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STATEMENT OF CORY S. HARTSFIELD,
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STATEMENT TO NOT SUPPORT HOUSE BILL 762

Mr. Chairman Bell, Ms. Vice Chairwoman Zweiner & Members of the Intergovernmental Affairs Committee:

My name is Cory S. Hartsfield with the law firm of Cory Hartsfield, P.C., located in Grapevine, Texas. I serve as General Counsel ("GC") for the Texas Association of School Administrators ("TASA"). I represent approximately 250 Superintendents per year regarding employment issues. As General Counsel for TASA, representing the Superintendents and Administrators of the State of Texas, I write in opposition to House Bill 762 ("HB 762").

First, I want to thank you for your service as representatives and as members of the Intergovernmental Affairs Committee and for your consideration of this matter.

Second, before addressing HB 762, I think it is important to understand the context in which severance agreements occur.

The Superintendent has a property interest in the term of the contract, which is protected by the U.S. and Texas constitutions. To take away that property interest, the District must provide the Superintendent due process, which means that before dismissing the Superintendent for good cause, the superintendent shall be given, among other things, notice of the charges against him or her, an explanation of the district's evidence, and an opportunity to respond at a hearing. And the law provides a mechanism for the district to initiate the termination of the Superintendent for good cause, as well as a hearing process that provides the Superintendent notice of the charges, an explanation of the evidence and an opportunity to respond. Severance agreements provide the District and the Superintendent the ability to amicably terminate the contract/employment by agreement in situations where "good cause" does not exist and/or to avoid costly litigation—many times far exceeding the cost of a typical severance agreement— when there is uncertainty as to the existence of "good cause." In my 24 years practicing law, 17 years of which has been representing Superintendents, I do not recall a matter in which a Superintendent was terminated for good cause and received a severance payment after being terminated for cause.

When "good cause" undoubtedly exists, we recognize that large severance payments are inappropriate in such cases. And as stated above, the law provides a mechanism for the district to initiate the termination of the Superintendent for good cause. In my experience, separation agreements in such cases where "good cause" exists often involve no severance payments at all or some amount of severance that takes into account what the parties may spend going through the termination/hearing process. Typically, such agreements involve a resignation that is effective on a date in the future consistent with the timing of the hearing process (75 -105 days from the date of a proposed termination made by the board) with no severance payment at all or a *de minimis* amount. In my experience, however, the overwhelming majority of severance

agreements do not fall into that category. Rather, most of the severance agreements result from a change in the makeup of the board—a newly elected majority of the board desire "their person" as Superintendent—and do not involve "good cause," at least not a legitimate credible threat of "good cause." Superintendents do not typically desire a severance agreement. Instead, Superintendents wish to fulfill the terms of their contracts and continue to serve the students in their respective districts. And in those matters where "good cause" does not exist and/or those in which a newly elected Board seeks to hire a different leader, Superintendents want to be treated fairly, in a manner that balances their property interest, reputation and risks of finding other employment in a timely manner with the Board's desire to terminate the contract early so they can hire a different leader. TASA supports a provision that requires a District to post the severance agreement on the District's website.

With that context in mind, I believe there are several unintended consequences that will significantly impact the relationship between a Superintendent, the Board of Trustees ("Board") and the School District ("District"), if HB 762 is passed:

1. By limiting severance pay to twenty (20) weeks, HB 762 effectively creates a 20-week contract for Superintendents, while TEC §11.201(b) provides for up to 5-year contracts for Superintendents. Faced with what is effectively a 20-week contract, no qualified Superintendent will take the risk and incur the cost of moving their families across the state or from another state with no assurances that they will be there for more than 20-weeks. As indicated below, one of the main factors contributing to the success of a district is longevity and continuity of leadership (board and superintendent). Twenty weeks is barely enough time to get familiar with the complexities of the District, much less make significant improvements or identify and correct already existing deficiencies.

2. The impact of Superintendents effectively having only 20-week contracts will also limit the Superintendent hiring pool, especially in Districts that struggle academically, financially or with governance issues. If HB 762 were passed, you would be asking a person to become the CEO of one of the most complex organizations in the community—considering the Superintendent's primary purpose is to educate the community's children & effectively run a big business, which oftentimes is the largest employer in the county and many of which districts employ more than 10,000 employees and as many as 27,000 employees—with only the assurance of a 20-week contract. The market for Superintendents is a national market, and qualified Superintendents faced with only a 20-week contract will most assuredly seek Superintendencies in other states that are willing to honor their full term and property interest. The state has already seen a significant rise in Superintendent retirements over the last few years. And a recent study by the University of Texas, indicated that 46% of Superintendents have three or less years of experience. In all likelihood, passing HB 762 would also result in increased/inflated compensation packages for those Superintendents in high demand who are willing to remain in Texas, as they seek to offset the risks of a 20-week contract. And many more districts may have to invest in District housing for the Superintendent to attract quality candidates who are not willing to purchase a house or sign a long-term lease as a result of a 20-week contract.

