

Summary of Final Bill (SB7005/HB7010)

Tennessee First to the Top Act of 2010

Legislative Status:

As introduced, this bill enacts the *Tennessee First to the Top Act of 2010*, and amends TCA Title 49, Chapters 1, 2, 3, and 5.

This bill was introduced on January 12, 2010, and on January 15, 2010 passed both the House and the Senate and was signed by the Speakers. On January 16, 2010, the bill was transmitted to the Governor for action. The bill, as filed, and as amended by the Government Operations, Education, and Finance and Ways & Means committees of the House and Senate and on the floor of both the House and Senate, is discussed below.

1. **Background:** Governor Bredesen called a special session of the General Assembly, which began on January 12, to consider a range of education-reform proposals, known as the “Tennessee Education Innovation Plan,” designed to improve Tennessee’s educational pipeline. Two separate bills were filed. First, the “*Tennessee’s First to the Top Act of 2010*” makes changes in the law to enhance Tennessee’s competitiveness with respect to the U.S.DOE’s Race to the Top competitive grant process. Second, the “*Complete College Tennessee Act of 2010*” is designed to improve Tennessee’s college completion rates. Although the higher education bill has been discussed in committee during the special session, legislative action on that bill will be deferred until the regular session.

2. **Fiscal Summary:** The fiscal summary assumes that Tennessee is awarded a federal Race to the Top grant in its application amount of \$485 million.
 - a. The federal expenditures increase will exceed \$121,250,000 for each of the four (4) fiscal years beginning with FY10-11.

 - b. The State revenues increase will exceed \$60,625,000 for each of the four (4) fiscal years beginning with FY10-11.

 - c. The local revenues increase will exceed \$60,625,000 for each of the four (4) fiscal years beginning with FY10-11.

 - d. The local expenditures increase will exceed \$60,725,000 for each of the four (4) fiscal years beginning with FY10-11.
 - i. The additional \$100,000 of expenditures above the amount of

increased revenues is based upon an estimated cost to local governments of employing impartial hearing officers for the teacher dismissal hearings required by this bill.

- ii. In addition, under the bill any increase in teacher pay proposed by the regular LEA is permissive, and the state-wide local permissive impact of increased teacher pay is estimated to exceed \$10M in each year. (NB: Only those teacher pay increases that are used to further the purposes of the RTTT program may be funded by RTTT monies. Funding of non-RTTT pay increases will require a separate local funding source.)

3. **Highlights of the bill, as filed:**

a. Provides for the establishment of an achievement school district (ASD).

Under current law, a school or LEA that does not meet the performance standards established by the state board of education for AYP may be placed in improvement status. This bill provides for the establishment of an achievement school district (ASD) by the commissioner of education as an organizational unit of the department of education. The ASD would provide oversight for the operation of the total program for a school or LEA placed in improvement status under current law.

This bill authorizes the commissioner to contract with any person, governmental entity, or nonprofit entity to manage the day to day operations of any school or LEA placed in the ASD, including providing direct services to students. For-profit entities would not be eligible for such managing entity contracts.

A managing entity may apply to the commissioner for a waiver of any state board of education rule that inhibits or hinders the ability of the school or LEA to achieve the required adequate yearly progress benchmarks. There are exceptions to rules that may be waived, however. The bill expressly provides that rules relating to the following areas shall not be waived: civil rights; health and safety; public records; immunizations; possession of weapons on school grounds; background checks and fingerprinting of personnel; special education services; student due process; parental rights; student assessment and accountability; open meetings; and at least the same equivalent time of instruction as required in regular public schools.

A managing entity may determine whether any teacher who was previously assigned to the school will have the option of continuing to teach at the school as an employee of the managing entity. Any teacher not given the option shall remain an employee of the LEA, subject to the provisions of current law relating to preferred lists for employment (49-5-511). Except for the provisions protecting a teacher's rights to accumulated sick leave, retirement benefits, pension, and tenure status, the Education Profession Negotiations Act would not apply to a teacher who accepts the option of

teaching at an achievement school district school.

The commissioner may remove any school or LEA from the achievement school district at any time. All BEP funds generated in support of students assigned to schools placed in the achievement school district must be moved to a special BEP reserve account to be held until the school is placed back under the jurisdiction of the LEA.

This bill requires the commissioner to develop a transition plan for the purpose of planning the school's or LEA's return to the jurisdiction of the local board of education after the school or LEA achieves the required adequate yearly progress benchmarks for two consecutive years. Implementation of the plan would begin after the school or LEA achieves the required benchmarks for three consecutive years. Return to the local board's jurisdiction would be completed within five consecutive years of meeting the benchmarks.

b. Revises present law regarding restructuring schools.

