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April 17, 2007

Mr. John O'Brien
Executive Director
Legislative Budget Board
Robert E. Johnson Building, 5th Floor
1501 N. Congress
Austin, Texas 78701

Dear Mr. O'Brien:

On behalf of the Coordinating Board, I am forwarding the following educational impact statement on **Senate Bill 1400**, which would authorize the Board of Regents of the University of Texas System to establish a law school at The University of Texas at Brownsville, located in Cameron County.

The Board staff has examined the critical issues of establishing a new law school in Cameron County and offers the following information for the members' consideration.

Texas currently has four public law schools and five independent law schools. The public law schools are Texas Southern University (Houston), Texas Tech University (Lubbock), the University of Houston, and The University of Texas at Austin. Independent law schools are Baylor University (Waco), St. Mary's University (San Antonio), South Texas College of Law (Houston), Southern Methodist University (Dallas), and Texas Wesleyan University (Fort Worth). The last law schools to receive American Bar Association (ABA) approval were Texas Wesleyan University in 1994 and, before that, Texas Tech University in 1969. In the last 20 years, the number of law school graduates has not increased as rapidly as the state's population or the number of undergraduate degrees awarded from its public and independent institutions. From 1985 to 2006, the number of law graduates increased 18 percent while the state's population increased 40 percent and undergraduate degrees awarded increased 61 percent.

High quality law schools are attached to mature, comprehensive universities that can ensure an enriched, well-balanced educational environment with strong faculty drawn from both academia and practice settings.

From 2000 to 2006, the public higher education institutions in South Texas reported cumulatively the greatest percentage increase (47.4 percent) in baccalaureate degrees conferred among the state's 10 higher education regions. The institutions in this region have grown rapidly but do not yet have the comprehensiveness and scholarship of the institutions that support the stronger law schools in the state. The University of Texas at Brownsville was only created in 1989. The University of Texas-Pan American is just beginning to develop its research program and started its first doctoral program in 1994.

South Texas currently does not have a public law school. With its recent history of growth and as the third largest population of the 10 higher education

planning regions, it probably has the population and student enrollment base to support a law school. A public law school there could serve a large number of Texas residents.

According to one analysis, the state has fewer law graduates per 100,000 population than most other states. In 2006, there were 2,450 graduates from Texas law schools for a state with an estimated population of 23.5 million or 10.4 law graduates per 100,000 population. The U.S. ratio for 2003, the most recent year for which data are available, was 13.4 law graduates per 100,000 population. To achieve a ratio of 13.4, Texas would need to produce 3,150 law graduates per year (700 more than the current rate).

Texas ranks 8th among the 10 most populous states in the ratio of lawyers to population. While there is no standard for an ideal ratio of lawyers to population, the Texas average of 304 lawyers per 100,000 population is lower than the national average (373) and the average of the 10 most populous states (394). This may simply mean that the Texas economy does not require as many law school graduates per 100,000 population as other populous states.

As with many professionals, lawyers practice in areas where the need for their services is greatest. In 2005, the State Bar of Texas reported that the Austin, Houston, and Dallas-Fort Worth-Arlington Metropolitan Statistical Areas (MSA) had the highest ratios of lawyers per 100,000 population among the state's 24 MSAs. The ratios for all three areas exceeded or were close to the national average. Among the other 21 MSAs, San Antonio ranked fourth with 278 lawyers per 100,000 population, Corpus Christi was 8th (254), Victoria was 15th (168), Brownsville-Harlingen was 21st (128), Laredo was 22nd (125) and McAllen-Edinburg-Pharr was 23rd (120). Thus, it is uncertain whether or not graduates from this proposed law school would be able to stay in the region to practice.

The distribution of practicing lawyers also may influence the cost of operating a law school. Texas law schools draw upon a large number of practicing lawyers to teach as part-time faculty. While the ratio of part-time to full-time faculty varies by individual law school, collectively, the state's law schools report that 49 percent of all faculty positions are part-time. Those ratios are highest at schools located in the areas of the state where the largest number of lawyers practice.

