REPORT OF
THE SENATE INTERIM COMMITTEE ON SCHOOL FACILITIES

OCTOBER 1994
October 1994

The Honorable Bob Bullock
Lieutenant Governor
State Capitol
Austin, TX 78701

Dear Governor Bullock:

The Senate Interim Committee on Public School Facilities has concluded its study of the state's role in the funding of facilities and offers its report and recommendations.

The committee recommends the state provide equalized funding for school facilities through the use of a guaranteed yield. The system for financing facilities should be separate from the existing Foundation School Program but tied to the $280,000 wealth level established by Senate Bill 7. The committee does not recommend the use of weights at this time but suggests they be considered after a financing program has been established and evaluated.

Respectfully submitted,

Ted Bivins, Chairman

John Montford

Bill Ratliff
SENATE INTERIM COMMITTEE ON SCHOOL FACILITIES

Senator Teel Bivins  
District 31, Amarillo  
Committee Chair

Senator John Montford  
District 28, Lubbock

Senator Bill Ratliff  
District 1, Mt. Pleasant

COMMITTEE STAFF

Debra Haas  
Legislative Budget Board  
Staff Director

Lisa Ivie  
Office of Senator Teel Bivins  
Committee Clerk
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EXECUTIVE SUMMARY

"Now that we've dealt with operations, we'll deal with facilities next session."

-- attributed to Senator Aikin, 1949

It has been nearly fifty years since the Gilmer-Aikin bills\(^1\) first created a school finance system in Texas aimed at providing a basic level of education for all of the state's children, and a decade has passed since the initial Edgewood case was filed in district court\(^2\).

In the original District Court opinion in the Edgewood case on public school financing, issued in June 1987\(^3\), Judge Harley Clark wrote:

"The Court hereby declares and enters Judgement that the Texas School Financing System is...UNCONSTITUTIONAL AND UNENFORCEABLE IN LAW because it fails to insure that each school district in this state has the same ability as every other district to obtain, by state legislative appropriation or by local taxation, or both, funds for educational expenditures, INCLUDING FACILITIES AND EQUIPMENT" [emphasis added].

In the more than seven years since this edict was issued by the court, the State of Texas has been working towards resolution of the issue of facilities funding. Numerous

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\(^{2}\)The initial Edgewood suit was filed in the 250th District Court of Texas on May 23, 1984.

\(^{3}\)Issued in the 250th District Court, Austin, Texas, June 15, 1987.
advisory committees have made recommendations for addressing the state's obligation in funding school facilities\textsuperscript{4}, and an inventory of the state's public school buildings was conducted by the Texas Education Agency during the 1991 school year\textsuperscript{5}. This committee, taking these previous actions into consideration, has met on three occasions to take public testimony and discuss the issues related to the state's involvement in the planning and funding of public school facilities. After careful consideration of public testimony and lengthy deliberation on the issues, the committee recommends that the state equalize funding for school facilities through a guaranteed yield system separate from the existing Foundation School Program.

Analysis of the costs of a program which incorporates the recommendations of the committee was performed by the Legislative Budget Board. Cost estimates for a funding program which adheres to these recommendations range from $178 million to $261 million for the 1996-97 biennium. Under either of the scenarios analyzed by the LBB, there is no significant impact on the level of equalized revenue in the system; 85% of

\textsuperscript{4}Recommendations for funding school facilities have been offered by several legislatively created committees. These committees include: (1) The 1985-86 Accountable Costs Advisory Committee; (2) The 1987-88 Accountable Costs Advisory Committee; (3) The 1988 Select Committee on Public Education; and (4) The 1989 School Facilities Advisory Committee.

\textsuperscript{5}The 71st Legislature appropriated $5 million to the TEA for the purpose of conducting an inventory of the state's public school facilities. The inventory was conducted using regional architectural and engineering firms to collect data. The data were collected from January through August, 1991, and a draft report was released by TEA in May 1992. No additional data has been collected.
students and 96% of revenues fall within the equalized system for both years of the biennium.

This committee report is intended to provide recommendations consistent with the charges to the committee, and reflects the deliberations which took place at the committee's meetings on May 2, 1994, July 28, 1994, and September 26, 1994.
SENATE INTERIM COMMITTEE ON SCHOOL FACILITIES

COMMITTEE CHARGES

The Committee shall:

1. Study and make recommendations regarding the state's participation in the funding of public school facilities to address the equity issue of school finance.

2. Study the current method of funding public schools to determine the best method of allocating state resources and assistance for educational facilities.

3. Study and make recommendations regarding the distribution and source of any state funding for school facilities.

4. Study and make recommendations regarding the appropriate organizational structure for administration of facilities funding.

5. Study and make recommendations regarding the I&S tax rates and any limits on past and future bonded indebtedness for the state's participation.

6. Review and evaluation methods for determining the needs of school districts for facilities funding.

7. Study and make recommendations regarding any additional or other changes that the Committee determines should be made to the Texas Constitution and statutory law that would provide an equitable system for funding public school facilities.
COMMITTEE RECOMMENDATIONS

These are the recommendations of the committee. The committee reached its conclusions on these recommendations at the meeting on July 28, 1994, after public testimony and consideration of the Issues Document. After formal presentation to the committee at the September 26, 1994 meeting, the members adopted the recommendations.

More detailed information is contained in the discussion of the work of the committee, and in the appendices at the end of this document.

Committee Recommendations

1. Facilities shall be financed through a guaranteed yield which is separate from tiers 1 and 2 of the Foundation School Program.

2. The guaranteed tax base for the facilities financing system shall be $280,000 per pupil, for a yield of $28 per penny per pupil.

3. There shall be no weights in the initial facilities funding program. The possibility of adding weights to the system shall be considered after the program has been observed in practice.

