

No. 14-0776

IN THE
SUPREME COURT OF TEXAS

**MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,
IN HIS OFFICIAL CAPACITY, ET AL.,
Appellants/Cross-Appellees**

v.

**CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT, ET AL.,
Appellees/Cross-Appellants**

v.

**TEXAS CHARTER SCHOOL ASSOCIATION, ET AL.; and
JOYCE COLEMAN, ET AL.,
Cross-Appellants/Appellees**

v.

**THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, ET AL.;
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.; and
FORT BEND INDEPENDENT SCHOOL DISTRICT, ET AL.;
Appellees**

On Direct Appeal from the
200th Judicial District Court of Travis County Texas
Cause No. D-1-GN-11-003130

FORT BEND ISD APPELLEES' BRIEF ON THE MERITS

Wallace B. Jefferson
State Bar No. 00000019
Rachel A. Ekery
State Bar No. 00787424
ALEXANDER DUBOSE
JEFFERSON & TOWNSEND LLP
515 Congress Ave., Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300
Telecopier: (512) 482-9303

J. David Thompson, III
State Bar No. 19950600
Philip Fraissinet
State Bar No. 00793749
THOMPSON & HORTON LLP
3200 Southwest Freeway
Suite 2000
Houston, Texas 77027
Telephone: (713) 554-6767
Telecopier: (713) 583-9668

Holly G. McIntush
State Bar No. 24065721
THOMPSON & HORTON LLP
400 West 15th Street
Suite 1430
Austin, Texas 78704
Telephone: (512) 615-2351
Telecopier: (512) 682-8860

ATTORNEYS FOR FORT BEND ISD, ET AL., APPELLEES

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	xi
RECORD REFERENCES	xviii
ABBREVIATIONS	xix
STATEMENT OF THE CASE.....	xxi
ISSUES PRESENTED.....	xxiv
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	4
I. Historical Background.....	4
A. The <i>Edgewood</i> cases observed that the Legislature was primarily responsible for ensuring that the school finance system efficiently provides for the general diffusion of knowledge.....	5
B. The <i>West Orange-Cove</i> cases held that the Legislature must provide for the general diffusion of knowledge without taking away school districts’ discretion over their taxes.	9
II. This Court’s intervention is needed once more.....	11
A. Legislative changes reduced districts’ ability to access local tax revenue and left schools severely underfunded.	12
1. Tax compression resulted in a structural deficit that left school districts competing with other demands for reduced general revenue.	12
2. The formulas do not account for the cost of providing all students a meaningful opportunity to achieve a general diffusion of knowledge.	14

a.	The 2006 system distributes revenue via decades-old formulas.....	14
b.	In 2011, the Legislature left schools without enough revenue to achieve a general diffusion of knowledge.....	18
c.	The Legislature’s partial “restoration” of the cuts in 2013 did not cure the constitutional defects.....	20
B.	Since <i>WOC II</i> , the Legislature has steadily increased standards without regard to the cost of giving all students a meaningful opportunity to meet those standards.....	22
1.	The Legislature has mandated college and career readiness as the standard by which schools <i>and</i> students will be judged.....	22
a.	The Legislature has centered the state curriculum and graduation requirements around college- and career-readiness standards.....	23
b.	To measure whether students are meeting college- and career-readiness standards, the State implemented a more challenging assessment regime.....	26
2.	At the same time, district costs are rising due to a student population that is growing poorer, more diverse, and more expensive to educate.....	27
3.	The State has not determined how much it costs districts to give <i>all</i> students a meaningful opportunity to meet the rising standards.....	29
a.	Despite a statutory mandate, the State has failed to calculate the cost of meeting the State’s requirements and goals.....	30

b.	The Texas Education Agency has made no attempt to determine the costs to school districts of educating students to the rising standards.	31
c.	In 2011, the Legislature broke the historical linkage between increased standards and increased funding.	32
C.	The combination of rising standards and flagging state support has resulted in a system that does not provide all students with a meaningful opportunity to achieve a general diffusion of knowledge.	34
1.	Student performance is not improving.....	34
a.	Performance on TAKS and NAEP exams flattened.	34
b.	STAAR passing rates are lower than TAKS rates and are not improving.....	34
c.	Even after multiple opportunities to retest, tens of thousands of students could not pass all the required STAAR EOC tests.	38
2.	Texas faces a bleak economic future if it does not provide <i>all</i> students with a general diffusion of knowledge.	41
	SUMMARY OF THE ARGUMENT	43
	ARGUMENT & AUTHORITIES	48
I.	The Court has jurisdiction over the ISD Plaintiffs’ claims.	48
A.	As this Court has previously held, article VII, section 1 does not present a nonjusticiable political question.	49
1.	The school finance system can be evaluated according to the constitutional standards without delving into policymaking.....	50
2.	School districts must turn to the courts when the Legislature is unable to satisfy constitutional mandates.....	54

B.	The ISD Plaintiffs have standing to assert their article VII, section 1 claims.	56
1.	On multiple occasions, the Court has granted the type of injunctive relief sought here.....	56
2.	The ISD Plaintiffs have standing because they are required to implement an unconstitutional statute—an injury that is directly redressed through injunctive relief.	58
3.	History shows there is more than a “mere hope” that the Legislature will fulfill its constitutional duty and respond to this Court’s decision.	58
C.	The ISD Plaintiffs’ claims are ripe for review.	60
1.	Ripeness requires only that the ISD Plaintiffs show an injury <i>is likely</i> to occur.....	60
2.	The 2013 legislative changes merely tweaked the current system; they did not create a new one.	63
a.	The student performance data is sufficient to assess the current system’s adequacy and suitability.	64
b.	The available school funding data is sufficient to assess the current system’s suitability and efficiency, as well as whether it imposes a <i>de facto</i> state property tax.....	65
D.	The Court has not only the authority, but an obligation, to ensure that the Texas Constitution is respected.....	67
II.	The trial court correctly determined that the school finance system imposes a <i>de facto</i> state property tax.....	68
A.	Standard of review for article VIII, section 1-e claims.....	68
B.	The existence of a state property tax turns on the degree of state control versus local discretion.....	69

C.	The State controls the levy, assessment, and disbursement of district revenue through the funding system’s structure.	71
1.	The State asserted control over the levy and assessment of M&O taxes by “compressing” tax rates and lowering the tax cap.	73
2.	The State maintains control over the levy and assessment of M&O taxes by imposing the TRE requirement and limiting the yield per penny for Tier II-b.....	75
3.	The State controls the disbursement of district revenue by treating revenue from increasing local property values as state revenue.....	78
4.	The State controls the levy, assessment, and disbursement of I&S taxes through the 50-cent debt test.	81
5.	The 2015 Legislature laid the groundwork for further control by preventing districts from repealing their “local option” homestead exemptions.	83
D.	The State exercises control by increasing standards while costs increase and State support plummets.	84
1.	The trial court properly recognized that calculation of the tax floor must include both educational and economic realities.	84
2.	The Legislature significantly increased academic standards.....	87
3.	The growing and changing student population increases districts’ costs.....	89
4.	Decreasing State support shifts (and thereby increases) costs to districts.	90
a.	State budget cuts shifted the burden of paying for a basic education more heavily onto local districts.....	91

b.	Stagnant facilities aid shifts the burden of paying for construction and maintenance onto local districts.....	93
E.	School districts have lost meaningful discretion over their tax rates.....	93
1.	The trial court properly tied the property tax floor to the cost of achieving a general diffusion of knowledge.	93
2.	Statewide evidence shows a systemic lack of meaningful discretion.....	95
a.	Districts must tax at higher rates to raise the revenue levels necessary to achieve a general diffusion of knowledge.....	95
b.	Tax rates and the percentage of available revenue being spent has increased steadily since 2007-08.	99
3.	Evidence from the focus districts confirms the lack of meaningful discretion.....	101
III.	The trial court correctly determined that the public education system is not “suitable.”	105
A.	Standard of review for article VII, section 1 claims	105
B.	The system’s suitability is judged by whether it is structured, operated, and funded to accomplish its purpose for <i>all</i> Texas children.....	106
C.	The State elevated the system’s goal but has not altered its structure, operation, or funding to meet that new goal.	109
1.	The school system’s legislatively defined purpose is to provide all students a meaningful opportunity to graduate college or career ready.	110
a.	The State has linked the academic components of the public education system to its purpose of preparing college- and career-ready graduates.....	110

b.	School districts must provide both an accredited education <i>and</i> a general diffusion of knowledge.....	112
2.	The current formula system does not take into account the cost of the Legislature’s own definition of a general diffusion of knowledge.	116
a.	The State has not calculated the cost of meeting its rising standards.	116
b.	“Formulas that once fit have been knocked askew.”	118
D.	The public school system cannot, because of its structure, achieve its purpose for <i>all</i> students.	121
1.	The system’s structure and operation prevent it from achieving a general diffusion of knowledge for economically disadvantaged students.....	122
a.	Performance outcomes for economically disadvantaged students reveal that the state’s largest subpopulation of students is not achieving a general diffusion of knowledge.....	122
b.	Economically disadvantaged students face challenges that make them more expensive to educate.	128
c.	Proven interventions can help economically disadvantaged students overcome educational obstacles.....	130
i.	High-quality pre-K programs help economically disadvantaged students overcome educational deficits.....	131
ii.	Smaller class sizes and instructional aides allow for individualized attention.	134

iii.	Increased instructional time is proven to help economically disadvantaged students close the achievement gap.....	135
d.	Funding for economically disadvantaged students is arbitrary and insufficient to allow districts to implement these proven interventions.....	136
i.	The funding weight for economically disadvantaged students is out-of-date and too low.....	136
ii.	The Legislature arbitrarily cut programs for economically disadvantaged students.	138
2.	The system’s structure and operation prevent it from achieving a general diffusion of knowledge for ELL students.....	139
a.	Performance outcomes reveal that ELL students are not achieving a general diffusion of knowledge.	139
b.	ELL students face educational challenges beyond those of non-ELL economically disadvantaged students.	140
c.	With appropriate interventions, ELL students can overcome these challenges and achieve a general diffusion of knowledge.....	141
d.	Funding for ELL students is arbitrary and insufficient.	142
E.	The State funding system provides insufficient means for achieving a general diffusion of knowledge.	144
IV.	The trial court correctly determined that the public education system is not “adequate.”	148
A.	The system’s adequacy is judged by whether it is achieving the legislatively defined level of a general diffusion of knowledge.	148

B.	Performance outcomes reveal that many Texas students do not have a meaningful opportunity to achieve a general diffusion of knowledge.	149
1.	Performance outcomes are not improving on state exams.	149
2.	Texas students are no longer outperforming the nation.....	154
3.	The State’s population trends make it essential that knowledge be spread diffusely.....	156
a.	Texas’s future depends on the performance of its most underperforming and challenging populations.....	156
b.	The State’s use of data that controls for socioeconomic characteristics paints a misleading picture.	157
V.	The trial court correctly determined that the public education system is not “efficient.”	158
A.	The system’s efficiency is judged by whether all districts have substantially equal access to the level of funds necessary to achieve a general diffusion of knowledge.....	158
B.	School districts cannot raise the revenue necessary to achieve a general diffusion of knowledge at similar tax rates.	160
1.	The trial court correctly analyzed the gap in tax rates based on the rate needed to raise enough revenue to provide a general diffusion of knowledge.	160
2.	The vast majority of school districts cannot legally raise their rates high enough to access sufficient revenue to achieve a general diffusion of knowledge.	164
C.	The 2011 and 2013 Legislative changes “leveled down” funding for school districts rather than “leveling up” to a general diffusion of knowledge.....	166
VI.	The trial court’s award of attorney’s fees was proper.	167

A. Attorney’s fee awards are reviewed for abuse of discretion..... 168

B. The trial court did not abuse its discretion when making its fee determination..... 168

VII. The trial court did not err in retaining “continuing jurisdiction” because it only purports to enforce its judgment and orders.....172

PRAYER174

CERTIFICATE OF COMPLIANCE.....176

CERTIFICATE OF SERVICE177

TABLE OF AUTHORITIES

Cases

<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	50, 53
<i>Barshop v. Medina Cnty Underground Water Conservation Dist.</i> , 925 S.W.2d 618 (Tex. 1996)	168, 169, 170
<i>Bocquet v. Herring</i> , 972 S.W.2d 19 (Tex. 1998).....	170
<i>Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.</i> , 826 S.W.2d 489 (Tex. 1992) (<i>Edgewood III</i>).....	<i>passim</i>
<i>City of San Antonio v. Singleton</i> , 858 S.W.2d 411 (Tex. 1993)	173
<i>City of Tyler v. St. Louis Sw. Ry. Co. of Tex.</i> , 405 S.W.2d 330 (Tex. 1966)	172
<i>Corsicana Cotton Mills v. Sheppard</i> , 71 S.W.2d 247 (Tex. 1934).....	68
<i>Cramer v. Skinner</i> , 931 F.2d 1020 (5th Cir. 1991)	59
<i>Duarte ex rel. Duarte v. City of Lewisville, Tex.</i> , 759 F.3d 514 (5th Cir. 2014)	59
<i>Edgewood Indep. Sch. Dist. v. Kirby</i> , 777 S.W.2d 391 (Tex. 1989) (<i>Edgewood I</i>)	<i>passim</i>
<i>Edgewood Indep. Sch. Dist. v. Kirby</i> , 804 S.W.2d 491 (Tex. 1991) (<i>Edgewood II</i>)	<i>passim</i>
<i>Edgewood Indep. Sch. Dist. v. Meno</i> , 917 S.W.2d 717 (Tex. 1995) (<i>Edgewood IV</i>)	<i>passim</i>
<i>Finance Comm’n of Tex. v. Norwood</i> , 418 S.W.3d 566 (Tex. 2013)	56

<i>Heckman v. Williamson Cnty.</i> , 369 S.W.3d 137 (Tex. 2012)	56
<i>Katz v. Bianchi</i> , 848 S.W.2d 372 (Tex. App.—Houston [14th Dist.] 1993, no writ).....	173
<i>La Ventana Ranch Owners’ Ass’n, Inc. v. Davis</i> , 363 S.W.3d 632 (Tex. App.—Austin 2011, pet. denied)	169
<i>Love v. Wilcox</i> , 28 S.W.2d 515 (Tex. 1930).....	67
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	59
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803).....	67
<i>Mayhew v. Town of Sunnyvale</i> , 964 S.W.2d 922 (Tex. 1998)	63
<i>Minn. Fed’n of Teachers v. Randall</i> , 891 F.2d 1354 (8th Cir. 1989)	59
<i>Mumme v. Marrs</i> , 40 S.W.2d 31 (Tex. 1931).....	49
<i>Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.</i> , 176 S.W.3d 746 (Tex. 2005) (<i>WOC II</i>)	<i>passim</i>
<i>Oake v. Collin Cnty.</i> , 692 S.W.2d 454 (Tex. 1985)	168
<i>Owens Corning v. Carter</i> , 997 S.W.2d 560 (Tex. 1999)	68
<i>Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.</i> , 971 S.W.2d 439 (Tex. 1998)	60, 61, 62
<i>Perry v. Del Rio</i> , 66 S.W.3d 239 (Tex. 2001).....	60

<i>SAVA gumarska in kemijska industrija d.d. v. Advanced Polymer Scis., Inc.</i> , 128 S.W.3d 304 (Tex. App.—Dallas 2004, no pet.)	170
<i>Simon v. E. Ky. Welfare Rights Org.</i> , 426 U.S. 26 (1976).....	58
<i>State Farm Lloyds v. C.M.W.</i> , 53 S.W.3d 877 (Tex. App.—Dallas 2001, pet. denied).....	170
<i>State v. Lodge</i> , 608 S.W.2d 910 (Tex. 1980)	62
<i>Heldman ex. rel T.H. v. Sobol</i> , 962 F.2d 148 (2d Cir. 1992)	58, 59
<i>Terrazas v. Ramirez</i> , 829 S.W.2d 712 (Tex. 1991)	57
<i>Tex. Dep’t of Banking v. Mount Olivet Cemetery Ass’n</i> , 27 S.W.3d 276 (Tex. App.—Austin 2000, pet. denied)	61
<i>Tex. Dep’t of Pub. Safety v. Moore</i> , 985 S.W.2d 149 (Tex.App.—Austin 1998, no pet.).....	61
<i>Tex. Workers’ Comp. Comm’n v. Garcia</i> , 893 S.W.2d 504 (Tex. 1995)	68
<i>Waco Indep. Sch. Dist. v. Gibson</i> , 22 S.W.3d 849 (Tex. 2000).....	60
<i>West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis</i> , 107 S.W.3d 558 (Tex. 2003) (WOC I).....	<i>passim</i>
<i>Williams v. Taylor</i> , 19 S.W. 156 (Tex. 1892).....	56, 57, 67
Constitution and Statutes	
20 U.S.C. § 1400 <i>et seq.</i>	121
TEX. CONST. art. VII, § 1.....	<i>passim</i>
TEX. CONST. art. VIII, § 1-e	69

Act of Apr. 30, 2015, 84th Leg., R.S., SB149, § 3	40
Act of May 29, 2015, 84th Leg., R.S., SB1, § 1	83
Act of May 29, 2015, 84th Leg., R.S., SJR1, §1	83
Act of May 30, 2015, 84th Leg., R.S., HB2, § 2	80
Act of June 1, 2015, 84th Leg., R.S., SB507, § 3.....	84
Act of Jun. 7, 1990, 71st Leg., 6th C.S., ch. 1, § 104	6, 63
Act of Jun. 7, 1990, 71st Leg., 6th C.S., ch. 1, § 110	6, 63
TEX. EDUC. CODE § 4.001(a).....	110, 148
TEX. EDUC. CODE § 4.002	85
TEX. EDUC. CODE § 21.001, <i>et seq.</i>	85
TEX. EDUC. CODE § 28.001	22, 85, 110, 111, 148
TEX. EDUC. CODE § 28.008	23, 87, 111, 116
TEX. EDUC. CODE § 28.009	111
TEX. EDUC. CODE § 28.010	111
TEX. EDUC. CODE § 28.014	111
TEX. EDUC. CODE § 28.025(b)	24, 25, 88, 111
TEX. EDUC. CODE § 28.0211	139, 151
TEX. EDUC. CODE § 28.0258	40
TEX. EDUC. CODE § 28.02121(d)	111
TEX. EDUC. CODE § 29.052	28
TEX. EDUC. CODE § 29.053(d).....	143
TEX. EDUC.CODE § 29.056 (a)-(b)	142
TEX. EDUC. CODE § 29.060	143

TEX. EDUC. CODE § 29.061	142
TEX. EDUC. CODE § 29.063(a)-(b)	142
TEX. EDUC. CODE § 29.182(b)	112
TEX. EDUC. CODE § 39.023	26, 111
TEX. EDUC. CODE § 39.024(a).....	23
TEX. EDUC. CODE § 39.052.....	112, 157
TEX. EDUC. CODE § 39.053.....	112, 157
TEX. EDUC. CODE § 39.102	113
TEX. EDUC. CODE § 41.002(a)(1).....	16, 17, 75
TEX. EDUC. CODE § 42.001	21, 30, 116, 167
TEX. EDUC. CODE § 42.007	14, 21, 30, 118, 137, 144, 167
TEX. EDUC. CODE § 42.101	15, 16
TEX. EDUC. CODE § 42.102	15
TEX. EDUC. CODE § 42.105	15
TEX. EDUC. CODE § 42.151-.154.....	15
TEX. EDUC. CODE § 42.152	90, 120, 136
TEX. EDUC. CODE § 42.155	16
TEX. EDUC. CODE § 42.156-.158.....	15
TEX. EDUC. CODE § 42.160	16
TEX. EDUC. CODE § 42.252	15, 74
TEX. EDUC. CODE § 42.301	16, 74, 99
TEX. EDUC. CODE § 42.302	17, 75, 76
TEX. EDUC. CODE § 42.2522	84

TEX. EDUC. CODE § 45.001	81
TEX. EDUC. CODE § 45.003	74, 93
TEX. EDUC. CODE § 46.032 A	93
TEX. EDUC. CODE § 45.0031	81
TEX. EDUC. CODE § 46.003	93
TEX. EDUC. CODE § 51.803	25
TEX. CIV. PRAC. & REM. CODE § 37.009.....	168
TEX. GOV'T CODE § 551.001 <i>et seq</i>	86
TEX. OCC. CODE § 1202.001 <i>et seq.</i>	86
TEX. TAX CODE § 11.13	72, 83
TEX. TAX CODE § 26.08(a), (n).....	12, 75, 146
19 Tex. Admin. Code § 89.1207.....	142
19 Tex. Admin. Code § 89.1210	143
19 Tex. Admin. Code § 89.1220(e)-(g), (k).....	142
19 Tex. Admin. Code § 89.1225(e).....	143
19 Tex. Admin. Code § 89.1250.....	143
19 Tex. Admin. Code § 89.1265.....	143
19 Tex. Admin. Code § 97.1001.....	89, 112, 113
19 Tex. Admin. Code § 97.1055.....	113
19 Tex. Admin. Code § 101.2005(b).....	38
19 Tex. Admin. Code § 101.3041	27, 153
37 Tex. Reg. 4302 (2012)	27
37 Tex. Reg. 6306 (2012)	27

39 Tex. Reg. 2403 (2014)27

39 Tex. Reg. 4766 (2014)27

39 Tex. Reg. 9775 (2014)27, 153

40 Tex. Reg. 1081 (2015)27, 153

Other Authorities

House Research Org., Bill Analysis, Tex. S.B.149,
84th Leg., R.S. (2015).....40, 76

Debate on C.S.H.B. 1025 on the Floor of the Senate,
83rd Leg. R.S. (May 24, 2013).....171

RECORD REFERENCES

Clerk's Record	CR[Volume No.]:[Page No.]
Conclusions of Law (CR12:567-91)	COL[No.]
Findings of Fact (CR12:209-567)	FOF[No.]
Reporter's Record	RR[Volume No.]:[Page No.]
Trial Exhibits	Ex.[No.]:[Page No.]

ABBREVIATIONS

Average Daily Attendance	ADA
Chief Financial Officer	CFO
Cost of Education Index	CEI
End-of-course	EOC
English-Language Learner	ELL
English as a Second Language	ESL
Foundation School Program	FSP
House Bill	HB
Interest and Sinking Fund	I&S
Legislative Budget Board	LBB
Maintenance and Operations	M&O
Pre-Kindergarten	Pre-K
Senate Bill	SB
State Assessment of Academic Skills	STAAR
State Board of Education	SBOE
Student Success Initiative	SSI
Tax Ratification Election	TRE
Texas Education Agency	TEA
Texas Essential Knowledge and Skills	TEKS

Texas Assessment of Knowledge and Skills

TAKS

Weighted Average Daily Attendance

WADA

STATEMENT OF THE CASE

Nature of the Case The Fort Bend Independent School District Appellees are a geographically and economically diverse group of eighty-two school districts that collectively educate approximately 1.8 million students. Together with other appellees,¹ the Fort Bend ISD Plaintiffs presented four constitutional challenges to the Texas school finance system: (1) that it establishes a de facto state property tax in violation of article VIII, section 1-e; and that it violates article VII, section 1 because it does not (2) suitably, (3) adequately, and (4) efficiently provide for a general diffusion of knowledge. The Texas Charter School Association Cross-Appellants/Appellees² sought a judgment declaring that the funding system does not adequately, suitably, and efficiently fund charter schools. The Intervenors³ sought a declaration that the system is “qualitatively” inefficient.

Trial Court The Honorable John K. Dietz, 250th Judicial District Court, Travis County.

¹ The other appellees are the Texas Taxpayer and Student Fairness Coalition, et al., Edgewood Independent School District et al., and Calhoun County Independent School District et al. The appellees shall be referred to respectively as the Fort Bend ISD Plaintiffs, TTSFC, the Edgewood ISD Plaintiffs, and the CCISD Plaintiffs, and shall be referred to collectively as the ISD Plaintiffs.

² The Texas Charter School Association, et al., shall be referred to as The Charters.

³ Plaintiff-Intervenors Joyce Coleman, et al., are six parents (each suing individually and on behalf of their minor children) and two entities who intervened in the Fort Bend ISD Plaintiffs’ lawsuit before it was consolidated with the other ISD Plaintiffs’ and The Charters’ lawsuits.

Trial Court's Disposition

Following a thirteen week, forty-five-day bench trial, involving more than eighty live witnesses and 5,000 exhibits, the trial court declared that the school finance system violated the Texas Constitution on several grounds. Before the trial court rendered its final judgment, however, the 83rd Legislature passed education legislation that had the potential to impact the trial court's decree. CR5:349-50. Accordingly, the trial court reopened the evidence to consider the impact of the 2013 legislative changes. Trial resumed on January 21, 2014. RR54:8; CR7:424-26. During this second phase, the trial court heard from another twelve live witnesses and admitted an additional 700 exhibits. RR1:550-657.

On August 28, 2014, the court declared the Texas school finance system unconstitutional because it violates (1) the state property tax prohibition in article VIII, section 1-e; (2) the "suitability" clause of article VII, section 1 because the State has failed to structure, operate, and fund the system to accomplish its purpose of a general diffusion of knowledge; (3) article VII, section 1's "general diffusion of knowledge" requirement (i.e. "adequacy"); and (4) article VII, section 1's "efficiency" clause because the school finance system does not provide substantially equal access to the level of funding necessary to achieve a general diffusion of knowledge and permits an amount of unequalized enrichment that is so great as to destroy the system's efficiency. CR12:193-97. The court also declared that financing for charter schools violates article VII, section 1's adequacy requirement because charter school funding is based on the average funding of school districts, but denied the charters schools' other claims. CR12:196, 198. The court denied the Intervenors' request for a judgment declaring that the system violated article VII, section 1's "qualitative efficiency" requirement. CR12:198.

The trial court enjoined the State from distributing any money under the school finance system until the constitutional violations are remedied, but stayed the injunction until July 1, 2015. CR12:199-200.

The State filed this direct appeal. CR12:774-77. The Charters and Intervenors appealed the trial court's denial of their requested declaratory relief, and Calhoun County appealed the trial court's grant of the Fort Bend ISD Plaintiffs', TTSFC's, and the Edgewood ISD Plaintiffs' request for declaratory relief on their efficiency claims. CR12:778-87. This Court has noted probable jurisdiction over all appeals.

ISSUES PRESENTED

1. Are the ISD Plaintiffs' claims nonjusticiable, despite thirty years of precedent from this Court holding that they are justiciable?
 - a. Are the Court's standards, as applied in the last six school finance cases, judicially manageable, or do they impermissibly tread on legislative discretion?
 - b. Is the trial court's declaratory relief, which parallels the relief granted by this Court in past school finance cases, reasonably likely to redress the ISD Plaintiffs' injury?
 - c. Are the ISD Plaintiffs' claims unripe because the Legislature considers school finance each biennium?
2. Does the State's control of local property tax rates and revenue amount to an unconstitutional state property tax?
 - a. Does the State control district tax rates both directly (by imposing the tax cap and tax ratification elections and prohibiting districts from repealing the optional homestead exemption) and indirectly (by increasing standards without regard to the cost of educating a growing, poorer, and more diverse student population)?
 - b. Does the State control district tax revenue by using it to finance non-education related expenditures?
3. Is the system suitable?
 - a. Are the State's formulas, which do not account for the cost of achieving state standards, structured, operated, and funded to achieve the system's goals?
 - b. Are formulas that were meant to compensate for district and student characteristics but which have not been examined or updated in decades—despite a statutory mandate and enormous demographic changes—structured, operated, and funded to achieve the system's goals?

- c. Does the system's structure and operation prevent economically disadvantaged and ELL students from achieving a general diffusion of knowledge?
4. Is the system adequate?
 - a. Do stagnant student performance and persistent performance gaps indicate a system that is working toward its goals?
 - b. Is a system in which economically disadvantaged students, who make up more than 60% of the population, and ELL students are not meeting state standards achieving a *general diffusion* of knowledge?
5. Is the system efficient?
 - a. Is a system in which the vast majority of districts cannot raise the revenue required to achieve a general diffusion of knowledge, productive of results with little waste?
 - b. Is a system that "levels down" funding to below the revenue level required to achieve a general diffusion of knowledge efficient?
6. Did the trial court abuse its discretion in awarding the Fort Bend ISD Plaintiffs their reasonable and necessary attorney's fees?
7. Does the trial court retain jurisdiction to enforce its injunction, and to modify or vacate it upon a showing of changed circumstances?

PRELIMINARY STATEMENT

Almost three decades ago, this Court was asked to bring the school finance system within constitutional parameters. The request came after the Legislature's several attempts failed. *Edgewood I* inaugurated a pattern: After this Court rules, the Legislature takes significant, tangible steps toward remediation. Then, it stops. The system regresses, forcing school districts to again turn to the courts. The recurring questions in these cases are demanding, complex, and politically difficult. Even though the work is hard, the Texas Constitution demands that its public officials—in *each* branch of government—honor its mandates. The arguments the State advances, in many instances, rehash arguments this Court has thoughtfully answered. For that reason, the Fort Bend ISD Plaintiffs request that the Court consider what has changed since its last foray into these questions.

In the ten years since this Court last weighed in, Texas's student population has grown in size, diversity, and need. It contains more low-income students, more students for whom English is a second language, and more students who require greater disability services. These students must know more to have any chance to succeed in today's economy. Understanding this imperative, legislators have raised the academic bar for all students. Yet, at the same time, they have refused to consider how increasing those standards impacts the financial side of the ledger. The only mechanism for making that assessment—a statutory requirement that funding needs

be assessed biennially—has not been followed for more than a decade. Consequently, the Legislature continues to distribute funds based on hopelessly antiquated formulas. The Court can take a long, and lasting, step toward a stable constitutional system by requiring that the Legislature comply with its mandatory duty to connect the system’s structure to its goals.

The State worries that this lawsuit is itself evidence that constitutional standards for school financing will be forever out of reach. But each of this Court’s rulings has spurred the Legislature to do its part, and no reasonable observer can deny that, because of this Court’s decrees, today’s school finance system is vastly better than the one at issue in *Edgewood I*.

The Fort Bend ISD Plaintiffs acknowledge that money is not the sole answer, but it is essential. The system need not operate perfectly, but must take into account changing educational needs and economic realities. Equality cannot be perfectly achieved, but cannot be ignored. This appeal presents an opportunity to imbue concepts like “general diffusion,” “suitability,” “adequacy,” “efficiency,” and “meaningful discretion” with concrete meaning based on metrics that the Legislature has mandated, but allowed to wither away.

The Ford Bend ISD Plaintiffs do not ask this Court to make new law. They ask, simply, that the Court abide its prior decisions and the Constitution’s mandate, which together provide manageable standards and clear guidance to the Legislature.

The Court should reject the State's suggestion that the system's problems remain insurmountable, and reaffirm the promise that public education represents for all Texans.

STATEMENT OF FACTS

I. Historical Background

School finance litigation has come before the Court six times previously. The *Edgewood* cases (with the exception of *Edgewood III*) focused primarily on the constitutional requirement of *efficiency*.⁴ The *WOC* cases focused on the constitutional requirement of *adequacy* and the constitutional prohibition on a *state property tax*.⁵ Each of this Court's decisions led to significant legislation that improved the school finance system.

⁴ *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) (*Edgewood IV*); (concluding that districts were able to raise requisite revenue to achieve a general diffusion of knowledge at similar tax rates, so system was not inefficient); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) (*Edgewood III*) (holding that uniform property tax rate set by Legislature but levied by "county education districts" violated state property tax prohibition); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (*Edgewood II*) (deciding that property-wealthy districts may not be left out of efficient system, but local enrichment above general diffusion of knowledge is permissible if overall system remains efficient); *see generally Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (*Edgewood I*) (determining that vast disparities in revenue available to property-poor districts despite taxing at higher rates than property-wealthy districts violated efficiency requirement).

⁵ *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005) (*WOC II*) (holding that, by forcing districts to tax near the statutory cap on property taxes to provide a general diffusion of knowledge, State had created *de facto* state property tax and system was on the verge of constitutional inadequacy); *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) (*WOC I*) (concluding that, for purpose of state property tax claim, state control over district taxes, and not the number of districts taxing at the statutory cap, is determinative).

A. The *Edgewood* cases observed that the Legislature was primarily responsible for ensuring that the school finance system efficiently provides for the general diffusion of knowledge.

From 1987 to 1995, this Court was thrice called upon to construe the Texas Constitution's education clause: "A general diffusion of knowledge being essential to the preservation of liberties and rights of the people, *it shall be the duty of the Legislature of the State* to establish and make *suitable provision* for the support and maintenance of an *efficient* system of public free schools." TEX. CONST. art. VII, § 1 (emphasis added).

Edgewood I focused primarily on the *efficiency* mandate. The Court noted that, as the state's population and economy had grown, "[f]ormulas that once fit have been knocked askew." 777 S.W.2d at 396. Before the state can "educate its populace efficiently and provide for a general diffusion of knowledge statewide," it must ensure that all districts "have substantially equal access to similar revenues per pupil at similar tax effort." *Id.* at 397.

Following that decision, the Legislature shifted some state funding to property-poor districts to ensure they could raise a certain "guaranteed yield" per penny of tax effort. *Edgewood II*, 804 S.W.2d at 495. While the *Edgewood II* Court praised the Legislature for providing "a wide array of biennial studies to ... inform

senior policy makers when increased state funding is required,”⁶ it held that the system remained unconstitutional because property-wealthy districts could still raise the necessary revenue levels at much lower tax rates than property-poor districts could. *Id.* at 495-96. *Edgewood II* emphasized that the requirement of a “direct and close correlation between a district’s tax effort and the educational resources available to it” applies all the way up to the revenue levels necessary to provide for a general diffusion of knowledge; *beyond* that level, the Legislature may authorize local school districts to provide enrichment through local revenues “so long as efficiency is maintained.” *Id.* at 500 and n.2 (quoting *Edgewood I*, 777 S.W.2d at 397).

In response, the Legislature created “county education districts” (“CEDs”) to levy property taxes and distribute the revenue to the school districts within their borders. *Edgewood III*, 826 S.W.2d at 498. Because the Legislature set the CED property-tax rate, school districts and taxpayers challenged the system as violating article VIII, section 1-e’s prohibition on a state property tax. *Id.* at 500. The *Edgewood III* Court agreed, holding that “[a]n ad valorem tax is a state tax when ... the State so completely controls the levy, assessment, and disbursement of

⁶ See Act of Jun. 7, 1990, 71st Leg., 6th C.S., ch. 1, §§ 104, 110. The same study requirement exists today, although it has not been complied with in over a decade. See *infra*, at n.12 and Facts Section II.B.3.a.

revenue, either directly or indirectly, that the authority employed is without meaningful discretion.” *Id.* at 502.

The Legislature responded to *Edgewood III* by passing Senate Bill 7, which involved a two-tier funding system. *Edgewood IV*, 917 S.W.2d at 727. Under the first tier, districts taxing at \$0.86 per \$100 of assessed property value were entitled to a basic allotment plus adjustments designed to account for cost variations due to various district and student characteristics.⁷ *Id.* In addition, districts could tax up to an additional \$0.64, for which they were guaranteed a minimum yield per student. *Id.* at 727-28. For the first time, property-wealthy districts were limited in how much revenue they could raise—to that generated by the “equalized wealth level.” *Id.* at 728. Revenue above that level was “recaptured” and redistributed to property-poor districts. *Id.* For understandable, but not entirely accurate, reasons, this approach was dubbed “Robin Hood.”

There was a divergence between the revenue the State guaranteed that property-poor districts could raise and the revenue property-wealthy districts could keep after recapture. This gap was the subject of *Edgewood IV*. While the parties focused on the \$600 gap in *revenue* that could be raised by districts at the maximum \$1.50 tax rate, this Court held that the proper analysis for evaluating the system’s

⁷ These cost adjustments, most of which have not been updated since well before SB7, are described in greater detail in Facts Section II.A.2.a *infra*.

efficiency was instead the gap in the *tax rate* needed to access the revenue level necessary to provide a general diffusion of knowledge. *Id.* at 731. Because property-wealthy districts could attain the revenue necessary to provide a general diffusion of knowledge—\$3,500, according to the Court—at \$1.22 and property-poor districts could attain the same revenue level at \$1.31 (both well below the \$1.50 cap)—the Court held that the Legislature had met its constitutional obligation to provide substantially equal access to the funding necessary for a general diffusion of knowledge. *Id.* at 731-32 and n.10. The Court cautioned that, while the Legislature could authorize districts to supplement *above* the revenue level necessary for a general diffusion of knowledge through unequalized enrichment, “the amount of ‘supplementation’ in the system cannot become so great that it, in effect, destroys the efficiency of the entire system.” *Id.* at 732.

The Court also presciently warned that the cost of providing a general diffusion of knowledge would inevitably rise, which carried with it two dangers. First, “what the Legislature today considers to be ‘supplementation’ may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge,” and thus subject to the requirement of substantially equal access. *Id.* Second, if districts are forced to raise their rates to the statutory cap to provide a general diffusion of knowledge, then the cap would “in effect [be] a floor as well as a ceiling” and would violate the prohibition on a state property tax. *Id.* at 738.

B. The *West Orange-Cove* cases held that the Legislature must provide for the general diffusion of knowledge without taking away school districts' discretion over their taxes.

By 2002, it became clear that the latter warning had gone unheeded, and the Legislature had allowed the school finance system to once again fall short. As a result, school districts were forced to ask this Court to require the Legislature to act. *See generally WOC I*, 107 S.W.3d 558. The trial court initially dismissed the lawsuit, but this Court reinstated it and, in the process, provided guidance on the constitutional standards governing article VII, section 1 and article VIII, section 1-e claims. *Id.* The Court reiterated that article VII, section 1 imposes a duty to establish and suitably provide for a system that equalizes *up* to a general diffusion of knowledge, rather than one that levels *down* to a funding benchmark insufficient to meet that standard. *Id.* at 571. It further noted that, because local school districts fulfill this duty, the Legislature *must* require that districts actually do so. *Id.* at 579-80. “A public school system dependent on local districts free to choose not to provide an adequate education would in no way be suitable.” *Id.* at 580. Therefore, districts lack meaningful discretion over their tax rates if they are forced to tax at the maximum rate to provide a general diffusion of knowledge and meet other statutory requirements. *Id.* at 580-82.

In November 2005, on direct appeal following trial on the merits, this Court held that the system was in fact built on an unconstitutional state property tax, in

violation of article VIII, section 1-e. *See generally WOC II*, 176 S.W.3d 746. Specifically, the Court reiterated that when school districts are forced to tax at or near maximum rates to meet constitutional and statutory requirements, control over local taxes effectively shifts to the State, resulting in an impermissible state property tax. *Id.* at 770, 795-96. The Court rejected the State’s arguments that all or most districts must be at the cap to demonstrate such a violation; rather, the Court explained that “the concern ... is not the pervasiveness of the tax *but the State’s control of it.*” *Id.* at 795 (quoting *WOC I*, 107 S.W.3d at 578) (emphasis added).

The Court held that the adequacy standard depends on “‘outputs’—the results of the educational process measured in student achievement.” *Id.* at 788. Because school districts were making progress toward meeting the system’s statutory goals, the Court did not deem the system constitutionally inadequate. *Id.* at 789-90. It noted, however, that “the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education.” *Id.* at 790. The Court noted:

Former Lieutenant Governor Ratliff, the author and principal sponsor of Senate Bill 7 in 1993, echoed the considered judgments of other witnesses at trial when he testified:

I am convinced that, just by my knowledge of the overall situation in Texas, school districts are virtually at the end of their resources, and to continue to raise the standards ... is reaching a situation where we’re asking people to make bricks without straw.

Id. The Court cautioned that the system was on the verge of “an impending constitutional violation” and questioned “whether the system’s predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes.” *Id.*

The Court also reminded the parties that efficiency is tied to the general diffusion of knowledge and requires substantially equivalent access to revenue for both instruction and facilities necessary to achieve this, “considering the system as a whole,” rather than its individual components. *Id.* at 790-91. Finally, the Court clarified that, while neither the trial court nor the parties had “differentiated suitability from the constitutional standards of adequacy and efficiency, [] the requirement of suitability is not merely redundant of the other two. Rather, it refers specifically to the *means* chosen to achieve an adequate education through an efficient system.” *Id.* at 793 (emphasis added).

Few will be surprised that the Court’s dire predictions have materialized. The Legislature’s refusal to modernize school funding formulas means that “[f]ormulas that once fit have [again] been knocked askew.” *Edgewood I*, 777 S.W.2d at 396.

II. This Court’s intervention is needed once more.

The Legislature’s response to *WOC II* provided temporary relief from the *de facto* state property tax, but did not provide the kind of significant change that the Court warned was needed to avoid the impending constitutional crisis. *See WOC II*,

176 S.W.3d at 790. To the contrary, the legislative changes—made without any attempt to calculate the cost of a general diffusion of knowledge—ultimately exacerbated existing structural problems and left school districts unable to raise the revenue needed to educate a growing and diversifying student population to heightened academic requirements.

A. Legislative changes reduced districts’ ability to access local tax revenue and left schools severely underfunded.

During a 2006 special session called in response to *WOC II*, the Legislature passed HB1, which had two goals: to provide property tax relief and to provide school districts with the constitutionally required “meaningful discretion.” Ex.6396. But because the Legislature did not fully replace the lost property tax revenue or account for the cost of meeting its own standards, the legislation did not achieve either goal.

1. Tax compression resulted in a structural deficit that left school districts competing with other demands for reduced general revenue.

HB1 required school districts to reduce, or “compress,” their M&O tax rates by one-third. In other words, a district that had been taxing at \$1.50 in 2006-07 had to reduce its tax rate to \$1. Ex.6593:11; Ex.6395:2. To ensure lasting tax relief, the State restricted districts’ ability to raise their rates by lowering the statutory cap on property tax rates to \$1.17 and requiring a “tax ratification election” for rates above \$1.04. TEX. TAX CODE § 26.08(a), (n); *see also* Ex.6396:5.

The Legislature *partially* replaced the local property tax funds that were lost as a result of this tax compression with state revenue from several sources, including a restructured business margins tax and increased cigarette and tobacco taxes. Ex.5592:8; Ex.5657:194;. But from the outset, the new taxes were not projected to fully replace the lost property tax revenues—something the Legislature recognized. Ex.6395:1; Ex.6520:323-26; RR31:89-90. This difference between the amount raised by the previous tax structure and that raised by the new one is referred to as the “structural deficit.” RR31:90-92. The LBB projected revenue losses to school districts of at least \$5.85 billion annually. Ex.6395. To make matters worse, the new state taxes actually *underperformed* projections, making the structural deficit more than \$3 billion larger than was initially estimated. Ex.5658:2; RR31:89-90.

When HB1 passed, legislators expressed their intent to ensure the structural deficit did not result in underfunding education. Ex.6520:323-26. For two biennia, the Legislature was able to meet funding requirements—by using a temporary, one-time budget surplus in 2007 and federal stimulus funds in 2009. Ex.5658:2; Ex.5592:8; Ex.6322:42; RR7:192-93; RR31:37-38. But in 2011, things changed. Facing a projected \$27 billion revenue shortfall for the 2012-13 biennium, Ex.5658:3, the Legislature cut \$5.3 billion in funding for public school districts. RR32:194; Ex.5658:221, 224; RR6:203-04; Ex.6349:38; Ex.6322:47.

2. The formulas do not account for the cost of providing all students a meaningful opportunity to achieve a general diffusion of knowledge.

When the Legislature compressed tax rates, it distributed the state money that was used to replace the local property taxes through the same basic two-tiered formula system established by SB7 in 1993. When setting the basic allotment of Tier I, the guaranteed yields of Tier II, and the equalized wealth levels, legislators made no attempt to determine whether those amounts “represent[] the cost per student of a regular education program that meets all mandates of law and regulation,” as state law requires. TEX. EDUC. CODE § 42.007(c)(1). Nor did they examine the special weights and allotments—intended to adjust for the cost variations among school districts and cover the costs of programs for economically disadvantaged and ELL students—to see if they were structured, operated, and funded to ensure that *all* districts could provide *all* students with a meaningful opportunity to achieve a general diffusion of knowledge. *Id.* § 42.007(c)(2)-(7).

a. The 2006 system distributes revenue via decades-old formulas.

As with the past several school finance plans, the current system imposes taxation at a minimum rate to receive the full basic allotment for each student in Average Daily Attendance (“ADA”). For sixteen years, the tax rate necessary to receive that allotment was a flat \$0.86. Ex.6549:4. After tax compression, the Legislature raised the rate to \$1—the compressed tax rate for districts that had

previously been taxing at \$1.50.⁸ Ex.6593:11; RR32:159-60; TEX. EDUC. CODE §§ 42.101, 42.252. The Texas Education Code sets the basic allotment at \$4,765 per student, but allows the Legislature to increase that amount for the biennium through the appropriations act. TEX. EDUC. CODE § 42.101. The 2013 appropriations act set the basic allotment at \$5,040 for the 2014-15 school year. Ex.6593:22R.

The basic allotment is then adjusted to reflect: (1) variations across districts in the costs of educating students through the Cost of Education Index “CEI”—a formula based on a district’s characteristics in the *1989-90* school year; and (2) diseconomies of scale based on size or a sparse population through the “small,” “sparsity,” and “mid-sized,” adjustments—formulas last updated in *1984* (small and sparsity) and *1995* (mid-sized). See TEX. EDUC. CODE §§ 42.102-.105; Ex.6593:22R, 24-26, 29-31; Ex.1328:14, 16.

Districts also receive special program allotments (in the form of “weights” multiplied by the number of students who qualify) for students on free-and-reduced lunch (to be spent on programs for at-risk students), and for special education, career and technology, bilingual/ESL, and gifted and talented programs. TEX. EDUC. CODE §§ 42.151-.154, 42.156-.158; Ex.6593:37-52R; FOF41. Although the 2006 Legislature added a \$275 allotment for each high school student, thirty-one years

⁸ Districts with compressed tax rates below \$1.00 receive a proportionally smaller basic allotment. RR56:122-23; Ex.6593:22R.

have elapsed since the Legislature last revised the formulas for most of the special allotments (including the weights for low-income and ELL students). Ex.1328:14-17; *see also* TEX. EDUC. CODE § 42.160; Ex.6593:57-58; FOF41. Districts also receive a transportation allotment that was last adjusted in 1984. TEX. EDUC. CODE § 42.155; Ex.6593:59-62; Ex.1328:16; FOF41.

The basic allotments and the adjustments and special allotments together comprise Tier I.⁹ A district that cannot raise the amount of its Tier I entitlement at the compressed rate receives state aid to make up the difference. *See* TEX. EDUC. CODE § 42.101; Ex.6593:72. If a district raises more than its Tier I entitlement, the State recaptures that additional amount. TEX. EDUC. CODE § 41.002(a)(1); Ex.6593:95R; Ex.1188:8. Tier I was supposed to cover the cost of a general diffusion of knowledge, as then Commissioner of Education Robert Scott acknowledged. Ex.5630:339-41, 343-45.

Beyond Tier I, districts were to have seventeen cents of discretionary taxing ability—up to the new tax rate cap of \$1.17—for “enrichment” purposes. *See* Ex.6521; Ex.6593:11; *see also* TEX. EDUC. CODE § 42.301 (“The purpose of the

⁹ To ensure that no district received *less* revenue as a result of the 2006 formula changes, the Legislature created a “hold harmless” system known as “Target Revenue.” *See* FOF50. A district’s target revenue is based on the amount of state and local revenue per weighted student a district received in 2005-06 or would have received in 2006-07 if the formulas had not been revised. *Id.*; Ex.1328:17-18; Ex.6593:104-18. In 2014-15, 272 districts still received additional revenue above the amount guaranteed by the current formulas through this system. Ex.6593:1532.

guaranteed yield [program] is to provide each school district with the opportunity to provide the basic program *and to supplement that program at a level of its own choice.*”) (emphasis added). Tier II funding is distributed based on a student count that has been “weighted” to theoretically reflect cost differences among districts—using the severely outdated district cost adjustments and student weights described above.¹⁰ For the first six cents above a district’s compressed rate (from \$1.01 to \$1.06 for districts who were taxing at \$1.50 at the time of *WOC II*), the State guarantees a district will receive the same amount of revenue per WADA per penny of tax effort that Austin ISD receives (\$61.86 for the 2014-15 school year). TEX. EDUC. CODE § 42.302(a-1)(1); Ex.6593:77R. Any additional revenue that property-wealthy districts raise above that rate is not subject to recapture. TEX. EDUC. CODE § 41.002(a)(2); Ex.6593:95R; Ex.1188:8. Because of their higher yield, these six cents of tax effort are known as “golden pennies.” RR32:160. Any tax rate above the golden pennies carries a significantly lower yield—just \$31.95 per penny for all districts. Ex.6593:82, 95R. The State recaptures any revenue above this amount. Ex.6593:95R. Because of their low yield, these cents of tax effort are referred to as “copper pennies.” *See, e.g.*, RR32:79.

¹⁰ This weighted student count is known as Weighted Average Daily Attendance or “WADA.”

While the Legislature intended that Tier I cover the cost of a general diffusion of knowledge and Tier II be reserved for “meaningful discretion,” it did not base the 2006 formulas, nor any adjustments that it has since made to these formulas, on an analysis of the costs of achieving that end. RR10:152-54, 197-99.

b. In 2011, the Legislature left schools without enough revenue to achieve a general diffusion of knowledge.

In 2011, when faced with a projected revenue deficit, the Legislature cut \$5.3 billion from schools, rather than fulfill its promise that the structural deficit would not lead to the underfunding of schools. Ex.5658:3; RR32:194; Ex.6520:24-25.

The first \$4 billion was cut from the formula structure, by applying percentage reductions to both the formulas and target revenue. Ex.6593:35R, 114R, 147-151. In 2011-12, districts received 92.39% of the regular program allotment in Tier I. Ex.5658:224. Because this number is used in the calculation of the special allotments, it impacts the weighted student calculation for Tier II. See FOF Ex.6322:48. In 2012-13, districts received 98% of the regular program allotment in Tier I.¹¹ Ex.5658:224.

