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Meeting the June 1 School Finance Deadline

Gov. Rick Perry has announced that he will call the 79th Legislature into a special session starting April 17 to address problems in the school tax system that the Texas Supreme Court found unconstitutional and ordered the Legislature to remedy. With the special session beginning just six weeks before a court-imposed deadline of June 1, 2006, to remedy these problems, questions have been raised about what would happen if the Legislature did not meet this deadline or if the legislation enacted proved unacceptable to the court.

In his November 2004 decision in *West Orange-Cove Consolidated ISD, et. al., v. Neeley, et. al.*, State District Judge John Dietz of Austin declared the current school finance system unconstitutional and enjoined the state from giving "any force and effect to Chapters 41 and 42 of the Education Code and from distributing any money under the current Texas school finance system" after October 1, 2005. (See page 9 for the complete text of Judge Dietz's injunction.)

On November 22, 2005, the Supreme Court upheld Judge Dietz's finding that school districts lacked "meaningful discretion" in setting local tax rates and extended the deadline for a legislative remedy until June 1, 2006. (For more information about these decisions, see *Court Rules School Finance System Unconstitutional*, HRO Focus Report Number 79-6, February 21, 2005, and "Supreme Court Finds Current School Tax System Unconstitutional," HRO Interim News, Number 79-1, December 19, 2005.)

A hearing before Judge Dietz is expected to be scheduled on or shortly after June 1 to consider the constitutionality of any proposal the Legislature adopts or possibly a court-ordered remedy if the Legislature fails to meet the deadline.

Education Code, chapters 41 and 42, govern the system for the collection and distribution of state funds for public education. Ch. 41 establishes the formula for determining the

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Proposed State System to Register Animal Premises on Hold

Proposed rules to implement the first part of a national animal identification system authorized by the 79th Legislature in 2005 have been put on hold indefinitely by the Texas Animal Health Commission (TAHC). At a hearing held in February 2006, the commission postponed action on proposed rules that would have required premises where livestock and poultry are kept to be registered with the state. To date, approximately 10,000 such premises have registered with the state on a voluntary basis. While continuing this program of voluntary registration, TAHC reports that it does not plan to reconsider the rules for mandatory registration until early 2007 unless it is required to move forward by the U.S. Department of Agriculture (USDA).

Some argue that the state should proceed with mandatory registration of animal premises as the first step in an animal identification program designed to combat the spread of contagious diseases such as avian flu that might damage Texas agriculture, harm the food supply, or threaten public health. They say that the state proactively should establish the broad framework for a national animal identification system so that Texas will be ready to respond to future federal mandates. Others question the fairness and effectiveness of mandatory premises registration and raise concerns over privacy, cost, and other burdens to the

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agriculture industry that might result from such a program. These critics contend that the state should take no steps toward mandatory registration in the absence of federal requirements.

Federal and state animal identification programs

Federal program. In 2005, the Texas Legislature enacted HB 1361 by Hardcastle, which authorizes TAHC to develop and implement an animal identification program that is consistent with the USDA's National Animal Identification System (NAIS). The federal program began in 2004 as a national framework to standardize and expand animal identification programs to all livestock species and poultry so that diseased, infected, and exposed animals could be traced. According to the USDA, the long-term goal of the NAIS is to enable the identification of premises and animals that have had direct contact with a disease within 48 hours of discovering an outbreak. The USDA is developing and maintaining the NAIS database, and each state is gathering information on its own livestock and poultry premises. Information from each state is stored in such a way that only the USDA and the state in question have access to it.

NAIS has three components: premises identification; animal identification; and animal tracking. Currently, the federal government does not require states to implement any part of the program, but the USDA has reported that it foresees making some or all aspects of the program mandatory in the future. A draft of federal program standards had included a deadline of January 2008 for states to make premises registration mandatory, but USDA has not developed any regulations to implement this plan. Premises registration at the state level is voluntary in 48 states and mandatory in North Carolina and Wisconsin. It will become mandatory in Indiana in September 2006.

Texas program. HB 1361 (Agriculture Code, sec. 161.056) authorizes TAHC to require the use of official identification numbers assigned as part of the animal identification program for animal disease control, animal emergency management, and other commission programs. The law authorizes the commission to recognize the following as official identification numbers: premises identification numbers, individual animal identification numbers, and group identification numbers. TAHC also is authorized to establish a date by which all premises would have to be registered and to assess a registration fee.