4. Districts shall have the option to finance their existing debt through the new facilities program in order to reduce their I&S tax rate. It will be up to local school districts to negotiate with their bond holders if they wish to receive funds for existing debt under the new system.

5. The determination of need for renovation or construction of school facilities shall be made at the local level by the school district and voters.

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6 The Issues Document considered by the Committee in making its recommendations was made available to the public prior to the July 28, 1994 meeting, and is contained in Appendix B.
6. The bond market is likely to be sensitive to the possibility that repayment could be disrupted due to the proration of state aid. The possibility of proration may also make it difficult to sell bonds at a favorable rate. To eliminate the possibility of proration, the first state dollars expended for the purposes of financing public education shall be dedicated to the facilities funding system.

7. State funding for facilities shall be based on a compressed tax rate.

8. A compressed tax rate is defined as the I&S tax rate required to make debt service payments based on the total yield per penny from state and local revenues. This rate is referred to as "compressed" because for those districts who are eligible for this program (wealth per unweighted pupil of $280,000 or less), the increased yield per penny compresses the number of pennies of tax rate needed to service any given amount of debt.

9. If districts find themselves in situations where their facilities needs exceed the amount provided by the funding program, they may levy an I&S rate higher than the compressed rate, but they shall receive no additional state aid above the rate needed to service their debt with combined state and local funds. Any local funds raised with an I&S tax rate above the compressed rate must be dedicated to and held for the construction and acquisition of school facilities or the repayment of debt.

10. The state shall continue to use the Permanent School Fund (PSF) to guarantee local district bonds to ensure that those bonds receive the best possible rating. In case of default, the state and local school district shall share in the repayment to the PSF in appropriate proportions when the state shares in the default or delinquency.

11. The law governing school bond and tax rate elections shall be amended to provide that a district may hold an election to impose a total tax rate greater than $1.50 for the purpose of servicing a debt on any date and, if the tax rate election is held on the same date as a bond election, the question concerning the tax rate may be included within the bond proposition.

12. In order to participate in the facilities funding program, a district must amortize the cost of construction or acquisition of a building over a period of at least ten (10) years.

13. The state shall not provide reimbursement, retroactively or in the future, to districts that choose to finance their facilities with cash. The provision of equalized access
to funds through the Foundation School Program (Tier 1 and Tier 2) is the state’s method of supporting cash outlays for school facilities.

14. The financing program shall provide that if a building constructed with state funds from this program is disposed of prior to the payment of the debt, the state is entitled to a prorata share of the proceeds. However, if the debt for the building has been retired, any proceeds will go to the district.

15. The state shall maintain data on the state’s school facilities. Data shall be collected at the building level from school districts by the Texas Education Agency through the Public Education Information Management System (PEIMS).

16. The ten percent (10%) debt to assessed valuation limit (TEC §20.04(c)) should be modified so that it applies only to that portion of the debt for which the school district is liable under the shared repayment program.
WORK OF THE SENATE INTERIM COMMITTEE ON SCHOOL FACILITIES

BACKGROUND

On March 31, 1994, Lieutenant Governor Bullock appointed an interim committee of the Senate, and charged the members with studying the issues related to equalizing the financing of school facilities, and directed them to make recommendations.

The Lieutenant Governor appointed three members to the committee. Senator Teel Bivins, chair of the committee, is a member of both the Senate Education and Finance committees, and had sponsored school facilities legislation during the 73rd session. Senator John Montford, chair of the Senate Finance committee, and Senator Bill Ratliff, chair of the Senate Education committee, were also appointed to serve.

COMMITTEE MEETINGS

MAY 2, 1994

The committee met for the first time on May 2, 1994. All members of the committee were in attendance. The meeting was also attended by a large number of individuals from state agencies and the public. At this meeting, the members were briefed by staff from the Texas Education Agency and the Legislative Budget Board on the nature and magnitude of meeting the court requirement that the state participate in the cost of
providing public school facilities. The TEA estimated the minimum cost for meeting critical needs for instructional space to be approximately $2 billion\textsuperscript{7}.

Following the staff presentations, individuals from groups representing the public education community and the bond community presented extensive public testimony.

Although there was no consensus on a best approach to funding facilities, several individuals testified that the members of their organizations would support some form of guaranteed yield for facilities. There was general agreement among those testifying on behalf of the education community that they would like to see a proposal that addressed new debt as well as existing debt.

The Chairman of the committee directed staff to prepare a comprehensive list of issues for the committee to consider in making recommendations. The document developed by the committee staff addressed several major areas including:\textsuperscript{8}:

17. "Old versus New" Debt
18. Determination of Need
19. Method of Allocation
20. Use of Weights
22. Funding Sources
23. Use of Maintenance Funds for Facilities Expenditures
24. Optional Developer Impact Fees
25. Reimbursement of Cash Financing
26. Disposition of Buildings Constructed With State Dollars
27. Use of Lease-Purchase Contracts
28. Update of Inventory Data

\textsuperscript{7}The assumptions used by TEA in calculating this estimate are laid out in testimony contained in Appendix A.

\textsuperscript{8}A complete copy of the issues document is contained in B.
The issues document was released to the public on May 25, 1994 to provide an opportunity for interested parties to review it prior to the next meeting of the committee.

JULY 28, 1994

At their July meeting, the members took additional public testimony concerning the issues document. The meeting was attended by all three members of the committee. The committee took particular interest in testimony dealing with the inclusion of old debt in a facilities financing program and the use of weights to reflect differentials in district need and the cost of constructing facilities.

Although the committee did not recommend the use of weights in an initial facilities financing program, the members were receptive to suggestions that weights be considered after an initial program is implemented.

