



**I.**

**DISCOVERY CONTROL PLAN**

1. The Calhoun County ISD Plaintiffs respectfully submit that the remaining discovery in this case should be conducted in accordance with the scheduling order agreed to by all parties and signed by the Court.

**II.**

**PARTIES**

2. Plaintiff Calhoun County Independent School District (“Calhoun County ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

3. Plaintiff Abernathy Independent School District (“Abernathy ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

4. Plaintiff Aransas County Independent School District (“Aransas County ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

5. Plaintiff Frisco Independent School District (“Frisco ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

6. Plaintiff Lewisville Independent School District (“Lewisville ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

7. Plaintiff Richardson Independent School District (“Richardson ISD”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

8. Defendant Texas Education Agency (the “TEA”) is a governmental agency organization under the laws of the State of Texas. The TEA has appeared in this matter and is before the Court for all purposes.

9. Defendant Michael Williams, Texas Commissioner of Education, is sued in his official capacity. Defendant Michael Williams has appeared in this matter and is before the Court for all purposes.

10. Defendant Susan Combs, Texas Comptroller of Public Accounts, is sued in her official capacity. Defendant Susan Combs has appeared in this matter and is before the Court for all purposes.

11. Defendant Texas State Board of Education is a governmental agency organization under the laws of the State of Texas. Defendant Texas State Board of Education has appeared in this matter and is before the Court for all purposes.

12. The Honorable Greg Abbott, Attorney General of the State of Texas, was served with notice in accordance with Section 37.006(b) of the Texas Civil Practice and Remedies Code and was served with appropriate notice at the Texas Supreme Court Building, 209 West 14th Street, Austin, Texas 78701.

### III.

#### JURISDICTION AND VENUE

13. This Court has original jurisdiction to adjudicate the claims or causes of action made by the Calhoun County ISD Plaintiffs against Defendants under the Uniform Declaratory Judgments Act of Section 37.001, *et seq.*, of the Texas Civil Practice and Remedies Code.

14. Venue is proper in the district court of Travis County because Robert Scott, former Defendant and Commissioner of Education, is a resident of Travis County. Venue as to all remaining Defendants is proper under Section 15.005 of the Texas Civil Practice and Remedies Code.

### IV.

#### INTRODUCTION

15. The Texas school finance system has reached a crisis stage again. In 2011, the Texas Legislature made unprecedented reductions in education funding and effectively failed to fund student enrollment growth for the first time in 60 years. The total \$5.3 billion cut to public education in the 2011 legislative session forced districts to eliminate thousands of positions for teachers and other support staff. Budget constraints have driven school districts to request thousands of waivers of the State's own statutory class size requirements. In addition, \$1.3 billion of the cuts have come from grant programs, many of which are targeted towards at-risk students, like full-day pre-kindergarten, after-school tutoring, and dropout prevention programs, which will only exacerbate the significant "achievement gaps" in Texas. These cuts to school funding come at a time when Texas is (1) already well below national averages in per-pupil expenditures, (2) adding roughly 70,000 students per year, and (3) implementing a new and more rigorous testing and accountability regime. In the words of Former Lieutenant Governor Bill

Ratliff, Texas has reached a “situation where we’re asking people to make bricks without straw.” *Neeley v. West Orange-Cove Consolidated I.S.D.* (“*West Orange-Cove IP*”), 176 S.W.3d 746, 790 (Tex. 2005).

16. Recognizing the devastating impact that the 2011 cuts had on school districts, in 2013, the 83rd Legislature restored a portion of the \$5.3 billion that it cut from public education. But only a small portion of the restored funding went to the coalition represented by the Calhoun County ISD Plaintiffs, leaving these districts well below their 2010-11 funding levels. And all school districts remain burdened by the cuts the Legislature chose *not* to restore – including virtually all of the cuts to grant programs designed to assist at-risk students. Even if the 83rd Legislature had fully restored the 2011 cuts, school districts would still be underfunded given the magnitude of the task at hand. Notwithstanding its partial restoration of the 2011 cuts, the Legislature has failed to provide the level of funding that school districts need to meet the State’s increased standards.

17. The State’s failure to adequately fund education has also threatened the principle of local control, long a central pillar of the Texas system of public education. A substantial number of school districts must now effectively use all of their local taxing capacity in the effort to meet state mandates and adequacy requirements. School districts are supposed to enjoy meaningful discretion to generate and use local tax revenues for local enrichment purposes. But for many districts, this discretion has practically vanished.

18. The State’s severe reductions in school funding, occurring just as it has simultaneously increased the burdens on school districts, represent a violation of the State’s constitutional responsibility to provide adequate resources for a quality public education for all schoolchildren. The State’s actions have also left school districts without meaningful discretion

to control their local property tax rates, in violation of the Texas Constitution's prohibition on state ad valorem taxes. This lawsuit seeks a declaration that the current system is unconstitutional and that the State must swiftly remedy the inadequacy of the system of funding for public education.

## V.

### BACKGROUND AND FACTUAL ALLEGATIONS

#### A. The Constitutional Framework

19. Article VII, section 1 of the Texas Constitution – the “education” clause – provides: “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.” TEX. CONST. art. VII, § 1. According to the Texas Supreme Court, article VII, section 1 obligates the Legislature to meet three standards in providing for a public school system.

20. First, the education provided must be adequate, i.e., the public school system must accomplish “that general diffusion of knowledge essential to the preservation of the liberties and rights of the people.” *West Orange-Cove II*, 176 S.W.3d at 752 (citing TEX. CONST. art. VII, § 1). The Texas Supreme Court has elaborated that the public education system is adequate if districts are reasonably able to:

provide “*all Texas children . . . access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.*” TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to “continue to learn in postsecondary educational, training, or employment settings.” TEX. EDUC. CODE § 28.001 (emphasis added).

*Id.* at 787.

21. Second, the means adopted by the Legislature must be “suitable.” *Id.* at 753. “[S]uitable provision’ requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children.” *Id.*

22. Third, the system must be “efficient.” *Id.* at 752.

23. The Legislature must also satisfy these obligations without relying on constitutionally prohibited state ad valorem taxes. *See* TEX. CONST. art. VIII, § 1-e (“No State ad valorem taxes shall be levied upon any property within this State.”). Local control of property tax rates and the ability to use revenues from those taxes for locally chosen programs are essential to the principle of local control upon which the Texas public school system is premised. As the Supreme Court has declared, “[L]ocal supplementation is made a core component of the system structure, necessitated by the basic philosophy of the virtue of local control.” *West Orange-Cove II*, 176 S.W.3d at 797.

