

- SUBJECT:** Increasing taxes for local enrichment under the school finance system
- COMMITTEE:** Public Education — favorable, without amendment
- VOTE:** 7 ayes — Allen, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff
2 nays — J. Rodriguez, Villarreal
2 absent — Aycock, Dutton
- WITNESSES:** For — Richard Matkin, Plano ISD; Dawson Orr and Christy Rome, Texas School Coalition; (*Registered, but did not testify:* David D. Anderson, Arlington ISD Board of Trustees; Jay Barksdale, Dallas Regional Chamber; Amber Elenz; Veronica Garcia, Houston ISD; Louann Martinez, Dallas ISD; Mike Motheral; Beth Ann Ray, Austin Chamber of Commerce; Wayne Rotan, Glen Rose ISD; Robert Schneider; Herb Youngblood, Abernathy ISD)

Against — Bill Grusendorf, Texas Association of Rural Schools; David Hinojosa, MALDEF; Wayne Pierce, Equity Center; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Annie Mahoney, Texas Conservative Coalition; Ted Melina Raab, Texas American Federation of Teachers; Jimmy Parker, Roosevelt ISD; Chandra Villanueva, Center for Public Policy Priorities)

On — (*Registered, but did not testify:* David Anderson and Lisa Dawn-Fisher, Texas Education Agency)
- BACKGROUND:** In November 2005, the Texas Supreme Court, in *Neeley v. West Orange-Cove C.I.S.D.*, 176 S.W.3d 746 (Tex. 2005), ruled that the current school tax system is unconstitutional because school districts do not have “meaningful discretion” to tax below maximum rates and still provide an accredited education. The Supreme Court upheld a state district court decision that the local property tax cap of \$1.50 per \$100 of valuation has evolved into a statewide property tax, which is prohibited by the Texas Constitution.

In its third called session in 2006, the 79th Legislature enacted HB 1 by Chisum, which provided state aid to school districts to reduce school

M&O property taxes by one-third in tax year 2007 and beyond. School districts were given the discretion to levy up to 4 cents per \$100 beyond the base M&O tax rate in “enrichment” taxes without voter approval. Any additional enrichment taxes must be approved by district voters in a local election.

Because the 4 cents of additional local tax effort generates significantly more state aid, some refer to them as “golden pennies.” The number of golden pennies later was increased to 6 cents.

Districts with the highest property wealth per student, known as “Chapter 41” districts, get to keep all the revenue generated by the golden pennies without it being recaptured by the state. For lower-wealth districts, known as “Chapter 42” districts, the state equalizes the tax revenue raised at a level equivalent to the yield for Austin ISD.

DIGEST:

HB 2756 would increase from 6 cents to 8 cents the amount of so-called “golden pennies” that a Chapter 41 district could levy for local enrichment that would not be subject to recapture, and a Chapter 42 district would be entitled to a guaranteed yield per student in weighted average daily attendance (WADA) for each cent of tax effort available to Austin ISD.

The bill would apply the \$319,500 cap on a district’s wealth per student to the district’s M&O tax effort that is greater than 8 cents above the compressed tax rate.

The bill would increase the level of tax effort subject to equalization at the Austin ISD level by 2 cents.

HB 2756 would make no appropriation but could provide the legal basis for an appropriation.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 2756 would make changes to the school finance system that could benefit all districts, regardless of their property wealth. The changes are in keeping with previous Texas Supreme Court rulings that said districts should have meaningful discretion in their ability to raise local funds for enrichment.

The bill would increase from 6 to 8 the number of M&O golden pennies

that generate revenue guaranteed under the Foundation School Program (FSP) at a yield equal to that of the Austin ISD, and for which no recapture is owed. As a result, Chapter 41 districts that gained voter approval to access pennies above a \$1.04 tax rate would be able to keep all the money raised instead of sharing part of the revenue with other districts. Meanwhile, Chapter 42 districts would receive a return on their additional tax effort at the Austin ISD rate, currently about \$61 per penny for each weighted student. Only 10 percent of districts now have a yield that exceeds that of Austin ISD, so for 90 percent of school districts the bill would nearly double the yield for these 2 cents.

