District Court August 28, 2014 Ruling on School Finance: A Compilation of References to Fast-Growth and Facilities-Related Issues

Executive Summary

In addition, the State's failure to ensure that facilities funding keeps pace with property value growth, inflation, or the growing student population, has forced districts to issue more bonds and raise I&S tax rates. In order to finance needed facilities and comply with the State's 50 cent limit on the issuance of new bonds, districts have been forced to issue debt with longer maturities and greater interest expenses. This increasingly expensive debt, combined with rising I&S tax rates due to lack of state support, has contributed to the loss of meaningful discretion over M&O tax rates.

Findings

FOF 49. Because the Texas Supreme Court has directed the trial court to consider facilities funding, together with M&O, in addressing the constitutionality of public school funding, the Court notes that the facilities funding structure effectively creates a fourth EWL of $350,000 per ADA for those districts that are successful in issuing bonds. There is no recapture of revenue generated from property values exceeding this EWL. Like the M&O weights and allotments, the Legislature has not recently updated the EWL to adjust for inflation and increased construction costs. Unlike M&O funding, however, facilities funding is subject to appropriation and is not a permanent part of the school funding system. Consequently, districts cannot rely on new funding to assist with construction costs.

ii. Districts lack capacity with respect to I&S tax rates.

FOF 224. School districts pay for new facility construction and renovation of current facilities by issuing voter-approved bonds and levying interest and sinking fund ("I&S") taxes to meet their annual debt service requirements. (Ex. 6318 at App. E, Part 14, p. 20; RR10:164-68; RR11:65-66, 73-77.)

FOF 225. Following the *Edgewood IV* decision, the State took a number of steps to address the Supreme Court's warning that "the lack of a separate facilities component has the potential of rendering the school finance system unconstitutional in its entirety in the very near future." *Edgewood IV*, 917 S.W.2d at 746. The structure of the current state facilities funding program was initiated in 1997 with the creation of the Instructional Facilities Allotment ("IFA"). (Ex. 1328, Casey Report, at 21.)

FOF 226. Like the State's M&O funding, the IFA operates on a guaranteed yield system, but without recapture. (*Id.* at 21-22.) Eligible school districts initially received the equivalent of a tax yield guarantee of $28 per penny per ADA to assist in meeting a district's debt service needs. (*Id.*) In 1999, the yield was increased to $35 per penny per ADA, and has not increased since then. (RR10:166-67 (referencing Ex. 6352 at 12); RR56:173-74 (referencing Ex. 6621 at 9).)

FOF 227. Unlike the State's M&O funding, districts are not actually guaranteed funding based solely on having a tax yield that is less than the guaranteed yield. (Ex. 1328, Casey Report, at 22.) The IFA system requires districts to submit an application that details the proposed bond schedule and the educational facilities to be constructed. (*Id.*) In the event of a greater demand for IFA funds than the appropriation would support, districts are ranked on the basis of their state property wealth per ADA – from lowest to highest – with the lowest-ranking districts the first to qualify for these funds. (*Id.*) Therefore, the number of districts whose applications are granted varies by the amount of the Legislative appropriation for new IFA awards. (*Id.*) The Legislature did not appropriate any money for new IFA awards during the 2011 or 2013 sessions. (RR56:174 (referencing Ex. 6621 at 8).)

FOF 228. While the IFA helps districts that seek to enter into new debt, the Existing Debt Allotment ("EDA") seeks to help districts pay back already existing debt. (Ex. 1328, Casey Report, at 23.) When the EDA was enacted in 1999, districts were guaranteed a yield of $35 per student for each cent of tax effort, equivalent. As enacted, only twelve cents of I&S tax effort were eligible for EDA state support. (*Id.*) This cap was raised to twenty-nine cents in 2001. (*Id.* at 23; RR10:172.) The $35 yield per student per cent of tax effort has not been increased since 1999. (Ex. 1328, Casey Report, at 23; Ex. 6352 at 12; RR32:198; RR56:173-74 (referencing Ex. 6621 at 9).)

FOF 229. At the time the EDA program was initiated, 896 school districts enrolling 91.2% of all Texas schoolchildren were eligible for state support under either the EDA or IFA programs. (Ex. 1328, Casey Report, at 23.) For the 2013-14 school year, fewer than 56% of all Texas students attended school in districts that were eligible for EDA or IFA support. (Ex. 6621 at 9-10; *see also* RR56:174-75; RR10:168; Ex. 6352 at 12; RR32:198.) If the EDA and IFA yields had been pegged to the 91.2 percentile of wealth, it would have a yield of $62.71 per penny today. (RR10:173; *see also* RR56:230-31.) If the $35 yield had simply been adjusted for inflation over the last decade, the yield today would be $54.77, with 84.8 percent of Texas students attending school in eligible districts. (RR10:174; *see also* RR56:230-31.)

