

**BALDWIN COUNTY BOARD OF EDUCATION
PRESS CONFERENCE**

JUNE 12, 2014 – 1 p.m.
Central Office Satellite – Loxley

DR. LEE:

Good afternoon. I'm Alan Lee, superintendent of Baldwin County Schools. Recently, Mr. Ira Harvey issued a report related to an Orange Beach School System, separate from the Baldwin County Public School System.

We committed to review Mr. Harvey's report. We have meticulously done so and today, we want to share with you our findings.

Let me be clear that our purpose of evaluating the report is so that the citizens of Orange Beach have the facts to make the best decision possible, if in fact a separate school system is pursued.

The most important thing we have to give a child is an education.

The education of the children of Orange Beach hangs in the balance of the decision of Orange Beach citizens. To stay or to separate is a decision for Orange Beach citizens. While we believe we are always better together, we're not going to block an effort to separate. We will, however, make sure that citizens are armed with the facts. We want to continue providing those facts today.

The Baldwin County Board of Education currently has responsibility for the education of the school children in Orange Beach.

While there will always be areas to improve upon in any educational setting, the Board is proud of the achievements of the system's students, faculty and administrators.

With current programs such as Digital Renaissance, the Career Academy Initiative, and Sand, Sea and Stars, a great partnership, we know the future for Orange Beach students is bright.

We just concluded a national Digital Renaissance conference that attracted superintendents, teachers, and administrators from 17 states who were in Baldwin County to see how they can replicate the success of our schools – and I can tell you, the schools in Gulf Shores and Orange Beach were the envy of the attendees.

Through large economies of scale and sharing of resources, the Baldwin County Board of Education is able to offer – through the current countywide system – superior academic, extracurricular and athletic programs to its students at a cost far less than smaller school systems in Alabama with greater financial resources.

Truly, Baldwin County's public schools are the envy of our state and region and our system continues to attract more and more students each year to take advantage of our wonderful schools.

At this point, I want to ask Mr. Norm Moore, president of our Baldwin County Board of Education, to share a few words with you. Mr. Moore, now retired, spent his career in the world of accounting and finances. Mr. Moore is a Certified Public Accountant – a CPA.

We are blessed to have that financial expertise on our board and bring it to bear in addressing Mr. Harvey's report. Mr. Moore —

MR. MOORE

The Board understands and appreciates that Orange Beach parents and community leaders desire to raise their system to an even higher level and we as a Board applaud and agree with this sentiment.

But, as Board members charged with the fiduciary obligation to safeguard the interests of the schoolchildren in Orange Beach within our care, we owe it to these children, their parents, and the citizens of Orange Beach to insure that this important decision be made with all relevant facts and perspectives on the table for consideration.

Our Chief Financial Officer, Mr. John Wilson, has spent countless hours analyzing Mr. Ira Harvey's report.

Most importantly, the decision must be based on hard, accurate financial projections and assumptions, not rosy revenue projections that will never be realized.

In that spirit, the Board has conducted an initial review of Dr. Harvey's Report and believes the citizens of Orange Beach deserve

to know of our initial findings.

First, the Board believes the financial assumptions made in the Report are not an accurate portrayal of the revenues an Orange Beach City School System should expect to receive.

The revenue projections are based on aggressive and unsubstantiated assumptions in direct conflict with federal, state and local education funding laws.

And this is not just the conclusion made by the Board but among others: the State Department of Education, the Office of the Attorney General of Alabama and the Circuit Court of Baldwin County.

The Baldwin County Board has many, many years experience in budgeting and staying within its budget – and managing its budget during the worst economy since the great depression, natural disasters such as hurricanes and man-made ones, like the BP oil spill.

To that end, The Baldwin County Board attempts to conservatively project its anticipated revenue when preparing budgets so that its plans for each school year can be fully realized.

Not only do we owe this to our parents, students and employees, we owe this to the taxpayers who pay taxes with the expectations that their money will be wisely spent.

We urge Orange Beach leaders to conservatively project their anticipated revenue so they can be frank and honest with Orange Beach taxpayers about the amount of additional taxes that will

ultimately be required in order to fund a city school system.

Dr. Harvey's financial projections will clearly fall far short and Orange Beach citizens should not be induced to form a new school system with increased taxes only to later learn that far more in additional taxes will be needed to adequately fund their public schools.

Below is a list of some of the revenue projections which were included as anticipated revenues by Dr. Harvey but will never be realized:

FIRST – Alabama's Foundation Program funding formula is directly correlated to the number of enrolled students – the dollars follow the students.

The Report used data from the Baldwin County school system based on the 2013-2014 enrollment figures utilized at the state level.

Even though Dr. Harvey had actual data related to student enrollment within the City of Orange Beach, he chose to ignore this data and in doing so, inflated the student enrollment totals based on an unsubstantiated student count that includes “homeschool students” and students living outside the city limits of Orange Beach.

This resulted in an inflated student count of 138 students over the actual student count for the 2013-2014 school year. Since countywide taxes would be split by student population, the overstated student enrollment results in an inflation of countywide taxes apportioned to Orange Beach by close to \$1 million.

SECOND – Alabama’s Foundation Program funds public schools principally through state and local taxes collected for public education purposes. The constitutional and statutory measures

governing the Foundation Program mandate that local tax collections be made by every school system – these are referred to as the “local minimum effort”.

Orange Beach and every school system in Alabama must contribute a minimum effort equal to the value of 10 mills of property tax collected from within its system. When the value of those local collections exceed the statewide average, the local system receives “chargeback” that is owed to the Foundation Program.

According to the State Department of Education, local systems in this manner contribute over \$500 million to the Foundation Program. This is the sole basis for Alabama’s “equity funding” formula that funds education across the State.

Based on actual student count for the 2013-2014 school year, Orange Beach would have received approximately \$4.2 million in state funds but would be required to contribute a local 10 mill property tax match equivalent of \$7.4 million.

This would result in a difference owed to the Foundation Program by Orange Beach of \$3.2 million.

Dr. Harvey's Report attempts to evade this chargeback by arguing Orange Beach would "not be eligible" to participate in the Foundation Program as it will receive no state allocation.