In addition, the Legislature cut \$1.3 billion from funding for special programs, many of which helped low-income and at-risk students. Ex.5658:224. For example, the Legislature cut—by 85%—funding for the Student Success Initiative (“SSI), a

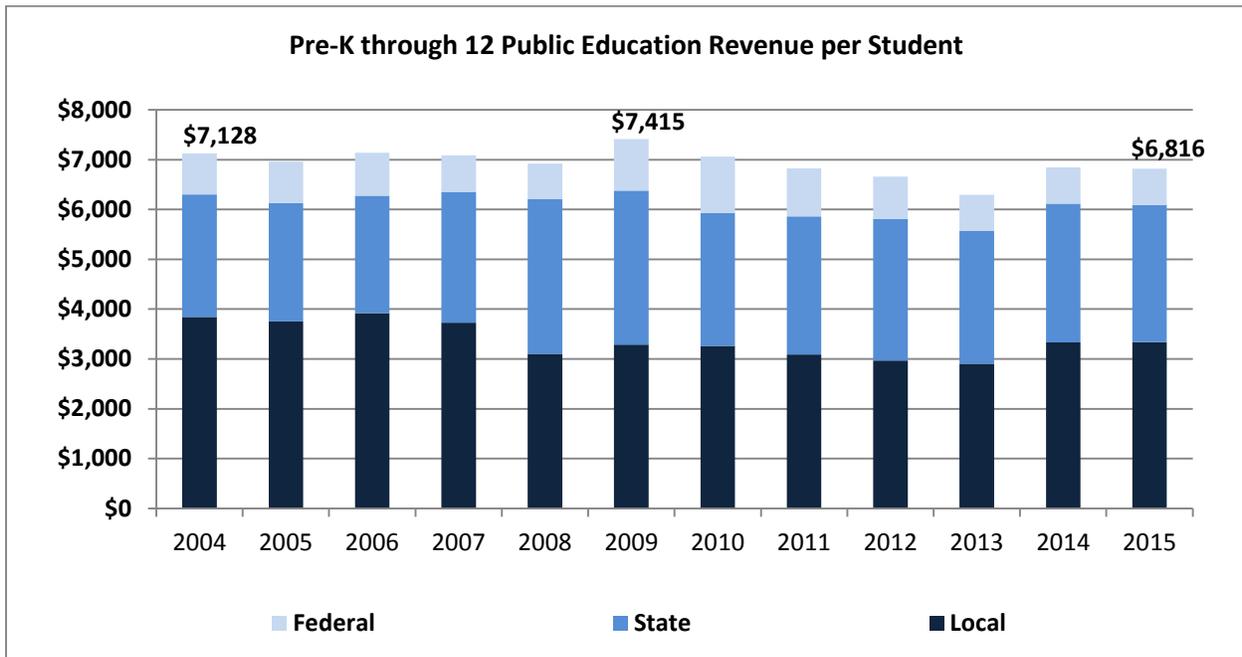
¹¹ However, the Legislature reduced guaranteed revenue to 92.35% of the calculated target for districts that still received funding based on their target revenue. Ex.5658:224.

grant program supporting students at risk of failing state assessments required for promotion or graduation. Ex.6322:49; Ex.10748:5; Ex.5658:225-26. It eliminated funding for Extended School Year programs, which give at-risk students additional instructional time. Ex.10748:3; RR31:171-72. The Legislature did away with \$201 million in full-day pre-K service grants for low-income students and cut by 60% funding for the Early Childhood School Readiness Program. Ex.6322:49; Ex.10748:4; Ex.5658:226-27. It struck all funding for the Texas Reading, Math, and Science Initiative, which paid for diagnostic tools and research-based training programs and materials designed to improve students' academic performance. *See* Ex.6501; Ex.10748:4.

The cuts forced school districts to eliminate teaching positions at the same time that their student populations were expanding. 44,454 *more* students were enrolled in public school districts statewide in 2011-12 than in 2010-11, yet total employment *declined* by more 26,000, increasing staffing ratios for teachers and support staff alike. Ex.6322:49; RR6:208; Ex.6349:45. As a result, TEA approved a record 8,600 waivers of the State's 22:1 class-size requirement for kindergarten through grade four. Ex.5630:391-92. Many school districts were also forced to eliminate their full-day pre-K programs, even though these programs demonstrably close the performance gap for low-income and ELL students. RR11:141-43; Ex.1074:2-3; Ex.5630:30-34, 42-44.

c. The Legislature’s partial “restoration” of the cuts in 2013 did not cure the constitutional defects.

In 2013, the Legislature convened with an \$8.8 billion surplus, and an almost \$12 billion balance in the State’s Rainy-Day Fund. RR14:121. Yet the Legislature only partially restored the 2011 formula funding cuts, reinstating just \$3.4 of the \$4 billion cut. RR54:88; Ex.6618:4. When adjusted for inflation, total per student revenues for public education in 2015—combining state, local, and federal dollars for operations and facilities—remained \$599 *less* than it was after tax compression was completed in 2009 and \$312 *less* than it was in 2004, at the time of *WOC II*, as seen in the chart below. Ex.6618:7. During this same time, the State significantly increased the standards students must meet to graduate. This dichotomy, fewer funds chasing higher standards, is described more fully in Section II.B, *infra*.



The Legislature did not comply with Education Code section 42.007¹² or otherwise make any attempt to determine the costs of meeting its own rising academic standards before deciding to cut funding. RR58:25-26, 54; RR56:170-72. It did not analyze, update, or modify outdated, and underfunded, formulas meant to adjust for cost variations between districts that were supposed to ensure that school funding is equitable and effective across districts and for economically disadvantaged and ELL students. *See* TEX. EDUC. CODE § 42.007(c)(2)-(3); Ex.6349:48-51. All agree that these students require substantially more resources to educate. RR29:105-07; RR26:67; RR56:124-27, 132, 148-49; RR63:19-20; RR16:34-35; Ex.3188:28-29; RR6:219-26; *see also* State Brief at 57 (“The rapidly growing low-income and ELL student populations are more difficult and expensive to educate.”).

Furthermore, the 2013 Legislature did not include any meaningful restoration of grant funding for at-risk students. Funding for the SSI was still \$200 million less than before the cuts—an 81% decrease. RR63:111; Ex.20216-A. The Legislature

¹² Section 42.007, entitled “Equalized Funding Elements,” requires the LBB to adopt rules “for the calculation for each year of a biennium of the qualified funding elements”—which include both the basic allotment and the adjustments for district and student characteristics—“necessary to achieve the state policy under Section 42.001.” TEX. EDUC. CODE § 42.007. The referenced policy is “that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student’s educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.” *Id.* § 42.001.

did not restore funding for early childhood and pre-K programs or the Texas Reading, Math and Science Initiative, among other programs. RR63:108-11; Ex.20216-A.

B. Since *WOC II*, the Legislature has steadily increased standards without regard to the cost of giving all students a meaningful opportunity to meet those standards.

In the years since *WOC II*, the Texas Legislature has steadily increased academic standards for school districts and students. Over the same time, the Texas student population has grown poorer, more diverse, and more expensive to educate. The State has made no attempt to determine the costs of providing all students with a meaningful opportunity to meet the rising standards.

1. The Legislature has mandated college and career readiness as the standard by which schools *and* students will be judged.

In 1995, the Legislature established as public policy that Texas schools must prepare all students for college or a career:

It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require *all* students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. *The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.*

TEX. EDUC. CODE § 28.001 (emphasis added). College readiness is “the level of preparation a student must attain in English language arts and mathematics courses

to enroll and succeed, *without remediation*, in an entry-level” college course. *Id.* § 39.024(a) (emphasis added).

In the years since *WOC II*, the Legislature and TEA have taken concrete steps to make college and career readiness more than just a goal—those standards have been incorporated into the curriculum, the state assessment system, and graduation requirements. In short, college and career readiness has become the operational standard that Texas public schools *and* students must meet. *See* RR28:167-68, 177; RR5:125; Ex.4273:28-29; RR63:138-40. They comprise the legislatively defined standard of a general diffusion of knowledge.

a. The Legislature has centered the state curriculum and graduation requirements around college- and career-readiness standards.

In 2006, the Legislature required the Education and Higher Education Commissioners to work together to establish college-readiness standards and recommend ways of aligning the curriculum with those standards. TEX. EDUC. CODE § 28.008; Ex.6393; RR28:120-21, 176-77; RR5:125-26. In 2008, the commissioners approved the college- and career-readiness standards. Ex.742:iii. The SBOE then incorporated these standards into the state curriculum, known as the TEKS, and “vertically aligned” the curriculum so that the TEKS for every grade—from kindergarten through high school—is designed to prepare students to meet them. *See* RR28:120-22; Ex.10336:I-47 and App.B.

The Legislature also increased high school graduation requirements. Before *WOC II*, it had made the Recommended Program the default graduation plan for Texas High School Students. RR28:128-29. The Recommended Program requires twenty-six total credits, including four courses in mathematics, science, social studies, and language arts, as well as two years of the same foreign language. RR6:151; Ex.6618:21; Ex.6349:5. In 2009, the Legislature discouraged students from moving down to the Minimum Plan, which imposes far less stringent requirements. Students cannot make that downward adjustment unless they are sixteen, have completed two credits in each of the four core subject areas, or have not been promoted to the tenth grade. RR28:131. Additionally, students must present signatures from a parent/guardian, the student, *and* a counselor or administrator. *See id.*; Ex.6375:28-29; Ex.6322:18. The Recommended and Minimum plans are still in place for students in the classes of 2016 and 2017. RR63:123-24.

In 2013, the Legislature updated graduation requirements to “maintain rigor while providing students flexibility to pursue college or career interests.” Ex.6532:9. Entering high school freshman (beginning with the class of 2018) are required to select a graduation plan that leads to an “endorsement” in: (1) science, technology, engineering and math (“STEM”); (2) multidisciplinary studies; (3) public service; (4) business and industry; or (5) arts and humanities. TEX. EDUC. CODE

§§ 28.025(b), (c-1). As with the Recommended Program, the endorsement plans require twenty-six credits, *see* Ex.6618:21, and there are barriers to moving down to the lower level graduation plan (now the “Foundation Plan”): the student must (1) be a junior or a senior; (2) obtain written parental permission; and (3) have been advised by the school counselor of the “specific benefits of graduating from high school with one or more endorsements.” TEX. EDUC. CODE § 28.025(b). Furthermore, to be eligible for automatic admission under the Top 10% rule,¹³ the student must complete the Distinguished Achievement Program, which requires additional coursework and endorsements. TEX. EDUC. CODE § 51.803; Ex.6618:21; RR54:126; RR63:141.

The TEA Commissioner for Standards and Programs confirmed that these changes did not alter the definition of college readiness, eliminate the expectation that students would graduate college or career ready, or otherwise lower expectations of Texas public school students. Ex.4273:28-34, 52-54; RR63:138-40; *see also* RR54:125-27.

¹³ Under the Top 10% Rule, students graduating in the top 10% of their high school class and meeting certain other criteria are guaranteed admission to the Texas public university of their choice. TEX. EDUC. CODE § 51.803.

b. To measure whether students are meeting college- and career-readiness standards, the State implemented a more challenging assessment regime.

The Legislature also required TEA to incorporate the college- and career-readiness standards into the State’s assessment and accountability system. RR27:33-34, 36-37; *see also* Ex.6388Ex.6375. It did so via a new standardized testing system known as STAAR.¹⁴ STAAR currently includes tests in grades three through eight, as well as five required high school “end-of-course” (“EOC”) exams—in Algebra 1, English Language Arts I and II, Biology, and United States History. *See* TEX. EDUC. CODE § 39.023(a), (c).

To establish the college-ready standard, TEA and its testing contractor compared performance on the original STAAR EOC exit-level math and English exams to performance on other state and national exams associated with college readiness. RR27:44-45; *see also* Ex.6375:50-51. The State used these studies to set two standards: Level II, which is associated with a 60% probability of achieving a “C” or better in college courses in the same subject area, and Level III, which is associated with a 75% probability. RR27:96-99, 110-12. TEA then vertically aligned the scores on these exams to those for lower level courses and grades.

¹⁴ STAAR exams are significantly more challenging than the state’s prior testing regime, the TAKS. RR28:21-22; RR27:35-36; Ex.5624:36-37, 70, 106, 111, 114, 198-99, 248-49; Ex.5620:101-05, 124-25; Ex.5621:32-34, 62; Ex.5630:20, 39; *see also* Ex.10937 (showing results of studies empirically linking TAKS standards to STAAR exams).

RR27:33-34; RR5:124-26. Ultimately, however, the State chose the lower Level II standard as the college-ready standard. RR27:97-98.

Level II will be “phased in” as the passing standard, with lower scores counting as passing in the initial years. Originally, the Level II standard was to be phased in over four years in three steps. Ex.5796:10-12; Ex.20321; 37 Tex. Reg. 4302 (2012), *adopted* 37 Tex. Reg. 6306 (2012) (former 19 Tex. Admin. Code § 101.3041) (TEA). However, faced with unexpectedly low, stagnant scores (*see* Fact Section II.C.1.b, *infra*), TEA has twice extended the schedule, which currently includes four steps over eleven school years. *See* 39 Tex. Reg. 9775 (2014), *adopted* 40 Tex. Reg. 1081 (2015) (codified as amendment to 19 Tex. Admin. Code § 101.3041) (TEA); *see also* 39 Tex. Reg. 2403 (2014), *adopted* 39 Tex. Reg. 4766 (previous amendment to 19 Tex. Admin. Code § 101.3041) (TEA). In comparison, the TAKS passing standard increased each year and reached the recommended passing standard in just three years. Ex.6350.

2. At the same time, district costs are rising due to a student population that is growing poorer, more diverse, and more expensive to educate.

Texas grew by almost 21%, or 4.3 million people, from 2000 to 2010. RR3:12-14; Ex.3228:4-6. During the same time, median household income declined, and the percentage of the population living in poverty grew among all three major ethnic subgroups: non-Hispanic Whites, Hispanics, and non-Hispanic Blacks.

Ex.3228:34. This trend is most pronounced among Hispanics, the fastest growing segment. The Hispanic population grew by 42% between 2000 and 2010, and the number living in poverty grew by roughly 900,000. *Id.* at 14, 34; RR3:17-19.

The number of economically disadvantaged public school students has grown by more than 773,000 students since *WOC II*. Ex.4258:13; Ex.11123:10. More than 60% of Texas public school students were economically disadvantaged in 2012-13, compared to 52.7% in 2003-04. Ex.4258:13; Ex.11123:10. The vast majority of this growth was in the Hispanic student population, which increased by 703,416 during this same time period and made up 51.3% of students in 2012-13. Ex.4258:13; Ex.11123:8. As with the larger population, the school-age Hispanic population has the highest percentage of low-income students.¹⁵ Ex.11123:11-12.

These population trends have increased enrollment in expensive educational programs. In 2012-13, there were 863,974 English Language Learners,¹⁶ up from 660,707 in 2003-04. Ex.4258:13; Ex.11213: 24; *see also* RR3:88-90; Ex.3228:78-79, 90-92. Texas has the second-largest ELL student population in the nation. Ex.1104:3. In addition, the number of students enrolled in career and technology

¹⁵ The Texas Education Agency's website provides similar figures updated through the 2013-14 school year: http://tea.texas.gov/acctres/enroll_index.html (last visited Jun. 28, 2015).

¹⁶ An ELL student is "a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary class work in English." TEX. EDUC. CODE § 29.052.

education courses more than doubled during the same time period. Ex.4258:17; Ex.11213:24.

These trends will continue. Total public school enrollment is projected to grow from 4.8 million in 2010 to nearly 9.3 million in 2050. RR3:72; Ex.3228:72. The numbers of economically disadvantaged, ELL, and other special-needs students will rise much faster than overall student enrollment growth—nearly doubling in this same period. RR3:75-76, 88-89; Ex.3228:78-79, 90-92. Spending on bilingual/ESL programs is projected to increase by \$3.3 billion, spending on career and technology programs by \$2.2 billion, and spending on special education by \$10.1 billion in today's dollars. *See* Ex.3228:92.

3. The State has not determined how much it costs districts to give *all* students a meaningful opportunity to meet the rising standards.

While thought, research, and study has gone into the State's updates of the curriculum, graduation requirements, and standardized testing programs to align them with the college- and career-readiness standards, the State has refused to examine how to operate or fund schools so that today's students can actually achieve the goals the Legislature has established.

- a. **Despite a statutory mandate, the State has failed to calculate the cost of meeting the State’s requirements and goals.**

The LBB *must* adopt rules to calculate the funding amount per student—including “adjustments designed to reflect the variation in known resource costs and costs of education beyond the control of school districts” and “appropriate program cost differentials” for at-risk, bilingual/ESL, special education, career and technology, and other special-needs student populations—necessary to achieve a “thorough and efficient education system” that provides each student with “access to programs and services that are appropriate to the student’s educational needs.” TEX. EDUC. CODE §§ 42.007, 42.001. The statute *requires* the LBB to calculate those amounts each biennium and to report them to the Education Commissioner and the Legislature. *Id.* § 42.007(a), (b). This mandate is *the way* the Legislature can evaluate, objectively, whether the State is meeting its constitutional duty to structure, operate, and fund a public school system that spreads knowledge diffusely. However, *at no point since WOC II has the LBB completed the statutorily required biennial studies.*¹⁷ See RR10:152-55; Ex.6621:4.

¹⁷ In 2009, LBB staff attempted to determine what updates needed to be made to the formulas to keep the system’s equity gaps in line with those that existed at the time of *WOC II*, but did not complete the comprehensive study required by the statute nor did the staff or LBB Board make any recommendations regarding the cost of achieving a general diffusion of knowledge. Ex.1328:11-12; RR10:154-55.

b. The Texas Education Agency has made no attempt to determine the costs to school districts of educating students to the rising standards.

TEA has not studied the cost of an adequate education nor has it otherwise determined the costs of meeting the new standards it helped develop. *See* RR56:170-72; RR17:37; RR32:75-76, 132-33, 196, 202-05; RR33:26-27, 138-41; RR63:104-06, 119-20, 136; Ex.6621:4; RR27:134-35, 147-48; RR28:172-74, 185-86; RR31:168-69, 174-75; RR34:85, 190-91; RR62:105-06; Ex.4273:40-41, 43-44, 53-54, 60, 73, 85-87, 102. TEA's CFO testified that the State *does not* attempt to factor increased costs to *districts* into TEA's biennial appropriations request for the Foundation School Program, although it *does* consider the cost to *TEA* of administering the laws and incorporates those estimates into its request. RR31:168-69. She further testified that none of the Legislature's appropriations for the 2014-15 biennium were based on an analysis of school district needs. RR63:104-06. Furthermore, while the fiscal notes attached to legislative bills contain detailed analysis of the costs to TEA of administering the bills, the analysis and estimate of costs to local school districts of such bills remain ambiguous and superficial. *See, e.g.* Ex.6377 (fiscal Note for HB3 in 2009) (noting local implementation costs would "vary"); Ex.6533 (fiscal note for HB5 in 2013) ("A school district might experience savings from the reduced number of end-of-course assessments, although a district

might incur some additional costs related to implementing the provisions of the bill.”).

c. In 2011, the Legislature broke the historical linkage between increased standards and increased funding.

For approximately thirty years, when the Legislature mandated major academic and operational reforms, it also supplied new revenues in recognition of the costs to districts of implementing those reforms. Ex.6322:37-43, Figure 43. For example, in 1984, the year before the Legislature first required passage of a standardized test to graduate, it increased equalization aid. RR6:187-88; Ex.6349:33; Ex.6322:37. Similarly, when it created the state accountability ratings system based on TAAS scores, it provided substantial new money. RR6:188; Ex.6349:34; Ex.6322:38. In 1999, when TAAS passage became required for promotion in certain grades, the Legislature increased formula funding *and* created the SSI grant program for students at risk of not being promoted as a result of this new requirement. Ex.6349:36; Ex.6322:39; RR6:189-90. In 2006, two years after the TAKS replaced the TAAS test (and after *WOC II*), the Legislature added revenues to the system once again. Ex.6349:37; Ex.6322:40-41; RR6:190-91.

This trend of linking increased standards with more funding was broken in 2011, when the Legislature dramatically cut both formula funding and interventional grant funding at the same time the STAAR went into effect—without any analysis of costs of the increased standards. RR6:191-93; Ex.6349:38-44; Ex.6322:43.

While the 2013 Legislature partially reinstated the formula funding cuts, it did not make *any* meaningful restoration of grant funding (even SSI funding for tutoring students who had failed state exams), nor did it evaluate the cost to districts of the increased remediation expenses due to the high STAAR failure rates or of implementing HB5’s “endorsement” system. RR62:105-06; RR63: 119-20, 136; Ex.4273:40-41, 43-44, 53-54, 60, 73, 85-87, 102. This failure to consider whether districts have enough revenue to meet the State’s rising standards is the opposite of “structur[ing], operat[ing], and fund[ing]” the public school system “so that it can accomplish its purpose for all Texas children.”¹⁸ *WOC II*, 176 S.W.3d at 753.

¹⁸ In *WOC II*, the Court warned of an impending constitutional violation “absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education.” 176 S.W.3d at 790. The State and the Intervenor both take the position that, because the Legislature hasn’t implemented improved efficiencies or better methods of education, the ISD Plaintiffs cannot prove that more funding is needed. State Brief at 95-102; Intervenor’s Brief at 42-43. This position ignores the trial court’s findings, which found no evidence that (a) district spending is “inefficient,” *see* FOF655-FOF679, or (b) that the “efficiencies” identified by the State and the Intervenor actually save money or improve performance, *see* FOF1466-FOF1489, but (c) did find that there is substantial evidence that money spent well improves performance. *See* FOF641-FOF654. It also misunderstands that the Constitution makes it the *Legislature’s* duty to suitably provide for a system that achieves a general diffusion of knowledge. *See WOC I*, 107 S.W.3d at 581, 584. To paraphrase the *WOC II* court, the State cannot refuse to improve efficiencies or provide for better methods of education, continue to increase academic standards in an environment of increasing costs, and then argue that “adequacy of funding is not the issue.” State’s Brief at 95; *cf. WOC II*, 176 S.W.3d at 796-97.

C. The combination of rising standards and flagging state support has resulted in a system that does not provide all students with a meaningful opportunity to achieve a general diffusion of knowledge.

1. Student performance is not improving.

a. Performance on TAKS and NAEP exams flattened.

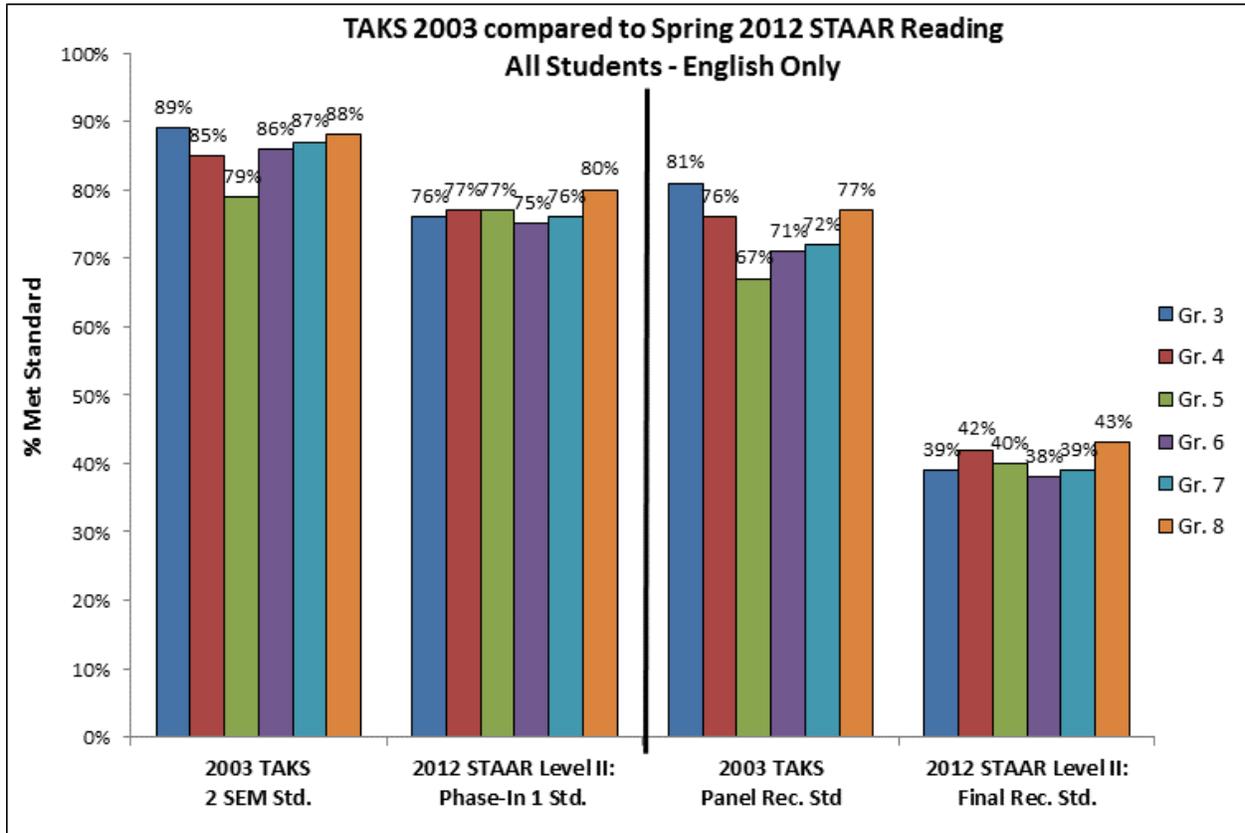
In 2004, the evidence before this Court showed higher passing rates with each administration of the TAKS exam and increasing scores on NAEP¹⁹ exams. *WOC II*, 176 S.W.3d 789-90. In the first five years of the TAKS exam, passing rates increased by twenty-three percentage points. Ex.6322:21. The good times are gone. Passing rates on the last five years of the TAKS exam increased by just six percentage points. *Id.*; *see also* Argument Section VI.B.1 *infra*. NAEP exam scores from 2005 to 2013 show a similar trend. *See* Argument Section VI.B.1 *infra*. Importantly, given Texas' demographic trends, the performance gaps between economically disadvantaged students and Hispanic students compared to White students *widened* from 2005 to 2013. *Compare* Ex.11488:9, 11, *with id.* at 10 (mathematics); *compare id.* at 19, 21, *with id.* at 20 (reading).

b. STAAR passing rates are lower than TAKS rates and are not improving.

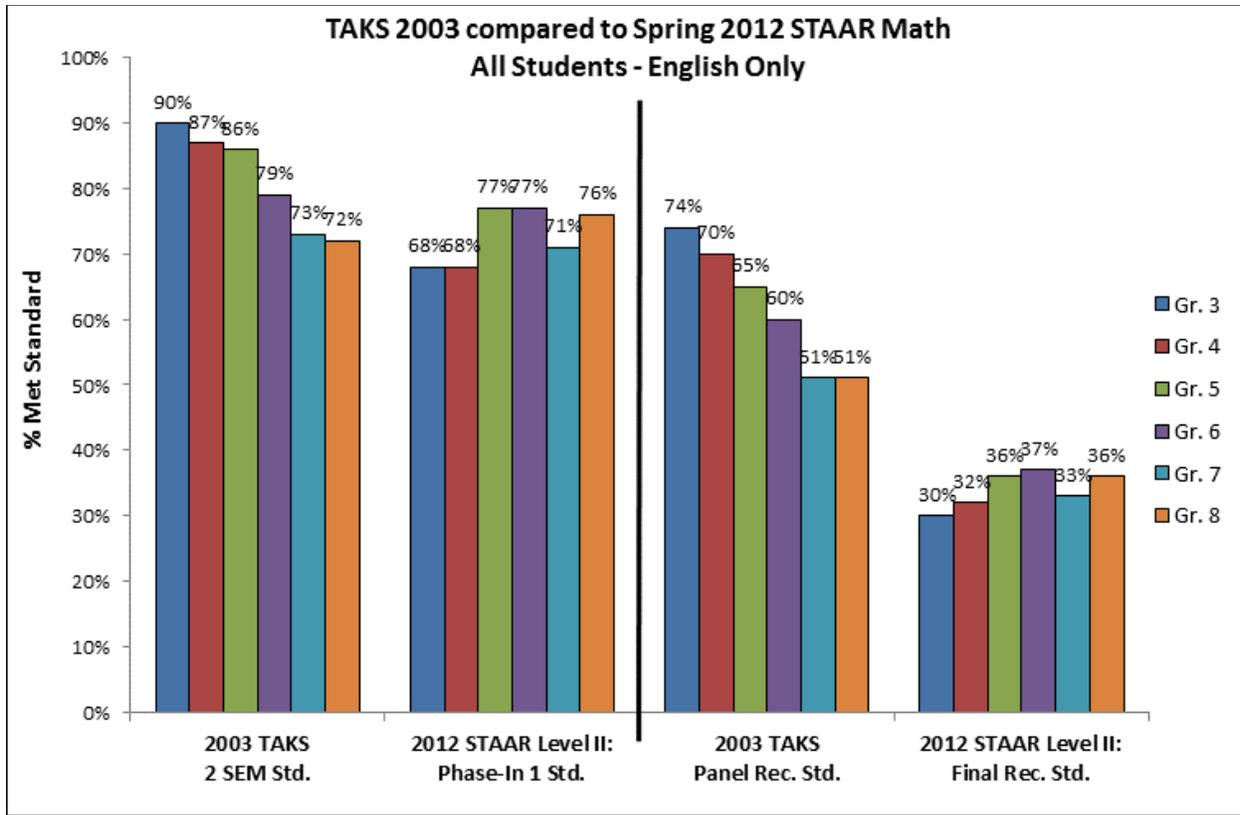
Passing rates on the STAAR 3-8 exams at the phase-in level were lower than the corresponding rates for the first year of the TAKS exams in every grade for

¹⁹ National Assessment of Educational Progress.

Reading and in all but one grade for Math. Ex.6515. The percentage of students meeting the final standard was approximately *half* the percentage that met the final standard in the first year of TAKS:



Ex.6515:1.



Ex.6515:2.

The Class of 2015 was the first class of students to take EOC exams during their freshman year. More than half—53%—failed at least one of these exams at the Level II Phase-In standard. Ex.6322:26. In comparison, in 2004, the first year that the TAKS test was required for graduation,²⁰ just 28% of all students failed to pass all their exams. Ex.6514:13. More than two-thirds of economically disadvantaged ninth-graders—67%—failed at least one exam in 2012, compared to 42% on the TAKS in 2004. *Compare Ex.6322:29 with Ex.6514:13.* 81% of all

²⁰ See Ex.6350 (showing that TAAS was required for graduation in 2003).

ninth-graders failed to reach the Final Level II (college-ready) standard on at least one exam, and 91% of economically disadvantaged students fell short. FOF130; Ex.6322: 29.

More disturbingly, performance did not improve appreciably for the second class of students taking the exams. Performance was stagnant across grades, subjects, and socio-economic status:

STAAR Tests – Combined English and Spanish	% Passing at Level II Phase-In 1 Standard		
	Spring 2012	Spring 2013	Change
First Administration Only—Spring 2012 and Spring 2013			
Grades 3 – 8 Reading Econ. Disadvantaged*	67%	66%	-1
Grades 3 – 8 Reading Non- Econ. Disadvantaged*	88%	88%	0
Grades 3 – 8 Mathematics Econ. Disadvantaged*	63%	62%	-1
Grades 3 – 8 Mathematics Non- Econ. Disadvantaged*	83%	83%	0
Grades 4 and 7 Writing Econ. Disadvantaged*	63%	61%	-2
Grades 4 and 7 Writing Non- Econ. Disadvantaged*	84%	83%	-1
Grades 5 and 8 Science Econ. Disadvantaged*	62%	65%	+3
Grades 5 and 8 Science Non- Econ. Disadvantaged*	85%	86%	+1
Grade 8 Social Studies Econ. Disadvantaged*	48%	52%	+4
Grade 8 Social Studies Non- Econ. Disadvantaged*	75%	78%	+3
<i>Algebra I Econ. Disadvantaged^</i>	72%	71%	-1
<i>Algebra I Non-Econ. Disadvantaged^</i>	85%	84%	-1
<i>English I Reading Econ. Disadvantaged^</i>	56%	59%	+3
<i>English I Reading Non-Econ. Disadvantaged^</i>	81%	83%	+2
<i>English I Writing Econ. Disadvantaged^</i>	41%	41%	0
<i>English I Writing Non-Econ. Disadvantaged^</i>	70%	70%	0
<i>Biology Econ. Disadvantaged^</i>	81%	83%	+2
<i>Biology Non-Econ. Disadvantaged^</i>	93%	94%	+1
<i>World Geography Econ. Disadvantaged^</i>	72%	72%	0
<i>World Geography Non-Econ. Disadvantaged^</i>	90%	90%	0

Ex.6618:26.

c. Even after multiple opportunities to retest, tens of thousands of students could not pass all the required STAAR EOC tests.

Students who fail an exam that is required for graduation or promotion to the next grade level are given multiple opportunities to “retest.” 19 Tex. Admin. Code § 101.2005(b). The State is correct that with each new opportunity to take the test the number of students passing the exam has increased. However, the results remain quite sobering.

The retest results from summer 2012 were abysmal, with the *passing* rate ranging from a low of 23% for English I Writing to a “high” of 48% for Biology—lower than the passing rate on TAKS retests and lower than TEA’s expectations. RR27:90-91; RR6:179-80; Ex.6324:1; Ex.6349:29. At the end of the first year of the STAAR exams, taking into consideration the initial administration and the first retest, just 53% of the class of 2015 had passed all tests taken, compared to a 75% passage rate at the end of the first year the exit-level TAKS exam was required for graduation. Ex.6324:1-2.

In December 2012, the passing rate ranged from 20% for World Geography to 37% for English I Writing. Ex.6519:2. After *three* administrations, 35% of the class of 2015 and 47% of the economically disadvantaged students in the class were off-track for graduation because of their inability to pass the exams. Ex.6519:1.

Faced with the possibility of this number increasing exponentially as these students were required to take sophomore-level exams in spring 2013 plus junior-level exams in spring 2014, the 2013 Legislature combined the English, Reading, and Writing exams into a comprehensive English Language Arts exam and changed the graduation requirements to include only EOC exams in English I, English II, Algebra I, Biology, and U.S. History. Ex.6532:7, 9-11; RR54:138-39; Ex.5796:24; Ex.6618:22; Ex.11482:2.

In response to the Legislature’s combination of the Reading and Writing EOC exams, TEA created a “transition rule” for those students who had already taken English I or II Reading and Writing as separate exams and failed one of the two; this rule allowed students who met a lower minimum score requirement on the test they failed and who achieved a certain cumulative score to be considered to have “passed” the combined exam and not be required to retest. Ex.5795:78-79; Ex.20313:3.

Yet even after application of the transition rule and three *more* opportunities to retest in 2013, TEA calculated that 75,322 students in the Class of 2015,²¹ or 24.4%, had still not passed all the required exams and remained off-track for graduation. Ex.5797:12; Ex.20312:4. The failure percentage was even higher for the economically disadvantaged students—34.4%. Ex.20312:6. The Class of 2016

²¹ These numbers do not account for tens of thousands of students who have disappeared from the “Class of 2015” since they began taking exams as freshman. This phenomenon is discussed in Argument Section VI.B.1 *infra*.

has not fared any better; after three administrations (through December 2013), 32.8% of students, and 44% of economically disadvantaged students, had not passed the required exams. Ex.5797:12; Ex.20312:7; Ex.20312:9.

The December 2013 results were the most recent available to the trial court. The Legislature, however, had the results of three more tests from 2014 (spring, summer, and winter) when it met in 2015. Noting that 28,177 seniors from the Class of 2015 were at risk of not graduating because they were unable to pass the required EOC exams (after *nine* administrations of most exams), legislators created an alternative path to graduation for those students who had failed just one or two exams. *See* House Research Org., Bill Analysis, Tex. S.B.149, 84th Leg., R.S. (2015) (“SB149 HRO Analysis”) at 5-6;²² Act of Apr. 30, 2015, 84th Leg., R.S., SB149, § 3 (to be codified at TEX. EDUC. CODE § 28.0258) (SB149).²³ The Legislature required school districts to establish graduation committees for each such student who had successfully completed the requisite coursework; the committee then must establish requirements the student must meet to graduate, such as a previously completed project or portfolio. SB149 at § 3. The House Research Organization acknowledged that legislators expected students to drop-out without

²² <http://www.hro.house.state.tx.us/pdf/ba84r/sb0149.pdf> (Apr. 21, 2015).

²³ <http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB00149F.pdf> (last visited Jun. 29, 2015).

this alternative path; yet they anticipated that only a fraction of eligible students would receive a diploma through these alternative means. *See* SB149 HRO Analysis at 6. While SB149 will allow these students to graduate, they will *not* be graduating college or career ready.

2. Texas faces a bleak economic future if it does not provide *all* students with a general diffusion of knowledge.

In light of Texas's changing demographics, it is more important than ever that Texas public schools prepare *all* students—including minority and low-income ones—for college or a career. Based on demographic trends, if existing gaps in educational attainment levels and household income remain in place between the non-Hispanic White population and the Black and Hispanic populations, Texas's population will have substantially lower incomes and a higher poverty rate in 2050 than in 2010. RR3:89-90; Ex.3228:93-94, 96. As a result, the State can expect reduced levels of consumer spending, reduced tax revenues, and higher enrollment in costly specialized educational programs. RR3:79-84; Ex.3228:81-82, 90-7.

Higher levels of education lead to higher incomes, which in turn leads to increased consumer spending and tax revenues and decreased spending on social services. RR3:85-87; Ex.3228:83-89; RR15:41-52; Ex.4040:2-5. If Texas were able to use improved educational outcomes for minorities to close the gap in income levels between Black and Hispanic households and non-Hispanic White households, total state income would increase by more than \$326 billion in 2050. RR3:79-80;

Ex.3228:80. This would lead to almost \$100 billion more in consumer spending and \$11.4 billion more in state (not including local) tax revenue. RR3:80-90; Ex.3228:81-82, 95-97. Even cutting the income gap in half would lead to substantial improvements—\$163.3 billion more in income, \$50 billion more in consumer spending, and \$5.7 billion more in state tax revenues. Ex.3228:95-97.

Summing up these projections, Dr. Steve Murdock, the State's former demographer and former director of the U.S. Census Bureau, testified:

This [minority] population is one that needs . . . education. And what I would argue is that their need is our need in the sense that how well they do in terms of education will become increasingly how well the state does; or to put it another way, ***how well minority populations do in Texas is how well Texas will do***. Our future, whether we look at Texas or whether we look broader at the United States as a whole, is increasingly tied to minority populations. And how well they do is how well Texas and in turn America will do.

RR3:93 (emphasis added).

SUMMARY OF THE ARGUMENT

I. Subject matter jurisdiction. This Court has subject matter jurisdiction. The constitution requires the Legislature to provide for a general diffusion of knowledge through an efficient system of schools, and, in an appropriate case, the courts must determine whether the Legislature has fulfilled its role. The State contends that the Court should reverse specific precedent on this very question and now declare the claims nonjusticiable. The reason, the State says, is simple: the Court cannot decide these issues without treading on legislative policymaking discretion. History tells us otherwise. In past challenges, the Court has determined *whether* the constitutional standards have been met—enjoining the unconstitutional system’s operation if they have not—and left it to the Legislature to determine *how* to fix the constitutional deficiencies. This appeal is no different. Compelling the Legislature to perform its constitutional function is an act of appropriate judicial engagement.

II. State property tax. Ten years ago, this Court held that the State’s control of local taxation for education amounted to an unconstitutional state property tax. In response, the Legislature enacted structural changes to local taxes. But, as the Court predicted, reforms have proved inadequate, because with them came new methods of State control. The Legislature requires voter pre-approval before a district can increase taxes beyond a certain amount, and it has prohibited the repeal of local option homestead exemptions.

Concurrently, the Legislature imposed stringent academic requirements. Meanwhile, the cost of educating Texas’s student population has increased dramatically, due in part to increasing numbers of English Language Learners and economically disadvantaged students. The Legislature did not assess the impact of these changes on the cost of achieving a general diffusion of knowledge or ensure that the new tax scheme would cover that cost. By restricting local taxes and implementing higher standards in an environment of increasing costs, the State controls local tax *rates*.

The State also controls local tax *revenue*. Despite rising property values statewide—and higher tax bills for Texans—the State has hoarded local tax revenue, allocating it to non-education matters. Even if districts taxed at the statutory cap, the vast majority of districts cannot raise the money necessary to provide a general diffusion of knowledge. Local ad valorem taxes have once again become a state property tax, violating article VIII, section 1-e of the Texas Constitution.

III. Suitability. The Constitution requires that the Legislature make “suitable provision” for schools’ support and maintenance. Suitability relates to “inputs” and requires that the system be structured, operated, and funded to accomplish its purpose for all Texas children.

The Legislature has defined the schools’ purpose as providing all students a meaningful opportunity to graduate college or career ready; to achieve that goal, the

Legislature imposes numerous obligations on school districts. The Legislature also requires the Legislative Budget Board to calculate biennially the funding necessary to provide students access to a constitutionally compliant education. As part of that calculation, the LBB must examine applicable formulas intended to compensate for particular district and student characteristics. But despite that statutory mandate—and despite enormous demographic change—the LBB has not engaged in that analysis for the last ten years. Instead, the Legislature distributes funding through antiquated methods—formulas that have not been updated for decades, if not generations. While this deprives all Texas children of the education the constitution guarantees, it disproportionately impacts economically disadvantaged and ELL students, who have underperformed State standards.

IV. Adequacy. The system is adequate only if districts are reasonably able to provide *all* students with access to a quality education that enables them to achieve their potential, fully participate in available opportunities, and pursue postsecondary education or employment. Adequacy focuses on “outputs”—the results of the educational process measured in student achievement. By all measures, the school finance system is not adequate.

In 2004, this Court warned that absent significant change, the system would continue to “drift toward constitutional inadequacy.” *WOC II*, 176 S.W.3d at 790. Because significant change has not materialized, constitutional inadequacy has.

Performance outcomes are not improving. Knowledge is not spread among all students but is instead concentrated among wealthier, native-English speakers. As this Court has recognized, “[t]he gaps between white students on the one hand and African-American and Hispanic students on the other are especially troublesome since the African-Americans and Hispanics are projected to be about two-thirds of Texas’ population in 2040.” *Id.* at 769. If Texas—and Texas children—are to reach their full potential, all students must be given a meaningful opportunity to achieve a general diffusion of knowledge.

V. Efficiency. An efficient school system produces the required result—a general diffusion of knowledge—with little waste. That means that districts must have substantially equal access to funding up to the level that achieves that legislatively defined result. Because the financing system depends so heavily on local property tax revenue—which varies widely between districts—the Legislature must “level up” revenue to ensure that all districts can raise the requisite amount at similar tax rates. But recent legislative changes have instead “leveled down” the system to *below* that requisite amount. Insufficient state funding, combined with the tax cap and other restrictions on districts’ ability to raise local revenue, means that the vast majority of districts cannot raise the revenue necessary to achieve a general diffusion of knowledge.

VI. Fees. The trial court correctly awarded the ISD Plaintiffs attorney’s fees. The Declaratory Judgment Act permits an award of “reasonable and necessary” fees that are “equitable and just.” The fees awarded satisfy those criteria. The ISD Plaintiffs prevailed, but even if they had not, the trial court correctly acknowledged the significance of their role in instituting this suit and its resulting contribution to the public debate on school finance law.

VII. Continuing jurisdiction. The trial court, like all Texas trial courts, retains the authority to enforce its judgment. The trial court’s statement that it retained jurisdiction to ensure compliance with that judgment suggests nothing more.

ARGUMENT & AUTHORITIES

I. The Court has jurisdiction over the ISD Plaintiffs' claims.

The State asks the Court to dismiss this case, for lack of jurisdiction, because any resolution from this Court would tread on legislative discretion. *See* State Brief at 49-61. But the Court has already crossed that Rubicon. The Court has repeatedly held that article VII, section 1 claims are not political questions. And contrary to the State's claim that judges are incapable of crafting a remedy that redresses the school districts' injury, the opposite is true: This Court has been the only government branch that has consistently and reliably fulfilled its constitutional role. When the system fails constitutional standards, the Court's rulings, combined with enjoining implementation of the unconstitutional plan, have spurred the Legislature to fulfill its role.

As an alternative ground for dismissal, the State argues that because the legislative landscape changed over the course of the trial, the ISD Plaintiffs' claims are not (and presumably, never can be) ripe for adjudication. This argument is akin to the first—that a court cannot remedy a constitutional infirmity if the matter is on the Legislature's agenda. Yet the Court has accepted jurisdiction under the same circumstances. *See Edgewood II*, 804 S.W.2d at 493. The Court's "prior opinions on these [jurisdictional] matters are clear enough and remain correct." *WOC II*, 176 S.W.3d at 772.

A. As this Court has previously held, article VII, section 1 does not present a nonjusticiable political question.

More than eighty years ago, this Court noted that “[t]he purpose of [article VII, section 1] as written was not only to recognize the inherent power in the Legislature to establish an educational system for the state, but also to make it the *mandatory duty* of that department to do so.” *Mumme v. Marrs*, 40 S.W.2d 31, 35 (Tex. 1931) (emphasis added). In *Edgewood I*, *WOC I*, and *WOC II*, the Court specifically examined whether the constitutional assignment of this duty to the Legislature meant that questions about fulfillment of that duty were nonjusticiable political questions. Each time, the Court rejected that argument, because the same constitutional provision that assigns the duty imposes minimum standards:

This is not an area in which the Constitution vests exclusive discretion in the legislature; rather the language of article VII, section 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools. This duty is not committed unconditionally to the legislature’s discretion, but instead is accompanied by standards. By express constitutional mandate, the legislature must make “suitable” provision for an “efficient” system for the “essential” purpose of a “general diffusion of knowledge.”

WOC II, 176 S.W.3d at 776 (quoting *Edgewood I*, 777 S.W.2d at 394); *see also WOC I*, 107 S.W.3d at 563-64, 584-85.²⁴

²⁴ The Court’s holdings are consistent with the majority of state courts that have decided this issue. *See* CCISD Appellees’ Brief at Note 15.

The last time the State questioned the courts' subject matter jurisdiction, this Court said that its "prior opinions on these matters are clear enough and remain correct." *WOC II*, 176 S.W.3d at 772. Yet, the State again raises the issue, relying once more on *Baker v. Carr*, 369 U.S. 186 (1962), which this Court has already examined, and essentially repeating the same arguments made in *WOC II*. 176 S.W.3d at 778. The State asserts that the constitutional standards are not "judicially discoverable and manageable." State Brief at 55-61. It also suggests that any attempt to discover and manage those standards will inevitably lead the Court "to make policy determinations of a kind clearly meant for non-judicial discretion."²⁵ *Id.* at 61.

The Court has defined and applied those standards in six prior school finance cases *without* treading on the Legislature's policymaking discretion. Indeed, the Court's holdings have driven the Legislature to perform its policymaking function. The Court should once again reject the State's jurisdictional claims.

1. The school finance system can be evaluated according to the constitutional standards without delving into policymaking.

In *WOC II*, the Court noted that "[l]itigation over the adequacy of public education may well invite judicial policy-making, but the invitation need not be

²⁵ Notably, the State does not challenge the Court's ability to manage article VIII, section 1-e claims, even though the test for determining whether the State has implemented a state property tax is interrelated with the article VII, section 1 standards. *See* CCISD Appellees' Brief at Argument Section I.A.4.

accepted.” 176 S.W.3d at 779. This Court has always refused that invitation, scrupulously observing the line between its duty to determine *whether* the standards have been met and the Legislature’s duty to determine *how* to meet those standards.²⁶

Both the constitution’s text and the Court’s precedent clearly delineate the standards for determining whether the Legislature has met its obligation:

First, the education provided must be adequate; that is, the public school system must accomplish that “general diffusion of knowledge . . . essential to the preservation of the liberties and rights of the people”. Second, the means adopted must be “suitable”. Third, the system itself must be “efficient”.

WOC I, 107 S.W.3d at 563. Recognizing the Legislature’s authority to determine *how* those standards are met, the Court has acknowledged that “[t]he Legislature is entitled to determine what public education is necessary for the constitutionally

²⁶ *WOC II*, 176 S.W.3d at 785 (“In assessing challenges to the public education system under article VII, section 1, courts must not on the one hand substitute their policy choices for the Legislature’s, however undesirable the latter may appear, but must on the other hand examine the Legislature’s choices carefully to determine whether those choices meet the requirements of the Constitution.”); *WOC I*, 107 S.W.3d at 563-64 (“The final authority to determine adherence to the Constitution resides with the Judiciary. Thus, the Legislature has the sole right to decide *how* to meet the standards set by the people in article VII, section 1, and the Judiciary has the final authority to determine *whether* they have been met.” (emphasis in original)); *Edgewood IV*, 917 S.W.2d at 726 (“This Court’s role under our Constitution’s separation of powers provision should be one of restraint. We do not dictate to the Legislature how to discharge its duty.”); *Edgewood III*, 826 S.W.2d at 523 (“Our role is only to determine whether the Legislature has complied with the Constitution. We have not, and we do not now, suggest that one way of school funding is better than another, or that any way is past challenge, or that any member of this Court prefers a particular course of action”); *Edgewood II*, 804 S.W.2d at 498 (“We do not prescribe the means which the Legislature must employ in fulfilling its duty Nevertheless, our duty is plain: we must measure the public school finance system by the standard of efficiency ordained by the people in our Constitution.”); *Edgewood I*, 777 S.W.2d at 399 (“The legislature has primary responsibility to decide how best to achieve an efficient system. We decide only the nature of the constitutional mandate and whether that mandate has been met.”).

required ‘general diffusion of knowledge.’” *WOC II*, 176 S.W.3d at 784. The Court has looked to statutes to discover the Legislature’s understanding of what constitutes a general diffusion of knowledge and then centered its analysis of each constitutional standard around that legislatively defined level. *See, e.g., id.* at 788-89; *Edgewood IV*, 917 S.W.2d at 730-31 and n.10.