In offering recommendations, the members of the committee agreed that legislation should not be proposed until the Supreme Court issued its opinion in the pending Edgewood case. The committee reached a consensus on a number of recommendations dealing with the conceptual structure of a financing program. The committee members directed staff to draft recommendations to be circulated prior to a final meeting to be held in September.

The committee also considered the issue of funding sources, but made no recommendation. Although they made no recommendation on funding sources, the committee did discuss the potential costs of the proposed funding program, and directed
the Legislative Budget Board (LBB) to analyze the costs of a program which incorporates
the recommendations of the committee.

The LBB prepared the requested costs estimates, and found that a funding program
which adheres to the recommendations of the committee would range in cost from
approximately $178 million to $261 million for the 1996-97 biennium. Under either of
the scenarios analyzed by the LBB, there is no significant impact on the level of equalized
revenue in the system; 85% of students and 96% of revenues fall within the equalized
system for both years of the biennium.

SEPTEMBER 26, 1994

The committee met for the third and final time on September 26, 1994 to take
additional public testimony and adopt its report and recommendations. The committee
was presented with extensive testimony from districts in Education Service Center
Region 19 (Clint ISD, San Elizario ISD, Soccoro ISD and Tornillo ISD) concerning the
effect on their school facilities needs of the rapidly increasing student population due to
the development of colonias in their districts. The individuals offering testimony
indicated that they felt that an adjustment (or weight) in the facilities formula would be
appropriate in dealing with their unique situation.

9Colonias are substandard housing developments without water, sewer or other utility
services. Testimony before the committee indicated that hundreds of households are being
established in these areas with as many as 3-5 children per household who must be housed
and educated in the public schools.
Other individuals from the education community also offered testimony to the committee regarding their proposed recommendations. Much of this additional testimony also focused on the committee's recommendation that the facilities funding formula be distributed on the basis of unweighted pupils. The members of the committee emphasized that they would not oppose the use of appropriate weights in a facilities program, but felt that the program weights currently in use in the Foundation School Program did not correspond to needs in a facilities program. The chairman of the committee urged the members of the education community to work to develop appropriate weights and bring them forward as legislation was developed prior to the start of the legislative session.

After public testimony was completed, the chairman asked for a motion to adopt the committee report and recommendations, with the understanding that staff would make the necessary changes prior to final approval of the report and recommendations by the committee. Senator Montford moved adoption of the report and recommendations, and the motion passed without objection.
APPENDIX A

MAY 2, 1994

AGENDA
MINUTES
INVITED TESTIMONY PRESENTED TO THE COMMITTEE
**REVISED AGENDA**

Senate Interim Committee on Public School Facilities

Committee Room 1, William P. Clements Building

Monday, May 2, 1994
11:00 a.m.

I. Call to Order

II. Opening Remarks

III. Adopt Rules

IV. Review of Charges

V. Staff Presentation on the Historical Perspective of School Facilities by
   Debra Haas, Legislative Budget Board

VI. TEA Testimony on School Facility Needs

VII. Attorney General Testimony on Lease Purchase (SB 826 Montford)

VIII. Public Testimony

IX. Closing Remarks

For Information Contact:

Lisa Ivie
Committee Clerk
463-0131

Debra Haas
Staff Director
463-1200
Pursuant to a notice posted on April 6, 1994, in accordance with House and Senate rules, the Senate Interim Committee on Public School Facilities convened in a public hearing and was called to order at 11:00 a.m. by Chair, Senator Teel Bivins.

The roll was answered as follows:

Members Present:

   Senator Teel Bivins
   Senator John Montford
   Senator Bill Ratliff

Members Absent:

A quorum was present.

The Chair offered a motion to adopt committee rules and was seconded by Senator Ratliff.

The following witnesses provided invited testimony regarding public school facilities.

Debra Haas, Legislative Budget Board
Dr. Skip Meno, Texas Education Agency
Dr. Roberto Zamora, Texas Education Agency
Dr. Rob Woodson, Texas Education Agency
Gayle Nelson, Texas Education Agency
David Anderson, Texas Education Agency

The following witnesses provided public testimony regarding public school facilities.

Craig Foster, The Equity Center
Bill Grusendorf, Texas Association of Rural Schools
Dr. John Wilson, Amarillo I.S.D. Superintendent/Texas School Alliance
James A. Smith, Wichita Falls I.S.D./Texas School Alliance
Lynn Moak, Texas School Alliance
Jim Thomassen, First Assistant Attorney General
The following witnesses registered, but did not testify.

Mike McLamore, Association of Texas Professional Educators
G. Charles Kobdish, McCall, Parkhurst and Horton, LLP

There being no further business before the Senate Interim Committee on Public School Facilities, the Chair ordered the meeting adjourned at 4:20 p.m.

Senator Teel Bivins
Chairman

Lisa Ivie
Committee Clerk
Senate Interim Committee on Public School Facilities
May 2, 1994

Outline of TEA Testimony

I. Introductions

II. Facilities Pressures
   a) Reform Initiatives
      Decrease student-teacher ratio (22-to-1)
      Expand kindergarten
      Increase attendance rate
      Decrease dropout rate
   b) Enrollment Growth
   c) Educational Technologies
   d) NAFTA

III. Estimates of Facilities Needs
   a) Goal
   b) Data Sources
   c) Caveats
   d) Assumptions
   e) Cost Estimates

IV. Information Needs
   a) Applications of Information
      To what questions must facilities data provide answers?
   b) Sources of Information
      From what sources and by what means will data be collected?
   c) Resource Considerations
      What are the local and state costs of collecting the data?
FACILITIES ESTIMATES
Goal, Data, Caveats, and Assumptions

GOAL
Establish a minimum estimate of facility needs based on explicit standards

What is the cost of meeting SBOE square feet standards in space rated no worse than fair?