Dr. Harvey cites no law or State Department of Education rule or regulation to support his position and in fact notes "it remains to be determined" if the Orange Beach system will be exempt from the chargeback due to its "non-participation in the 1995 Foundation

Program”.

To put it mildly, no new school system should be started if over \$3 million of its projected revenue out of a total of, at best, \$8 million is highly in doubt.

Rather than guessing if Orange Beach’s purported “exemption” from the chargeback is accurate, the Board recently corresponded with the State Department of Education.

The Alabama State Department of Education confirmed the Board’s understanding that neither Orange Beach nor any other public school system in Alabama is exempt, or can “opt-out”, of the Foundation Program and the requirement to contribute to it the value of 10 mills.

Dr. Craig Pouncey, Chief of Staff to the Alabama State Board of Education, agreed with this in his letter of May 28, 2014, stating that it is not “possible for the newly formed district to ‘opt-out’ of the local match requirement” as “funds for all county and city boards of education are essential in the determination of state funds allocated to the operation of public schools in Alabama”.

It is simply wrong for Orange Beach to assume it is not obligated to the Foundation Program for these funds and we urge the leaders of Orange Beach not to allow its citizens to be misled as to this critical issue.

We will supply you with a copy of this letter to which we refer. See Tabs 1 and 2, Baldwin County Board Letter to Dr. Craig Pouncey and Response Letter from Dr. Pouncey.

THIRD – The Baldwin County Board currently receives almost \$17 million annually from a special privilege license tax (“Special Tax”). Act 83-532 authorized the imposition of the Special Tax “at the rate of 1% of gross sales or receipts.” Act 84-523 required the proceeds of the Special Tax to be distributed among a number of public entities within Baldwin County, including the Board as follows: “Fifty-Five Percent (55%) shall be distributed to the Baldwin County Board of Education to be used exclusively for capital improvement, capital construction, and maintenance purposes.”

Despite the clear language restricting the distribution of the Special Tax, Dr. Harvey projects in his revenue assumptions that Orange Beach can anticipate receiving a share of almost \$500,000 annually.

Dr. Harvey does note, however, that the money is “earmarked” specifically to the Baldwin County Board of Education and that the

“restrictive language” in the Act authorizing the collection and levy of the tax “does present an issue for the proposed Orange Beach City Board of Education”.

Opinion of the Attorney General, 2007-034 (January 12, 2007) and an order dated July 24, 2007 from the Baldwin County Circuit Court, attached as Tabs 3 & 4, both specifically address the Special Tax and whether it is subject to apportionment as a countywide tax with a city school system within Baldwin County.

Dr. Harvey’s Report neglects to mention the existence of the *Opinion of the Attorney General* or the Baldwin County Circuit Court Order, both of which conclusively determined that the Special Tax is to be paid to and used exclusively by the Baldwin County Board of Education and not shared with Orange Beach or any other city school system.

Indeed, the 2007 *Opinion of the Attorney General* was rendered expressly on account of Orange Beach's earlier plans to split from the county system and to correct Orange Beach's mistaken assumption it was entitled to a portion of the revenue from this tax.

Though not mentioning the *Opinion* or Order Dr. Harvey attempts to justify his position by reference to *Ala. Code* § 40-12-4 (Repl Vol. 2006).

This statute, which authorizes county sales taxes for public schools, requires those taxes to be distributed all local boards of education within a county and therefore Dr. Harvey argues that failure to do so could constitute an Equal Protection violation "of the Fourteenth Amendment."

In other words, Dr. Harvey urges Orange Beach residents to disregard both the Official Opinion of the Attorney General and a

final court order under the speculative notion that it can file and win an Equal Protection lawsuit to overturn the clear legislative language contained in Act 84-523.

Dr. Harvey is clearly misguided at best. To be sure, there are countywide sales taxes – distinct from this Special Tax – imposed in Baldwin County pursuant to Section 40-12-4. As to those sales taxes, the Baldwin County Board does not dispute that those sales taxes are to be apportioned to all boards of education in the county pursuant to 40-12-4 as well as Section 16-13-31.

The Special Tax though was not authorized pursuant to Section 40-12-4, as is specifically noted in the Opinion of the Attorney General. Section 40-12-4 is a statute of statewide application.

The Acts authorizing and restricting the distribution of Special Tax are separate, independent local statutes pertaining solely to Baldwin County.

The Acts provide not just specifically for a distribution to the Baldwin County Board of Education but to other entities within Baldwin County as well, such as Faulkner State. This is why the Opinion concludes that Section 40-12-4 “is not applicable to the taxes collected under Act 84-523.”

This is also why the Baldwin County Circuit Court determined the Baldwin County Board of Education was authorized to use all of the Special Tax for its capital debt service “notwithstanding ...the creation of any city board of education in the County.”

It simply could not be clearer that Orange Beach will not receive any portion of the Special Tax and should not include this as a potential revenue stream to fund a separate school system.

Either Dr. Harvey has not done his homework or he has failed to apprise Orange Beach residents of significant roadblocks regarding its receipt of any revenue from the Special Tax. Either way, residents of Orange Beach should not include this revenue in its projections for funding a separate school system.

FOURTH – Dr. Harvey stated in his study that Orange Beach would be entitled to receive approximately \$300,000 in Federal Title I Funding. In order to be an eligible Title 1 school , at least 40% of the students must be from families who meet the federal level of “low income”, generally those families whose children receive free or reduced price school lunches.

Orange Beach schools currently do not meet the federal criteria to enable them to receive Title I funds and there is no reason to project that by separating their schools will be more likely to do so.

FIFTH – Dr. Harvey stated in his Report that the total amount of federal, state, local, and other sources of revenue that an Orange Beach City School System would receive before any additional taxes would be \$8,048,297. The facts, based on true student enrollment for the 2013-2014 school year, and current federal, state and local laws governing education funding, is that Orange Beach should anticipate receiving only \$3,599,234 in revenues. See Tab 5 attached related to this.

