Senate Education Hearing on Public Education Cost Drivers

Paul Clore,
Superintendent
Gregory-Portland ISD
Portland, Texas
Region 2 Service Center
San Patricio County
Senate District 21
Senator Judith Zaffirini
Enrollment - 4,147

The purpose of my testimony is to make you aware of some Texas Commission on Environmental Quality issues which recently have come into play that could significantly impact school finance:

1. The first item could affect a number of school districts in 14 "smokestack industry" counties from Cameron to Orange County, and

2. The second, a Texas Court Of Appeals, Third District, At Austin decision that, as case law, could become precedent and impact any school district anywhere in Texas.

In the first matter, the Texas Commission on Environmental Quality (TCEQ) is hearing a request for granting ad valorem abatement on valuation of pollution control equipment installed in refinery smokestacks. In the January 13, 2010 hearing on this matter, the TCEQ administrative staff and Executive Director recommended that the requests for abatement of value be denied because the equipment and its impact did not meet the standards current in TCEQ regulatory guidelines.

TCEQ commissioners rejected those recommendations, remanding the matter back to the staff and executive director to be reconsidered after an advisory committee was named on January 27, 2010 by the commission to assist the staff and executive director in guideline revision, with the new procedures to be presented to the commission for approval. Once the new guidelines are in place, the TCEQ administrative staff and executive director, with advisement from the newly appointed committee to review abatement requests such as the one in question here, are to make new recommendations to the commission on the original request submitted by the industry in question.

Given the nature of the original request, the San Patricio County Appraisal District modeled the potential impact of a TCEQ decision supporting the appellant's original request, assuming both 10% and 100% levels. The 10% abatement over a three year period of time would cost Gregory-Portland ISD a rebate to the industries listed on the bottom of your spreadsheet $693,600 while a 100% abatement will require a repayment of $5,192,448. The 10% abatement represents an adjustment to the current general fund budget of 2% while the 100% abatement level represents 16.5% of the district's current general fund budget.

At the 100% abatement level, our neighboring school district, Ingleside ISD, would have to rebate over $15 million which exceeds their general fund budget significantly, so their loss will exceed 100% of their general fund budget. Their neighboring district, Aransas Pass ISD, straddles three counties. Their potential loss just for the San Patricio county portion of their district at 100% abatement is estimated to be over $1million. No estimates of impact have been provided by the CADs for the other two counties they span. Their cost could be significantly more than $1 million. Just one county of the fourteen counties with "smokestack" property

could experience over $20 million in revenue decline with 100% abatement. When the rebates required of school districts in the other 13 counties, many having more of these industries at higher valuations, are factored in, the combined financial adjustments to those school districts will be stratospheric.

Representative Hardcastle, the author of HB 3732 which amended Section 11.31 of the Tax Code (the "pollution control property" tax exemption) currently being used to drive TCEQ decisions, now tells our local State Representative, Todd Hunter, that it was not the bill author's intent that school districts find themselves in the position they could be in if these newer interpretations are applied. That oral communication notwithstanding, nothing in Representative Hardcastle's attached 2007 letter to the TCEQ outlining legislative intent indicates such a belief. In fact, broad interpretation of the letter to TCEQ clearly indicates that any equipment that is used for pollution control is to receive consideration for abatement at 100%. No reference is made to buffering downstream impact on entities such as school districts.

In the matter of the Travis County court decision referenced above, this decision was a default decision which means no one from the Travis County Central Appraisal District presented on behalf of the appraisal district and the court granted the appellant's claim for relief forthwith. If this decision is allowed to stand, and if it becomes case law and thereby the standard for future exemption appeals, public entities that receive revenue tied to ad valorem value of property could begin to see revenue plummet, once "Me, Too" requests for exemption from property owners begin to pour in to appraisal districts and the TCEQ. In such a scenario, does the State of Texas which presently faces a deficit that potentially could reach as high as $20 billion shoulder the "Hold Harmless" financial partnership with school districts now in law, even if districts assumed 5% or even 10% of the responsibility?

If the current matter before the TCEQ commission and the consequences of the Travis County court decision both become in play simultaneously, what deflation in revenue to school districts, not to mention other entities such as counties could occur? Can the State of Texas afford to shoulder the multi-million, if not billion dollar amount that would result if TCEQ appeals are granted at 100%? Would not "Proration" of funding for school districts quickly have to be administered by the state in a situation such as this? In a proration environment, school districts simply will not be able to carry out the requirements not fully funded now outlined in the Texas Education Code. Please understand that the series of "unintended consequences" brought about by a declining economy and the requirements outlined in the Texas Tax and Education Codes, will result in school districts being unable to operate as you intend.