DATA
Facilities inventory from 1991 and campus enrollment for 1992-93

Can facilities inventoried through August 1991 meet SBOE standards for 1992-93 enrollment?

CAVEATS
Inventory data are static and less-than-optimal for needs estimates

The facilities inventory is a snapshot of school physical plant in Texas as of the summer of 1991. The inventory does not track facility changes since August 1991 and contains qualitative condition ratings rather than detailed assessments of potential replacement or renovation projects.
ASSUMPTIONS

SBOE Square Foot Standards

General classrooms:
  Pre kindergarten through first grade - minimum of 36 square feet per pupil.1
  Elementary - minimum of 30 square feet per pupil.
  Secondary - minimum of 28 square feet per pupil.

Computer laboratories:
  Elementary - minimum of 41 square feet per pupil.
  Secondary - minimum of 36 square feet per pupil.

Science labs:
  Elementary - minimum of 41 square feet per pupil.
  Secondary - minimum of 50 square feet per pupil.

Gymnasia:
  Elementary - minimum of 3,600 square feet.
  Middle - minimum of 4,800 square feet.
  Secondary - minimum of 7,500 square feet.

Libraries:
  Elementary - minimum of 1,400 square feet.
  Middle - minimum of 2,100 square feet.
  Secondary - minimum of 2,800 square feet.

Condition ratings2

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poor</td>
<td>Highly deteriorated, requiring total replacement</td>
</tr>
<tr>
<td>Below</td>
<td>Modestly deteriorated; requiring partial replacement</td>
</tr>
<tr>
<td>Average</td>
<td>Slightly deteriorated, with portions requiring minor repair/touch-up</td>
</tr>
<tr>
<td>Fair</td>
<td>In good condition and requiring normal maintenance treatments</td>
</tr>
</tbody>
</table>

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1 For the purpose of this analysis 32 square feet is used for elementary general classrooms. No differentiation is made between elementary grades.

2 Condition ratings provide only a gross indication of renovation and replacement needs. Accurate determination of needs and costs requires analysis of specific facilities projects.
Estimation procedure

- Analyses are performed at the campus level and then aggregated to the district and state levels.

- Campuses are categorized according to the range of grades offered using Snapshot definitions. Campuses identified in Snapshot as "both" are considered "secondary" in this analysis.

- Standards are applied to classroom, science lab, computer lab, library, and gym space.

- Space rated as poor is replaced while that rated as below average is renovated.

- Types of space are divided by campus enrollment and compared to SBOE minimum square foot standards. Additional needed space makes up the shortfall in meeting those standards.

- Space needs for science and computer labs are estimated for secondary schools only and derived using the preceding logic but dividing the needed space by six, on the assumption that a given student occupies such space during one of six daily class periods.

- Portable and permanent spaces are not differentiated.

- Unit costs are calculated using R.S. Means Company's estimated construction costs. For new classrooms, construction costs per square foot are $55 for elementary, $60 for middle, $80 for secondary, and $57 for combined elementary and middle grade campuses. Gymnasium and library costs are $60 per square foot. A renovation cost of $28 per square foot is applied to all grade levels. Replacement costs are $57 per square foot for elementary and middle schools and $80 per square foot for high schools.

- Costs are exclusive of land, architect fees, furniture, and equipment.
## Estimated School Facility Needs

<table>
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<tr>
<th>Type of Space</th>
<th>Square Feet</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Classroom</td>
<td>6.1 M</td>
<td>$346 M</td>
</tr>
<tr>
<td>Science Lab</td>
<td>7.1 M</td>
<td>$565 M</td>
</tr>
<tr>
<td>Library</td>
<td>2.9 M</td>
<td>$170 M</td>
</tr>
<tr>
<td>Computer Lab</td>
<td>5.4 M</td>
<td>$431 M</td>
</tr>
<tr>
<td>Gym</td>
<td>8.1 M</td>
<td>$476 M</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>29.6 M</strong></td>
<td><strong>$1.99 B</strong></td>
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</tbody>
</table>
A SHORT HISTORY OF STATE INVOLVEMENT IN SCHOOL FACILITIES

- Incentive Aid for Consolidation - 62nd, 1971
  The incentive aid program provides funds for construction for up to 10 years for districts which consolidate.

- Guaranteed Bond Program - established 68th Legislature, 1983.
  The guaranteed bond program allows school districts to obtain the best possible bond rating by allowing bonds to be guaranteed by the corpus and income of the permanent school fund.

- Accountable Costs Studies - 1986, 1988
  The 1985-86 Accountable Costs Committee looked at the costs associated with facilities waivers for 22:1 and recommended further study.

  The 1987-88 Accountable Costs Committee - proposed a debt service subsidy for low wealth districts and continuation of the Bond Guarantee Program.

- Edgewood I Decision - 1987
  Judge Harley Clark stated in the original trial court opinion that facilities and equipment must be included in an equalized funding program for education in order for that funding system to pass constitutional muster.

- Select Committee on Education - 1988
  The 1988 Select Committee on Education - proposed establishment of an emergency fund of $100 million for new construction, a capital depreciation fund to recognize previous efforts to fund facilities and an guaranteed yield program for new construction.

- School Facilities Advisory Committee - 1989
  The School Facilities Advisory Committee proposed a guaranteed yield system which also recognizes efforts of districts which use cash for construction funding, as well as a system of priorities for allocating limited funds.
Establishment of Facilities Standards - 71st Legislature, 1989

The SBOE was directed to adopt standards on size, construction quality and educational adequacy. In 1989-90 the board adopted rules setting standards for space, requiring adherence to building codes and establishing procedures for districts to develop educational specifications for renovations or new buildings.

