

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/Cross-Appellees,

v.

**TEXAS CHARTER SCHOOLS ASSOCIATION, ET AL., and JOYCE
COLEMAN, ET AL.,**

Appellees/Cross-Appellants,

v.

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

Appellees/Cross-Appellees

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

**SUPPLEMENT TO BRIEF OF THE TEXAS PUBLIC
POLICY FOUNDATION AS *AMICUS CURIAE* IN
SUPPORT OF EFFICIENCY INTERVENORS**

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INTRODUCTION

On August 21, 2015, the Texas Public Policy Foundation (“Foundation”) filed an Amicus Curiae Brief with the Court in support of Efficiency Intervenors. Oral argument was heard on September 1, 2015. Since oral argument, the Foundation has published an exhaustive analysis of the Texas public school finance system, which it offers to this Court as a resource to better understand the complexities of the existing public education funding system that the parties are litigating.

The Foundation submits its March 2016 *Texas School Finance: Basics and Reform* report (“Report”) attached as Exhibit A as a Supplement to its Amicus Curiae Brief.

School finance in Texas is a maze of confusion, which even experts navigate with caution. The Foundation’s purpose in publishing this Report is to clear the clouds of confusion that surround Texas’ financial support of public education. Texas cannot improve our finance system without our system being understood. It is undisputed that the existing public education system is broken.

Unless the finance system is fundamentally reformed, it will continue to hinder children from entering adulthood as productive members of society. Student-centered funding should be used to support our traditional public schools, thereby enhancing efficiency and productivity. Since 1949, public education

funding formulas have been based upon institutional appeals, rather than student needs. Twenty years ago, the charter school finance system began the return to a student-centered allotment; universal per-student funding would fully accomplish this goal. When this occurs, an increasing number of educational options will become available to students, and a market for education services will flourish across the state. Student-centered funding will lead to an efficient and equitable finance system.

The goal of public education is not to merely fund a public education system. We maintain public education because we care about what life will be like for our children and grandchildren. We believe that there are children in Texas who have greater potential, ambition, and intelligence than even the greatest leaders today.

Yet our system is failing their genius; the trial court found Texas public education to be a “dismal” failure to “hundreds of thousands” of Texas students. Texas cannot claim devotion to liberty or equality and stand by as a child’s destiny is defined by the zip code they’re born into. To improve the school finance system, one must first understand it. The Foundation’s Report provides a tool for the Court to do so.

REPORT SUMMARY

The Foundation's Report explains the current state and history of Texas' public school finance system. It then recommends specific improvements. No other work, since Dr. Billy Walker's 1996 *The Basics of Texas Public School Finance*, has accomplished this.

SECTION ONE - The Report restates the goal of public education: the protection of rights and liberties through the general diffusion of knowledge. It explains what this means in light of the Texas Constitution and the options open to Texas legislators.

SECTION TWO – The Report explains public education's sources of revenue in order of their size by fiscal year (FY) 2014. This includes local property taxes (\$25.1 billion), state General Revenue (\$16.2 billion), federal funds (\$5.2 billion), statutorily dedicated state taxes (\$2.4 billion), recaptured local property tax revenue (\$1.2 billion), and the Permanent School Fund (\$839 million). The oldest source of revenue is the Permanent School Fund, which was established in 1854 and is now the second-largest educational endowment in the United States.

SECTION THREE – The Report explains public education expenditures to show how money is both distributed and spent. The Report demonstrates how the Foundation School Program provides funding through three tiers; these tiers are illustrated in Figure 17. Tier 1 is the largest, and funds ten programs, such as the

regular, bilingual, and special education programs. Students in each program are funded at different levels based on weights, as summarized in Figures 24 and 29. The total Tier 1 allotment was \$34.6 billion in the 2014-15 school year. Tier 2 provides a fixed amount of money per student for each penny of tax effort; total Tier 2 spending was \$2.8 billion in the 2014-15 school year. Tier 3 funds facilities through debt service; total Tier 3 spending, excluding local expenditures for which districts saved up over a period of time, was \$5.9 billion in the 2014-15 school year.

After explaining the three Tiers, the Report discusses the special expenditures that exist outside them, for which \$5.8 billion was allotted in the 2014-15 biennium. Last, the Report summarizes federal spending on education in Texas, which totaled \$5.2 billion in FY 2014-15. As Figure 1 illustrates, total public education expenditures in FY 2014 was approximately \$61 billion.

SECTION FOUR¹ – The Report offers the Foundation’s recommendations to improve the school finance system. The Foundation begins by noting two central problems in the current system: a lack of efficiency and equity. The Report also

¹ Sections Four and Five should illustrate to the Court that policy solutions exist that will improve Texas public education. However, the Foundation maintains that the role of this Court remains that of the “umpire calling balls and strikes.” The judiciary’s role, though important, is limited to ensuring *that* the constitutional standards are met - not *how* the standards should be met.

The Foundation requests that this Court declare that the Texas School System is unconstitutional in violation of Tex. Const. Art. VII, §1, because it is not structurally efficient, i.e. “productive of results with little waste” and mandate that the Texas legislature reform public education to satisfy ***all*** of the requirements set forth in the Texas Constitution.

notes that tremendous emphasis has been placed upon district equity and that no similar emphasis has been placed upon student equity. The result is that equality of opportunity is diminished. The Report explains how to address these problems through a student-centered funding system.

SECTION FIVE – The Report shows how to maximize equity and efficiency through Education Savings Accounts (ESAs). The basics of ESAs are detailed to show how they would increase efficiency and equity while satisfying the constitutional requirements. The Report also summarizes research on how similar reform has affected student achievement and public education in other states.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, I certify that the body of the attached *Supplement to Brief of the Texas Public Policy Foundation as Amicus Curiae in Support of Efficiency Intervenors* appears in proportionately spaced type of 14 points, is double-spaced using a Roman font, and contains 1,015 words, excluding the caption, identity of parties and counsel, table of contents, table of citations, signature, proof of service, certification, and certificate of compliance.



ROBERT HENNEKE

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2016, the SUPPLEMENT TO BRIEF OF THE TEXAS PUBLIC POLICY FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF EFFICIENCY INTERVENORS was served via electronic service on the following:

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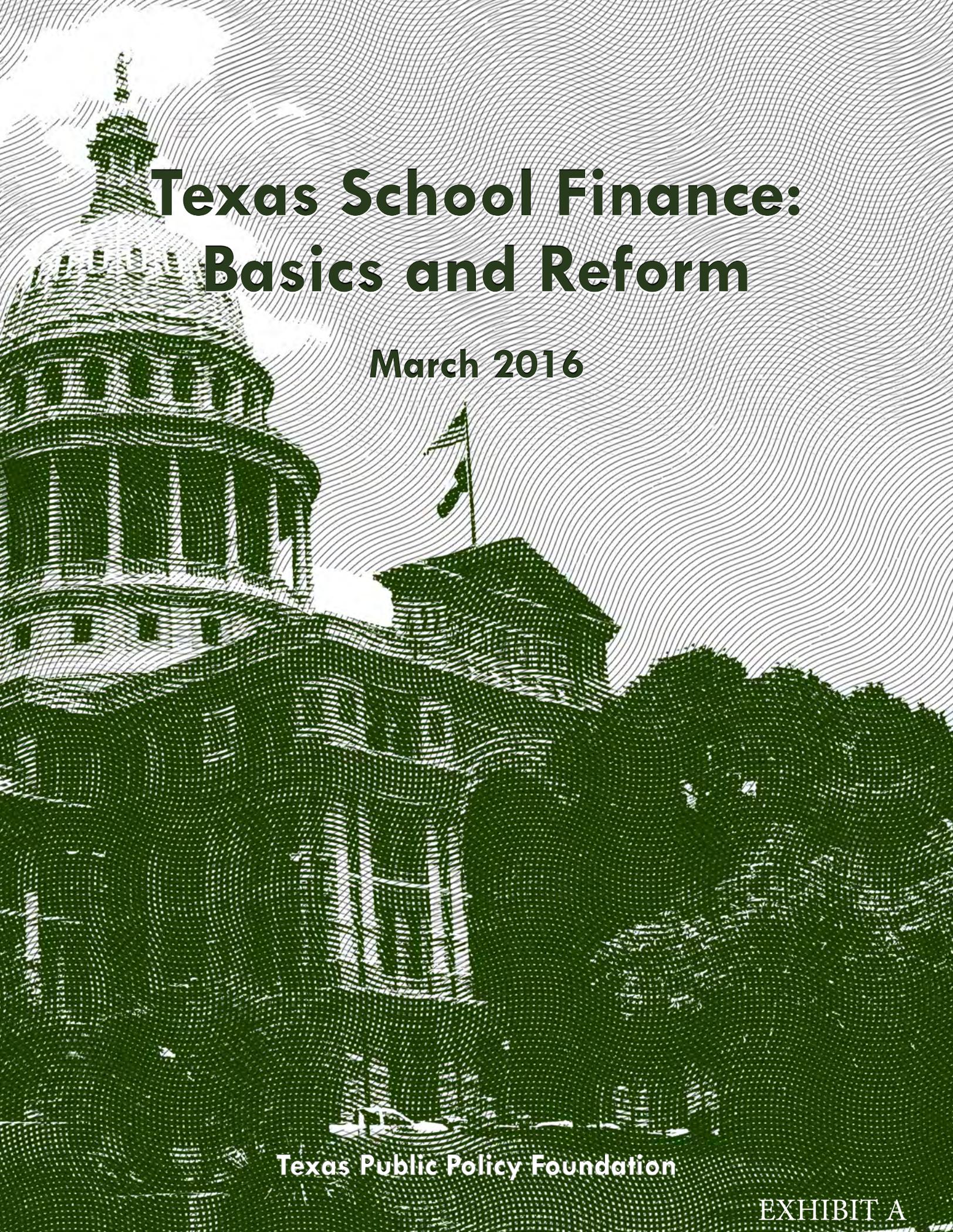
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A handwritten signature in black ink, appearing to read "Robt Henneke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

ROBERT HENNEKE



Texas School Finance: Basics and Reform

March 2016

Texas Public Policy Foundation

EXHIBIT A

Contents

- 1 Executive Summary
- 2 Acknowledgments
- 2 Introduction

The Current System

- 5 Section 1: Goals & Principles
 - 5 The Goal of Education
 - 6 Legislative Discretion
- 8 Section 2: Sources of Education Revenue
 - 8 Introduction to Revenue and Cash Flow
 - 8 State-Collected Revenue
 - 8 Permanent School Fund (PSF)
 - 11 Dedicated Taxes and Fees
 - 11 General Revenue
 - 13 Fees
 - 13 How State Revenue Flows to Schools
 - 13 Foundation School Fund (FSF)
 - 14 Available School Fund (ASF)
 - 15 Other Revenue Streams
 - 17 Locally-Collected Revenue
 - 17 Introduction to Property Taxes
 - 17 Robin Hood
 - 18 Federal Revenue
- 21 Section 3: Allocation of Revenue
 - 21 Introduction to Allocations
 - 22 Establishing the Foundation School Program (FSP)
 - 23 Foundation School Program Structure
 - 23 Before the Tiers: District-Level Adjustments
 - 28 Tier 1: Student Weights and Special Programs
 - 37 Tier 2: WADA & the Guaranteed Yield Program
 - 40 Tier 3: Instructional Facilities and Existing Debt
 - 42 Special Grants and Funding Outside the FSP
 - 42 ASF and the Instructional Materials Allotment
 - 42 Online Education
 - 45 Regional Education Service Centers
 - 46 Additional State Aid for Tax Reduction
 - 47 Federal Allotments
 - 48 Summary of Allocations

Our Recommendations

- 49 Section 4: Achieve Efficiency and Equity
 - 49 Efficiency
 - 50 Equity
 - 52 Funding Public Schools for the 21st Century
- 54 Section 5: Maximize Efficiency and Equity
 - 55 Benefits of Educational Choice
- 57 Conclusion
- 58 Appendix: Effect of Educational Choice
- 59 Notes
- 67 Index

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Executive Summary

This work explains Texas' public school finance system and recommends specific improvements.

School finance in Texas is a maze of confusion which even experts navigate with caution. Yet understanding and reforming the system is necessary if our state is to secure the blessings of education to our children. Reform is also necessary in light of school finance rulings from the Texas Supreme Court. Each school finance ruling over the last thirty years has served as a catalyst for legislative action. Such a catalyst should benefit Texas students, but the current state of education shows this is not always the case. The district court which ruled upon the most recent lawsuit found:

1. A “disastrous” 14-25 percent of students fail to graduate from high school, and 18 percent of graduates from 2010-2013 met the SAT or ACT college-readiness standards.¹
2. One-third of English Language Learners (ELL) in grades 3-12 failed to progress a grade level in English. In most plaintiff districts, fewer than 1 percent of ELL students were college-ready.²
3. Not one student performance measure presented at trial demonstrated sufficient student achievement.³
4. The current system fails to meet the needs of hundreds of thousands of Texas students.⁴

There is a serious disconnect between the purpose of education and how we try to accomplish it. The purpose of education in our state has long been the protection of the liberties and rights of the people, which is accomplished when children grow into good, hard-working, and resilient citizens. Past Texas Supreme Court rulings noted that only an efficient and equitable finance system could accomplish this, but our state has yet to achieve either goal.

Our system is not efficient. In the 2014-15 school year, PreK-12 education expenditures totaled \$61 billion. With 4.8 million students in attendance, average expenditures per student were \$12,761. For that amount, Texas children receive the results sketched above.

Nor is our system equitable from a student perspective; the state system contains district-level adjustments and student weights which result in students receiving varying allotments. A recent example of this is seen in a case currently before the Texas Supreme Court: *Clint ISD v Sonia Herrera*. This case involves a dispute between Clint ISD and families who live in CISD. The families have shown that certain schools receive over 40 percent more funding per student than others.

When oral arguments were heard in this appeal for student equity, the Texas Supreme Court chambers were near empty. When oral arguments were heard in the titanic push for school district equity, not a seat in the chamber was unfilled.⁵ For decades, the focus of school finance in Texas has been on equity for school districts. This must change; families must be empowered. We must look outside the box to ensure educational opportunities for all Texas students.

Student-centered funding could be used to support our traditional public schools, thereby enhancing efficiency and productivity, which would greatly benefit Texas students. Since 1949, public education funding formulas have been based upon institutional appeals, rather than student needs. Twenty years ago, the charter school finance system began the return to a student-centered allotment; universal per-student funding would fully accomplish this goal. When this occurs, an increasing number of educational options will become available to students, and a market for education services will flourish across the state. Student-centered funding will lead to an efficient and equitable finance system.

In many other states, educational choice is changing the focus. Education Savings Accounts are a remarkable example of choice in which parents manage their child's education allotment, can use it on a variety of educational expenses from tuition to tutoring, and roll-over unused funds. This model of support for public education has a strong incentive for efficiency, and the transparency of ESA allotments allow for the vigilant maintenance of equitable allotments.

We maintain public education because we care about what life will be like for our children and grandchildren. Will they have the same opportunities as we did? As our parents did? We believe that there are children in Texas who have greater potential, ambition, and intelligence than even the greatest leaders today. Yet our system is failing their genius; the district court found Texas public education to be a “dismal” failure to “hundreds of thousands” of Texas students.⁶ We cannot claim devotion to liberty or equality, and stand by as a child's destiny is defined by the zip code they're born into. We must understand the finance system, and we must improve it. This goal animates our work.

Acknowledgments

Our research on public school finance began with a deceptively simple question: “*how much does Texas spend per student?*” We wish to thank the good Texans who guided us throughout this project: the invaluable work of the late Dr. Billy Walker, the timely replies of staff at the Texas Education Agency, the impeccable data analysis of Wayne Pierce and Ray Freeman at the Equity Center, the data shared by the Legislative Budget Board, and the guidance provided by the work of Sheryl Pace at the Texas Taxpayers and Research Association. Disagreements inevitably persist upon

how to describe and improve our system, but we consistently found Texans of good will striving to help Texas children. We also thank several interns who did much to further this project: Leticia Macias for research on Public Education Grants; Chris Grover for work summarizing the Tiers of revenue; Emma Parma for analysis of the Texas Constitution and history of Texas public education; Nathanael Scherer for help creating state maps and research on special education; and Alejandra Lafon for collection of Tier 1 data and preparation of the endnotes.

Introduction

Almost 20 years ago, Dr. Billy Walker, the foremost expert on school finance, wrote, “If there is an observable theme in the long history of school finance, it is that of increasing complexity in the design, form, and substance of educational support in the state.”⁷ At times, the study of this topic is disorienting and readers may lack helpful, actionable, information.⁸ But we can also learn several principles of good governance from this particular issue.⁹

Currently, clouds of confusion surround the state system designed to support public education. The situation has forced Texans and their elected representatives to rely upon a select few experts for guidance in how they should act, rather than making judgments for themselves. This is not self-government. Rather, it is a very old and easy way of governing, which is opposed to the American way of life.¹⁰ The opening statement of the Federalist Papers is as appropriate now as it was then:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide *the* important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be

Are we capable of reflecting upon the principles of good government and choosing to maintain them?

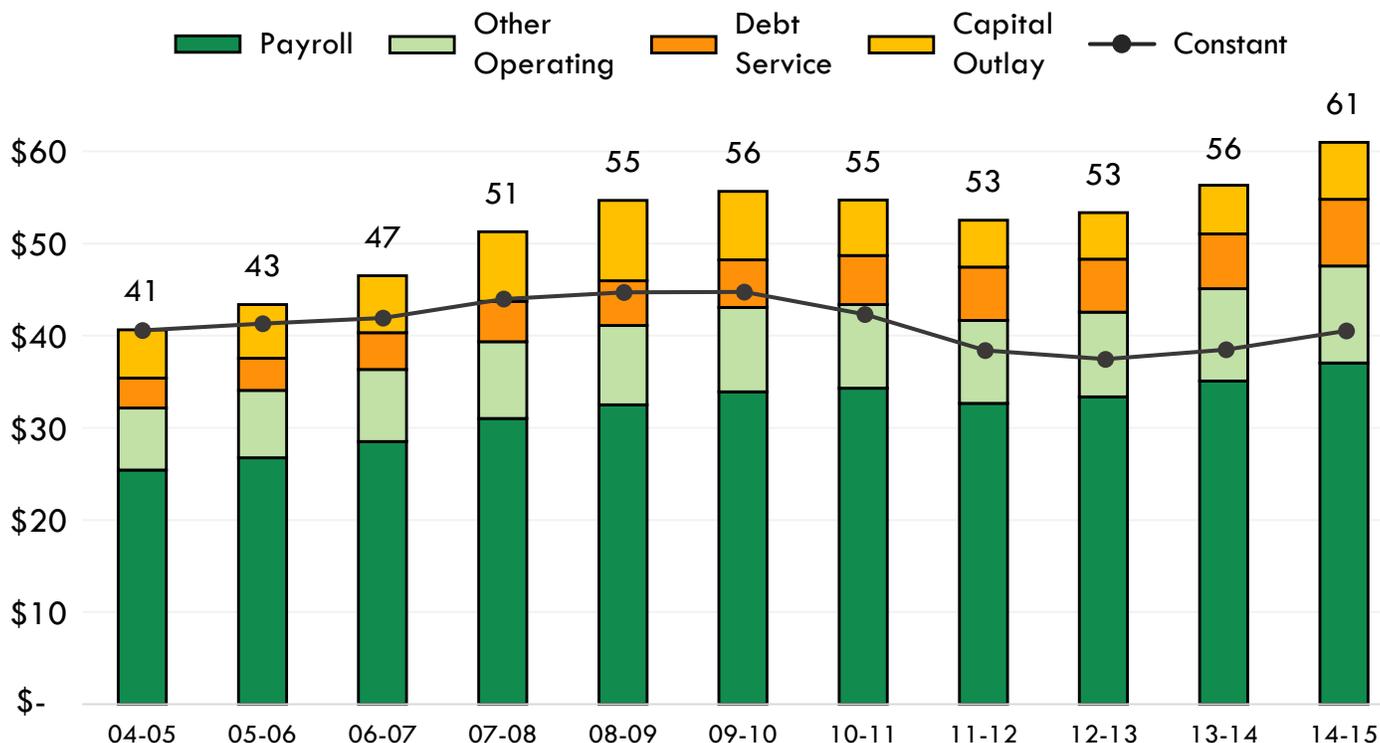
considered as the general misfortune of mankind.¹¹

Today we must answer this question: are we Texans capable of reflecting upon the principles of good government and choosing to maintain them? Especially on the issue of public education, answering this question correctly is critical.

One’s opinion of his fellow citizens is truly evident not in what he says or his passing actions, but in the lasting freedom with which he entrusts them. And who is freer and more capable of self-government than one who is truly educated? The lasting freedom of our great state depends upon many good laws, but the foremost among them are those pertaining to the education of the people.

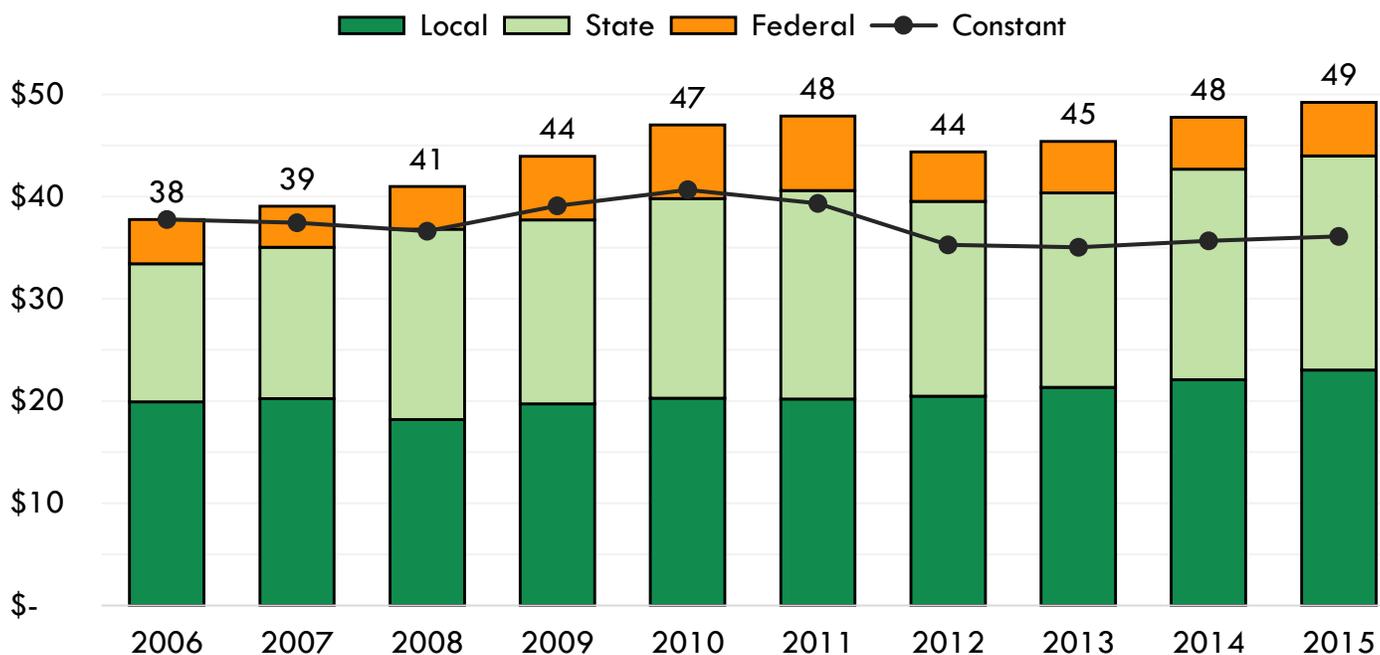
In our nation, this idea was given force by Thomas Jefferson, who wrote, “I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness.”¹² In 2005, the Texas Supreme Court threw its authority behind the idea that education is essential to self-governance, writing, “The truth of the axiom had long been, and remains, beyond doubt.”¹³

Figure 1A: Expenditures by Major Category, School Years 2004-05 through 2014-15 (in billions)



Source: Texas Education Agency. PEIMS Financial Standard Reports: 2004-2014 District Financial Actual Reports. Constant dollars have been adjusted for population plus inflation in 2004 dollars.

Figure 1B: Revenue by Government Source, Fiscal Years 2006 - 2015 (in billions)



Source: Legislative Budget Board. Fiscal Size Up: 2014-15 Biennium, 231. State total also includes appropriations for the Teacher Retirement System from General Appropriations Acts. Constant dollars have been adjusted for population plus inflation in 2006 dollars.

Note: Several experts were consulted about the difference between the expenditure and revenue data. It was their estimate that the revenue data excludes the local portion of Tier 3 payments for debt service and capital outlay. See pages 40-41 for an introduction to Tier 3, which is also known as Interest and Sinking (I&S) revenue. This difference substantially affects spending per student calculations. There were 4,778,559 students in average daily attendance (ADA) in the 2014-15 school year. Therefore, expenditures per student are \$12,761; revenue per student is \$10,302.

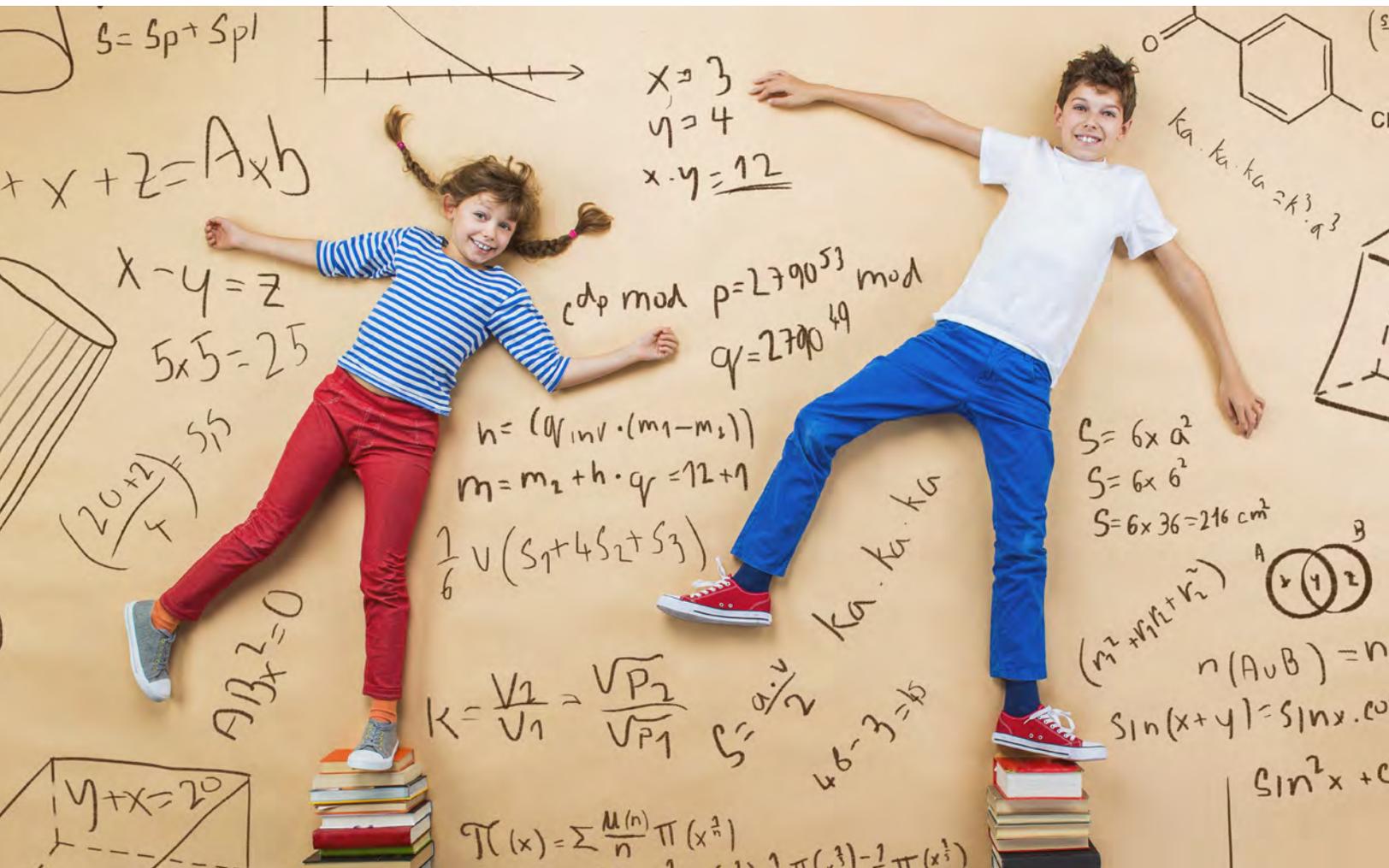
This is the first purpose of the present work: to aid self-government by clearing the clouds of confusion that surround Texas' financial support for public education. But this is not enough.

In October 2012, the Texas judicial system began its seventh round of school finance litigation, following Edgewood I, II, III, and IV and West Orange Cove I and II. In the past, these cases led to substantial legislative action. In their rulings, the Texas Supreme Court repeatedly called for structural reform to deliver much needed efficiency and equity, but numerous legislative changes did not accomplish this. Legislators now have an opportunity to make the system efficient and equitable. The direct effects of education reform, such as the promotion of liberty, self-governance, the happiness of our people, and equality, will last throughout the 21st century.¹⁴ To achieve this, we offer a comprehensive review of Texas school finance, an analysis of its problems, and our recommendations for reform.

In the first section, we orient ourselves by recalling the goal of public education: the protection of rights and liberties through the general diffusion of knowledge. We explain what this means in light of the Texas Constitution, and the options open to Texas legislators.

In the second section, we explain public education's sources of revenue. In order of their size by fiscal year (FY) 2014, this includes local property taxes (\$25.1 billion), state General Revenue (\$16.2 billion), federal funds (\$5.2 billion), statutorily dedicated state taxes (\$2.4 billion), recaptured local property tax revenue (\$1.2 billion), and the Permanent School Fund (\$839 million). The oldest source of revenue is the Permanent School Fund, which was established in 1854 and is now the second-largest educational endowment in the USA.

In the third section, we explain expenditures to show how money is both distributed and spent. Specifically, we show that the Foundation School Program provides funding through three tiers; these tiers are illustrated in Figure 17. Tier 1 is the largest, and funds ten programs, such as the regular, bilingual, and special education programs. Students in each program are funded at different levels based on weights, as summarized in Figures 24 and 29. The total Tier 1 allotment was \$34.6 billion in the 2014-15 school year. Tier 2 provides a fixed amount of money per student for each penny of tax effort; total Tier 2 spending was \$2.8 billion in the 2014-15 school year. Tier 3 funds facilities through debt service; total Tier 3 spending was \$5.9 billion in the 2014-15 school year. After explaining the three Tiers, we discuss



the special expenditures that exist outside them, for which \$5.8 billion was allotted in the 2014-15 biennium. Last, we summarize federal spending on education in Texas, which totaled \$5.2 billion in FY 2014.¹⁵ As Figure 1 illustrates, total public education expenditures in FY 2014 were about \$50 billion.

In the fourth section, we offer our recommendations upon how to improve the school finance system. We begin by noting two central problems in the current system: a lack of efficiency and equity. We also note that tremendous emphasis has been placed upon district equity, and that no similar emphasis has been placed upon student equity. The result is that equality of opportunity is diminished. We explain how to address

these problems through a student-centered funding system.

In section five, we show how to maximize equity and efficiency through Education Savings Accounts (ESAs). The basics of ESAs are detailed, and we show how they would increase efficiency and equity while satisfying the constitutional requirements. We also summarize research on how similar reform has affected student achievement and public education in other states.

While this work is written for all Texans, it is our hope that it offers insight to Texas legislators and their staff as they work to improve public education for the benefit of all Texas children.

Section 1 : Goals and Principles

The Goal of Education

Before studying how Texas supports public education, we must orient ourselves by recalling the goal of this task. The Texas Constitution states:

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.¹⁶

How can knowledge protect the people? We can begin to answer this question by looking to the source of our constitution's language: A Bill for the More General Diffusion of Knowledge, which was House Bill 79 of one of the first Virginia Congresses. This bill, filed by Thomas Jefferson, explained why education protects rights:

Experience hath shewn, that even under the best forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny; and it is believed that the most effectual means of preventing this would be, to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts, which history exhibiteth, that, possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes.¹⁷

This led Jefferson to explain in a private letter, "I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness."¹⁸ A similar position was advanced by George Washington in his first State of the Union Address:

Knowledge is in every country the surest basis of public happiness. In one in which the measures of government receive their impressions so immediately from the sense of the community as in ours it is proportionally essential. To the security of a free constitution it contributes in various ways - by convincing those who are entrusted with the public administration that every valuable end of government is best answered by the enlightened confidence of the people, and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; between burdens proceeding from a disregard to their convenience and those resulting from the inevitable exigencies of society; to discriminate the spirit of liberty from that of licentiousness—cherishing the first, avoiding the last—and uniting a speedy but temperate vigilance against encroachments, with an inviolable respect to the laws.¹⁹

Over two centuries later, in 2005, the Texas Supreme Court threw its authority behind the idea that education is essential to self-governance, writing, "The truth of the axiom had long been, and remains, beyond doubt."²⁰

In our state, the people are guided in their interactions with the government by the general diffusion of knowledge. However, what exactly does this general diffusion mean? The definition of this term is explained in Texas law and summarized in Figure 2.²¹ The Texas Supreme Court has said that these statutes, taken together, “properly inform the construction and application of the constitutional standard of a general diffusion of knowledge.”²² These two sections of the Texas Education Code reveal the knowledge that each Texas child should develop through public education.