To determine adequacy, the Court looks to objective student performance measures and asks whether school districts are “reasonably able to afford all students the access to education and the educational opportunity to accomplish a general diffusion of knowledge.” *WOC II*, 176 S.W.3d at 789-90; *see also id.* at 764-70.

To determine suitability, the Court asks whether “the structure [or] operation of the funding system prevents it from efficiently accomplishing a general diffusion of knowledge.” *Id.* at 793-94; *see also Edgewood IV*, 917 S.W.2d at 736.

To evaluate efficiency, the Court asks whether “children who live in property-poor districts and children who live in property-wealthy districts [] have substantially equal access to funds necessary for a general diffusion of knowledge.” *Edgewood IV*, 917 S.W.2d at 730-31; *see also WOC II*, 176 S.W.3d at 792.

The State suggests that this case’s size—as measured by the length of the trial, the number of exhibits, and even the fact that expert testimony was offered—proves that the standards are unmanageable. State Brief at 57-58. But Texas courts—including this one—routinely manage large, complex litigation. Furthermore, the

record's size has nothing to do with whether the case violates the separation of powers, which is the gravamen of the political question doctrine. *See Baker*, 369 U.S. at 211.

The State also argues that the Court may not exercise its judicial authority to determine whether these constitutional standards are met because decisions about how to fund schools involve budgetary considerations and therefore are inherently “of a kind meant for non-judicial discretion.” State Brief at 60-61. The Court rejected that reasoning when the *WOC II* dissent raised it:

The dissent repeatedly states that government agencies do not have standing to sue for increased funding, tacitly assuming that funding of governmental functions is always a matter of policy and allocation of resources. ***The dissent's statements are not true when funding is required by the Constitution***, as the districts claim here. In *Vondy v. Commissioners Court*, we held that by providing that justices of the peace be compensated by salary, article XVI, § 61 requires commissioners courts to set reasonable salaries. Similarly, we held in *Mays v. Fifth Court of Appeals* that a commissioners court must pay a district court's court reporter the salary determined by the district court as authorized by statute. ... [T]he Legislature has discretion under article VII, section 1 to determine how to structure and fund the public education system to achieve a general diffusion of knowledge. However, in *Vondy*, as in this case, governmental discretion is circumscribed by the Constitution. Article VII, section 1 requires that public school finance be efficient and adequate to provide a general diffusion of knowledge.

WOC II, 176 S.W.3d at 775 (emphasis added) (citations omitted). Put another way:

In setting appropriations, ***the legislature must establish priorities according to constitutional mandate***; equalizing educational opportunity cannot be relegated to an ‘if funds are left over’ basis. We recognize that there are and always will be strong public interests

competing for available state funds. However, the legislature’s responsibility to support public education is different because it is constitutionally imposed. Whether the legislature acts directly or enlists local government to help meet its obligation, the end product must still be what the constitution commands—i.e. an efficient system of public free schools throughout the state.

Edgewood I, 777 S.W.2d at 397-98 (emphasis added). Budgetary constraints are real; however, Article VII, section 1 “does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, regardless of whether it has a rational basis *or even a compelling reason for doing so.*” *WOC II*, 176 S.W.3d at 785 (emphasis added).

2. School districts must turn to the courts when the Legislature is unable to satisfy constitutional mandates.

The State claims that the constitutional mandates cannot be managed by this Court, as evidenced by the repeated necessity of this Court’s intervention. State Brief at 49-52, 59-60. But, as the State acknowledged, the Court has rejected that argument:

[T]he continued litigation over public school finance cannot fairly be blamed on constitutional standards that are not judicially manageable; the principal cause of continued litigation, as we see it, is the difficulty the Legislature has in designing and funding public education in the face of strong and divergent political pressures.

WOC II, 176 S.W.3d at 779 (observing that constitutional standards like “due process” and “equal protection” have “inspired far more litigation than article VII, section 1, which has been at the heart of only a few lawsuits in two decades”).

The Fort Bend ISD Plaintiffs disagree with the State’s assertion that the Court has not given “interested parties and lower courts” a “meaningful framework for litigating and evaluating the reasonableness of this immensely complex system” nor has it provided the Legislature with “useful direction.” State Brief at 51, 59. This might be true if, as the State incorrectly states, the Court had “collapsed” the constitutional standards into a generic reasonableness test, thus resulting in “the reasonableness of the system [] being judged in a vacuum.” *Id.* at 52, 55. But the Court has never simply asked, “Is the public school system reasonable?” Instead, the Court has judged the system’s reasonableness only in light of the constitutional standards and the legislative definition of a general diffusion of knowledge.

Furthermore, after each of this Court’s decisions, the Legislature has acted, by passing legislation that (at least partially) responded to the Court’s concerns and moved the system toward constitutionality. *See* Statement of Facts, Section I *supra*. After making the initial adjustments, however, the Legislature has not maintained those inroads. More specifically, the Legislature has not evaluated the costs to school districts of complying with increasing standards and a changing definition of a general diffusion of knowledge. Accordingly, the Legislature has not adjusted the system’s structure, operation, and funding to ensure that it can achieve those standards. By neglecting to measure costs necessary to keep pace with legislative standards, *see* Statement of Facts, Section II.B.3 *supra*, the Legislature has allowed

the system to slide back into unconstitutionality. The Legislature’s inability to satisfy its constitutional duty is, itself, a ground for this Court’s intervention.

B. The ISD Plaintiffs have standing to assert their article VII, section 1 claims.

Standing, like other concepts of justiciability, “identif[ies] appropriate occasions for judicial action and thus maintain[s] the proper separation of governmental powers.” *Finance Comm’n of Tex. v. Norwood*, 418 S.W.3d 566, 580 (Tex. 2013) (citations omitted). Standing requires (1) a concrete injury to the plaintiff that (2) is caused by the complained of conduct or statute and that (3) is likely to be redressed by the requested relief. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 154-55 (Tex. 2012). As with the political question doctrine, the standing doctrine “prevent[s] the Judiciary from exercising authority that belongs to other departments of government, [but does not] deprive the Judiciary of its role in interpreting law, especially constitutional law.” *Norwood*, 418 S.W.3d at 581.

1. On multiple occasions, the Court has granted the type of injunctive relief sought here.

The judiciary’s power to enjoin the enforcement of unconstitutional laws is well-established. More than a century ago, the Court declared, “The constitution is the superior law, and when attempted legislation conflicts with its restrictions and purports to make a law which is thereby prohibited it is clearly the duty of the courts to declare such legislation void, and to give it no effect.” *Williams v. Taylor*, 19

S.W. 156, 156 (Tex. 1892). Courts do this, rather than dictate modifications that would make the statute constitutional, because separation of powers requires that only the Legislature amend statutes. *Id.* at 157 (“The courts certainly have no power to revise or amend the statutes passed by the legislature”)

The Court has four times declared the school finance system unconstitutional. Each time it has enjoined the State from continuing to fund districts through that system. *See WOC II*, 176 S.W.3d at 798-99; *Edgewood III*, 826 S.W.2d at 523 and n.42; *Edgewood II*, 804 S.W.2d at 498-99 and n.16; *Edgewood I*, 777 S.W.2d at 399. Injunctive relief is appropriate because it respects the Legislature’s role: “The Constitution does not require a particular solution. We leave such matters to the discretion of the Legislature.” *WOC II*, 176 S.W.3d at 799.

This Court takes a similar approach in redistricting cases: “After a legislative plan has been invalidated, respect for the separation of powers explicitly recognized in article II, section 1 of our Constitution requires that the Legislature be given a reasonable opportunity to enact a substitute statute.” *Terrazas v. Ramirez*, 829 S.W.2d 712, 720 (Tex. 1991). This is so even though, unlike in the school finance context, Texas state courts have the power to adopt and enforce a substitute, constitutional plan. *Id.* at 717-18.

2. The ISD Plaintiffs have standing because they are required to implement an unconstitutional statute—an injury that is directly redressed through injunctive relief.

There can be no doubt that public school students, parents, teachers, and the public at large are harmed by the Legislature’s inability to ensure that the public school system achieves its goal of a general diffusion of knowledge and that legislative action would redress those injuries. But the injury that gives school districts standing to sue under article VII, section 1 is that “they are being required to implement unconstitutional statutes.” *WOC II*, 176 S.W.3d at 774-75. The requested injunction redresses this harm.

3. History shows there is more than a “mere hope” that the Legislature will fulfill its constitutional duty and respond to this Court’s decision.

Even if the ISD Plaintiffs were required to show that legislative action was necessary to redress their claims, they could still establish standing by demonstrating that the requested injunction is likely to result in legislative action. *See Heldman ex. rel T.H. v. Sobol*, 962 F.2d 148, 157 (2d Cir. 1992) (“As with the causation requirement, indirectness of redressability is not dispositive, if the plaintiff alleges the links in the chain of redressability.”). While “unadorned speculation” is not enough to show that a remedy will redress an injury, *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 44 (1976), reasonable inferences are permissible, especially when they are consistent with a party’s “self-interest, consistent practice, and common

sense.” *Cramer v. Skinner*, 931 F.2d 1020, 1029 (5th Cir. 1991); *see also Duarte ex rel. Duarte v. City of Lewisville, Tex.*, 759 F.3d 514, 521 (5th Cir. 2014) (noting that factors other than challenged ordinance could contribute to injury, but “one could reasonably infer” that the ordinance contributed and that “it is likely a judgment in [plaintiffs’] favor would at least make it easier for them to find a residence to rent or buy in Lewisville”); *Minn. Fed’n of Teachers v. Randall*, 891 F.2d 1354, 1366 (8th Cir. 1989). It is reasonable to infer that parties to the litigation and third parties will act in accordance with their legal obligations. *Compare Heldman*, 962 F.2d at 157 (holding that “nexus between relief and redress is easily established” where third party is required to adhere to regulations), *with Lujan v. Defenders of Wildlife*, 504 U.S. 555, 568 (1992) (“But this would not remedy respondents’ alleged injury *unless the funding agencies were bound by the Secretary’s regulation.*”) (emphasis added).

The Legislature must support and maintain the public school system. The State’s argument that there is not “a substantial likelihood” that the requested relief would redress the plaintiffs’ injuries is tantamount to saying that the Legislature is more likely to abandon its duty entirely than it is to enact legislation addressing this Court’s decision. Neither history nor common sense supports that cynicism. It is reasonable to infer that the Legislature will respond—as it has each time the Court declared the school finance system unconstitutional—and take steps to bring the system into constitutional compliance. The Legislature’s past practice shows that

plaintiffs have more than a mere hope of legislative action. *See Edgewood IV*, 917 S.W.2d at 726-727 (describing legislative responses to *Edgewood I*, *Edgewood II*, and *Edgewood III*); Ex.6393 (legislative response to *WOC II*); Ex.6524 (same).

C. The ISD Plaintiffs’ claims are ripe for review.

1. Ripeness requires only that the ISD Plaintiffs show an injury is likely to occur.

Ripeness refers to the requirement of a concrete injury. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000). “The central concern [of ripeness] is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Perry v. Del Rio*, 66 S.W.3d 239, 249 (Tex. 2001). In determining whether a cause is ripe for judicial consideration, courts ask whether the facts have sufficiently developed to show that an injury has *or is likely to occur*. *Id.* at 251; *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). A court may not decide an abstract or hypothetical dispute, because any opinion would be advisory, in violation of the separation of powers provision. *Patterson*, 971 S.W.2d at 443. A case that is not ripe when filed may ripen as facts develop. *Del Rio*, 66 S.W.3d at 251.

The Court has noted that a redistricting challenge is not yet ripe when it was not clear what redistricting plan, if any, the Legislature would adopt. *Id.* Similarly, the Court held that the question of whether a state appropriations rider conflicted with federal regulations was not yet ripe when neither the state agency responsible

for the funds nor the federal agency responsible for the regulations had determined what actions it would take—and the undisputed evidence was that one possible course of action by the state agency would have avoided any injury to the plaintiffs.²⁷ *Planned Parenthood*, 971 S.W.2d at 444.

Here, the State cannot argue that this case presents an abstract or hypothetical dispute. During the second phase of the trial in January 2014, school districts were already receiving money through the legislatively adopted funding formulas. They were also operating under the tweaks to the academic changes made by the 2013 Legislature. Most importantly, students were receiving an education that was the product of those changes.

Rather, the State contends that the case is not ripe because there was no student performance data from the 2013-14 school year available at the time of trial. This argument mischaracterizes the record. There is student performance data from the 2013-14 school year in the record—in fact, the State relies on that data in making its arguments. *See* Ex.20314-Ex.20319; State Brief at 113 (citing Ex.20312). The argument also misunderstands the ripeness doctrine, which is meant to prohibit

²⁷ While the lack of final regulations may mean a case is not yet ripe for review, “there is no requirement that an agency undertake an enforcement action before the potential subject of that action can file suit for declaratory judgment.” *Tex. Dep’t of Banking v. Mount Olivet Cemetery Ass’n*, 27 S.W.3d 276, 282-83 (Tex. App.—Austin 2000, pet. denied); *Tex. Dep’t of Pub. Safety v. Moore*, 985 S.W.2d 149, 153–54 (Tex.App.—Austin 1998, no pet.) (observing that in declaratory-judgment context, ripeness only requires “ripening seeds of a controversy”).

“premature” litigation, not to prohibit the consideration of important constitutional questions entirely. *See Patterson*, 971 S.W.2d at 443 (citing Nichol, *Ripeness and the Constitution*, 54 U. CHI. L. REV. 153, 178 (1987) (ripeness doctrine “allows the courts to *postpone* interfering when necessary so that other branches of government ... may perform their functions unimpeded” (emphasis added))). Yet under the State’s reasoning, any adjustment to the school finance system or the academic requirements creates a “new” system and requires a full year’s worth of academic performance data before the “new” system’s constitutionality can be evaluated.

Since the Legislature meets every other spring, and performance results from the following school year would not be available until the next summer, even if plaintiffs could complete discovery, trial, *and* any appeal in a year, the Legislature would have already met again and any education-related legislation could be the source of an argument that the claims must languish for yet another year. Applying the State’s theory of ripeness would be similar to applying the mootness doctrine when a constitutional violation is capable of repetition yet evades review, depriving an injured party of any chance for redress. *See, e.g., State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980). Finally, the State’s argument is based on the false premise that the 2013 Legislative modifications created a “new” public education system and

thus discounts entirely the wealth of student performance and financial data the trial court considered.

2. The 2013 legislative changes merely tweaked the current system; they did not create a new one.

The State assumes any legislation creates a system so new and different that all prior evidence becomes irrelevant to the constitutional analysis. This assumption is incorrect. After the Court held the school finance system unconstitutional in *Edgewood I*, the Legislature passed SB1. Acts 1990, 71st Leg., 6th C.S., ch. 1. That legislation changed the school finance system beginning in the 1990-91 school year. *Id.* A trial court hearing and an appeal to this Court took place *during* that school year, culminating in this Court’s decision on January 22, 1991—halfway through the academic year. *See generally Edgewood II*, 804 S.W.2d 491. The Court did not find that the new statutory scheme rendered any challenge unripe until data from 1990-91 was available; rather, the Court examined how the legislative changes impacted the parties’ claims.²⁸ *Id.* at 496-97. The Court held that SB1 left “essentially intact the same funding system with the same deficiencies we reviewed in *Edgewood I*.” *Id.* at 495.

²⁸ Although the *Edgewood II* parties did not raise ripeness, the Court could have considered it sua sponte and dismissed the case had it determined the claims were unripe. *See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998) (holding that “[r]ipeness is an element of subject matter jurisdiction . . . that a court can raise sua sponte”).

Here, the trial court re-opened the evidence so that it could thoroughly review how the changes to the statutory formulas and the graduation requirements impacted the parties' claims. CR5:349-50; RR54-RR64. Ultimately, the court found that *the 2013 Legislative changes did not cure the constitutional violations. See FOF65-FOF71, FOF105-FOF110.* The trial court's findings in this regard were based on a wealth of student performance data and district financial data.

a. The student performance data is sufficient to assess the current system's adequacy and suitability.

The 2013 Legislature did not change the public school system's mission from preparing students to graduate college or career ready. *See Ex.4273:28-34, 52-54; RR63:138-40; RR54:125-27.* The STAAR exams for grades three through eight remain in place unchanged, and high school students must still take five STAAR End-of-Course exams.²⁹ *Ex.6618:22; RR54:138.* The 2011-12 and 2012-13 results that were presented during the first and second phases of the trial on these still-mandatory exams therefore remain highly relevant. *See FOF94, n.28; RR54:138-41; Ex.6618:22-27; FOF130-FOF159.*

The default graduation plan under HB5 still requires twenty-six credits to graduate. *Ex.6618:21.* Further, 2013 changes to graduation plans take effect with

²⁹ As discussed *supra*, in Facts Section II.C.1.c., the Legislature has created an alternative path to graduation for a small minority of students who, after nine administrations, still had not passed one or two of the required exams.

the class of 2018; students in prior classes are still subject to the previous graduation requirements. Ex.6532:6. Thus, data available at the time of trial regarding graduation and completion rates are still highly relevant, as are ACT and SAT scores, which can indicate college readiness. See FOF160-FOF168, FOF329-FOF331.

Furthermore, the State’s contention that the record is silent on student performance during the 2013-14 school year is incorrect. See FOF152-FOF153; Ex.20314-Ex.20319; Ex.20312. The State itself cites performance data that incorporates results from the December 2013 administration of the STAAR exam. State Brief at 113 (citing Ex.20312). Passing rates on that administration remained dismal, ranging from 30% on Algebra I to 67% on U.S. History. See Ex.20314-Ex.20319. These results that do not indicate that the 2013 legislative changes “cured” the system.

b. The available school funding data is sufficient to assess the current system’s suitability and efficiency, as well as whether it imposes a *de facto* state property tax.

The statutory formulas and the system’s structure remained the same following the 2013 legislative changes—the Legislature simply used the appropriations process to flow some additional money through the same system. RR54:85; Ex.6618:3; RR56:148-49. Accordingly, the structural defects (*e.g.*, arbitrary and inadequate “weights” for low-income and ELL students that have not been updated *since 1984* and a “cost of education index” based on district

characteristics from the 1989-90 school year, among other things) remain in place.³⁰

The State still has made no attempt to study the costs of its own standards or link funding levels to that cost. RR56:172.

In the absence of the State doing so, the ISD Plaintiffs adduced evidence at both the initial trial and the re-opening regarding the cost of achieving a general diffusion of knowledge. *See* FOF625-FOF640. These estimates show that the \$3.5 billion partial restoration did not cure the system’s unsuitability. *Id.* In other words, the 2013 Legislature did not take the necessary steps to ensure that the system is structured, operated, and funded to achieve its purpose.³¹

Trial witnesses analyzed the impact of the 2013 legislation on the system’s efficiency and the state property tax claim by running 2012-13 “near final” data through the 2013-14 and 2014-15 formulas, a technique that has been used in past school finance cases. *See, e.g., Edgewood II*, 804 S.W.2d at 494-97 (applying new statute to existing tax rates to determine legislation’s effect); *see also* CR6:411 ¶ 5; CR6:415 ¶ 8; CR6:416 ¶ 14; RR58:18-19.

³⁰ *See* Argument Section V.C.2 *infra*.

³¹ Legislative band-aids, which do nothing to connect the system’s structure to its goals, will not bring lasting change. *Cf. WOC II*, 176 S.W.3d at 790 (“There is substantial evidence . . . that the public school system has reached the point where continued improvement will not be possible absent significant change”); *Edgewood I*, 777 S.W.2d at 397 (“A band-aid will not suffice; the system itself must be changed.”)

D. The Court has not only the authority, but an obligation, to ensure that the Texas Constitution is respected.

Because the Constitution “both empowers and obligates” the Legislature, it is the judiciary’s *duty* to determine whether the Legislature has met its constitutional obligations, as the Court has repeatedly recognized.³² This duty stems from the Texas judiciary’s obligation to ensure statutes adhere to the “superior law” of the Texas Constitution—an obligation that this Court has recognized for over a century. *Williams*, 19 S.W. at 156; *see also Love v. Wilcox*, 28 S.W.2d 515, 520 (Tex. 1930) (“Where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.” (quoting *Marbury v. Madison*, 5 U.S. 137 (1803))); *see also Morton v. Gordon*, Dallam 396, 397-98 (Tex. 1841)

³² *WOC II*, 176 S.W.3d at 778-79 (“But the constitution nowhere suggests that the Legislature is to be the final authority on whether it has discharged its constitutional obligation. If the framers intended the Legislature’s discretion to be absolute, they need not have mandated that the public education system be efficient and suitable. . . . [T]he judiciary’s duty is to decide the legal issues properly before it without dictating policy matters.”); *WOC I*, 107 S.W.3d at 563-64 (article VII, section 1 standards “provide a standard by which this court *must*, when called upon to do so, measure the constitutionality of the legislature’s actions.” (emphasis added)); *Edgewood IV*, 917 S.W.2d at 726 (“The people of Texas have themselves set the standard for their schools. Our responsibility is to decide whether that standard has been satisfied”); *Edgewood III*, 826 S.W.2d at 523 (“The duty to establish and provide for such a system is committed by the Constitution to the Legislature. Our role is only to determine whether the Legislature has complied with the Constitution.”) (internal citations omitted); *Edgewood II*, 804 S.W.2d at 498 (“While we share the district court’s desire to avoid disruption of the educational process, we must heed our duty to ensure Texas students the efficient education system guaranteed them by the Constitution.”); *Edgewood I*, 777 S.W.2d at 394 (“If the system is not ‘efficient’ or not ‘suitable,’ the legislature has not discharged its constitutional duty and it is *our* duty to say so.” (emphasis in original)).

("[We] cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution; [we] cannot pass it by because it is doubtful; with whatever doubt, with whatever difficulties a case may be attended, [we] must decide it, when it arises in judgment.").

II. The trial court correctly determined that the school finance system imposes a *de facto* state property tax.

A. Standard of review for article VIII, section 1-e claims

The constitutionality of the statutes establishing and maintaining the public school system are questions of law that are reviewed *de novo*. *WOC II*, 176 S.W.3d at 785. However, "*to the extent that this determination rests on factual matters that are in dispute, [the Court] must, of course, rely entirely on the district's courts findings.*" *Id.* (emphasis added).

The State is correct that the facts play "a limited role" in the ultimate determination of constitutionality, *id.* at 785, but it is incorrect to suggest that a trial court's findings are immaterial. The State's authorities stand for the proposition that courts—including both the trial court and this Court—should not contradict or second-guess *legislative* fact findings. *See Owens Corning v. Carter*, 997 S.W.2d 560, 582 (Tex. 1999); *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995); *Corsicana Cotton Mills v. Sheppard*, 71 S.W.2d 247, 250 (Tex. 1934).

Here, the trial court did not second-guess legislative findings, but instead followed this Court’s directive that “courts must not on the one hand substitute their policy choices for the Legislature’s ... but must on the other hand examine the Legislature’s choices carefully to determine whether those choices meet the requirements of the Constitution.” *WOC II*, 176 S.W.3d at 785. For example, the trial court did not question the Legislature’s rationale in adopting the college- and career-readiness goal; rather, its findings addressed whether that decision has inexorably forced districts to raise taxes. *See* FOF81-FOF110 (describing legislative actions incorporating college- and career-readiness standards into curriculum, standardized testing, and graduation requirements); FOF233-FOF248 (describing how rising standards increase district costs). Thus, the Court must “rely entirely” on the trial court’s factual findings when determining whether the facts demonstrate that local districts lack meaningful discretion to set tax rates. *WOC II*, 176 S.W.3d at 785.

B. The existence of a state property tax turns on the degree of state control versus local discretion.

The Texas Constitution states, “[n]o State ad valorem taxes shall be levied upon any property within this State.” TEX. CONST. art. VIII, § 1-e. An ad valorem tax is a state tax “when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without meaningful discretion.” *Edgewood III*, 826 S.W.2d at 502. This holding

tells us two important things about the standard for determining whether a property tax is a prohibited state tax.

First, the State can exercise its control over school district property taxes both directly and indirectly. It does so through the system's structure—setting minimum and maximum tax rates and redistributing local property tax revenue. *See WOC II*, 176 S.W.3d at 797; *Edgewood IV*, 917 S.W.2d at 737-38. The State also exercises control by not keeping pace with the continually rising cost of a general diffusion of knowledge. *Edgewood IV*, 917 S.W.2d at 738. While the constitutional duty to provide for a general diffusion of knowledge is the State's, the Legislature has enlisted school districts to carry out that mission. *WOC I*, 107 S.W.3d at 579-80. When the state steadily increases academic requirements “in an environment of increasing costs,” districts must raise their tax rates to offer compliant educational programs, as well as offer the statutorily contemplated enrichment. *WOC II*, 176 S.W.3d at 798. In this way, “educational requirements and economic necessities” can stifle districts' discretion over their tax rates. *Id.*

Second, districts' discretion over tax rates must be more than just nominal—it must be meaningful. The Court has “rejected the argument that the State could circumvent the constitutional prohibition of a state property tax merely by slight variations in the degree of [state] control.” *Id.* at 795. Accordingly, to prove a state property tax violation, districts are not required to prove they are “forced absolutely

to the limit of the cap.” *Id.* Requiring such a showing would require districts to prove that they lack, not just meaningful discretion, but “any discretion whatsoever.” *Id.* at 795-96. Furthermore, it would “ignore[] the realities of the education process.” *Id.* at 796. Rather than mandating specific expenditures and programs, the State requires in broad strokes that the districts provide a general diffusion of knowledge. To accomplish that task, the districts use “professional judgment and experience.” *Id.* Methods “vary depending on student demographics and school location.” *Id.*

The extent of state control versus local discretion is measured by looking at the combined effect of all the different ways that the control is exercised, rather than looking at each category individually. *See id.* at 797.

C. The State controls the levy, assessment, and disbursement of district revenue through the funding system’s structure.

In response to *WOC II*, the Legislature forced districts to lower their tax rates and, by doing so, to “provide the largest tax cut in Texas history.” *See Ex.5731*. To ensure lasting tax relief, the State exercised greater control over the rate that districts may levy—through tax compression, a tax cap, the tax ratification election requirement, and the guaranteed yield structure. In 2015, the Legislature further enhanced state control by prohibiting districts from repealing “local option”

homestead exemptions,³³ but it provided no funding to replace the revenue loss the exemptions cause. In addition, every session, the Legislature controls the disbursement of local property tax revenue through an appropriations process that uses local revenue to fund “state” formula increases.

The trial court correctly determined that these mechanisms *taken together* and *combined with* the increased academic standards and accompanying increased costs (as described in Section II.C *infra*), have compelled districts to tax at a statewide rate.³⁴ The State, which cannot remember the past, is condemned to repeat it:

We now hold, as did the district court, that local ad valorem taxes have become a state property tax in violation of article VIII, section 1-e, as we warned ten years ago they inevitably would, absent a change in course, which has not happened.

* * *

. . . . [W]e are constrained to caution, as we have before, that a cap to which districts are inexorably forced by education requirements and economic necessities as they have been under Senate Bill 7, will in short order violate the prohibition of a state property tax.

WOC II, 176 S.W.3d at 754, 798; *see, e.g.*, FOF210, FOF262.

³³ Any taxing entity, including school districts, may offer an additional percentage exemption—up to 20% of a home’s value—above the mandatory homestead amount set by the Legislature. TEX. TAX CODE § 11.13(n).

³⁴ *WOC II*, 176 S.W.3d at 797 (“Even if each category of evidence would not, by itself, prove a constitutional violation, all of this evidence taken together, along with the extensive record before us, clearly shows that school districts have lost meaningful discretion to tax below maximum rates and still provide and accredited education.”).

Furthermore, contrary to the State’s assertion, the trial court did not declare a separate constitutional violation as to facilities funding. *See* COL76. Rather, the court found that the way in which the State funds—or fails to fund—facilities contributes to districts’ loss of meaningful discretion over their M&O tax rates. *See, e.g.,* FOF232 (“[T]he Court finds that rising I&S rates have contributed to the loss of meaningful discretion over M&O tax rates for many fast-growth school districts.”). It acknowledged that, to local taxpayers, there is virtually no distinction between taxes designated for instruction and those designated for facilities. *Id.* The trial court’s approach is consistent with this Court’s recognition that “[a]n efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. The components of an efficient system—instruction and facilities—are inseparable.” *Edgewood IV*, 917 S.W.2d at 726; *see also WOC II*, 176 S.W.3d at 790.

1. The State asserted control over the levy and assessment of M&O taxes by “compressing” tax rates and lowering the tax cap.

Through HB1, the Legislature forced school districts to “compress” their property tax rates by one-third. Ex.6395:2. A school district that had been taxing at the \$1.50 cap at the time of *WOC II* was compressed to a rate of \$1. *Id.*; Ex.6593:11. This reduced the amount of property tax revenue available to school districts by \$14.2 billion in the first biennium alone. Ex.5657:194.

That \$1.00 compressed rate became the statutory “floor” for school district taxes, because a district must tax at \$1.00 to receive the full basic allotment. TEX. EDUC. CODE § 42.252; Ex.6593:22R. At the same time, the Legislature lowered the tax cap from \$1.50 to \$1.17. TEX. EDUC. CODE § 45.003. Assuming *arguendo* that in 2008 a school district could achieve a general diffusion of knowledge using just the basic allotment, this means that districts started out with seventeen cents of taxing discretion available to “to supplement [the basic] program at a level of its own choice.” TEX. EDUC. CODE § 42.301.

Had the State ensured that the basic allotment covered and kept pace with increases in that cost, the lowered tax cap and the billions in lost property tax revenue would not have presented a constitutional problem. However, because the State failed to do so,³⁵ lowering the tax cap significantly sped up the rate at which districts have been “inexorably forced by educational requirements and economic necessities” to tax at that cap to achieve a general diffusion of knowledge—much less “afford any supplementation at all.” *WOC II*, 176 S.W.3d at 797-98.

³⁵ See Facts Section II.B.3 *supra* and Argument Section V, *infra*.

2. The State maintains control over the levy and assessment of M&O taxes by imposing the TRE requirement and limiting the yield per penny for Tier II-b.

The Legislature's TRE³⁶ requirement was designed to slow the rate at which districts would raise rates to the cap. TEX. TAX CODE § 26.08(a), (n); Ex.6396:5 (“Without adjusting the rollback rate to reflect the reduction in school M&O tax rates, any property tax relief could quickly evaporate as school boards increased local property taxes year after year.”). The TRE requirement is unique to school districts. A traditional rollback rate is tied to a taxing entity's current tax rate and prevents the entity from increasing the rate by more than a certain amount without voter approval. The TRE requirement, however, prevents school districts from taxing above \$1.04 without first obtaining voter pre-approval—no matter how slowly they increase the tax rate. *See* Ex.6393:21-25.

The TRE requirement, combined with Tier II's guaranteed yield structure, clusters many school districts' property tax rates around \$1.04. RR54:116-17; Ex.6618:14. As described above, school districts have access to six golden pennies of tax effort above their compressed rate that carry with them a higher yield—a guaranteed yield of \$61.86 for the 2014-15 school year, with property-wealthy districts' revenue above that rate not subject to recapture. TEX. EDUC. CODE §§ 41.002(a)(2), 42.302(a-1)(1); Ex.6593:82, 85R, 95R. A district with a

³⁶ Tax ratification election.

compressed tax rate of \$1.00 can access four of the six golden pennies without bumping up against the TRE requirement. Beyond the golden pennies, the yield drops dramatically—to just \$31.95. TEX. EDUC. CODE § 42.302; Ex.6593:85R. While the golden pennies encourage districts to raise their tax rates as high as allowed without a TRE (\$1.04), the copper pennies’ low yield has prevented districts from accessing the full-range of taxing authority.³⁷ Property-poor school districts have difficulty passing a TRE due to the low guaranteed yield and the poverty rate among district taxpayers; property-wealthy districts have difficulty because of the higher recapture rate on the copper pennies. *See* Ex.3198:30-32; Ex.3204:46-47; Ex.3201:19-21; Ex.3202:35-42, 46-48; RR15:197-99; Ex.5384:7; RR21:86-88.

The State argues that the TRE requirement poses no constitutional problem because voter approval is a form of local control. State Brief at 156. But as with the tax cap, the TRE requirement and the lower yield would not necessarily present a constitutional problem *if* the State had given districts sufficient revenue through the basic allotment—or even the basic allotment plus the accessible four cents of golden

³⁷ The Legislature recognizes that the TRE mechanism has successfully maintained control of school districts’ taxes. During the most recent session, the House Research Organization noted that supporters of the recent homestead exemption increase did so in part because “[i]ncreases in property taxes can happen in two ways: rate increases and appraisal increases. *Rate increases are unlikely to happen, since most school districts are required to gain voter approval for increases in property tax rates.*” House Research Org., Bill Analysis, Tex. S.B.1, 84th Leg., R.S. (2015) (emphasis added) (“SB1 HRO Analysis”) at 5.

pennies—to cover the cost of a general diffusion of knowledge. In that case, the additional tax rate subject to voter approval would be for true *supplementation*.

But because the State did not comply with its own study requirement or otherwise ensure that funding keeps up with the cost of a general diffusion of knowledge, the vast majority of school districts are unable to access the necessary revenue at \$1.04. *See* RR58:46-49 (929 school districts cannot raise inflation-adjusted revenue level this Court found to be adequate in *Edgewood IV* with \$1.04 tax rate); Ex.6622:20 (same); *see also* RR58:41-45 (in 2014-15, 477 school districts cannot raise revenue level necessary to achieve “acceptable” rating under old TAKS-based accountability system with \$1.04 tax rate); Ex.6622:18 (same). These districts are faced with at least one of two constitutional problems. A district that is unable to access the revenue necessary to provide a general diffusion of knowledge due to the inability to pass a TRE is forced to endure an unsuitable system.³⁸ *See WOC I*, 107 S.W.3d at 581 (“[B]ecause the State has chosen to rely heavily on school

³⁸ Duncanville ISD is one such example. The district tried, and failed, to pass a TRE in 2008. Ex.6342:22-23. Superintendent Dr. Alfred Ray testified that the district simply cannot meet the community’s expectations for a general diffusion of knowledge for all students at current resource levels. *Id.* at 62-66; *see also id.* at 40-45 (explaining community expectations for general diffusion of knowledge); *WOC I*, 107 S.W.3d at 572 (“[T]he State’s provision for a general diffusion of knowledge must reflect changing times, needs, and public expectations.”) (quoting *Edgewood IV*, 917 S.W.2d at 732 n.14)). The district’s results on STAAR exams bear out Dr. Ray’s testimony. In the first year of STAAR administration, 62% of the district’s 9th graders failed at least one exam. Ex.6324:9. Results did not improve in the second year, when 64.9% of the district’s 9th and 10th graders failed at least one exam. Ex.6548:7. Furthermore, the district’s need for additional operations revenue must compete with its need to issue bonds to meet facilities needs. Ex.6342:39.

districts to discharge its duty to provide a constitutionally adequate education . . . the State must require that school districts achieve this goal; otherwise, the public school system is not suitable for its purpose.”), 584 (“As we have explained, the Legislature has chosen to make suitable provision for a general diffusion of knowledge by using school districts, and therefore the State cannot be heard to argue that school districts are free to choose not to achieve that goal.”). A school district that has successfully passed a TRE and increased its tax rate to the \$1.17 cap, but has no room for supplementation, has lost meaningful discretion.³⁹ *See WOC II*, 797-98.

3. The State controls the disbursement of district revenue by treating revenue from increasing local property values as state revenue.

TREs are difficult to pass because, even without a rate increase, Texans’ tax bills have risen with property values. Yet that resulting property-tax revenue goes not to school districts, but to the State. *See RR54:94-95*. The guaranteed yield system means that property-poor districts receive less, and the State pays less, in state aid when local property values rise; while the recapture system means that

³⁹ Humble ISD proves illustrative. Humble has been taxing at the maximum \$1.17 since 2008. RR3:154; Ex.6346:6. Superintendent Dr. Guy Sconzo testified that the district does not have sufficient money to meet the district’s substantially increased remediation requirements under the STAAR regime. RR3:190-99; Ex.6557:58-59. Dr. Sconzo presented evidence that the district’s STAAR remediation efforts have not been as successful as its TAKS remediation efforts were. *Id.* at 58-59. Roughly 10% of economically disadvantaged EOC failures were successfully remediated. *Id.*; Ex.20255:11 (showing 195 of 1651 economically-disadvantaged EOC failures were successfully remediated).

property-wealthy districts pay more, and the state receives more, in recapture when local property values rise.

The appropriations process illustrates this phenomenon. In 2013, the Legislature “restored” \$3.4 of the \$4 billion in formula funding that it had cut from state revenue two years prior, and also funded enrollment growth at a cost of \$2.2 billion. RR54:88-89. However, of this total \$5.6 billion appropriation, just one-third came from the State’s general revenue fund; \$3.77 billion was appropriated from anticipated *local* revenue growth from property value increases.⁴⁰ *Id.* at 97; Ex.6618:4.

In addition, should local property value growth *exceed* the Legislature’s budgeted amounts, the resulting additional revenue is treated as state revenue and applied to non-education related spending. Comptroller Hegar, in his letter accompanying the 2016-17 biennial revenue estimate, noted that the 2014-15 biennium ended with a \$7.5 billion surplus, due in part to “strongly rising local property tax collections by school districts.” *See* Tex. Comptroller of Public

⁴⁰ This reliance on local property value growth to fund the Foundation School Program formula increases and enrollment growth—as well as non-education related budget shortfalls—has resulted in the percent of Foundation School Program funding that comes from local property tax revenue steadily increasing from a low of 50% in 2007-08 (the first year tax compression) to 55% in 2014-15. RR54:98-99. The State has historically relied heavily on local property tax revenue to fund a general diffusion of knowledge. While “[t]he Legislature’s decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the Texas Constitution,” the Court has noted that this reliance makes it more difficult to ensure that the system meets the constitutional standards. *WOC II*, 176 S.W.3d at 756-57; *see also Edgewood III*, 826 S.W.2d at 503.

Accounts, *Biennial Revenue Estimate* at i (January 2015).⁴¹ This “surplus” was used to fund revenue shortfalls in other areas of the budget. *See* Act of May 30, 2015, 84th Leg., R.S., HB2, §§ 2 (reducing appropriation for Foundation School Program by \$710 million), 7-28 (increasing appropriations for Facilities Commission, Department of Family and Protective Services, Health & Human Services Commission, Department of Criminal Justice, Animal Health Commission, and Parks and Wildlife Department, among others). In other words, while the Texas Constitution “clearly recognizes the distinction between state and local taxes” and “prohibits the Legislature from merely characterizing a local property tax as a ‘state tax,’” *Edgewood III*, 826 S.W.2d at 513, the State fully controls how local property tax revenue generated by property value growth is used and, for all practical intents and purposes, treats it as state general revenue. *Cf. WOC II*, 176 S.W.3d at 797 (“The State’s control of [recaptured] revenue is a significant factor in considering whether local taxes have become a state property tax.”).

As a result, school districts that have been at the \$1.17 cap for seven years⁴² have no way to increase their revenue—even as local property taxpayers pay higher tax bills—unless the State routes local school districts’ increased revenue back to

⁴¹http://www.texasparency.org/State_Finance/Budget_Finance/Reports/Biennial_Revenue_Estimate/2016_17/pdf/BRE_2016-17.pdf (Jan. 2015).

⁴² Humble ISD is one such example. *See* RR3:154; Ex.6346:6.

them in the form of an increase in the guaranteed yields. This is a system in which the State dominates the disbursement of local revenue.

4. The State controls the levy, assessment, and disbursement of I&S taxes through the 50-cent debt test.

School districts issue voter-approved bonds to pay for facility construction and renovation. TEX. EDUC. CODE §§ 45.001, .003. Interest and sinking funds taxes (also known as I&S taxes) pay the principal and interest on those bonds. RR10:164-68; RR11:65-66, 73-77. In 2011-12, more than 800 school districts levied I&S taxes to service \$62.6 billion in outstanding school district debt. *See* Ex.1328:21; Ex.6352:20-21; RR10:180. Before a school district may issue a bond, it must demonstrate to the Attorney General that the district can meet its debt service obligations at tax rate of \$0.50 or less. *See* TEX. EDUC. CODE § 45.0031; Ex.1328:26-27; RR10:187-90. Accordingly, this 50-cent debt test serves as a *de facto* cap on facilities tax rates.

As with the cap on taxes for instruction, the 50-cent debt test would suffice *if* school facilities funding kept pace with enrollment growth and increasing costs. However, as described in more detail in Section IV.D.4.b *infra*, state aid for facilities has been stagnant since 1999. Ex.6621:9. As a result, many districts no longer qualify for facilities aid. *Id.* at 9-10. Making matters worse, 90% of the enrollment growth in the state is concentrated in approximately 100 districts. RR10:177; Ex.6352:22-23. These “fast-growth” districts must build facilities—and issue

bonds—just to keep up with that growth. RR56:180-81, 206, 237; Ex.6621:15-16. For example, Humble ISD added nearly 1,000 students (the size of a typical middle school) *every year* since the *WOC II* trial. RR3:132. Northside ISD in San Antonio grew by 25,000 students since *WOC II* and had to build thirty-seven new schools from 2002 to 2012. RR25:84-85. Fort Bend ISD built twenty schools in the same time period. RR11:60. A demographic study in Los Fresnos found that the district will have to build one school each year for the next twenty-five years. RR24:139.

Consequently, I&S tax rates in fast-growth districts are inexorably forced closer to the 50-cent limit. Ex.6352:22, 24. As this happens, districts must issue bonds with longer maturities to prove they can meet the 50-cent debt test over the full life of the bond. RR10:191-92; RR11:80-83; Ex.6352:26-29; Ex.665:12, 14-15; Ex.6621:16. Longer maturities force local school districts and taxpayers to pay many millions of dollars in additional interest costs. RR11:84; Ex.665:14-15; Ex.1328:26-27; Ex.6352:30. But the districts have no other option. If they did not issue debt, they could not build the facilities required to house these new students. *Cf. Edgewood IV*, 917 S.W.2d at 726 (“An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system—instruction and facilities—are inseparable.”).

5. The 2015 Legislature laid the groundwork for further control by preventing districts from repealing their “local option” homestead exemptions.

The 2015 Legislature proposed a constitutional amendment that would increase the mandatory homestead property tax exemption from \$15,000 to \$25,000. Act of May 29, 2015, 84th Leg., R.S., SJR1, § 1 (to be codified at TEX. CONST. art. VIII, § 1-b(c)). Any taxing entity, including school districts, may offer an additional percentage exemption—up to 20% of a home’s value—above the mandatory amount. TEX. TAX CODE § 11.13(n). The same constitutional amendment would also authorize the Legislature to prohibit school districts from reducing or repealing such “local option” homestead exemptions. Act of May 29, 2015, 84th Leg., R.S., SJR1, § 1 (to be codified at TEX. CONST. art. VIII, § 1-b(e)). Anticipating the amendment’s passage, the Legislature has already enacted this prohibition, slated to take effect immediately if voters approve the amendment in November 2015. Act of May 29, 2015, 84th Leg., R.S., SB1, § 1 (to be codified at TEX. TAX CODE § 11.13 (n-1)).

In *WOC I*, the State argued that a district that had a local option exemption could not bring a state tax claim because “it has meaningful discretion” to remove the exemption. 107 S.W.3d at 582. The Court correctly observed:

[W]hile school districts obviously have discretion whether to increase homestead exemptions, it is far from obvious that their discretion is meaningful. By authorizing local-option homestead exemptions, knowing that some constituencies will insist on them, the Legislature

may actually have increased the pressure on school districts to tax at maximum rates.

Id. at 582. Even the *WOC II* dissent recognized that that these exemptions are expenditures that are mandatory *de facto*, even though not mandatory *de jure*. *WOC II*, 176 S.W.3d at 810 and n.73 (Brister, J. dissenting).

But now, the Legislature has taken steps to make it mandatory *de jure* for districts that previously adopted the exemptions. Yet the Legislature still will not recognize this exemption in the formulas—meaning that property-poor districts with local option exemptions will receive no state aid to cover the revenue lost as a result of the now mandatory exemption. And property-wealthy districts will continue to pay recapture on property value that is not (and cannot be) actually taxed. *See* TEX. EDUC. CODE § 42.2522; *see also* Act of June 1, 2015, 84th Leg., R.S., SB507, § 3 (to be codified at TEX. EDUC. CODE § 42.2528).

D. The State exercises control by increasing standards while costs increase and State support plummets.

1. The trial court properly recognized that calculation of the tax floor must include both educational and economic realities.

The State argues that districts have discretion because they spend money on items—such as pre-K for three year olds or salaries above the minimum salary schedule—that are not “required by the state.” State Brief at 164-65. This argument both misstates the nature of state “requirements” and “ignores the realities of the educational process.” *WOC II*, 176 S.W.3d at 796.

The Legislature passed laws that establish the mission of public schools and outline related objectives and goals, including preparing all students for a college or career. TEX. EDUC. CODE §§ 4.001-.002; *see also id.* § 28.001. The Legislature requires “a state curriculum, a standardized test to measure how well the curriculum is being taught, accreditation standards to hold schools accountable for their performance, and sanctions and remedial measures for students, schools, and districts to ensure that accreditation standards are met.” *WOC II*, 176 S.W.3d at 764; *see also* TEX. EDUC. CODE art. II, subtitles F, H; *Edgewood IV*, 917 S.W.2d at 728-29; *WOC I*, 107 S.W.3d at 580.

However, the accountability and accreditation system does not fully measure the entire state curriculum or the college- and career-readiness goals of a general diffusion of knowledge. *See* FOF111-FOF122. Nor does it capture the other legislative requirements that cost school districts money. These include class-size limits, student counseling, teacher contracts and employment protections, school discipline and student due process protections, school safety mandates, school facilities standards, reporting requirements, parental rights, open government, and a host of other mandates contained in the Texas Education Code and elsewhere. *See, e.g.* TEX. EDUC. CODE §§ 21.001, *et seq.* (teacher employment), 25.112 (class size), 26.001 *et seq.* (parental rights), 28.0212-.02121 (personal graduation plans), 28.022 (notice to parent of unsatisfactory performance), 28.026 (counseling regarding

automatic college admission and financial aid), 33.002 *et seq.* (counseling programs), 37.001 *et seq.* (school discipline), 38.001 *et seq.* (health and safety); TEX. GOV'T CODE §§ 551.001 *et seq.* (open meetings), 552.002 (open records); TEX. OCC. CODE §§ 1202.001 *et seq.* (portable building regulations), 1951.212 (pest management).

What the Legislature has not done is tell districts *how* to accomplish a general diffusion of knowledge. As one superintendent put it:

The State has shown us a destination that every child is to be delivered to, and I support and agree with the destination. But the State can't argue that [] you don't need a vehicle to deliver that child to that destination.

RR19:49-50. Thus, for example, money spent on pre-K for three year olds, which bridges the performance gap for low-income students, *see* Ex.1074:2-3; RR11:139-40, 188-90, or on salaries to recruit quality teachers, the most important factor in a student's success, *see, e.g.*, RR23:209-10, RR3:143, RR25:122-23, is in fact money spent in pursuit of a general diffusion of knowledge.

Because it is "simply impossible to trace the impact on accreditation of each dollar spent for programs and teacher salaries[,] ... State influence on district taxing and spending cannot be measured exactly but must be gauged along a spectrum of possibilities." *WOC II*, 176 S.W.3d at 796. In determining that it was "not a close question" whether the system at issue in *WOC II* was too far along the state control side of the spectrum, the Court credited evidence of "the increased curriculum,

testing, and accreditation standards, and the increased costs of meeting them” as well as “the higher costs of educating economically disadvantaged students and students with limited English proficiency.” *Id.*

As detailed below, the trial court properly found that, after raising the tax floor to \$1 and lowering the tax ceiling to \$1.17 via HB1, the State promptly began to raise the floor even higher by going down the same path of increasing performance standards in an environment of increasing costs. During the same time period, state support for education has *declined* in real dollars—thus making the floor rise even faster. “*These are facts, not opinions.*” *Id.* at 796 (emphasis added).

2. The Legislature significantly increased academic standards.

In the years since tax compression, the State has increased performance standards and taken concrete steps to make college readiness the operative goal of the public education system. *See* FOF81-FOF110; FOF233-FOF244. It has:

- Developed and incorporated college- and career- readiness standards into the curriculum from kindergarten through graduation. *See* TEX. EDUC. CODE § 28.008; Ex.742:iii; RR28:120-22, 176-77; RR5:125-26; Ex.10336:I-47; *see also* FOF82-FOF89.
- Developed and implemented a significantly more difficult testing system that evaluates whether students from grade three forward are on-track to graduate from high school prepared for college or a career. *See* RR28:20-22; RR27:33, 35-37; Ex.5624:25-26, 34-35; Ex.5785:70, 106, 111, 198-99; Ex.5620:101-05, 124-25; *see also* FOF93-FOF102.
- Increased high school graduation requirements, implementing barriers to prevent students from graduating with just the minimum

requirements. TEX. EDUC. CODE § 28.025(b), (c-1); Ex.6618:21; Ex.6532; RR54:125-27; *see also* FOF90-FOF91, FOF103-FOF110.

The trial court correctly found that districts are not able to give all students a meaningful opportunity to meet these higher standards. *See* FOF244; FOF520. The court based these findings on an array of student performance metrics, including stagnant NAEP scores, flattening scores on the TAKS in its final years (after incorporation of college-ready standards), and dismally low STAAR scores that are not improving (in stark contrast to the early years of the TAKS). FOF130-FOF208. School districts are particularly struggling to educate the state's growing economically disadvantaged student population to the new standards. Economically disadvantaged students failed STAAR EOC at more than twice the rate of their peers on most exams. Ex.6618:25; *see also* FOF299-FOF311. Performance gaps actually widened between the first and second year of the STAAR EOC exams in many subjects. *See* FOF301. Furthermore, only 13% of economically disadvantaged students met the State's chosen measure of college readiness on all of the EOC exams they took in Spring 2013. *See* Ex.6536:14; *see also* FOF313-FOF314.