This is an overstatement of some \$4.5 million. An overstatement of this magnitude will, of course, create an increased financial burden for Orange Beach taxpayers as the current tax increases called for by the Mayor and City Council will certainly fall far short of meeting the needs of an Orange Beach system.

What will the true costs of running the Orange Beach schools? How much will Orange Beach taxpayers have to contribute over and above the current tax increases called for by the Mayor and City Council?

Will voters be permitted to vote for additional tax increases in the future or will the City Council impose additional taxes as they will certainly be needed? What assurances do Orange Beach parents and schoolchildren have that their schools will be at least equal to their current schools in every respect – academics, extracurricular and athletics?

Orange Beach citizens deserve to have answers to these questions and deserve to base their decision on conservative, accurate revenue projections. More importantly, the current and future schoolchildren in Orange Beach deserve thoughtful, careful planning not grossly inflated projections and exaggerated numbers that will never be realized.

This concludes our overview of Mr. Harvey's report.

This press conference would not be complete without calling on Mrs. Angie Swiger, who represents Orange Beach and Gulf Shores.

Mrs. Swiger –

MRS. SWIGER –

- speaks to the fact:

** that while we believe we're better together, the decision at hand is ultimately up to the citizens.

** Our effort here is to ensure that citizens have the facts

** The nation is coming to our county and our community to see the tremendous success of our schools and Orange Beach/Gulf Shores Schools are a prime focus.

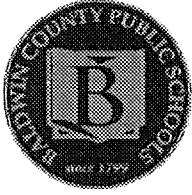
** With Baldwin County Public Schools, the future is incredibly bright.

DR. ALAN T. LEE –

Thank you Mr. Moore. Thank you Mrs. Swiger. This concludes our press conference. We thank you for attending. We also thank you for watching.

We are available for questions.

TAB 1



BALDWIN COUNTY PUBLIC SCHOOLS

ALANT LEE, Ph.D.
Superintendent

May 23, 2014

Board of Education

DAVID B. COX
District 1

DAVID TARWATER
District 2

ELMER MCDANIEL
District 3

NORMAN MOORE
District 4

ANGIE SWIGER
District 5

ROBERT B. CALLAHAN, JR.
District 6

SHANNON CAULEY
District 7

Dr. Warren Craig Pouncey
Chief of Staff
Alabama State Department of Education
5119 Gordon Persons Building
P.O. Box 302101
Montgomery, AL 36130-2101

Dear Dr. Pouncey:

Alabama recognizes only two types of public school systems, countywide systems and municipal systems. Counties are constitutionally and statutorily mandated to make public education available to children within their county, to be administered and operated under the supervision of county boards of education. *See, e.g., Article XIV, § 256, Alabama Constitution of 1901; Ala. Code § 16-8-8 (2001 Repl. Vol.)* Municipal systems are authorized by *Ala. Code § 16-13-199 (2001 Repl. Vol.)* for cities with a population in excess of 5,000 but, unlike counties, cities are not mandated to form their own systems but can remain, by agreement, under county supervision. *Id.*

Alabama funds public education principally through the Foundation Program, established by the legislature in 1995 largely in response to the “equity funding” decisions made by the Supreme Court of Alabama in *Opinion of the Justices No. 333, 624 So.2d 107 (Ala. 1993)* and *Ex Parte James, 713 So.2d 869 (1995)*. The entire premise of school funding changed as a result by requiring “adequate” funding resources to be made annually by the legislature to all children of the state regardless of the wealth or poverty of their locality.

Adequate education funding is achieved through a combination of state and local funding. Minimum local contributions, computed on the basis of the value of one mill of district tax, are required to be made by each county or municipal system to the Foundation Program. The value of one mill varies widely across Alabama depending on the relative wealth or poverty of the county’s citizens and infrastructure improvements there. Hence, equity is achieved inasmuch as wealthier school districts are required to contribute more Foundation Program dollars than poorer districts, ie, they are “charged back” against state Foundation Program dollars otherwise due them. In this manner such local funding is combined with state education funds to constitute the annual

Foundation Program. These funds are then appropriated and distributed equally through the Education Trust Fund budget to cover the annual cost of providing adequate educational opportunity for all public students of the state. It should also be noted that while local systems are required to give the minimum effort to the Foundation Program, such local systems are free to give more local effort to their schools than the minimum and are permitted to retain all such funds over and above their minimum effort.

The "minimum effort" required of local school systems is constitutionally mandated by Article XIV, § 269.08 of the *Alabama Constitution of 1901*. Ratified by statewide vote on November 7, 2006, this provision requires each school district in Alabama to levy and collect "for general public school purposes" ten (10) mills of ad valorem property taxes. The county commission of each county is required annually to determine if any school district within such county is required to levy additional ad valorem property tax in order to comply with this constitutional mandate. A school district can take in to account, in determining whether it meets this constitutional mandate, countywide or district property taxes, other countywide taxes whose use is restricted for public schools within the county, or municipal ad valorem taxes collected for public schools within the municipality.

Section 16-13-231(b) of the Alabama Code also requires that "each local board of education" insure it is receiving "ten mills of school tax as computed from the most current assessed valuation of property which comprises the school tax district" as a condition "for the local board of education **to share in the apportionment** of the Foundation Program Fund and to receive the maximum benefit therefrom... ."

Section 16-13-31(b) further provides as follows:

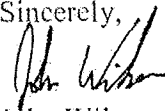
(b) The tax collector/revenue commissioner of each county shall **apportion county-wide taxes collected for the purposes of participating in the Foundation Program to each local board of education in the county on the basis of the total calculated costs of the Foundation Program for those local boards of education within the county. The total calculated costs of the Foundation Program for each local board of education shall be the sum of state funds received from the Foundation Program and the amount of local effort required pursuant to paragraph a. of subdivision (3) of subsection (b) of Section 16-13-231.** (Emphasis added).