Under HB 1361, information collected by the commission for the animal identification program is exempt from the disclosure requirements of the Texas Public Information Act. However, the bill specifically authorizes the commission to release information to:

- the person who owns or controls the animals, following a written request;
- the attorney general of Texas, for law enforcement purposes;
- the USDA, for animal health protection purposes;
- the U.S. Department of Homeland Security, for homeland security purposes;
- the Texas Department of State Health Services, for public health-related purposes;
- a state, city, or county emergency management authority, for disaster response or management;
- a person with a court order; and
- anyone authorized to receive the information for NAIS purposes by the TAHC executive director, if the director determines that livestock may be threatened by a disease, agent, or pest.

In addition, TAHC is required to release information from the program if it is necessary for emergency management purposes under the Texas Disaster Act (Government Code, ch. 418).

Failure to comply with an order or rule adopted under HB 1361 is a class C misdemeanor (maximum fine of $500). Repeat offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000). TAHC also is authorized to assess administrative penalties for violations of rules relating to the NAIS program.

Tier 1: Premises identification in Texas. While the 2005 Texas law gives TAHC broad authority to develop an animal identification program consistent with the federal program, the proposed rules discussed in the February 2006 hearing dealt exclusively with mandatory premises

registration, the first step in the NAIS program. This involves registering the geographic site where livestock, exotic livestock, poultry, domestic fowl, and exotic fowl are held, managed, or handled. Premises include farms, ranches, feedlots, livestock markets, laboratories, veterinary offices, livestock show grounds, and ports of entry. The number itself is a seven-character alphanumeric figure randomly generated by the USDA and issued by the TAHC.

TAHC has been registering premises voluntarily since 2004 and currently has about 10,000 registrations, including premises of large and small operators. This represents roughly 4 percent of the state's estimated 250,000 farms, ranches, and other livestock and poultry premises.

In Texas, owners of premises can register online at www.tahc.state.tx.us or by mailing or faxing a form to the commission. Registered information includes contact names, mailing addresses, phone numbers, and the physical address of the premises headquarters. The form collects information on the types of premises and the various species located on each but does not ask about the size of a premises or how many animals are located there.

Registration in Texas currently is free and will remain so, according to the commission, until TAHC adopts any changes through rules. The rules proposed in February 2006 would have authorized TAHC to collect a $20 fee from registrants, and registrations would have been valid for two years.

The commission historically has not charged fees, and the one authorized in HB 1361 would be its first. Under Art. 9, sec. 14.09 of the general appropriations act for fiscal 2006-07 (SB 1 by Ogden), fee receipts would have been deposited in the general revenue account and TAHC would have received an appropriation contingent on the generation of new revenue due to the enactment of HB 1361. The commission has received about $2.2 million in federal funds under cooperative agreements for aspects of the NAIS, of which approximately $1.2 million is dedicated to outreach, training, and premises registration and $1 million to test animal tracking methods.

Tiers 2 and 3: Individual identification and tracking. The federal framework for NAIS contemplates two additional parts to the program: identification of individual animals and tracking their movements.

Under the current plan, during the phase-in stage of the second and third tiers of the program, the USDA reports that animals would have to be identified as they left any premises, regardless of where they were born. After a few years, identification of all animals would be the responsibility of the owner at the animal's birth location. The owner could apply the identification tag at the birth premises or take the animal to an official tagging station. In the end, NAIS would require the registration of all premises, but animals that never left their birth locations would not have to be tagged individually, although the USDA would encourage owners to tag them.

Different species likely would receive different types of identification. Some species may be identified through group or lot identification numbers rather than by individual animal. The USDA has convened working groups for the various animal species and reports that through this process it is developing standards regarding collecting and reporting information. Currently, animal owners voluntarily can obtain identification numbers under NAIS.

Debate

Debate on mandatory premises registration and the animal identification program in Texas centers on issues of necessity, applicability, privacy, and cost.

