

# Interim News Briefs



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## Public Education

### Texas Legislature reviewing Hurricane Harvey school costs

May 9 — When Hurricane Harvey struck the Gulf Coast last August, it caused extensive damage to school facilities in districts that educate about 1.4 million students. The physical and economic damage left in its wake has required some students to attend school in other districts during repairs at their home campuses, while also increasing the number considered academically at-risk and eligible for additional state funding.

Texas is required under the Education Code to reimburse certain costs school districts have incurred from the hurricane, although reimbursement of other storm-related costs is at the Legislature's discretion.

Speaking at recent hearings of the [House Public Education Committee](#) and [Senate Finance Committee](#), the commissioner of education discussed both categories of Harvey-related expenses. For fiscal 2018-19, the Texas Education Agency (TEA) estimates the cost of required reimbursements to be \$426 million, with optional costs ranging from \$860 million to \$1.36 billion. The 86th Texas Legislature could consider some of the costs in a supplemental appropriations bill when it meets during the regular session in 2019.

**Enrollment shifts.** For districts and charter schools that lost student enrollment due to the hurricane, a one-time adjustment for the current school year is designed to hold them harmless for the declines that otherwise would reduce their state funding under [Foundation School Program](#) (FSP) formulas. Education Code, [sec. 42.005\(d\)](#) authorizes the commissioner to adjust the average daily attendance of a school district that is significantly affected by a disaster, flood, or extreme weather event. The commissioner estimates that such adjustments will cost the state \$99 million in additional state aid and lost revenue from property-wealthy districts affected by the hurricane that send some of their local tax dollars to the state under the "recapture" system.

TEA is tracking about 17,000 students who changed districts due to Harvey. As of February 20, the agency had approved 76 districts for the funding adjustment.

**Property value decline.** The hearings focused on several issues related to property valuations in the 60-county disaster area. State funding requirements are different for districts that ordered a reappraisal of property after the hurricane and those that did not.

*Districts that reappraised.* Tax Code, [sec. 23.02](#) authorizes the governing body of a tax unit that is located partly or entirely inside an official disaster area to order the market-value reappraisal of damaged property immediately after the disaster.

TEA is aware of 12 school boards, including Katy ISD and Spring Branch ISD, that have voted to reappraise 2017 property values in their districts. The agency estimates that local collections of school maintenance and operations tax revenue in these districts will be about \$150 million less than anticipated, an amount for which the Legislature could choose to hold these districts harmless during the 2017-18 school year.

TEA says that beginning with the 2018-19 school year, however, it is required by Education Code, [sec. 42.2523](#) to increase state aid to those districts at an estimated state cost of \$150 million, based on an assumed 7 percent decline in reappraised value.

*Districts that did not reappraise.* The Legislature is not obligated to increase state aid to districts that did not order reappraisals but could collect less school tax revenue due to delayed and uncollected tax payments from storm-stricken property owners. Lawmakers could decide to hold those districts harmless at a potential cost of \$150 million for the current

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school year. According to TEA, continuing to hold these districts harmless for the 2018-19 school year would cost between \$500 million and \$1 billion, which could help them avert budget cuts and teacher layoffs.

**Facilities repair.** Costs to replace school facilities damaged by Harvey are estimated by TEA to be \$907 million. Insurance and the Federal Emergency Management Agency (FEMA) are expected to cover 90 percent of the anticipated losses. Districts that make recapture payments may reduce or eliminate these payments for facility damage costs not covered by insurance or FEMA, at an estimated state cost of \$30 million during the 2018-19 school year. The Education Code does not guarantee facilities assistance to districts not subject to recapture. For those districts, TEA estimates a cost of \$60 million in fiscal 2019 that the Legislature could consider reimbursing.

**Compensatory education.** An increase in the number of students eligible for the national school lunch program as a result of Hurricane Harvey will require additional state funding under the compensatory education allotment in Education Code, [sec. 42.152](#). Enrollment in the free and reduced-price lunch program is used to calculate how much extra per-student funding a district is entitled to receive through the compensatory education allotment. The Texas Department of Agriculture, which administers the school lunch program, estimates an additional 80,500 students will qualify this school year. TEA estimates the state cost of the increase at \$103 million for the current school year and \$44 million for the 2018-19 school year.