The City of Orange Beach is considering the formation of a separate municipal system. Its current financial assumptions and projections conclude that, due to extremely high value of its ten mill district tax, its required "minimum effort" exceeds its projected state Foundation Program allocation. Similarly, projections made by the Baldwin County Board of Education reach the same conclusion, except even a larger deficit balance is projected. Orange Beach is

assuming apparently that since its 10 mills of ad valorem tax exceeds its Foundation Program allocation the system is "not eligible" to participate in the Foundation program. It reaches this conclusion in order to attempt to exempt it from a "chargeback" projected to be over \$2.5 million. (Note: these are funds currently going to the ETF from the chargeback due from Baldwin County and will be lost if not charged back to Orange Beach). There is no statutory or administrative support for any conclusion that an Orange Beach system is not a part of Alabama's Foundation Program and can unilaterally exempt itself from the Alabama constitutional and statutory funding framework for public schools. And any conclusion that it is exempt would undermine Alabama's framework for funding public education in an equitable manner statewide. Indeed, if Orange Beach is exempt from the chargeback other wealthy systems likewise can withdraw from the Foundation Program and create significant funding hurdles statewide.

At a minimum, it appears to the Baldwin County Board that Orange Beach cannot have it both ways. While it apparently intends to attempt to evade its Section 16-13-231 required minimum effort by claiming exemption from the Foundation Program, it is also claiming the right to receive, pursuant to Section 16-13-31(b), apportionment countywide education tax receipts levied and collected by the county for purposes of participating in the Foundation Program. The Baldwin County Board understands that either Orange Beach is participating in the Foundation Program, and eligible to receive its apportionment of countywide school taxes, and also therefore subject to the chargeback of Section 16-13-231, or it is exempt from the chargeback but also exempt from receiving its apportionment of countywide taxes "collected for the purposes of participating in the Foundation Program." We do not understand or believe that Orange Beach can unilaterally exempt its system from participation in the Foundation Program and request confirmation that this understanding is correct. If, however, it is determined that Orange Beach can unilaterally exempt itself from the Foundation Program, we request confirmation that it is not entitled to receive apportionment of county education tax dollars pursuant to Section 16-13-31(b). Since the citizens of Orange Beach are currently evaluating their options, as is the Baldwin County Board, we would request a response to this inquiry at your earliest convenience.

Sincerely,



John Wilson, CSFO

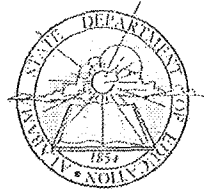
Director of Business and Finance

Cc: Dr. Alan Lee, Superintendent
Baldwin County Board of Education Board Members
Scotty Lewis, Board Attorney

TAB 2



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Thomas R. Bice
State Superintendent of Education

May 28, 2014

Alabama
State Board
of Education

Mr. John Wilson, Chief School Financial Officer
Baldwin County Board of Education
2600-A North Hand Avenue
Bay Minette, AL 36057

Governor
Robert Bentley
President

Dear Mr. Wilson:

Tracy T. Roberts
District I

The proposed consideration for forming an Orange Beach City School System as presented in a preliminary report has unveiled a number of financial issues that were not contemplated in the development of the 1995 Foundation Program laws. Under existing law, Alabama funds a system of state-supported public schools. One particular criteria is that each system sets aside a "local match" that is the equivalent of 10 mills of ad valorem. Currently this totals \$539,347,750 statewide and is actually subtracted from the individual system's calculated Foundation Program costs appropriated by the state. In essence, the local match is a required component of the state's funding formula for all public school systems. It is collected at the local level but is used to support the sum total of the state support sent to each system.

Betty Peters
District II

Stephanie Bell
District III

Yvette M.
Richardson, Ed.D.
District IV

Your letter indicated that some of the proponents for a new school system for Orange Beach have assumed that it may be possible for the newly formed district to "opt-out" of the local match requirement. Current state law does not allow a local board of education to "opt-out" of participating in the Foundation Program for Alabama public schools. The calculation of Foundation Program funds for all county and city boards of education are essential in the determination of state funds allocated for the operation of public schools in Alabama.

Ella B. Bell
District V
President Pro Tem

Charles E. Elliott, M.D.
District VI
Vice President

In closing, if I can answer any further questions regarding this proposal, please feel free to contact me at any time.

Jeff Newman
District VII

Mary Scott Hunter, J.D.
District VIII

Sincerely,

Warren Craig Pouncey
Chief of Staff

Thomas R. Bice, Ed.D.
Secretary and
Executive Officer

WCP:EEK

cc: Dr. Alan Lee

TAB 3



2007-034

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

January 12, 2007

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable R. Scott Lewis, Attorney
Baldwin County Board of Education
Stone, Granade & Crosby, P.C.
Post Office Box 1509
Bay Minette, Alabama 36507

Sales Tax — Education, Boards of
— Education Foundation Program
— Ad Valorem Taxes - Exemptions

The sales tax revenues distributed to the Baldwin County Board of Education under Act 84-523 are required to be distributed to the Baldwin County Board of Education to be used exclusively for capital improvement, capital construction, and maintenance purposes.

Dear Mr. Lewis:

This opinion of the Attorney General is issued in response to your request on behalf of the Baldwin County Board of Education ("Board").

QUESTION

Are the revenues derived from the sales taxes levied and collected under Act 84-523 that are designated to be distributed to the Baldwin County Board of Education to be used exclusively for capital improvements by the Board, or must these funds also be distributed on a pro rata basis to the new municipal school systems formed in Baldwin County?

FACTS AND ANALYSIS

Your question arises following the formation or possible formation of two municipal school systems in the county. You specifically question whether any state laws, specifically statutes relating to the Education Foundation Program, require these sales tax revenues to be distributed between the Board and these new school systems.

Act 83-532, as amended by Act 84-523, is a local act that authorizes the Baldwin County Commission to levy an additional one percent sales tax. Initially, it should be noted that this opinion presumes that the local act is validly enacted and constitutional. This opinion does not address any possible constitutional issues that might be raised with respect to the local act.

Section 3 of Act 83-532 sets forth the authority of Baldwin County to levy the one percent sales tax in question and states as follows:

The county commission is hereby authorized with or without a referendum of the people, to levy and impose, *in addition to all other taxes, including* municipal gross receipts license taxes now imposed by law, *a special county privilege license tax paralleling the state sales tax*, such privilege license tax to be determined by the application of rates against gross sales or gross receipts, as the case may be, and within specified areas at the rate of 1% of the gross proceeds of sales or receipts.