In considering the need for a new law school, Board staff also studied the opportunity for Texas residents to attend law school. Opportunity is measured by calculating the ratio of baccalaureate degrees awarded in the state to the number of law school seats available in Texas, and then comparing that ratio to those for comparable states. In 2005, Texas ranked seventh among the 10 most populous states in average opportunity to attend law school. Texas awarded 32 baccalaureate degrees per law school seat. The average for the 10 states was 27 and the highest ranked state was Michigan with 18 baccalaureate degrees awarded per seat. As the state continues to promote higher education and award more baccalaureate degrees, that opportunity will continue to decline if the number of seats in law schools does not also increase.

Board staff also compared the average costs of law school at the state's public and independent institutions. It found that tuition and fees are at least 21 percent more at the least expensive law school at an independent institution than at the most expensive law school at a public institution in Texas. Tuition and fees range from \$10,268 (Texas Southern

University) to \$16,935 (The University at Texas at Austin) at public law schools, and \$20,520 (Texas Wesleyan University) to \$31,238 (Southern Methodist University) at independent schools. St. Mary's University's tuition and fees are \$21,410. Average tuition and fees at the public law schools (\$13,174) are slightly above the national average (\$13,145), while average tuition and fees at the state's independent law schools (\$24,425) are below the national average (\$28,900). While loans are available to students at all law schools, the large debts that students often accumulate can be a deterrent to enrollment at independent law schools. Student debt can be mitigated by a number of financial aid programs including the Tuition Equalization Grant Program (TEG), which is available to both graduate and professional students at independent institutions who meet the statutory requirements. Independent Colleges and Universities in Texas (ICUT) reported that, in fiscal year 2006, TEG provided \$496,668 in grants to 155 law students at St. Mary's University in San Antonio.

While some of the information cited above suggests a significant unmet need for additional law school graduates, several workforce indicators show that the state currently produces a sufficient number of lawyers to meet workforce demand. The Texas Board of Bar Examiners reports that 3,028 lawyers, of whom 72 percent (2,178) were Texas law school graduates, passed the Texas Bar examination in 2006. While many of the 850, who were not graduates of Texas law schools, may reside outside Texas and only occasionally practice in the state, these data suggest that Texas is attracting the lawyers it needs from out-of state beyond the number it graduates. Furthermore, the Texas Workforce Commission projects only 1,535 new lawyer hires per year through 2012, approximately half the number who passed the bar exam in 2006. In a special study, the Texas Bar Association also reported a 2005 mean net annual earnings for city attorneys with six or fewer years of experience of \$48,900. This salary level suggests only a modest demand for new attorneys.

However, should the state choose to expand capacity and opportunity to attend law school, Board staff estimate that start-up costs for a new law school, excluding facility costs, would be \$23 million above the cost of adding the same capacity to existing law schools including inflation adjustment. All start-up costs assume that the school would begin employing some faculty (22) and staff as early as Fall 2007 and would enroll its first class of 150 to 200 students in Fall 2010 with 36 full-time faculty and staff. Based on this timeline, the law school would be eligible for formula funding for instruction and operations beginning in fiscal year 2012 but continue to receive special item funding from fiscal years 2008 through 2013. Start-up costs of the new school for the 2008-09 biennium are estimated to be \$3.2 million. An additional \$28 million would be required for the construction of a 165,000 square foot law school building (debt service would be an additional \$13 million over the initial five-year period).

These amounts are minimal for the initial startup of a law school and may vary considerably depending on the number of faculty hired and the faculty salary levels. For example, these calculations are based on an average faculty salary of \$107,000 at Florida International University (the last U.S. law school to receive ABA accreditation when the analysis was conducted) adjusted for inflation with the number of faculty at the time of initial accreditation. Florida International University had approximately 32 faculty members by the time they received final accreditation. Faculty salaries could be considerably higher. For example, the University of Houston's average faculty salary is \$157,301 for a professor and The University of Texas at Austin's average professor salary is \$185,037.

In a recent survey of the nine law schools, Board staff found that three schools could increase their entering class size by a total of 105 entering students using existing resources (less than a 5 percent increase to the Fall 2006 statewide first-year enrollment). Of those three schools, St. Mary's University in San Antonio could add 60 new students with its plans to start a new night program. Although they did not indicate a desire to expand, five schools (Texas Southern University, Texas Tech University, Southern Methodist University, Texas Wesleyan University and the University of Houston) reported that they could add 364 entering students with additional resources (a 14 percent increase to the current statewide total). The additional cost of adding these students would be incurred primarily for new faculty and staff although some construction would also be required. Two other schools, UT-Austin and Baylor University, report that they would not consider increasing class size, and, in fact, want to decrease their law school enrollments in order to be more selective.