Legislative Discretion

For three decades, the Texas Supreme Court has wrestled with the various ways our existing system struggles to achieve a general diffusion of knowledge. They have urged repeatedly that the system needs to be substantially restructured to ensure its efficiency.²³ Litigation will continue until restructuring occurs, but the Texas judiciary—which honors the separation of powers—cannot tell Legislators what laws to enact.²⁴ It can only explain the constitutional tests it must satisfy. In satisfying these tests, it is critical to understand that Texas legislators are free to choose from many options. The Texas Supreme Court has stated this repeatedly, but most emphatically in *Edgewood IV*, where it ruled:

In Senate Bill 7,²⁵ the Legislature fulfills its mandate to provide a general diffusion of knowledge by establishing a regime administered by the State Board of Education. The Constitution does not require, however, that the State Board of Education or any state agency fulfill this duty. As long as the Legislature establishes a suitable regime that provides for a general diffusion of knowledge, the Legislature may decide whether the

regime should be administered by a state agency, by the districts themselves, or by any other means.²⁶

In other words, the Legislature is free to craft the means by which the public is educated, as long as its solution meets the requirements of the Texas Constitution. Those requirements are listed in Article VII, Section 1, and consist of three tests: efficiency, adequacy, and suitability.²⁷ The questions at the heart of each test are illustrated in Figure 3. The Texas Supreme Court has explained the tests in the following way:

1. Efficiency means the same thing as it did when the Texas Constitution was written in 1875.²⁸ Efficient is defined as: “effective or productive of results and connotes the use of resources so as to produce results with little waste.”²⁹ According to the Texas Supreme Court, the efficiency test has two prongs:

- Explicit: The explicit requirement of efficiency is also called the qualitative component. It is results-oriented, and tests comprehensively whether the system meets the definition of efficient.³⁰
- Implicit: The implicit requirement of efficiency is also called the quantitative or financial component. It is helpful to understand it as equity. This is the inputs-oriented part of the efficiency test.

2. Adequacy is “simply shorthand for the requirement that public education accomplish a general diffusion of knowledge.”³¹ If a general diffusion of knowledge is not accomplished, the adequacy standard is not met.

3. Suitability is the constitutional test that “requires that the public school system be (1) structured, (2) operated, and (3) funded so that it can accomplish its purpose for all Texas children.”³²

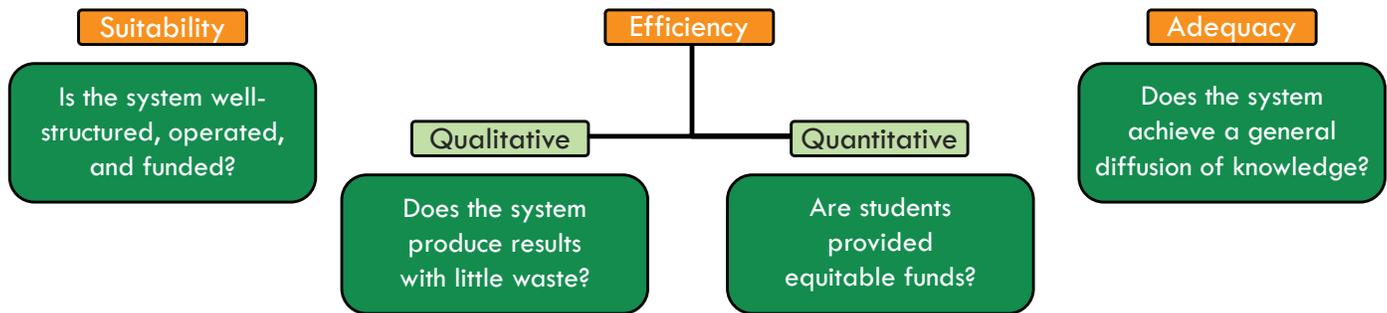
Figure 2: How “General Diffusion of Knowledge” is Defined

Section 4.001(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.”

Section 28.001: “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.”

Figure 3: Constitutional Tests of Public Education

There are three tests for Texas public education listed in Article 7, Section 1.



These tests allow the Texas Legislature wide latitude to exercise its judgment. What does this exercise look like in practice? One example is the fundamental reform of Texas public education in the 1940s. In 1949, Texas legislators observed that the public education system established 70 years prior no longer met the needs of the people. They urged that “proposals for improving education in Texas must be based upon the needs of the state. Personalities, petty quarrels, local self-interest, political alignments, selfishness – these must be forgotten by any group entrusted with designing a better education for Texans.”³³

These lawmakers considered several options when they set out to reform public education. An interim committee’s 1948 report summarized two possible reforms:

One approach would be to provide a minimum amount of money to be spent on each pupil enrolled in each school. The local school system could then spend that money as it saw fit. Another approach would be to start with a minimum list of school services and then see to it that each local system provides at least those services. This second approach is the one we are recommending.³⁴

In other words, state legislators chose to establish and fund a list of educational services, rather than provide a more flexible student allotment.

The choice made by legislators was informed by their time and place. The facts we remember about the 1940s do not, and cannot, include all the facts that informed legislative decisions. But we can see that past legislators were trying to improve public education. As we discuss later (see p. 22-23), legislators who established the Foundation School Program saw several problems. One problem was that one-third of school-age children were not in school. A second example is that education in parts of the state was

sparse.³⁵ Seeing this as an effect of a system established 70 years prior, Texas legislators wrote, “We can’t do a 20th century job with 19th century machinery.”³⁶ Their choice established a floor, under which educational services could not fall. This is why they called their system the *Minimum Foundation Program*. (see p. 22)

To engage in education reform that benefits children today, we must repeat this process. We can’t do a 21st job with a 20th century strategy.³⁷ We might begin by noting that, in certain ways, our lives have changed substantially since the 1940s. One change is that a multitude of educational options exist; however, not every student *has access* to them. Another change is the ubiquity of technology. While technology must not alter the fundamental goal of education, it can help us achieve our goal. One invention we now take for granted is the general-use credit and debit card. These cards did not exist until almost a decade after the 1940s reforms were ratified. The speed at which they transfer funds and the information conveyed by them introduces new possibilities to education finance. Education Savings Accounts (ESAs), detailed later in this work (see p. 54), bring these possibilities to life. In other states, lawmakers are using ESAs to provide a student-centered allotment that establishes access to a variety of educational services.³⁸ We show later that student achievement improves when allotments are made portable and flexible. (see p. 59) And with the information collected today, it is possible to ensure that allotments are used properly.³⁹ This illustrates the latitude given to legislative discretion.

Section 2: Sources of Education Revenue

Introduction to Cash Flow

The cash flow of public schools is complex and not widely understood. This section will focus upon the following basic questions:

- What are the sources of public education’s revenue?
- Who manages the revenue?
- Why do these sources support education?
- When were the sources established?
- Have they been reformed? Why?
- How much revenue do they currently provide?

Figure 4 illustrates how funds flow through the system. Although the Permanent School Fund (PSF) has existed to support public education since 1854, the primary source of state support is General Revenue (GR), which contributed \$32.4 billion in the 2014-15 biennium.⁴⁰ In addition to GR, certain taxes, which will be listed later, are dedicated by

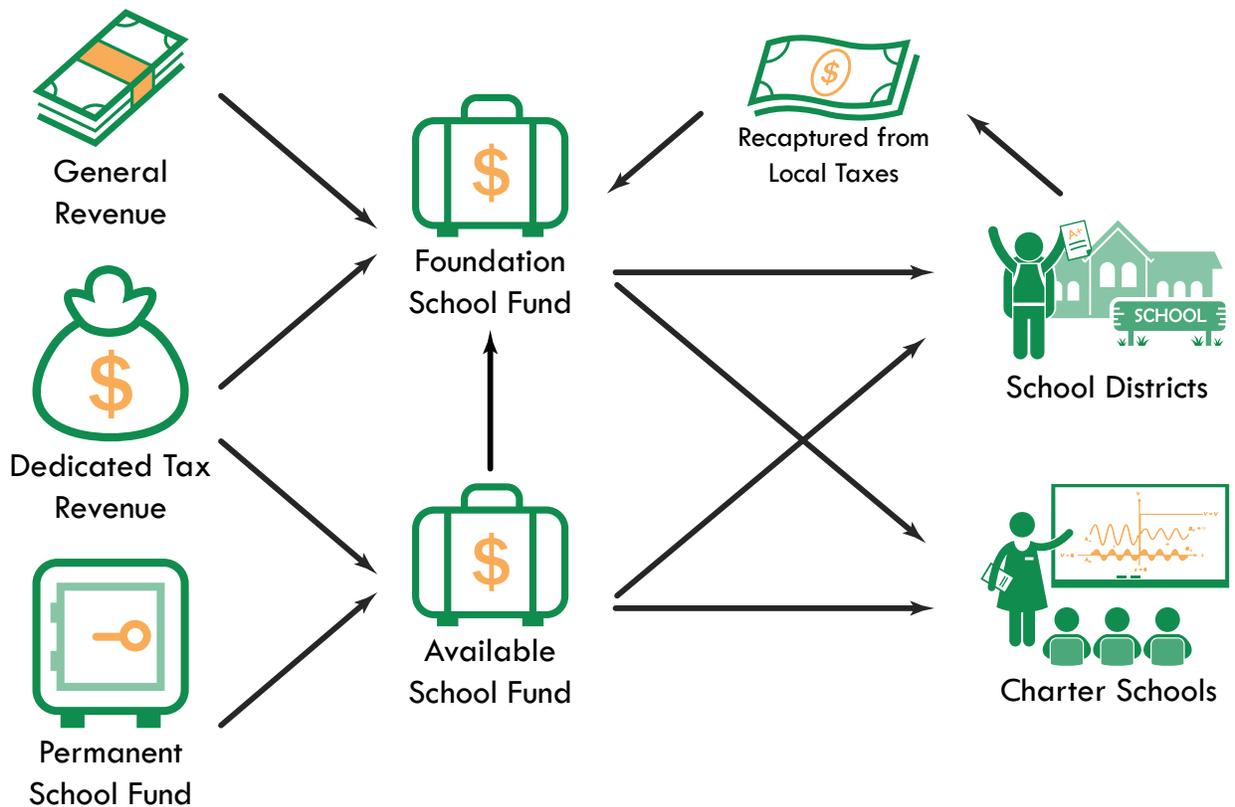
law to the Foundation School Fund (FSF) or the Available School Fund (ASF). The FSF and the ASF simply serve as briefcases, or conduits for funds flowing to schools. The FSF has an added role in the process of Recapture. This section will explain each item illustrated in Figure 4, moving from left to right. Last, federal revenues will be introduced, though education is not in the jurisdiction of the federal government.⁴¹

State-Collected Revenue

Permanent School Fund (PSF)

Prior to the Compromise of 1850, Texas consisted of lands that today are located in New Mexico, Oklahoma, Kansas, Colorado, and Wyoming. However, in the Compromise of 1850, the U.S. federal government offered Texas \$10

Figure 4: Flow of Funds Supporting Texas Public Education



Source: Concept derived from Casey, Daniel T. and Billy D. Walker, *The Basics of Texas Public School Finance*, 6th ed. (Austin, TX: Texas Association of School Boards, 1996), 31. Updated to reflect current law.

million and help with paying Texas' war debts. In return, the federal government requested the land beyond Texas' current boundaries.⁴² Texas agreed, and used \$2 million of that payment to establish the Permanent School Fund (PSF).⁴³ Though the funds were used in the 1860s to fund the Civil War, the State Constitution of 1876 reestablished the PSF and defined it as: "all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the permanent school fund, and all revenue derived from the land or other properties."⁴⁴ This placed 42 million acres in the fund, and all the remaining public domain was placed in the PSF in 1899.⁴⁵ In the 1950s, the U.S. Supreme Court affirmed Texas' claim to the waters in the Gulf of Mexico as its domain, up to a distance of approximately 10 miles from the coast.⁴⁶ The funds raised through the sale and mineral-related rental of these lands are also placed in the PSF.

Because the fund serves as a lasting endowment, the principal cannot be disbursed.⁴⁷ The PSF is divided into two parts: the first used to consist of land and mineral interests; the second consists of investments in stocks, bonds, and other investment vehicles.⁴⁸ The School Land Board (SLB) manages the first, which is why it's referred to as the PSF(SLB); the State Board of Education (SBOE) manages the second, which is referred to as the PSF(SBOE).

The PSF(SLB) no longer primarily invests in land. As the Legislative Budget Board observes, "it should be noted that the primary focus of the SLB and the Investment Advisory Committee has recently changed relative to previous years in that the strategic objective of the fund is diversification of assets by investment in real estate funds as opposed to the actual acquisition of real property to be held by the PSF. As a result, over the past three biennia, the SLB has approved the acquisition of relatively few specific tracts of land."⁴⁹

Day-to-day administration of the PSF(SLB) is carried out by the General Land Office while day-to-day administrative duties for the PSF(SBOE) are executed by the Texas Education Agency. A mix of agency staff and private contractors manage the investment portfolios from both funds.⁵⁰ By FY 2015, the total fund assets were \$34.5 billion, making the PSF the second-largest educational endowment in the nation, after Harvard University's endowment.⁵¹ Despite its size, the average annual contribution of the PSF since 2005 is \$834 million, which accounts for less than 2 percent of total public school funding over that time. The PSF's contribution is eclipsed by that of property tax and general revenue.

The PSF aids public education in two ways. First, a

The PSF no longer primarily invests in land. The strategic objective of the fund is diversification of investments in real estate funds, not the acquisition of real property.

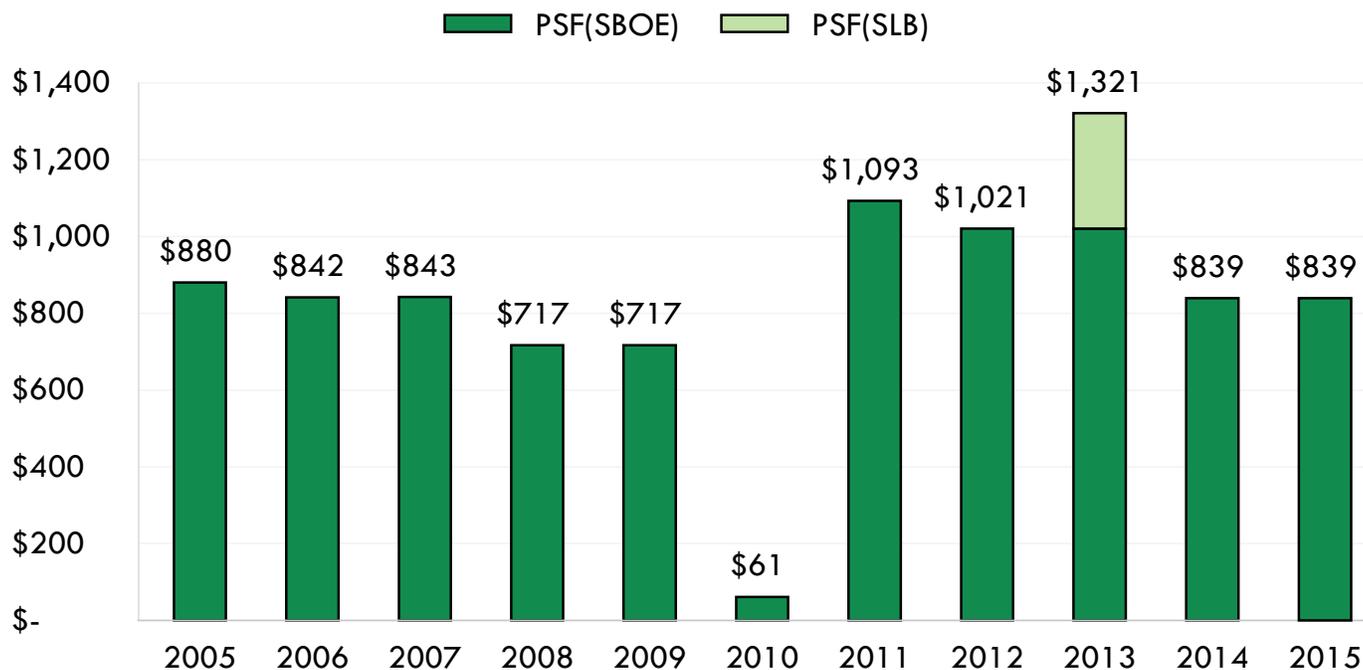
distribution of earnings is made each year from the PSF to the ASF, which helps pay a part of the educational costs incurred by public schools.⁵² Second, the PSF is used to guarantee bonds issued by school districts and loans taken out by charter schools.

With one exception in the last decade, the distribution to the ASF is made from the PSF(SBOE), and not the PSF(SLB). The PSF(SLB) usually sends funds to the PSF(SBOE) before they are transferred to the ASF. In FY 2015, the PSF distributed \$838.7 million.⁵³

The amount paid from PSF(SBOE) to the ASF is determined by the SBOE. However, the SBOE is limited by two rules in determining the amount it can send to the ASF. First, the annual allotment cannot exceed six percent of the market value of the fund. Second, the allotments over the previous 10 years cannot be greater than the total return on the investments over those 10 years.⁵⁴ Therefore, if the market has a drastic downturn, PSF(SBOE) distributions will too. An example of this can be seen in Figure 5, which shows the annual distributions to the ASF from 2005 through 2014. There was a sudden drop in 2010 because the national recession decreased the 10-year investment return of the PSF(SBOE) to a point where the SBOE could only distribute \$61 million. In addition to the distributions from the PSF(SBOE), the SLB can—in its sole discretion—distribute up to \$300 million from the PSF(SLB). This occurred in 2013, as Figure 5 illustrates.

The second way that the PSF aids public education is by guaranteeing bonds and loans for facilities. The purpose of this program is to reduce the borrowing costs for schools by increasing their credit rating, because bonds guaranteed by the PSF are rated AAA.⁵⁵ This ability was added in 1983, and currently guarantees 2,869 school district bonds, which have an outstanding principal balance of \$58.1 billion.⁵⁶ The PSF also guarantees 10 charter school loans, which have an outstanding principal balance of \$302.5 million.⁵⁷ After adding interest that must be paid on these bonds and loans, the PSF guarantees \$96 billion.⁵⁸ Figure 6 lists the 10 ISDs with the most total outstanding debt.⁵⁹

Figure 5: Annual Distributions from the PSF to the ASF, FY 2005 - 2015 (in millions)



Source: Texas Education Agency, *Texas Permanent School Fund: FY 2014 Comprehensive Annual Financial Report*, 60; *Texas Permanent School Fund: FY 2015 Comprehensive Annual Financial Report*, 64.

State and federal law limit the maximum amount of principal that can be guaranteed by the PSF. State law gives the SBOE an option of raising the guarantee to five times the cost value of the PSF, as long as the guarantee remains rated AAA.⁶⁰ The SBOE has chosen a lower limit of three times the cost value of the PSF, for an upper limit of \$82.8 billion.⁶¹ Federal law also sets a maximum limit at five times the cost value, or \$117 billion.⁶²

In the event of a default, the PSF pays the principal and interest of the overdue bond or loan, and then recoups the money by withholding funds the state would have sent to the school. To date, no school district or charter school has defaulted.⁶³

Figure 6: Ten Largest Debts Guaranteed by the PSF, August 2015 (in millions)

District	City	Balance
Dallas ISD	Dallas	\$ 2,327
Houston ISD	Houston	\$ 1,996
Northside ISD	San Antonio	\$ 1,928
Cypress-Fairbanks ISD	Houston	\$ 1,852
Frisco ISD	Dallas	\$ 1,560
North East ISD	San Antonio	\$ 1,333
Katy ISD	Houston	\$ 1,271
Leander ISD	Austin	\$ 962
Conroe ISD	Conroe	\$ 932
Klein ISD	Houston	\$ 872

Source: Texas Education Agency, *Texas Permanent School Fund: 2015 Comprehensive Annual Financial Report*.

Dedicated Taxes and Fees

There are 11 taxes and fees, 25 percent of which are statutorily dedicated to public education.⁶⁴ These are listed in Figure 7. Total state aid in the 2014-2015 school year was \$20.4 billion; therefore, these dedicated revenue items contribute about 12 percent of the state's share of Foundation School Program funding.⁶⁵

General Revenue

The 2016-17 state budget totals \$209.4 billion in All Funds, which can be separated into four main categories: General Revenue Funds (\$106.6 billion), General Revenue-Dedicated Funds (\$7.5 billion), Federal Funds (\$68 billion), and Other Funds (\$27.3 billion).⁶⁶ The part of this budget that receives the most attention during any legislative session is General Revenue (GR), which was first used as a revenue source for public education in 1919.⁶⁷

The state's tax system, in which the sales tax is the keystone, contributes an estimated 88 percent of the state's net General Revenue for the 2016-17 biennium, with non-tax revenues contributing the rest.⁶⁸ Figure 8 summarizes the sources of income for the state of Texas,⁶⁹ and Figure 9 illustrates the relative contribution of the nine largest sources.⁷⁰

The Sales and Use Tax, first levied at a rate of two percent, was established in 1961 in order to provide additional revenue for the state.⁷¹ By the end of the 1960s, it had ascended to the primary source of funds, supplanting the statewide property tax. The primary cause of this shift was that, in 1967, legislators passed a constitutional amendment eliminating the statewide property tax and prohibiting its future use.⁷² In 1968, Texans ratified the amendment, which became enshrined in our constitution as Article VIII, Section 1-e. This elevated the Sales and Use Tax to the prominence it holds today.⁷³ In the 2016-17 biennium, the state's tax rate of 6.25 percent will collect an estimated \$59.7 billion of revenue, or 56.4 percent of total net revenue.⁷⁴

The second largest source of tax revenue is projected to be the Motor Vehicle Sales and Rental Tax, which will collect an estimated \$9.8 billion, or 9.3 percent of total net revenue.⁷⁵ The Motor Vehicle Sales Tax was created in 1941, and the Vehicle Rental Tax was established 30 years later.

In the 2016-17 biennium, the third largest source of tax revenue will be the Franchise Tax, which will collect an estimated \$5.7 billion, or 5.4 percent of total net revenue.⁷⁶

Figure 7: Summary of Taxes Dedicated to the FSF, 2014 (in millions)

Tax or Fee	Revenue Collected	Dedicated to FSF
Oil production tax	\$ 3,872	\$ 968
Natural gas production tax	\$ 1,900	\$ 475
Insurance premium taxes	\$ 1,811	\$ 453
Lottery proceeds	\$ 1,236	\$ 309
Gas, electric, and water utility tax	\$ 408	\$ 102
Professional fees	\$ 178	\$ 45
Oil well service tax	\$ 130	\$ 32
Health related professional fees	\$ 57	\$ 14
Attorney occupation tax	\$ 14	\$ 4
Cement production tax	\$ 9	\$ 2
Sulphur production tax	\$ 4	\$ 1
Total	\$ 9,618	\$ 2,405

Source: Texas Comptroller of Public Accounts, Sources of Revenue. <http://bit.ly/1oFpDXk>

Texas has had a business tax since the 1800s. Though it has been through multiple revolutions, the current Franchise Tax was established in 1992, and heavily reformed in 2006 when the Legislature reacted to the Texas Supreme Court's West Orange Cove II ruling.⁷⁷

In that ruling, the Texas Supreme Court held that local property taxes had become a *de facto* statewide property tax.⁷⁸ The Court found that school districts did not have "meaningful discretion" over property tax rates because the maximum tax rate allowed by the state was the same as the minimum rate districts had to levy to educate children.⁷⁹ In effect, the state was levying a property tax in violation of Article VIII, Section 1-e.⁸⁰

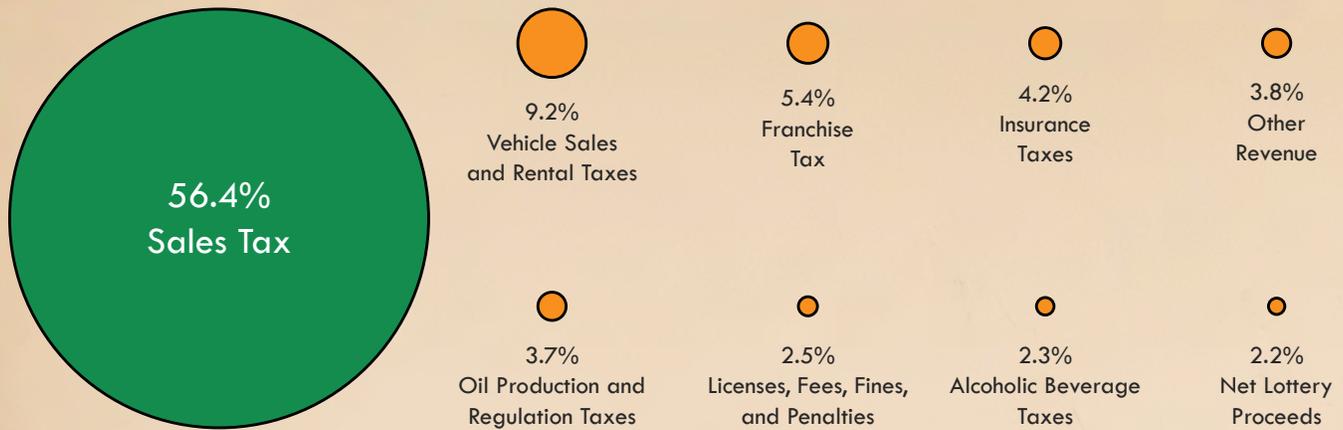
In an attempt to reduce reliance upon property taxes and replace any lost revenue, legislators turned to the Franchise Tax. The additional revenue generated by these reforms is statutorily distributed to the Property Tax Relief Fund (PTRF).⁸¹

The 2006 reform of the Franchise Tax changed the tax calculation from a corporation's net worth to a gross receipts-style tax, based on multiple taxable margins.⁸² In addition, the tax base was broadened to include all businesses except sole proprietorships.⁸³ To make the

Figure 8: General Revenue-Related Funds by Source, 2015 - 2017 biennium (in millions)				
Tax Collections	2014-15	2016-17	Change	
Sales Taxes	\$ 56,062	\$ 59,690	6.5%	
Motor Vehicle Sales and Rental Taxes	\$ 8,648	\$ 9,774	13.0%	
Motor Fuel Taxes	\$ 1,818	\$ 1,898	4.3%	
Franchise Tax	\$ 5,700	\$ 5,700	0.0%	
Insurance Taxes	\$ 3,996	\$ 4,406	10.3%	
Natural Gas Production Tax	\$ 3,180	\$ 1,915	-39.8%	
Cigarette and Tobacco Taxes	\$ 1,143	\$ 1,148	0.4%	
Alcoholic Beverage Taxes	\$ 2,192	\$ 2,436	11.1%	
Oil Production and Regulation Taxes	\$ 6,753	\$ 3,907	-42.1%	
Inheritance Tax	\$ (4)	\$ -	0.0%	
Utility Taxes	\$ 959	\$ 971	1.2%	
Hotel Occupancy Tax	\$ 1,011	\$ 1,133	12.0%	
Other Taxes	\$ 336	\$ 156	-53.5%	
Total Tax Collections	\$ 91,793	\$ 93,134	1.5%	
Non-Tax Collections				
Licenses, Fees, Fines, and Penalties	\$ 3,104	\$ 2,683	-13.5%	
Interest and Investment Income	\$ 1,731	\$ 2,208	27.6%	
Net Lottery Proceeds	\$ 2,303	\$ 2,311	0.4%	
Sales of Goods and Services	\$ 243	\$ 248	1.9%	
Settlement of Claims	\$ 1,077	\$ 1,070	-0.7%	
Land Income	\$ 81	\$ 57	-30.5%	
Contributions to Employee Benefits	\$ -	\$ -	22.0%	
Other Revenue	\$ 3,952	\$ 4,056	2.6%	
Total Non-Tax Collections	\$ 12,491	\$ 12,633	1.1%	
Total Net Revenue	\$ 104,284	\$ 105,767	1.4%	
Balances and Adjustments				
Beginning Fund 1 Balance	\$ 5,345	\$ 8,149		
Beginning Funds 2 and 3 Balances	\$ 161	\$ 192		
Change in GR-Dedicated Account Balances	\$ (382)	\$ (1,126)		
Reserve for Transfers to Economic Stabilization and State Highway Fund	\$ (5,749)	\$ (2,669)		
Total Balances and Adjustments	\$ (626)	\$ 4,546		
Total Net Revenue	\$ 103,659	\$ 110,313	6.4%	

Source: Glenn Hegar, Texas Comptroller of Public Accounts. <http://bit.ly/1QCH69n>

Figure 9: Relative Contribution of Nine Largest State Revenue Sources



Source: Glenn Hegar, Texas Comptroller of Public Accounts. <http://bit.ly/1D6YErj>

plan politically palatable, businesses have been allowed to calculate their taxable revenue in four ways, and choose the lowest one.⁸⁴ Businesses then paid a 1 percent tax; retailers and wholesalers paid a lower rate of 0.5 percent. Although the 84th Texas Legislature permanently cut these rates 25 percent starting in January 2016,⁸⁵ the obvious complexity of the tax⁸⁶ and the fact that it's levied on gross receipts (meaning that companies with a net loss are still subject to the tax) makes it unpopular and inefficient.⁸⁷ Figure 10 summarizes the tax rates and basic information about taxpayers in Texas.⁸⁸

Fees

While a tax has the primary purpose of raising revenue, a fee's stated purpose is to recoup the cost of providing a service from a beneficiary.⁸⁹ Though the lion's share of education fees consists of higher education tuition, there are two other fees relating to primary and secondary education.

The first fee was created in 1991 by the first special session of the 72nd Legislature. Historically, all sorts of licensed professionals, such as accountants, engineers, or bankers, have paid fees. In 1991, legislators passed House Bill 11, 72nd Legislature, which increased various professional fees by \$200, and required that 25 percent of the increase be deposited in the Foundation School Fund (FSF).⁹⁰ In fiscal year (FY) 2014, this increase collected a total of \$90 million; therefore, about \$23 million was devoted to the FSF.⁹¹

The second fee is a teacher certification fee, paid by teachers to the Texas Education Agency.⁹² The fee collects \$75 for a standard teaching certificate, or \$30 for an aide's certificate. Total collections in FY 2014 for this fee were about \$28 million, all of which is allocated to General Revenue.

How State Revenue Flows to Schools

Foundation School Fund (FSF)

The FSF is an account within the General Revenue Fund that is used for funding public education.⁹³ As Figure 4 illustrates, the FSF serves as a pipeline connecting General Revenue and Dedicated Taxes to schools.⁹⁴ The amount of money deposited into the FSF is determined primarily by the legislative appropriation process and is appropriated to the Texas Education Agency (TEA), which manages the day-to-day administration of the fund.⁹⁵ The Legislature establishes funding formulas that determine how FSF money is divided among districts, and those formulas form the basis for estimating how much the Legislature should spend each biennium on education. After estimated revenue from statutorily dedicated taxes is determined, the outstanding balance is filled from General Revenue.

Figure 10: Tax Rates and Taxpayers in Texas

Tax	Rate	Who remits revenue?	Number of Taxpayers
Sales	6.25%	Retail companies	652,400
Oil Production and Regulation	4.60%	Producers, purchasers	178
Natural Gas Production	7.50%	Producers, purchasers	1,721
Insurance	0.5% to 4.85%	Companies, agents	10,596
Hotel Occupancy	6% of room rate	Hotel owner	7,834
Motor Fuels	20 cents per gallon	Suppliers, distributors	976
Utility	0.581% to 1.997%	Utility companies	103
Franchise	0.75% gross revenue	Most companies	925,000
Vehicle Sales and Rental	6.25% sales; 10% rentals	Dealerships, rental companies	1,451
Cigarette and Tobacco	\$1.41 per cigarette pack; 1 cent per 10 cigars; \$1.22 per ounce of non-smoking tobacco	Wholesalers	457
Alcoholic Beverages	\$6 per 31 gallons of beer; 20 cents per gallon of malt liquor; \$2.40 per gallon of liquor; 8.25% sales tax on mixed drinks; 6.7% on gross receipts of mixed drinks	Beer distributors, manufacturers; malt liquor and liquor wholesalers; mixed drink vendors	14,109

Source: Texas Comptroller of Public Accounts, *Sources of Revenue*. <http://bit.ly/1oFpDXk>

Available School Fund (ASF)

As Figure 4 illustrates, the Available School Fund (ASF) serves as a conduit or pipeline through which funds flow from earnings on the PSF and dedicated taxes to schools. Along with the PSF, it was created by the Constitution of 1876 to serve as the primary means to fund public education.⁹⁶ This changed in 1984. At that time, lawmakers passed House Bill 72, 68th Legislature, which reformed much of the finance system.⁹⁷ Before H.B. 72, all taxes and fees that were dedicated by the Education Code to public education were sent through the ASF, and not the FSF.⁹⁸ H.B. 72 changed this, and diverted the taxes—listed in Figure 7—to the FSF. Today, only the Diesel Fuel Tax and the Gas Tax,⁹⁹ which are constitutionally dedicated, are sent to the ASF. Figure 11 shows the revenue accruing to the ASF.¹⁰⁰

The cause for this shift was that the ASF is constitutionally required to distribute money on a per capita basis, whereas the FSF is distributed based on Foundation School Program (FSP) funding formulas. Whereas the ASF provided the same amount to every student, the FSF provides higher amounts to children that are deemed more difficult to educate.¹⁰¹ In other words, legislators elevated student weights to the prominence they hold today.

Figure 11: ASF Revenue, 2008 - 2015
(in millions)

Fiscal Year	Motor Fuel Tax	PSF (SBOE)	PSF (SLB)	Total Revenue
2008	\$761	\$717	\$0	\$1,478
2009	\$745	\$717	\$0	\$1,461
2010	\$745	\$61	\$0	\$806
2011	\$761	\$1,093	\$0	\$1,854
2012	\$773	\$1,021	\$0	\$1,794
2013	\$791	\$1,021	\$300	\$2,112
2014	\$784	\$839	\$0	\$1,623
2015	\$784	\$839	\$0	\$1,623

Source: Legislative Budget Board, *Fiscal Size Up 2014*, 242.

Other Revenue Streams

The finance system is more complex than is indicated in Figure 4. In that flow chart, all state funds flow through the FSF or the ASF, but there are exceptions; some state funds pass directly from the state to their destination. Figure 12 is derived from H.B. 1, the 84th Legislature's appropriations bill, and sheds light on these other funds.¹⁰² Each revenue stream supporting education is labeled with a row number. Rows 2, 3, 4, 10, and 12 pass through the ASF or the FSF.¹⁰³ The remaining rows are streams of revenue which do not

pass through the ASF or the FSF. The largest of these other streams are rows 16, 17, and 18, which show that \$2.2 billion flowed from GR and a trust fund to the Teacher Retirement System. The second largest amount is row 11, the Property Tax Relief Fund, which is explained below. (see p. 46) Third, there is row 6, which consists of \$1.2 billion in lottery proceeds flowing directly from GR to the Texas Education Agency. These sources directly offset the amount of GR transferred to the FSF.