— Janet Elliott

## *Criminal Justice, Judiciary and Jurisprudence*

# Air conditioning to remedy heat at Texas prison after legal settlement

[May 16](#) — The Texas Department of Criminal Justice (TDCJ) has installed air conditioning in a prison near Navasota as part of a recent settlement of a lawsuit brought by inmates over excessive heat at the facility. The settlement requires TDCJ to install temporary air conditioning at the Wallace Pack Unit by April 2018 and, subject to legislative approval, to install permanent air conditioning by May 2020. The court accepted the settlement on May 8, which could prompt additional changes to how the agency handles high-risk heat sensitive inmates in other facilities.

With the newly installed air conditioning at the Pack Unit, 29 of TDCJ's 104 facilities, which house about 145,000 inmates, are fully air conditioned. Many of the other facilities have little or no air conditioning in living areas. Dormitories and cells with about 34,000 beds are air conditioned, and about one-third of these beds are reserved for medical, mental health, or offender treatment programs.

**Pack Unit lawsuit.** In the 2014 lawsuit, inmates claimed that dangerous heat at the 1,478-bed Pack Unit made confinement there unconstitutional under the Eighth Amendment's ban on cruel and unusual punishment, which is also prohibited under Texas Constitution, [Art. 1, sec. 13](#). The suit called for requiring TDCJ to lower indoor temperatures to 88 degrees. The agency said it maintained constitutional conditions with heat mitigation efforts that included cool showers, ice water, fans, a relaxed dress code, open windows, and air-conditioned respite areas.

In 2016, a federal district court judge certified the [original lawsuit](#) filed by four inmates as a class action, naming as a general class all those incarcerated at the Pack Unit. The court also named two subclasses — one for heat-sensitive inmates, including those with certain medical conditions, on certain types of medication, or those over age 65, and another for those with disabilities and at risk of heat-related illnesses, injury, or death due to disability or medical treatment.

**Preliminary order.** In 2017, the court issued a [preliminary injunction](#), finding that TDCJ's efforts to mitigate heat at the Pack Unit were insufficient to reduce the substantial risk of serious injury or death for inmates. The court did not order TDCJ to install air conditioning but did require several broad actions. For young and healthy inmates, the court ordered TDCJ to implement a fully functioning respite program for the prison. For the heat-sensitive subclass, the court ordered the agency to lower the maximum heat index in housing areas to 88 degrees. It also required TDCJ to develop a heat wave policy for the facility.

In August, TDCJ relocated about 1,000 heat-sensitive inmates to air-conditioned housing in other facilities, although the unit's population rebounded a few weeks later with the arrival of inmates evacuated due to Hurricane Harvey.

**May lawsuit settlement.** Under the May settlement agreement, which applies only to the Pack Unit, all housing areas in 2018 and 2019 will be air conditioned from April 15 through

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October 15 using temporary measures. Subject to legislative approval, permanent air conditioning will be installed in the prison's housing areas by May 2020.

TDCJ reports that installing and operating the temporary cooling system at the Pack Unit cost about \$800,000 in existing funds budgeted for facilities maintenance and repairs. Subject to information still being gathered, the agency estimates that permanent air conditioning will cost about \$4 million to install and reports that the expenditure would appear in its fiscal 2020-21 budget request for major repairs and renovations.

The agency received \$40 million in facilities repair funding for fiscal 2018-19, which typically pays for items such as infrastructure repairs, security fencing and lighting, electrical renovations, and water and wastewater improvements.

TDCJ intends to use the settlement's criteria to identify and relocate inmates at highest risk of heat injury to some of the state's existing 34,000 beds in air-conditioned housing. To accommodate the transfers, some facilities may require infrastructure changes such as additional fencing or other security measures.

**Other settlements.** Court documents indicate that since 1998, 23 TDCJ inmates have died of heat-related causes, including 10 who died during a 2011 heat wave. Lawsuits against the state in eight of these deaths and one injury also were settled in May.

— *Kellie A. Dworaczyk*