FOF 230. Because state aid for facilities has not kept pace with property value growth or the growing student population, districts have been forced to raise I&S rates to keep pace with facility needs. (*See* RR10:171-77, 180-83; Ex. 6352 at 17, 20-21; RR32:198-99; RR56:176-79; *see also infra* Parts I.A.1.a.ii (FOF 224, *et seq.*) and I.A.1.a.iv (FOF 263, *et seq.*).) Over the course of the last decade, more districts issued debt to finance their facility needs. The number of districts without an I&S tax levy decreased from 369 districts in 1999-2000 to 200 districts for the 2012-13 school year. The number of districts with I&S tax levies at or above $0.30 increased from 34 districts in 1999-2000 to 225 districts in the 2012-13 school year. (RR56:179-80 (referencing Ex. 6621 at 14).) In the 2011-12 school year, 810 Texas public school districts levied I&S taxes to service $62.6 billion in outstanding school district debt (including both principal and interest). (*See* Ex. 1328, Casey Report, at 21; Ex. 6352 at 20-21; RR10:180.) The following table shows the count of school districts by I&S tax rate grouping from the 1999-2000 school year through the 2012-13 school year:

I&S Tax Rate	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
> $0.50	1	0	1	0	0	0	0	0	0	0	1	3	6	6
$0.50	0	1	1	1	0	1	1	0	1	5	12	19	24	27
$0.40<$0.50	6	7	3	5	4	7	7	14	47	62	61	61	65	61
$0.30<$0.40	27	30	32	32	41	43	52	63	101	108	115	129	127	131
$0.20<$0.30	104	103	108	132	142	168	149	152	168	187	190	186	187	195
$0.10<$0.20	253	271	288	306	292	276	267	276	274	249	252	242	238	230
$0.00<$0.10	261	257	264	243	242	232	258	250	195	183	172	169	162	171
$0.00	369	352	324	302	300	294	287	266	235	227	218	212	212	200
Total	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021

(Ex. 6621 at 14.)

FOF 231. From the 2007-08 to the 2011-12 school year, the Texas public school system grew by 330,306 students. (Ex. 1328, Casey Report, at 21.) More than 90% of this enrollment growth has occurred in approximately 100 school districts. (*Id.*; RR10:177.) Northside ISD, one of these "fast-growth" districts, has built and opened thirty-seven new schools in the last ten years. (RR25:84-85, 55-89.) A demographic study in Los Fresnos, another fast-growth district, found that the district would have to build one school each year for the next twenty-five years. (RR24:139.) While student population growth does result in some property value growth, officials from fast-growth districts testified that the property value growth is not enough to cover the costs of new facilities construction for these districts. (*See* RR11:61; RR24:212.) Some fast-growth districts have even been forced to pledge to use M&O tax revenue to pay back bonds, in order to meet the 50 cent debt test (required to obtain Attorney General approval to issue bonds). (*See infra* I.A.1.a.iv; RR10:189-90.)

FOF 232. The Court finds that these "fast-growth" districts are required to build more facilities, which means issuing more bonds and increasing their I&S tax rates more quickly. (RR10:177, 182; Ex. 6352 at 22-25; RR56:180-82 (referencing Ex. 6621 at 15).) As the Chief Financial Officer of Fort Bend ISD testified, when a district is forced to increase its I&S rate to make its bond payments, it is necessarily harder for that district to also raise its M&O rate because "it's just one tax bill to [the district's] constituents." (RR11:84-85.) Similarly, several superintendents testified that their districts' need to regularly seek voter approval for bond issuances to keep up with student growth (and the resulting increase in I&S tax rates) makes it difficult, if not impossible, to hold a successful TRE. (*See, e.g.*, RR22:57; RR19:85-86; RR25:102; Ex. 4336, Cavazos Dep., at 18:-19.) For the reasons articulated by these witnesses, the Court finds that rising I&S rates have contributed to the loss of meaningful discretion over M&O tax rates for many fast-growth school districts.

iv. The State controls the levy of I&S taxes through the 50 cent debt test, which acts as a *de facto* cap on I&S tax rates.

FOF 263. Whether or not they receive EDA or IFA funding, before a school district may issue a bond, it is required to demonstrate to the Attorney General that the district has the ability to meet its principal and interest payments on bonds[1] from an I&S tax rate that does not exceed $0.50 per $100 of taxable value. *See* TEX. EDUC. CODE § 45.0031. (*See also* Ex. 1328, Casey Report, at 26-27; RR10:187-90.)

FOF 264. The decline in EDA and IFA funding detailed above in Part I.A.1.a.ii (FOF 224, *et seq.*) has forced districts to increase their local I&S rates. (RR32:198-99 (referencing Ex. 6352 at 20).) In the 1999-2000 school year (the first year of full implementation of the EDA) only thirty-four school districts had I&S rates of $0.30 or higher. (RR56:177 (referencing Ex. 6621 at 13).) At the time of *WOC II*, forty-five school districts had I&S rates of $0.30 or higher. (Ex. 6621 at 14.) By 2012-13, 225 school districts had I&S rates above $0.30. (*Id.*; *cf.* RR32:198-99 (referencing Ex. 6352 at 20); *see also supra* Part I.A.1.a.ii (FOF 224, *et seq.*).) As districts raise their tax rates closer to the 50 cent level, they may be forced to either forgo issuing voter-approved debt or to issue bonds with longer maturities to meet the 50 cent debt test. (*Id.*; Ex. 6352 at 28-29; RR10:191-92; RR11:80-83 (referencing Ex. 665 at 12, 14-15); Ex. 6621 at 16.) Longer maturities result in local school districts and taxpayers paying tens to hundreds of millions in additional interest costs. (Ex. 1328, Casey Report, at 26-27; Ex. 6352 at 30; RR11:84 (referencing Ex. 665 at 14-15).)