Figure 12: Other Revenue Streams Supporting Public Education, 2016 - 2017 biennium (in millions)

Row	General Revenue (GR) Fund	FY 2016	FY 2017
1	General Revenue Fund	\$ 163,343,322	\$ 156,637,578
2	Available School Fund No. 002, estimated	\$ 1,381,800,000	\$ 1,395,700,000
3	Instructional Materials Fund No. 003	\$ 529,684,784	\$ 529,684,784
4	Foundation School Fund No. 193, estimated	\$ 15,541,860,281	\$ 15,152,550,579
5	Certification and Assessment Fees (GR Fund)	\$ 25,336,590	\$ 25,336,590
6	Lottery Proceeds, estimated	\$ 1,207,000,000	\$ 1,209,300,000
7	Educator Excellence Fund No. 5135	\$ 16,000,000	\$ 16,000,000
8	GR Dedicated - Specialty License Plates General	\$ 32,701	\$ 32,701
9	Subtotal, General Revenue Fund	\$ 18,865,057,678	\$ 18,485,242,232
Other Funds			
10	Permanent School Fund No. 044	\$ 30,162,203	\$ 30,162,203
11	Property Tax Relief Fund, estimated	\$ 1,427,700,000	\$ 1,522,200,000
12	Appropriated Receipts, estimated	\$ 1,775,100,000	\$ 2,069,900,000
13	Interagency Contracts	\$ 12,372,713	\$ 12,372,713
14	License Plate Trust Fund Account No. 0802	\$ 325,000	\$ 325,000
15	Subtotal, Other Funds	\$ 3,245,659,916	\$ 3,634,959,916
Teacher Retirement System			
16	Method of Financing: General Revenue Fund	\$ 2,002,929,038	\$ 2,046,454,786
17	GR Dedicated - Account No. 770	\$ 46,177,654	\$ 48,024,760
18	TRS Trust Account Fund No. 960	\$ 122,573,232	\$ 80,603,019
19	Subtotal, Teacher Retirement System	\$ 2,171,679,924	\$ 2,175,082,565
20	Total	\$ 24,282,397,518	\$ 24,295,284,713

Source: H.B. 1, 84th R.S. (2015)



Locally-Collected Revenue

Introduction to Property Taxes

Property taxes collected by school districts contribute the largest share of revenue to Texas public education. In FY 2014, school districts collected \$26.45 billion in property tax revenue, including \$1.2 billion recaptured by the state through a process commonly known as Robin Hood.¹⁰⁴ This locally-levied tax is authorized by House Joint Resolution 4 of the 18th Texas Legislature.¹⁰⁵ Ratified in 1883, this constitutional amendment became Article VII, Section 3 of the Texas Constitution. The same amendment provided authority to the Legislature to establish school districts. In 1890, local property taxes comprised 68 percent of public school revenues; in 1930, that share was 79 percent; by 1949, the local share was 63 percent.¹⁰⁶ Compared to federal and state funding today, property tax revenue generates over half of revenue generated to fund education through state formulas.

This tax has a long history in Texas, most of which will not be discussed here.¹⁰⁷ While the average total school district property tax rate is \$1.26, the highest is \$1.67, and the

lowest is \$0.70. Figure 13 explains the frequently-used term “pennies of tax effort.” The total revenue each district raises with these rates depends entirely upon the total value of taxable property located within the district. The differences in taxable property wealth among districts has resulted in legal difficulties.

Robin Hood

The Texas Supreme Court’s ruling in Edgewood I was the initial catalyst for the eventual establishment of recapture in Texas. The ruling was the first in a long series of school finance litigation that has continued for 30 years. In Edgewood I, the Texas Supreme Court observed the difference between the original structure of public education and its structure in the late 1980s:

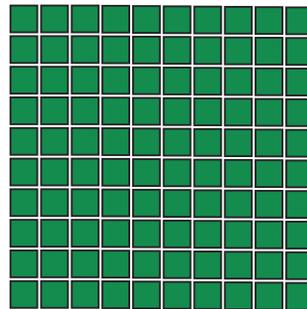
There are glaring disparities in the abilities of the various school districts to raise revenues from property taxes because taxable property wealth varies greatly from district to district. The wealthiest district has over \$14,000,000 of property wealth per student, while the poorest has approximately \$20,000; this disparity reflects a 700 to 1 ratio.... The structure of school finance [in 1876] indicates that such gross disparities

Figure 13: What “Pennies of Tax Effort” Means

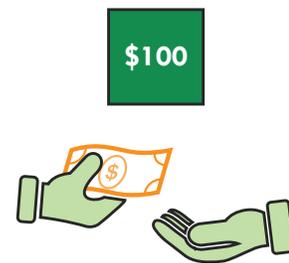
The total taxable value of property is measured. For this example, we’ll use Prosper ISD, where the taxable property in 2014 was valued at \$3 billion.



The total value is then broken up into \$100 blocks. There are 30 million blocks in Prosper ISD’s \$3 billion of property.



Prosper ISD then collects an amount on each block. In the 2014-15 school year, PISD collected \$1.67. The average statewide rate is \$1.26.



Summary

The term “pennies of tax effort” refers to the number of cents collected on each \$100 block of property value. Prosper ISD’s levy can also be understood as a rate of 1.67 percent. Some pennies are matched by greater state funding than others. See page 40 for the discussion of this concept.

were not contemplated. Apart from cities, there was no district structure for schools nor any authority to tax locally for school purposes under the Constitution of 1876. The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly across the state, and each student in the state was entitled to exactly the same distribution of funds. The state's school fund was initially apportioned strictly on a per capita basis.¹⁰⁸

The court found that the disparities violated the constitutional requirement that the public education system be quantitatively efficient. In other words, disparate school district funding was an inefficient way to support an education system for *all* Texas students.¹⁰⁹ Moreover, this passage shows that school district equity was only intended to be a means to student equity; student inequity is directly counter to the constitutional intent regarding Texas school finance.

As a result, recapture was established in 1993 by Senate Bill 7, 73rd Legislature.¹¹⁰ Commonly known as “Robin Hood,” recapture is the process by which property tax revenue raised by one district is sent to other districts for the sake of district equity.¹¹¹ The principle animating recapture is this: property values are not distributed across the state in the same way as students. To fulfill the constitutional requirement to fund public education efficiently statewide,¹¹² the Equity Center has suggested that the state could either cease to rely so heavily upon property taxes, or redistribute the local property tax revenue from wealthy districts.¹¹³ Through recapture, state legislators have chosen the latter course, although funds are sent to students indirectly, i.e. through school districts. This situation has contributed to the focus upon school district equity.

After several previous legislative attempts to comply with the Edgewood rulings, S.B. 7 attempted to equalize property tax revenue by requiring rich districts to adopt at least one of five options to rid themselves of excessive wealth:

1. Consolidate with another district.
2. Detach property.
3. Purchase attendance credits from the state.
4. Contract to educate nonresident students.
5. Consolidate tax bases with another district.¹¹⁴

Most property wealthy districts currently choose either the third or fourth option.¹¹⁵ What this means when it comes to the operation of the school finance system, as we explain below (see p. 21), is that state and local funds are in essence comingled and the distribution of all non-federal funds, including local property tax revenue, are dependent on

Originally, the burden of school taxes was uniform across the state, and every student's allotment was the same. This is no longer the case.

state law and FSP funding formulas.

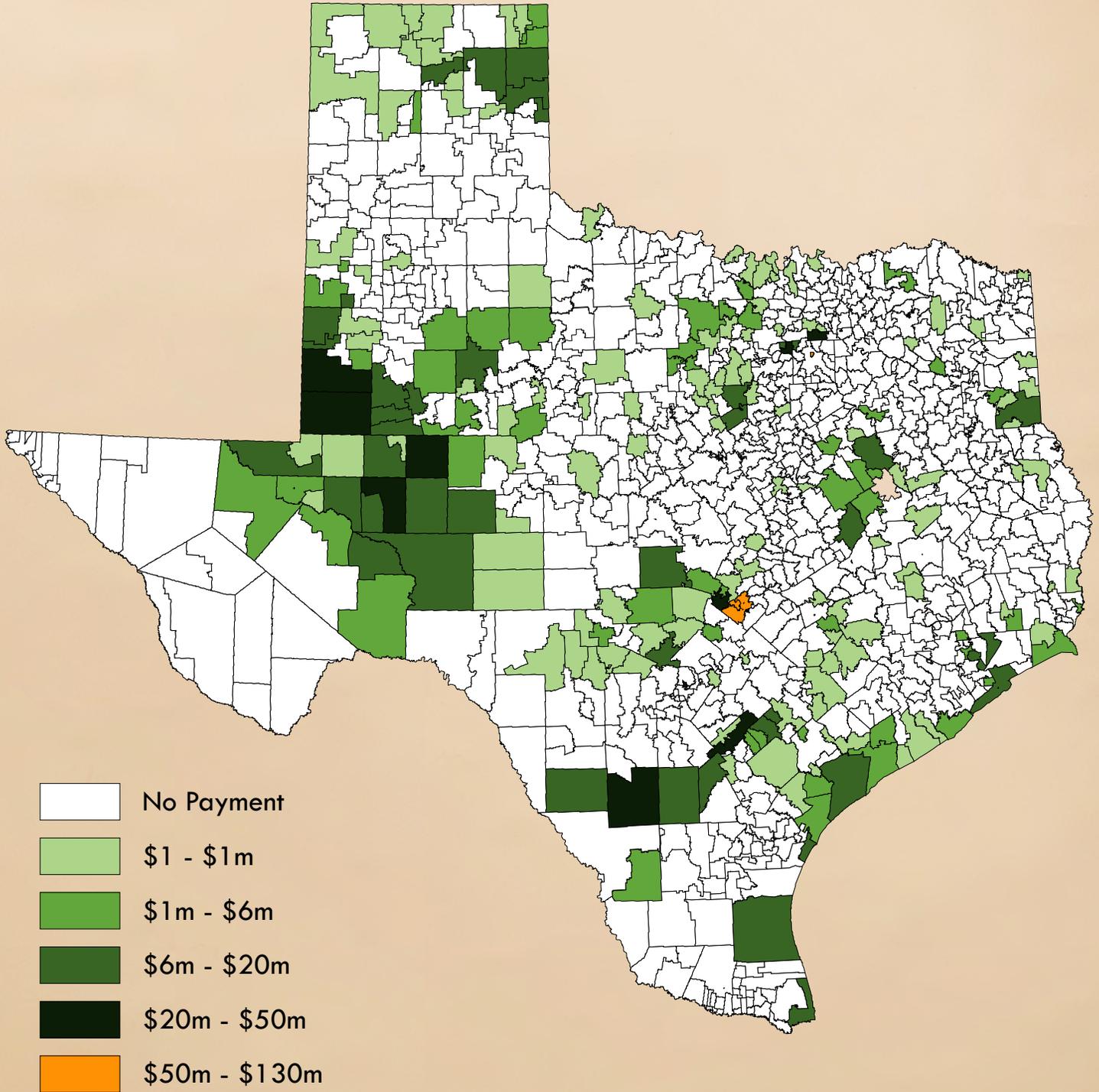
The establishment of recapture in 1993 applied to school districts with taxable property wealth above \$280,000 per weighted student.¹¹⁶ This would have resulted in an immediate reduction in funding to 104 school districts.¹¹⁷ While the state sought equality, it also sought to not decrease spending. As a result, S.B. 7 included a hold harmless provision for those 104 districts that had at least \$280,000 of property wealth per weighted student. This provision initially lasted for school years from 1993 to 1997, but in 1999, Senate Bill 4, 76th Legislature, slightly increased the level for these districts to \$295,000, and made the provision permanent.¹¹⁸ As property values increased, many of the 104 districts have grown out of the provision. By the 2013-14 school year, only 37 districts were eligible for this provision.¹¹⁹

Today, different levels of recapture apply to different tiers of funding. These tiers and their recapture requirements will be explained in the next section. (see p. 23-24) As Figure 4 illustrates, recaptured funds from school districts are sent to the Foundation School Fund (FSF), and are then redistributed to other school districts. Whereas initially only 104 districts were subject to recapture, in 2014 a total of 226 school districts paid recapture.¹²⁰ Figure 14 illustrates their distribution across the state. These districts educate about 12 percent of total state ADA.¹²¹ As Figure 15 shows, recapture was the source of an estimated \$1.2 billion in FY 2014.¹²²

Federal Revenue

In the 2014-15 biennium, the federal government contributed \$9.7 billion to Texas public education.¹²³ Figure 1 illustrates the size of this contribution relative to State and Local support. Funds from the federal government flow both through the state government to local school districts and directly to districts. For example, the American Recovery and Reinvestment Act (ARRA) allocated \$5.9 billion in one-time funds to the state.¹²⁴ The state, in turn, awarded these funds to school districts in 2009. About \$1.6 billion

Figure 14: Recapture Paid by School Districts, 2014

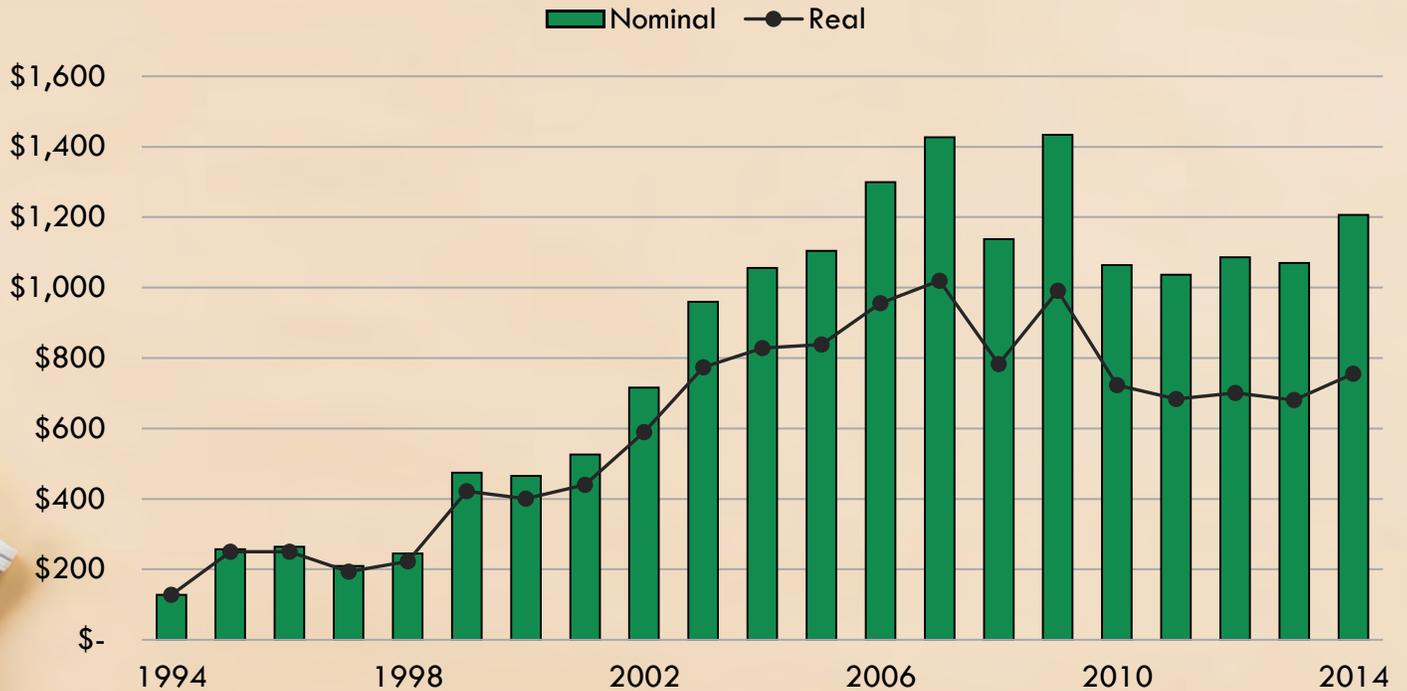


Source: Texas Education Agency, 1994-2016 Chapter 41 Recapture Paid by District. <http://bit.ly/1LefEyD>

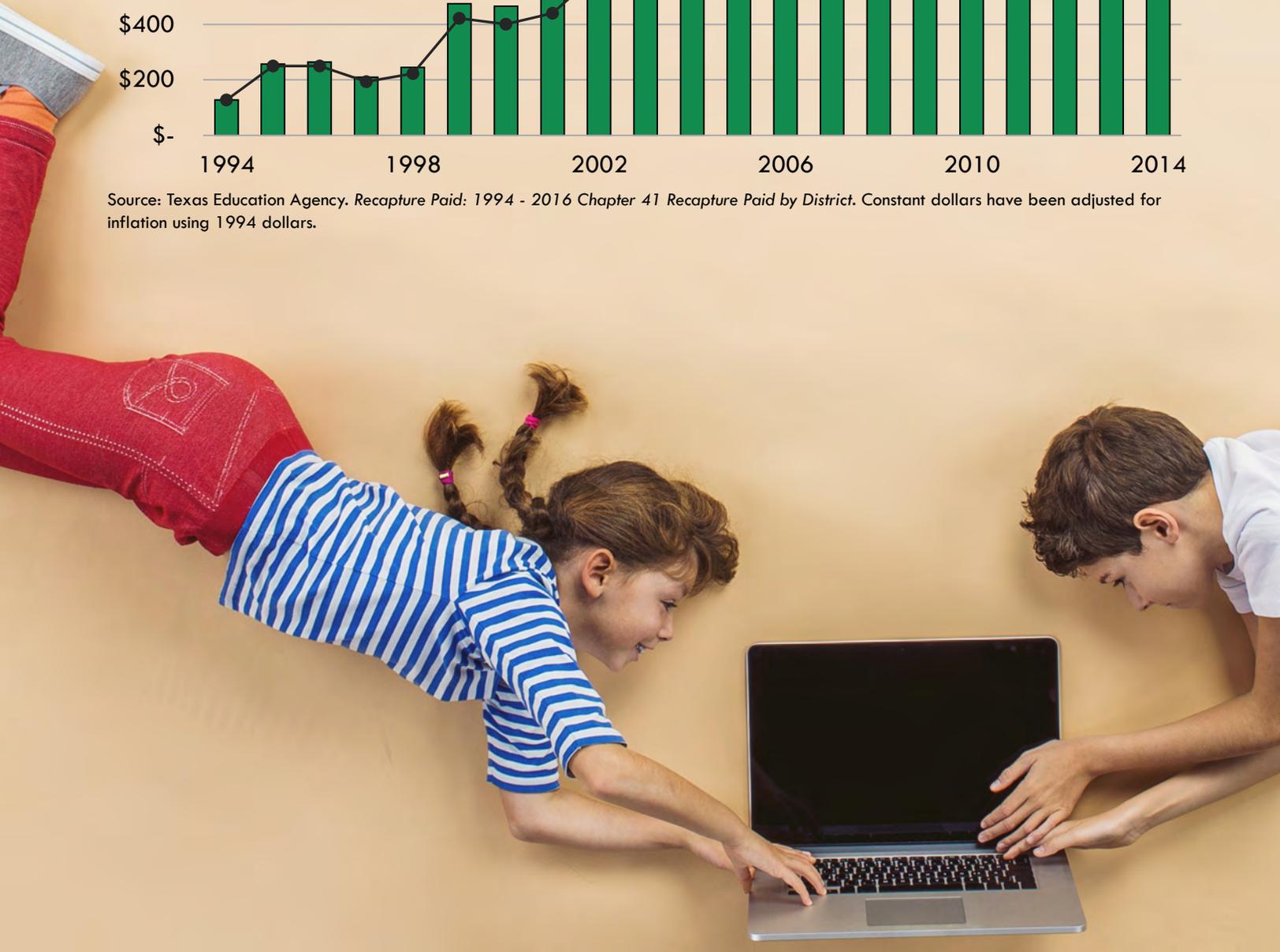
of these funds were identified as state funding in FY 2010 and FY 2011, but the original source of these was ARRA.¹²⁵ On the other hand, the federal government directly funds Regional Education Service Centers (RESCs); according

to a TEA report submitted to the 84th Legislature, RESCs receive almost half of their revenue directly from the federal government. (see p. 45)

Figure 15: Total Recapture Paid, 1994 - 2014



Source: Texas Education Agency. *Recapture Paid: 1994 - 2016 Chapter 41 Recapture Paid by District*. Constant dollars have been adjusted for inflation using 1994 dollars.



Section 3: Allocation of Revenue

Introduction to Allocations

Section 2 introduced the revenue sources for public education. This section will take us further into the system of public school finance by examining the allocation of funds and answering questions such as: how do we determine each district's allotment? How much do we spend per student? How is revenue distributed among the districts? These questions and more will be explained in the present section.

Expenditures on public education totaled \$60.98 billion in 2015. In fiscal year 2015, about 11 percent of this amount was from federal funds, 43 percent from the state, and 47 percent from local governments. State and local funding for public education in Texas is allocated primarily through the Foundation School Program (FSP), which refers to a tiered school finance structure established by the Texas Legislature. It should not be confused with the Foundation School Fund (FSF) which is an account used to flow funds from state revenue sources to schools.¹²⁶ The FSP is founded on the principle that public education is a state responsibility.¹²⁷ The FSP is funded primarily by a combination of local property tax revenue and state general revenue.

Perhaps the greatest misunderstanding when it comes to public school finance is the principle underlying an equalized system. While those who follow public education are very aware of Robin Hood, few understand that recapture is only the most obvious equalization method. It is true that only a relatively small portion of local property tax revenues flow into the state system; most remain in the district where the money is raised. However, the total amount of money a district has to spend, i.e., the maintenance and operations (M&O) allocations from both state and local sources, are completely dependent on state law and FSP formulas. Since expenditures from both state and local revenue streams are controlled by state formulas, the effect is that any change in the system—to enrollment, property values, or tax revenue—is borne by the state. Figure 16 uses an analogy to illustrate how this marginal concept plays out in our current system. In a system that is funded separately by both state and local revenue, this aspect of

the system is not intuitive.

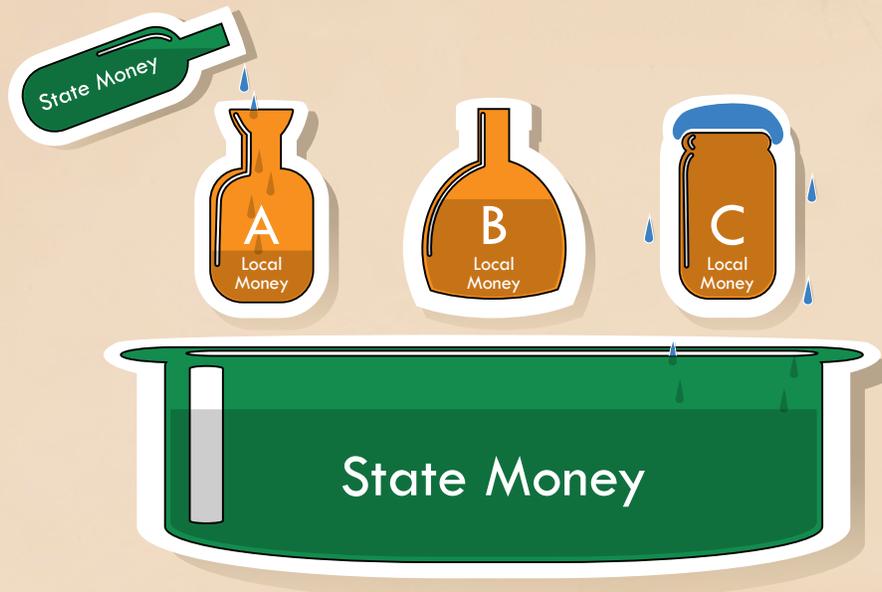
To help explain this, we'll use the 3-glass analogy on page 21. One example of how the FSP works is when property values increase, which causes an increase in local property tax revenue. To follow our analogy, the amount of local revenue collected by school districts increases, so the state does not need to contribute as much from its own sources to fill the jars. On the other hand, when property values decline, school districts have less revenue, but still are guaranteed the same level of funding, i.e., the district's jar does not shrink. As a result, the state must contribute more of its own revenue.¹²⁸

A second example in which the state benefits financially is when a student moves out of the state. In this case, following the analogy, a district's jar shrinks and the formulas would automatically reduce the entire amount which the district is entitled for that child, not just the "state's portion" of the revenue.

A third and more complex example occurs when a student moves from one district to another. In this case, one district's formula funding is reduced, i.e., its jar shrinks, and another district's formula funding, and jar, grows. Again, the reduction for the one district and the increase for the other is the entire amount of funding that each district is entitled to from state *and* local revenue. From this, we can see that the district from which the student departed does not get to save the money they would have spent. While the district does not necessarily lose any local property tax revenue, it loses state funding that equals the total sum of both the state and local funding for that student. The same is true for the increase received by the district into which the student transferred.

This is the conclusion underlying an equalized finance system: since all funds, state and local, are controlled by state law and formulas, the system acts as if the money were first sent to the state, then reallocated to districts from one big pot called the Foundation School Program (FSP). These FSP formulas determine how much each district gets based on various formula elements including tax rates, district size, student demographics, and district demographics.¹²⁹

Figure 16: Using Analogy to Understand the Foundation School Program



The Foundation School Program (FSP) is like the illustration above. School districts A, B, and C have different amounts of total spending, based upon their characteristics (such as whether they're a rural district) and how many children attend school each day (ADA). The total amount to which each district is entitled is represented by a full jar. This amount is set by FSP formulas. The districts collect property taxes to meet this goal. Some districts - like district C - raise too much, so the overflow goes back to the state. The state gives the overflow and its own money to others - like districts A and B - which don't collect enough money. While only three jars are seen above, there are 1,019 school districts, each with different characteristics and ADA. The complexity of the system can be overwhelming, but it's important to understand that both district and state funds are controlled by the state funding formulas. Therefore, an increase in jar size (increased spending) is borne by the state and a decrease in jar size (decreased spending) benefits the state. This depicts the principles of an equalized system, but due to political pressures, many statutory exemptions have been added to this system.

Establishing the Foundation School Program

Although the system looks quite different today, the FSP concept was originally established through a series of reforms in 1949 that are referred to as the Gilmer-Aikin Laws. These laws were conceived by the 1948 Gilmer-Aikin interim committee, formed by the Legislature in 1947 to study education reform. The Gilmer-Aikin Laws refers to three Senate Bills: 115, 116, and 117, 51st Texas Legislature. These bills, which were based on the committee's findings, significantly restructured Texas public education. S.B. 115 reorganized the administrative education structure into a Central Education Agency, the three parts of which were: a State Board of Education, the Commissioner of

Education, and the State Department of Education.¹³⁰ S.B. 116 established the Minimum Foundation Program, which Texans now call the Foundation School Program.¹³¹ S.B. 117 was a technical bill that rerouted existing allotments to conform with S.B. 115 and 116.¹³²

The FSP was initially titled the Minimum Foundation Program because it sought to provide a minimum floor of financial support for education, below which no school could fall.¹³³ To accomplish this goal, legislators established the Personnel Unit (PU) system. Before this time, schools were funded based on a census count of all school-age children in a community. S.B. 116 shifted away from funding all of a community's children to funding a defined number of teachers and staff based upon student attendance.¹³⁴ The PU system funded Texas schools on a per capita basis until 1984. Advocates of the Gilmer-Aikin

bills argued for their passage based upon the following reasons:

1. The cost of public education was increasing beyond the ability of local communities to support.¹³⁵
2. About one-third of school-age children were not enrolled in school.¹³⁶
3. There was a shortage of qualified teachers.¹³⁷
4. Enrollment was increasing at a high rate.¹³⁸

In 1949, Texas legislators faced a choice of how to deal with the issue. The interim committee's report summarized the choice:

One approach would be to provide a minimum amount of money to be spent on each pupil enrolled in each school. The local school system could then spend that money as it saw fit. Another approach would be to start with a minimum list of school services and then see to it that each local system provides at least those services. This second approach is the one we are recommending.¹³⁹

Under the 1949 reform there was no limit on what local communities could add to the program. In this respect, these reforms are unlike Texas' system today. Former Senator James Taylor, chairman of the Gilmer-Aikin Committee, illustrates this point in his writings after the 1949 reforms: "Although the program puts a floor under the kind and quantity of public school services in Texas, there is no ceiling above to prevent any district from going as far beyond the fixed minimum as local initiative and extra effort may provide."¹⁴⁰ In other words, a system of recapture was not conceived in the Gilmer-Aikin reforms. As discussed in Section 2, such a ceiling was established in 1993. (see p. 17-18)

We reiterate that the Gilmer-Aikin Laws are an example of the wide latitude the Texas Constitution gives to legislative discretion. This discretion should be informed by a legislator's time and place. In the case of the Gilmer-Aikin reforms, lawmakers worked to provide a minimum level of services to every community in Texas.¹⁴¹ This is why, as we noted above, they called their newly-established system the Minimum Foundation Program. (see p. 7) To enact education reform that benefits children today, we must repeat the process of understanding our current system, looking for problems in it, and finding contemporary solutions.

As we execute this task, several ideas must be kept in mind: our goal is the general diffusion of knowledge;

the only proper means to achieve the goal is a student-centered system; and we should use modern technology in accomplishing our ends. We can't do a 21st century job with a 20th century strategy.¹⁴² To successfully accomplish this task, we must have the same boldness of thought and action as the founders of the FSP.

Foundation School Program Structure

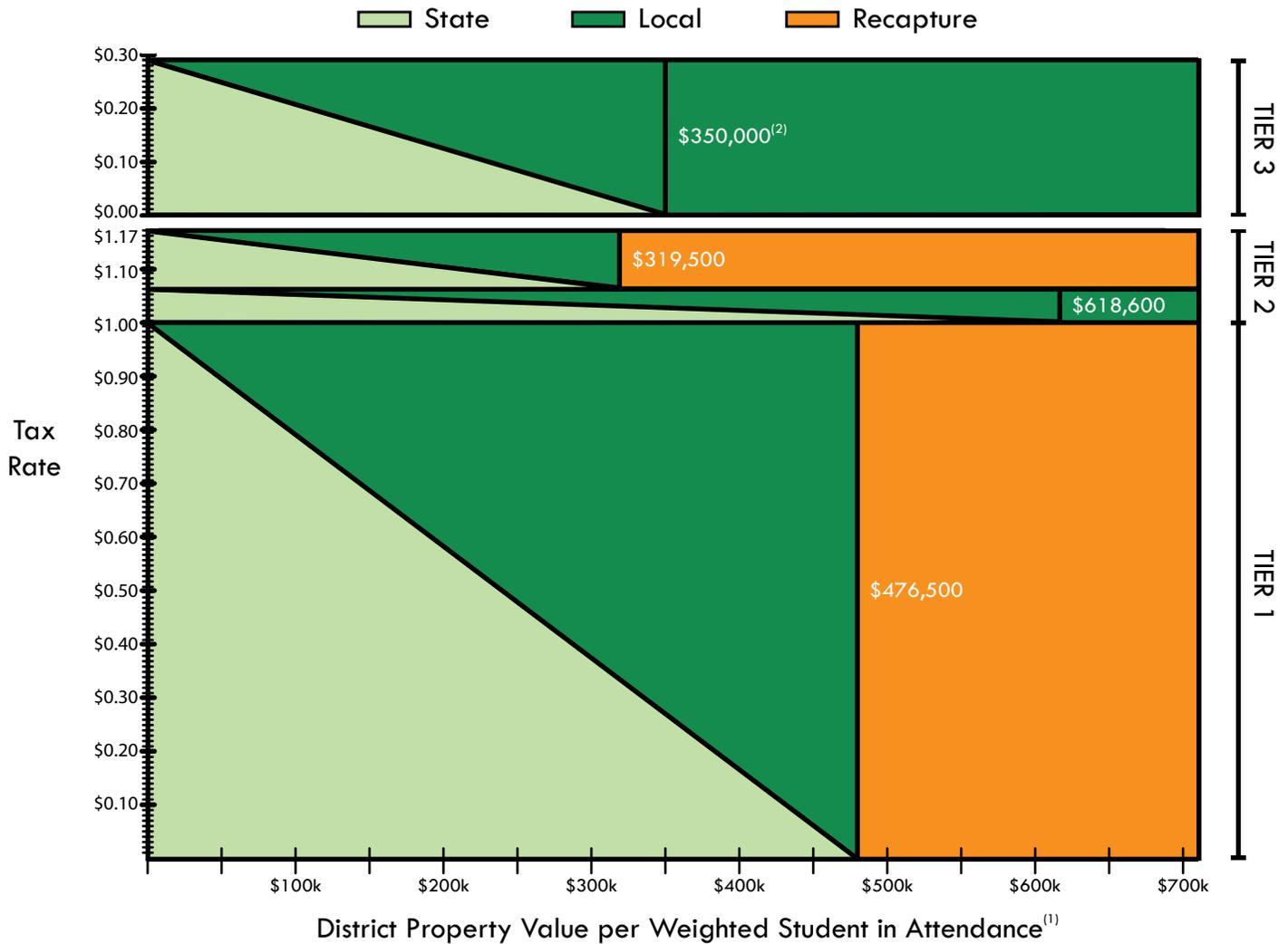
Today, as Figure 17 illustrates, the FSP funding formulas consist of three tiers. Tiers 1 and 2 are funded through a combination of local and state revenue to pay for maintenance and operations (M&O) expenses. Tier 1 supports the core educational program; Tier 2 is a guaranteed yield program providing a state-guaranteed allotment per weighted student for tax effort above the Tier 1 rate. Tier 3 funds facilities and debt service and is commonly referred to as Interest and Sinking (I&S) funding. In the 2014-15 school year, \$21.1 billion was collected from the Tier 1 and 2 (M&O) property tax levies; \$5.3 billion was collected from Tier 3 (I&S) levy.¹⁴³

The basis for all school formula calculations is student attendance. However, unlike the original constitutional per capita allotment, today's system contains many politically-driven adjustments to these formulas. These adjustments have resulted in complex and opaque formulas that have been a central issue in the school finance litigation of the past three decades. In 2014, a district court found, "the state still uses arbitrary, outdated weights in the funding formulas that have no real connection to actual student need or program costs."¹⁴⁴ The district court did not stop there, finding that certain weights have "never been properly tied" to the cost of educating students.¹⁴⁵

Before the Tiers: District-Level Adjustments

This section will discuss the first four steps in calculating the flow of funds to school districts. First, the Legislature establishes a dollar amount per student in average daily attendance (ADA) called the Basic Allotment (BA). Second, the BA is adjusted by the Compressed Tax Rate. Third, the BA is modified by the Cost of Education Index (CEI) to produce the Adjusted Basic Allotment, or ABA. Fourth, the ABA is modified by the Size Adjustments to produce the Adjusted Allotment (AA).