Under present law, a school or LEA that does not meet performance standards by the end of the fourth year on improvement status (Restructuring 1), may be placed in the fifth year of such status (Restructuring 2.) Restructuring 2 status subjects the school or LEA to certain sanctions, including the implementation of a plan for alternative governance. This bill authorizes the commissioner to choose for the school or LEA the plan of alternative governance to be developed and implemented.

This bill authorizes the same sanctions that apply to Restructuring 2 schools to apply to schools meeting the U.S. department of education's definition of "persistently low achieving schools." Under current law, these sanctions include making the director of the LEA responsible for implementing the plan for alternative governance from the options provided by the commissioner of education; provided, that, in the case where the plan for alternative governance is implemented, the LEA will continue to be accountable for the match required by the BEP funding formula for students served. This bill provides that the director would implement the alternative governance plan either from the options provided or the specific plan chosen by the commissioner. It provides that the LEA would continue to be accountable for the matching funds, and adds that the LEA also would continue providing any support services identified by the commissioner.

Under the current law, the commissioner of education is authorized to assume any or all powers of governance for a LEA in Restructuring 2 status. This bill specifies that such powers include the power to assign the LEA, or individual schools within the LEA, to the achievement school district.

c. Creates a 15 member teacher evaluation advisory committee.

This bill creates a 15 member teacher evaluation advisory committee to develop and recommend to the state board guidelines and criteria for the annual evaluation of teachers and principals, including a local-level evaluation grievance procedure. As filed, the committee would consist of the commissioner, who would serve as chair; the

executive director of the state board of education; the chairperson of the education committees of each house; and 11 appointees of the governor. Appointments shall include persons representing the interests of teachers, school boards, principals, directors, students, and parents. As discussed below, the composition of the advisory committee and appointing authority was changed by amendment.

The state board must adopt policies necessary to implement the recommendations of the committee. The annual evaluations would be a factor in employment decisions including promotion, retention, termination, compensation, and the attainment of tenure status.

This bill, as filed, requires that the following criteria be used in teacher evaluations:

- a. Teacher effect data, when available, or some other comparable measure of student growth;
- b. Review of prior evaluations;
- c. Personal conferences to include strengths and weaknesses and remediation;
- d. Classroom or position observation followed by written assessment.

This bill, as filed, requires that, in addition to subsections a, b, and c, above, the following criteria be used in principal's annual evaluations:

- a. Student achievement data, with a significant portion, as determined by the Tennessee evaluation advisory committee, being student growth data as reflected in teacher effect data and TVAAS data.
- b. Any additional criteria pursuant to the principal's employment contract. (Under present law, the contract must contain performance standards including school performance on value added assessment and other benchmarks for student proficiency, graduation rates, ACT scores where applicable and student attendance.)

This bill establishes a local-level grievance procedure for evaluated teachers and principals employed by LEAs. However, the grievance procedure provides a means for evaluated teachers and principals to challenge *only* the accuracy of the data used in the evaluation and adherence to the evaluation policies.

The policies adopted by the state board must be effective by July 1, 2011, in order to be implemented prior to the 2011-2012 academic year.

d. Revises present law regarding the evaluation of teachers and principals;

Under current law, tenured teachers are required to be evaluated two times during the licensure period (or two times within 10 years.) Under the bill, teachers and principals shall be evaluated annually.

Currently, data from TCAP tests is used to provide an estimate of the statistical distribution of teacher effects on the educational progress of students within school districts. A specific teacher's effect on the educational progress of students may not be used as a part of formal personnel evaluation until data from three complete academic years has been obtained. This bill removes this prohibition on using the data as a part of a formal personnel evaluation prior to the third year.

Under present law, an estimate of specific teacher effects on the educational progress of students is not a public record and is to be made available only to the specific teacher, the teacher's appropriate administrators as designated by the local board of education and school board members. Under this bill, such an estimate also may be made available to the state board approved teacher preparation programs of the individual teacher, but may not personally identify the particular teacher.

e. Revises present law regarding hearings for teacher dismissal or suspensions.

Under present law, a tenured teacher who receives a notice of dismissal or suspension charges may demand a hearing before the local board of education within 30 days after receipt of notice. A tenured teacher having received such notice in Davidson County or Memphis may demand such a hearing before an impartial hearing officer selected by the board. This bill applies these provisions relating to impartial hearings statewide. Therefore, under this bill, all tenured teachers, not just those in Nashville and Memphis, would have the right to demand a hearing on suspension or dismissal charges before an impartial hearing officer selected by the board. The bill sets forth in detail the manner in which such a hearing would be held.