FOF 265. Fast-growing school districts are particularly hard hit by the combination of the stagnant $35 yield and the requirements of the 50 cent test. (RR56:180-81, 206, 237; Ex. 6621 at 15-16; Ex. 6352 at 26-27.) Fast-growth districts have greater facilities needs because they must build facilities just to keep up with enrollment growth. (*See, e.g.*, RR3:132 (Humble ISD added 900-1,000 students – the size of a typical middle school – per year since *WOC II* trial); RR11:60 (Fort Bend ISD had to build twenty schools over the past ten years due to enrollment growth); RR25:84-85 (Northside has grown by 25,000 students since *WOC II* and had to build and open 37 schools from 2002 to 2012 to keep pace with enrollment growth).) For the 2011-12 school year, fast-growth school districts have an average I&S tax rate of $0.333 per $100, compared with $0.223 for districts that are not fast growth. (Ex. 1328, Casey Report, at 26.)

FOF 266. The Court finds that the 50 cent debt test functions as a *de facto* cap on I&S tax rates, and that as districts are forced to tax at or near that cap in order to meet their facilities needs, fast-growth districts have lost discretion over their I&S tax rates. Furthermore, because the same taxpayers are responsible for both I&S and M&O property taxes, increasing pressure on I&S taxes necessarily causes increasing pressure on M&O taxes, contributing to the violation of the constitutional prohibition against a statewide property tax.

[1] Excluding those bonds approved by voters on or before April 1, 1991 and issued prior to September 1, 1992.

3. If *all* Texas students are to have a reasonable and meaningful opportunity to acquire a general diffusion of knowledge, Texas schools must be given adequate and suitable funding to hire a quality workforce and implement quality programs.

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FOF 525. Finally, school districts must meet the demands of a growing student population by building new facilities and repairing or replacing aging facilities. (*See infra* Part I.A.3.e (FOF 585, *et seq.*).)

e. Districts lack the funding necessary to provide adequate educational facilities.

FOF 585. As the Texas Supreme Court has noted, "An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system – instruction and facilities – are inseparable." *Edgewood IV*, 917 S.W.2d at 726. Accordingly, the Court finds that adequate school facilities are necessary to the functioning of the Texas public school system. To provide an adequate education, districts must have adequate facilities, which requires access to sufficient funds to build new facilities and maintain and renovate current ones.

FOF 586. The conditions that must be addressed when considering whether a building is adequate or inadequate include health and safety, age of the building, human comfort, indoor air quality, lighting, acoustical control, and secondary science laboratories. (Ex. 3231 at 37-42; Ex. 3198, Garza Dep., at 35-36; RR18:164-77.)

FOF 587. The Texas Comptroller released a report in 2006 studying school facilities. According to the Comptroller's report, roughly 40% of the high schools were considered in the categories of fair, poor, or needs replacing, with the average age of these facilities being 34.5 years old. (Ex. 3231 at 6; RR18:162-87.) Districts with an economically disadvantaged rate of less than 20% reported the highest percent of facilities in good or excellent condition, whereas districts with an economically disadvantaged rate of 80% or higher reported the lowest percentage of facilities in good or excellent condition. (Ex. 3231 at 6; RR18:164-77.)

FOF 588. Superintendents from across the state testified about aging facilities that the district cannot afford to repair or replace. (Ex. 3200, Wallis Dep., at 49 and 56; Ex. 3203, Knight Dep., at 40-42; RR5:193-94, 224-28; RR20:86-88; Ex. 3198, Garza Dep., at 32-33.) These older facilities cost more to maintain and operate. (Ex. 3200, Wallis Dep., at 49 and 56.) Superintendents testified about having to educate students in buildings with damaged roofs and foundations with structural problems. (Ex. 3204, Dupre Dep., at 48-51; Ex. 3207, Salazar Dep., at 52-53; RR5:225-27; RR20:86-88; Ex. 3206, French Dep., at 52-53.) Oftentimes, unmaintained buildings can pose a safety hazard. (Ex. 3203, Knight Dep., at 40-42; Ex. 3200, Wallis Dep., at 49, 56.)