Inventory of School Facilities - 71st Legislature, 1989 - appropriation 71st Legislature, 6th CS, 1990

The legislature provided $5 million to TEA for the purpose of taking an inventory of all school buildings in the state. The inventory was conducted during the 1990 school year. TEA released in a draft report containing the results of the inventory in 1991.

$50 Million Emergency Grants - 72nd Legislature, 1991

The legislature appropriated $50 million and directed SBOE to develop rules for its distribution. Funds were distributed on an ADA basis to 126 qualifying districts with low wealth, high growth and high tax effort.

TEA Draft Report - 1992

In May 1992 TEA released a draft report with estimated costs for facilities. The costs have since been refined by the agency - which estimates an immediate need of approximately $2 billion to bring all school districts up to standards both in terms of types of instructional space and class size. Current estimates reflect continued use of non-permanent construction in some cases.

Constitutional Amendment $750 million - 73rd Legislature, 1993

The sale of $750 million in state general obligation bonds was proposed on May 1993 ballot - enabling legislation passed both houses, but in very different forms. The bill never went to conference after the constitutional amendment failed.

Lease-Purchase of Facilities - SB 826, 73rd Legislature, 1993

Senate Bill 826 provided that school districts may use lease-purchase to acquire school facilities. The issue of whether it is constitutional to use maintenance taxes for lease-purchase is being considered by the attorney general. The request for an opinion is #RQ 597, no expected release date was provided by the AG's office.
APPENDIX B

JULY 28, 1994

AGENDA
MINUTES
INVITED TESTIMONY PRESENTED TO THE COMMITTEE
SENATOR TEEL BIVINS
DISTRICT 31

COMMITTEES:
Finance
Education
Natural Resources
Chair, Sub-Committee on Agriculture
International Relations,
Trade & Technology

The Senate of
The State of Texas

AGENDA

Senate Interim Committee on Public School Facilities

Committee Room 1, William P. Clements Building

Thursday, July 28, 1994
10:00 a.m.

I. Call to Order
II. Approval of Minutes from May 2, 1994 hearing
III. Public Testimony
IV. Invited testimony:
   Chuck Kobdish- McCall, Parkhurst & Horton
   Steve Collins- Legislative Council
V. Committee Review of Issues Document
VI. Adjournment

For Information Contact:

Lisa Ivie
Committee Clerk
463-0131

Debra Haas
Staff Director
463-1200
Pursuant to a notice posted on July 1, 1994, in accordance with House and Senate rules, the Senate Interim Committee on Public School Facilities convened in a public hearing and was called to order at 10:00 a.m. by Chair, Senator Teel Bivins.

The roll was answered as follows:

Members present:

  Senator Teel Bivins  
  Senator John Montford  
  Senator Bill Ratliff

Members absent:

A quorum was present.

The Chair moved to approve the minutes of the May 2, 1994 meeting. Senator Ratliff seconded the motion.

The following witnesses provided public testimony regarding public school facilities.

Craig Foster, The Equity Center  
Richard Kirkpatrick, The Equity Center  
Dr. Tamara Wallthall, La Vega ISD  
Kevin O'Hanlon, private attorney

The following witnesses provided invited testimony regarding public school facilities.

Chuck Kobdish, McCall, Parkhurst  
Steve Collins, Legislative Council  
Eric Hoaglund, Legislative Council
After taking public testimony, the member of the committee reviewed the issues document and came to the following agreements:

• The committee will recommend a guaranteed yield system for financing facilities.
• The system will be tied to the $280,000 wealth per pupil figure in SB 7.
• The system will not include weights initially, the possibility of addition weights may be recommended for study.
• Districts will have the option to move old debt from Tier 2 to the new system, but it will not be required.
• Need for facilities should be determined at the local level by voters and school boards.
• The first state dollars for school finance will be directed to fund the facilities program to eliminate the possibility of prorating the program.
• A compressed tax rate will be used as the basis for funding the program.
• The PSF should continue to be used to guarantee local bonds.
• District elections for bonds and tax rates should be tied together and will not have to be on a uniform election date.
• The state will not participate in cash financing.
• Facilities data should be gathered, updated and maintained through the PEIMS system.

There being no further business before the Senate Interim Committee on Public School Facilities, the Chair ordered the meeting recessed at 1:30 subject to the call of the chair.

[Signatures]

Senator Teel Bivins
Chairman

Lisa Vie
Committee Clerk
"Old versus New" Debt

- Does the committee wish to recommend that "old" debt be included in a facilities financing program?
- Old debt and related debt service will have to be defined.

One definition of old debt might be any debt issued or existing prior to the effective date of the legislation coming out of the 1995 session.

Another possible definition is any debt authorized by election on or before April 1, 1991, and issued on or before September 1, 1992 in accordance with TEC §20.09 ($1.50 tax rate cap).

We should request assistance from TEA, Comptroller's Office, Bond Review Board and the Municipal Advisory Council in determining how much "old" debt (as defined by TEC §20.09) is held by school districts.

- Under the Foundation School Program any old debt serviced with an I&S tax rate (up to a total rate of $1.50) is generating guaranteed yield monies which a district may use for any legal purpose - including financing the program.

Including Old Debt in a New Facilities Financing Program

- Steve Collins, of the Legislative Council, has indicated that there may be problems associated with changing the mechanism for funding old or existing debt. Existing debt is governed by bond covenants which stipulate a dedicated source of revenue (local tax dollars) and require the district to levy a rate sufficient to generate that revenue stream. Changing that revenue source (i.e. including guaranteed yield and requiring a compressed tax rate) could open school districts up to legal challenges from existing bond holders.