**B. *West Orange-Cove II: The School Finance System Under a Constitutional Cloud***

24. Ten years ago, in *West Orange-Cove Consolidated I.S.D. et al v. Neeley*, a broad coalition of school districts brought two claims against the State. First, they argued that the school finance system had evolved into an unconstitutional state property tax, in violation of article VIII, section 1-e of the Texas Constitution. Specifically, the statutory cap on maintenance and operations (“M&O”) tax rates of \$1.50 per \$100 of property valuation had become both a “floor” (because districts could not meaningfully lower their tax rates without compromising their ability to provide a constitutionally adequate education) and a “ceiling” (because the cap barred districts from raising their tax rates further), such that districts lacked meaningful discretion in setting their tax rates. Second, the *West Orange-Cove* plaintiffs argued that the

then-existing school finance system failed to provide the plaintiff districts access to funds sufficient to provide a constitutionally adequate education. In extensive findings, the trial court ruled in favor of the *West Orange-Cove* plaintiffs on both the state property tax and adequacy claims.

25. In November 2005, in a 7-1 decision, the Texas Supreme Court declared the Texas school finance system unconstitutional, finding that it violated the Constitution's prohibition of a state property tax. *Neeley v. West Orange-Cove Consolidated I.S.D.*, 176 S.W.3d 746 (Tex. 2005).

26. In upholding the trial court's judgment that the system had evolved into an unconstitutional state property tax, the Supreme Court emphasized that the Legislature must provide a funding system that allows local school districts to meet the State's high educational standards, while leaving local school boards with meaningful discretion over their local property tax rates. While the Court acknowledged that "meaningful discretion" is an "imprecise standard," it concluded that it was not even a "close question" as to whether districts had such discretion. *Id.* at 796. The Court cited evidence of "how districts are struggling to maintain accreditation with increasing standards, a demographically diverse and changing student population, and fewer qualified teachers, while cutting budgets even further." *Id.* It referenced falling teacher certification rates, growing teacher turnover and attrition, the increasing numbers of limited English proficient and economically disadvantaged students, the higher costs of educating these special needs students, and the more rigorous curriculum, testing, and accreditation standards. *Id.* After pointing to statistics regarding the number of districts taxing at the cap and the exhaustion of fiscal capacity in the system, the Court noted that "[t]he current

situation has become virtually indistinguishable from one in which the State simply set an ad valorem tax rate of \$1.50 and redistributed the revenue to the districts.” *Id.* at 796-97.

27. The Court also reaffirmed that districts must have funding for “local supplementation,” noting that this was inherent in the statutory scheme:

Although the statute does not promise any particular level of supplemental funding, local supplementation is made a core component of the system structure, necessitated by the basic philosophy of local control. *The State cannot provide for local supplementation, pressure most of the districts by increasing accreditation standards in an environment of increasing costs to tax at maximum rates in order to afford any supplementation at all, and then argue that it is not controlling tax rates.*

*Id.* at 797 (emphasis added).

28. The Supreme Court reversed the trial court’s finding of an adequacy violation, but not without raising serious warning flags. The Court noted that there was:

much evidence . . . that many schools and districts are struggling to teach an increasingly demanding curriculum to a population with a growing number of disadvantaged students, yet without additional funding needed to meet these challenges. There are wide gaps in performance among student groups differentiated by race, proficiency in English, and economic advantage. Non-completion and dropout rates are high, and the loss of students who are struggling may make performance measures applied to those who continue appear better than they should. The rate of students meeting college preparedness standards is very low. There is also evidence of high attrition and turnover among teachers statewide, due to increasing demands and stagnant compensation.

*Id.* at 789.

29. The Court further concluded that there was “substantial evidence . . . that the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education.” *Id.* at 790.

30. The Court even characterized the situation as “an *impending* constitutional violation” and stated that it “remains to be seen whether the system’s *predicted drift toward*

*constitutional inadequacy* will be avoided by legislative reaction to widespread calls for changes.” *Id.* (emphasis added).

31. Finally, the Supreme Court issued a warning about the legislative proposals being discussed at the time of its decision:

Various legislative proposals during the past year to remedy perceived problems with the public education system and its funding would reduce the maximum ad valorem tax rate and allow it to be exceeded for certain purposes. While we express no view on the appropriateness of any of these proposals, *we are constrained to caution, as we have before, that a cap to which districts are inexorably forced by educational requirements and economic necessities, as they have been under Senate Bill 7, will in short order violate the prohibition of a state property tax.*

*Id.* at 797-98 (emphasis added). The Supreme Court’s warnings have proven prophetic.

### **C. The Legislature Responds to the *West Orange-Cove II* Decision**

32. The Texas Legislature attempted to respond to the Supreme Court’s *West Orange-Cove II* decision in a special session called in the summer of 2006. In that session, the Legislature passed House Bill 1, which mandated the lowering of M&O tax rates for most districts from \$1.50 to \$1.00. This new lower rate is known as the “compressed rate.”

33. The compression of local property tax rates by approximately one-third, standing alone, would have severely reduced the overall funding available for public education. The Legislative Budget Board estimated that House Bill 1’s compression of local M&O tax rates by one-third would reduce property tax revenue by \$14.2 billion in the 2008-09 biennium. To partially replace this significant loss of local revenue, in the same special session, the Legislature created the Property Tax Relief Fund (“PTRF”), to be funded from several sources, including a restructured business margins tax and increased cigarette and tobacco taxes. From the very outset, the Legislature recognized that the new taxes would not fully fund the compression of local school taxes, and state funds would be needed from other sources for this purpose.

Counting on the availability of new revenues from the PTRF – and to make up for school districts’ loss of local property tax revenues – House Bill 1 included an increase in the amount allotted to schools from the State through its statutory funding formulas.

34. House Bill 1 included additional provisions to make sure that no individual school district actually lost revenues as a result of the Legislature’s changes. The bill provided, in substance, that state aid would be provided to districts in an amount needed for each district to maintain total per-pupil revenue equal to what it had received in the 2005-06 school year, or what it would have received in the 2006-07 school year under the old system, whichever was greater. The bill further provided additional state aid for teachers and a high school allotment of \$275 per pupil. These provisions are the origin of what is known as “target revenue.”