1983 Ala. Acts No. 83-532, 827, 828 (emphasis added).

The revenues from this county sales tax are to be distributed as follows:

All revenues arising from the taxes herein authorized to be levied shall be distributed as follows: (a) *Fifty-five percent (55%) shall be distributed to the Baldwin County board of education to be used exclusively for capital improvement, capital construction and maintenance purposes;* (b) five percent (5%) shall be

distributed to Faulkner State Junior College in Bay Minette to be used as other appropriations to said school are used; and (c) forty percent (40%) shall be deposited in the general funds of the county to be expended as other county funds.

1984 Ala. Acts No. 84-523, 1142, 1143 (emphasis added). The act also provides that "prior to any other distribution, two percent (2%) of all net revenues herein collected shall be appropriated to the juvenile court for Baldwin County." *Id.*

Under the established rules of statutory construction, words used in a statute (or legislative act) must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 334-34 (Ala. 2000); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The plain language of local Act 84-523 provides that 55 percent of the sales tax revenues shall be distributed to the Baldwin County Board of Education to be used for capital improvement, capital construction, and maintenance purposes. Nothing in the act provides that a portion of the sales tax revenues shall be distributed to municipal school systems in the county, and nothing in the act states that the tax is levied for "public school purposes."

The language of Act 84-523 should be contrasted with the language of section 40-12-4 of the Code of Alabama. Section 40-12-4 of the Code authorizes counties to collect "franchise, excise and privilege license taxes with respect to privileges or receipts from privileges exercised in such county" to provide funds for "public school purposes." ALA. CODE § 40-12-4 (2003). This section also provides that the county tax must parallel, except for the rate of the tax, the state sales tax. *Id.* The last sentence of this section states that "[i]n all counties having more than one local board of education, **revenues collected under the provisions of this section** shall be distributed within such county on the same basis of the total calculated costs for the Foundation Program for those local boards of education within the county." *Id.* (emphasis added). Thus, any taxes collected for "public school purposes" by a county under this section must be distributed among the local boards of education in the county on the same basis of the total calculated costs for the Foundation Program for those local boards of education.

Article 2 of chapter 13 of title 16 generally provides for the apportionment and distribution of public school funds. ALA. CODE § 16-13-30 to 16-13-40 (2001). Section 16-13-31 specifically discusses the apportionment of countywide taxes for the Foundation Program. Section 16-13-31(c) states as follows:

The apportionment of countywide taxes collected for the purposes of participating in the Foundation Program as determined in Section 16-13-31(b) shall be used unless the local boards of education in a county sign a mutual agreement and secure the approval of the State Superintendent of Education to use some other plan involving desirable special adjustments.

ALA. CODE § 16-13-31(c) (2001).

The sales taxes collected in this situation, however, are collected pursuant to a local act and are not collected under section 40-12-4 for "public school purposes." Act 83-532 specifically states that the one percent sales tax provided by the act is in addition to all other taxes, including a special county privilege license tax paralleling the state sales tax. Accordingly, the requirement for distribution of sales taxes collected under section 40-12-4 to all the local boards of education in the county is not applicable to the taxes collected under Act 84-523.

Again, it should be noted that validly enacted legislation is presumed to be constitutional. *Miller v. Marshall County Bd. Of Educ.*, 652 So. 2d 759, 760 (Ala. 1995). Furthermore, this Office does not make determinations concerning the constitutionality of statutes or acts.

CONCLUSION

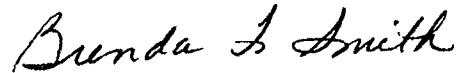
The sales tax revenues distributed to the Baldwin County Board of Education under Act 84-523 are required to be distributed to the Baldwin County Board of Education to be used exclusively for capital improvement, capital construction, and maintenance purposes.

Honorable R. Scott Lewis
Page 5

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
218559/103266

TAB 4

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

**COUNTY BOARD OF EDUCATION OF)
BALDWIN COUNTY, ALABAMA, and)
ROBERT CALLAHAN, JR., TRACY)
ROBERTS, ROBERT A. WILLS, NORMAN)
MOORE, MARGARET C. LONG, ELMER)
MCDANIEL, and FRANK J. TRIONE,)
as Members of the said Board,)**

Plaintiffs,)

v.)

**THE TAXPAYERS AND CITIZENS OF)
BALDWIN COUNTY, ALABAMA,)**

Defendants.)

CIVIL ACTION NO.

07-461

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL JUDGMENT**

This cause having been set for hearing at 9:00 a.m. on July 24, 2007 at the County Courthouse, Bay Minette, Alabama, pursuant to order of the Court entered on June 22, 2007, and it appearing to the Court that notice of this hearing has been given to the Defendants as required by law and the District Attorney of Baldwin County, Alabama, having filed an answer herein on behalf of the Defendant taxpayers and citizens of Baldwin County, Alabama, and the defendants having been represented by counsel at the said hearing, this cause was submitted for final judgment on July 24, 2007, on the pleadings and proof and testimony before the Court and exhibits, and the Court having heard the arguments of the attorneys and upon consideration of the pleadings and proof, does hereby make the following findings of fact, state the following conclusions of law and does now order, adjudge and decree as follows:

FINDINGS OF FACT

1. The petition herein is filed under and pursuant to the provisions of Article 7 of Chapter 81 of Title 11 of the CODE OF ALABAMA 1975 (§§11-81-220 *et seq.*) (the "Validation Act"). The County Board of Education of Baldwin County, Alabama (the "Board"), is a "unit" as defined in the Validation Act. The individual plaintiffs are the respective duly qualified, elected and acting members of the Board.