Necessity. Critics of mandatory premises registration argue that such a program is unnecessary and would be ineffective. They say that Texas agriculture long has operated successfully without this type of government intrusion, and the state should not impose new burdens and costs on animal owners unless required to do so under federal law. The proposed system would be ineffective because there is no way to ensure that all premises in Texas would be registered. In the event of a disease outbreak, animal health officials still would have to investigate areas of the state to determine if all premises had registered. The proposed identification system would be especially ineffective for animals that frequently change locations, such as horses. The current system, by contrast, has worked well in this respect by imposing state and regional quarantines on the movement of horses during certain disease outbreaks. It does not make sense for Texas to impose mandatory premises registration while most other states and Mexico have not established such programs, say the critics.

Supporters of mandatory premises registration say that Texas should proceed with its program even without a federal mandate to help protect the agriculture industry and the food supply in Texas. If all premises in Texas were registered, sick and infected animals more quickly could be identified during disease outbreaks with public health implications such as avian flu, foot-and-mouth disease, and West Nile virus. While the system is designed to fight the spread of highly contagious diseases, it also could be useful in containing the outbreak of other diseases such as bovine spongiform encephalopathy (BSE), also known as "mad cow disease." These and other diseases – some of which deliberately could be introduced into the country through a bioterrorist attack – could devastate Texas agriculture and endanger the food supply. The quicker that infected premises were identified, the sooner the spread of a disease could be contained and its negative consequences minimized. These measures increasingly are necessary today because programs used in the past to identify some animals, such as brucellosis and tuberculosis testing and tagging in some species, are ending, and other species never have been subject to an industry-wide identification system for identifying premises or animals, say registration supporters.

Complying with NAIS and establishing mandatory premises registration will help promote continued confidence in Texas agriculture and enhance the reputation of the state as a place that raises healthy animals. Japan continues to ban the import of U.S. beef due to concerns about mad cow disease, and Texas should cooperate with the federal government to prevent the occurrence of similar situations in the future, say registration supporters.

Many of the objections to premises registration are really objections to the other parts of the federal program – tagging and tracking – which are a long way from implementation and may change drastically before they become mandatory, say registration supporters. There will be ample opportunity for public and legislative input into any federal or state requirements for tagging and tracking. Other states are moving in the direction of mandatory premises registration, and talks with Mexico are underway about the adoption of a similar system in that country. Texas needs to take the first step of mandatory premises registration at the state level so that it will be ready to comply with the inevitable federal mandate. It is better for the Legislature to give TAHC broad authority to develop a program than to encode details of the program in the statutes, which would be inflexible and subject to change only during legislative sessions, say registration supporters.

Applicability. Critics of mandatory premises registration argue that it is being applied too broadly, placing an unfair burden on small producers and the owners of just a few animals. Children involved in raising animals for a 4H club or Future Farmers of America (FFA) chapter, for example, should not be required to register. Similarly, registration would place an excessive burden on the owner of a backyard chicken flock or a rural homeowner who keeps a single cow. Owners of fowl and livestock on such a small scale should not be treated the same way as large agribusinesses, say registration critics.

Supporters of mandatory premises registration argue that diseases do not discriminate by herd size, location, or type of premises. It is important that all premises – even backyard flocks – be identified. During a 2003 outbreak of exotic Newcastle disease in the El Paso area, the disease was found in chickens kept at private homes, and the birds had to be destroyed to contain the spread of the illness. In the event of a disease outbreak, the current system of voluntary registration might require health officials to go door-to-door in search of animals. This process is costly, time consuming, and inefficient, which could have disastrous consequences for Texas agriculture and public health following an animal disease outbreak.

Through the rule-making process, TAHC can address the concerns of small producers and others. For example, under the recently proposed rules, the commission had developed a way for youths keeping animals for a 4H club or FFA chapter in certain situations to use identification numbers assigned to those groups. The commission also proposed exempting the premises of persons who kept only caged exotic fowl such as parakeets or parrots if the birds remained in a person's residence and were not used for sale, barter, or exchange, say registration supporters.

Privacy. Critics of mandatory premises registration argue that having to register with the government constitutes an invasion of privacy. Owners should not have to give the government private information about their premises, especially when such data would be stored in a government database and could be shared with others.