35. House Bill 1’s mandatory compression of local property tax rates and its target revenue provisions were, together, intended to establish a basic level of funding for school districts consistent with their levels of tax effort and revenue generation as they existed at the time of the 2006 legislative changes. The target revenue provisions, moreover, would avoid the effect of penalizing any school districts for their own victory in court in *West Orange-Cove II*. From fiscal years 2007 through the present, school districts have been generally funded at the greater of either their target revenue level or the level that would be provided by the State’s statutory formulas, as set forth in Chapters 41 and 42 of the Texas Education Code.

36. House Bill 1 also sought to address the state property tax violation that the Supreme Court had identified in *West Orange-Cove II*. The Supreme Court had directed that districts must have meaningful discretion in setting their local property tax rates, and that local property taxes could not be wholly enlisted in the effort to meet basic state requirements. The Legislature thus provided that districts could supplement the basic level of funding through a

decision to increase local M&O tax rates above the compressed rate, up to a cap that was eventually set at \$1.17 per \$100 of property valuation. House Bill 1 intended that districts could use the additional funds from \$1.00 to \$1.17 for local enrichment purposes above the level of funding required for an adequate education.

37. But the ability to increase local M&O tax rates came with several significant constraints. House Bill 1 stipulated that any increase above \$1.04 had to be approved by the district's voters in a special election, known as a Tax Ratification Election ("TRE"). The legislation also contained special measures applying to districts subject to the recapture provisions of Chapter 41 of the Education Code. For these Chapter 41 districts, any funds generated by an increase of more than six cents above the compressed rate were subject to partial recapture by the State under statutory formulas. Chapter 41 districts that wished to tax more than six cents above the compressed rate, and above \$1.04, would therefore be forced to ask their voters to approve a tax increase in which a portion of the new dollars raised would not be used locally and would instead be recaptured by the State.

38. The Legislature's 2006 modifications to school finance were supposed to result in a system in which local property taxes were lowered, but in which the State made up for this lost revenue with new revenue from the PTRF and other sources. Districts were supposed to receive a basic tier of funding equal to or greater than their per-pupil funding in 2005-06 or their anticipated per-pupil funding in 2006-07. This level of funding was supposed to be sufficient to enable districts to meet essential state standards. And on top of this basic tier of funding, districts were supposed to have meaningful discretion to raise additional local tax dollars for local enrichment purposes. This was the intent of the plan. Unfortunately, the reality today does not match these intentions.

**D. 2007-2013: The Legislature's Fix Proves Illusory**

39. Almost from the beginning, the Legislature's response to the Supreme Court's ruling showed signs of serious inadequacy. The PTRF, which was supposed to partially offset the revenue lost from the compression of local property taxes, underperformed from the beginning. In the 2008-09 biennium, the PTRF fell short of the Comptroller's expectations by more than \$3 billion. Although the Comptroller lowered expectations for the fund in the 2010-11 biennium, the PTRF still raised more than \$1 billion *less* than predicted. The sums raised by the PTRF were nowhere near what was needed to compensate for the gap in the budget resulting from local property tax compression. The Comptroller has estimated that the tax "swap" implemented in 2006 has left the State with a recurring structural deficit of nearly \$10 billion per biennium.

40. The State was able to avoid a more serious budget reckoning in the 2009 legislative session, owing to the infusion of approximately \$12 billion in federal stimulus funds. This included \$3.8 billion earmarked specifically for education. These federal funds enabled the Legislature to postpone confronting the true challenges of the structural deficit it had created.

41. But in the 82nd Legislative Session, beginning in January 2011, the extent of the structural deficit could no longer be hidden. Responding to the problems originating in the failed tax swap of 2006, the Legislature chose to cut a total of \$4 billion in the fiscal biennium beginning in September 2011 from the Foundation School Program (the primary vehicle for distributing state aid to school districts) and \$1.3 billion in grants administered by the Texas Education Agency. Many of the grants were for programs targeted towards at-risk students, such as full-day prekindergarten, after-school tutoring, and dropout prevention efforts. These cuts were not guided by any studies or analyses of the true costs of adequate funding for quality

public education. They had the effect of reducing overall funding for most school districts by approximately 5-6% in the 2011-12 school year, compared to what they would have received under prior law, with even greater reductions for many districts in 2012-13.

42. These funding cuts came even as enrollment in Texas schools is increasing at the rate of approximately 70,000 students per year. Ordinarily, student growth would have required a corresponding increase in state funding just to maintain the same levels of funding per student. But the budget cuts of 2011 caused a significant decline in actual per-student expenditures – even as Texas already ranked below average among states in this category. Even before the budget cuts were implemented, *Quality Counts*, an annual report prepared by *Education Week*, ranked Texas 49th out of the 50 states on per-pupil expenditures after adjusting for regional cost differences.

43. In 2013, the 83rd Legislature restored \$3.4 billion of the \$4 billion that it cut from the Foundation School Program in 2011 through the passage of Senate Bill 1 and House Bill 1025. Despite the partial restoration of funding, many school districts, including each of the Calhoun County ISD Plaintiffs, are still expected to receive substantially less per weighted student in the next two school years than they would have received under the finance formulas before the cuts. In addition, the 83rd Legislature failed to restore any meaningful portion of the \$1.3 billion in cuts to grant programs designed to assist at-risk students. Thus, the Legislature chose not to fully restore the 2011 cuts, much less to provide any additional funding to meet the State's more rigorous standards.

44. Further, the Legislature also relied extensively on local property tax revenue to finance these changes. While the cost of the funding changes and enrollment growth adds up to

approximately \$6 billion, an estimated \$4.5 billion of this cost will be funded from local rather than state revenue.

**E. The Situation Today: the Supreme Court's Warnings Have Materialized**

45. Texas schools today find themselves in the very situation of which the Supreme Court warned in *West Orange-Cove II*. The State's school finance system is no longer merely "drifting" toward constitutional inadequacy. It has arrived.

