

Investing in Our Future:

What you need to know as Texas re-examines the school finance system

by Chandra Villanueva

In January, the newly created Texas Commission on Public School Finance will begin the task of studying and making recommendations to improve the school finance system. This five-part series prepares readers to engage with lawmakers and the school finance commission by providing background on past school finance commissions, the strengths and challenges of the current finance system, and recommendations for improvements.

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Part 1: How We Got Here – Lawsuits, Studies, and Inaction

Every session the Texas Legislature grapples with questions around how we fund our schools. Because the system is very complicated and impacts so many people, it is difficult to build agreement around large changes during the regular legislative session. When lawmakers take substantial action, they are usually responding to a court order.

Unfortunately, more than 30 years of incremental changes and tweaks around the edges have left us with an outdated school finance system bogged down in inefficiency. As a result, our state provides funding to school districts that is not aligned with current costs, which leaves many school districts unable to meet the educational needs of all students despite taxing at the maximum allowed rate. In many ways, our school finance system has become like an old house that has fallen into disrepair and is in need of some serious [remodeling](#).

Beginning in 2018, the Texas Commission on Public School Finance, comprised of 13 members inside and outside of the legislature, will begin the remodeling process by developing recommendations to improve the school finance system. A study alone will not fix the school finance system, of course. As our history of school finance studies shows, we also need bipartisan political will among our elected officials to increase the state's investment in public education and make structural changes to the system. This new commission is an opportunity for everyone in Texas to learn more about how we fund our schools, advocate for a system that is based on costs, and hold our lawmakers accountable for providing high quality educational opportunities for all children.

Part 1 of this series covers:

- Past school finance litigation;
- The legislature’s response to the 2016 Texas Supreme Court ruling;
- An overview of the newly created Texas Commission on Public School Finance; and
- Past studies and commissions tasked with improving the school finance system.

Past Litigation Forced School Finance system Improvements

Frustrated over the low levels of investments in their schools and general inaction from the legislature during the 1960s, low-income parents began to explore legal options that would force legislative action. The first legal challenge to the Texas school finance system, *Rodriguez v. San Antonio ISD*, was filed in federal court in 1968 by parents in San Antonio who were concerned about the quality of education children at Edgewood ISD received compared to more affluent school districts in the area. At the time, the Edgewood community was primarily Hispanic and most families were poor migrants. The U.S. Supreme Court ruled that school finance systems must be judged by state Constitutions and not the U.S. Constitution—setting off over 30 years of litigation at the state court level in Texas.

Since the first state level lawsuit filed in 1984, families and school districts have challenged the state seven times over the fairness of the school finance system, levels of funding, and method of tax collection. Overall, this history of litigation has led to significant improvements in the school finance system.

The latest challenge came in 2011 from more than 600 school districts, after the legislature cut \$5.3 billion—or \$500 per student—from the public education budget when faced with a revenue shortfall. Five years later, the Supreme Court of Texas found that “despite the imperfections of the current school funding regime, it meets minimum constitutional requirements.” Though the court found the system to be constitutional and did not mandate action from the legislature, it also declared that school children of Texas “deserve transformational, top-to-bottom reforms that amount to more than Band-Aid on top of Band-Aid.”

History of Texas School Finance Litigation

Litigation	Ruling	Legislative Response
<i>Rodriguez v. San Antonio ISD</i> (1968 – 1973)	SCOTUS: Education is not a fundamental right granted by the U.S. Constitution. School finance systems must be judged by state Constitutions not the U.S. Constitution.	No legislative response required.
<i>Edgewood I</i> (1984 – 1989)	The system was challenged and ruled unconstitutional by Texas Supreme Court on the issue of equity; “substantially equal access to similar levels of revenue per student at similar levels of tax effort.”	Legislature made increases in the basic allotment and guaranteed yield levels, but excluded wealthy districts from the equalized system.
<i>Edgewood II</i> (1990 – 1991)	Texas Supreme Court ruled the system was unconstitutional because wealthy districts cannot be excluded. Also offered an Advisory Opinion holding that un-equalized local enrichment was okay if property owners approve an additional local property tax.	Legislature created 188 County Education Districts to consolidate the property wealth between districts.