FOF 589. Other superintendents testified that the district cannot afford to construct buildings to keep pace with student growth. (RR5:193-94, 224-28.) As a result, campuses become overcrowded, with classes being held in auditoriums, libraries, and other common spaces instead of traditional classrooms. (RR5:193-94, 224-28.) These overcrowded campuses do not have sufficient restrooms or cafeteria space. (RR5:193-94, 224-28.) Other campuses do not have sufficient science facilities, which prevent districts from offering advanced science courses or meeting the requirements of TEKS. (RR5:225, 227; RR20:87-88; Ex. 3206, French Dep., at 18, 52-53.)

FOF 590. In light of the above findings—along with the Court's findings regarding the Legislature's failure to appropriate sufficient funds and increase the guaranteed yield for facilities funding to keep pace with inflation, construction costs, and fast growth (*see supra* Parts I.A.1.a.ii (FOF 224, *et seq.*) and I.A.1.a.iv (FOF 263, *et seq.*)) – this Court finds that overall funding for facilities is insufficient, and, in particular, that the guaranteed yield for facilities is inadequate. The insufficient funding for facilities has contributed to the inadequacy of the system as a whole.

5. The ISD Plaintiffs have demonstrated that the cost of providing an adequate education exceeds the available funding under the current school finance system as a result of the State's failure to suitably provide for the Texas public school system.

a. Despite statutory mandates, the State has made no attempt in the last decade to calculate the cost of adequacy or the costs of meeting its own performance standards.

FOF 603. The State Defendants have not attempted to calculate the cost of adequacy in this case. In fact, the State of Texas (including the Legislature and TEA) has not conducted a study of the cost of an adequate education since 2003. (RR17:37; RR32:196, 202-05; RR56:170-72; Ex. 6621 at 4.) Moreover, the State's witnesses acknowledge that the State has made no effort to determine the cost of meeting the State's new and higher standards or the costs of HB5's changes to the graduation, assessment, or accountability requirements. (RR32:75-76, 132-33, 196, 202-05; RR33:26-27, 138-41; RR27:134-35, 147-48; RR28:172-74, 185-86; RR31:168-69, 174-75; RR34:85, 190-91; RR62:105-06; RR63:119-20, 136; Ex. 4273, Martinez Dep., at 40-41, 43-44, 53-54, 60, 73, 85-87, 102.) Further, TEA's CFO testified that the State does not attempt to factor increased costs to districts into TEA's biennial legislative appropriations request ("LAR") for the FSP, although the State does consider the cost to TEA of administering the laws and incorporates those estimates into TEA's LAR. (RR31:168-69.) The CFO further testified that none of the 2014-15 appropriated amounts for the FSP program, IFA and EDA programs, or the grant programs were based on any study or analysis of school district needs. (RR63:104-06.)

FOF 604. Section 42.007 of the Education Code creates a mechanism for keeping the important funding elements of the FSP up-to-date and consistent with the State's academic goals, as

well as changing local demographic and financial conditions. (Ex. 1328, Casey Report, at 4-5.) Under this section, the LBB is directed to adopt rules that provide for "the calculation for each year of a biennium of the qualified funding elements" – including the cost per student for the regular program, as well as special population programs, and adjustments such as the CEI, the guaranteed yield level for enrichment, and funding for the school facilities programs – that are "necessary to achieve the state policy under Section 42.001." (*Id.* at 4; RR10:152-54 (referencing Ex. 6352 at 7-8).) *See also* TEX. EDUC. CODE § 42.001(a) ("It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs . . . .").

FOF 605. Daniel Casey (a former head of the Legislative Education Board, which is the former agency responsible for conducting such studies) testified that the LBB has failed to fulfill its statutory obligation to adopt rules and conduct studies regarding the cost of the State's requirements and goals. (RR10:154-55 (referencing Ex. 6352 at 9); RR56:170 (referencing Ex. 6621 at 4).) Mr. Casey further testified that, when the State has conducted studies, it has rarely taken action on them. (RR10:154-55 (referencing Ex. 6352 at 9); *see also* Ex. 1328, Casey Report, at 6-12.) Mr. Casey also testified that the House of Representatives added provisions to the 2013 appropriations bill that called for the studies required by Section 42.007 of the Texas Education Code, as well as more detailed studies of the weights and other cost-adjustments. (RR56:170-72; Ex. 6621 at 4-5.) However, these school finance study riders were removed in conference committee, despite the fact that the State was criticized during the first phase of the trial for its failure to study the cost of adequacy or the cost of meeting its own standards. (RR56:171-72; Ex. 6550; Ex. 6621 at 4-5.)

FOF 606. As discussed in greater detail in Parts **Error! Reference source not found.** (**Error! Reference source not found.**, *et seq.*), **Error! Reference source not found.** (**Error! Reference source not found.**, *et seq.*), and **Error! Reference source not found.** (**Error! Reference source not found.**, *et seq.*) above, most of the "qualified funding elements" that should have been studied under this statutory requirement are out-of-date and lack a research base. (*See also* Ex. 6322, Moak Report, at 56-62.) Because these adjustments do not reflect the true costs to districts arising from the differing student, programmatic, and community characteristics or variables, they contribute significantly to the inadequacy and unsuitability of the school funding system. The Legislature's failure to enact formulas and allotments that bear some factual relationship to the costs of education is a structural defect in the school finance system that makes it impossible to accomplish a general diffusion of knowledge.

vii. Fort Bend ISD

FOF 755. It has approximately 69,500 students, an increase of 10,200 students since 2003. (Ex. 6353 at 3.) Fort Bend ISD grew by almost 1,000 students per year between 2003 and 2009, before the economic downturn slowed development in the area. (RR11:59 (referencing Ex. 6353 at 3).) The district built twenty schools over the past ten years, including thirteen elementary schools, three high schools, three middle schools, and an alternative school.