46. The Legislature's 2011 budget cuts have forced school districts across the State to eliminate teaching positions, to fail to replace retiring teachers and staff, to increase class sizes, to reduce career and counseling services, to restrict curriculum and enrichment opportunities, and to curtail or eliminate after-school and prekindergarten programs. These reductions – which have not been fully reversed – have had and will continue to have a significant adverse impact on the ability of school districts to provide the access to quality education for all schoolchildren that the State's laws require. They hinder districts in the preparation of their students to meet college and post-secondary preparedness standards, a task that both the Supreme Court and the Legislature have identified as central to the State's constitutional obligation. They have also driven many districts to a dramatic increase in the number of requests for waivers of the State's legally mandated class size requirements. In tacit recognition of the dire circumstances in which districts have found themselves, the Texas Education Agency even added a new option for "financial hardship" to the list of reasons for requesting a class size waiver. These facts, together with others to be presented at trial, reveal that the State has not made the significant forward progress the Supreme Court admonished was necessary to avert a constitutional violation.

47. These severe funding reductions came just as school districts were called upon by the Legislature and the TEA to do much more. Although the Legislature restored a portion of the

cuts in 2013, school districts require *more* funding than pre-cut levels – not less – to meet the significantly more challenging requirements the State has imposed since the budget cuts. Even with the partial restoration of funding, the State has not adequately funded school districts to meet its recently increased standards.

48. Following mandates from the Legislature, the State has implemented a new set of accountability and assessment exams and a new set of end-of-course exams. The new State of Texas Assessments of Academic Readiness (“STAAR”) program is widely acknowledged to demand more of students, schools, and districts than the previous Texas Assessment of Knowledge and Skills (“TAKS”) program. The TEA’s website observes that “[t]he most significant changes to the assessment program include increasing the rigor of both the assessments and the performance standards for all grades, subjects, and courses . . . . The rigor of items has been increased by assessing skills at a greater depth and level of cognitive complexity.” Moreover, the TEA notes, “[t]he total number of test items for the STAAR assessments has been increased for most grades, subjects, and courses.” The State has also conducted studies to empirically link performance on the STAAR exam with other measures, including TAKS. The results of these studies indicate that the final standards on STAAR are far more rigorous than were the final TAKS standards.

49. The Legislature also has set “college and career readiness” as the outcome goal of the Texas educational system. To advance this mission, in 2006, the Legislature required the Commissioner of Education and the Commissioner of Higher Education to work together to:

- establish “college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education”;

- “evaluate whether the high school curriculum requirements under Section 28.002 and other instructional requirements serve to prepare students to successfully perform college-level course work”; and
- “recommend how the public school curriculum requirements [could] be aligned with college readiness standards and expectations.”

TEX. EDUC. CODE § 28.008.

50. In 2008, the College and Career Readiness Standards (“CCRS”) were formally adopted by the Texas Higher Education Coordinating Board (“THECB”). These standards have since been approved by the Commissioner of Education and incorporated into state curriculum standards by the State Board of Education. By their own terms,

the CCRS are designed to represent a full range of knowledge and skills that students need to succeed in entry-level college courses, as well as in a wide range of majors and careers. According to research, over 80 percent of 21st century jobs require some postsecondary education. By implementing these standards, secondary school and postsecondary faculty in all academic disciplines will advance the mission of Texas: college and career ready students.<sup>1</sup>

51. In 2009, in House Bill 3, the Legislature extended and revised early college readiness legislation to include:

- development of end-of-course exams that embed the college-readiness content standards;
- establishment of evaluation criteria on Algebra II and English III exams that directly link test performance with readiness to succeed in an entry-level, credit-bearing college course without remediation; and
- establishment of a statewide school accountability system that will hold schools accountable for increasing the percentages of students who meet EOC test standards for graduating from high school.

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<sup>1</sup> Texas College and Career Readiness Standards at p. iii, *available at* <http://www.thecb.state.tx.us/files/dmfile/CCRS081009FINALUTRevisions.pdf> (visited Oct. 9, 2013).

College readiness is now defined as the level of preparation a student must attain in English language arts and mathematics to enroll and succeed, without remediation, in an entry-level college course in those subject areas. TEX. EDUC. CODE § 39.024(a).

52. The Legislature also requires the Commissioner of Education to periodically increase performance standards for students and schools so that, by the 2019-20 school year, Texas (1) ranks within the top states in terms of college readiness and (2) has eliminated any “significant achievement gaps by race, ethnicity and socioeconomic status.” TEX. EDUC. CODE § 39.053(f).

53. Yet even as the Legislature has increased the demands and expectations upon school districts, it has failed to provide districts with the resources needed to meet these challenges. None of this changed with the 83rd Legislature’s passage of new legislation, including legislation related to school funding (such as Senate Bill 1, House Bill 1025, House Bill 10, Senate Bill 758, and Senate Bill 1458); legislation related to standardized assessments, graduation requirements, and accountability ratings (such as House Bill 5 and House Bill 866); and other legislation affecting public education (such as Senate Bill 2, House Bill 2201, and House Bill 2549).<sup>2</sup>

54. For example, House Bill 5 reduces the number of STAAR end-of-course exams that students must pass from fifteen to five. To be eligible for graduation, students must now achieve minimum scores on the Algebra I, Biology, U.S. History, English I, and English II end-of-course exams, with the English exams covering material from what were previously four separate reading and writing exams. Students who entered ninth grade in the 2011-12 school

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<sup>2</sup> Attached as Exhibit A is a spreadsheet describing some of the legislation from the 83rd Legislature that affects school finance. This spreadsheet was filed with the Court on July 18, 2013 and is incorporated herein by reference.

year were required to achieve minimum scores on end-of-course exams similar to the five now required for graduation under House Bill 5. After *two* test administrations, almost half of these students still had not passed at least one of the required end-of-course exams and were therefore off track to graduate. More than 122,680 of these students still had not passed at least one of these exams after *three* testing opportunities. These failures have already resulted in substantial remediation costs for districts.

55. Even with a reduction in the EOC tests to be considered, relatively high failure rates continued in the STAAR program in the second year of administration. Overall, 51 percent of ninth and tenth graders failed at least one of the examinations now required for high school graduation by the enactment of House Bill 5. More than three quarters of the students failed to achieve the final recommended standard, which is considered by the TEA and the THECB to be a college-ready standard.

56. School districts continue to face significant costs to prepare students for the end-of-course exams that are now required. And while House Bill 5 reduces the total number of end-of-course exams students must pass, it does not meaningfully relieve the demands placed on school districts. House Bill 5 does not reduce the rigor of the end-of-course exams, does not eliminate the requirement to prepare students to graduate college ready, and does not reduce academic expectations. Thus, House Bill 5 does not reduce the costs districts face to meet the State's standards.