- Districts could be offered the option to modify their bond covenants in order to include existing debt in the new facilities financing formula. Districts would be allowed to reduce their total Tier 2 tax rate by the amount needed to fund their existing debt under the new program.
• Including Old Debt in a New Facilities Financing Program

In the event that districts could not modify bond covenants to accommodate the new funding mechanism, I&S tax rates (up to $1.50) would continue to generate guaranteed yield funds under Tier 2.

• Determination of Need - Local versus State Control

It appeared to be the general consensus of both the committee and those who testified that need should be determined at the local level by school boards and voters.

Factors that have been used previously to determine need (by both the SBOE in allocating the $50 million grants, and in the proposal in SB 131) include high tax effort over several years relative to statewide average and rapid increase in average daily attendance.

Previous discussions of funding programs have contemplated limiting funding to "instructional or instructionally related" facilities. This approach is burdensome, in that each project would have to be reviewed to determine what portion is eligible for funding, and it also potentially unconstitutional under the "equal astroturf" doctrine established in Edgewood II.

• Definition of Capital Expenditures Purchased with Bonded Debt

The committee needs to define an eligible capital expenditure under this program. Issues include whether capital expenditures financed with debt extend to the purchase of equipment and furnishings.

Tom Canby of the TEA Audit Division indicated that everything necessary for the construction and furnishing of a school building, including desks, chairs, equipment and computers can be financed with bonded debt. He said this is common practice for districts undertaking new construction or renovation because many districts do not have the cash balances to furnish a new building without the use of debt.
• Method of Allocation

There are three general methods of allocation on the options document, a fourth has been proposed during public testimony, but no details have been provided to staff.

- Guaranteed Yield
- Per Pupil/Tier One Allotment
- Per Project Funding
- Capital Depreciation Grant

• Use of Weights

An issue arises as to whether or not to use weighted students in determining a district’s allocation for facilities funding. While weights may be appropriate in the financing of maintenance and operations, they may actually constitute overcounting of need in financing facilities. School buildings are constructed to accommodate the needs of all kinds of students, and the costs of meeting special student needs are reflected in the total cost of a building. To add weights on top of the allowance for construction would result in double counting the cost of meeting special needs.

• Issues Which Affect District Tax Rates and the Stability of the Bond Market

- Ten (10) Percent Debt Limit

TEC §20.04(c) limits the amount of bonded indebtedness that a district may incur to no more than 10 percent of the assessed valuation of property in the district. For districts with low total property wealth, this represents a revenue ceiling on funds available to meet facilities needs.

Debt service assistance from the state would not automatically increase the amount of outstanding debt a district may have because the limit is expressed in terms of the value of the debt rather than the tax rate necessary to support the debt.

TEA has provided information concerning districts who are approaching this debt limit. According to TEA and the Texas Bond Review Board, only two districts, Tornillo ISD and Clint ISD, have debt that exceeds eight percent of their assessed value. Nine additional districts have debt exceeding six percent of their assessed value.
Proration under §16.254(h)

This section of the law allows the commissioner to apply proration to be made up in the next year. Without changes, this section has the potential to hamper a facilities funding program in two ways:

- there is no way to make a compressed tax rate work to repay annual debt service if proration can occur (districts would need to be able to levy a higher tax rate), and;
- the bond market may be sensitive to the potential that repayment may be disrupted, and bonds will not sell at the most favorable rate (if at all).

A possible solution to the problem presented by TEC §16.254 would be to require that the first state dollars expended for guaranteed yield be directed to the facilities funding program.

Tax Rate Compression

Tax rate compression requires that districts levy an I&S tax no greater than the amount needed to repay a debt with state and local monies.

Without tax rate compression, districts which currently have high I&S rates could generate large fund balances in excess of their debt obligations with state dollars. In order to meet district facilities needs and maintain reasonable state costs, districts will be allowed to set their I&S only as high as is needed to repay the principal and interest on their debt for new construction or renovation.

Tax Rate Response

With the implementation of a guaranteed yield system under S.B. 351, districts demonstrated a far greater tax rate response than was anticipated, creating a stress on the finance system that led to proration of state aid. Although the potential for a similar tax rate response does exist with a facilities program, it is limited by two factors - the need for construction or renovation of a building, and the requirement that voters approve the use of debt for that purpose. Tax rates under a facilities program will require a vote of the taxpayers in the district, as opposed to maintenance taxes which are set by the local school board.
Continued use of the Permanent School Fund Guarantee

Under the current system, many districts use the Permanent School Fund Guarantee rather than buying private bond insurance. It is preferable to continue to have districts issue debt for construction (as opposed to any other entity) because they will continue to benefit from the AAA rating provided as a function of the bond guarantee. This is also a benefit to the state, because it will result in lower required tax rates to finance debt, and therefore a lowered state share or reimbursement amount.

Tax Rate Rollbacks

This does not appear to be an issue.

Issuance of Debt - Public versus Private Markets

Under current law, school districts are required to issue debt for new construction in the public market, while cities, counties and other municipalities have access to private bond markets. Bond attorneys at the meeting commented that allowing school districts access to both the public and private markets would be of great benefit. This would require a statutory change.

Chuck Kobdish, an attorney with McCall, Parkhurst and Horton in Dallas has provided a letter explaining the benefits of this change to school districts. His letter (copy attached) raises two issues:

- The tax rate limits established by TEC §20.09 and the requirement for public sale create a situation where districts cannot tailor their debt service to maximize the allowable tax rate. Bidding procedures attempting to maximize the tax rate make it difficult to find a bidder other than their financial advisor for their bonds, defeating the purpose of a public sale.