2. The defendants are the taxpayers and citizens of Baldwin County, Alabama (the "County").

3. On June 21, 2007, the Board adopted a resolution (the "Resolution") authorizing the issuance of \$150,000,000 aggregate principal amount of its Capital Outlay School Warrants, Series 2007 (the "Warrants"). The Resolution contains provisions providing for the payment, terms, conditions, form, maximum interest rate, place of payment, and maturity of the Warrants and other matters in connection therewith. A true and correct copy of the Resolution was attached to the Complaint marked Exhibit A, and made a part thereof. The Warrants will be secured by a pledge of the portion of the proceeds of that certain tax (the "Special Tax") that is authorized to be levied pursuant to Act No. 83-532 of the Alabama Legislature, as amended by Act No. 84-523 (the "Special Tax Act"), required by the Special Tax Act to be paid to the Board (the "Pledged Portion of the Special Tax Proceeds").

4. The net assessed value of the property in the County as of September 30, 2006, was not less than \$3,977,340,266.

5. The authority for the issuance of the Warrants are the Resolution and the Constitution and laws of the State of Alabama, including, without limitation, Article 6 of Chapter 13 of Title 16 of the CODE OF ALABAMA 1975 (§§16-13-120 *et seq.*). The Warrants have been authorized to be issued for the purpose of paying costs of constructing those certain capital improvements to the Board's educational system that are effectively described in Exhibit A to the Resolution.

6. The principal amount of Warrants to be issued is \$150,000,000.

7. The maximum rate of interest on the Warrants will not exceed 7% per annum and will be established by negotiations between the Board and The Frazer Lanier Company Incorporated.

8. The principal of the Warrants will be payable upon surrender of the Warrants at maturity at the designated corporate trust office of Regions Bank, Birmingham, Alabama. Except as described below, the Warrants will mature on July 1 in the following years and principal amounts:

<u>Year of Maturity</u>	<u>Principal Amount Maturing</u>	<u>Year of Maturity</u>	<u>Principal Amount Maturing</u>
2010	\$2,725,000	2024	\$5,050,000
2011	2,835,000	2025	5,300,000
2012	2,950,000	2026	5,565,000
2013	3,065,000	2027	5,845,000
2014	3,190,000	2028	6,135,000
2015	3,350,000	2029	6,445,000
2016	3,515,000	2030	6,765,000
2017	3,690,000	2031	7,105,000
2018	3,875,000	2032	7,460,000

2019	4,040,000	2033	7,830,000
2020	4,220,000	2034	8,205,000
2021	4,405,000	2035	8,595,000
2022	4,600,000	2036	9,000,000
2023	4,810,000	2037	9,430,000

However, the Board may, at its option, specify that the principal amount of Warrants maturing in any two or more consecutive years as set forth in the maturity schedule above may, in lieu of maturing in each of such years, be designed to comprise one (1), two (2), three (3) or four (4) maturities of Warrants ("Term Warrants") scheduled to mature in the latest of such years, but subject to mandatory redemption in part, by lot, at par plus accrued interest, without premiums in each of the years and in the principal amounts set forth in the maturity schedule above. Payments of interest with respect to the Warrants will be made on each January 1 and July 1, beginning January 1, 2008, and ending on July 1, 2037; and such interest will be payable pursuant to a book-entry system maintained by the Board with The Depository Trust Company, New York, New York.

9. The revenues or other means provided for the payment of the Warrants are the Pledged Portion of the Special Tax Proceeds. There is no outstanding indebtedness payable or secured by the Pledged Portion of the Special Tax Proceeds.

10. *The Baldwin Times* and *The Onlooker* are newspapers published and having general circulation in the County.

11. The Board has duly authorized the filing of the Complaint herein.

12. That portion of the proceeds of the Special Tax that is required by the Special Tax Act to be paid to the Board has produced more than \$13,000,000 during the 12-month period beginning October 1, 2005, and ending September 30, 2006.

13. The Clerk of this Court has caused to be published in (i) the July 5, 2007, July 12, 2007, and July 19, 2007, editions of *The Baldwin Times*, and (ii) the July 4, 2007, July 11, 2007, and July 18, 2007, editions of *The Onlooker*, a notice addressed to the taxpayers and citizens of the County, requiring them at the time and place specified in the Order of this Court made and entered on June 22, 2007, to show cause, if any they have, why the matters referred to in that Order should not be validated and confirmed. The Complaint filed herein and the Order entered herein in this cause were served on the District Attorney of the County more than 18 days before the date of the hearing herein, and said District Attorney has appeared and made defense to the Complaint and performed the duties required of the District Attorney in the Validation Act. The taxpayers and citizens of the County have become parties defendant to this proceeding.

14. There is sufficient evidence to support the findings and determinations of the Board contained in the Resolution. There is no evidence of fraud, collusion, undue influence, corruption, or unfair dealing in connection with any of the aforesaid documents or proceedings.

15. No taxpayer or citizen of the County has appeared in this proceeding by pleading to said Complaint or otherwise, nor has any taxpayer or citizen intervened herein or made application for intervention herein, nor has any such taxpayer or citizen sought herein to show cause why the Warrants, the means provided for their payment, the Special Tax, the pledge of the Pledged Portion of the Special Tax Proceeds and the covenants or provisions for the benefit of the Warrants referred to in the Complaint, should not be validated and confirmed by this Court.

CONCLUSIONS OF LAW

1. All actions and things required under the provisions of the Validation Act to be had and done in this proceeding preliminary to the making of the findings of fact, conclusions of law and judgment of this Court herein contained, have been had and done in the manner provided by the Validation Act. The Board and the members thereof have power to institute and conduct this proceeding and have duly authorized the same.

2. The Complaint filed herein is legally sufficient and has been duly and regularly filed.

3. The publication, by the Clerk of this Court, of the notice hereinabove described provided the notice to the taxpayers and citizens of the County required by law, thereby they have become parties defendant to this proceeding, and this Court has jurisdiction of each of them as effectively as if each of them were named individually as a party defendant in the Complaint and personally served with process.

4. The District Attorney of the County has performed the duties effectively assigned to her by the Validation Act.

5. This "Findings of Fact, Conclusions of Law and Final Judgment" will be forever conclusive against the Board and all taxpayers and citizens of the County, upon the expiration of the appeal period in this matter, which period shall expire fourteen days after the date of this final judgment.