Figure 17: Tiers of the Foundation School Program



Notes:

- (1) This refers to WADA. The complexity of WADA makes it difficult to explain until Tier 1 programs are covered; therefore, it will be explained after Tier 1 is discussed.
 - (2) Total district property values in Tier 3 are divided by Average Daily Attendance (ADA), not Weighted Average Daily Attendance (WADA). As such, Tier 3 does not neatly fit into this figure, and state aid phases out sooner than is indicated. The implications of this difference is discussed below (see p. 40).
- The concept for the above table was derived from Dr. Billy Walker's 1996 work, *The Basics of Texas Public School Finance*, 45. It has been updated to reflect current law.

The Basic Allotment

The keystone of Tier 1 calculations is the Basic Allotment (BA). The BA is defined in law as the cost per student of a regular education program which, combined with Tier 2 allotments, meets all mandates of law and regulation.¹⁴⁶ Though the Texas Education Code defines the amount of the BA as \$4,765, this was increased to \$5,140 through a general appropriations bill: House Bill 1, 84th Legislature.¹⁴⁷

The BA is only a starting point for Tier 1 formula calculations. Practically, it is an arbitrary amount which is not defined according to the cost of an education. The difficulty of this

task will be discussed in Section 4 below. The BA is adjusted many times by district-level and student-level multipliers to arrive at a final entitlement for each district.

Compressed Tax Rate Adjustment

The BA is first multiplied by the district's Compressed Tax Rate (CTR) if their CTR is less than \$1.00.¹⁴⁸ The CTR refers to the property tax rate after the rate was compressed in 2006 by House Bill 1, 79th Legislature.¹⁴⁹ H.B. 1 was passed in response to the Texas Supreme Court's ruling in *West Orange Cove II*. In that ruling, the Texas Supreme

Court held that local property taxes had become a *de facto* statewide property tax.¹⁵⁰ Such a tax is prohibited by Article VIII, Section 1-e of the Texas Constitution.¹⁵¹ The Court explained that when the maximum tax rate allowed by the state is the same as the minimum rate districts must levy to educate children, “the districts would then have lost all meaningful discretion.”¹⁵² As mentioned above (see p. 11-13), the Legislature tried to resolve this problem by relying less upon property tax revenue, and more upon franchise tax revenue.

That shift caused lawmakers to reduce property tax rates across Texas; the technical mechanism which resulted from this was the CTR. Prior to H.B. 1, the maximum tax rate allowed for Tier 1 and Tier 2 was \$1.50.¹⁵³ The majority of districts (67 percent) with the vast majority of students (80 percent) taxed near this rate.¹⁵⁴ After a brief phase-in, H.B. 1 decreased each district’s tax rate to 66.67 percent of the 2005 level.¹⁵⁵ A significant hold harmless provision, Additional State Aid for Tax Reduction (ASATR), applies to this requirement, and will be discussed later in this study. (see p. 46)

The result for each district was their CTR. Figure 18 summarizes CTR levels in Texas school districts; 473 districts (46 percent) have a CTR less than \$1.00. On the other hand, 541 school districts (53 percent) received a CTR of \$1.00. These districts enrolled 60 percent of ADA in the 2013-14 school year.¹⁵⁶

For example, Red Lick ISD in Northeast Texas has the state’s lowest CTR at \$0.64.¹⁵⁷ Therefore, RLISD’s BA is

equal to \$5,140 x 0.64, or \$3,290. On the other hand, Aldine ISD in Houston has the state’s highest CTR at \$1.09.¹⁵⁸ Because AISD’s CTR is above \$1.00, the district receives no adjustment to its Basic Allotment.¹⁵⁹

The Cost of Education Index

After the CTR adjustment, the next district-level adjustment is the Cost of Education Index (CEI). The CEI is theoretically designed to adjust for “the geographic variation in known resource costs and costs of education due to factors beyond the control of the school district.”¹⁶⁰ The CEI’s intended goal is very similar to a Cost of Living Index (COLI), the goal of which is to measure the changes in the price of goods and services, depending on location, and adjust spending to compensate for these differences. Figure 19 illustrates each district’s increase to the BA due to the CEI in fall 2015.

The first attempt to produce an index was made in 1984 by a special session of 68th Legislature, which established the Price Differential Index (PDI).¹⁶¹ The PDI was later renamed the CEI, and remains in place today.¹⁶²

In practice, the CEI does not actually function as a COLI. With a COLI, a community could have a cost of living that is lower-than-average, average, or higher-than-average. However, the minimum CEI is 1.02, which means that every district gets an increase in funding through the CEI. The mathematical impossibility of all districts having a higher than average cost is a key sign that, in practice, the CEI is a politically-adjusted COLI which gives every school district increased funding. The maximum CEI is 1.20, and the average is 1.08.¹⁶³

The CEI is problematic in another way: unlike a complete COLI the CEI does not take into account all uncontrollable factors which drive the cost of labor.¹⁶⁴ The study commissioned by the 77th Legislature states candidly that distinguishing between controllable and uncontrollable costs is “up to the researcher,” and therefore “inherently subject to criticism.”¹⁶⁵ The cost-drivers decided upon by researchers when forming the CEI were student and community characteristics. Specifically, this included: labor costs compared to surrounding districts, whether the district is in a rural county, the number of low-income students, whether the district was an independent town or was rural, and how many ADA the district educated.¹⁶⁶

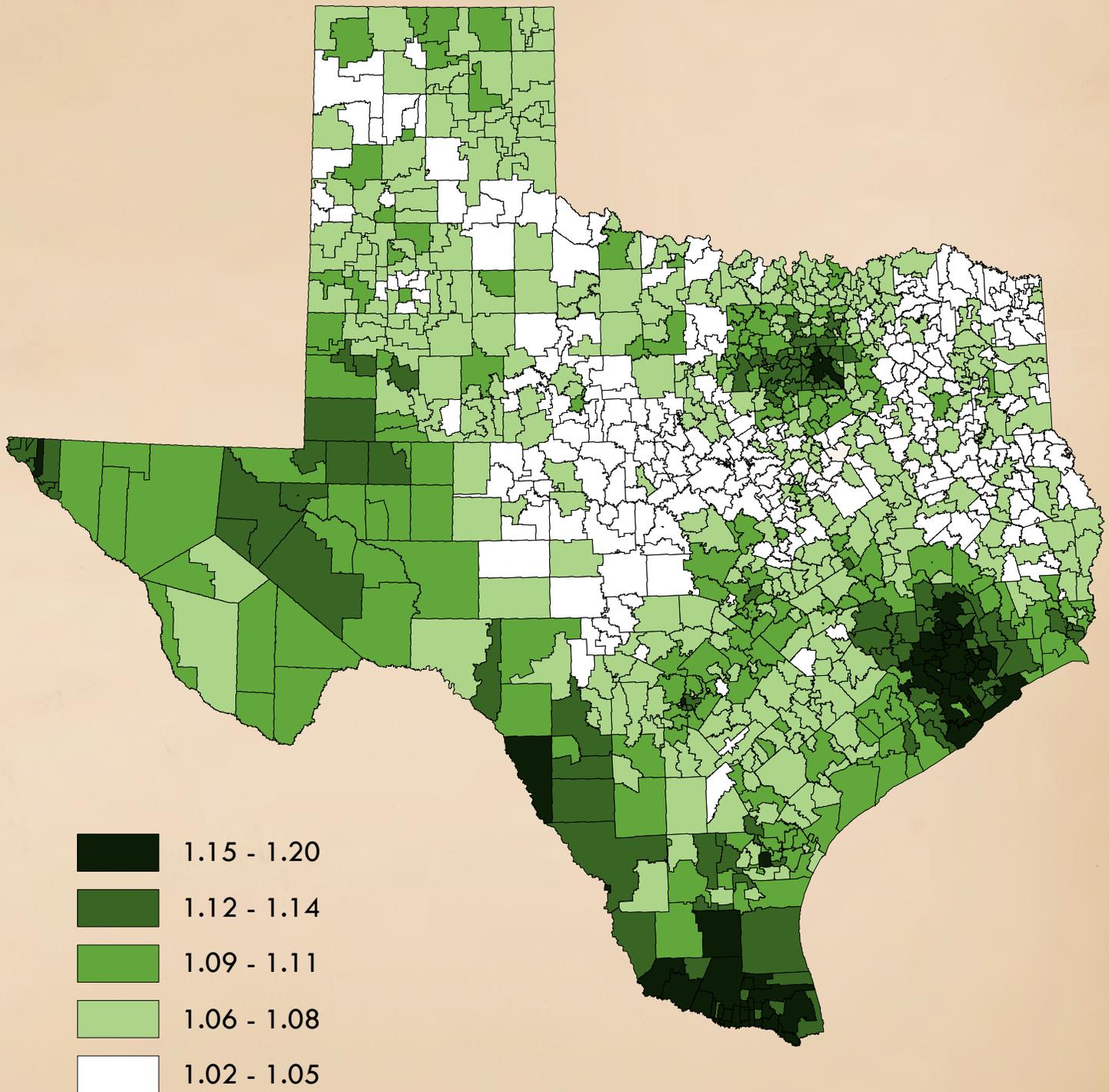
The effect of each cost-driver is based on 1989-90 LBB estimates¹⁶⁷ and has not been updated in over 25 years.¹⁶⁸

Figure 18: Number of Districts with Different CTRs

Tier 1 + Tier 2 Tax Rate	Number of Districts	Percent of Districts
\$0.64	2	0.2%
\$0.65 - \$0.69	4	0.4%
\$0.70 - \$0.74	3	0.3%
\$0.75 - \$0.79	7	0.7%
\$0.80 - \$0.84	16	1.6%
\$0.85 - \$0.89	47	4.6%
\$0.90 - \$0.94	141	13.8%
\$0.95 - \$0.99	253	24.8%
\$1.00	541	53.0%
\$1.01 - \$1.09	6	0.6%
Total	1,020	100%

Source: Texas Taxpayers and Research Association, Introduction to School Finance in Texas, 22.

Figure 19: Cost of Education Index, 2015



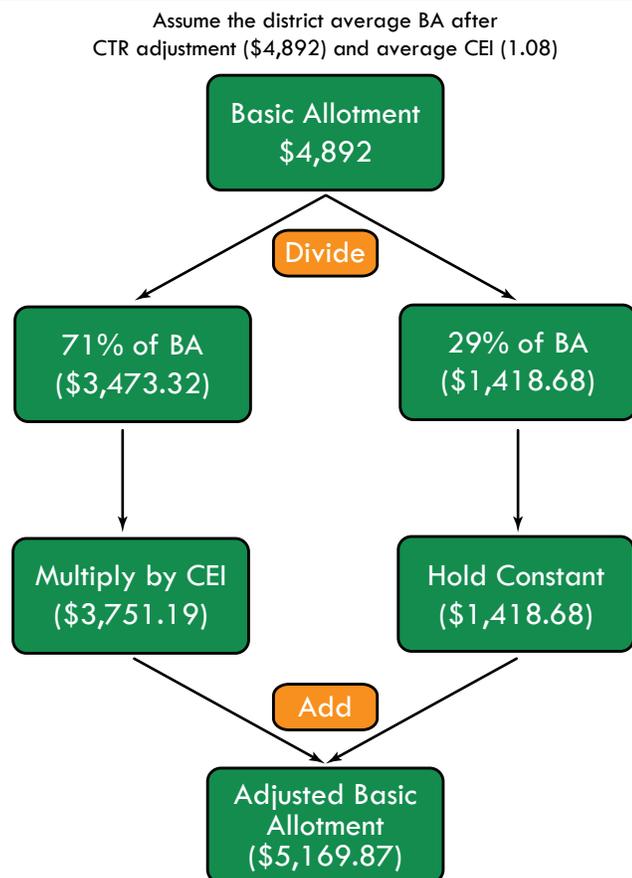
Source: Texas Education Agency, Amanda Brownson, email message to author. August 24, 2015. Data available upon request.

Currently, about \$2.36 billion in state funds is distributed annually through the CEI, though the cost-drivers bear little resemblance to what they were because of economic and demographic changes around the state.¹⁶⁹ Furthermore, since the CEI is the second adjustment to the formulas, it has a compounding effect because it affects all subsequent formula elements.

The CEI has two parts: a Price Component and a Scale Component. The Price Component theoretically compensates for geographic differences in cost; the Scale Component provides additional compensation for small districts. The Scale Component was installed into the CEI with the intent of replacing the Small-District Adjustment, which is explained below. However, the Legislature ultimately kept both.¹⁷⁰

The CEI is multiplied by 71 percent of each district's Basic Allotment (BA).¹⁷¹ Figure 20 shows an example of this process.¹⁷² The reason the CEI only applies to 71 percent

Figure 20: The CEI's Effect on a District's Allotment



Sources:
Average Basic Allotment after CTR adjustment: Texas Education Agency, Sherry Mansell, email message to author. September 29, 2015. Data available upon request.
Finding the effect of the CEI: Texas Administrative Code, Sec. 203.25

of the BA is that the CEI was designed to account for the uncontrolled factors that affected teacher salaries, not the total cost of education.¹⁷³ Labor costs for teachers were estimated to account for about 71 percent of expenditures; therefore, the CEI was applied to that part of the BA.

Adjusting the BA with the CEI results in the Adjusted Basic Allotment (ABA).

Size Adjustments

The Sparsity Adjustment

The Sparsity Adjustment functions as a minimum ADA. In other words, it serves as a floor for a district's student count; if a district has less students than the sparsity adjustment provides, the finance system still "sees" the minimum ADA. Figure 21 lists the four types of districts eligible for this adjustment.¹⁷⁴ Districts with few students can also qualify if they are more than 30 miles from the nearest district offering high school courses. As of June 2014, 71 districts had an ADA less than 130; these districts educate 0.1 percent of Texas students.¹⁷⁵

Small & Midsize District Adjustments

After the CEI modifies the BA and Sparsity Adjustment modifies student counts in very small districts, the Small and Midsize Adjustments are the next district-level step, and begin with the ABA. The Legislature has provided increased funding to rural areas for a century. A Rural Aid program was established in 1915 for schools with less than 200 students.¹⁷⁶ The program was expanded in 1929,¹⁷⁷ and again in 1937.¹⁷⁸ By the time the program was replaced in the late 1940s, it was referred to as the Equalization Aid Program, and provided funding to schools with 20 to 1,500 students. In the 1948-49 school year, the last year of this program's operation, it sent funds to 3,482 schools (72 percent) which educated 579,275 students (38 percent).¹⁷⁹

The narrow eligibility of the program led it to be supplanted by the Minimum Foundation Program established by the Gilmer-Aikin Laws.¹⁸⁰ These laws, discussed above, intended to provide a minimum level of funding for every student, regardless of district size. Nevertheless, a Small District adjustment was reestablished in 1977.¹⁸¹ The 1,600 ADA and 300 square mile requirements were put in place at that time.¹⁸² The Midsize District adjustment was established in 1995 by S.B. 1, 74th Legislature.¹⁸³

According to the TEA, the purpose of the size adjustments is to provide additional aid to small districts because their cost of educating each student is higher than in larger districts.¹⁸⁴ Figure 22 summarizes these adjustments. Currently, small districts are defined as those with less than 1,600 ADA; midsize districts are those with less than 5,000 ADA.¹⁸⁵ There are two possible Small District adjustments: one for districts with less than 300 square miles and one for districts with 300 square miles or more. In the 2013-14 school year, 860 districts (84 percent) with 938,589 ADA (20.5 percent) were eligible for these adjustments.¹⁸⁶ The map in Figure 23 illustrates the regions of Texas most benefiting from the size adjustments.

Once the ABA goes through the size adjustments, the result is the Adjusted Allotment (AA). The state average AA in the 2014-15 school year was \$6,272, or about \$1,100 above the BA. However, about 160 districts are too large to qualify for the size adjustments. In their case, the ABA automatically becomes the AA, without adjustment.

After all the district-level adjustments are applied, the AA is then multiplied by various student weights, as discussed below, to determine Tier 1 funding.

Figure 21: Possible Sparsity Adjustments

District Offers	Actual ADA	ADA Used
K - 12	90 ≤ ADA < 130	130
K - 8	50 ≤ ADA	75
K - 6	40 ≤ ADA	60
K - 4; is on state border	75 ≤ ADA < 130	130

Source: Texas Education Code, Sec. 42.103

Figure 22: Small and Midsize Adjustments

ADA	Sq. Miles	Adjustment Formula
≤ 1,600	≥ 300	$(1 + ((1,600 - ADA) \times .0004)) \times ABA$
≤ 1,600	< 300	$(1 + ((1,600 - ADA) \times .00025)) \times ABA$
< 5,000	N/A	$(1 + ((5,000 - ADA) \times .000025)) \times ABA$

Source: Texas Education Code, Sec. 42.103

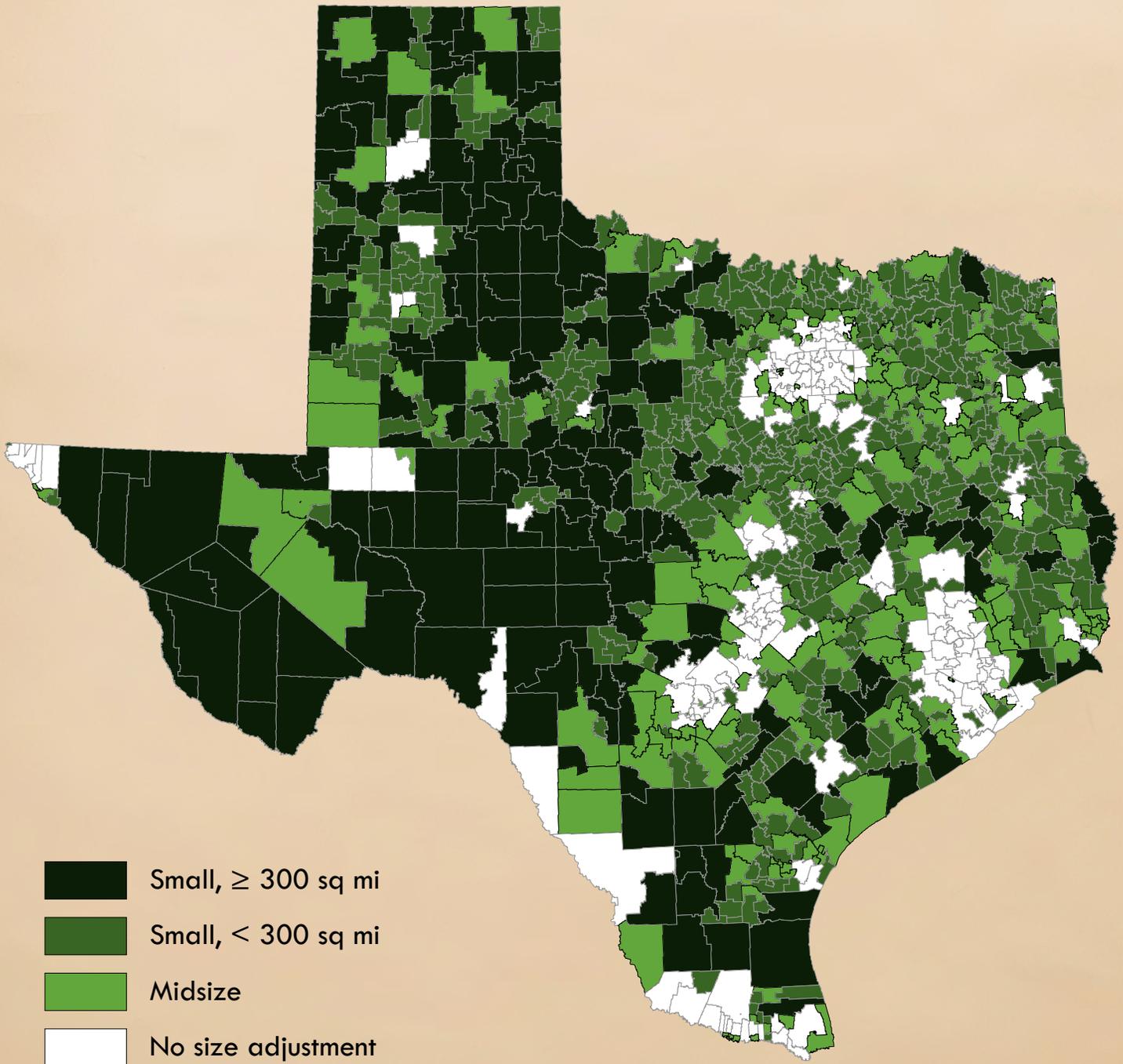
Tier 1: Student Weights and Special Programs

As with other politically driven systems, the Tier 1 formula structure has increased in complexity over time. The first layer of the FSP funding structure is Tier 1. Today Tier 1 is designed to provide every district with basic funding per student on an equalized basis. To speak technically, each district receives the same number of dollars per penny of tax effort, per weighted student in attendance. While “pennies of tax effort” has been explained above (see p. 17), we have not yet seen what student weights are. The key to understanding weights is to see that Texas students are—by law—funded unequally. This is due to the fact that student weights guarantee more funding to some students than others. For example, some Special Education students are valued at 500 percent for funding purposes and therefore receive a weight of five. Another example is Compensatory Education: 3.2 million Texas students, which are 68 percent of total ADA, are classified as Compensatory Education and therefore receive an extra 20 percent, or a weight of 1.2.¹⁸⁷

As illustrated by Figure 17, Tier 1 is the largest layer in the FSP, and collects the majority of property tax revenue.¹⁸⁸ The total Tier 1 allotment was \$34.6 billion in the 2014-15 school year.¹⁸⁹ With 4,778,559 students in average attendance (ADA) statewide, the average 2014-15 Tier 1 allotment per student was \$7,240.¹⁹⁰ This supports 10 programs: the Regular Program, Compensatory Education, Bilingual Education, Gifted & Talented, Public Education Grants, Special Education, Career & Technology, the High School Allotment, the New Instructional Facilities Allotment (NIFA), and Transportation.¹⁹¹ Figure 24 summarizes the number of students counted in these programs, the total spending on each Tier 1 program, and the statewide average spending per student through Tier 1.

Financing for Tier 1 is a shared responsibility between state and local taxpayers. The greater the property wealth of a local district, the greater the amount of money will be raised locally, and the lower the amount of state aid.¹⁹² Those who have more wealth than allowed by law must redistribute the excess revenue to the state or to poor districts. This principle is illustrated in Figure 17: as you move from left to right along the horizontal axis, the state share decreases while the local share grows.¹⁹³

Figure 23: Small and Mid-Size Districts, based on 2013 - 2014 ADA



Sources:

For square miles: Texas Education Agency, *Approximate School District Areas*. <http://bit.ly/1QIPvCb>

For ADA: Texas Taxpayers and Research Association, *An Introduction to School Finance in Texas*. 37-54. <http://bit.ly/1OFT0hr>

Figure 24: Tier 1 Student Counts and Allotments, 2014 - 2015 School Year

Student Program	Student Count ⁽¹⁾	Statewide Allotment	Allotment per Student
Regular Program (Tier 1 starting point)	4,494,182	\$ 25,024,854,689	\$ 5,568.28
Programs which add to the Regular Program Allotment			
Compensatory Education	3,229,212	\$ 3,607,394,886	\$ 1,117.11
Pregnant Students	1,033	\$ 13,901,427	\$ 13,459.19
Bilingual Education	818,705	\$ 455,268,040	\$ 556.08
Gifted & Talented	230,563	\$ 153,305,287	\$ 664.92
Public Education Grants	2,736	\$ 1,632,167	\$ 596.64
High School	1,344,300	\$ 369,682,448	\$ 275.00
Stand-Alone Programs, which are not added to the Regular Program Allotment			
Special Education			
Mainstream	114,446	\$ 698,590,904	\$ 6,104.11
Resource Room	68,969	\$ 1,145,890,874	\$ 16,614.64
Self-Contained, Mild, Moderate, Severe: Regular Campus	33,726	\$ 556,651,511	\$ 16,505.32
Speech Therapy	7,132	\$ 197,149,488	\$ 27,641.12
Vocational Adjustment Class	1,374	\$ 17,577,609	\$ 12,796.02
State-Operated School	6	\$ 104,956	\$ 17,396.93
Off Home Campus	1,832	\$ 28,442,567	\$ 15,521.52
Nonpublic Contract	171	\$ 1,599,040	\$ 9,364.91
Hospital Class	160	\$ 2,619,136	\$ 16,377.07
Residential Care & Treatment	1,887	\$ 42,667,080	\$ 22,611.61
Homebound	264	\$ 7,313,090	\$ 27,661.49
Career & Technology	246,000	\$ 1,853,001,843	\$ 7,532.53
Advanced Career & Technology	44,652	\$ 2,232,648	\$ 50.00

Notes:

(1) Student counts differ based upon the type of program they are enrolled in. For more information, see Figure 29.

Sources: Texas Education Agency, 2014-15 Statewide Summary of Finances. Run ID: 16466. <http://bit.ly/1GFXjel>; Special Education data was aggregated from 2014-15 district-level Summary of Finance reports, and is available upon request.

Regular Program

The largest part of Tier 1 funding is the Regular Program, which generated \$25 billion in the 2014-15 school year to support 4.5 million students in ADA.¹⁹⁴ This program serves all students who are not enrolled in the Special Education or Career & Technology programs, discussed below. Figure 24 shows that average Tier 1 spending on Regular Program students was \$5,568 per ADA. This is a basic level of funding for each student before student weights are added.

Before moving on, it is important to note that students who are in multiple programs receive multiple weights.¹⁹⁵ It also helps to see that Tier 1 programs can be distinguished by whether they add an allotment on top of the Regular Program allotment or stand-alone in lieu of the Regular Program. Add-on Tier 1 programs are listed near the top of Figure 24; stand-alone programs are listed below these.

Figure 29, located at the end of this section, summarizes each student weight, how it affects the allotment, and where it is established in the Texas Education Code.

Programs Adding to the Regular Program

Compensatory Education Weight

Compensatory Education (Comp Ed) is a program that intends to serve students who are at risk of dropping out.¹⁹⁶ It provides a weight of 0.2, thereby adding 20 percent to the Regular Program allotment; the adjustment for a Comp Ed student adds \$1,117 to the Regular Program allotment, as shown in Figure 24. Comp Ed eligibility includes students who are in the Free and Reduced Price Lunch Program; eligibility for that program depends on household income.¹⁹⁷ Therefore, income is used as a proxy for students at risk of dropping out. As such, it is possible for even high-achieving students to be counted and funded in the Comp Ed program.

Pregnant students are included in this program count, though they receive a much larger weight of 2.41, as Figure 24 shows. On average, \$13,459 is added to the Regular Program allotment, for a total of \$19,027 per pregnant student.

Bilingual Education Weight

The Bilingual Education program funds all students who attend a special language program.¹⁹⁸ Schools receive an additional weight of 0.1 for each bilingual ADA. This program was created to serve students whose primary language is not English and who is not performing his or her classwork in English.¹⁹⁹ The stated goal is to teach these students to master basic English language skills to integrate into the regular school curriculum.²⁰⁰ Bilingual ADA in the 2014-15 school year was 818,705; the total state allotment was \$455 million.²⁰¹ This program added an average of \$556 to these students' Regular Program allotment, as Figure 24 summarizes. The average total is \$6,124 per student, if this is the only weight assigned.

Gifted and Talented Weight

The Gifted and Talented (GT) program adds an additional weight of 0.12 to students who show a remarkably high capacity for artistic or intellectual development, or possess an unusual capacity for leadership.²⁰² The program includes curricula such as that taught through International Baccalaureate and Advanced Placement courses.²⁰³ The state limits GT funds at 5 percent of total school district ADA.²⁰⁴ The assumption underlying this rule is that truly gifted students will not make up more than 5 percent of the total student population. The Legislature installed a cap to prevent a district from applying for GT funding for all its students. In practice, most districts max out this cap: 4.8

percent of all Texas students were placed in this program in the 2014-15 school year.²⁰⁵ GT ADA in the 2014-15 school year was 230,540; the total state allotment was \$153 million. This program adds \$665 to the Regular Program allotment, for an average total of \$6,233 per student, as shown in Figure 24.

High School Allotment

The High School Allotment is disbursed for each high school student.²⁰⁶ Its intended purpose is to offset the increased cost of high school, decrease the dropout rate, and increase college enrollment.²⁰⁷ It thereby overlaps with the Comp Ed and CT programs. Unlike many other Tier 1 programs, this program does not have a weight that serves as a multiplier. Rather, it provides a sum certain allotment per high school student equal to \$275. The number of high school students in the 2014-15 school year was 1,344,299; therefore the total state allotment was about \$370 million, shown in Figure 24. This funding is added on top of the Regular Program allotment.

Stand-Alone Programs

Special Education Weights

The Special Education program is for students with disabilities from ages three to twenty-one.²⁰⁸ Eligible students are those with: physical disability, mental retardation, emotional disturbance, learning disability, autism, speech disability, or traumatic brain injury.²⁰⁹ Although the first listed purpose of the program is to comply with federal law, the central stated purpose is to meet each disabled student's educational needs through the least restrictive environment possible, with the aim of integrating them into the regular school curriculum as much as possible.²¹⁰ These students can be placed into 11 different instructional settings, and a different weight is applied for each location.²¹¹ Figure 25 summarizes each instructional setting.

A special committee decides where to place a student.²¹² It must make individualized decisions; for example, it cannot decide that all students with cerebral palsy will be placed in a hospital instructional setting.²¹³ Each school district must establish a committee for each special education student, the members of which are: the student and his parents and teachers; a school district representative; and a representative of the agency that will pay for the student services.²¹⁴ A helpful guide to the law on this topic can be found online.²¹⁵

For each of the 11 instructional settings, Figure 24 lists special education student counts, total allotments, and

the average allotment per student.²¹⁶ Unlike the Comp Ed, Bilingual, and GT programs, funding for these 11 programs is not added on top of the Regular Program allotment. It is stand-alone funding. Also, students in these programs are not counted in the same way as other programs. Other programs use Average Daily Attendance (ADA), which measures the average number of students in classroom seats throughout the year. Special Ed counts students by Full Time Equivalents (FTE), which is defined as the number of students who receive 30 hours of instruction per week. For example, two students receiving 15 hours of instruction per week count as one FTE.²¹⁷

Career and Technology Weight

The Career and Technology (CT) program is an optional program for all Texas students.²¹⁸ Its goal is to prepare students for life after school, both as a family member and a wage earner.²¹⁹ The intent is to allow a student to earn an industry-recognized credential or allow a graduate to earn an associate or baccalaureate degree.²²⁰ While there is only

one weight for CT students, an additional \$50 is given to CT students who enroll in two or more CT classes or a class that is part of a dual credit (high school and college) program.²²¹ The CT student count in the 2014-15 school year was 246,000; the total state allotment was \$1.85 billion.²²² Therefore, average spending per student in the 2014-15 school year was \$7,541, as noted in Figure 24. This funding is not added on top of the Regular Program allotment.

New Instructional Facilities Allotment

The New Instructional Facilities Allotment (NIFA) is disbursed for any start-up operational costs associated with opening a new teaching facility.²²³ This might include furniture, computer hardware, water fountains, or any other purchases; districts and charters receiving a NIFA allotment have discretion over the use of the funds.²²⁴ However, NIFA cannot be used for construction or debt reduction, and should not be confused with the Tier 3 Instructional Facilities Allotment, which is for construction and debt reduction.²²⁵ (see p. 40-41)

Figure 25: Explanation of Special Education Instructional Arrangements

Arrangement	Location	Student Description ⁽¹⁾
Mainstream	In the regular classroom	Student can progress in general education
Vocational Adjustment Class	At a place of employment or work	Student's IEP includes transition goals
State-Operated School	In a state-supported living center	Student resides and educated in state center
Nonpublic Contract	Nonpublic school	
Speech Therapy	In the regular classroom or other setting	
Hospital Class	In a classroom, hospital, or residential care facility not operated by the school district	
Resource Room	On regular campus, but not in regular classroom	Student in self-contained setting less than half of a school day
Self-Contained, Mild, Moderate, Severe: Regular Campus	On regular campus, but not in regular classroom	Student in self-contained setting more than half of a school day
Off Home Campus	A location other than the student's home district; can be another district or a community setting	Students in a district that can't provide a free appropriate public education
Residential Care & Treatment	In a school district campus	Student in residential care facilities whose parents do not live in the school district providing educational services
Homebound	Home or hospital bedside	Students confined to home or hospital for four weeks; chronically ill students over any period of time

Notes:
 (1) Student Descriptions are included if they are contained in the Administrative Code.
 Source: Texas Admin. Code XIX:2 Ch. 89 § 63(c)

The allotment provides \$250 for each student in the first two years. However, in the second year, the allotment is only given out for the number of students over and above the first year attendance. For example, if 1,000 students attend the new school in year 1, and 1,200 students attend in year 2, then the allotment will provide \$250 for each of the 1,000 students in year 1, and \$250 for 200 students in year 2.