(RR11:60.) Fort Bend's Chief Financial Officer, Dr. Tracy Hoke, testified that growth is projected to pick back up as housing developments are completed. (Ex. 6338, Hoke Dep., at 17-18.)

ix. Northside ISD

FOF 783. Northside ISD is the fourth largest district in the state, enrolling almost 100,000 students. (Ex. 6438 at 2; Ex. 6345, Folks Dep., at 8-9.) Northside ISD has grown by 25,000 students since *WOC II* and is considered a fast-growth district. (Ex. 6438 at 2; 1RR25:84-85; Ex. 6345, Folks Dep., at 10-11.) As a result of that growth, Northside ISD had to build and open thirty-seven schools from 2002 to 2012, and has had to pass a bond issue approximately every three years. (RR25:84-85, 88-89.) Approximately 60% of the area within Northside's geographic boundaries is developed, leaving room for significant additional growth. (RR25:85.)

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FOF 788. Prior to tax compression, Northside ISD was taxing at the $1.50 cap. (RR25:94 (referencing Ex. 6438 at 5).) The district accessed the first four "golden pennies" in 2008-09. (RR25:94 (referencing Ex. 6438 at 5).) Northside cannot raise its M&O tax rate any further without holding a TRE. The district has not held a TRE because enrollment grown in the district and the continuing bond and facilities needs that result. (RR25:102.) The facilities needs, combined with the loss of state facilities aid, has forced the district to steadily raise its I&S tax rate, which has increased by ten cents since 2008-09. (RR25:94 (referencing Ex. 6438 at 5).)

vi. Frisco ISD

FOF 898. Over the past twenty years, Frisco ISD has been the fastest growing school district in the nation on a percentage basis. (RR41:61-62.) Frisco ISD's ADA and WADA have nearly doubled from 2006-07 to 2012-13. (Ex. 5617, Reedy Dep., at 21 (referencing Ex. 332).) In 2011-12, Frisco ISD served more than 40,000 students. (RR41:61 at 51 (referencing Ex. 323 at 1).) Frisco ISD's enrollment increased by nearly 3,000 students in 2012-13. (*Id.* at 52.)

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FOF 915. Frisco ISD's unique challenges include its rapid rate of growth over the past twenty years, which has created particular challenges in educating students. (*Id.* at 13-14; *see supra* FOF 898.) One challenge involves providing sufficient facilities and programs to the growing student population. (Ex. 5617, Reedy Dep., at 13-14.) In addition, students who move into Frisco ISD from outside Texas are unfamiliar with the State's standardized tests and require remediation efforts to be successful. (*Id.* at 14.) Frisco ISD's rapidly growing student population has required the district to hire a large number of first-year teachers. (*Id.* at 14-

15.) Providing professional development to each of the new teachers is a significant challenge. (*Id.*) Frisco ISD must now help its fast-growing student body to meet the new demands set out by the state with less funding than it has had in the past.

vii. Pflugerville ISD

FOF 949. Pflugerville ISD's I&S rate is 44 cents. Its last bond election was in 2007. With that money the district built a middle school and several elementary schools. It also upgraded technology, replaced HVAC systems, and fixed roofs. The new buildings were necessary because of growth and some of them opened at capacity. Pflugerville has deferred maintenance on HVAC systems and has leaking roofs. Because of growth it will have another bond election in 2013. (Ex. 3204, Dupre Dep., at 48-51.)

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FOF 956. Pflugerville ISD is a growing district having added nine campuses in the last ten years. Beyond the need for facilities, this growth is challenging because it requires more teachers and more materials and supplies. (RR24:186, 189.)

ix. Everman ISD

FOF 1032. Roofing issues are the major deferred maintenance issue for Everman ISD. Everman cannot afford to fix them. HVAC units must be replaced and plumbing is also a major issue on the Everman ISD campuses and the district has insufficient funds to correct those problems. It does not have the science labs to meet the STAAR requirements or offer advanced science courses. (RR5:225-28.)

FOF 1033. Everman cannot raise sufficient funds to address its current facility needs. Everman does not have sufficient science classrooms to meet its students' needs. Consequently, it impossible for Everman to offer AP Chemistry, AP Physics or Physics 2. (RR5:225, 227.)

FOF 1034. The Everman community passed a bond in May 2013, which raised Everman's I&S tax rate to 22.5 cents. The bond authorized $40 million in bond sales, $30.5 million of which have been sold. Even with the passing of the bond, Everman will not come close to addressing all of its facility needs. (Ex. 3541, Pfeifer Dep. (Vol. II), at 7-8.)