6. The Resolution, a copy of which is set forth in Exhibit A to the Complaint, has been duly and validly adopted by the Board at a meeting of the Board duly called, held and conducted, and the Resolution is now in full force and effect. In adopting the Resolution, the Board properly and lawfully exercised the power and authority vested in the Board by the laws of Alabama, and acted within all limitations prescribed by the laws of Alabama. All proceedings and all acts, conditions and things required to happen, exist or be performed precedent to or in the adoption of the Resolution had happened, did exist and had been performed at or before the adoption thereof, in the manner and within the time required by the Constitution and laws of the State of Alabama.

7. The issuance of the Warrants is authorized by the Constitution and laws of the State of Alabama, and upon the execution of the Warrants by the officers thereunto duly authorized as provided in the Resolution, and delivery and payment therefor, the Warrants will be

payable solely from that portion of the proceeds of the Special Tax that is appropriated or apportioned and paid to the Board pursuant to the Special Tax Act.

8. The issuance of the Warrants, and the use of the proceeds thereof to acquire and construct the capital improvements described in the Resolution, do not violate the Constitution or laws of the State of Alabama or any public policy of the State of Alabama.

9. The issuance of the Warrants and the use of proceeds thereof, in the manner contemplated by the Resolution, are authorized by the Constitution and laws of Alabama and will not constitute an improvident use or a misapplication, misappropriation or waste of public funds.

10. The Special Tax, a portion of which is pledged for payment of the Warrants, is valid and enforceable. The Board is authorized by law to use the Board's portion of the proceeds of the Special Tax first to pay debt service on the Warrants, notwithstanding any amendment that may hereafter be made by the Legislature of Alabama to the Special Tax Act, including (but not limited to) any reallocation of the proceeds of such Special Tax, or the creation of any city board of education in the County.

11. The Special Tax Act, i.e., Act No. 83-532 of the Legislature of Alabama, as amended by Act No. 84-523 of said Legislature, is valid and enforceable and constitutes full and adequate authority for the levy of the Special Tax.

12. The Court has considered carefully each and every defense and objection set forth in the answers filed herein or presented in open court on the hearing of this cause. Such answers and defenses have shown no cause why the prayers of the Plaintiffs should not be granted and have disclosed no illegality in the proceedings of the Board, the Special Tax Act, or the provisions, covenants, agreements and obligations of the Resolution and all such defenses and objections should be and they hereby are overruled.

FINAL JUDGMENT

It is therefore ordered, adjudged and decreed by the Court as follows:

1. The Court does hereby validate and confirm the Warrants and all proceedings had and taken in connection with the following, viz.:

- (a) the Resolution and the due adoption thereof;
- (b) all covenants, agreements, provisions and obligations of the Board set forth in the Resolution;
- (c) the Warrants and the use of the proceeds thereof;
- (d) the Special Tax;

(e) the pledge of the Pledged Portion of the Special Tax Proceeds for the payment of the Warrants; and

(f) the sale of the Warrants to The Frazer Lanier Company Incorporated by means of a negotiated sale.

2. When the Warrants shall have been executed, authenticated and delivered to The Frazer Lanier Company Incorporated in accordance with the Resolution, then the Warrants, the covenants and agreements and obligations set forth in the Resolution, and all proceedings taken and adopted by the Board in connection with the same, shall stand validated and confirmed.

3. At the time of the delivery to the purchaser or purchasers of the Warrants in accordance with the Resolution, the President of the Board is hereby directed to cause to be stamped, printed, or written on each of the Warrants a legend substantially as follows:

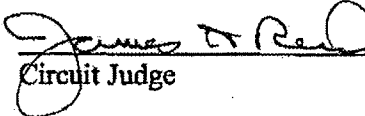
"Validated and confirmed by judgment of the Circuit Court of Baldwin County, State of Alabama, entered on the ____ day of July, 2007.

Clerk of the Circuit Court of Baldwin County"

The Clerk of this Court is authorized and directed to sign such legend in her capacity as such Clerk by either her manual signature or by causing a facsimile of her signature to be printed thereon.

4. The cost of this proceeding is hereby taxed against the Board.

DONE AND ENTERED at Bay Minette, Alabama, this 24th day of July, 2007.



