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Public Education

State seeking review of school finance ruling

November 3 — A district court ruling that the state’s school finance system is unconstitutional could be reviewed by the Texas Supreme Court under a direct appeal request from the Texas Office of the Attorney General. Other parties, including a business group and charter school association, also have asked the Supreme Court to accept their direct appeals of the trial court ruling.

Government Code, [sec. 22.001\(c\)](#) allows an appeal directly to the Supreme Court from an order of a trial court granting or denying an injunction based on the constitutionality of a state statute.

State District Judge John Dietz, in an August 28 ruling, found the state’s system for funding public schools violates the state constitution and has given the Legislature until July 1, 2015, to address the issues in his ruling.

Constitutional issues. The ruling said the state was in violation of two provisions of the state constitution — a provision that prohibits a state property tax and a provision referred to in the opinion as the “education clause,” which charges the Legislature with establishing and supporting an efficient, free public school system.

State property tax. Judge Dietz found a property tax imposed by the funding system to be in violation of Tex. Const., [Art. 8, sec. 1-e](#), which bans state property taxes, because school districts lack meaningful discretion to set local property tax rates. He said current maintenance and operations (M&O) tax rates function as both a floor and a ceiling for school districts because they cannot lower taxes without compromising their ability to meet state standards and are either legally or practically unable to raise rates further. The court said that even if the plaintiff districts raised M&O tax rates to the maximum allowed with voter approval, the additional funds — which are designed for local enrichment

— would be needed for basic programs due to inflation, higher performance standards, and state budget cuts.

Adequacy, suitability, and equity. Judge Dietz said the school funding system was in violation of Tex. Const., [Art. 7, sec. 1](#), which calls for a “general diffusion of knowledge” and charges the Legislature with establishing and providing suitable support for and maintenance of an efficient, free public school system. The opinion said the Legislature had failed to:

- ensure that school districts and charter schools reasonably can provide all students with a meaningful opportunity to learn the essential knowledge and skills reflected in the state curriculum to be prepared for college or a career upon graduation;
- structure, operate, and fund a system that can accomplish a general diffusion of knowledge for all students; and
- design a system that gives all districts substantially equal access to necessary education funds at similar tax efforts.

Judge Dietz cited the convergence of three major trends since 2005 that he said have brought the school finance system back under judicial scrutiny: a rapidly growing student population that also is growing poorer and more diverse, the substantial raising of academic expectations and transition to more rigorous testing, and a significant decline in financial support for public education. He said that when adjusted for inflation, funding is \$312 per student lower than in 2004 and that of 1,020 districts, only the 259 with the greatest property wealth are able to cover the cost of an adequate education.

The district court ruling came in a case consolidated from lawsuits filed in 2011 by four groups representing more than 600 districts of varying degrees of property wealth.

(continued on page 2)

Other claims. The plaintiffs also included several individual taxpayers, who claimed that the finance system violated the requirement in Tex. Const., [Art. 8, Sec. 1\(a\)](#), that all taxation be “equal and uniform.” Judge Dietz denied the claim, saying that taxpayers in the same school district are taxed at the same rate and that the constitution does not require equal and uniform benefit from taxing.

Judge Dietz upheld the claim of a charter school association that raised adequacy claims similar to those of the school districts but denied a separate equal protection claim based on the lack of facilities funding for charter schools. The court said that because charter schools and districts are subject to different requirements, the Legislature has a rational basis for funding them differently.

A coalition of business interests and school choice advocates also intervened in the case, arguing that greater “qualitative efficiency” could be achieved with reforms such as eliminating the statutory cap on charter schools, allowing more school choice, and reforming provisions that govern teacher compensation, hiring, firing, and certification. Judge Dietz denied the intervenors’ claims, saying there was no precedent for judicial interference in specific questions of education policy.

Natural Resources

Texas considers water desalination

[November 3](#) — With Texas experiencing an ongoing drought and a rapidly growing population, planning for the state’s long-term water needs has become a top policy priority. Among the approaches called for in the most recent state water plan is more reliance on desalination technologies to produce potable water from both brackish and marine sources. Desalination is the process of removing salt from seawater or brackish water.

The abundance of brackish groundwater in Texas has water planners looking to desalination to produce more potable water and to free the existing fresh water supply for stream flow and

Both the charter school association and the business and school choice coalition have filed notices of appeal to the Texas Supreme Court. A group of property-wealthy school districts also has asked the Supreme Court to hear its appeal of the portion of Judge Dietz’s ruling related to funding equity.

The state’s case. The state has not yet filed briefs outlining its arguments on appeal. During the trial, the state presented evidence from experts who questioned the relationship between funding and student achievement. The state also argued that districts have control over their own budgets and may be spending on personnel, technology, extracurricular activities, and facilities beyond what is required to provide a constitutionally adequate education.

Read the school finance final judgment [here](#) and the findings of fact and conclusions of law [here](#).

— by Janet Elliott

other uses. The large-scale implementation of desalination from both brackish groundwater and seawater remains constrained by high cost and energy consumption and, in the case of seawater desalination, the need to transport treated water across the state. Some observers say changes to the state’s regulatory and permitting process are needed to facilitate the growth of desalination.

Read more about desalination in Texas in the House Research Organization’s interim news article, [Texas eyes desalination as option to increase state’s water supply](#).

*Criminal Justice***States consider changes to marijuana laws**

November 6 — The 84th Texas Legislature may join a growing number of states revising laws on possession and use of marijuana. Recent revisions and proposed changes to marijuana laws in other states fall into three main categories: lowering criminal penalties for possession of small amounts, legalizing use for medical purposes, and legalizing recreational use.