All tenured teachers and the director of schools would have the right to appeal a decision of the hearing officer to the local board of education on the record, and any party would have the right to appeal the decision of the board to the chancery court.

f. Revisions to class size for CTE.

Under present law, the class size for any academic class for grades 7-12 may not exceed 35 students and the class size for any educational vocational class (career and technical education class) may not exceed 25 students. This bill requires the department of education, with the assistance of the LEAs, to identify career and technical education classes in which there is no physical safety risk to students for the purpose of making recommendations to the state board that such classes be exempted from the

maximum class size for career and technical education classes and instead be set at the maximum class size for academic classes in grades 7-12. If the maximum class size of a career and technical class is set at the maximum class size for academic classes in grades 7-12, then the funding level for such class under the BEP must be the same as the funding level for academic classes in the grade level at which the class is taught.

g. Other revisions to current law.

Present law requires the commissioner to annually formulate a base salary table based on training and experience factors to be applied to all licensed personnel in every LEA, not including substitute personnel. This bill alternatively authorizes an LEA to submit to the commissioner its own proposed salary schedule, subject to collective bargaining where applicable. Implementation of such a salary schedule would be subject to approval by the commissioner and the state board, but in no case may such a schedule result in a reduction of the salary of a teacher employed by the LEA at the time of the adoption of the salary schedule.

4. Amendments to the final bill:

- a. **Teacher evaluation advisory committee.** There were numerous amendments relating to the TEAC during the course of the special session, including amendments relating to composition of the advisory committee and the authority to appoint members to the committee. The final bill provides as follows:
- i. The fifteen (15) member committee would be comprised of the commissioner of education, the executive director of the state board of education, the chairs of the house and senate education committees, and two public school teachers (K-12), appointed by the speakers of the house and senate, respectively. The remaining nine members would be the Governor's appointments, and are to include three (3) teachers, two (2) principals, a director, and other stakeholders, provided that at least one member is a parent. Membership is to appropriately reflect the racial and geographic diversity of the state.
 - ii. Such appointments are to be made within 30 days of the effective date of the Act.
 - iii. The advisory committee is to be subject to the governmental entity review law, such that the TEAC shall terminate on July 1, 2011, unless continued by the General Assembly.

b. **Teacher /principal evaluations.**

- i. The teacher and principal evaluation procedure shall require that 50% of the evaluation criteria shall consist of student achievement data. In addition, 35% of the evaluation criteria used in teacher and principal evaluations must be student achievement data based on the student growth data from TVAAS, or some other comparable measure, if no TVAAS data is available. The remaining 15% shall be based on other measures of student achievement selected from a list of measures adopted by the board. The teacher or principal being evaluated shall mutually agree with the evaluator as to which additional measures to use. If the parties cannot agree, the evaluator shall choose the measure. However, the teacher or principal being evaluated may choose to use the student growth data for the entire 50% of the evaluation relating to student achievement.
- ii. The teacher evaluation procedure established by the bill shall not apply to teachers who are employed under contracts of duration of 120 days per school year or less or who are not employed full-time.

c. **Achievement school districts.**

- i. Absent other funding, the ASD must use state and local funding to operate the school and for new initiatives and programs. However, if such state funds are not used to support the school or LEA in the ASD, then such funds shall be allocated to a state reserve fund to be distributed to an LEA only upon commissioner approval. If local funds are not so used, the LEA shall allocate the funds to a special BEP reserve account until the school or LEA is returned to LEA jurisdiction. It is the legislative intent that such funds are to be used only for non-recurring purposes. Also, no state funds, other than those in a special reserve account, shall be used on ASD schools or ASD LEAs unless specifically appropriated by general appropriations.
- ii. The ASD managing entity is required to provide timely information to the LEA and director regarding school operations including employment of personnel matters. In addition, LEAs may continue to support educational

improvement, and managing entities may voluntarily work with LEAs in the areas of professional development and technical assistance.

- iii. The ASD managing entities shall provide expenditure reports to the department of education and comptroller.

d. **Teacher salary.**

Any additional expenditures incurred as a result of any alternative salary schedule submitted by an LEA and approved by the commissioner shall be subject to appropriations by the governing body with such authority.

e. **CTE class size.**

The amendments removed in its entirety the provisions of the bill relating to increasing maximum class size for CTE classes and changes to the funding of the same. Therefore, as passed with amendments, this bill makes no changes to class size or funding of career and technical classes.

f. **Teacher professional development fund.**

The bill creates a teacher professional development fund, to be funded exclusively by federal monies, for the professional development of classroom teachers.

Attachment A (Estimated RTTT LEA Funding, dated 1/13/10)