Circuit Judge

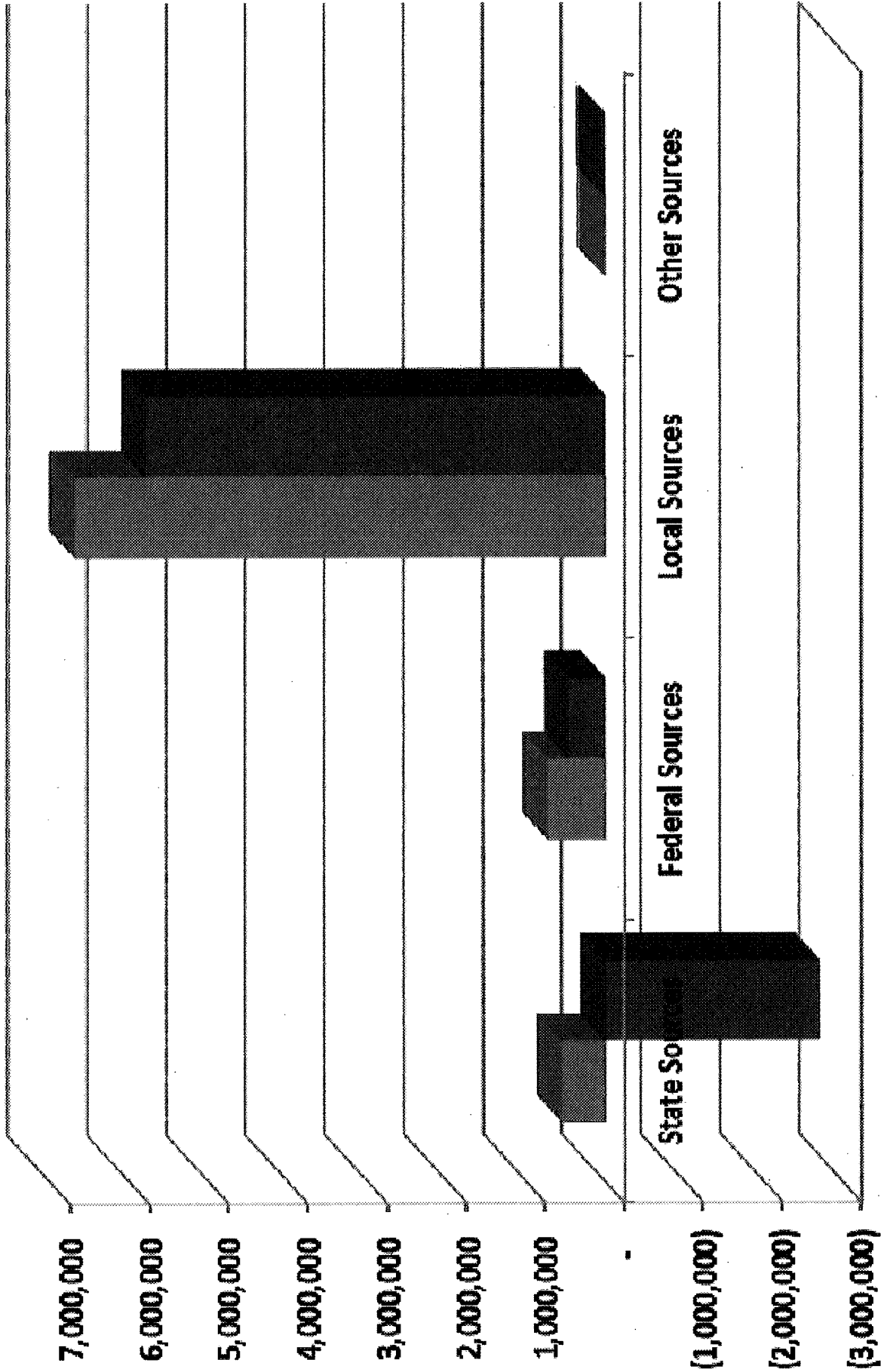
CIRCUIT COURT
BALDWIN COUNTY, AL
FILED

JUL 24 2007

JODY W. CAMPBELL
CIRCUIT CLERK

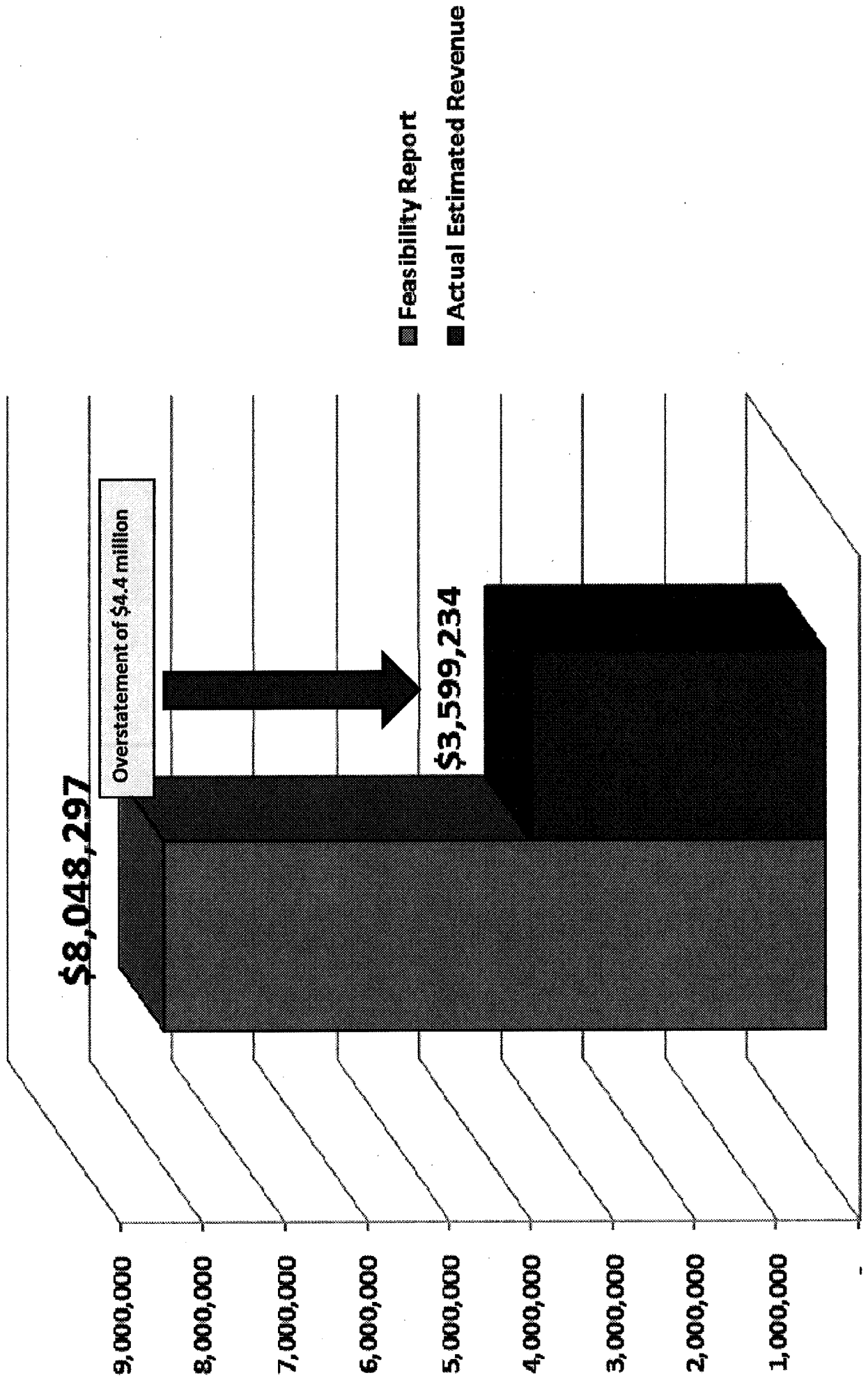
TAB 5

Revenue Comparisons



■ Feasibility Report ■ Actual Estimated Revenue

Estimated Revenue Comparisons



Orange Beach State Funding