The most high-profile state policies on marijuana have been approval of the sale of recreational marijuana in Colorado and Washington state. In the November 2014 elections, voters in Alaska and Oregon approved initiatives to do the same. These laws generally tax and regulate marijuana in a manner similar to alcohol. Voters in Washington, D.C. in the most recent general election also approved an initiative to legalize possession of up to 2 ounces of marijuana.

Three states in 2014 approved the use of marijuana for medical purposes, bringing the total to 23 states and the District

of Columbia. In the November election, Florida voters defeated a state constitutional amendment that would have legalized medical marijuana.

Texas and other states have debated whether to lower criminal penalties for possession of small amounts of marijuana, including by reducing it to a fine-only offense. In Texas, the crime of possessing marijuana is punished according to the amount possessed, with possession of smaller amounts being misdemeanors. The debate on lowering penalties centers on the appropriate level of criminalization for marijuana possession, the cost to state and local governments to enforce current law, and whether lower penalties would encourage drug use.

Read more about proposals on possession and use of marijuana and the debate on reducing criminal penalties in the House Research Organization's interim news article, [States consider changes to laws on marijuana possession and use](#).

*Regulation and Licensing***Further regulation of payday lending may be considered**

November 14 — As some local governments in Texas enact stricter consumer protections on payday and auto title lending, the 84th Legislature may consider similar proposals in 2015.

A payday loan is a small cash advance delivered to consumers who agree to repay the principal and associated fees by a specified date, typically the consumer's next payday. Consumers often provide a post-dated check or access to their debit accounts as collateral. Some payday loans are structured as multiple-payment transactions, and lenders may allow consumers to delay repayment in return for extra fees. One fast-growing sector of the industry is online payday lending.

Auto title loans are similar products. They require a car title as collateral, allowing a lender to repossess the car if the borrower defaults. Texas auto title lenders repossessed about 37,000 cars in 2013, according to the Office of Consumer Credit Commissioner.

Federal. The federal Military Lending Act (MLA) puts a 36 percent cap on the interest rates and certain other fees that payday and auto title lending entities may charge certain active-duty service members and their families. Because some of these

businesses have adjusted their loan structures to fall outside the MLA's regulatory framework, the Department of Defense has proposed rules to broaden the applicability of the act.

The federal Consumer Financial Protection Bureau is considering whether to develop rules that would regulate the payday lending industry for all consumers.

State. A payday or auto title lender in Texas is regulated as a "credit access business" (CAB). CABs offer credit to consumers but do not have to follow the same rules as traditional lenders, such as banks or credit unions. Texas law does not limit interest rates, fees, or refinances of loans issued by CABs, nor does it cap the amount a consumer may borrow based on income. CABs are regulated by the Finance Commission of Texas, including the Office of Consumer Credit Commissioner, under administrative [rules](#) authorized under Finance Code, chapters [342](#) and [393](#).

In 2011, the Texas Legislature enacted two laws to regulate payday and auto title lending. [HB 2592](#) and [HB 2594](#) by Truitt require CABs to disclose information conspicuously about fee schedules and refinancing charges and to register with the Office

(continued on page 4)

of Consumer Credit Commissioner. The 82nd Legislature also considered, but did not enact, [HB 2593](#) by Truitt, which would have limited the amount a consumer could borrow based on family income, restricted the number of times a loan could be renewed or refinanced, and allowed borrowers to make partial payments toward the principal loan amount.

In 2013, the 83rd Legislature considered [SB 1247](#) by Carona, which is similar to HB 2593. SB 1247 was left pending after a hearing in the House Investments and Financial Services Committee.

Local. At least 18 cities in Texas have imposed stricter regulations on CABs. Several have adopted a unified ordinance requiring that:

- CABs register with the city;
- consumers borrow no more than 20 percent of their gross monthly income (for payday loans) and 3 percent of their gross annual income or 70 percent of the car's value (for auto title loans); and
- loans consist of no more than four payments, each of which must reduce the principal by at least 25 percent.

Supporters of stricter statewide regulation say it would help to limit potential harms to consumers from the business model of CABs in Texas, which allows lenders to evade the state's usury laws, including caps on interest rates and fees. They say payday lenders profit from exorbitant fees to renew the loans of economically desperate borrowers who are unable to pay on time. Borrowers may become trapped in a cycle of debt after repeated loan renewals, supporters say, and those who lose their cars after defaulting on an auto title loan may have trouble getting to work and earning a living. Alternatives such as community

loan centers are emerging to meet the needs of those with limited access to credit.

Supporters say additional state-level consumer protections would help prevent payday and auto title lenders from sidestepping city ordinances. In addition, they say, online payday lending exists in a regulatory gray area and tends to cost even more than storefront loans. Clear statewide regulation is needed to protect consumers of both online and storefront payday lending.

Opponents of stricter statewide regulation say further restrictions on CABs might force them to close rather than comply, making loans less available to people who need them. Many Texans struggle at times to pay their bills, and payday and auto title lending provide access to credit for those with few realistic choices, opponents say. These loans tend to be the least expensive option for short-term loan consumers. Without such options, some who are struggling might suffer financial harm by paying their bills late or overdrawing their bank accounts.

Opponents say excessive regulation might hinder innovation in the Texas marketplace, potentially raising costs for the industry and prices for consumers. Certain consumer protections may be appropriate but should not limit choice or availability for the millions of Texans who need these loans and are able to repay them on time. State lawmakers have consistently rejected policies that would distort competition or fix prices in the payday lending marketplace.

— by *Mary Beth Schaefer*