57. House Bill 5 also alters the accountability system. Accountability is now based on three separate categories – academic, financial, and community and student engagement. Like the changes to the end-of-course exams, these changes to the accountability system do not affect the requirement that school districts prepare students to graduate college or career ready.

58. House Bill 5 contains other provisions that *increase* the demands on school districts. For example, House Bill 5 creates a foundation plan requiring students to complete at least 22 credits for graduation and requires students to select an endorsement in one of five areas (business/industry; science, technology, engineering, and mathematics (STEM); public services; arts/humanities; and multidisciplinary studies). School districts must now provide additional course offerings with no additional funds to do so.

59. The Legislature has increased expectations and demands on school districts while failing to provide funding to meet its expectations. To meet the State's new expectations, funding is needed to implement strategies that evidence links to increased student performance – such as (1) smaller class sizes, particularly in the early grades, (2) full-day quality pre-K programs, (3) more competitive teacher salaries to improve the hiring and retention of quality teachers, (4) instructional coaches, (5) tutors, and (6) extended day and summer school programs. Education experts have calculated that school districts require funding well above the 2010-11 pre-cut levels to meet the State's standards, but state funding falls far short.

60. The Supreme Court has cautioned that “[i]t would be arbitrary . . . for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.” *West Orange-Cove II*, 176 S.W.3d at 785. Failure to even restore the full amount of the State's unprecedented budget cuts at a time when significant new and demanding burdens are being placed on school districts falls short of any reasonable measure of constitutional adequacy.

61. Nor are school districts reasonably able to make up for the loss in state funding by raising their local property taxes. Many districts are already at or very near the statutory M&O cap of \$1.17. Many other districts – including several of the plaintiffs in this action – are

effectively constrained in their ability to raise taxes above \$1.04 or \$1.06, either (a) because they have attempted but failed to pass a TRE (like plaintiff Lewisville ISD), or (b) because they have determined that a TRE is not politically viable and is unlikely to succeed in their district. This latter circumstance is exacerbated in the case of Chapter 41 districts, which are placed in the position of asking voters to support a tax increase when a significant portion of any new tax revenue exceeding six cents above the compressed rate would be sent out of the district.

62. Even if districts could raise enough money through local tax increases to offset the Legislature's cuts, forcing districts to do so in order to achieve adequate funding would violate the Supreme Court's precedent in *West Orange-Cove II*. Tax dollars raised above the compressed rate are intended to enable local supplementation and enrichment, not to be a vehicle for compensating for funding the State has failed to provide. As the Supreme Court has emphasized, the State must ensure that districts are adequately funded without requiring districts to enlist all of their local taxing capacity in the effort to accomplish state objectives. Despite this mandate, districts have been compelled to tax in the range of \$1.04 to \$1.17 primarily in an attempt to keep up with state standards in the face of increasing costs – not to provide local supplementation.

63. In addition, the State already controls and redistributes over \$1 billion annually in local tax revenues recaptured from Chapter 41 districts, a circumstance that the Supreme Court has described as a “significant factor in considering whether local taxes have become a state property tax.” *West Orange-Cove II*, 176 S.W.3d at 797. For Chapter 41 districts, increasing M&O rates to the statutory maximum would increase the total amount of funds recaptured by the State, thereby adding to, not reducing, the State's level of control over the local revenues generated by these districts. The State's underfunding of public education thus threatens to drive

the system toward an even greater reliance on recapture dollars to fund public education. For Chapter 41 school districts, this would further erode the principle of local control upon which the system is premised.

64. These circumstances demonstrate that the school finance system is constitutionally inadequate. The State has severely reduced levels of per-student funding, even as the burdens on school districts have increased. The State has acted arbitrarily in failing to provide the resources reasonably needed to enable school districts to prepare students to achieve the goals and accountability standards set by the Legislature.

65. The State's underfunding of public education also places school districts, once again, in the position of collecting a *de facto* unconstitutional state property tax. A large number of school districts have lost meaningful discretion to set their local M&O tax rates, either because they already tax at the statutory maximum, or because they are effectively constrained in the setting of their M&O tax rates by the combination of state budget cuts, statutory recapture provisions, and the TRE requirement.

66. The Calhoun County ISD Plaintiffs ask the Court to order that these violations be remedied.

## VI.

### CAUSES OF ACTION

#### **Declaratory Judgment**

67. The Calhoun County ISD Plaintiffs bring the following claims under the Uniform Declaratory Judgment Act. *See* TEX. CIV. PRAC. & REM. CODE, § 37.001 *et seq.*

68. The Texas Constitution requires a public school finance system that (1) permits districts to raise and receive sufficient funds to provide a general diffusion of knowledge, i.e., a

constitutionally adequate education (article VII, section 1); (2) is suitably structured, operated and funded so that it can accomplish a general diffusion of knowledge for all Texas children (article VII, section 1); and (3) leaves districts “meaningful discretion” to set their property tax rates in order to provide local enrichment programs to their students, if they so choose (article VIII, section 1-e). The current system is in violation of all of these requirements, including with respect to the Plaintiffs named in this Petition.

**1. State Property Tax Claim**

69. The factual allegations set forth above in Paragraphs 15-66 are incorporated herein by reference and support the Calhoun County ISD Plaintiffs’ state property tax claim.

70. The Calhoun County ISD Plaintiffs request that the Court enter a judgment declaring that the current system of school finance prevents districts from exercising “meaningful discretion” in setting their tax rates thereby violating article VIII, section 1-e of the Texas Constitution. School districts, including the Calhoun County ISD Plaintiffs, have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any plaintiff district could raise taxes to the statutory maximum rate, the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

71. In the alternative, the Calhoun County ISD Plaintiffs request such a declaration as to their particular districts.

## **2. Adequacy Claim**

72. The factual allegations set forth above in Paragraphs 15-66 are incorporated herein by reference and support the Calhoun County ISD Plaintiffs' adequacy claim.

73. Based on these allegations, the Calhoun County ISD Plaintiffs request that the Court enter a judgment declaring that the current school finance system violates the "general diffusion of knowledge" clause in article VII, section 1 of the Texas Constitution in that it is inadequate and fails to provide the resources needed to achieve a general diffusion of knowledge.