The State erroneously equates the percentage of districts *meeting* minimum accreditation standards (which the trial court correctly found does not measure the general diffusion of knowledge, *see* Argument Section V.C.1.b *infra*) with this Court's calculation of the number of districts that *exceeded* minimum accreditation standards at the time of *WOC II*. *See* State Brief at 159; *WOC II*, 176 S.W.3d at 796

(approximately one-third of districts with about a fifth of the student population exceeded minimum accreditation requirements). As the Court noted last time, even if districts are meeting minimum accreditation standards, “one cannot infer from that fact that the districts could lower taxes and still meet those standards.” *WOC II*, 176 S.W.3d at 796. The current accountability system’s version of exceeding the minimum standards is to receive a “distinction” for “postsecondary readiness.” *See* 19 Tex. Admin. Code § 97.1001(b) (2014 Accountability Manual at 53).⁴³ In 2014, only *nineteen* of the state’s 1,025 school districts earned this distinction. *See* TEA, Final 2014 Accountability Ratings (Aug. 2014).⁴⁴

3. The growing and changing student population increases districts’ costs.

At the time of *WOC II*, 52.7% of the state’s students were economically disadvantaged; by the 2012-13 school year, the percentage had grown to 60.4%. This trend will continue. The former director of the U.S. Census Bureau projected that the number of economically disadvantaged students in Texas will nearly double by 2050. *See* Ex.3228:78; RR3:75.

⁴³ http://ritter.tea.state.tx.us/rules/tac/chapter097/19_0097_1001-1.pdf (last visited Jul. 1, 2015).

⁴⁴ http://ritter.tea.state.tx.us/perfreport/account/2014/dd_dist_psr.pdf (last visited Jun. 30, 2015). TEA also issued a news release discussing the accountability ratings and aggregating the results, which is available at: http://tea.texas.gov/news_release.aspx?id=25769815103 (Aug. 8, 2014).

As the economically disadvantaged student population balloons, the challenge to educate them—to provide a general diffusion of knowledge—also swells. The State concedes that the economically disadvantaged student population is more expensive to educate and that “[i]f you want to close gaps, you need to provide services to the children who need those services.” RR26:67; *see also* State Brief at 57; R29:105-07; Ex.5630:91-92. Furthermore, performance results indicate, and the State’s expert witness agreed, that there is a “concentration effect” that makes the challenge greater as the percentage of economically disadvantaged students in a school increases—an effect that school funding formulas do not take into account. *See* Ex.6620; Ex.6349:49; RR29:105-07; TEX. EDUC. CODE § 42.152.

4. Decreasing State support shifts (and thereby increases) costs to districts.

Rather than ensure that districts have access to the increased funding necessary to meet the cost of educating the growing and changing student population to its increased standards, the State has shifted the burden to local property taxpayers, thereby raising the tax floor—a situation that the Court has repeatedly foretold. *See WOC II*, 176 S.W.3d at 790; *WOC I*, 107 S.W.3d at 580; *Edgewood IV*, 917 S.W.2d at 738.

a. State budget cuts shifted the burden of paying for a basic education more heavily onto local districts.

In *WOC II*, total per student spending from state, local, and federal revenue was \$7,128 per student. Ex.6618:7; RR54:83. Support for education temporarily increased following *WOC II*, though mandatory teacher salary increases (costing \$802 million in 2006-07, \$140 million in 2007-08 and 2008-09, and \$616 million in 2009-10 and 2010-11), meant that the State controlled how those additional formula funds were spent. RR7:33-34; Ex.6349:65. Education funding hit a high of \$7,415 in 2008-09 (the year after tax compression was fully implemented) due in part to an increase in federal funds. Ex.6618:7; RR54:84. Those levels have not been sustained, though, and six years later, after higher standards were imposed, funding is now \$599 *less* per student in 2004 dollars. Ex.6618:7; RR54:83-85. The State's share of this funding has decreased from 50% in 2007-08 (the first year of tax compression) to 45% in 2014-15. RR54:98-99.

The Legislature substantially cut funding for the 2012-13 and 2013-14 school years—the first two years of the STAAR exams.⁴⁵ While districts attempted to minimize the cuts' impact on the classroom, the magnitude of the cuts made it impossible to insulate core instructional programs—especially for the 932 districts

⁴⁵ Notably, the Legislature did *not* pass a salary decrease, even though it effectively eliminated all of the increased funding that had been provided from 2006 through 2010 that was not associated with replacing the dollars lost to the property tax compression. RR7:23-25; Ex.6349:65; Ex.6322:52.

that were already taxing at \$1.04 or higher and could not access additional revenue without passing a TRE in the middle of an economic downturn. *See, e.g.*, Ex.6349:45 (11,487 teaching positions and 14,896 support staff positions eliminated as student population grew by 44,454), 64 (932 districts taxing at or above \$1.04 in 2011-12); *see also* FOF682-FOF1203.

Furthermore, the Legislature cut funding for several programs that helped districts provide additional interventions and instructional time to economically disadvantaged students and other students struggling to meet the State's heightened standards, including:

- Slashing funding for the SSI grant program—which allowed districts to provide intensive tutoring, extended day programs, and summer school for students who failed the State's standardized tests—by 81%. RR63:111; Ex.20216-A; Ex.5630:28-29, 44-45.
- Cutting funding for the early childhood school readiness program by 61%. RR63:108; Ex.20216-A.
- Eliminating \$200 million in grants designed to assist districts with providing full-day pre-K services to approximately 56,000 at-risk students. RR63:110; Ex.20216-A; Ex.5630:30-34, 42-44.
- Eliminating funding for FSP-Extended Year Programs, which provided support for students who were not meeting the state content standards. RR63:109; Ex.20216-A; Ex.4000:49-50; RR31:171-72.

b. Stagnant facilities aid shifts the burden of paying for construction and maintenance onto local districts.

Like instructional funding, facilities funding works on a guaranteed yield system.⁴⁶ Ex.1328:21-24. The guaranteed yield for facilities funding has remained stagnant at \$35 per penny per student since 1999. TEX. EDUC. CODE §§ 46.003, .032; RR56:173-74; Ex.6621:9. At that time, 91% of Texas schoolchildren were enrolled in districts that were eligible for state facilities funding; by 2013-14, just 56% were. Ex.6621:9-10; *see also* RR56:174-75; Ex.6352:12; RR32:198. If the yield had been pegged to the 91st percentile of wealth, it would be \$63 (as opposed to \$35) today. RR10:173. If the yield had simply been adjusted for inflation, it would be \$55 today, with 84.8% of Texas students attending school in eligible districts. RR10:174; Ex.1328:24. The Legislature’s failure to adjust the guaranteed yield during the past sixteen years means that local districts bear a much larger share of facilities costs.

E. School districts have lost meaningful discretion over their tax rates.

1. The trial court properly tied the property tax floor to the cost of achieving a general diffusion of knowledge.

In *Edgewood IV*, the evidence revealed that “[p]roperty-poor and property-rich districts presently can attain the revenue necessary to provide suitably for a

⁴⁶ Districts are not eligible for state facilities aid—and cannot even levy facilities taxes—unless they first gain voter approval to issue a bond. TEX. EDUC. CODE §§ 45.003, 46.003, 46.032. A district that cannot pass such a bond is in the same position as a charter school and must use instructional funds to cover facilities needs or go without.

general diffusion of knowledge [\$3,500] at tax rates of approximately \$1.31 and \$1.22, respectively.” 917 S.W.2d at 731; *see also id.* at 731 n.10 (achieving general diffusion of knowledge requires “about \$3,500 per weighted student”). With this in mind, the Court held that the school finance system did not yet violate the state property tax prohibition, but warned:

However, if the cost of providing for a general diffusion of knowledge continues to rise, as it surely will, the minimum rate at which a district must tax will also rise. Eventually, some districts may be forced to tax at the maximum allowable rate just to provide a general diffusion of knowledge. If a cap on tax rates were to become in effect a floor as well as a ceiling, the conclusion that the Legislature had set a statewide ad valorem tax would appear to be unavoidable because the districts would then have lost all meaningful discretion in setting the tax rate.

Id. at 738; *see also WOC II*, 176 S.W.3d at 795.

In *WOC I*, the Court refused to dismiss the school districts’ claims because the record did not show whether districts were “forced to tax at maximum rates either to meet accreditation standards or to provide a general diffusion of knowledge.” 107 S.W.3d at 581-82. The factual record that was later established revealed that the cost of achieving a general diffusion of knowledge had risen enough that districts were so forced. *See WOC II*, 176 S.W.3d at 797.

The State argues that the trial court erred by following this precedent because “this approach wrongly presumes that adequacy can be measured in dollars rather than actual student performance.” State Brief at 161. But that ignores the litany of student performance measures in the trial court’s findings that underpin its

conclusion that the system is not achieving a general diffusion of knowledge. *See* FOF126-FOF209; FOF298-FOF331; FOF349-FOF375; COL71 (“All performance measures considered at trial, including STAAR tests, EOC exams, SATs, the ACTs, performance gaps, graduation rates, and dropout rates, among others, demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge); COL76 (concluding that districts lack meaningful discretion “to use local tax dollars for enrichment beyond the level required for a constitutionally adequate education”).

2. Statewide evidence shows a systemic lack of meaningful discretion.

a. Districts must tax at higher rates to raise the revenue levels necessary to achieve a general diffusion of knowledge.

The State has not determined how much revenue is required to provide the constitutionally required general diffusion of knowledge. In that vacuum, the ISD Plaintiffs have developed a substantial record, based on objective data and updated metrics, which the trial court accepted as a matter of fact and law. *See* FOF610-FOF640; COL12, 18, 33; *see also* Argument Sections V.E and VII.B.2 *infra*.

The first estimate provided by the districts derives from the estimate credited by both the trial court and this Court in *Edgewood IV* that \$3,500 per weighted student provided an accredited education in 1995. *See Edgewood IV*, 917 S.W.2d at 731 n.10. Adjusted for twenty years of inflation (but *not* for twenty years of rising

standards⁴⁷), this number is equivalent to \$6,955 per weighted student today. RR54:123-25; *see also* RR58:46-48; Ex.6618:19. Fort Bend ISD Plaintiffs’ expert Dr. Catherine Clark⁴⁸ determined that 929 districts, enrolling 98.4% of the state’s students, would need to tax above \$1.04 to generate this amount. *See* Ex.6622:20; RR58:49. Even taxing at the \$1.17 cap, 888 districts, (enrolling 96.6% of students), cannot raise the inflation-adjusted *Edgewood IV* amount. *See* Ex.6622:20; RR58:49-50. Districts that would not be able to provide a general diffusion of knowledge “even by raising the rate to the maximum need not do so just to prove the point.” *WOC I*, 107 S.W.3d at 583.

The second adequacy estimate before the Court came from Dr. Allen Odden, an expert for the Fort Bend ISD and Calhoun County ISD Plaintiffs. He examined the resource levels needed to implement programs and strategies with a proven track record of improving student performance—such as full-day kindergarten, smaller class-sizes, instructional coaches, and tutors and summer school for struggling students—plus the cost of meeting certain state staffing requirements. *See generally* Ex.5520; *see also* Ex.5665:10-21; RR17:67-68, 76-77, 86-87 (discussing research

⁴⁷ *WOC II*, 176 S.W.3d at 796 (noting that standards and costs of meeting them had risen since *Edgewood IV*); FOF81-FOF110 (standards have risen substantially since *WOC II*).

⁴⁸ At the time she testified, Dr. Clark was the Associate Executive Director of the Texas Association of School Boards, with forty years’ experience in school finance and education policy. *See* RR58:9-15; Ex.6554.

base showing benefits of included educational strategies). After factoring in the costs of transportation, food services, and security, schools needed on average \$6,176 per weighted student in to implement this slate of proven-effective programs in the 2010-11 school year. *See* RR17:137-39; Ex.5665:23; Ex.6618:19; Ex.6325:1. Without adjustment for inflation to the current year, the State's expert, Dr. Lisa Dawn-Fisher, acknowledged that 896 districts, educating roughly 97% of the state's students, cannot raise this amount with a \$1.04 tax rate. *See* RR63:45-47. Even if every district in the state were able to successfully pass a TRE and raise their rates to the \$1.17 cap, 761 districts, educating more than 80% of students, could not cobble together enough funds to achieve a general diffusion of knowledge. RR63:48-50.

School finance expert and TEA's former Deputy Commissioner for Research and Development, Lynn Moak, demonstrated that both of these cost-of-adequacy estimates exceed the *system's* available revenue capacity. RR54:118-20; Ex.6618:15, 19. If all districts were taxing at \$1.04, the Foundation School Program would raise, on average, about \$5,743 per WADA in 2014-15. Ex.6618:19. This amount is \$1,212 less than the *Edgewood IV* estimate and \$789 less than the Odden estimate, once it is adjusted for inflation to 2014-15. *Id.* Even if *all* districts taxed at the maximum \$1.17 tax rate, the Foundation School Program would raise just \$6,232 per WADA—\$723 less per WADA than the *Edgewood IV* estimate and \$300

less than the Odden estimate. *Id.* This analysis shows there is not enough capacity in the system to fund a general diffusion of knowledge, much less enrichment.

The State criticizes Mr. Moak’s analysis for looking at revenue at specific rates (\$1.04 and \$1.17) and suggests the Court should instead look to the analysis done by Dr. Dawn-Fisher, who examined how much revenue districts raise at current tax rates compared to how much revenue would be generated if all districts taxed at \$1.17. She “discovered” \$2.3 billion of additional taxing capacity at the time of the first trial in fall 2012. State Brief at 159-61; Ex.1188:18. But one cannot determine how much of that capacity is for *enrichment above the cost of a general diffusion of knowledge* without first identifying the cost of a general diffusion of knowledge.⁴⁹ That is what plaintiffs’ experts Dr. Clark and Mr. Moak did.

Whether looking at individual districts (as Dr. Clark did) or systemwide (as Mr. Moak did), the evidence establishes that the system provides insufficient access to revenue to achieve a general diffusion of knowledge at tax rates below the cap—much less at rates far enough below the cap to allow districts “to provide the basic program and to supplement that program at a level of its own choice.”⁵⁰ TEX. EDUC.

⁴⁹ This is especially true given the difficulty districts have passing a TRE to raise their rates above \$1.04, even if doing so is necessary to achieve a general diffusion of knowledge. *See* Argument Section IV.C.2 *supra*; *see also* SB1 HRO Analysis at 5 (“Rate increases are unlikely to happen, since most school districts are required to gain voter approval for increases in property tax rates.”) *available at* <http://www.hro.house.state.tx.us/pdf/ba84r/sb0001.pdf> (May 24, 2015).

⁵⁰ The State takes Mr. Moak’s testimony before the trial court out of context to suggest that his analysis is not connected to the cost of a general diffusion of knowledge. State Brief at 161.

CODE § 42.301; *see also WOC II*, 176 S.W.3d at 797 (“Although the statute does not promise any particular level of supplemental funding, local supplementation is made a core component of the system structure, necessitated by the basic philosophy of the virtue of local control.”).

b. Tax rates and the percentage of available revenue being spent has increased steadily since 2007-08.

The State argues, as it did in *WOC II*, that the ISD Plaintiffs cannot, as a matter of law, show a systemwide violation of article VIII, section 1-e because not enough school districts are taxing at the statutory cap. State Brief at 159. However, the Court has twice “rejected the argument that impermissible state control depended on the number of districts affected” and instead has emphasized that the determining factor is the extent of state control. *WOC II*, 176 S.W.3d at 795 (quoting *WOC I*, 107 S.W.3d at 578); *see also WOC I*, 107 S.W.3d at 558. In determining whether that state control has resulted in school districts losing meaningful discretion to tax

When asked if he knew of specific districts that had access to more revenue than that needed for adequacy, he responded that he had not personally looked at individual districts, but had instead done a system-level analysis. *See* RR7:113-14 (“Q: And if we’re looking at the districts who are at \$1.17, are there districts who are at \$1.17 right now and have funds above what is required to provide an adequate education? A: I’ve not specifically studied relating the funding *for districts* at \$1.17 to the adequacy level. . . . Q: Okay. And do you know whether there are districts who are not taxing at \$1.17 that if they were, they could have funds available to provide more than an adequate education? A: Again, *I haven’t studied individual districts or done individual district analysis* to make that determination.”). The district-level analysis that the State asked Mr. Moak about, however, *was* done by Dr. Clark and revealed that only 133 school districts could raise the revenue necessary for a general diffusion of knowledge at \$1.17 tax rate. Ex.6622:20. Dr. Clark’s and Mr. Moak’s analyses provide different perspectives on the system, but each reveals that the districts do not have access to enough revenue to achieve a general diffusion of knowledge.

below maximum rates, the Court looked to several systemwide trends, including a “marked increase” in local tax rates and an increasing percentage of available revenue being spent. *WOC II*, 176 S.W.3d at 794-796.

Once again, the cost pressures from rising academic standards and the changing student population are forcing districts to the cap in an attempt to provide a general diffusion of knowledge. In 2012-13, 928 districts (over 90%), with almost 4.2 million students, taxed at or above \$1.04—up from 630 at the time tax compression was passed. Ex.6618:14. Despite the State’s attempt to control district tax rates and prevent them from taxing above \$1.04 (*see* Argument Section IV.C.2 and note 37, *supra*), the number of districts taxing at the cap has more than doubled in five years:

Figure F-17. M&O Tax Rates for Texas School Districts 2007-08 and 2012-13

M&O Tax Rate	# Districts 2007-08	% Districts	2007-08 ADA	% ADA	# Districts 2012-13	% Districts	2012-13 ADA	% ADA
<\$1.00	98	9.55	165,709	3.92	54	5.29	80,452	1.78
\$1.00 to <\$1.04	108	10.53	994,860	23.52	39	3.82	292,556	6.46
\$1.04	699	68.13	2,680,939	63.38	607	59.45	3,046,938	67.29
\$1.04 to <\$1.17	24	2.34	217,130	5.13	74	7.25	505,855	11.17
\$1.17 and Above	97	9.49	171,294	4.05	247	24.19	602,429	13.30
Total	1,026	100	4,229,933	100	1,021	100	4,528,231	100

Source: Moak, Casey & Associates data files (original source data from the State Comptroller of Public Accounts Self-Report Property Value File and TEA reports of student counts by district)

Ex.6618:14 (emphasis added). The number of students living in districts that are taxing at the cap has more than *tripled*. *Id.* As tax rates rise and the tax cap stays the same, the percentage of available revenue being spent necessarily also rises.

Similarly, because state aid for facilities has not kept pace with property value growth or the growing student population, districts have been forced to raise facility

tax rates to keep pace with facility needs. *See* RR10:171-77, 180-83; Ex.6352 at 17, 20-21; RR32:198-99; RR56:176-79. In 1999-2000, the year the \$35 yield was adopted, just 34 districts levied a facility tax rate at or above \$0.30. RR56:177; Ex.6621:13. At the time of *WOC II*, forty-five school districts had I&S rates of \$0.30 or higher. Ex.6621:14. By 2012-13 that number had grown to 225 districts. RR56:179-80; Ex.6621:13-14. The increase in tax rates has been even more profound for the ninety-five fast-growth districts, fifty-seven of which levy a facility tax rate of \$0.30 or higher. Ex.6621:15.

3. Evidence from the focus districts confirms the lack of meaningful discretion.

The State isolates individual districts to argue that the districts were not required to increase tax rates “purely to meet state requirements.” State Brief at 166. This argument not only misconstrues the legal standard, it ignores evidence showing that districts are struggling under the increasing standards and cannot afford programs needed to improve their performance.⁵¹

Most strikingly, the State does not even address the performance data of the districts it singles out. For example, the State suggests “supplemental technology” was the only reason that Duncanville ISD needs additional revenue—ignoring the

⁵¹ The Fort Bend ISD Plaintiffs agree with and incorporate by reference the Calhoun County ISD Plaintiffs’ briefing regarding the evidence presented at trial from individual districts. *See* CCISD Appellees’ Brief at Argument Section IV.B.3.

fact that in the first two years of the STAAR administration, the percentage of its students passing all their EOC exams fell from 38% to 32%. *See* Ex.6324:5; Ex.6548:7.

The State dismisses Corsicana ISD Superintendent Diane Frost’s testimony as not providing “a sufficient tie to adequacy” for the district’s decision to raise its rate to \$1.04. State Brief at 167. But Dr. Frost testified about her district’s inability to sustain academic performance at standards the State mandates. She noted that the district was already struggling to improve scores in the final years of TAKS, with scores flat or even declining. Ex.6341:28-29; Ex.368:10-11. Not even half of Corsicana ISD’s students passed all of their EOC exams in the first two years of STAAR testing—and not even 15% achieved the state’s standard for college readiness on all exams. *See* Ex.6324:18; Ex.6548:11; Ex.6547:9; Ex.368:15-20. It is not surprising that Dr. Frost characterized the district’s challenge under the increasing standards as more than “a hill or a bump in the road, it’s a mountain.” Ex.6341:34.

Other districts that the State criticized fared just as poorly. Abilene ISD’s passage rate *declined* from 47% of students passing all of their STAAR EOC exams in the first year to 45% doing so in the second year of administration. Ex.6324:21; Ex.6548:7. In Aldine ISD, only 35% of students passed all of their EOCs in the first two administrations, and in Waco ISD just 22% of its students passed all their EOCs

in the first year and only 23.5% did so in the second year—demonstrating that neither district is achieving a general diffusion of knowledge under current tax rates. Ex.6324:13 (Aldine), 17 (Waco); Ex.6548:5 (Aldine), 7 (Waco).

The State incorrectly suggests that the superintendent testimony on their districts' financial and instructional needs was vague. For example, the State says that former Austin ISD Superintendent Meria Carstarphen “testified only to the perceived need to raise the tax rate to cure the 2011 cuts and opined that any raise in rates would not be discretionary,” as if this were the full extent of her testimony. State Brief at 170 (citing RR19:158, 161). In fact, Dr. Carstarphen detailed Austin ISD's struggles to provide all of its students with a meaningful opportunity to achieve state standards—especially the 64% of students who are economically disadvantaged and the 28% who are ELL. RR19:142-43, 145-46; Ex.6356:4-5. She explained that one of the biggest challenges for the latter population, who speak some sixty-four different languages, is recruiting, training, and compensating qualified bilingual teachers. RR19:146-47. She also testified regarding the district's struggles to provide the continuity of service needed for the 30% of students who lack stable housing and therefore switch schools repeatedly during the school year. RR19:144, 149-54; Ex.6356:6-8. The school finance system does not account for

these additional costs, which therefore must be borne by the district.⁵² RR19:153-54. At the same time, \$135.2 million of Austin ISD’s revenue (almost 20%) is fully controlled by the State and redistributed to other districts via recapture. RR19:163; Ex.6356:13.

Refugee students also present challenges beyond those posed by even their other economically disadvantaged peers. The Amarillo, Alief, and Abilene superintendents testified to the hurdles their districts face in educating refugee students—largely from Asian and African countries—to state standards. Refugee students often arrive unschooled and illiterate even in their native language and must first be taught basic skills such as how to hold a pencil and sit at their desks. *See* RR8:98-99; RR19:41-44; RR22:120-23. Frequently, these students have undergone emotional trauma—trauma that the districts must help them address so they can succeed in school. Ex.4224-L:83-84. On a more practical note, districts often have difficulty finding instructional materials in the students’ native language and recruiting personnel who speak their language. RR19:44; RR8:96; RR22:120. The school funding formulas fail to account for these challenges.

⁵² Dr. Carstarphen was not the only superintendent to testify regarding the challenges residentially unstable students pose for school districts. *See also, e.g.*, Ex.6335:18-24 (Waco); RR8:100-01 (Alief); RR22:140-42 (Edgewood); RR4:72 (San Benito); Ex.3206:12 (Quinlan); RR24:126 (Los Fresnos).

The testimony from these superintendents illustrates how districts today—much as they did when this Court decided *WOC II*—are struggling under increasing standards and a demographically diverse and changing student population. *See WOC II*, 176 S.W.2d at 796. This loss of meaningful discretion, further evidenced by the restrictions on tax rates and the districts’ inability to reap the benefits from increased tax revenue filling state coffers, compels but one conclusion: the school finance system once again imposes a *de facto* state property tax.

III. The trial court correctly determined that the public education system is not “suitable.”

A. Standard of review for article VII, section 1 claims

Courts review article VII, section 1 claims for arbitrariness, asking whether the Legislature’s choices are reasonable. *WOC II*, 176 S.W.3d at 784. While the Legislature has broad discretion “to determine what public education is necessary for the constitutionally required ‘general diffusion of knowledge’, and then to determine the means for providing that education,” it does not “have free rein at either level.” *Id.* Its choices must be “informed by guiding rules and principles properly related to education.” *Id.* at 785. Its choices may not result in “a public school system that is inadequate, inefficient, or unsuitable, regardless of whether it has a rational basis or even a compelling reason to do so.” *Id.* Likewise, its choices may not “define the goals for accomplishing a general diffusion of knowledge and then provide insufficient means for achieving those goals.” *Id.*

Because the question of whether the statutes establishing the public school system violate article VII, section 1 are questions of law, they are reviewed *de novo*. *Id.* However, “to the extent that this determination rests on factual matters that are in dispute, [the Court] must, of course, rely entirely on the district court’s findings.” *Id.*; *see also* Argument Section IV.A *supra*.

B. The system’s suitability is judged by whether it is structured, operated, and funded to accomplish its purpose for all Texas children.

The Constitution requires the Legislature to “make *suitable* provision for the support and maintenance” of the public school system. TEX. CONST. art. VII, § 1 (emphasis added). “In essence, ‘suitable provision’ requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children.” *WOC II*, 176 S.W.3d at 753; *see also id.* at 794.

The Legislature has broad discretion in *how* to meet the suitability requirement, but not in *whether* to do so:

The word ‘suitable,’ used in connection with the word ‘provision’ in this section of the Constitution, is an elastic term, depending upon the necessities of changing times or conditions, and clearly leaves to the Legislature the right to determine what is suitable, and its determination will not be reviewed by the courts *if the act has a real relation to the subject and object of the Constitution*.

Edgewood IV, 917 S.W.2d at 736 (emphasis added) (quoting *Mumme v. Marrs*, 40 S.W.2d at 36); *id.* at 735 (holding that suitability requirement is judicially enforceable mandate). Thus, for example, the Legislature may rely on local districts

to provide the constitutionally required general diffusion of knowledge, but only if it requires districts to adhere to that mandate. *Id.* at 730 n.8; *WOC I*, 107 S.W.3d at 579-80. Similarly, the Legislature may “define the goals for accomplishing the constitutionally required general diffusion of knowledge,” but once it does so, it must ensure that districts have sufficient resources to do so. *WOC II*, 176 S.W.3d at 785; *see also id.* at 778 (“[A] system without resources to accomplish its purposes would be inefficient and unsuitable.”). Further, it may not artificially lower the definition of a general diffusion of knowledge to avoid its duty to ensure districts have sufficient funding. *Id.* at 784; *WOC I*, 107 S.W.3d at 571; *Edgewood IV*, 917 S.W.2d at 730 n.8.

The State argues that if the system is adequate and efficient, it is therefore suitable. State Brief at 152-53. But that reads the suitability requirement out of the Constitution. *Edgewood III*, 826 S.W.2d at 506 (“One fundamental provision of constitutional construction is that effect must be given to all its provisions if possible.”); *Edgewood I*, 777 S.W.2d at 395 (“The language of the Constitution must be presumed to have been carefully selected.”).

The Constitution has three distinct standards: “*First*, the education provided must be adequate; that is, the public school system must accomplish that ‘general diffusion of knowledge ... essential to the preservation of the liberties and rights of the people’. *Second*, the means adopted must be ‘suitable’. *Third*, the system itself

must be ‘efficient’.” *WOC I*, 107 S.W.3d at 563 (emphasis added). Just as the adequacy and efficiency standards are “interrelated” yet distinct, so too is the suitability standard. *Id.* at 571. Suitability “refers specifically to the means chosen to achieve an adequate education through an efficient system.” *WOC II*, 176 S.W.3d at 793.

The suitability claims in *Edgewood IV* and *WOC II* failed, not because the efficiency and adequacy claims failed, but because the proof failed. In *Edgewood IV*, the Court held:

Certainly, if the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas, the “suitable provision” clause would be violated. The present record, however, does not reflect any such abdication.

917 S.W.2d at 736-37; *see also WOC II*, 176 S.W.3d at 794 (“We rejected the [suitability] argument [in *Edgewood IV*], not because it misinterpreted the standard, but because the reliance on local revenue does not prevent the system from providing a general diffusion of knowledge.”). Indeed, in *WOC II*, the Court specifically noted, “Neither the court nor the parties have differentiated suitability from the constitutional standards of adequacy and efficiency, *but the requirement of suitability is not merely redundant of the other two.*” 176 S.W.3d at 793 (emphasis added). It denied the suitability claim because the parties had not proven that the

structure or operation of the funding system prevented it from efficiently accomplishing a general diffusion of knowledge. *Id.* at 794.

The districts, aware of the Court’s prior holdings, focused heavily on the system’s structure and operation, and developed considerable evidence that deficiencies in both have impeded the general diffusion mandate. In short, the districts have proved that *the funding system “cannot because of its structure achieve its purpose.”* *Id.* at 783 (emphasis added).

C. The State elevated the system’s goal but has not altered its structure, operation, or funding to meet that new goal.

The State has integrated the academic components of the public education system: “a state curriculum, a standardized test to measure how well the curriculum is being taught, accreditation standards to hold schools accountable for their performance, and sanctions and remedial measures for students, schools, and districts” *Id.* at 764. The State regularly updates these components to reflect “changing times, needs, and expectations”—most recently by incorporating college- and career-readiness standards throughout. *See* Facts Section II.B.1 *supra*; State Brief at 11-25. What the State has *not* done, however, is update the finance components to meet these academic enhancements. *Compare* State Brief at 11-25 (academic components of system reviewed and revised based on “consultation,” “research,” and “study”) *with id.* at 25-37 (school funding retains pre-*WOC II*

structure, with no mention of research or study or any rationale for the formula structure or funding amounts).

- 1. The school system’s legislatively defined purpose is to provide all students a meaningful opportunity to graduate college or career ready.**
 - a. The State has linked the academic components of the public education system to its purpose of preparing college- and career-ready graduates.**

The Legislature’s prescription for a general diffusion of knowledge can be drawn from the statutes it enacts. *See WOC II*, 176 S.W.3d at 788-90. Based on its “conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens,” the Legislature has defined the “mission” of the public education system as “ensur[ing] that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.” TEX. EDUC. CODE § 4.001(a). As part of this mission, the Legislature requires school districts to “prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.” *Id.* § 28.001. By calling the knowledge and skills to do so “essential,” the Legislature linked the college- and career-readiness requirement to the constitutional standard of a general diffusion of knowledge. *Id.*; *WOC II*, 176 S.W.3d at 789.

The Legislature has further equated a general diffusion of knowledge with college and career readiness by requiring:

- The Education Commissioner and the Higher Education Commissioner to develop and “periodically review and revise” college-readiness standards. TEX. EDUC. CODE §§ 28.008(a)-(c), (g).
- The SBOE to incorporate the college-readiness standards into the required curriculum. *Id.* § 28.008(d).
- TEA to incorporate the college-readiness standards into the STAAR exams. *Id.* §§ 39.023(a-1)(1); .0241(a-1); *see also* RR27:33, 36-37; RR28:20-21; Ex.38:10.
- School districts to ensure that students may earn at least twelve semester credit hours in high school and to notify students of this opportunity. TEX. EDUC. CODE §§ 28.009, 28.010.
- School districts to partner with at least one higher education institute to develop and provide college preparatory math and English classes. *Id.* § 28.014.
- School districts to work with each entering high school freshman and her/his parents to develop a graduation plan that “(1) promotes: (A) college and workforce readiness; and (B) career placement and advancement; and (2) facilitates the student’s transition from secondary to postsecondary education.” *Id.* § 28.02121(d).
- Students to begin high school on a graduation plan that includes an endorsement in STEM, multidisciplinary studies, public service, business and industry, or arts and humanities and prohibiting them from moving down to a lower level graduation plan before their junior year or without parental permission. *Id.* § 28.025(b).
- School districts to ensure all students have the opportunity to participate in career and technology education programs and to provide such students, “to the greatest extent possible ... opportunities to enroll in dual credit courses designed to lead to a degree, license, or certification.” *Id.* § 29.182(b).

- School district performance to be measured on the percentage of students who meet the college-readiness standard on STAAR and at least one other measure of college and career readiness. *Id.* §§ 39.053(c)(1)(B), (c)(6).
- The Education Commissioner to periodically increase performance standards for students and schools to ensure that Texas ranks within the top 10 states in terms of college readiness by 2019-20. *Id.* § 39.053(f).

b. School districts must provide both an accredited education *and* a general diffusion of knowledge.

The Commissioner annually determines districts’ accreditation status based on student performance and the district’s performance under the financial accountability system. TEX. EDUC. CODE § 39.052(a). The Legislature establishes general standards for measuring student performance—such as “the percentage of students who performed successfully” on the STAAR exams and “high school graduation rates.” *Id.* §§ 39.052-.053. The Commissioner determines the specifics—such as what percentage or rate is required. 19 Tex. Admin. Code § 97.1001. Under the Commissioner’s rules, districts are rated as either “met standard” or “improvement required.”⁵³ 19 Tex. Admin. Code § 97.1001(b). The consequences of an “improvement required” rating can be severe. The Commissioner must intervene and sanction any school district that is rated

⁵³ Traditional campuses and charters receive the same ratings; “alternative education campuses”—those that serve a student body that is at least 75% at-risk and at least 50% grades 6-12—receive the ratings “met alternative standard” or “improvement required” instead. 19 Tex. Admin. Code § 97.1001(b).

“improvement required” for two consecutive school years. *See* TEX. EDUC. CODE § 39.102; 19 Tex. Admin. Code §§ 97.1055(a)(1)(B), (C). If a district is rated “improvement required” for four years in a row, its accreditation is revoked and the Commissioner will initiate proceedings to close the district and annex it to another district. *See* 19 Tex. Admin. Code §§ 97.1055(d)(1), (4); *see also* TEX. EDUC. CODE § 39.102(d).

TEA historically phases in the standards to ensure that most districts are accredited.⁵⁴ For example, in 2004 under the TAKS-based accountability system, a district that had only 25% of its students pass the science exam, 35% of its students pass the mathematics exam, and 50% of its students pass social studies, writing, and reading/English language arts would have been ranked “academically acceptable.” RR30:87; Ex.11245:2. These percentages were raised incrementally, thus ensuring that over the course of the TAKS-based accountability system the highest percentage of districts and charters ever ranked “unacceptable” was 6.5%—and that number occurred in 2010-11—the last year of the TAKS-based accountability system. RR30:87-88; Ex.11245:10.

⁵⁴ The advisory committees that help TEA establish the criteria for accountability ratings explicitly consider how many districts can meet the criteria when setting them. *See* Ex.5785:48-50 (Director of TEA’s Division of Performance Monitoring testifying: “That’s exactly what they’re discussing, how many schools would be impacted if the target was set at X versus Y, and that’s what they had based their recommendations on to the commissioner.”).

This Court has previously recognized that:

The public school system the Legislature has established requires that school districts provide both an accredited education and a general diffusion of knowledge. It may well be that the requirements are identical; indeed, as in *Edgewood IV*, we presume they are, giving deference to the Legislature’s choices. But it is possible for them not to be—an accredited education may provide more than a general diffusion of knowledge, or vice versa

WOC I, 107 S.W.3d at 581. The current STAAR-based accountability system fits the latter scenario. Paradoxically, TEA rates districts that do not spread knowledge diffusely as “met standard.” For example:

- 80% of Edgewood’s ninth and tenth graders failed at least one EOC exam in Spring 2013—the second year of the exams. Ex.6548. The district’s students showed no improvement between the first and second administration in Algebra, Biology, or English I Reading and Writing, Ex.4237:16, and Edgewood ISD was identified as “needs improvement” in 12 of 32 “safeguards.” Ex.5785:178-79; Ex.20249. Yet Edgewood was still rated “met standard.”
- 76.5% of Waco’s ninth and tenth graders failed at least one EOC in Spring 2013—showing very little improvement over Spring 2012, when 78% of the 9th graders failed at least one EOC. Ex.6548:7; Ex.6324:17. Only 7% of these students met the final level II (the State’s standard for college readiness) on all their EOC exams in 2013. Ex.6547:5. Waco ISD was rated “met standard.” Ex.6588.
- 65% of Aldine’s ninth and tenth graders failed at least one EOC in Spring 2013, showing no improvement over Spring 2012. Ex.6548:5; Ex.6324:13. Just 11.7% of the district ninth and tenth graders reached the college-ready standard on all exams. Ex.6547:3. Aldine ISD was still rated “met standard.” Ex.6564.
- On ten of the seventeen STAAR 3-8 exams, Kermit ISD had passing rates below 50%, yet it was still rated “met standard.” Ex.5785:138-39; Ex.20247.

- La Pryor ISD had passing rates below 30% on every fourth grade exam and was still rated “met standard.” Ex.5785:142; Ex.20248.

TEA’s limited resources check its ability to monitor every district.⁵⁵ And it must consider the practical effect that closing a district visits on its neighboring districts. Yet these practical challenges *do not change the legislative definition of a general diffusion of knowledge*. Nor is the definition transformed when the Legislature permits students to walk across the stage even if they cannot meet minimal requirements for college or a career. A definition that varies depending on student and district performance is not a “definition.” This Court has made clear “[t]he Legislature may not define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision imposed by article VII, section 1.” *WOC II*, 176 S.W.3d at 784; (quoting *WOC I*, 107 S.W.3d at 571 and *Edgewood IV*, 917 S.W.3d at 730 n.8).

⁵⁵ Cf. Ex.5785:51 (TEA Monitoring and Interventions Division monitors districts ranked “improvement required”); Ex.5630:110-11, 475 (then Commissioner Scott testifying that adding a charter school that needs to be reviewed, monitored, and accredited adds to the agency’s workload and that there is an agency “capacity issue”); *id.* at 254-57 (the Legislature cut TEA’s budget by 35-40% in 2011, without reducing TEA’s monitoring or other statutorily-required duties).

2. **The current formula system does not take into account the cost of the Legislature’s own definition of a general diffusion of knowledge.**
 - a. **The State has not calculated the cost of meeting its rising standards.**

Just as the Education Code requires the Education and Higher Education Commissioners to review and revise the college- and career-ready standards, it instructs the LBB to biennially calculate the funding amount per student, considering variations in costs between districts and students, that would provide each student access to an education appropriate to his or her needs. *See* TEX. EDUC. CODE §§ 28.008(b)(6); 42.007; *see also id.* § 42.001. While the former provision ensures that the Legislature’s definition of a general diffusion of knowledge is updated “to reflect changing times, needs, and public expectations,”⁵⁶ the latter would ensure that the Legislature evaluates whether the system is “structured, operated, and funded”⁵⁷ to provide that knowledge to all Texas schoolchildren.

But, for more than a decade, the LBB study has lapsed. *See* RR10:152-55; Ex.6352:7-9; RR56:170; Ex.6621:4. A version of this requirement has existed in statute since before *Edgewood II*, when the Court praised its inclusion as a key improvement made in response to *Edgewood I*:

⁵⁶ *WOC I*, 107 S.W.3d at 572 (quoting *Edgewood IV*, 917 S.W.2d at 732 n.14).

⁵⁷ *WOC II*, 176 S.W.3d at 753.

Senate Bill 1 does make certain improvements in public school finance. It attempts to realize the long-articulated objective of assuring school districts substantially similar educational revenue for similar levels of local tax effort by *providing for a wide array of biennial studies to detect deviations from fiscal neutrality and inform senior policy makers when increased state funding is required*. These policy makers then recommend to the Legislature the amount of funds that should be allocated for public education for the succeeding biennium. Thus, for the first time, the system contains a *mandate for biennial adjustment, based upon information from a battery of studies, with the intention of preventing the opportunity gap between poor and rich districts from re-widening each time legislative action narrows it*.

Edgewood II, 804 S.W.2d at 494-95 (emphasis added). Unfortunately, *at no point in the last decade has the LBB completed the required calculations or made the required recommendations*. RR10:154-55; Ex.1328:11-12. So, while the State discusses the amount of study, thought, and effort that went into increasing the academic requirements during this time period, it fails to even mention the requirement to study the formulas and calculate the cost of providing students with an education that meets those requirements. *Compare* State Brief at 12-13 (TEKS and college- and career-ready standards adopted following consultation and study), 14 (career and technology TEKS revised based on recommendations from educators and employers; college- and career-ready standards periodically reviewed and revised), 17 (STAAR developed in consultation with educators and testing experts), 18 (final STAAR passing standards based on studies linking standards to college and career readiness), 23 (accountability system standards set in consultation with educators, business and community leaders, and parents) *with id.* at xxxii (no citation

to § 42.007), 25-33 (no mention of LBB study or any other analysis of cost of meeting standards).

b. “Formulas that once fit have been knocked askew.”

If there is one lesson that Texas’s school finance litigation delivered, it is that school finance formulas cannot be established, then ignored as the state’s population, economy, and academic needs change. In *Edgewood I*, the Court observed, “[t]he economic development of the state has not been uniform. Some cities have grown dramatically, while their sister communities have remained static or have shrunk. Formulas that once fit have been knocked askew.” 777 S.W.2d at 391. Sixteen years later, in *WOC II*, the Court again noted how an evolving student population, whose change and growth was not uniform across districts, presented constitutional challenges. 176 S.W.3d at 755-56. While the *WOC II* Court upheld the system against the article VII, section 1 challenges, it also issued two strong warnings. First, the Court said, “We remain convinced, however, as we were sixteen years ago, that *defects in the structure of the public school finance system expose the system to constitutional challenge.*” *Id.* at 754 (emphasis added). Second, it cautioned:

There is substantial evidence, which again the district court credited, that the public education system has reached the point where continued improvement *will not be possible* absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education. ... [I]t remains to be seen whether the system’s predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes.

Id. at 790 (emphasis added). The Court’s warning is, by no means, easy to heed. Political, social, economic, demographic, and other factors stand in the way. But these obstacles must be overcome. And if the Legislature fails, the Court must intervene.

From 1990 to 2010, the State’s population grew by almost 50%—from not quite 17 million to just over 25 million. Ex.3228:3. The Austin and McAllen area populations grew by more than 35%, while the north and west central areas of the state grew less rapidly and, in a few areas, even declined. Ex.3228:10-13. About 90% of enrollment growth has been in approximately 100 of the state’s 1025 school districts. Ex.6352:22-23; RR10:176. Yet the Cost of Education Index, the formula designed to account for variations in the cost of resources needed to run a school (such as variation in teacher salaries), is *based on district characteristics from the 1989-90 school year*. Ex.6593:24. The Legislature has twice commissioned studies of the index (2000 and 2004) and both studies confirmed what logic dictates—that costs have increased significantly and that the index should be replaced. Ex.1328:10-11. But both studies are collecting dust on the shelves. *Id.*

The fastest growing districts are forced to build new facilities at a rapid pace, yet the facilities-funding guaranteed yield has not changed since 1999 and does not take into consideration district growth rates, construction needs, or costs. *See* RR3:132; RR25:84-85; RR11:60; Ex.1328:21-24; Ex.6621:9; *see also supra*, at

Argument Section IV.C.4. The formulas designed to account for diseconomies of scale due to size or a sparse population are twenty to thirty years old. Ex.1328:14, 16. The transportation allotment, which covered approximately 28% of statewide transportation expenditures in the 2006-07 school years, has not been revised **since 1984**. *Id.*

From 2000 to 2010, the percentage of the population living in poverty grew across every ethnic group. Ex.3228:34. The percentage of the student population considered to be economically disadvantaged climbed to over 60% by 2012-13. Ex.4258:13; Ex.11123:10. Yet the funding weight assigned to these students has not changed **since 1984**. Ex.1328:16. Eighty-one school districts have a poverty rate of more than 90%. *See* Ex.6620. Yet the formula does not take into account the increased educational challenges and cost associated with a higher concentration of economically disadvantaged students. *See* Ex.6620; Ex.6349:49; RR29:105-07; TEX. EDUC. CODE § 42.152.

The ELL student population grew by more than 260,000 students from 2001-02 to 2012-13. *See* Ex.4258:13; Ex.11213:2; *see also* RR3:88-90; Ex.3228:78-79. Students speak a dizzying array of home languages: ninety-three in Richardson, eighty-two in Alief, sixty-four in Austin, more than forty in Amarillo, and thirty-five in Abilene. RR4:212; RR8:96; RR19:45-48; RR22:121; RR19:41-42. Yet the funding weight for these students also has not changed **since 1984**. Ex.1328:16.

Special education is a significant cost driver for school districts. For example, in Humble ISD, the number of students who require special education services is only modestly increasing, yet due to the increasing severity of students' disabilities and the increasing need for additional support that federal law requires, their costs and personnel requirements have increased dramatically. RR3:146-49; Ex.6346:5; RR4:15-17; Ex.6347; *see also* 20 U.S.C. § 1400 *et seq.*; RR25:163-65 (Northside ISD); RR4:192-93 (San Benito CISD). Fort Bend ISD's CFO testified that the district's state and local expenditures "well exceed" what its special education allotment generates—due to increasing severity of students' disabilities. Ex.6338:62-68; Ex.664:25-26. Many special education students require additional nursing resources. RR24:132. Yet the funding weights for special education students are all at least **twenty-two years old**. Ex.1328:16.

D. The public school system cannot, because of its structure, achieve its purpose for *all* students.

In *Edgewood IV*, the Court observed that "[c]ertainly if the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas, the 'suitable provision' clause would be violated." *Edgewood IV*, 917 S.W.2d at 736; *see also WOC I*, 107 S.W.3d at 580. While the record in *Edgewood IV* did not "reflect any such abdication,"

Edgewood IV, 917 S.W.2d at 736-37, the one here does—especially for the state’s growing populations of economically disadvantaged and ELL students.

- 1. The system’s structure and operation prevent it from achieving a general diffusion of knowledge for economically disadvantaged students.**
 - a. Performance outcomes for economically disadvantaged students reveal that the state’s largest subpopulation of students is not achieving a general diffusion of knowledge.**

Texas holds *all* of its students to the same rigorous academic standards. RR26:172-73. Yet the state’s economically disadvantaged students are not receiving the same opportunity to achieve those standards. The Spring 2013 STAAR EOC exams revealed poor performance by economically disadvantaged students. Just one out of every three passed all of their exams on the first try. Ex.6618:25. The data also reveal large achievement gaps between economically disadvantaged students and their peers:

STAAR EOC Tests	% of Students <u>Failing</u> at Level II Phase-in 1 Standard
Eng. I Reading Econ. Disadvantaged*	46%
Eng. I Reading Non-econ. Disadvantaged*	20%
Eng. I Writing Econ. Disadvantaged*	65%
Eng. I Writing Non-econ. Disadvantaged*	35%
Biology Econ. Disadvantaged*	21%
Biology Non-econ. Disadvantaged*	7%
Algebra I Econ. Disadvantaged*	29%
Algebra I Non-econ. Disadvantaged*	13%
Eng. II Reading Econ. Disadvantaged*	31%
Eng. II Reading Non-econ. Disadvantaged*	12%
Eng. II Writing Econ. Disadvantaged*	61%
Eng. II Writing Non-econ. Disadvantaged*	33%
World History (Proxy) Econ. Disadvantaged*	41%
World History (Proxy) Non-econ. Disadvantaged*	19%
All Tests Taken. Econ. Disadvantaged – Graduation Tests Only ⁵⁸	64%
All Tests Taken. Non-econ. Disadvantaged – Graduation Tests Only	35%

Id. (emphasis added).

These gaps are troublingly persistent. Between the first and second year of STAAR, the gaps *increased* for four of the five EOC tests required for graduation:

- English I Reading performance gap increased from twenty-three to twenty-six percentage points and Writing from twenty-eight to thirty percentage points. *Compare* Ex.4114, and 4115:1, *with* Ex.4259:110, and Ex.4259:112.
- Algebra I performance gap increased from thirteen to sixteen percentage points. *Compare* Ex.4131:1, *with* Ex.4259:104.

⁵⁸ To estimate the percentage of ninth and tenth graders who were able to pass all of the exams required for graduation, this analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History. Ex.6618:25.

- U.S. History performance gap increased from fourteen to eighteen percentage points; *Compare* Ex.4135:3, *with* Ex.4259:124.
- Biology performance gap increased from eleven to fourteen percentage points. *Compare* Ex.4133:1, *with* Ex.4259:107.

See also FOF301.

EOC exams are given in the spring, and students are allowed to retest until they either pass or give up and drop-out. But even after multiple retests, tens of thousands of economically disadvantaged ninth and tenth graders still failed. Taking into account all retests through December 2013 and the “transition rule” that allowed more than 32,000 economically disadvantaged students who passed *either* Reading *or* Writing and only failed the other by a certain amount to be considered to have “passed” English I and II—135,000 students from the Classes of 2015 and 2016 *still* could not pass all of their exams:

	Number of ED students having failed to pass all exams taken (with transition rule)	Percent of ED students having failed to pass all exams taken (with transition rule)	Number of ED students not required to retest based on transition rule
Class of 2015	54,755	34.4	19,069
Class of 2016	80,192	44.2	13,424

FOF307; Ex.5797:12. These numbers do not include the more than 36,500 students who had taken the freshman level exams in Spring 2012 but, by December 2013, had either left the public school system or fallen too far behind to be considered part of the “Class of 2015.” *See* Ex.5795:39-40 (approximately 345,688 ninth graders

took EOC exams in 2012), 76 (309,133 students in TEA’s “Class of 2015” analysis prepared for trial);⁵⁹ Ex.10855; Ex.11452.