From 2012-2015, NIFA was not funded because of budget constraints following the national recession.²²⁶ The 2015 Legislature allotted \$47.5 million for NIFA in the 2016-17 biennia.²²⁷

Transportation Allotment

The Transportation Allotment provides funding for student transportation services.²²⁸ Transportation is provided through four programs: Regular, Special Education, Career & Technology (CT), and privately contracted bussing.²²⁹ Figure 26 helps illustrate the size of each program relative to the others. The state does not fund bussing for extracurricular events.

Students are eligible for the Regular Transportation

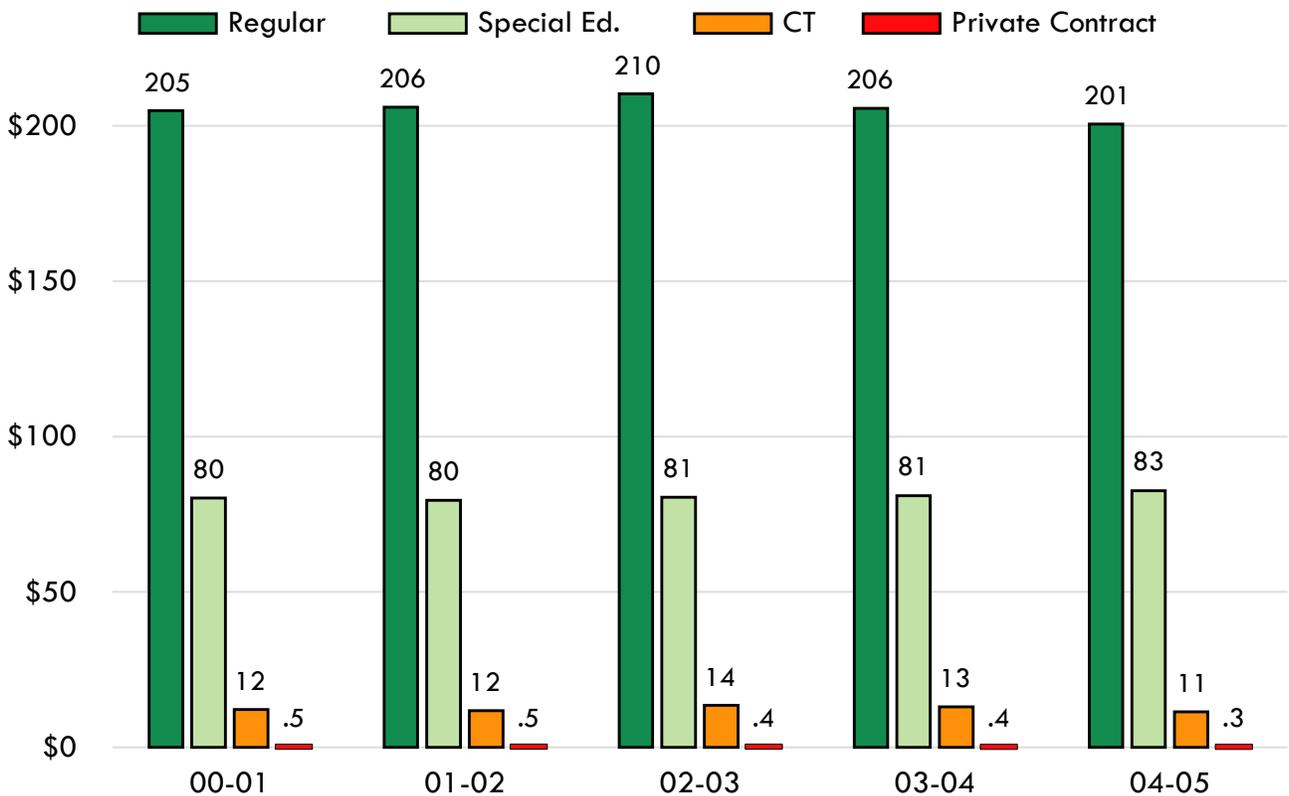
allotment if they live more than two miles from their school.²³⁰ In the 2014-15 school year, 1.24 million students used this program daily.²³¹ The state also provides a smaller fraction of funding (10 percent) for students who live less than two miles away, if the conditions between the school and a student’s home are hazardous.²³² In the 2014-15 school year, 288,763 students used this program daily.²³³

Students are eligible for Special Education transportation if they are enrolled in the Special Education program and they need the service to attend school.²³⁴ The student’s committee judges necessity.²³⁵ Average daily ridership for this program was 115,491 in the 2014-15 school year.²³⁶ See the discussion upon Special Education, above, for details about committee membership.

Students are eligible for CT transportation if they are enrolled in the CT program, described above. Unlike the Regular program, CT bussing moves students from school to school, and not from home to school.²³⁷ Average daily ridership for this program was 55,749 in the 2014-15 school year.²³⁸

Finally, privately contracted bussing is allowed only in cases of

Figure 26: Allotment for Transportation Programs, 2000 - 2005 (in millions)



Source: Legislative Budget Board, *Texas School District Transportation Services*, 3. <http://bit.ly/1TLxWhk>

extreme hardship, and only for students who live in isolated areas.²³⁹ State funding is contingent upon the Education Commissioner’s approval.²⁴⁰ On average, 340 students used this program each day during the 2014-15 school year.²⁴¹

Whereas other student counts, such as ADAs and FTEs, are basically figured out by averaging daily teacher/student face time, transportation student counts are figured out in the following way: districts must cherry pick the number of students on their busses during two trips in the year. This can be either a morning or afternoon trip, but the trips must occur in different months. The two numbers are averaged, and the average of these two days is then multiplied by the number of days in a school year (180).²⁴² The result is called the annual average, but the practical result is that the highest volume trips are treated as if they were the average volume.²⁴³

According to the Legislative Budget Board, state support for transportation is not given to districts subject to Tier 1 recapture.²⁴⁴ As Figure 17 illustrates, these districts are defined as those with an average property value of more than \$476,500 per weighted student (WADA).

For eligible districts, the state determines how much funding to provide by dividing the number of students transported by the number of miles they are transported.²⁴⁵ The result is called the district’s linear density. Rural areas will have lower density; urban areas a higher one. Districts are then assigned to one of seven density categories, listed in Figure 27. State funding per mile depends on the category into which a district falls.

Public Education Grants

The Public Education Grant (PEG) is a system of parental choice in the sense that it provides added funding to school districts that receive students who transfer from struggling

Figure 27: Transportation Allotment Rate, 2014 - 2015

Linear Density	Funding per Mile ⁽¹⁾
2.40 and above	\$1.43
1.65 to 2.40	\$1.25
1.15 to 1.65	\$1.11
0.90 to 1.15	\$0.97
0.65 to 0.90	\$0.88
0.40 to 0.65	\$0.79
Up to 0.40	\$0.68

Notes:
 (1) This rate of reimbursement is based on the cost of transportation in 1983.
 Source: Texas Education Agency, *School Transportation Allotment Handbook*, 44.

schools. The PEG offers a weight of 0.1 in addition to the allotment otherwise available to the receiving district.²⁴⁶ In 2014, 2,217 students enrolled in this program; the total allotment was \$1.3 million.²⁴⁷ Therefore, added spending per student was \$580, if this is the only weight applied.

PEG students can enroll in schools within or outside of their assigned district.²⁴⁸ Students are eligible for the program if half of the students at their school did not perform satisfactorily on standardized tests,²⁴⁹ or if their school receives a grade of D or F from the Texas Education Agency in two of the three most recent years.²⁵⁰ Based on performance from 2013-15, 1,532 schools fell into this category, up from 1,199 schools one year prior.²⁵¹ A good school grade depends on high test scores, low dropout rates, high graduation rates, high GT completion, high special endorsement rates,²⁵² high college readiness rates, and high dual credit rates.²⁵³

Figure 28 summarizes the number of students receiving PEGs each school year since the program was established. Critics of this program claim that low enrollment demonstrates that parental choice was not wanted or could not be afforded by Texas parents.²⁵⁴ However, there are currently 105,000 students on wait lists to enroll in charter schools,²⁵⁵ and satisfaction with choice schools is higher than with assigned schools,²⁵⁶ indicating that there are other reasons for low PEG enrollment. One possible reason is that students have not been able to take advantage of this program because a receiving district has legal power to reject applicants.²⁵⁷ Continued research is required to give better guidance on this issue.

Figure 29 summarizes every student weight, how it affects the allotment, and where it is established in the Texas Education Code.

Figure 28: Students Receiving a PEG, 1998 - 2014

Year	Students	Year	Students
1998	422	2007	538
1999	475	2008	529
2000	264	2009	462
2001	176	2010	467
2002	166	2011	619
2003	103	2012	852
2004	156	2013	1,744
2005	218	2014	2,217
2006	337		

Source: Texas Education Agency, Sherry Mansell, email message to author. April 9, 2015. Data available upon request.

Figure 29: Summary of Weights and Formulas for Tier 1 Programs

Student Program	Base Funding Level	Student Count	Weight	How to Find Funding	Edu. Code
Regular Program	Adjusted Allotment	Average Daily Attendance (ADA)	-	AA x Student Count	42.101
Programs which add to the Regular Program Allotment					
Compensatory Education	Adjusted Allotment	Free & Reduced Lunch Program ADA ⁽¹⁾	0.20	AA x Student Count x Weight	42.152
Pregnant Students	Adjusted Allotment	Full Time Equivalents (FTEs) ⁽²⁾	2.41	AA x Student Count x Weight	42.152
Bilingual Education	Adjusted Allotment	ADA	0.10	AA x Student Count x Weight	42.153
Gifted and Talented	Adjusted Allotment	Student enrollment ⁽³⁾	0.12	AA x Student Count x Weight	42.156
Public Education Grants	Adjusted Allotment	ADA	0.10	AA x Student Count x Weight	42.157
High School Allotment	\$275	ADA	-	\$275 x Student Count	42.160
Stand-Alone Programs (not added to the Regular Program Allotment)					
Special Education	Adjusted Allotment	FTEs ⁽²⁾	1.10	AA x Student Count x Weight	42.151(a)
Mainstream	Adjusted Allotment	FTEs ⁽²⁾	3.00	AA x Student Count x Weight	42.151(a)
Resource Room	Adjusted Allotment	FTEs ⁽²⁾	3.00	AA x Student Count x Weight	42.151(a)
Self-Contained, Mild and Moderate	Adjusted Allotment	FTEs ⁽²⁾	3.00	AA x Student Count x Weight	42.151(a)
Self-Contained, Severe	Adjusted Allotment	FTEs ⁽²⁾	3.00	AA x Student Count x Weight	42.151(a)
Speech Therapy	Adjusted Allotment	FTEs ⁽²⁾	5.00	AA x Student Count x Weight	42.151(a)
Vocational Adjustment	Adjusted Allotment	FTEs ⁽²⁾	2.30	AA x Student Count x Weight	42.151(a)
State-Operated School	Adjusted Allotment	FTEs ⁽²⁾	2.80	AA x Student Count x Weight	42.151(b)
Off Home Campus	Adjusted Allotment	FTEs ⁽²⁾	2.70	AA x Student Count x Weight	42.151(a)
Nonpublic Contract	Adjusted Allotment	FTEs ⁽²⁾	1.70	AA x Student Count x Weight	42.151(a)
Hospital Class	Adjusted Allotment	FTEs ⁽²⁾	3.00	AA x Student Count x Weight	42.151(a)
Residential Care and Treatment	Adjusted Allotment	FTEs ⁽²⁾	4.00	AA x Student Count x Weight	42.151(b)
Homebound	Adjusted Allotment	FTEs ⁽²⁾	5.00	AA x Student Count x Weight	42.151(a)
Career and Technology	Adjusted Allotment	ADA	1.35	AA x Student Count x Weight	42.154
Advanced Career and Technology	\$50	ADA	-	\$50 x Student Count	42.154
New Instructional Facilities Allotment	\$250	ADA of new students in first 2 years	-	\$250 x Student Count	42.158
Transportation	Varies by Density	Two-trip student count, multiplied by 180 ⁽⁴⁾	-	Student Count / Miles	42.155

Notes:

- (1) The method to count the number of Comp Ed students is not the same as in other Programs. For details, see Texas Education Code, Sec. 42.152(b)(1).
- (2) An FTE is defined as a student who receives 30 hours of instruction per week. For example, two students receiving 15 hours of instruction per week equal one FTE. See Texas Education Code, Sec. 42.151(f).
- (3) This refers to the number of students signed-up for the program, not those in ADA. Enrollment is subject to a cap of 5% of district enrollment.
- (4) Transportation Student Count is odd in this regard. Districts must cherry pick the number of students on their buses during two trips in the year. This can be either a morning or afternoon trip, but the trips must occur in different months. The two counts are averaged, and the average of these two days is then multiplied by 180. The result is called the annual average, but in practice, the result is that the highest volume trips are treated as if they were the average volume.

Student weights are simple in theory, but exceedingly difficult in practice. Persistent questions include: why do we have 20 weighted groups? Is each weight actually based on student needs? Is the weight used by districts when they allocate funds to each of their schools? These questions will be addressed in Section 4.



Tier 2: WADA and the Guaranteed Yield Program

Introduction to WADA

Before taking up Tier 2, it is important to understand Weighted Average Daily Attendance, or WADA. WADA is based on the theory that some students should have more funds due to their characteristics. As seen in the previous section, certain students are counted as one student in the Tier 1 programs, while others are counted as more than one, as Figure 29 summarized. These weights are a critical determinant when defining district funding in the tiers of the FSP. This occurs because WADA, not ADA, serves as the student count which is divided into a district's total property value. For an illustration of this, see Figure 17, where the x-axis measures property value per WADA. As property value per WADA increases, a district moves further to the right of Figure 17, indicating it is property wealthy. Therefore, WADA is a critical part of funding in Tiers 1 and 2. Once all the weights have been added in Tier 1 due to student characteristics, a district's funding is determined based on Weighted Average Daily Attendance, or WADA.

WADA has an added purpose in Tier 2: it is the starting point for the Tier 2 allotment. Whereas Tier 1 starts with ADA, and then applies student weights, Tier 2 begins with WADA. The two layers of Tier 2, which are about to be explained, each guarantee a set amount of money, per penny of tax effort, per WADA.

With WADA, the finance system “sees” more students than are in the classroom. For example, in the 2014-15 school year, there were 1,033 pregnant students. The weight for these students is 2.41, so the WADA for pregnant students should be equal to $1,033 \times 2.41$, or 3,522. In other words, when the finance system “sees” 1,033 pregnant students, it allots an amount of money equal to what it would spend on 3,522 regular program students. If students participate in multiple weighted programs, they receive a weight for each program.²⁵⁸ In such a system, student equity is difficult to measure or accomplish.

In theory, WADA is the sum total of a district's weighted student counts. In practice, TEA calculates WADA through the formula depicted in Figure 30. Figure 31 walks through an example of how this works in practice. According to experts, the complexity of the formula comes from two facts. First, the Tier 1 programs, including the Transportation Allotment, NIFA, and the High School Allotment, were subtracted from the Total Tier 1

allotment because it was perceived that these programs didn't generate additional student costs.²⁵⁹ Second, careful analysts will notice that the second bracket, which deals with the ABA and the BA, has the same effect as subtracting half of the CEI; it is said that this bracket was installed to align the formula with available funding.²⁶⁰

Calculating revenue or expenditures per WADA is not an accurate per student average. When calculating a per student average, total spending must be divided by ADA, not by WADA. Because of the weights, WADA artificially increases the student count. To illustrate: statewide ADA in the 2014-15 school year for districts and charters was 4,778,559; WADA was 6,448,446.²⁶¹ The difference of 1,669,524 represents a 35 percent increase over ADA. With total revenue at \$49.23 billion and expenditures at \$60.98 billion, revenue per ADA is \$10,302; expenditures per ADA are \$12,761. On the other hand, revenue per WADA is only \$7,634; expenditures per WADA are \$9,456. Since WADA does not count the actual number of students in classrooms, spending per WADA is misleading. The boost to student counts caused by WADA differs by district. Figure 32 shows the percent increase in student counts due to WADA; the majority of districts receive an increase in the range of 25 to 75 percent. Figure 33 illustrates the percent increase in student counts, by district.

Guaranteed Yield Program

Tier 2 was established in 1990.²⁶² The stated purpose of Tier 2 is to allow school districts to provide a basic educational program and to supplement or enrich that program at a higher tax rate, if it chooses to do so.²⁶³ Because it also supports a basic education program, the purpose of Tier 2 overlaps Tier 1. As Figure 34 summarizes, the state's share of Tier 2 in the 2014-15 school year was \$1.45 billion; the local share was \$1.35 billion.²⁶⁴ With 4,778,559 students in average attendance (ADA) statewide, the average 2014-15 Tier 2 allotment per student was \$585.²⁶⁵ The relative position of this Tier to the other Tiers can be seen in Figure 17, which shows that it relies upon property tax rates between \$1.00 and \$1.17. This is typical for the following reason: the statutory maximum on Tier 1 and Tier 2 tax rates is equal to \$1.17.²⁶⁶ Any rate above this is void.²⁶⁷

Tier 2 is frequently called a Guaranteed Yield Program (GYP) because it operates on the following principle: the state will add to whatever property tax revenue is raised by school districts, up to a certain level per student. Practically, the GYP acts as an incentive to increase local

Figure 30: the WADA formula

$$\left[\begin{array}{c} \text{Total} \\ \text{Tier 1} \\ \text{Allotment} \end{array} - \text{Transportation} \begin{array}{c} \text{Allotment} \\ \text{Allotment} \end{array} - \text{New} \begin{array}{c} \text{Instructional} \\ \text{Facilities} \\ \text{Allotment} \end{array} - \text{High} \begin{array}{c} \text{School} \\ \text{Allotment} \end{array} + \text{Pre-School} \begin{array}{c} \text{Allotment} \\ \text{Allotment} \end{array} \right] \left[\begin{array}{c} 1 - \left(\frac{\text{Adjusted} \\ \text{Basic} \\ \text{Allotment}}{2} - \frac{\text{Basic} \\ \text{Allotment}}{\text{Adjusted} \\ \text{Basic} \\ \text{Allotment}} \right) \end{array} \right] = \text{WADA}$$

Basic Allotment

Figure 31: An Example of How a District Finds WADA

Here’s how El Paso ISD calculated WADA in the 2014-15 school year.

Step 1. Find the total cost of Tier 1.	\$411,806,089
Step 2. Subtract the district’s:	
a. Transportation Allotment	– \$3,214,581
b. New Instructional Facilities Allotment (NIFA)	– \$0
c. High School Allotment	– \$4,712,169
Step 3. Add the Pre-K Set Aside	+ \$174,228
Step 4. This will yield the “Adjusted Tier 1.” Put this aside.	\$404,053,567
Step 5. Find the statewide Basic Allotment (BA)	\$5,040
Step 6. Find the district’s Adjusted Basic Allotment (ABA)	\$5,541
Step 7. Subtract the BA from the ABA.	= \$501
Step 8. Divide the difference by 2.	= \$250.50
Step 9. Divide the quotient by the district’s ABA.	= 0.04521
Step 10. Subtract the quotient from 1.	= 0.95479
Step 11. Multiply the difference by the “Adjusted Tier 1.”	= \$385,871,156
Step 12. Divide the product by the BA. This is the WADA.	76,545

Conclusion on ADA, WADA, and spending per student:

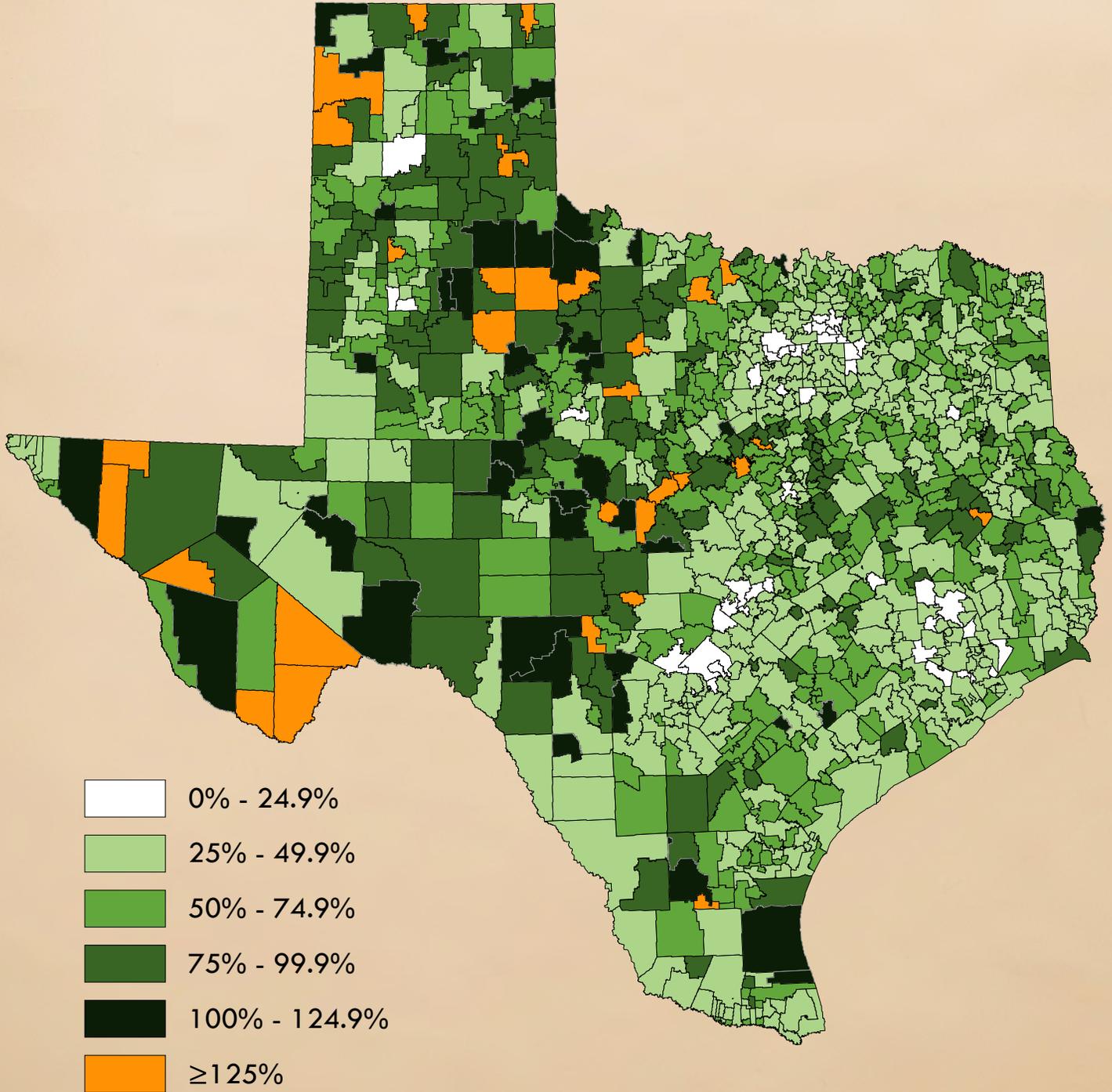
EPISD’s ADA in the 2014-15 school year was 56,188. Therefore, for funding purposes, the system “sees” 36 percent more students than are in classrooms. It is absolutely critical to note that, when calculating a per student average, total spending should not be divided by WADA. It should be divided by ADA because WADA artificially increases student counts. To illustrate: statewide ADA in the 2014-15 school year for districts and charters was 4,778,559; WADA was 6,448,446. The difference of 1,669,524 represents a 35 percent increase. Total annual revenue for that year was \$49.23 billion; total expenditures were \$60.98 billion. **Thus, revenue per ADA is \$10,302; revenue per WADA is only \$7,634. Likewise, expenditures per ADA are \$12,761; expenditures per WADA are \$9,456.**

Figure 32: Increase in ADA due to WADA, 2014

Percent Increase over ADA	0% - 24.9%	25% - 49.1%	50% - 74.9%	75% - 99.9%	100% - 124.9%	≥125%
ISDs with this Increase	48	411	334	155	47	30

Sources: For ADA: Texas Education Agency, *Region and School District ADA Report: 2004-05 through estimated 2014-15*. <http://bit.ly/18ka5Q7>; For WADA: Danette Overstreet, email message to author. December 4 2015. Data available upon request.

Figure 33: Percent Increase to ADA due to Adjustments and Weights, 2014



Sources:

For ADA: Texas Education Agency. *Region and School District ADA Report: 2004-05 through estimated 2014-15*. <http://bit.ly/18ka5Q7>
For WADA: Danette Overstreet, email message to author. December 4 2015. Data available upon request.

Figure 34: Tier 2 Allotment, 2006 - 2014
(in millions)

Year	State	Local	Total
2006	\$ 3,182	\$ 6,887	\$ 10,068
2007	\$ 3,507	\$ 5,840	\$ 9,347
2008	\$ 1,707	\$ 2,370	\$ 4,077
2009	\$ 1,913	\$ 2,779	\$ 4,692
2010	\$ 1,122	\$ 971	\$ 2,094
2011	\$ 1,186	\$ 1,005	\$ 2,190
2012	\$ 1,200	\$ 1,069	\$ 2,268
2013	\$ 1,342	\$ 1,153	\$ 2,495
2014	\$ 1,449	\$ 1,345	\$ 2,794

Source: Texas Education Agency. Danette Overstreet, email message to author. Dec. 4, 2015.

property tax rates in order to maximize state funding. In the past, Tier 2 had one, and only one, guaranteed yield: \$27.14 per penny per WADA. However, in 2006 this changed.²⁶⁸ House Bill 1, 73rd Legislature, multiplied the single yield into three yields.²⁶⁹ In 2009, House Bill 3646, 81st Legislature, collapsed this into two yields, which is the current structure.²⁷⁰ These two yields will be referred to here as Tier 2.1 and Tier 2.2.

Tier 2.1: Golden Pennies

Tier 2.1 generally refers to the first six cents above a school district's Tier 1 tax rate.²⁷¹ For example, if the Tier 1 tax rate is \$1.00, as shown in Figure 17, the Tier 2.1 rate would include \$1.01 to \$1.06. The local school board has full taxing power over the first 4 cents of this rate. The next 2 cents require voter approval.²⁷²

The state's guarantee to districts under Tier 2.1 depends upon the projected revenue collected by Austin ISD's Tier 2.1 tax rate. Most recently, when AISD levied this tax, it collected an estimated \$61.86 per penny per WADA.²⁷³ By statute, the state then guarantees the Austin yield—\$61.86 per penny per weighted student—to every Texas school district.²⁷⁴

Why does every school district in the state depend on AISD for this part of state funding? It is likely that AISD was chosen because it was equal to the 95th percentile of wealth.²⁷⁵ By tying the Tier 2.1 guaranteed yield for every district to one of the wealthiest districts, state law aims at equality among districts. This equality is accomplished by giving all districts the revenue they *would* have if they

were in the 95th percentile of property wealth. Nevertheless, recapture does not apply to Tier 2.1.

Tier 2.2 Copper Pennies

Tier 2.2 is defined in a simpler way. State law defines this guaranteed yield as \$31.95 per penny per weighted student (WADA).²⁷⁶ This guarantee applies to any remaining cents of tax effort between the other M&O rates and \$1.17. Voters have full power to levy and change this rate; it can only be changed through a referendum. Tier 2.2 is subject to recapture for districts that have a property wealth per weighted student greater than \$319,500.²⁷⁷

Because the Tier 2.2 state contribution is lower than the one under Tier 2.1, and because it is subject to recapture, this tax rate has been referred to as copper pennies, while the rate under Tier 2.1 has been called golden pennies.

Tier 3: Instructional Facilities and Existing Debt Allotments

Tier 3 provides funding for facilities and debt service costs related to those facilities.²⁷⁸ Under authority granted by the state,²⁷⁹ school districts usually fund the construction, acquisition, renovation, and improvement of their facilities by selling bonds. Bonds also pay for the purchase of new school busses and other items with a useful life of more than 1 year.²⁸⁰ Voters have full power over the approval of new debt.²⁸¹ As of 2014, school districts were the leading issuer of local debt, above cities, water districts, other special districts, counties, community and junior colleges, and hospital districts.²⁸²

Tier 3 property tax revenue pays for debt service. This range of taxing authority is commonly called the Interest & Sinking (I&S) tax rate. In the late 1990s, the state established two programs to help districts repay bonds: the Instructional Facilities Allotment (IFA) and the Existing Debt Allotment (EDA). In the early and mid-1990s, the state provided facilities funding through Tier 2.²⁸³ Earlier state support, although it was indirect, began in 1983, when the Permanent School Fund began to guarantee public school district debt.²⁸⁴ (see p. 9) Before that time, the state seems to have served only as a fact-finder of facilities information.²⁸⁵

Figure 17 illustrates Tier 3's relation to Tier 1 and 2. The IFA and EDA both provide the same guarantee: \$35 per penny of tax effort per student in attendance.²⁸⁶ This is different from Tier 2, which guarantees a certain amount per *weighted* student. Therefore, state funds for facilities will phase out sooner than Figure 17 indicates.

Certain rules apply to both programs. For example, the state defines a maximum tax effort that it will supplement,²⁸⁷ recapture does not apply here,²⁸⁸ and outstanding bonds must be repaid within 40 years after they are issued.²⁸⁹

Figure 35 illustrates total school district debt service from 1992 to 2014.²⁹⁰ Total debt in 1992 was \$9.8 billion; by 2014 it was \$68.4 billion in real 1992 dollars, a six-fold increase.²⁹¹

In the 2014-15 school year, IFA state allotments were \$240 million; EDA state allotments were \$314 million. When added to the 2014-15 school district I&S levy of \$5.3 billion, Tier 3 expenditures total \$5.9 billion. *However, this does not count debt service or capital outlay expenditures for which districts saved up over time.* Exactly 853 school districts have outstanding Tier 3 debt.²⁹² With 4,778,559 students in average attendance (ADA) statewide, the average 2014-15 Tier 3 allotment per student was \$1,234.²⁹³

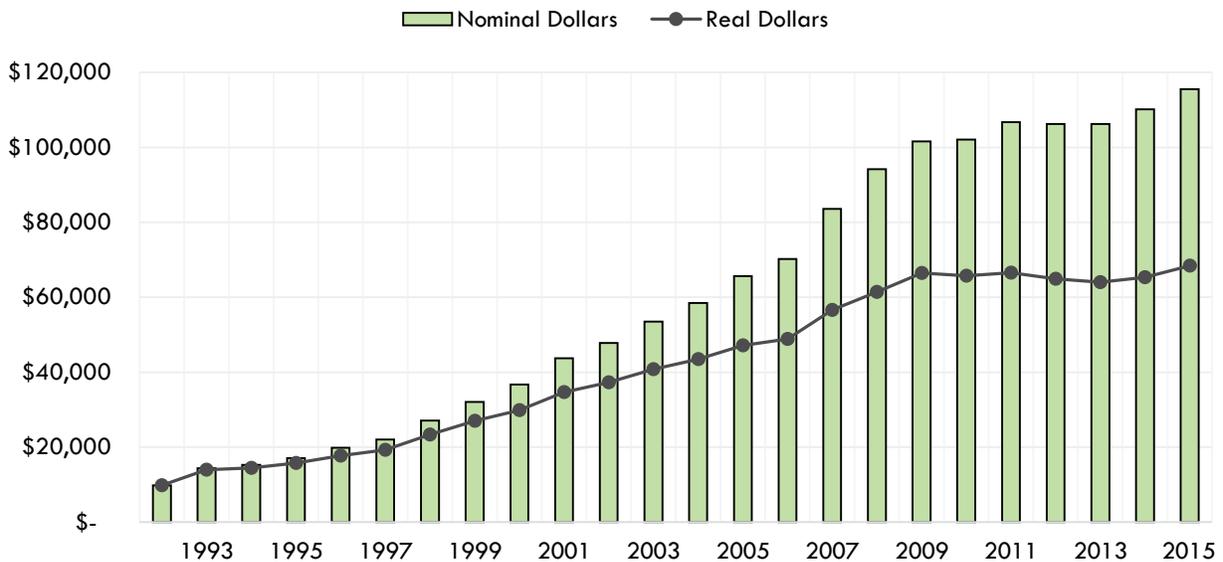
The Instructional Facilities Allotment (IFA) was created by H.B. 1 during the 75th Legislature in 1997.²⁹⁴ The purpose of the program is to provide state support for buildings that will be primarily used for teaching.²⁹⁵ While local school boards and voters have full power to approve bonds, eligibility for state funds is determined through an application process to the TEA.²⁹⁶ Highest priority is given to districts that have less outstanding debt and lower property values.²⁹⁷ Districts that are approved for support will receive IFA aid until the full repayment of the debt.²⁹⁸ The state guarantees \$35 per

penny of tax effort per student in attendance, and defines a minimum amount of aid it will provide.²⁹⁹ Over the life of each bond, the minimum state guarantee is the greater of \$100,000 or \$250 per ADA. In addition, the state explicitly allows districts to levy a tax above and beyond what the state will supplement through the IFA.³⁰⁰ This is different from maintenance and operations tax rates (Tier 1 plus Tier 2), and EDA tax rates, for which the state has established a maximum rate that districts are allowed to levy.³⁰¹

The Existing Debt Allotment (EDA) was created by S.B. 4 during the 76th Legislature in 1999.³⁰² The purpose of the program is to provide state support for instructional or non-instructional buildings.³⁰³ However, a district cannot receive IFA and EDA aid for the same debt.³⁰⁴ The bonds approved by local school boards and voters are automatically eligible for state funds if, in the previous biennium, the district made a payment on the debt or levied taxes to repay the debt.³⁰⁵ The state guarantee only applies to 29 cents of tax effort.³⁰⁶ Districts may tax above this level, but receive no state revenue.

Total school district debt service in 1992 was \$9.8 billion. By 2015, it was \$155.5 billion. After adjusting for inflation, this is a six-fold increase.

Figure 35: School District Total Debt Service, 1992 - 2015 (in millions)



Notes:
 Real dollar amounts have been adjusted for inflation in 1992 dollars.
 Source: Texas Bond Review Board, *Local Publications, FY 2000-2015 ISD GO & Rev Debt Outstanding*, (accessed January 27 2016). Data for FY 1992-1999 was obtained through a public information request: Bond Review Board. Justin Groll, email message to author. November 6 2015. Data available upon request.