74. In the alternative, the Calhoun County ISD Plaintiffs request such a declaration as to their particular districts.

75. The constitutional right of adequacy extends to schoolchildren, in addition to the public at large, *West Orange-Cove II*, 176 S.W.3d at 774, and these schoolchildren will be irreparably harmed if they are denied access to a quality education. Their constitutional right to an adequate education cannot be made subject to a vote. For this reason, at a minimum, school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to the TREs.

## **3. Suitability Claim**

76. The factual allegations set forth above in Paragraphs 15-66 are incorporated herein by reference and support the Calhoun County ISD Plaintiffs' suitability claim.

77. Based on these allegations, the Calhoun County ISD Plaintiffs request that the Court enter a judgment declaring that the current school finance system violates the "make suitable provision" clause in article VII, section 1 of the Texas Constitution in that the system is not "structured, operated, and funded so that it can accomplish" a general diffusion of knowledge. *West Orange-Cove II*, 176 S.W.3d at 753. The State has failed to make suitable

provision for free public schools because the State is relying on outdated, arbitrary weights and allotments that do not reflect the actual cost of education to determine funding levels for districts and is further cutting that funding by appropriating school finance funds based upon funds that are available rather than what funds are required.

### **NOTICE OF JUSTICIABLE INTEREST IN CONSOLIDATED EFFICIENCY CLAIMS**

78. The Calhoun County ISD Plaintiffs also provide notice that they have a justiciable interest in the article VII, section 1 efficiency claims and equal protection claims brought by the other plaintiff groups and the Intervenors, and specifically:

- the article VII, section 1 efficiency claim brought by the Intervenors, the Texans for Real Efficiency and Equity in Education et. al (*see generally* Intervenors' Third Amended Plea in Intervention);
- the article VII, section 1 efficiency claim and equal protection claim brought by the Texas Taxpayer & Student Fairness Coalition Plaintiffs (*see, e.g.*, Texas Taxpayer's Ninth Amended Original Petition, ¶¶ 23-45, 66);
- the article VII, section 1 efficiency claim brought by the Fort Bend ISD Plaintiffs (*see, e.g.*, Fort Bend ISD Plaintiffs' Seventh Amended Petition, ¶¶ 159-61); and
- the article VII, section 1 efficiency claim brought by the Edgewood Plaintiffs (*see, e.g.*, Edgewood Plaintiffs' Original Petition, ¶¶ 85-86, 88).

79. For example, if these plaintiffs were to prevail on the efficiency claims and the adequacy and state property tax claims were to fail, the Legislature could potentially remedy the efficiency violation through a variety of measures that could harm the Calhoun County ISD Plaintiffs and other Chapter 41 districts. The Intervenors have taken the position, as part of their article VII, section 1 claim, that plaintiff districts are wasteful, inefficient, and that any additional funds would not improve student performance.

80. The Calhoun County ISD Plaintiffs need not answer these claims, because they were not named as defendants. Nor can they intervene in these lawsuits, given that all of these lawsuits already have been consolidated. Instead, the Calhoun County ISD Plaintiffs hereby provide notice of their justiciable interest in, and potential adversity to, these claims to preserve their right to present testimony, file briefing, and seek findings in connection with the aforementioned claims (including evidence, testimony, and briefing concerning the effect of the 2013 legislative changes on these claims), and to participate in any appeal of these claims.

### **PRAYER FOR RELIEF**

81. The Calhoun County ISD Plaintiffs respectfully request that the Court grant the following relief:

- A. The Calhoun County ISD Plaintiffs request that the Court grant the declaratory relief described above.
- B. The Calhoun County ISD Plaintiffs seek a permanent injunction prohibiting Defendants from giving any force and effect to the sections of the Texas Education Code relating to the financing of public school education (Chapters 41 and 42 of the Texas Education Code) and from distributing any money under the current Texas school financing system until the constitutional violation is remedied. The Calhoun County ISD Plaintiffs request that the Legislature be given a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.
- C. The Calhoun County ISD Plaintiffs request that the Court retain continuing jurisdiction over this matter until the Court has determined that the Defendants have fully and properly complied with its orders.
- D. The Calhoun County ISD Plaintiffs seek recovery of their reasonable attorneys' fees, costs, and expenses as provided by Section 37.009 of the Texas Civil Practices and Remedies Code and as otherwise allowed by law.
- E. The Calhoun County ISD Plaintiffs request that they be awarded such other relief at law and in equity to which they may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the Calhoun County ISD Plaintiffs' Third Amended Petition has been served this 11th day of October, 2013 as provided below:

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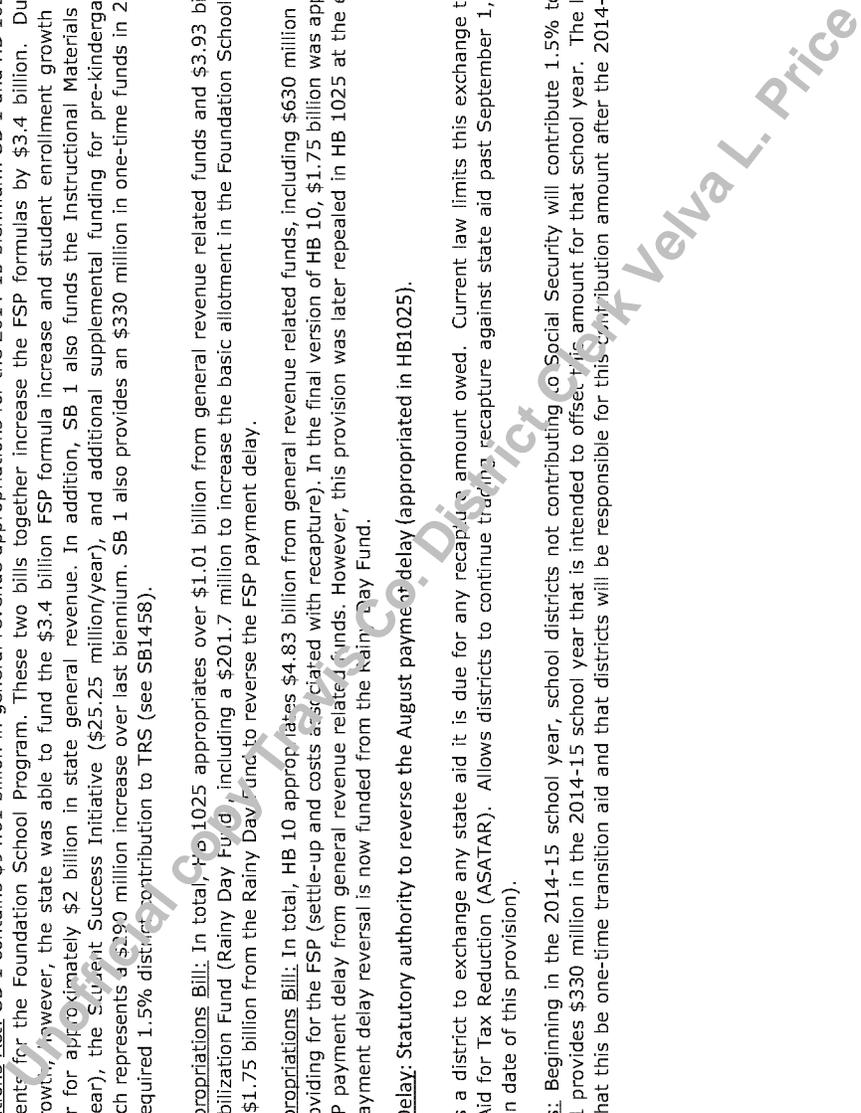
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Mark R. Trachtenberg