To put these passing percentages into context, it helps to know just how low the phased-in passing standard is. As shown below, in Spring 2012, students needed only answer twenty out of fifty-four questions correctly, or 37%, to “pass” the Algebra I and Biology tests.

	# Items Tested	Phase-in 1, Level 2		Final Level 2	
		# Correct	% Correct	# Correct	% Correct
Eng I Read	56	30	54%	36	64%
Eng II Read	56	27	48%	33	59%
Eng I Write	62	40	65%	45	73%
Eng II Write	62	38	61%	43	69%
Algebra I	54	20	37%	34	63%
Biology	54	20	37%	33	61%
U.S. History	68	28	41%	44	65%

Ex.44:9-10.⁶⁰

Looking at the college-ready standard, the percentage of items needed to pass is still relatively low—with only one being above 70%, or what would traditionally be considered a “C” grade. *Id.* Yet the percentages of economically disadvantaged students who can meet this standard are low across all subjects. In Spring 2013, just

⁵⁹ By January 2015, the “Class of 2015” had lost another 18,500 students, down to 291,062. [http://tea.texas.gov/About_TEA/News_and_Multimedia/Press_Releases/2015/Class_of_2015_S_TEAR%20AE_end-of-course_exam_passing_rate_hits_90_percent_\(Jan._15,_2015\).](http://tea.texas.gov/About_TEA/News_and_Multimedia/Press_Releases/2015/Class_of_2015_S_TEAR%20AE_end-of-course_exam_passing_rate_hits_90_percent_(Jan._15,_2015).)

⁶⁰ The numbers of correct items required to pass the test have not changed appreciably since 2012. See <http://tea.texas.gov/student.assessment/convtables/> (last visited Jun. 30, 2015).

13% of economically disadvantaged students achieved the college-ready standard on all of the required EOC exams.⁶¹

STAAR EOC Tests	% Failing to Meet Level II Final Standard
Eng. I Reading Econ. Disadvantaged*	70%
Eng. I Reading Non-econ. Disadvantaged*	39%
Eng. I Writing Econ. Disadvantaged*	82%
Eng. I Writing Non-econ. Disadvantaged*	54%
Biology Econ. Disadvantaged*	67%
Biology Non-econ. Disadvantaged*	37%
Algebra I Econ. Disadvantaged*	75%
Algebra I Non-econ. Disadvantaged*	50%
Eng. II Reading Econ. Disadvantaged*	49%
Eng. II Reading Non-econ. Disadvantaged*	23%
Eng. II Writing Econ. Disadvantaged*	82%
Eng. II Writing Non-econ. Disadvantaged*	58%
World History (Proxy) Econ. Disadvantaged*	77%
World History (Proxy) Non-econ. Disadvantaged*	52%
All Tests Taken. Econ. Disadvantaged – Graduation Tests Only [^]	87%
All Tests Taken. Non-econ. Disadvantaged – Graduation Tests Only [^]	64%

See Ex.6536:14 (emphasis added).

Furthermore, as the percentage of economically disadvantaged students in a district increases, performance levels drop. This pattern holds true across grade levels, subjects, and types of exams. For example, on both the STAAR exams in grades three through eight and the STAAR EOC exams, passing rates decline for

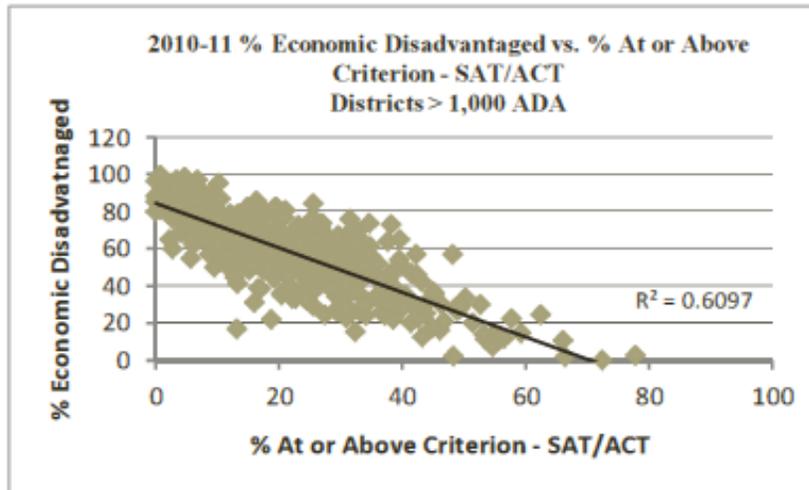
⁶¹ To estimate the percentage of ninth and tenth graders able to achieve the college-ready standard on all of the exams required for graduation, this analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History. Ex.6536:14.

both the economically disadvantaged students *and* the *non*-economically disadvantaged students:

STAAR 3-8 Spring 2013 Percentage Passing (at Level II Phase-In)			
% Economically disadvantaged	# Districts	Economically disadvantaged Students % Passing	Non-Economically Disadvantaged Students % Passing
Under 30%	93	56.6%	84.0%
30% to less than 50%	257	53.0%	78.2%
50% to less than 70%	467	48.0%	72.2%
70% to less than 90%	291	46.3%	67.2%
90% and Over	81	42.6%	59.7%
Grand Total	1,189	47.9%	76.2%

STAAR EOC Spring 2013 Percentage Passing (at Level II Phase-In)			
% Economically disadvantaged	# Districts	Economically disadvantaged Students % Passing	Non-Economically Disadvantaged Students % Passing
Under 30%	77	49.6%	77.2%
30% to less than 50%	243	41.0%	66.9%
50% to less than 70%	449	35.9%	60.1%
70% to less than 90%	273	33.9%	54.1%
90% and Over	61	31.3%	47.7%
Grand Total	1,103	36.1%	65.0%

See Ex.6620; RR54:147-48; Ex.6618:27. This is not a new phenomenon, nor is it unique to the STAAR exams. A 2010-11 analysis shows that SAT/ACT scores also decline as the percentage of economically disadvantaged students increases:



RR6:222-25; Ex.6349:49; Ex.6322:60. TAKS exams followed the same pattern. See Ex.6349:49; RR6:222-25.

b. Economically disadvantaged students face challenges that make them more expensive to educate.

The challenges economically disadvantaged students face in achieving a general diffusion of knowledge begin before they even start school. They often are not exposed to adult language or enriched vocabulary in the home. They know roughly 500 words by age three, compared to 5,000 words for non-economically disadvantaged students. See Ex.3202:15-17; see also Ex.3206:12-13. Many enter school without knowing basic colors, numbers, animals, the alphabet, how to turn a page, or in which direction to read. See RR20:77; Ex.3206:12; RR19:78-79; Ex.3207:14-15; RR5:172-75, RR5:181-183; RR19:18-19; RR20:100; Ex.3202:15-17.

Students from low-income families often receive less academic support at home, as their parents do not have the same education levels nor the time and money to advance their children’s education. RR20:73-74; RR4:70-71, 74-75. Because their families are less apt to have computers in their homes, the children are more likely to be “technology-illiterate” and may not understand how to use a keyboard or mouse. RR24:23-24; RR6:31-32. Low-income students often do not have the same access to out-of-school educational opportunities like tutoring, after-school programs, and educational amenities like museum trips, as their peers. RR18:12-13; RR4:73-74, 86; Ex.3207:14-21; Ex.1102:23-25; RR19:18-20. At the same time, because low-income parents are also less likely to be able to transport their children to school, the student’s reliance on school transportation can limit opportunities to participate in after-hours tutoring and summer school learning programs provided by the school district. RR4:77-78. The poorest children may not even have their basic needs—housing, proper nutrition, and healthcare—met, which hinders progress in school. *See, e.g.*, RR24:118-123 (describing challenges faces by Los Fresnos ISD students who live in colonias, which are characterized by poor housing and inadequate physical infrastructure without paved roads, heat, electricity, or potable water); RR4:61-62 (San Benito CISD serves students who live in colonias); RR19:149 (Austin ISD serves an increasing population of homeless students whose basic needs are not met); Ex.6341:14-15 (nutrition can be problem for Corsicana

ISD’s low-income students); RR18:34-35 (nutrition can be problem for La Feria’s low-income students); RR22:139 (poor nutrition can lead to health problems, such as diabetes, for Edgewood ISD students); RR24:131-32 (lack of proper health care hinders education for Los Fresnos students).

As economically disadvantaged students progress through school, and achievement gaps widen between them and their more affluent peers, the economically disadvantaged student can become “an unwilling learner”—“a disenfranchised, disconnected student” who is difficult to engage in the learning process and more likely to drop out of school. RR19:23-24; *see also* RR11:178-79; RR4:72-73, 94-95, 175-76; RR22:153-54; RR19:18-20.

c. Proven interventions can help economically disadvantaged students overcome educational obstacles.

Despite the challenges economically disadvantaged students face, they can meet the State’s increasing standards if they are given access to sound intervention programs (such as quality pre-K); individualized attention through smaller class-sizes and instructional support teams; and after-school tutoring, extended school days, or summer school. Contrary to the State’s assertion, the trial court did not find that the Legislature must provide these specific programs, nor do the Fort Bend ISD Plaintiffs ask this Court to do so. However, to assess whether the failure of economically disadvantaged students is merely inevitable, or whether it is instead

the result of the system's structure, operation, and funding, it is necessary to understand the nature of educational programs that have proven effective at helping low-income students overcome educational obstacles. Likewise, to determine whether districts can give economically disadvantaged students a meaningful opportunity to graduate from high school prepared for college or career, courts must ask whether school districts have sufficient resources to provide such programs. This is precisely what the trial court did. *See* COL31; *see also* FOF379-FOF445.

i. High-quality pre-K programs help economically disadvantaged students overcome educational deficits.

Without early intervention, economically disadvantaged students can start kindergarten as much as eighteen months behind their peers in language development and with an achievement gap one standard deviation below their peers. RR11:141-43. Access to quality pre-K can cut that gap in half. Ex.1074:2-4; RR11:139-40; *see also* Ex.3201:24-26. New Jersey's high-quality pre-K program cut the achievement gap between disadvantaged and non-disadvantaged students by at least one-quarter in one year. Ex.1074:5-6. Two years of pre-K cut the gap by 40% by the end of second grade. *Id.* Pre-K programs can also compensate for the lack of outside learning opportunities in low-income homes. *See, e.g.*, RR3:142-43.

Pre-K programs are also a sound investment. *See* RR11:192-93. By intervening early, schools can stop the cycle of failure that causes low-income

students to fall even further behind their peers. *See* RR11:146-47, 190-91; Ex.1074:4-5, 17; RR19:144; RR24:177-18; RR5:174; *cf.* RR19:23-24. As a result, districts will not have to provide as much (costly) remediation in the later school years, or spend their resources dealing with delinquency and other behavioral problems. *See* RR20:55-56; RR24:117-18; *cf.* RR19:28-29 (credit recovery high school costs 50% more than regular high school); RR11:190-93 (comparing impact of current Texas spending on pre-K with impact of spending on quality programs). Quality pre-K programs have also been shown to raise students' future income levels. RR3:107-08. To be most effective, pre-K programs require well-educated teachers and trained specialists to support, monitor, and coach teachers and should be offered on a full-day basis beginning at age three. *See* RR11:188-90; *cf.* Ex.1074:14-15 (describing deficiencies in Texas's current pre-K programs).

Superintendents from across the state testified that they have seen first-hand the importance of these programs for low-income students. *See, e.g.,* Ex.5613:23-24 (Abernathy); RR5:172, 174-75 (Everman); RR8:103-04 (Alief); RR19:144, 185 (Austin); RR20:55-56 (Austin); RR24:115-17 (Los Fresnos); Ex.3208:210-11 (Kaufman). Gina Day, the State's Director of Early Childhood Education, agreed that high quality preschool programs help prepare low-income students to meet state standards. RR34:84-85. Intervenors' expert Dr. Eric Hanushek concurred that high-quality pre-K programs can provide low-income students an important educational

jump-start. RR37:208. Then-Commissioner Scott cited research regarding the effectiveness of quality pre-K programs at helping low-income students meet state standards when requesting that the 2011 Legislature provide additional funding for such programs. *See* Ex.15:3; *see also* Ex.5630:30-32; 42-44.

The Legislature did not grant Commissioner Scott's request. In 2011, it discontinued the Pre-Kindergarten Early Start Grant, which had provided approximately \$100 million annually to help districts begin full-day programs. RR34:27-28, 92. This funding was not restored in 2013. RR63:108-10; Ex 20216-A. Even before the state budget cuts, state funding per child already had fallen to \$3,761 per child in 2010-11, less than the inflation-adjusted funding in any of the three prior years. Ex.1075:132. This level of funding provided services to only 52% of the state's four-year-olds and 6% of its three-year-olds. *Id.* As a result of the budget cuts, many districts reduced the quality of their pre-K programs by moving from full-day to half-day, eliminating programs for three year-olds, and/or increasing class sizes. *See, e.g.,* RR5:43; RR22:154-56; Ex.3201:24-25; Ex.5613:23, 54-55; RR8:121-28, 131; Ex.6341:23-26; Ex.368:9; Ex.6339:61-62; Ex.364:5; RR4:13-14; Ex.6337:35-38; *see also* Ex.4237:11; RR22:152-53; RR8:103-04, 124.

ii. Smaller class sizes and instructional aides allow for individualized attention.

Smaller class sizes are another proven mechanism for educating low-income students and closing the achievement gap. *See, e.g.*, Ex.1101:11-14; RR4:73-74. Smaller classes at the elementary level improve student performance and produce higher graduation rates. Ex.5520:4; RR17:197-98; Ex.1079:2-3; Ex.1101:11; RR15:33.

When classes are smaller, students are more engaged and teachers are better able to tailor their lessons toward their students' specific needs. RR22:209-17; RR15:123-128; RR4:259. Plaintiffs' experts, superintendents, teachers, and even the experts for the State and Intervenors agreed that class-size reduction is particularly beneficial for economically disadvantaged students. *See, e.g.*, RR4:258-60; Ex.5618:53-55; Ex.5614:33-37; Ex.5613:17-22, 34-35; RR4:73-74; RR19:50-52; RR37:163-64; RR26:81; Ex.20062A: 25-31.

Despite this agreement, as a result of the 2011 budget cuts, 30% of elementary schools across the state were forced to seek class size waivers from the State's mandated 22:1 student-to-teacher ratio in kindergarten through grade four. *See* Ex.5630:394-95; Ex.31:1. In 2011-12, the TEA granted nearly 8,600 waivers. Ex.5630:391-92; Ex.30:3. Many districts with high economically disadvantaged and ELL enrollment were forced to raise class sizes and seek large numbers of class

size waivers. *See, e.g.*, RR19:50; RR5:32-34; RR22:158-59; RR4:83; Ex.3201:23-24; RR8:123-26; Ex.6339:61-62.

Another tool for providing individualized attention is to use instructional aides—like tutors, academic coaches, and reading specialists—who can assist students who are struggling to understand concepts or need help engaging in the learning process. *See, e.g.*, RR24:135; Ex.5616:12-13; Ex.5615:62-64; RR25:89-91, 108-11; Ex.6345:35-36; Ex.6341:25-28; Ex.6335:90-91; Ex.6344:19-20, 83-85; Ex.6343:17; RR4:75-76; RR11:156-57; RR8:104; Ex.3198:16. But, as with class size, many districts are unable to provide low-income students with the needed support individualized attention and, in fact, have had to *reduce* the size of their staffs that are dedicated to such support. *See, e.g.*, RR8:121-22; Ex.3201:22; RR25:106-08; Ex.6345:35-36; Ex.6341:25-28; Ex.6336:35-36.

iii. Increased instructional time is proven to help economically disadvantaged students close the achievement gap.

Additional instructional time is another effective tool for improving the performance of economically disadvantaged students. After-school programs, extended school day programs, and summer school allow school districts to remediate economically disadvantaged students who have fallen behind in course work or failed the STAAR exams, as well as to provide the reinforcement the students do not receive at home. *See* RR3:143; RR20:78; Ex.3206:35, 58-59, 63-

65; Ex.6337:67; Ex.6342:28-29. After-school and extended-day programs allow districts to “remediate in real time” and help students master difficult concepts or catch-up on course-work. RR19:30-31. For example, Abilene ISD’s federal-grant-funded extended school day program served over 2400 students in two years—including providing 1400 students with tutorial sessions and helping 960 students earn 1800 credits. *Id.* at 32. However, not every district is fortunate enough to have a received a grant to make up for the State’s devastating cuts to the SSI and Extended School Year grants—funding which was specifically dedicated to providing just this type of support and which was not restored by the Legislature in 2013. *See* RR63:109-10; Ex.20216-A; *see also, e.g.*, Ex.4224-L:33-34; RR4:75-79; RR22:143; Ex.6342:28-29.

- d. Funding for economically disadvantaged students is arbitrary and insufficient to allow districts to implement these proven interventions.**
 - i. The funding weight for economically disadvantaged students is out-of-date and too low.**

The Foundation School Program assigns a funding “weight” of 20% to economically disadvantaged students—meaning that districts receive 20% more for an economically disadvantaged student than they otherwise would. TEX. EDUC. CODE § 42.152(a), (b); Ex.1328:15. When the Legislature established the Orwellian weight in 1984, a legislative advisory committee had conducted a comprehensive

study of the cost differentials and recommended a weight for economically disadvantaged students of at least 40%. *See* RR23:80-81; *cf.* RR6:218-19. But the Legislature set the differential at half the recommended amount, where it has remained ever since. Ex.1328:16.

Every biennium, the LBB should be calculating the differential cost of educating economically disadvantaged students. TEX. EDUC. CODE §§ 42.007(c)(3), .152. They have not done so in more than ten years. But three experts researched the current differential and determined that the weight should be at least doubled. *See* RR6:219-26; Ex.6322:58; Ex.1123:36; RR16:34-35; Ex.3188:28-29. Research from other states indicates that the true cost difference of educating low-income students can be as much as 100%. Ex.6322:58.

The underfunding of the compensatory education weight is evidenced by the fact that, in 2010-11 its impact was so overwhelmed by other aspects of the formula system that, as the percentage of economically disadvantaged students increased, districts' revenue per weighted student *decreased* and its revenue per unweighted student varied only slightly:

% Economically Disadvantaged	ADA	WADA	FSP Revenue	Revenue per ADA	Revenue per WADA
Under 10%	30,219	34,415	\$225,853,345	\$7,474	\$6,563
10% to under 30%	570,856	697,294	\$4,244,405,813	\$7,435	\$6,087
30% to under 50%	808,325	1,020,791	\$5,892,091,212	\$7,289	\$5,772
50% to under 70%	1,276,001	1,698,012	\$9,635,063,254	\$7,551	\$5,674
70% to under 90%	1,298,873	1,793,660	\$10,022,020,910	\$7,716	\$5,587
90% and over	221,735	316,250	\$1,755,071,075	\$7,915	\$5,550
Grand Total	4,206,008	5,560,423	\$31,774,505,609	\$7,555	\$5,714

Ex.6349:53; *see also* Ex.6322:56 (after other formula adjustments are applied, compensatory education funding represents just 10% of Tier I funds).

ii. The Legislature arbitrarily cut programs for economically disadvantaged students.

In addition, as discussed in Facts Section Argument Section IV.D.4.a *supra*, the Legislature eliminated or drastically reduced funding for several programs that helped districts provide additional remediation for economically disadvantaged students who are struggling to pass the State’s standardized test—including the Student Success Initiative and the Extended Year Programs—at the same time that it increased the rigor of those tests and *did not restore those cuts in 2013*. *See* RR63:109, 111; Ex.20216-A; Ex.5630:28-29, 44-45; Ex.4000:49-50; RR31:171-72;

cf. RR63:108; RR63:110. These funding decisions were made without any analysis of the costs to districts of providing the still mandatory remediation.⁶²

2. The system’s structure and operation prevent it from achieving a general diffusion of knowledge for ELL students.

a. Performance outcomes reveal that ELL students are not achieving a general diffusion of knowledge.

The State assesses ELL students’ progress in learning English using the Texas English Language Proficiency Assessment System (“TELPAS”). That system measures students’ English language skills as “beginner,” “intermediate,” “advanced,” or “advanced high.” Ex.1104:13-14. “Advanced high” signifies enough English proficiency to predict passage of the TAKS test.⁶³ *See* Ex.4224-T:148-50. The State expects that an ELL will advance at least one level each year and become proficient within four to five years. In actuality, roughly one-third of

⁶² *See* RR.63:106; RR31:168-69; RR27:134, 148; TEX. EDUC. CODE §§ 28.0211 (a-1) (“Each time a student fails to perform satisfactorily on an assessment instrument administered under Section 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth grade, the school district in which the student attends school *shall* provide to the student accelerated instruction in the applicable subject area.”), 28.0211(c) (“Each time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), the school district in which the student attends school *shall* provide to the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to perform satisfactorily on a reading assessment instrument. After a student fails to perform satisfactorily on an assessment instrument a second time, a grade placement committee *shall* be established to prescribe the accelerated instruction the district shall provide to the student before the student is administered the assessment instrument the third time”), 39.025(b-1) (“A school district *shall* provide each student who fails to perform satisfactorily as determined by the commissioner under Section 39.0241(a) on an end-of-course assessment instrument with accelerated instruction in the subject assessed by the assessment instrument.”) (emphases added).

⁶³ The State has not linked TELPAS standards to STAAR. RR35:87-89; Ex.4224-T:142.

ELL students fail to advance a level in a year and stay ELLs for six or more years. RR35:105-06; Ex.11010:29; Ex.4262.

ELL students’ struggles to achieve English proficiency impact the rest of their education. In Spring 2013, ELL students failed not just English, but also Biology and Algebra at significantly higher rates than their non-ELL peers:

2013 EOC	% ELL Students <u>Failing</u> at Level II Phase-In	% Non-ELL Students <u>Failing</u> at Level II Phase-In
English I Reading	82%	30%
English I Writing	91%	48%
Algebra I	49%	20%
Biology	45%	12%

See Ex.4259:104, 107, 110, 112.

ELL students drop out of school at significantly higher rates, and graduate at much lower rates, than their peers. For example, ELL students in the Class of 2012, dropped out at three times the rate of non-ELL students. Ex.4269:73.

b. ELL students face educational challenges beyond those of non-ELL economically disadvantaged students.

ELL students are largely low-income and therefore face the challenges discussed in Argument Section V.D.1.b *supra*, but they also face additional hurdles due to their limited English proficiency. See RR14:126-27; RR34:173; RR17:152. For example, ELL students in the upper-elementary and middle school grades often must learn basic English and specialized subject-area vocabularies at the same time. RR14:145-48; Ex.1104:23. ELL students who arrive in the United States with

limited literacy in their native language and an interrupted school experience require much higher levels of support than those who possess strong native-language literacy skills. RR14:127. Parents of ELL students often have language barriers themselves, making it difficult for them to provide educational support for their children. RR4:86.

c. With appropriate interventions, ELL students can overcome these challenges and achieve a general diffusion of knowledge.

As with economically disadvantaged students, ELL students' performance is significantly improved through quality pre-K programs, individualized attention, and additional instructional time. *See* Argument Section V.D.1.c *supra*. In addition, to provide ELL students with a meaningful opportunity to meet the State's standards, districts must be able to provide ELL students with instructional materials in both English and the student's native language. RR5:178-79. Native language textbooks, bilingual dictionaries, charts, instructional games, and interactive digital technology can help bridge the gap between languages and help ELL students understand complex ideas. RR14:52-56; Ex.1085:7-8; Ex.1104:23-24; *see also* RR18:11-13, 18-19, 21-26, 28. In addition, districts must be able to recruit and retain qualified bilingual teachers. Ex.1085:8-9. Teachers in bilingual or English-as-a-second-language ("ESL") programs *must* be certified in bilingual education or ESL; and a district can only receive a waiver of this requirement if it uses at least 10% of its

bilingual education allotment to fund a training program for its teachers. TEX. EDUC. CODE § 29.061; 19 Tex. Admin. Code § 89.1207(a)(1)(D), (b)(1)(E).

d. Funding for ELL students is arbitrary and insufficient.

State law imposes several requirements related to identifying and educating ELL students. For all students entering public school in Texas, schools must conduct home language surveys in both English and the home language to determine the language normally used in the student’s home. TEX. EDUC. CODE § 29.056 (a) (1). If the surveys identify students as possibly ELL, districts must then administer English and home-language oral and written proficiency tests to determine if the student is ELL. *Id.* § 29.056 (a)-(b). Districts must then form a language proficiency assessment committee (“LPAC”)—composed of a professional bilingual educator, a professional transitional language educator, a parent of an ELL student, and a campus administrator—to determine the language proficiency level of each such potential ELL student to monitor language acquisition and academic progress. *Id.* § 29.063(a)-(b); 19 Tex. Admin. Code § 89.1220(e)-(g), (k). School districts must establish enough LPACs to enable them to discharge their duties within twenty school days of the enrollment of ELL students. 19 Tex. Admin. Code § 89.1220(e).

Each district enrolling twenty or more ELL students in the same grade must offer bilingual education in elementary school, bilingual or English-as-a-Second Language (ESL) or another transitional language instruction program in middle

school, and ESL in high school. TEX. EDUC. CODE § 29.053(d); 19 Tex. Admin. Code §§ 89.1225(e), 89.1210. In addition, each school district that is required to offer a bilingual education program must offer an eight-week summer preschool program for children eligible for admission to kindergarten or first grade at the beginning of the next school year. TEX. EDUC. CODE § 29.060; 19 Tex. Admin. Code § 89.1250. The preschool program must include 120 hours of intensive bilingual education or special language program and a student-to-teacher ratio of 18:1 or lower. TEX. EDUC. CODE § 29.060; 19 Tex. Admin. Code § 89.1250. School districts with bilingual education or ESL programs must conduct regular assessments to determine the program impact on student outcomes, and prepare annual reports detailing ELL students' progress. 19 Tex. Admin. Code § 89.1265. Each school principal at a campus with a program must develop, review, and revise the campus improvement plan annually. *Id.*

The 10% funding weight for bilingual students was established during Ronald Reagan's first term in office. Ex.1328:14. Like the compensatory education weight, it was not based on studies of the actual costs to educate ELL students. Ex.6322:58; RR6:215. Before the 10% weight was adopted, an advisory committee recommended that it be set at 40%. RR23:80-81; Ex.4000:12, 30. After it was adopted, a different advisory committee recommended that it be increased to 60%. Ex.1328:11-12. Studies from other states indicate that the cost differential for ELL

students is closer to 50%. *See* RR23:82-86; *cf.* RR6:218-20; Ex.6322:58. The cost of meeting State requirements exceeds the amount generated by the current funding weight. *See, e.g.*, RR18:10-11; Ex.10644 (State allocated approximately \$400 additional dollars for each ELL student enrolled in La Feria ISD, but district's expenditures amounted to approximately \$1,446 per ELL student); Ex.10633; Ex.4237:8 (State allocated approximately \$430 for each ELL student enrolled in Edgewood ISD, but district spent \$2,843 per ELL student, or nearly six times its allotment); *cf.* Ex.10615 (Abilene ISD spent \$2,130 per ELL student); Ex.10619 (Alief ISD spent \$2,545 per ELL student) Ex.10621 (Amarillo ISD spent \$2,496 per ELL student), Ex.10629 (Calhoun County ISD spent \$2,653 per ELL student); Ex.10645 (Lewisville ISD spent \$1,315 per ELL student); Ex.10648 (Lubbock ISD spent \$1,304 per ELL student). The LBB's mandate to study costs includes studying the differential cost of educating ELL students. TEX. EDUC. CODE §§ 42.007(c)(3), .153. Yet it has not done so, and the weight has not been adjusted in thirty-one years. Ex.1328:16.

E. The State funding system provides insufficient means for achieving a general diffusion of knowledge.

The Court has recognized that, inherent in the duty to structure, operate, and fund the public school system so that it can achieve a general diffusion of knowledge is a duty to provide sufficient resources to enable districts to do so. *See WOC II*, 176 S.W.3d at 785 (“It would be arbitrary, for example, for the Legislature to define the

goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.”); *see also* State Brief at 99 (arguing that “insufficient means” would be a suitability, rather than adequacy, violation). Furthermore, because the Legislature “must require that school districts achieve this goal,” *WOC I*, 107 S.W.3d at 581, the decision regarding whether to provide a general diffusion of knowledge cannot be left to a vote of the local taxpayers. *See id.* at 584 (“As we have explained, the Legislature has chosen to make suitable provision for a general diffusion of knowledge by using school districts, and therefore the State cannot be heard to argue that school districts are free to choose not to achieve that goal. If they were, the Legislature’s use of districts to discharge its constitutional duty would not be suitable, since the Legislature would have employed a means that need not achieve its end.”); *see also WOC II*, 176 S.W.3d at 793 (“[I]f the funding system were efficient so that districts had substantially equal access to it, and the education system was adequate to provide for a general diffusion of knowledge, but districts were not actually required to provide an adequate education, ‘the Legislature’s use of districts to discharge its constitutional duty would not be suitable.’”). Therefore, districts must have access to sufficient resources to be able to provide a general diffusion of knowledge at \$1.04 or less—otherwise, the system would unsuitably be “dependent on local districts free

to choose not to provide an adequate education.” *WOC I*, 107 S.W.3d at 580; *see also* TEX. TAX CODE § 26.08(a), (n).

In the absence of any attempt by the State to determine the level of resources necessary to accomplish a general diffusion of knowledge—either when establishing the funding levels or in this litigation—the ISD Plaintiffs presented three estimates of the cost.

As discussed above in Argument Section IV.E.2.a, the first two estimates—derived from this Court’s decision in *Edgewood IV* and from Dr. Odden’s research into the cost of implementing programs proven to improve student performance—indicate that the vast majority of districts, educating the vast majority of students, cannot raise sufficient resources to provide a general diffusion of knowledge.

Mr. Moak provided a third estimate. He testified that, based on his almost fifty years of experience in Texas public education,⁶⁴ expending approximately \$1,000 per weighted student above 2010-11 spending levels would correct outdated weights and adjustments and allow districts to meet increased state standards. RR6:241-43. This translates into \$6,941 per weighted student in 2014-15—\$1,198 more than the Foundation School Program generates at \$1.04 tax rate and \$709 more than it generates at \$1.17. *See* Ex.6618:19; RR54:124-25.

⁶⁴ For a discussion of that experience, *see* RR6:130-34.

The State argues that consideration of these estimates is proof that the trial court focused too much on “inputs” and not enough on “outputs.” *See* State Brief at 94-99. However, as this Court acknowledged, while the relationship between funding and education “is neither simple nor direct,” the “end-product of public education is related to the resources available for its use” and therefore “it is useful to consider how funding levels and mechanisms relate to better-educated students.” *WOC II*, 176 S.W.3d at 788. Furthermore, to determine if the system provides sufficient means to accomplish its goals, or whether instead its structure and operation prevent it from accomplishing them, it is necessary to first develop a factual record of the cost of achieving those goals. *Cf. WOC I*, 107 S.W.3d at 581-82 (holding that to determine if districts are forced to tax at cap to provide accredited education, must have factual record of cost doing so); *Edgewood IV*, 917 S.W.2d at 731-32 and n.10 (basing equity analysis on whether districts “can attain the revenue necessary to provide suitably for a general diffusion of knowledge”—then \$3,500—at similar tax rates). That is what the trial court did when it heard evidence regarding these three estimates. While the estimates vary slightly—from \$6,532 to \$6,955 in today’s dollars—they consistently show that districts lack sufficient resources to accomplish their goal of providing all students with a meaningful opportunity to graduate from high school prepared for college or a career. *See* Ex.6618:19

IV. The trial court correctly determined that the public education system is not “adequate.”

A. The system’s adequacy is judged by whether it is achieving the legislatively defined level of a general diffusion of knowledge.

The Texas Constitution’s requirement that the Legislature support and maintain a public school system is grounded in the Founders’ conviction that a “general diffusion of knowledge [is] essential to the preservation of the liberties and rights of the people.” TEX. CONST. art. VII, § 1; *see also WOC II*, 176 S.W.3d at 785-86; *Edgewood I*, 777 S.W.2d at 395-96. The accomplishment of this general diffusion of knowledge “is the standard by which the adequacy of the public education system is to be judged.” *WOC II*, 176 S.W.3d at 787. The standard is satisfied when districts are “reasonably able” to provide *all* of their students with “access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation” and “a meaningful opportunity to acquire the essential knowledge and skills” that allow them to “continue to learn in postsecondary educational, training, or employment settings.” *Id.* (quoting TEX. EDUC. CODE §§ 4.001(a), 28.001). To determine if districts are in fact reasonably able to provide this access and opportunity to all of their students, the Court looks to “the results of the educational process measured in student achievement.” *Id.* at 788.

As part of this inquiry, “it is useful to consider how funding levels and mechanisms relate to better-educated students.” *Id.*

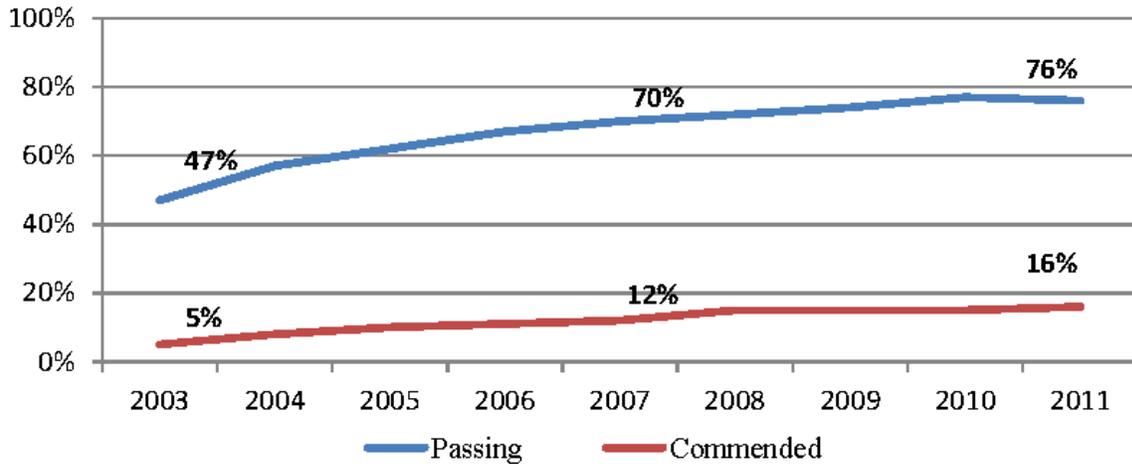
B. Performance outcomes reveal that many Texas students do not have a meaningful opportunity to achieve a general diffusion of knowledge.

1. Performance outcomes are not improving on state exams.

In *WOC II*, the Court held that the school finance system was adequate but on the verge of a constitutional crisis. 176 S.W.3d at 789-90. While “many schools and districts [were] struggling,” the Court nonetheless upheld the system because “the undisputed evidence [was] that standardized test scores have steadily improved over time, even while tests and curriculum have been made more difficult.” *Id.* at 789. It warned, however, that “absent significant change,” continued improvement was likely not possible and the system would continue to “drift toward constitutional inadequacy.” *Id.* at 790. Unfortunately, the Court’s predictions materialized—significant change did not occur and student performance stopped improving.

The first indication came in the final years of the TAKS regime. In the first five years TAKS was administered, the percentage of students passing all tests taken grew by twenty-three points, from 47% to 70%. Ex.6322:21. In the last five years, it only grew by six points to 76% as illustrated below:

Figure 22. Percentage of All Students in Grades 3-11 Reaching Various Performance Standards 2003 through 2011-- All TAKS Tests Taken



Source: TEA Academic Excellence Indicator System (AEIS), various years.

Id. The performance of economically disadvantaged students followed the same trend. In the first year of TAKS administration, 33% of economically disadvantaged students passed all tests taken. *Id.* at 23. This percentage grew by twenty-five points in four years to 58%. *Id.* But it only grew by ten percentage points to 68% in the next four years, and economically disadvantaged student performance lagged behind their more advantaged peers by eighteen percentage points. *Id.*

The leveling of students' scores cannot be dismissed as students "topping out on the test," *see* State Brief at 111-12, as the percentage of students scoring at the higher commended level never went above 16%:

Figure 25. The Percentage of Students in Grades 3-11 Meeting the Commended Standard on All TAKS Tests Taken: 2003 through 2011

All Tests Taken	2003	2005	2007	2009	2011
All Students - Commended	5%	10%	12%	16%	16%
Economically Disadvantaged	2%	5%	7%	9%	10%
Non-Economically Disadvantaged	7%	15%	18%	23%	24%
Gap	5 points	10 points	11 points	14 points	14 points

Source: Texas Education Agency TAKS Aggregate System data, various years.

Ex.6322:23.

After the transition to STAAR, the percentage of students passing the tests dropped significantly—and not just below the final TAKS passing rates, but well below *initial* TAKS passing rates. In the first year of the STAAR, passing rates in grades three through eight averaged nine percentage points lower at the phase-in standard than the first year of TAKS and *thirty-two* percentage points lower at the final recommended standard. *See* Ex.6515; *see also* Facts Section II.C.1.b *supra*. The percentage of high school students passing all of their EOC exams was *twenty-five* percentage points lower than the passing rate for the exit level TAKS in the first year it was required for graduation. *Compare* Ex.6514:13 (72% of 11th graders passed all exams in 2004) *with* Ex.6349:19 (47% passed all exams in 2012).

Further, STAAR scores are not improving in the initial years like they did on the TAKS. Fifth and eighth grade students are required to pass the State’s reading and math exams to be promoted to the next grade. TEX. EDUC. CODE § 28.0211(a). On TAKS reading, performance increased between the first and second

administrations by at least five percentage points at every passing level in both grades. Ex.6514:5, 10. In contrast, on STAAR reading, eighth grade performance improved by only two points and fifth grade performance *declined* by one percentage point. Ex.11373:1-2. On TAKS math, fifth grade performance improved by between two and eight percentage points at each passing standard. Ex.6514:5. On STAAR math, fifth grade performance *declined* by four points. Ex.11373:1-2

From 2012 to 2013, the percentage of high school students passing all of their exams improved by only two points, and *remained below 50% in both years*. Ex.6322:26; RR54:141-42; Ex.6618:23. The percentage of students meeting the final Level II standard (TEA’s definition of college ready) *declined* by three percentage points on both English I Reading and Biology, and increased by just one percentage point on English I Writing and Algebra I. *Compare* Ex.6349:19 *with* Ex.6618:23. In comparison, in the first two years that the TAKS was required for graduation, the percentage of students meeting the final standard on the eleventh grade TAKS went up by four points on English Language Arts, five points on Math, and eight points on Science. *See* Ex.6514:13 (compare 2004 “Panel Rec.” with 2005 “Panel Rec.”).

An additional two years’ worth of data that TEA released following the 2014 and 2015 administrations shows that the picture has not changed since the close of trial. From the first administration in Spring 2012 to the *fourth* administration in

Spring 2015, fifth grade passage rates on the reading exam stayed the same and eighth grade passage rates *declined* by three percentage points. *Compare* Ex.11373:1-2, *with* TEA, “March 2015 5&8.”⁶⁵ Similarly, performance on EOCs improved by just two percentage points on Algebra 1 and five percentage points on Biology. *Compare* Ex.4131:1 (Algebra 1), *and* Ex.4133:1 (Biology), *with* TEA, Spring 2015 EOC “Phase In Level II Reports”.⁶⁶ The percentage of high school students achieving the Level II final/college-ready standard is still below 65% on every subject. *See* TEA, “Spring 2015 EOC: Phase In Level II Reports.”⁶⁷

Faced with these results, both TEA and the Legislature have implicitly recognized that districts are not reasonably able to give students a meaningful opportunity to meet the new standards. While the passing score for the TAKS was raised to the final standard in just three administrations, TEA is not raising the STAAR passing standard to the final level until the eleventh administration. *Compare* Ex.6530 *with* 39 Tex. Reg. 9775 (2014), *adopted* 40 Tex. Reg. 1081 (2015) (codified as amendment to 19 Tex. Admin. Code § 101.3041) (TEA). Yet, despite these extensions and multiple retests, the number of students who were at risk of not

⁶⁵ STAAR Statewide Summary Reports 2014-15, [http://tea.texas.gov/Student Testing and Accountability/Testing/State of Texas Assessments of Academic Readiness \(STAAR\)/STAAR Statewide Summary Reports 2014-2015/](http://tea.texas.gov/Student_Testing_and_Accountability/Testing/State_of_Texas_Assessments_of_Academic_Readiness_(STAAR)/STAAR_Statewide_Summary_Reports_2014-2015/).

⁶⁶ *Id.*

⁶⁷ *Id.*

graduating (because they were unable to pass the required STAAR EOC exams) was still so high that legislators stepped in to allow students who had failed up to two exams to graduate anyway. *See* SB149. Although it is compassionate not to punish students for the State’s inability to meet its constitutional obligations, the fact that the State had to take such measures further indicates that the system has fallen over a constitutional brink.

2. Texas students are no longer outperforming the nation.

NAEP exams in reading and math are administered in grades four and eight in odd-numbered years. From 2005 to 2013, Texas lost ground compared to the national average on all tests except eighth grade math, and even on that test, Texas scores dropped from 2011 to 2013.⁶⁸ Ex.11488:2, 12, 22, 32; *see also* RR26:165-68, 170-71; Ex.5678:11-14; Ex.5460:1 Texas eighth graders performed below the national average on the reading test four out of the five years. Ex.11488:32. Importantly, given Texas’s demographic trends, performance of economically disadvantaged fourth graders dropped on both subjects from 2011 to 2013, and the performance gaps between economically disadvantaged students and Hispanic

⁶⁸ This failure to improve against the national average is particularly troubling considering that the NAEP scores are based on sampling, and states and school districts can exclude students from the sample if they have learning disabilities or are ELL—but there is no uniform standard for deciding which students to exclude, and Texas’s exclusion rate is among the highest in the nation. RR26:189-92, 200-01; Ex.5678:19-22. The National Assessment Governing Board has stated that the difference in exclusion rates “may jeopardize the fairness and validity of state comparisons and other NAEP data trends.” RR26:197-98; Ex.5678:23.

students compared to White students *widened* from 2005 to 2013.⁶⁹ *Compare id.* at 9, 11 *with id.* at 10 (mathematics); *compare id.* at 19, 21 *with id.* at 20 (reading).

SAT and ACT scores likewise confirm that Texas students are falling behind the nation. From 2007 to 2013, SAT scores *declined*, and the performance gap between Texas students and students nationwide *widened*. *See* Ex.11368:6; *see also* FOF162-FOF164; RR35:198-200; Ex.5687:41; Ex.11300:8. ACT scores have remained relatively flat over the same time frame. Ex.11368:4.

According to the National Center for Education Statistics, one in four Texas students fails to graduate from high school.⁷⁰ RR26:152, 159-60. These rates place Texas at the national average. RR26:152, 159-60. As the State’s own expert observed, these rates are a “disaster” because “[w]hen students drop out of high school, their lives are literally at risk, because [of] their inability to get gainful employment. So it’s a big problem.” RR26:160.

⁶⁹ The State’s contention that performance gaps have narrowed is from an outdated analysis that only goes through 2011 and does not take into consideration its own evidence from the 2013 NAEP administration. *See* State Brief at 114 (citing Ex.11216); Ex.11488.

⁷⁰ The State cites a higher statistic issued by a different division of the U.S. Department of Education, which suggests that Texas’s graduation rate is higher than most states. State Brief at 115. Their expert who presented that statistic at trial—after relying on the lower number in his expert report—however, candidly acknowledged to the Court, “I’m not sure which numbers to believe.” RR26:157. He further testified that both measures have “obvious flaws” and “I think we need to know more before we place large scale bets on particular graduation rates” RR26:158-59.

3. The State’s population trends make it essential that knowledge be spread diffusely.

Texas has recognized that its future depends on its ability to spread knowledge diffusely among all segments of the population. The 1836 Declaration of Independence declared, “unless a People are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.” *See* Unanimous Declaration of Independence by the Delegates of the People of Texas (Mar. 2, 1836); *see also WOC II*, 176 S.W.3d at 786-87. The delegates to the Constitutional Convention of 1875 “spoke at length on the importance of education for *all* the people of this state, rich and poor alike.” *Edgewood I*, 777 S.W.3d at 395. They “recognized the importance of a diffusion of knowledge among the masses not only for the preservation of democracy but for the prevention of crime and for the growth of the economy.” *Id.* at 395-96. The chair of the convention’s education committee declared, “it is for the general welfare of all, rich and poor, male and female, that the means of a common school education should, if possible, be placed within the reach of every child in the State.” *Id.* at 395.

a. Texas’s future depends on the performance of its most underperforming and challenging populations.

Given Texas’s demographic trends, its economic future depends on how successfully Texas schools educate its growing populations of economically

disadvantaged, ELL, and Hispanic students and closes the educational performance gaps. RR3:90-93; *see also supra*, at II.C.2.

b. The State’s use of data that controls for socioeconomic characteristics paints a misleading picture.

In recognition of the importance of ensuring that *all* Texas students receive the same quality education, the State holds all students to the same performance standards. *See* RR26:172-73. Further, the Legislature has long required that performance data be disaggregated by race and economically disadvantaged status to ensure that no particular subpopulation is being denied a meaningful opportunity to meet those standards. *See* TEX. EDUC. CODE § 39.053(b) (“The indicators must be based on information that is disaggregated by race, ethnicity, and socioeconomic status.”). It also has directed the Education Commissioner to set district accreditation standards in a manner that ensures there are “no significant achievement gaps by race, ethnicity, and socioeconomic status” by 2019-2020. *Id.* § 39.053(f)(2). It further requires that districts be evaluated on “the effectiveness of the district’s programs for special populations.” *Id.* § 39.052(b)(2)(B).

The State, however, urges that the Court make allowances for the State’s poor performance by “adjust[ing] for demographics.” *See* State Brief at 114. The State contends that Texas does better on national comparisons of NAEP scores when comparing our low-income students to only other low-income students, our Hispanic students to only other Hispanic students, and our African-American students to only

other African-American students. *Id.* Such an analysis might make sense *if* students only competed against other students of the same race or socioeconomic status in postsecondary education, training, and employment settings or *if* Texas was only competing against other states with a greater than 60% economically disadvantaged student population. However, Texas has the 10th largest percentage of children living in poverty and the fastest growing Hispanic population in the nation. Ex.3228:33-34. Both Hispanic enrollment and economically disadvantaged student enrollment grew by more than 800,000 from 2000 to 2010. *Id.* at 53. Texas’s NAEP scores *will* continue to decline against the nation’s if the performance gaps for these groups continue to increase at the same time they grow in both overall size and percentage of the population.

V. The trial court correctly determined that the public education system is not “efficient.”

A. The system’s efficiency is judged by whether all districts have substantially equal access to the level of funds necessary to achieve a general diffusion of knowledge.

The public school system must be efficient. TEX. CONST. art. VII, § 1. That is, it must be “productive of results ... with little waste.” *Edgewood I*, 777 S.W.2d at 395. The *result* that must be produced is, of course, a general diffusion of knowledge. *See WOC I*, 107 S.W.3d at 566.

To produce a general diffusion of knowledge with *little waste*, “a funding system that is so dependent on local ad valorem property taxes must draw revenue

from all property at a substantially similar rate.” *Edgewood II*, 804 S.W.2d at 496. “[T]hat is, districts must have substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge.” *Edgewood IV*, 717 S.W.2d at 730.

After providing for the general diffusion of knowledge through such an efficient system, *then* the Legislature “may, so long as efficiency is maintained, authorize local school districts to supplement their educational resources if local property owners approve an additional local property tax.” *Edgewood II*, 804 S.W.2d at 500. But “[s]upplementation must be just that: additional revenue not required for an education that is constitutionally adequate.” *WOC II*, 176 S.W.3d at 792 (citation omitted).

By tying the efficiency standard to the general diffusion of knowledge, the Court ensures that the system is judged based on whether it *levels up* school districts to the constitutionally required result. If the standard were not tied to the required result, the effect would be to:

‘level-down’ the quality of our public school system, a consequence which is universally regarded as undesirable from an educational perspective. Under this theory, it would be constitutional for the Legislature to limit all districts to a funding level of \$500 per student as long as there was equal access to this \$500 per student, *even if* \$3500 per student were required for a general diffusion of knowledge. Neither the Constitution nor our previous *Edgewood* decisions warrant such an interpretation. Rather, the question before us is whether the financing system established by Senate Bill 7 meets the financial [efficiency] *and* qualitative [result] standards of article VII, section 1.

Edgewood IV, 917 S.W.2d at 730 (emphasis added). In other words, if the system does not provide for a general diffusion of knowledge it is, per se, inefficient.

B. School districts cannot raise the revenue necessary to achieve a general diffusion of knowledge at similar tax rates.

1. The trial court correctly analyzed the gap in tax rates based on the rate needed to raise enough revenue to provide a general diffusion of knowledge.

In *Edgewood IV*, the parties focused largely on “the \$600 advantage enjoyed by the wealthiest districts at a \$1.50 tax rate.” 917 S.W.2d at 731. The Court, however, noted that this gap calculation was “premised on an erroneous view of the meaning of efficiency” because it was not tied to the cost of achieving a general diffusion of knowledge. *Id.* The correct constitutional inquiry was instead to first determine the “level of efficiency that achieves a general diffusion of knowledge” and then determine at what tax-rate property-poor and property-wealthy districts could achieve that revenue level. *Id.* at 730-32 and n.10. At that time, achieving a general diffusion of knowledge “require[d] about \$3,500 per weighted student.” *Id.* at 731 n.10. Under the system in place at the time, property-poor and property-wealthy districts could attain \$3,500 per weighted student “at tax rates of approximately \$1.31 and \$1.22, respectively”—both rates that were well below the \$1.50 statutory cap that was in place at the time. *Id.* at 731 and n.12. It was this gap in tax rates needed to raise the level of revenue necessary to achieve a general

diffusion of knowledge that the Court found constitutionally acceptable. *Id.* at 731-32 and n.10, 12.