Premises registration is the first step toward tagging and tracking animals, which would generate information that could fall into the hands of competitors or be used to influence markets. In addition, there is no assurance that the government could keep the information confidential because the legislation includes a long list of persons and entities to whom it could be released, say the critics.

Supporters of mandatory premises registration argue that the program would not invade anyone's privacy because the information being collected – name, contact information, and type of animal – is minimal and not invasive. Premises registration does not require disclosure of the number of animals at a premises or any proprietary information. In addition, the confidentiality of the information would be safeguarded by privacy protections in HB 1361 that exempt the information from disclosure under the Public Information Act, and the federal government currently is working to address privacy concerns. The specified exceptions to the confidentiality requirements, including those for the purposes of law enforcement and emergency management, are necessary and not unusual, say registration supporters.

Cost. Critics of charging a fee for mandatory premises registration argue that the fee would constitute a burdensome tax on livestock and animal owners, especially small producers. The state is receiving federal funds to offset some of the cost of the program, and because the identification system would benefit the public, any additional cost should be borne by taxpayers generally, not just by animal owners. Taxpayers generally bear the cost of other health care programs that benefit the public. For example, the state does not charge Texans for the inclusion of information in the state immunization records database that can be used during an outbreak among humans. Fees charged by regulatory agencies generally are levied for licensing or other concrete regulatory activities, not to generate general revenue for all programs, as would the premises registration fee. It is especially unfair to ask someone who owns just one or two animals to pay the same fee as a large, commercial operator. Most other states are not charging for premises registration, and Texas should follow this model.

It is unfair to subject agriculture producers to criminal penalties and fines for failing to comply with premises registration requirements. The commission is authorized to assess administrative penalties of up to $1,000 per day, an excessive penalty for a violation of this program, say critics.

Supporters of charging a fee for mandatory premises registration say that it is part of a new effort for the TAHC to partially fund some of its activities through user fees, which is common practice among other state agencies. A minimal, broad-based fee applied to all the premises for affected species and charged to all registrants would be the fairest way to collect revenue to partially fund animal health activities that benefit all of agriculture. The fee is especially modest when compared to the immense costs that could be associated with a disease outbreak or other animal health emergency. It is normal for the state to charge fees to those it oversees and common for those fees to be assessed on all involved in an activity.

Concerns that the TAHC would levy the maximum administrative penalties are unfounded, say registration supporters. The commission historically has worked for voluntary compliance before assessing administrative penalties and assesses only a small number of penalties annually, if any at all. Assessing an administrative penalty would involve a long process with numerous opportunities for an animal owner to make his or her case before paying any fine. Administrative law judges traditionally have recommended penalties only for the most egregious violations. While penalties are necessary to ensure that animal owners follow registration requirements, the TAHC is interested in compliance, not in doling out harsh punishments, say registration supporters.

– by Kellie Dworaczyk

(Deadline, from page 1)

"equalized wealth level," which currently is property wealth of $305,000 per student, the level above which a school district becomes subject to the "recapture" of local property tax revenue. Ch. 41 also outlines options these districts have for reducing local property tax value, such as purchasing attendance credits from the state.

Ch. 42 includes procedures for the distribution of state education funding through the Foundation School Program (FSP). The funding scheme consists of three tiers. Each school district receives a basic allotment (Tier 1) based on the number of students enrolled in its regular education program, as well as additional funding for certain student and district characteristics. In Tier 2, the "guaranteed yield," each district receives equalized state funding per penny of local tax effort. Tier 3, facilities funding, is governed primarily by Education Code, ch. 46.

In the absence of new legislation to allow school districts meaningful discretion in setting school tax rates, the court's injunction would prohibit the state from "recapturing" any local funds under ch. 41 or distributing any FSP funds under ch. 42 to school districts after June 1, 2006.

Past school funding deadlines met and missed

The June 1, 2006, deadline is not the first that the Texas Supreme Court has given the Legislature for addressing constitutional violations in the school finance system. In a series of *Edgewood* lawsuits in the early 1990s, the Supreme Court became increasingly firm in its insistence that the Legislature meet court-imposed deadlines or risk shutting down the public school system or having the court impose its own alternative plan.