3. Experience and data indicate that Districts with significant turnover in leadership (the Superintendency and/or members of the Board of Trustees) struggle to be successful. By contrast, data shows that the Districts that promote longevity and continuity of leadership see greater success, and most importantly, success in student performance. Instead of promoting longevity between the Superintendent and Board, which has been shown to have a direct, positive impact on student outcomes, HB 762 appears to encourage turnover in leadership and disruption of the board-

superintendent relationship. Instead of encouraging more buyouts by limiting severance to 20 weeks, more efforts could be directed to promoting longevity and continuity of leadership between the board and superintendent by enforcing the current governance structure in the Education Code. HB 762 will negatively impact longevity and continuity of leadership by encouraging every new faction of a board to hire their own person, for no other reason than a desire to hire someone else. In many cases, Superintendents have been named or nominated by their board in the Spring for Superintendent of the year, and that same Fall, once a newly elected board is in place, are forced with consideration of a severance agreement with the newly elected board.

4. By effectively providing Superintendents with twenty-week contracts, HB 762 would negatively impact the governance structure and statutory balance of authority between the Superintendents' statutory, policy and contractual obligations to manage the District and the Board of Trustees' authority as policy makers and management oversight.

5. Usually, the Superintendent does not initiate a severance agreement. Instead, most severance pay packages are developed because of turnover on the Board, where the new board majority—without "good cause"—wants to terminate the Superintendent's contract and implement a change in leadership. Texas Superintendents should not be penalized & denied an opportunity to fulfill the contract term—a term in which they have a property interest protected by the Texas and U.S. constitutions—when they have done nothing wrong. And students should not suffer because of a lack of longevity and continuity amongst leadership emanating only from the desire of a newly elected board majority to hire "their person."

6. HB 762 is inconsistent with current law specifically addressing Superintendent severance. Under current law, severance packages are already significantly shaped by TEC §11.201(c). While section 11.201(c) does not prohibit a District from paying a severance greater than 1-year's salary and benefits, it provides that, if a District pays a Superintendent severance that exceeds the value of 1-year's salary & benefits, the District's FSP funds are penalized. Based on current law, very few severance amounts exceed the value of 1-year's salary & benefits, likely indicating proper balance of protecting the Superintendent's property interest, reputation and risk of finding other employment in a timely manner with the Board's desire to hire a different leader. A typical Superintendent search lasts at least 3-6 months and at any given time the number of comparable districts searching for a new superintendent may be very small. Realistically, a six-month severance would not adequately compensate a Superintendent for the risk of finding comparable employment in a timely manner.

7. If HB 762 is implemented and the current limitations on severance packages are further restricted to 20 weeks, it will significantly disrupt the current balance of interests in 11.201(c) and increase the number of Superintendent termination/administrative appeals/litigation, in turn significantly increasing litigation costs of Districts and TEA.

8. HB 762 is inconsistent with the current structure for term contract termination/appeals under TEC Subchapters F & G. Section 21.304, subsections (e) & (f) provide that if the TEA Commissioner reverses the action of a Board to terminate an employee's term contract for "good cause," the employee is entitled to reinstatement with backpay & benefits or a severance in the amount of one-year's salary. HB 762 seems to indicate that if the Board terminated the employee for "misconduct" (defined as what the political subdivision decides is "misconduct"), but the Commissioner reverses

because "good cause" did not exist to terminate the contract, the political subdivision would still be prohibited from paying the statutory remedy because it exceeds the twenty weeks allowed by HB 762.

9. HB 762 Section (e) also purports to place limitations on a court's ability to issue a writ of execution or mandamus in support of a judgment that does not comply with HB 762. HB 762 does not set forth how a judgment will "comply with" the section. In addition, the HB 762 limits prohibit only writs of execution and mandamus, not any of the other methods available to collect a judgment. Even if the attempt to restrict the remedies a court may issue is allowed by law, the limitation without any definition of how a judgment complies with Section (e) makes it so vague as to be unenforceable.

10. Finally, as a Superintendent has a property interest in the position for the period of time stated in the contract, HB 762 is likely unconstitutional as it arguably seeks to limit a court's ability to award damages based on a District depriving a superintendent of his/her constitutionally protected property interest.

At a minimum, Superintendents should be exempted from the provisions of HB 762, as existing laws address severance amounts paid to Superintendents. Furthermore, Superintendents are very similar to CEOs of public hospitals in that they often manage similarly sized organizations—in fact, many superintendents manage more employees than a CEO of a public hospital (Fort Worth ISD employs approximately 10,000 employees; some districts employ up to 27,000 employees; whereas the Tarrant County Hospital District employs approximately 7,200 employees). Like, public hospitals, school districts and their superintendents should be exempted. Accordingly, as GC of TASA, representing the Superintendents and Administrators of the State of Texas, I respectfully request that this Committee not support HB 762.

Please know we are willing to work with you and visit on this matter if that is helpful to you.