- The district does have an opportunity to vote to go over the $1.50 limit; however, the attorney general has specified that one of four uniform election dates must be used. These election dates are difficult for districts. A better alternative would be to tie the bond election and tax rate proposition election together on a date chosen by the district.
• Funding Sources

The three potential sources of funding for this program -

- General Revenue Funds
- Lottery Funds
- Available School Fund

The Available School Fund could be used to fund this program in two ways

- Statutory change which would redistribute the ASF on an equalized basis within counties to meet facilities needs; or

- Constitutional change which would constitutionally dedicate some or all or the ASF to funding an equalized facilities program.

• Use of Maintenance Funds (M&O) for Facilities Expenditures

Senator Ratliff has suggested that districts which cannot meet their facilities needs with monies generated under the new facilities funding program be allowed to use additional M&O funds to underwrite these costs. There may be a legal or constitutional issue raised by such a proposed use. The Chair has requested that Legislative Council staff brief the members of the committee on this issue.

• Optional Developer Impact Fees

The Legislature has authorized municipalities to assess impact fees on developers to assist them in financing the cost of infrastructure necessary to support new development. Senator Shapiro has suggested that the legislature expand this authorization to school districts in order to give them an additional financing tool to deal with rapid growth.

While this would give districts an additional option for raising local dollars, it should be noted that this will not alleviate the need for state funding for facilities. The local dollars may be considered by some to be disequalizing.
• **Reimbursement of Cash Financing**

The committee needs to consider whether or not it wishes to reimburse districts for construction undertaken with cash rather than debt financing. If so, will reimbursement for cash expenditures be made over a 20 year repayment period as though it were debt?

Texas has been operating under increasingly equalized funding programs since 1984, and as a result districts that have accumulated cash have done so with equalized dollars. To reimburse districts who have paid for construction with cash would constitute "double-dipping" and represents an unnecessary state cost.

• **Disposition of Buildings Constructed with State Dollars**

SB 131 (73rd Session) had a provision for the state to share proportionately in any proceeds from the sale of a school constructed with state support. It has been suggested that if a building constructed with state funds is disposed of prior to the payment of the debt, the state is entitled to a prorata share of the proceeds. However, if the debt for the building has been retired, any proceeds will go to the district.

• **Use of Lease-Purchase Contracts**

SB 826 provided for the use of lease-purchase contracts by school districts to acquire buildings. Problems stem from language in the Madeley case prohibiting use of maintenance funds for such a purpose, although Texas Constitution Art. VII §3 allows for the use of maintenance taxes for the "erection and equipment of buildings". Possible solutions include additional legislation or constitutional amendment. Staff will continue to pursue this issue with AG's office and outside attorneys.
Update of Inventory Data

The initial inventory of school facilities provides a baseline for the analysis of facilities needs and costs, and has been valuable in developing proposals for facilities funding.

Unless determination of facilities need is going to take place at the state level, updating the inventory can be kept to a minimum, if it is done at all.

However, it may be advisable that some information on new construction be provided to the state for accountability purposes. It is probably not necessary to conduct the kind of comprehensive data collection that took place during the 1990-91 school year.

One possible mechanism for updating the inventory could be district self-reporting through the PEIMS system.
May 17, 1994

Senator Teel Bivins
Capitol Station
P.O. Box 12068
Austin, Texas 78711

Re: Chapter 20, Texas Education Code

Dear Senator Bivins:

After the May 2, 1994 hearing of the Senate Interim Committee on Public School Facilities, you asked that I commit to writing the problem that the requirement found in Section 20.01, Texas Education Code, creates for school districts selling voted, construction bonds. Specifically, Section 20.01 provides that bonds shall be "...sold to the highest bidder..."

Prior to the passage of S.B. 7 the "highest bidder" or public sale requirement did not cause a significant problem since the debt service schedule resulting from the public sale of the bonds did not affect one way or the other the ability of the school district to in fact issue the bonds. The potential unevenness of the debt service from one year to the next simply meant raising or lowering the tax rate. New Section 20.09(a), Texas Education Code, as amended by S.B. 7, imposes a $1.50/$100 of assessed valuation total tax rate limit and a $0.50/$100 of assessed valuation debt tax rate limit, in each case, exclusive of "old debt" which consists of bonds voted prior to April 1, 1991 and issued prior to September 1, 1992 (or bonds issued to refund such bonds).

The new tax rate limits cause several areas of concern. A school district must now be sure that the year in which the debt service on its proposed new bond issue and any other previously issued "new" bond issues is greatest does not exceed an amount which would require a tax rate in excess of either limit. A logical solution to the problem would be to simply put an annual maximum debt service limit in the official notice of sale and bid instructions for the bond issue. We have been informed by several, reputable financial advisors and investment bankers that such a limitation in the bidding process would result in only one bid being submitted --- a bid from the financial advisor to the school district. The reason for this, as explained to me, is that in preparing bids the investment bankers do not run a debt service schedule for the bonds they are bidding on. They establish a
pricing scale only. Add to this the complication that the bids are usually telephoned in to the financial advisor for the school district in the last few minutes prior to the bidding deadline, in order to allow the bidding investment banker to submit his bid based on the most up-to-date market conditions. The end result apparently is that investment bankers will simply not bid on a bond issue with a significant restriction requiring out-of-the-ordinary procedures when there are plenty of other bond issues they can bid on without restrictions. Therefore, the only bidder is likely to be the financial advisor, which obviously defeats the purpose of requiring public bids.

The problem is compounded when the school district has a multi-year, multi-issue bond program. Each bond issue will have to satisfy the tax rate limit tests individually at the time of issuance. Drops in assessed valuation and the unevenness of the debt service on prior issues may contribute to prevent the school district from issuing the bonds its voters authorized. Even worse, the school district may be prevented from completing facilities it had started with a prior bond issue.