Special Grants and Funding Outside the FSP

There are over a dozen set-aside programs that exist outside the FSP finance structure discussed above. Most are described by the Legislative Budget Board's *Fiscal Size-Up: 2014-15 Biennium*.³⁰⁷ To not duplicate the LBB's efforts, Figure 36 summarizes their work. The only grants and non-FSP funding that will be discussed in more detail here includes: the Instructional Material Allotment, online education, Regional Education Service Centers, and Additional State Aid for Tax Reduction. The 1990s hold-harmless provisions relating to Recapture, which also are technically funding outside the FSP, were discussed above. (see p. 18)

Available School Fund (ASF) and the Instructional Material Allotment (IMA)

The ASF was introduced in Section 2, where it was defined as the conduit through which funds flow from the Permanent School Fund to schools. (see p. 8)

The ASF first disburses its funds to the Instructional Materials Allotment (IMA), previously known as the State Textbook Fund and the Technology Allotment. These were reformed in 2011 by Senate Bill 6, 82nd Legislature.³⁰⁸ The result was the IMA, which can be used to purchase paper,

Figure 37: ASF Expenditures, 2008 - 2015
(in millions)

Fiscal Year	IMA	Technology Allotment	Total Expenditure
2008	\$269	\$34	\$1,171
2009	\$205	\$130	\$1,094
2010	\$198	\$133	\$516
2011	\$273	\$134	\$1,445
2012	\$599	\$0	\$1,118
2013	\$10	\$0	\$2,174
2014	\$419	\$0	\$1,350
2015	\$419	\$0	\$1,242

Source: Legislative Budget Board, *Fiscal Size Up 2014, 242*. <http://bit.ly/1vqBN8W>

books, hardware, software, educator training, salaries of tech-support staff, and the administrative costs associated with these tasks.³⁰⁹

By state law, at least half of the money sent from the PSF to the ASF must be used for the IMA.³¹⁰ In practice, an average of 20 percent of PSF funds have been expended on the IMA since 2008, as Figure 37 summarizes.³¹¹ In FY 2015, IMA appropriations totaled \$419.3 million.³¹² This funding, which is given to school districts and charter schools, is distributed based on average daily attendance (ADA).³¹³ Remaining funds are distributed to schools on a per student basis, and are distributed to districts that are subject to Tier 1 recapture.³¹⁴

However, before 1984, the ASF served a far greater role in school finance: it was the primary conduit through which money flowed from the state to schools. In part, this was because all taxes dedicated to education, such as those listed in Figure 7, were sent through the ASF. After a 2nd special session, House Bill 72, 68th Legislature, diverted almost all that tax revenue away from the ASF and to the Foundation School Fund (FSF). The cause for this shift was that the ASF is constitutionally required to distribute money on a per student basis, whereas the FSF distributes money based on weighted funding formulas. However, two taxes remained dedicated to the ASF: the Diesel Fuel Tax and the Gas Tax.³¹⁵ The ASF was saved from elimination because it is constitutionally established. Reformers had enough legislative votes to reform statute, they lacked the legislative and popular votes to reform the constitution.³¹⁶

Online Education

Three programs receive funding to provide online education in Texas: the Student Success Initiative (SSI), Project Share, and the Virtual Schools Network (VSN); their respective allotments are illustrated in Figure 38.³¹⁷

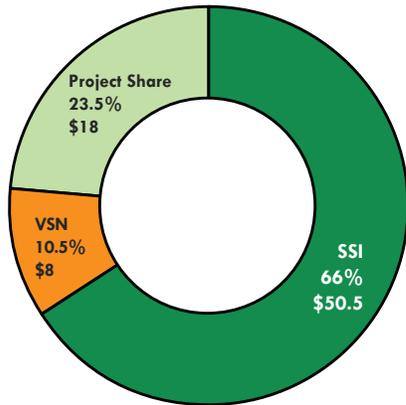
The SSI was established by Senate Bill 4, 76th Legislature, in conjunction with a prohibition upon social promotion.³¹⁸ SSI's purpose is to provide remedial education to students who are at risk of not being promoted to the next grade.³¹⁹ As such, its purpose is identical to the Tier 1 Compensatory Education weight.³²⁰ The method of instruction is not specified in state law. Only general guidance, such as allowing for accelerated instruction to occur beyond the normal school day and year, is provided.³²¹ In the past, the TEA used these funds to provide grants to districts, but transformed the SSI primarily into an online instruction program in the

Figure 36: Summary of Grants and Special Allotments Outside the FSP, 2014 - 2015 Biennium

Program	Purpose	Program with similar purpose	Allotment	Money given through	Relevant Law
Agency Administration	Fund the Texas Education Agency	N/A	\$270.4 million	General Revenue,	
District Awards for Teacher Excellence	Teacher pay program	N/A	\$32 million	TEA Rider 47	Education Code Ch. 21, SubCh O
Instructional Materials Allotment (IMA)	Purchase books, software, etc.		\$838.7 million	Available School Fund	Education Code Ch. 31, SubCh B
Pre-K Grants					
Option 1	Support Pre-Kindergarten programs	Support in Rider 48	\$30 million	General Revenue, TEA Rider 66	Education Code Ch. 29, SubCh E
Option 2	Support Pre-Kindergarten programs	Support in Rider 66	\$7 million	General Revenue, TEA Rider 48	Education Code Ch. 29, SubCh E
Project Share	Teacher and student online learning		\$18 million	General Revenue, TEA Rider 68	
Regional Education Service Centers	Varies. Includes administration, professional development, technical assistance		\$25 million	General Revenue, TEA Rider 38	Education Code Ch. 8, SubCh B
Standardized Testing	Assess the knowledge of students		\$171.2 million	General Revenue, TEA strategy B.1.1	Education Code Ch. 39, SubCh B
Student Success Initiative (SSI)	Provide remedial instruction for students who fail standardized test		\$50.5 million	General Revenue, Rider 50	Education Code Ch. 28, SubCh B
Student Programs					
Communities in Schools	Improve attendance, achievement, and behavior of at-risk students	Tier 1 Compensatory Education Weight	\$38.6 million	General Revenue, TEA Rider 24	Education Code Ch. 33, SubCh E
Early College HS and Texas STEM	Support dual high school and college programs	Tier 1 Career and Technology Weight	\$6 million	General Revenue, TEA Rider 57	
Online College and Career Preparation Technical Assistance	Support college and career preparation	Tier 1 Career and Technology Weight	\$1 million	General Revenue, TEA Rider 56	
Texas Academic Innovation and Mentoring	Support Boys and Girls Club	Tier 1 Compensatory Education Weight	\$3 million	General Revenue, TEA Rider 59	
Texas Advanced Placement Initiative	Pay for student exam fees and teacher training		\$16.3 million	General Revenue, TEA Rider 54	Education Code Ch. 28, SubCh C
Teacher Retirement System (TRS)	Provide retirement plan for school employees		\$3.7 billion	General Revenue, TRS Riders 1-17	Constitution, Art. 16 Sec. 67(b)
TRS Care	Provide health insurance to retirees not eligible for other state plans	N/A	\$495.1 million		Insurance Code Ch. 1575, SubCh A
TRS ActiveCare	Provide health insurance to employees not eligible for other state plans	N/A	\$2.4 million		Insurance Code Ch. 1579, SubCh A
Texas Student Data System	Collect student data; distribute to teachers		\$15.1 million	General Revenue, TEA Rider 2	
Windham School District	Educate adult inmates in correctional system		\$103 million	General Revenue, TEA Rider 6	Education Code Ch. 19
Total			\$ 5,808,300,000		

Sources: Programs, purposes, and allotments can be found in: Legislative Budget Board, Fiscal Size-Up 2014-15 Biennium, 237-240.

Figure 38: Funding for Online Education, 2014 - 2015 (in millions)



Source: Legislative Budget Board, *Educational Technology Initiatives at the Texas Education Agency*.

2012-13 biennium, when funding for SSI was reduced from \$276.6 million to \$36.5 million.³²² At that time, the TEA began to use these funds to purchase statewide licenses for online programs providing instruction in reading, math, and writing.³²³ In the 2016-17 biennium, the SSI was allotted \$31.7 million; there are more than two million student accounts for the SSI's reading and math programs.³²⁴

Project Share is an online platform, maintained by the TEA, which provides educational content to teachers and parents. The content is intended to supplement a student's instruction in English, math, science, and social studies.³²⁵ In addition, the platform provides online professional development to teachers seeking to renew their certification. The program was established in FY 2009, and was allotted \$18 million for the 2016-17 biennium.³²⁶

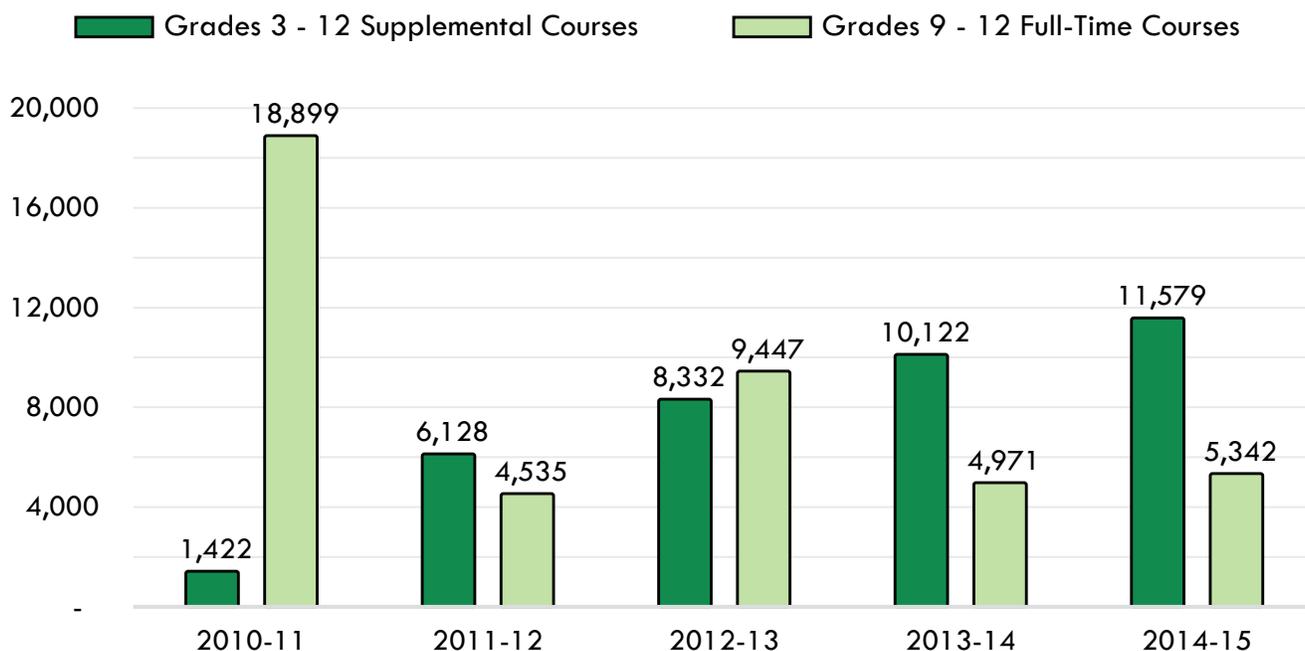
According to the LBB, national demand for online education serving students has dramatically increased.³²⁷ In 2007, the Texas Legislature attempted to meet this demand by establishing the Virtual Schools Network (VSN) through Senate Bill 1788, 80th Legislature.³²⁸ The TEA administers the VSN; Region 10's Education Service Center maintains the day-to-day operations.³²⁹ There are two branches of the VSN: the first offers supplemental online courses for students in 9th through 12th grades; the second offers full-time enrollment to students in the 3rd through 12th grades.³³⁰ Very strict guidelines govern student enrollment, provider eligibility, and student allotments for both supplemental classes and full-time online schools (OLS). Figure 39 illustrates VSN average daily attendance.

Public school students are eligible to enroll in the VSN if they were enrolled the previous school year in a public school, were placed in foster care, or have a parent in the military.³³¹ Non-public school students may enroll in the VSN, but cannot enroll in more than two courses each semester, and do not receive FSP funding.³³² High school students who enroll in courses to supplement their district or charter school instruction cannot enroll in more than three online classes.³³³ Statute allows school districts and charter schools to deny a parent's request to enroll their child in the VSN for three reasons: the course is inconsistent with the student's graduation plan, college admission requirements, or industry certification requirements; the parent's request is not made within the district's or charter's established enrollment time line; the district or charter offers a similar course.³³⁴

Several types of organizations can provide supplemental courses: school districts, charter schools, universities, regional education service centers, or non-profit organizations. A full-time OLS can only be operated by districts or charter schools, and state law prohibits the funding of a full-time school if the school was not operating prior to January 1, 2013.³³⁵ The result is that only six full-time online schools serve VSN students.

Student allotments are only given to the providers if students successfully complete the course and demonstrate the proficiency required for promotion to the next grade level.³³⁶ Although no other student allotment functions in this manner, the VSN program director has noted, "This 'no pass, no pay' approach gives an incentive to both the providing and the receiving districts to work together to ensure that each student succeeds."³³⁷ Students in the VSN are funded at the same level as other public school students.³³⁸ However, they are counted differently: OLS students in the 3rd through 8th grade receive an allotment if they advance to the next grade; OLS students in high school count as half an ADA if they complete three or more courses, and as one ADA if they complete 5 or more courses. Public school students taking a supplemental course are counted as half an ADA if they complete three or more courses.³³⁹ In addition, VSN students can be counted in other Tier 1 programs, and their district or charter school would receive weighted funding for that student.³⁴⁰

Figure 39: Average Daily Attendance in Texas Virtual School Network



Source: Texas Education Agency. *TxVSN Enrollments by Semester, Summer 2010 - Fall 2016*. <http://bit.ly/216bYES>; Texas Education Agency. *PEIMS Standard Enrollment Reports, 2010 - 2015*. <http://bit.ly/24xHZdy>

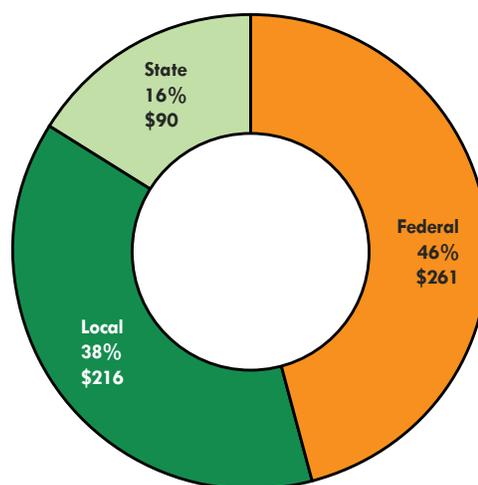
Regional Education Service Centers

Twenty Regional Education Service Centers (RESCs) were established to provide services to school districts in order to improve student performance and increase district efficiency.³⁴¹ An RESC's effectiveness is measured against standards adopted by the commissioner of education.³⁴² To achieve their mandate, RESCs sell districts professional development training, as well as provide employees to fill the roles of librarians, counselors, nurses, IT, lawyers, and auditors.³⁴³ RESCs also sell software, instructional materials, printing, and internet filtering services. In addition, certain RESCs specialize in specific topics: for example, Region 18's ESC maintains information on special education, while Region 10's ESC maintains the day-to-day operations of the Virtual School Network.

A summary of RESC services, staff counts, and expenditures is published by the TEA prior to each legislative session.³⁴⁴ In the most recent report, the TEA concluded that RESCs were budgeted \$567 million in fiscal year 2012-13, and employed 4,598 FTEs.³⁴⁵ Figure 40 shows that about 46 percent of this revenue came from the federal government; 38 percent was from school districts; 16 percent was from the

state. Federal funds are primarily dedicated to the Head Start Program.³⁴⁶ State funds are taken from the money allotted to the TEA for the Foundation School Program.³⁴⁷

Figure 40: RESC Revenue by Source, 2012 - 2013 (in millions)



Source: Texas Education Agency. *Regional and District Level Report: 84th Texas Legislature*, (accessed February 25 2016), 38.

Additional State Aid for Tax Reduction (ASATR)

At the end of 2005, the Texas Supreme Court declared the Texas school property tax system unconstitutional in its West Orange Cove II ruling. The Court wrote:

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.... 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. Pouring more money into the system may forestall those challenges, but only for a time. They will repeat until the system is overhauled.³⁴⁸

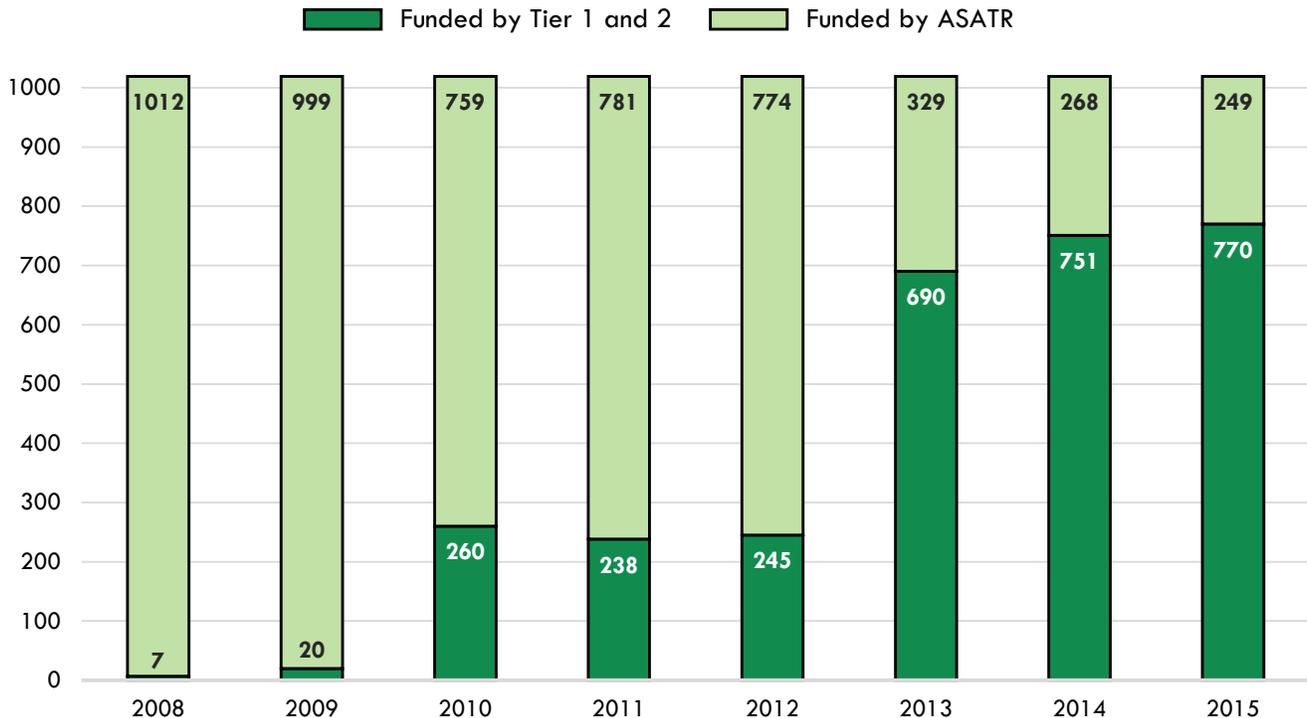
The legislature’s response to this ruling affected the way the state both collects and disburses revenue. The effect on collections was discussed above (see p. 11), where it was noted that legislators tried to draw less from local property taxes and more from the Franchise or Margins Tax. All revenue collected as a result of these reforms is statutorily

distributed to the Property Tax Relief Fund (PTRF). As its name indicates, this fund is used to offset school district revenue lost through the property tax decrease that became effective in 2008.³⁴⁹ Furthermore, the Legislature’s reaction to the Texas Supreme Court had a substantial effect upon non-FSP disbursements.

That effect came in the third called session of the 79th Legislature, when lawmakers reduced property tax rates across Texas. At the time, the maximum tax rate allowed for Tier 1 and Tier 2 was \$1.50.³⁵⁰ The majority of districts (67 percent) with the vast majority of students (80 percent) taxed near this rate.³⁵¹ The districts, whose power derives from the state,³⁵² were required by H.B. 1 and 2 to decrease their tax rates. The state did this by establishing the Compressed Tax Rate (CTR). The CTR was set by decreasing each district’s tax rate by 33.33 percent.³⁵³ The practical effect was that the majority of school districts lowered their tax rate to \$1.00. Figure 18 (see p. 25) summarized CTR levels in each school district. Note that 53 percent of districts, which enrolled 60 percent of ADA in the 2013-14 school year, have a CTR of \$1.00.³⁵⁴

Though the state sought tax cuts, it also sought to not decrease school spending within individual districts.³⁵⁵

Figure 41: ASATR-Funded Districts, 2008 - 2015



Source: Legislative Budget Board. *Fiscal Size Up: 2014-15 Biennium*, 235.

Therefore, the state established a funding system outside the FSP's tiered finance structure.³⁵⁶ The new hold-harmless structure guaranteed the same amount of money (per weighted student) to districts as they had received in the 2005-06 school year, before the tax cut.³⁵⁷ This pre-cut amount is called Target Revenue. If the tax rate cut resulted in spending below the Target Revenue, a district could opt out of Tier 1 and 2, and into the hold-harmless system.³⁵⁸ If the district did so, the state sent them additional revenue: Additional State Aid for Tax Reduction (ASATR). In 2015, 249 school districts (24 percent) received hold-harmless ASATR funding, as Figure 41 illustrates.

A decreasing number of districts are eligible for ASATR, for two reasons: first, legislators have decreased Target Revenue by about 8 percentage points; second, legislators have increased Tier 1 and 2 funding.³⁵⁹ The Legislature has indicated that it will continue to shift districts back into the Tiers and eliminate the Target Revenue system in FY 2018.³⁶⁰

The use of ASATR and hold harmless provisions generally obscures and complicates the workings of Texas' system of school finance. Specifically, ASATR maintains inefficiencies and inequities when it comes to district funding, but more importantly, it stymies any progress toward a student-centered system. The emphasis should be shifted to maximizing efficiency and equity for students. The ultimate solution to this funding problem of education and other local government services is to eliminate local property taxes and replace lost revenue with a reformed statewide sales tax.³⁶¹ This would be a more efficient tax system that would allow allotments to be student-centered, and it would also end litigation over Article VII, section 1-e, the prohibition of a statewide property tax.³⁶²

Federal Allotments

Although public education is within the jurisdiction of the states,³⁶³ the federal government establishes and maintains educational programs. Funding for these programs account for approximately 11 percent of Pre-K through high school funding in Texas.³⁶⁴ About 20 percent of all federal funds disbursed to Texas are devoted to education.³⁶⁵ Federal funds are always contingent upon the satisfaction of various criteria—there are always strings attached. The lion's share of these programs supports disadvantaged and special education students. Figure 42 provides a comprehensive list of federal education programs published by the US Department of Education.³⁶⁶ For the sake of brevity, an explanation of these programs is beyond the scope of this work.

Figure 42: US Department of Education Funding in Texas, 2014 - 2015 (in millions)

Program Category	2014 Actual	2015 Estimate
For the Disadvantaged		
Grants to Local Agencies	\$ 1,320	\$ 1,320
School Improvement Programs	\$ 45	\$ 45
For Migrants	\$ 58	\$ 58
For Neglected and Delinquent	\$ 2	\$ 2
Subtotal	\$ 1,425	\$ 1,426
Impact Aid		
Basic Support	\$ 83	\$ 97
For Children with Disabilities	\$ 3	\$ 3
Impact Aid Construction	\$ 2	\$ -
Subtotal	\$ 88	\$ 100
Special Education		
Grants to States	\$ 983	\$ 985
Preschool Grants	\$ 21	\$ 21
Grants for Infants and Families	\$ 40	\$ 40
Subtotal	\$ 1,044	\$ 1,046
Other Programs		
Teacher Quality State Grants	\$ 187	\$ 187
Math and Science Partnerships	\$ 15	\$ 15
Education Technology Grants	\$ -	\$ -
Community Learning Centers	\$ 106	\$ 101
State Assessments	\$ 23	\$ 23
Rural and Low-income Schools	\$ 7	\$ 7
Small, Rural School Achievement	\$ 9	\$ 9
Indian Education	\$ 1	\$ 0
English Language Acquisition	\$ 104	\$ 106
Homeless Children	\$ 6	\$ 6
Technical and Vocational (Adult)	\$ 92	\$ 92
Subtotal	\$ 549	\$ 546
Total, All Programs	\$ 3,106	\$ 3,118

Notes:
Because federal spending reported by the U.S. Department of Education is less than that reported by the Texas LBB, continued research is necessary. See *Fiscal Size Up: 2014-15 Biennium*, 231.
Source: FY 2014-2016 State Tables for the US Department of Education. State tables by State. <http://1.usa.gov/1LOEuGh>

Summary of Section 3: Allocation of Revenue

As Figure 1 summarized, PreK-12 revenue totaled \$49.23 billion in fiscal year 2015; expenditures totaled \$60.98 billion in the 2014-15 school year. About 11 percent of revenue is from federal funds, 40 percent is from the state, and 49 percent is from local governments. Through Figure 16, we sought to explain how the FSP works through an analogy. This section later showed in Figure 17 that education funds are collected and spent through three Tiers of funding. The first two Tiers support maintenance and operations (M&O); the third exists to support facilities debt, commonly called interest and sinking (I&S). In the 2014-15 school year, the FSP influenced the flow of \$34.6 billion in Tier 1 allotments; \$2.8 billion in Tier 2 allotments; and \$5.9 billion in Tier 3 allotments.³⁶⁷ With 4,778,559 students in average attendance (ADA), the average 2014-15 Tier 1 allotment per student was \$7,240; Tier 2 was \$585; Tier 3 was \$1,234.³⁶⁸ This money is distributed based upon student attendance. However, distributions differ based upon district adjustments and student weights; Figures 24 and 29 summarize student weights, while district adjustments are discussed beginning on page 23. In addition, as Figure 36 showed, there are a number of special state programs and grants that distributed \$5.8 billion outside of the Tiered structure in the 2014-15 biennium. The largest expenditure outside the FSP's Tiers is ASATR, which is a hold-harmless provision that is slated to be phased out.



Section 4: Recommendation 1, Achieve Efficiency and Equity

Efficiency

As previously noted, efficiency is defined by the Texas Supreme Court as: **“effective or productive of results and connotes the use of resources so as to produce results with little waste.”**³⁶⁹ The present study of Texas’ school finance system is replete with examples of inefficiencies including the cost of education index, cherry-picked student bussing counts, a multi-tiered M&O structure, district adjustments, hold harmless provisions, a needlessly complicated WADA formula, and a re-distributive system which tries to bridge the gap between locally-levied taxes and a state guarantee of education for all. The system is resistant to innovation and the people most involved in the process of learning and instruction—parents, students, and teachers—lack power over allotments.

The inefficiency of Texas’ public school finance system is rooted in the fact that the government steps in for individual families and arbitrarily sets a price for education. The arbitrary nature of the system was highlighted in the most recent school finance trial:

The [Texas Education Agency] CFO testified that none of the 2014-15 appropriated amounts for the FSP program, IFA and EDA programs, or the grant programs were based on any study or analysis of school district needs.³⁷⁰

We know what we spend, but, as one analyst wrote, **“We don’t know how much it costs to educate a student. We know how much we spend, but because public schools are funded in lump sums to districts... [they] set their costs right at the government subsidy.”**³⁷¹

The task of determining the efficient cost is both theoretically and practically impossible. We can get an idea of what parents are willing to spend by looking to the private school market. As Figure 43 summarizes, average tuition for an accredited PreK-12 education costs \$6,804.³⁷² This contrasts with \$12,761 in expenditures per ADA for public schools. (see Figures 1 and 31) To discover the efficient cost of an education, analysts must study individual choices.

An example of this is provided in the auto industry: Kelley Blue Book and TrueCar are two companies that report the

Figure 43: Texas Private School Enrollment and Tuition Levels, 2015

Accreditation Organization	Student Enrollment	Average Tuition
American Association of Christian Schools	538	\$ 5,556.00
Association of Classical & Christian Schools	2,336	\$ 10,670.00
Association of Christian Schools International	19,017	\$ 7,260.00
Accreditation Commission of the Texas Association of Baptist Schools	8,230	\$ 7,991.10
Association of Christian Teachers and Schools	389	\$ 4,621.43
AdvancED ⁽¹⁾	173,000	\$ 6,300.00
International Christian Accrediting Association	5,483	\$ 5,688.00
Independent Schools Association of the Southwest	35,021	\$ 19,388.00
Lutheran Schools Accreditation Commission	12,667	\$ 8,043.00
National Christian Schools Association	5,778	\$ 7,265.00
Southwestern Association of Episcopal Schools	24,643	\$ 11,665.00
Texas Alliance of Accredited Private Schools	9,491	\$ 10,333.00
Texas Catholic Conference Education Department	76,367	\$ 4,880.00
Texas Seventh Day Adventists School System	2,534	\$ 4,750.00
Wisconsin Evangelical Lutheran Synod School Accreditation	256	\$ 4,550.00
Total Enrollment	375,750	
Weighted Average Tuition		\$ 6,804.24

Notes:

(1) Southern Association of Colleges and Schools Council on Accreditation and School Improvement

Source: Texas Private School Accreditation Commission, Laura Colangelo, email to author. October 12, 2015.

The question of “adequate” funding confounds analysts around the country because we know what we spend, not the efficient cost to educate each child.

market price for cars. How? Not by estimating the cost of the materials and labor used to build cars, but rather by collecting data on the actual price that buyers have recently paid. They analyze the data and publicly report a price range within which buyers can judge whether they’re being offered a good, fair, or bad deal.³⁷³ Somewhere in this range is the equilibrium price and, all other things being equal, makes for an efficient market. Efficient prices are discoverable by aggregating individual decisions. Such a task exceeds the foresight of a central planner. As Friedrich Hayek observes:

There exists a great temptation, as a first estimate, to begin with the assumption that we know everything needed for full explanation or control. This assumption is treated as something of little consequence which can later be set aside without much effect on the conclusions. We must constantly keep in mind the necessary and irremediable ignorance on everyone’s part of most of the particular facts which determine the actions of all the members of human society.³⁷⁴

Economics explains that the supply and demand of goods and services in a market is driven by people seeking satisfaction. Consumers and producers in a market negotiate with each other to agree on an exchange at a price that each side sees as beneficial. It is only through this process that the free market, or equilibrium, price is determined whereby supply and demand are balanced.³⁷⁵ This is the means by which a market determines the efficient allocation of scarce resources. For example, high prices in a particular market signal to producers to invest in greater production in response to an increase in the amount demanded; low prices tell producers that they have invested too much to meet current levels of demand. Market prices free of government manipulation are essential to an efficient market that meets people’s desires; the price that brings together buyer and seller differs from person to person and time to time based on numerous facts for which a central planner cannot account.

We do not, and cannot, know all the considerations influencing individual decisions. Of course, this hasn’t stopped analysts and researchers from spending years searching in vain to determine the “adequacy” of public education funding, i.e., how much government should spend to provide an education for students. The search is fruitless; as some of the foremost national experts on school finance recently observed, “The question of how much funding is ‘adequate’ to meet some set of performance objectives is one that confounds policymakers around the country.”³⁷⁶ **It’s possible to define what has been spent and will be spent, but not what should be spent.** It is impossible for lawmakers to determine an efficient price for each child’s education, but it is possible for parents to do so.

Equity

In the jargon of school finance, equity means that “children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds.”³⁷⁷ **Equity is not for districts, but for children.** The current finance system is not equitable. Each year, students within different districts are allotted unequal amounts, as are students within districts who are assigned to different campuses. The effect is compounded by student and district weights.

This issue is difficult to address, but it cannot be ignored or glossed over. Providing special funding, perhaps employed at the discretion of the Education Commissioner, is legitimate for students with extraordinary needs and disabilities. But district adjustments and student weights—beneficial in theory—have led to inequity in practice because they provide the basis for political gamesmanship.

Weights hold the promise of doling out different allotments to different groups of students, and an equal allotment to students within a single group. In practice, the weights are outdated, inefficient, and more influenced by political strategy than student needs.³⁷⁸ If this were not the case, if the primary concern were student equity, then all students in the same program (such as Bilingual Education) would receive the same allotment, regardless of where they live in Texas. But this is not the case. As Figure 44 demonstrates, students in the same program receive varied allotments, depending on the district in which they reside. The only equitable allotments are those that are unweighted: the \$275 High School and \$50 Advanced Career & Technology allotments.

Figure 44: Tier 1 Student Allotments, 2014 - 2015

Student Program	Lowest District	State Average	Highest District
Regular Program (Tier 1 starting point)	\$ 3,867	\$ 6,263	\$ 8,824
Programs which add to the Regular Program Allotment			
Compensatory Education	\$ 773	\$ 1,252	\$ 1,765
Pregnant Students	\$ 9,319	\$ 14,290	\$ 20,035
Bilingual Education	\$ 387	\$ 622	\$ 882
Gifted & Talented	\$ 464	\$ 751	\$ 1,059
Public Education Grants	\$ 487	\$ 617	\$ 834
High School	\$ 275	\$ 275	\$ 275
Stand-Alone Programs, which are not added to the Regular Program Allotment			
Special Education			
Mainstream	\$ 4,254	\$ 6,882	\$ 9,706
Resource Room	\$ 11,601	\$ 18,778	\$ 26,472
Self-Contained, Mild, Moderate, Severe: Regular Campus	\$ 11,601	\$ 18,414	\$ 25,998
Speech Therapy	\$ 19,335	\$ 31,326	\$ 44,120
Vocational Adjustment Class	\$ 8,894	\$ 13,423	\$ 18,922
State-Operated School	\$ 14,913	\$ 17,651	\$ 22,184
Off Home Campus	\$ 11,424	\$ 16,338	\$ 22,343
Nonpublic Contract	\$ 8,944	\$ 9,534	\$ 13,865
Hospital Class	\$ 15,291	\$ 16,791	\$ 22,587
Residential Care & Treatment	\$ 19,488	\$ 23,046	\$ 33,148
Homebound	\$ 19,335	\$ 29,127	\$ 42,575
Career & Technology	\$ 5,220	\$ 8,425	\$ 11,699
All M&O Revenue (Tier 1 & 2)	\$ 6,762	\$ 8,089	\$ 61,723

Sources:

All Maintenance & Operations Revenue: Office of the Lieutenant Governor, Marian Wallace, email message to author. October 6, 2015. Divide ISD has the highest revenue per student at \$61,723 because they had 7.28 ADA, and received the K-6 sparsity adjustment which funds 60 ADA. (see p. 27-28)

Tier 1 Allotments: Texas Education Agency, 2014-15 district-level Summary of Finance reports. Data available upon request.