The State and Calhoun County ISD ignore the Court’s standard (and Dr. Clark’s analysis) for how to assess the system’s efficiency. Instead, they consider the revenue gaps at various tax rates—contending that the gaps are narrower than they were at the time of *Edgewood IV*. *See* State Brief at 124-135; Calhoun County ISD Plaintiffs’ Brief of Appellant’s (“CCISD Ant. Brief”) at 40-45. But neither the State nor Calhoun acknowledge that *Edgewood IV* said the revenue gap analysis was premised on an incorrect understanding of the meaning of efficiency, because it does not take into account the constitutionally required *result* that is to be produced with little waste. *See* 917 S.W.2d at 731.

The State and Calhoun County did not take into account the cost of achieving a general diffusion of knowledge. Calhoun County looked at the average revenue for property-poor districts—an amount it separately acknowledges to be too low to achieve a general diffusion of knowledge—and calculates the difference in tax rates needed to achieve that revenue level. *See* CCISD Ant. Brief at 46. It then compares this gap to the seventeen-cent gap between the then-\$1.50 cap and the \$1.33 tax rate property-wealthy districts needed to levy to raise the same amount their property-poor counterparts could raise at \$1.50 that was calculated by the parties to *WOC II*. *See id.* at 45; *WOC II*, 176 S.W.3d at 762.

Calhoun County ISD’s analysis has two key flaws. First, the two rate gaps are not comparable—one is based on the revenue raised at the statutory cap and the other is based on the revenue raised at average tax rates, without consideration for whether those rates are kept artificially low as a result of the TRE requirement. Second, and more fundamentally, *WOC II* specifically noted that the tax rate gap calculated by the parties was *not* comparable to the cost-of-a-general-diffusion-of-knowledge-centered gap on which they based their *Edgewood IV* analysis, *see WOC II*, 176 S.W.3d at 762, and the Court *did not* approve of this gap or suggest that it was relevant to the Court’s equity analysis. *See id.* at 790-92 (only discussion of \$0.17 gap is to note that the State [correctly] said it was not comparable to the \$0.09 gap in *Edgewood IV*).

The State, on the other hand, looked at the gap in average tax rates between the various wealth deciles⁷¹—i.e., the rate property-poor districts are currently levying versus the rate property-wealthy districts are currently levying. State Brief at 123-24, 130. The State did not consider the rate wealthy districts would require to raise the revenue poor districts were receiving, much less what rates were required to achieve a general diffusion of knowledge. *Id.* The State’s “tax rate gap” analysis is therefore incomparable to the *Edgewood IV* gap.

⁷¹ That is, by ranking the districts by wealth and dividing them into ten evenly-sized groups.

The State dismisses Dr. Clark’s analysis as “hypothetical.” *See id.* at 137. Since the State believes the current system is adequate, it believes the gaps should be based on current tax rates. *Id.* at 138. But that is not what the Court did in *Edgewood IV*; rather, the Court looked at the evidence before the trial court of the cost of achieving a general diffusion of knowledge (\$3,500 at the time) and calculated the gap in tax rates necessary to raise that level of revenue. 917 S.W.2d at 731-32 and n.12. Because the State has not attempted to measure the cost of achieving a general diffusion of knowledge, either in this case or as required by law, it is simply unable to perform the analysis this Court did in *Edgewood IV*. Conversely, Dr. Clark looked at evidence regarding the cost of achieving a general diffusion of knowledge—specifically the *Edgewood IV* estimate adjusted for inflation—and calculated the tax rate needed to raise that level.⁷² The difference between the current system and the one at issue in *Edgewood IV*, however, is that currently most districts cannot raise the necessary revenue within legal tax limits, whereas in *Edgewood IV*, all could do so with at least nineteen cents of revenue leftover for true supplementation. *See id.*

⁷² Dr. Albert Cortez, Edgewood ISD’s expert, also analyzed the gaps in tax rates needed to achieve various estimates of the revenue levels necessary to achieve a general diffusion of knowledge. Fort Bend ISD does not dispute his analysis, but leaves discussion of his analysis to Edgewood ISD.

2. The vast majority of school districts cannot legally raise their rates high enough to access sufficient revenue to achieve a general diffusion of knowledge.

The cost of a general diffusion of knowledge that the *Edgewood IV* Court used to calculate the tax rate gap was \$3,500. 917 S.W.2d at 731 and n.12. As discussed above, once adjusted for inflation, that represents \$6,955 in 2014-15. *See* RR58:49; *see also* RR58:46-48. In the intervening twenty years, the State has also significantly increased standards, and the student population has become more diverse and costly to educate. *See* Facts Section II.B and Argument Section IV.D *supra*. Under the 2014-15 formulas, 888 districts, with a collective weighted student enrollment of almost 5.9 million, cannot raise \$6,955 even if taxing at the \$1.17 cap, as noted below in the chart prepared by Dr. Clark. *See* RR58:49-50.

		\$6,955 Adequacy Estimate for 2014-15			
Formula System	M&O Tax Rate	# Districts Above	# Districts Below	# WADA Above	# WADA Below
2014-15 Formulas	Current Rate	87	934	83,340	5,995,437
	\$1.00	73	948	72,132	6,006,646
	\$1.04	92	929	97,697	5,981,081
	Maximum Rate Allowed	133	888	207,682	5,871,095

See Ex.6622:20 (emphasis added). In comparison, seventy-three districts, enrolling only 72,000 weighted students, can raise this revenue amount at a tax rate of \$1.00. *Id.* In other words, even if 888 poorest districts levied tax rates that were 17 cents higher than the seventy-three wealthiest districts, they *still* could not raise the

inflation-adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under prior academic standards.

The State argues that all accredited districts are providing a general diffusion of knowledge. *See* State Brief at 80-2. While the Fort Bend ISD Plaintiffs disagree that an accreditation system that is designed to allow most districts to be ranked “met standard” even if they have abysmally low performance results, *see* Argument Section V.C.1.b *supra*, the evidence reveals that the system is inefficient even if the cost of accreditation is the revenue level used.

In 2010-11, the average revenue of districts rated “Acceptable” under the prior, less rigorous accountability system, was \$5,645. RR58:41-43. In 2014-15, twenty-three districts cannot raise \$5,645 by raising their rate to the statutory cap, and 477 districts could not do so by taxing at \$1.04. *See* RR58:44; Ex.6622:18. In comparison, 283 districts can raise this amount at a tax rate of just \$1.00. Ex.6622:18. The twenty-three districts that cannot raise the amount of money necessary to provide an accredited education under the *prior* standards within permissible tax rates, and the 477 districts that cannot do so without a TRE, do not have substantially equal access to this level of funding at similar tax rates to those districts that can raise this amount at \$1.00.

Thus, this case presents an issue that was not presented in either *Edgewood IV* or *WOC II*, because school districts are not allowed to raise their rates high enough

to achieve a general diffusion of knowledge. Given that the system does not produce the constitutionally required “result,” it cannot possibly do so “with little waste.” *Edgewood I*, 777 S.W.2d at 395; *see also WOC II*, 176 S.W.3d at 790-91; *WOC I*, 107 S.W.3d at 565-66; *Edgewood IV*, 917 S.W.2d at 731 and n.10.

C. The 2011 and 2013 Legislative changes “leveled down” funding for school districts rather than “leveling up” to a general diffusion of knowledge.

The State argues that “the Legislature’s recent actions have made the school-finance system more efficient by closing the gaps between poor and wealthy districts.” State Brief at 131. It is true that, if districts are divided into deciles by wealth, the wealthiest four deciles received less money in 2014-15 than they had in 2010-11, while bottom six received slightly more. *See* Ex.6622:7-8.

The State suggests the latter fact means that the Legislature “leveled up” the funding of property-poor school districts. State Brief at 131. Like its argument regarding tax rates, however, this argument does not take into consideration the cost of achieving a general diffusion of knowledge. The constitutional mandate is to ensure that “districts ... have substantially equal access to funding *up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge.*” *Edgewood IV*, 917 S.W.2d at 730 (emphasis added). But Dr. Clark’s analysis shows that the vast majority of districts do not have access to

the revenue needed to achieve a general diffusion of knowledge at any tax rate—much less similar tax rates. *See* Section VII.B.2 *supra*.

The Legislature did not comply with Section 42.007 of the Texas Education Code—which is entitled “equalized funding elements” and is specifically designed to ensure that the state meet its policy “that each student enrolled in the public school system *shall have access to programs and services that are appropriate to the student’s educational needs* and that are substantially equal to those available to any similar student, *notwithstanding varying local economic factors*”⁷³—or otherwise attempt to determine the costs of meeting its own rising academic standards before shifting money among school districts. *See* RR58:25-26, 54; RR56:170-72. Instead of calculating the cost of its own standards and “leveling up” district revenue to that cost, the Legislature “leveled down” funding for Texas public school districts,⁷⁴ in direct contravention of this Court’s instruction. *See* RR58:35; Ex.6622:5-8; *Edgewood IV*, 917 S.W.2d at 730.

VI. The trial court’s award of attorney’s fees was proper.

The State argues that should the Court reverse the judgment on any of the constitutional claims, it should reverse and remand the trial court’s attorney’s fees

⁷³ TEX. EDUC. CODE § 42.001 (emphasis added) (cited by § 42.007).

⁷⁴ The *average* wealth district, which is in the seventh wealth decile, still has less funding after the 2013 “restoration” than it did in 2011. Ex.6622:7-8; RR58:27.

award. State Brief at 183, 187. But even if the Fort Bend ISD Plaintiffs do not prevail in part or in whole after this appeal, the trial court’s alternative basis for Fort Bend ISD’s fee award remains valid.

A. Attorney’s fee awards are reviewed for abuse of discretion.

The Declaration Judgment Act (“DJA”) grants the trial court discretion to award attorney’s fees to a litigant whether or not the party “substantially prevailed”—as long as the award of fees is both “reasonable and necessary” and “equitable and just.” *See* TEX. CIV. PRAC. & REM. CODE § 37.009; *Barshop v. Medina Cnty Underground Water Conservation Dist.*, 925 S.W.2d 618, 637-38 (Tex. 1996). A trial court’s fee award will not be reversed absent a clear abuse of discretion. *Oake v. Collin Cnty.*, 692 S.W.2d 454, 455 (Tex. 1985).

B. The trial court did not abuse its discretion when making its fee determination.

The trial court made clear rulings as to the reasonable and necessary and equitable and just nature of attorney’s fees for the Fort Bend ISD Plaintiffs.⁷⁵ *See* COL109; CR12:200. While the court implied the award was based partially on the Fort Bend ISD Plaintiffs having prevailed, *see* COL112, 117; CR12:200, it also stated that should they not prevail on appeal, the fee award was *still* equitable and just because the plaintiffs “made significant contributions to the public debate on

⁷⁵ The trial court’s judgment overruled the State’s substantive objections regarding the reasonable and necessary nature of the fees. *See generally* CR12:200-02, 205-06.

school finance law through this lawsuit.” *See* COL112 (citing *Scottsdale Ins. v. Travis*, 68 S.W.3d 72, 77 (Tex. App.—Dallas 2001, no pet.) (holding that DJA fees may be awarded to non-prevailing party)).

The State argues that: 1) the trial court erred in awarding appellate attorney’s fees regardless of the appeal result; 2) although a party need not prevail on the merits to obtain a fee award under the DJA, the party’s ultimate success or failure “still matters”; and 3) the trial court’s justification for awarding fees regardless of the outcome of an appeal was unreasonable. *See* State Brief at 184-186. The State’s argument ignores the dual basis for the trial court’s fee award and fails to demonstrate that the award is not equitable and just on this record.

First, the State’s contention that the trial court erred in its award of appellate attorney’s fees to the Fort Bend ISD Plaintiffs regardless of the appeal’s result does not merit a remand, because a condition is necessarily implied for appellate attorney’s fees. *See La Ventana Ranch Owners’ Ass’n, Inc. v. Davis*, 363 S.W.3d 632, 652 n.17 (Tex. App.—Austin 2011, pet. denied) (“Because unconditional appellate fees are improper, such a condition is necessarily implied.”). The Fort Bend ISD Plaintiffs adopt and incorporate the Calhoun County ISD Plaintiffs’ argument on this issue. *See* CCISD Appellees’ Brief, Argument Section V. Moreover, while *appellate* awards are conditioned on success, trial level attorney’s fees are not. *See Barshop*, 925 S.W.2d at 637.

Second, because the DJA does not require a party who was awarded fees to have “substantially prevailed” on its claim, *Barshop*, 925 S.W.2d at 637-638; *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998), a reversal of a trial court’s declaratory judgment decision does not “necessarily mean the award of attorney’s fees to the party who prevailed in the trial court was an abuse of discretion.” *SAVA gumarska in kemijska industrija d.d. v. Advanced Polymer Scis., Inc.*, 128 S.W.3d 304, 324 (Tex. App.—Dallas 2004, no pet.). Trial courts are entrusted to “weigh the equities” in making these fee decisions and have discretion to do so. *See Bocquet*, 972 S.W.2d at 21.

The State cites several cases in which a court remanded a fee award question because of a reversal of a judgment on the merits. It is true that a court *may* remand in light of these considerations, but it is not required to do so. *SAVA*, 128 S.W.3d at 324. When courts *choose* to remand, it is often because it is unclear whether the fee award was based solely on prevailing party status or on some other reason; thus remand is needed to allow the trial court to determine if any alternate bases exist. *See, e.g., State Farm Lloyds v. C.M.W.*, 53 S.W.3d 877, 895 (Tex. App.—Dallas 2001, pet. denied) (record does not reflect reasons for trial court award to prevailing party and thus no evidence of whether fees would be equitable or just in light of court’s reversal of claim of prevailing party). But here, the trial court has already

made an alternative determination justifying the fee award—the contribution of the Fort Bend ISD Plaintiffs to the public debate regarding school finance laws.

Third, the trial court did not abuse its discretion in finding this contribution to be a basis for the Fort Bend ISD Plaintiffs’ attorney’s fees. The trial court’s determination that the Fort Bend ISD Plaintiffs, via this lawsuit, significantly contributed to the public debate on school finance law, *see* COL112, is affirmed by events during trial. This lawsuit spurred action in the 83rd Legislature, and legislative leaders indicated that statutory changes were made with this litigation in mind. *See, e.g.* Debate on C.S.H.B. 1025 on the Floor of the Senate, 83rd Leg. R.S. (May 24, 2013) (Chairman of Senate Finance Committee, Senator Tommy Williams, stated: “Remember, Members, that we’ve gone through this whole process with our eye toward making sure we are addressing the issues that have been raised in our lawsuit, and the best way for us to do that is to put money in the formulas. And the second best thing that we can do is to put money into grant programs that help students with their achievement and that’s what this \$10 million does, and I think that coupled with what Sen. Patrick has done in House Bill 5 ... goes a long way in addressing this concern about the high standards that we have for our schools and the amount of money we are appropriating so we are trying to address that.”).⁷⁶ In

⁷⁶ Senate video archive, Senate Session (Part II) starting at 4:07:58, http://tlcsenate.granicus.com/MediaPlayer.php?view_id=9&clip_id=662 (last visited Jul. 2, 2015).

fact, that legislative action led the trial court to reopen the evidence to determine if any of the statutory changes from the 83rd Legislature changed the constitutional violations by the State. *See* CR12:189. Even the State acknowledged that the 83rd Legislature’s actions were a result of school district advocacy. *See* RR54:62 (“The evidence in the record will show that the Texas Legislature made these changes in response to pleas for change from public school administrators and teachers, parents, business stakeholders and the community at large.”). The State provides no explanation as to why these contributions and the Fort Bend ISD Plaintiffs’ need to prosecute litigation to enforce their constitutional rights are not factors that the trial court could reasonably consider as a basis for awarding fees. Because the trial court did not abuse its discretion in finding that the Fort Bend ISD Plaintiffs were entitled to attorney’s fees for their substantial contribution to the public debate on this important constitutional issue, remand is unnecessary.

VII. The trial court did not err in retaining “continuing jurisdiction” because it only purports to enforce its judgment and orders.

The trial court stated that it will have “continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders.” CR12:208. Trial courts are vested with the explicit authority to enforce their judgments through Texas Rule of Civil Procedure 308 and an inherent “judicial authority” to enforce orders and decrees. *See City of Tyler v. St. Louis Sw. Ry. Co. of Tex.*, 405 S.W.2d 330, 332 (Tex. 1966) (absent

changed conditions, it is the duty of the trial court to enforce the judgment as entered and if necessary compel enforcement); *Katz v. Bianchi*, 848 S.W.2d 372, 374 (Tex. App.—Houston [14th Dist.] 1993, no writ). Any orders must be consistent with the original judgment and should not constitute a material change in the “substantial adjudicated portions of the judgment.” *See Katz*, 848 S.W.2d at 374. But a trial court has the power to change the terms of the injunction upon a change in circumstances. *See City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993).

The State correctly notes that no “Texas court has ever asserted authority to exercise continuing jurisdiction in the manner federal courts do, to continually monitor a situation for compliance with an injunction to meet a particular policy goal.” State Brief at 188-189. But it does not explain why the trial court’s order rises to the level of a “structural” injunction akin to federal court practice, rather than a statement that it will enforce its judgment or modify the injunction if circumstances change, consistent with Texas judicial authority and practice. In fact, the case law cited by the trial court in its related conclusion of law specifically refers to modifying an injunction *if* circumstances change—something the State recognizes Texas trial courts may do. *Compare* COL118 (citing *City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993) (“A trial court generally retains jurisdiction to review, open, vacate or modify a permanent injunction upon a showing of changed

conditions.”)), *with* State Brief at 188. The fact that the trial court’s final judgment and injunction deal with a constitutional violation does not change enforcement of the judgment into a “policy goal” or otherwise limit this authority. In short, the State is arguing against an order that the trial court did not issue.

PRAYER

The Fort Bend ISD Plaintiffs respectfully request that the Court affirm (1) the trial court’s judgment declaring that the school finance system imposes a state property tax in violation of article VIII, section 1-e of the Texas Constitution and violates the suitability, adequacy, and efficiency requirements of article VII, section 1; (2) the related injunctive relief; and (3) the award of attorney’s fees in their favor. The Fort Bend ISD Plaintiffs also ask for all other relief to which they are entitled.

Respectfully submitted,

ALEXANDER DUBOSE JEFFERSON &
TOWNSEND LLP

/s/ Wallace B. Jefferson

Wallace B. Jefferson

State Bar No. 00000019

wjefferson@adjtlaw.com

Rachel A. Ekery

State Bar No. 00787424

rekery@adjtlaw.com

515 Congress Ave., Suite 2350

Austin, Texas 78701-3562

Telephone: (512) 482-9300

Facsimile: (512) 482-9303

THOMPSON & HORTON LLP

/s/ J. David Thompson, III

J. David Thompson, III

State Bar No. 19950600

dthompson@thompsonhorton.com

Philip Fraissinet

State Bar No. 00793749

pfraissinet@thompsonhorton.com

Phoenix Tower, Suite 2000

3200 Southwest Freeway

Houston, Texas 77027

Telephone: (713) 554-6767

Facsimile: (713) 583- 9668

Holly G. McIntush

State Bar No. 24065721

hmcintush@thompsonhorton.com

400 West 15th Street, Suite 1430

Austin, Texas 78704

Telephone: (512) 615-2351

Facsimile: (512) 682-8860

ATTORNEYS FOR FORT BEND ISD, ET AL.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief contains a total of 40,736 words, excluding the parts exempted under Tex. R. App. P. 9.4(i)(1), as verified by Microsoft Word 2010.

Dated: July 2, 2015

/s/ Holly G. McIntush
Holly G. McIntush
Attorney for Fort Bend ISD Appellees

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on counsel of record at the addresses below by electronic service on the second day of July 2015:

Ken Paxton
State Bar No. 15649200
Rance Craft
State Bar No. 24035655
Charles E. Roy
Kristofer S. Monson
James E. Davis
Beth Klusmann
Evan S. Greene
Jonathan F. Mitchell
Shelley N. Dahlberg
Office of the Attorney General
PO Box 12548 (MC 059)
Austin, TX 78711-2548
rance.craft@texasattorneygeneral.gov

Attorneys for Michael Williams, et al.

Craig T. Enoch
State Bar No. 00000026
Melissa L. Lorber
State Bar No. 24032969
Shelby L. O'Brien
Enoch Kever PLLC
600 Congress, Ste. 2800
Austin, Texas 78701
Telephone: (512) 615-1200
Telecopier: (512) 615-1198
cenoch@enochkever.com
mlorber@enochkever.com
sobrien@enochkever.com

Attorneys for Joyce Coleman, et al.

Robert A. Schulman
State Bar No. 17834500
Joseph E. Hoffer
Schulman, Lopez & Hoffer, LLP
517 Soledad St.
San Antonio, Texas 78205-1508
Telephone: (210) 538-5385
Telecopier: (210) 538-5384
rschulman@slh-law.com
jhoffer@slh-law.com

Leonard J. Schwartz
State Bar No. 1786700
Schulman, Lopez & Hoffer, LLP
700 Lavaca St., Suite 1425
Austin, Texas 78701
Telephone: (512) 962-7384
Facsimile: (512) 402-8411
lschwartz@slh-law.com

Attorneys for Texas Charter Schools Association, et al.

J. Christopher Diamond
State Bar No. 00792459
Sprague, Rustam & Diamond, P.C.
11111 Katy Freeway, Suite 300
Houston, Texas 77040
Telephone: (713) 645-3130
Telecopier: (713) 647-3137
christopherdiamond@yahoo.com

James C. Ho
State Bar No. 24052766
Gibson, Dunn & Crutcher LLP
2100 McKinney Ave., Suite 1100
Dallas, Texas 75201-6912
Telephone: (214) 698-3264
Telecopier: (214) 571-2917
jho@gibsondunn.com

Mark R. Trachtenberg
State Bar No. 24008169
Haynes and Boone, LLP
1221 McKinney St., Ste. 2100
Houston, Texas 77010
Telephone: (713) 547-2000
Telecopier: (713) 547-2600
mark.trachtenberg@haynesboone.com

John W. Turner
State Bar No. 24028085
Micah E. Skidmore
Michelle C. Jacobs
Haynes and Boone, LLP
2323 Victory Ave., Ste. 700
Dallas, Texas 75218
Telephone: (214) 651-5000
Telecopier: (214) 651-5940
john.turner@haynesboone.com
micah.skidmore@haynesboone.com
michelle.jacobs@haynesboone.com

Attorneys for Calhoun County ISD, et al.

Richard E. Gray, III
Toni Hunter
Richard E. Gray, IV
Gray & Becker, P.C.
900 West Ave.
Austin, Texas 78701
rick.gray@graybecker.com
toni.hunter@graybecker.com
richard.grayiv@graybecker.com

Attorneys for The Texas Taxpayer & Student Fairness Coalition, et al.

Marisa Bono
State Bar No. 24052874
Celina Moreno
State Bar No. 24074754
Mexican American Legal Defense
And Education Fund, Inc.
110 Broadway, Ste. 300
San Antonio, Texas 78205
Telephone: (210) 224-5476
Telecopier: (210) 224-5382
mbono@maldef.org
cmoreno@maldef.org

Attorneys for Edgewood ISD, et al.

Roger L. Rice
(PRO HAC VICE)
Multicultural Education,
Training and Advocacy, Inc.
240A Elm St., Ste. 22
Somerville, Maine 02144
rlr@shore.net

/s/ Holly G. McIntush
Holly G. McIntush
Attorney for Fort Bend ISD Appellees

APPENDIX

Tab Item

1. Texas Constitutional Provisions

- A. TEX. CONST. art VII §1
- B. TEX. CONST. art VIII §1-e

2. Texas Education Code Provisions

- A. TEX. EDUC. CODE § 4.001
- B. TEX. EDUC. CODE § 4.002
- C. TEX. EDUC. CODE § 28.001
- D. TEX. EDUC. CODE § 28.008
- E. TEX. EDUC. CODE § 39.024
- F. TEX. EDUC. CODE § 41.002
- G. TEX. EDUC. CODE § 42.001
- H. TEX. EDUC. CODE § 42.007
- I. TEX. EDUC. CODE § 42.101
- J. TEX. EDUC. CODE § 42.102
- K. TEX. EDUC. CODE § 42.103
- L. TEX. EDUC. CODE § 42.104
- M. TEX. EDUC. CODE § 42.105
- N. TEX. EDUC. CODE § 42.151
- O. TEX. EDUC. CODE § 42.152
- P. TEX. EDUC. CODE § 42.153
- Q. TEX. EDUC. CODE § 42.154
- R. TEX. EDUC. CODE § 42.155
- S. TEX. EDUC. CODE § 42.252
- T. TEX. EDUC. CODE § 42.301
- U. TEX. EDUC. CODE § 42.302
- V. TEX. EDUC. CODE § 42.2522
- W. TEX. EDUC. CODE § 45.001
- X. TEX. EDUC. CODE § 45.003
- Y. TEX. EDUC. CODE § 45.0031
- Z. TEX. EDUC. CODE § 46.003

- AA. TEX. EDUC. CODE § 46.032
- BB. TEX. EDUC. CODE § 46.033

3. Texas Tax Code Provisions

- A. TEX. TAX CODE § 11.13
- B. TEX. TAX CODE § 26.08

4. 84th Legislature (2015) Enacted Legislation

- A. Senate Joint Resolution 1
- B. Senate Bill 1
- C. Senate Bill 149
- D. Senate Bill 507

APPENDIX 1:
TEXAS
CONSTITUTIONAL
PROVISIONS

APPENDIX 1A:
TEX. CONST. ART VII § 1

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article VII. Education
the Public Free Schools

Vernon's Ann. Texas Const. Art. 7, § 1

§ 1. Support and maintenance of system of public free schools

[Currentness](#)

Sec. 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

[Notes of Decisions \(107\)](#)

Vernon's Ann. Texas Const. Art. 7, § 1, TX CONST Art. 7, § 1

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 1B:
TEX. CONST. ART VIII § 1-E

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article VIII. Taxation and Revenue

Vernon's Ann. Texas Const. Art. 8, § 1-e

§ 1-e. Abolition of ad valorem property taxes

Effective: November 26, 2001

[Currentness](#)

Sec. 1-e. No State ad valorem taxes shall be levied upon any property within this State.

Credits

Adopted Nov. 5, 1968. Amended Nov. 2, 1982; Nov. 6, 2001, eff. Nov. 26, 2001.

[Notes of Decisions \(24\)](#)

Vernon's Ann. Texas Const. Art. 8, § 1-e, TX CONST Art. 8, § 1-e

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2:
TEXAS EDUCATION
CODE PROVISIONS

APPENDIX 2A:
TEX. EDUC. CODE § 4.001

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle A. General Provisions
Chapter 4. Public Education Mission, Objectives, and Goals (Refs & Annos)

V.T.C.A., Education Code § 4.001

§ 4.001. Public Education Mission and Objectives

Effective: September 1, 2003

[Currentness](#)

(a) The mission of the public education system of this state is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens. It is further grounded on the conviction that a successful public education system is directly related to a strong, dedicated, and supportive family and that parental involvement in the school is essential for the maximum educational achievement of a child.

(b) The objectives of public education are:

OBJECTIVE 1: Parents will be full partners with educators in the education of their children.

OBJECTIVE 2: Students will be encouraged and challenged to meet their full educational potential.

OBJECTIVE 3: Through enhanced dropout prevention efforts, all students will remain in school until they obtain a high school diploma.

OBJECTIVE 4: A well-balanced and appropriate curriculum will be provided to all students.

OBJECTIVE 5: Educators will prepare students to be thoughtful, active citizens who have an appreciation for the basic values of our state and national heritage and who can understand and productively function in a free enterprise society.

OBJECTIVE 6: Qualified and highly effective personnel will be recruited, developed, and retained.

OBJECTIVE 7: The state's students will demonstrate exemplary performance in comparison to national and international standards.

OBJECTIVE 8: School campuses will maintain a safe and disciplined environment conducive to student learning.

OBJECTIVE 9: Educators will keep abreast of the development of creative and innovative techniques in instruction and administration using those techniques as appropriate to improve student learning.

OBJECTIVE 10: Technology will be implemented and used to increase the effectiveness of student learning, instructional management, staff development, and administration.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 82, § 1, eff. Sept. 1, 2003.

[Notes of Decisions \(4\)](#)

V. T. C. A., Education Code § 4.001, TX EDUC § 4.001

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2B:
TEX. EDUC. CODE § 4.002

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle A. General Provisions
Chapter 4. Public Education Mission, Objectives, and Goals (Refs & Annos)

V.T.C.A., Education Code § 4.002

§ 4.002. Public Education Academic Goals

Currentness

To serve as a foundation for a well-balanced and appropriate education:

GOAL 1: The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language.

GOAL 2: The students in the public education system will demonstrate exemplary performance in the understanding of mathematics.

GOAL 3: The students in the public education system will demonstrate exemplary performance in the understanding of science.

GOAL 4: The students in the public education system will demonstrate exemplary performance in the understanding of social studies.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#).

V. T. C. A., Education Code § 4.002, TX EDUC § 4.002

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2C:
TEX. EDUC. CODE § 28.001

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle F. Curriculum, Programs, and Services
Chapter 28. Courses of Study; Advancement (Refs & Annos)
Subchapter A. Essential Knowledge and Skills; Curriculum

V.T.C.A., Education Code § 28.001

§ 28.001. Purpose

Currentness

It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require all students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#).

V. T. C. A., Education Code § 28.001, TX EDUC § 28.001

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2D:
TEX. EDUC. CODE § 28.008

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle F. Curriculum, Programs, and Services
Chapter 28. Courses of Study; Advancement (Refs & Annos)
Subchapter A. Essential Knowledge and Skills; Curriculum

V.T.C.A., Education Code § 28.008

§ 28.008. Advancement of College Readiness in Curriculum

Effective: June 14, 2013

[Currentness](#)

(a) To ensure that students are able to perform college-level course work at institutions of higher education, the commissioner of education and the commissioner of higher education shall establish vertical teams composed of public school educators and institution of higher education faculty.

(b) The vertical teams shall:

(1) recommend for approval by the commissioner of education and the Texas Higher Education Coordinating Board college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education;

(2) evaluate whether the high school curriculum requirements under [Section 28.002](#) and other instructional requirements serve to prepare students to successfully perform college-level course work;

(3) recommend how the public school curriculum requirements can be aligned with college readiness standards and expectations;

(4) develop instructional strategies for teaching courses to prepare students to successfully perform college-level course work;

(5) develop or establish minimum standards for curricula, professional development materials, and online support materials in English language arts, mathematics, science, and social studies, designed for students who need additional assistance in preparing to successfully perform college-level course work; and

(6) periodically review and revise the college readiness standards and expectations developed under Subdivision (1) and recommend revised standards for approval by the commissioner of education and the Texas Higher Education Coordinating Board.

(c) The commissioner of education and the Texas Higher Education Coordinating Board by rule shall:

(1) establish the composition and duties of the vertical teams established under this section; and

(2) establish a schedule for the periodic review required under Subsection (b)(6), giving consideration to the cycle of review and identification under Section 28.002 of the essential knowledge and skills of subjects of the required curriculum.

(d) The State Board of Education shall incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board under Subsection (b) into the essential knowledge and skills identified by the board under [Section 28.002\(c\)](#).

(d-1) Expired.

(e) Notwithstanding any other provision of this section, the State Board of Education retains its authority under [Section 28.002](#) concerning the required curriculum.

(f) Expired.

(g) The agency shall coordinate with the Texas Higher Education Coordinating Board as necessary in administering this section.

Credits

Added by [Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 5.01, eff. May 31, 2006](#). Amended by [Acts 2007, 80th Leg., ch. 1058, § 7, eff. June 15, 2007](#); [Acts 2013, 83rd Leg., ch. 1014 \(H.B. 2549\), § 1, eff. June 14, 2013](#).

V. T. C. A., Education Code § 28.008, TX EDUC § 28.008

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2E:
TEX. EDUC. CODE § 39.024

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle H. Public School System Accountability
Chapter 39. Public School System Accountability (Refs & Annos)
Subchapter B. Assessment of Academic Skills

V.T.C.A., Education Code § 39.024

§ 39.024. Measure of College Readiness

Effective: September 1, 2013

[Currentness](#)

(a) In this section, “college readiness” means the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, without remediation, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree program at:

(1) a general academic teaching institution, as defined by [Section 61.003](#), other than a research institution, as categorized under the Texas Higher Education Coordinating Board's accountability system; or

(2) a postsecondary educational institution that primarily offers associate degrees or certificates or credentials other than baccalaureate or advanced degrees.

(b) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(c) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(d) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(e) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(f) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(f-1) Expired.

(f-2) Expired.

(g) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(h) Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2).

(i) The agency shall gather data and conduct research to substantiate any correlation between a certain level of performance by students on end-of-course assessment instruments and success in:

(1) military service; or

(2) a workforce training, certification, or other credential program at a postsecondary educational institution that primarily offers associate degrees or certificates or credentials other than baccalaureate or advanced degrees.

Credits

Added by Acts 2009, 81st Leg., ch. 895, § 53, eff. June 19, 2009. Amended by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(a)(2), eff. Sept. 1, 2013.

V. T. C. A., Education Code § 39.024, TX EDUC § 39.024

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2F:
TEX. EDUC. CODE § 41.002

 KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** [2015 Tex. Sess. Law Serv. Ch. 448 \(H.B. 7\) \(VERNON'S\)](#),

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)
[Education Code \(Refs & Annos\)](#)
[Title 2. Public Education \(Refs & Annos\)](#)
[Subtitle I. School Finance and Fiscal Management](#)
[Chapter 41. Equalized Wealth Level \(Refs & Annos\)](#)
[Subchapter A. General Provisions](#)

V.T.C.A., Education Code § 41.002

§ 41.002. Equalized Wealth Level

Effective: September 1, 2012

[Currentness](#)

(a) A school district may not have a wealth per student that exceeds:

(1) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to a district with maintenance and operations tax revenue per cent of tax effort equal to the maximum amount provided per cent under [Section 42.101\(a\)](#) or [\(b\)](#), for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, subject to [Section 41.093\(b-1\)](#); or

(3) \$319,500, for the district's maintenance and operations tax effort that exceeds the first six cents by which the district's maintenance and operations tax effort exceeds the rate equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year.

(a-1) Expired.

(b) For purposes of this chapter, the commissioner shall adjust, in accordance with [Section 42.2521](#), the taxable values of a school district that, due to factors beyond the control of the board of trustees, experiences a rapid decline in the tax base used in calculating taxable values.

(c) Repealed by [Acts 1999, 76th Leg., ch. 396, § 3.01\(a\), eff. Sept. 1, 1999](#).

(d) Expired.

(e) Notwithstanding Subsection (a), and except as provided by Subsection (g), in accordance with a determination of the commissioner, the wealth per student that a school district may have after exercising an option under [Section 41.003\(2\)](#) or [\(3\)](#) may not be less than the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1992-1993 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31, if the district imposes an effective tax rate for maintenance and operation of the district equal to the greater of the district's current tax rate or \$1.50 on the \$100 valuation of taxable property.

(f) For purposes of Subsection (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year less any amounts paid into a tax increment fund under Chapter 311, Tax Code, by the quotient of the district's taxable value of property, as determined under Subchapter M, Chapter 403, Government Code,¹ divided by 100.

(g) The wealth per student that a district may have under Subsection (e) is adjusted as follows:

$$\text{AWPS} = \text{WPS} \times (((\text{EWL}/280,000 - 1) \times \text{DTR}/1.5) + 1)$$

where:

“AWPS” is the district's wealth per student;

“WPS” is the district's wealth per student determined under Subsection (e);

“EWL” is the equalized wealth level; and

“DTR” is the district's adopted maintenance and operations tax rate for the current school year.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 1997, 75th Leg., ch. 1071, § 7, eff. Sept. 1, 1997](#); [Acts 1999, 76th Leg., ch. 396, §§ 1.02, 3.01\(a\), eff. Sept. 1, 1999](#); [Acts 2001, 77th Leg., ch. 1187, § 2.02, eff. Sept. 1, 2001](#); [Acts 2001, 77th Leg., ch. 1187, § 2.03, eff. Sept. 1, 2002](#); [Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 1.01, eff. May 31, 2006](#); [Acts 2009, 81st Leg., ch. 1328, § 44, eff. Sept. 1, 2009](#); [Acts 2011, 82nd Leg., 1st C.S., ch. 4 \(S.B. 1\), § 57.06, eff. Sept. 28, 2011](#).

Notes of Decisions (3)

Footnotes

¹ [V.T.C.A., Government Code § 403.301 et seq.](#)

V. T. C. A., Education Code § 41.002, TX EDUC § 41.002

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2G:
TEX. EDUC. CODE § 42.001



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter A. General Provisions

V.T.C.A., Education Code § 42.001

§ 42.001. State Policy

Currentness

(a) It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

(b) The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#).

Notes of Decisions (5)

V. T. C. A., Education Code § 42.001, TX EDUC § 42.001

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2H:
TEX. EDUC. CODE § 42.007

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter A. General Provisions

V.T.C.A., Education Code § 42.007

§ 42.007. Equalized Funding Elements

Effective: June 17, 2005

[Currentness](#)

(a) The Legislative Budget Board shall adopt rules, subject to appropriate notice and opportunity for public comment, for the calculation for each year of a biennium of the qualified funding elements, in accordance with Subsection (c), necessary to achieve the state policy under [Section 42.001](#).

(b) Before each regular session of the legislature, the board shall, as determined by the board, report the equalized funding elements to the commissioner and the legislature.

(c) The funding elements must include:

(1) a basic allotment for the purposes of [Section 42.101](#) that, when combined with the guaranteed yield component provided by Subchapter F, represents the cost per student of a regular education program that meets all mandates of law and regulation;

(2) adjustments designed to reflect the variation in known resource costs and costs of education beyond the control of school districts;

(3) appropriate program cost differentials and other funding elements for the programs authorized under Subchapter C,¹ with the program funding level expressed as dollar amounts and as weights applied to the adjusted basic allotment for the appropriate year;

(4) the maximum guaranteed level of qualified state and local funds per student for the purposes of Subchapter F;²

(5) the enrichment and facilities tax rate under Subchapter F;²

(6) the computation of students in weighted average daily attendance under [Section 42.302](#); and

(7) the amount to be appropriated for the school facilities assistance program under Chapter 46.

(d) Repealed by Acts 2005, 79th Leg., ch. 741, § 10(b).

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1071, § 13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 1.10, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 741, §§ 2, 10(b), eff. June 17, 2005.

Footnotes

1 V.T.C.A., Education Code § 42.151 et seq.

2 V.T.C.A., Education Code § 42.301 et seq.

V. T. C. A., Education Code § 42.007, TX EDUC § 42.007

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2I:
TEX. EDUC. CODE § 42.101



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** 2015 Tex. Sess. Law Serv. Ch. 448 (H.B. 7) (VERNON'S),



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter B. Basic Entitlement

V.T.C.A., Education Code § 42.101

§ 42.101. Basic and Regular Program Allotments

Effective: September 28, 2011 to August 31, 2015

[Currentness](#)

<Text of section effective until Sept. 1, 2015. See, also, text of § 42.101 effective Sept. 1, 2015.>

(a) The basic allotment is an amount equal to the lesser of \$4,765 or the amount that results from the following formula:

$$A = \$4,765 \times (\text{DCR}/\text{MCR})$$

where:

“A” is the resulting amount for a district;

“DCR” is the district's compressed tax rate, which is the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

“MCR” is the state maximum compressed tax rate, which is the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by \$1.50.

(a-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.31(3).

(a-2) Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.31(3).

(b) A greater amount for any school year for the basic allotment under Subsection (a) may be provided by appropriation.

(c) A school district is entitled to a regular program allotment equal to the amount that results from the following formula:

$$\text{RPA} = \text{ADA} \times \text{AA} \times \text{RPAF}$$

where:

“RPA” is the regular program allotment to which the district is entitled;

“ADA” is the number of students in average daily attendance in a district, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C;

“AA” is the district's adjusted basic allotment, as determined under [Section 42.102](#) and, if applicable, as further adjusted under [Section 42.103](#); and

“RPAF” is the regular program adjustment factor.

(c-1) Except as provided by Subsection (c-2), the regular program adjustment factor (“RPAF”) is 0.9239 for the 2011-2012 school year and 0.98 for the 2012-2013 school year.

(c-2) For a school district that does not receive funding under [Section 42.2516](#) for the 2011-2012 school year, the commissioner may set the regular program adjustment factor (“RPAF”) at 0.95195 for the 2011-2012 and 2012-2013 school years if the district demonstrates that funding reductions as a result of adjustments to the regular program allotment made by S.B. No. 1, Acts of the 82nd Legislature, 1st Called Session, 2011, will result in a hardship to the district in the 2011-2012 school year. Notwithstanding any other provision of this subsection, the commissioner shall adjust the regular program adjustment factor (“RPAF”) for the 2012-2013 school year for a school district whose regular program adjustment factor is set in accordance with this subsection to ensure that the total amount of state and local revenue in the combined 2011-2012 and 2012-2013 school years does not differ from the amount the district would have received if the district's regular program adjustment factor had not been set in accordance with this subsection. A determination by the commissioner under this subsection is final and may not be appealed.

(c-3) The regular program adjustment factor (“RPAF”) is 0.98 for the 2013-2014 and 2014-2015 school years or a greater amount established by appropriation, not to exceed 1.0. This subsection and Subsections (c), (c-1), and (c-2) expire September 1, 2015.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 1997, 75th Leg., ch. 1071, § 14, eff. Sept. 1, 1997](#); [Acts 1999, 76th Leg., ch. 396, § 1.11, eff. Sept. 1, 1999](#); [Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 1.03, eff. May 26, 2006](#); [Acts 2009, 81st Leg., ch. 1328, § 50, eff. Sept. 1, 2009](#); [Acts 2011, 82nd Leg., 1st C.S., ch. 4 \(S.B. 1\), §§ 57.07, 57.08, 57.31\(3\), eff. Sept. 28, 2011](#).

Notes of Decisions (2)

V. T. C. A., Education Code § 42.101, TX EDUC § 42.101

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2J:
TEX. EDUC. CODE § 42.102

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter B. Basic Entitlement

V.T.C.A., Education Code § 42.102

§ 42.102. Cost of Education Adjustment

Currentness

(a) The basic allotment for each district is adjusted to reflect the geographic variation in known resource costs and costs of education due to factors beyond the control of the school district.

(b) The cost of education adjustment is the cost of education index adjustment adopted by the foundation school fund budget committee and contained in Chapter 203, Title 19, Texas Administrative Code, as that chapter existed on March 26, 1997.

(c) Repealed by [Acts 1997, 75th Leg., ch. 1071, § 30, eff. Sept. 1, 1997](#).

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 1997, 75th Leg., ch. 1071, §§ 15, 30, eff. Sept. 1, 1997](#).

V. T. C. A., Education Code § 42.102, TX EDUC § 42.102

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2K:
TEX. EDUC. CODE § 42.103

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter B. Basic Entitlement

V.T.C.A., Education Code § 42.103

§ 42.103. Small and Mid-Sized District Adjustment

Effective: September 1, 2009

[Currentness](#)

(a) The basic allotment for certain small and mid-sized districts is adjusted in accordance with this section. In this section:

- (1) "AA" is the district's adjusted allotment per student;
- (2) "ADA" is the number of students in average daily attendance for which the district is entitled to an allotment under [Section 42.101](#); and
- (3) "ABA" is the adjusted basic allotment determined under [Section 42.102](#).

(b) The basic allotment of a school district that contains at least 300 square miles and has not more than 1,600 students in average daily attendance is adjusted by applying the formula:

$$AA = (1 + ((1,600 - ADA) \times .0004)) \times ABA$$

(c) The basic allotment of a school district that contains less than 300 square miles and has not more than 1,600 students in average daily attendance is adjusted by applying the formula:

$$AA = (1 + ((1,600 - ADA) \times .00025)) \times ABA$$

(d) The basic allotment of a school district that offers a kindergarten through grade 12 program and has less than 5,000 students in average daily attendance is adjusted by applying the formula, of the following formulas, that results in the greatest adjusted allotment:

- (1) the formula in Subsection (b) or (c) for which the district is eligible; or
- (2) $AA = (1 + ((5,000 - ADA) \times .000025)) \times ABA$.

(e) Repealed by Acts 2009, 81st Leg., ch. 1328, § 105(a)(5).

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 553, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 6.008, eff. Sept. 1, 2003; Acts 2009, 81st Leg., ch. 1328, § 105(a)(5), eff. Sept. 1, 2009.

V. T. C. A., Education Code § 42.103, TX EDUC § 42.103

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2L:
TEX. EDUC. CODE § 42.104



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter B. Basic Entitlement

V.T.C.A., Education Code § 42.104

§ 42.104. Use of Small or Mid-Sized District Adjustment in Calculating Special Allotments

Currentness

In determining the amount of a special allotment under Subchapter C¹ for a district to which [Section 42.103](#) applies, a district's adjusted basic allotment is considered to be the district's adjusted allotment determined under [Section 42.103](#).

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#).

Footnotes

¹ [V.T.C.A., Education Code § 42.151 et seq.](#)

V. T. C. A., Education Code § 42.104, TX EDUC § 42.104

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2M:
TEX. EDUC. CODE § 42.105

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter B. Basic Entitlement

V.T.C.A., Education Code § 42.105

§ 42.105. Sparsity Adjustment

Effective: September 28, 2011 to August 31, 2015

[Currentness](#)

<Text of section effective until Sept. 1, 2015. See, also, text of § 42.105 effective Sept. 1, 2015.>

Notwithstanding [Sections 42.101](#), [42.102](#), and [42.103](#), a school district that has fewer than 130 students in average daily attendance shall be provided a regular program allotment on the basis of 130 students in average daily attendance if it offers a kindergarten through grade 12 program and has preceding or current year's average daily attendance of at least 90 students or is 30 miles or more by bus route from the nearest high school district. A district offering a kindergarten through grade 8 program whose preceding or current year's average daily attendance was at least 50 students or which is 30 miles or more by bus route from the nearest high school district shall be provided a regular program allotment on the basis of 75 students in average daily attendance. An average daily attendance of 60 students shall be the basis of providing the regular program allotment if a district offers a kindergarten through grade 6 program and has preceding or current year's average daily attendance of at least 40 students or is 30 miles or more by bus route from the nearest high school district.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 2011, 82nd Leg., 1st C.S., ch. 4 \(S.B. 1\), § 57.10, eff. Sept. 28, 2011](#).

[Notes of Decisions \(1\)](#)

V. T. C. A., Education Code § 42.105, TX EDUC § 42.105

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2N:
TEX. EDUC. CODE § 42.151

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter C. Special Allotments

V.T.C.A., Education Code § 42.151

§ 42.151. Special Education

Effective: September 1, 2011

[Currentness](#)

(a) For each student in average daily attendance in a special education program under Subchapter A, Chapter 29,¹ in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under Subchapter A, Chapter 29,¹ in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement as follows:

Homebound.....	5.0
Hospital class.....	3.0
Speech therapy.....	5.0
Resource room.....	3.0
Self-contained, mild and moderate, regular campus.....	3.0
Self-contained, severe, regular campus.....	3.0
Off home campus.....	2.7
Nonpublic day school.....	1.7
Vocational adjustment class.....	2.3

(b) A special instructional arrangement for students with disabilities residing in care and treatment facilities, other than state schools, whose parents or guardians do not reside in the district providing education services shall be established under the rules of the State Board of Education. The funding weight for this arrangement shall be 4.0 for those students who receive their education service on a local school district campus. A special instructional arrangement for students with disabilities residing in state schools shall be established under the rules of the State Board of Education with a funding weight of 2.8.

(c) For funding purposes, the number of contact hours credited per day for each student in the off home campus instructional arrangement may not exceed the contact hours credited per day for the multidistrict class instructional arrangement in the 1992-1993 school year.

(d) For funding purposes the contact hours credited per day for each student in the resource room; self-contained, mild and moderate; and self-contained, severe, instructional arrangements may not exceed the average of the statewide total contact hours credited per day for those three instructional arrangements in the 1992-1993 school year.

(e) The State Board of Education by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under this section. In prescribing the qualifications that a mainstream instructional arrangement must meet, the board shall establish requirements that students with disabilities and their teachers receive the direct, indirect, and support services that are necessary to enrich the regular classroom and enable student success.

(f) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and special education program personnel.

(g) The State Board of Education shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements.

(h) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in the special education program under Subchapter A, Chapter 29.¹

(i) The agency shall encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.

(j) Repealed by Acts 2011, 82nd Leg., ch. 494 (H.B. 1130), § 1.

(k) A school district that provides an extended year program required by federal law for special education students who may regress is entitled to receive funds in an amount equal to 75 percent, or a lesser percentage determined by the commissioner, of the adjusted basic allotment or adjusted allotment, as applicable, for each full-time equivalent student in average daily attendance, multiplied by the amount designated for the student's instructional arrangement under this section, for each day the program is provided divided by the number of days in the minimum school year. The total amount of state funding for extended year services under this section may not exceed \$10 million per year. A school district may use funds received under this section only in providing an extended year program.

(l) From the total amount of funds appropriated for special education under this section, the commissioner shall withhold an amount specified in the General Appropriations Act, and distribute that amount to school districts for programs under [Section 29.014](#). The program established under that section is required only in school districts in which the program is financed by funds distributed under this subsection and any other funds available for the program. After deducting the amount withheld under this subsection from the total amount appropriated for special education, the commissioner shall reduce each district's allotment proportionately and shall allocate funds to each district accordingly.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 545, § 1, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., ch. 494 (H.B. 1130), § 1, eff. Sept. 1, 2011.

Footnotes

¹ V.T.C.A., Education Code § 29.001 et seq.