FOF 1035. Everman ISD continues to feel the effects of the State's failure to fund the Instructional Facilities Allotment, which was a funding stream Everman was previously able to take advantage of. (*Id.* at 8.)

xii. Belton ISD

FOF 1072. Belton ISD is a property-poor Chapter 42 district located between Austin and Waco in central Texas. Belton ISD currently educates 9,800 students. It is a fast growing district. (Ex. 3226, Kincannon Dep., at 9-10; Ex. 609 at 12.)

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FOF 1080. Belton ISD had a bond election in May of 2012 and raised $60 million which it used to build three new schools for the district, two elementary schools and a middle school, to address the growth of the school district which has been 40% over a ten-year period. (Ex. 3226, Kincannon Dep., at 59-61.)

d. Property-poor districts levy higher I&S taxes, yet raise less revenue for facilities.

FOF 1289. Using the same process of sorting by wealth per WADA and grouping into percentiles of districts or WADA detailed in Error! Reference source not found. above, Dr. Pierce calculated the average tax rate the bottom 10 and 15 % of districts would have to levy in order to receive the same average I&S revenue as the top ten and fifteen percent. (RR9:101-03.) As detailed below, the bottom percentiles would have to tax between 74 and 86 cents higher than the top percentiles to receive the same I&S revenue that the top percentiles receive, and between $2.78 and $6.01 higher to receive the same maximum I&S revenue that the top percentiles could raise at the 50 cent limit during the 2011-12 school year. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy districts receive, because the property-poor districts would have to exceed the de facto 50 cent cap for I&S created by the 50 cent debt test. (*See supra* Part I.A.1.a.iv (FOF 263, *et seq.*).) Because there is no recapture of I&S revenues, property wealthy districts receive the full benefit of their wealth for every I&S penny of tax effort which creates the gross disparity in access to these revenues. Further, when funded, the relatively low guaranteed yield of $35 per student per penny of tax effort does little to reduce that gross disparity. Neither the 82nd nor the 83rd Legislature funded new I&S dollars exacerbating the disparities – again to the disadvantage of property poor districts.

a. **I&S Tax Rate and Revenue by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) to receive the same I&S revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax for I&S, on average, $0.86 higher than the top 10%, or at a tax rate of $1.049. (Ex. 3036 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA as the top 15%, the bottom 15% would have to tax , on average, $0.74 higher than the top 15%, or at a tax rate of $0.929. (*Id.*)

b. **Maximum I&S Revenue (50 cents) by percentiles of districts:** In order for the 10% of districts with the lowest I&S revenue per WADA at $0.50 (bottom 10%) to receive the same I&S revenue per WADA that the 10% of districts with the highest I&S revenue per WADA at $0.50 (top 10%) can raise, the bottom 10% would have

to tax, on average, $6.01 higher than the top 10%, or at the rate of $6.51. (Ex. 3072 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that the top 15% can raise at $0.50, the bottom 15% would have to tax, on average, $4.13 higher than the top 15%, or at the rate of $4.63. (*Id.*)

c. **Maximum I&S Revenue (50 cents) by percentiles of WADA:** In order for the districts with the lowest I&S revenue per WADA at $0.50 enrolling 10% of the WADA (bottom 10%) to receive the same I&S revenue per WADA that the districts with the highest I&S revenue per WADA at $0.50 enrolling 10% of the WADA (top 10%) can raise at $0.50, the bottom 10% would have to tax, on average, $2.97 higher than the top 10%, or at a rate of $3.47. (Ex. 3078 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that the top 15% can raise at $0.50, the bottom 15% would have to tax, on average, $2.78 higher than the top 15%, or at a rate of $3.28. (*Id.*)

FOF 1290. This pattern of property-poor districts having to tax at substantially higher tax rates in order to receive the same I&S revenue per WADA as their wealthier counterparts is evident when comparing I&S tax rates and I&S revenue in the top and bottom 10, 15, 20, and 25 % of districts. (Ex. 3036 at 1; Ex. 3072 at 1; Ex. 3078 at 1.)

FOF 1291. Using the same process of sorting districts by wealth per WADA or yield per WADA, and grouping into percentiles of districts or WADA as described in **Error! Reference source not found.**, Dr. Pierce analyzed the facilities revenue available to the top and bottom 10 and 15 % of districts during the 2012-2013 school year via I&S revenues. Under these analyses, property-poor districts in the bottom percentiles receive up to $1,582 less in I&S revenue per WADA (or up to $54,771 per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying I&S taxes at rates up to 4.6 *more* than the property-wealthy districts.