You are encouraged to look for and implement as many ways to limit the state education requirements which are not fully funded with state dollars that now exist. If the potential revenue losses related to the TCEQ matters addressed here become real, then that becomes one more reason you will need to free districts of as many unfunded requirements as possible so they can continue to function and carry out their mission to educate the children of Texas.

Gregory-Portland ISD

POTENTIAL REBATE IF TCEQ GRANTS 10% ABATEMENT RETROACTIVE TO 2007

Gregory-Portland ISD		Rate	Exemption	Potential loss per year
2007		1.36	17,000,000	231,200
2008		1.36	17,000,000	231,200
2009		1.36	17,000,000	231,200
	TOTAL			**693,600**

POTENTIAL REBATE AT 100% ABATEMENT RETROACTIVE TO 2007

this chart breaks down abatement amount by industry / company

	VALUES 2007	VALUES 2008	VALUES 2009
AIR LIQUIDE AMERICA	-	-	-
(Not applied for Exemption)			
BPU SHERWIN ALUMINA	24,019,170	22,633,690	16,673,120
NASHTEC (not applicable)	-	-	-
GREGORY POWER PARTNERS	96,000,000	106,000,000	116,471,660
TOTAL VALUE PER YEAR	120,019,170	128,633,690	133,144,780
TAX RATE	1.36	1.36	1.36
TOTAL TAX PER YEAR	**1,632,261**	**1,749,418**	**1,810,769**
TOTAL POTENTIAL LOSS - 2007, 2008, 2009			**5,192,448**

RICHARD L. "RICK" IlARnCASTLE
HOUSE OF REPRESENTATIVES

August 1, 2007

Ms. Grace Montgomery Faulkner
Deputy Director, Administrative Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Ms. Faulkner,

It has come to my attention that questions have arisen about the legislative intent of Section 4 ofHB 3732 which amends Section 11.31 of the Tax Code (commonly referred to as the "Prop. 2" or the "pollution control property" tax exemption). As the House author of the bill, I have a few things I would like to clarify regarding the intent and scope of that part of the bill.

1. Scope of Bill and Possible Impact on Industries Other than Electric Power Generation

The reason I filed HB 3732 was to help ensure that Texas continues to maintain and build power plants that are as clean as possible, but still capable of using a diverse range of affordable feedstocks such as coal, biomass, petroleum coke, and solid waste. Helping electricity remain affordable is an important aspect of the bill along with the obvious environmental protection goals of the bill. With that overall intent in mind, we focused the equipment list contained in Sections 4 and 5 of the bill on electric generation projects.

HB 3732 clarifies, but does not alter, the TCEQ's underlying legal authority under the Prop. 2 program. While I was focused on electric generation in filing HB 3732, I am aware that TCEQ has always had the authority (since 1994) under the Prop. 2 program to add items to the predetermined equipment list (PEL), including equipment that resembles equipment included on the HB 3732 list that are used in industries other than the electric generation industry. It was not my intent to alter that authority with this legislation.
Nor does this legislation change the fundamental requirement of the Prop. 2 program that equipment needs to control pollution, in whole or in part, in order to be eligible for a full or partial exemption.

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An extreme example of a potential misinterpretation would be to interpret item No. 1 on the list ("coal cleaning or refining facilities") as an exemption for an entire oil refinery. Such an interpretation is entirely without merit given the context of the statute and flies in the face of the bill's fundamental purpose. The "refining" word was added to the bill to clarify that, in addition to coal cleaning, the bill would encourage folks to "refine" coal before it is used. I became aware during the legislative session of the difference between the two technologies and that is why we adjusted the language in the bill.

We made it clear in the legislation that the list was not exclusive and included a general provision (item no. 18) which I intended to give the TCEQ discretion to add additional technologies when supplementing their PEL in the future as they see fit. This provision should not be interpreted as vastly expanding the fundamental purpose and scope of HB 3732.

2. Recosmition of Pollution Control Exemption Despite Product or Co-product Generation bv the Same Equipment

I understand that there has historically been a debate about whether and to what extent pollution control tax exemptions can be allowed for equipment that might also be involved in production. I am also aware of the debate that has existed when a facility has figured out a way to sell, as a product, materials that accumulate within a pollution control device (e.g., fly ash). One of the goals of the legislation this session was to ensure that TCEQ had the authority and direction from the legislature to recognize that pollution control benefits can be derived from the manner in which fuel is prepared and
used, and from increasing the efficiency of certain facilities. By doing so, the amount of fuel needed and the total amount of pollution emitted can be reduced. I did not intend, nor do I support, an interpretation of anything in HB 3732 to prevent electric generating facilities from receiving exemptions for equipment simply because they also derive profit from a given piece of equipment or process. If it reduces pollution, it qualifies.

I am aware that some of the items on the HB 3732 list include entire generation processes like "fluidized bed combustion systems" and "ultra-supercritical pulverized coal boilers" which were included for the reason stated above - the manner in which the fuel is used helps reduce pollution. Consistent with the process put in place by HB 3121 in 2001, if TCEQ receives documentation justifying that less than 100% of an exemption should be granted for such processes, we have afforded the TCEQ discretion under the bill to include an item on the PEL for less than 100%. I understand that the TCEQ's initial plan is to assume a 100% exemption unless documentation establishes a legitimate basis for a lesser percentage. I support that approach because, again, the goal of the legislation is to reduce pollution.

I hope that this letter helps to clarify my intent regarding HB 3732. If you need any further explanation or have additional questions, please do not hesitate to contact me.

Sincerely,

Representative Rick Hardcastle
House District 68

RH/mw

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-09-00013-CV

Travis Central Appraisal District, Appellant

v.

Wells Fargo Bank Minnesota, N.A., Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 201ST JUDICIAL DISTRICT
NO. D-1-GN-08-000025, HONORABLE MARGARET A. COOPER, JUDGE PRESIDING

MEMORANDUM OPINION

Appellee Wells Fargo Bank Minnesota, N.A. ("Wells Fargo") filed suit seeking to compel appellant Travis Central Appraisal District ("TCAD") to downwardly adjust the ad valorem property valuation for property owned by Wells Fargo in accordance with an environmental-use determination issued by the Texas Commission on Environmental Quality ("TCEQ"). The trial court granted summary judgment in favor of Wells Fargo and ordered TCAD to apply the use determination issued by the TCEQ. TCAD did not appeal from that judgment. Thereafter, Wells Fargo filed a motion for sanctions, asserting that TCAD was still refusing to apply the use-determination exemption as ordered by the trial court. The trial court granted the motion and ordered TCAD to pay Wells Fargo $97,459 in sanctions plus $7,500 in attorney's fees. TCAD

interfered with court's exercise of its core functions). Here, the trial court essentially determined that the prior order granting Wells Fargo's motion for summary judgment was sufficiently clear in requiring TCAD to adjust its valuation of the property in a manner consistent with Wells Fargo's reading of the TCEQ order, as presented in its motion for summary judgment. Indeed, TCAD itself seems to have understood the import of the trial court's summary judgment order, as reflected in the following statement from TCAD's motion for new trial: "In granting Plaintiff's motion for summary judgment and denying Defendant's motion for summary judgment, the court determined that the entire property, *even that part of the property that is not exempt per the TCEQ order*, is entitled to a pollution control exemption." (Emphasis in original.) Although TCAD obviously disagreed with that ruling, it did not perfect an appeal from the summary judgment. A party cannot ignore or flout a court order simply because it believes the court got it wrong. The trial court was therefore entitled to exercise its inherent power "to compel compliance with valid orders incident to the administration of justice"—a power that is "fundamental, and closely related to the core functions of the judiciary." *Kutch v. Del Mar Coll.*, 831 S.W.2d 506, 510 (Tex. App.—Corpus Christi 1992, no writ).

TCAD's continued efforts to argue that the summary-judgment order is ambiguous and that its interpretation of the TCEQ use determination is the proper one constitute an argument that the trial court erred in granting Wells Fargo's motion for summary judgment. That order, however, was not appealed, and the issues resolved by that final judgment are not before this Court. Furthermore, the record establishes that Wells Fargo was obligated to bring this motion for sanctions in order to enforce the earlier judgment, thus providing a basis for the trial court's award of

In light of the foregoing, we overrule TCAD's issues on appeal and affirm the trial court's sanctions order.

CONCLUSION

Because the trial court did not abuse its discretion, we affirm the order awarding Wells Fargo sanctions in the amount of $94,459, plus $7,500 in attorney's fees.

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J. Woodfin Jones, Chief Justice

Before Chief Justice Jones, Justices Waldrop and Henson

Affirmed

Filed: January 26, 2010