# Exhibit A

Unofficial copy Travis Co. District Clerk Velda L. Price

**MAJOR LEGISLATION\***

<u>Bill Number</u>	<u>Summary</u>	<u>Effective Date(s)</u>
<b>SB1</b>	<p><u>General Appropriations Act:</u> SB 1 contains \$94.61 billion in general revenue appropriations for the 2014-15 biennium. SB 1 and HB 1025 contain the funding elements for the Foundation School Program. These two bills together increase the FSP formulas by \$3.4 billion. Due to local property value growth, however, the state was able to fund the \$3.4 billion FSP formula increase and student enrollment growth of 85,000 students per year for approximately \$2 billion in state general revenue. In addition, SB 1 also funds the Instructional Materials Allotment (\$419.3 million/year), the Student Success Initiative (\$25.25 million/year), and additional supplemental funding for pre-kindergarten (\$15 million/year), which represents a \$290 million increase over last biennium. SB 1 also provides an \$330 million in one-time funds in 2014-15 to offset the newly required 1.5% district contribution to TRS (see SB1458).</p>	2013-14
<b>HB1025</b>	<p><u>Supplemental Appropriations Bill:</u> In total, HB 1025 appropriates over \$1.01 billion from general revenue related funds and \$3.93 billion from the Economic Stabilization Fund (Rainy Day Fund), including a \$201.7 million to increase the basic allotment in the Foundation School Program. The bill also uses \$1.75 billion from the Rainy Day Fund to reverse the FSP payment delay.</p>	Payment delay effective immediately, rest effective 2013-14
<b>HB10</b>	<p><u>Supplemental Appropriations Bill:</u> In total, HB 10 appropriates \$4.83 billion from general revenue related funds, including \$630 million to TEA for the purpose of providing for the FSP (settle-up and costs associated with recapture). In the final version of HB 10, \$1.75 billion was appropriated to reverse the FSP payment delay from general revenue related funds. However, this provision was later repealed in HB 1025 at the end of the session and the payment delay reversal is now funded from the Rainy Day Fund.</p>	Immediately
<b>SB758</b>	<p><u>August Payment Delay:</u> Statutory authority to reverse the August payment delay (appropriated in HB1025).</p>	Immediately
<b>SB1658</b>	<p><u>Recapture:</u> Allows a district to exchange any state aid it is due for any recapture amount owed. Current law limits this exchange to just the Additional State Aid for Tax Reduction (ASATAR). Allows districts to continue trading recapture against state aid past September 1, 2017 (the previous expiration date of this provision).</p>	Immediately
<b>SB1458</b>	<p><u>TRS Contributions:</u> Beginning in the 2014-15 school year, school districts not contributing to Social Security will contribute 1.5% to the TRS pension fund. SB1 provides \$330 million in the 2014-15 school year that is intended to offset this amount for that school year. The legislature stated its intent that this be one-time transition aid and that districts will be responsible for this contribution amount after the 2014-15 school year.</p>	Sept. 1, 2014



**Bill Number**  
**HB5**

**MAJOR LEGISLATION\***

**Summary**

**Graduation Requirements:** The bill creates a single "foundation" diploma that requires completion of at least 22 credits by all students, comprising 17 required and 5 elective credits. Foundation requirements include: 4 credits in English, 3 in math, 3 in science, 3 in social studies, 2 LOTE credits, 1 PE, 1 fine arts, and 5 elective credits. All students must have personal graduation plans (PGPs) beginning with high school. Students completing the foundation program can also earn one of five endorsements, each of which requires 4 math credits total, 4 science credits total, and 2 additional elective credits for a total of 26 credits to graduate. Endorsements are available in business/industry, STEM, public services, arts/humanities, and interdisciplinary studies. The distinguished achievement level can be earned on top of any endorsement by completing all foundation and endorsement-specific credit requirements and including Algebra II among the 4 math credits. Performance acknowledgements are available to put on diplomas and transcripts for outstanding performance in certain areas. Eligibility for general admission to Texas public 4-year institutions of higher education and for financial aid is tied to completion of the foundation plan. Automatic admission under top ten percent requires the distinguished level of achievement. Students are to be counseled annually about postsecondary education and financial aid requirements. Current eighth- through tenth-grade students may "opt in" to the new diploma plan in 2014-15 or remain on their current plans. The foundation diploma also may serve as a "safety net" for students in 2013-14 who cannot otherwise graduate on time on their chosen program of study.

**Standardized Testing:** Districts must give, and students must take, end-of-course tests in Algebra I, English I and II (with reading and writing integrated into a single test for each), Biology and US History. Each of the five tests must be passed for graduation. The bill eliminates the "15% requirement," cumulative score requirements, "standalone" EOC test requirements for graduation and required retesting. The commissioner is to provide a conversion of EOC scale scores to a 0-100 scale. Districts may opt to assess all students enrolled in English III and Algebra II courses with diagnostic (of postsecondary readiness) end-of-course tests. TEA is to release test questions and answer keys by 2015-16 according to a schedule in the bill that reflects active test usage. Districts may administer no more than 2 benchmark tests for any specified state assessment. Districts are prohibited from administering any benchmarks for the English III and Algebra II postsecondary readiness tests.

