section or 49-2-502 is authorized to devote its school funds to the payment of the proportionate part of the cost of the maintenance and operation of the schools. The county board of education shall operate the schools transferred to as a coordinated part of the county school system, to the end that a unified and balanced school system may be maintained in the county. All school funds belonging to transferred schools, including allocated state funds, shall be expended entirely for the benefit of the schools of the town, city or special school district. Where there is any school indebtedness owed at the time the transfer is effectuated, the indebtedness shall remain the obligation of the town, city or special school district, and existing arrangements for the retirement of the indebtedness shall be continued until the indebtedness is retired and paid in full, unless the county legislative body, by resolution adopted by a majority of the members, agrees to assume the school indebtedness owed by the town, city or special school district.

**TCA 49-2-1201**

Planning Commission

In all counties in which separate school systems are maintained by the county and a municipality or a special school district, a unification educational planning commission may be established to determine whether all public schools in the county should consolidate into a unified school system.

**TCA 49-2-1207**

Powers of state regarding consolidation

The department and commissioner of education are to formulate recommended policies and practices for conducting consolidation, develop suggested methods and a manual, provide professional assistance, appraise reports and recommend changes, and afford financial assistance required by counties in effecting consolidation within funds available for such purposes.

**TCA 49-2-1264**

Multi-County consolidated school systems—  
Participation by municipal or special school districts

Any municipal or special school district within a county contemplating consolidation may participate in the consolidation process. The municipal or special school district shall notify the county commission of their respective county of their wish to consolidate with the county systems. If the municipal or special school district wishes to withdraw from the consolidation process, it may do so at any time prior to submittal of the plan to the local governing bodies.

**TCA 6-58-112 (b)**

New municipalities—School systems—Property  
tax—Incorporation election

An existing municipality that does not operate a school system or a municipality incorporated after May 19, 1998, may not establish a school system.



## Appendix 2: Timeline of Memphis City Schools and Shelby County Schools Merger

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Dec. 20, 2010	Memphis City School Board of Education voted to surrender its charter and transfer the administration of its schools to the Shelby County Board of Education.
Jan. 19, 2011	Shelby County Election commission scheduled a referendum for City of Memphis voters, as required by 49-2-502.
Jan. 27, 2011	Shelby County Board of Education adopted a resolution that unanimously opposed the transfer of Memphis City Schools to Shelby County.
Feb. 1, 2011	Acting Commissioner of Department of Education requested that the Directors of Memphis City Schools (MCS) and Shelby County Schools (SCS) submit a plan by Feb. 15 to show that teachers' rights and privileges would not be compromised in a new, merged school system, as required by TCA 49-5-203. The commissioner also requested an overall plan March 1 for the merging of the two systems, although not required by law.
Feb. 7, 2011	Directors of MCS and SCS sent a joint letter in response to the commissioner's request, stating that it would take months to assimilate the information necessary for a plan to address teachers' rights and privileges of a combined system, and they would be unable to comply with the commissioner's request for either a teacher plan or an overall merger plan by the deadlines.
Feb. 10, 2011	Memphis City Council passed a resolution approving the surrender of the MCS charter to meet requirements of the 1961 Private Acts for dissolution of the school board.
Feb. 11, 2011	The Governor signed Chapter 1, Public Acts 2011, requiring school mergers meeting certain criteria, such as those presented by MCS-SCS, to use a prescribed planning process with a Transition Planning Committee if the voters approve the merger in a referendum. The new law also allows new municipal or special school districts to be created in the counties where school mergers meet certain criteria.
Feb. 11, 2011	Memphis City Council's resolution was delivered and filed with the Secretary of State.
Feb 11, 2011	Shelby County school leaders filed a federal lawsuit, eventually naming ten defendants. Most of the defendants eventually filed cross-claims and counterclaims against at least one of the other parties.
Feb. 28, 2011	Shelby County Commission adopted an ordinance to increase the number of Shelby County School Board members from 7 to 25 for a new transitional school board. March 28 was set as the date to appoint the 18 new urban members and the commission began collecting applications.

March 8, 2011	Memphis referendum was held for voters to decide, "Shall the administration of the Memphis City School system, a special school district, be transferred to the Shelby County Board of Education?" The vote was 67 percent in favor of the question.
May 23, 2011	Court scheduling order issued to expedite the lawsuit after mediation attempts failed. By agreement of the parties, the court will decide the matters at issue on the written record and affidavits following submission of final briefs on June 30 <sup>th</sup> .
Aug. 8, 2011	Federal court order issued with the findings that the MCS charter was properly surrendered, the merger is legal and that the new stipulations of Public Chapter 1 apply. The current SCS school board is unconstitutional because it lacks Memphis representation but the Shelby County Commission has no authority to revise membership of the school board. The order specifically did not address the legality of new municipal and special school districts authorized by Public Chapter 1.
Sept. 9, 2011	All members of the Transition Planning Commission are appointed, as specified by Public Chapter 1.
Sept. 28, 2011	Consent Decree issued by the court addresses the composition of the Shelby County School Board during the transition to a single school district.
Oct. 3, 2011	New members of the unified Shelby County School Board appointed by the Shelby County Commission are sworn in, joining existing SCS and MCS board members. Both MCS and SCS systems under the governance of one 23-member unified school board.
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<i>August 2012</i>	<i>Seven appointed unified school board members up for countywide election.</i>
<i>August 2013</i>	<i>The Memphis City Schools district will end operations and the consolidated Shelby County Schools district will begin operations.</i>
<i>September 1, 2013</i>	<i>Terms of the 16 school board members formerly elected as MCS or the old SCS school board members expire and the combined school system will be governed by the 7 members elected in Aug. 2012</i>

Sources: Board of Education of Shelby County, Tenn. v. Memphis City Board of Education, 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011); Board of Education of Shelby County, Tenn. v. Memphis City Board of Education, 11-2101, (W.D. Tenn. Sept. 28, 2011); and various newspaper reports.



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