***Edgewood I* – deadline missed.** On October 2, 1989, the Texas Supreme Court found the existing school finance system violated constitutional standards for "efficiency" and established a standard of "substantially equal access to similar revenues per pupil at similar levels of tax effort." The court gave the Legislature until May 1, 1990, to remedy the problems with the existing finance system.

Gov. Bill Clements called the Legislature into special session on February 27, 1990. Four consecutive special sessions followed, continuing well past the May 1 deadline. While the legislative leadership became convinced of the need for higher taxes to satisfy the courts, Gov. Clements repeatedly threatened to veto any tax increase.

In late May, with legislators unable to agree on a plan and the threat of a veto hanging over them, State District Judge Scott McCown extended the deadline to propose a new school finance plan until June 21, 1990, but made it clear that if a plan were not adopted by then, the court could adopt a school finance plan developed by a court-appointed special master. On June 1, the special master, former Supreme Court Justice William Wayne Kilgarlin, released a draft proposal that suggested shifting $540 million in state funding from property-rich, low-taxing school districts to property-poor, high-taxing districts.

Shortly after the release of the special master's draft proposal, the Legislature approved its own school finance bill that increased state aid to public schools by $528 million. The plan was funded with a quarter-cent increase in the state sales tax, a 15-cent increase in cigarette taxes, an increase in the tax on mixed drinks, and various budget transfers from other state agencies. Gov. Clements signed the bill into law on June 7, 1991, the day after the Legislature passed it.

***Edgewood II* – deadline missed.** Judge McCown subsequently determined that the new legislation did not meet constitutional requirements for substantially equal access to revenue but allowed the bill to take effect for the 1991-92 school year in order to avoid disruption in the public school system. Following a state appeal, the Supreme Court, in *Edgewood II*, upheld Judge McCown's decision that the new system did not meet constitutional

According to the Texas Education Agency (TEA), the injunction would not affect local property tax collection, which is governed by Education Code, ch. 45. Nor would it affect school bond programs and facilities funding. Judge Dietz specified that the injunction "does not limit, modify or eliminate the authority of a school district to issue or execute bonds, notes, public securities or other evidences of indebtedness" or for the state to provide facilities assistance under Education Code, chapters 42 or 46.

Education Code, sec. 42.259, requires TEA to make FSP payments on or before the 25th of each month. In addition, Government Code, sec. 403.093(d) does not allow the comptroller of public accounts to transfer revenue from the general revenue fund to the FSP before the 23rd of the month.

Under the state distribution formulas, the poorest school districts receive a greater proportion of their state aid earlier in the year than do average-wealth districts. By June 1, 2006, the state's poorest districts will have received 80 percent of their total state funds for the 2005-06 school year, while average-wealth districts will have received 62 percent.

Among school districts that receive state funding under Education Code, ch. 42, the impact of a funding cutoff would vary, depending mainly on the percentage of their

standards for efficiency. In an opinion issued on January 22, 1991, the court gave the Legislature until April 1, 1991, to devise a substantial restructuring of the school finance system before funding for the public schools would be cut off. In its decision, the court specifically noted that the district court was not justified in extending its previous deadline for enacting a new school finance plan.

Once again, the Legislature failed to adopt a plan by the deadline. Judge McCown effectively postponed the April 1 deadline by scheduling a hearing for April 15, 10 days before school districts were scheduled to receive their first state payments after the funding cutoff date. Faced again with the possibility that Judge McCown might order into effect a special master's plan to redistribute state money for public education, the Legislature finally approved a plan of its own on April 11, and Gov. Ann Richards signed the bill less than half an hour before Judge McCown's hearing was scheduled to begin.

***Edgewood III* – deadline met.** The new proposal, which would have replaced the current system of local property tax collection with county education districts, was invalidated by the Supreme Court on January 22, 1992. The court ordered the Legislature to adopt a new school finance proposal by June 1, 1993, to take effect for the 1993-94 school year and promised not to extend this deadline for cutting off school funding.

The Legislature met in special session in November and December of 1992 but did not adopt a new proposal. On May 1, 1993, Texas voters rejected a constitutional amendment that would have addressed the Supreme Court's concerns with county education districts. This left the Legislature less than a month to come up with an acceptable alternative in time for the "firm" June 1 deadline. On May 28, 1993, the 73rd Legislature adopted SB 7 by Ratliff, which established most of the current school finance system, including the recapture elements commonly referred to as "Robin Hood." Gov. Richards signed the bill into law on May 31.