Allowing school districts to issue voted, construction bonds at negotiated sale would allow a school district, within the tax rate limits, the ability to actually structure its debt service requirements so that it could maximize the allowable tax rate and, at the same time, be assured that it can meet the legal tax rate limits set in Section 20.09.

School districts already issue all of their other authorized types of debt securities without the necessity of a public sale. Tax and revenue anticipation notes (Section 20.49), stadium revenue bonds (Section 20.22), time warrants (Section 20.43), delinquent tax notes (Section 20.45), certificates of indebtedness (Sections 20.51 and 20.55) and contractual obligations (Subchapter A of Chapter 271, Local Government Code) do not require public sale. In fact, when voted, construction bonds of a school district are issued in combination with refunding bonds of the district under Article 717k, V.A.T.C.S., the entire bond issue may be sold at negotiated sale.

It is actually rare to find in Texas law any governmental bodies that are required to sell their debt securities at public sale. Currently, the only major types of governmental bodies so restricted are school districts and certain water districts.

If the Legislature should decide to remove the public sale requirement for voted, construction bonds for school districts, simply changing the above-quoted language of Section 20.01 to read "...sold at public or negotiated sale..."
Senator Teel Bivins  
May 17, 1994  
Page 3

After the Committee hearing, I was reminded of another problem that school districts have encountered as a result of the adoption of Section 20.09. Although Section 20.09 allows a school district to conduct an election for the specific purpose of raising the total tax rate limit, the Attorney General has concluded that such an election must be held on one of the four designated election dates each year. A school district's bond and maintenance tax elections may be held on any date. In order to raise the total tax rate limit, a school district must either conduct a separate election on the proposition on one of the four dates or combine the proposition with a bond/maintenance tax election on one of the four dates when it otherwise could have held the election on any date. Because of the peculiarities of the school year, school districts normally conduct their bond/maintenance tax elections during the school year and not on one of the four dates. Besides, school districts would have a real problem trying to explain, not to mention pass, a proposition seeking to raise the total tax rate limit in a vacuum. If the proposition is submitted with a bond proposition, the school district is at least in a position to explain not only the bond proposition, but also the connection of the two propositions in terms of the need to adopt both in order to be able to legally issue the bonds if approved. In other words, the school district can explain to the voters that without passage of the total tax rate limit increase proposition, passage of the bond proposition may be ineffective.

If the Legislature should decide to permit school districts to conduct the election to raise the total tax rate limit on the same dates that a school district can conduct an election on the issuance of bonds, simply adding the following sentence to the end of Section 20.09(a) would work:

"The requirement that an election must be held on a uniform election date as prescribed by the Election Code does not apply to an election held under this section."

Hopefully this letter fully explains the two issues addressed. If you should have any questions or require further discussion on these matters or any other school finance issues, please do not hesitate to contact me.

Respectfully,

G. Charles Kobdish
APPENDIX C

SEPTEMBER 26, 1994

AGENDA
MINUTES
SENATE INTERIM COMMITTEE ON PUBLIC SCHOOL FACILITIES

Lt. Governor’s Committee Room
2nd floor, Capitol Building

Monday, September 26, 1994
3:00 p.m.

I. Call to Order

II. Adoption of Minutes of July 28, 1994 meeting

III. Public Testimony

IV. Adoption of Recommendations and Committee Report

V. Adjournment

For Information Contact:

Lisa Ivie
Committee Clerk
463-0131

Debra Haas
Staff Director
463-1200
Pursuant to notice posted on September 1, 1994, in accordance with House and Senate rules, the Senate Interim Committee on Public School Facilities convened in a public hearing and was called to order at 3:00 p.m. by Chair, Senator Teel Bivins.

The roll was answered as follows:

Members Present:

Senator Teel Bivins
Senator John Montford
Senator Bill Ratliff

Members Absent:

A quorum was present.

The Chair asked for a motion to approve the minutes of the July 28, 1994 meeting. Senator Ratliff moved to approve the minutes and was seconded by Senator Bivins.

The Chair offered opening remarks and began public testimony.

The following witnessed provided public testimony regarding public school facilities.

R. Jerry Barber, Socorro I.S.D.
Maria Casillas, Region 19 Education Service Center
Beatrice Curry, Superintendent, San Elizario I.S.D
Ramon Holguin, School Board President, San Elizario I.S.D.
John Sutton, Superintendent, Tornillo I.S.D.
Susan Lettunich, School Board President, Tornillo I.S.D.
Karr Ingham, Texas School Alliance
Lynn Moak, Texas School Alliance
Ann Dixon, Somerset I.S.D.
Bill Grusendorf, Texas Association of Rural Schools
Albert Kauffman, Edgewood Plaintiffs
Craig Foster, Equity Center
Richard Kirkpatrick, Equity Center
Coli Bramblett, Clint I.S.D.
Carroll Welch, Superintendent, Clint I.S.D.
Roderick Britton, Clint I.S.D.
James Pendell, Clint I.S.D.
Daniel Casey, Texas Association of School Boards
Susan Lee Voss, Roger I.S.D.
Paul Martin, Northside I.S.D.
Lonnie Hollingsworth, Texas Classroom Teachers Association

The Chair closed public testimony and Debra Haas of the Legislative Budget Board reviewed changes of the Executive Summary for the members.

Senator Montford moved to delete item #14 of the summary, Senator Bivins seconded the motion.

The Chair offered a motion to adopt the recommendations with the understanding that staff circulate the changes to the members for approval.

Senator Montford seconded the motion but wants to leave open the option for weights for further study.

The committee voted to adopt committee recommendations.

There being no further business before the Senate Interim Committee on Public School Facilities, the Chair ordered the meeting adjourned at 7:00 p.m.

[Signatures]
Senator Teel Bivins
Chairman
Lisa Ivie
Committee Clerk