**Remediation:** Districts cannot charge for providing accelerated instruction (AI) to students who have failed state tests, and AI must be provided prior to the next administration of the test. Comp Ed funds may be used to support AI in grades 3-12; the funds for AI must be budgeted first, before any other budgeting of comp ed funds can take place. Districts must evaluate effectiveness of AI programs and hold a hearing about the results. Students may not miss more than 10% of instructional days of a class for remedial tutoring without written parental consent.

**Accountability Ratings:** By August 8 each year, three accountability ratings are to be publicly released: the state's academic accountability ratings of districts, charters and schools; the state's financial accountability ratings of districts and charters; and each district is to release its self-rating and the rating assigned to each of its campuses on community and student engagement. Distinction designations for outstanding performance also are to be released by TEA on August 8 annually. By 2016-17, district academic accountability ratings are to use letter grades of A, B, C (each considered acceptable), or D or F (each considered unacceptable). Campus ratings, and all community and student engagement ratings, are identified in the bill as exemplary, recognized, acceptable or unacceptable. Financial accountability ratings are to include consideration of future financial solvency and use rating labels determined by the commissioner. Academic accountability indicators are to include those in current law plus percent earning endorsements, percent earning distinguished level of achievement, AND at least three additional indicators that must include either TSI performance on the THECB college readiness tests or a set of four indicators that include percentages earning associates degrees or certifications. In determining ratings the commissioner is to give greatest weight to non-STAAR-based indicators, to the extent possible.

**Effective Date(s)**

2014-15, with transition period from 2014-15 to 2018

2013-14, except TEA not required to adopt or develop Algebra II and English III district-option tests until 2015-16

2013-14

2013-14, except: letter-grade rating system takes effect 2016-17, future financial solvency, certain new reporting indicators, and special accreditation investigation triggers take effect 2014-15

**MAJOR LEGISLATION\***

<u>Bill Number</u>	<u>Summary</u>	<u>Effective Date(s)</u>
<b>HB866</b>	<p><u>STAAR 3-8 testing:</u> If granted a waiver by the federal government, the structure of the STAAR 3-8 testing system would change. All students would be tested in reading and mathematics in grades 3, 5, and 8; in writing in grades 4 and 7; in science in grades 5 and 8, and in social studies in grade 8. As part of the new structure, a new scoring concept would be introduced, called the Minimum Satisfactory Adjusted Score (the MSAS). The MSAS would be the sum of the passing cut score plus the minimum number of points above that cut score that is predictive within a 3 percent margin of error that a student would pass a subsequent year's test in the same subject. Students in grades 4, 6, and 7 would be assessed if, in prior year, their students did not perform at or above the MSAS. Districts are given the ability to "opt in" to universal testing of 4th, 6th and 7th graders, but the scores cannot be used for accountability or any other provision.</p>	<p>2013-14 or 2014-15 contingent on federal waiver; expires Sept. 1, 2017.</p>
<b>SB2</b>	<p><u>Open-Enrollment Charters:</u> HB2 increases the cap on charter schools, currently at 215, by 15 each year for six years, beginning Sept. 2014, up to a total of 305 in Sept 2019. There can be an unlimited number of charters that serve at least 50% students with disabilities. The bill transfers the authority to grant charters from the SBOE to TEA; the commissioner must notify the SBOE that s/he plans to grant a charter, and the SBOE has 90 days to hold a vote against granting the charter. The commissioner must give priority to applicants who propose to open a charter in the attendance zone of an academically unacceptable campus. No charter holder may hold more than one charter. The bill requires the commissioner to establish a three-tiered renewal process for charters based on performance: expedited (full renewal based on high performance); discretionary (renewal of charter that does not meet expedited renewal terms, but has shown academic growth), and; nonrenewal (do not meet standards for 3 years on academic or final ratings). School districts must give a charter school the opportunity to make an offer to buy or lease a school district facility that is listed for purchase or lease.</p>	<p>Effective immediately, except that the increase in the cap on charters applies beginning with the 2014-15 school year.</p>
<b>HB1751</b>	<p><u>Educator Excellence Innovation Program:</u> Creates a fund and a mechanism for the TEA to award educator excellence innovation grants to districts that submit teacher appraisal plans. It also provides for open-ended waivers from the program.</p>	<p>2014-15</p>
<b>HB1926</b>	<p><u>Virtual School Network:</u> Governs student access to electronic learning options by allowing districts great latitude in denying requests of students to access the program. No recourse is provided to students who are denied access to electronic learning options. The also makes provision for determining the eligibility to act as a course provider and requirements for course listing and numbering.</p>	<p>2013-14</p>
<b>HB2012</b>	<p><u>Professional Salaries:</u> Gathering and analysis of professional employee salary information, including an analysis of cost-of-living salary comparability in regions around the state. It provides for a teaching and learning conditions survey. It also provides for educator preparation programs.</p>	<p>Effective immediately.</p>
<b>SB376</b>	<p><u>Free Breakfast Program:</u> Requires the provision of free breakfast to all children in a school if at least 80% of the students in the district or open-enrollment charter school are eligible students under the free or reduced breakfast program.</p>	<p>2014-15</p>

**Bill Number**  
**SB1575/ HB3497**

**Summary**

Taxpayer Savings Grant: These bills did not pass. The fiscal note found, among other things, that the bill, "As introduced [would have had] a negative impact of (\$77,266,257) through the biennium ending August 31, 2015. However, starting with fiscal year 2016, there are significant ongoing savings to General Revenue exceeding the cost for the 2014-15 biennium."

**Effective Date(s)**

N/A

**LEGISLATION THAT DID NOT PASS\*\***

\* This list is provided on behalf of the four ISD Plaintiff groups, the Charter School Plaintiffs, and the Intervenor. The State will be submitting its list separately. The Edgewood Plaintiffs maintain that they are entitled to declaratory judgment based on the present system and the present trial record. Without waiving such argument, Edgewood Plaintiffs concur with the bill list. It is the understanding of the Charter School Plaintiffs that the Summaries of the Legislation listed are general descriptions identifying the legislation and not a description of all salient points.

\*\*This section is included at the request of the Intervenor. The Plaintiff do not agree that legislation that did not pass is a changed circumstance that has a material impact on the issues before the Court.

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