SB 7 was challenged in court, but in January 1995 the Supreme Court upheld the constitutionality of the new system. A subsequent *Edgewood* lawsuit challenged certain aspects of the school finance system, but the Legislature responded to many of the issues raised before the case was considered in district court. (For a detailed background of the lawsuits that followed the enactment of SB 7, see "School Finance Litigation Update," *HRO Interim News*, Number 78-4, April 7, 2004.)

In the current school finance lawsuit, State District Judge John Dietz originally gave the Legislature until October 1, 2005, to address constitutional violations, but that deadline was suspended pending appeal, and when the Supreme Court ruled in November 2005, it extended the deadline until June 1, 2006.

total budgets that come from local property tax revenue and on the amount of accumulated fund reserves they hold. School districts with little or no funding in reserve would experience the most immediate financial pressure. According to TEA, in the 2003-04 school year, nearly half of the state's school districts did not meet the state's "optimum" standard for fund balances of approximately one month's reserves. However, some districts are reported to be shoring up their reserves in anticipation of a possible state funding cutoff.

How state aid is distributed to school districts

Overall, the state provides less than 40 percent of all funds used by local school districts. Locally raised funds (mostly from property taxes), proceeds from bonds sold by local districts, and federal funds provide more than 60 percent. In some districts, particularly those with the lowest taxable property wealth per student, state funds account for most of their available money. Other districts with high property wealth, known as Chapter 41 districts, raise virtually all of their money locally. These districts' local property tax revenue is subject to "recapture," meaning that some local tax revenue is returned to the state through the purchase of "attendance credits" or paid directly through contracts between property-wealthy districts and low-wealth districts. All school districts receive a "per capita" distribution, currently $309 per student, from the Available Student Fund (ASF), as required by the Texas Constitution, as well as $110 per student in WADA (a weighted count of average daily attendance).

In the absence of new legislation to allow school districts meaningful discretion in setting school tax rates, the court's injunction would prohibit recapture of local funds and distribution of FSP funds after June 1, 2006.

By June 1, the state will have disbursed 71 percent of its total fiscal 2006 FSP payments to local districts. TEA estimates that the remaining FSP payments scheduled for fiscal 2006 amount to $1.57 billion. (Another $70 million for the health insurance passthrough for school employees and $161 million in "per capita" funding from the ASF also are scheduled to be paid in monthly installments after June 1.) The state's August payment to school districts, which is paid in early September (fiscal 2007), is estimated to be $763 million.

The state schedules disbursement of aid to school districts according to local property wealth. Districts are divided into three categories, based on taxable property value divided by the number of students in average daily attendance. (There is a separate category for charter schools.) Category 1 districts have per-pupil property wealth of less than half of the statewide average (currently $271,462). Category 2 districts have at least half the average, but not greater than the average wealth, and Category 3 districts have above-average wealth.

Education Code, sec. 42.259, sets out separate payment schedules for districts in each of the three categories. The system is "front loaded" to provide districts with a large percentage of their state funds (between 25 percent and 45 percent, depending on category) between September and November. State payments are curtailed for all but the lowest-wealth districts in December through March, when districts receive more income from local property tax payments.

The lowest-wealth districts (Category 1) receive their state payments in 10 installments throughout the year. Those in Category 2 receive about 40 percent of their state payments in September through November and the remainder between April and August. Category 3 districts receive 80 percent of their state payments in the first two months of the year, and the remaining 20 percent in August. Therefore, while the lowest-property-wealth districts may be more dependent on state aid, as a group they will have already received 80 percent of their state aid by June 1 while those in Category 2 will have received only 62 percent of their state aid by June 1.

Table 1 (page 10) illustrates this distribution, including the number of students in the three district categories and the amounts owed the districts after June 1.

West Orange-Cove injunction

The following text is taken directly from the "Injunctive Relief" prescribed by Judge John Dietz in his November 2004 decision in *West Orange-Cove Consolidated ISD, et. al., v. Neeley, et. al.*, except that references to October 1, 2005, have been changed to June 1, 2006, to reflect the Texas Supreme Court's modification of the injunction date.