<p><i>Edgewood III</i> (1991 – 1993)</p>	<p>Property wealthy school districts and over 400 businesses challenged the County Education Districts as an unconstitutional state property tax and improper transfer of tax revenue from one district to another without voter approval. The Texas Supreme Court agreed and ruled the system unconstitutional.</p>	<p>The legislature created the system of recapture we have today.</p>
<p><i>Edgewood IV</i> (1993 – 1995)</p>	<p>Property poor and property wealthy districts were unhappy and charged that recapture was unconstitutional. The Texas Supreme Court disagreed and ruled the system constitutional. The court also linked the state’s accountability system to the “General Diffusion of Knowledge.”</p>	<p>No legislative response required.</p>
<p><i>West Orange Cove I & II</i> (2001 – 2005)</p>	<p>Districts filed suit claiming that the \$1.50 cap on M&O tax rates is statewide property tax because they have reached the cap and have no meaningful discretion.</p> <ul style="list-style-type: none"> • Texas Supreme Court remanded the case back to district court; 300 districts joined the suit adding adequacy and equity to the claim (West Orange Cove II). • Judge Dietz ruled system unconstitutional on grounds of 1) statewide property tax, 2) adequacy 3) inequitable facilities funding. • Texas Supreme Court only upheld statewide property tax claim. 	<p>The legislature compressed tax rates by one-third and created a system of Additional State Revenue for Tax Reduction (ASATR). To off-set some of the costs of tax compression, the legislature increased taxes on cigarettes and used vehicle purchases, and reformed the margins tax.</p>
<p><i>Texas Taxpayers and Student Fairness Coalition</i> (2011 – 2016)</p>	<p>Over 600 districts filed suit after the legislature cut \$5.3 billion from the public education budget on grounds that the system was inadequate, inequitable, and did not provide meaningful discretion to set tax rates. The district court found the system unconstitutional. On appeal the Texas Supreme Court overturned the lower court decision and held the system was minimally constitutional.</p>	<p>No legislative response required.</p>

The Legislature’s Response to the 2016 Texas Supreme Court Ruling

Even without a court mandate, both the House and the Senate began the 2017 legislative session with a commitment to improve the school finance system. Coming up with a solution once again proved difficult as [both chambers took different approaches](#).

In the House, the leading proposal was [House Bill 21](#), which would have removed some outdated and inefficient elements from the funding formulas and provided a slight increase in funding for English language learners among other small funding adjustments. The Senate formed a workgroup on school finance that led to the introduction of [Senate Bill 2145](#), by Chairman Larry Taylor, a proposal that would significantly simplify the school finance system without adjusting funding levels. Knowing it would be hard to gain support for a massive overhaul of the system while the legislature was also busy writing the

budget and addressing other state priorities, Chairman Taylor also introduced a bill to create a commission to study school finance ([SB 2144](#)).

After the legislature was unable to find a compromise that would begin the remodeling process during the regular session, the Governor added school finance—and specifically the creation of a school finance commission—to the items for debate during the summer's special session. The House again tried to move House Bill 21 in the same form it passed the House during the regular session. Ultimately, [House Bill 21](#) was reduced greatly in scope by the Senate and the school finance commission was added before the bill passed in the final moments of the special session. The bill failed to achieve meaningful school finance reform.

The Texas Commission on Public School Finance

House Bill 21, passed during the 2017 special legislative session, requires the establishment of the Texas Commission on Public School Finance “to develop and make recommendations for improvements to the current public school finance system or for new methods of financing public schools.”

The commission is made up of 13 members, four each appointed by the Governor, Lieutenant Governor, and Speaker of the House, and one appointed by the Chair of the State Board of Education. The four members appointed by the Governor must include a teacher (current or retired) with at least 10 years of experience, a business leader, a civic leader, and one other person of his choosing. The Lieutenant Governor and Speaker both appoint three members from their respective legislative body and one school administrator or elected school board representative. The Chair of the State Board of Education appoints one state board member. The composition of the committee should reflect the geographic and ethnic diversity of the state.

Governor Greg Abbott appointed former Supreme Court of Texas Justice Scott Brister to chair the school finance commission. Judge Brister served on the Texas Supreme Court during the West Orange Cove II lawsuit when the court confirmed the state had a de facto state property tax, but rejected the lower court’s ruling that the system was unconstitutional due to adequacy and equity concerns.

Composition of the Texas Commission on Public School Finance

4 Gov. Appointees	4 Lt. Gov. Appointees	4 Speaker Appointees	1 SBOE Appointee
Scott Brister (Former Supreme Court of TX Justice – Austin)	Sen. Larry Taylor (Friendswood)	Rep. Dan Huberty (Houston)	Keven Ellis (SBOE Member – Lufkin)
Melissa Martin (CTE Teacher - Galena Park ISD)	Sen. Paul Bettencourt (Houston)	Rep. Ken King (Canadian)	
Elvira Reyna (TX Board of Professional Engineers - Mesquite)	Sen. Royce West (Dallas)	Rep. Diego Bernal (San Antonio)	
Todd Williams (The Commit Partnership – Dallas)	Dr. Douglas Killian (Pflugerville ISD Superintendent)	Nicole Conley Johnson (CFO Austin ISD)	

While the commission will have flexibility to set the agenda and decide how to approach the task at hand, House Bill 21 specifically asks the commission to address:

- The purpose of the public school finance system;
- the relationships between state and local funding;
- the appropriate levels of taxing necessary to meet constitutional requirements; and
- policy changes needed to adjust for student demographics and geographic diversity.