FOF 1292. **I&S Tax and Revenue Gaps by Percentile of Districts**

Percentiles of Districts by Wealth	I&S Tax Gap 10%	I&S Revenue Gap 10%	Classroom Gap 10%		I&S Tax Gap 15%	I&S Revenue Gap 15%	Classroom Gap 15%
I&S ATR All Districts	2.6 ¢	$1,397	$48,373		1.4 ¢	$1,112	$38,226
I&S ATR I&S Districts	4.3 ¢	$1,582	$54,771		2.2 ¢	$1,349	$46,390
I&S Yield Per Penny All Districts	2.4 ¢	$1,239	$43,141		2.1 ¢	$996	$34,035
I&S Yield Per Penny I&S Districts	4.6 ¢	$1,479	$51,495		3.6 ¢	$1,184	$40,455

(Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3316 at 1; Ex. 3317 at 1; Ex. 3334 at 1; Ex. 3335 at 1; Ex. 3340 at 1; Ex. 3341 at 1.)

FOF 1293. **I&S Tax and Revenue Gaps by Percentile of WADA**

Percentiles of Districts by Wealth	I&S Tax Gap 10%	I&S Revenue Gap 10%	Classroom Gap 10%		I&S Tax Gap 15%	I&S Revenue Gap 15%	Classroom Gap 15%
I&S ATR All Districts	1.2 ¢	$1,023	$35,104		0.4 ¢	$1,015	$34,667
I&S ATR I&S Districts	2.0 ¢	$1,219	$41,851		1.5 ¢	$1,182	$40,343
I&S Yield Per Penny All Districts	0.9 ¢	$764	$26,468		1.2 ¢	$669	$22,783
I&S Yield Per Penny I&S Districts	2.1 ¢	$921	$31,890		1.9 ¢	$816	$27,810

(Ex. 3322 at 1; Ex. 3323 at 1; Ex. 3328 at 1; Ex. 3329 at 1; Ex. 3346 at 1; Ex. 3347 at 1; 3352 at 1; 3353 at 1.)

FOF 1294. Dr. Pierce's analysis establishes that property poor districts levy higher I&S taxes, receive less revenue, and suffer significant class funding disadvantage at every level when compared with their property wealthy counterparts. (Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3322 at 1; Ex. 3323 at 1.)

FOF 1295. The gap in revenue available to the districts at the I&S limit (50 cents) is once again even greater – up to $6,118 per WADA.

FOF 1296. **Maximum I&S Revenue per WADA at $0.50, Grouped by Districts**

MAX I&S BY DISTRICTS	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$6,118	$223,443
Top & Bottom 15% by Wealth	0.0 ¢	$4,630	$166,698

(Ex. 3454 at 1; Ex. 3455 at 1)

FOF 1297. **Maximum I&S Revenue per WADA at $0.50, Grouped by WADA**

MAX I&S BY WADA	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$3,340	$117, 701

Top & Bottom 15% by Wealth	0.0 ¢	$2,847	$98,158

(Ex. 3460 at 1; Ex. 3461 at 1.)

FOF 1298. Although adopted I&S tax rate differences are smaller than M&O tax gaps, the evidence established the same pattern where property poor districts tax higher for I&S revenue, receive less I&S revenue for that effort, and suffer a classroom funding disadvantage at all levels from the top and bottom 5% to 50% of districts. Where the greatest differences are seen in I&S funding or in I&S or facilities funding capacity. Because I&S revenues are not recaptured, property wealthy districts receive the full benefit of that greater property wealth. Property poor districts are further disadvantaged by the low equalization of I&S revenues – assuming that the Legislature appropriates the necessary funds for equalization. (Ex. 3454 at 1; Ex. 3455 at 1; Ex. 3460 at 1; Ex. 3461 at 1.)

FOF 1299. Because of the substantial gaps in I&S revenue per WADA per penny of tax effort, property-wealthy districts such as Eanes ISD also have the unique ability to use bond money (generated from I&S taxes not subject to recapture) to pay for certain expenses that might otherwise be funded from M&O money. (RR21:111; Ex. 5617, Reedy Dep., at 80; RR9:78-81.) Property-wealthy districts use bond funds, for example, to purchase and pay for computers, technology, and other items that facilitate the education of their students (including the basic, adequate education) and thus have more funds to pay for operating expenses, including teacher salaries.[2] (RR21:11.) There is no yield benefit to using I&S tax revenue for M&O purposes for lower wealth districts because for these districts, $35 per ADA raises less than $31.95 per WADA. (Ex. 3187, Pierce Report, at 14.) Yet some property-poor districts are still forced to do so because of increasing pressures on M&O revenues. (*See*, *e.g.*, RR11:68-71, 84-85.)

FOF 1300. Disparate access to I&S funds affects more than just a district's ability to fund facilities. Schools housed in older facilities are significantly less likely to recruit experienced or National Board certified teachers to fill vacancies – holding salaries and student characteristics constant. (Ex. 1122, Vigdor Report, at 23-24.) Teachers working in older buildings are also more likely to quit in order to take a job in another nearby school district. (*Id.*) According to a recent Texas Comptroller report, the state's poorest students are concentrated in the oldest facilities. (Ex. 1070 at 5.) The Texas Comptroller found in 2006 that schools with economically disadvantage student rates above 80% are on average forty-one years old, and have the lowest proportion of "good" or "excellent" facility ratings from administrators. (*Id.*) Schools serving high proportions of Hispanic students also tend to be older. (RR18:165, 178-79.)