Moreover, intra-district finance practice compound student inequity. A Georgetown University economist found that, in spite of state weights installed for the benefit of disadvantaged students, greater amounts flow to students who live in ethnic majority, affluent neighborhoods.³⁷⁹ An analyst from the RAND Corporation also found that funds in Texas are not allotted by districts according to state-defined student weights, but that greater amounts flow to low-performing schools.³⁸⁰

Such a situation prompted the most recent—and little known—school finance case before the Texas Supreme Court. That case involves a dispute between Clint

ISD (CISD) and families who live in CISD. Figure 45 summarizes the reason Clint parents filed a lawsuit: CISD's highest funded middle and high school receives over 40 percent more than the lowest funded schools.³⁸¹

We must place a greater emphasis upon student-level equity. It is revealing that, when oral arguments were heard over the issue of student equity in the Clint ISD case, the Texas Supreme Court chambers were empty; when oral arguments were heard over the issue of district equity in the 7th school finance lawsuit, no seat in the chamber was empty.³⁸² This must change. We must provide equitable allotments to students.

Figure 45: Average Per Student Allotment in Clint ISD Schools, 2006 - 2010

School	Allotment per Campus
Clint High School	\$ 9,435
Mountain View High School	\$ 7,553
Horizon High School	\$ 6,726
Clint Middle School	\$ 7,192
East Montana Middle School	\$ 6,663
Horizon Middle School	\$ 4,958

Source: Clint ISD v Sonia Herrera Marquez, et. al., Brief of Amici Curiae in Support of Appellants.

Funding Public Schools for the 21st Century

An efficient system would produce results with prices that limit waste and free parents to maximize their child's educational benefits. **An equitable system would ensure that children from diverse backgrounds are provided equal opportunity.** Equity focuses attention on inputs, or on funds before they are used. Efficiency draws attention to outputs, or to maximizing the benefit to students. How can efficiency and equity be accomplished in practice?

The current school finance system suffers terrible opacity, and works against good government and student achievement.

The current funding system has been cobbled together over the years based solely on what works politically. School districts are funded through elaborate formulas which few understand and which have little relationship with the production of results. By shifting funding from an inputs-oriented system to an outputs-oriented system, students will reap huge benefits.

An efficient and equitable system must be established by remolding the finance structure to better align with student needs in today's world. This can be accomplished by focusing on the constitutional requirement of equity for students to accomplish a general diffusion of knowledge (GDK).

We recommend that Maintenance and Operations funding for school districts be based on services provided. All the outdated and complex formulas in the FSP should be replaced with a single "GDK Allotment." The GDK Allotment would replace the BA and all the other district and student weights

would be eliminated, with two exceptions:

- The allotment would be adjusted for a school district's M&O tax rate.
- The allotment would then be multiplied by a cost-of-living adjustment.

The first adjustment assumes that revenue would still be collected through a local property tax. The Texas Supreme Court has ruled that, in such a taxing system, districts must have "substantially equal revenue at similar tax rates." The cost-of-living adjustment would use the US Department of Commerce's *Regional Price Parities (RPP1) for Metropolitan Statistical Areas*.³⁸³ This would diminish political gamesmanship at the state level.

For example, the GDK Allotment could be set at \$8,000. For a district with a local property tax rate of \$1.10, the allotment per student would increase to \$8,800. If the district then had a price parity of 1.05, the allotment would then increase to \$9,240.

At this point, the dollar value would be converted into points. In our example, students in the district would have 8,360 points each year to apply toward their educational needs. They could use these points at any public education provider. Any points remaining at the end of the school year would be rolled over for future use. Figure 46 illustrates a reformed flow of funds for Texas public education.

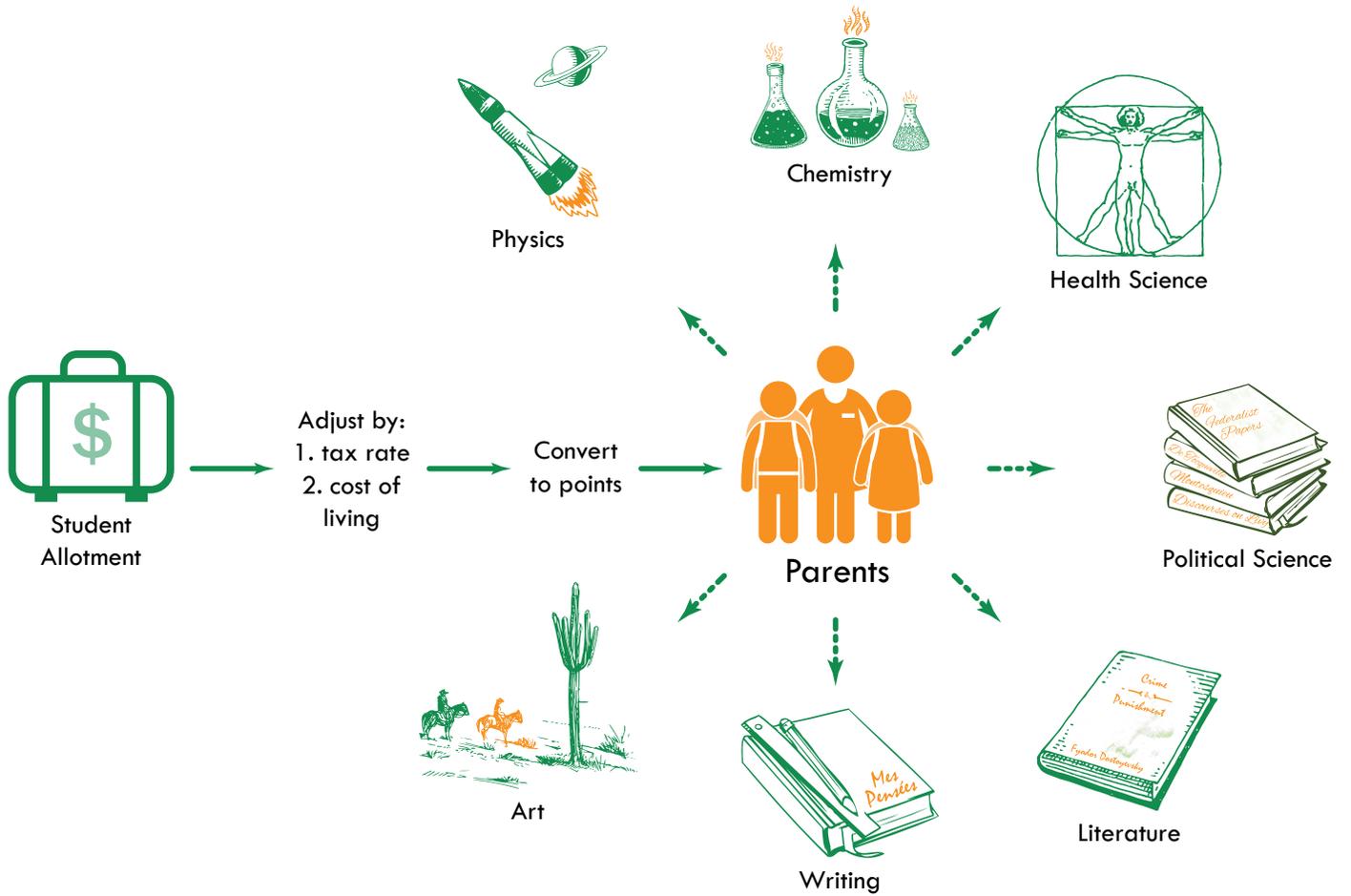
Most changes to school finance formulas—especially those of this magnitude—have a significant yet disparate impact upon funding for each district. Some districts gain revenue while others lose revenue. This situation has led previous legislators who made formula changes to provide hold-harmless funding for districts that would lose money. There are two problems with hold-harmless funding. First, hold-harmless provisions generally require an increase in spending. Second, these provisions decrease the efficiency and equity of the funding formulas. However, even if legislators choose to use hold-harmless provisions when implementing a student-centered finance system, the new system will have a positive net impact. Instead of the complex, opaque, and outdated FSP formulas, funding would be based on providing a general diffusion of knowledge. All students would be entitled to equitable funding based on a transparent allotment.

This system would more closely track the original constitutional per capita concept, and parents would assign their child's points to districts based on the services that they prefer. However, ISDs would not have a monopoly. Some students would continue to take all their courses of study from the district, others may not, and some students would

assess a higher value on some courses. Therefore, a market for educational services would be created within the school, the district, and the state, resulting in an increasingly efficient allocation of resources.

Such a change in the structural dynamics of school finance would require districts to be freed of most of the regulatory burdens that restrict their operations today, because districts would need to have the ability to meet consumer demands.

Figure 46: Reformed Flow of Funds within School Districts



Section 5: Recommendation 2, Maximize Efficiency and Equity

In 1949, state legislators made a fundamental change in the way Texas structured education. They took into account all the facts of their day, and worked hard to meet the needs of the next generation of Texans. Today, we must do the same, and apply our knowledge and technology to restructure the system solely for the benefit of Texas students. Upon this action depends the preservation of liberty, the self-governance or happiness of our people, and the promotion of equality.³⁸⁴

Educational choice is a proven finance method which uses diverse decision making to improve efficiency and equity in the provision of education. Laws around the nation have increased efficiency and equity through educational choice. Figure 47 illustrates the growth of educational choice in America. Each of the 24 educational-choice states (plus Washington D.C.) has tailored the program to meet their unique situation. We recommend using Education Savings Accounts (ESAs) to maximize equity and efficiency.

In an ESA system, funds are deposited by the state into a savings account managed by parents. Parents must apply to the program, and once accepted, they can use the savings account to purchase educational goods and services for their children, such as: tuition, tutoring, therapy, software, books, distance learning classes, and instruction in a local school. Parents can customize the education to meet their child's needs. Any funds remaining in the account at the end of the school year roll over to the next year, and funds remaining after the student graduates from high school can be used on higher education.

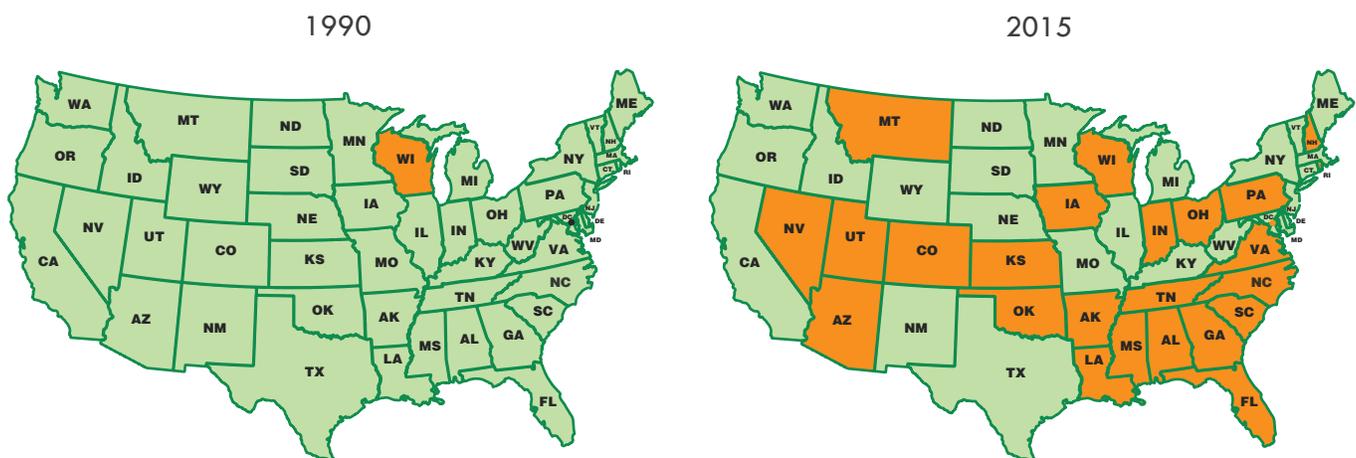
Figure 48 illustrates a reformed flow of funds for Texas public education. ESAs would be especially helpful to Texas' unique geographic and demographic conditions: Texas has more school districts than any other state in the nation, and as Figure 49 summarizes, the majority have an average daily attendance (ADA) of 1,000 students or less.³⁸⁵ Our finance system must account for this fact. The unique strengths of rural communities will always be overlooked by a centrally designed and maintained system. As national school finance experts have noted, "rural leaders need the kind of leadership that they themselves provide: personal, case-

Figure 49: Number of Texas School Districts by ADA, 2013 - 2014

District ADA	Number of Districts	Percent of Districts
Over 50,000	16	2%
25,001 to 50,000	30	3%
10,001 to 25,000	51	5%
5,001 to 10,000	66	6%
1,001 to 5,000	314	31%
1 to 1,000	548	53%

Source: Source: Texas Education Agency, 2004-2005 Through 2014-2015 Region ADA Report

Figure 47: The Spread of Educational Choice, 1990 - 2015



specific, and focused on solutions, not rules.”³⁸⁶ One salient problem for rural districts is providing students access to specialized staff, facilities, and courses. One reaction is to encourage district consolidation. This is a mistake.³⁸⁷ Instead, rural communities should be allowed to share services through increased portability of student allotments. Education Savings Accounts facilitate such flexibility.³⁸⁸

Benefits of Educational Choice

There are three critical points to note about educational choice. First, when parents have been offered the ability to divide their educational allotment between different services, about one-third of allocated money is used on multiple expenses. In other words, when given the ability to break up spending into individual items, a significant

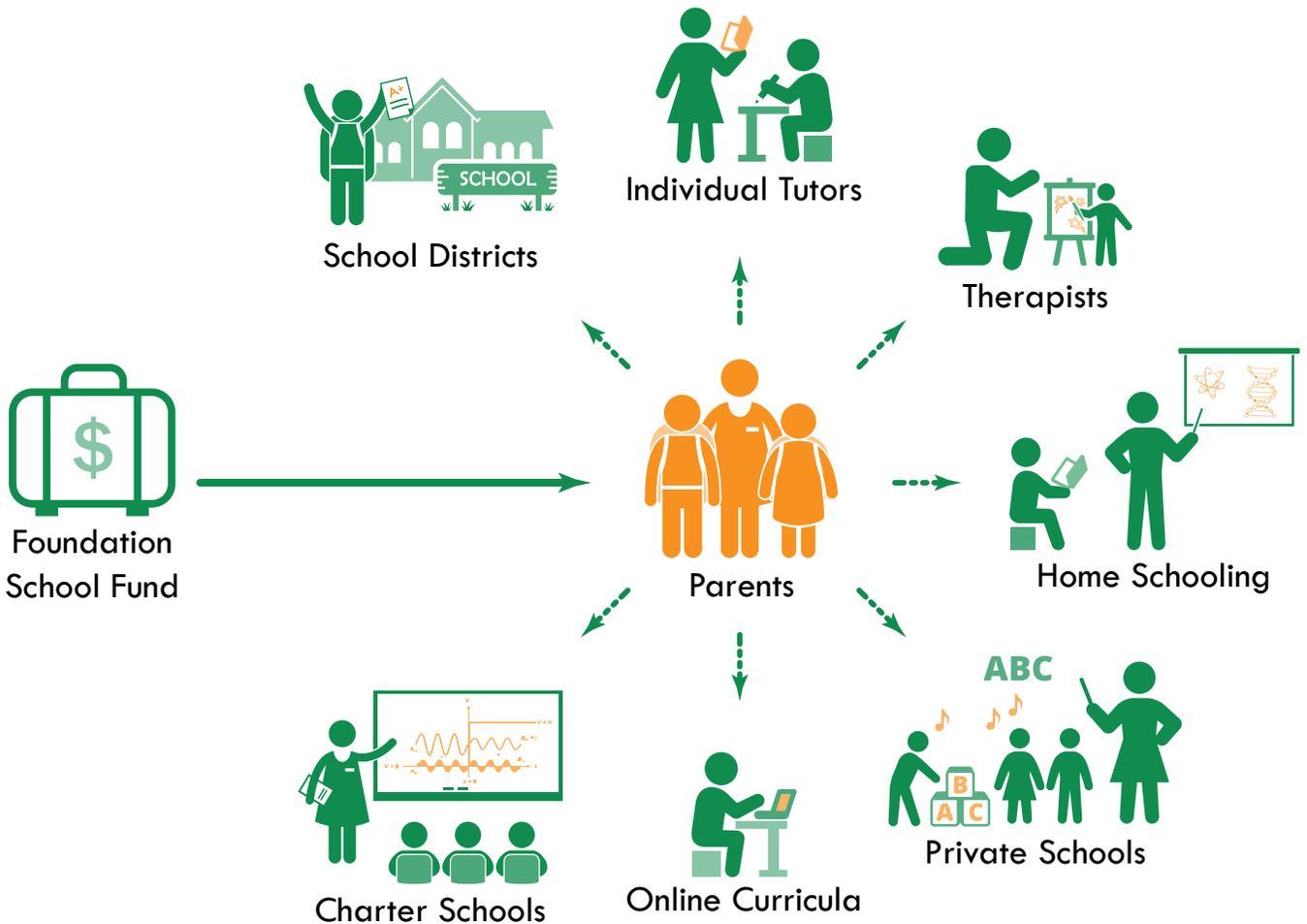
minority of parents quickly took advantage of this option in other states, rather than using all the funds on tuition. Figure 50 illustrates this. Continued research is needed on this topic as educational choice programs become universal and facilitate the incremental use of allotments.

Second, when Arizona parents were given the option to rollover unused dollars and spend them on future educational expenses—such as college-tuition—they rolled-over an average of 43 percent of their allotment.³⁸⁹

Third, educational choice has boosted student achievement in other parts of the nation, as noted by the studies highlighted below. Further findings are listed in Appendix A.

- A peer reviewed study by UT Austin and Harvard scholars found that Milwaukee student reading scores improved by six percentile points; math scores

Figure 48: Reformed Flow of Funds through Education Savings Accounts

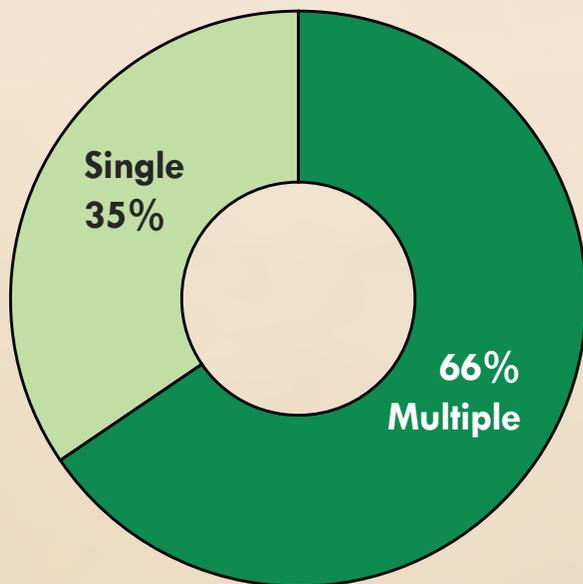


improved by 11 points.³⁹⁰

- A study by Stanford economists found that choice programs in Wisconsin, Michigan, and Arizona improved *school district* achievement in Reading, Math, Science, and Social Studies.³⁹¹
- A peer reviewed study from Harvard University scholars found that New York students improved their reading scores by three percent and their math scores by five percent.³⁹²
- A study by the Federal Department of Education found that Washington D.C. boosted their students' 70 percent high school graduation rate to 82 percent.³⁹³
- A study by the Brookings Institution and Harvard University found that African American college enrollment increased by 25%, and that selective college enrollment more than doubled.³⁹⁴

These improvements are the result of driving funds to educators based on the benefit they provide to students.³⁹⁵ Educational choice ensures equitable funding, encourages efficient expenditures, and improves student achievement. It satisfies all the constitutional requirements we discussed at the outset of this work.

Figure 50: Percentage of Education Savings Account Funds Used on Multiple Expenses



Source: The Friedman Foundation, *The Education Debit Card: What Arizona Parents Purchase with Education Savings Accounts*, 12.



Conclusion

Over two decades ago, former UT Chancellor Mark Yudof quipped, “school finance reform is like a Russian novel: it’s long, tedious, and everybody dies in the end.”³⁹⁶ This captures perfectly the stalemate that has characterized the battle over Texas school finance the last thirty years. One cause is the complexity and confusion surrounding this issue. Another is that human affection for our own opinions and knowledge stymies reform.³⁹⁷ For example, the deepest reform suggested by the district court in the current school finance case was to alter the existing taxing rates so that Texas can collect and distribute more money for school districts.³⁹⁸ The presiding judge went so far as to state, “The Court does not ask if there is a better way.”³⁹⁹

It is certainly better to seek that way. And it is certainly a matter of public duty—for the good of our people—to seek out good laws upon public education. All good men and women grant this, and we hope that all parties involved in reform will be unbiased by considerations opposed to the public good. Realistically, this is more to be wished for than seriously expected. The problems addressed here affect too many individual interests not to involve in their discussion a variety of objects foreign to their merits, which are unfavorable to the discovery of truth. The line of thought we echo from the *Federalist Papers* should be made explicit:

So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of *moderation* to those who are ever so much persuaded of their being in the right in any controversy.... In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth.⁴⁰⁰

The animating purpose of this work has been to uncover evidence of the truth regarding school finance and show how to transform it into a student-centered system. In 1949, the state revolutionized the way it funded education in order to meet the needs of the time. Legislators

evaluated all the evidence they could find, and exercised wide discretion to modernize the system. Today, we must do this again. The way we fund education in Texas is so complex that even those who run the system on a day-to-day basis have difficulty understanding how it works. As noted above, the district court judge who ruled upon the most recent school finance lawsuit concluded that formula elements do not relate to student needs. (see p 23) This is a natural result of a system that has been designed piecemeal, and is not based on what works for students, but on what delivers votes in the Legislature. Practically, votes depend on “the runs,” which are spreadsheets that indicate how funds will be divided up between districts.

Whereas litigation and political disputes over the past several decades have revolved around the issue of equity for school districts, the focus should be upon equity and efficiency for students. The opacity and litigation will continue unless we focus, as our Constitution intended, on funding students instead of districts. We recall the quote from the Texas Supreme Court, discussed earlier:

The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly across the state, and each student in the state was entitled to exactly the same distribution of funds. The state’s school fund was initially apportioned strictly on a per capita basis.⁴⁰¹

We should foster the same spirit—if not the same laws—of past Texas legislators. We have offered up this work for the improvement of our state. It is only one contribution among many in the push to improve public education. These contributions are moving on all fronts. Texas has a habit of moving on, and will always leave behind those who do not push forward. We have never lost the spirit of Travis, who declared at the Alamo that he would “never forget what is due to his own honor and that of his country.”⁴⁰² As future Texans look back on the advance we made together, they must see that we have fulfilled our promise. Almost two centuries ago, Texans declared to a candid world that “it is an axiom in political science, that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government.”⁴⁰³ This work resounds that declaration, and tries to make good on the promise of our fathers.

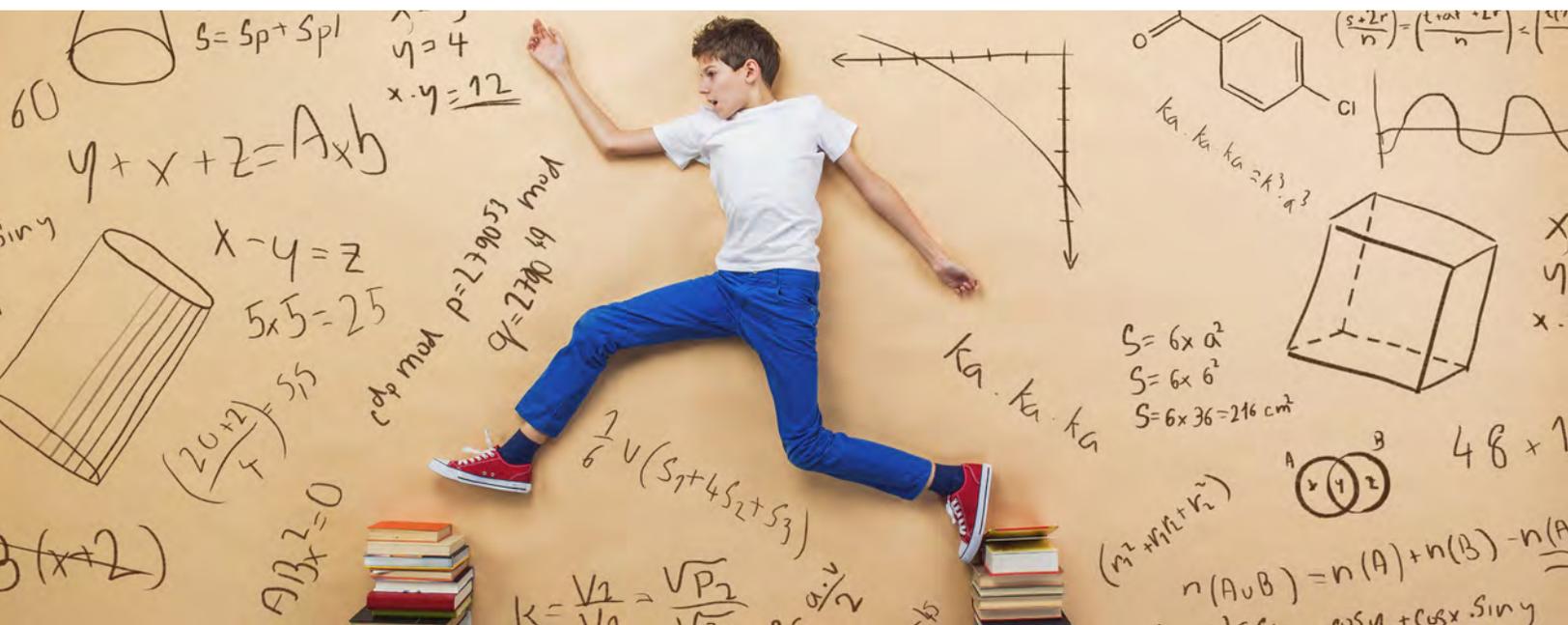
Appendix: Effect of Educational Choice on Students

Here is a summary of social science research about the effect of educational choice on student achievement.

- A 1998 peer reviewed study by MIT scholars found that math scores of Milwaukee school choice participants improved by 1.5 – 2.3 percentage points. Reading scores were not affected.⁴⁰⁴
- A 1999 peer reviewed study by UT Austin and Harvard scholars found that, in Milwaukee, reading scores of students in the fourth year of their choice program had improved by six percentile points; math scores improved by 11 points.⁴⁰⁵
- A 2002 by Stanford economists found that programs in Wisconsin, Michigan, and Arizona improved *school district* achievement in Reading, Math, Science, and Social Studies.⁴⁰⁶
- A 2003 peer reviewed study by scholars at Johns Hopkins, Columbia, and Harvard found a 3-percentile point increase in math scores for African American children and stated that choice programs have “greater potential benefit for children in lower-scoring schools.”⁴⁰⁷
- A 2001 study by Education Next (a non-profit journal) found that choice students in Charlotte, NC, scored 5.9 percentile points higher on math tests and 6.5 percentile points higher on reading tests.⁴⁰⁸
- A 2010 peer reviewed study from Harvard University scholars found that New York public school students in choice programs improved their math and reading

scores. Math scores of students who came from low-performing public schools increased by 4-5 percent; reading scores increased by 2-3 percent.⁴⁰⁹

- A 2010 study by the Federal Department of Education found that the school choice program in Washington D.C. had no impact on student test scores, but increased high school graduation rates from 70 percent to 82 percent.⁴¹⁰
- A 2008 peer reviewed Policy Studies Journal article confirmed the reading score improvement from the 2001 Education Next study, but did not find a change in the math scores.⁴¹¹
- A 2004 study by Princeton University scholars found that test scores of African American students in the New York school choice program did not change as a result of school choice.⁴¹²
- A 2006 Brookings Institution study found that African American students in Washington, D.C., Dayton, OH, and New York, NY, scored six percentile points higher on their Iowa Tests than students who remained in their former school.⁴¹³
- A 2012 joint study by the Brookings Institution and Harvard University looked at New York’s school choice program. They found that college enrollment by African American school choice students increased by 25%. They also found that African American enrollment in selective colleges (which have an average SAT of 1100 or greater) more than doubled.⁴¹⁴



Endnotes

1. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Findings of Fact 205-207, 160. D-1-GN-11-003130.
2. *Ibid.*, Findings of Fact 352, 368.
3. *Ibid.*, Conclusion of Law 71.
4. *Ibid.*, Executive Summary at page 3 and 5, Findings of Fact 94 n28, 102, 305, 322, 364, 1108.
5. Compare video from [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#) and [Clint ISD v Sonia Herrera Marquez, et. al.](#), 445 SW3d 450.
6. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Executive Summary at page 3 and 5, Findings of Fact 94 n28, 102, 305, 322, 364, 1108.
7. Casey, Daniel T. and Billy D. Walker, [The Basics of Texas Public School Finance](#), 6th ed. (Austin, TX: Texas Association of School Boards, 1996), 57.
8. Montesquieu, [The Spirit of the Laws](#), ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge, MA: Cambridge University Press, 1989), 30:11, 629.
9. As Publius wondered, “What is government itself but the greatest of all reflections on human nature?” Hamilton, Alexander, James Madison, and John Jay, [The Federalist Papers](#), ed. Clinton Rossiter (New York, NY: Signet Classic), 51:319.
10. Adams, Charles Francis, ed., [The Works of John Adams, Second President of the United States](#) (Boston, MA: Charles Little and James Brown, 1851), 4:292-293; [The Spirit of the Laws](#), 5:14, 63.
11. [The Federalist Papers](#), 1:27.
12. Jefferson, Thomas, “[Letter to George Wythe: Paris, August 13 1786](#),” in *The Works of Thomas Jefferson*, vol. 5 (Correspondence 1786-1789), ed. Paul Leicester Ford. (New York, NY: The Knickerbocker Press, 1904), 153.
13. [West Orange Cove II](#), at 100. 176 S. W. 3d 746; 2005 Tex. LEXIS 868; 49 Tex. Sup. J. 119.
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15. Legislative Budget Board. [Fiscal Size Up: 2014-15 Biennium](#), 231. [Figure 185](#). Feb. 2014.
16. Texas Const. [Art. VII, § 1](#).
17. “[A Bill for the More General Diffusion of Knowledge](#),” in *The Works of Thomas Jefferson*, vol. 2, 414-426.
18. “[Letter to George Wythe: Paris, August 13 1786](#),” in *The Works of Thomas Jefferson*, vol. 5, 153.
19. Pangle, Lorraine Smith and Thomas Pangle, [The Learning of Liberty: The Educational Ideas of the American Founders](#) (Lawrence, KS: University of Kansas Press, 1993), 113.
20. [West Orange Cove II](#), at 100.
21. Texas Edu. Code Ch. 4, § [002](#); Ch. 28, § [001](#).
22. [West Orange Cove II](#), at 110.
23. *Ibid.*, at 10; [Edgewood IV](#), at 738. 917 S.W.2d 717 (1995).
24. [West Orange Cove II](#), at 74-86.
25. [S.B. 7](#), 73rd R.S. (1993). For a discussion of S.B. 7 and its establishment of recapture, see pages 17-18.
26. Emphasis added. [Edgewood IV](#), at 730.
27. Texas Const. [Art. VII, § 1](#).
28. [Edgewood I](#), at 395. 777 S.W.2d 391 (1989); [West Orange Cove II](#), at 4.
29. [Edgewood I](#), at 395; [West Orange Cove II](#), at 4.
30. [West Orange Cove II](#), at 5.
31. *Ibid.*, at 5.
32. *Ibid.*, at 7.
33. Gilmer-Aikin Committee on Education. [To Have What We Must](#) (September 1948), 11; See also [The Federalist Papers](#), 51:317-322.
34. [To Have What We Must](#), 13.
35. *Ibid.*
36. *Ibid.*, 25.
37. Without a doubt, the Texas Supreme Court defends this wide latitude. See [Edgewood IV](#), at 730.
38. ESAs have been established in Tennessee, Mississippi, Florida, Arizona, and Nevada.
39. Arizona Department of Education. [Empowerment Scholarship Account Handbook: A Parent’s Guide to Expanded School Choice](#) (August 2014), 21, 61.
40. [Fiscal Size Up: 2014-15 Biennium](#), 232-233.
41. The United States Supreme Court has observed, “Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.” See also the Tenth Amendment of the US Constitution, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” [San Antonio School District v. Rodriguez](#), at 35. 411 U.S. 1 (1973).
42. [Compromise of 1850](#). § 1-3. U.S. 31st R.S. I. Ch. 51 (1850).
43. Holman Hamilton, [Texas Bonds and Northern Profits](#), *The Mississippi Valley Historical Review* 43, no. 1 (1957): 579, doi: 10.2307/1902274; Texas Education Agency, [Texas Permanent School Fund: 2014 Annual Report](#), 47.
44. Texas Const. [Art. VII, § 5](#).