V. T. C. A., Education Code § 42.151, TX EDUC § 42.151

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 20:
TEX. EDUC. CODE § 42.152

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter C. Special Allotments

V.T.C.A., Education Code § 42.152

§ 42.152. Compensatory Education Allotment

Effective: September 1, 2013

[Currentness](#)

(a) For each student who is educationally disadvantaged or who is a student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2, and by 2.41 for each full-time equivalent student who is in a remedial and support program under [Section 29.081](#) because the student is pregnant.

(b) For purposes of this section, the number of educationally disadvantaged students is determined:

(1) by averaging the best six months' enrollment in the national school lunch program of free or reduced-price lunches for the preceding school year; or

(2) in the manner provided by commissioner rule, if no campus in the district participated in the national school lunch program of free or reduced-price lunches during the preceding school year.

(c) Funds allocated under this section shall be used to fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under Subchapter B, Chapter 39,¹ or disparity in the rates of high school completion between students at risk of dropping out of school, as defined by [Section 29.081](#), and all other students. Specifically, the funds, other than an indirect cost allotment established under State Board of Education rule, which may not exceed 45 percent, may be used to meet the costs of providing a compensatory, intensive, or accelerated instruction program under [Section 29.081](#) or a disciplinary alternative education program established under [Section 37.008](#), to pay the costs associated with placing students in a juvenile justice alternative education program established under [Section 37.011](#), or to support a program eligible under Title I of the Elementary and Secondary Education Act of 1965, as provided by [Pub. L. No. 103-382](#) and its subsequent amendments, and by federal regulations implementing that Act, at a campus at which at least 40 percent of the students are educationally disadvantaged. In meeting the costs of providing a compensatory, intensive, or accelerated instruction program under [Section 29.081](#), a district's compensatory education allotment shall be used for costs supplementary to the regular education program, such as costs for program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary for teachers of at-risk students, smaller class size, and individualized instruction. A home-rule school district or an open-enrollment charter school must use funds allocated under Subsection (a) for a purpose authorized in this subsection but is not otherwise subject to Subchapter C,

Chapter 29.² For purposes of this subsection, a program specifically designed to serve students at risk of dropping out of school, as defined by [Section 29.081](#), is considered to be a program supplemental to the regular education program, and a district may use its compensatory education allotment for such a program.

(c-1) Notwithstanding Subsection (c), funds allocated under this section may be used to fund in proportion to the percentage of students served by the program that meet the criteria in [Section 29.081\(d\)](#) or (g):

(1) an accelerated reading instruction program under [Section 28.006\(g\)](#); or

(2) a program for treatment of students who have dyslexia or a related disorder as required by [Section 38.003](#).

(c-2) Notwithstanding Subsection (c), funds allocated under this section may be used to fund a district's mentoring services program under [Section 29.089](#).

(d) The agency shall evaluate the effectiveness of accelerated instruction and support programs provided under [Section 29.081](#) for students at risk of dropping out of school.

(e) to (p) Repealed by [Acts 2009, 81st Leg., ch. 1328, § 105\(a\)\(6\)](#).

(q) The State Board of Education, with the assistance of the comptroller, shall develop and implement by rule reporting and auditing systems for district and campus expenditures of compensatory education funds to ensure that compensatory education funds, other than the indirect cost allotment, are spent only to supplement the regular education program as required by Subsection (c). The reporting requirements shall be managed electronically to minimize local administrative costs. A district shall submit the report required by this subsection not later than the 150th day after the last day permissible for resubmission of information required under [Section 42.006](#).

(q-1) The commissioner shall develop a system to identify school districts that are at high risk of having used compensatory education funds other than in compliance with Subsection (c) or of having inadequately reported compensatory education expenditures. If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is not at high risk of having misused compensatory education funds or of having inadequately reported compensatory education expenditures, the district may not be required to perform a local audit of compensatory education expenditures and is not subject to on-site monitoring under this section.

(q-2) If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is at high risk of having misused compensatory education funds, the commissioner shall notify the district of that determination. The district must respond to the commissioner not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If the district's response does not change the commissioner's determination that the district is at high risk of having misused compensatory education funds or if the district does not respond in a timely manner, the commissioner shall:

(1) require the district to conduct a local audit of compensatory education expenditures for the current or preceding school year;

(2) order agency staff to conduct on-site monitoring of the district's compensatory education expenditures; or

(3) both require a local audit and order on-site monitoring.

(q-3) If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is at high risk of having inadequately reported compensatory education expenditures, the commissioner may require agency staff to assist the district in following the proper reporting methods or amending a district or campus improvement plan under Subchapter F, Chapter 11. If the district does not take appropriate corrective action before the 45th day after the date the agency staff notifies the district of the action the district is expected to take, the commissioner may:

(1) require the district to conduct a local audit of the district's compensatory education expenditures; or

(2) order agency staff to conduct on-site monitoring of the district's compensatory education expenditures.

(q-4) The commissioner, in the year following a local audit of compensatory education expenditures, shall withhold from a district's foundation school fund payment an amount equal to the amount of compensatory education funds the agency determines were not used in compliance with Subsection (c). The commissioner shall release to a district funds withheld under this subsection when the district provides to the commissioner a detailed plan to spend those funds in compliance with Subsection (c).

(r) The commissioner shall grant a one-year exemption from the requirements of Subsections (q)-(q-4) to a school district in which the group of students who have failed to perform satisfactorily in the preceding school year on an assessment instrument required under [Section 39.023\(a\), \(c\), or \(l\)](#) subsequently performs on those assessment instruments at a level that meets or exceeds a level prescribed by commissioner rule. Each year the commissioner, based on the most recent information available, shall determine if a school district is entitled to an exemption for the following school year and notify the district of that determination.

(s) Expired.

(s-1) Expired.

(s-2) Expired.

(s-3) Expired.

(t), (u) Repealed by [Acts 2009, 81st Leg., ch. 1328, § 105\(a\)\(6\)](#).

(v) Expired.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1071, § 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 1.13, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 725, § 11, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1156, §§ 4, 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, § 30, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 253, § 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 783, § 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 785, § 57, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 903, § 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, § 6.009, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 728, § 23.001(17), eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 1204, § 3, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 1328, §§ 52, 53, 105(a)(6), eff. Sept. 1, 2009; Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.12, eff. Sept. 28, 2011.

Footnotes

1 V.T.C.A., Education Code § 39.021 et seq.

2 V.T.C.A., Education Code § 29.081 et seq.

V. T. C. A., Education Code § 42.152, TX EDUC § 42.152

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2P:
TEX. EDUC. CODE § 42.153

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter C. Special Allotments

V.T.C.A., Education Code § 42.153

§ 42.153. Bilingual Education Allotment

Currentness

- (a) For each student in average daily attendance in a bilingual education or special language program under Subchapter B, Chapter 29,¹ a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1.
- (b) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in providing bilingual education or special language programs under Subchapter B, Chapter 29, and must be accounted for under existing agency reporting and auditing procedures.
- (c) A district's bilingual education or special language allocation may be used only for program and student evaluation, instructional materials and equipment, staff development, supplemental staff expenses, salary supplements for teachers, and other supplies required for quality instruction and smaller class size.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Footnotes

¹ V.T.C.A., Education Code § 29.051 et seq.

V. T. C. A., Education Code § 42.153, TX EDUC § 42.153

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2Q:
TEX. EDUC. CODE § 42.154

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter C. Special Allotments

V.T.C.A., Education Code § 42.154

§ 42.154. Career and Technology Education Allotment

Effective: February 1, 2013

[Currentness](#)

(a) For each full-time equivalent student in average daily attendance in an approved career and technology education program in grades nine through 12 or in career and technology education programs for students with disabilities in grades seven through 12, a district is entitled to:

(1) an annual allotment equal to the adjusted basic allotment multiplied by a weight of 1.35; and

(2) \$50, if the student is enrolled in:

(A) two or more advanced career and technology education classes for a total of three or more credits; or

(B) an advanced course as part of a tech-prep program under Subchapter T, Chapter 61. ¹

(a-1) Expired.

(b) In this section, “full-time equivalent student” means 30 hours of contact a week between a student and career and technology education program personnel.

(c) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in providing career and technology education programs in grades nine through 12 or career and technology education programs for students with disabilities in grades seven through 12 under [Sections 29.182, 29.183, and 29.184](#).

(d) The commissioner shall conduct a cost-benefit comparison between career and technology education programs and mathematics and science programs.

(e) Out of the total statewide allotment for career and technology education under this section, the commissioner shall set aside an amount specified in the General Appropriations Act, which may not exceed an amount equal to one percent of the total amount appropriated, to support regional career and technology education planning. After deducting the amount set aside under this subsection from the total amount appropriated for career and technology education under this section, the commissioner shall reduce each district's tier one allotments in the same manner described for a reduction in allotments under [Section 42.253](#).

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 2003, 78th Leg., ch. 201, § 31, eff. Sept. 1, 2003](#); [Acts 2007, 80th Leg., ch. 763, § 5, eff. June 15, 2007](#); [Acts 2009, 81st Leg., ch. 1328, § 54, eff. Sept. 1, 2009](#).

Footnotes

1 [V.T.C.A., Education Code § 61.851 et seq.](#)

V. T. C. A., Education Code § 42.154, TX EDUC § 42.154

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2R:
TEX. EDUC. CODE § 42.155

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter C. Special Allotments

V.T.C.A., Education Code § 42.155

§ 42.155. Transportation Allotment

Effective: June 17, 2011

[Currentness](#)

(a) Each district or county operating a transportation system is entitled to allotments for transportation costs as provided by this section.

(b) As used in this section:

(1) “Regular eligible student” means a student who resides two or more miles from the student's campus of regular attendance, measured along the shortest route that may be traveled on public roads, and who is not classified as a student eligible for special education services.

(2) “Eligible special education student” means a student who is eligible for special education services under [Section 29.003](#) and who would be unable to attend classes without special transportation services.

(3) “Linear density” means the average number of regular eligible students transported daily, divided by the approved daily route miles traveled by the respective transportation system.

(c) Each district or county operating a regular transportation system is entitled to an allotment based on the daily cost per regular eligible student of operating and maintaining the regular transportation system and the linear density of that system. In determining the cost, the commissioner shall give consideration to factors affecting the actual cost of providing these transportation services in each district or county. The average actual cost is to be computed by the commissioner and included for consideration by the legislature in the General Appropriations Act. The allotment per mile of approved route may not exceed the amount set by appropriation.

(d) A district or county may apply for and on approval of the commissioner receive an additional amount of up to 10 percent of its regular transportation allotment to be used for the transportation of children living within two miles of the school they attend who would be subject to hazardous traffic conditions if they walked to school. Each board of trustees shall provide to the commissioner the definition of hazardous conditions applicable to that district and shall identify the specific hazardous areas for which the allocation is requested. A hazardous condition exists where no walkway is provided and children must walk along

or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition.

(e) The commissioner may grant an amount set by appropriation for private or commercial transportation for eligible students from isolated areas. The need for this type of transportation grant shall be determined on an individual basis and the amount granted shall not exceed the actual cost. The grants may be made only in extreme hardship cases. A grant may not be made if the students live within two miles of an approved school bus route.

(f) The cost of transporting career and technology education students from one campus to another inside a district or from a sending district to another secondary public school for a career and technology program or an area career and technology school or to an approved post-secondary institution under a contract for instruction approved by the agency shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by the board of trustees and approved by the agency.

(g) A school district or county that provides special transportation services for eligible special education students is entitled to a state allocation paid on a previous year's cost-per-mile basis. The maximum rate per mile allowable shall be set by appropriation based on data gathered from the first year of each preceding biennium. Districts may use a portion of their support allocation to pay transportation costs, if necessary. The commissioner may grant an amount set by appropriation for private transportation to reimburse parents or their agents for transporting eligible special education students. The mileage allowed shall be computed along the shortest public road from the student's home to school and back, morning and afternoon. The need for this type transportation shall be determined on an individual basis and shall be approved only in extreme hardship cases.

(h) Funds allotted under this section must be used in providing transportation services.

(i) In the case of a district belonging to a county transportation system, the district's transportation allotment for purposes of determining a district's foundation school program allocations is determined on the basis of the number of approved daily route miles in the district multiplied by the allotment per mile to which the county transportation system is entitled.

(j) The Texas School for the Deaf is entitled to an allotment under this section. The commissioner shall determine the appropriate allotment.

(k) Notwithstanding any other provision of this section, the commissioner may not reduce the allotment to which a district or county is entitled under this section because the district or county provides transportation for an eligible student to and from a child-care facility, as defined by [Section 42.002, Human Resources Code](#), or a grandparent's residence instead of the student's residence, as authorized by [Section 34.007](#), if the transportation is provided within the approved routes of the district or county for the school the student attends.

(l) A school district may, with the funds allotted under this section, provide a bus pass or card for another transportation system to each student who is eligible to use the regular transportation system of the district but for whom the regular transportation system of the district is not a feasible method of providing transportation. The commissioner by rule shall provide procedures for a school district to provide bus passes or cards to students under this subsection.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1071, § 17, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 169, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, § 32, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., ch. 352 (H.B. 3506), § 1, eff. June 17, 2011.

V. T. C. A., Education Code § 42.155, TX EDUC § 42.155

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2S:
TEX. EDUC. CODE § 42.252

 KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** [2015 Tex. Sess. Law Serv. Ch. 448 \(H.B. 7\) \(VERNON'S\)](#),

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter E. Financing the Program

V.T.C.A., Education Code § 42.252

§ 42.252. Local Share of Program Cost (Tier One)

Effective: September 1, 2009

[Currentness](#)

(a) Each school district's share of the Foundation School Program is determined by the following formula:

$$\text{LFA} = \text{TR} \times \text{DPV}$$

where:

“LFA” is the school district's local share;

“TR” is a tax rate which for each hundred dollars of valuation is an effective tax rate of the amount equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the lesser of:

(1) \$1.50; or

(2) the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

“DPV” is the taxable value of property in the school district for the preceding tax year determined under Subchapter M, Chapter 403, Government Code.¹

(b) The commissioner shall adjust the values reported in the official report of the comptroller as required by [Section 5.09\(a\), Tax Code](#), to reflect reductions in taxable value of property resulting from natural or economic disaster after January 1 in the year in which the valuations are determined. The decision of the commissioner is final. An adjustment does not affect the local fund assignment of any other school district.

(c) Appeals of district values shall be held pursuant to [Section 403.303, Government Code](#).

(d) A school district must raise its total local share of the Foundation School Program to be eligible to receive foundation school fund payments.

(e) Repealed by Acts 1999, 76th Leg., ch. 396, § 3.01(a), eff. Sept. 1, 1999.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1071, § 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 3.01(a), eff. Sept. 1, 1999; Acts 2009, 81st Leg., ch. 1328, § 59, eff. Sept. 1, 2009.

Notes of Decisions (5)

Footnotes

1 V.T.C.A., Government Code § 403.301 et seq.

V. T. C. A., Education Code § 42.252, TX EDUC § 42.252

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2T:
TEX. EDUC. CODE § 42.301



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter F. Guaranteed Yield Program

V.T.C.A., Education Code § 42.301

§ 42.301. Purpose

Currentness

The purpose of the guaranteed yield component of the Foundation School Program is to provide each school district with the opportunity to provide the basic program and to supplement that program at a level of its own choice. An allotment under this subchapter may be used for any legal purpose other than capital outlay or debt service.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 396, § 1.20, eff. Sept. 1, 1999.

V. T. C. A., Education Code § 42.301, TX EDUC § 42.301

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2U:
TEX. EDUC. CODE § 42.302



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** 2015 Tex. Sess. Law Serv. Ch. 448 (H.B. 7) (VERNON'S),



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter F. Guaranteed Yield Program

V.T.C.A., Education Code § 42.302

§ 42.302. Allotment

Effective: January 1, 2014

[Currentness](#)

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under [Section 42.303](#), is determined by the formula:

$$GYA = (GL \times WADA \times DTR \times 100) \div LR$$

where:

“GYA” is the guaranteed yield amount of state funds to be allocated to the district;

“GL” is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is an amount described by Subsection (a-1) or a greater amount for any year provided by appropriation;

“WADA” is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under [Section 42.158](#) or [42.160](#), and 50 percent of the adjustment under [Section 42.102](#), by the basic allotment for the applicable year;

“DTR” is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under [Section 42.2521](#), divided by 100; and

“LR” is the local revenue, which is determined by multiplying “DTR” by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, ¹ or, if applicable, under [Section 42.2521](#), divided by 100.

(a-1) In this section, “wealth per student” has the meaning assigned by [Section 41.001](#). For purposes of Subsection (a), the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort (“GL”) for a school district is:

- (1) the greater of the amount of district tax revenue per weighted student per cent of tax effort that would be available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, if the reduction of the limitation on tax increases as provided by [Section 11.26\(a-1\)](#), [\(a-2\)](#), or [\(a-3\)](#), [Tax Code](#), did not apply, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and
- (2) \$31.95, for the district's maintenance and operations tax effort that exceeds the amount of tax effort described by Subdivision (1).
- (a-2) The limitation on district enrichment tax rate ("DTR") under [Section 42.303](#) does not apply to the district's maintenance and operations tax effort described by Subsection (a-1)(1).
- (a-3) Expired.
- (a-4) Expired.
- (b) In computing the district enrichment tax rate of a school district, the total amount of maintenance and operations taxes collected by the school district does not include the amount of:
- (1) the district's local fund assignment under [Section 42.252](#); or
- (2) taxes paid into a tax increment fund under Chapter 311, Tax Code.
- (c) For purposes of this section, school district taxes for which credit is granted under [Section 31.035](#), [31.036](#), or [31.037](#), [Tax Code](#), are considered taxes collected by the school district as if the taxes were paid when the credit for the taxes was granted.
- (d) For purposes of this section, the total amount of maintenance and operations taxes collected for an applicable school year by a school district with alternate tax dates, as authorized by [Section 26.135](#), [Tax Code](#), is the amount of taxes collected on or after January 1 of the year in which the school year begins and not later than December 31 of the same year.
- (e) For purposes of this section, school district taxes for which credit is granted under former Subchapter D, Chapter 313, Tax Code, are considered taxes collected by the school district as if the taxes were paid when the credit for the taxes was granted.
- (f) If a school district imposes a maintenance and operations tax at a rate greater than the rate equal to the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, the district is entitled to receive an allotment under this section on the basis of that greater tax effort.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1071, § 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 637, § 3, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 396, § 1.20, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 320, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1187, § 2.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1187, § 2.10, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1505, § 8, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 1275, § 2(21), eff. Sept. 1, 2003; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 1.08, eff. May 31, 2006; Acts 2007, 80th Leg., ch. 19, § 3, eff. May 12, 2007; Acts 2007, 80th Leg., ch. 1191, § 2, eff. Sept. 1, 2010; Acts 2009, 81st Leg., ch. 87, § 7.006, eff. Sept. 1, 2010; Acts 2009, 81st Leg., ch. 1328, §§ 63, 105(c), eff. Sept. 1, 2009; Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), §§ 57.26, 61.08, eff. Sept. 28, 2011; Acts 2013, 83rd Leg., ch. 1304 (H.B. 3390), § 21, eff. Jan. 1, 2014.

Footnotes

1 V.T.C.A., Government Code § 403.301 et seq.

V. T. C. A., Education Code § 42.302, TX EDUC § 42.302

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2V:
TEX. EDUC. CODE § 42.2522

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 42. Foundation School Program (Refs & Annos)
Subchapter E. Financing the Program

V.T.C.A., Education Code § 42.2522

§ 42.2522. Adjustment for Optional Homestead Exemption

Effective: September 1, 2001

[Currentness](#)

(a) In any school year, the commissioner may not provide funding under this chapter based on a school district's taxable value of property computed in accordance with [Section 403.302\(d\)\(2\), Government Code](#), unless:

(1) funds are specifically appropriated for purposes of this section; or

(2) the commissioner determines that the total amount of state funds appropriated for purposes of the Foundation School Program for the school year exceeds the amount of state funds distributed to school districts in accordance with [Section 42.253](#) based on the taxable values of property in school districts computed in accordance with [Section 403.302\(d\), Government Code](#), without any deduction for residence homestead exemptions granted under [Section 11.13\(n\), Tax Code](#).

(b) In making a determination under Subsection (a)(2), the commissioner shall:

(1) notwithstanding [Section 42.253\(b\)](#), reduce the entitlement under this chapter of a school district whose final taxable value of property is higher than the estimate under [Section 42.254](#) and make payments to school districts accordingly; and

(2) give priority to school districts that, due to factors beyond the control of the board of trustees, experience a rapid decline in the tax base used in calculating taxable values in excess of four percent of the tax base used in the preceding year.

(c) In the first year of a state fiscal biennium, before providing funding as provided by Subsection (a)(2), the commissioner shall ensure that sufficient appropriated funds for purposes of the Foundation School Program are available for the second year of the biennium, including funds to be used for purposes of [Section 42.2521](#).

(d) If the commissioner determines that the amount of funds available under Subsection (a)(1) or (2) does not at least equal the total amount of state funding to which districts would be entitled if state funding under this chapter were based on the taxable values of property in school districts computed in accordance with [Section 403.302\(d\)\(2\), Government Code](#), the commissioner

may, to the extent necessary, provide state funding based on a uniform lesser fraction of the deduction under [Section 403.302\(d\)\(2\), Government Code](#).

(e) The commissioner shall notify school districts as soon as practicable as to the availability of funds under this section. For purposes of computing a rollback tax rate under [Section 26.08, Tax Code](#), a district shall adjust the district's tax rate limit to reflect assistance received under this section.

Credits

Added by [Acts 1999, 76th Leg., ch. 396, § 1.18, eff. Sept. 1, 1999](#). Amended by [Acts 2001, 77th Leg., ch. 1158, § 3, eff. Sept. 1, 2001](#).

V. T. C. A., Education Code § 42.2522, TX EDUC § 42.2522

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2W:
TEX. EDUC. CODE § 45.001

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 45. School District Funds
Subchapter A. Tax Bonds and Maintenance Taxes

V.T.C.A., Education Code § 45.001

§ 45.001. Bonds and Bond Taxes

Effective: September 1, 2009

[Currentness](#)

(a) The governing board of an independent school district, including the city council or commission that has jurisdiction over a municipally controlled independent school district, the governing board of a rural high school district, and the commissioners court of a county, on behalf of each common school district under its jurisdiction, may:

(1) issue bonds for:

(A) the construction, acquisition, and equipment of school buildings in the district;

(B) the acquisition of property or the refinancing of property financed under a contract entered under Subchapter A, Chapter 271, Local Government Code,¹ regardless of whether payment obligations under the contract are due in the current year or a future year;

(C) the purchase of the necessary sites for school buildings; and

(D) the purchase of new school buses; and

(2) may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to [Section 45.003](#).

(b) The bonds must mature serially or otherwise not more than 40 years from their date. The bonds may be made redeemable before maturity.

(c) Bonds may be sold at public or private sale as determined by the governing board of the district.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1536, § 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1500, § 1, eff. June 17, 2001; Acts 2009, 81st Leg., ch. 1240, § 2, eff. June 19, 2009; Acts 2009, 81st Leg., ch. 1328, § 87(b), eff. June 19, 2009.

Notes of Decisions (40)

Footnotes

1 V.T.C.A., Local Government Code § 271.001 et seq.

V. T. C. A., Education Code § 45.001, TX EDUC § 45.001

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 2X:
TEX. EDUC. CODE § 45.003



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 45. School District Funds
Subchapter A. Tax Bonds and Maintenance Taxes

V.T.C.A., Education Code § 45.003

§ 45.003. Bond and Tax Elections

Effective: May 26, 2006

[Currentness](#)

(a) Bonds described by [Section 45.001](#) may not be issued and taxes described by [Section 45.001](#) or [45.002](#) may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for that purpose, at the expense of the district, in accordance with the Election Code, except as provided by this section. Each election must be called by resolution or order of the governing board or commissioners court. The resolution or order must state the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters considered necessary or advisable by the governing board or commissioners court.

(b) A proposition submitted to authorize the issuance of bonds must include the question of whether the governing board or commissioners court may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:

(1) sufficient, without limit as to rate or amount, to pay the principal of and interest on the bonds; or

(2) sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition.

(c) If bonds are ever voted in a district pursuant to Subsection (b)(1), then all bonds thereafter proposed must be submitted pursuant to that subsection, and Subsection (b)(2) does not apply to the district.

(d) A proposition submitted to authorize the levy of maintenance taxes must include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate stated in the proposition. For any year, the maintenance tax rate per \$100 of taxable value adopted by the district may not exceed the rate equal to the sum of \$0.17 and the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by \$1.50.

(e) A rate that exceeds the maximum rate specified by Subsection (d) for the year in which the tax is to be imposed is void. A school district with a tax rate that is void under this subsection may, subject to requirements imposed by other law, adopt a rate for that year that does not exceed the maximum rate specified by Subsection (d) for that year.

(f) Notwithstanding any other law, a district that levied a maintenance tax for the 2005 tax year at a rate greater than \$1.50 per \$100 of taxable value in the district as permitted by special law may not levy a maintenance tax at a rate that exceeds the rate per \$100 of taxable value that is equal to the sum of \$0.17 and the product of the state compression percentage, as determined under [Section 42.2516](#), multiplied by the rate of the maintenance tax levied by the district for the 2005 tax year.

Credits

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 1997, 75th Leg., ch. 1071, § 22, eff. Sept. 1, 1997](#); [Acts 2001, 77th Leg., ch. 678, § 2, eff. Sept. 1, 2001](#); [Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 1.12, eff. May 31, 2006](#).

[Notes of Decisions \(70\)](#)

V. T. C. A., Education Code § 45.003, TX EDUC § 45.003

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2Y:
TEX. EDUC. CODE § 45.0031

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 45. School District Funds
Subchapter A. Tax Bonds and Maintenance Taxes

V.T.C.A., Education Code § 45.0031

§ 45.0031. Limitation on Issuance of Tax-Supported Bonds

Effective: September 1, 2003

[Currentness](#)

(a) Before issuing bonds described by [Section 45.001](#), a school district must demonstrate to the attorney general under Subsection (b) or (c) that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation.

(b) A district may demonstrate the ability to comply with Subsection (a) by using the most recent taxable value of property in the district, combined with state assistance to which the district is entitled under Chapter 42 or 46 that may be lawfully used for the payment of bonds.

(c) A district may demonstrate the ability to comply with Subsection (a) by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due for the bonds submitted to the attorney general, combined with state assistance to which the district is entitled under Chapter 42 or 46 that may be lawfully used for the payment of bonds. The district must submit to the attorney general a certification of the district's projected taxable value of property that is prepared by a registered professional appraiser certified under Chapter 1151, Occupations Code, who has demonstrated professional experience in projecting taxable values of property or who can by contract obtain any necessary assistance from a person who has that experience. To demonstrate the professional experience required by this subsection, a registered professional appraiser must provide to the district written documentation relating to two previous projects for which the appraiser projected taxable values of property. Until the bonds submitted to the attorney general are approved or disapproved, the district must maintain the documentation and on request provide the documentation to the attorney general or comptroller. The certification of the district's projected taxable value of property must be signed by the district's superintendent. The attorney general must base a determination of whether the district has complied with Subsection (a) on a taxable value of property that is equal to 90 percent of the value certified under this subsection.

(d) A district that demonstrates to the attorney general that the district's ability to comply with Subsection (a) is contingent on receiving state assistance may not adopt a tax rate for a year for purposes of paying the principal of and interest on the bonds unless the district credits to the account of the interest and sinking fund of the bonds the amount of state assistance equal to the amount needed to demonstrate compliance and received or to be received in that year.

(e) If a district demonstrates to the attorney general the district's ability to comply with Subsection (a) using a projected future taxable value of property under Subsection (c) and subsequently imposes a tax to pay the principal of and interest on bonds to which Subsection (a) applies at a rate that exceeds the limit imposed by Subsection (a), the attorney general may not approve a subsequent issuance of bonds unless the attorney general finds that the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds to which Subsection (a) applies from a tax at a rate not to exceed \$0.45 per \$100 of valuation.

Credits

Added by [Acts 2001, 77th Leg., ch. 678, § 1, eff. Sept. 1, 2001](#). Amended by [Acts 2003, 78th Leg., ch. 1276, § 14A.762, eff. Sept. 1, 2003](#).

V. T. C. A., Education Code § 45.0031, TX EDUC § 45.0031

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2Z:
TEX. EDUC. CODE § 46.003

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 46. Assistance with Instructional Facilities and Payment of Existing Debt (Refs & Annos)
Subchapter A. Instructional Facilities Allotment (Refs & Annos)

V.T.C.A., Education Code § 46.003

§ 46.003. School Facilities Allotment

Effective: September 1, 2001

Currentness

(a) For each year, except as provided by [Sections 46.005](#) and [46.006](#), a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate, or improve an instructional facility. The amount of state support is determined by the formula:

$$\text{FYA} = (\text{FYL} \times \text{ADA} \times \text{BTR} \times 100) - (\text{BTR} \times (\text{DPV}/100))$$

where:

“FYA” is the guaranteed facilities yield amount of state funds allocated to the district for the year;

“FYL” is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

“ADA” is the greater of the number of students in average daily attendance, as determined under [Section 42.005](#), in the district or 400;

“BTR” is the district's bond tax rate for the current year, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code,¹ or, if applicable, [Section 42.2521](#), divided by 100; and

“DPV” is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, [Section 42.2521](#).

(b) The bond tax rate under Subsection (a) may not exceed the rate that would be necessary for the current year, using state funds under Subsection (a), to make payments of principal and interest on the bonds for which the tax is pledged.

(c) To enable the district to collect local funds sufficient to pay the district's share of the debt service, a district may levy a bond tax at a rate higher than the maximum rate for which it may receive state assistance.

(d) The amount budgeted by a district for payment of eligible bonds may include:

- (1) bond taxes collected in the current school year;
 - (2) bond taxes collected in a preceding school year in excess of the amount necessary to pay the district's share of actual debt service on bonds in that year, provided that the taxes were not used to generate other state financial assistance for the district; or
 - (3) maintenance and operations taxes collected in the current school year or a preceding school year in excess of the amount eligible to be used to generate other state financial assistance for the district.
- (e) Bonds are eligible to be paid with state and local funds under this section if:
- (1) taxes to pay the principal of and interest on the bonds were first levied in the 1997-1998 school year or a later school year; and
 - (2) the bonds do not have a weighted average maturity of less than eight years.
- (f) A district may use state funds received under this section only to pay the principal of and interest on the bonds for which the district received the funds.
- (g) The board of trustees and voters of a school district shall determine district needs concerning construction, acquisition, renovation, or improvement of instructional facilities.
- (h) To receive state assistance under this subchapter, a school district must apply to the commissioner in accordance with rules adopted by the commissioner before issuing bonds that will be paid with state assistance. Until the bonds are fully paid or the instructional facility is sold:
- (1) a school district is entitled to continue receiving state assistance without reapplying to the commissioner; and
 - (2) the guaranteed level of state and local funds per student per cent of tax effort applicable to the bonds may not be reduced below the level provided for the year in which the bonds were issued.

Credits

Added by [Acts 1997, 75th Leg., ch. 592, § 1.04, eff. Sept. 1, 1997](#). Amended by [Acts 1999, 76th Leg., ch. 396, § 1.24, eff. Sept. 1, 1999](#); [Acts 2001, 77th Leg., ch. 1156, § 6, eff. Sept. 1, 2001](#).

Footnotes

1 [V.T.C.A., Government Code § 403.301 et seq.](#)

V. T. C. A., Education Code § 46.003, TX EDUC § 46.003

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2AA:
TEX. EDUC. CODE § 46.032

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 46. Assistance with Instructional Facilities and Payment of Existing Debt (Refs & Annos)
Subchapter B. Assistance with Payment of Existing Debt

V.T.C.A., Education Code § 46.032

§ 46.032. Allotment

Effective: September 1, 2001

Currentness

(a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under [Section 46.034](#), is determined by the formula:

$$\text{EDA} = (\text{EDGL} \times \text{ADA} \times \text{EDTR} \times 100) - (\text{EDTR} \times (\text{DPV}/100))$$

where:

“EDA” is the amount of state funds to be allocated to the district for assistance with existing debt;

“EDGL” is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

“ADA” is the number of students in average daily attendance, as determined under Section 42.005, in the district;

“EDTR” is the existing debt tax rate of the district, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code,¹ or, if applicable, under [Section 42.2521](#), divided by 100; and

“DPV” is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under [Section 42.2521](#).

(b) The existing debt tax rate of the district under Subsection (a) may not exceed the rate that would be necessary for the current year, using state funds under Subsection (a), to make payments of principal and interest on the bonds for which the tax is pledged.

(c) The amount budgeted by a district for payment of eligible bonds may include:

(1) bond taxes collected in the current school year;

(2) bond taxes collected in a preceding school year in excess of the amount necessary to pay the district's share of actual debt service on bonds in that year, provided that the taxes were not used to generate other state financial assistance for the district; or

(3) maintenance and operations taxes collected in the current school year or a preceding school year in excess of the amount eligible to be used to generate other state financial assistance for the district.

Credits

Added by [Acts 1999, 76th Leg., ch. 396, § 1.29, eff. Sept. 1, 1999](#). Amended by [Acts 2001, 77th Leg., ch. 1156, § 8, eff. Sept. 1, 2001](#).

Footnotes

¹ [V.T.C.A. Government Code § 403.301 et seq.](#)

V. T. C. A., Education Code § 46.032, TX EDUC § 46.032

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 2BB:
TEX. EDUC. CODE § 46.033

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Education Code (Refs & Annos)
Title 2. Public Education (Refs & Annos)
Subtitle I. School Finance and Fiscal Management
Chapter 46. Assistance with Instructional Facilities and Payment of Existing Debt (Refs & Annos)
Subchapter B. Assistance with Payment of Existing Debt

V.T.C.A., Education Code § 46.033

§ 46.033. Eligible Bonds

Effective: September 1, 2009

[Currentness](#)

Bonds, including bonds issued under [Section 45.006](#), are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the final school year of the preceding state fiscal biennium or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year; and

(2) the district does not receive state assistance under Subchapter A ¹ for payment of the principal and interest on the bonds.

Credits

Added by Acts 1999, 76th Leg., ch. 396, § 1.29, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1156, § 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, § 40, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 899, § 12.01, eff. Aug. 29, 2005; Acts 2007, 80th Leg., ch. 235, § 2, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 1328, § 76, eff. Sept. 1, 2009.

Footnotes

¹ V.T.C.A., Education Code § 46.001 et seq.

V. T. C. A., Education Code § 46.033, TX EDUC § 46.033

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 3:
TEXAS TAX CODE
PROVISIONS

APPENDIX 3A:
TEX. TAX. CODE § 11.13



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** [2015 Tex. Sess. Law Serv. Ch. 391 \(H.B. 1022\) \(VERNON'S\)](#),



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)

[Tax Code \(Refs & Annos\)](#)

[Title 1. Property Tax Code](#)

[Subtitle C. Taxable Property and Exemptions](#)

[Chapter 11. Taxable Property and Exemptions \(Refs & Annos\)](#)

[Subchapter B. Exemptions \(Refs & Annos\)](#)

V.T.C.A., Tax Code § 11.13

§ 11.13. Residence Homestead

Effective: September 1, 2013

[Currentness](#)

(a) A family or single adult is entitled to an exemption from taxation for the county purposes authorized in [Article VIII, Section 1-a, of the Texas Constitution](#) of \$3,000 of the assessed value of his residence homestead.

(b) An adult is entitled to exemption from taxation by a school district of \$15,000 of the appraised value of the adult's residence homestead, except that \$10,000 of the exemption does not apply to an entity operating under former Chapter 17, 18, 25, 26, 27, or 28, Education Code, as those chapters existed on May 1, 1995, as permitted by [Section 11.301, Education Code](#).

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of \$10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit; or

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is \$3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section; or

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section.

(f) Once authorized, an exemption adopted as provided by Subsection (d) of this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by Subdivision (2) of Subsection (d) of this section. In the case of a decrease, the amount of the exemption may not be reduced to less than \$3,000 of the market value.

(g) If the residence homestead exemption provided by Subsection (d) of this section is adopted by a county that levies a tax for the county purposes authorized by [Article VIII, Section 1-a, of the Texas Constitution](#), the residence homestead exemptions provided by Subsections (a) and (d) of this section may not be aggregated for the county tax purposes. An individual who is eligible for both exemptions is entitled to take only the exemption authorized as provided by Subsection (d) of this section for purposes of that county tax.

(h) Joint, community, or successive owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either. A person may not receive an exemption under this section for more than one residence homestead in the same year.

(i) The assessor and collector for a taxing unit may disregard the exemptions authorized by Subsection (b), (c), (d), or (n) of this section and assess and collect a tax pledged for payment of debt without deducting the amount of the exemption if:

(1) prior to adoption of the exemption, the unit pledged the taxes for the payment of a debt; and

(2) granting the exemption would impair the obligation of the contract creating the debt.

(j) For purposes of this section:

(1) "Residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(A) is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;

(B) is designed or adapted for human residence;

(C) is used as a residence; and

(D) is occupied as the individual's principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.

(2) "Trustor" means a person who transfers an interest in real or personal property to a qualifying trust, whether during the person's lifetime or at death, or the person's spouse.

(3) "Qualifying trust" means a trust:

(A) in which the agreement, will, or court order creating the trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that the trustor of the trust or a beneficiary of the trust has the right to use and occupy as the trustor's or beneficiary's principal residence residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument or court order:

(i) for life;

(ii) for the lesser of life or a term of years; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

(B) that acquires the property in an instrument of title or under a court order that:

(i) describes the property with sufficient certainty to identify it and the interest acquired; and

(ii) is recorded in the real property records of the county in which the property is located.

(k) A qualified residential structure does not lose its character as a residence homestead if a portion of the structure is rented to another or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However, the amount of any residence homestead exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(l) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if that owner does not establish a different principal residence and the absence is:

(1) for a period of less than two years and the owner intends to return and occupy the structure as the owner's principal residence; or

(2) caused by the owner's:

(A) military service outside of the United States as a member of the armed forces of the United States or of this state; or

(B) residency in a facility that provides services related to health, infirmity, or aging.

(m) In this section:

(1) “Disabled” means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.

(2) “School district” means a political subdivision organized to provide general elementary and secondary public education. “School district” does not include a junior college district or a political subdivision organized to provide special education services.

(n) In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent.

(o) For purposes of this section, a residence homestead also may consist of an interest in real property created through ownership of stock in a corporation incorporated under the Cooperative Association Act ([Article 1396-50.01, Vernon's Texas Civil Statutes](#)) to provide dwelling places to its stockholders if:

(1) the interests of the stockholders of the corporation are appraised separately as provided by [Section 23.19](#) of this code in the tax year to which the exemption applies;

(2) ownership of the stock entitles the owner to occupy a dwelling place owned by the corporation;

(3) the dwelling place is a structure or a separately secured and occupied portion of a structure; and

(4) the dwelling place is occupied as his principal residence by a stockholder who qualifies for the exemption.

(p) Exemption under this section for a homestead described by Subsection (o) of this section extends only to the dwelling place occupied as a residence homestead and to a portion of the total common area used in the residential occupancy that is equal to the percentage of the total amount of the stock issued by the corporation that is owned by the homestead claimant. The size of a residence homestead under Subsection (o) of this section, including any relevant portion of common area, may not exceed 20 acres.

(q) The surviving spouse of an individual who qualifies for an exemption under Subsection (d) for the residence homestead of a person 65 or older is entitled to an exemption for the same property from the same taxing unit in an amount equal to that of the exemption for which the deceased spouse qualified if:

- (1) the deceased spouse died in a year in which the deceased spouse qualified for the exemption;
 - (2) the surviving spouse was 55 or older when the deceased spouse died; and
 - (3) the property was the residence homestead of the surviving spouse when the deceased spouse died and remains the residence homestead of the surviving spouse.
- (r) An individual who receives an exemption under Subsection (d) is not entitled to an exemption under Subsection (q).
- (s) Expired.

Credits

Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 31, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4822, ch. 851, § 6, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 301, § 1, eff. June 7, 1985; Acts 1987, 70th Leg., ch. 547, § 1, eff. Jan. 1, 1988; Acts 1991, 72nd Leg., ch. 20, § 18, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 20, § 19(a), eff. Jan. 1, 1992; Acts 1991, 72nd Leg., ch. 391, § 14; Acts 1993, 73rd Leg., ch. 347, § 4.08, eff. May 31, 1993; Acts 1993, 73rd Leg., ch. 854, § 1, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, § 15.01, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 610, § 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 194, § 1, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 592, § 2.01; Acts 1997, 75th Leg., ch. 1039, § 6, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1059, § 2, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1071, § 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1199, § 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1481, § 1, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 240, § 1, eff. June 18, 2003; Acts 2005, 79th Leg., ch. 159, § 1, eff. Jan. 1, 2006; Acts 2013, 83rd Leg., ch. 699 (H.B. 2913), § 6, eff. Sept. 1, 2013.

Notes of Decisions (32)

V. T. C. A., Tax Code § 11.13, TX TAX § 11.13

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

APPENDIX 3B:
TEX. TAX. CODE § 26.08

 KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** [2015 Tex. Sess. Law Serv. Ch. 465 \(S.B. 1\) \(VERNON'S\)](#),

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)

[Tax Code \(Refs & Annos\)](#)

[Title 1. Property Tax Code](#)

[Subtitle D. Appraisal and Assessment \(Refs & Annos\)](#)

[Chapter 26. Assessment \(Refs & Annos\)](#)

V.T.C.A., Tax Code § 26.08

§ 26.08. Election to Ratify School Taxes

Effective: September 1, 2011

[Currentness](#)

(a) If the governing body of a school district adopts a tax rate that exceeds the district's rollback tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate. When increased expenditure of money by a school district is necessary to respond to a disaster, including a tornado, hurricane, flood, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs.

(b) The governing body shall order that the election be held in the school district on a date not less than 30 or more than 90 days after the day on which it adopted the tax rate. [Section 41.001, Election Code](#), does not apply to the election unless a date specified by that section falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax rate of \$_____ per \$100 valuation in (name of school district) for the current year, a rate that is \$_____ higher per \$100 valuation than the school district rollback tax rate." The ballot proposition must include the adopted tax rate and the difference between that rate and the rollback tax rate in the appropriate places.

(c) If a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate that was adopted by the governing body.

(d) If the proposition is not approved as provided by Subsection (c), the governing body may not adopt a tax rate for the school district for the current year that exceeds the school district's rollback tax rate.

(d-1) If, after tax bills for the school district have been mailed, a proposition to approve the school district's adopted tax rate is not approved by the voters of the district at an election held under this section, on subsequent adoption of a new tax rate by the governing body of the district, the assessor for the school shall prepare and mail corrected tax bills. The assessor shall include with each bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(d-2) If a property owner pays taxes calculated using the originally adopted tax rate of the school district and the proposition to approve the adopted tax rate is not approved by voters, the school district shall refund the difference between the amount of taxes paid and the amount due under the subsequently adopted rate if the difference between the amount of taxes paid and the amount due under the subsequent rate is \$1 or more. If the difference between the amount of taxes paid and the amount due under the subsequent rate is less than \$1, the school district shall refund the difference on request of the taxpayer. An application for a refund of less than \$1 must be made within 90 days after the date the refund becomes due or the taxpayer forfeits the right to the refund.

(e) For purposes of this section, local tax funds dedicated to a junior college district under [Section 45.105\(e\), Education Code](#), shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to [Section 26.085](#).

(f) Repealed by [Acts 1999, 76th Leg., ch. 396, § 3.01\(c\), eff. Sept. 1, 1999](#).

(g) In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the effective rate of that tax as of the date of the county unit system's abolition is added to the district's rollback tax rate.

(h) For purposes of this section, increases in taxable values and tax levies occurring within a reinvestment zone under Chapter 311 (Tax Increment Financing Act), in which the district is a participant, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district.

<Text of subsec. (i) effective until Sept. 1, 2017>

(i) For purposes of this section, the effective maintenance and operations tax rate of a school district is the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, including state funds that will be distributed to the district in that school year under [Section 42.2516, Education Code](#), would provide the same amount of state funds distributed under Chapter 42, Education Code, including state funds distributed under [Section 42.2516, Education Code](#), and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year.

<Text of subsec. (i) effective Sept. 1, 2017 >

(i) For purposes of this section, the effective maintenance and operations tax rate of a school district is the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, would provide the same amount of state funds distributed under Chapter 42, Education Code, and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year.

<Text of subsec. (i-1) effective until Sept. 1, 2017>

(i-1) For purposes of Subsections (i) and (k), any change from the preceding school year to the current school year in the amount of state funds distributed to a school district under [Section 42.2516, Education Code](#), is not considered to be a change in a funding element for Chapter 42, Education Code. The amount of state funds distributed under Chapter 42, Education Code, and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year is computed on the basis of the amount actually distributed to the district under [Section 42.2516, Education Code](#), in the preceding school year.

<Text of subsec. (j) effective until Sept. 1, 2017>

(j) For purposes of Subsection (i), the amount of state funds that would have been available to a school district in the preceding year is computed using the maximum tax rate for the current year under [Section 42.253\(e\), Education Code](#).

(k) Expired.

(l) Expired.

(m) Expired.

(n) For purposes of this section, the rollback tax rate of a school district whose maintenance and operations tax rate for the 2005 tax year was \$1.50 or less per \$100 of taxable value is:

(1) for the 2006 tax year, the sum of the rate that is equal to 88.67 percent of the maintenance and operations tax rate adopted by the district for the 2005 tax year, the rate of \$0.04 per \$100 of taxable value, and the district's current debt rate; and

(2) for the 2007 and subsequent tax years, the lesser of the following:

(A) the sum of the following:

(i) the rate per \$100 of taxable value that is equal to the product of the state compression percentage, as determined under [Section 42.2516, Education Code](#), for the current year and \$1.50;

(ii) the rate of \$0.04 per \$100 of taxable value;

(iii) the rate that is equal to the sum of the differences for the 2006 and each subsequent tax year between the adopted tax rate of the district for that year if the rate was approved at an election under this section and the rollback tax rate of the district for that year; and

(iv) the district's current debt rate; or

(B) the sum of the following:

(i) the effective maintenance and operations tax rate of the district as computed under Subsection (i) or (k), as applicable;

(ii) the rate per \$100 of taxable value that is equal to the product of the state compression percentage, as determined under [Section 42.2516, Education Code](#), for the current year and \$0.06; and

(iii) the district's current debt rate.

(o) For purposes of this section, the rollback tax rate of a school district whose maintenance and operations tax rate for the 2005 tax year was greater than \$1.50 per \$100 of taxable value is computed in the manner provided by Subsection (n) except that the maintenance and operations tax rate per \$100 of taxable value adopted by the district for the 2005 tax year is substituted for \$1.50 in a computation under that subsection.

(p) Notwithstanding Subsections (i), (n), and (o), if for the preceding tax year a school district adopted a maintenance and operations tax rate that was less than the district's effective maintenance and operations tax rate for that preceding tax year, the rollback tax rate of the district for the current tax year is calculated as if the district adopted a maintenance and operations tax rate for the preceding tax year that was equal to the district's effective maintenance and operations tax rate for that preceding tax year.

Credits

Acts 1979, 66th Leg., p. 2280, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 166, ch. 13, § 120, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 5377, ch. 987, § 4, eff. June 19, 1983; Acts 1984, 68th Leg., 2nd C.S., ch. 28, art. II, § 14, eff. Sept. 1, 1984; [Acts 1987, 70th Leg., ch. 947, § 10, eff. Jan. 1, 1988](#); [Acts 1989, 71st Leg., ch. 816, § 22, eff. Sept. 1, 1989](#); Acts 1991, 72nd Leg., ch. 20, §§ 20, 26, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 347, § 2.04, eff. May 31, 1993; Acts 1993, 73rd Leg., ch. 728, § 85, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 260, § 47, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 506, § 4, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 828, § 4(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 592, § 2.03, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, §§ 1.40, 3.01(c), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1187, § 2.11, eff. Sept. 1, 2001; Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 1.14, eff. May 31, 2006; Acts 2009, 81st Leg., ch. 777, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 1240, § 1, eff. June 19, 2009; Acts 2009, 81st Leg., ch. 1328, § 87(a), eff. June 19, 2009; Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 23.002, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), §§ 57.29, 57.32(b), eff. Sept. 1, 2017.

Editors' Notes

REPEAL OF SUBSECS. (I-1) AND (J)

<Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 57.32(b) repeals subsecs. (i-1) and (j) effective Sept. 1, 2017. >

Notes of Decisions (7)

V. T. C. A., Tax Code § 26.08, TX TAX § 26.08

Current through Chapters effective immediately through Chapter 46 of the 2015 Regular Session of the 84th Legislature

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX 4:
84TH LEGISLATURE
(2015) ENACTED
LEGISLATION

APPENDIX 4A:
SENATE JOINT
RESOLUTION 1

SENATE JOINT RESOLUTION

1
2 proposing a constitutional amendment increasing the amount of the
3 residence homestead exemption from ad valorem taxation for public
4 school purposes and providing for a reduction of the limitation on
5 the total amount of ad valorem taxes that may be imposed for those
6 purposes on the homestead of an elderly or disabled person to
7 reflect the increased exemption amount, authorizing the
8 legislature to prohibit a political subdivision that has adopted an
9 optional residence homestead exemption from ad valorem taxation
10 from reducing the amount of or repealing the exemption, and
11 prohibiting the enactment of a law that imposes a transfer tax on a
12 transaction that conveys fee simple title to real property.