The average cost to General Revenue of supporting a law student at a public institution is currently \$6,381 per year (\$1.3 million for 200 students), which is approximately equivalent to the average annual cost of supporting a full-time graduate student at a public university but significantly more than the average cost to General Revenue of supporting a full-time undergraduate student at a public university (\$2,819) or community college (\$2,109). Thus, if overall educational funding is limited, each additional law school seat will displace one graduate school seat, 2.2 undergraduate seats or 2.9 community college seats.

Coordinating Board staff also examined regional access to law school. Although law schools are generally regarded as statewide resources, it is clear that regional balance would be improved by giving first priority to expanding law school capacity in South Texas. The Regional Plan for Texas Higher Education divides the state into 10 geographic regions, which for the purposes of law school analysis can be combined into five super regions. Of those super-regions, the South Texas/Upper Rio Grande (5.1 million population) has one independent law school at St. Mary's University with a total of 733 law students or 14.5 law students per 100,000 population. The next least well-served region is the Metroplex/Upper East region (7.3 million population) with Southern Methodist University and Texas Wesleyan University (1,739 combined enrollment) and a ratio of 23.9 law students per 100,000 population. The statewide ratio is 34.4 with the High Plains/Northwest/West ratio of 36.7, the Gulf Coast/Southeast ratio of 49.0 and the Central Texas ratio of 66.5. All of the Texas law schools enroll students from throughout the state and their graduates practice across the state.

Finally, Coordinating Board staff considered the location of a new law school as a means to closing the gaps in the ethnic distribution of graduates from professional schools. Locating the school in the South Texas and/or Upper Rio Grande regions would most likely provide a greater opportunity for Hispanics to attend the state's public law schools. In 2006, Hispanics represented 21 percent of baccalaureate graduates at public institutions but only 14 percent of law school graduates at public institutions. That gap is the largest of all ethnic groups. Whites represented 59 percent of all baccalaureate graduates and 63.5 percent of law school graduates; Blacks represented 9 percent of baccalaureate graduates and 10.5 percent of law school graduates. Asians had an equal balance of baccalaureate and law school graduates. The South Texas region and the Upper Rio Grande Region account for 43 percent of the Hispanic population and 51 percent of the 2006 Hispanic bachelor's degrees.

Conclusion

The data gathered by the Coordinating Board staff on the proposed law school in Cameron County suggest that there is no urgent need currently for a new law school in the state, although, in regard to relative need, the stronger argument could be made to establish the next public law school in South Texas. It is certainly unseemly that a region as large and populous as South Texas has no public law school and that Texas ranks eighth among the 10 largest states in the ratio of lawyers to population. It is also troubling that Texas has been declining in "reasonable opportunity" for its residents to attend law school, again in comparison to the 10 largest states, and that the reliance on private law schools to train Texas lawyers places an undue financial burden on the state's law students. If the state was to determine that "reasonable opportunity" criteria for access to legal education justified a new public law school, the data suggest that Texas would be best served by placing the new school in South Texas.

These considerations notwithstanding, Texas is attracting sufficient numbers of lawyers to meet demand for the state as a whole and for specific areas of the state where the need for their services is greatest. The highly credible projections from the Texas Workforce Commission indicate that the state's law schools, both public and independent, are more than meeting the state's need for new attorneys now and into the foreseeable future (and this without taking into account the significant number of attorneys trained in other states who come to Texas to practice). Furthermore, we urge that the issue of a new law school be weighed against the prioritized higher education needs identified by the Coordinating Board in its Legislative Appropriations Request such as increasing student financial aid and increasing funding for the Advanced Research Program, as well as fully funding the instruction and operations funding formula. Finally, in regard to the issue of the need for more professional education in the Texas-Mexico border area, we suggest that the continued development of The University of Texas at Brownsville's general campus, with its emphasis on undergraduate education in a community with one of the lowest educational attainment rates in the state, should be the highest priority.

The Coordinating Board welcomes the opportunity to comment upon proposed legislation affecting higher education. Please let me know if the Board or I can provide additional assistance regarding Senate Bill 1400 or other proposed legislation.

Sincerely,

Raymund A. Paredes

c: Coordinating Board Members
David Gardner

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