Some districts already have received voter approval to tax at a rate of \$1.08 or more. These districts would automatically get the higher equalized amount for the 2 cents above \$1.06. Currently, 54 percent of districts are taxing 7 cents or more above their compressed tax rate. If pennies 7 and 8 were to become more valuable, then more than half of the districts in the state would receive an automatic increase, either from the state for equalization or from being able to keep more local taxes in the district.

Critics who argue that many Chapter 42 districts are so poor that they cannot afford to raise their tax rates to access golden pennies should recognize that, while that is a matter of local control, districts that did win voter approval would receive more money from the state.

Some also have questioned how HB 2756 might impact the pending school finance case. The judge has not yet issued his written opinion, but he announced from the bench that the system fails to provide substantially equal access to revenues for all districts. That opinion, as have other rulings, applies to funding in the basic tier of the school finance system. Golden pennies of tax effort are meant for the purpose of enrichment and are not required to be equalized. Adding golden pennies, as allowed under HB 2756, would provide districts with more capacity in the enrichment tier and help address the district court ruling that our system has evolved into a statewide property tax.

The overall M&O school property tax cap remains at \$1.17, so districts would not have any more taxing authority, but taxpayers would get a better return on investment for their local M&O tax payments. While the bill could broaden the equity gap between a few of the wealthiest districts and those remaining, overall it would improve equity by increasing the

yield for it.

Lawmakers are working through the budget process to restore some of the cuts to public education enacted by the 82nd Legislature in 2011. In order to improve equity, more money would be restored to districts with lower property wealth and some higher wealth districts would see only a small funding increase.

The superintendent for Plano ISD testified that his district lost \$658 per student in the cuts made last session but could see as little as \$36 per student restored under pending budget proposals. HB 2756 would help districts such as Plano leverage local tax revenue to restore staff and programs.

OPPONENTS
SAY:

HB 2756 would value some students more than others even though all students are held to the same standards. The bill would violate basic principles of equity by allowing about 10 percent of school districts to gain access to more revenue than would be available to all others.

Under HB 2756, districts with a wealth-per-student less than Austin ISD would receive about \$56 more per student. Districts with a wealth greater than Austin ISD would receive about \$193 more per student, about 3.5 times the increase for districts below the Austin ISD wealth level. Any legislation that widened the funding gap between rich and poor districts would be on shaky constitutional ground, as evidenced by a series of court decisions handed down since the *Edgewood* decision in 1989. A similar decision is likely to follow in the pending school finance case.

Simple math proves any additional unrecaptured golden pennies would work against closing the inequitable funding gap between rich and poor districts. Even though every district could benefit through a higher guaranteed yield, the districts that would benefit most are ones that already have the highest funding levels, in many cases at lower tax rates.

The \$401 million the bill would cost Texas under HB 2756 could be spent in better ways that would improve equity. It could be distributed to schools through the basic allotment or used to boost transportation funding, for example.

NOTES:

The Legislative Budget Board (LBB) fiscal note estimates a cost of \$401.5 million in fiscal 2014-15. Assuming districts already levying more than 6

cents above the compressed rate continued to levy the same rate, the additional cost to the state would be estimated at \$129.5 million in fiscal 2014 and \$139.2 million in fiscal 2015, increasing to \$167 million by fiscal 2018.

The LBB assumed that other districts could levy additional pennies without holding an election, at an estimated cost of \$26.6 million in fiscal 2014 and \$27.3 million in fiscal 2015, and increasing to \$30.2 million by fiscal 2018.

For districts that would be required to hold a tax ratification election (TRE), the LBB assumed that about one-third would hold successful TREs in each of fiscal years 2014, 2015, and 2016. Costs associated with districts accessing the higher 8-cent limit via election would total an estimated \$23.4 million in fiscal 2014, \$55.4 million in fiscal 2015, and \$86.8 million in fiscal 2016, with continuing costs in subsequent years.

The LBB said it could not determine the impact of HB 2756 on equalized funding requirements. Specific impact on equity within the FSP would depend on the actions taken at the discretion of local school districts in response to the bill.