13 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

14 SECTION 1. Sections 1-b(c), (d), and (e), Article VIII,
15 Texas Constitution, are amended to read as follows:

16 (c) The amount of \$25,000 [~~Fifteen Thousand Dollars~~
17 ~~(\$15,000)~~] of the market value of the residence homestead of a
18 married or unmarried adult, including one living alone, is exempt
19 from ad valorem taxation for general elementary and secondary
20 public school purposes. The legislature by general law may provide
21 that all or part of the exemption does not apply to a district or
22 political subdivision that imposes ad valorem taxes for public
23 education purposes but is not the principal school district
24 providing general elementary and secondary public education

1 throughout its territory. In addition to this exemption, the
2 legislature by general law may exempt an amount not to exceed [~~Ten~~
3 ~~Thousand Dollars~~ () \$10,000()] of the market value of the residence
4 homestead of a person who is disabled as defined in Subsection (b)
5 of this section and of a person [~~sixty-five~~ () 65()] years of age or
6 older from ad valorem taxation for general elementary and secondary
7 public school purposes. The legislature by general law may base the
8 amount of and condition eligibility for the additional exemption
9 authorized by this subsection for disabled persons and for persons
10 [~~sixty-five~~ () 65()] years of age or older on economic need. An
11 eligible disabled person who is [~~sixty-five~~ () 65()] years of age or
12 older may not receive both exemptions from a school district but may
13 choose either. An eligible person is entitled to receive both the
14 exemption required by this subsection for all residence homesteads
15 and any exemption adopted pursuant to Subsection (b) of this
16 section, but the legislature shall provide by general law whether
17 an eligible disabled or elderly person may receive both the
18 additional exemption for the elderly and disabled authorized by
19 this subsection and any exemption for the elderly or disabled
20 adopted pursuant to Subsection (b) of this section. Where ad
21 valorem tax has previously been pledged for the payment of debt, the
22 taxing officers of a school district may continue to levy and
23 collect the tax against the value of homesteads exempted under this
24 subsection until the debt is discharged if the cessation of the levy
25 would impair the obligation of the contract by which the debt was
26 created. The legislature shall provide for formulas to protect
27 school districts against all or part of the revenue loss incurred by

1 the implementation of this subsection, Subsection (d) of this
2 section, and Section 1-d-1 of this article [~~Article VIII, Sections~~
3 ~~1-b(c), 1-b(d), and 1-d-1, of this constitution~~]. The legislature
4 by general law may define residence homestead for purposes of this
5 section.

6 (d) Except as otherwise provided by this subsection, if a
7 person receives a residence homestead exemption prescribed by
8 Subsection (c) of this section for homesteads of persons who are
9 [~~sixty-five ()~~ 65[+)] years of age or older or who are disabled, the
10 total amount of ad valorem taxes imposed on that homestead for
11 general elementary and secondary public school purposes may not be
12 increased while it remains the residence homestead of that person
13 or that person's spouse who receives the exemption. If a person
14 [~~sixty-five ()~~ 65[+)] years of age or older dies in a year in which
15 the person received the exemption, the total amount of ad valorem
16 taxes imposed on the homestead for general elementary and secondary
17 public school purposes may not be increased while it remains the
18 residence homestead of that person's surviving spouse if the spouse
19 is [~~fifty-five ()~~ 55[+)] years of age or older at the time of the
20 person's death, subject to any exceptions provided by general law.
21 The legislature, by general law, may provide for the transfer of all
22 or a proportionate amount of a limitation provided by this
23 subsection for a person who qualifies for the limitation and
24 establishes a different residence homestead. However, taxes
25 otherwise limited by this subsection may be increased to the extent
26 the value of the homestead is increased by improvements other than
27 repairs or improvements made to comply with governmental

1 requirements and except as may be consistent with the transfer of a
2 limitation under this subsection. For a residence homestead
3 subject to the limitation provided by this subsection in the 1996
4 tax year or an earlier tax year, the legislature shall provide for a
5 reduction in the amount of the limitation for the 1997 tax year and
6 subsequent tax years in an amount equal to \$10,000 multiplied by the
7 1997 tax rate for general elementary and secondary public school
8 purposes applicable to the residence homestead. For a residence
9 homestead subject to the limitation provided by this subsection in
10 the 2014 tax year or an earlier tax year, the legislature shall
11 provide for a reduction in the amount of the limitation for the 2015
12 tax year and subsequent tax years in an amount equal to \$10,000
13 multiplied by the 2015 tax rate for general elementary and
14 secondary public school purposes applicable to the residence
15 homestead.

16 (e) The governing body of a political subdivision, other
17 than a county education district, may exempt from ad valorem
18 taxation a percentage of the market value of the residence
19 homestead of a married or unmarried adult, including one living
20 alone. In the manner provided by law, the voters of a county
21 education district at an election held for that purpose may exempt
22 from ad valorem taxation a percentage of the market value of the
23 residence homestead of a married or unmarried adult, including one
24 living alone. The percentage may not exceed twenty percent.
25 However, the amount of an exemption authorized pursuant to this
26 subsection may not be less than [~~Five Thousand Dollars~~] \$5,000 [✓]
27 unless the legislature by general law prescribes other monetary

1 restrictions on the amount of the exemption. The legislature by
2 general law may prohibit the governing body of a political
3 subdivision that adopts an exemption under this subsection from
4 reducing the amount of or repealing the exemption. An eligible
5 adult is entitled to receive other applicable exemptions provided
6 by law. Where ad valorem tax has previously been pledged for the
7 payment of debt, the governing body of a political subdivision may
8 continue to levy and collect the tax against the value of the
9 homesteads exempted under this subsection until the debt is
10 discharged if the cessation of the levy would impair the obligation
11 of the contract by which the debt was created. The legislature by
12 general law may prescribe procedures for the administration of
13 residence homestead exemptions.

14 SECTION 2. Article VIII, Texas Constitution, is amended by
15 adding Section 29 to read as follows:

16 Sec. 29. (a) After January 1, 2016, no law may be enacted
17 that imposes a transfer tax on a transaction that conveys fee simple
18 title to real property.

19 (b) This section does not prohibit:

20 (1) the imposition of a general business tax measured
21 by business activity;

22 (2) the imposition of a tax on the production of
23 minerals;

24 (3) the imposition of a tax on the issuance of title
25 insurance; or

26 (4) the change of a rate of a tax in existence on
27 January 1, 2016.

1 SECTION 3. The following temporary provision is added to
2 the Texas Constitution:

3 TEMPORARY PROVISION. (a) This temporary provision applies
4 to the constitutional amendment proposed by S.J.R. 1, 84th
5 Legislature, Regular Session, 2015.

6 (b) The amendments to Sections 1-b(c), (d), and (e), Article
7 VIII, of this constitution take effect for the tax year beginning
8 January 1, 2015.

9 (c) This temporary provision expires January 1, 2017.

10 SECTION 4. This proposed constitutional amendment shall be
11 submitted to the voters at an election to be held November 3, 2015.
12 The ballot shall be printed to permit voting for or against the
13 proposition: "The constitutional amendment increasing the amount
14 of the residence homestead exemption from ad valorem taxation for
15 public school purposes from \$15,000 to \$25,000, providing for a
16 reduction of the limitation on the total amount of ad valorem taxes
17 that may be imposed for those purposes on the homestead of an
18 elderly or disabled person to reflect the increased exemption
19 amount, authorizing the legislature to prohibit a political
20 subdivision that has adopted an optional residence homestead
21 exemption from ad valorem taxation from reducing the amount of or
22 repealing the exemption, and prohibiting the enactment of a law
23 that imposes a transfer tax on a transaction that conveys fee simple
24 title to real property."

S.J.R. No. 1

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 1 was adopted by the Senate on March 25, 2015, by the following vote: Yeas 23, Nays 8; and that the Senate concurred in House amendments on May 29, 2015, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

I hereby certify that S.J.R. No. 1 was adopted by the House, with amendments, on May 24, 2015, by the following vote: Yeas 138, Nays 0, one present not voting.

Chief Clerk of the House

APPENDIX 4B:
SENATE BILL 1

1 AN ACT

2 relating to certain restrictions on the imposition of ad valorem
3 taxes and to the duty of the state to reimburse certain political
4 subdivisions for certain revenue loss; making conforming changes.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 11.13, Tax Code, is amended by amending
7 Subsection (b) and adding Subsection (n-1) to read as follows:

8 (b) An adult is entitled to exemption from taxation by a
9 school district of \$25,000 [~~\$15,000~~] of the appraised value of the
10 adult's residence homestead, except that only \$5,000 [~~\$10,000~~] of
11 the exemption applies [~~does not apply~~] to an entity operating under
12 former Chapter 17, 18, 25, 26, 27, or 28, Education Code, as those
13 chapters existed on May 1, 1995, as permitted by Section 11.301,
14 Education Code.

15 (n-1) The governing body of a school district,
16 municipality, or county that adopted an exemption under Subsection
17 (n) for the 2014 tax year may not reduce the amount of or repeal the
18 exemption. This subsection expires December 31, 2019.

19 SECTION 2. Section 11.26(a), Tax Code, is amended to read as
20 follows:

21 (a) The tax officials shall appraise the property to which
22 this section applies and calculate taxes as on other property, but
23 if the tax so calculated exceeds the limitation imposed by this
24 section, the tax imposed is the amount of the tax as limited by this

1 section, except as otherwise provided by this section. A school
2 district may not increase the total annual amount of ad valorem tax
3 it imposes on the residence homestead of an individual 65 years of
4 age or older or on the residence homestead of an individual who is
5 disabled, as defined by Section 11.13, above the amount of the tax
6 it imposed in the first tax year in which the individual qualified
7 that residence homestead for the applicable exemption provided by
8 Section 11.13(c) for an individual who is 65 years of age or older
9 or is disabled. If the individual qualified that residence
10 homestead for the exemption after the beginning of that first year
11 and the residence homestead remains eligible for the same exemption
12 for the next year, and if the school district taxes imposed on the
13 residence homestead in the next year are less than the amount of
14 taxes imposed in that first year, a school district may not
15 subsequently increase the total annual amount of ad valorem taxes
16 it imposes on the residence homestead above the amount it imposed in
17 the year immediately following the first year for which the
18 individual qualified that residence homestead for the same
19 exemption, except as provided by Subsection (b). If the first tax
20 year the individual qualified the residence homestead for the
21 exemption provided by Section 11.13(c) for individuals 65 years of
22 age or older or disabled was a tax year before the 2015 [~~1997~~] tax
23 year, the amount of the limitation provided by this section is the
24 amount of tax the school district imposed for the 2014 [~~1996~~] tax
25 year less an amount equal to the amount determined by multiplying
26 \$10,000 times the tax rate of the school district for the 2015
27 [~~1997~~] tax year, plus any 2015 [~~1997~~] tax attributable to

1 improvements made in 2014 [~~1996~~], other than improvements made to
2 comply with governmental regulations or repairs.

3 SECTION 3. Section 25.23, Tax Code, is amended by adding
4 Subsection (a-1) to read as follows:

5 (a-1) This subsection applies only to the appraisal records
6 for the 2015 tax year. If the appraisal records submitted to the
7 appraisal review board include the taxable value of residence
8 homesteads or show the amount of the exemption under Section
9 11.13(b) applicable to residence homesteads, the chief appraiser
10 shall prepare supplemental appraisal records that reflect an
11 exemption amount under that subsection of \$25,000. This subsection
12 expires December 31, 2016.

13 SECTION 4. Section 26.04, Tax Code, is amended by adding
14 Subsections (a-1) and (c-1) to read as follows:

15 (a-1) On receipt of the appraisal roll for the 2015 tax
16 year, the assessor for a school district shall determine the total
17 taxable value of property taxable by the school district and the
18 taxable value of new property based on a residence homestead
19 exemption under Section 11.13(b) of \$25,000. This subsection
20 expires December 31, 2016.

21 (c-1) An officer or employee designated by the governing
22 body of a school district shall calculate the effective tax rate and
23 the rollback tax rate of the school district for the 2015 tax year
24 based on a residence homestead exemption under Section 11.13(b) of
25 \$25,000. This subsection expires December 31, 2016.

26 SECTION 5. Section 26.08, Tax Code, is amended by adding
27 Subsection (q) to read as follows:

1 (g) For purposes of this section, the effective maintenance
2 and operations tax rate and the rollback tax rate of a school
3 district for the 2015 tax year shall be calculated based on a
4 residence homestead exemption under Section 11.13(b) of \$25,000.
5 This subsection expires December 31, 2016.

6 SECTION 6. Section 26.09, Tax Code, is amended by adding
7 Subsection (c-1) to read as follows:

8 (c-1) The assessor for a school district shall calculate the
9 amount of tax imposed by the school district on a residence
10 homestead for the 2015 tax year based on an exemption under Section
11 11.13(b) of \$15,000 and separately based on an exemption under that
12 subsection of \$25,000. This subsection expires December 31, 2016.

13 SECTION 7. Section 26.15, Tax Code, is amended by adding
14 Subsection (h) to read as follows:

15 (h) The assessor for a school district shall correct the tax
16 roll for the school district for the 2015 tax year to reflect the
17 results of the election to approve the constitutional amendment
18 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015.
19 This subsection expires December 31, 2016.

20 SECTION 8. Section 31.01, Tax Code, is amended by adding
21 Subsections (d-2), (d-3), (d-4), and (d-5) to read as follows:

22 (d-2) This subsection and Subsections (d-3) and (d-4) apply
23 only to taxes imposed by a school district on a residence homestead
24 for the 2015 tax year. The assessor for the school district shall
25 compute the amount of taxes imposed and the other information
26 required by this section based on a residence homestead exemption
27 under Section 11.13(b) of \$25,000. The tax bill or the separate

1 statement must indicate that the bill is a provisional tax bill and
2 include a statement in substantially the following form:

3 "If the amount of the exemption from ad valorem taxation by a
4 school district of a residence homestead had not been increased by
5 the Texas Legislature, your tax bill would have been \$_____ (insert
6 amount equal to the sum of the amount calculated under Section
7 26.09(c-1) based on an exemption under Section 11.13(b) of \$15,000
8 and the total amount of taxes imposed by the other taxing units
9 whose taxes are included in the bill). Because of action by the
10 Texas Legislature increasing the amount of the residence homestead
11 exemption, your tax bill has been lowered by \$_____ (insert
12 difference between amount calculated under Section 26.09(c-1)
13 based on an exemption under Section 11.13(b) of \$15,000 and amount
14 calculated under Section 26.09(c-1) based on an exemption under
15 Section 11.13(b) of \$25,000), resulting in a lower tax bill of \$_____
16 (insert amount equal to the sum of the amount calculated under
17 Section 26.09(c-1) based on an exemption under Section 11.13(b) of
18 \$25,000 and the total amount of taxes imposed by the other taxing
19 units whose taxes are included in the bill), contingent on the
20 approval by the voters at an election to be held November 3, 2015,
21 of a constitutional amendment authorizing the residence homestead
22 exemption increase. If the constitutional amendment is not
23 approved by the voters at the election, a supplemental school
24 district tax bill in the amount of \$_____ (insert difference between
25 amount calculated under Section 26.09(c-1) based on an exemption
26 under Section 11.13(b) of \$15,000 and amount calculated under
27 Section 26.09(c-1) based on an exemption under Section 11.13(b) of

1 \$25,000) will be mailed to you."

2 (d-3) A tax bill prepared by the assessor for a school
3 district as provided by Subsection (d-2) and mailed to a person in
4 whose name property subject to an exemption under Section 11.13(b)
5 is listed on the tax roll and to the person's authorized agent as
6 provided by Subsection (a) of this section is considered to be a
7 provisional tax bill until the canvass of the votes on the
8 constitutional amendment proposed by S.J.R. 1, 84th Legislature,
9 Regular Session, 2015. If the constitutional amendment is approved
10 by the voters, the tax bill is considered to be a final tax bill for
11 the taxes imposed on the property for the 2015 tax year, and no
12 additional tax bill is required to be mailed to the person and to
13 the person's authorized agent, unless another provision of this
14 title requires the mailing of a corrected tax bill. If the
15 constitutional amendment is not approved by the voters:

16 (1) a tax bill prepared by the assessor for a school
17 district as provided by Subsection (d-2) and mailed to a person in
18 whose name property subject to an exemption under Section 11.13(b)
19 is listed on the tax roll and to the person's authorized agent as
20 provided by Subsection (a) of this section is considered to be a
21 final tax bill but only as to the portion of the taxes imposed on the
22 property for the 2015 tax year that are included in the bill;

23 (2) the amount of taxes imposed by each school
24 district on a residence homestead for the 2015 tax year is
25 calculated based on an exemption under Section 11.13(b) of \$15,000;
26 and

27 (3) except as provided by Subsections (f), (i-1), and

1 (k), the assessor for each school district shall prepare and mail a
2 supplemental tax bill, by December 1 or as soon thereafter as
3 practicable, to each person in whose name property subject to an
4 exemption under Section 11.13(b) is listed on the tax roll and to
5 the person's authorized agent in an amount equal to the difference
6 between the amount calculated under Section 26.09(c-1) based on an
7 exemption under Section 11.13(b) of \$15,000 and the amount
8 calculated under Section 26.09(c-1) based on an exemption under
9 Section 11.13(b) of \$25,000.

10 (d-4) Except as otherwise provided by Subsection (d-3), the
11 provisions of this section other than Subsection (d-2) apply to a
12 supplemental tax bill mailed under Subsection (d-3).

13 (d-5) This subsection and Subsections (d-2), (d-3), and
14 (d-4) expire December 31, 2016.

15 SECTION 9. Section 31.02, Tax Code, is amended by adding
16 Subsection (a-1) to read as follows:

17 (a-1) Except as provided by Subsection (b) of this section
18 and Sections 31.03 and 31.04, taxes for which a supplemental tax
19 bill is mailed under Section 31.01(d-3) are due on receipt of the
20 tax bill and are delinquent if not paid before March 1 of the year
21 following the year in which imposed. This subsection expires
22 December 31, 2016.

23 SECTION 10. Subchapter A, Chapter 41, Education Code, is
24 amended by adding Section 41.0011 to read as follows:

25 Sec. 41.0011. COMPUTATION OF WEALTH PER STUDENT FOR
26 2015-2016 SCHOOL YEAR. Notwithstanding any other provision of this
27 chapter, in computing a school district's wealth per student for

1 the 2015-2016 school year, a school district's taxable value of
2 property under Subchapter M, Chapter 403, Government Code, is
3 determined as if the increase in the residence homestead exemption
4 under Section 1-b(c), Article VIII, Texas Constitution, and the
5 additional limitation on tax increases under Section 1-b(d) of that
6 article in effect for the 2015 tax year as proposed by S.J.R. 1,
7 84th Legislature, Regular Session, 2015, had been in effect for the
8 2014 tax year. This section expires September 1, 2016.

9 SECTION 11. Section 41.004, Education Code, is amended by
10 adding Subsections (a-1), (b-1), and (c-1) to read as follows:

11 (a-1) This subsection applies only if the constitutional
12 amendment proposed by S.J.R. 1, 84th Legislature, Regular Session,
13 2015, is approved by the voters in an election held for that
14 purpose. As soon as practicable after receiving revised property
15 values that reflect adoption of the constitutional amendment, the
16 commissioner shall review the wealth per student of districts in
17 the state and revise as necessary the notifications provided under
18 Subsection (a) for the 2015-2016 school year. This subsection
19 expires September 1, 2016.

20 (b-1) This subsection applies only to a district that has
21 not previously held an election under this chapter and is not
22 eligible to reduce the district's wealth per student in the manner
23 authorized by Section 41.0041. Notwithstanding Subsection (b), a
24 district that enters into an agreement to exercise an option to
25 reduce the district's wealth per student under Section 41.003(3),
26 (4), or (5) for the 2015-2016 school year may request and, as
27 provided by Section 41.0042(a), receive approval from the

1 commissioner to delay the date of the election otherwise required
2 to be ordered before September 1. This subsection expires
3 September 1, 2016.

4 (c-1) Notwithstanding Subsection (c), a district that
5 receives approval from the commissioner to delay an election as
6 provided by Subsection (b-1) may adopt a tax rate for the 2015 tax
7 year before the commissioner certifies that the district has
8 achieved the equalized wealth level. This subsection expires
9 September 1, 2016.

10 SECTION 12. Subchapter A, Chapter 41, Education Code, is
11 amended by adding Section 41.0042 to read as follows:

12 Sec. 41.0042. TRANSITIONAL PROVISIONS: INCREASED
13 HOMESTEAD EXEMPTION AND LIMITATION ON TAX INCREASES. (a) The
14 commissioner shall approve a district's request under Section
15 41.004(b-1) to delay the date of an election required under this
16 chapter if the commissioner determines that the district would not
17 have a wealth per student that exceeds the equalized wealth level if
18 the constitutional amendment proposed by S.J.R. 1, 84th
19 Legislature, Regular Session, 2015, were approved by the voters.

20 (b) The commissioner shall set a date by which each district
21 that receives approval under this section must order the election.

22 (c) Not later than the 2016-2017 school year, the
23 commissioner shall order detachment and annexation of property
24 under Subchapter G or consolidation under Subchapter H as necessary
25 to achieve the equalized wealth level for a district that receives
26 approval under this section and subsequently:

27 (1) fails to hold the election; or

1 (2) does not receive voter approval at the election.

2 (d) This section expires September 1, 2017.

3 SECTION 13. Subchapter A, Chapter 41, Education Code, is
4 amended by adding Section 41.0121 to read as follows:

5 Sec. 41.0121. TRANSITIONAL ELECTION DATES. (a) This
6 section applies only to an election under this chapter that occurs
7 during the 2015-2016 school year.

8 (b) Section 41.012 does not apply to a district that
9 receives approval of a request under Section 41.0042. The district
10 shall hold the election on a Tuesday or Saturday on or before a date
11 specified by the commissioner. Section 41.001, Election Code, does
12 not apply to the election.

13 (c) This section expires September 1, 2016.

14 SECTION 14. Section 41.094, Education Code, is amended by
15 adding Subsection (a-1) to read as follows:

16 (a-1) Notwithstanding Subsection (a), a district that
17 receives approval of a request under Section 41.0042 shall pay for
18 credits purchased in equal monthly payments as determined by the
19 commissioner beginning March 15, 2016, and ending August 15, 2016.
20 This subsection expires September 1, 2016.

21 SECTION 15. Subchapter D, Chapter 41, Education Code, is
22 amended by adding Section 41.0981 to read as follows:

23 Sec. 41.0981. TRANSITIONAL EARLY AGREEMENT CREDIT.
24 Notwithstanding Section 41.098, a district that receives approval
25 of a request under Section 41.0042 may receive the early agreement
26 credit described by Section 41.098 for the 2015-2016 school year if
27 the district orders the election and obtains voter approval not

1 later than the date specified by the commissioner. This section
2 expires September 1, 2016.

3 SECTION 16. Section 41.208, Education Code, is amended by
4 adding Subsection (a-1) to read as follows:

5 (a-1) Notwithstanding Subsection (a), for the 2015-2016
6 school year, the commissioner shall order any detachments and
7 annexations of property under this subchapter as soon as
8 practicable after the canvass of the votes on the constitutional
9 amendment proposed by S.J.R. 1, 84th Legislature, Regular Session,
10 2015. This subsection expires September 1, 2016.

11 SECTION 17. Subchapter E, Chapter 42, Education Code, is
12 amended by adding Section 42.2518 to read as follows:

13 Sec. 42.2518. ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION
14 AND LIMITATION ON TAX INCREASES. (a) For the 2015-2016 and
15 2016-2017 school years, a school district is entitled to additional
16 state aid to the extent that state and local revenue under this
17 chapter and Chapter 41 is less than the state and local revenue that
18 would have been available to the district under Chapter 41 and this
19 chapter as those chapters existed on September 1, 2015, if the
20 increase in the residence homestead exemption under Section 1-b(c),
21 Article VIII, Texas Constitution, and the additional limitation on
22 tax increases under Section 1-b(d) of that article as proposed by
23 S.J.R. 1, 84th Legislature, Regular Session, 2015, had not
24 occurred.

25 (b) The lesser of the school district's currently adopted
26 maintenance and operations tax rate or the adopted maintenance and
27 operations tax rate for the 2014 tax year is used for the purpose of

1 determining additional state aid under this section.

2 (c) Revenue from a school district maintenance and
3 operations tax that is levied to pay costs of a lease-purchase
4 agreement as described by Section 46.004 and that is included in
5 determining state assistance under Subchapter A, Chapter 46, is
6 included for the purpose of calculating state aid under this
7 section.

8 (d) The commissioner, using information provided by the
9 comptroller and other information as necessary, shall compute the
10 amount of additional state aid to which a district is entitled under
11 this section. A determination by the commissioner under this
12 section is final and may not be appealed.

13 (e) This section expires August 31, 2017.

14 SECTION 18. Effective September 1, 2017, Subchapter E,
15 Chapter 42, Education Code, is amended by adding Section 42.2518 to
16 read as follows:

17 Sec. 42.2518. ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION
18 AND LIMITATION ON TAX INCREASES. (a) Beginning with the 2017-2018
19 school year, a school district is entitled to additional state aid
20 to the extent that state and local revenue under this chapter and
21 Chapter 41 is less than the state and local revenue that would have
22 been available to the district under Chapter 41 and this chapter as
23 those chapters existed on September 1, 2015, excluding any state
24 aid that would have been provided under former Section 42.2516, if
25 the increase in the residence homestead exemption under Section
26 1-b(c), Article VIII, Texas Constitution, and the additional
27 limitation on tax increases under Section 1-b(d) of that article as

1 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, had
2 not occurred.

3 (b) The lesser of the school district's currently adopted
4 maintenance and operations tax rate or the adopted maintenance and
5 operations tax rate for the 2014 tax year is used for the purpose of
6 determining additional state aid under this section.

7 (c) Revenue from a school district maintenance and
8 operations tax that is levied to pay costs of a lease-purchase
9 agreement as described by Section 46.004 and that is included in
10 determining state assistance under Subchapter A, Chapter 46, is
11 included for the purpose of calculating state aid under this
12 section.

13 (d) The commissioner, using information provided by the
14 comptroller and other information as necessary, shall compute the
15 amount of additional state aid to which a district is entitled under
16 this section. A determination by the commissioner under this
17 section is final and may not be appealed.

18 SECTION 19. Section 42.252, Education Code, is amended by
19 adding Subsection (e) to read as follows:

20 (e) Notwithstanding any other provision of this chapter, in
21 computing each school district's local share of program cost under
22 this section for the 2015-2016 school year, a school district's
23 taxable value of property under Subchapter M, Chapter 403,
24 Government Code, is determined as if the increase in the residence
25 homestead exemption under Section 1-b(c), Article VIII, Texas
26 Constitution, and the additional limitation on tax increases under
27 Section 1-b(d) of that article in effect for the 2015 tax year as

1 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, had
2 been in effect for the 2014 tax year. This subsection expires
3 September 1, 2016.

4 SECTION 20. Section 42.302, Education Code, is amended by
5 adding Subsection (g) to read as follows:

6 (g) Notwithstanding any other provision of this chapter, in
7 computing a school district's enrichment tax rate ("DTR") and local
8 revenue ("LR") for the 2015-2016 school year, a school district's
9 taxable value of property under Subchapter M, Chapter 403,
10 Government Code, is determined as if the increase in the residence
11 homestead exemption under Section 1-b(c), Article VIII, Texas
12 Constitution, and the additional limitation on tax increases under
13 Section 1-b(d) of that article in effect for the 2015 tax year as
14 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, had
15 been in effect for the 2014 tax year. This subsection expires
16 September 1, 2016.

17 SECTION 21. Section 46.003, Education Code, is amended by
18 adding Subsection (i) to read as follows:

19 (i) Notwithstanding any other provision of this chapter, in
20 computing a district's bond tax rate ("BTR") and taxable value of
21 property ("DPV") for the 2015-2016 school year, a school district's
22 taxable value of property under Subchapter M, Chapter 403,
23 Government Code, is determined as if the increase in the residence
24 homestead exemption under Section 1-b(c), Article VIII, Texas
25 Constitution, and the additional limitation on tax increases under
26 Section 1-b(d) of that article in effect for the 2015 tax year as
27 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, had

1 been in effect for the 2014 tax year. This subsection expires
2 September 1, 2016.

3 SECTION 22. Section 46.032, Education Code, is amended by
4 adding Subsection (d) to read as follows:

5 (d) Notwithstanding any other provision of this chapter, in
6 computing a district's existing debt tax rate ("EDTR") and taxable
7 value of property ("DPV") for the 2015-2016 school year, a school
8 district's taxable value of property under Subchapter M, Chapter
9 403, Government Code, is determined as if the increase in the
10 residence homestead exemption under Section 1-b(c), Article VIII,
11 Texas Constitution, and the additional limitation on tax increases
12 under Section 1-b(d) of that article in effect for the 2015 tax year
13 as proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015,
14 had been in effect for the 2014 tax year. This subsection expires
15 September 1, 2016.

16 SECTION 23. Chapter 46, Education Code, is amended by
17 adding Subchapter D to read as follows:

18 SUBCHAPTER D. STATE AID FOR HOMESTEAD EXEMPTION AND LIMITATION ON
19 TAX INCREASES

20 Sec. 46.071. ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION
21 AND LIMITATION ON TAX INCREASES. (a) Beginning with the 2015-2016
22 school year, a school district is entitled to additional state aid
23 under this subchapter to the extent that state and local revenue
24 used to service debt eligible under this chapter is less than the
25 state and local revenue that would have been available to the
26 district under this chapter as it existed on September 1, 2015, if
27 the increase in the residence homestead exemption under Section

1 1-b(c), Article VIII, Texas Constitution, and the additional
2 limitation on tax increases under Section 1-b(d) of that article as
3 proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, had
4 not occurred.

5 (b) Subject to Subsections (c)-(e), additional state aid
6 under this section is equal to the amount by which the loss of local
7 interest and sinking revenue for debt service attributable to the
8 increase in the residence homestead exemption under Section 1-b(c),
9 Article VIII, Texas Constitution, and the additional limitation on
10 tax increases under Section 1-b(d) of that article as proposed by
11 S.J.R. 1, 84th Legislature, Regular Session, 2015, is not offset by
12 a gain in state aid under this chapter.

13 (c) For the purpose of determining state aid under this
14 section, local interest and sinking revenue for debt service is
15 limited to revenue required to service debt eligible under this
16 chapter as of September 1, 2015, including refunding of that debt,
17 subject to Section 46.061. The limitation imposed by Section
18 46.034(a) does not apply for the purpose of determining state aid
19 under this section.

20 (d) If the amount required to pay debt service eligible
21 under this section is less than the sum of state and local
22 assistance provided under this chapter, including the amount of
23 additional aid provided under this section, the district may not
24 receive aid under this section in excess of the amount that, when
25 added to the district's local interest and sinking revenue for debt
26 service for the school year, as defined by this section, and state
27 aid under Subchapters A and B, equals the amount required to pay the

1 eligible debt service.

2 (e) The commissioner, using information provided by the
3 comptroller and other information as necessary, shall compute the
4 amount of additional state aid to which a district is entitled under
5 this section. A determination by the commissioner under this
6 section is final and may not be appealed.

7 SECTION 24. (a) Section 403.302(j), Government Code, is
8 amended to read as follows:

9 (j) The [For purposes of Chapter 42, Education Code, the]
10 comptroller shall certify the final taxable value for each school
11 district, appropriately adjusted to give effect to certain
12 provisions of the Education Code related to school funding, to the
13 commissioner of education as provided by the terms of a memorandum
14 of understanding entered into between the comptroller, the
15 Legislative Budget Board, and the commissioner of education[+]

16 [(1) a final value for each school district computed
17 on a residence homestead exemption under Section 1-b(c), Article
18 VIII, Texas Constitution, of \$5,000,

19 [(2) a final value for each school district computed
20 on:

21 [(A) a residence homestead exemption under
22 Section 1-b(c), Article VIII, Texas Constitution, of \$15,000, and

23 [(B) the effect of the additional limitation on
24 tax increases under Section 1-b(d), Article VIII, Texas
25 Constitution, as proposed by H.J.R. No. 4, 75th Legislature,
26 Regular Session, 1997, and

27 [(3) a final value for each school district computed

1 ~~on the effect of the reduction of the limitation on tax increases to~~
2 ~~reflect any reduction in the school district tax rate as provided by~~
3 ~~Section 11.26(a-1), (a-2), or (a-3), Tax Code, as applicable].~~

4 (b) Section 403.302(k), Government Code, is repealed.

5 SECTION 25. (a) An assessor or collector for a school
6 district is not liable for civil damages or subject to criminal
7 prosecution for compliance in good faith with Section 31.01, Tax
8 Code, as amended by this Act.

9 (b) This section takes effect immediately if this Act
10 receives a vote of two-thirds of all the members of each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for this section to take
13 immediate effect, this section takes effect on the 91st day after
14 the last day of the legislative session.

15 (c) This section expires December 31, 2018.

16 SECTION 26. This Act applies beginning with the 2015 tax
17 year.

18 SECTION 27. (a) Except as provided by Subsection (b) of
19 this section or as otherwise provided by this Act:

20 (1) this Act takes effect on the date on which the
21 constitutional amendment proposed by S.J.R. 1, 84th Legislature,
22 Regular Session, 2015, takes effect; and

23 (2) if that amendment is not approved by the voters,
24 this Act has no effect.

25 (b) Sections 25.23(a-1), 26.04(a-1) and (c-1), 26.08(q),
26 26.09(c-1), 26.15(h), 31.01(d-2), (d-3), (d-4), and (d-5), and
27 31.02(a-1), Tax Code, and Sections 41.004(a-1), (b-1), and (c-1),

1 41.0042, 41.0121, 41.094(a-1), 41.0981, and 41.208(a-1), Education
2 Code, as added by this Act, take effect immediately if this Act
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for those sections
6 to have immediate effect, those sections take effect on the 91st day
7 after the last day of the legislative session.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1 passed the Senate on March 25, 2015, by the following vote: Yeas 26, Nays 5; May 25, 2015, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2015, House granted request of the Senate; May 29, 2015, Senate adopted Conference Committee Report by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 1 passed the House, with amendments, on May 25, 2015, by the following vote: Yeas 141, Nays 0, one present not voting; May 27, 2015, House granted request of the Senate for appointment of Conference Committee; May 29, 2015, House adopted Conference Committee Report by the following vote: Yeas 138, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

APPENDIX 4C:
SENATE BILL 149

AN ACT

relating to alternative methods for satisfying certain public high school graduation requirements, including the use of individual graduation committees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.104, Education Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) An open-enrollment charter school is subject to the requirement to establish an individual graduation committee under Section 28.0258. This subsection expires September 1, 2017.

SECTION 2. Section 28.025, Education Code, is amended by adding Subsection (c-6) to read as follows:

(c-6) Notwithstanding Subsection (c), a person may receive a diploma if the person is eligible for a diploma under Section 28.0258. This subsection expires September 1, 2017.

SECTION 3. Subchapter B, Chapter 28, Education Code, is amended by adding Sections 28.0258 and 28.0259 to read as follows:

Sec. 28.0258. HIGH SCHOOL DIPLOMA AWARDED ON BASIS OF INDIVIDUAL GRADUATION COMMITTEE REVIEW. (a) This section applies only to an 11th or 12th grade student who has failed to comply with the end-of-course assessment instrument performance requirements under Section 39.025 for not more than two courses.

(b) For each student to whom this section applies, the school district that the student attends shall establish an

1 individual graduation committee at the end of or after the
2 student's 11th grade year to determine whether the student may
3 qualify to graduate as provided by this section. A student may not
4 qualify to graduate under this section before the student's 12th
5 grade year. The committee shall be composed of:

6 (1) the principal or principal's designee;

7 (2) for each end-of-course assessment instrument on
8 which the student failed to perform satisfactorily, the teacher of
9 the course;

10 (3) the department chair or lead teacher supervising
11 the teacher described by Subdivision (2); and

12 (4) as applicable:

13 (A) the student's parent or person standing in
14 parental relation to the student;

15 (B) a designated advocate described by
16 Subsection (c) if the person described by Paragraph (A) is unable to
17 serve; or

18 (C) the student, at the student's option, if the
19 student is at least 18 years of age or is an emancipated minor.

20 (c) The commissioner by rule shall establish a procedure for
21 appointing an alternative committee member if a person described by
22 Subsection (b) is unable to serve, including appointing a
23 designated advocate for the student if the student's parent or
24 person standing in parental relation to the student is unable to
25 serve. The superintendent of each school district shall establish
26 procedures for the convening of an individual graduation committee.

27 (c-1) Notwithstanding Subsection (c), for the 2014-2015

1 school year, the school district that the student attends shall
2 establish procedures for appointing alternative committee members
3 as provided by Subsection (c). This subsection expires September
4 1, 2015.

5 (c-2) A school district shall provide an appropriate
6 translator, if available, for the appropriate person described
7 under Subsection (b)(4) who is unable to speak English.

8 (d) The school district shall ensure a good faith effort is
9 made to timely notify the appropriate person described under
10 Subsection (b)(4) of the time and place for convening the
11 individual graduation committee and the purpose of the committee.
12 The notice must be:

- 13 (1) provided in person or by regular mail or e-mail;
14 (2) clear and easy to understand; and
15 (3) written in English, in Spanish, or, to the extent
16 practicable, in the native language of the appropriate person
17 described by Subsection (b)(4).

18 (e) To be eligible to graduate and receive a high school
19 diploma under this section, a student must successfully complete
20 the curriculum requirements required for high school graduation:

- 21 (1) identified by the State Board of Education under
22 Section 28.025(a); or
23 (2) as otherwise provided by the transition plan
24 adopted by the commissioner under Section 28.025(h).

25 (f) Notwithstanding any other law, a student's individual
26 graduation committee established under this section shall
27 recommend additional requirements by which the student may qualify

1 to graduate, including:

2 (1) additional remediation; and

3 (2) for each end-of-course assessment instrument on
4 which the student failed to perform satisfactorily:

5 (A) the completion of a project related to the
6 subject area of the course that demonstrates proficiency in the
7 subject area; or

8 (B) the preparation of a portfolio of work
9 samples in the subject area of the course, including work samples
10 from the course that demonstrate proficiency in the subject area.

11 (g) For purposes of Subsection (f), a student may submit to
12 the individual graduation committee coursework previously
13 completed to satisfy a recommended additional requirement.

14 (h) In determining whether a student for whom an individual
15 graduation committee is established is qualified to graduate, the
16 committee shall consider:

17 (1) the recommendation of the student's teacher in
18 each course for which the student failed to perform satisfactorily
19 on an end-of-course assessment instrument;

20 (2) the student's grade in each course for which the
21 student failed to perform satisfactorily on an end-of-course
22 assessment instrument;

23 (3) the student's score on each end-of-course
24 assessment instrument on which the student failed to perform
25 satisfactorily;

26 (4) the student's performance on any additional
27 requirements recommended by the committee under Subsection (f);

- 1 (5) the number of hours of remediation that the
2 student has attended, including:
- 3 (A) attendance in a college preparatory course
4 required under Section 39.025(b-2), if applicable; or
- 5 (B) attendance in and successful completion of a
6 transitional college course in reading or mathematics;
- 7 (6) the student's school attendance rate;
- 8 (7) the student's satisfaction of any of the Texas
9 Success Initiative (TSI) college readiness benchmarks prescribed
10 by the Texas Higher Education Coordinating Board;
- 11 (8) the student's successful completion of a dual
12 credit course in English, mathematics, science, or social studies;
- 13 (9) the student's successful completion of a high
14 school pre-advanced placement, advanced placement, or
15 international baccalaureate program course in English,
16 mathematics, science, or social studies;
- 17 (10) the student's rating of advanced high on the most
18 recent high school administration of the Texas English Language
19 Proficiency Assessment System;
- 20 (11) the student's score of 50 or greater on a
21 College-Level Examination Program examination;
- 22 (12) the student's score on the ACT, the SAT, or the
23 Armed Services Vocational Aptitude Battery test;
- 24 (13) the student's completion of a sequence of courses
25 under a career and technical education program required to attain
26 an industry-recognized credential or certificate;
- 27 (14) the student's overall preparedness for

1 postsecondary success; and

2 (15) any other academic information designated for
3 consideration by the board of trustees of the school district.

4 (i) After considering the criteria under Subsection (h),
5 the individual graduation committee may determine that the student
6 is qualified to graduate. Notwithstanding any other law, a student
7 for whom an individual graduation committee is established may
8 graduate and receive a high school diploma on the basis of the
9 committee's decision only if the student successfully completes all
10 additional requirements recommended by the committee under
11 Subsection (f), the student meets the requirements of Subsection
12 (e), and the committee's vote is unanimous. The commissioner by
13 rule shall establish a timeline for making a determination under
14 this subsection. This subsection does not create a property
15 interest in graduation. The decision of a committee is final and
16 may not be appealed.

17 (i-1) Notwithstanding Subsection (i), for the 2014-2015
18 school year, the school district that the student attends shall
19 establish a timeline for making a determination under Subsection
20 (i). This subsection expires September 1, 2015.

21 (j) Notwithstanding any action taken by an individual
22 graduation committee under this section, a school district shall
23 administer an end-of-course assessment instrument to any student
24 who fails to perform satisfactorily on an end-of-course assessment
25 instrument as provided by Section 39.025(b). For purposes of
26 Section 39.053(c)(1), an assessment instrument administered as
27 provided by this subsection is considered an assessment instrument

1 required for graduation retaken by a student.

2 (k) The commissioner shall adopt rules as necessary to
3 implement this section not later than the 2015-2016 school year.

4 (l) This section expires September 1, 2017.

5 Sec. 28.0259. REPORTING REQUIREMENTS FOR STUDENTS
6 GRADUATING BASED ON INDIVIDUAL GRADUATION COMMITTEE REVIEW
7 PROCESS. (a) Each school district shall report through the Public
8 Education Information Management System (PEIMS) the number of
9 district students each school year for which an individual
10 graduation committee is established under Section 28.0258 and the
11 number of district students each school year who are awarded a
12 diploma based on the decision of an individual graduation committee
13 as provided by Section 28.0258.

14 (b) A school district shall report the information required
15 by Subsection (a) not later than December 1 of the school year
16 following the school year the student is awarded a diploma.

17 (c) The agency shall make the information reported under
18 this section available on the agency's Internet website.

19 (d) The commissioner shall adopt rules as necessary to
20 implement this section not later than the 2015-2016 school year.

21 (e) This section expires September 1, 2018.

22 SECTION 4. Section 39.025, Education Code, is amended by
23 adding Subsections (a-2) and (a-3) to read as follows:

24 (a-2) Notwithstanding Subsection (a), a student who has
25 failed to perform satisfactorily on end-of-course assessment
26 instruments in the manner provided under this section may receive a
27 high school diploma if the student has qualified for graduation

1 under Section 28.0258. This subsection expires September 1, 2017.

2 (a-3) A student who, after retaking an end-of-course
3 assessment instrument for Algebra I or English II, has failed to
4 perform satisfactorily as required by Subsection (a), but who
5 receives a score of proficient on the Texas Success Initiative
6 (TSI) diagnostic assessment for the corresponding subject for which
7 the student failed to perform satisfactorily on the end-of-course
8 assessment instrument satisfies the requirement concerning the
9 Algebra I or English II end-of-course assessment, as applicable.
10 This subsection expires September 1, 2017.

11 SECTION 5. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 149 passed the Senate on March 17, 2015, by the following vote: Yeas 28, Nays 2; and that the Senate concurred in House amendments on April 29, 2015, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 149 passed the House, with amendments, on April 22, 2015, by the following vote: Yeas 125, Nays 9, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

APPENDIX 4D:
SENATE BILL 507

AN ACT

relating to the placement and use of video cameras in self-contained classrooms or other settings providing special education services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.009(b), Education Code, is amended to read as follows:

(b) An employee of a school district is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:

(1) purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;

(2) a purpose related to a cocurricular or extracurricular activity;

(3) a purpose related to regular classroom instruction; ~~or~~

(4) media coverage of the school; or

(5) a purpose related to the promotion of student safety under Section 29.022.

SECTION 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.022 to read as follows:

Sec. 29.022. VIDEO SURVEILLANCE OF SPECIAL EDUCATION

1 SETTINGS. (a) In order to promote student safety on request by a
2 parent, trustee, or staff member, a school district or
3 open-enrollment charter school shall provide equipment, including
4 a video camera, to each school in the district or each charter
5 school campus in which a student who receives special education
6 services in a self-contained classroom or other special education
7 setting is enrolled. Each school or campus that receives equipment
8 shall place, operate, and maintain one or more video cameras in each
9 self-contained classroom or other special education setting in
10 which a majority of the students in regular attendance are:

11 (1) provided special education and related services;
12 and

13 (2) assigned to a self-contained classroom or other
14 special education setting for at least 50 percent of the
15 instructional day.

16 (b) A school or campus that places a video camera in a
17 classroom or other special education setting in accordance with
18 Subsection (a) shall operate and maintain the camera in the
19 classroom or setting as long as the classroom or setting continues
20 to satisfy the requirements under Subsection (a).

21 (c) Video cameras placed under this section must be capable
22 of:

23 (1) covering all areas of the classroom or other
24 special education setting, except that the inside of a bathroom or
25 any area in the classroom or setting in which a student's clothes
26 are changed may not be visually monitored; and

27 (2) recording audio from all areas of the classroom or

1 other special education setting.

2 (d) Before a school or campus places a video camera in a
3 classroom or other special education setting under this section,
4 the school or campus shall provide written notice of the placement
5 to all school or campus staff and to the parents of a student
6 receiving special education services in the classroom or setting.

7 (e) A school district or open-enrollment charter school
8 shall retain video recorded from a camera placed under this section
9 for at least six months after the date the video was recorded.

10 (f) A school district or open-enrollment charter school may
11 solicit and accept gifts, grants, and donations from any person for
12 use in placing video cameras in classrooms or other special
13 education settings under this section.

14 (g) This section does not:

15 (1) waive any immunity from liability of a school
16 district or open-enrollment charter school, or of district or
17 school officers or employees; or

18 (2) create any liability for a cause of action against
19 a school district or open-enrollment charter school or against
20 district or school officers or employees.

21 (h) A school district or open-enrollment charter school may
22 not:

23 (1) allow regular or continual monitoring of video
24 recorded under this section; or

25 (2) use video recorded under this section for teacher
26 evaluation or for any other purpose other than the promotion of
27 safety of students receiving special education services in a

1 self-contained classroom or other special education setting.

2 (i) A video recording of a student made according to this
3 section is confidential and may not be released or viewed except as
4 provided by this subsection or Subsection (j). A school district or
5 open-enrollment charter school shall release a recording for
6 viewing by:

7 (1) a school district employee or a parent or guardian
8 of a student who is involved in an incident documented by the
9 recording for which a complaint has been reported to the district,
10 on request of the employee, parent, or guardian, respectively;

11 (2) appropriate Department of Family and Protective
12 Services personnel as part of an investigation under Section
13 261.406, Family Code;

14 (3) a peace officer, a school nurse, a district
15 administrator trained in de-escalation and restraint techniques as
16 provided by commissioner rule, or a human resources staff member
17 designated by the board of trustees of the school district or the
18 governing body of the open-enrollment charter school in response to
19 a complaint or an investigation of district or school personnel or a
20 complaint of abuse committed by a student; or

21 (4) appropriate agency or State Board for Educator
22 Certification personnel or agents as part of an investigation.

23 (j) If a person described by Subsection (i)(3) or (4) who
24 views the video recording believes that the recording documents a
25 possible violation under Subchapter E, Chapter 261, Family Code,
26 the person shall notify the Department of Family and Protective
27 Services for investigation in accordance with Section 261.406,

1 Family Code. If any person described by Subsection (i)(2), (3), or
2 (4) who views the recording believes that the recording documents a
3 possible violation of district or school policy, the person may
4 allow access to the recording to appropriate legal and human
5 resources personnel. A recording believed to document a possible
6 violation of district or school policy may be used as part of a
7 disciplinary action against district or school personnel and shall
8 be released at the request of the student's parent or guardian in a
9 legal proceeding. This subsection does not limit the access of a
10 student's parent to a record regarding the student under the Family
11 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
12 1232g) or other law.

13 (k) The commissioner may adopt rules to implement and
14 administer this section, including rules regarding the special
15 education settings to which this section applies.

16 SECTION 3. Subchapter E, Chapter 42, Education Code, is
17 amended by adding Section 42.2528 to read as follows:

18 Sec. 42.2528. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF
19 SPECIAL EDUCATION SETTINGS. (a) Notwithstanding any other
20 provision of law, if the commissioner determines that the amount
21 appropriated for the purposes of the Foundation School Program
22 exceeds the amount to which school districts are entitled under
23 this chapter, the commissioner by rule shall establish a grant
24 program through which excess funds are awarded as grants for the
25 purchase of video equipment, or for the reimbursement of costs for
26 previously purchased video equipment, used for monitoring special
27 education classrooms or other special education settings required

1 under Section 29.022.

2 (b) In awarding grants under this section, the commissioner
3 shall give highest priority to districts with maintenance and
4 operations tax rates at the greatest rates permitted by law. The
5 commissioner shall also give priority to:

6 (1) districts with maintenance and operations tax
7 rates at least equal to the state maximum compressed tax rate, as
8 defined by Section 42.101(a), and lowest amounts of maintenance and
9 operations tax revenue per weighted student; and

10 (2) districts with debt service tax rates near or
11 equal to the greatest rates permitted by law.

12 (c) The commissioner may adopt rules to implement and
13 administer this section.

14 SECTION 4. (a) Subject to the availability of funds, the
15 commissioner of education shall distribute grant funds in
16 accordance with Section 42.2528, Education Code, as added by this
17 Act, beginning with the 2015-2016 school year.

18 (b) The change in law made by Section 29.022, Education
19 Code, as added by this Act, applies beginning with the 2016-2017
20 school year.

21 SECTION 5. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 507 passed the Senate on May 11, 2015, by the following vote: Yeas 24, Nays 7; May 28, 2015, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 29, 2015, House granted request of the Senate; May 31, 2015, Senate adopted Conference Committee Report by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

I hereby certify that S.B. No. 507 passed the House, with amendments, on May 27, 2015, by the following vote: Yeas 132, Nays 12, two present not voting; May 29, 2015, House granted request of the Senate for appointment of Conference Committee; May 31, 2015, House adopted Conference Committee Report by the following vote: Yeas 140, Nays 0, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor