

The Conservative Alliance of Texas

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Texas Association of School Boards
P.O. Box 400
Austin, Texas 78767-0400
Sedora Jefferson- General Counsel

Dear Mrs. Jefferson,

The purpose of this letter is to inform the members of TASB of actions being taken by the citizens and taxpayers of Texas against several school districts. Over the next several months multiple lawsuits will be filed in state and federal courts regarding Energy Savings Performance Contracts (ESPC, PC) executed by school districts in Texas since 1995. The actions being taken are a direct result of the failure of elected state officials and state agencies in Austin to listen to and to stop the funding method of school projects using the funding method known as "Performance Contracting" as outlined in section 44.901 Fiscal Management, subchapter "Z", Miscellaneous Provisions. The effort to stop this method of funding contracts goes back to late 2005. Since 2005 countless and endless effort has been made to expose and to stop all funding of school projects with estimated and projected energy savings. This funding method has cost the taxpayers of Texas hundreds of millions of dollars for overpriced and inflated costs for new equipment and systems funded by these contracts. The "off balance" sheet accounting method for these contracts that have totaled over \$700,000,000.00 have cost the taxpayers of Texas dearly. Using this method of funding and hiding it from taxpayers has skewed the "real" cost of operating and maintain school districts for over two decades. It has allowed ESCOs to make millions and even created several new start-up companies at the expense of taxpayers. There are also serious issues regarding the overlap of school projects funded by bond programs, O&M funds and from PC contracts that have cost taxpayers millions of dollars. This is well documented.

Many districts have been left with HVAC equipment and systems that did not perform or produce the estimated energy savings. Multiple school districts have dealt with ongoing issues with lighting retrofits that resulted in school districts having to spend more taxpayer money to correct these issues. Taxpayers not only paying much more for these contracts above fair market failure but are paying additional money from the O&M fund to correct these problems. The legislation that currently allows this funding method is being challenged and the conflict of current law requiring competitive bidding for all purchases above \$50,000.00 as outlined in subchapter "B" of section

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44.901. The failure of school districts, superintendents, and boards to recognize that all savings (dollars) that may be realized for any reason either energy related or otherwise belong to the taxpayers of their respective districts. The money saved by lower energy cost should go into the general or O&M funds of the district and be subject to the same due process as the competitive process as tax dollars that are collected via the ad valorem taxing method on personal property currently used in Texas. The fraud and corruption that has occurred with many Performance Contracts in Texas will be exposed soon as these cases are being prepared for court. The actions taken by several school districts that sent threatening letters from the legal counsel of the ESCO company their contract was executed with was not well received by citizens in Texas. This has brought critical attention to be drawn to the issues with contracts that have been executed.

The districts that will be challenged in court will soon find out in court just how little they really understand about energy savings, real costs for HVAC and Lighting projects, and so-called energy saving measures (gimmicks) that cannot be proven in court to save a penny in energy. The companies performing the work in Texas schools are experts in selling and presenting great “dog and pony” shows that are very impressive at first glance. Many school districts have been distracted and lost focus on the basics, and how to apply basic common sense to finance and purchasing practice.

Please understand the court cases that will be filed are directly related at the relationship between the school district (boards) and the taxpayers of their districts(s). What legislature passed in the early 1990’s that allowed the funding of school projects with estimated and projected energy savings was a band aid approach to a much large problem regarding school funding in Texas. Just because the legislature made a huge mistake by passing the PC legislation does not mean this funding method has to be used by districts in Texas. The failure of hundreds of school districts to follow and execute due diligence regarding to the contracts signed does not relieve them of their responsibility to protect the taxpayers from fraud and overpriced equipment and systems. In 2007 when I met with officials in Austin and contacted the FBI to investigate the problems, I was told that school districts are autonomous and make their own decisions and are not accountable to the state regarding their decision to use the PC funding method. I believe school districts will soon find out they will not have the support from SECO, TEA and others when they must answer in court for the decisions they have made.

Since 1995 there have been several hundred PC contracts executed. To date Fifty-three districts have been identified with major issues with contracts totaling \$391,000,000.00. What has occurred in many schools in Texas is very alarming and must be stopped at all cost by taxpayers. At this time, I am asking that the probe by the FBI be opened again and to review what has happened in Austin since 2007. Elected and appointed officials at the TEA, SECO, SAO, State Comptrollers Office,

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Attorney General's office have failed the taxpayers of Texas by turning their heads to the problem and refusing to get involved and stop it. Taxpayers are going to petition the courts for relief by asking for an independent investigation and audit be performed in seven school districts where major fraud has occurred. I, and the taxpayers of these districts are asking that control of the districts be taken over by the state or federal government until audits are complete and total cost to the taxpayers is known for the complete term of contracts that have recently ended.

The cases that are going to be filed will prove without a doubt that school districts and boards have made some very costly decisions regarding taxpayer funds. The cases will prove that many districts do not have the knowledge and experience required to make sound judgements and decisions regarding Performance Contracting and energy saving projects. The third-party engineering process and review is a total failure and was front to try and convince school districts that the PC funding method was valid because the savings was reviewed by a third-party engineer. This will be brought out in court on several projects as well and the relationship between the third-party engineer and the ESCO that was awarded the contract.

Summary

At this time, I am recommending that TASB alert all districts in the state not enter into an agreement of any kind regarding a project that is funded by estimated or projected energy savings. This includes a feasibility study, assessment, a review of energy cost for consideration that would lead to a contract relating to energy savings that would fund a project in Texas. It is my belief once these cases have been tried in courts and what is made public knowledge will lead to the removal of many superintendents and administrators from office. School board trustees will also be under scrutiny as well. The evidence of what has occurred since 1995 is overwhelming. There are over 30 witnesses that will be asked to testify in court that will verify what has been going on for over two decades. There are contractors who will testify in court that price fixing and bait and switch tactics have been part of the PC contracts going back to the early 2000s. I have already given testimony and will be testifying in court about the technical issues regarding PC contracts, energy savings calculations and project costs. I have over 40 years in the HVAC and Electrical industry as contractor, designer, manufactures rep, and energy engineer. I have worked at all levels of government up to the federal level. I was the lead oversight over a \$5,000,000,000.00 government package of PC projects to review the contracts. Eighty percent of the contracts were rejected due to fraudulent tactics used to estimate savings and costs. The same has been occurring in Texas schools since the PC legislation was passed.

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If the members of TASB would like to meet with me in person I would be glad to discuss as much of this issue I can with them at this time. Due to the nature and seriousness, I cannot discuss details regarding the cases being filed. I can however bring some key points and reasons any school district in Texas should not consider funding using the PC method regardless of what the state of Texas and Austin is saying. It is very disheartening as a taxpayer to witness what has been going on for way to long and that taxpayers in Texas such as myself must take such drastic measures.

Respectfully,

Jeff Mashburn

Cc: Dan Huberty-District 127 Chair- Public Education Committee
Morgan Meyer-District 108-Member Public Education Committee
Gary VanDeaver-District-1 – Member of Public Education Committee