45. [The Basics of Texas Public School Finance](#), 32.
46. [Texas Permanent School Fund: 2014 Annual Report](#), 23, 47.
47. Ibid., 16, 38; Governmental Accounting Standards Board. [Statement 54: Fund Balance Reporting and Governmental Fund Type Definitions](#), paragraph 35.
48. [Texas Permanent School Fund: 2014 Annual Report](#), 15.
49. [Fiscal Size Up: 2014-15 Biennium](#), 433-434; emphasis added
50. [Texas Permanent School Fund: 2014 Annual Report](#), 18-19.
51. Texas Education Agency, [Texas Permanent School Fund: 2015 Annual Report](#), 19; U.S. News & World Report, [10 Universities with the Largest Endowments](#), (accessed February 15 2016).
52. [Texas Permanent School Fund: 2014 Annual Report](#), 5.
53. [Fiscal Size Up: 2014-15 Biennium](#), 242.
54. [Texas Permanent School Fund: 2014 Annual Report](#), 26.
55. Ibid., 39, 5.
56. Ibid., 63.
57. Ibid.
58. Ibid., 39.
59. [Texas Permanent School Fund: 2015 Annual Report](#), 72.
60. Texas Edu. Code Ch. 45, § 053.
61. [Texas Permanent School Fund: 2014 Annual Report](#), 20, 39.
62. Ibid.
63. Ibid., 38-39.
64. Texas Comptroller of Public Accounts. [Sources of Revenue: A History of State Taxes and Fees in Texas](#) (January 2015), 158, 154, 128, 132, 106, 164, 162, 116, 70, 78, and 176. For the constitutional dedication of revenue, see Texas Const. [Art. VII, § 1](#).
65. Texas Education Agency, [2014-2015 Statewide Summary of Finances](#). January 22 2016.
66. Legislative Budget Board, [Summary of Conference Committee Report for House Bill 1: Appropriations for the 2016-17 Biennium](#) (2015), 17.
67. Walker, Billy D, [Achieving Adequacy, Equity, and Efficiency in Texas Public School Finance](#) (Austin, TX: Center for Educational Research, 1989), 4, 12, 13.
68. Texas Comptroller of Public Accounts. [Biennial Revenue Estimate for 2016-17 Biennium](#) (January 2015), 12.
69. Ibid.
70. [Sources of Revenue](#), 19.
71. 57th First C.S. [H.B. 20](#).
72. [Sources of Revenue](#), 35; [S.J.R. 32](#), 60th R.S. (1967).
73. [Sources of Revenue](#), 18.
74. Hegar, Glenn, Texas Comptroller of Public Accounts, [Certification Revenue Estimate – 2016-17](#), (accessed March 18 2016).
75. [Biennial Revenue Estimate](#), 12.
76. Ibid., 12.
77. Sources of Revenue, 21; Texas Taxpayers and Research Association. [Understanding the Texas Franchise - or Margin - Tax](#) (October 2011); Drenkard, Scott, [The Texas Margin Tax: A Failed Experiment](#) (Washington, D.C.: The Tax Foundation, January 2015)
78. [West Orange Cove II](#), at 10.
79. Ibid.; School districts derive their powers from the state. [Love v Dallas](#), at 2. 120 Tex. 351 (Tex. 1931).
80. [West Orange Cove II](#), at 4.
81. [Sources of Revenue](#), 102.
82. [The Texas Margin Tax](#), 3.
83. Ibid.
84. Ibid.
85. [H.B. 32](#), 84th R.S. (2015).
86. [The Texas Margin Tax](#), 4
87. Ibid., 7-11.
88. [Sources of Revenue](#), sales and use tax: [168](#); franchise tax: [102](#); motor vehicle taxes: [148](#); oil taxes: [158](#); gas tax: [110](#); insurance premium taxes: [128](#); natural gas tax: [154](#); tobacco taxes: [80](#); beer and liquor taxes: [72](#), [130](#), [134](#); hotel tax: [120](#); utility taxes: [106](#).
89. [Sources of Revenue](#), 17.
90. [H.B. 11](#), 72nd R.S. (1991); [Sources of Revenue](#), 164-165.
91. [Sources of Revenue](#), 30.
92. Ibid., 178-179.
93. [Fiscal Size Up: 2014-15 Biennium](#), 242.
94. [The Basics of Texas Public School Finance](#), 30.
95. [Fiscal Size Up: 2014-15 Biennium](#), 242.
96. Texas Constitution, [Art. VII, § 5](#).
97. [H.B. 72](#), 68th Second C.S. (1984)
98. Legislative Budget Board. [Fiscal Note on Conference Committee Report on H.B. 72](#), 68th Second C.S. (June 29 1984), para. P.
99. [Sources of Revenue](#), 92-93, 110-111.
100. [Fiscal Size Up: 2014-15 Biennium](#), 242.
101. [Fiscal Note on Conference Committee Report on H.B. 72](#), para. P; [The Basics of Texas Public School Finance](#), 44-46. The question of how to treat different types of individuals is an exceedingly difficult one. Thomas Jefferson's course of action was animated by the expectation for a fluid class structure achieved by winnowing out talent ([The Learning of Liberty](#), 121).
102. [H.B. 1](#), 84th R.S., III:5, III:28-29. (2015).
103. For an explanation of line 2, the Available School Fund, see p. 14; for line 3, the Instructional Materials Fund, see p. 42; for line 4, the Foundation School Fund, see p. 43; for line 10, the Permanent School Fund, see p. 8-10. Line 12, Appropriated Receipts, consists entirely of \$1.8 billion in estimated local property tax revenue recaptured by the state. [Fiscal Size Up: 2014-15 Biennium](#), 233. See p. 17-18 for an introduction to recapture.
104. [2014-2015 Statewide Summary of Finances](#). January 22 2016; Texas Education Agency. [Recapture Paid](#), 2014, (accessed January 26 2016); see also, [Fiscal Size Up: 2014-15 Biennium](#), 233.
105. [H.J.R. 4](#). 18th R.S. (1883).
106. [The Basics of Texas Public School Finance](#), 86; Still, Rae Files, [The Gilmer-Aikin Bills: A Study in the Legislative Process](#) (Austin, TX: The Steck Company), 176.

107. [The Basics of Texas Public School Finance](#), 86-107.
108. [Edgewood I](#), at 2, 6; emphasis added
109. Texas Const. [Art. VII, § 5](#). According to the Texas Supreme Court, the constitutional test of Efficiency consists of two distinct tests. See Barba, Michael and Kent Grusendorf, [Analysis of the District Court's School Finance Ruling](#) (Austin, TX: Texas Public Policy Foundation, December 2014), 8-9.
110. [S.B. 7](#), 73rd R.S.
111. [The Basics of Texas Public School Finance](#), 36.
112. Texas Const., [Art. VII, § 1](#).
113. The Equity Center has helpfully described the choice as follows: "move children to other districts, or we move the resources that come from taxation where we have value in abundance." [Layers of Knowledge, Texas School Finance #14: Recapture](#), YouTube, published May 11 2015.
114. Texas Edu. Code Ch. 41, § [003](#).
115. Dawn-Fisher, Lisa, Beth Davis, Al McKenzie, Nora Rainey, and Kim Wall, [School Finance 101: Funding of Texas Public Schools](#), (Austin, TX: Texas Education Agency, September 2014), 29.
116. [The Basics of Texas Public School Finance](#), 37; Senate Research Center. [Bill Analysis on S.B. 7](#), 68th Second C.S. (August 18 1993), Ch. 36, § 002 (page 1338).
117. Texas Taxpayers and Research Association. [Introduction to School Finance in Texas](#), 3rd ed. (Austin, TX: Texas Taxpayers and Research Association, June 2014), 20.
118. [S.B. 4](#), 76th R.S. (1999); Legislative Budget Board. [Fiscal Note on S.B. 4](#), 76th R.S. (May 29 1999).
119. [Introduction to School Finance in Texas](#), 20.
120. [Recapture Paid](#), 2014.
121. This includes district and charter schools. See Texas Education Agency. [Region and School District ADA Report: 2004-2005 Through Estimated 2014-2015 Wealth per ADA Report](#), (accessed January 26 2016).
122. [Recapture Paid](#), 2014; [Fiscal Size Up: 2014-15 Biennium](#), 233.
123. [Summary of Conference Committee Report for House Bill 1: Appropriations for the 2016-17 Biennium](#), 68.
124. [Fiscal Size Up: 2014-15 Biennium](#), 243-244.
125. *Ibid.*, 234, Figure 188.
126. *Ibid.*, 242; [The Basics of Texas Public School Finance](#), 30.
127. [Fiscal Size Up: 2014-15 Biennium](#), 232; Texas Edu. Code Ch. 42, § [001](#).
128. [Fiscal Size Up: 2014-15 Biennium](#), 233-234.
129. Grusendorf, Kent, [Transparency in Education Funding Sorely Missing](#) (Austin, TX: Texas Public Policy Foundation), 2.
130. [S.B. 115](#). 51st R.S. (1949); [The Gilmer-Aikin Bills](#), 2-5; Texas Education Agency. [Thirty-Sixth Biennial Report: 1948-1950](#), 15. (January 1951)
131. [S.B. 116](#). 51st R.S. (1949); [The Gilmer-Aikin Bills](#), 5-9.
132. [S.B. 117](#). 51st R.S. (1949); [The Gilmer-Aikin Bills](#), 9-10.
133. [The Gilmer-Aikin Bills](#), 8-9.
134. [S.B. 116](#), 51st R.S. (1949), Art. III.
135. [The Gilmer-Aikin Bills](#), 163.
136. *Ibid.*
137. *Ibid.* This issue, familiar to all generations of Texans, will not be discussed in this work.
138. *Ibid.*
139. [To Have What We Must](#), 13.
140. [The Gilmer-Aikin Bills](#), 170, 167.
141. [To Have What We Must](#), 13.
142. Without a doubt, the Texas Supreme Court defends this wide latitude. See [Edgewood IV](#), at 730.
143. [2014-2015 Statewide Summary of Finances](#). January 22 2016.
144. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Finding of Fact 275.
145. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Finding of Fact 466; emphasis added
146. Texas Edu. Code Ch. 42, § [007\(c\)\(1\)](#).
147. Texas Edu. Code Ch. 42, § [101](#); [H.B. 1](#), 84th R.S. (2015), III-5.
148. Texas Edu. Code Ch. 42, § [2516\(b-2\)](#). The CTR is equal to the district's 2005 Maintenance and Operation (M&O) tax rate, multiplied by .6667. The CTR was established by the state Legislature in order to decrease property taxes in the wake of the Texas Supreme Court's [West Orange Cove II](#) ruling. For an explanation of this situation, see p. 42.
149. [H.B. 1](#). 79th Third C.S. (2006), Ch. 42 § 2516.
150. [West Orange Cove II](#), at 10.
151. *Ibid.*; Texas Const. [Art. VIII, § 1-e](#).
152. [West Orange Cove II](#), at 10; The state has power over district rates because districts derive their power from the state. [Love v Dallas](#), at 2.
153. With one exception: the 53rd Legislature in 1953 allowed school districts in counties with more than 700,000 residents to levy a combined Tier 1, 2, and 3 rate of \$2.00.
154. [West Orange Cove II](#), at 36.
155. [H.B. 1](#). 79th Third C.S., Ch. 42 § 2516.
156. District CTRs: Texas Education Agency. Sherry Mansell, email message to author. September 29, 2015. Data available upon request. ADA data: Texas Education Agency, [Region and School District ADA Report: 2004-2005 Through Estimated 2014-2015 Wealth per ADA Report](#).
157. Texas Education Agency. Sherry Mansell, email message to author. September 29, 2015.
158. *Ibid.*
159. District CTRs can also be found in [An Introduction to School Finance in Texas](#), 37-54.
160. Texas Edu. Code Ch. 42 § [102](#).
161. [H.B. 72](#), 68th Second C.S.. The cost drivers considered in the PDI were: teacher labor costs and the number of students in the compensatory education program. Alexander, Celeste, Timothy Gronberg, Dennis Jansen, Harrison Keller, Lori Taylor, and Philip Treisman, [A Study of Uncontrollable Variations in the Costs of Texas Public Education](#) (Austin, TX: University of Texas

- at Austin, November 2000), A-4.
162. [S.B. 1](#), 74th R.S. (1995); Texas Edu. Code Ch. 42 § [102](#); Texas Admin. Code XIX:6 Ch. 203 § [25](#) (2014).
163. Texas Education Agency. Amanda Brownson, email message to author. August 24 2015. Data available upon request.
164. Bureau of Labor Statistics, [Consumer Price Index: Frequently Asked Questions](#), Question 4: Is the CPI a cost-of-living index? (accessed January 26 2016).
165. [A Study of Uncontrollable Variations in the Costs of Texas Public Education](#), S-5.
166. Independent towns were defined as the largest district in a county with a population of 25,000 to 100,000; rural districts were those with less than 743 ADA and a growth rate less than 20 percent. [A Study of Uncontrollable Variations in the Costs of Texas Public Education](#), 2-2.
167. *Ibid.*, 2-2.
168. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Exhibit 6322: Moak Report, at 56-57.
169. [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#), Finding of Fact 598.
170. The Small-District Adjustment applies to districts with less than 1,600 ADA and the Scale Component applies to districts with 1,600 to 2,000 ADA. As of June 2014, only 55 of the 1,020 school districts had 1,600 to 2,000 ADA. [A Study of Uncontrollable Variations in the Costs of Texas Public Education](#), 2-3; [An Introduction to School Finance in Texas](#), 37-54.
171. Texas Admin. Code XIX:6 Ch. 203 § [25](#) (2014).
172. [Layers of Knowledge, Texas School Finance #4: CEI and Adjusted Basic Allotment](#). YouTube, published May 11 2015.
173. [A Study of Uncontrollable Variations in the Costs of Texas Public Education](#), 2-1.
174. Texas Edu. Code Ch. 42, § [103](#).
175. [An Introduction to School Finance in Texas](#), 37-54.
176. [H.B. 8](#), 34th First C.S. (1915)
177. [H.B. 1](#), 41st Second C.S. (1929)
178. [Thirty-Sixth Biennial Report: 1948-1950](#), 16; Walker, Billy D., [Achieving Adequacy, Equity, and Efficiency in Texas Public School Finance](#) (Austin, TX: Texas Center for Educational Research, March 1989), 13; Robertson, Berhl L., [Wealth Equalization Legislation in Texas](#) (PhD diss., Texas Tech University, 2005), 25.
179. [Thirty-Sixth Biennial Report: 1948-1950](#), 16-17.
180. *Ibid.*
181. [Achieving Adequacy, Equity, and Efficiency in Texas Public School Finance](#), 40.
182. *Ibid.*, 41. The Equity Center has observed that the 300 square mile distinction was a punitive political measure.
183. Legislative Budget Board. [Fiscal Note on S.B. 1](#), 74th R.S. (April 5 1995); Texas Edu. Code Ch. 42, § [105](#).
184. [School Finance 101](#), 13.
185. Texas Edu. Code Ch. 42, § [103](#).
186. [Thirty-Sixth Biennial Report: 1948-1950](#), 17.
187. [2014-2015 Statewide Summary of Finances](#). January 22 2016.
188. [The Basics of Texas Public School Finance](#), 45.
189. [2014-2015 Statewide Summary of Finances](#). January 22 2016.
190. ADA data from Texas Education Agency, [Region and School District ADA Report: 2004-2005 Through Estimated 2014-2015 Wealth per ADA Report](#).
191. [Layers of Knowledge, Texas School Finance #6: Tier 1 Regular Program Allotment](#). YouTube, published March 12 2015.
192. [The Basics of Texas Public School Finance](#), 43.
193. [School Finance 101](#), 18.
194. Texas Education Agency, [2014-2015 Summary of Finances: Statewide Tier 1 Detail Report](#). January 22 2016.
195. Texas Education Agency. Amanda Brownson, email message to author. December 3 2015.
196. Texas Edu. Code Ch. 42, § [152](#).
197. Students from a family of four are currently eligible for a reduced price meal if household income is less than \$44,863; meals are free if household income is less than \$31,525. Federal Register [Vol. 80, no. 61](#) (March 31 2015): 17026.
198. Texas Edu. Code Ch. 42, § [153](#).
199. Texas Edu. Code Ch. 29, § [052](#).
200. Texas Edu. Code Ch. 29, § [051](#).
201. [2014-2015 Summary of Finances: Statewide Tier 1 Detail Report](#). January 22 2016.
202. Texas Edu. Code Ch. 29, § [121](#).
203. Texas Edu. Code Ch. 42, § [156\(b\)](#).
204. Texas Edu. Code Ch. 42, § [156\(c\)](#).
205. [2014-2015 Summary of Finances: Statewide Tier 1 Detail Report](#). January 22 2016.
206. Texas Edu. Code Ch. 42, § [160](#).
207. Texas Edu. Code Ch. 29, § [918](#); Texas Admin. Code XIX:2 Ch. 61 § [1093](#) (2014).
208. Texas Edu. Code Ch. 29, § [001](#).
209. Texas Edu. Code Ch. 29, § [003](#); Texas Admin. Code XIX:2 Ch. 89 § [1040\(c\)](#) (2014).
210. Texas Edu. Code Ch. 29, § [001\(1\), \(7-8\)](#).
211. Texas Edu. Code Ch. 42, § [151\(a\)](#).
212. Texas Admin. Code XIX:2 Ch. 89 § [1075\(e\)](#).
213. Texas Admin. Code XIX:2 Ch. 89 § [1115\(d\)\(3\)\(B\)](#).
214. Texas Admin. Code XIX:2 Ch. 89 § [1050](#).
215. [The Legal Framework for the Child-Centered Special Education Process](#). Region 18 Education Service Center, (accessed January 27 2016).
216. The formula used to determine Special Education spending is defined by Texas Admin. Code XIX:2 Ch. 89 § [1121\(c\)](#). All Special Education data was aggregated from 2014-15 district-level Summary of Finance Reports. Our conclusions were submitted to the review of Texas Education Agency and Equity Center experts, who verified that our method was correct.
217. Texas Edu. Code Ch. 42, § [151\(f\)](#). Thus, for the purpose of

finance, FTEs are the number of students served; in practice, more students are enrolled in the special education program, but do not receive full-time services.

218. Texas Edu. Code Ch. 29, § [182](#).
219. Texas Edu. Code Ch. 29, § [181](#).
220. Texas Edu. Code Ch. 29, § [182](#).
221. Texas Edu. Code Ch. 42, § [154\(a\)\(2\)](#).
222. [2014-2015 Summary of Finances: Statewide Tier 1 Detail Report](#). January 22 2016.
223. Texas Edu. Code Ch. 42, § [158](#); Ch. 46, § [001](#).
224. Texas Education Agency. Cassie Huggins, phone call with author. January 14 2016.
225. See also [An Introduction to School Finance in Texas](#), 16.
226. *Ibid.*, 11.
227. [H.B. 1](#), 84th R.S., III:6. (2015).
228. Texas Edu. Code Ch. 42, § [155](#).
229. Legislative Budget Board. [Texas School District Transportation Services](#), 2. 2009.
230. Texas Edu. Code Ch. 42, § [155\(b\)](#).
231. Texas Education Agency. [Summary of Finances: Transportation Route Services Statewide 2014-2015](#), (accessed January 27 2016).
232. Texas Edu. Code Ch. 42, § [155\(b\)](#).
233. [Summary of Finances: Transportation Route Services Statewide 2014-2015](#), (accessed January 27 2016).
234. Texas Edu. Code Ch. 42, § [155\(b\)](#).
235. See “Related Services” and “Services Plan” in the glossary published at [The Legal Framework for the Child-Centered Special Education Process](#). Region 18 Education Service Center, accessed January 27 2016.
236. [Summary of Finances: Transportation Route Services Statewide 2014-2015](#), (accessed January 27 2016).
237. Texas Edu. Code Ch. 42, § [155\(f\)](#).
238. [Summary of Finances: Transportation Route Services Statewide 2014-2015](#), (accessed January 27 2016).
239. Texas Edu. Code Ch. 42, § [155\(e\)](#).
240. *Ibid.*
241. [Summary of Finances: Transportation Route Services Statewide 2014-2015](#), (accessed January 27 2016).
242. Texas Education Agency. [School Transportation Allotment Handbook: Effective Beginning with 2014-2015 School Year](#), 32. May 2014.
243. [Layers of Knowledge, Texas School Finance #12: Transportation Allotment](#). YouTube, published May 11 2015.
244. [Texas School District Transportation Services](#), 1.
245. [School Transportation Allotment Handbook](#), 43.
246. Texas Edu. Code Ch. 42, § [157](#).
247. Texas Education Agency. Sherry Mansell, email message to author. April 9, 2015. Data available upon request.

248. Texas Edu. Code Ch. 29, § [201](#).
249. Texas Edu. Code Ch. 29, § [202\(a\)\(1\)](#).
250. Texas Edu. Code Ch. 29, § [202\(a\)\(2\)](#); Ch. 39, § [054](#).
251. Texas Education Agency. [2016-2017 Public Education Grant \(PEG\) List](#), 40. December 14 2015; Texas Education Agency. [2015-2016 Public Education Grant \(PEG\) List](#), 33. December 19 2016.
252. There are 4 endorsements which reflect special preparation in either STEM, business, public service, or the liberal arts. See Texas Edu. Code Ch. 28, § [025\(c-1\)](#).
253. Texas Edu. Code Ch. 39, § [053\(c\)](#).
254. Smith, Morgan, [Existing Program Languishes as Scholarship is Pushed](#), (Austin, TX: The Texas Tribune, February 15 2013). See comments by Mike Moses, former Dallas ISD superintendent.
255. [Message from the Executive Director, David Dunn](#), Texas Charter Schools Association, (accessed January 25 2016).
256. Grady, Sarah, Stacey Bielick, and Susan Aud, [Trends in the Use of School Choice: 1993 to 2007](#), (Washington, D.C.: U.S. Department of Education, National Center for Education Statistics, April 2010), 30-32.
257. [Love v Dallas](#), at 2
258. Texas Education Agency. Amanda Brownson, email message to author. December 3 2015.
259. Texas Education Agency. Lisa Dawn Fisher, email message to author. November 17 2015.
260. *Ibid.*
261. [Region and School District ADA Report: 2004-05 through estimated 2014-15](#); Danette Overstreet, email message to author. December 4 2015. Data available upon request.
262. Colbert, Paul, “[In Depth: Understanding Texas School Finance](#),” *InDepth: Understanding Texas School Finance* 4, no. 2 (Spring 2014): 2.
263. Texas Edu. Code Ch. 42, § [002](#); Ch. 42, § [301](#).
264. Texas Education Agency. Danette Overstreet, email message to author. December 4 2015. Data available upon request.
265. ADA data from Texas Education Agency, [Region and School District ADA Report: 2004-2005 Through Estimated 2014-2015 Wealth per ADA Report](#).
266. Texas Edu. Code Ch. 45, § [003\(d\)](#). To be precise, the maximum rate is equal to \$0.17 plus the product of the compression percentage and \$1.50.
267. Texas Edu. Code Ch. 45, § [003\(e\)](#).
268. [H.B. 1](#), 73rd Third C.S. (2006).
269. *Ibid.*, § [1.01\(a\)\(1-3\)](#).
270. [H.B. 3646](#), 81st R.S. (2009)
271. Texas Edu. Code Ch. 42, § [302\(a\)](#); Ch. 41, § [002\(a\)\(2\)](#).
272. [An Introduction to School Finance in Texas](#), 14.
273. *Ibid.*, 15.
274. Texas Edu. Code Ch. 42, § [302\(a-1\)\(1\)](#).
275. [An Introduction to School Finance in Texas](#), 15.

276. Texas Edu. Code Ch. 42, § [302\(a-1\)\(2\)](#).
277. Texas Edu. Code Ch. 41, § [002\(a\)\(3\)](#).
278. *Fiscal Size Up: 2014-15 Biennium*, 236.
279. Texas Edu. Code Ch. 45, § [001](#).
280. Texas Edu. Code Ch. 45, § [001\(a\)\(1\)\(D\)](#). Further research is needed on how much I&S revenue is expended on M&O items.
281. *An Introduction to School Finance in Texas*, 16.
282. Texas Bond Review Board, *2014 Annual Report: Fiscal Year Ended August 31, 2014* (Austin, TX: Texas Bond Review Board, December 2014), 7.
283. According to the 1990 Texas Education Code, the purpose of Tier 2 was “to provide an enriched program and additional funds for facilities.” *In Depth: Understanding Texas School Finance*, 2.
284. *Texas Permanent School Fund: 2014 Annual Report*, 63.
285. Texas Education Agency. *Forty-Eighth Biennial Report: 1972-1974*, 78; Texas Education Agency. *Thirty-Seventh Biennial Report: 1950-1952*, 15-18.
286. Texas Edu. Code Ch. 46, § [003\(a\)](#); Ch. 46, § [032\(a\)](#); Texas Association of School Boards, *A Guide to Texas School Finance* (Austin, TX: Texas Association of School Boards, January 2012), 25-26; *School Finance 101*, 37.
287. Texas Edu. Code Ch. 46, § [005](#); Ch. 46, § [034\(a\)](#).
288. *A Guide to Texas School Finance*, 23.
289. Texas Edu. Code Ch. 45, § [001\(b\)](#).
290. The Bond Review Board (BRB) noted that, “Everything on our website is for informational purposes only and is meant to be an estimate. BRB staff does not receive issuance information for everything that has been issued among local governments. We did just complete a project where we reconciled debt outstanding back to 2003, meaning we compared the debt outstanding information in our database to other sources, but did not go farther back than 2003.” Texas Bond Review Board. Justin Groll, email message to author. November 6 2015.
291. Texas Bond Review Board, *Local Publications, FY 2000-2015 ISD GO & Rev Debt Outstanding*, (accessed January 27 2016). Data for FY 1992-1999 was obtained through a public information request: Bond Review Board. Justin Groll, email message to author. November 6 2015. Data available upon request.
292. Texas Education Agency, *2014-2015 Statewide Summary of Finances*. January 22 2016; Texas Bond Review Board, *Local Publications, FY 2000-2015 ISD GO & Rev Debt Outstanding*, (accessed January 27 2016).
293. ADA data from Texas Education Agency, *Region and School District ADA Report: 2004-2005 Through Estimated 2014-2015 Wealth per ADA Report*.
294. [H.B. 1](#), 75th R.S. (1997)
295. Texas Admin. Code XIX:2 Ch. 61, § [1032](#) (2014).
296. Texas Edu. Code Ch. 46, § [003\(g\)](#).
297. Texas Edu. Code Ch. 46, § [006](#).
298. *A Guide to Texas School Finance*, 25.
299. Texas Edu. Code Ch. 46, § [005](#).
300. Texas Edu. Code Ch. 46, § [003\(c\)](#).
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308. *School Finance 101*, 42.
309. Ibid.
310. *Fiscal Size Up: 2014-15 Biennium*, 237.
311. Ibid., 242.
312. Ibid., 242.
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315. *Sources of Revenue*, 92-93, 110-111.
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349. [Sources of Revenue](#), 102.
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351. [West Orange Cove II](#), at 36.
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353. [Introduction to School Finance](#), 22.
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363. The United States Supreme Court has observed, "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." See also the Tenth Amendment of the US Constitution. [San Antonio School District v. Rodriguez](#), at 35.
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380. Hansen, Janet S., Gina Ikemoto, Julie Marsh, and Heather Barney, [School Finance Systems and Their Responsiveness to Performance Pressure: A Case Study of Texas](#) (Seattle, WA: Center on Reinventing Public Education, March 2007), 37. Hansen and her colleagues concluded about Texas, "the state funding formulas [have] for many years been weighted by student needs. State-wide, however, it appeared to us that use of weighted formulas for distributing district funds to schools was still very much the exception rather than the rule." Hansen noted that targeted funds were diverted to low-performing schools, which is at odds with Roza's and Hill's findings.

381. Clint ISD v Sonia Herrera Marquez, et. al., [Brief of Amici Curiae the El Paso Interreligious Sponsoring Organization and the Border Network for Human Rights](#), at 12. The facts in the Marquez case raise salient questions in light of Roza's, Hill's, and Hansen's research: what amount of student inequity is maintained by districts? Why is it maintained? Is it caused by individual discretion or systematic necessity? Is this consistent with the Constitution's requirements in [Art. VII, § 1](#)? Is it consistent with the requirement to accomplish a general diffusion of knowledge, especially in light of Texas Edu. Code Ch. 4, § [001\(a\)](#), and Ch. 28, § [001](#)? Further research is needed to answer these questions. Unfortunately, this is far beyond the scope of the present work.
382. Compare video from [Texas Taxpayer & Student Fairness Coalition et al v Michael Williams](#) and [Clint ISD v Sonia Herrera Marquez, et. al.](#)
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399. Ibid., Findings of Fact 1466. However, this shouldn't be mistaken for restraint animated by respect for the separation of powers. The District Court provided numerous advisory opinions by demanding funding for at least 47 things. See [Analysis of the District Court's School Finance Ruling](#), 4. Advisory opinions are an executive power properly exercised in Texas only by the Attorney General. When judges issue advisory opinions they violate the separation of powers. For a condemnation of this by the Texas Supreme Court in the context of school finance, see the scathing opinions of Texas Supreme Court Justices Gonzalez, Gammage, Doggett, and Mauzy in [Edgewood II](#), at 500-506.
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Index

A

Adams, John 2
 Additional State Aid for Tax Reduction 46
 Adequacy 6, 50
 Adjusted Allotment 23, 28
 Adjusted Basic Allotment 23, 27
 Available School Fund 8, 9, 14, 42
 Average Daily Attendance 18, 23, 25, 27, 28, 30, 32, 34, 37, 41, 42, 44, 48, 54

B

Basic Allotment 23, 24, 27
 Bilingual Education Program 28, 30, 31, 35, 51

C

Career and Technology Program 30, 32, 35, 43, 51
 Compensatory Education Program 28, 30, 31, 35, 42, 43, 51
 Compressed Tax Rate 23, 24, 25, 46
 Copper Pennies. *See* Tier 2.1
 Cost of Education Index 23, 25, 27, 37, 49

D

Debt Service. *See* Tier 3
 District-Level Adjustments 23, 24, 25, 26, 27, 28, 29
 Dropout Rate 1, 31, 34

E

Education Savings Accounts 1, 5, 7, 54, 55
 Efficiency 6, 18, 45, 49
 Equity 6, 18, 37, 50, 51, 54
 Existing Debt Allotment 40, 41, 49

F

Federal Funds 18, 45, 47, 48
 Federalist Papers 2, 57
 Foundation School Fund 8, 11, 13, 14, 18, 21, 42
 Foundation School Program 4, 7, 11, 14, 21, 22, 23, 28, 37, 42, 45, 48, 49, 52
 Free and Reduced Price Lunch Program 31

G

General Diffusion of Knowledge 4, 5, 6, 52
 General Revenue 4, 8, 11, 12, 13, 15, 21, 43
 Gifted and Talented Program 30, 31, 34, 35, 51
 Gilmer-Aikin Laws 22, 23, 27
 Golden Pennies. *See* Tier 2.2
 Graduation Rate 1, 34
 Guaranteed Yield Program. *See* Tier 2

H

High School Allotment 28, 30, 31, 35, 37, 51

I

Instructional Facilities Allotment 40, 41, 49
 Instructional Materials Allotment 42, 43
 Interest and Sinking. *See* Tier 3

J

Jefferson, Thomas 2, 5

L

Legislation
 House Bill 1, 73rd 3CS (2006) 40
 House Bill 1, 75th RS (1997) 41
 House Bill 1, 79th 3CS (2006) 24, 25, 46
 House Bill 1, 84th RS (2015) 15, 24
 House Bill 2, 79th 3CS (2006) 46
 House Bill 11, 72nd RS (1991) 13
 House Bill 72, 68th 2CS (1984) 14, 42
 House Bill 3646, 81st RS (2009) 40
 Senate Bill 1, 74th RS (1995) 27
 Senate Bill 4, 76th RS (1999) 18, 41, 42
 Senate Bill 6, 82nd RS (2011) 42
 Senate Bill 7, 73rd RS (1993) 18
 Senate Bill 115, 51st RS (1949) 22
 Senate Bill 116, 51st RS (1949) 22
 Senate Bill 117, 51st RS (1949) 22
 Senate Bill 1788, 80th RS (2007) 44

Litigation

Edgewood I 4, 17
 Edgewood II 66

Edgewood IV 6
 Texas Taxpayer & Student Fairness Coalition et al v Michael Williams 59, 61, 62, 65, 66
 West Orange Cove II 4, 11, 24, 46

M

Maintenance and Operations. *See* Tier 1 or Tier 2
 Midsize-District Adjustment 27, 28
 Minimum Foundation Program 7, 22

N

New Instructional Facilities Allotment 28, 32, 33, 35, 37

P

Permanent School Fund 4, 8, 9, 10, 14, 40, 42
 Pregnant Student Program 30, 31, 35, 37, 51
 Property Tax Relief Fund 11, 15, 46
 Public Education Grant 28, 30, 34, 35, 51

R

Recapture 4, 8, 17, 18, 19, 20, 23, 24, 34, 40, 41, 42
 Regular Program 28, 30, 32, 35, 37, 51
 Robin Hood. *See* Recapture
 Rural District. *See* Sparse, Small, or Midsize-District Adjustment

S

Set-Aside Grants 42
 Small-District Adjustment 27, 28
 Sparsity Adjustment 27

Special Education Program 28, 30, 31, 33, 35, 45, 47, 51
 Instructional Arrangements 32
 Suitability 6

T

Target Revenue. *See* Additional State Aid for Tax Reduction
 Tax
 Dedicated Taxes 11, 13, 14
 Diesel Fuel Tax 14
 Franchise Tax 11, 12, 13, 25
 Gas Tax 14
 Motor Vehicle Taxes 11, 12
 Property Tax 4, 9, 11, 17, 18, 21, 23, 24, 25, 28
 Sales Tax 11, 12, 13, 14
 Texas Constitution 11, 14, 18, 23
 Article VIII, Section 1-e 11, 25, 47
 Article VII, Section 1 6
 Article VII, Section 3 17
 Texas Education Agency 13, 20, 22
 Tier 1 23, 24, 25, 28, 30, 41, 46, 51
 Tier 2 23, 24, 25, 37, 41, 46, 48
 Tier 2.1 40
 Tier 2.2 40
 Tier 3 4, 23, 24, 32, 40, 41, 48
 Transportation Allotment 28, 33, 34, 35, 37

W

WADA 34, 37, 38, 39, 40, 49
 Washington, George 5



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