Not Our First Rodeo: Past School Finance Commissions and Studies

In addition to a long history of school finance litigation, Texas has a long history of studying how best to fund our schools. Unfortunately, most recommendations from past studies were largely dismissed. Attempts to study the school finance system began in earnest following the *Rodriguez* case, which was litigated in the late 1960s and early 1970s. However, not every school finance study or commission was directly tied to litigation.

The U.S. Supreme Court's criticism of the extreme unfairness within the Texas school finance system led Governor Dolph Briscoe to declare improving the school finance system an emergency item for the 1975 legislative session. The legislature rejected many of the recommendations developed by the Governor's Office of Education Research and Planning, such as a minimum per student funding level with additional funding for low-income and bilingual students. However, small improvements were made, including updating the name of the finance system to the Foundation School Program and adopting a more flexible funding structure that allowed for some adjustments based on student cost differences.¹

In 1984, as the Edgewood community was preparing its first state-level legal challenge to the school finance system, the Select Committee on Public Education was formed to study the school finance system and other education policies in the state. This committee is often referred to as the Perot Commission, because businessman Ross Perot was assigned the chairman role.

The work of the Perot Commission led to legislation that developed the foundation of the school finance system Texas has today by pushing for many of the recommendations made a decade earlier by the Governor's Office of Education Research and Planning. However, funding levels recommended by the commission were not adopted by the legislature. A study group within the Perot Commission recommended the minimum per student funding amount be set at \$1,750 per-student, yet the legislature only funded it at \$1,290 or 74 percent of the cost-based recommendation. Additional funding created for low-income and bilingual students was also underfunded.²

The State Board of Education (SBOE) and the Comptroller's office both conducted studies on the appropriate level of education funding in the late 1980s. The SBOE 1987-1988 Accountable Cost Study found that the basic allotment—the minimum per-student level of funding—was too low at \$1,350 per-student and recommended an increase to \$1,890 for the 1989-90 school year and \$1,973 for the 1990-91 school year.³ The Comptroller's School Finance Work Group examined the cost of providing a "quality" education as opposed to just a "minimum" education and recommended that the basic allotment should be set at \$3,519. The legislature made no adjustments to the basic allotment after these recommendations were presented.⁴

Throughout the 1990s, studies looking at appropriate funding levels and additional needs for special populations were conducted by the Legislative Budget Board and private consulting firms. In 2000, the Charles A. Dana Center conducted a study on uncontrollable costs in the education system. Then in 2004, the legislature formed a Joint Select Committee on Public School Finance to once again study the school finance system. While some of these studies have led to tweaks around the edges, the school finance system remains underfunded and outdated.

The most recent attempt to study school finance was in 2010 when the [Select Committee on Public School Finance Weights, Allotments, and Adjustments](#) was formed. This 16-member committee of legislators and community leaders held five hearings, but ultimately failed to produce a report or release any recommendations.

As a review of the history of school finance commissions and studies shows, the Texas Commission on School Finance study will advance meaningful school finance reform only if it is coupled with the political will to make necessary investments in education. As the newly established commission conducts its study, the people of Texas must communicate to their legislators that we cannot afford to wait any longer for a school finance system that adequately and equitably provides a quality education to all 5.3 million Texas public school children.

¹ Colbert, Paul. The Development of the Texas School Finance System: A History of Inadequacy and Inequity. Testimony for the Edgewood and Alvarado Plaintiff-Intervenors in *West Orange Cove vs. Neely*. Circa 2001.

² Colbert, Paul. The Development of the Texas School Finance System: A History of Inadequacy and Inequity. Testimony for the Edgewood and Alvarado Plaintiff-Intervenors in *West Orange Cove vs. Neely*. Circa 2001.

³ 1987-1988 Accountable Costs Study. Texas State Board of Education. 1988.

⁴ Colbert, Paul. The Development of the Texas School Finance System: A History of Inadequacy and Inequity. Testimony for the Edgewood and Alvarado Plaintiff-Intervenors in *West Orange Cove vs. Neely*. Circa 2001.

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