This Court grants final judgment in favor of the West Orange-Cove Plaintiffs on their claims for injunctive relief. Accordingly, this Court:

1. ... Hereby enjoins the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until June 1, 2006, in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

2. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.

3. This injunction shall not bar suits for collection of delinquent taxes, penalties and interest.

4. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before June 1, 2006, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after June 1, 2006, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before June 1, 2006, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after June 1, 2006, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.

5. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after June 1, 2006, or to levy, assess, and collect, before, on, or after June 1, 2006, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

6. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after to June 1, 2006, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

How recapture payments are collected from property wealthy districts

Under Education Code, sec. 41.002, school districts that exceed the equalized wealth level are subject to the recapture of local property tax revenue. These "Chapter 41" districts, which learn by July 15 from TEA that they are subject to recapture of property tax revenues collected the following school year, have five options for reducing their wealth per student to the equalized wealth level. Of these, school districts generally choose either to buy attendance credits from the state or to enter into contracts with low-wealth districts to pay a share of their education costs based on students in average daily attendance.

Districts that choose to purchase attendance credits pay the state in seven equal monthly installments between February 15 and August 15. If an injunction took effect June 1, these districts would not submit installment payments for June, July or August.

The court's injunction means that Chapter 41 districts would be able to retain local tax revenue if the system were enjoined after June 1. However, since local property taxes are not collected until the end of the year, even the wealthiest districts would have to rely on fund balances or savings from unpaid attendance credits to cover expenses between the beginning of the 2006-07 school year and the time local property tax payments are remitted.

Other budgetary factors for districts

Teacher salaries. Teacher contracts are set for a 10-month period, but many teachers elect to spread their salary payments over 12 months. If state funding were cut off on June 1, school districts would have to continue to pay teachers on 12-month contracts for the remaining three months of the 2005-06 school year.

Summer school. The state provides funding for a limited number of summer school programs, such as early intervention programs for bilingual students in kindergarten and 1st grade. Most summer school programs, however, are funded locally, often at least partially through tuition paid by students. Since most summer school programs are funded locally, a cutoff in state funding may not significantly affect most districts. However, districts with small or nonexistent fund balances could be reluctant to finance summer school with local funds in the face of the loss of state funding for other programs.

Fund balances. If state funding were cut off on June 1, it is likely that school districts would draw down local fund balances to cover salaries and other expenses. Those districts with little or no funding in reserve balances would be affected most immediately if state payments were withheld. Although the state does not require school districts to maintain fund balances, the state's financial accountability system includes a measure to determine whether a district

Table 1: Distribution of FSP payments by district wealth

	number of districts	number of students*	FSP amount paid by 6/1	June-August payments**
Category 1	218	621,476	$2.29 billion	$0.59 billion
Category 2	464	1,862,427	$2.99 billion	$1.81 billion
Category 3	318	1,631,184	$0.73 billion	$0.14 billion

Category 1: per-pupil wealth less than half the statewide average

Category 2: per-pupil wealth at least half the statewide average but not greater than average

Category 3: per-pupil wealth greater than the statewide average

**approximate average daily attendance*

***June-August payments include the delayed August payment made in early September*

Source: Texas Education Agency

maintains what TEA considers an "optimum fund balance." In general, the optimum fund balance would cover at least one month's average cash disbursements. According to TEA, in the 2004-05 annual audit, nearly half (46.8 percent) of districts did not carry optimum fund balances.

Some school districts, particularly those with small or nonexistent fund balances, could face immediate difficulties if the remaining state payments for the 2005-06 school year were withheld, while other districts likely could cover these remaining costs for the summer. Many more districts would be strained financially if the Legislature did not adopt an acceptable proposal by September 1, when the first state payments for the 2006-07 school year are distributed. Since these payments are "front-loaded" for many districts, the state payments for September and October represent a significant portion of the annual budget for the 90 percent of districts that receive state aid. Even districts that have significant reserve funds would have difficulty making up the loss of these state funds.

– by Betsy Blair

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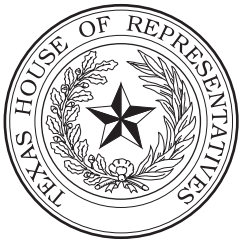

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