[2] This use of I&S revenues for M&O expenses can be viewed in two equally compelling ways: 1) as a result, property wealthy districts have additional unrecaptured "M&O" funding capacity that is not available to property poor districts further undermining financial efficiency; 2) this use of I&S revenues for M&O expenses indicated that those districts are out of discretion over M&O taxes and must resort to I&S revenues to fund a GDK. The first affects financial efficiency of the system. The second implicates a state property tax violation.

ii. Unconstitutional disparities in I&S revenues persist among districts after changes by the 83rd Legislature.

FOF 1319. The legislature did nothing to change facilities funding and the disparities between districts based on wealth continue to remain problematic. When analyzing I&S tax rates and I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of districts, when comparing the top and bottom 15% of districts by wealth, the tax rate gap in FY12 was 1.3 cents and by FY 13 had grown to 1.4 cents. The revenue gap in FY12 was $865 and by FY13 had grown to $1,112 and is projected for FY14 and FY15 to be $1,094 and $1,094, respectively. The classroom funding disadvantage in FY12 was $28,985, by FY13 had grown to $38,226 and is projected to be in FY14 and FY15 $38,197 and $38,195, respectively. (Ex. 3013 at 1; Ex. 3014 at 1; Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3358 at 1; Ex. 3359 at 1; Ex. 3406 at 1; Ex. 3407 at 1.)

FOF 1320. When analyzing I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of WADA, when comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $770 and by FY13 had grown to $1,015 and is projected for FY14 and FY15 to be $999 and $999, respectively. The classroom funding disadvantage in FY12 was $25,476, by FY13 had grown to $34,667 and is projected to be in FY14 and FY15 $34,636 and $34,634, respectively. (Ex. 3028 at 1; Ex. 3029 at 1; Ex. 3322 at 1; Ex. 3323 at 1; Ex. 3370 at 1; Ex. 3371 at 1; Ex. 3418 at 1; Ex. 3419 at 1.)

FOF 1321. When analyzing I&S tax rates, I&S revenue, and I&S yield per penny and sorting all districts by yield and grouping those districts by percentiles of districts, when comparing the top and bottom 15% of districts by wealth, the tax rate gap in FY12 was $0.00 and by FY13 had grown to 2.1 cents. The revenue gap in FY12 was $796 and by FY 13 had grown to $996 and is projected for FY14 and FY15 to be $969 and $976, respectively. The yield gap in FY12 was $52.10 and by FY13 had grown to $83.69 and is projected for FY14 and FY15 to be $81.69 and $81.86, respectively. The classroom funding disadvantage in FY12 was $26,325, by FY13 had grown to $34,035 and is projected to be in FY14 and FY15 $33,722 and $34,783, respectively. (Ex. 3044 at 1; Ex. 3045 at 1; Ex. 3334 at 1; Ex. 3335 at 1; Ex. 3382 at 1; Ex. 3383 at 1; Ex. 3430 at 1; Ex. 3431 at 1.)

FOF 1322. When analyzing I&S revenue and I&S yield per penny and sorting all districts by yield and grouping those districts by percentiles of WADA, when comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $642 and by FY 13 had grown to $669 and is projected for FY14 and FY15 to be $671 and $642, respectively. The yield gap in FY12 was $36.75 and by FY13 had grown to $50.66 and is projected for FY14 and FY15 to be $50.87 and $48.77, respectively. The classroom funding disadvantage in FY12 was $21,087, by FY13 had grown to $22,783 and is projected to be in FY14 and FY15 $23,666 and $22,626, respectively. (Ex. 3057 at 1; Ex. 3058 at 1; Ex. 3346 at 1; Ex. 3347 at 1; Ex. 3394 at 1; Ex. 3395 at 1; Ex. 3442 at 1; Ex. 3443 at 1.)

FOF 1323. This same pattern (the property-poor districts receive less I&S revenue, receive a smaller yield per penny of tax effort, and suffer under a significant classroom funding disadvantage

as compared to their wealthier counterparts) is evident when comparing I&S revenue and I&S yield in the top and bottom 5 % of districts all the way up to the top and bottom 50 % of districts. (Ex. 3013; Ex. 3014; Ex. 3310; Ex. 3311; Ex. 3358; Ex. 3359; Ex. 3406; Ex. 3407; Ex. 3028; Ex. 3029; Ex. 3322; Ex. 3323; Ex. 3370; Ex. 3371; Ex. 3418; Ex. 3419; Ex. 3044; Ex. 3045; Ex. 3334; Ex. 3335; Ex. 3382; Ex. 3383; Ex. 3430; Ex. 3431; Ex. 3057; Ex. 3058; Ex. 3346; Ex. 3347; Ex. 3394; Ex. 3395; Ex. 3442; Ex. 3443.)

FOF 1324. The actions of the 83rd Legislature did not significantly close the I&S revenue gaps or the I&S yield gaps, therefore making little to no progress in making the school finance system more efficient.